

SECOND REGULAR SESSION

SENATE BILL NO. 824

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time February 4, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5840S.011

AN ACT

To repeal sections 1.020, 56.010, 56.060, 56.265, 56.363, 56.430, 56.805, 56.816, and 211.411, RSMo, and to enact in lieu thereof ten new sections relating to prosecuting attorneys.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 1.020, 56.010, 56.060, 56.265, 56.363, 56.430, 56.805, 56.816, and 211.411, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 1.020, 56.010, 56.015, 56.017, 56.060, 56.265, 56.430, 56.805, 56.816, and 211.411, to read as follows:

1.020. As used in the statutory laws of this state, unless otherwise specially provided or unless plainly repugnant to the intent of the legislature or to the context thereof:

(1) "Certified mail" or "certified mail with return receipt requested", includes certified mail carried by the United States Postal Service, or any parcel or letter carried by an overnight, express, or ground delivery service that allows a sender or recipient to electronically track its location and provides record of the signature of the recipient;

(2) ["County or circuit attorney" means prosecuting attorney] **"County attorney", "circuit attorney", "district attorney", "prosecuting attorney", or "prosecutor" or any or any derivation thereof, when used in the context of the functions, duties, powers, and responsibilities of the office, means an elected official of a county or designated district with the responsibility for prosecuting violations of state law;**

(3) "Executor" includes administrator where the subject matter applies to an administrator;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 (4) "General election" means the election required to be held on the
18 Tuesday succeeding the first Monday of November, biennially;

19 (5) "Guardian", if used in a section in a context relating to property rights
20 or obligations, means conservator of the estate as defined in chapter
21 475. "Guardianship", if used in a section in a context relating to rights and
22 obligations other than property rights or obligations, means guardian of the
23 person as defined in chapter 475;

24 (6) "Handicap" means a mental or physical impairment that substantially
25 limits one or more major life activities, whether the impairment is congenital or
26 acquired by accident, injury, or disease, and where the impairment is verified by
27 medical findings;

28 (7) "Heretofore" means any time previous to the day when the statute
29 containing it takes effect; and "hereafter" means the time after the statute
30 containing it takes effect;

31 (8) "In vacation" includes any adjournment of court for more than one day
32 whenever any act is authorized to be done by or any power given to a court, or
33 judge thereof in vacation, or whenever any act is authorized to be done by or any
34 power given to a clerk of any court in vacation;

35 (9) "Incompetent", if used in a section in a context relating to actual
36 occupational ability without reference to a court adjudication of incompetency,
37 means the actual ability of a person to perform in that
38 occupation. "Incompetent", if used in a section in a context relating to the
39 property rights and obligations of a person, means a disabled person as defined
40 in chapter 475. "Incompetent", if used in a section in a context relating to the
41 rights and obligations of a person other than property rights and obligations,
42 means an incapacitated person as defined in chapter 475;

43 (10) "Justice of the county court" means commissioner of the county
44 commission;

45 (11) "Month" and "year". "Month" means a calendar month, and "year"
46 means a calendar year unless otherwise expressed, and is equivalent to the words
47 year of our Lord;

48 (12) The word "person" may extend and be applied to bodies politic and
49 corporate, and to partnerships and other unincorporated associations;

50 (13) "Personal property" includes money, goods, chattels, things in action
51 and evidences of debt;

52 (14) "Place of residence" means the place where the family of any person

53 permanently resides in this state, and the place where any person having no
54 family generally lodges;

55 (15) "Preceding" and "following", when used by way of reference to any
56 section of the statutes, mean the section next preceding or next following that in
57 which the reference is made, unless some other section is expressly designated
58 in the reference;

59 (16) "Property" includes real and personal property;

60 (17) "Real property" or "premises" or "real estate" or "lands" is coextensive
61 with lands, tenements and hereditaments;

62 (18) "State", when applied to any of the United States, includes the
63 District of Columbia and the territories, and the words "United States" includes
64 such district and territories;

65 (19) "Under legal disability" includes persons within the age of minority
66 or of unsound mind or imprisoned;

67 (20) "Ward", if used in a section in a context relating to the property
68 rights and obligations of a person, means a protectee as defined in chapter
69 475. "Ward", if used in a section in a context relating to the rights and
70 obligations of a person other than property rights and obligations, means a ward
71 as defined in chapter 475;

72 (21) "Will" includes the words testament and codicil;

73 (22) "Written" and "in writing" and "writing word for word" includes
74 printing, lithographing, or other mode of representing words and letters, but in
75 all cases where the signature of any person is required, the proper handwriting
76 of the person, or his mark, is intended.

56.010. 1. At the general election to be held in [this state in the year A.D.
2 1982, and every four years thereafter,] **the years provided under this**
3 **section**, there shall be elected [in each county of this state] a prosecuting
4 attorney **or district attorney**, who shall be a person learned in the law, duly
5 licensed to practice as an attorney at law in this state, and enrolled as such, at
6 least twenty-one years of age, and who has been a bona fide resident of the county
7 **or prosecutorial district** in which he **or she** seeks election for twelve months
8 next preceding the date of the general election at which he is a candidate for such
9 office and shall hold his **or her** office for four years, and until his successor is
10 elected, commissioned and qualified.

11 **2. At the general election in the year 2018, and every four years**
12 **thereafter, in each county that has not entered into a prosecutorial**

13 district under section 56.015, there shall be elected a prosecuting
14 attorney.

15 3. At the general election in the year 2018, and every four years
16 thereafter, in each prosecutorial district or county which adopted the
17 proposition authorized by section 56.015, there shall be elected a
18 district attorney.

19 4. At the general election provided for in its charter, and every
20 four years thereafter, in any judicial circuit composed of a single
21 charter county, there shall be elected a prosecuting attorney or district
22 attorney, as the charter may direct.

23 5. At the general election in the year 2016, in any prosecutorial
24 district formed prior to January 1, 2015, there shall be elected a district
25 attorney, for a term of two years.

56.015. 1. The governing bodies of any two or more contiguous
2 counties within a single judicial circuit may act cooperatively in the
3 common employment of a district attorney. Additional counties within
4 the judicial circuit may be admitted to participation by the consent of
5 each county already participating and each county seeking to
6 participate upon the approval of a new joint agreement under
7 subsection 3 of this section. The territorial area comprising the
8 participating counties shall be designated a "prosecutorial district", and
9 the prosecuting attorney shall be known as a "district attorney", who
10 shall have the same duties prescribed by this chapter for prosecuting
11 attorneys throughout the state and any additional duties as provided
12 in section 56.060. In order to form or join a prosecutorial district:

13 (1) For counties not having a charter form of government, the
14 county commission shall adopt a resolution to join in a prosecutorial
15 district and approve the joint agreement provided for in subsection 3
16 of this section;

17 (2) For counties having a charter form of government, the
18 governing body shall adopt a charter amendment to join in a
19 prosecutorial district and approve the joint agreement provided for in
20 subsection 3 of this section.

21 2. Notice of the formation or expansion of a prosecutorial district
22 shall be transmitted to the secretary of state and the election authority
23 of each county within the prosecutorial district at least twelve months
24 in advance of the next general election at which a district attorney

25 shall be elected. The election to form or expand a prosecutorial district
26 shall be irrevocable once such notice is transmitted.

27 3. The governing bodies of the counties electing to join together
28 in a prosecutorial district shall approve a joint agreement which
29 specifies the duties of each county. If any county seeks to join a
30 prosecutorial district which has already been established pursuant to
31 this section, the joint agreement shall be rewritten and reapproved by
32 the governing body of each member county. Any agreement shall
33 contain the following:

34 (1) The names of the counties within the district;

35 (2) The formula for calculating each county's contribution to the
36 costs of the district;

37 (3) The formula for calculating each county's portion of the fee
38 collected under subsection 4 of section 56.060; and

39 (4) The timing and procedures for approval of the prosecutorial
40 district's annual budget by the governing bodies of the member
41 counties.

42 4. In any judicial circuit composed of a single county, the
43 governing body of the county may convert the office of prosecuting
44 attorney to the office of district attorney. The district attorney shall
45 have the same duties prescribed by this chapter for prosecuting
46 attorneys throughout the state and any additional duties as provided
47 under section 56.060. If the office is converted, the county shall be
48 designated a prosecutorial district. In order to convert the office to
49 that of a prosecutorial district:

50 (1) In a judicial circuit composed of a single charter county, the
51 governing body of the county shall adopt a charter amendment to
52 convert the office of prosecuting attorney to the office of district
53 attorney;

54 (2) In a judicial circuit composed of a single noncharter county,
55 the governing body of the county shall adopt a resolution to convert the
56 office of prosecuting attorney to the office of district attorney.

57 5. The prosecuting attorney of a county electing to convert the
58 office as provided for in subsection 4 of this section shall perform the
59 additional duties of a district attorney immediately upon the governing
60 body taking the action provided for in subsection 4 of this section, but
61 the election of a district attorney shall not occur until the next regular

62 election for the office.

56.017. 1. Each district attorney shall have all the powers and
2 duties of the office of prosecuting attorney provided to prosecuting
3 attorneys in counties of the first classification under this
4 chapter. Each district attorney representing counties of the second,
5 third, or fourth classification shall also perform the duties provided for
6 prosecuting attorneys in such counties under sections 56.291, 56.293,
7 56.300, and 56.305.

8 2. Each district attorney shall be responsible for the budgets and
9 staff of the offices within the prosecutorial district or county. Each
10 district attorney may appoint such assistant district attorneys, and may
11 employ such investigators and stenographic and clerical help as the
12 district attorney deems necessary for the proper discharge of the duties
13 of the district attorney's office, and may set their compensation within
14 the limits of the allocations made for that purpose by joint agreement
15 of the governing bodies of the counties in the prosecutorial
16 district. The compensation for the assistant district attorneys,
17 investigators and stenographic and clerical help shall be paid in equal
18 installments out of the respective county treasuries in the same manner
19 as other county employees are paid.

20 3. The assistant district attorneys shall be subject to the same
21 fines and penalties for neglect of duty or misdemeanor in office as the
22 district attorney.

23 4. All assistant district attorneys, investigators, and stenographic
24 and clerical help shall hold office at the pleasure of the district
25 attorney.

56.060. 1. Each prosecuting attorney or district attorney shall:

2 (1) Commence and prosecute all [civil and] criminal actions by adults
3 in the prosecuting attorney's county or district attorney's prosecutorial
4 district in which the county or state is concerned[,];

5 (2) Defend all suits against the state [or county, and];

6 (3) Prosecute forfeited recognizances and actions for the recovery of debts,
7 fines, penalties and forfeitures accruing to the state [or], county, or
8 prosecutorial district; and

9 (4) Follow and prosecute or defend, as the case may be, all cases
10 in which changes of venue are granted, for which, in addition to the
11 fees now allowed by law, the prosecuting or district attorney shall

12 **receive his or her actual expenses.** [In all cases, civil and criminal, in which
13 changes of venue are granted, the prosecuting attorney shall follow and prosecute
14 or defend, as the case may be, all the causes, for which, in addition to the fees
15 now allowed by law, the prosecuting attorney shall receive his or her actual
16 expenses. If any misdemeanor case is taken to the court of appeals by appeal the
17 prosecuting attorney shall represent the state in the case in the court and make
18 out and cause to be printed, at the expense of the county, all necessary abstracts
19 of record and briefs, and if necessary appear in the court in person, or shall
20 employ some attorney at the prosecuting attorney's own expense to represent the
21 state in the court, and for his or her services he or she shall receive the
22 compensation that is proper, not to exceed twenty-five dollars for each case, and
23 necessary traveling expenses, to be audited and paid as other claims are audited
24 and paid by the county commission of the county.]

25 2. Notwithstanding the provisions of subsection 1 of this section, in any
26 county for which a county counselor is appointed, the prosecuting attorney shall
27 only perform those duties prescribed by subsection 1 of this section which are not
28 performed by the county counselor under the provisions of law relating to the
29 office of county counselor.

30 **3. In each county taking the actions provided in section 56.015,**
31 **the district attorney shall perform the following duties in addition to**
32 **all other duties imposed by law:**

33 **(1) Subject to appropriations, commence and prosecute all**
34 **juvenile cases in the prosecutorial district;**

35 **(2) Except as otherwise provided by law, represent state agencies**
36 **in the collection of debt; and**

37 **(3) Provide not less than six hours of continuing education to**
38 **peace officers in the member counties in each year of his or her term**
39 **of office.**

40 **4. In the absence of an agreement that states otherwise, the**
41 **district attorney shall maintain twenty percent of all debt collected on**
42 **behalf of state agencies under subsection 3 of this section as a**
43 **collection fee with:**

44 **(1) One-half of the fee collected to be payable to the state of**
45 **Missouri and remitted to the director of revenue who shall deposit the**
46 **amount collected pursuant to this section to the credit of the Missouri**
47 **office of prosecution services fund to be used solely for the purpose of**

48 **offsetting county expenses related to victim services, office supplies,**
 49 **postage, books, training, office equipment, capital outlay, expenses of**
 50 **trial and witness preparation, additional employees for the staff of the**
 51 **district attorney, and salary supplements for existing employees on the**
 52 **staff of the district attorney; and**

53 **(2) One-half of the fee collected to be payable to the county**
 54 **treasurer of each county in the prosecutorial district on a pro rata**
 55 **basis, pursuant to the agreement entered into by the counties under**
 56 **section 56.015, and deposited into the county treasury.**

56.265. 1. [The county] A prosecuting attorney [in any county], other
 2 than a **prosecuting attorney** in a chartered county, shall receive an annual
 3 salary computed using the following schedule, when applicable. The assessed
 4 valuation factor shall be the amount thereof as shown for the year immediately
 5 preceding the year for which the computation is done.

6 **(1) For a district attorney, he or she shall receive compensation**
 7 **equal to the compensation of a circuit judge. In multi-county**
 8 **prosecutorial districts, the total cost to the counties for the**
 9 **compensation of the district attorney shall be prorated among the**
 10 **counties, pursuant to the agreement entered into by the counties under**
 11 **section 56.015. Nothing in this subdivision shall be construed to**
 12 **prevent the governing body of a charter county from electing to**
 13 **compensate the district attorney in excess of the salary of a circuit**
 14 **judge;**

15 **(2) For a full-time [prosecutor] prosecuting attorney in a county not**
 16 **taking the actions provided in section 56.015, the prosecutor shall receive**
 17 **compensation equal to the compensation of an associate circuit judge;**

18 **[(2)] (3) For a part-time [prosecutor] prosecuting attorney in a**
 19 **county that is not part of a prosecutorial district as provided in section**
 20 **56.015, the governing body of the county may elect to pay the part-time**
 21 **prosecutor in accordance with one of the following options:**

22 **Option 1. Using the following scale:**

23 Assessed Valuation	Amount
24 \$ 18,000,000 to 40,999,999	\$37,000
25 41,000,000 to 53,999,999	38,000
26 54,000,000 to 65,999,999	39,000
27 66,000,000 to 85,999,999	41,000

28	86,000,000 to 99,999,999	43,000
29	100,000,000 to 130,999,999	45,000
30	131,000,000 to 159,999,999	47,000
31	160,000,000 to 189,999,999	49,000
32	190,000,000 to 249,999,999	51,000
33	250,000,000 to 299,999,999	53,000
34	300,000,000 or more	55,000; or

35 **Option 2. Compensation equal to one-half the compensation of a full-**
 36 **time district attorney provided under subdivision (1) of this subsection,**
 37 **but this option may only be selected if the part-time prosecutor**
 38 **consents to represent the juvenile officer in all juvenile court cases,**
 39 **and is appointed to do so by the presiding judge of the circuit court.**

40 2. [Two] **Ten** thousand dollars of the salary authorized in this section
 41 shall be payable to the prosecuting attorney only if the prosecuting attorney has
 42 completed at least [twenty] **thirty** hours of classroom instruction each calendar
 43 year relating to the operations of the prosecuting attorney's office when approved
 44 by a professional association of the county prosecuting attorneys of Missouri
 45 unless exempted from the training by the professional association. The
 46 professional association approving the program shall provide a certificate of
 47 completion to each prosecuting attorney who completes the training program and
 48 shall send a list of certified prosecuting attorneys to the treasurer of each
 49 county. Expenses incurred for attending the training session may be reimbursed
 50 to the [county] prosecuting attorney in the same manner as other expenses as
 51 may be appropriated for that purpose.

52 3. As used in this section, the term "prosecuting attorney" includes the
 53 circuit attorney of any city not within a county.

54 4. The prosecuting attorney of any county which becomes a county of the
 55 first classification during a four-year term of office or a county which passed the
 56 proposition authorized by section 56.363 shall not be required to devote full time
 57 to such office pursuant to section 56.067 until the beginning of the prosecuting
 58 attorney's next term of office or until the proposition otherwise becomes effective.

59 5. The provisions of section 56.066 shall not apply to full-time prosecutors
 60 who are compensated pursuant to subdivision (1) of subsection 1 **or subdivision**
 61 **(2)** of this section.

56.430. At the general election to be held in this state in the year 1948,
 2 and every four years thereafter, there shall be elected in the city of St. Louis one

3 circuit attorney, who shall reside in said city, and shall possess the same
4 qualifications and be subject to the same duties that are prescribed by this
5 chapter for **district or** prosecuting attorneys throughout the state.

56.805. As used in sections 56.800 to 56.840, the following words and
2 terms mean:

3 (1) "Annuity", annual payments, made in equal monthly installments, to
4 a retired member from funds provided for, in, or authorized by, the provisions of
5 sections 56.800 to 56.840;

6 (2) "Average final compensation", the average compensation of an
7 employee for the two consecutive years prior to retirement when the employee's
8 compensation was greatest;

9 (3) "Board of trustees" or "board", the board of trustees established by the
10 provisions of sections 56.800 to 56.840;

11 (4) "Compensation", all salary and other compensation payable by a
12 county to an employee for personal services rendered as an employee, but not
13 including travel and mileage reimbursement;

14 (5) "County", the city of St. Louis and each county in the state;

15 (6) "Creditable service", the sum of both membership service and
16 creditable prior service;

17 (7) "Effective date of the establishment of the system", August 28, 1989;

18 (8) "Employee", an elected or appointed prosecuting attorney [or circuit
19 attorney who is employed by a county or a city not within a county];

20 (9) "Membership service", service as a prosecuting [attorney], or circuit
21 attorney after becoming a member that is creditable in determining the amount
22 of the member's benefits under this system;

23 (10) "Prior service", service of a member rendered prior to the effective
24 date of the establishment of the system which is creditable under section 56.823;

25 (11) **"Prosecuting attorney", shall included any elected or**
26 **appointed prosecuting attorney employed by a county, district attorney**
27 **employed by a prosecutorial district, or circuit attorney employed by**
28 **a city not within a county;**

29 (12) "Retirement system" or "system", the prosecuting attorneys and
30 circuit attorneys' retirement system authorized by the provisions of sections
31 56.800 to 56.840.

56.816. 1. The normal annuity of a retired member who served as
2 prosecuting attorney of a county of the third or fourth class shall, except as

3 provided in subsection 3 of this section, be equal to:

4 (1) Any member who has served twelve or more years as a prosecuting
5 attorney and who meets the conditions of retirement at or after the member's
6 normal retirement age shall be entitled to a normal annuity in a monthly amount
7 equal to one hundred five dollars multiplied by the number of two-year periods
8 and partial two-year periods served as a prosecuting attorney;

9 (2) Any member who has served twenty or more years as a prosecuting
10 attorney and who meets the conditions of retirement at or after the member's
11 normal retirement age shall be entitled to a normal annuity in a monthly amount
12 equal to one hundred thirty dollars multiplied by the number of two-year periods
13 and partial two-year periods as a prosecuting attorney.

14 2. The normal annuity of a retired member who served as prosecuting
15 attorney of a first or second class county, **as district attorney**, or as circuit
16 attorney of a city not within a county shall be equal to fifty percent of the final
17 average compensation.

18 3. The normal annuity of a retired member who served as a prosecuting
19 attorney of a county which after August 28, 2001, elected to make the position of
20 prosecuting attorney full time pursuant to section 56.363 shall be equal to fifty
21 percent of the final average compensation.

22 4. The actuarial present value of a retired member's benefits shall be
23 placed in a reserve account designated as a "Retired Lives Reserve". The value
24 of the retired lives reserve shall be increased by the actuarial present value of
25 retiring members' benefits, and by the interest earning of the total fund on a pro
26 rata basis and it shall be decreased by payments to retired members and their
27 survivors. Each year the actuary shall compare the actuarial present value of
28 retired members' benefits with the retired lives reserve. If the value of the
29 retired lives reserve plus one year's interest at the assumed rate of interest
30 exceeds the actuarial present value of retired lives, then distribution of this
31 excess may be made equally to all retired members, or their eligible
32 survivors. The distribution may be in a single sum or in monthly payments at
33 the discretion of the board on the advice of the actuary.

211.411. 1. [It is the duty of circuit, prosecuting and city attorneys, and
2 county counselors representing the state or a city in any court, to give the
3 juvenile officer such aid and cooperation as may not be inconsistent with the
4 duties of their offices] **Except by order of the governing body of the county**
5 **providing for representation of the juvenile officer by another attorney,**

6 **and subject to appropriations, full-time prosecuting attorneys in each**
7 **county not electing to join a prosecutorial district under section 56.015**
8 **shall represent the juvenile officer in all juvenile court cases.**

9 2. It is the duty of police officers, sheriffs and other authorized persons
10 taking a child into custody to give information of that fact immediately to the
11 juvenile court or to the juvenile officer or one of his deputies and to furnish the
12 juvenile court or the juvenile officer all the facts in their possession pertaining
13 to the child, its parents, guardian or other persons interested in the child,
14 together with the reasons for taking the child into custody.

15 3. It is the duty of all other public officials and departments to render all
16 assistance and cooperation within their jurisdictional power which may further
17 the objects of this chapter. The court is authorized to seek the cooperation of all
18 societies and organizations having for their object the protection or aid of children
19 and of any person or organization interested in the welfare of children.

 [56.363. 1. The county commission of any county may on
2 its own motion and shall upon the petition of ten percent of the
3 total number of people who voted in the previous general election
4 in the county submit to the voters at a general or special election
5 the proposition of making the county prosecutor a full-time
6 position. The commission shall cause notice of the election to be
7 published in a newspaper published within the county, or if no
8 newspaper is published within the county, in a newspaper
9 published in an adjoining county, for three weeks consecutively, the
10 last insertion of which shall be at least ten days and not more than
11 thirty days before the day of the election, and by posting printed
12 notices thereof at three of the most public places in each township
13 in the county. The proposition shall be put before the voters
14 substantially in the following form:

15 Shall the office of prosecuting attorney be made a full-time
16 position in County?

17 YES NO

18 If a majority of the voters voting on the proposition vote in favor of
19 making the county prosecutor a full-time position, it shall become
20 effective upon the date that the prosecutor who is elected at the
21 next election subsequent to the passage of such proposal is sworn
22 into office.

23 2. The provisions of subsection 1 of this section
24 notwithstanding, in any county where the proposition of making
25 the county prosecutor a full-time position was submitted to the
26 voters at a general election in 1998 and where a majority of the
27 voters voting on the proposition voted in favor of making the county
28 prosecutor a full-time position, the proposition shall become
29 effective on May 1, 1999. Any prosecuting attorney whose position
30 becomes full time on May 1, 1999, under the provisions of this
31 subsection shall have the additional duty of providing not less than
32 three hours of continuing education to peace officers in the county
33 served by the prosecuting attorney in each year of the term
34 beginning January 1, 1999.

35 3. In counties that, prior to August 28, 2001, have elected
36 pursuant to this section to make the position of prosecuting
37 attorney a full-time position, the county commission may at any
38 time elect to have that position also qualify for the retirement
39 benefit available for a full-time prosecutor of a county of the first
40 classification. Such election shall be made by a majority vote of the
41 county commission and once made shall be irrevocable. When such
42 an election is made, the results shall be transmitted to the
43 Missouri prosecuting attorneys and circuit attorneys' retirement
44 system fund, and the election shall be effective on the first day of
45 January following such election. Such election shall also obligate
46 the county to pay into the Missouri prosecuting attorneys and
47 circuit attorneys' system retirement fund the same retirement
48 contributions for full-time prosecutors as are paid by counties of
49 the first classification.]

✓