SENATE BILL NO. 793

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time January 28, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

5538S.01I

AN ACT

To repeal sections 56.110, 478.240, 544.250, 550.040, and 550.060, RSMo, and to enact in lieu thereof four new sections relating to criminal procedure.

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

Section A.   Sections 56.110, 478.240, 544.250, 550.040, and 550.060, RSMo,

2 are repealed and four new sections enacted in lieu thereof, to be known as

3 sections 56.110, 478.240, 544.250, and 550.040, to read as follows:

56.110.   If the prosecuting attorney and assistant prosecuting attorney be

2 interested or shall have been employed as counsel in any case where such

3 employment is inconsistent with the duties of his office, or shall be related to the

4 defendant in any criminal prosecution, either by blood or by marriage, the court

5 having criminal jurisdiction may appoint some other attorney to prosecute or

6 defend the cause. **A special prosecutor appointed under this section may**

7 **not be otherwise employed by a party other than the state of Missouri**

8 **in any criminal case or proceeding while appointed as a special**

9 **prosecutor and shall be considered an appointed prosecutor for**

10 **purposes of section 56.360.**

478.240. 1. The presiding judge of each circuit which is provided by

2 subsection 3 of section 15 of article V of the constitution shall be selected for a

3 two-year term. The circuit and associate circuit judges in each circuit shall select

4 by secret ballot a circuit judge from their number to serve as presiding

5 judge. Selection and removal procedures, not inconsistent with the rules of the

6 supreme court, may be provided by local court rule. If a presiding judge is

7 disqualified from acting as a judicial officer pursuant to the constitution, article

8 V, section 24, the circuit judges and associate circuit judges of the circuit shall

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

9 select a circuit judge as presiding judge. If the circuit does not have an eligible

10 judge to be elected presiding judge, then the chief justice of the supreme court

11 may designate an acting presiding judge until a successor is chosen or until the

12 disability of the presiding judge terminates.

13   2. Subject to the authority of the supreme court and the chief justice

14 under article V of the constitution, the presiding judge of the circuit shall have

15 general administrative authority over all judicial personnel and court officials in

16 the circuit, including the authority to assign any judicial or court personnel

17 anywhere in the circuit, and shall have the authority to assign judges to hear

18 such cases or classes of cases as the presiding judge may designate, and to assign

19 judges to divisions. Such assignment authority shall include the authority to

20 authorize particular associate circuit judges to hear and determine cases or

21 classes of cases. By this subsection the presiding judge shall not, however, be

22 authorized to make the following assignments:

23   (1) Assignment of a municipal judge to hear any case other than to

24 initially hear a municipal ordinance violation case of the municipality which

25 makes provision for such municipal judge, except that the presiding judge of a

26 circuit may assign a municipal judge of a municipality within the circuit to hear

27 and determine municipal ordinance violations in a court of another municipality

28 within the circuit if the municipality to which the judge is especially assigned by

29 the presiding judge has made provision for the compensation of such judge;

30   (2) Assignment of a judge to hear the trial of a felony case when he **or**

31 **she** has previously conducted the preliminary hearing in that case**, unless the**

32 **defendant has signed a written waiver permitting the same judge to**

33 **conduct both the preliminary hearing and the trial**;

34   (3) Assignment of a case to a judge contrary to provisions of supreme

35 court rules or local circuit court rules; and

36   (4) Assignment of a case or class of cases not within the class of cases

37 specified in section 472.020, to a circuit judge who is also judge of the probate

38 division and who was on January 1, 1979, a probate judge shall only be with the

39 consent of such judge of the probate division.

40   3. If any circuit judge or associate circuit judge shall proceed to hear and

41 determine any case or class of cases which has not been assigned to him by the

42 presiding judge pursuant to subsection 1 or 2 of this section, or to which he had

43 not been transferred by the chief justice of the supreme court, or in the event the

44 purported assignment to him shall be determined to be defective or deficient in

45 any manner, any order or judgment he may have entered may be set aside, as
46 otherwise provided by rule or by law, and the judge may be subject to discipline
47 under article V, section 24 of the Missouri Constitution, but he shall not be
48 deemed to have acted other than as a judicial officer because of any such absence,
49 defect or deficiency of assignment under this section, or transfer by the chief
50 justice.

544.250. **1.** No prosecuting or circuit attorney in this state shall file any
2 information charging any person or persons with any felony, until such person or
3 persons shall first have been accorded the right of a preliminary examination
4 before some associate circuit judge in the county where the offense is alleged to
5 have been committed in accordance with this chapter. And if upon such hearing
6 the associate circuit judge shall determine that the alleged offense is one on
7 which the accused may be released, the associate circuit judge may release him
8 as provided in section 544.455 conditioned for his appearance at a time certain
9 before a circuit judge, or associate circuit judge who is specially assigned, and
10 thereafter as directed by the court to answer such charges as may be preferred
11 against him, abide sentence and judgment therein, and not to depart the court
12 without leave; provided, a preliminary examination shall in no case be required
13 where same is waived by the person charged with the crime, or in any case where
14 an information has been substituted for an indictment as authorized by section
15 545.300.

16 **2. Motions or objections made to exclude evidence on the ground**
17 **that it was obtained unlawfully shall be inapplicable in preliminary**
18 **hearings.**

19 **3. The findings by the court shall be based on substantial**
20 **evidence, which may be hearsay, in whole or in part, in the following**
21 **forms:**

22 **(1) Written reports of expert witnesses;**

23 **(2) Documentary evidence without a proper predicate, provided**
24 **there is a substantial basis for believing such predicate will be**
25 **available at trial and that the document is otherwise competent; or**

26 **(3) Testimony of a witness concerning the declarations of**
27 **another where there is a substantial basis for believing that the source**
28 **of the hearsay is reliable.**

550.040. In all **[**capital cases, and those in which imprisonment in the
2 penitentiary is the sole punishment for the offense, if the defendant is acquitted,

3   the costs shall be paid by the state; and in all other trials on indictments or

4   information, if the defendant is acquitted, the costs shall be paid by the county

5   in which the indictment was found or information filed.**] cases in which the**

6   **defendant is acquitted, or in which a person shall be committed or**

7   **recognized to answer for a felony and no indictment shall be found**

8   **against such person, the costs shall be paid by the state.**

          [550.060. In all cases where any person shall be committed

2   or recognized to answer for a felony, and no indictment shall be

3   found against such person, the prosecutor, or person on whose oath

4   the prosecution was commenced, shall be liable for all the costs

5   incurred in that behalf; and the court shall render judgment

6   against such prosecutor for the same, and in no such

7   case shall the state or county pay such costs.**]**

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