

SECOND REGULAR SESSION

HOUSE BILL NO. 1448

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COX.

5256H.011

D. ADAM CRUMBLISS, Chief Clerk

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 judicial procedures.

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, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections 56.110, 478.240,
3 544.250, and 550.040, to read as follows:

56.110. If the prosecuting attorney and assistant prosecuting attorney be interested or
2 shall have been employed as counsel in any case where such employment is inconsistent with
3 the duties of his **or her** office, or shall be related to the defendant in any criminal prosecution,
4 either by blood or by marriage, the court having criminal jurisdiction may appoint some other
5 attorney to prosecute or defend the cause. **Such special prosecutor may not be otherwise**
6 **employed by a party other than the state of Missouri in any criminal case or proceeding**
7 **and shall be considered an appointed prosecutor for purposes of section 56.360.**

478.240. 1. The presiding judge of each circuit which is provided by subsection 3 of
2 section 15 of article V of the constitution shall be selected for a two-year term. The circuit and
3 associate circuit judges in each circuit shall select by secret ballot a circuit judge from their
4 number to serve as presiding judge. Selection and removal procedures, not inconsistent with the
5 rules of the supreme court, may be provided by local court rule. If a presiding judge is
6 disqualified from acting as a judicial officer pursuant to the constitution, article V, section 24,
7 the circuit judges and associate circuit judges of the circuit shall select a circuit judge as
8 presiding judge. If the circuit does not have an eligible judge to be elected presiding judge, then

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

9 the chief justice of the supreme court may designate an acting presiding judge until a successor
10 is chosen or until the disability of the presiding judge terminates.

11 2. Subject to the authority of the supreme court and the chief justice under article V of
12 the constitution, the presiding judge of the circuit shall have general administrative authority over
13 all judicial personnel and court officials in the circuit, including the authority to assign any
14 judicial or court personnel anywhere in the circuit, and shall have the authority to assign judges
15 to hear such cases or classes of cases as the presiding judge may designate, and to assign judges
16 to divisions. Such assignment authority shall include the authority to authorize particular
17 associate circuit judges to hear and determine cases or classes of cases. By this subsection the
18 presiding judge shall not, however, be authorized to make the following assignments:

19 (1) Assignment of a municipal judge to hear any case other than to initially hear a
20 municipal ordinance violation case of the municipality which makes provision for such
21 municipal judge, except that the presiding judge of a circuit may assign a municipal judge of a
22 municipality within the circuit to hear and determine municipal ordinance violations in a court
23 of another municipality within the circuit if the municipality to which the judge is especially
24 assigned by the presiding judge has made provision for the compensation of such judge;

25 (2) Assignment of a judge to hear the trial of a felony case when he **or she** has previously
26 conducted the preliminary hearing in that case, **unless the defendant has signed a written**
27 **waiver permitting the same judge to hear both the preliminary hearing and the trial;**

28 (3) Assignment of a case to a judge contrary to provisions of supreme court rules or local
29 circuit court rules; and

30 (4) Assignment of a case or class of cases not within the class of cases specified in
31 section 472.020, to a circuit judge who is also judge of the probate division and who was on
32 January 1, 1979, a probate judge shall only be with the consent of such judge of the probate
33 division.

34 3. If any circuit judge or associate circuit judge shall proceed to hear and determine any
35 case or class of cases which has not been assigned to him **or her** by the presiding judge pursuant
36 to subsection 1 or 2 of this section, or to which he **or she** had not been transferred by the chief
37 justice of the supreme court, or in the event the purported assignment to him **or her** shall be
38 determined to be defective or deficient in any manner, any order or judgment he **or she** may have
39 entered may be set aside, as otherwise provided by rule or by law, and the judge may be subject
40 to discipline under article V, section 24 of the Missouri Constitution, but he **or she** shall not be
41 deemed to have acted other than as a judicial officer because of any such absence, defect or
42 deficiency of assignment under this section, or transfer by the chief justice.

544.250. 1. No prosecuting or circuit attorney in this state shall file any information
2 charging any person or persons with any felony, until such person or persons shall first have been

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

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

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

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

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

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

550.040. [In all capital cases, and those in which imprisonment in the penitentiary is the
2 sole punishment for the offense, if the defendant is acquitted, the costs shall be paid by the state;
3 and in all other trials on indictments or information, if the defendant is acquitted, the costs shall
4 be paid by the county in which the indictment was found or information filed.] **In all cases in**
5 **which the defendant is acquitted, or in which a person shall be committed or recognized**
6 **to answer for a felony and no indictment shall be found against such person, the costs shall**
7 **be paid by the state.**

[550.060. In all cases where any person shall be committed or recognized
2 to answer for a felony, and no indictment shall be found against such person, the
3 prosecutor, or person on whose oath the prosecution was commenced, shall be
4 liable for all the costs incurred in that behalf; and the court shall render judgment
5 against such prosecutor for the same, and in no such case shall the state or county
6 pay such costs.]

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