

SECOND REGULAR SESSION

# HOUSE BILL NO. 1945

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCGIRL.

4693H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 478.240, 483.240, 483.241, and 483.245, RSMo, and to enact in lieu thereof four new sections relating to circuit clerks.

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

Section A. Sections 478.240, 483.240, 483.241, and 483.245, RSMo, are repealed and  
2 four new sections enacted in lieu thereof, to be known as sections 478.240, 483.240, 483.241,  
3 and 483.245, to read as follows:

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  
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  
13 over all judicial personnel and court officials in the circuit, **except any elected or appointed**  
14 **circuit clerk**, including the authority to assign any judicial or court personnel anywhere in the  
15 circuit, and shall have the authority to assign judges to hear such cases or classes of cases as the  
16 presiding judge may designate, and to assign judges to divisions. Such assignment authority

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.

17 shall include the authority to authorize particular associate circuit judges to hear and determine  
18 cases or classes of cases. By this subsection the presiding judge shall not, however, be  
19 authorized to make the following assignments:

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

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

31 (3) Assignment of a case to a judge contrary to provisions of supreme court rules or local  
32 circuit court rules; ~~and~~

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

37 **(5) Assignment of any administrative or supervisory role within the circuit clerk's**  
38 **office. Such assignment shall be the obligation of the circuit clerk as provided by law and**  
39 **by supreme court rules.**

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

483.240. ~~[+]~~ Each circuit clerk shall have administrative control over, and be  
2 responsible for, the safekeeping of the records of the circuit court of each county or of the city  
3 of St. Louis, except for ~~the following:~~

4 ~~———(1) Records in probate divisions;~~

5 ~~———(2) Records in cases while they are pending in divisions presided over by an associate~~  
6 ~~circuit judge; provided, however, this subdivision (2) shall not apply to cases pending before~~  
7 ~~associate circuit judges in the circuit court of the city of St. Louis;~~

8 ~~———(3)] records in cases while they are pending in the municipal divisions[; and~~

9 ~~———(4) Records of the traffic violation bureaus.~~

10 ~~———2. Associate circuit judges and judges of the probate divisions who are authorized to~~  
11 ~~appoint division clerks shall have administrative control over the division clerks they appoint and~~  
12 ~~the records of their divisions. With respect to divisions which are staffed by division clerks~~  
13 ~~rather than by the circuit clerk or deputy circuit clerks, the judge appointing the division clerks~~  
14 ~~for that division shall designate a chief division clerk who shall be primarily responsible for the~~  
15 ~~safekeeping of the records of that division] . **The circuit clerk shall have administrative**~~  
16 ~~**control over the deputy clerks and division clerks as described in subsection 1 of section**~~  
17 ~~**483.241.**~~

483.241. 1. Deputy circuit clerks shall constitute the clerical staff of the circuit clerk to  
2 perform those duties for which the circuit clerk has general administrative control. **Deputy**  
3 **clerks shall be the general staff of the circuit clerk.**

4 2. Division clerks shall constitute the clerical staff of the circuit ~~court] clerk~~ to perform  
5 the recordkeeping functions of the circuit court for which the circuit clerk ~~[does not have] has~~  
6 general administrative control~~], except with respect to records in cases while they pend in~~  
7 ~~municipal divisions or in a traffic violations bureau maintained by a municipality. Division~~  
8 ~~clerks shall be under the administrative control of the judge who appoints them] . **Division**~~  
9 ~~**clerks shall be deputy clerks assigned by the circuit clerk to a specific courtroom or judge**~~  
10 ~~**to perform the duties and responsibilities for that specific division.**~~

11 3. Municipal clerks shall constitute the clerical staff of the circuit court to perform the  
12 recordkeeping functions in the municipal divisions.

13 4. Municipal clerks shall perform the clerical functions in the traffic violation bureaus  
14 in those municipalities which have a municipal judge or judges. Clerical personnel of the  
15 municipality shall perform the clerical functions of the traffic violation bureaus in those  
16 municipalities which have no municipal judges.

483.245. 1. The provisions of this section shall become effective on July 1, 1981.

2 2. The circuit clerk, or person exercising the authority of the circuit clerk pursuant to  
3 county charter, shall **be the appointing authority and** appoint all deputy circuit clerks **and**  
4 **division clerks**, including deputy circuit clerks serving in courtrooms, and shall prescribe and  
5 assign the duties of such deputy circuit clerks. The circuit clerk may remove from office any  
6 deputy circuit clerk **or division clerk** whom he **or she** appoints. ~~[All division clerks, as defined~~

7 in section 483.241, shall be appointed by the judge of the division such clerks serve, and such  
8 judge may remove from office any division clerk whom he appoints.]

9 3. Notwithstanding the provisions of subsection 2 of this section, if, on June 30, 1981,  
10 in any county or in the city of St. Louis, there exists by reason of local charter, a plan of merit  
11 selection and retention or other similar personnel plan, providing for selection, tenure or  
12 retention of deputy circuit clerks or division clerks, after July 1, 1981, as to clerical personnel  
13 who were, on June 30, 1981, under such a plan, the provisions for merit retention and tenure  
14 shall continue to apply as to such persons insofar as is reasonably possible even though they are  
15 paid by the state and become state employees, and the circuit [~~court en banc~~] clerk shall be  
16 considered as the [~~commission or board~~] authority for determining the propriety of any  
17 disciplinary or dismissal action.

18 4. [~~In addition to the authority to remove deputy circuit clerks and division clerks~~  
19 ~~hereinabove provided, the circuit court en banc may remove from office a deputy circuit clerk~~  
20 ~~or division clerk for cause.~~

21 ~~5. The maximum number of deputy circuit clerks for each county and the maximum~~  
22 ~~number of division clerks for a particular division shall be determined by order of the circuit~~  
23 ~~court en banc. Such order may be modified for cause by order of the supreme court, or if no~~  
24 ~~order is entered providing for the number of deputy circuit clerks and division clerks, the~~  
25 ~~supreme court may enter such order.~~

26 ~~6.] The salaries of deputy circuit clerks and division clerks shall be established by the~~  
27 ~~circuit clerk in the case of deputy circuit clerks[, or the judge appointing the division clerk in the~~  
28 ~~ease of] and division clerks, within salary ranges and classifications which may from time to~~  
29 ~~time be established by administrative rule of the supreme court within the limit of funds~~  
30 ~~appropriated for this purpose. The salaries of deputy circuit clerks and division clerks shall be~~  
31 ~~paid by the state, and they shall be state employees.~~

32 [7.] 5. Notwithstanding the other provisions of this section providing for the  
33 establishment of the number of deputy circuit clerks and division clerks serving the various  
34 circuit courts and the determination of their salaries, such determinations shall not be construed  
35 as mandating appropriations to fund such positions, and the payment of the salaries and  
36 emoluments of deputy circuit clerks and division clerks shall be subject to the availability of  
37 moneys appropriated for those purposes by the general assembly or federal grant moneys.

38 [8. For purposes of this section, the circuit court en banc shall be deemed to include all  
39 circuit and associate circuit judges of the entire circuit, and determinations or orders of the circuit  
40 court en banc shall be by action of a majority of such judges in office.]

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