

By: Senator(s) Rayborn

To: Judiciary; County
Affairs

SENATE BILL NO. 2793

1 AN ACT TO CREATE SECTION 19-23-10, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR THE POSITION OF JUSTICE COURT PROSECUTOR IN CERTAIN
3 COUNTIES; TO AMEND SECTION 19-23-11, MISSISSIPPI CODE OF 1972, TO
4 SPECIFY THE DUTIES OF JUSTICE COURT PROSECUTOR; TO AMEND SECTIONS
5 19-23-13 AND 19-3-49, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND
6 FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. The following shall be codified as Section
9 19-23-10, Mississippi Code of 1972:

10 19-23-10. In any county having four (4) or more justice
11 court judges, there shall be, in addition to any elected county
12 prosecuting attorney, a full-time justice court prosecutor
13 employed by the county and paid a salary to be determined by the
14 board of supervisors. The justice court prosecutor shall be an
15 attorney licensed to practice law in the State of Mississippi.

16 SECTION 2. Section 19-23-11, Mississippi Code of 1972, is
17 amended as follows:

18 19-23-11. (1) Except as provided in subsection (2) of this
19 section, the county prosecuting attorney shall appear and
20 represent the state in all investigations for felony before the
21 various justice court judges in his county. He shall also appear
22 before justice court judges and prosecute all cases against
23 persons charged with offenses therein. The county prosecuting
24 attorney shall be the prosecuting attorney for the county court
25 and shall prosecute all state criminal cases therein, and he shall
26 represent the state in criminal cases appealed from the county
27 court to the circuit court.

28 (2) In any county required to employ a full-time justice

court prosecutor as provided in Section 19-23-10, the justice court prosecutor shall appear before justice court judges and prosecute all cases against persons charged with offenses therein.

(3) The county prosecuting attorney may assist the district attorney in all criminal cases and in all civil cases where the services of the district attorney are required in which the state, his county or any municipality of his county is interested.

(4) The county prosecuting attorney may present any matter to the grand jury of his county.

(5) The county prosecuting attorney shall have full responsibility for all misdemeanors, youth court proceedings, and all other cases not specifically granted to the district attorney. Provided, however, that in any municipality having a municipal youth court, the municipal prosecutor shall have responsibility for youth court matters in that court, and provided further, that in any county required to have a justice court prosecutor, the justice court prosecutor shall have responsibility for prosecutions in that court.

Where any statute of this state confers a jurisdiction, responsibility, duty, privilege or power upon a county attorney or county prosecuting attorney, either solely, jointly or alternatively with a district attorney, such county prosecuting attorney shall be responsible for the prosecution, handling, appearance, disposition or other duty conferred by such statute. Any such provision shall not be construed to bestow such responsibility, jurisdiction or power upon the district attorney where there is no elected county prosecuting attorney, and any such matter shall be handled pursuant to subsection (9) of this section.

(6) In any case handled by the county prosecuting attorney or the justice court prosecutor pursuant to this section which subsequently results in charges being modified in such a manner that the case would be within the jurisdiction of the district

attorney pursuant to Section 25-31-11, the responsibility for prosecution shall be transferred to the district attorney. The county prosecuting attorney and the justice court prosecutor shall report to the district attorney the disposition of all affidavits, crimes, occurrences or arrests handled by him wherein any person is charged with a crime for which a conviction may result in imprisonment in the State Penitentiary.

(7) The validity of any judgment or sentence shall not be affected by the division of jurisdiction under this section, and no judgment or sentence may be reversed or modified upon the basis that the case was not processed according to subsection (6) of this section.

(8) A county prosecuting attorney may be designated by the district attorney to appear on behalf of the district attorney pursuant to an agreement relating to appearances in certain courts or proceedings in the county of the county prosecuting attorney. Such agreement shall be filed with the circuit court clerk of any county where such agreement shall be operative. Such agreement shall be binding upon the district attorney and county prosecuting attorney or municipal prosecuting attorney until dissolved by either of them in writing upon five (5) days' notice.

(9) In the event that there is no elected county prosecuting attorney serving in a county, the prosecution of such cases shall be handled by a county attorney employed by the board of supervisors of such county pursuant to Section 19-3-49.

SECTION 3. Section 19-23-13, Mississippi Code of 1972, is amended as follows:

19-23-13. Neither the county prosecuting attorney nor the justice court prosecutor shall * * * represent or defend any person in any criminal prosecution in the name of the state, county or municipality of the county, nor shall he give any advice against the state, his county or in a criminal case against a municipality of his county, and shall not represent any person in

any case against the state, his county, or in a criminal case arising in a municipal court of his county. Nothing herein shall prohibit any county prosecuting attorney from defending any person in any criminal prosecution in any county not within the circuit court district of such county, but the position of justice court prosecutor shall be a full-time position, and the holder thereof shall not otherwise practice law.

SECTION 4. Section 19-3-49, Mississippi Code of 1972, is amended as follows:

19-3-49. (1) In all counties of this state wherein there is no elected county prosecuting attorney, the boards of supervisors shall have the power and authority to employ a competent attorney to appear and prosecute in cases requiring the services of the county prosecuting attorney. The compensation paid to the person so employed shall be paid from the general fund of such county and shall not exceed, during any calendar year, the amount authorized by law to be paid as salary to the county prosecuting attorney in such county. The employment of a county prosecuting attorney as authorized by this section shall be pursuant to a contract which shall provide that the salary of such county prosecuting attorney shall not be reduced, increased or terminated for the period of the contract. Such contract shall be for the period of the remainder of the term of office of the board of supervisors which employs the county prosecuting attorney; however, the contract shall provide expressly or by reference to this section that the contract shall be abrogated upon the creation and filling of the office of elected county prosecuting attorney.

(2) Where the board of supervisors is required under Section 19-23-10 to hire a full-time justice court prosecutor, the board's authority under subsection (1) of this section is limited to those cases not statutorily assigned to the justice court prosecutor.

SECTION 5. This act shall take effect and be in force from and after October 1, 1999.