

SECOND REGULAR SESSION

# SENATE BILL NO. 1388

## 103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

5764S.01I

KRISTINA MARTIN, Secretary

### AN ACT

To repeal sections 56.010, 56.805, 56.814, 542.400, 552.040, 557.014, and 610.140, RSMo, and to enact in lieu thereof thirteen new sections relating to district attorneys.

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

Section A. Sections 56.010, 56.805, 56.814, 542.400, 552.040, 557.014, and 610.140, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 56.010, 56.805, 56.814, 56.1000, 56.1005, 56.1010, 56.1015, 56.1020, 56.1025, 542.400, 552.040, 557.014, and 610.140, to read as follows:

56.010. At the general election [to be held in this state in the year A.D. 1982, and every four years thereafter] **in the year 2028**, there shall be elected in each county [of this state] which has not elected to become part of the district attorney system a prosecuting attorney, who shall be a person learned in the law, duly licensed to practice as an attorney at law in this state, and enrolled as such, at least twenty-one years of age, and who has been a bona fide resident of the county in which he seeks election for twelve months next preceding the date of the general election at which he **or she** is a candidate for such office and shall hold his **or her** office for four years, and until [his successor] **a district attorney** is elected,

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

14 commissioned, and qualified **pursuant to subdivision (2) of**  
15 **subsection 1 of section 56.1000.**

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

3 (1) "Annuity", annual payments, made in equal monthly  
4 installments, to a retired member from funds provided for,  
5 in, or authorized by, the provisions of sections 56.800 to  
6 56.840;

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

11 (3) "Board of trustees" or "board", the board of  
12 trustees established by the provisions of sections 56.800 to  
13 56.840;

14 (4) "Compensation", all salary and other compensation  
15 payable by a county to an employee for personal services  
16 rendered as an employee, including any salary reduction  
17 amounts under a cafeteria plan that satisfies 26 U.S.C.  
18 Section 125 or an eligible deferred compensation plan that  
19 satisfies 26 U.S.C. Section 457 but not including  
20 reimbursement for any expenses, any consideration for  
21 agreeing to terminate employment, or any other nonrecurring  
22 or unusual payment that is not part of regular remuneration;

23 (5) "County", the City of St. Louis and each county in  
24 the state;

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

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

29 (8) "Employee", an elected or appointed prosecuting  
30 attorney or circuit attorney who is employed by a county or

31 a city not within a county **or an elected or appointed**  
32 **district attorney who is employed by a judicial circuit;**

33 (9) "Membership service", service as a prosecuting  
34 attorney or circuit attorney after becoming a member that is  
35 creditable in determining the amount of the member's  
36 benefits under this system;

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

40 (11) **"Prosecuting attorney", includes any elected or**  
41 **appointed prosecuting attorney or district attorney;**

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

56.814. 1. Any person who became a member prior to  
2 January 1, 2019, who has attained the age of sixty-two years  
3 and who has twelve years or more of creditable service as  
4 prosecuting attorney or circuit attorney may retire with a  
5 normal annuity as determined in subsection 3 of section  
6 56.840.

7 2. Any person who becomes a member on or after January  
8 1, 2019, who has attained the age of sixty-five and who has  
9 twelve years or more of creditable service as a prosecuting  
10 attorney or circuit attorney may retire with a normal  
11 annuity.

12 3. **Any person who is a member of the retirement system**  
13 **on December 31, 2028, and who has served more than four**  
14 **years as a prosecuting attorney in a county which elects to**  
15 **become part of the district attorney system and who does not**  
16 **become a district attorney on January 1, 2029, may elect to**  
17 **receive a reduced retirement benefit as provided in section**

18 56.816 that the person's period of service equals twelve  
19 years.

20 4. Any person who is a member of the retirement system  
21 on December 31, 2032, and who has served more than four  
22 years as a prosecuting attorney in a county that becomes a  
23 part of the district attorney system in the year 2033, and  
24 who does not become a district attorney on January 1, 2033,  
25 may elect to receive a reduced retirement benefit as  
26 provided in section 56.816 that the person's period of  
27 service equals twelve years.

56.1000. 1. (1) At the general election in the year  
2 2028, there shall be elected in each judicial circuit of  
3 this state a district attorney for those counties in the  
4 circuit that elect to become part of the district attorney  
5 system.

6 (2) At the general election in the year 2032, and  
7 every four years thereafter, there shall be elected in each  
8 judicial circuit of this state a district attorney.

9 2. Each district attorney shall be duly licensed to  
10 practice as an attorney at law in this state and shall have  
11 been a bona fide resident of the judicial circuit in which  
12 such person seeks election for twelve months next preceding  
13 the date of the general election at which such person is a  
14 candidate for such office.

15 3. The geographical boundaries of the judicial  
16 circuits shall correspond to those authorized by a circuit  
17 realignment plan developed in accordance with section  
18 478.073.

19 4. District attorneys elected under the provisions of  
20 this section shall enter upon the discharge of their duties  
21 on the first day of January following their election,  
22 commission, and qualification.

23       5. The district attorney of each judicial circuit  
24 shall receive the same annual salary as that of a circuit  
25 judge, which shall be paid by the state out of the state  
26 treasury. A district attorney in a judicial circuit  
27 consisting of a single county with a charter form of  
28 government may receive additional compensation set by the  
29 governing body of the county in its sole discretion and paid  
30 out of the county treasury, chargeable to the county general  
31 revenue fund.

56.1005. 1. Each district attorney shall commence and  
2 prosecute all criminal and ancillary actions in which a  
3 county or state is concerned in those counties of the  
4 judicial circuit. In cases in which changes of venue are  
5 granted, the district attorney shall follow and continue  
6 prosecution of the case. If any misdemeanor case is  
7 appealed to the court of appeals, the district attorney  
8 shall represent the state in the case in the court.

9       2. Notwithstanding any provision of law to the  
10 contrary, if a district attorney is unable to commence or  
11 prosecute a criminal case due to conflict of interest on the  
12 part of the district attorney, the presiding judge shall  
13 appoint the district attorney from any adjoining circuit as  
14 special district attorney for that particular matter.

56.1010. 1. The district attorney may appoint such  
2 full-time and part-time assistant district attorneys, and  
3 may employ such investigators and stenographic and clerical  
4 help as the district attorney deems necessary for the proper  
5 discharge of the duties of the district attorney's office,  
6 and may set their compensation within the limits of the  
7 allocations made for that purpose by the county  
8 commissions. The compensation for the assistant district  
9 attorneys, investigators, and stenographic and clerical help

10 shall be paid in equal installments out of the county  
11 treasury in the same manner as the compensation for other  
12 county employees.

13 2. All assistant district attorneys, investigators,  
14 and stenographic and clerical help shall hold office at the  
15 pleasure of the district attorney.

16 56.1015. 1. Except for the salary of the district  
17 attorney as provided under subsection 5 of section 56.1000,  
18 the salaries, expenses, and overhead costs of all district  
19 attorney offices shall be funded by the respective counties  
20 which such offices serve subject to reimbursement by the  
state as described in this section.

21 2. For the district attorney offices in judicial  
22 circuits consisting of one county, the state shall reimburse  
23 the percentage of the office budget by five percent every  
24 year for which the district attorney system has been adopted  
25 until the tenth and subsequent years, for which the  
percentage of the office budget that is reimbursed shall be  
fifty percent.

26 3. For district attorney offices in judicial circuits  
27 consisting of two or more counties, the state shall  
28 reimburse the percentage of the office budget by ten percent  
29 every year for which the district attorney system has been  
30 adopted until the fifth and subsequent years, for which the  
percentage of the office budget that is reimbursed shall be  
fifty percent.

31 4. The office of administration shall make payment for  
32 the reimbursement from appropriations made for that purpose  
33 on or before July fifteenth of each year following the  
34 calendar year in which such expenses by the counties were  
35 paid. In circuits where more than one county contributed to  
36 payment of the expenses of the district attorney's office,

27 each of the counties shall be reimbursed in the same  
28 proportion as its contribution.

2 56.1020. Except in the performance of special  
3 prosecutions or otherwise representing the state or its  
4 political subdivisions, the district attorney shall devote  
5 full time to the office, and shall not otherwise engage in  
the practice of law.

2 56.1025. 1. For counties not having a charter form of  
3 government to join the district attorney system, the county  
4 commission of each county within a judicial circuit shall  
5 adopt by majority vote a resolution to join the district  
attorney system and such resolution shall be in  
6 substantially the following form:

7 "The county commission for  
8 .....  
9 County hereby certifies that it has met and voted  
10 to join the state district attorney system and  
11 thereby eliminate the office of prosecuting  
12 attorney.".

13 2. The resolutions provided for in subsection 1 of  
14 this section shall be transmitted to the secretary of state  
15 by November 7, 2027, and such election shall be irrevocable  
16 once such resolution is transmitted.

17 3. For counties with a charter form of government in a  
18 single county judicial circuit to join the district attorney  
19 system, the governing body shall adopt, by charter  
20 amendment, a provision to join the district attorney system  
21 and eliminate the office of prosecuting attorney.

22 4. Except as otherwise provided by law, the office of  
23 county prosecuting attorney shall cease to exist upon the  
24 election and qualification of a district attorney for that

25 **county and judicial circuit, except any prosecuting attorney**  
26 **may be retained by a district attorney.**

542.400. As used in sections 542.400 to 542.422, the  
2 following words and phrases mean:

3 (1) "Aggrieved person", a person who was a party to  
4 any intercepted wire communication or a person against whom  
5 the interception was directed;

6 (2) "Communication common carrier", an individual or  
7 corporation undertaking to transport messages for  
8 compensation;

9 (3) "Contents", when used with respect to any wire  
10 communication, includes any information concerning the  
11 identity of the parties, the substance, purport, or meaning  
12 of that communication;

13 (4) "Court of competent jurisdiction", any circuit  
14 court having general criminal jurisdiction within the  
15 territorial jurisdiction where the communication is to be  
16 intercepted including any circuit judge specially assigned  
17 by the supreme court of Missouri pursuant to section 542.404;

18 (5) "Electronic, mechanical, or other device", any  
19 device or apparatus which can be used to intercept a wire  
20 communication other than:

21 (a) Any telephone or telegraph instrument, equipment  
22 or facility, or any component thereof, owned by the user or  
23 furnished to the subscriber or user by a communications  
24 common carrier in the ordinary course of its business and  
25 being used by the subscriber or user in the ordinary course  
26 of its business or being used by a communications common  
27 carrier in the ordinary course of its business or by an  
28 investigative office or law enforcement officer in the  
29 ordinary course of his duties; or

30 (b) A hearing aid or similar device being used to  
31 correct subnormal hearing to not better than normal;

32 (6) "Intercept", the aural acquisition of the contents  
33 of any wire communication through the use of any electronic  
34 or mechanical device, including but not limited to  
35 interception by one spouse of another spouse;

43 (8) "Oral communication", any communication uttered by  
44 a person exhibiting an expectation that such communication  
45 is not subject to interception under circumstances  
46 justifying such expectation;

47                   (9) "Person", any employee, or agent of this state or  
48 political subdivision of this state, and any individual,  
49 partnership, association, joint stock company, trust, or  
50 corporation;

51 (10) "Prosecuting attorney", the elected prosecuting  
52 attorney **or district attorney** of the county or the circuit  
53 attorney of any city not contained within a county;

54 (11) "State", the state of Missouri and political  
55 subdivisions of the state;

62 engaged as a common carrier in providing or operating such  
63 facilities for the transmission of local, state or  
64 interstate communications.

552.040. 1. For the purposes of this section, the  
2 following words mean:

3 (1) "Prosecutor of the jurisdiction", the prosecuting  
4 attorney **or district attorney** in a county or the circuit  
5 attorney of a city not within a county;

6 (2) "Secure facility", a state mental health facility,  
7 state developmental disability facility, private facility  
8 under contract with the department of mental health, or a  
9 section within any of these facilities, in which persons  
10 committed to the department of mental health pursuant to  
11 this chapter shall not be permitted to move about the  
12 facility or section of the facility, nor to leave the  
13 facility or section of the facility, without approval by the  
14 head of the facility or such head's designee and adequate  
15 supervision consistent with the safety of the public and the  
16 person's treatment, habilitation or rehabilitation plan;

17 (3) "Tried and acquitted" includes both pleas of  
18 mental disease or defect excluding responsibility that are  
19 accepted by the court and acquittals on the ground of mental  
20 disease or defect excluding responsibility following the  
21 proceedings set forth in section 552.030.

22 2. When an accused is tried and acquitted on the  
23 ground of mental disease or defect excluding responsibility,  
24 the court shall order such person committed to the director  
25 of the department of mental health for custody. The court  
26 shall also order custody and care in a state mental health  
27 or intellectual disability facility unless an immediate  
28 conditional release is granted pursuant to this section. If  
29 the accused has not been charged with a dangerous felony as

30 defined in section 556.061, or with murder in the first  
31 degree pursuant to section 565.020, or sexual assault  
32 pursuant to section 566.040, or the attempts thereof, and  
33 the examination contains an opinion that the accused should  
34 be immediately conditionally released to the community by  
35 the court, the court shall hold a hearing to determine if an  
36 immediate conditional release is appropriate pursuant to the  
37 procedures for conditional release set out in subsections 10  
38 to 14 of this section. Prior to the hearing, the court  
39 shall direct the director of the department of mental  
40 health, or the director's designee, to have the accused  
41 examined to determine conditions of confinement in  
42 accordance with subsection 5 of section 552.020. The  
43 provisions of subsection 16 of this section shall be  
44 applicable to defendants granted an immediate conditional  
45 release and the director shall honor the immediate  
46 conditional release as granted by the court. If the court  
47 determines that an immediate conditional release is  
48 warranted, the court shall order the person committed to the  
49 director of the department of mental health before ordering  
50 such a release. The court granting the immediate  
51 conditional release shall retain jurisdiction over the case  
52 for the duration of the conditional release. This shall not  
53 limit the authority of the director of the department of  
54 mental health or the director's designee to revoke the  
55 conditional release or the trial release of any committed  
56 person pursuant to subsection 17 of this section. If the  
57 accused is committed to a mental health or developmental  
58 disability facility, the director of the department of  
59 mental health, or the director's designee, shall determine  
60 the time, place and conditions of confinement.

61       3. The provisions of sections 630.110, 630.115,  
62       630.130, 630.133, 630.135, 630.140, 630.145, 630.150,  
63       630.180, 630.183, 630.192, 630.194, 630.196, 630.198,  
64       630.805, 632.370, 632.395, and 632.435 shall apply to  
65       persons committed pursuant to subsection 2 of this section.  
66       If the department does not have a treatment or  
67       rehabilitation program for a mental disease or defect of an  
68       individual, that fact may not be the basis for a release  
69       from commitment. Notwithstanding any other provision of law  
70       to the contrary, no person committed to the department of  
71       mental health who has been tried and acquitted by reason of  
72       mental disease or defect as provided in section 552.030  
73       shall be conditionally or unconditionally released unless  
74       the procedures set out in this section are followed. Upon  
75       request by an indigent committed person, the appropriate  
76       court may appoint the office of the public defender to  
77       represent such person in any conditional or unconditional  
78       release proceeding under this section.

79       4. Notwithstanding section 630.115, any person  
80       committed pursuant to subsection 2 of this section shall be  
81       kept in a secure facility until such time as a court of  
82       competent jurisdiction enters an order granting a  
83       conditional or unconditional release to a nonsecure facility.

84       5. The committed person or the head of the facility  
85       where the person is committed may file an application in the  
86       court that committed the person seeking an order releasing  
87       the committed person unconditionally; except that any person  
88       who has been denied an application for a conditional release  
89       pursuant to subsection 13 of this section shall not be  
90       eligible to file for an unconditional release until the  
91       expiration of one year from such denial. In the case of a  
92       person who was immediately conditionally released after

93 being committed to the department of mental health, the  
94 released person or the director of the department of mental  
95 health, or the director's designee, may file an application  
96 in the same court that released the committed person seeking  
97 an order releasing the committed person unconditionally.  
98 Copies of the application shall be served personally or by  
99 certified mail upon the head of the facility unless the head  
100 of the facility files the application, the committed person  
101 unless the committed person files the application, or unless  
102 the committed person was immediately conditionally released,  
103 the director of the department of mental health, and the  
104 prosecutor of the jurisdiction where the committed person  
105 was tried and acquitted. Any party objecting to the  
106 proposed release must do so in writing within thirty days  
107 after service. Within a reasonable period of time after any  
108 written objection is filed, which period shall not exceed  
109 sixty days unless otherwise agreed upon by the parties, the  
110 court shall hold a hearing upon notice to the committed  
111 person, the head of the facility, if necessary, the director  
112 of the department of mental health, and the prosecutor of  
113 the jurisdiction where the person was tried. Prior to the  
114 hearing any of the parties, upon written application, shall  
115 be entitled to an examination of the committed person, by a  
116 psychiatrist or psychologist, as defined in section 632.005,  
117 or a physician with a minimum of one year training or  
118 experience in providing treatment or services to  
119 intellectually disabled or mentally ill individuals of its  
120 own choosing and at its expense. The report of the mental  
121 condition of the committed person shall accompany the  
122 application. By agreement of all parties to the proceeding  
123 any report of the mental condition of the committed person  
124 which may accompany the application for release or which is

125 filed in objection thereto may be received by evidence, but  
126 the party contesting any opinion therein shall have the  
127 right to summon and to cross-examine the examiner who  
128 rendered such opinion and to offer evidence upon the issue.

129 6. By agreement of all the parties and leave of court,  
130 the hearing may be waived, in which case an order granting  
131 an unconditional release shall be entered in accordance with  
132 subsection 8 of this section.

133 7. At a hearing to determine if the committed person  
134 should be unconditionally released, the court shall consider  
135 the following factors in addition to any other relevant  
136 evidence:

137 (1) Whether or not the committed person presently has  
138 a mental disease or defect;

139 (2) The nature of the offense for which the committed  
140 person was committed;

141 (3) The committed person's behavior while confined in  
142 a mental health facility;

143 (4) The elapsed time between the hearing and the last  
144 reported unlawful or dangerous act;

145 (5) Whether the person has had conditional releases  
146 without incident; and

147 (6) Whether the determination that the committed  
148 person is not dangerous to himself or others is dependent on  
149 the person's taking drugs, medicine or narcotics.

150 The burden of persuasion for any person committed to a  
151 mental health facility under the provisions of this section  
152 upon acquittal on the grounds of mental disease or defect  
153 excluding responsibility shall be on the party seeking  
154 unconditional release to prove by clear and convincing  
155 evidence that the person for whom unconditional release is

156 sought does not have, and in the reasonable future is not  
157 likely to have, a mental disease or defect rendering the  
158 person dangerous to the safety of himself or others.

159       8. The court shall enter an order either denying the  
160 application for unconditional release or granting an  
161 unconditional release. An order denying the application  
162 shall be without prejudice to the filing of another  
163 application after the expiration of one year from the denial  
164 of the last application.

165       9. No committed person shall be unconditionally  
166 released unless it is determined through the procedures in  
167 this section that the person does not have, and in the  
168 reasonable future is not likely to have, a mental disease or  
169 defect rendering the person dangerous to the safety of  
170 himself or others.

171       10. The committed person or the head of the facility  
172 where the person is committed may file an application in the  
173 court having probate jurisdiction over the facility where  
174 the person is detained for a hearing to determine whether  
175 the committed person shall be released conditionally. In  
176 the case of a person committed to a mental health facility  
177 upon acquittal on the grounds of mental disease or defect  
178 excluding responsibility for a dangerous felony as defined  
179 in section 556.061, murder in the first degree pursuant to  
180 section 565.020, or sexual assault pursuant to section  
181 566.040, any such application shall be filed in the court  
182 that committed the person. In such cases, jurisdiction over  
183 the application for conditional release shall be in the  
184 committing court. In the case of a person who was  
185 immediately conditionally released after being committed to  
186 the department of mental health, the released person or the  
187 director of the department of mental health, or the

188 director's designee, may file an application in the same  
189 court that released the person seeking to amend or modify  
190 the existing release. The procedures for application for  
191 unconditional releases set out in subsection 5 of this  
192 section shall apply, with the following additional  
193 requirements:

194 (1) A copy of the application shall also be served  
195 upon the prosecutor of the jurisdiction where the person is  
196 being detained, unless the released person was immediately  
197 conditionally released after being committed to the  
198 department of mental health, or unless the application was  
199 required to be filed in the court that committed the person  
200 in which case a copy of the application shall be served upon  
201 the prosecutor of the jurisdiction where the person was  
202 tried and acquitted and the prosecutor of the jurisdiction  
203 into which the committed person is to be released;

204 (2) The prosecutor of the jurisdiction where the  
205 person was tried and acquitted shall use their best efforts  
206 to notify the victims of dangerous felonies. Notification  
207 by the appropriate person or agency by certified mail to the  
208 most current address provided by the victim shall constitute  
209 compliance with the victim notification requirement of this  
210 section;

211 (3) The application shall specify the conditions and  
212 duration of the proposed release;

213 (4) The prosecutor of the jurisdiction where the  
214 person is being detained shall represent the public safety  
215 interest at the hearing unless the prosecutor of the  
216 jurisdiction where the person was tried and acquitted  
217 decides to appear to represent the public safety interest.

218 If the application for release was required to be filed in  
219 the committing court, the prosecutor of the jurisdiction  
220 where the person was tried and acquitted shall represent the  
221 public safety interest. In the case of a person who was  
222 immediately conditionally released after being committed to  
223 the department of mental health, the prosecutor of the  
224 jurisdiction where the person was tried and acquitted shall  
225 appear and represent the public safety interest.

226 11. By agreement of all the parties, the hearing may  
227 be waived, in which case an order granting a conditional  
228 release, stating the conditions and duration agreed upon by  
229 all the parties and the court, shall be entered in  
230 accordance with subsection 13 of this section.

231 12. At a hearing to determine if the committed person  
232 should be conditionally released, the court shall consider  
233 the following factors in addition to any other relevant  
234 evidence:

235 (1) The nature of the offense for which the committed  
236 person was committed;

237 (2) The person's behavior while confined in a mental  
238 health facility;

239 (3) The elapsed time between the hearing and the last  
240 reported unlawful or dangerous act;

241 (4) The nature of the person's proposed release plan;

242 (5) The presence or absence in the community of family  
243 or others willing to take responsibility to help the  
244 defendant adhere to the conditions of the release; and

245 (6) Whether the person has had previous conditional  
246 releases without incident.

247 The burden of persuasion for any person committed to a  
248 mental health facility under the provisions of this section

249 upon acquittal on the grounds of mental disease or defect  
250 excluding responsibility shall be on the party seeking  
251 release to prove by clear and convincing evidence that the  
252 person for whom release is sought is not likely to be  
253 dangerous to others while on conditional release.

254       13. The court shall enter an order either denying the  
255 application for a conditional release or granting  
256 conditional release. An order denying the application shall  
257 be without prejudice to the filing of another application  
258 after the expiration of one year from the denial of the last  
259 application.

260       14. No committed person shall be conditionally  
261 released until it is determined that the committed person is  
262 not likely to be dangerous to others while on conditional  
263 release.

264       15. If, in the opinion of the head of a facility where  
265 a committed person is being detained, that person can be  
266 released without danger to others, that person may be  
267 released from the facility for a trial release of up to  
268 ninety-six hours under the following procedure:

269           (1) The head of the facility where the person is  
270 committed shall notify the prosecutor of the jurisdiction  
271 where the committed person was tried and acquitted and the  
272 prosecutor of the jurisdiction into which the committed  
273 person is to be released at least thirty days before the  
274 date of the proposed trial release;

275           (2) The notice shall specify the conditions and  
276 duration of the release;

277           (3) If no prosecutor to whom notice is required  
278 objects to the trial release, the committed person shall be  
279 released according to conditions and duration specified in  
280 the notice;

281 (4) If any prosecutor objects to the trial release,  
282 the head of the facility may file an application with the  
283 court having probate jurisdiction over the facility where  
284 the person is detained for a hearing under the procedures  
285 set out in subsections 5 and 10 of this section with the  
286 following additional requirements:

290 (b) The prosecutor or prosecutors who objected to the  
291 trial release shall represent the public safety interest at  
292 the hearing; and

293 (5) The release criteria of subsections 12 to 14 of  
294 this section shall apply at such a hearing.

16. The department shall provide or shall arrange for follow-up care and monitoring for all persons conditionally released under this section and shall make or arrange for reviews and visits with the client at least monthly, or more frequently as set out in the release plan, and whether the client is receiving care, treatment, habilitation or rehabilitation consistent with his needs, condition and public safety. The department shall identify the facilities, programs or specialized services operated or funded by the department which shall provide necessary levels of follow-up care, aftercare, rehabilitation or treatment to the persons in geographical areas where they are released.

308       17. The director of the department of mental health,  
309       or the director's designee, may revoke the conditional  
310       release or the trial release and request the return of the  
311       committed person if such director or coordinator has  
312       reasonable cause to believe that the person has violated the

313 conditions of such release. If requested to do so by the  
314 director or coordinator, a peace officer of a jurisdiction  
315 in which a patient on conditional release is found shall  
316 apprehend and return such patient to the facility. No peace  
317 officer responsible for apprehending and returning the  
318 committed person to the facility upon the request of the  
319 director or coordinator shall be civilly liable for  
320 apprehending or transporting such patient to the facility so  
321 long as such duties were performed in good faith and without  
322 negligence. If a person on conditional release is returned  
323 to a facility under the provisions of this subsection, a  
324 hearing shall be held within ninety-six hours, excluding  
325 Saturdays, Sundays and state holidays, to determine whether  
326 the person violated the conditions of the release or whether  
327 resumption of full-time hospitalization is the least  
328 restrictive alternative consistent with the person's needs  
329 and public safety. The director of the department of mental  
330 health, or the director's designee, shall conduct the  
331 hearing. The person shall be given notice at least twenty-  
332 four hours in advance of the hearing and shall have the  
333 right to have an advocate present.

334 18. At any time during the period of a conditional  
335 release or trial release, the court which ordered the  
336 release may issue a notice to the released person to appear  
337 to answer a charge of a violation of the terms of the  
338 release and the court may issue a warrant of arrest for the  
339 violation. Such notice shall be personally served upon the  
340 released person. The warrant shall authorize the return of  
341 the released person to the custody of the court or to the  
342 custody of the director of mental health or the director's  
343 designee.

344       19. The head of a mental health facility, upon any  
345 notice that a committed person has escaped confinement, or  
346 left the facility or its grounds without authorization,  
347 shall immediately notify the prosecutor and sheriff of the  
348 county wherein the committed person is detained of the  
349 escape or unauthorized leaving of grounds and the prosecutor  
350 and sheriff of the county where the person was tried and  
351 acquitted.

352       20. Any person committed to a mental health facility  
353 under the provisions of this section upon acquittal on the  
354 grounds of mental disease or defect excluding responsibility  
355 for a dangerous felony as defined in section 556.061, murder  
356 in the first degree pursuant to section 565.020, or sexual  
357 assault pursuant to section 566.040 shall not be eligible  
358 for conditional or unconditional release under the  
359 provisions of this section unless, in addition to the  
360 requirements of this section, the court finds that the  
361 following criteria are met:

362           (1) Such person is not now and is not likely in the  
363 reasonable future to commit another violent crime against  
364 another person because of such person's mental illness; and

365           (2) Such person is aware of the nature of the violent  
366 crime committed against another person and presently  
367 possesses the capacity to appreciate the criminality of the  
368 violent crime against another person and the capacity to  
369 conform such person's conduct to the requirements of law in  
370 the future.

557.014. 1. As used in this section, the following  
2 terms shall mean:

3           (1) "Accusatory instrument", a warrant of arrest,  
4 information, or indictment;

5 (2) "Accused", an individual accused of a criminal  
6 offense, but not yet charged with a criminal offense;

7 (3) "Defendant", any person charged with a criminal  
8 offense;

18 (6) "Prosecuting attorney", includes the prosecuting  
19 attorney, **district attorney**, or circuit attorney for each  
20 county of the state and the City of St. Louis;

26           2. Each prosecuting attorney in the state of Missouri  
27 shall have the authority to, upon agreement with an accused  
28 or a defendant, divert a criminal case to a prosecution  
29 diversion program for a period of six months to two years,  
30 thus allowing for any statute of limitations to be tolled  
31 for that time alone. The period of diversion may be  
32 extended by the prosecuting attorney as a disciplinary  
33 measure or to allow sufficient time for completion of any  
34 portion of the prosecution diversion including restitution;  
35 provided, however, that no extension of such diversion shall  
36 be for a period of more than two years.

37       3. The prosecuting attorney may divert cases, under  
38 this program, out of the criminal justice system where the  
39 prosecuting attorney determines that the advantages of  
40 utilizing prosecution diversion outweigh the advantages of  
41 immediate court activity.

42       4. Prior to or upon the issuance of an accusatory  
43 instrument, with consent of the accused or defendant, other  
44 than for an offense enumerated in this section, the  
45 prosecuting attorney may forego continued prosecution upon  
46 the parties' agreement to a prosecution diversion plan. The  
47 prosecution diversion plan shall be for a specified period  
48 and be in writing. The prosecuting attorney has the sole  
49 authority to develop diversionary program requirements, but  
50 minimum requirements are as follows:

51       (1) The alleged crime is nonviolent, nonsexual, and  
52 does not involve a child victim or possession of an unlawful  
53 weapon;

54       (2) The accused or defendant must submit to all  
55 program requirements;

56       (3) Any newly discovered criminal behavior while in a  
57 prosecution diversion program will immediately forfeit his  
58 or her right to continued participation in said program at  
59 the sole discretion of the prosecuting attorney;

60       (4) The alleged crime does not also constitute a  
61 violation of a current condition of probation or parole;

62       (5) The alleged crime is not a traffic offense in  
63 which the accused or defendant was a holder of a commercial  
64 driver license or was operating a commercial motor vehicle  
65 at the time of the offense; and

66       (6) Any other criteria established by the prosecuting  
67 attorney.

68       5. During any period of prosecution diversion, the  
69 prosecuting attorney may impose conditions upon the behavior  
70 and conduct of the accused or defendant that assures the  
71 safety and well-being of the community as well as that of  
72 the accused or defendant. The conditions imposed by the  
73 prosecuting attorney shall include, but are not limited to,  
74 requiring the accused or defendant to remain free of any  
75 criminal behavior during the entire period of prosecution  
76 diversion.

77       6. The responsibility and authority to screen or  
78 divert specific cases, or to refuse to screen or divert  
79 specific cases, shall rest within the sole judgment and  
80 discretion of the prosecuting attorney as part of their  
81 official duties as prosecuting attorney. The decision of  
82 the prosecuting attorney regarding diversion shall not be  
83 subject to appeal nor be raised as a defense in any  
84 prosecution of a criminal case involving the accused or  
85 defendant.

86       7. Any person participating in the program:

87           (1) Shall have the right to insist on criminal  
88 prosecution for the offense for which he or she is accused  
89 at any time; and

90           (2) May have counsel of the person's choosing present  
91 during all phases of the prosecution diversion proceedings,  
92 but counsel is not required and no right to appointment of  
93 counsel is hereby created.

94       8. In conducting the program, the prosecuting attorney  
95 may require at any point the reinitiation of criminal  
96 proceedings when, in his or her judgment, such is warranted.

97       9. Any county, city, person, organization, or agency,  
98 or employee or agent thereof, involved with the supervision  
99 of activities, programs, or community service that are a

100 part of a prosecution diversion program, shall be immune  
101 from any suit by the person performing the work under the  
102 deferred prosecution agreement, or any person deriving a  
103 cause of action from such person, except for an intentional  
104 tort or gross negligence. Persons performing work or  
105 community service pursuant to a deferred prosecution  
106 agreement as described shall not be deemed to be engaged in  
107 employment within the meaning of the provisions of chapter  
108 288. A person performing work or community service pursuant  
109 to a deferred prosecution agreement shall not be deemed an  
110 employee within the meaning of the provisions of chapter 287.

111 10. Any person supervising or employing an accused or  
112 defendant under the program shall report to the prosecuting  
113 attorney any violation of the terms of the prosecution  
114 diversion program.

115 11. After completion of the program and any conditions  
116 imposed upon the accused or defendant, to the satisfaction  
117 of the prosecuting attorney, the individual shall be  
118 entitled to a dismissal or alternative disposition of  
119 charges against them. Such disposition may, in the  
120 discretion of the prosecuting attorney, be without prejudice  
121 to the state of Missouri for the reinstatement of criminal  
122 proceedings, within the statute of limitations, upon any  
123 subsequent criminal activity on the part of the accused.  
124 Any other provision of law notwithstanding, such individual  
125 shall be required to pay any associated costs prior to  
126 dismissal of pending charges.

610.140. 1. For the purposes of this section, the  
2 following terms mean:

3 (1) "Court", any Missouri municipal, associate  
4 circuit, or circuit court;

5 (2) "Crime", any offense, violation, or infraction of  
6 Missouri state, county, municipal, or administrative law;

(3) "Prosecutor" or "prosecuting attorney", the prosecuting attorney, **district attorney**, circuit attorney, or municipal prosecuting attorney.

10           2. (1) Notwithstanding any other provision of law and  
11           subject to the provisions of this section, any person may  
12           apply to any court in which such person was charged or found  
13           guilty of any crimes for an order to expunge records of such  
14           arrest, plea, trial, or conviction.

30           3. The following crimes shall not be eligible for  
31 expungement under this section:

32 (1) Any class A felony offense;

33 (2) Any dangerous felony as that term is defined in  
34 section 556.061;

35 (3) Any offense that requires registration as a sex  
36 offender;

37 (4) Any felony offense where death is an element of  
38 the offense;

39 (5) Any felony offense of assault; misdemeanor or  
40 felony offense of domestic assault; or felony offense of  
41 kidnapping;

42 (6) Any offense listed, previously listed, or is a  
43 successor to an offense in chapter 566 or section 105.454,  
44 105.478, 115.631, 130.028, 188.030, 188.080, 191.677,  
45 194.425, 217.385, 334.245, 375.991, 389.653, 455.085,  
46 455.538, 557.035, 565.120, 565.130, 565.156, 566.093,  
47 566.111, 566.115, 566.116, 568.020, 568.030, 568.032,  
48 568.045, 568.060, 568.065, 568.175, 569.040, 569.050,  
49 569.055, 569.060, 569.065, 569.067, 569.072, 569.160,  
50 570.025, 570.090, 570.180, 570.223, 570.224, 570.310,  
51 571.020, 571.060, 571.063, 571.070, 571.072, 571.150,  
52 573.200, 573.205, 574.070, 574.105, 574.115, 574.120,  
53 574.130, 574.140, 575.040, 575.095, 575.153, 575.155,  
54 575.157, 575.159, 575.195, 575.200, 575.210, 575.220,  
55 575.230, 575.240, 575.353, 577.078, 577.703, 577.706, or  
56 632.520;

57 (7) Any offense eligible for expungement under section  
58 610.130;

59 (8) Any intoxication-related traffic or boating  
60 offense as defined in section 577.001, or any offense of  
61 operating an aircraft with an excessive blood alcohol  
62 content or while in an intoxicated condition;

63 (9) Any ordinance violation that is the substantial  
64 equivalent of any offense that is not eligible for  
65 expungement under this section;

66 (10) Any violation of any state law or county or  
67 municipal ordinance regulating the operation of motor  
68 vehicles when committed by an individual who has been issued

69 a commercial driver's license or is required to possess a  
70 commercial driver's license issued by this state or any  
71 other state; and

72 (11) Any offense of section 571.030, except any  
73 offense under subdivision (1) of subsection 1 of section  
74 571.030 where the person was convicted or found guilty prior  
75 to January 1, 2017, or any offense under subdivision (4) of  
76 subsection 1 of section 571.030.

77 4. The petition shall name as defendants all law  
78 enforcement agencies, courts, prosecuting or circuit  
79 attorneys, central state repositories of criminal records,  
80 or others who the petitioner has reason to believe may  
81 possess the records subject to expungement for each of the  
82 crimes listed in the petition. The court's order of  
83 expungement shall not affect any person or entity not named  
84 as a defendant in the action.

85 5. The petition shall include the following  
86 information:

87 (1) The petitioner's:  
88 (a) Full name;  
89 (b) Sex;  
90 (c) Race;  
91 (d) Driver's license number, if applicable; and  
92 (e) Current address;

93 (2) Each crime for which the petitioner is requesting  
94 expungement;

95 (3) The approximate date the petitioner was charged  
96 for each crime; and

97 (4) The name of the county where the petitioner was  
98 charged for each crime and if any of the crimes occurred in  
99 a municipality, the name of the municipality for each crime;  
100 and

101 (5) The case number and name of the court for each  
102 crime.

6. The clerk of the court shall give notice of the filing of the petition to the office of the prosecuting attorney that prosecuted the crimes listed in the petition. If the prosecuting attorney objects to the petition for expungement, he or she shall do so in writing within thirty days after receipt of service. Unless otherwise agreed upon by the parties, the court shall hold a hearing within sixty days after any written objection is filed, giving reasonable notice of the hearing to the petitioner. If no objection has been filed within thirty days after receipt of service, the court may set a hearing on the matter and shall give reasonable notice of the hearing to each entity named in the petition. At any hearing, the court may accept evidence and hear testimony on, and may consider, the following criteria for each of the crimes listed in the petition for expungement:

119 (1) At the time the petition is filed, it has been at  
120 least three years if the offense is a felony, or at least  
121 one year if the offense is a misdemeanor, municipal  
122 violation, or infraction, from the date the petitioner  
123 completed any authorized disposition imposed under section  
124 557.011 for each crime listed in the petition;

125 (2) At the time the petition is filed, the person has  
126 not been found guilty of any other misdemeanor or felony,  
127 not including violations of the traffic regulations provided  
128 under chapters 301, 302, 303, 304, and 307, during the time  
129 period specified for the underlying crime in subdivision (1)  
130 of this subsection;

131 (3) The person has satisfied all obligations relating  
132 to any such disposition, including the payment of any fines  
133 or restitution;

134 (4) The person does not have charges pending;

135 (5) The petitioner's habits and conduct demonstrate  
136 that the petitioner is not a threat to the public safety of  
137 the state; and

138 (6) The expungement is consistent with the public  
139 welfare and the interests of justice warrant the expungement.

140 A pleading by the petitioner that such petitioner meets the  
141 requirements of subdivisions (5) and (6) of this subsection  
142 shall create a rebuttable presumption that the expungement  
143 is warranted so long as the criteria contained in  
144 subdivisions (1) to (4) of this subsection are otherwise  
145 satisfied. The burden shall shift to the prosecuting  
146 attorney or circuit attorney to rebut the presumption. A  
147 victim of a crime listed in the petition shall have an  
148 opportunity to be heard at any hearing held under this  
149 section. A court may find that the continuing impact of the  
150 offense upon the victim rebuts the presumption that  
151 expungement is warranted.

152        7. A petition to expunge records related to an arrest  
153        for an eligible crime may be made in accordance with the  
154        provisions of this section to a court of competent  
155        jurisdiction in the county where the petitioner was arrested  
156        no earlier than eighteen months from the date of arrest;  
157        provided that, during such time, the petitioner has not been  
158        charged and the petitioner has not been found guilty of any  
159        misdemeanor or felony offense.

160           8. If the court determines that such person meets all  
161 the criteria set forth in subsection 6 of this section for

162 each of the crimes listed in the petition for expungement,  
163 the court shall enter an order of expungement. In all cases  
164 under this section, the court shall issue an order of  
165 expungement or dismissal within six months of the filing of  
166 the petition. A copy of the order of expungement shall be  
167 provided to the petitioner and each entity possessing  
168 records subject to the order, and, upon receipt of the  
169 order, each entity shall close any record in its possession  
170 relating to any crime listed in the petition, in the manner  
171 established by section 610.120. The records and files  
172 maintained in any administrative or court proceeding in a  
173 municipal, associate, or circuit court for any crime ordered  
174 expunged under this section shall be confidential and only  
175 available to the parties or by order of the court for good  
176 cause shown. The central repository shall request the  
177 Federal Bureau of Investigation to expunge the records from  
178 its files.

179 9. The order shall not limit any of the petitioner's  
180 rights that were restricted as a collateral consequence of  
181 such person's criminal record, and such rights shall be  
182 restored upon issuance of the order of expungement. Except  
183 as otherwise provided under this section, the effect of such  
184 order shall be to fully restore the civil rights of such  
185 person to the status he or she occupied prior to such  
186 arrests, pleas, trials, or convictions as if such events had  
187 never taken place. This includes fully restoring the civil  
188 rights of a person to the right to vote, the right to hold  
189 public office, and to serve as a juror. For purposes of 18  
190 U.S.C. Section 921(a)(33)(B)(ii), an order of expungement  
191 granted pursuant to this section shall be considered a  
192 complete removal of all effects of the expunged conviction.  
193 Except as otherwise provided under this section, the effect

194 of such order shall be to restore such person to the status  
195 he or she occupied prior to such arrests, pleas, trials, or  
196 convictions as if such events had never taken place. No  
197 person as to whom such order has been entered shall be held  
198 thereafter under any provision of law to be guilty of  
199 perjury or otherwise giving a false statement by reason of  
200 his or her failure to recite or acknowledge such arrests,  
201 pleas, trials, convictions, or expungement in response to an  
202 inquiry made of him or her and no such inquiry shall be made  
203 for information relating to an expungement, except the  
204 petitioner shall disclose the expunged crime to any court  
205 when asked or upon being charged with any subsequent crime.  
206 The expunged crime may be considered a prior offense in  
207 determining a sentence to be imposed for any subsequent  
208 offense that the person is found guilty of committing.

209 10. Notwithstanding the provisions of subsection 9 of  
210 this section to the contrary, a person granted an  
211 expungement shall disclose any expunged crime when the  
212 disclosure of such information is necessary to complete any  
213 application for:

214 (1) A license, certificate, or permit issued by this  
215 state to practice such individual's profession;

216 (2) Any license issued under chapter 313 or permit  
217 issued under chapter 571;

218 (3) Paid or unpaid employment with an entity licensed  
219 under chapter 313, any state-operated lottery, or any  
220 emergency services provider, including any law enforcement  
221 agency;

222 (4) Employment with any federally insured bank or  
223 savings institution or credit union or an affiliate of such  
224 institution or credit union for the purposes of compliance  
225 with 12 U.S.C. Section 1829 and 12 U.S.C. Section 1785;

226 (5) Employment with any entity engaged in the business  
227 of insurance or any insurer for the purpose of complying  
228 with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or  
229 other similar law which requires an employer engaged in the  
230 business of insurance to exclude applicants with certain  
231 criminal convictions from employment; or

232 (6) Employment with any employer that is required to  
233 exclude applicants with certain criminal convictions from  
234 employment due to federal or state law, including  
235 corresponding rules and regulations.

236 An employer shall notify an applicant of the requirements  
237 under subdivisions (4) to (6) of this subsection.

238 Notwithstanding any provision of law to the contrary, an  
239 expunged crime shall not be grounds for automatic  
240 disqualification of an applicant, but may be a factor for  
241 denying employment, or a professional license, certificate,  
242 or permit; except that, a crime expunged under the  
243 provisions of this section may be grounds for automatic  
244 disqualification if the application is for employment under  
245 subdivisions (4) to (6) of this subsection.

246           11. A person who has been granted an expungement of  
247 records pertaining to a crime may answer "no" to an  
248 employer's inquiry into whether the person has ever been  
249 arrested, charged, or convicted of a crime if, after the  
250 granting of the expungement, the person has no public record  
251 of a crime. The person, however, shall answer such an  
252 inquiry affirmatively and disclose his or her criminal  
253 convictions, including any offense expunged under this  
254 section or similar law, if the employer is required to  
255 exclude applicants with certain criminal convictions from

256 employment due to federal or state law, including  
257 corresponding rules and regulations.

258 12. If the court determines that the petitioner has  
259 not met the criteria for any of the crimes listed in the  
260 petition for expungement or the petitioner has knowingly  
261 provided false information in the petition, the court shall  
262 enter an order dismissing the petition. Any person whose  
263 petition for expungement has been dismissed by the court for  
264 failure to meet the criteria set forth in subsection 6 of  
265 this section may not refile another petition until a year  
266 has passed since the date of filing for the previous  
267 petition.

268 13. A person may be granted more than one expungement  
269 under this section provided that during his or her lifetime,  
270 the total number of crimes for which orders of expungement  
271 are granted to the person shall not exceed the following  
272 limits:

273 (1) Not more than three misdemeanor offenses or  
274 ordinance violations that have an authorized term of  
275 imprisonment; and

276 (2) Not more than two felony offenses.

277 A person may be granted expungement under this section for  
278 any number of infractions. Nothing in this section shall be  
279 construed to limit or impair in any way the subsequent use  
280 of any record expunged under this section of any arrests or  
281 findings of guilt by a law enforcement agency, criminal  
282 justice agency, prosecuting attorney or circuit attorney,  
283 including its use as a prior crime.

284 14. The court shall make available a form for pro se  
285 petitioners seeking expungement, which shall include the  
286 following statement: "I declare under penalty of perjury

287 that the statements made herein are true and correct to the  
288 best of my knowledge, information, and belief.".

289 15. Nothing in this section shall be construed to  
290 limit or restrict the availability of expungement to any  
291 person under any other law.

✓