

SECOND REGULAR SESSION

# SENATE BILL NO. 1388

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

5764S.011

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Section A. Sections 56.010, 56.805, 56.814, 542.400, 2 552.040, 557.014, and 610.140, RSMo, are repealed and thirteen 3 new sections enacted in lieu thereof, to be known as sections 4 56.010, 56.805, 56.814, 56.1000, 56.1005, 56.1010, 56.1015, 5 56.1020, 56.1025, 542.400, 552.040, 557.014, and 610.140, to 6 read as follows:

56.010. At the general election [to be held in this 2 state in the year A.D. 1982, and every four years 3 thereafter] **in the year 2028**, there shall be elected in each 4 county [of this state] **which has not elected to become part 5 of the district attorney system** a prosecuting attorney, who 6 shall be a person learned in the law, duly licensed to 7 practice as an attorney at law in this state, and enrolled 8 as such, at least twenty-one years of age, and who has been 9 a bona fide resident of the county in which he seeks 10 election for twelve months next preceding the date of the 11 general election at which he **or she** is a candidate for such 12 office and shall hold his **or her** office for four years, and 13 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

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

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

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

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

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

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

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

3. Any person who is a member of the retirement system on December 31, 2028, and who has served more than four years as a prosecuting attorney in a county which elects to become part of the district attorney system and who does not become a district attorney on January 1, 2029, may elect to 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.

          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.

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

7 2. For the district attorney offices in judicial  
8 circuits consisting of one county, the state shall reimburse  
9 the percentage of the office budget by five percent every  
10 year for which the district attorney system has been adopted  
11 until the tenth and subsequent years, for which the  
12 percentage of the office budget that is reimbursed shall be  
13 fifty percent.

14 3. For district attorney offices in judicial circuits  
15 consisting of two or more counties, the state shall  
16 reimburse the percentage of the office budget by ten percent  
17 every year for which the district attorney system has been  
18 adopted until the fifth and subsequent years, for which the  
19 percentage of the office budget that is reimbursed shall be  
20 fifty percent.

21 4. The office of administration shall make payment for  
22 the reimbursement from appropriations made for that purpose  
23 on or before July fifteenth of each year following the  
24 calendar year in which such expenses by the counties were  
25 paid. In circuits where more than one county contributed to  
26 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.

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

56.1025. 1. For counties not having a charter form of  
2 government to join the district attorney system, the county  
3 commission of each county within a judicial circuit shall  
4 adopt by majority vote a resolution to join the district  
5 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;

36 (7) "Investigative officer" or "law enforcement  
37 officer or agency", any officer or agency of this state or a  
38 political subdivision of this state, who is empowered by law  
39 to conduct investigations of or to make arrests for offenses  
40 enumerated in sections 542.400 to 542.422, and any attorney  
41 authorized by law to prosecute or participate in the  
42 prosecution of such offenses;

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;

56 (12) "Wire communication", any communication made in  
57 whole or in part through the use of facilities for the  
58 transmission of communications by the aid of wire, cable, or  
59 other like connection between the point of origin and the  
60 point of reception including the use of such connection in a  
61 switching station furnished or operated by any person

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

defined in section 556.061, or with murder in the first degree pursuant to section 565.020, or sexual assault pursuant to section 566.040, or the attempts thereof, and the examination contains an opinion that the accused should be immediately conditionally released to the community by the court, the court shall hold a hearing to determine if an immediate conditional release is appropriate pursuant to the procedures for conditional release set out in subsections 10 to 14 of this section. Prior to the hearing, the court shall direct the director of the department of mental health, or the director's designee, to have the accused examined to determine conditions of confinement in accordance with subsection 5 of section 552.020. The provisions of subsection 16 of this section shall be applicable to defendants granted an immediate conditional release and the director shall honor the immediate conditional release as granted by the court. If the court determines that an immediate conditional release is warranted, the court shall order the person committed to the director of the department of mental health before ordering such a release. The court granting the immediate conditional release shall retain jurisdiction over the case for the duration of the conditional release. This shall not limit the authority of the director of the department of mental health or the director's designee to revoke the conditional release or the trial release of any committed person pursuant to subsection 17 of this section. If the accused is committed to a mental health or developmental disability facility, the director of the department of mental health, or the director's designee, shall determine 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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

287           (a) A copy of the application shall also be served  
288 upon the prosecutor of the jurisdiction into which the  
289 committed person is to be released; and

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.

295           16. The department shall provide or shall arrange for  
296 follow-up care and monitoring for all persons conditionally  
297 released under this section and shall make or arrange for  
298 reviews and visits with the client at least monthly, or more  
299 frequently as set out in the release plan, and whether the  
300 client is receiving care, treatment, habilitation or  
301 rehabilitation consistent with his needs, condition and  
302 public safety. The department shall identify the  
303 facilities, programs or specialized services operated or  
304 funded by the department which shall provide necessary  
305 levels of follow-up care, aftercare, rehabilitation or  
306 treatment to the persons in geographical areas where they  
307 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

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

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

9           (4) "Deferred prosecution", the suspension of a  
10 criminal case for a specified period upon the request of  
11 both the prosecuting attorney and the accused or the  
12 defendant;

13           (5) "Diversionary screening", the discretionary power  
14 of the prosecuting attorney to suspend all formal  
15 prosecutorial proceedings against a person who has become  
16 involved in the criminal justice system as an accused or  
17 defendant;

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;

21           (7) "Prosecution diversion", the imposition of  
22 conditions of behavior and conduct by the prosecuting  
23 attorney upon an accused or defendant for a specified period  
24 of time as an alternative to proceeding to adjudication on a  
25 complaint, information, or indictment.

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



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

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

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

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

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

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

7           (3) "Prosecutor" or "prosecuting attorney", the  
8 prosecuting attorney, **district attorney**, circuit attorney,  
9 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.

15           (2) Subject to the limitations of subsection 13 of  
16 this section, a person may apply to have one or more crimes  
17 expunged if each such crime occurred within the state of  
18 Missouri and was prosecuted under the jurisdiction of a  
19 Missouri court, so long as such person lists all the crimes  
20 he or she is seeking to have expunged in the petition and so  
21 long as all such crimes are not excluded under subsection 3  
22 of this section.

23           (3) If the crimes sought to be expunged were committed  
24 as part of the same course of criminal conduct, the person  
25 may include all such related crimes in the petition,  
26 regardless of the limits of subsection 13 of this section,  
27 and those related crimes shall only count as the highest  
28 level for the purpose of determining current and future  
29 eligibility for expungement.

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.

103           6. The clerk of the court shall give notice of the  
104 filing of the petition to the office of the prosecuting  
105 attorney that prosecuted the crimes listed in the petition.  
106 If the prosecuting attorney objects to the petition for  
107 expungement, he or she shall do so in writing within thirty  
108 days after receipt of service. Unless otherwise agreed upon  
109 by the parties, the court shall hold a hearing within sixty  
110 days after any written objection is filed, giving reasonable  
111 notice of the hearing to the petitioner. If no objection  
112 has been filed within thirty days after receipt of service,  
113 the court may set a hearing on the matter and shall give  
114 reasonable notice of the hearing to each entity named in the  
115 petition. At any hearing, the court may accept evidence and  
116 hear testimony on, and may consider, the following criteria  
117 for each of the crimes listed in the petition for  
118 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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

(2) Not more than two felony offenses.

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

14. The court shall make available a form for pro se petitioners seeking expungement, which shall include the 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.

✓