

FIRST REGULAR SESSION

# HOUSE BILL NO. 967

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DOGAN.

2071H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To amend chapter 557, RSMo, by adding thereto one new section relating to diversion authority of prosecuting attorneys.

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

Section A. Chapter 557, RSMo, is amended by adding thereto one new section, to be known as section 557.014, to read as follows:

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

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

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

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

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

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

(6) "Prosecution diversion", the imposition of conditions of behavior and conduct by the prosecuting attorney upon an accused or defendant for a specified period of time as an alternative to proceeding to adjudication on a complaint, information, or indictment;

(7) "Prosecuting attorney", the prosecuting attorney or circuit attorney for each county of the state and the City of St. Louis.

2. Each prosecuting attorney in the state of Missouri shall have the authority to, upon agreement with an accused or a defendant, divert a criminal case to a prosecution

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

18 diversion program for a period of six months to two years, thus allowing for any statute  
19 of limitations to be tolled for that time alone. The period of diversion may be extended by  
20 the prosecuting attorney as a disciplinary measure or to allow sufficient time for  
21 completion of any portion of the prosecution diversion, including restitution; provided,  
22 however, that no extension of such diversion shall be for a period of more than two years.

23       3. The prosecuting attorney may divert cases under this program out of the  
24 criminal justice system if the prosecuting attorney determines that the advantages of  
25 utilizing prosecution diversion outweigh the advantages of immediate court activity.

26       4. Prior to or upon the issuance of an accusatory instrument, with consent of the  
27 accused or defendant, other than for an offense enumerated in this section, the prosecuting  
28 attorney may forego continued prosecution upon the parties' agreement to a prosecution  
29 diversion plan. The prosecution diversion plan shall be for a specified period and shall be  
30 in writing. The prosecuting attorney has the sole authority to develop diversionary  
31 program requirements, but minimum requirements are as follows:

32       (1) The alleged offense is nonviolent, nonsexual, and does not involve a child victim  
33 or possession of an unlawful weapon;

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

35       (3) Any newly discovered criminal behavior while in a prosecution diversion  
36 program will immediately forfeit his or her right to continued participation in such  
37 program at the sole discretion of the prosecuting attorney;

38       (4) The alleged offense does not also constitute a violation of a current condition of  
39 probation or parole; and

40       (5) Any other criteria established by the prosecuting attorney.

41       5. During any period of prosecution diversion, the prosecuting attorney may impose  
42 conditions upon the behavior and conduct of the accused or defendant that assures the  
43 safety and well-being of the community as well as that of the accused or defendant. The  
44 conditions imposed by the prosecuting attorney shall include, but are not limited to, the  
45 following:

46       (1) Requiring the accused or defendant to remain free of any criminal behavior  
47 during the entire period of prosecution diversion;

48       (2) Payment of restitution to any victim of the related offense;

49       (3) Requiring the accused to pay an administrative handling cost of one hundred  
50 dollars for each case diverted under this section. Notwithstanding the provisions of  
51 sections 50.525 to 50.745, the costs provided in this subsection shall be deposited by the  
52 county treasurer into a separate, interest-bearing fund to be expended by the prosecuting  
53 attorney or circuit attorney. This fund shall be known as the "Administrative Handling

54 **Cost Fund", and it shall be the same fund for deposits under this section and under section**  
55 **570.120. The funds shall be expended, upon warrants issued by the prosecuting attorney**  
56 **or circuit attorney directing the treasurer to issue checks thereon, only for purposes related**  
57 **to that authorized by subsection 4 of this section. Notwithstanding the provisions of any**  
58 **other law, in addition to the administrative handling cost the prosecuting attorney or**  
59 **circuit attorney shall collect an additional cost of five dollars per case for deposit to the**  
60 **Missouri office of prosecution services fund established in subsection 2 of section 56.765.**  
61 **All moneys collected under this section that are payable to the Missouri office of**  
62 **prosecution services fund shall be transmitted at least monthly by the county treasurer to**  
63 **the director of revenue who shall deposit the amount collected to the credit of the Missouri**  
64 **office of prosecution services fund under the procedure established under subsection 2 of**  
65 **section 56.765.**

66 **6. The moneys deposited in the fund may be used by the prosecuting attorney or**  
67 **circuit attorney for office supplies, postage, books, training, office equipment, capital**  
68 **outlay, expenses of trial and witness preparation, additional employees for the staff of the**  
69 **prosecuting attorney or circuit attorney, employees' salaries, and for other lawful expenses**  
70 **incurred by the prosecuting attorney or circuit attorney in the operation of that office.**

71 **7. This fund may be audited by the state auditor's office or the appropriate**  
72 **auditing agency.**

73 **8. If the moneys collected and deposited into this fund are not totally expended**  
74 **annually, the unexpended balance shall remain in the fund and shall be kept in the fund**  
75 **to accumulate from year to year.**

76 **9. The responsibility and authority to screen or divert specific cases, or to refuse**  
77 **to screen or divert specific cases, shall rest within the sole judgment and discretion of the**  
78 **prosecuting attorney as part of his or her official duty as prosecuting attorney. The**  
79 **decision of the prosecuting attorney regarding diversion shall not be subject to appeal nor**  
80 **be raised as a defense in any prosecution of a criminal case involving the accused or**  
81 **defendant.**

82 **10. Any person participating in the program shall have the right to:**

83 **(1) Insist on criminal prosecution for the offense for which they are accused at any**  
84 **time; and**

85 **(2) The right to counsel of the person's choosing during all phases of the**  
86 **prosecution diversion proceedings unless the right to counsel is knowingly and voluntarily**  
87 **waived by the accused or defendant.**

88 **11. In conducting the program, the prosecuting attorney may require at any point**  
89 **the reinitiation of criminal proceedings if, in his or her judgment, such is warranted.**

90           **12. Any county, city, person, organization, or agency, or employee or agent thereof,**  
91 **involved with the supervision of activities, programs, or community service that are a part**  
92 **of a prosecution diversion program shall be immune from any suit by the person**  
93 **performing the work under the deferred prosecution agreement, or any person deriving**  
94 **a cause of action from such person, except for an intentional tort or gross negligence.**  
95 **Persons performing work or community service under a deferred prosecution agreement**  
96 **as described shall not be deemed to be engaged in employment within the meaning of the**  
97 **provisions of chapter 288. A person performing work or community service under a**  
98 **deferred prosecution agreement shall not be deemed an employee within the meaning of**  
99 **the provisions of chapter 287.**

100           **13. Any person supervising an accused or defendant under the program shall**  
101 **report to the prosecuting attorney any violation of the terms of the prosecution diversion**  
102 **program.**

103           **14. After completion of the program and any conditions imposed upon the accused**  
104 **or defendant, to the satisfaction of the prosecuting attorney, the individual shall be entitled**  
105 **to a dismissal or alternative disposition of charges against him or her. Such disposition**  
106 **may, in the discretion of the prosecuting attorney, be without prejudice to the state of**  
107 **Missouri for the reinstatement of criminal proceedings, within the statute of limitations,**  
108 **upon any subsequent criminal activity on the part of the accused. Any other provision of**  
109 **law notwithstanding, such individual shall be required to pay any associated costs prior**  
110 **to dismissal of pending charges.**

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