

UNCONDITIONAL AND CONDITIONAL RELEASE CONSIDERATIONS

Applying the Rules of Law, Medicine, and
Witchcraft to Section 552.040 RSMo.

- Who can file the application?
- Where do you file it?
- What do you have to prove?

Who files the application?

Unconditional and Conditional

The **committed person** or the **head of the facility** where the person is committed may file the application.

- Where do you file the application?

Unconditional:

In the court that committed the person.

Conditional:

In the court having probate jurisdiction over the facility where the person is detained, unless the person was acquitted for a dangerous felony (556.061), murder in the first degree (565.020), or sexual assault (566.040)

What do you have to prove?

Unconditional

The party seeking the release must prove by clear and convincing evidence that the individual does not have and is not likely to have a mental disease or defect rendering the person dangerous to himself or others.

Conditional

The party seeking the release must prove by clear and convincing evidence that the individual is not likely to be dangerous to others while on conditional release.

Criteria for Unconditional Release:

The court **shall** consider the following factors **in addition to any other relevant evidence**:

- (1) *Whether or not the committed person presently has a mental disease or defect; **
- (2) The nature of the offense for which the committed person was committed;
- (3) The committed person's behavior while confined in a mental health facility;
- (4) The elapsed time between the hearing and the last reported unlawful or dangerous act;
- (5) Whether the person has had conditional releases without incident; and
- (6) *Whether the determination that the committed person is not dangerous to himself or others is dependent on the person's taking drugs, medicine or narcotics. **

Criteria for Conditional Release

- 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.

Additional factors to consider

Any person committed to a mental health facility as NGRI for a **dangerous felony** shall not be eligible for conditional or unconditional release under the provisions of this section unless, in addition to the requirements of this section, the court finds that the following criteria are met:

- (1) Such person is not now and is not likely in the reasonable future to commit another violent crime against another person because of such person's mental illness; and
- (2) Such person is aware of the nature of the violent crime committed against another person and presently possesses the capacity to appreciate the criminality of the violent crime against another person and the capacity to conform such person's conduct to the requirements of law in the future.

- Dangerous felony

- **arson in the first degree**, assault in the first degree, **attempted rape in the first degree if physical injury results**, attempted forcible rape if physical injury results, **attempted sodomy in the first degree if physical injury results**, attempted forcible sodomy if physical injury results, **rape in the first degree**, forcible rape, **sodomy in the first degree**, forcible sodomy, **assault in the second degree if the victim of such assault is a special victim as defined in subdivision (14) of section [565.002](#)**, kidnapping in the first degree, **kidnapping**, murder in the second degree, **assault of a law enforcement officer in the first degree**, domestic assault in the first degree, **elder abuse in the first degree**, robbery in the first degree, **statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense**, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, **child molestation in the first or second degree**, abuse of a child if the child dies as a result of injuries sustained from conduct chargeable under section [568.060](#), **child kidnapping**, parental kidnapping committed by detaining or concealing the whereabouts of the child for not less than one hundred twenty days under section [565.153](#), **an "intoxication-related traffic offense" or "intoxication-related boating offense" if the person is found to be a "habitual offender" or "habitual boating offender" as such terms are defined in section [577.001](#)**;