

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 530
90TH GENERAL ASSEMBLY

Reported from the Committee on Aging, Families and Mental Health, March 7, 2000, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

Senate Committee Substitute adopted March 16, 2000.

Taken up March 16, 2000. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

2782S.04P

AN ACT

To repeal sections 552.020 and 552.040, RSMo Supp. 1999, relating to the placement of certain individuals in correctional institutions, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 552.020 and 552.040, RSMo Supp. 1999, are repealed and two new sections enacted in lieu thereof, to be known as sections 552.020 and 552.040, to read as follows:

552.020. 1. No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

2. Whenever any judge has reasonable cause to believe that the accused lacks mental fitness to proceed, he shall, upon his own motion or upon motion filed by the state or by or on behalf of the accused, by order of record, appoint one or more private psychiatrists or psychologists, as defined in section 632.005, RSMo, or physicians with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, who are neither employees nor contractors of the department of mental health for purposes of performing the examination in question, to examine the accused; or shall direct the

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

director to have the accused so examined by one or more psychiatrists or psychologists, as defined in section 632.005, RSMo, or physicians with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals. The order shall direct that a written report or reports of such examination be filed with the clerk of the court. No private physician, psychiatrist, or psychologist shall be appointed by the court unless he has consented to act. The examinations ordered shall be made at such time and place and under such conditions as the court deems proper; except that, if the order directs the director of the department to have the accused examined, the director, or his designee, shall determine the time, place and conditions under which the examination shall be conducted. The order may include provisions for the interview of witnesses and may require the provision of police reports to the department for use in evaluations. The department shall establish standards and provide training for those individuals performing examinations pursuant to this section and section 552.030. No individual who is employed by or contracts with the department shall be designated to perform an examination pursuant to this chapter unless the individual meets the qualifications so established by the department. Any examination performed pursuant to this subsection shall be completed and filed with the court within sixty days of the order unless the court for good cause orders otherwise. Nothing in this section or section 552.030 shall be construed to permit psychologists to engage in any activity not authorized by chapter 337, RSMo. One pretrial evaluation shall be provided at no charge to the defendant by the department. All costs of subsequent evaluations shall be assessed to the party requesting the evaluation.

3. A report of the examination made under this section shall include:

(1) Detailed findings;

(2) An opinion as to whether the accused has a mental disease or defect;

(3) An opinion based upon a reasonable degree of medical or psychological certainty as to whether the accused, as a result of a mental disease or defect, lacks capacity to understand the proceedings against him or to assist in his own defense;

(4) A recommendation as to whether the accused should be held in custody in a suitable hospital facility for treatment pending determination, by the court, of mental fitness to proceed; and

(5) A recommendation as to whether the accused, if found by the court to be mentally fit to proceed, should be detained in such hospital facility pending further proceedings.

4. If the accused has pleaded lack of responsibility due to mental disease or defect or has given the written notice provided in subsection 2 of section 552.030, the court shall order the report of the examination conducted pursuant to this section to include, in addition to the information required in subsection 3 of this section, an opinion as to whether at the time of the alleged criminal conduct the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality, or wrongfulness of his conduct or as a result of mental disease or

defect was incapable of conforming his conduct to the requirements of law. A plea of not guilty by reason of mental disease or defect shall not be accepted by the court in the absence of any such pretrial evaluation which supports such a defense. In addition, if the accused has pleaded not guilty by reason of mental disease or defect, and the alleged crime is not a dangerous felony as defined in section 556.061, RSMo, or those crimes set forth in subsection 11 of section 552.040, or the attempts thereof, the court shall order the report of the examination to include an opinion as to whether or not the accused should be immediately conditionally released by the court pursuant to the provisions of section 552.040 or should be committed to a [mental health or mental retardation facility] **secure facility as defined in section 552.040**. If such an evaluation is conducted at the direction of the director of the department of mental health, the court shall also order the report of the examination to include an opinion as to the conditions of release which are consistent with the needs of the accused and the interest of public safety, including, but not limited to, the following factors:

- (1) Location and degree of necessary supervision of housing;
- (2) Location of and responsibilities for appropriate psychiatric, rehabilitation and aftercare services, including the frequency of such services;
- (3) Medication follow-up, including necessary testing to monitor medication compliance;
- (4) At least monthly contact with the department's forensic case monitor;
- (5) Any other conditions or supervision as may be warranted by the circumstances of the case.

5. If the report contains the recommendation that the accused should be committed to or held in a suitable hospital facility pending determination of the issue of mental fitness to proceed, and if the accused is not admitted to bail or released on other conditions, the court may order that the accused be committed to or held in a suitable hospital facility pending determination of the issue of mental fitness to proceed.

6. The clerk of the court shall deliver copies of the report to the prosecuting or circuit attorney and to the accused or his counsel. The report shall not be a public record or open to the public. Within ten days after the filing of the report, both the defendant and the state shall, upon written request, be entitled to an order granting them an examination of the accused by a psychiatrist or psychologist, as defined in section 632.005, RSMo, or a physician with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, of their own choosing and at their own expense. An examination performed pursuant to this subsection shall be completed and a report filed with the court within sixty days of the date it is received by the department or private psychiatrist, psychologist or physician unless the court, for good cause, orders otherwise. A copy shall be furnished the opposing party.

7. If neither the state nor the accused nor his counsel requests a second examination

relative to fitness to proceed or contests the findings of the report referred to in subsections 2 and 3 of this section, the court may make a determination and finding on the basis of the report filed or may hold a hearing on its own motion. If any such opinion is contested, the court shall hold a hearing on the issue. The court shall determine the issue of mental fitness to proceed and may impanel a jury of six persons to assist in making the determination. The report or reports may be received in evidence at any hearing on the issue but the party contesting any opinion therein shall have the right to summon and to cross-examine the examiner who rendered such opinion and to offer evidence upon the issue.

8. At a hearing on the issue pursuant to subsection 7 of this section, the accused is presumed to have the mental fitness to proceed. The burden of proving that the accused does not have the mental fitness to proceed is by a preponderance of the evidence and the burden of going forward with the evidence is on the party raising the issue. The burden of going forward shall be on the state if the court raises the issue.

9. If the court determines that the accused lacks mental fitness to proceed, the criminal proceedings shall be suspended and the court shall commit him to the director of the department of mental health, **pursuant to section 552.040**.

10. Any person committed pursuant to subsection 9 of this section shall be entitled to the writ of habeas corpus upon proper petition to the court that committed him. The issue of the mental fitness to proceed after commitment under subsection 9 of this section may also be raised by a motion filed by the director of the department of mental health or by the state, alleging the mental fitness of the accused to proceed. A report relating to the issue of the accused's mental fitness to proceed may be attached thereto. If the motion is not contested by the accused or his counsel or if after a hearing on a motion the court finds the accused mentally fit to proceed, or if he is ordered discharged from the director's custody upon a habeas corpus hearing, the criminal proceedings shall be resumed.

11. The following provisions shall apply after a commitment as provided in this section:

(1) Six months after such commitment, the court which ordered the accused committed shall order an examination by the head of the facility in which the accused is committed, or a qualified designee, to ascertain whether the accused is mentally fit to proceed and if not, whether there is a substantial probability that the accused will attain the mental fitness to proceed to trial in the foreseeable future. The order shall direct that written report or reports of the examination be filed with the clerk of the court within thirty days and the clerk shall deliver copies to the prosecuting attorney or circuit attorney and to the accused or his counsel. The report required by this subsection shall conform to the requirements under subsection 3 of this section with the additional requirement that it include an opinion, if the accused lacks mental fitness to proceed, as to whether there is a substantial probability that the accused will attain the mental fitness to proceed in the foreseeable future;

(2) Within ten days after the filing of the report, both the accused and the state shall, upon written request, be entitled to an order granting them an examination of the accused by a psychiatrist or psychologist, as defined in section 632.005, RSMo, or a physician with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals, of their own choosing and at their own expense. An examination performed pursuant to this subdivision shall be completed and filed with the court within thirty days unless the court, for good cause, orders otherwise. A copy shall be furnished to the opposing party;

(3) If neither the state nor the accused nor his counsel requests a second examination relative to fitness to proceed or contests the findings of the report referred to in subdivision (1) of this subsection, the court may make a determination and finding on the basis of the report filed, or may hold a hearing on its own motion. If any such opinion is contested, the court shall hold a hearing on the issue. The report or reports may be received in evidence at any hearing on the issue but the party contesting any opinion therein relative to fitness to proceed shall have the right to summon and to cross-examine the examiner who rendered such opinion and to offer evidence upon the issue;

(4) If the accused is found mentally fit to proceed, the criminal proceedings shall be resumed;

(5) If it is found that the accused lacks mental fitness to proceed but there is a substantial probability the accused will be mentally fit to proceed in the reasonably foreseeable future, the court shall continue such commitment for a period not longer than six months, after which the court shall reinstitute the proceedings required under subdivision (1) of this subsection;

(6) If it is found that the accused lacks mental fitness to proceed and there is no substantial probability that the accused will be mentally fit to proceed in the reasonably foreseeable future, the court shall dismiss the charges without prejudice and the accused shall be discharged, but only if proper proceedings have been filed under chapter 632 or chapter 475, RSMo, in which case those sections and no others will be applicable. The probate division of the circuit court shall have concurrent jurisdiction over the accused upon the filing of a proper pleading to determine if the accused shall be involuntarily detained under chapter 632, RSMo, or to determine if the accused shall be declared incapacitated under chapter 475, RSMo, and approved for admission by the guardian under section 632.120 or 633.120, RSMo, to a mental health or retardation facility. When such proceedings are filed, the criminal charges shall be dismissed without prejudice if the court finds that the accused is mentally ill and should be committed or that he is incapacitated and should have a guardian appointed. The period of limitation on prosecuting any criminal offense shall be tolled during the period that the accused lacks mental fitness to proceed.

12. If the question of the accused's mental fitness to proceed was raised after a jury was

impaneled to try the issues raised by a plea of not guilty and the court determines that the accused lacks the mental fitness to proceed or orders the accused committed for an examination pursuant to this section, the court may declare a mistrial. Declaration of a mistrial under these circumstances, or dismissal of the charges pursuant to subsection 11 of this section, does not constitute jeopardy, nor does it prohibit the trial, sentencing or execution of the accused for the same offense after he has been found restored to competency.

13. The result of any examinations made pursuant to this section shall not be a public record or open to the public.

14. No statement made by the accused in the course of any examination or treatment pursuant to this section and no information received by any examiner or other person in the course thereof, whether such examination or treatment was made with or without the consent of the accused or upon his motion or upon that of others, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding then or thereafter pending in any court, state or federal. A finding by the court that the accused is mentally fit to proceed shall in no way prejudice the accused in a defense to the crime charged on the ground that at the time thereof he was afflicted with a mental disease or defect excluding responsibility, nor shall such finding by the court be introduced in evidence on that issue nor otherwise be brought to the notice of the jury.

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

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

(2) "Secure facility", a state mental health facility, **Marshall Habilitation Center**, a state mental retardation facility, [private facility under contract with the department of mental health,] or a section within any of these facilities, in which persons committed to the department of mental health pursuant to this chapter, shall not be permitted to move about the facility or section of the facility, nor to leave the facility or section of the facility, without approval by the head of the facility or such head's designee and adequate supervision consistent with the safety of the public and the person's treatment, habilitation or rehabilitation plan;

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

2. When an accused is tried and acquitted on the ground of mental disease or defect excluding responsibility, the court shall order such person committed to the director of the department of mental health for custody. The court shall also order custody and care in a state mental health or retardation facility unless an immediate conditional release is granted pursuant to this section. If the accused has not been charged with a dangerous felony as defined in section 556.061, RSMo, or with murder in the first degree pursuant to section 565.020, RSMo, or sexual assault pursuant to section 566.040, RSMo, 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 4 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 mental retardation facility, the director of the department of mental health, or the director's designee, shall determine the time, place and conditions of confinement.

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

4. Notwithstanding section 630.115, RSMo, any person committed pursuant to subsection 2 of this section shall be kept in a secure facility until such time as a court of competent jurisdiction enters an order granting a conditional or unconditional release to a nonsecure facility. **A parent or guardian of a person committed pursuant to this section and transferred to the Marshall Habilitation Center may appeal such transfer to the Missouri advisory council on mental retardation and developmental disabilities, as established in chapter 633, RSMo, or to the regional council having jurisdiction over that client. The appeal procedure shall be conducted in accordance with the provisions of chapter 621, RSMo.**

5. The committed person or the head of the facility where the person is committed may file an application in the court that committed the person seeking an order releasing the committed person unconditionally; except that any person who has been denied an application for a conditional release pursuant to subsection 13 of this section shall not be eligible to file for an unconditional release until the expiration of one year from such denial. 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 director's designee, may file an application in the same court that released the committed person seeking an order releasing the committed person unconditionally. Copies of the application shall be served personally or by certified mail upon the head of the facility unless the head of the facility files the application, the committed person unless the committed person files the application, or unless the committed person was immediately conditionally released, the director of the department of mental health, and the prosecutor of the jurisdiction where the committed person was tried and acquitted. Any party objecting to the proposed release must do so in writing within thirty days after service. Within a reasonable period of time after any written objection is filed, which period shall not exceed sixty days unless otherwise agreed upon by the parties, the court shall hold a hearing upon notice to the committed person, the head of the facility, if necessary, the director of the department of mental health, and the prosecutor of the jurisdiction where the person was tried. Prior to the hearing any of the parties, upon written application, shall be entitled to an examination of the committed person, by a psychiatrist or psychologist, as defined in section 632.005, RSMo, or a physician with a minimum of one year training or experience in providing treatment or services to mentally retarded or mentally ill individuals of its own choosing and at its expense. The report of the mental condition of the committed person shall accompany the application. By agreement of all parties to the proceeding any report of the mental condition of the committed person which may accompany the application for release or which is filed in objection thereto may be received by evidence, but the party contesting any opinion therein shall have the right to summon and to cross-examine the examiner who rendered such opinion and to offer evidence upon the issue.

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

7. At a hearing to determine if the committed person should be unconditionally released, 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. 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 unconditional release to prove by clear and convincing 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, RSMo, murder in the first degree pursuant to section 565.020, RSMo, or sexual assault pursuant to section 566.040, RSMo, 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 director's designee, may file an application in the same court that released the person seeking to amend or modify the existing release. The procedures for application for unconditional releases set out in subsection 5 of this section shall apply, with the following additional requirements:

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

(2) The prosecutor of the jurisdiction where the person was tried and acquitted shall use

their best efforts to notify the victims of dangerous felonies. Notification by the appropriate person or agency by certified mail to the most current address provided by the victim shall constitute compliance with the victim notification requirement of this section;

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

(4) The prosecutor of the jurisdiction where the person is being detained shall represent the public safety interest at the hearing unless the prosecutor of the jurisdiction where the person was tried and acquitted 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;

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

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

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

(5) The release criteria of subsections 12 to 14 of 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.

17. The director of the department of mental health, or the director's designee, may revoke the conditional release or the trial release and request the return of the committed person if such director or coordinator has 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.

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

20. 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 for a dangerous felony as defined in section 556.061, RSMo, murder in the first degree pursuant to section 565.020, RSMo, or sexual assault pursuant to section 566.040, RSMo, 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.

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