

SECOND REGULAR SESSION

# SENATE BILL NO. 661

99TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR RIDDLE.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5192S.011

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## AN ACT

To repeal section 552.020, RSMo, and to enact in lieu thereof one new section relating to persons committed to the department of mental health due to the lack of mental fitness to stand trial.

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

Section A. Section 552.020, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 552.020, to read as follows:

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

5 2. Whenever any judge has reasonable cause to believe that the accused  
6 lacks mental fitness to proceed, **[he] the judge** shall, upon his **or her** own  
7 motion or upon motion filed by the state or by or on behalf of the accused, by  
8 order of record, appoint one or more private psychiatrists or psychologists, as  
9 defined in section 632.005, or physicians with a minimum of one year training or  
10 experience in providing treatment or services to persons with an intellectual  
11 disability or developmental disability or mental illness, who are neither  
12 employees nor contractors of the department of mental health for purposes of  
13 performing the examination in question, to examine the accused; or shall direct  
14 the director to have the accused so examined by one or more psychiatrists or  
15 psychologists, as defined in section 632.005, or physicians with a minimum of one  
16 year training or experience in providing treatment or services to persons with an  
17 intellectual disability, developmental disability, or mental illness. The order  
18 shall direct that a written report or reports of such examination be filed with the

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

19 clerk of the court. No private physician, psychiatrist, or psychologist shall be  
20 appointed by the court unless he **or she** has consented to act. The examinations  
21 ordered shall be made at such time and place and under such conditions as the  
22 court deems proper; except that, if the order directs the director of the  
23 department to have the accused examined, the director, or his **or her** designee,  
24 shall determine the time, place and conditions under which the examination shall  
25 be conducted. The order may include provisions for the interview of witnesses  
26 and may require the provision of police reports to the department for use in  
27 evaluations. The department shall establish standards and provide training for  
28 those individuals performing examinations pursuant to this section and section  
29 552.030. No individual who is employed by or contracts with the department  
30 shall be designated to perform an examination pursuant to this chapter unless  
31 the individual meets the qualifications so established by the department. Any  
32 examination performed pursuant to this subsection shall be completed and filed  
33 with the court within sixty days of the order unless the court for good cause  
34 orders otherwise. Nothing in this section or section 552.030 shall be construed  
35 to permit psychologists to engage in any activity not authorized by chapter  
36 337. One pretrial evaluation shall be provided at no charge to the defendant by  
37 the department. All costs of subsequent evaluations shall be assessed to the  
38 party requesting the evaluation.

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

40 (1) Detailed findings;

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

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

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

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

52 4. If the accused has pleaded lack of responsibility due to mental disease  
53 or defect or has given the written notice provided in subsection 2 of section  
54 552.030, the court shall order the report of the examination conducted pursuant

55 to this section to include, in addition to the information required in subsection 3  
56 of this section, an opinion as to whether at the time of the alleged criminal  
57 conduct the accused, as a result of mental disease or defect, did not know or  
58 appreciate the nature, quality, or wrongfulness of his **or her** conduct or as a  
59 result of mental disease or defect was incapable of conforming his **or her** conduct  
60 to the requirements of law. A plea of not guilty by reason of mental disease or  
61 defect shall not be accepted by the court in the absence of any such pretrial  
62 evaluation which supports such a defense. In addition, if the accused has pleaded  
63 not guilty by reason of mental disease or defect, and the alleged crime is not a  
64 dangerous felony as defined in section 556.061, or those crimes set forth in  
65 subsection 11 of section 552.040, or the attempts thereof, the court shall order the  
66 report of the examination to include an opinion as to whether or not the accused  
67 should be immediately conditionally released by the court pursuant to the  
68 provisions of section 552.040 or should be committed to a mental health or  
69 developmental disability facility. If such an evaluation is conducted at the  
70 direction of the director of the department of mental health, the court shall also  
71 order the report of the examination to include an opinion as to the conditions of  
72 release which are consistent with the needs of the accused and the interest of  
73 public safety, including, but not limited to, the following factors:

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

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

88 6. The clerk of the court shall deliver copies of the report to the  
89 prosecuting or circuit attorney and to the accused or his **or her** counsel. The  
90 report shall not be a public record or open to the public. Within ten days after

91 the filing of the report, both the defendant and the state shall, upon written  
92 request, be entitled to an order granting them an examination of the accused by  
93 a psychiatrist or psychologist, as defined in section 632.005, or a physician with  
94 a minimum of one year training or experience in providing treatment or services  
95 to persons with an intellectual disability or developmental disability or mental  
96 illness, of their own choosing and at their own expense. An examination  
97 performed pursuant to this subsection shall be completed and a report filed with  
98 the court within sixty days of the date it is received by the department or private  
99 psychiatrist, psychologist or physician unless the court, for good cause, orders  
100 otherwise. A copy shall be furnished the opposing party.

101           7. If neither the state nor the accused nor his **or her** counsel requests a  
102 second examination relative to fitness to proceed or contests the findings of the  
103 report referred to in subsections 2 and 3 of this section, the court may make a  
104 determination and finding on the basis of the report filed or may hold a hearing  
105 on its own motion. If any such opinion is contested, the court shall hold a  
106 hearing on the issue. The court shall determine the issue of mental fitness to  
107 proceed and may impanel a jury of six persons to assist in making the  
108 determination. The report or reports may be received in evidence at any hearing  
109 on the issue but the party contesting any opinion therein shall have the right to  
110 summon and to cross-examine the examiner who rendered such opinion and to  
111 offer evidence upon the issue.

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

118           9. If the court determines that the accused lacks mental fitness to  
119 proceed, the criminal proceedings shall be suspended and the court shall commit  
120 him **or her** to the director of the department of mental health. **After the**  
121 **accused has been committed, legal counsel for the department of**  
122 **mental health shall have standing to file motions and participate in**  
123 **hearings on the issue of involuntary medications.**

124           10. Any person committed pursuant to subsection 9 of this section shall  
125 be entitled to the writ of habeas corpus upon proper petition to the court that  
126 committed him **or her**. The issue of the mental fitness to proceed after

127 commitment under subsection 9 of this section may also be raised by a motion  
128 filed by the director of the department of mental health or by the state, alleging  
129 the mental fitness of the accused to proceed. A report relating to the issue of the  
130 accused's mental fitness to proceed may be attached thereto. If the motion is not  
131 contested by the accused or his **or her** counsel or if after a hearing on a motion  
132 the court finds the accused mentally fit to proceed, or if he **or she** is ordered  
133 discharged from the director's custody upon a habeas corpus hearing, the criminal  
134 proceedings shall be resumed.

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

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

150           (2) Within ten days after the filing of the report, both the accused and the  
151 state shall, upon written request, be entitled to an order granting them an  
152 examination of the accused by a psychiatrist or psychologist, as defined in section  
153 632.005, or a physician with a minimum of one year training or experience in  
154 providing treatment or services to persons with an intellectual disability or  
155 developmental disability or mental illness, of their own choosing and at their own  
156 expense. An examination performed pursuant to this subdivision shall be  
157 completed and filed with the court within thirty days unless the court, for good  
158 cause, orders otherwise. A copy shall be furnished to the opposing party;

159           (3) If neither the state nor the accused nor his **or her** counsel requests  
160 a second examination relative to fitness to proceed or contests the findings of the  
161 report referred to in subdivision (1) of this subsection, the court may make a  
162 determination and finding on the basis of the report filed, or may hold a hearing

163 on its own motion. If any such opinion is contested, the court shall hold a  
164 hearing on the issue. The report or reports may be received in evidence at any  
165 hearing on the issue but the party contesting any opinion therein relative to  
166 fitness to proceed shall have the right to summon and to cross-examine the  
167 examiner who rendered such opinion and to offer evidence upon the issue;

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

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

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

191 12. If the question of the accused's mental fitness to proceed was raised  
192 after a jury was impaneled to try the issues raised by a plea of not guilty and the  
193 court determines that the accused lacks the mental fitness to proceed or orders  
194 the accused committed for an examination pursuant to this section, the court may  
195 declare a mistrial. Declaration of a mistrial under these circumstances, or  
196 dismissal of the charges pursuant to subsection 11 of this section, does not  
197 constitute jeopardy, nor does it prohibit the trial, sentencing or execution of the  
198 accused for the same offense after he **or she** has been found restored to

199 competency.

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

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

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