

SECOND REGULAR SESSION

SENATE BILL NO. 838

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

Read 1st time January 8, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4590S.011

AN ACT

To repeal section 552.020, RSMo, and to enact in lieu thereof one new section relating to the discharge of certain committed persons.

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Section A. Section 552.020, RSMo, is repealed and one new section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, the judge shall, upon his or her own motion or
7 upon motion filed by the state or by or on behalf of the accused, by order of
8 record, appoint one or more private psychiatrists or psychologists, as defined in
9 section 632.005, or physicians with a minimum of one year training or experience
10 in providing treatment or services to persons with an intellectual disability or
11 developmental disability or mental illness, who are neither employees nor
12 contractors of the department of mental health for purposes of performing the
13 examination in question, to examine the accused; or shall direct the director to
14 have the accused so examined by one or more psychiatrists or psychologists, as
15 defined in section 632.005, or physicians with a minimum of one year training or
16 experience in providing treatment or services to persons with an intellectual
17 disability, developmental disability, or mental illness. The order shall direct that
18 a written report or reports of such examination be filed with the clerk of the
19 court. No private physician, psychiatrist, or psychologist shall be appointed by
20 the court unless he or she has consented to act. The examinations ordered shall

21 be made at such time and place and under such conditions as the court deems
22 proper; except that, if the order directs the director of the department to have the
23 accused examined, the director, or his or her designee, shall determine the time,
24 place and conditions under which the examination shall be conducted. The order
25 may include provisions for the interview of witnesses and may require the
26 provision of police reports to the department for use in evaluations. The
27 department shall establish standards and provide training for those individuals
28 performing examinations pursuant to this section and section 552.030. No
29 individual who is employed by or contracts with the department shall be
30 designated to perform an examination pursuant to this chapter unless the
31 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 his
45 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 result
59 of mental disease or defect was incapable of conforming his or her conduct to the
60 requirements of law. A plea of not guilty by reason of mental disease or defect
61 shall not be accepted by the court in the absence of any such pretrial evaluation
62 which supports such a defense. In addition, if the accused has pleaded not guilty
63 by reason of mental disease or defect, and the alleged crime is not a dangerous
64 felony as defined in section 556.061, or those crimes set forth in subsection 10 of
65 section 552.040, or the attempts thereof, the court shall order the report of the
66 examination to include an opinion as to whether or not the accused should be
67 immediately conditionally released by the court pursuant to the provisions of
68 section 552.040 or should be committed to a mental health or developmental
69 disability facility. If such an evaluation is conducted at the direction of the
70 director of the department of mental health, the court shall also order the report
71 of the examination to include an opinion as to the conditions of release which are
72 consistent with the needs of the accused and the interest of public safety,
73 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 person
121 has been committed, legal counsel for the department of mental health shall have
122 standing to file motions and participate in hearings on the issue of involuntary
123 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. When a motion to
131 proceed is filed, legal counsel for the department of mental health shall have
132 standing to participate in hearings on such motions. If the motion is not
133 contested by the accused or his or her counsel or if after a hearing on a motion
134 the court finds the accused mentally fit to proceed, or if he or she is ordered
135 discharged from the director's custody upon a habeas corpus hearing, the criminal
136 proceedings shall be resumed.

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

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

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

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

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

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

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

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

193 **(7) If, after evaluation, the director of the department of mental**
194 **health concludes that a person committed under subdivision (6) of this**
195 **subsection should be released, and the alleged offense for which the**
196 **committed person has been found to have lacked the mental fitness to**
197 **proceed and for which there is no substantial probability he or she will**
198 **be mentally fit to proceed in the reasonably foreseeable future is not**
199 **a dangerous felony, as defined in section 556.061, murder in the first**
200 **degree under section 565.020, sexual assault under section 566.040 as it**

201 existed prior to August 28, 2013, or rape in the second degree under
202 section 566.031, or the attempts thereof, then the director shall submit
203 to the guardian a discharge plan. Such discharge plan shall include an
204 opinion as to the conditions of release that are consistent with the
205 needs of the accused and the interest of public safety, including, but
206 not limited to, the following factors:

- 207 (a) Location and degree of necessary supervision of housing;
- 208 (b) Location of and responsibilities for appropriate psychiatric,
209 rehabilitation, and aftercare services, including the frequency of such
210 services;
- 211 (c) Medication follow-up, including necessary testing to monitor
212 medication compliance;
- 213 (d) At least monthly contact with the department's forensic case
214 monitor; and
- 215 (e) Any other conditions or supervision as may be warranted by
216 the circumstances of the case.

217 (8) If the committed person under subdivision (7) of this
218 subsection has a guardian appointed under chapter 475, the department
219 shall obtain the consent of the guardian before discharging the
220 committed person. If the guardian does not consent to the discharge
221 of the patient or resident from a facility operated by the department,
222 then the department shall propose other appropriate placement
223 alternatives, if available, and seek to obtain the guardian's consent
224 until the alternatives are exhausted. If the guardian refuses to consent
225 to the proposed discharge plan, the department may seek review under
226 the procedures set forth in section 630.635.

227 (9) If, after evaluation, the director of the department of mental
228 health concludes that a person committed under subdivision (6) of this
229 subsection should be released, and the alleged offense for which the
230 committed person has been found to have lacked the mental fitness to
231 proceed and for which there is no substantial probability he or she will
232 be mentally fit to proceed in the reasonably foreseeable future is a
233 dangerous felony, as defined in section 556.061, murder in the first
234 degree under section 565.020, sexual assault under section 566.040 as it
235 existed prior to August 28, 2013, or rape in the second degree under
236 section 566.031, or the attempts thereof, then the director shall submit
237 to the probate division of the circuit court having jurisdiction over the

238 committed person under chapter 475 a discharge plan. After receiving
239 the discharge plan, the probate division shall hold a hearing as follows:

240 (a) Notice of such hearing shall be provided to the committed
241 person's guardian, the prosecuting or circuit attorney of the
242 jurisdiction who originally filed the case leading to the finding under
243 subdivision (6) of this subsection, and other persons as the court may
244 order.

245 (b) At a hearing to determine if the committed person should be
246 released, the court shall consider the following factors in addition to
247 any other relevant evidence:

248 a. Whether the committed person presently has a mental disease
249 or defect;

250 b. The nature of the offense for which the committed person was
251 committed;

252 c. The committed person's behavior while confined in a mental
253 health facility;

254 d. The elapsed time between the hearing and the last reported
255 unlawful or dangerous act;

256 e. Whether the person has had supervised community outings
257 without incident; and

258 f. Whether the determination that the committed person is not
259 dangerous to himself or herself or others is dependent on the person
260 taking drugs, medicine, or narcotics.

261 (c) No committed person shall be released under this subdivision
262 unless the court finds that the person does not have, and in the
263 reasonably foreseeable future is not likely to have, a mental disease or
264 defect rendering the person dangerous to the safety of himself or
265 herself or others.

266 (10) In the event that the director concludes that a committed
267 person should be released under with subdivision (7) or (9) of this
268 subsection, the guardian appointed to the committed person shall be
269 given access to all risk assessments and patient files maintained by the
270 department for the committed person.

271 (11) The department shall provide or arrange for follow-up care
272 and monitoring for all persons released under this subsection and shall
273 make or arrange for reviews and visits with the client at least monthly,
274 or more frequently as set out in the discharge plan, and determine

275 **whether the client is receiving care, treatment, habilitation, or**
276 **rehabilitation services consistent with his or her needs, condition, and**
277 **public safety. The department shall identify the facilities, programs,**
278 **or specialized services operated or funded by the department that shall**
279 **provide necessary levels of follow-up care, aftercare, rehabilitation, or**
280 **treatment to the client in geographical areas where he or she is**
281 **released.**

282 12. If the question of the accused's mental fitness to proceed was raised
283 after a jury was impaneled to try the issues raised by a plea of not guilty and the
284 court determines that the accused lacks the mental fitness to proceed or orders
285 the accused committed for an examination pursuant to this section, the court may
286 declare a mistrial. Declaration of a mistrial under these circumstances, or
287 dismissal of the charges pursuant to subsection 11 of this section, does not
288 constitute jeopardy, nor does it prohibit the trial, sentencing or execution of the
289 accused for the same offense after he or she has been found restored to
290 competency.

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

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

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