

FIRST REGULAR SESSION

SENATE BILL NO. 122

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

0768S.01I

ADRIANE D. CROUSE, Secretary

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Section A. Section 552.020, RSMo, is repealed and one new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

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

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

19 one or more psychiatrists or psychologists, as defined in
20 section 632.005, or physicians with a minimum of one year
21 training or experience in providing treatment or services to
22 persons with an intellectual disability, developmental
23 disability, or mental illness. The order shall direct that
24 a written report or reports of such examination be filed
25 with the clerk of the court. No private physician,
26 psychiatrist, or psychologist shall be appointed by the
27 court unless he or she has consented to act. The
28 examinations ordered shall be made at such time and place
29 and under such conditions as the court deems proper; except
30 that, if the order directs the director of the department to
31 have the accused examined, the director, or his or her
32 designee, shall determine the time, place and conditions
33 under which the examination shall be conducted. The order
34 may include provisions for the interview of witnesses and
35 may require the provision of police reports to the
36 department for use in evaluations. The department shall
37 establish standards and provide training for those
38 individuals performing examinations pursuant to this section
39 and section 552.030. No individual who is employed by or
40 contracts with the department shall be designated to perform
41 an examination pursuant to this chapter unless the
42 individual meets the qualifications so established by the
43 department. Any examination performed pursuant to this
44 subsection shall be completed and filed with the court
45 within sixty days of the order unless the court for good
46 cause orders otherwise. Nothing in this section or section
47 552.030 shall be construed to permit psychologists to engage
48 in any activity not authorized by chapter 337. One pretrial
49 evaluation shall be provided at no charge to the defendant

50 by the department. All costs of subsequent evaluations
51 shall be assessed to the party requesting the evaluation.

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

54 (1) Detailed findings;

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

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

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

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

70 4. If the accused has pleaded lack of responsibility
71 due to mental disease or defect or has given the written
72 notice provided in subsection 2 of section 552.030, the
73 court shall order the report of the examination conducted
74 pursuant to this section to include, in addition to the
75 information required in subsection 3 of this section, an
76 opinion as to whether at the time of the alleged criminal
77 conduct the accused, as a result of mental disease or
78 defect, did not know or appreciate the nature, quality, or
79 wrongfulness of his or her conduct or as a result of mental
80 disease or defect was incapable of conforming his or her
81 conduct to the requirements of law. A plea of not guilty by

82 reason of mental disease or defect shall not be accepted by
83 the court in the absence of any such pretrial evaluation
84 which supports such a defense. In addition, if the accused
85 has pleaded not guilty by reason of mental disease or
86 defect, and the alleged crime is not a dangerous felony as
87 defined in section 556.061, or those crimes set forth in
88 subsection 10 of section 552.040, or the attempts thereof,
89 the court shall order the report of the examination to
90 include an opinion as to whether or not the accused should
91 be immediately conditionally released by the court pursuant
92 to the provisions of section 552.040 or should be committed
93 to a mental health or developmental disability facility. If
94 such an evaluation is conducted at the direction of the
95 director of the department of mental health, the court shall
96 also order the report of the examination to include an
97 opinion as to the conditions of release which are consistent
98 with the needs of the accused and the interest of public
99 safety, including, but not limited to, the following factors:

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

111 5. If the report contains the recommendation that the
112 accused should be committed to or held in a suitable
113 hospital facility pending determination of the issue of

114 mental fitness to proceed, and if the accused is not
115 admitted to bail or released on other conditions, the court
116 may order that the accused be committed to or held in a
117 suitable hospital facility pending determination of the
118 issue of mental fitness to proceed.

119 6. The clerk of the court shall deliver copies of the
120 report to the prosecuting or circuit attorney and to the
121 accused or his or her counsel. The report shall not be a
122 public record or open to the public. Within ten days after
123 the filing of the report, both the defendant and the state
124 shall, upon written request, be entitled to an order
125 granting them an examination of the accused by a
126 psychiatrist or psychologist, as defined in section 632.005,
127 or a physician with a minimum of one year training or
128 experience in providing treatment or services to persons
129 with an intellectual disability or developmental disability
130 or mental illness, of their own choosing and at their own
131 expense. An examination performed pursuant to this
132 subsection shall be completed and a report filed with the
133 court within sixty days of the date it is received by the
134 department or private psychiatrist, psychologist or
135 physician unless the court, for good cause, orders
136 otherwise. A copy shall be furnished the opposing party.

137 7. If neither the state nor the accused nor his or her
138 counsel requests a second examination relative to fitness to
139 proceed or contests the findings of the report referred to
140 in subsections 2 and 3 of this section, the court may make a
141 determination and finding on the basis of the report filed
142 or may hold a hearing on its own motion. If any such
143 opinion is contested, the court shall hold a hearing on the
144 issue. The court shall determine the issue of mental
145 fitness to proceed and may impanel a jury of six persons to

146 assist in making the determination. The report or reports
147 may be received in evidence at any hearing on the issue but
148 the party contesting any opinion therein shall have the
149 right to summon and to cross-examine the examiner who
150 rendered such opinion and to offer evidence upon the issue.

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

159 9. If the court determines that the accused lacks
160 mental fitness to proceed, the criminal proceedings shall be
161 suspended and the court shall commit him or her to the
162 director of the department of mental health. After the
163 person has been committed, legal counsel for the department
164 of mental health shall have standing to file motions and
165 participate in hearings on the issue of involuntary
166 medications.

167 10. Any person committed pursuant to subsection 9 of
168 this section shall be entitled to the writ of habeas corpus
169 upon proper petition to the court that committed him or
170 her. The issue of the mental fitness to proceed after
171 commitment under subsection 9 of this section may also be
172 raised by a motion filed by the director of the department
173 of mental health or by the state, alleging the mental
174 fitness of the accused to proceed. A report relating to the
175 issue of the accused's mental fitness to proceed may be
176 attached thereto. When a motion to proceed is filed, legal
177 counsel for the department of mental health shall have

178 standing to participate in hearings on such motions. If the
179 motion is not contested by the accused or his or her counsel
180 or if after a hearing on a motion the court finds the
181 accused mentally fit to proceed, or if he or she is ordered
182 discharged from the director's custody upon a habeas corpus
183 hearing, the criminal proceedings shall be resumed.

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

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

204 (2) Within ten days after the filing of the report,
205 both the accused and the state shall, upon written request,
206 be entitled to an order granting them an examination of the
207 accused by a psychiatrist or psychologist, as defined in
208 section 632.005, or a physician with a minimum of one year
209 training or experience in providing treatment or services to

210 persons with an intellectual disability or developmental
211 disability or mental illness, of their own choosing and at
212 their own expense. An examination performed pursuant to
213 this subdivision shall be completed and filed with the court
214 within thirty days unless the court, for good cause, orders
215 otherwise. A copy shall be furnished to the opposing party;

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

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

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

238 (6) If it is found that the accused lacks mental
239 fitness to proceed and there is no substantial probability
240 that the accused will be mentally fit to proceed in the
241 reasonably foreseeable future, the court shall dismiss the

242 charges without prejudice and the accused shall be
243 discharged, but only if proper proceedings have been filed
244 under chapter 632 or chapter 475, in which case those
245 sections and no others will be applicable. The probate
246 division of the circuit court shall have concurrent
247 jurisdiction over the accused upon the filing of a proper
248 pleading to determine if the accused shall be involuntarily
249 detained under chapter 632, or to determine if the accused
250 shall be declared incapacitated under chapter 475, and
251 approved for admission by the guardian under section 632.120
252 or 633.120, to a mental health or developmental disability
253 facility. When such proceedings are filed, the criminal
254 charges shall be dismissed without prejudice if the court
255 finds that the accused is mentally ill and should be
256 committed or that he or she is incapacitated and should have
257 a guardian appointed. **Once the charges are dismissed, the**
258 **accused shall remain in the custody of the department of**
259 **mental health until such time as the department determines**
260 **that the accused is appropriate for placement in the**
261 **community. The accused shall not be discharged from**
262 **department custody until it is determined by the department**
263 **that the accused is not likely to be dangerous to others**
264 **while living in the community. When the accused is**
265 **appropriate for placement in the community, the department**
266 **shall ensure that a discharge plan is developed and provided**
267 **to the guardian. The department shall arrange for follow-up**
268 **monitoring for all persons discharged to the community under**
269 **this subdivision who were charged with a dangerous felony,**
270 **as defined by section 556.061, murder in the first degree**
271 **under section 565.020, sexual assault under section 566.040**
272 **as it existed prior to August 28, 2013, or rape in the**
273 **second degree under section 566.031, or attempts thereof,**

274 and shall arrange for reviews and visits with the person at
275 least monthly, or more frequently as set out in the
276 discharge plan. If the person was charged with an offense
277 that is not a dangerous felony, as defined by section
278 556.061, murder in the first degree under section 565.020,
279 sexual assault under section 566.040 as it existed prior to
280 August 28, 2013, or rape in the second degree under section
281 566.031, or attempts thereof, and has been determined by the
282 department as appropriate for discharge to the community,
283 the discharge plan shall identify if follow-up monitoring is
284 necessary to meet the needs of the person and the frequency
285 and duration of such monitoring. The department shall
286 identify the facilities, programs or specialized services
287 operated or funded by the department that are appropriate to
288 provide necessary levels of follow-up care, aftercare,
289 rehabilitation or treatment to the persons in geographical
290 areas where they are placed as set out in the discharge
291 plan. Prior to discharge, the department shall notify the
292 prosecuting or circuit attorney of the jurisdiction where
293 the accused was found to lack mental fitness to proceed.
294 The period of limitation on prosecuting any criminal offense
295 shall be tolled during the period that the accused lacks
296 mental fitness to proceed.

297 12. If the question of the accused's mental fitness to
298 proceed was raised after a jury was impaneled to try the
299 issues raised by a plea of not guilty and the court
300 determines that the accused lacks the mental fitness to
301 proceed or orders the accused committed for an examination
302 pursuant to this section, the court may declare a mistrial.
303 Declaration of a mistrial under these circumstances, or
304 dismissal of the charges pursuant to subsection 11 of this
305 section, does not constitute jeopardy, nor does it prohibit

306 the trial, sentencing or execution of the accused for the
307 same offense after he or she has been found restored to
308 competency.

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

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

✓