

SENATE BILL NO. 1463

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

6225S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 552.020, RSMo, and to enact in lieu thereof one new section relating to mental capacity to be tried or convicted, with penalty provisions.

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Section A. Section 552.020, RSMo, is repealed and one new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 and the**
8 **accused is charged with one or more nonviolent misdemeanors,**
9 **the judge shall, upon his or her own motion, or upon motion**
10 **filed by the state, or by or on behalf of the accused, by**
11 **order of record, direct the director of the department of**
12 **mental health to have the accused assessed by a mental**
13 **health professional as defined in section 632.005. The**
14 **assessment shall determine the treatment needs of the**
15 **accused and, as appropriate, refer the accused to community**
16 **treatment services, which may include involuntary commitment**
17 **under section 632.305. The department of mental health**

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

18 shall establish standards and provide training for those
19 individuals performing assessments under this section. Any
20 assessment performed under this subsection shall be
21 completed and filed with the court within fourteen days of
22 the order unless the court for good cause orders otherwise.
23 Charges shall be dismissed after no less than six months
24 following successful participation in treatment services but
25 no longer than the maximum amount of time that would have
26 been served if convicted.

27 3. Whenever any judge has reasonable cause to believe
28 that the accused lacks mental fitness to proceed **and the**
29 **accused is charged with a felony or violent misdemeanor**, the
30 judge shall, upon his or her own motion or upon motion filed
31 by the state or by or on behalf of the accused, by order of
32 record, appoint one or more private psychiatrists or
33 psychologists, as defined in section 632.005, or physicians
34 with a minimum of one year training or experience in
35 providing treatment or services to persons with an
36 intellectual disability or developmental disability or
37 mental illness, who are neither employees nor contractors of
38 the department of mental health for purposes of performing
39 the examination in question, to examine the accused; or
40 shall direct the director to have the accused so examined by
41 one or more psychiatrists or psychologists, as defined in
42 section 632.005, or physicians with a minimum of one year
43 training or experience in providing treatment or services to
44 persons with an intellectual disability, developmental
45 disability, or mental illness. The order shall direct that
46 a written report or reports of such examination be filed
47 with the clerk of the court. No private physician,
48 psychiatrist, or psychologist shall be appointed by the
49 court unless he or she has consented to act. The

50 examinations ordered shall be made at such time and place
51 and under such conditions as the court deems proper; except
52 that, if the order directs the director of the department to
53 have the accused examined, the director, or his or her
54 designee, shall determine the time, place and conditions
55 under which the examination shall be conducted. The order
56 may include provisions for the interview of witnesses and
57 may require the provision of police reports to the
58 department for use in evaluations. The department shall
59 establish standards and provide training for those
60 individuals performing examinations pursuant to this section
61 and section 552.030. No individual who is employed by or
62 contracts with the department shall be designated to perform
63 an examination pursuant to this chapter unless the
64 individual meets the qualifications so established by the
65 department. Any examination performed pursuant to this
66 subsection shall be completed and filed with the court
67 within sixty days of the order unless the court for good
68 cause orders otherwise. Nothing in this section or section
69 552.030 shall be construed to permit psychologists to engage
70 in any activity not authorized by chapter 337. One pretrial
71 evaluation shall be provided at no charge to the defendant
72 by the department. All costs of subsequent evaluations
73 shall be assessed to the party requesting the evaluation.

74 [3.] 4. A report of the examination made under this
75 section shall include:

- 76 (1) Detailed findings;
- 77 (2) An opinion as to whether the accused has a mental
78 disease or defect;
- 79 (3) An opinion based upon a reasonable degree of
80 medical or psychological certainty as to whether the
81 accused, as a result of a mental disease or defect, lacks

82 capacity to understand the proceedings against him or her or
83 to assist in his or her own defense;

84 (4) An opinion, if the accused is found to lack
85 capacity to understand the proceedings against him or her or
86 to assist in his or her own defense, as to whether there is
87 a substantial probability that the accused will be mentally
88 fit to proceed in the reasonably foreseeable future;

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

93 (6) A recommendation as to whether the accused, if
94 found by the court to be mentally fit to proceed, should be
95 detained in such hospital facility pending further
96 proceedings;

97 (7) A recommendation as to whether the accused, if
98 found by the court to lack the mental fitness to proceed,
99 should be committed to a suitable hospital facility for
100 treatment to restore the mental fitness to proceed or if
101 such treatment to restore the mental fitness to proceed can
102 be provided in a county jail or other detention facility
103 approved by the director or designee; and

104 (8) A recommendation as to whether the accused, if
105 found by the court to lack the mental fitness to proceed and
106 the accused is not charged with a dangerous felony as
107 defined in section 556.061, murder in the first degree under
108 section 565.020, or rape in the second degree under section
109 566.031, or the attempts thereof:

110 (a) Should be committed to a suitable hospital
111 facility; or

112 (b) May be appropriately treated in the community; and

113 (c) Is able to comply with bond conditions as set
114 forth by the court and is able to comply with treatment
115 conditions and requirements as set forth by the director of
116 the department or his or her designee.

117 [4.] 5. When the court determines that the accused can
118 comply with the bond and treatment conditions as referenced
119 in subsection [3] 4 of this section, the court shall order
120 that the accused remain on bond while receiving treatment
121 until the case is disposed of as set forth by subsection
122 [12] 13 of this section. If, at any time, the court finds
123 that the accused has failed to comply with the bond and
124 treatment conditions, the court may order that the accused
125 be taken into law enforcement custody until such time as a
126 department inpatient bed is available to provide treatment.

127 [5.] 6. If the accused has [pleaded] **pled** lack of
128 responsibility due to mental disease or defect or has given
129 the written notice provided in subsection 2 of section
130 552.030, the court shall order the report of the examination
131 conducted pursuant to this section to include, in addition
132 to the information required in subsection [3] 4 of this
133 section, an opinion as to whether at the time of the alleged
134 criminal conduct the accused, as a result of mental disease
135 or defect, did not know or appreciate the nature, quality,
136 or wrongfulness of his or her conduct or as a result of
137 mental disease or defect was incapable of conforming his or
138 her conduct to the requirements of law. A plea of not
139 guilty by reason of mental disease or defect shall not be
140 accepted by the court in the absence of any such pretrial
141 evaluation which supports such a defense. In addition, if
142 the accused has [pleaded] **pled** not guilty by reason of
143 mental disease or defect, and the alleged crime is not a
144 dangerous felony as defined in section 556.061, or those

crimes set forth in subsection 10 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 developmental disability facility. 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.

[6.] 7. 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.

177 **[7.] 8.** The clerk of the court shall deliver copies of
178 the report to the prosecuting or circuit attorney and to the
179 accused or his or her counsel. The report shall not be a
180 public record or open to the public. Within ten days after
181 the filing of the report, both the defendant and the state
182 shall, upon written request, be entitled to an order
183 granting them an examination of the accused by a
184 psychiatrist or psychologist, as defined in section 632.005,
185 or a physician with a minimum of one year training or
186 experience in providing treatment or services to persons
187 with an intellectual disability or developmental disability
188 or mental illness, of their own choosing and at their own
189 expense. An examination performed pursuant to this
190 subsection shall be completed and a report filed with the
191 court within sixty days of the date it is received by the
192 department or private psychiatrist, psychologist or
193 physician unless the court, for good cause, orders
194 otherwise. A copy shall be furnished the opposing party.

195 **[8.] 9.** If neither the state nor the accused nor his
196 or her counsel requests a second examination relative to
197 fitness to proceed or contests the findings of the report
198 referred to in subsections 2, **[and]** 3, **and 4** of this
199 section, the court shall make a determination and finding on
200 the basis of the report filed or hold a hearing on its own
201 motion. If any such opinion is contested, the court shall
202 hold a hearing on the issue. The court shall determine the
203 issue of mental fitness to proceed and may impanel a jury of
204 six persons to assist in making the determination. The
205 report or reports may be received in evidence at any hearing
206 on the issue but the party contesting any opinion therein
207 shall have the right to summon and to cross-examine the

208 examiner who rendered such opinion and to offer evidence
209 upon the issue.

210 [9.] 10. At a hearing on the issue pursuant to
211 subsection [8] 9 of this section, the accused is presumed to
212 have the mental fitness to proceed. The burden of proving
213 that the accused does not have the mental fitness to proceed
214 is by a preponderance of the evidence and the burden of
215 going forward with the evidence is on the party raising the
216 issue. The burden of going forward shall be on the state if
217 the court raises the issue.

218 [10.] 11. If the court determines that the accused
219 lacks mental fitness to proceed, the criminal proceedings
220 shall be suspended and the court shall commit him or her to
221 the director of the department of mental health. The
222 director of the department, or his or her designee, shall
223 notify the court and the parties of the location and
224 conditions for treatment. After the person has been
225 committed, legal counsel for the department of mental health
226 shall have standing to file motions and participate in
227 hearings on the issue of involuntary medications.

228 [11.] 12. Any person committed pursuant to subsection
229 [10] 11 of this section shall be entitled to the writ of
230 habeas corpus upon proper petition to the court that
231 committed him or her. The issue of the mental fitness to
232 proceed after commitment under subsection [10] 11 of this
233 section may also be raised by a motion filed by the director
234 of the department of mental health or by the state, alleging
235 the mental fitness of the accused to proceed. A report
236 relating to the issue of the accused's mental fitness to
237 proceed may be attached thereto. When a motion to proceed
238 is filed, legal counsel for the department of mental health
239 shall have standing to participate in hearings on such

240 motions. If the motion is not contested by the accused or
241 his or her counsel or if after a hearing on a motion the
242 court finds the accused mentally fit to proceed, or if he or
243 she is ordered discharged from the director's custody upon a
244 habeas corpus hearing, the criminal proceedings shall be
245 resumed.

246 [12.] 13. The following provisions shall apply after a
247 commitment as provided in this section:

248 (1) Six months after such commitment, the court which
249 ordered the accused committed shall order an examination by
250 the head of the facility in which the accused is committed,
251 or a qualified designee, to ascertain whether the accused is
252 mentally fit to proceed and if not, whether there is a
253 substantial probability that the accused will attain the
254 mental fitness to proceed to trial in the foreseeable
255 future. The order shall direct that written report or
256 reports of the examination be filed with the clerk of the
257 court within thirty days and the clerk shall deliver copies
258 to the prosecuting attorney or circuit attorney and to the
259 accused or his or her counsel. The report required by this
260 subsection shall conform to the requirements under
261 subsection [3] 4 of this section with the additional
262 requirement that it include an opinion, if the accused lacks
263 mental fitness to proceed, as to whether there is a
264 substantial probability that the accused will attain the
265 mental fitness to proceed in the foreseeable future;

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

persons with an intellectual disability or developmental disability or mental illness, 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 or her 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, 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, or to determine if the accused shall be declared incapacitated under chapter 475, and approved for admission by the guardian under section 632.120 or 633.120, to a mental health or developmental disability 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 or she 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.

[13.] 14. 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 **[12] 13** 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 or she has been found restored to competency.

334 [14.] 15. The result of any examinations made pursuant
335 to this section shall not be a public record or open to the
336 public.

337 [15.] 16. No statement made by the accused in the
338 course of any examination or treatment pursuant to this
339 section and no information received by any examiner or other
340 person in the course thereof, whether such examination or
341 treatment was made with or without the consent of the
342 accused or upon his or her motion or upon that of others,
343 shall be admitted in evidence against the accused on the
344 issue of guilt in any criminal proceeding then or thereafter
345 pending in any court, state or federal. A finding by the
346 court that the accused is mentally fit to proceed shall in
347 no way prejudice the accused in a defense to the crime
348 charged on the ground that at the time thereof he or she was
349 afflicted with a mental disease or defect excluding
350 responsibility, nor shall such finding by the court be
351 introduced in evidence on that issue nor otherwise be
352 brought to the notice of the jury.

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