

SECOND REGULAR SESSION

# SENATE BILL NO. 1463

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR CRAWFORD.

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6225S.01I

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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.

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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Section A. Section 552.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 552.020, to read as follows: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 capacity to understand the proceedings against him or her or to assist in his or her 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 and the accused is charged with one or more nonviolent misdemeanors, the judge shall, upon his or her own motion, or upon motion filed by the state, or by or on behalf of the accused, by order of record, direct the director of the department of mental health to have the accused assessed by a mental health professional as defined in section 632.005. The assessment shall determine the treatment needs of the accused and, as appropriate, refer the accused to community treatment services, which may include involuntary commitment 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 [pledged] **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 [pledged] **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

145 crimes set forth in subsection 10 of section 552.040, or the  
146 attempts thereof, the court shall order the report of the  
147 examination to include an opinion as to whether or not the  
148 accused should be immediately conditionally released by the  
149 court pursuant to the provisions of section 552.040 or  
150 should be committed to a mental health or developmental  
151 disability facility. If such an evaluation is conducted at  
152 the direction of the director of the department of mental  
153 health, the court shall also order the report of the  
154 examination to include an opinion as to the conditions of  
155 release which are consistent with the needs of the accused  
156 and the interest of public safety, including, but not  
157 limited to, the following factors:

158 (1) Location and degree of necessary supervision of  
159 housing;

160 (2) Location of and responsibilities for appropriate  
161 psychiatric, rehabilitation and aftercare services,  
162 including the frequency of such services;

163 (3) Medication follow-up, including necessary testing  
164 to monitor medication compliance;

165 (4) At least monthly contact with the department's  
166 forensic case monitor;

167 (5) Any other conditions or supervision as may be  
168 warranted by the circumstances of the case.

169 [6.] 7. If the report contains the recommendation that  
170 the accused should be committed to or held in a suitable  
171 hospital facility pending determination of the issue of  
172 mental fitness to proceed, and if the accused is not  
173 admitted to bail or released on other conditions, the court  
174 may order that the accused be committed to or held in a  
175 suitable hospital facility pending determination of the  
176 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

272 persons with an intellectual disability or developmental  
273 disability or mental illness, of their own choosing and at  
274 their own expense. An examination performed pursuant to  
275 this subdivision shall be completed and filed with the court  
276 within thirty days unless the court, for good cause, orders  
277 otherwise. A copy shall be furnished to the opposing party;

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

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

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

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

304 charges without prejudice and the accused shall be  
305 discharged, but only if proper proceedings have been filed  
306 under chapter 632 or chapter 475, in which case those  
307 sections and no others will be applicable. The probate  
308 division of the circuit court shall have concurrent  
309 jurisdiction over the accused upon the filing of a proper  
310 pleading to determine if the accused shall be involuntarily  
311 detained under chapter 632, or to determine if the accused  
312 shall be declared incapacitated under chapter 475, and  
313 approved for admission by the guardian under section 632.120  
314 or 633.120, to a mental health or developmental disability  
315 facility. When such proceedings are filed, the criminal  
316 charges shall be dismissed without prejudice if the court  
317 finds that the accused is mentally ill and should be  
318 committed or that he or she is incapacitated and should have  
319 a guardian appointed. The period of limitation on  
320 prosecuting any criminal offense shall be tolled during the  
321 period that the accused lacks mental fitness to proceed.

322 [13.] **14.** If the question of the accused's mental  
323 fitness to proceed was raised after a jury was impaneled to  
324 try the issues raised by a plea of not guilty and the court  
325 determines that the accused lacks the mental fitness to  
326 proceed or orders the accused committed for an examination  
327 pursuant to this section, the court may declare a mistrial.  
328 Declaration of a mistrial under these circumstances, or  
329 dismissal of the charges pursuant to subsection [12] **13** of  
330 this section, does not constitute jeopardy, nor does it  
331 prohibit the trial, sentencing or execution of the accused  
332 for the same offense after he or she has been found restored  
333 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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