

FIRST REGULAR SESSION

HOUSE BILL NO. 1082

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE THOMPSON.

2322H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 552.020, RSMo, and to enact in lieu thereof one new section relating to behavioral health services for certain accused 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Section A. Section 552.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 552.020, to read as follows: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, 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, appoint one or more private psychiatrists or psychologists, as defined in section 632.005, or physicians with a minimum of one year training or experience in providing treatment or services to persons with an intellectual disability or developmental disability or mental illness, who are neither employees nor contractors of the department of mental health for purposes of performing the examination in question, to examine the accused; or shall direct the director to have the accused so examined by one or more psychiatrists or psychologists, as defined in section 632.005, or physicians with a minimum of one year training or experience in providing treatment or services to persons with an intellectual disability, developmental disability, or mental illness. The order shall direct that a written report or reports of such examination be filed with the clerk of the court. No private physician, psychiatrist, or psychologist shall be

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

35 (1) Detailed findings;

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

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

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

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

45 **(6) A recommendation as to whether the accused, if found by the court to lack**
46 **the mental fitness to proceed, should be committed to a suitable hospital facility for**
47 **treatment to restore the mental fitness to proceed or if such treatment to restore the**
48 **mental fitness to proceed can be provided in a county jail or other detention facility**
49 **approved by the director or designee; and**

50 **(7) A recommendation as to whether the accused, if found by the court to lack**
51 **the mental fitness to proceed and the accused is not charged with a dangerous felony as**
52 **defined in section 556.061, murder in the first degree under section 565.020, or rape in**
53 **the second degree under section 566.031, or the attempts thereof:**

54 **(a) Should be committed to a suitable hospital facility; or**

55 **(b) May be appropriately treated in the community; and**
56 **(c) Is able to comply with bond conditions as set forth by the court and is able to**
57 **comply with treatment conditions and requirements as set forth by the director of the**
58 **department or his or her designee.**

59 4. If the accused has pleaded lack of responsibility due to mental disease or defect or
60 has given the written notice provided in subsection 2 of section 552.030, the court shall order
61 the report of the examination conducted pursuant to this section to include, in addition to the
62 information required in subsection 3 of this section, an opinion as to whether at the time of the
63 alleged criminal conduct the accused, as a result of mental disease or defect, did not know or
64 appreciate the nature, quality, or wrongfulness of his or her conduct or as a result of mental
65 disease or defect was incapable of conforming his or her conduct to the requirements of law.
66 A plea of not guilty by reason of mental disease or defect shall not be accepted by the court in
67 the absence of any such pretrial evaluation which supports such a defense. In addition, if the
68 accused has pleaded not guilty by reason of mental disease or defect, and the alleged crime is
69 not a dangerous felony as defined in section 556.061, or those crimes set forth in subsection
70 10 of section 552.040, or the attempts thereof, the court shall order the report of the
71 examination to include an opinion as to whether or not the accused should be immediately
72 conditionally released by the court pursuant to the provisions of section 552.040 or should be
73 committed to a mental health or developmental disability facility. If such an evaluation is
74 conducted at the direction of the director of the department of mental health, the court shall
75 also order the report of the examination to include an opinion as to the conditions of release
76 which are consistent with the needs of the accused and the interest of public safety, including,
77 but not limited to, the following factors:

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

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

91 6. The clerk of the court shall deliver copies of the report to the prosecuting or circuit
92 attorney and to the accused or his or her counsel. The report shall not be a public record or
93 open to the public. Within ten days after the filing of the report, both the defendant and the
94 state shall, upon written request, be entitled to an order granting them an examination of the
95 accused by a psychiatrist or psychologist, as defined in section 632.005, or a physician with a
96 minimum of one year training or experience in providing treatment or services to persons
97 with an intellectual disability or developmental disability or mental illness, of their own
98 choosing and at their own expense. An examination performed pursuant to this subsection
99 shall be completed and a report filed with the court within sixty days of the date it is received
100 by the department or private psychiatrist, psychologist or physician unless the court, for good
101 cause, orders otherwise. A copy shall be furnished the opposing party.

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

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

116 9. If the court determines that the accused lacks mental fitness to proceed, the
117 criminal proceedings shall be suspended and the court shall commit him or her to the director
118 of the department of mental health. After the person has been committed, legal counsel for
119 the department of mental health shall have standing to file motions and participate in hearings
120 on the issue of involuntary medications. **The director of the department or his or her**
121 **designee shall determine the locations and conditions under which treatment shall be**
122 **provided.**

123 10. Any person committed pursuant to subsection 9 of this section shall be entitled to
124 the writ of habeas corpus upon proper petition to the court that committed him or her. The
125 issue of the mental fitness to proceed after commitment under subsection 9 of this section
126 may also be raised by a motion filed by the director of the department of mental health or by
127 the state, alleging the mental fitness of the accused to proceed. A report relating to the issue

128 of the accused's mental fitness to proceed may be attached thereto. When a motion to proceed
129 is filed, legal counsel for the department of mental health shall have standing to participate in
130 hearings on such motions. If the motion is not contested by the accused or his or her counsel
131 or if after a hearing on a motion the court finds the accused mentally fit to proceed, or if he or
132 she is ordered discharged from the director's custody upon a habeas corpus hearing, the
133 criminal proceedings shall be resumed.

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

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

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

155 (3) If neither the state nor the accused nor his or her counsel requests a second
156 examination relative to fitness to proceed or contests the findings of the report referred to in
157 subdivision (1) of this subsection, the court may make a determination and finding on the
158 basis of the report filed, or may hold a hearing on its own motion. If any such opinion is
159 contested, the court shall hold a hearing on the issue. The report or reports may be received in
160 evidence at any hearing on the issue but the party contesting any opinion therein relative to
161 fitness to proceed shall have the right to summon and to cross-examine the examiner who
162 rendered such opinion and to offer evidence upon the issue;

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

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

170 (6) If it is found that the accused lacks mental fitness to proceed and there is no
171 substantial probability that the accused will be mentally fit to proceed in the reasonably
172 foreseeable future, the court shall dismiss the charges without prejudice and the accused shall
173 be discharged, but only if proper proceedings have been filed under chapter 632 or chapter
174 475, in which case those sections and no others will be applicable. The probate division of
175 the circuit court shall have concurrent jurisdiction over the accused upon the filing of a proper
176 pleading to determine if the accused shall be involuntarily detained under chapter 632, or to
177 determine if the accused shall be declared incapacitated under chapter 475, and approved for
178 admission by the guardian under section 632.120 or 633.120, to a mental health or
179 developmental disability facility. When such proceedings are filed, the criminal charges shall
180 be dismissed without prejudice if the court finds that the accused is mentally ill and should be
181 committed or that he or she is incapacitated and should have a guardian appointed. The
182 period of limitation on prosecuting any criminal offense shall be tolled during the period that
183 the accused lacks mental fitness to proceed.

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

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

193 14. No statement made by the accused in the course of any examination or treatment
194 pursuant to this section and no information received by any examiner or other person in the
195 course thereof, whether such examination or treatment was made with or without the consent
196 of the accused or upon his or her motion or upon that of others, shall be admitted in evidence
197 against the accused on the issue of guilt in any criminal proceeding then or thereafter pending
198 in any court, state or federal. A finding by the court that the accused is mentally fit to proceed
199 shall in no way prejudice the accused in a defense to the crime charged on the ground that at
200 the time thereof he or she was afflicted with a mental disease or defect excluding

201 responsibility, nor shall such finding by the court be introduced in evidence on that issue nor
202 otherwise be brought to the notice of the jury.

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