

**HOUSE AMENDMENT NO. \_\_\_\_\_**  
**TO**  
**HOUSE AMENDMENT NO. \_\_\_\_\_**

**Offered By**

AMEND House Amendment No. \_\_\_\_\_ to House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 106, Page 7, Line 21, by inserting after all of said section and line the following:

"Further amend said bill, Page 22, Section 552.020, Line 214, by inserting after all of said section and line the following:

"552.030. 1. A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect such person was incapable of knowing and appreciating the nature, quality, or wrongfulness of such person's conduct.

2. Evidence of mental disease or defect excluding responsibility shall not be admissible at trial of the accused unless the accused, at the time of entering such accused's plea to the charge, pleads not guilty by reason of mental disease or defect excluding responsibility, or unless within ten days after a plea of not guilty, or at such later date as the court may for good cause permit, the accused files a written notice of such accused's purpose to rely on such defense. Such a plea or notice shall not deprive the accused of other defenses. The state may accept a defense of mental disease or defect excluding responsibility, whether raised by plea or written notice, if the accused has no other defense and files a written notice to that effect. The state shall not accept a defense of mental disease or defect excluding responsibility in the absence of any pretrial evaluation as described in this section or section 552.020. Upon the state's acceptance of the defense of mental disease or defect excluding responsibility, the court shall proceed to order the commitment of the accused as provided in section 552.040 in cases of persons acquitted on the ground of mental disease or defect excluding responsibility, and further proceedings shall be had regarding the confinement and release of the accused as provided in section 552.040.

3. Whenever the accused has pleaded mental disease or defect excluding responsibility or has given the written notice provided in subsection 2 of this section, and such defense has not been accepted as provided in subsection 2 of this section, the court shall, after notice and upon motion of either the state or 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 of the department of mental health, or the director's designee, to have the accused so examined by one or more psychiatrists or psychologists, as defined in section

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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 designated by the director, or the director's designee, as qualified to perform examinations pursuant to this chapter. The order shall direct that written report or reports of such examination be filed with the clerk of the court. No private psychiatrist, psychologist, or physician shall be appointed by the court unless such psychiatrist, psychologist or physician has consented to act. The examinations ordered shall be made at such time and place and under such conditions as the court deems proper; except that, if the order directs the director of the department of mental health to have the accused examined, the director, or the director's designee, shall determine the time, place and conditions under which the examination shall be conducted. The order may include provisions for the interview of witnesses and may require the provision of police reports to the department for use in evaluation. If an examination provided in section 552.020 was made and the report of such examination included an opinion as to whether, at the time of the alleged criminal conduct, the accused, as a result of mental disease or defect, did not know or appreciate the nature, quality or wrongfulness of such accused's conduct or as a result of mental disease or defect was incapable of conforming such accused's conduct to the requirements of law, such report may be received in evidence, and no new examination shall be required by the court unless, in the discretion of the court, another examination is necessary. If an examination is ordered pursuant to this section, the report shall contain the information required in subsections 3 and [4] 5 of section 552.020. Within ten days after receiving a copy of such report, both the accused and the state shall, upon written request, be entitled to an order granting them an examination of the accused by an examiner of such accused's or its own choosing and at such accused's or its expense. The clerk of the court shall deliver copies of the report or reports to the prosecuting or circuit attorney and to the accused or his counsel. No reports required by this subsection shall be public records or be open to the public. Any examination performed pursuant to this subsection shall be completed and the results shall be filed with the court within sixty days of the date it is received by the department or private psychiatrist, psychologist or physician unless the court, for good cause, orders otherwise.

4. If the report contains the recommendation that the accused should be held in custody in a suitable hospital facility pending trial, 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 trial.

5. No statement made by the accused in the course of any such examination and no information received by any physician or other person in the course thereof, whether such examination was made with or without the consent of the accused or upon the accused's motion or upon that of others, shall be admitted in evidence against the accused on the issue of whether the accused committed the act charged against the accused in any criminal proceeding then or thereafter pending in any court, state or federal. The statement or information shall be admissible in evidence for or against the accused only on the issue of the accused's mental condition, whether or not it would otherwise be deemed to be a privileged communication. If the statement or information is admitted for or against the accused on the issue of the accused's mental condition, the court shall, both orally at the time of its admission and later by instruction, inform the jury that it must not consider such statement or information as any evidence of whether the accused committed the act charged against the accused.

6. All persons are presumed to be free of mental disease or defect excluding responsibility for their conduct, whether or not previously adjudicated in this or any other state to be or to have been sexual or social psychopaths, or incompetent; provided, however, the court may admit evidence presented at such adjudication based on its probative value. The issue of whether any person had a mental disease or defect excluding responsibility for such person's conduct is one for the trier of fact to decide upon the introduction of substantial evidence of lack of such responsibility.

But, in the absence of such evidence, the presumption shall be conclusive. Upon the introduction of substantial evidence of lack of such responsibility, the presumption shall not disappear and shall alone be sufficient to take that issue to the trier of fact. The jury shall be instructed as to the existence and nature of such presumption when requested by the state and, where the issue of such responsibility is one for the jury to decide, the jury shall be told that the burden rests upon the accused to show by a preponderance or greater weight of the credible evidence that the defendant was suffering from a mental disease or defect excluding responsibility at the time of the conduct charged against the defendant. At the request of the defense the jury shall be instructed by the court as to the contents of subsection 2 of section 552.040.

7. When the accused is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state as well as state the offense for which the accused was acquitted. The clerk of the court shall furnish a copy of any judgment or order of commitment to the department of mental health pursuant to this section to the criminal records central repository pursuant to section 43.503.

552.040. 1. For the purposes of this section, the following words mean:

(1) "Prosecutor of the jurisdiction", the prosecuting attorney in a county or the circuit attorney of a city not within a county;

(2) "Secure facility", a state mental health facility, state developmental disability facility, private facility under contract with the department of mental health, or a section within any of these facilities, in which persons committed to the department of mental health pursuant to this chapter shall not be permitted to move about the facility or section of the facility, nor to leave the facility or section of the facility, without approval by the head of the facility or such head's designee and adequate supervision consistent with the safety of the public and the person's treatment, habilitation or rehabilitation plan;

(3) "Tried and acquitted" includes both pleas of mental disease or defect excluding responsibility that are accepted by the court and acquittals on the ground of mental disease or defect excluding responsibility following the proceedings set forth in section 552.030.

2. When an accused is tried and acquitted on the ground of mental disease or defect excluding responsibility, the court shall order such person committed to the director of the department of mental health for custody. The court shall also order custody and care in a state mental health or intellectual disability facility unless an immediate conditional release is granted pursuant to this section. If the accused has not been charged with a dangerous felony as defined in section 556.061, or with murder in the first degree pursuant to section 565.020, or sexual assault pursuant to section 566.040, or the attempts thereof, and the examination contains an opinion that the accused should be immediately conditionally released to the community by the court, the court shall hold a hearing to determine if an immediate conditional release is appropriate pursuant to the procedures for conditional release set out in subsections 10 to 14 of this section. Prior to the hearing, the court shall direct the director of the department of mental health, or the director's designee, to have the accused examined to determine conditions of confinement in accordance with subsection [4] 5 of section 552.020. The provisions of subsection 16 of this section shall be applicable to defendants granted an immediate conditional release and the director shall honor the immediate conditional release as granted by the court. If the court determines that an immediate conditional release is warranted, the court shall order the person committed to the director of the department of mental health before ordering such a release. The court granting the immediate conditional release shall retain jurisdiction over the case for the duration of the conditional release. This shall not limit the authority of the director of the department of mental health or the director's designee to revoke the conditional release or the trial release of any committed person pursuant to subsection 17 of this section. If the accused is committed to a mental health or developmental disability facility, the director of the department of mental health, or the director's designee, shall

1 determine the time, place and conditions of confinement.

2 3. The provisions of sections 630.110, 630.115, 630.130, 630.133, 630.135, 630.140,  
3 630.145, 630.150, 630.180, 630.183, 630.192, 630.194, 630.196, 630.198, 630.805, 632.370,  
4 632.395, and 632.435 shall apply to persons committed pursuant to subsection 2 of this section. If  
5 the department does not have a treatment or rehabilitation program for a mental disease or defect of  
6 an individual, that fact may not be the basis for a release from commitment. Notwithstanding any  
7 other provision of law to the contrary, no person committed to the department of mental health who  
8 has been tried and acquitted by reason of mental disease or defect as provided in section 552.030  
9 shall be conditionally or unconditionally released unless the procedures set out in this section are  
10 followed. Upon request by an indigent committed person, the appropriate court may appoint the  
11 office of the public defender to represent such person in any conditional or unconditional release  
12 proceeding under this section.

13 4. Notwithstanding section 630.115, any person committed pursuant to subsection 2 of this  
14 section shall be kept in a secure facility until such time as a court of competent jurisdiction enters an  
15 order granting a conditional or unconditional release to a nonsecure facility.

16 5. The committed person or the head of the facility where the person is committed may file  
17 an application in the court that committed the person seeking an order releasing the committed  
18 person unconditionally; except that any person who has been denied an application for a conditional  
19 release pursuant to subsection 13 of this section shall not be eligible to file for an unconditional  
20 release until the expiration of one year from such denial. In the case of a person who was  
21 immediately conditionally released after being committed to the department of mental health, the  
22 released person or the director of the department of mental health, or the director's designee, may  
23 file an application in the same court that released the committed person seeking an order releasing  
24 the committed person unconditionally. Copies of the application shall be served personally or by  
25 certified mail upon the head of the facility unless the head of the facility files the application, the  
26 committed person unless the committed person files the application, or unless the committed person  
27 was immediately conditionally released, the director of the department of mental health, and the  
28 prosecutor of the jurisdiction where the committed person was tried and acquitted. Any party  
29 objecting to the proposed release must do so in writing within thirty days after service. Within a  
30 reasonable period of time after any written objection is filed, which period shall not exceed sixty  
31 days unless otherwise agreed upon by the parties, the court shall hold a hearing upon notice to the  
32 committed person, the head of the facility, if necessary, the director of the department of mental  
33 health, and the prosecutor of the jurisdiction where the person was tried. Prior to the hearing any of  
34 the parties, upon written application, shall be entitled to an examination of the committed person, by  
35 a psychiatrist or psychologist, as defined in section 632.005, or a physician with a minimum of one  
36 year training or experience in providing treatment or services to intellectually disabled or mentally  
37 ill individuals of its own choosing and at its expense. The report of the mental condition of the  
38 committed person shall accompany the application. By agreement of all parties to the proceeding  
39 any report of the mental condition of the committed person which may accompany the application  
40 for release or which is filed in objection thereto may be received by evidence, but the party  
41 contesting any opinion therein shall have the right to summon and to cross-examine the examiner  
42 who rendered such opinion and to offer evidence upon the issue.

43 6. By agreement of all the parties and leave of court, the hearing may be waived, in which  
44 case an order granting an unconditional release shall be entered in accordance with subsection 8 of  
45 this section.

46 7. At a hearing to determine if the committed person should be unconditionally released, the  
47 court shall consider the following factors in addition to any other relevant evidence:

- 48 (1) Whether or not the committed person presently has a mental disease or defect;  
49 (2) The nature of the offense for which the committed person was committed;

- 1 (3) The committed person's behavior while confined in a mental health facility;
- 2 (4) The elapsed time between the hearing and the last reported unlawful or dangerous act;
- 3 (5) Whether the person has had conditional releases without incident; and
- 4 (6) Whether the determination that the committed person is not dangerous to himself or
- 5 others is dependent on the person's taking drugs, medicine or narcotics.

6  
7 The burden of persuasion for any person committed to a mental health facility under the provisions  
8 of this section upon acquittal on the grounds of mental disease or defect excluding responsibility  
9 shall be on the party seeking unconditional release to prove by clear and convincing evidence that  
10 the person for whom unconditional release is sought does not have, and in the reasonable future is  
11 not likely to have, a mental disease or defect rendering the person dangerous to the safety of himself  
12 or others.

13 8. The court shall enter an order either denying the application for unconditional release or  
14 granting an unconditional release. An order denying the application shall be without prejudice to  
15 the filing of another application after the expiration of one year from the denial of the last  
16 application.

17 9. No committed person shall be unconditionally released unless it is determined through  
18 the procedures in this section that the person does not have, and in the reasonable future is not likely  
19 to have, a mental disease or defect rendering the person dangerous to the safety of himself or others.

20 10. The committed person or the head of the facility where the person is committed may file  
21 an application in the court having probate jurisdiction over the facility where the person is detained  
22 for a hearing to determine whether the committed person shall be released conditionally. In the case  
23 of a person committed to a mental health facility upon acquittal on the grounds of mental disease or  
24 defect excluding responsibility for a dangerous felony as defined in section 556.061, murder in the  
25 first degree pursuant to section 565.020, or sexual assault pursuant to section 566.040, any such  
26 application shall be filed in the court that committed the person. In such cases, jurisdiction over the  
27 application for conditional release shall be in the committing court. In the case of a person who was  
28 immediately conditionally released after being committed to the department of mental health, the  
29 released person or the director of the department of mental health, or the director's designee, may  
30 file an application in the same court that released the person seeking to amend or modify the  
31 existing release. The procedures for application for unconditional releases set out in subsection 5 of  
32 this section shall apply, with the following additional requirements:

33 (1) A copy of the application shall also be served upon the prosecutor of the jurisdiction  
34 where the person is being detained, unless the released person was immediately conditionally  
35 released after being committed to the department of mental health, or unless the application was  
36 required to be filed in the court that committed the person in which case a copy of the application  
37 shall be served upon the prosecutor of the jurisdiction where the person was tried and acquitted and  
38 the prosecutor of the jurisdiction into which the committed person is to be released;

39 (2) The prosecutor of the jurisdiction where the person was tried and acquitted shall use  
40 their best efforts to notify the victims of dangerous felonies. Notification by the appropriate person  
41 or agency by certified mail to the most current address provided by the victim shall constitute  
42 compliance with the victim notification requirement of this section;

43 (3) The application shall specify the conditions and duration of the proposed release;

44 (4) The prosecutor of the jurisdiction where the person is being detained shall represent the  
45 public safety interest at the hearing unless the prosecutor of the jurisdiction where the person was  
46 tried and acquitted decides to appear to represent the public safety interest.

47  
48 If the application for release was required to be filed in the committing court, the prosecutor of the  
49 jurisdiction where the person was tried and acquitted shall represent the public safety interest. In the

1 case of a person who was immediately conditionally released after being committed to the  
 2 department of mental health, the prosecutor of the jurisdiction where the person was tried and  
 3 acquitted shall appear and represent the public safety interest.

4 11. By agreement of all the parties, the hearing may be waived, in which case an order  
 5 granting a conditional release, stating the conditions and duration agreed upon by all the parties and  
 6 the court, shall be entered in accordance with subsection 13 of this section.

7 12. At a hearing to determine if the committed person should be conditionally released, the  
 8 court shall consider the following factors in addition to any other relevant evidence:

- 9 (1) The nature of the offense for which the committed person was committed;
- 10 (2) The person's behavior while confined in a mental health facility;
- 11 (3) The elapsed time between the hearing and the last reported unlawful or dangerous act;
- 12 (4) The nature of the person's proposed release plan;
- 13 (5) The presence or absence in the community of family or others willing to take  
 14 responsibility to help the defendant adhere to the conditions of the release; and
- 15 (6) Whether the person has had previous conditional releases without incident.

16  
 17 The burden of persuasion for any person committed to a mental health facility under the provisions  
 18 of this section upon acquittal on the grounds of mental disease or defect excluding responsibility  
 19 shall be on the party seeking release to prove by clear and convincing evidence that the person for  
 20 whom release is sought is not likely to be dangerous to others while on conditional release.

21 13. The court shall enter an order either denying the application for a conditional release or  
 22 granting conditional release. An order denying the application shall be without prejudice to the  
 23 filing of another application after the expiration of one year from the denial of the last application.

24 14. No committed person shall be conditionally released until it is determined that the  
 25 committed person is not likely to be dangerous to others while on conditional release.

26 15. If, in the opinion of the head of a facility where a committed person is being detained,  
 27 that person can be released without danger to others, that person may be released from the facility  
 28 for a trial release of up to ninety-six hours under the following procedure:

29 (1) The head of the facility where the person is committed shall notify the prosecutor of the  
 30 jurisdiction where the committed person was tried and acquitted and the prosecutor of the  
 31 jurisdiction into which the committed person is to be released at least thirty days before the date of  
 32 the proposed trial release;

33 (2) The notice shall specify the conditions and duration of the release;

34 (3) If no prosecutor to whom notice is required objects to the trial release, the committed  
 35 person shall be released according to conditions and duration specified in the notice;

36 (4) If any prosecutor objects to the trial release, the head of the facility may file an  
 37 application with the court having probate jurisdiction over the facility where the person is detained  
 38 for a hearing under the procedures set out in subsections 5 and 10 of this section with the following  
 39 additional requirements:

40 (a) A copy of the application shall also be served upon the prosecutor of the jurisdiction into  
 41 which the committed person is to be released; and

42 (b) The prosecutor or prosecutors who objected to the trial release shall represent the public  
 43 safety interest at the hearing; and

44 (5) The release criteria of subsections 12 to 14 of this section shall apply at such a hearing.

45 16. The department shall provide or shall arrange for follow-up care and monitoring for all  
 46 persons conditionally released under this section and shall make or arrange for reviews and visits  
 47 with the client at least monthly, or more frequently as set out in the release plan, and whether the  
 48 client is receiving care, treatment, habilitation or rehabilitation consistent with his needs, condition  
 49 and public safety. The department shall identify the facilities, programs or specialized services

operated or funded by the department which shall provide necessary levels of follow-up care, aftercare, rehabilitation or treatment to the persons in geographical areas where they are released.

17. The director of the department of mental health, or the director's designee, may revoke the conditional release or the trial release and request the return of the committed person if such director or coordinator has reasonable cause to believe that the person has violated the conditions of such release. If requested to do so by the director or coordinator, a peace officer of a jurisdiction in which a patient on conditional release is found shall apprehend and return such patient to the facility. No peace officer responsible for apprehending and returning the committed person to the facility upon the request of the director or coordinator shall be civilly liable for apprehending or transporting such patient to the facility so long as such duties were performed in good faith and without negligence. If a person on conditional release is returned to a facility under the provisions of this subsection, a hearing shall be held within ninety-six hours, excluding Saturdays, Sundays and state holidays, to determine whether the person violated the conditions of the release or whether resumption of full-time hospitalization is the least restrictive alternative consistent with the person's needs and public safety. The director of the department of mental health, or the director's designee, shall conduct the hearing. The person shall be given notice at least twenty-four hours in advance of the hearing and shall have the right to have an advocate present.

18. At any time during the period of a conditional release or trial release, the court which ordered the release may issue a notice to the released person to appear to answer a charge of a violation of the terms of the release and the court may issue a warrant of arrest for the violation. Such notice shall be personally served upon the released person. The warrant shall authorize the return of the released person to the custody of the court or to the custody of the director of mental health or the director's designee.

19. The head of a mental health facility, upon any notice that a committed person has escaped confinement, or left the facility or its grounds without authorization, shall immediately notify the prosecutor and sheriff of the county wherein the committed person is detained of the escape or unauthorized leaving of grounds and the prosecutor and sheriff of the county where the person was tried and acquitted.

20. Any person committed to a mental health facility under the provisions of this section upon acquittal on the grounds of mental disease or defect excluding responsibility for a dangerous felony as defined in section 556.061, murder in the first degree pursuant to section 565.020, or sexual assault pursuant to section 566.040 shall not be eligible for conditional or unconditional release under the provisions of this section unless, in addition to the requirements of this section, the court finds that the following criteria are met:

(1) Such person is not now and is not likely in the reasonable future to commit another violent crime against another person because of such person's mental illness; and

(2) Such person is aware of the nature of the violent crime committed against another person and presently possesses the capacity to appreciate the criminality of the violent crime against another person and the capacity to conform such person's conduct to the requirements of law in the future."; and

Further amend said bill, Page 23, Section 552.050, Line 42, by inserting after all of said section and line the following:

"552.080. 1. Notwithstanding any other provisions of law, the court in which the proceedings are pending shall, upon application and approval, order the payment of or tax as costs the following expenses and fees, which in each case shall be reasonable, and so found by the court:

(1) Expenses and fees for examinations, reports and expert testimony of private psychiatrists who are neither employees nor contractors of the department of mental health for purposes of

1 performing such services and who are appointed by the court to examine the accused under sections  
2 552.020 and 552.030;

3 (2) The expenses of conveying any prisoner from a jail to a facility of the department of  
4 mental health and the expense of returning him to a jail under the provisions of section 552.020,  
5 552.030, 552.040 or 552.050.

6  
7 Such expenses and fees shall be paid, no matter how taxed as costs or collected, by the state, county  
8 or defendant, when liable for such costs under the provisions of chapter 550. Such order may be  
9 made at any time before or after the final disposition of the case and whether or not the accused is  
10 convicted or sentenced to the custody of the division of corrections or county jail, as the case may  
11 be, or placed upon probation or granted parole.

12 2. The expenses and fees provided in subsection 1 of this section may be levied and  
13 collected under execution; except that, if the state or county has by inadvertence or mistake paid  
14 expenses or fees as provided in subsection 1 of this section, the political entity having made such a  
15 mistake or inadvertent payment shall be entitled to recover the same from the entity responsible for  
16 such payment.

17 3. If a person is ordered held or hospitalized by the director of the department of mental  
18 health or in one of the facilities of the department of mental health pursuant to the following  
19 provisions, the liability for hospitalization shall be paid by the person, his estate or those responsible  
20 for his support in accordance with chapter 630:

21 (1) Following determination of lack of mental fitness to proceed under subsection [7] 8 of  
22 section 552.020;

23 (2) Following acquittal because of lack of responsibility due to mental disease or defect  
24 under section 552.030, and subsequent order of commitment to the director of the department of  
25 mental health under section 552.040.

26 4. The method of collecting the costs and expenses herein provided or otherwise incurred in  
27 connection with the custody, examination, trial, transportation or treatment of any person accused or  
28 convicted of any offense shall not be exclusive and same may be collected in any other manner  
29 provided by law."; and"; and

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31 Further amend said bill by amending the title, enacting clause, and intersectional references  
32 accordingly.

33  
34 THIS AMENDS AMENDMENT 0309H.44H