

FIRST REGULAR SESSION

HOUSE BILL NO. 1254

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

2048H.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 the discharge of certain committed persons.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 552.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 552.020, to read as follows: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 4. If the accused has pleaded lack of responsibility due to mental disease or defect or
46 has given the written notice provided in subsection 2 of section 552.030, the court shall order
47 the report of the examination conducted pursuant to this section to include, in addition to the
48 information required in subsection 3 of this section, an opinion as to whether at the time of the
49 alleged criminal conduct the accused, as a result of mental disease or defect, did not know or
50 appreciate the nature, quality, or wrongfulness of his or her conduct or as a result of mental
51 disease or defect was incapable of conforming his or her conduct to the requirements of law.
52 A plea of not guilty by reason of mental disease or defect shall not be accepted by the court in
53 the absence of any such pretrial evaluation which supports such a defense. In addition, if the
54 accused has pleaded not guilty by reason of mental disease or defect, and the alleged crime is

55 not a dangerous felony as defined in section 556.061, or those crimes set forth in subsection
56 10 of section 552.040, or the attempts thereof, the court shall order the report of the
57 examination to include an opinion as to whether or not the accused should be immediately
58 conditionally released by the court pursuant to the provisions of section 552.040 or should be
59 committed to a mental health or developmental disability facility. If such an evaluation is
60 conducted at the direction of the director of the department of mental health, the court shall
61 also order the report of the examination to include an opinion as to the conditions of release
62 which are consistent with the needs of the accused and the interest of public safety, including,
63 but not limited to, the following factors:

- 64 (1) Location and degree of necessary supervision of housing;
- 65 (2) Location of and responsibilities for appropriate psychiatric, rehabilitation and
66 aftercare services, including the frequency of such services;
- 67 (3) Medication follow-up, including necessary testing to monitor medication
68 compliance;
- 69 (4) At least monthly contact with the department's forensic case monitor;
- 70 (5) Any other conditions or supervision as may be warranted by the circumstances of
71 the case.

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

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

88 7. If neither the state nor the accused nor his or her counsel requests a second
89 examination relative to fitness to proceed or contests the findings of the report referred to in
90 subsections 2 and 3 of this section, the court may make a determination and finding on the
91 basis of the report filed or may hold a hearing on its own motion. If any such opinion is

92 contested, the court shall hold a hearing on the issue. The court shall determine the issue of
93 mental fitness to proceed and may impanel a jury of six persons to assist in making the
94 determination. The report or reports may be received in evidence at any hearing on the issue
95 but the party contesting any opinion therein shall have the right to summon and to cross-
96 examine the examiner who rendered such opinion and to offer evidence upon the issue.

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

102 9. If the court determines that the accused lacks mental fitness to proceed, the
103 criminal proceedings shall be suspended and the court shall commit him or her to the director
104 of the department of mental health. After the person has been committed, legal counsel for
105 the department of mental health shall have standing to file motions and participate in hearings
106 on the issue of involuntary medications.

107 10. Any person committed pursuant to subsection 9 of this section shall be entitled to
108 the writ of habeas corpus upon proper petition to the court that committed him or her. The
109 issue of the mental fitness to proceed after commitment under subsection 9 of this section
110 may also be raised by a motion filed by the director of the department of mental health or by
111 the state, alleging the mental fitness of the accused to proceed. A report relating to the issue
112 of the accused's mental fitness to proceed may be attached thereto. When a motion to proceed
113 is filed, legal counsel for the department of mental health shall have standing to participate in
114 hearings on such motions. If the motion is not contested by the accused or his or her counsel
115 or if after a hearing on a motion the court finds the accused mentally fit to proceed, or if he or
116 she is ordered discharged from the director's custody upon a habeas corpus hearing, the
117 criminal proceedings shall be resumed.

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

120 (1) Six months after such commitment, the court which ordered the accused
121 committed shall order an examination by the head of the facility in which the accused is
122 committed, or a qualified designee, to ascertain whether the accused is mentally fit to proceed
123 and if not, whether there is a substantial probability that the accused will attain the mental
124 fitness to proceed to trial in the foreseeable future. The order shall direct that written report or
125 reports of the examination be filed with the clerk of the court within thirty days and the clerk
126 shall deliver copies to the prosecuting attorney or circuit attorney and to the accused or his or
127 her counsel. The report required by this subsection shall conform to the requirements under
128 subsection 3 of this section with the additional requirement that it include an opinion, if the

129 accused lacks mental fitness to proceed, as to whether there is a substantial probability that
130 the accused will attain the mental fitness to proceed in the foreseeable future;

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

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

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

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

154 (6) **(a)** If it is found that the accused lacks mental fitness to proceed **for a dangerous**
155 **felony, as defined by section 556.061, murder in the first degree under section 565.020,**
156 **sexual assault under section 566.040 as it existed prior to August 28, 2013, or rape in the**
157 **second degree under section 566.031, or attempts thereof,** and there is no substantial
158 probability that the accused will be mentally fit to proceed in the reasonably foreseeable
159 future, the court shall dismiss the charges without prejudice and the accused shall be
160 discharged, but only if proper proceedings have been filed under chapter 632 or chapter 475,
161 in which case those sections and no others will be applicable. The probate division of the
162 circuit court shall have concurrent jurisdiction over the accused upon the filing of a proper
163 pleading to determine if the accused shall be involuntarily detained under chapter 632, or to
164 determine if the accused shall be declared incapacitated under chapter 475, and approved for
165 admission by the guardian under section 632.120 or 633.120, to a mental health or

166 developmental disability facility. When such proceedings are filed, the criminal charges shall
167 be dismissed without prejudice if the court finds that the accused is mentally ill and should be
168 committed or that he or she is incapacitated and should have a guardian appointed.

169 **(b) Once the charges are dismissed, the accused shall remain in the custody of**
170 **the department of mental health until such time as the department determines that the**
171 **accused is appropriate for placement in the community. The accused shall not be**
172 **discharged from department custody until it is determined by the department that the**
173 **accused is not likely to be dangerous to others while living in the community. When the**
174 **accused is determined to be appropriate for placement in the community, the**
175 **department shall allow the guardian to be involved in the discharge planning, as**
176 **appropriate, and shall ensure that a discharge plan is developed and provided to the**
177 **guardian. If the guardian does not consent to the discharge, the department shall**
178 **request a due process hearing before the clinical due process review committee, which**
179 **shall be appointed by the director of the department, or his or her designee. The**
180 **decision of the clinical due process review committee may be appealed by the guardian**
181 **or discharging facility to the director. In accordance with sections 536.110 to 536.140,**
182 **any guardian aggrieved by the decision of the department director may appeal to the**
183 **circuit court of the county that has jurisdiction over the guardianship, of the county in**
184 **which the facility is located, or Cole County. The appeal must be filed within thirty days**
185 **of the date the decision of the department director is issued. The accused shall not be**
186 **discharged to the community and shall remain in the custody of the department until**
187 **the appeal is final.**

188 **(c) The department shall arrange for follow-up monitoring for all persons**
189 **discharged to the community under this subdivision and shall arrange for reviews and**
190 **visits with the person at least monthly or more as set out in the discharge plan. The**
191 **frequency of monitoring shall be reviewed annually by the monitor in consultation with**
192 **the community treatment provider or providers. Unless it is determined at any time**
193 **after thirty-six months that the frequency of monitoring should be reduced, monitoring**
194 **shall be at least monthly. At no time shall the monitoring be less than once per year.**
195 **The monitor shall be responsible for providing annual documentation of monitoring and**
196 **shall include an explanation for the frequency of monitoring for the next year.**

197 **(d) The department shall identify the facilities, programs, or specialized services**
198 **operated or funded by the department that are appropriate to provide necessary levels**
199 **of follow-up care, aftercare, rehabilitation or treatment to the persons in geographical**
200 **areas where they are placed as set out in the discharge plan. The discharge plan for**
201 **each person shall include the location for his or her housing and degree of recommended**

202 supervision within such setting, identified provider or providers for the person's follow-
203 up treatment and services, and frequency of follow-up monitoring.

204 (e) At least thirty days prior to discharge, the department shall notify the
205 prosecutor of the jurisdiction where the accused was found to lack mental fitness to
206 proceed. Upon the written request of the victim of the criminal offense that resulted in
207 the accused being found to permanently lack mental fitness to proceed on the charges,
208 as set forth in this subdivision, the prosecutor of the jurisdiction where the accused was
209 found to permanently lack mental fitness to proceed shall provide a copy of the
210 department's notification to the victim.

211 (f) The period of limitation on prosecuting any criminal offense shall be tolled during
212 the period that the accused lacks mental fitness to proceed.

213 (7) (a) If it is found that the accused lacks mental fitness to proceed for an
214 offense that is not a dangerous felony, as defined by section 556.061, murder in the first
215 degree under section 565.020, sexual assault under section 566.040 as it existed prior to
216 August 28, 2013, or rape in the second degree under section 566.031, or attempts
217 thereof, and there is no substantial probability that the accused will be mentally fit to
218 proceed in the reasonably foreseeable future, the court shall dismiss the charges without
219 prejudice.

220 (b) Once the charges are dismissed, the accused shall remain in the custody of
221 the department of mental health as permanently incompetent to proceed until such time
222 as the department determines that the accused is appropriate for placement in the
223 community. The accused shall not be discharged from department custody until it is
224 determined by the department that the accused is not likely to be dangerous to others
225 while living in the community. When the accused is appropriate for placement in the
226 community, the department shall allow the accused, or guardian if one is appointed, to
227 be involved in the discharge planning, as appropriate, and shall ensure that a discharge
228 plan is developed and provided to the accused, or guardian if one is appointed. If the
229 accused, or guardian if one is appointed, does not consent to the discharge, the
230 department shall request a due process hearing before the clinical due process review
231 committee, which shall be appointed by the director of the department, or his or her
232 designee. The decision of the clinical due process review committee may be appealed by
233 the accused, or guardian if appointed, or discharging facility to the director. In
234 accordance with sections 536.110 to 536.140, any guardian aggrieved by the decision of
235 the department director may appeal to the circuit court of the county that has
236 jurisdiction over the guardianship, of the county in which the facility is located, or Cole
237 County. The appeal must be filed within thirty days of the date the decision of the

238 **department director is issued. The accused shall not be discharged to the community**
239 **and shall remain in the custody of the department until the appeal is final.**

240 **(c) The department shall arrange for follow-up monitoring for all persons**
241 **discharged to the community under this subdivision and shall arrange for reviews and**
242 **visits with the person at least monthly or more as set out in the discharge plan. The**
243 **discharge plan for each person shall include the location for his or her housing and**
244 **degree of recommended supervision within such setting, identified provider or providers**
245 **for the person's follow-up treatment and services, and frequency of follow-up**
246 **monitoring. Unless it is determined at any time after thirty-six months that**
247 **monitoring is no longer needed, the frequency of monitoring shall be reviewed**
248 **annually by the monitor in consultation with the community treatment provider or**
249 **providers. The monitor shall be responsible for providing annual documentation of**
250 **monitoring and shall include an explanation for the frequency of monitoring for the**
251 **next year.**

252 **(d) The department shall identify the facilities, programs, or specialized services**
253 **operated or funded by the department that are appropriate to provide necessary levels**
254 **of follow-up care, aftercare, rehabilitation or treatment to the persons in geographical**
255 **areas where they are placed as set out in the discharge plan.**

256 **(e) At least thirty days prior to discharge, the department shall notify the**
257 **prosecutor of the jurisdiction where the accused was found to lack mental fitness to**
258 **proceed. Upon the written request of the victim of the criminal offense that resulted in**
259 **the accused being found to permanently lack mental fitness to proceed on the charges,**
260 **as set forth in this section, the prosecutor of the jurisdiction where the accused was**
261 **found to permanently lack mental fitness to proceed shall provide a copy of the**
262 **department's notification to the victim.**

263 **(f) The period of limitation on prosecuting any criminal offense shall be tolled**
264 **during the period that the accused lacks mental fitness to proceed.**

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

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

274 14. No statement made by the accused in the course of any examination or treatment
275 pursuant to this section and no information received by any examiner or other person in the
276 course thereof, whether such examination or treatment was made with or without the consent
277 of the accused or upon his or her motion or upon that of others, shall be admitted in evidence
278 against the accused on the issue of guilt in any criminal proceeding then or thereafter pending
279 in any court, state or federal. A finding by the court that the accused is mentally fit to proceed
280 shall in no way prejudice the accused in a defense to the crime charged on the ground that at
281 the time thereof he or she was afflicted with a mental disease or defect excluding
282 responsibility, nor shall such finding by the court be introduced in evidence on that issue nor
283 otherwise be brought to the notice of the jury.

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