

SECOND REGULAR SESSION

HOUSE BILL NO. 2377

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COOK.

5638H.01I

JOSEPH ENGLER, Chief Clerk

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.

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Section A. Section 552.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 552.020, to read as follows: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 qualified 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 shall establish standards and provide training for those individuals performing assessments under this section. Any assessment performed under this subsection shall be completed and filed with the court within fourteen days of the order unless the court for good cause orders otherwise. Charges shall be dismissed**

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.

17 **after no less than six months following successful participation in treatment services but**
18 **no longer than the maximum amount of time that would have been served if convicted.**

19 **3.** Whenever any judge has reasonable cause to believe that the accused lacks mental
20 fitness to proceed **and the accused is charged with a felony or violent misdemeanor**, the
21 judge shall, upon his or her own motion or upon motion filed by the state or by or on behalf of
22 the accused, by order of record, appoint one or more private psychiatrists or psychologists, as
23 defined in section 632.005, or physicians with a minimum of one year **of** training or
24 experience in providing treatment or services to persons with an intellectual disability or
25 developmental disability or mental illness, who are neither employees nor contractors of the
26 department of mental health for purposes of performing the examination in question, to
27 examine the accused; or shall direct the director to have the accused so examined by one or
28 more psychiatrists or psychologists, as defined in section 632.005, or physicians with a
29 minimum of one year **of** training or experience in providing treatment or services to persons
30 with an intellectual disability, developmental disability, or mental illness. The order shall
31 direct that a written report or reports of such examination be filed with the clerk of the court.
32 No private physician, psychiatrist, or psychologist shall be appointed by the court unless he or
33 she has consented to act. The examinations ordered shall be made at such time and place and
34 under such conditions as the court deems proper; except that, if the order directs the director
35 of the department to have the accused examined, the director, or his or her designee, shall
36 determine the time, place and conditions under which the examination shall be conducted.
37 The order may include provisions for the interview of witnesses and may require the
38 provision of police reports to the department for use in evaluations. The department shall
39 establish standards and provide training for those individuals performing examinations
40 pursuant to this section and section 552.030. No individual who is employed by or contracts
41 with the department shall be designated to perform an examination pursuant to this chapter
42 unless the individual meets the qualifications so established by the department. Any
43 examination performed pursuant to this subsection shall be completed and filed with the court
44 within sixty days of the order unless the court for good cause orders otherwise. Nothing in
45 this section or section 552.030 shall be construed to permit psychologists to engage in any
46 activity not authorized by chapter 337. One pretrial evaluation shall be provided at no charge
47 to the defendant by the department. All costs of subsequent evaluations shall be assessed to
48 the party requesting the evaluation.

49 ~~[3-]~~ **4.** A report of the examination made under this section shall include:

50 (1) Detailed findings;

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

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

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

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

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

64 (7) A recommendation as to whether the accused, if found by the court to lack the
65 mental fitness to proceed, should be committed to a suitable hospital facility for treatment to
66 restore the mental fitness to proceed or if such treatment to restore the mental fitness to
67 proceed can be provided in a county jail or other detention facility approved by the director or
68 designee; and

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

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

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

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

78 [4.] 5. When the court determines that the accused can comply with the bond and
79 treatment conditions as referenced in subsection 3 of this section, the court shall order that the
80 accused remain on bond while receiving treatment until the case is disposed of as set forth by
81 subsection 12 of this section. If, at any time, the court finds that the accused has failed to
82 comply with the bond and treatment conditions, the court may order that the accused be taken
83 into law enforcement custody until such time as a department inpatient bed is available to
84 provide treatment.

85 [5.] 6. If the accused has ~~pleaded~~ **pled** lack of responsibility due to mental disease or
86 defect or has given the written notice provided in subsection 2 of section 552.030, the court
87 shall order the report of the examination conducted pursuant to this section to include, in
88 addition to the information required in subsection 3 of this section, an opinion as to whether at

89 the time of the alleged criminal conduct the accused, as a result of mental disease or defect,
90 did not know or appreciate the nature, quality, or wrongfulness of his or her conduct or as a
91 result of mental disease or defect was incapable of conforming his or her conduct to the
92 requirements of law. A plea of not guilty by reason of mental disease or defect shall not be
93 accepted by the court in the absence of any such pretrial evaluation which supports such a
94 defense. In addition, if the accused has ~~[pleaded]~~ **pled** not guilty by reason of mental disease
95 or defect, and the alleged crime is not a dangerous felony as defined in section 556.061, or
96 those crimes set forth in subsection 10 of section 552.040, or the attempts thereof, the court
97 shall order the report of the examination to include an opinion as to whether or not the
98 accused should be immediately conditionally released by the court pursuant to the provisions
99 of section 552.040 or should be committed to a mental health or developmental disability
100 facility. If such an evaluation is conducted at the direction of the director of the department of
101 mental health, the court shall also order the report of the examination to include an opinion as
102 to the conditions of release which are consistent with the needs of the accused and the interest
103 of public safety, including, but not limited to, the following factors:

- 104 (1) Location and degree of necessary supervision of housing;
- 105 (2) Location of and responsibilities for appropriate psychiatric, rehabilitation and
106 aftercare services, including the frequency of such services;
- 107 (3) Medication follow-up, including necessary testing to monitor medication
108 compliance;
- 109 (4) At least monthly contact with the department's forensic case monitor;
- 110 (5) Any other conditions or supervision as may be warranted by the circumstances of
111 the case.

112 ~~[6-]~~ 7. If the report contains the recommendation that the accused should be
113 committed to or held in a suitable hospital facility pending determination of the issue of
114 mental fitness to proceed, and if the accused is not admitted to bail or released on other
115 conditions, the court may order that the accused be committed to or held in a suitable hospital
116 facility pending determination of the issue of mental fitness to proceed.

117 ~~[7-]~~ 8. The clerk of the court shall deliver copies of the report to the prosecuting or
118 circuit attorney and to the accused or his or her counsel. The report shall not be a public
119 record or open to the public. Within ten days after the filing of the report, both the defendant
120 and the state shall, upon written request, be entitled to an order granting them an examination
121 of the accused by a psychiatrist or psychologist, as defined in section 632.005, or a physician
122 with a minimum of one year of training or experience in providing treatment or services to
123 persons with an intellectual disability or developmental disability or mental illness, of their
124 own choosing and at their own expense. An examination performed pursuant to this
125 subsection shall be completed and a report filed with the court within sixty days of the date it

126 is received by the department or private psychiatrist, psychologist or physician unless the
127 court, for good cause, orders otherwise. A copy shall be furnished ~~to~~ the opposing party.

128 ~~[8:]~~ **9.** If neither the state nor the accused nor his or her counsel requests a second
129 examination relative to fitness to proceed or contests the findings of the report referred to in
130 subsections 2 and 3 of this section, the court shall make a determination and finding on the
131 basis of the report filed or hold a hearing on its own motion. If any such opinion is contested,
132 the court shall hold a hearing on the issue. The court shall determine the issue of mental
133 fitness to proceed and may impanel a jury of six persons to assist in making the
134 determination. The report or reports may be received in evidence at any hearing on the issue
135 but the party contesting any opinion therein shall have the right to summon and to cross-
136 examine the examiner who rendered such opinion and to offer evidence upon the issue.

137 ~~[9:]~~ **10.** At a hearing on the issue pursuant to subsection 8 of this section, the accused
138 is presumed to have the mental fitness to proceed. The burden of proving that the accused
139 does not have the mental fitness to proceed is by a preponderance of the evidence and the
140 burden of going forward with the evidence is on the party raising the issue. The burden of
141 going forward shall be on the state if the court raises the issue.

142 ~~[10:]~~ **11.** If the court determines that the accused lacks mental fitness to proceed, the
143 criminal proceedings shall be suspended and the court shall commit him or her to the director
144 of the department of mental health. The director of the department, or his or her designee,
145 shall notify the court and the parties of the location and conditions for treatment. After the
146 person has been committed, legal counsel for the department of mental health shall have
147 standing to file motions and participate in hearings on the issue of involuntary medications.

148 ~~[11:]~~ **12.** Any person committed pursuant to subsection 10 of this section shall be
149 entitled to the writ of habeas corpus upon proper petition to the court that committed him or
150 her. The issue of the mental fitness to proceed after commitment under subsection 10 of this
151 section may also be raised by a motion filed by the director of the department of mental health
152 or by the state, alleging the mental fitness of the accused to proceed. A report relating to the
153 issue of the accused's mental fitness to proceed may be attached thereto. When a motion to
154 proceed is filed, legal counsel for the department of mental health shall have standing to
155 participate in hearings on such motions. If the motion is not contested by the accused or his
156 or her counsel or if after a hearing on a motion the court finds the accused mentally fit to
157 proceed, or if he or she is ordered discharged from the director's custody upon a habeas
158 corpus hearing, the criminal proceedings shall be resumed.

159 ~~[12:]~~ **13.** The following provisions shall apply after a commitment as provided in this
160 section:

161 (1) Six months after such commitment, the court which ordered the accused
162 committed shall order an examination by the head of the facility in which the accused is

committed, or a qualified designee, to ascertain whether the accused is mentally fit to proceed and if not, whether there is a substantial probability that the accused will attain the mental fitness to proceed to trial in the foreseeable future. The order shall direct that written report or reports of the examination be filed with the clerk of the court within thirty days and the clerk shall deliver copies to the prosecuting attorney or circuit attorney and to the accused or his or her counsel. The report required by this subsection shall conform to the requirements under subsection 3 of this section with the additional requirement that it include an opinion, if the accused lacks mental fitness to proceed, as to whether there is a substantial probability that the accused will attain the mental fitness to proceed in the foreseeable future;

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

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

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

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

(6) If it is found that the accused lacks mental fitness to proceed and there is no substantial probability that the accused will be mentally fit to proceed in the reasonably foreseeable future, the court shall dismiss the charges without prejudice and the accused shall be discharged, but only if proper proceedings have been filed under chapter 632 or chapter 475, in which case those sections and no others will be applicable. The probate division of

200 the circuit court shall have concurrent jurisdiction over the accused upon the filing of a proper
201 pleading to determine if the accused shall be involuntarily detained under chapter 632, or to
202 determine if the accused shall be declared incapacitated under chapter 475, and approved for
203 admission by the guardian under section 632.120 or 633.120, to a mental health or
204 developmental disability facility. When such proceedings are filed, the criminal charges shall
205 be dismissed without prejudice if the court finds that the accused is mentally ill and should be
206 committed or that he or she is incapacitated and should have a guardian appointed. The
207 period of limitation on prosecuting any criminal offense shall be tolled during the period that
208 the accused lacks mental fitness to proceed.

209 ~~[13.]~~ 14. If the question of the accused's mental fitness to proceed was raised after a
210 jury was impaneled to try the issues raised by a plea of not guilty and the court determines
211 that the accused lacks the mental fitness to proceed or orders the accused committed for an
212 examination pursuant to this section, the court may declare a mistrial. Declaration of a
213 mistrial under these circumstances, or dismissal of the charges pursuant to subsection 12 of
214 this section, does not constitute jeopardy, nor does it prohibit the trial, sentencing or execution
215 of the accused for the same offense after he or she has been found restored to competency.

216 ~~[14.]~~ 15. The result of any examinations made pursuant to this section shall not be a
217 public record or open to the public.

218 ~~[15.]~~ 16. No statement made by the accused in the course of any examination or
219 treatment pursuant to this section and no information received by any examiner or other
220 person in the course thereof, whether such examination or treatment was made with or
221 without the consent of the accused or upon his or her motion or upon that of others, shall be
222 admitted in evidence against the accused on the issue of guilt in any criminal proceeding then
223 or thereafter pending in any court, state or federal. A finding by the court that the accused is
224 mentally fit to proceed shall in no way prejudice the accused in a defense to the crime charged
225 on the ground that at the time thereof he or she was afflicted with a mental disease or defect
226 excluding responsibility, nor shall such finding by the court be introduced in evidence on that
227 issue nor otherwise be brought to the notice of the jury.

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