

SECOND REGULAR SESSION

HOUSE BILL NO. 3252

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EALY.

7036H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 552.020, RSMo, and to enact in lieu thereof one new section relating to persons lacking mental capacity to understand certain proceedings.

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Section A. Section 552.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 552.020, to read as follows: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) An opinion, if the accused is found to lack capacity to understand the proceedings
41 against him or her or to assist in his or her own defense, as to whether there is a substantial
42 probability that the accused will be mentally fit to proceed in the reasonably foreseeable
43 future;

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

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

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

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

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

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

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

63 4. When the court determines that the accused can comply with the bond and
64 treatment conditions as referenced in subsection 3 of this section, the court shall order that the
65 accused remain on bond while receiving treatment until the case is disposed of as set forth by
66 subsection 12 of this section. If, at any time, the court finds that the accused has failed to
67 comply with the bond and treatment conditions, the court may order that the accused be taken
68 into law enforcement custody until such time as a department inpatient bed is available to
69 provide treatment.

70 5. If the accused has pleaded lack of responsibility due to mental disease or defect or
71 has given the written notice provided in subsection 2 of section 552.030, the court shall order
72 the report of the examination conducted pursuant to this section to include, in addition to the
73 information required in subsection 3 of this section, an opinion as to whether at the time of the
74 alleged criminal conduct the accused, as a result of mental disease or defect, did not know or
75 appreciate the nature, quality, or wrongfulness of his or her conduct or as a result of mental
76 disease or defect was incapable of conforming his or her conduct to the requirements of law.
77 A plea of not guilty by reason of mental disease or defect shall not be accepted by the court in
78 the absence of any such pretrial evaluation which supports such a defense. In addition, if the
79 accused has pleaded not guilty by reason of mental disease or defect, and the alleged crime is
80 not a dangerous felony as defined in section 556.061, or those crimes set forth in subsection
81 10 of section 552.040, or the attempts thereof, the court shall order the report of the
82 examination to include an opinion as to whether or not the accused should be immediately
83 conditionally released by the court pursuant to the provisions of section 552.040 or should be
84 committed to a mental health or developmental disability facility. If such an evaluation is
85 conducted at the direction of the director of the department of mental health, the court shall
86 also order the report of the examination to include an opinion as to the conditions of release
87 which are consistent with the needs of the accused and the interest of public safety, including,
88 but not limited to, the following factors:

89 (1) Location and degree of necessary supervision of housing;

90 (2) Location of and responsibilities for appropriate psychiatric, rehabilitation and
91 aftercare services, including the frequency of such services;

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

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

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

97 6. If the report contains the recommendation that the accused should be committed to
98 or held in a suitable hospital facility pending determination of the issue of mental fitness to
99 proceed, and if the accused is not admitted to bail or released on other conditions, the court
100 may order that the accused be committed to or held in a suitable hospital facility pending
101 determination of the issue of mental fitness to proceed.

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

113 8. If neither the state nor the accused nor his or her counsel requests a second
114 examination relative to fitness to proceed or contests the findings of the report referred to in
115 subsections 2 and 3 of this section, the court shall make a determination and finding on the
116 basis of the report filed or hold a hearing on its own motion. If any such opinion is contested,
117 the court shall hold a hearing on the issue. The court shall determine the issue of mental
118 fitness to proceed and may impanel a jury of six persons to assist in making the
119 determination. The report or reports may be received in evidence at any hearing on the issue
120 but the party contesting any opinion therein shall have the right to summon and to cross-
121 examine the examiner who rendered such opinion and to offer evidence upon the issue.

122 9. At a hearing on the issue pursuant to subsection 8 of this section, the accused is
123 presumed to have the mental fitness to proceed. The burden of proving that the accused does
124 not have the mental fitness to proceed is by a preponderance of the evidence and the burden
125 of going forward with the evidence is on the party raising the issue. The burden of going
126 forward shall be on the state if the court raises the issue.

127 10. If the court determines that the accused lacks mental fitness to proceed, the
128 criminal proceedings shall be suspended and the court shall commit him or her to the director
129 of the department of mental health. The director of the department, or his or her designee,
130 shall notify the court and the parties of the location and conditions for treatment. After the
131 person has been committed, legal counsel for the department of mental health shall have
132 standing to file motions and participate in hearings on the issue of involuntary medications.

133 11. Any person committed pursuant to subsection 10 of this section shall be entitled
134 to the writ of habeas corpus upon proper petition to the court that committed him or her. The
135 issue of the mental fitness to proceed after commitment under subsection 10 of this section
136 may also be raised by a motion filed by the director of the department of mental health or by
137 the state, alleging the mental fitness of the accused to proceed. A report relating to the issue
138 of the accused's mental fitness to proceed may be attached thereto. When a motion to proceed
139 is filed, legal counsel for the department of mental health shall have standing to participate in
140 hearings on such motions. If the motion is not contested by the accused or his or her counsel
141 or if after a hearing on a motion the court finds the accused mentally fit to proceed, or if he or
142 she is ordered discharged from the director's custody upon a habeas corpus hearing, the
143 criminal proceedings shall be resumed.

144 12. The following provisions shall apply after a commitment as provided in this
145 section:

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

157 (2) Within ten days after the filing of the report, both the accused and the state shall,
158 upon written request, be entitled to an order granting them an examination of the accused by a
159 psychiatrist or psychologist, as defined in section 632.005, or a physician with a minimum of
160 one year training or experience in providing treatment or services to persons with an
161 intellectual disability or developmental disability or mental illness, of their own choosing and
162 at their own expense. An examination performed pursuant to this subdivision shall be

163 completed and filed with the court within thirty days unless the court, for good cause, orders
164 otherwise. A copy shall be furnished to the opposing party;

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

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

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

180 (6) If it is found that the accused lacks mental fitness to proceed and there is no
181 substantial probability that the accused will be mentally fit to proceed in the reasonably
182 foreseeable future, the court shall dismiss the charges without prejudice and the accused shall
183 be discharged, but only if proper proceedings have been filed under chapter 632 or chapter
184 475, in which case those sections and no others will be applicable. The probate division of
185 the circuit court shall have concurrent jurisdiction over the accused upon the filing of a proper
186 pleading to determine if the accused shall be involuntarily detained under chapter 632, or to
187 determine if the accused shall be declared incapacitated under chapter 475, and approved for
188 admission by the guardian under section 632.120 or 633.120, to a mental health or
189 developmental disability facility. When such proceedings are filed, the criminal charges shall
190 be dismissed without prejudice if the court finds that the accused is mentally ill and should be
191 committed or that he or she is incapacitated and should have a guardian appointed. The
192 period of limitation on prosecuting any criminal offense shall be tolled during the period that
193 the accused lacks mental fitness to proceed.

194 13. If the question of the accused's mental fitness to proceed was raised after a jury
195 was impaneled to try the issues raised by a plea of not guilty and the court determines that the
196 accused lacks the mental fitness to proceed or orders the accused committed for an
197 examination pursuant to this section, the court may declare a mistrial. Declaration of a
198 mistrial under these circumstances, or dismissal of the charges pursuant to subsection 12 of

199 this section, does not constitute jeopardy, nor does it prohibit the trial, sentencing or execution
200 of the accused for the same offense after he or she has been found restored to competency.

201 14. The result of any examinations made pursuant to this section shall not be a public
202 record or open to the public.

203 15. No statement made by the accused in the course of any examination or treatment
204 pursuant to this section and no information received by any examiner or other person in the
205 course thereof, whether such examination or treatment was made with or without the consent
206 of the accused or upon his or her motion or upon that of others, shall be admitted in evidence
207 against the accused on the issue of guilt in any criminal proceeding then or thereafter pending
208 in any court, state or federal. A finding by the court that the accused is mentally fit to proceed
209 shall in no way prejudice the accused in a defense to the crime charged on the ground that at
210 the time thereof he or she was afflicted with a mental disease or defect excluding
211 responsibility, nor shall such finding by the court be introduced in evidence on that issue nor
212 otherwise be brought to the notice of the jury.

213 **16. To the extent permitted by state or federal law, a prosecuting attorney and a**
214 **victim, or the victim's family if the victim is deceased, shall be notified if any of the**
215 **following occurs:**

216 **(1) The accused is transferred to a different facility;**

217 **(2) There is a change in security level if the accused is transferred to another**
218 **facility;**

219 **(3) The accused is placed on conditional or unconditional release;**

220 **(4) The accused is discharged from commitment; or**

221 **(5) A finding that the accused's competency has been restored.**

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