

SECOND REGULAR SESSION

HOUSE BILL NO. 1970

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FITZWATER.

5766H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 552.020, RSMo, and to enact in lieu thereof one new section relating to persons committed to the department of mental health due to the lack of mental fitness to stand trial.

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Section A. Section 552.020, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 552.020, to read as follows: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, [~~he~~] **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 appointed by the court unless he **or she** has

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

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

33 (1) Detailed findings;

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

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

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

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

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

53 a dangerous felony as defined in section 556.061, or those crimes set forth in subsection [44] **10**
54 of section 552.040, or the attempts thereof, the court shall order the report of the examination
55 to include an opinion as to whether or not the accused should be immediately conditionally
56 released by the court pursuant to the provisions of section 552.040 or should be committed to
57 a mental health or developmental disability facility. If such an evaluation is conducted at the
58 direction of the director of the department of mental health, the court shall also order the report
59 of the examination to include an opinion as to the conditions of release which are consistent with
60 the needs of the accused and the interest of public safety, including, but not limited to, the
61 following factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

149 (6) If it is found that the accused lacks mental fitness to proceed and there is no
150 substantial probability that the accused will be mentally fit to proceed in the reasonably
151 foreseeable future, the court shall dismiss the charges without prejudice and the accused shall
152 be discharged, but only if proper proceedings have been filed under chapter 632 or chapter 475,
153 in which case those sections and no others will be applicable. The probate division of the circuit
154 court shall have concurrent jurisdiction over the accused upon the filing of a proper pleading to
155 determine if the accused shall be involuntarily detained under chapter 632, or to determine if the
156 accused shall be declared incapacitated under chapter 475, and approved for admission by the
157 guardian under section 632.120 or 633.120, to a mental health or developmental disability
158 facility. When such proceedings are filed, the criminal charges shall be dismissed without
159 prejudice if the court finds that the accused is mentally ill and should be committed or that he
160 **or she** is incapacitated and should have a guardian appointed. The period of limitation on

161 prosecuting any criminal offense shall be tolled during the period that the accused lacks mental
162 fitness to proceed.

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

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

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

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