

FIRST REGULAR SESSION

# SENATE BILL NO. 387

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

1478S.01I

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 552.020, RSMo, and to enact in lieu thereof one new section relating to behavioral health services for certain accused 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Section A. Section 552.020, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 552.020,  
3 to read as follows:

552.020. 1. No person who as a result of mental  
2 disease or defect lacks capacity to understand the  
3 proceedings against him or her or to assist in his or her  
4 own defense shall be tried, convicted or sentenced for the  
5 commission of an offense so long as the incapacity endures.

6 2. Whenever any judge has reasonable cause to believe  
7 that the accused lacks mental fitness to proceed, the judge  
8 shall, upon his or her own motion or upon motion filed by  
9 the state or by or on behalf of the accused, by order of  
10 record, appoint one or more private psychiatrists or  
11 psychologists, as defined in section 632.005, or physicians  
12 with a minimum of one year training or experience in  
13 providing treatment or services to persons with an  
14 intellectual disability or developmental disability or  
15 mental illness, who are neither employees nor contractors of  
16 the department of mental health for purposes of performing  
17 the examination in question, to examine the accused; or  
18 shall direct the director to have the accused so examined by

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 one or more psychiatrists or psychologists, as defined in  
20 section 632.005, or physicians with a minimum of one year  
21 training or experience in providing treatment or services to  
22 persons with an intellectual disability, developmental  
23 disability, or mental illness. The order shall direct that  
24 a written report or reports of such examination be filed  
25 with the clerk of the court. No private physician,  
26 psychiatrist, or psychologist shall be appointed by the  
27 court unless he or she has consented to act. The  
28 examinations ordered shall be made at such time and place  
29 and under such conditions as the court deems proper; except  
30 that, if the order directs the director of the department to  
31 have the accused examined, the director, or his or her  
32 designee, shall determine the time, place and conditions  
33 under which the examination shall be conducted. The order  
34 may include provisions for the interview of witnesses and  
35 may require the provision of police reports to the  
36 department for use in evaluations. The department shall  
37 establish standards and provide training for those  
38 individuals performing examinations pursuant to this section  
39 and section 552.030. No individual who is employed by or  
40 contracts with the department shall be designated to perform  
41 an examination pursuant to this chapter unless the  
42 individual meets the qualifications so established by the  
43 department. Any examination performed pursuant to this  
44 subsection shall be completed and filed with the court  
45 within sixty days of the order unless the court for good  
46 cause orders otherwise. Nothing in this section or section  
47 552.030 shall be construed to permit psychologists to engage  
48 in any activity not authorized by chapter 337. One pretrial  
49 evaluation shall be provided at no charge to the defendant

50 by the department. All costs of subsequent evaluations  
51 shall be assessed to the party requesting the evaluation.

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

54 (1) Detailed findings;

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

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

62 (4) A recommendation as to whether the accused should  
63 be held in custody in a suitable hospital facility for  
64 treatment pending determination, by the court, of mental  
65 fitness to proceed; [and]

66 (5) A recommendation as to whether the accused, if  
67 found by the court to be mentally fit to proceed, should be  
68 detained in such hospital facility pending further  
69 proceedings;

70 (6) **A recommendation as to whether the accused, if**  
71 **found by the court to lack the mental fitness to proceed,**  
72 **should be committed to a suitable hospital facility for**  
73 **treatment to restore the mental fitness to proceed or if**  
74 **such treatments to restore the mental fitness to proceed may**  
75 **be provided in a county jail or other detention facility**  
76 **approved by the director or his or her designee; and**

77 (7) **A recommendation as to whether the accused, if**  
78 **found by the court to lack the mental fitness to proceed,**  
79 **and the accused is not charged with a dangerous felony as**  
80 **defined in section 556.061, or murder in the first degree**

81 pursuant to section 565.020, or rape in the second degree  
82 pursuant to section 566.031, or the attempts thereof:

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

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

86 (c) Whether the accused can comply with bond  
87 conditions as set forth by the court and can comply with  
88 treatment conditions and requirements as set forth by the  
89 director of the department, or his or her designee.

90 4. If the accused has pleaded lack of responsibility  
91 due to mental disease or defect or has given the written  
92 notice provided in subsection 2 of section 552.030, the  
93 court shall order the report of the examination conducted  
94 pursuant to this section to include, in addition to the  
95 information required in subsection 3 of this section, an  
96 opinion as to whether at the time of the alleged criminal  
97 conduct the accused, as a result of mental disease or  
98 defect, did not know or appreciate the nature, quality, or  
99 wrongfulness of his or her conduct or as a result of mental  
100 disease or defect was incapable of conforming his or her  
101 conduct to the requirements of law. A plea of not guilty by  
102 reason of mental disease or defect shall not be accepted by  
103 the court in the absence of any such pretrial evaluation  
104 which supports such a defense. In addition, if the accused  
105 has pleaded not guilty by reason of mental disease or  
106 defect, and the alleged crime is not a dangerous felony as  
107 defined in section 556.061, or those crimes set forth in  
108 subsection 10 of section 552.040, or the attempts thereof,  
109 the court shall order the report of the examination to  
110 include an opinion as to whether or not the accused should  
111 be immediately conditionally released by the court pursuant  
112 to the provisions of section 552.040 or should be committed

113 to a mental health or developmental disability facility. If  
114 such an evaluation is conducted at the direction of the  
115 director of the department of mental health, the court shall  
116 also order the report of the examination to include an  
117 opinion as to the conditions of release which are consistent  
118 with the needs of the accused and the interest of public  
119 safety, including, but not limited to, the following factors:

120 (1) Location and degree of necessary supervision of  
121 housing;

122 (2) Location of and responsibilities for appropriate  
123 psychiatric, rehabilitation and aftercare services,  
124 including the frequency of such services;

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

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

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

131 5. If the report contains the recommendation that the  
132 accused should be committed to or held in a suitable  
133 hospital facility pending determination of the issue of  
134 mental fitness to proceed, and if the accused is not  
135 admitted to bail or released on other conditions, the court  
136 may order that the accused be committed to or held in a  
137 suitable hospital facility pending determination of the  
138 issue of mental fitness to proceed.

139 6. The clerk of the court shall deliver copies of the  
140 report to the prosecuting or circuit attorney and to the  
141 accused or his or her counsel. The report shall not be a  
142 public record or open to the public. Within ten days after  
143 the filing of the report, both the defendant and the state  
144 shall, upon written request, be entitled to an order

145 granting them an examination of the accused by a  
146 psychiatrist or psychologist, as defined in section 632.005,  
147 or a physician with a minimum of one year training or  
148 experience in providing treatment or services to persons  
149 with an intellectual disability or developmental disability  
150 or mental illness, of their own choosing and at their own  
151 expense. An examination performed pursuant to this  
152 subsection shall be completed and a report filed with the  
153 court within sixty days of the date it is received by the  
154 department or private psychiatrist, psychologist or  
155 physician unless the court, for good cause, orders  
156 otherwise. A copy shall be furnished the opposing party.

157         7. If neither the state nor the accused nor his or her  
158 counsel requests a second examination relative to fitness to  
159 proceed or contests the findings of the report referred to  
160 in subsections 2 and 3 of this section, the court may make a  
161 determination and finding on the basis of the report filed  
162 or may hold a hearing on its own motion. If any such  
163 opinion is contested, the court shall hold a hearing on the  
164 issue. The court shall determine the issue of mental  
165 fitness to proceed and may impanel a jury of six persons to  
166 assist in making the determination. The report or reports  
167 may be received in evidence at any hearing on the issue but  
168 the party contesting any opinion therein shall have the  
169 right to summon and to cross-examine the examiner who  
170 rendered such opinion and to offer evidence upon the issue.

171         8. At a hearing on the issue pursuant to subsection 7  
172 of this section, the accused is presumed to have the mental  
173 fitness to proceed. The burden of proving that the accused  
174 does not have the mental fitness to proceed is by a  
175 preponderance of the evidence and the burden of going  
176 forward with the evidence is on the party raising the

177 issue. The burden of going forward shall be on the state if  
178 the court raises the issue.

179 9. If the court determines that the accused lacks  
180 mental fitness to proceed, the criminal proceedings shall be  
181 suspended and the court shall commit him or her to the  
182 director of the department of mental health. **The director**  
183 **of the department, or his or her designee, shall determine**  
184 **the locations and conditions under which treatment shall be**  
185 **provided.** After the person has been committed, legal  
186 counsel for the department of mental health shall have  
187 standing to file motions and participate in hearings on the  
188 issue of involuntary medications.

189 10. Any person committed pursuant to subsection 9 of  
190 this section shall be entitled to the writ of habeas corpus  
191 upon proper petition to the court that committed him or  
192 her. The issue of the mental fitness to proceed after  
193 commitment under subsection 9 of this section may also be  
194 raised by a motion filed by the director of the department  
195 of mental health or by the state, alleging the mental  
196 fitness of the accused to proceed. A report relating to the  
197 issue of the accused's mental fitness to proceed may be  
198 attached thereto. When a motion to proceed is filed, legal  
199 counsel for the department of mental health shall have  
200 standing to participate in hearings on such motions. If the  
201 motion is not contested by the accused or his or her counsel  
202 or if after a hearing on a motion the court finds the  
203 accused mentally fit to proceed, or if he or she is ordered  
204 discharged from the director's custody upon a habeas corpus  
205 hearing, the criminal proceedings shall be resumed.

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

208           (1) Six months after such commitment, the court which  
209 ordered the accused committed shall order an examination by  
210 the head of the facility in which the accused is committed,  
211 or a qualified designee, to ascertain whether the accused is  
212 mentally fit to proceed and if not, whether there is a  
213 substantial probability that the accused will attain the  
214 mental fitness to proceed to trial in the foreseeable  
215 future. The order shall direct that written report or  
216 reports of the examination be filed with the clerk of the  
217 court within thirty days and the clerk shall deliver copies  
218 to the prosecuting attorney or circuit attorney and to the  
219 accused or his or her counsel. The report required by this  
220 subsection shall conform to the requirements under  
221 subsection 3 of this section with the additional requirement  
222 that it include an opinion, if the accused lacks mental  
223 fitness to proceed, as to whether there is a substantial  
224 probability that the accused will attain the mental fitness  
225 to proceed in the foreseeable future;

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

238           (3) If neither the state nor the accused nor his or  
239 her counsel requests a second examination relative to



240 fitness to proceed or contests the findings of the report  
241 referred to in subdivision (1) of this subsection, the court  
242 may make a determination and finding on the basis of the  
243 report filed, or may hold a hearing on its own motion. If  
244 any such opinion is contested, the court shall hold a  
245 hearing on the issue. The report or reports may be received  
246 in evidence at any hearing on the issue but the party  
247 contesting any opinion therein relative to fitness to  
248 proceed shall have the right to summon and to cross-examine  
249 the examiner who rendered such opinion and to offer evidence  
250 upon the issue;

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

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

260 (6) If it is found that the accused lacks mental  
261 fitness to proceed and there is no substantial probability  
262 that the accused will be mentally fit to proceed in the  
263 reasonably foreseeable future, the court shall dismiss the  
264 charges without prejudice and the accused shall be  
265 discharged, but only if proper proceedings have been filed  
266 under chapter 632 or chapter 475, in which case those  
267 sections and no others will be applicable. The probate  
268 division of the circuit court shall have concurrent  
269 jurisdiction over the accused upon the filing of a proper  
270 pleading to determine if the accused shall be involuntarily  
271 detained under chapter 632, or to determine if the accused

272 shall be declared incapacitated under chapter 475, and  
273 approved for admission by the guardian under section 632.120  
274 or 633.120, to a mental health or developmental disability  
275 facility. When such proceedings are filed, the criminal  
276 charges shall be dismissed without prejudice if the court  
277 finds that the accused is mentally ill and should be  
278 committed or that he or she is incapacitated and should have  
279 a guardian appointed. The period of limitation on  
280 prosecuting any criminal offense shall be tolled during the  
281 period that the accused lacks mental fitness to proceed.

282 12. If the question of the accused's mental fitness to  
283 proceed was raised after a jury was impaneled to try the  
284 issues raised by a plea of not guilty and the court  
285 determines that the accused lacks the mental fitness to  
286 proceed or orders the accused committed for an examination  
287 pursuant to this section, the court may declare a mistrial.  
288 Declaration of a mistrial under these circumstances, or  
289 dismissal of the charges pursuant to subsection 11 of this  
290 section, does not constitute jeopardy, nor does it prohibit  
291 the trial, sentencing or execution of the accused for the  
292 same offense after he or she has been found restored to  
293 competency.

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

297 14. No statement made by the accused in the course of  
298 any examination or treatment pursuant to this section and no  
299 information received by any examiner or other person in the  
300 course thereof, whether such examination or treatment was  
301 made with or without the consent of the accused or upon his  
302 or her motion or upon that of others, shall be admitted in  
303 evidence against the accused on the issue of guilt in any

304 criminal proceeding then or thereafter pending in any court,  
305 state or federal. A finding by the court that the accused  
306 is mentally fit to proceed shall in no way prejudice the  
307 accused in a defense to the crime charged on the ground that  
308 at the time thereof he or she was afflicted with a mental  
309 disease or defect excluding responsibility, nor shall such  
310 finding by the court be introduced in evidence on that issue  
311 nor otherwise be brought to the notice of the jury.

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