

FIRST REGULAR SESSION

# SENATE BILL NO. 616

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BLACK.

2054S.02I

KRISTINA MARTIN, Secretary

## 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Section A. Section 552.020, RSMo, is repealed and one new  
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

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 consented to act. The examinations ordered shall be made at such time and place and under such conditions as the court deems proper; except that, if the order directs the director of the department to have the accused examined, the director, or his or her designee, shall determine the time, place and conditions under which the examination shall be conducted. The order may include provisions for the interview of witnesses and may require the provision of police reports to the department for use in evaluations. The department shall establish standards and provide training for those individuals performing examinations pursuant to this section and section 552.030. No individual who is employed by or contracts with the department shall be designated to perform an examination pursuant to this chapter unless the individual meets the qualifications so established by the department. Any examination performed pursuant to this subsection shall be completed and filed with the court within sixty days of the order unless the court for good cause orders otherwise. Nothing in this section or section 552.030 shall be construed to permit psychologists to engage in any activity not authorized by chapter 337. One pretrial 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 4. If the accused has pleaded lack of responsibility  
71 due to mental disease or defect or has given the written  
72 notice provided in subsection 2 of section 552.030, the  
73 court shall order the report of the examination conducted  
74 pursuant to this section to include, in addition to the  
75 information required in subsection 3 of this section, an  
76 opinion as to whether at the time of the alleged criminal  
77 conduct the accused, as a result of mental disease or  
78 defect, did not know or appreciate the nature, quality, or  
79 wrongfulness of his or her conduct or as a result of mental  
80 disease or defect was incapable of conforming his or her  
81 conduct to the requirements of law. A plea of not guilty by

reason of mental disease or defect shall not be accepted by the court in the absence of any such pretrial evaluation which supports such a defense. In addition, if the accused has pleaded not guilty by reason of mental disease or defect, and the alleged crime is not a dangerous felony as defined in section 556.061, or those crimes set forth in subsection 10 of section 552.040, or the attempts thereof, the court shall order the report of the examination to include an opinion as to whether or not the accused should be immediately conditionally released by the court pursuant to the provisions of section 552.040 or should be committed to a mental health or developmental disability facility. If such an evaluation is conducted at the direction of the director of the department of mental health, the court shall also order the report of the examination to include an opinion as to the conditions of release which are consistent with the needs of the accused and the interest of public safety, including, but not limited to, the following factors:

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

5. If the report contains the recommendation that the accused should be 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  
115 admitted to bail or released on other conditions, the court  
116 may order that the accused be committed to or held in a  
117 suitable hospital facility pending determination of the  
118 issue of mental fitness to proceed.

119         6. The clerk of the court shall deliver copies of the  
120 report to the prosecuting or circuit attorney and to the  
121 accused or his or her counsel. The report shall not be a  
122 public record or open to the public. Within ten days after  
123 the filing of the report, both the defendant and the state  
124 shall, upon written request, be entitled to an order  
125 granting them an examination of the accused by a  
126 psychiatrist or psychologist, as defined in section 632.005,  
127 or a physician with a minimum of one year training or  
128 experience in providing treatment or services to persons  
129 with an intellectual disability or developmental disability  
130 or mental illness, of their own choosing and at their own  
131 expense. An examination performed pursuant to this  
132 subsection shall be completed and a report filed with the  
133 court within sixty days of the date it is received by the  
134 department or private psychiatrist, psychologist or  
135 physician unless the court, for good cause, orders  
136 otherwise. A copy shall be furnished the opposing party.

137         7. If neither the state nor the accused nor his or her  
138 counsel requests a second examination relative to fitness to  
139 proceed or contests the findings of the report referred to  
140 in subsections 2 and 3 of this section, the court may make a  
141 determination and finding on the basis of the report filed  
142 or may hold a hearing on its own motion. If any such  
143 opinion is contested, the court shall hold a hearing on the  
144 issue. The court shall determine the issue of mental  
145 fitness to proceed and may impanel a jury of six persons to

146 assist in making the determination. The report or reports  
147 may be received in evidence at any hearing on the issue but  
148 the party contesting any opinion therein shall have the  
149 right to summon and to cross-examine the examiner who  
150 rendered such opinion and to offer evidence upon the issue.

151 8. At a hearing on the issue pursuant to subsection 7  
152 of this section, the accused is presumed to have the mental  
153 fitness to proceed. The burden of proving that the accused  
154 does not have the mental fitness to proceed is by a  
155 preponderance of the evidence and the burden of going  
156 forward with the evidence is on the party raising the  
157 issue. The burden of going forward shall be on the state if  
158 the court raises the issue.

159 9. If the court determines that the accused lacks  
160 mental fitness to proceed, the criminal proceedings shall be  
161 suspended and the court shall commit him or her to the  
162 director of the department of mental health. After the  
163 person has been committed, legal counsel for the department  
164 of mental health shall have standing to file motions and  
165 participate in hearings on the issue of involuntary  
166 medications.

167 10. Any person committed pursuant to subsection 9 of  
168 this section shall be entitled to the writ of habeas corpus  
169 upon proper petition to the court that committed him or  
170 her. The issue of the mental fitness to proceed after  
171 commitment under subsection 9 of this section may also be  
172 raised by a motion filed by the director of the department  
173 of mental health or by the state, alleging the mental  
174 fitness of the accused to proceed. A report relating to the  
175 issue of the accused's mental fitness to proceed may be  
176 attached thereto. When a motion to proceed is filed, legal  
177 counsel for the department of mental health shall have

standing to participate in hearings on such motions. If the motion is not contested by the accused or his or her counsel or if after a hearing on a motion the court finds the accused mentally fit to proceed, or if he or she is ordered discharged from the director's custody upon a habeas corpus hearing, the criminal proceedings shall be resumed.

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

(1) Six months after such commitment, the court which ordered the accused 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 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) **(a)** If it is found that the accused lacks mental fitness to proceed **for a dangerous felony, as defined by section 556.061, murder in the first degree under section 565.020, sexual assault under section 566.040 as it existed**



242 **prior to August 28, 2013, or rape in the second degree under**  
243 **section 566.031, or attempts thereof,** and there is no  
244 substantial probability that the accused will be mentally  
245 fit to proceed in the reasonably foreseeable future, the  
246 court shall dismiss the charges without prejudice and the  
247 accused shall be discharged, but only if proper proceedings  
248 have been filed under chapter 632 or chapter 475, in which  
249 case those sections and no others will be applicable. The  
250 probate division of the circuit court shall have concurrent  
251 jurisdiction over the accused upon the filing of a proper  
252 pleading to determine if the accused shall be involuntarily  
253 detained under chapter 632, or to determine if the accused  
254 shall be declared incapacitated under chapter 475, and  
255 approved for admission by the guardian under section 632.120  
256 or 633.120, to a mental health or developmental disability  
257 facility. When such proceedings are filed, the criminal  
258 charges shall be dismissed without prejudice if the court  
259 finds that the accused is mentally ill and should be  
260 committed or that he or she is incapacitated and should have  
261 a guardian appointed.

262 **(b) Once the charges are dismissed, the accused shall**  
263 **remain in the custody of the department of mental health**  
264 **until such time as the department determines that the**  
265 **accused is appropriate for placement in the community. The**  
266 **accused shall not be discharged from department custody**  
267 **until it is determined by the department that the accused is**  
268 **not likely to be dangerous to others while living in the**  
269 **community. When the accused is determined to be appropriate**  
270 **for placement in the community, the department shall allow**  
271 **the guardian to be involved in the discharge planning, as**  
272 **appropriate, and shall ensure that a discharge plan is**  
273 **developed and provided to the guardian. If the guardian**

274 does not consent to the discharge, the department shall  
275 request a due process hearing before the clinical due  
276 process review committee, which shall be appointed by the  
277 director of the department, or his or her designee. The  
278 decision of the clinical due process review committee may be  
279 appealed by the guardian or discharging facility to the  
280 director. In accordance with sections 536.110 to 536.140,  
281 any guardian aggrieved by the decision of the director of  
282 the department may appeal to the circuit court of the county  
283 that has jurisdiction over the guardianship, the county in  
284 which the facility is located, or Cole County. The appeal  
285 shall be filed within thirty days of the date the decision  
286 of the director is issued. The accused shall not be  
287 discharged to the community and shall remain in the custody  
288 of the department until the appeal is final.

289 (c) The department shall arrange for follow-up  
290 monitoring for all persons discharged to the community under  
291 this subdivision and shall arrange for reviews and visits  
292 with the person at least monthly or more as set out in the  
293 discharge plan. The frequency of monitoring shall be  
294 reviewed annually by the monitor in consultation with the  
295 community treatment provider or providers. Unless it is  
296 determined at any time after thirty-six months that the  
297 frequency of monitoring should be reduced, monitoring shall  
298 be at least monthly. At no time shall the monitoring be  
299 less than once per year. The monitor shall be responsible  
300 for providing annual documentation of monitoring and shall  
301 include an explanation for the frequency of monitoring for  
302 the next year.

303 (d) The department shall identify the facilities,  
304 programs, or specialized services operated or funded by the  
305 department that are appropriate to provide necessary levels

306 of follow-up care, aftercare, and rehabilitation or  
307 treatment to the persons in geographical areas where they  
308 are placed as set out in the discharge plan. The discharge  
309 plan for each person shall include the location for his or  
310 her housing and degree of recommended supervision within  
311 such setting, identified provider or providers for the  
312 person's follow-up treatment and services, and frequency of  
313 follow-up monitoring.

314 (e) At least thirty days prior to discharge, the  
315 department shall notify the prosecutor of the jurisdiction  
316 where the accused was found to lack mental fitness to  
317 proceed. Upon the written request of the victim of the  
318 criminal offense that resulted in the accused being found to  
319 permanently lack mental fitness to proceed on the charges,  
320 as set forth in this subdivision, the prosecutor of the  
321 jurisdiction where the accused was found to permanently lack  
322 mental fitness to proceed shall provide a copy of the  
323 department's notification to the victim.

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

327 (7) (a) If it is found that the accused lacks mental  
328 fitness to proceed for an offense that is not a dangerous  
329 felony, as defined by section 556.061, murder in the first  
330 degree under section 565.020, sexual assault under section  
331 566.040 as it existed prior to August 28, 2013, or rape in  
332 the second degree under section 566.031, or attempts  
333 thereof, and there is no substantial probability that the  
334 accused will be mentally fit to proceed in the reasonably  
335 foreseeable future, the court shall dismiss the charges  
336 without prejudice.

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

(c) The department shall arrange for follow-up monitoring for all persons discharged to the community under

369 this subdivision and shall arrange for reviews and visits  
370 with the person at least monthly or more as set out in the  
371 discharge plan. The discharge plan for each person shall  
372 include the location for his or her housing and degree of  
373 recommended supervision within such setting, identified  
374 provider or providers for the person's follow-up treatment  
375 and services, and frequency of follow-up monitoring.  
376 Unless it is determined at any time after thirty-six months  
377 that monitoring is no longer needed, the frequency of  
378 monitoring shall be reviewed annually by the monitor in  
379 consultation with the community treatment provider or  
380 providers. The monitor shall be responsible for providing  
381 annual documentation of monitoring and shall include an  
382 explanation for the frequency of monitoring for the next  
383 year.

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

390 (e) At least thirty days prior to discharge, the  
391 department shall notify the prosecutor of the jurisdiction  
392 where the accused was found to lack mental fitness to  
393 proceed. Upon the written request of the victim of the  
394 criminal offense that resulted in the accused being found to  
395 permanently lack mental fitness to proceed on the charges,  
396 as set forth in this section, the prosecutor of the  
397 jurisdiction where the accused was found to permanently lack  
398 mental fitness to proceed shall provide a copy of the  
399 department's notification to the victim.

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

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

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

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

431 finding by the court be introduced in evidence on that issue  
432 nor otherwise be brought to the notice of the jury.

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