

HOUSE BILL No. 6131

September 8, 2004, Introduced by Rep. Meyer and referred to the Committee on Judiciary.

A bill to amend 1974 PA 258, entitled
 "Mental health code,"
 by amending sections 1001a, 1020, 1022, 1024, 1026, 1028, 1030,
 1031, 1032, 1034, 1036, 1038, 1040, 1042, 1044, and 1050 (MCL
 330.2001a, 330.2020, 330.2022, 330.2024, 330.2026, 330.2028,
 330.2030, 330.2031, 330.2032, 330.2034, 330.2036, 330.2038,
 330.2040, 330.2042, 330.2044, and 330.2050), section 1001a as
 amended by 1993 PA 252.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1001a. (1) "Center for forensic psychiatry program" **or**
 2 **"center"** means that program established by the center for
 3 forensic psychiatry to provide services related to all of the
 4 following:
 5 (a) ~~Persons~~ **Individuals** who are alleged to be incompetent
 6 to stand trial.

1 (b) ~~Persons~~ **Individuals** who are acquitted of criminal
2 charges by reason of insanity.

3 (c) ~~Persons~~ **Individuals** who are transferred to the center
4 **for forensic psychiatry** from places of detention or from other
5 state psychiatric hospitals.

6 (2) "Corrections mental health program" means that program of
7 the department of corrections that is responsible for the
8 provision of mental health services to certain prisoners under
9 this chapter.

10 (3) "Hearing committee" means a committee appointed by the
11 corrections mental health program ~~pursuant to~~ **under**
12 section 1003c.

13 (4) "**Juvenile**" means an individual subject to the
14 jurisdiction of the family division of circuit court according to
15 section 2(a)(1) of chapter XIIIA of the probate code of 1939, 1939
16 PA 288, MCL 712A.2.

17 (5) ~~(4)~~ "Mental health services" means ~~the provision of~~
18 **providing** mental health care in a protective environment to
19 prisoners with mental illness or mental retardation, including,
20 but not limited to, chemotherapy, ~~and~~ individual **therapy**, and
21 group ~~therapies~~ **therapy**.

22 (6) ~~(5)~~ "Mental illness" means a substantial **thought or**
23 **mood** disorder ~~of thought or mood~~ that significantly impairs
24 judgment, behavior, capacity to recognize reality, or ability to
25 cope with the ordinary demands of life.

26 (7) ~~(6)~~ "Mentally retarded" means significantly subaverage
27 general intellectual functioning that originates during the

1 developmental period and is associated with impairment in
2 adaptive behavior.

3 Sec. 1020. (1) A defendant to a criminal charge ~~shall be~~
4 **or a juvenile facing a charge that would be a crime if committed**
5 **by an adult is** presumed competent to stand trial. He **or she**
6 shall be determined incompetent to stand trial only if he **or she**
7 is incapable because of his **or her** mental condition, **regardless**
8 **of his or her age,** of understanding the nature and object of the
9 proceedings against him **or her** or of assisting in his **or her**
10 defense in a rational manner. The court shall determine the
11 capacity of a defendant **or juvenile** to assist in his **or her**
12 defense by his **or her** ability to perform the tasks reasonably
13 necessary for him **or her** to perform in the preparation of his **or**
14 **her** defense and during his **or her** trial.

15 (2) A defendant **or juvenile** shall not be determined
16 incompetent to stand trial because psychotropic drugs or other
17 medication have been or are being administered under proper
18 medical direction, and even though without ~~such~~ **the** medication
19 the defendant **or juvenile** might be incompetent to stand trial.
20 However, ~~when~~ **if** the defendant **or juvenile** is receiving such
21 medication, the court may, ~~prior to~~ **before** making its
22 determination on the issue of incompetence to stand trial,
23 require the filing of a statement by the treating physician that
24 ~~such~~ **the** medication will not adversely affect the defendant's
25 **or juvenile's** understanding of the proceedings or his **or her**
26 ability to assist in his **or her** defense.

27 Sec. 1022. (1) A defendant **or juvenile** who is determined

1 incompetent to stand trial shall not be proceeded against while
2 he **or she** is incompetent.

3 (2) ~~Any~~ **A** pretrial motion may be made by ~~either~~ the
4 **defense, the juvenile, the juvenile's attorney, the guardian**
5 **ad litem, the court,** or **the** prosecution while a defendant **or**
6 **juvenile** is incompetent to stand trial, and the issues presented
7 by the motion shall be heard and decided if the presence of the
8 defendant **or juvenile** is not essential for a fair hearing and
9 decision on the motion.

10 (3) ~~When it appears~~ **If the court determines** that evidence
11 essential to the case the **defense, juvenile,** or prosecution plans
12 to present might not be available at the time of trial, the court
13 shall allow ~~such~~ **that** evidence to be taken and preserved.
14 ~~Evidence so taken shall be~~ **that evidence is** admissible at the
15 trial only if it is not otherwise available **or by stipulation of**
16 **the parties.** Procedures for ~~the~~ taking and preserving ~~of~~
17 evidence under this subsection, and the conditions under which
18 ~~such~~ **that** evidence ~~shall be~~ **is** admissible at trial, shall be
19 provided by court rule.

20 Sec. 1024. The issue of incompetence to stand trial may be
21 raised by the defense, **the juvenile, the** court, or **the**
22 prosecution. The time and form of the procedure for raising the
23 issue shall be provided by court rule.

24 Sec. 1026. (1) Upon a showing that the defendant **or**
25 **juvenile** may be incompetent to stand trial, the court shall order
26 the defendant **or juvenile** to undergo an examination by personnel
27 of either the center for forensic psychiatry or other facility

1 officially certified by the department ~~of mental health~~ to
2 perform examinations relating to the issue of incompetence to
3 stand trial. The defendant **or juvenile** shall make himself **or**
4 **herself** available for the examination at the places and times
5 established by the center or other certified facility. If the
6 defendant **or juvenile**, after being notified, fails to make
7 himself **or herself** available for the examination, the court may
8 order his **or her** commitment to the center or other facility
9 without a hearing.

10 (2) ~~When~~ **If** the defendant **or juvenile** is to be held in a
11 jail or similar place of detention pending trial, the center or
12 other facility may perform the examination in the jail **or similar**
13 **place of detention** or may notify the sheriff to transport the
14 defendant **or juvenile** to the center or other facility for the
15 examination. ~~and the~~ **The** sheriff shall return the defendant
16 **or juvenile** to the jail **or similar place of detention** upon
17 completion of the examination.

18 (3) Except as provided in subsection (1), ~~when~~ **if** the
19 defendant **or juvenile** is not to be held in a jail or similar
20 place of detention pending trial, the court shall commit him **or**
21 **her** to the center or other facility only ~~when~~ **if** the commitment
22 is necessary ~~for the performance of~~ **to perform** the
23 examination.

24 (4) The defendant **or juvenile** shall be released by the center
25 or other facility upon completion of the examination.

26 Sec. 1028. (1) ~~When~~ **If** the defendant **or juvenile** is
27 ordered to undergo an examination ~~pursuant to~~ **under**

1 section 1026, the center or other facility shall, for the purpose
2 of gathering psychiatric and other information pertinent to the
3 issue of the incompetence of the defendant **or juvenile** to stand
4 trial, examine the defendant **or juvenile** and consult with
5 ~~defense~~ counsel **for the defense or the juvenile**, and may
6 consult with the prosecutor or other persons. ~~Defense counsel~~
7 **Counsel for the defense or juvenile** shall make himself **or herself**
8 available for consultation with the center or other facility.
9 The examination shall be performed, ~~defense~~ counsel **for the**
10 **defense or juvenile** consulted, and a written report submitted to
11 the court, prosecuting attorney, and ~~defense~~ counsel **for the**
12 **defense or juvenile** within 60 days of the date of the order.

13 (2) The report shall contain **at least all of the following:**

14 (a) The clinical findings of the center or other facility.

15 (b) The facts, in reasonable detail, upon which the findings
16 are based, and upon request of the court, **counsel for the defense**
17 **or juvenile**, or prosecution additional facts ~~germane~~ **relevant**
18 to the findings.

19 (c) The opinion of the center or other facility on the issue
20 of ~~the incompetence of~~ **whether** the defendant **or juvenile is**
21 **incompetent** to stand trial.

22 (d) If the opinion is that the defendant **or juvenile** is
23 incompetent to stand trial, the opinion of the center or other
24 facility on the likelihood of the defendant ~~attaining~~ **or**
25 **juvenile will attain** competence to stand trial, if provided a
26 course of treatment, within the time limit established by section
27 1034.

1 (3) The opinion concerning competency to stand trial derived
2 from the examination may not be admitted as evidence for any
3 purpose in the pending criminal **or juvenile** proceedings, except
4 on the issues to be determined in the hearings required or
5 permitted by sections 1030 and 1040. ~~The foregoing~~ **A bar of**
6 testimony ~~shall not be construed to~~ **under this subsection does**
7 **not** prohibit the examining qualified clinician from presenting at
8 other stages in the criminal **or juvenile** proceedings opinions
9 concerning criminal responsibility, disposition, or other issues
10 if they were originally requested by the court and are
11 available. Information gathered in the course of a prior
12 examination that is of historical value to the examining
13 qualified clinician may be utilized in ~~the formulation of~~
14 **formulating** an opinion in ~~any~~ **a** subsequent court ordered
15 evaluation.

16 Sec. 1030. (1) Upon receipt of the written report, the
17 court shall ~~cause~~ **order** the defendant **or juvenile** to appear in
18 court and shall hold a hearing within 5 days or upon the
19 conclusion of the case, proceeding, or other matter then before
20 it, whichever is sooner, unless the defense, **counsel for the**
21 **juvenile**, or **the** prosecution for good cause requests a delay for
22 a reasonable time.

23 (2) On the basis of the evidence admitted at the hearing, the
24 court shall determine the issue of ~~the incompetence of~~ **whether**
25 the defendant **or juvenile is incompetent** to stand trial. If the
26 defendant **or juvenile** is determined incompetent to stand trial,
27 the court shall also determine whether there is a substantial

1 probability that the defendant **or juvenile**, if provided a course
2 of treatment, will attain competence to stand trial within the
3 time limit established by section 1034.

4 (3) The written report shall be admissible as ~~competent~~
5 evidence in the hearing, unless the defense, **counsel for the**
6 **juvenile**, or **the** prosecution objects, but not for any other
7 purpose in the pending criminal **or juvenile** proceeding. The
8 defense, **counsel for the juvenile**, **the** prosecution, and the court
9 on its own motion may present additional evidence relevant to the
10 issues to be determined at the hearing.

11 (4) If the defendant **or juvenile** is receiving medication and
12 is not determined incompetent to stand trial, the court may, in
13 order to maintain the competence of the defendant **or juvenile** to
14 stand trial, ~~make such orders as it deems~~ **issue an order the**
15 **court considers** appropriate for ~~the~~ continued administration of
16 ~~such~~ medication pending and during trial.

17 Sec. 1031. If the defendant **or juvenile** is determined
18 incompetent to stand trial ~~—~~ and ~~if~~ the court determines that
19 there is not a substantial probability that, if provided a course
20 of treatment, he **or she** will attain competence to stand trial
21 within the time limit established by section 1034, the court may
22 direct a prosecuting attorney to file a petition asserting that
23 the defendant is a person requiring treatment as defined by
24 section 401 or meets the criteria for judicial admission as
25 defined by section 515 **or that the juvenile is a minor requiring**
26 **treatment as defined in section 498b** with the probate court of
27 the defendant's **or juvenile's** county of residence.

1 Sec. 1032. (1) If the defendant **or juvenile** is determined
2 incompetent to stand trial, and if the court determines that
3 there is a substantial probability that, if provided a course of
4 treatment, he **or she** will attain competence to stand trial within
5 the time limit established by section 1034, the court shall order
6 ~~him~~ **the defendant or juvenile** to undergo treatment to render
7 him **or her** competent to stand trial.

8 (2) The court shall appoint a medical supervisor of the
9 course of treatment. The supervisor may be **the department or** any
10 person or agency willing to supervise the course of treatment. ~~—~~
11 ~~or the department of mental health.~~

12 (3) The court may commit the defendant **or juvenile** to the
13 custody of the department, ~~of mental health,~~ or to the custody
14 of any other inpatient mental health facility if it agrees, only
15 if commitment is necessary for the effective administration of
16 the course of treatment. If the defendant **or juvenile**, absent
17 commitment to the department ~~of mental health~~ or other
18 inpatient facility, would otherwise be held in a jail or similar
19 place of detention pending trial, the court may enter an order
20 restricting the ~~defendant in his~~ **defendant's or juvenile's**
21 movements to the buildings and grounds of the facility at which
22 he **or she** is to be treated.

23 Sec. 1034. (1) ~~No~~ **An** order or combination of orders
24 issued under section 1032 or 1040, or both, shall **not** have force
25 and effect for a total period in excess of 15 months or 1/3 of
26 the maximum sentence the defendant could receive if convicted of
27 the charges against him **or her, or 1/3 of the maximum sentence**

1 **the juvenile could have received if convicted as an adult,**
2 whichever is ~~lesser; nor~~ **less. An order or combination of**
3 **orders issued under section 1032 or 1040, or both, shall not have**
4 **force and effect** after the charges against the defendant **or**
5 **juvenile** are dismissed.

6 (2) The court shall provide for notification of defense
7 counsel, **the juvenile's counsel**, the prosecution, and the medical
8 supervisor of treatment ~~whenever~~ **when** the charges against the
9 defendant **or juvenile** are dismissed and ~~whenever~~ **when** an order
10 whose stated time period has not elapsed is voided by the court.

11 (3) If the defendant **or juvenile** is to be discharged or
12 released because of the expiration of an order or orders under
13 section 1032 or 1040, the supervisor of treatment ~~prior to~~
14 **before** the discharge or release may file a petition asserting
15 that the defendant is a person requiring treatment as defined by
16 section 401, ~~or~~ **that the defendant** meets the criteria for
17 judicial admission as defined by section 515, **or that the**
18 **juvenile is a minor requiring treatment as defined in section**
19 **498b**, with the probate court of the defendant's **or juvenile's**
20 county of residence.

21 Sec. 1036. The **defendant's or juvenile's** right ~~of the~~
22 ~~defendant~~ to be at liberty pending trial, on bail or otherwise,
23 shall not be impaired because the issue of incompetence to stand
24 trial has been raised, because the defendant **or juvenile** has been
25 determined incompetent to stand trial, or because the defendant
26 **or juvenile** has been ordered to undergo treatment to render him
27 **or her** competent to stand trial, except to the extent authorized

1 by section 1026 for the purpose of an examination or by section
2 1032 for the purpose of administering a course of treatment.

3 Sec. 1038. (1) The medical supervisor of treatment shall
4 transmit a written report to the court, prosecuting attorney,
5 defense counsel, **the juvenile's counsel**, and the center for
6 forensic psychiatry **in each of the following instances:**

7 (a) At least once every 90 days from the date of an order
8 issued ~~pursuant to~~ **under** section 1032.

9 (b) ~~Whenever~~ **If** he **or she** is of the opinion that the
10 defendant **or juvenile** is no longer incompetent to stand trial.

11 (c) ~~Whenever~~ **If** he **or she** is of the opinion that there is
12 not a substantial probability that the defendant **or juvenile**,
13 with treatment, will attain competence to stand trial within the
14 time limit established by section 1034.

15 (2) The reports shall be admissible ~~pursuant to~~ **under**
16 section 1030(3) and shall contain **all of the following:**

17 (a) The clinical findings of the supervisor of treatment.

18 (b) The facts, in reasonable detail, upon which the findings
19 are based, and ~~upon request of the court, defense, or~~
20 ~~prosecution~~ **any** additional facts ~~germane~~ **relevant** to the
21 findings **if requested by court, defense counsel, juvenile's**
22 **counsel, or prosecution.**

23 (c) The opinion of the supervisor of treatment on the issue
24 of the incompetence of the defendant **or juvenile** to stand trial.

25 (d) If the opinion is that the defendant **or juvenile** is
26 incompetent to stand trial, the opinion of the supervisor of
27 treatment on whether the defendant **or juvenile** has made progress

1 toward attaining competence to stand trial during the course of
2 treatment.

3 Sec. 1040. (1) The court shall forthwith hear and
4 redetermine the issue of the incompetence of the defendant **or**
5 **juvenile** to stand trial. ~~and, if~~ **If** the defendant **or juvenile**
6 is redetermined incompetent to stand trial, **the court** shall hear
7 and determine whether the defendant **or juvenile** has made progress
8 toward attaining competence to stand trial during his **or her**
9 course of treatment, ~~whenever~~ **if** the court receives a report
10 from the supervisor of treatment, unless the defense **or juvenile**
11 waives the hearing, or ~~whenever deemed~~ **when considered**
12 appropriate by the court.

13 (2) Section 1030 ~~shall govern~~ **governs** hearings held
14 ~~pursuant to~~ **under** this section.

15 (3) If the defendant **or juvenile** is not redetermined
16 incompetent to stand trial at a hearing held ~~pursuant to~~ **under**
17 this section, trial shall commence as soon as practicable. If
18 the defendant **or juvenile** is redetermined incompetent to stand
19 trial, and if the court determines that the defendant **or juvenile**
20 has made progress toward attaining competence to stand trial, the
21 court may modify or continue any orders it previously issued
22 under section 1032.

23 Sec. 1042. Time spent in custody because of orders issued
24 ~~pursuant to~~ **under** sections 1026, 1032, and 1040 shall be
25 credited against any sentence **or disposition** imposed on the
26 defendant **or juvenile** in the pending criminal case or in any
27 other case arising from the same transaction.

1 Sec. 1044. (1) The charges against a defendant **or juvenile**
2 determined incompetent to stand trial shall be dismissed **if**
3 **either of the following applies:**

4 (a) ~~When the~~ **The** prosecutor notifies the court of his **or**
5 **her** intention not to prosecute the case. ~~—; or~~

6 (b) Fifteen months ~~after~~ **have elapsed since** the date on
7 which the defendant **or juvenile** was originally determined
8 incompetent to stand trial.

9 (2) ~~When~~ **If** charges are dismissed ~~pursuant to~~ **under**
10 subsection (1), the same charges, or other charges arising from
11 the transaction ~~which~~ **that** gave rise to the dismissed charges,
12 shall not subsequently be filed against the defendant **or**
13 **juvenile**, except as provided in this section.

14 (3) If the charges were dismissed ~~pursuant to~~ **under**
15 subsection (1)(b) and if the crime charged was punishable by a
16 sentence of life imprisonment, **or, in the case of a juvenile,**
17 **would have been a crime punishable by a sentence of life**
18 **imprisonment if committed by an adult,** the prosecutor may at any
19 time petition the court for permission to again file charges. In
20 the case of other charges dismissed ~~pursuant to~~ **under**
21 subsection (1)(b), the prosecutor may, within that period of time
22 after the charges were dismissed equal to 1/3 of the maximum
23 sentence that the defendant could receive on the charges **or that**
24 **a juvenile could have received if convicted as an adult,** petition
25 the court for permission to again file charges.

26 (4) The court shall grant permission to again file charges if
27 after a hearing it determines that the defendant **or juvenile** is

1 competent to stand trial. ~~Prior to~~ **Before** the hearing, the
2 court may order the defendant **or juvenile** to be examined by
3 personnel of the center for forensic psychiatry or other
4 qualified person as an outpatient, but may not commit the
5 defendant **or juvenile** to the center or any other facility for the
6 examination.

7 Sec. 1050. (1) The court shall immediately commit ~~any~~
8 ~~person~~ **a juvenile found not responsible by reason of insanity**
9 **for an offense that would be a crime if committed by an adult or**
10 **an individual** who is acquitted of a criminal charge by reason of
11 insanity to the custody of the center for forensic psychiatry,
12 for ~~a period not to exceed~~ **not more than** 60 days. The court
13 shall forward to the center a full report, in the form of a
14 settled record, of the facts concerning the crime ~~which~~ **that**
15 the patient was found to have committed but of which he **or she**
16 was acquitted **or found not responsible for** by reason of
17 insanity. The center shall thoroughly examine and evaluate the
18 **patient's** present mental condition ~~of the person~~ in order to
19 reach an opinion on whether the ~~person~~ **patient** meets the
20 criteria of a person requiring treatment or for judicial
21 admission set forth in section 401 or 515 **or is a minor requiring**
22 **treatment as defined in section 498b.**

23 (2) Within the 60-day period the center shall file a report
24 with the court, prosecuting attorney, **juvenile's counsel**, and
25 defense counsel. The report shall contain a summary of the crime
26 ~~which~~ **that** the patient committed but of which he **or she** was
27 acquitted **or found not responsible for** by reason of insanity and

1 an opinion as to whether the ~~person~~ **patient** meets the criteria
2 of a person requiring treatment or for judicial admission as
3 defined by section 401 or 515 **or is a minor requiring treatment**
4 **as defined by section 498b**, and the facts upon which the opinion
5 is based. If the opinion ~~stated is~~ **states** that the ~~person~~
6 **patient** is a person requiring treatment, the report shall be
7 accompanied by certificates from 2 physicians, at least 1 of whom
8 shall be a psychiatrist, ~~which~~ **that** conform to the requirements
9 of section ~~400(j)~~ **100c(10)**. **If the opinion stated is that the**
10 **patient is a minor requiring treatment, the report shall be**
11 **accompanied by an evaluation from a psychiatrist that conforms to**
12 **the requirements of section 498g.**

13 (3) After ~~receipt of~~ **receiving** the report, the court may
14 direct the prosecuting attorney to file a petition ~~pursuant to~~
15 **under** section 434 or 516 for an order of hospitalization or an
16 order of admission to a facility with the probate court of the
17 ~~person's~~ **patient's** county of residence or of the county in
18 which the criminal trial was held. ~~Any certificates~~ **A**
19 **certificate** that accompanied the report of the center may be
20 filed with the petition, and ~~shall be~~ **is** sufficient to cause a
21 hearing to be held ~~pursuant to~~ **under** section 451 even if ~~they~~
22 ~~were~~ **that certificate was** not executed within 72 hours ~~of the~~
23 ~~filing of~~ **after** the petition **was filed**. **An evaluation**
24 **supporting the opinion that the patient is a minor requiring**
25 **treatment is sufficient to support hospitalization under section**
26 **498f**. The report from the court containing the facts concerning
27 the crime for which he **or she** was acquitted by reason of insanity

1 shall be admissible in the hearings. **The report from the court**
2 **containing the facts of the crime for which he or she was found**
3 **not responsible by reason of insanity shall be considered in**
4 **determining whether the minor should be hospitalized and**
5 **determining the treatment to be provided.**

6 (4) If the report states ~~the opinion~~ that the ~~person~~
7 **patient** meets the criteria of a person requiring treatment, ~~or~~
8 **meets the criteria** for judicial admission, **or meets the criteria**
9 **of a minor requiring hospitalization**, and if a petition is to be
10 filed ~~pursuant to~~ **under** subsection (3), the center may retain
11 the ~~person~~ **patient** pending a hearing on the petition **or the**
12 **minor's transfer to a hospital**. If a petition is not to be filed
13 **or the prosecution does not seek hospitalization of the patient**
14 **as a minor requiring treatment**, the prosecutor shall notify the
15 center in writing. The center, upon ~~receipt of~~ **receiving** the
16 notification, shall ~~cause the person to be discharged~~ **discharge**
17 **the patient**.

18 (5) The release provisions of sections 476 to 479 ~~of this~~
19 ~~act shall~~ apply to a person found to have committed a crime by a
20 court or jury, but who is acquitted by reason of insanity, except
21 that a person shall not be discharged or placed on leave without
22 first being evaluated and recommended for discharge or leave by
23 the department's program for forensic psychiatry. ~~—and~~
24 ~~authorized~~ **Authorized** leave or absence from the hospital may be
25 extended for a period of 5 years.

26 Enacting section 1. This amendatory act does not take
27 effect unless all of the following bills of the 92nd Legislature

1 are enacted into law:

2 (a) Senate Bill No. _____ or House Bill No. 6130 (request
3 no. 02327'03).

4 (b) Senate Bill No. _____ or House Bill No. 6132 (request
5 no. 02329'03).