

# HOUSE BILL No. 6132

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

A bill to amend 1927 PA 175, entitled  
 "The code of criminal procedure,"  
 by amending sections 20, 20a, 21, 21a, and 36 of chapter VIII  
 (MCL 768.20, 768.20a, 768.21, 768.21a, and 768.36), section 20a  
 of chapter VIII as amended by 1983 PA 42, section 21a of  
 chapter VIII as amended by 1994 PA 56, and section 36 of  
 chapter VIII as amended by 2002 PA 245.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 CHAPTER VIII

2 Sec. 20. (1) If a defendant in a ~~felony~~ **criminal** case  
 3 proposes to offer in his **or her** defense testimony to establish an  
 4 alibi at the time of the alleged offense, the defendant shall at  
 5 the time of arraignment on the information or within 15 days  
 6 after that arraignment but not less than 10 days before the trial  
 7 of the case, or at another time as the court directs, file and

1 serve upon the prosecuting attorney a notice in writing of his or  
2 her intention to claim that defense. **If a juvenile facing trial**  
3 **for an offense that would be a crime if committed by an adult**  
4 **proposes to offer in his or her defense testimony to establish an**  
5 **alibi at the time of the alleged offense, the juvenile shall at**  
6 **the preliminary hearing on the petition or within 15 days after**  
7 **that hearing, but not less than 10 days before the trial of the**  
8 **case, or at another time as the court directs, file and serve**  
9 **upon the prosecuting attorney a notice in writing of his or her**  
10 **intention to claim that defense.** The notice shall contain, as  
11 particularly as is known to the defendant or the defendant's  
12 attorney **or the juvenile or the juvenile's attorney**, the names of  
13 witnesses to be called in behalf of the defendant **or juvenile** to  
14 establish that defense. The ~~defendant's~~ notice shall include  
15 specific information as to the place at which the ~~accused~~  
16 **defendant or juvenile** claims to have been at the time of the  
17 alleged offense.

18 (2) Within 10 days after the receipt of the ~~defendant's~~  
19 notice **required under subsection (1)** but not later than 5 days  
20 before the trial of the case, or at ~~such other~~ **another** time as  
21 the court may direct, the prosecuting attorney shall file and  
22 serve upon the defendant **or juvenile** a notice of rebuttal ~~which~~  
23 ~~shall contain~~ **that contains**, as particularly as is known to the  
24 prosecuting attorney, the names of the witnesses whom the  
25 prosecuting attorney proposes to call in rebuttal to controvert  
26 the ~~defendant's~~ **alibi** defense at the trial of the case.

27 (3) ~~Both the~~ **The** defendant, **the juvenile**, and the

1 prosecuting attorney ~~shall be~~ **are** under a continuing duty to  
2 disclose promptly the names of additional witnesses ~~which~~ **that**  
3 come to ~~the~~ **their** attention ~~of either party~~ subsequent to  
4 filing their respective notices as provided in this section.  
5 Upon motion with notice to the other party and upon a showing by  
6 the moving party that the name of an additional witness was not  
7 available when the notice required by ~~subsections~~ **subsection**  
8 (1) or (2) was filed and could not have been available by the  
9 exercise of due diligence, the additional witness may be called  
10 by the moving party to testify as a witness for the purpose of  
11 establishing or rebutting an alibi defense.

12       (4) **As used in this section, "juvenile" includes an**  
13 **individual who may be within the jurisdiction of the family**  
14 **division of circuit court under section 2(a)(1) of chapter XIIA**  
15 **of the probate code of 1939, 1939 PA 288, MCL 712A.2.**

16       Sec. 20a. (1) If a defendant in a ~~felony~~ **criminal case or**  
17 **a juvenile facing trial for an offense that would be a crime if**  
18 **committed by an adult** proposes to offer in his or her defense  
19 testimony to establish his or her insanity at the time of an  
20 alleged offense, the defendant **or juvenile** shall file and serve  
21 upon the court and the prosecuting attorney a notice in writing  
22 of his or her intention to assert the defense of insanity not  
23 less than 30 days before the date set for the trial of the case,  
24 or at ~~such other~~ **another** time as the court directs.

25       (2) Upon receipt of a notice of an intention to assert the  
26 defense of insanity, a court shall order the defendant **or**  
27 **juvenile** to undergo an examination relating to his or her claim

1 of insanity by personnel of the center for forensic psychiatry or  
2 by other qualified personnel, as applicable, for a period not to  
3 exceed 60 days from the date of the order. ~~When~~ **If** the  
4 defendant **or juvenile** is to be held in jail **or detention** pending  
5 trial, the center or the other qualified personnel may perform  
6 the examination in the jail **or at the juvenile detention**  
7 **facility**, or may notify the sheriff to transport the defendant **or**  
8 **juvenile** to the center or facility used by the qualified  
9 personnel for the examination, and the sheriff shall return the  
10 defendant to the jail **or the juvenile to the juvenile detention**  
11 **facility** upon completion of the examination. ~~When~~ **If** the  
12 defendant **or juvenile** is at liberty pending trial, on bail or  
13 otherwise, the defendant **or juvenile** shall make himself or  
14 herself available for the examination at the place and time  
15 established by the center or the other qualified personnel. If  
16 the defendant **or juvenile**, after being notified of the place and  
17 time of the examination, fails to make himself or herself  
18 available for the examination, the court may, without a hearing,  
19 order his or her commitment to the center.

20 (3) The defendant **or juvenile** may, at his or her own expense,  
21 or if indigent, at the expense of the county, secure an  
22 independent psychiatric evaluation by a clinician of his or her  
23 choice on the issue of his or her insanity at the time the  
24 alleged offense was committed. The defendant **or juvenile** shall  
25 notify the prosecuting attorney at least 5 days before the day  
26 scheduled for the independent evaluation that he or she intends  
27 to secure such an evaluation. The prosecuting attorney may

1 similarly obtain independent psychiatric evaluation. A clinician  
2 secured by an indigent defendant ~~shall be~~ **or juvenile is**  
3 entitled to receive a reasonable fee as approved by the court.

4 (4) The defendant **or juvenile** shall fully cooperate in his or  
5 her examination by ~~personnel of~~ the center for forensic  
6 ~~psychiatry~~ **psychiatry's personnel** or by other qualified  
7 personnel, and by any other independent examiners for the  
8 ~~defense and prosecution~~ **defendant, the juvenile, or the**  
9 **prosecutor**. If he or she fails to cooperate, and that failure is  
10 established to the satisfaction of the court at a hearing prior  
11 to trial, the defendant **or juvenile** shall be barred from  
12 presenting testimony relating to his or her insanity at the trial  
13 of the case.

14 (5) Statements made by the defendant **or juvenile** to  
15 ~~personnel of~~ the center for forensic ~~psychiatry~~ **psychiatry's**  
16 **personnel**, to other qualified personnel, or to any independent  
17 examiner during an examination ~~shall~~ **is** not ~~be~~ admissible  
18 ~~or~~ **and does not** have probative value in court at the trial of  
19 the case on any issues other than his or her mental illness or  
20 insanity at the time of the alleged offense.

21 (6) Upon conclusion of the examination, the center for  
22 forensic psychiatry, ~~or the~~ other qualified personnel, ~~and~~  
23 ~~any~~ **or** independent examiner ~~—~~ shall prepare a written report  
24 and shall submit the report to the prosecuting attorney and  
25 ~~defense~~ counsel **for the defendant or the juvenile**. The report  
26 shall contain **all of the following**:

27 (a) The clinical findings of the center, the qualified

1 personnel, or ~~any~~ independent examiner.

2 (b) The facts, in reasonable detail, ~~upon~~ **on** which the  
3 findings were based.

4 (c) The ~~opinion of the center or~~ **center's**, qualified  
5 ~~personnel~~ **personnel's**, ~~and~~ **or** the independent ~~examiner~~  
6 **examiner's opinion** on the issue of the defendant's **or juvenile's**  
7 insanity at the time the alleged offense was committed and  
8 whether the defendant **or juvenile** was mentally ill or mentally  
9 retarded at the time the alleged offense was committed.

10 (7) Within 10 days after the receipt of the report from the  
11 center for forensic psychiatry or from the qualified personnel,  
12 or within 10 days after the receipt of the report of an  
13 independent examiner secured by the prosecution, whichever occurs  
14 later, but not later than 5 days before the trial of the case, or  
15 at ~~such other~~ **another** time as the court directs, the  
16 prosecuting attorney shall file and serve upon the defendant **or**  
17 **juvenile** a notice of rebuttal of the defense of insanity ~~which~~  
18 **that** shall contain the names of the witnesses whom the  
19 prosecuting attorney proposes to call in rebuttal.

20 (8) The report of the center for forensic psychiatry, ~~the~~  
21 qualified personnel, or ~~any~~ independent examiner may be  
22 admissible in evidence upon the stipulation of the ~~prosecution~~  
23 ~~and defense~~ **parties**.

24 (9) As used in this section: ~~, "qualified personnel" means~~  
25 ~~either of the following: (a) Personnel~~

26 (a) "Center" means the center for forensic psychiatry.

27 (b) "Juvenile" includes an individual who may be within the

1 jurisdiction of the family division of circuit court under  
2 section 2(a)(1) of chapter XIIA of the probate code of 1939, 1939  
3 PA 288, MCL 712A.2.

4 (c) "Qualified personnel" means personnel meeting standards  
5 determined by the department of ~~mental~~ **community** health under  
6 rules promulgated ~~pursuant to Act No. 306 of the Public Acts of~~  
7 ~~1969, being sections 24.301 to 24.315 of the Michigan Compiled~~  
8 ~~Laws~~ **under the administrative procedures act of 1969, 1969**  
9 **PA 306, MCL 24.201 to 24.328.**

10 ~~(b) Until the rules to which subdivision (a) refers,~~  
11 ~~excluding emergency rules, are in effect, personnel of the~~  
12 ~~psychiatric clinic of the recorder's court of the city of~~  
13 ~~Detroit.~~

14 Sec. 21. (1) If the defendant **or juvenile** fails to file and  
15 serve the written notice prescribed in section 20 or 20a **of this**  
16 **chapter**, the court shall exclude evidence offered by the  
17 defendant **or juvenile** for the purpose of establishing an alibi or  
18 ~~the~~ insanity ~~of the defendant~~ **defense**. If the notice given  
19 by the defendant **or juvenile** does not state, as particularly as  
20 is known to the defendant or the defendant's attorney **or the**  
21 **juvenile or the juvenile's attorney**, the name of a witness to be  
22 called in behalf of the defendant **or juvenile** to establish a  
23 defense specified in section 20 or 20a **of this chapter**, the court  
24 shall exclude the **witness** testimony ~~of a witness which is~~  
25 offered by the defendant **or juvenile** for the purpose of  
26 establishing that defense.

27 (2) If the prosecuting attorney fails to file and serve a

1 notice of rebuttal upon the defendant **or juvenile** as provided in  
2 section 20 or 20a **of this chapter**, the court shall exclude  
3 evidence offered by the prosecution in rebuttal to the  
4 defendant's **or juvenile's** evidence relevant to a defense  
5 specified in section 20 or 20a **of this chapter**. If the notice  
6 given by the prosecuting attorney does not state, as particularly  
7 as is known to the prosecuting attorney, the **witness's** name ~~of a~~  
8 ~~witness~~ to be called ~~in rebuttal of the defense of~~ **to rebut**  
9 **the** alibi or insanity **defense**, the court shall exclude the  
10 **witness** testimony ~~of a witness which is~~ offered by the  
11 prosecuting attorney for the purpose of rebutting that defense.

12 (3) As used in this section, "juvenile" includes an  
13 individual who may be within the jurisdiction of the family  
14 division of circuit court under section 2(a)(1) of chapter XIIA  
15 of the probate code of 1939, 1939 PA 288, MCL 712A.2.

16 Sec. 21a. (1) It is an affirmative defense to a prosecution  
17 for a criminal offense **or for an offense committed by a juvenile**  
18 **that would be a crime if committed by an adult** that the defendant  
19 **or juvenile** was legally insane when he or she committed the acts  
20 constituting the offense. An individual is legally insane if, as  
21 a result of mental illness **or of being mentally retarded as those**  
22 **terms are** defined in section ~~400a of the mental health code, Act~~  
23 ~~No. 258 of the Public Acts of 1974, being section 330.1400a of~~  
24 ~~the Michigan Compiled Laws, or as a result of being mentally~~  
25 ~~retarded as defined in section 500(h) of the mental health code,~~  
26 ~~Act No. 258 of the Public Acts of 1974, being section 330.1500 of~~  
27 ~~the Michigan Compiled Laws~~ **1001a of the mental health code, 1974**

1 PA 258, MCL 330.2001a, that ~~person~~ **individual** lacks substantial  
2 capacity either to appreciate the nature and quality or the  
3 wrongfulness of his or her conduct or to conform his or her  
4 conduct to the requirements of the law. Mental illness or being  
5 mentally retarded does not otherwise constitute a defense of  
6 legal insanity.

7 (2) An individual who was under the influence of voluntarily  
8 consumed or injected alcohol or controlled substances at the time  
9 of his or her alleged offense is not considered to have been  
10 legally insane solely because of being under the influence of the  
11 alcohol or controlled substances.

12 (3) The defendant **or juvenile** has the burden of proving the  
13 defense of insanity by a preponderance of the evidence.

14 (4) **As used in this section, "juvenile" includes an**  
15 **individual who may be within the jurisdiction of the family**  
16 **division of circuit court under section 2(a)(1) of chapter XIIA**  
17 **of the probate code of 1939, 1939 PA 288, MCL 712A.2.**

18 Sec. 36. (1) If the defendant **or juvenile** asserts a defense  
19 of insanity in compliance with section 20a of this chapter, the  
20 defendant may be found "guilty but mentally ill" **or the juvenile**  
21 **may be found "responsible but mentally ill"** if, after trial, the  
22 trier of fact finds all of the following:

23 (a) The defendant is guilty beyond a reasonable doubt of an  
24 offense **or the juvenile is responsible for an offense that would**  
25 **be a crime if committed by an adult.**

26 (b) The defendant **or juvenile** has proven by a preponderance  
27 of the evidence that he or she was mentally ill at the time of

1 the commission of that offense.

2 (c) The defendant **or juvenile** has not established by a  
3 preponderance of the evidence that he or she lacked the  
4 substantial capacity either to appreciate the nature and quality  
5 or the wrongfulness of his or her conduct or to conform his or  
6 her conduct to the requirements of the law.

7 (2) If the defendant **or juvenile** asserts a defense of  
8 insanity in compliance with section 20a of this chapter and the  
9 defendant **or juvenile** waives his or her right to trial, by jury  
10 or by judge, the trial judge, with the approval of the  
11 prosecuting attorney, may accept a plea of guilty but mentally  
12 ill ~~in lieu~~ **or responsible but mentally ill instead** of a plea  
13 of guilty, **a plea of responsible**, or a plea of nolo contendere.  
14 The judge shall not accept a plea of guilty but mentally ill **or**  
15 **responsible but mentally ill** until, with the defendant's **or**  
16 **juvenile's** consent, the judge has examined the report or reports  
17 prepared in compliance with section 20a of this chapter, the  
18 judge has held a hearing on the issue of the defendant's **or**  
19 **juvenile's** mental illness at which either party may present  
20 evidence, and the judge is satisfied that the defendant **or**  
21 **juvenile** has proven by a preponderance of the evidence that the  
22 defendant **or juvenile** was mentally ill at the time of the offense  
23 to which the plea is entered. The reports shall be made a part  
24 of the record of the case.

25 (3) If a defendant **or juvenile** is found guilty but mentally  
26 ill **or responsible but mentally ill** or enters a plea to that  
27 effect ~~which~~ **that** is accepted by the court, the court shall

1 impose any sentence that could be imposed by law upon a defendant  
2 who is convicted of the same offense **or upon a juvenile found**  
3 **responsible for the same offense. If the juvenile is committed**  
4 **to the custody of the family independence agency or to a juvenile**  
5 **facility, the juvenile shall undergo further evaluation and be**  
6 **given treatment that is psychiatrically indicated for the**  
7 **juvenile's mental illness or retardation.** If the defendant is  
8 committed to the custody of the department of corrections, the  
9 defendant shall undergo further evaluation and be given such  
10 treatment as is psychiatrically indicated for his or her mental  
11 illness or retardation. Treatment may be provided by the  
12 department of corrections or by the department of community  
13 health as provided by law. Sections 1004 and 1006 of the mental  
14 health code, 1974 PA 258, MCL 330.2004 and 330.2006, apply to the  
15 discharge of the defendant from a facility of the department of  
16 community health to which the defendant has been admitted and to  
17 the return of the defendant to the department of corrections for  
18 the balance of the defendant's sentence. When a treating  
19 facility designated by either the department of corrections or  
20 the department of community health discharges the defendant  
21 before the expiration of the defendant's sentence, that treating  
22 facility shall transmit to the parole board a report on the  
23 condition of the defendant that contains the clinical facts, the  
24 diagnosis, the course of treatment, the prognosis for the  
25 remission of symptoms, the potential for recidivism, the danger  
26 of the defendant to himself or herself or to the public, and  
27 recommendations for future treatment. If the parole board

1 considers the defendant for parole, the board shall consult with  
2 the treating facility at which the defendant is being treated or  
3 from which the defendant has been discharged and a comparable  
4 report on the condition of the defendant shall be filed with the  
5 board. If the defendant is placed on parole, the defendant's  
6 treatment shall, upon recommendation of the treating facility, be  
7 made a condition of parole. Failure to continue treatment except  
8 by agreement with the designated facility and parole board is  
9 grounds for revocation of parole.

10 (4) If a defendant who is found guilty but mentally ill **or a**  
11 **juvenile who is responsible for an offense that would be a crime**  
12 **if committed by an adult** is placed on probation under the  
13 jurisdiction of the sentencing court as provided by law, the  
14 trial judge, upon recommendation of the center for forensic  
15 psychiatry, shall make treatment a condition of probation.  
16 Reports as specified by the trial judge shall be filed with the  
17 probation officer and the sentencing court. Failure to continue  
18 treatment, except by agreement with the treating agency and the  
19 sentencing court, is grounds for revocation of probation. The  
20 period of probation **for a defendant** shall not be for less than  
21 5 years and shall not be shortened without receipt and  
22 consideration of a forensic psychiatric report by the sentencing  
23 court. **The period of probation for a juvenile shall extend to**  
24 **the juvenile's twenty-first birthday. The period of probation**  
25 **for a juvenile shall not be shortened without receipt and**  
26 **consideration of a forensic psychiatric report by the sentencing**  
27 **court.** Treatment shall be provided by an agency of the department

1 of community health or, with the approval of the sentencing court  
2 and at individual expense, by private agencies, private  
3 physicians, or other mental health personnel. A psychiatric  
4 report shall be filed with the probation officer and the  
5 sentencing court every 3 months during the period of probation.  
6 If a motion on a petition to discontinue probation is made by the  
7 defendant **or juvenile**, the probation officer shall request a  
8 report as specified from the center for forensic psychiatry or  
9 ~~any~~ other facility certified by **the** department of community  
10 health for the performance of forensic psychiatric evaluation.

11 **(5) As used in this section, "juvenile" includes an**  
12 **individual who may be within the jurisdiction of the family**  
13 **division of circuit court under section 2(a)(1) of chapter XIIA**  
14 **of the probate code of 1939, 1939 PA 288, MCL 712A.2.**

15 Enacting section 1. This amendatory act does not take  
16 effect unless all of the following bills of the 92nd Legislature  
17 are enacted into law:

18 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 6130  
19 (request no. 02327'03).

20 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 6131  
21 (request no. 02328'03).