

# HOUSE BILL No. 4215

February 8, 2005, 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 as  
amended by 1983 PA 42, section 21a as amended by 1994 PA 56, and  
section 36 as amended by 2002 PA 245.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### CHAPTER VIII

Sec. 20. (1) If a defendant in a ~~felony~~ **CRIMINAL** case  
proposes to offer in his **OR HER** defense testimony to establish an  
alibi at the time of the alleged offense, the defendant shall at  
the time of arraignment on the information or within 15 days after  
that arraignment but not less than 10 days before the trial of the

case, or at another time as the court directs, file and serve upon the prosecuting attorney a notice in writing of his **OR HER** intention to claim that defense. **IF A JUVENILE FACING TRIAL FOR AN OFFENSE THAT WOULD BE A CRIME IF COMMITTED BY AN ADULT PROPOSES TO OFFER IN HIS OR HER DEFENSE TESTIMONY TO ESTABLISH AN ALIBI AT THE TIME OF THE ALLEGED OFFENSE, THE JUVENILE SHALL AT THE PRELIMINARY HEARING ON THE PETITION OR WITHIN 15 DAYS AFTER THAT HEARING, BUT NOT LESS THAN 10 DAYS BEFORE THE TRIAL OF THE CASE, OR AT ANOTHER TIME AS THE COURT DIRECTS, FILE AND SERVE UPON THE PROSECUTING ATTORNEY A NOTICE IN WRITING OF HIS OR HER INTENTION TO CLAIM THAT DEFENSE.** The notice shall contain, as particularly as is known to the defendant or the defendant's attorney **OR THE JUVENILE OR THE JUVENILE'S ATTORNEY**, the names of witnesses to be called in behalf of the defendant **OR JUVENILE** to establish that defense. The ~~defendant's~~ notice shall include specific information as to the place at which the ~~accused~~ **DEFENDANT OR JUVENILE** claims to have been at the time of the alleged offense.

(2) Within 10 days after the receipt of the ~~defendant's~~ notice **REQUIRED UNDER SUBSECTION (1)** but not later than 5 days before the trial of the case, or at ~~such other~~ **ANOTHER** time as the court may direct, the prosecuting attorney shall file and serve upon the defendant **OR JUVENILE** a notice of rebuttal ~~which shall contain~~ **THAT CONTAINS**, as particularly as is known to the prosecuting attorney, the names of the witnesses whom the prosecuting attorney proposes to call in rebuttal to controvert the ~~defendant's~~ **ALIBI** defense at the trial of the case.

(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. Upon  
 5 motion with notice to the other party and upon a showing by the  
 6 moving party that the name of an additional witness was not  
 7 available when the notice required by ~~subsections~~ **SUBSECTION** (1)  
 8 or (2) was filed and could not have been available by the exercise  
 9 of due diligence, the additional witness may be called by the  
 10 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 INDIVIDUAL**  
 13 **WHO MAY BE WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF**  
 14 **CIRCUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIA OF THE PROBATE**  
 15 **CODE OF 1939, 1939 PA 288, MCL 712A.2.**

16 Sec. 20a. (1) If a defendant in a ~~felony~~ **CRIMINAL** case **OR A**  
 17 **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 of  
 22 his or her intention to assert the defense of insanity not less  
 23 than 30 days before the date set for the trial of the case, or at  
 24 ~~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 JUVENILE**  
 27 **to undergo an examination relating to his or her claim of insanity**

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

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

1 indigent defendant ~~shall be~~ **OR JUVENILE IS** entitled to receive a  
2 reasonable fee as approved by the court.

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

12 (5) Statements made by the defendant **OR JUVENILE** to ~~personnel~~  
13 ~~of~~ the center for forensic ~~psychiatry~~ **PSYCHIATRY'S PERSONNEL**, to  
14 other qualified personnel, or to any independent examiner during an  
15 examination ~~shall~~ **IS** not ~~be~~ admissible ~~or~~ **AND DOES NOT** have  
16 probative value in court at the trial of the case on any issues  
17 other than his or her mental illness or insanity at the time of the  
18 alleged offense.

19 (6) Upon conclusion of the examination, the center for  
20 forensic psychiatry, ~~or the~~ other qualified personnel, ~~and any~~  
21 **OR** independent examiner ~~—~~ shall prepare a written report and  
22 shall submit the report to the prosecuting attorney and ~~defense~~  
23 counsel **FOR THE DEFENDANT OR THE JUVENILE**. The report shall contain  
24 **ALL OF THE FOLLOWING:**

25 (a) The clinical findings of the center, the qualified  
26 personnel, or ~~any~~ independent examiner.

27 (b) The facts, in reasonable detail, ~~upon~~ **ON** which the

1 findings were based.

2 (c) The ~~opinion of the center or~~ **CENTER'S**, qualified  
 3 ~~personnel~~ **PERSONNEL'S**, ~~and~~ **OR** the independent ~~examiner~~  
 4 **EXAMINER'S OPINION** on the issue of the defendant's **OR JUVENILE'S**  
 5 insanity at the time the alleged offense was committed and whether  
 6 the defendant **OR JUVENILE** was mentally ill or mentally retarded at  
 7 the time the alleged offense was committed.

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

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

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

24 (A) "CENTER" MEANS THE CENTER FOR FORENSIC PSYCHIATRY.

25 (B) "JUVENILE" INCLUDES AN INDIVIDUAL WHO MAY BE WITHIN THE  
 26 JURISDICTION OF THE FAMILY DIVISION OF CIRCUIT COURT UNDER SECTION  
 27 2(A)(1) OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288,

1 MCL 712A.2.

2 (C) "QUALIFIED PERSONNEL" MEANS PERSONNEL meeting standards  
3 determined by the department of ~~mental~~ COMMUNITY health under  
4 rules promulgated ~~pursuant to Act No. 306 of the Public Acts of~~  
5 ~~1969, being sections 24.301 to 24.315 of the Michigan Compiled Laws~~  
6 UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL  
7 24.201 TO 24.328.

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

11 Sec. 21. (1) If the defendant OR JUVENILE fails to file and  
12 serve the written notice prescribed in section 20 or 20a OF THIS  
13 CHAPTER, the court shall exclude evidence offered by the defendant  
14 OR JUVENILE for the purpose of establishing an alibi or ~~the~~  
15 ~~insanity of the defendant~~ DEFENSE. If the notice given by the  
16 defendant OR JUVENILE does not state, as particularly as is known  
17 to the defendant or the defendant's attorney OR THE JUVENILE OR THE  
18 JUVENILE'S ATTORNEY, the name of a witness to be called in behalf  
19 of the defendant OR JUVENILE to establish a defense specified in  
20 section 20 or 20a OF THIS CHAPTER, the court shall exclude the  
21 WITNESS testimony ~~of a witness which is~~ offered by the defendant  
22 OR JUVENILE for the purpose of establishing that defense.

23 (2) If the prosecuting attorney fails to file and serve a  
24 notice of rebuttal upon the defendant OR JUVENILE as provided in  
25 section 20 or 20a OF THIS CHAPTER, the court shall exclude evidence  
26 offered by the prosecution in rebuttal to the defendant's OR  
27 JUVENILE'S evidence relevant to a defense specified in section 20

1 or 20a **OF THIS CHAPTER**. If the notice given by the prosecuting  
 2 attorney does not state, as particularly as is known to the  
 3 prosecuting attorney, the **WITNESS'S** name ~~of a witness~~ to be  
 4 called ~~in rebuttal of the defense of~~ **TO REBUT THE** alibi or  
 5 insanity **DEFENSE**, the court shall exclude the **WITNESS** testimony ~~of~~  
 6 ~~a witness which is~~ offered by the prosecuting attorney for the  
 7 purpose of rebutting that defense.

8 (3) **AS USED IN THIS SECTION, "JUVENILE" INCLUDES AN INDIVIDUAL**  
 9 **WHO MAY BE WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF**  
 10 **CIRCUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIA OF THE PROBATE**  
 11 **CODE OF 1939, 1939 PA 288, MCL 712A.2.**

12 Sec. 21a. (1) It is an affirmative defense to a prosecution  
 13 for a criminal offense **OR FOR AN OFFENSE COMMITTED BY A JUVENILE**  
 14 **THAT WOULD BE A CRIME IF COMMITTED BY AN ADULT** that the defendant  
 15 **OR JUVENILE** was legally insane when he or she committed the acts  
 16 constituting the offense. An individual is legally insane if, as a  
 17 result of mental illness **OR OF BEING MENTALLY RETARDED** as **THOSE**  
 18 **TERMS ARE** defined in section ~~400a of the mental health code, Act~~  
 19 ~~No. 258 of the Public Acts of 1974, being section 330.1400a of the~~  
 20 ~~Michigan Compiled Laws, or as a result of being mentally retarded~~  
 21 ~~as defined in section 500(h) of the mental health code, Act No. 258~~  
 22 ~~of the Public Acts of 1974, being section 330.1500 of the Michigan~~  
 23 ~~Compiled Laws~~ **1001A OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL**  
 24 **330.2001A**, that ~~person~~ **INDIVIDUAL** lacks substantial capacity  
 25 either to appreciate the nature and quality or the wrongfulness of  
 26 his or her conduct or to conform his or her conduct to the  
 27 requirements of the law. Mental illness or being mentally retarded



1 does not otherwise constitute a defense of legal insanity.

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

7 (3) The defendant **OR JUVENILE** has the burden of proving the  
8 defense of insanity by a preponderance of the evidence.

9 (4) **AS USED IN THIS SECTION, "JUVENILE" INCLUDES AN INDIVIDUAL**  
10 **WHO MAY BE WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF**  
11 **CIRCUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIA OF THE PROBATE**  
12 **CODE OF 1939, 1939 PA 288, MCL 712A.2.**

13 Sec. 36. (1) If the defendant **OR JUVENILE** asserts a defense of  
14 insanity in compliance with section 20a of this chapter, the  
15 defendant may be found "guilty but mentally ill" **OR THE JUVENILE**  
16 **MAY BE FOUND "RESPONSIBLE BUT MENTALLY ILL"** if, after trial, the  
17 trier of fact finds all of the following:

18 (a) The defendant is guilty beyond a reasonable doubt of an  
19 offense **OR THE JUVENILE IS RESPONSIBLE FOR AN OFFENSE THAT WOULD BE**  
20 **A CRIME IF COMMITTED BY AN ADULT.**

21 (b) The defendant **OR JUVENILE** has proven by a preponderance of  
22 the evidence that he or she was mentally ill at the time of the  
23 commission of that offense.

24 (c) The defendant **OR JUVENILE** has not established by a  
25 preponderance of the evidence that he or she lacked the substantial  
26 capacity either to appreciate the nature and quality or the  
27 wrongfulness of his or her conduct or to conform his or her conduct

1 to the requirements of the law.

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

19 (3) If a defendant **OR JUVENILE** is found guilty but mentally  
20 ill **OR RESPONSIBLE BUT MENTALLY ILL** or enters a plea to that effect  
21 ~~which~~ **THAT** is accepted by the court, the court shall impose any  
22 sentence that could be imposed by law upon a defendant who is  
23 convicted of the same offense **OR UPON A JUVENILE FOUND RESPONSIBLE**  
24 **FOR THE SAME OFFENSE. IF THE JUVENILE IS COMMITTED TO THE CUSTODY**  
25 **OF THE FAMILY INDEPENDENCE AGENCY OR TO A JUVENILE FACILITY, THE**  
26 **JUVENILE SHALL UNDERGO FURTHER EVALUATION AND BE GIVEN TREATMENT**  
27 **THAT IS PSYCHIATRICALY INDICATED FOR THE JUVENILE'S MENTAL ILLNESS**

1 **OR RETARDATION.** If the defendant is committed to the custody of the  
2 department of corrections, the defendant shall undergo further  
3 evaluation and be given such treatment as is psychiatrically  
4 indicated for his or her mental illness or retardation. Treatment  
5 may be provided by the department of corrections or by the  
6 department of community health as provided by law. Sections 1004  
7 and 1006 of the mental health code, 1974 PA 258, MCL 330.2004 and  
8 330.2006, apply to the discharge of the defendant from a facility  
9 of the department of community health to which the defendant has  
10 been admitted and to the return of the defendant to the department  
11 of corrections for the balance of the defendant's sentence. ~~When~~  
12 **IF** a treating facility designated by either the department of  
13 corrections or the department of community health discharges the  
14 defendant before the expiration of the defendant's sentence, that  
15 treating facility shall transmit to the parole board a report on  
16 the condition of the defendant that contains the clinical facts,  
17 the diagnosis, the course of treatment, the prognosis for the  
18 remission of symptoms, the potential for recidivism, the danger of  
19 the defendant to himself or herself or to the public, and  
20 recommendations for future treatment. If the parole board considers  
21 the defendant for parole, the board shall consult with the treating  
22 facility at which the defendant is being treated or from which the  
23 defendant has been discharged and a comparable report on the  
24 condition of the defendant shall be filed with the board. If the  
25 defendant is placed on parole, the defendant's treatment shall,  
26 upon recommendation of the treating facility, be made a condition  
27 of parole. Failure to continue treatment except by agreement with

1 the designated facility and parole board is grounds for revocation  
2 of parole.

3 (4) If a defendant who is found guilty but mentally ill **OR A**  
4 **JUVENILE WHO IS RESPONSIBLE FOR AN OFFENSE THAT WOULD BE A CRIME IF**  
5 **COMMITTED BY AN ADULT** is placed on probation under the jurisdiction  
6 of the sentencing court as provided by law, the trial judge, upon  
7 recommendation of the center for forensic psychiatry, shall make  
8 treatment a condition of probation. Reports as specified by the  
9 trial judge shall be filed with the probation officer and the  
10 sentencing court. Failure to continue treatment, except by  
11 agreement with the treating agency and the sentencing court, is  
12 grounds for revocation of probation. The period of probation **FOR A**  
13 **DEFENDANT** shall not be for less than 5 years and shall not be  
14 shortened without receipt and consideration of a forensic  
15 psychiatric report by the sentencing court. **THE PERIOD OF PROBATION**  
16 **FOR A JUVENILE SHALL EXTEND TO THE JUVENILE'S TWENTY-FIRST**  
17 **BIRTHDAY. THE PERIOD OF PROBATION FOR A JUVENILE SHALL NOT BE**  
18 **SHORTENED WITHOUT RECEIPT AND CONSIDERATION OF A FORENSIC**  
19 **PSYCHIATRIC REPORT BY THE SENTENCING COURT.** Treatment shall be  
20 provided by an agency of the department of community health or,  
21 with the approval of the sentencing court and at individual  
22 expense, by private agencies, private physicians, or other mental  
23 health personnel. A psychiatric report shall be filed with the  
24 probation officer and the sentencing court every 3 months during  
25 the period of probation. If a motion on a petition to discontinue  
26 probation is made by the defendant **OR JUVENILE**, the probation  
27 officer shall request a report as specified from the center for

1 forensic psychiatry or ~~any~~ other facility certified by **THE**  
2 department of community health for the performance of forensic  
3 psychiatric evaluation.

4 (5) AS USED IN THIS SECTION, "JUVENILE" INCLUDES AN INDIVIDUAL  
5 WHO MAY BE WITHIN THE JURISDICTION OF THE FAMILY DIVISION OF  
6 CIRCUIT COURT UNDER SECTION 2(A)(1) OF CHAPTER XIIA OF THE PROBATE  
7 CODE OF 1939, 1939 PA 288, MCL 712A.2.

8 Enacting section 1. This amendatory act does not take effect  
9 unless all of the following bills of the 93rd Legislature are  
10 enacted into law:

11 (a) Senate Bill No.\_\_\_\_ or House Bill No. 4213(request no.  
12 00138'05).

13 (b) Senate Bill No.\_\_\_\_ or House Bill No. 4214(request no.  
14 00139'05).