

Legislative Analysis



JUVENILE COMPETENCY

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House Bill 5175

Sponsor: Rep. Tonya Schuitmaker

House Bill 5482

Sponsor: Rep. Lesia Liss

House Bill 5486

Sponsor: Rep. Hugh Crawford

House Bill 5483

Sponsor: Rep. Eileen Kowall

House Bill 5487

Sponsor: Rep. Pam Byrnes

House Bill 5484

Sponsor: Rep. Kate Segal

House Bill 5488

Sponsor: Rep. Joan Bauer

House Bill 5485

Sponsor: Rep. Ellen Cogen Lipton

House Bill 5489

Sponsor: Rep. Jennifer Haase

Committee: Judiciary

Complete to 1-19-10

A SUMMARY OF HOUSE BILL 5175 AS INTRODUCED 7-14-09 AND HOUSE BILLS 5482-5489 AS INTRODUCED 9-29-09

Together, the bills would make virtually identical changes to the Mental Health Code and Probate Code regarding the manner in which a juvenile's competency to stand trial for the commission of a crime would be determined. House Bills 5175 and 5482 amend the Mental Health Code and House Bills 5483-5489 amend Chapter XIIA of the Probate Code (entitled "Jurisdiction, Procedure, and Disposition Involving Minors"). House Bills 5484-5489 are tie-barred to each other. In brief, the bills would do the following:

- Create a process by which the competency of a juvenile to stand trial could be determined.
- Specify that a juvenile under the age of 10 would be presumed incompetent to stand trial. A juvenile 10 years of age or older would be presumed to be competent to proceed unless the issue of competency were raised by either party.
- Allow a competency evaluation to be ordered by a court or requested by the juvenile, his or her attorney, or the prosecuting attorney at any time during the proceeding. The delinquency proceeding would temporarily cease until a determination was made on the juvenile's competency.
- Apply constitutional protections against self-incrimination to statements made during a competency evaluation. Statements made during a competency

evaluation and any evidence resulting from a statement would not be admissible in a proceeding to determine guilt or innocence of any other charges based on those events or transactions.

- Require a court to order a prosecuting attorney to provide all information related to competency to the juvenile's attorney, and require both attorneys to submit information relevant to the competency evaluation to the qualified examiner.
- Require competency evaluations to be conducted by qualified examiners. A court would have the final determination as to who was a qualified examiner.
- Define "qualified examiner" and "qualified restoration provider" to mean a mental health professional as that term is defined in Section 100b of the Mental Health Code, who the court determines to have the skills and training necessary to conduct the evaluation or provide restoration services, respectively, as specified in the legislation. Measures would have to be taken to avoid conflict of interests among agencies or individuals providing evaluation and restoration.
- Allow any party to retain its own qualified examiner, at its own expense, to conduct additional evaluations.
- Require competency evaluations to be conducted in the least restrictive environment with a presumption in favor of conducting the evaluation while the juvenile remained in the custody of a parent or legal guardian – unless removal was necessary for the best interests of the juvenile, the safety of the public, or the parent or guardian refused to cooperate with the evaluation process.
- Require qualified examiners to submit a written report to the court that would include the diagnosis and functional impact of mental illness, developmental disability, or cognitive deficiency, and also require an opinion regarding the juvenile's competency to proceed, including the services needed to restore the juvenile to competency.
- Within 30 days of the filing of a competency report by a qualified examiner, require a court hearing to determine the juvenile's competency to proceed. A court could issue a restoration order if the juvenile were found to be incompetent but could be restored to competency in the foreseeable future. The court would be required to dismiss the charges and determine custody of the juvenile if he or she were determined to be incompetent to proceed or there were a substantial probability that the juvenile would remain incompetent to proceed for the foreseeable future or within the period of the restoration order. Custody could include civil commitment.
- If the juvenile were determined to be incompetent to stand trial, but may be restored to competency in the foreseeable future, require the charges to be dismissed if the offense were a misdemeanor or a juvenile traffic offense, allow a

court to dismiss the charges or suspend the proceedings if the offense were a serious misdemeanor, and require the proceedings to be suspended if the offense were a felony.

- Require reports by qualified examiners and qualified restoration providers relating to a competency evaluation to be sealed once a case proceeded to adjudication or the juvenile was found to be unable to regain competence, and limit the conditions under which the reports could be opened. Statements made during a competency evaluation, or any evidence resulting from that statement, would not be subject to disclosure.
- Allow a qualified examiner to receive reasonable fees for services rendered; the court would determine who would pay the cost of the competency evaluation.
- Define numerous terms, including "competency evaluation," "incompetent to proceed," and "least restrictive environment."

House Bill 5175 would add several new sections to the Mental Health Code, MCL 330.1060-330.1070.

House Bill 5482 would add two new sections to the Mental Health Code, MCL 330.1060c and 330.1072.

House Bill 5483 would amend Section 1 of the Probate Code and add Section 18s, MCL 712A.1 and 712A.18s.

House Bill 5485 would amend Section 1 of the Probate Code, MCL 712A.1.

House Bill 5487 would add Section 18n to the Probate Code (MCL 712A.18n); House Bill 5488 would add Section 18o (MCL 712A.18o); House Bill 5489 would add Section 18p (MCL 712A.18p); House Bill 5486 would add Section 18q (MCL 712A.18q); and House Bill 5484 would add Section 18r (MCL 712A.18r).

FISCAL IMPACT:

House Bill 5175. Community Mental Health Services Programs (CMHSPs) would incur local and state costs, to the extent, that: CMHSPs are required to hire "qualified examiners" who are defined as mental health professionals that have the necessary skills and training to conduct competency evaluations for juveniles as ordered by the courts; services rendered by the "qualified examiners" are not fully reimbursed by the courts; and CMHSPs are ordered by the courts to pay the cost of the competency evaluations.

The bill would have an indeterminate fiscal impact on the judicial branch. Any fiscal impact would be the result of conducting and processing a juvenile competency hearing. The court would realize administrative costs in conducting a hearing on juvenile

competency. The cost of the competency evaluation ordered by the court would be determined by the judge in each case.

House Bill 5482. CMHSPs would incur local and state costs, to the extent, that CMHSPs are required to hire "qualified restoration providers" who are defined as mental health professionals that have the necessary skills and training to provide restoration services for juveniles as ordered by the courts.

House Bill 5483. The bill would have an indeterminate fiscal impact on the judicial branch. Issuance of a restoration order may increase administrative costs to the court. In those instances where dismissal is warranted, the court would likely realize cost savings.

House Bill 5486. The bill would have an indeterminate fiscal impact on the judicial branch. Any fiscal impact would be the result of costs to the court for conducting a competency hearing. The court will determine who must pay the cost of the competency evaluation ordered by the court.

House Bills 5484-5485 and 5487-5489. The bills will have no fiscal impact on the judicial branch.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.