

JUVENILE COMPETENCY

House Bill 5175 (Substitute H-2)

Sponsor: Rep. Tonya Schuitmaker

House Bill 5482 (Substitute H-2)

Sponsor: Rep. Lesia Liss

House Bill 5483 (Substitute H-2)

Sponsor: Rep. Eileen Kowall

House Bill 5484 as introduced

Sponsor: Rep. Kate Segal

House Bill 5485 (Substitute H-2)

Sponsor: Rep. Ellen Cogen Lipton

House Bill 5486 (Substitute H-1)

Sponsor: Rep. Hugh Crawford

House Bill 5487 (Substitute H-1)

Sponsor: Rep. Pam Byrnes

House Bill 5488 as introduced

Sponsor: Rep. Joan Bauer

House Bill 5489 as introduced

Sponsor: Rep. Jennifer Haase

Committee: Judiciary

Complete to 6-9-10

A SUMMARY OF HOUSE BILL 5175 AND HOUSE BILLS 5482-5489 WITH PROPOSED SUBSTITUTES

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 is 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, with House Bill 5485 also tie-barred to House Bill 5175. 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.
- Define "incompetent to proceed" to mean that a juvenile, based on age-appropriate norms, lacked a reasonable degree of rational and factual understanding of the proceeding and was unable to understand right from wrong,

sufficiently understand the charges, and/or consult with and assist his or her attorney in preparing a defense in a meaningful manner.

- 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.
- Require competency evaluations to be conducted by qualified forensic mental health examiners. A court would have the final determination as to who was a qualified forensic mental health examiner.
- Define "qualified forensic mental health examiner." Initially, the term would apply to a psychiatrist or psychologist who performs forensic mental health examinations for the purpose of determining competency and who possesses experience or training in forensic evaluation procedures for juveniles; evaluation and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities; clinical understanding of child and adolescent development, and familiarity with competency standards in the state. Beginning 12 months after House Bill 5175 took effect, the term would also include a social worker, counselor, or limited license psychologist who met the certification requirements under a program required to be developed and implemented (not later than 12 months after the bill took effect) to certify individuals as qualified forensic mental health examiners. A psychiatrist or psychologist could, but would not be required to, seek certification under this program.
- Define "qualified restoration provider" as an individual who the court determines, as the result of the opinion provided by the qualified forensic mental health examiner, to have the skills and training necessary to provide restoration services, as specified in the legislation. Measures would have to be taken to avoid conflicts of interest among agencies or individuals providing evaluation and restoration. "Restoration" would mean the process by which education or treatment resulted in the juvenile becoming competent to proceed.
- Allow a court the discretion to order mental health services to be provided by various public entities for up to 60 days if the report from the competency evaluation reported a substantial probability that the juvenile was unable to be restored to competency due to serious emotional disturbance. The entity providing the services would have to submit a report to the court and the qualified forensic mental health examiner at least 14 days before the order expired. Based on that report, the court could renew the order for another period of treatment not to exceed 60 days or determine custody of the juvenile and dismiss the charges.
- 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, require the juvenile's attorney to provide certain records or information relevant to the competency evaluation (except as prohibited by law), and require both attorneys to submit information relevant to the competency evaluation to the qualified forensic mental health examiner.
- Allow any party to retain its own qualified forensic mental health 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 forensic mental health 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, if possible, within a projected time frame. The opinion would have to include an assessment of whether the juvenile were a threat to self or others and required emergency intervention.
- Within 30 days of the filing of a competency report by a qualified forensic mental health 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 a juvenile determined to be incompetent to proceed or if there was 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 a court finding determined the juvenile may be restored to competency in the foreseeable future, require the charges to be dismissed if the offense were a traffic offense or misdemeanor other than a serious misdemeanor, allow a court to dismiss the charges or suspend the proceedings if the offense were a serious misdemeanor, and require the proceedings to be further suspended if the offense were a felony.
- Require reports by qualified forensic mental health 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" and "least restrictive environment."

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

House Bill 5482 would add two new sections to the Mental Health Code, MCL 330.1060c and 330.1074, and amend several other sections to conform existing provisions regarding hospitalization of minors for mental health services to the proposed changes.

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). House Bill 5484 would add Section 18r (MCL 712A.18r).

FISCAL IMPACT:

House Bill 5175 and **House Bill 5482**. A 2004 Michigan Court of Appeals opinion has ruled the following: the probate court has no authority under the Mental Health Code to order mental health care and treatment of a juvenile who was determined incompetent to stand trial and whose condition will not improve; and the probate court has no authority to order a county community mental health authority to arrange and pay for an examination to determine if a juvenile is competent to stand trial and for treatment if found incompetent. Therefore, HB 5175 (H-2) and HB 5482 (H-2) might impose local and state costs on community mental health services programs (CMHSPs) if they are seen as overturning the Court of Appeals opinion. Currently, the probate courts contract privately with "qualified forensic mental health examiners" and "qualified restoration providers" or hire "qualified forensic mental health examiners" and "qualified restoration providers."

House Bill 5175 (H-2) may increase state costs as it requires the Department of Community Health (DCH), in conjunction with the Boards of Counseling and Social

Work within DCH, the Michigan Counseling Association, and the Michigan Chapter of the National Association of Social Workers, to develop and implement a program to certify individuals as "qualified forensic mental health examiners."

House Bill 5175 (H-2) 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. Furthermore, there may be additional costs to the local prosecutor's offices as well as the public defender offices (if a public defender were involved) for complying with the competency evaluation order.

House Bill 5483. The bill would have an indeterminate fiscal impact on the judicial branch. Issuance and processing a restoration order may increase administrative costs for 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.