

# HOUSE BILL No. 5174

July 14, 2009, Introduced by Reps. Segal and Schuitmaker and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled  
"Probate code of 1939,"  
by amending section 1 of chapter XIIA (MCL 712A.1), as amended by  
2001 PA 211, and by adding sections 18n, 18o, 18p, 18q, and 18r to  
chapter XIIA.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### CHAPTER XIIA

Sec. 1. (1) As used in this chapter:

(a) "Civil infraction" means that term as defined in section  
113 of the revised judicature act of 1961, 1961 PA 236, MCL  
600.113.

(B) "COMPETENCY EVALUATION" MEANS A COURT-ORDERED EXAMINATION  
OF A JUVENILE DIRECTED TO DEVELOPING INFORMATION RELEVANT TO A  
DETERMINATION OF HIS OR HER COMPETENCY TO PROCEED AT A PARTICULAR  
STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO IS THE SUBJECT

1 OF A DELINQUENCY PETITION.

2 (C) "COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER  
3 A JUVENILE IS COMPETENT TO PROCEED.

4 (D) ~~(b)~~—"County juvenile agency" means that term as defined in  
5 section 2 of the county juvenile agency act, 1998 PA 518, MCL  
6 45.622.

7 (E) ~~(e)~~—"Court" means the family division of circuit court.

8 (F) ~~(d)~~—"Foreign protection order" means that term as defined  
9 in section 2950h of the revised judicature act of 1961, 1961 PA  
10 236, MCL 600.2950h.

11 (G) "INCOMPETENT TO PROCEED" MEANS THAT A JUVENILE LACKS A  
12 REASONABLE DEGREE OF RATIONAL AS WELL AS FACTUAL UNDERSTANDING OF  
13 THE PROCEEDING, IS UNABLE TO UNDERSTAND THE NATURE OR OBJECT OF THE  
14 PROCEEDING, AND IS UNABLE TO ASSIST IN HIS OR HER DEFENSE IN A  
15 MEANINGFUL WAY. A DETERMINATION OF JUVENILE INCOMPETENCY MUST BE  
16 MADE IN LIGHT OF ADOLESCENT NORMS. ELEMENTS OF JUVENILE  
17 INCOMPETENCY INCLUDE, BUT ARE NOT LIMITED TO, MENTAL OR PHYSICAL  
18 DISORDER, MENTAL RETARDATION OR DEVELOPMENTAL DISABILITY, COGNITIVE  
19 OR INTELLECTUAL DEFICIT, IMMATURITY, OR OTHER FUNCTIONAL DEFICIT.

20 (H) "JUVENILE" MEANS A PERSON WHO IS LESS THAN 17 YEARS OF AGE  
21 WHO IS THE SUBJECT OF A DELINQUENCY PETITION.

22 (I) "LEAST RESTRICTIVE ENVIRONMENT" MEANS A SUPERVISED  
23 COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE JUVENILE'S  
24 PARENT, GUARDIAN, RELATIVE, OR A FACILITY OR CONDITIONS OF  
25 TREATMENT THAT IS A RESIDENTIAL OR INSTITUTIONAL PLACEMENT ONLY  
26 UTILIZED AS A LAST RESORT BASED ON THE BEST INTEREST OF THE  
27 JUVENILE OR FOR REASONS OF PUBLIC SAFETY.

1           (J) "LICENSED CHILD CARING INSTITUTION" MEANS THAT A CHILD  
2 CARING INSTITUTION AS DEFINED AND LICENSED UNDER 1973 PA 116, MCL  
3 722.111 TO 722.128.

4           (K) ~~(e)~~—"MCI" means the Michigan children's institute created  
5 and established by 1935 PA 220, MCL 400.201 to 400.214.

6           (L) ~~(f)~~—"Personal protection order" means a personal protection  
7 order issued under section 2950 or 2950a of the revised judicature  
8 act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes  
9 a valid foreign protection order.

10           (M) "QUALIFIED EXAMINER" MEANS A MENTAL HEALTH PROFESSIONAL AS  
11 DEFINED IN SECTION 100B OF THE MENTAL HEALTH CODE, 1978 PA 258, MCL  
12 330.1100B, WHO THE COURT DETERMINES HAS THE SKILLS AND TRAINING  
13 NECESSARY TO CONDUCT THE COMPETENCY EVALUATION. THE SKILLS  
14 NECESSARY TO CONDUCT THE COMPETENCY EVALUATION SHALL INCLUDE, BUT  
15 ARE NOT LIMITED TO, KNOWLEDGE, SKILL, TRAINING, AND EXPERIENCE IN  
16 ALL OF THE FOLLOWING:

17           (i) THE EVALUATION OR TREATMENT OF CHILDREN AND ADOLESCENTS  
18 WITH SERIOUS EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR  
19 DEVELOPMENTAL DISABILITIES.

20           (ii) CLINICAL UNDERSTANDING OF CHILD DEVELOPMENT AND ADOLESCENT  
21 DEVELOPMENT.

22           (iii) FORENSIC EVALUATION PROCEDURES FOR JUVENILES THROUGH  
23 FORMAL INSTRUCTION, PROFESSIONAL SUPERVISION, OR BOTH.

24           (iv) FAMILIARITY WITH COMPETENCY STANDARDS IN THIS STATE.

25           (N) "RESTORATION" MEANS THAT A JUVENILE IS NO LONGER  
26 INCOMPETENT TO PROCEED.

27           (O) "SERIOUS MISDEMEANOR" MEANS THAT TERM AS DEFINED IN SECTION

1 61 OF THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA  
2 87, MCL 780.811.

3 (P) ~~(g)~~—"Valid foreign protection order" means a foreign  
4 protection order that satisfies the conditions for validity  
5 provided in section 2950i of the revised judicature act of 1961,  
6 1961 PA 236, MCL 600.2950i.

7 (2) Except as otherwise provided, proceedings under this  
8 chapter are not criminal proceedings.

9 (3) This chapter shall be liberally construed so that each  
10 juvenile coming within the court's jurisdiction receives the care,  
11 guidance, and control, preferably in his or her own home, conducive  
12 to the juvenile's welfare and the best interest of the state. If a  
13 juvenile is removed from the control of his or her parents, the  
14 juvenile shall be placed in care as nearly as possible equivalent  
15 to the care that should have been given to the juvenile by his or  
16 her parents.

17 SEC. 18N. (1) A JUVENILE 10 YEARS OF AGE OR OLDER IS PRESUMED  
18 COMPETENT TO PROCEED UNLESS THE ISSUE OF COMPETENCY IS RAISED BY A  
19 PARTY. A JUVENILE LESS THAN 10 YEARS OF AGE IS PRESUMED INCOMPETENT  
20 TO PROCEED.

21 (2) THE COURT MAY ORDER, OR A JUVENILE, THE JUVENILE'S  
22 ATTORNEY, OR THE PROSECUTING ATTORNEY MAY REQUEST, A COMPETENCY  
23 EVALUATION TO DETERMINE WHETHER THE JUVENILE IS INCOMPETENT TO  
24 PROCEED IF THE JUVENILE IS BEING CHARGED AS A JUVENILE IN THE COURT.  
25 THE ISSUE OF THE JUVENILE'S COMPETENCY MAY BE RAISED BY THE COURT  
26 BEFORE WHICH THE PROCEEDINGS ARE PENDING OR BEING HELD, OR BY MOTION  
27 OF A PARTY, AT ANY TIME DURING THE PROCEEDING.

1           (3) AT THE TIME AN ISSUE OF THE JUVENILE'S COMPETENCY IS  
2 RAISED, THE DELINQUENCY PROCEEDING SHALL TEMPORARILY CEASE UNTIL  
3 DETERMINATION IS MADE ON THE COMPETENCE OF THE JUVENILE ACCORDING TO  
4 THIS ACT.

5           SEC. 18O. (1) A COMPETENCY EVALUATION ORDERED UNDER SECTION 18N  
6 OF THIS CHAPTER SHALL BE CONDUCTED BY A QUALIFIED EXAMINER. THE  
7 QUALIFIED EXAMINER SHALL MAKE A FINDING AS TO WHETHER THE JUVENILE IS  
8 COMPETENT TO PROCEED. THE COURT HAS THE FINAL DETERMINATION AS TO WHO  
9 IS A QUALIFIED EXAMINER.

10          (2) THIS SECTION DOES NOT PROHIBIT ANY PARTY FROM RETAINING THE  
11 PARTY'S OWN QUALIFIED EXAMINER TO CONDUCT ADDITIONAL EVALUATIONS AT  
12 THE PARTY'S OWN EXPENSE.

13          (3) THE COMPETENCY EVALUATION SHALL BE CONDUCTED IN THE LEAST  
14 RESTRICTIVE ENVIRONMENT. THERE IS A PRESUMPTION IN FAVOR OF  
15 CONDUCTING A COMPETENCY EVALUATION WHILE THE JUVENILE REMAINS IN THE  
16 CUSTODY OF A PARENT OR LEGAL GUARDIAN, UNLESS REMOVAL FROM THE HOME  
17 IS NECESSARY FOR THE BEST INTERESTS OF THE JUVENILE, FOR REASONS OF  
18 PUBLIC SAFETY, OR BECAUSE THE PARENT OR GUARDIAN HAS REFUSED TO  
19 COOPERATE IN THE COMPETENCY EVALUATION PROCESS.

20          SEC. 18P. (1) THE COURT SHALL ORDER THE PROSECUTING ATTORNEY  
21 TO PROVIDE TO THE JUVENILE'S ATTORNEY ALL INFORMATION RELATED TO  
22 COMPETENCY AND SHALL ORDER THE PROSECUTING ATTORNEY AND JUVENILE'S  
23 ATTORNEY TO SUBMIT TO THE QUALIFIED EXAMINER ANY INFORMATION  
24 CONSIDERED RELEVANT TO THE COMPETENCY EVALUATION, INCLUDING, BUT  
25 NOT LIMITED TO:

26           (A) THE NAMES AND ADDRESSES OF ALL ATTORNEYS INVOLVED.

27           (B) INFORMATION ABOUT THE ALLEGED OFFENSE.

1 (C) ANY INFORMATION ABOUT THE JUVENILE'S BACKGROUND IN THE  
2 PROSECUTING ATTORNEY'S POSSESSION.

3 (2) THE COURT SHALL REQUIRE THE JUVENILE'S ATTORNEY TO PROVIDE  
4 ANY AVAILABLE RECORDS OF THE JUVENILE OR OTHER INFORMATION RELEVANT  
5 TO THE EVALUATION, INCLUDING, BUT NOT LIMITED TO, ANY OF THE  
6 FOLLOWING:

7 (A) PSYCHIATRIC RECORDS.

8 (B) SCHOOL RECORDS.

9 (C) MEDICAL RECORDS.

10 (D) CHILD PROTECTIVE SERVICES RECORDS.

11 (3) ALL INFORMATION REQUIRED UNDER SUBSECTIONS (1) AND (2)  
12 MUST BE PROVIDED TO THE QUALIFIED EXAMINER WITHIN 10 DAYS AFTER THE  
13 COURT ISSUES THE ORDER FOR THE COMPETENCY EVALUATION. IF POSSIBLE,  
14 THE INFORMATION REQUIRED UNDER THIS SECTION SHALL BE RECEIVED  
15 BEFORE THE JUVENILE'S COMPETENCY EVALUATION OR THE COMMENCEMENT OF  
16 THE COMPETENCY EVALUATION IN AN OUTPATIENT SETTING.

17 (4) A QUALIFIED EXAMINER WHO CONDUCTS A COMPETENCY EVALUATION  
18 SHALL SUBMIT A WRITTEN REPORT TO THE COURT NOT LATER THAN 30 DAYS  
19 FROM RECEIPT OF THE COURT ORDER REQUIRING THE COMPETENCY  
20 EVALUATION. THE REPORT SHALL CONTAIN, BUT NOT BE LIMITED TO, THE  
21 FOLLOWING:

22 (A) A DESCRIPTION OF THE NATURE, CONTENT, AND EXTENT OF THE  
23 EXAMINATION, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

24 (i) A DESCRIPTION OF ASSESSMENT PROCEDURES, TECHNIQUES, AND  
25 TESTS USED.

26 (ii) AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS  
27 REVIEWED.

1           (iii) SOCIAL, CLINICAL, DEVELOPMENTAL, AND LEGAL HISTORY AS  
2 AVAILABLE.

3           (B) A CLINICAL ASSESSMENT THAT INCLUDES, BUT IS NOT LIMITED  
4 TO, THE FOLLOWING:

5           (i) A MENTAL STATUS EXAMINATION.

6           (ii) THE DIAGNOSIS AND FUNCTIONAL IMPACT OF MENTAL ILLNESS,  
7 DEVELOPMENTAL DISABILITY, OR COGNITIVE DEFICIENCY. IF THE JUVENILE  
8 IS TAKING MEDICATION, THE IMPACT OF THE MEDICATION ON THE  
9 JUVENILE'S MENTAL STATE AND BEHAVIOR.

10          (iii) AN ASSESSMENT OF THE JUVENILE'S INTELLIGENCE.

11          (iv) THE JUVENILE'S AGE, MATURITY LEVEL, DEVELOPMENTAL STAGE,  
12 AND DECISION-MAKING ABILITIES.

13          (v) WHETHER THE JUVENILE HAS ANY OTHER FACTOR THAT AFFECTS  
14 COMPETENCE.

15          (C) A DESCRIPTION OF ABILITIES AND DEFICITS IN THE FOLLOWING  
16 MENTAL COMPETENCY FUNCTIONS RELATED TO THE JUVENILE'S COMPETENCE TO  
17 PROCEED:

18          (i) THE ABILITY TO FACTUALLY AS WELL AS RATIONALLY UNDERSTAND  
19 AND APPRECIATE THE NATURE AND OBJECT OF THE PROCEEDINGS, INCLUDING,  
20 BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

21          (A) AN ABILITY TO UNDERSTAND THE ROLE OF THE PARTICIPANTS IN  
22 THE COURT PROCESS, INCLUDING, THE ROLES OF JUDGE, THE JUVENILE'S  
23 ATTORNEY, THE PROSECUTING ATTORNEY, THE PROBATION OFFICER,  
24 WITNESSES, AND THE JURY, AND TO UNDERSTAND THE ADVERSARIAL NATURE  
25 OF THE PROCESS.

26          (B) AN ABILITY TO APPRECIATE THE CHARGES AND UNDERSTAND THE  
27 SERIOUSNESS OF THE CHARGES.

1 (C) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE  
2 LIKELY OUTCOMES.

3 (D) AN ABILITY TO EXTEND THINKING INTO THE FUTURE.

4 (ii) THE ABILITY TO RENDER MEANINGFUL ASSISTANCE TO THE  
5 JUVENILE'S ATTORNEY IN THE PREPARATION OF THE CASE, INCLUDING, BUT  
6 NOT LIMITED TO, ALL OF THE FOLLOWING:

7 (A) AN ABILITY TO DISCLOSE TO AN ATTORNEY A REASONABLY  
8 COHERENT DESCRIPTION OF FACTS AND EVENTS PERTAINING TO THE CHARGE,  
9 AS PERCEIVED BY THE JUVENILE.

10 (B) AN ABILITY TO CONSIDER THE IMPACT OF HIS OR HER ACTION ON  
11 OTHERS.

12 (C) VERBAL ARTICULATION ABILITIES OR THE ABILITY TO EXPRESS  
13 HIMSELF OR HERSELF IN A REASONABLE AND COHERENT MANNER.

14 (D) LOGICAL DECISION-MAKING ABILITIES, PARTICULARLY  
15 MULTIFACTORED PROBLEM-SOLVING OR THE ABILITY TO TAKE SEVERAL  
16 FACTORS INTO CONSIDERATION IN MAKING A DECISION.

17 (E) AN ABILITY TO REASON ABOUT AVAILABLE OPTIONS BY WEIGHING  
18 THE CONSEQUENCES, INCLUDING WEIGHING PLEAS, WAIVERS, AND  
19 STRATEGIES.

20 (F) AN ABILITY TO DISPLAY APPROPRIATE COURTROOM BEHAVIOR.

21 (5) THE QUALIFIED EXAMINER SHALL PROVIDE THE COURT WITH AN  
22 OPINION ABOUT THE JUVENILE'S COMPETENCY TO PROCEED. IF THE  
23 QUALIFIED EXAMINER DETERMINES THAT THE JUVENILE IS INCOMPETENT TO  
24 PROCEED, THE EXAMINER WILL COMMENT ON THE NATURE OF MENTAL DISEASE  
25 OR DEFECT, THE PROGNOSIS, AND THE SERVICES NEEDED TO RESTORE THE  
26 JUVENILE TO COMPETENCY, IF POSSIBLE, WITHIN A PROJECTED TIME FRAME.  
27 THE OPINION SHALL INCLUDE AN ASSESSMENT OF WHETHER THE JUVENILE IS



1 A THREAT TO SELF OR OTHERS AND REQUIRES EMERGENCY INTERVENTION.

2 (6) THE COURT IN ITS DISCRETION MAY, FOR GOOD CAUSE, GRANT THE  
3 QUALIFIED EXAMINER A 30-DAY EXTENSION IN FILING THE COMPETENCY  
4 EVALUATION REPORT.

5 (7) COPIES OF THE WRITTEN REPORT SHALL BE PROVIDED BY THE COURT  
6 TO THE JUVENILE'S ATTORNEY, THE PROSECUTING ATTORNEY, AND ANY  
7 GUARDIAN AD LITEM FOR THE JUVENILE NOT LATER THAN 5 WORKING DAYS  
8 AFTER RECEIPT OF THE REPORT BY THE COURT.

9 SEC. 18Q. (1) NOT LATER THAN 30 DAYS AFTER A REPORT IS FILED  
10 UNDER SECTION 18P OF THIS CHAPTER, THE COURT SHALL HOLD A HEARING TO  
11 DETERMINE IF A JUVENILE IS COMPETENT TO PROCEED. AT THE HEARING, THE  
12 PARTIES MAY INTRODUCE OTHER EVIDENCE REGARDING THE JUVENILE'S MENTAL  
13 CONDITION OR MAY SUBMIT THE MATTER BY WRITTEN STIPULATION BASED ON  
14 THE FILED REPORT.

15 (2) UPON A FINDING BY THE COURT THAT A JUVENILE IS INCOMPETENT  
16 TO PROCEED OR A FINDING THAT THERE IS A SUBSTANTIAL PROBABILITY THAT  
17 THE JUVENILE WILL REMAIN INCOMPETENT TO PROCEED FOR THE FORESEEABLE  
18 FUTURE OR WITHIN THE PERIOD OF THE RESTORATION ORDER, THE COURT SHALL  
19 DISMISS THE CHARGES AGAINST THE JUVENILE AND MAY DETERMINE CUSTODY OF  
20 THE JUVENILE.

21 (3) THE QUALIFIED EXAMINER APPOINTED BY THE COURT TO DETERMINE  
22 THE JUVENILE'S MENTAL CONDITION SHALL BE ALLOWED REASONABLE FEES FOR  
23 SERVICES RENDERED. THE COURT SHALL DETERMINE WHO SHALL PAY THE COST  
24 OF THE COMPETENCY EVALUATION ORDERED BY THE COURT.

25 SEC. 18R. (1) THE CONSTITUTIONAL PROTECTIONS AGAINST SELF-  
26 INCRIMINATION APPLY TO ALL COMPETENCY EVALUATIONS.

27 (2) ANY EVIDENCE OR STATEMENT OBTAINED DURING A COMPETENCY

1 EVALUATION IS NOT ADMISSIBLE IN ANY PROCEEDING TO DETERMINE THE  
2 JUVENILE'S GUILT OR INNOCENCE UNLESS THE JUVENILE PRESENTS EVIDENCE  
3 THAT IS INTENDED TO REBUT THE PRESUMPTION OF CRIMINAL  
4 RESPONSIBILITY.

5 (3) A STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY  
6 EVALUATION OR EVIDENCE RESULTING FROM THE STATEMENT CONCERNING ANY  
7 OTHER EVENT OR TRANSACTION IS NOT ADMISSIBLE IN ANY PROCEEDING TO  
8 DETERMINE THE JUVENILE'S GUILT OR INNOCENCE OF ANY OTHER CHARGES THAT  
9 ARE BASED ON THOSE EVENTS OR TRANSACTIONS.

10 (4) A STATEMENT THAT THE JUVENILE MAKES DURING A COMPETENCY  
11 EVALUATION MAY NOT BE USED FOR ANY PURPOSE WITHOUT THE WRITTEN  
12 CONSENT OF THE JUVENILE OR THE JUVENILE'S GUARDIAN. THE JUVENILE OR  
13 THE JUVENILE'S GUARDIAN MUST HAVE AN OPPORTUNITY TO CONSULT WITH  
14 HIS OR HER ATTORNEY BEFORE GIVING CONSENT.

15 (5) AFTER THE CASE PROCEEDS TO ADJUDICATION OR THE JUVENILE IS  
16 FOUND TO BE UNABLE TO REGAIN COMPETENCE, THE COURT SHALL ORDER ALL  
17 OF THE REPORTS THAT ARE SUBMITTED ACCORDING TO SECTIONS 18N TO 18Q  
18 OF THIS CHAPTER TO BE SEALED. THE COURT MAY ORDER THAT THE REPORTS  
19 BE OPENED ONLY AS FOLLOWS:

20 (A) FOR FURTHER COMPETENCY OR CRIMINAL RESPONSIBILITY  
21 EVALUATIONS.

22 (B) FOR STATISTICAL ANALYSIS.

23 (C) IF THE RECORDS ARE CONSIDERED TO BE NECESSARY TO ASSIST IN  
24 MENTAL HEALTH TREATMENT ORDERED ACCORDING TO THE MENTAL HEALTH  
25 CODE, 1974 PA 258, MCL 330.1001 TO 330.2106.

26 (D) FOR DATA GATHERING.

27 (E) FOR SCIENTIFIC STUDY OR OTHER LEGITIMATE RESEARCH.

1           (6) IF THE COURT ORDERS REPORTS TO BE OPEN FOR THE PURPOSES OF  
2     STATISTICAL ANALYSIS, DATA GATHERING, OR SCIENTIFIC STUDY ACCORDING  
3     TO SUBSECTION (5), THE REPORTS SHALL REMAIN CONFIDENTIAL.

4           (7) ANY STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY  
5     EVALUATION, OR ANY EVIDENCE RESULTING FROM THAT STATEMENT, IS NOT  
6     SUBJECT TO DISCLOSURE.