

HOUSE BILL No. 5175

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

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding sections 1060, 1060a, 1060b,
1062, 1064, 1066, 1068, and 1070.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CRIMINAL PROVISIONS REGARDING JUVENILES

2 SEC. 1060. FOR THE PURPOSES OF SECTIONS 1060A TO 1070, THE
3 WORDS AND PHRASES DEFINED IN SECTIONS 1060A AND 1060B HAVE THE
4 MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

5 SEC. 1060A. (1) "COMPETENCY EVALUATION" MEANS A COURT-ORDERED
6 EXAMINATION OF A JUVENILE DIRECTED TO DEVELOPING INFORMATION
7 RELEVANT TO A DETERMINATION OF HIS OR HER COMPETENCY TO PROCEED AT
8 A PARTICULAR STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO

1 IS THE SUBJECT OF A DELINQUENCY PETITION.

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

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

13 (4) "JUVENILE" MEANS A PERSON WHO IS LESS THAN 17 YEARS OF AGE
14 WHO IS THE SUBJECT OF A DELINQUENCY PETITION.

15 SEC. 1060B. (1) "LEAST RESTRICTIVE ENVIRONMENT" MEANS A
16 SUPERVISED COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE
17 JUVENILE'S PARENT, GUARDIAN, RELATIVE, OR A FACILITY OR CONDITIONS
18 OF TREATMENT THAT IS A RESIDENTIAL OR INSTITUTIONAL PLACEMENT ONLY
19 UTILIZED AS A LAST RESORT BASED ON THE BEST INTEREST OF THE
20 JUVENILE OR FOR REASONS OF PUBLIC SAFETY.

21 (2) "LICENSED CHILD CARING INSTITUTION" MEANS THAT A CHILD
22 CARING INSTITUTION AS DEFINED AND LICENSED UNDER 1973 PA 116, MCL
23 722.111 TO 722.128.

24 (3) "QUALIFIED EXAMINER" MEANS A MENTAL HEALTH PROFESSIONAL
25 WHO THE COURT DETERMINES HAS THE SKILLS AND TRAINING NECESSARY TO
26 CONDUCT THE COMPETENCY EVALUATION. THE SKILLS NECESSARY TO CONDUCT
27 THE COMPETENCY EVALUATION SHALL INCLUDE, BUT ARE NOT LIMITED TO,

1 KNOWLEDGE, SKILL, TRAINING, AND EXPERIENCE IN ALL OF THE FOLLOWING:

2 (A) THE EVALUATION OR TREATMENT OF CHILDREN AND ADOLESCENTS
3 WITH SERIOUS EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR
4 DEVELOPMENTAL DISABILITIES.

5 (B) CLINICAL UNDERSTANDING OF CHILD DEVELOPMENT AND ADOLESCENT
6 DEVELOPMENT.

7 (C) FORENSIC EVALUATION PROCEDURES FOR JUVENILES THROUGH
8 FORMAL INSTRUCTION, PROFESSIONAL SUPERVISION, OR BOTH.

9 (D) FAMILIARITY WITH COMPETENCY STANDARDS IN THIS STATE.

10 (4) "RESTORATION" MEANS THAT A JUVENILE IS NO LONGER
11 INCOMPETENT TO PROCEED.

12 (5) "SERIOUS MISDEMEANOR" MEANS THAT TERM AS DEFINED IN SECTION
13 61 OF THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA
14 87, MCL 780.811.

15 SEC. 1062. (1) A JUVENILE 10 YEARS OF AGE OR OLDER IS PRESUMED
16 COMPETENT TO PROCEED UNLESS THE ISSUE OF COMPETENCY IS RAISED BY A
17 PARTY. A JUVENILE LESS THAN 10 YEARS OF AGE IS PRESUMED INCOMPETENT
18 TO PROCEED.

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

26 (3) AT THE TIME AN ISSUE OF THE JUVENILE'S COMPETENCY IS
27 RAISED, THE DELINQUENCY PROCEEDING SHALL TEMPORARILY CEASE UNTIL

1 DETERMINATION IS MADE ON THE COMPETENCE OF THE JUVENILE ACCORDING TO
2 THIS ACT.

3 SEC. 1064. (1) A COMPETENCY EVALUATION ORDERED UNDER SECTION
4 1062 SHALL BE CONDUCTED BY A QUALIFIED EXAMINER. THE QUALIFIED
5 EXAMINER SHALL MAKE A FINDING AS TO WHETHER THE JUVENILE IS COMPETENT
6 TO PROCEED. THE COURT HAS THE FINAL DETERMINATION AS TO WHO IS A
7 QUALIFIED EXAMINER.

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

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

18 SEC. 1066. (1) THE COURT SHALL ORDER THE PROSECUTING ATTORNEY
19 TO PROVIDE TO THE JUVENILE'S ATTORNEY ALL INFORMATION RELATED TO
20 COMPETENCY AND SHALL ORDER THE PROSECUTING ATTORNEY AND JUVENILE'S
21 ATTORNEY TO SUBMIT TO THE QUALIFIED EXAMINER ANY INFORMATION
22 CONSIDERED RELEVANT TO THE COMPETENCY EVALUATION, INCLUDING, BUT
23 NOT LIMITED TO:

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

25 (B) INFORMATION ABOUT THE ALLEGED OFFENSE.

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

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

5 (A) PSYCHIATRIC RECORDS.

6 (B) SCHOOL RECORDS.

7 (C) MEDICAL RECORDS.

8 (D) CHILD PROTECTIVE SERVICES RECORDS.

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

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

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

22 (i) A DESCRIPTION OF ASSESSMENT PROCEDURES, TECHNIQUES, AND
23 TESTS USED.

24 (ii) AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS
25 REVIEWED.

26 (iii) SOCIAL, CLINICAL, DEVELOPMENTAL, AND LEGAL HISTORY AS
27 AVAILABLE.

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

3 (i) A MENTAL STATUS EXAMINATION.

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

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

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

11 (v) WHETHER THE JUVENILE HAS ANY OTHER FACTOR THAT AFFECTS
12 COMPETENCE.

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

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

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

24 (B) AN ABILITY TO APPRECIATE THE CHARGES AND UNDERSTAND THE
25 SERIOUSNESS OF THE CHARGES.

26 (C) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE
27 LIKELY OUTCOMES.

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

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

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

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

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

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

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

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

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

27 (6) THE COURT IN ITS DISCRETION MAY, FOR GOOD CAUSE, GRANT THE

1 QUALIFIED EXAMINER A 30-DAY EXTENSION IN FILING THE COMPETENCY
2 EVALUATION REPORT.

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

7 SEC. 1068. (1) NOT LATER THAN 30 DAYS AFTER A REPORT IS FILED
8 UNDER SECTION 1066, THE COURT SHALL HOLD A HEARING TO DETERMINE IF A
9 JUVENILE IS COMPETENT TO PROCEED. AT THE HEARING, THE PARTIES MAY
10 INTRODUCE OTHER EVIDENCE REGARDING THE JUVENILE'S MENTAL CONDITION OR
11 MAY SUBMIT THE MATTER BY WRITTEN STIPULATION BASED ON THE FILED
12 REPORT.

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

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

23 SEC. 1070. (1) THE CONSTITUTIONAL PROTECTIONS AGAINST SELF-
24 INCRIMINATION APPLY TO ALL COMPETENCY EVALUATIONS.

25 (2) ANY EVIDENCE OR STATEMENT OBTAINED DURING A COMPETENCY
26 EVALUATION IS NOT ADMISSIBLE IN ANY PROCEEDING TO DETERMINE THE
27 JUVENILE'S GUILT OR INNOCENCE UNLESS THE JUVENILE PRESENTS EVIDENCE

1 THAT IS INTENDED TO REBUT THE PRESUMPTION OF CRIMINAL
2 RESPONSIBILITY.

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

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

13 (5) AFTER THE CASE PROCEEDS TO ADJUDICATION OR THE JUVENILE IS
14 FOUND TO BE UNABLE TO REGAIN COMPETENCE, THE COURT SHALL ORDER ALL
15 OF THE REPORTS THAT ARE SUBMITTED ACCORDING TO SECTIONS 1062 TO
16 1068 TO BE SEALED. THE COURT MAY ORDER THAT THE REPORTS BE OPENED
17 ONLY AS FOLLOWS:

18 (A) FOR FURTHER COMPETENCY OR CRIMINAL RESPONSIBILITY
19 EVALUATIONS.

20 (B) FOR STATISTICAL ANALYSIS.

21 (C) IF THE RECORDS ARE CONSIDERED TO BE NECESSARY TO ASSIST IN
22 MENTAL HEALTH TREATMENT ORDERED UNDER THIS ACT.

23 (D) FOR DATA GATHERING.

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

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

1 (7) ANY STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY
2 EVALUATION, OR ANY EVIDENCE RESULTING FROM THAT STATEMENT, IS NOT
3 SUBJECT TO DISCLOSURE.