

# HOUSE BILL No. 5482

September 29, 2009, Introduced by Reps. Liss, Schuitmaker, Kowall, Lipton, Haase, Byrnes, Bauer, Segal and Crawford 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 1060c and 1072.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           SEC. 1060C. (1) "QUALIFIED RESTORATION PROVIDER" MEANS A  
2 MENTAL HEALTH PROFESSIONAL WHO THE COURT DETERMINES HAS THE SKILLS  
3 AND TRAINING NECESSARY TO PROVIDE RESTORATION SERVICES. THE COURT  
4 SHALL TAKE MEASURES TO AVOID ANY CONFLICT OF INTEREST AMONG  
5 AGENCIES OR INDIVIDUALS WHO MAY PROVIDE EVALUATION AND RESTORATION.  
6 THE SKILLS NECESSARY TO CONDUCT RESTORATION SHALL INCLUDE, BUT ARE  
7 NOT LIMITED TO, KNOWLEDGE, SKILL, TRAINING, AND EXPERIENCE IN ALL  
8 OF THE FOLLOWING:

9           (A) THE EDUCATION OR TREATMENT OF CHILDREN AND ADOLESCENTS  
10 WITH SERIOUS EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR

1 DEVELOPMENTAL DISABILITIES.

2 (B) CLINICAL UNDERSTANDING OF CHILD DEVELOPMENT AND ADOLESCENT  
3 DEVELOPMENT.

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

6 (D) FAMILIARITY WITH COMPETENCY STANDARDS AND RESTORATION  
7 PROCEDURES IN THIS STATE.

8 (2) "RESTORATION" MEANS THE PROCESS BY WHICH EDUCATION OR  
9 TREATMENT OF A JUVENILE RESULTS IN THAT JUVENILE BECOMING COMPETENT  
10 TO PROCEED.

11 SEC. 1072. (1) IF THE JUVENILE IS INCOMPETENT TO PROCEED, BUT  
12 THE COURT FINDS THAT THE JUVENILE MAY BE RESTORED TO COMPETENCY IN  
13 THE FORESEEABLE FUTURE, THEN 1 OF THE FOLLOWING APPLIES:

14 (A) IF THE OFFENSE IS A MISDEMEANOR OTHER THAN A SERIOUS  
15 MISDEMEANOR OR A JUVENILE TRAFFIC OFFENSE, THE MATTER SHALL BE  
16 DISMISSED.

17 (B) IF THE OFFENSE IS A SERIOUS MISDEMEANOR, THE COURT MAY  
18 DISMISS THE MATTER OR SUSPEND THE PROCEEDINGS AGAINST THE JUVENILE.

19 (C) IF THE OFFENSE IS A FELONY, THE PROCEEDINGS AGAINST THE  
20 JUVENILE SHALL BE FURTHER SUSPENDED.

21 (2) IF PROCEEDINGS ARE SUSPENDED BECAUSE THE JUVENILE IS  
22 INCOMPETENT TO PROCEED BUT THE COURT FINDS THAT THE JUVENILE MAY BE  
23 RESTORED TO COMPETENCY IN THE FORESEEABLE FUTURE, THEN 1 OF THE  
24 FOLLOWING APPLIES:

25 (A) THE COURT MAY ISSUE A RESTORATION ORDER THAT IS VALID FOR  
26 180 DAYS FROM THE DATE OF THE INITIAL FINDING OF INCOMPETENCY OR  
27 UNTIL 1 OF THE FOLLOWING OCCURS, WHICHEVER OCCURS FIRST:

1           (i) THE RESTORATION PROGRAM SUBMITS A REPORT THAT THE JUVENILE  
2 HAS REGAINED COMPETENCY OR THAT THERE IS NO SUBSTANTIAL PROBABILITY  
3 THAT THE JUVENILE WILL REGAIN COMPETENCY WITHIN THE PERIOD OF THE  
4 ORDER.

5           (ii) THE CHARGES ARE DISMISSED.

6           (iii) THE JUVENILE REACHES 18 YEARS OF AGE.

7           (B) BEFORE ISSUING A RESTORATION ORDER, THE COURT SHALL HOLD A  
8 HEARING TO DETERMINE THE LEAST RESTRICTIVE ALTERNATIVE SETTING FOR  
9 COMPLETION OF THE RESTORATION.

10           (C) FOLLOWING ISSUANCE OF THE RESTORATION ORDER, THE QUALIFIED  
11 RESTORATION PROVIDER SHALL SUBMIT A REPORT TO THE COURT THAT  
12 INCLUDES THE INFORMATION REQUIRED UNDER SECTION 1066. THE REPORT  
13 SHALL BE SUBMITTED TO THE COURT EVERY 90 DAYS, OR SOONER IF AND AT  
14 THE TIME EITHER OF THE FOLLOWING OCCURS:

15           (i) THE QUALIFIED RESTORATION PROVIDER DETERMINES THAT THE  
16 JUVENILE IS NO LONGER INCOMPETENT TO PROCEED.

17           (ii) THE QUALIFIED RESTORATION PROVIDER DETERMINES THAT THERE  
18 IS NO SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL NOT BE  
19 INCOMPETENT TO PROCEED WITHIN THE PERIOD OF THE ORDER.

20           (3) NOT LATER THAN 20 DAYS BEFORE THE EXPIRATION OF THE  
21 INITIAL 180-DAY ORDER, THE QUALIFIED RESTORATION PROVIDER MAY  
22 RECOMMEND TO THE COURT THAT THE RESTORATION ORDER BE RENEWED BY THE  
23 COURT FOR ANOTHER 90 DAYS, IF THERE IS A SUBSTANTIAL PROBABILITY  
24 THAT THE JUVENILE WILL NOT BE INCOMPETENT TO PROCEED WITHIN THE  
25 PERIOD OF THAT RENEWED RESTORATION ORDER. THE COURT MAY RENEW THE  
26 RESTORATION ORDER FOR NOT MORE THAN AN ADDITIONAL 90 DAYS.

27           (4) UPON RECEIPT OF A REPORT THAT THERE IS A SUBSTANTIAL

1 PROBABILITY THAT THE JUVENILE WILL REMAIN INCOMPETENT TO PROCEED  
2 FOR THE FORESEEABLE FUTURE OR WITHIN THE PERIOD OF THE RESTORATION  
3 ORDER, THE COURT SHALL DO BOTH OF THE FOLLOWING:

4 (A) DISMISS THE CHARGES AGAINST THE JUVENILE.

5 (B) DETERMINE CUSTODY OF THE JUVENILE AS FOLLOWS:

6 (i) THE COURT MAY DIRECT THAT CIVIL COMMITMENT PROCEEDINGS BE  
7 INITIATED, AS ALLOWED UNDER SECTION 498D.

8 (ii) IF THE COURT DETERMINES THAT COMMITMENT PROCEEDINGS ARE  
9 INAPPROPRIATE, THE JUVENILE SHALL BE RELEASED TO THE JUVENILE'S  
10 PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN UNDER CONDITIONS  
11 CONSIDERED APPROPRIATE TO THE COURT.