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BILL ANALYSIS



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House Bill 4555 (Substitute H-3 as passed by the House)
Sponsor: Representative Ellen Cogen Lipton
House Committee: Families, Children, and Seniors

CONTENT

The bill would amend the Mental Health Code to do the following regarding juveniles subject to a delinquency petition:

- Establish a presumption of competence to proceed for a juvenile who was 10 years of age or older, and a presumption of incompetence for a juvenile who was under 10.
- Allow a court to order, or a party to request, a competency evaluation to determine whether a juvenile was incompetent to proceed if he or she were the subject of a delinquency petition in court.
- Establish standards for conducting a competency evaluation of a juvenile, including a requirement that an evaluation be conducted by a qualified juvenile forensic mental health examiner.
- Require a competency evaluation to be based on a Juvenile Adjudicative Competence Interview or another interview method approved by the court.
- Allow any party to retain its own qualified juvenile forensic mental health examiner to conduct a competency evaluation.
- Require the prosecuting attorney and the juvenile's attorney to give certain information to the qualified juvenile examiner.
- Require a qualified juvenile examiner to submit a written report to the court within 30 days of receiving a court order requiring evaluation, and specify assessments and information that the report would have to include.
- Require the court to hold a juvenile competency hearing within 30 days after a qualified juvenile examiner's competency report was filed.
- Require a court to dismiss charges against the juvenile, with prejudice, if the court found a juvenile to be incompetent to proceed and that there was a substantial probability that he or she would remain incompetent to proceed for the foreseeable future.
- Specify options for the court if a juvenile were incompetent to proceed but he or she could be restored to competency in the foreseeable future, including issuing a restoration order that would be valid for 60 days.
- Require a qualified restoration provider to report to the court and the qualified forensic mental health examiner every 30 days, or sooner under certain circumstances, after a restoration order was issued.
- Allow the qualified restoration provider to recommend that the court renew the restoration order for another 60 days, if there were a substantial probability that the juvenile would not be incompetent to proceed within that period, but limit the restoration order and any renewal to 120 days.
- Require the court to dismiss charges against the juvenile, and either direct civil commitment proceedings to be initiated under the Mental Health Code or release the juvenile to his parent or guardian, upon receiving a report that the juvenile likely would remain incompetent to proceed for the foreseeable future.

- Allow a court to order mental health services to be provided to the juvenile, and retain jurisdiction over the juvenile, upon receiving a report that there was a substantial probability that the juvenile would be unable to be restored due to serious emotional disturbance.
- Specify that protections against self-incrimination would apply to all competency evaluations; evidence obtained during a competency evaluation would not be admissible to determine the juvenile's responsibility; and the juvenile's statements in a competency hearing would not be subject to disclosure.

The bill also would require the Department of Community Health, within 18 months after the bill's effective date, to review and endorse a training program for juvenile forensic mental health examiners who provided juvenile competency exams.

The bill is tie-barred to Senate Bill 246, which would make similar changes to the juvenile code.

MCL 330.1498d

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 4555 (H-3) and Senate Bill 246 could lead to indeterminate cost increases for the Department of Community Health (DCH) and the Department of Human Services (DHS). There also would be a potential fiscal impact on county governments. The bills would allow courts to order that juveniles be provided mental health services by the DCH, the DHS, a county department of human services, or a local community mental health services program (CMHSP). Because CMHSPs are funded by the State and by county governments, any court orders would either increase costs or reduce the availability of services for other CMHSP clients.

There also would be administrative costs for the DCH, as the legislation would require the DCH to oversee a training program for juvenile forensic mental health examiners.

In addition, the bills would have an indeterminate fiscal impact on local courts. In accordance with the guidelines set forth in the bills, the courts would be tasked with appointing and reasonably compensating a "qualified juvenile forensic mental health examiner" as needed in juvenile delinquency cases. This task would not be an entirely new liability for local courts, but by providing uniform guidelines, the bills could result in more requests for competency examinations. Some courts already may have arrangements with experienced examiners, whether they have an examiner on staff or have arrangements with their local community mental health agency. Small jurisdictions, which may see cases involving juvenile competency less frequently, may need to make arrangements on a case-by-case basis.

Date Completed: 12-6-12

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