

SUBSTITUTE FOR
HOUSE BILL NO. 4555

A bill to amend 1974 PA 258, entitled "Mental health code," by amending sections 498d, 498e, and 498h (MCL 330.1498d, 330.1498e, and 330.1498h), section 498d as amended by 1998 PA 524, section 498e as amended by 1996 PA 588, and section 498h as amended by 2000 PA 57, and by adding sections 1060, 1060a, 1060b, 1060c, 1062, 1064, 1066, 1068, 1070, 1072, and 1074.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 498d. (1) Subject to section 498e and except as otherwise
2 provided in this chapter, **SECTION 1074, AND SECTION 18S OF CHAPTER**
3 **XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18S,** a
4 minor of any age may be hospitalized if both of the following
5 conditions are met:

6 (a) The minor's parent, guardian, or a person acting in loco

1 parentis for the minor or, in compliance with subsection (2) or
2 (3), the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** or
3 county juvenile agency, as applicable, requests hospitalization of
4 the minor under this chapter.

5 (b) The minor is found to be suitable for hospitalization.

6 (2) The ~~family independence agency~~ **DEPARTMENT OF HUMAN**
7 **SERVICES** may request hospitalization of a minor who is committed to
8 the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** under
9 1935 PA 220, MCL 400.201 to 400.214.

10 (3) As applicable, the ~~family independence agency~~ **DEPARTMENT**
11 **OF HUMAN SERVICES** may request hospitalization of, or the county
12 juvenile agency may request an evaluation for hospitalization of, a
13 minor who is 1 of the following:

14 (a) A ward of the court under chapter X or XIIA of **THE PROBATE**
15 **CODE OF 1939**, 1939 PA 288, MCL 710.21 to 710.70 and 712A.1 to
16 712A.32, if the ~~family independence agency~~ **DEPARTMENT OF HUMAN**
17 **SERVICES** or county juvenile agency is specifically empowered to do
18 so by court order.

19 (b) Committed to the ~~family independence agency~~ **DEPARTMENT OF**
20 **HUMAN SERVICES** or county juvenile agency under the youth
21 rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309,
22 except that if the minor is residing with his or her custodial
23 parent, the consent of the custodial parent is required.

24 (4) Subject to sections 498e, 498f, and 498j, **AND EXCEPT AS**
25 **PROVIDED IN SECTION 1074 AND SECTION 18S OF CHAPTER XIIA OF THE**
26 **PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18S**, a minor 14 years
27 of age or older may be hospitalized if both of the following

1 conditions are met:

2 (a) The minor requests hospitalization under this chapter.

3 (b) The minor is found to be suitable for hospitalization.

4 (5) In making the determination of suitability for
5 hospitalization, a minor shall not be determined to be a minor
6 requiring treatment solely on the basis of 1 or more of the
7 following conditions:

8 (a) Epilepsy.

9 (b) Developmental disability.

10 (c) Brief periods of intoxication caused by substances such as
11 alcohol or drugs or by dependence upon or addiction to those
12 substances.

13 (d) Juvenile offenses, including school truancy, home truancy,
14 or incorrigibility.

15 (e) Sexual activity.

16 (f) Religious activity or beliefs.

17 (g) Political activity or beliefs.

18 (6) As used in this section, "county juvenile agency" means
19 that term as defined in section 2 of the county juvenile agency
20 act, 1998 PA 518, MCL 45.622.

21 Sec. 498e. (1) ~~A-EXCEPT AS PROVIDED IN SECTION 1074 AND~~
22 ~~SECTION 18S OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA~~
23 ~~288, MCL 712A.18S, A~~ minor requesting hospitalization or for whom a
24 request for hospitalization was made shall be evaluated to
25 determine suitability for hospitalization ~~pursuant-~~ **ACCORDING** to
26 this section as soon as possible after the request is made.

27 (2) The executive director of the community mental health

1 services program that is responsible for providing services in the
2 county of residence of a minor requesting hospitalization or for
3 whom a request for hospitalization was made shall evaluate the
4 minor to determine his or her suitability for hospitalization
5 ~~pursuant~~**—ACCORDING** to this section. In making a determination of a
6 minor's suitability for hospitalization, the executive director
7 shall utilize the community mental health services program's
8 children's diagnostic and treatment service. If a children's
9 diagnostic and treatment service does not exist in the community
10 mental health services program, the executive director shall,
11 through written agreement, arrange to have a determination made by
12 the children's diagnostic and treatment service of another
13 community mental health services program, or by the appropriate
14 hospital.

15 (3) In evaluating a minor's suitability for hospitalization,
16 the executive director shall do all of the following:

17 (a) Determine both of the following:

18 (i) Whether the minor is a minor requiring treatment.

19 (ii) Whether the minor requires hospitalization and is expected
20 to benefit from hospitalization.

21 (b) Determine whether there is an appropriate, available
22 alternative to hospitalization, and if there is, refer the minor to
23 that program.

24 (c) Consult with the appropriate school, hospital, and other
25 public or private agencies.

26 (d) If the minor is determined to be suitable for
27 hospitalization under subdivision (a), refer the minor to the

1 appropriate hospital.

2 (e) If the minor is determined not to be suitable for
3 hospitalization under subdivision (a), determine if the minor needs
4 mental health services. If it is determined that the minor needs
5 mental health services, the executive director shall offer an
6 appropriate treatment program for the minor, if the program is
7 available, or refer the minor to any other appropriate agency for
8 services.

9 (f) If a minor is assessed and found not to be clinically
10 suitable for hospitalization, the executive director shall inform
11 the individual or individuals requesting hospitalization of the
12 minor of appropriate available alternative services to which a
13 referral should be made and of the process for a request of a
14 second opinion under subsection (4).

15 (4) If the children's diagnostic and treatment service of the
16 community mental health services program denies hospitalization,
17 the parent or guardian of the minor may request a second opinion
18 from the executive director. The executive director shall arrange
19 for an additional evaluation by a psychiatrist, other physician, or
20 licensed psychologist to be performed within 3 days, excluding
21 Sundays and legal holidays, after the executive director receives
22 the request. If the conclusion of the second opinion is different
23 from the conclusion of the children's diagnostic and treatment
24 service, the executive director, in conjunction with the medical
25 director, shall make a decision based on all clinical information
26 available. The executive director's decision shall be confirmed in
27 writing to the individual who requested the second opinion, and the

1 confirming document shall include the signatures of the executive
2 director and medical director or verification that the decision was
3 made in conjunction with the medical director.

4 (5) If a minor has been admitted to a hospital not operated by
5 or under contract with the department or a community mental health
6 services program and the hospital considers it necessary to
7 transfer the minor to a hospital under contract with a community
8 mental health services program, the hospital shall submit an
9 application for transfer to the appropriate community mental health
10 services program. The executive director shall determine if there
11 is an appropriate, available alternative to hospitalization of the
12 minor. If the executive director determines that there is an
13 appropriate, available alternative program, the minor shall be
14 referred to that program. If the executive director determines that
15 there is not an appropriate, alternative program, the minor shall
16 be referred to a hospital under contract with the community mental
17 health services program.

18 (6) Except as provided in subsections (1) and (5), this
19 section only applies to hospitals operated under contract with a
20 community mental health services program.

21 Sec. 498h. (1) ~~A—EXCEPT AS PROVIDED IN SECTION 1074 AND~~
22 ~~SECTION 18S OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA~~
23 ~~288, MCL 712A.18S, A~~ minor's parent, guardian, or person in loco
24 parentis may request emergency admission of the minor to a
25 hospital, if the person making the request has reason to believe
26 that the minor is a minor requiring treatment and that the minor
27 presents a serious danger to self or others.

1 (2) If the hospital to which the request for emergency
2 admission is made is not under contract to the community mental
3 health services program, the request for emergency hospitalization
4 shall be made directly to the hospital. If the hospital director
5 agrees that the minor needs emergency admission, the minor shall be
6 hospitalized. If the hospital director does not agree, the person
7 making the request may request hospitalization of the minor under
8 section 498d.

9 (3) If the hospital to which the request for emergency
10 admission is made is under contract to the community mental health
11 services program, the request shall be made to the preadmission
12 screening unit of the community mental health services program
13 serving in the county where the minor resides. If the community
14 mental health services program has a children's diagnostic and
15 treatment service, the preadmission screening unit shall refer the
16 person making the request to that service. In counties where there
17 is no children's diagnostic and treatment service, the preadmission
18 screening unit shall refer the person making the request to the
19 appropriate hospital. If it is determined that emergency admission
20 is not necessary, the person may request hospitalization of the
21 minor under section 498d. If it is determined that emergency
22 admission is necessary, the minor shall be hospitalized or placed
23 in an appropriate alternative program.

24 (4) If a minor is assessed by the preadmission screening unit
25 and found not to be clinically suitable for hospitalization, the
26 preadmission screening unit shall inform the individual or
27 individuals requesting hospitalization of the minor of appropriate

1 available alternative services to which a referral should be made
2 and of the process for a request of a second opinion under
3 subsection (5).

4 (5) If the preadmission screening unit of the community mental
5 health services program denies hospitalization, a minor's parent or
6 guardian may request a second opinion from the executive director.
7 The executive director shall arrange for an additional evaluation
8 by a psychiatrist, other physician, or licensed psychologist to be
9 performed within 3 days, excluding Sundays and legal holidays,
10 after the executive director receives the request. If the
11 conclusion of the second opinion is different from the conclusion
12 of the preadmission screening unit, the executive director, in
13 conjunction with the medical director, shall make a decision based
14 on all clinical information available. The executive director's
15 decision shall be confirmed in writing to the individual who
16 requested the second opinion, and the confirming document shall
17 include the signatures of the executive director and medical
18 director or verification that the decision was made in conjunction
19 with the medical director.

20 (6) If a person in loco parentis makes a request for emergency
21 admission and the minor is admitted to a hospital under this
22 section, the hospital director or the executive director of the
23 community mental health services program immediately shall notify
24 the minor's parent or parents or guardian.

25 (7) If a minor is hospitalized in a hospital that is operated
26 under contract with a community mental health services program, the
27 hospital director shall notify the appropriate executive director

1 within 24 hours after the hospitalization occurs.

2 (8) If a peace officer, as a result of personal observation,
3 has reasonable grounds to believe that a minor is a minor requiring
4 treatment and that the minor presents a serious danger to self or
5 others and if after a reasonable effort to locate the minor's
6 parent, guardian, or person in loco parentis, the minor's parent,
7 guardian, or person in loco parentis cannot be located, the peace
8 officer may take the minor into protective custody and transport
9 the minor to the appropriate community mental health preadmission
10 screening unit, if the community mental health services program has
11 a children's diagnostic and treatment service, or to a hospital if
12 it does not have a children's diagnostic and treatment service.
13 After transporting the minor, the peace officer shall execute a
14 written request for emergency hospitalization of the minor stating
15 the reasons, based upon personal observation, that the peace
16 officer believes that emergency hospitalization is necessary. The
17 written request shall include a statement that a reasonable effort
18 was made by the peace officer to locate the minor's parent,
19 guardian, or person in loco parentis. If it is determined that
20 emergency hospitalization of the minor is not necessary, the minor
21 shall be returned to his or her parent, guardian, or person in loco
22 parentis if an additional attempt to locate the parent, guardian,
23 or person in loco parentis is successful. If the minor's parent,
24 guardian, or person in loco parentis cannot be located, the minor
25 shall be turned over to the protective services program of the
26 family independence agency. If it is determined that emergency
27 admission of the minor is necessary, the minor shall be admitted to

1 the appropriate hospital or to an appropriate alternative program.
2 The executive director immediately shall notify the minor's parent,
3 guardian, or person in loco parentis. If the hospital is under
4 contract with the community mental health services program, the
5 hospital director shall notify the appropriate executive director
6 within 24 hours after the hospitalization occurs.

7 (9) An evaluation of a minor admitted to a hospital under this
8 section shall begin immediately after the minor is admitted. The
9 evaluation shall be conducted in the same manner as provided in
10 section 498e. If the minor is not found to be suitable for
11 hospitalization, the minor shall be released into the custody of
12 his or her parent, guardian, or person in loco parentis, and the
13 minor shall be referred to the executive director who shall
14 determine if the minor needs mental health services. If it is
15 determined that the minor needs mental health services, the
16 executive director shall offer an appropriate treatment program for
17 the minor, if the program is available, or refer the minor to
18 another agency for services.

19 (10) A hospital director shall proceed under either the
20 estates and protected individuals code, 1998 PA 386, MCL 700.1101
21 to ~~700.8102~~**700.8206**, or chapter XIIIA of the probate code of 1939,
22 1939 PA 288, MCL 712A.1 to 712A.32, as warranted by the situation
23 and the best interests of the minor, under any of the following
24 circumstances:

25 (a) The hospital director cannot locate a parent, guardian, or
26 person in loco parentis of a minor admitted to a hospital under
27 subsection (8).

1 (b) The hospital director cannot locate the parent or guardian
2 of a minor admitted to a hospital by a person in loco parentis
3 under this section.

4 SEC. 1060. FOR THE PURPOSES OF SECTIONS 1060A TO 1074, THE
5 WORDS AND PHRASES DEFINED IN SECTIONS 1060A TO 1060C HAVE THE
6 MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

7 SEC. 1060A. (1) "COMPETENCY EVALUATION" MEANS A COURT-ORDERED
8 EXAMINATION OF A JUVENILE DIRECTED TO DEVELOPING INFORMATION
9 RELEVANT TO A DETERMINATION OF HIS OR HER COMPETENCY TO PROCEED AT
10 A PARTICULAR STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO
11 IS THE SUBJECT OF A DELINQUENCY PETITION.

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

14 (3) "INCOMPETENT TO PROCEED" MEANS THAT A JUVENILE, BASED ON
15 AGE-APPROPRIATE NORMS, LACKS A REASONABLE DEGREE OF RATIONAL AND
16 FACTUAL UNDERSTANDING OF THE PROCEEDING OR IS UNABLE TO DO 1 OR
17 MORE OF THE FOLLOWING:

18 (A) CONSULT WITH AND ASSIST HIS OR HER ATTORNEY IN PREPARING
19 HIS OR HER DEFENSE IN A MEANINGFUL MANNER.

20 (B) SUFFICIENTLY UNDERSTAND THE CHARGES AGAINST HIM OR HER.

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

23 SEC. 1060B. (1) "LEAST RESTRICTIVE ENVIRONMENT" MEANS A
24 SUPERVISED COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE
25 JUVENILE'S PARENT, GUARDIAN, RELATIVE, OR A FACILITY OR CONDITIONS
26 OF TREATMENT THAT IS A RESIDENTIAL OR INSTITUTIONAL PLACEMENT ONLY
27 UTILIZED AS A LAST RESORT BASED ON THE BEST INTEREST OF THE

1 JUVENILE OR FOR REASONS OF PUBLIC SAFETY.

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

5 (3) "QUALIFIED FORENSIC MENTAL HEALTH EXAMINER" MEANS 1 OF THE
6 FOLLOWING WHO PERFORMS FORENSIC MENTAL HEALTH EXAMINATIONS FOR THE
7 PURPOSES OF SECTIONS 1062 TO 1074 BUT DOES NOT EXCEED THE SCOPE OF
8 HIS OR HER PRACTICE AS AUTHORIZED BY STATE LAW:

9 (A) A PSYCHIATRIST OR PSYCHOLOGIST WHO POSSESSES EXPERIENCE OR
10 TRAINING IN THE FOLLOWING:

11 (i) FORENSIC EVALUATION PROCEDURES FOR JUVENILES.

12 (ii) EVALUATION, DIAGNOSIS, AND TREATMENT OF CHILDREN AND
13 ADOLESCENTS WITH EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR
14 DEVELOPMENTAL DISABILITIES.

15 (iii) CLINICAL UNDERSTANDING OF CHILD AND ADOLESCENT
16 DEVELOPMENT.

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

18 (B) BEGINNING 18 MONTHS AFTER THE EFFECTIVE DATE OF THE
19 AMENDATORY ACT THAT ADDED THIS SECTION, A MENTAL HEALTH
20 PROFESSIONAL OTHER THAN A PSYCHIATRIST OR PSYCHOLOGIST WHO HAS
21 COMPLETED A JUVENILE COMPETENCY TRAINING PROGRAM FOR FORENSIC
22 MENTAL HEALTH EXAMINERS THAT IS ENDORSED BY THE DEPARTMENT UNDER
23 SECTION 1072 AND WHO POSSESSES EXPERIENCE OR TRAINING IN ALL OF THE
24 FOLLOWING:

25 (i) FORENSIC EVALUATION PROCEDURES FOR JUVENILES.

26 (ii) EVALUATION, DIAGNOSIS, AND TREATMENT OF CHILDREN AND
27 ADOLESCENTS WITH EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR

1 DEVELOPMENTAL DISABILITIES.

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

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

5 (4) "QUALIFIED RESTORATION PROVIDER" MEANS AN INDIVIDUAL, WHO
6 THE COURT DETERMINES AS A RESULT OF THE OPINION PROVIDED BY THE
7 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER, HAS THE SKILLS AND
8 TRAINING NECESSARY TO PROVIDE RESTORATION SERVICES. THE COURT SHALL
9 TAKE MEASURES TO AVOID ANY CONFLICT OF INTEREST AMONG AGENCIES OR
10 INDIVIDUALS WHO MAY PROVIDE EVALUATION AND RESTORATION.

11 SEC. 1060C. (1) "RESTORATION" MEANS THE PROCESS BY WHICH
12 EDUCATION OR TREATMENT OF A JUVENILE RESULTS IN THAT JUVENILE
13 BECOMING COMPETENT TO PROCEED.

14 (2) "SERIOUS MISDEMEANOR" MEANS THAT TERM AS DEFINED IN SECTION
15 61 OF THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA
16 87, MCL 780.811.

17 SEC. 1062. (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 UPON ITS OWN MOTION, OR AT THE REQUEST
22 OF THE JUVENILE, THE JUVENILE'S ATTORNEY, OR THE PROSECUTING
23 ATTORNEY, A COMPETENCY EVALUATION TO DETERMINE WHETHER THE JUVENILE
24 IS INCOMPETENT TO PROCEED IF THE JUVENILE IS THE SUBJECT OF A
25 DELINQUENCY PETITION IN THE COURT OR IF THE JUVENILE IS UNDER THE
26 COURT'S JURISDICTION UNDER SECTION 2(A)(2) TO (4) OF CHAPTER XIIA OF
27 THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2. THE ISSUE OF THE

1 JUVENILE'S COMPETENCY MAY BE RAISED BY THE COURT BEFORE WHICH THE
2 PROCEEDINGS ARE PENDING OR BEING HELD, OR BY MOTION OF A PARTY, AT
3 ANY TIME DURING THE PROCEEDING.

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

8 SEC. 1064. (1) A COMPETENCY EVALUATION ORDERED UNDER SECTION
9 1062 SHALL BE CONDUCTED BY A QUALIFIED FORENSIC MENTAL HEALTH
10 EXAMINER. THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER SHALL PROVIDE
11 THE COURT WITH AN OPINION AS TO WHETHER THE JUVENILE IS COMPETENT TO
12 PROCEED. THE COURT HAS THE FINAL DETERMINATION OF AN EXPERT WITNESS
13 SERVING AS A QUALIFIED FORENSIC MENTAL HEALTH EXAMINER.

14 (2) THIS SECTION DOES NOT PROHIBIT ANY PARTY FROM RETAINING THE
15 PARTY'S OWN QUALIFIED FORENSIC MENTAL HEALTH EXAMINER TO CONDUCT
16 ADDITIONAL EVALUATIONS AT THE PARTY'S OWN EXPENSE.

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

24 SEC. 1066. (1) THE COURT SHALL ORDER THE PROSECUTING ATTORNEY
25 TO PROVIDE TO THE JUVENILE'S ATTORNEY ALL INFORMATION RELATED TO
26 COMPETENCY AND SHALL ORDER THE PROSECUTING ATTORNEY AND JUVENILE'S
27 ATTORNEY TO SUBMIT TO THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER

1 ANY INFORMATION CONSIDERED RELEVANT TO THE COMPETENCY EVALUATION,
2 INCLUDING, BUT NOT LIMITED TO:

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

4 (B) INFORMATION ABOUT THE ALLEGED OFFENSE.

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

7 (2) EXCEPT AS PROHIBITED BY FEDERAL LAW, THE COURT SHALL
8 REQUIRE THE JUVENILE'S ATTORNEY TO PROVIDE ANY AVAILABLE RECORDS OF
9 THE JUVENILE OR OTHER INFORMATION RELEVANT TO THE EVALUATION,
10 INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

11 (A) PSYCHIATRIC RECORDS.

12 (B) SCHOOL RECORDS.

13 (C) MEDICAL RECORDS.

14 (D) CHILD PROTECTIVE SERVICES RECORDS.

15 (3) THE REQUIREMENT TO PROVIDE RECORDS OR INFORMATION UNDER
16 SUBSECTION (1) OR (2) DOES NOT LIMIT, WAIVE, OR ABROGATE THE WORK
17 PRODUCT DOCTRINE OR THE ATTORNEY-CLIENT PRIVILEGE, AND RELEASE OF
18 RECORDS AND INFORMATION UNDER SUBSECTION (1) OR (2) IS SUBJECT TO
19 THE WORK PRODUCT DOCTRINE AND THE ATTORNEY-CLIENT PRIVILEGE.

20 (4) ALL INFORMATION REQUIRED UNDER SUBSECTIONS (1) AND (2)
21 MUST BE PROVIDED TO THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER
22 WITHIN 10 DAYS AFTER THE COURT ISSUES THE ORDER FOR THE COMPETENCY
23 EVALUATION. IF POSSIBLE, THE INFORMATION REQUIRED UNDER THIS
24 SECTION SHALL BE RECEIVED BEFORE THE JUVENILE'S COMPETENCY
25 EVALUATION OR THE COMMENCEMENT OF THE COMPETENCY EVALUATION IN AN
26 OUTPATIENT SETTING.

27 (5) A QUALIFIED FORENSIC MENTAL HEALTH EXAMINER WHO CONDUCTS A

1 COMPETENCY EVALUATION SHALL SUBMIT A WRITTEN REPORT TO THE COURT
2 NOT LATER THAN 30 DAYS FROM RECEIPT OF THE COURT ORDER REQUIRING
3 THE COMPETENCY EVALUATION. THE EVALUATION SHALL BE BASED ON A
4 JUVENILE ADJUDICATIVE COMPETENCE INTERVIEW (JACI) OR ANOTHER
5 INTERVIEW METHOD APPROVED BY THE COURT. THE REPORT SHALL CONTAIN,
6 BUT NOT BE LIMITED TO, THE FOLLOWING:

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

9 (i) A DESCRIPTION OF ASSESSMENT PROCEDURES, TECHNIQUES, AND
10 TESTS USED.

11 (ii) AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS
12 REVIEWED.

13 (iii) SOCIAL, CLINICAL, DEVELOPMENTAL, AND LEGAL HISTORY AS
14 AVAILABLE.

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

17 (i) A MENTAL STATUS EXAMINATION.

18 (ii) THE DIAGNOSIS AND FUNCTIONAL IMPACT OF MENTAL ILLNESS,
19 DEVELOPMENTAL DISABILITY, OR COGNITIVE IMPAIRMENT. IF THE JUVENILE
20 IS TAKING MEDICATION, THE IMPACT OF THE MEDICATION ON THE
21 JUVENILE'S MENTAL STATE AND BEHAVIOR.

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

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

25 (v) WHETHER THE JUVENILE HAS ANY OTHER FACTOR THAT AFFECTS
26 COMPETENCE.

27 (C) A DESCRIPTION OF ABILITIES AND DEFICITS IN THE FOLLOWING

1 MENTAL COMPETENCY FUNCTIONS RELATED TO THE JUVENILE'S COMPETENCE TO
2 PROCEED:

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

6 (A) AN ABILITY TO UNDERSTAND THE ROLE OF THE PARTICIPANTS IN
7 THE COURT PROCESS, INCLUDING, THE ROLES OF THE JUDGE, THE
8 JUVENILE'S ATTORNEY, THE PROSECUTING ATTORNEY, THE PROBATION
9 OFFICER, WITNESSES, AND THE JURY, AND TO UNDERSTAND THE ADVERSARIAL
10 NATURE OF THE PROCESS.

11 (B) AN ABILITY TO APPRECIATE THE CHARGES AND UNDERSTAND THE
12 SERIOUSNESS OF THE CHARGES.

13 (C) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE
14 LIKELY OUTCOMES.

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

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

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

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

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

26 (D) LOGICAL DECISION-MAKING ABILITIES, PARTICULARLY
27 MULTIFACTORED PROBLEM-SOLVING OR THE ABILITY TO TAKE SEVERAL

1 FACTORS INTO CONSIDERATION IN MAKING A DECISION.

2 (E) AN ABILITY TO REASON ABOUT AVAILABLE OPTIONS BY WEIGHING
3 THE CONSEQUENCES, INCLUDING WEIGHING PLEAS, WAIVERS, AND
4 STRATEGIES.

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

6 (6) THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER SHALL PROVIDE
7 THE COURT WITH AN OPINION ABOUT THE JUVENILE'S COMPETENCY TO
8 PROCEED. IF THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER DETERMINES
9 THAT THE JUVENILE IS INCOMPETENT TO PROCEED, THE QUALIFIED FORENSIC
10 MENTAL HEALTH EXAMINER SHALL COMMENT ON THE NATURE OF ANY
11 PSYCHIATRIC OR PSYCHOLOGICAL DISORDER OR COGNITIVE IMPAIRMENT, THE
12 PROGNOSIS, AND THE SERVICES NEEDED AND EXPERTISE REQUIRED TO
13 RESTORE THE JUVENILE TO COMPETENCY, IF POSSIBLE, WITHIN A PROJECTED
14 TIME FRAME.

15 (7) THE COURT IN ITS DISCRETION MAY, FOR GOOD CAUSE, GRANT THE
16 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER A 30-DAY EXTENSION IN
17 FILING THE COMPETENCY EVALUATION REPORT.

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

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

1 (2) UPON A FINDING BY THE COURT THAT A JUVENILE IS INCOMPETENT
2 TO PROCEED AND A FINDING THAT THERE IS A SUBSTANTIAL PROBABILITY THAT
3 THE JUVENILE WILL REMAIN INCOMPETENT TO PROCEED FOR THE FORESEEABLE
4 FUTURE OR WITHIN THE PERIOD OF THE RESTORATION ORDER, THE COURT SHALL
5 DISMISS WITH PREJUDICE THE CHARGES AGAINST THE JUVENILE AND MAY
6 DETERMINE CUSTODY OF THE JUVENILE.

7 (3) THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER APPOINTED BY
8 THE COURT TO DETERMINE THE JUVENILE'S MENTAL CONDITION SHALL BE
9 ALLOWED REASONABLE FEES FOR SERVICES RENDERED.

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

12 (2) ANY EVIDENCE OR STATEMENT OBTAINED DURING A COMPETENCY
13 EVALUATION IS NOT ADMISSIBLE IN ANY PROCEEDING TO DETERMINE THE
14 JUVENILE'S RESPONSIBILITY.

15 (3) A STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY
16 EVALUATION OR EVIDENCE RESULTING FROM THE STATEMENT CONCERNING ANY
17 OTHER EVENT OR TRANSACTION IS NOT ADMISSIBLE IN ANY PROCEEDING TO
18 DETERMINE THE JUVENILE'S RESPONSIBILITY FOR ANY OTHER CHARGES THAT
19 ARE BASED ON THOSE EVENTS OR TRANSACTIONS.

20 (4) A STATEMENT THAT THE JUVENILE MAKES DURING A COMPETENCY
21 EVALUATION MAY NOT BE USED FOR ANY PURPOSE OTHER THAN ASSESSMENT OF
22 HIS OR HER COMPETENCY WITHOUT THE WRITTEN CONSENT OF THE JUVENILE
23 OR THE JUVENILE'S GUARDIAN. THE JUVENILE OR THE JUVENILE'S GUARDIAN
24 MUST HAVE AN OPPORTUNITY TO CONSULT WITH HIS OR HER ATTORNEY BEFORE
25 GIVING CONSENT.

26 (5) AFTER THE CASE PROCEEDS TO ADJUDICATION OR THE JUVENILE IS
27 FOUND TO BE UNABLE TO REGAIN COMPETENCE, THE COURT SHALL ORDER ALL

1 OF THE REPORTS THAT ARE SUBMITTED ACCORDING TO SECTIONS 1062 TO
2 1068 TO BE SEALED. THE COURT MAY ORDER THAT THE REPORTS BE OPENED
3 ONLY AS FOLLOWS:

4 (A) FOR FURTHER COMPETENCY OR CRIMINAL RESPONSIBILITY
5 EVALUATIONS.

6 (B) FOR STATISTICAL ANALYSIS.

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

9 (D) FOR DATA GATHERING.

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

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

14 (7) ANY STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY
15 EVALUATION, OR ANY EVIDENCE RESULTING FROM THAT STATEMENT, IS NOT
16 SUBJECT TO DISCLOSURE.

17 SEC. 1072. (1) NOT LATER THAN 18 MONTHS AFTER THE EFFECTIVE
18 DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT
19 SHALL REVIEW AND ENDORSE A TRAINING PROGRAM FOR JUVENILE FORENSIC
20 MENTAL HEALTH EXAMINERS WHO PROVIDE JUVENILE COMPETENCY EXAMS. A
21 PSYCHIATRIST OR PSYCHOLOGIST MAY, BUT IS NOT REQUIRED TO, SEEK
22 CERTIFICATION UNDER THE PROGRAM ESTABLISHED UNDER THIS SECTION.

23 (2) THE DEPARTMENT MAY MAKE ADAPTATIONS OR ADJUSTMENTS TO THE
24 ENDORSED TRAINING PROGRAM DESCRIBED UNDER SUBSECTION (1) BASED ON
25 RESEARCH AND BEST PRACTICES.

26 SEC. 1074. (1) IF THE JUVENILE IS INCOMPETENT TO PROCEED, BUT
27 THE COURT FINDS THAT THE JUVENILE MAY BE RESTORED TO COMPETENCY IN

1 THE FORESEEABLE FUTURE, 1 OF THE FOLLOWING APPLIES:

2 (A) IF THE OFFENSE IS A TRAFFIC OFFENSE OR A MISDEMEANOR OTHER
3 THAN A SERIOUS MISDEMEANOR, THE MATTER SHALL BE DISMISSED.

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

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

8 (2) IF PROCEEDINGS ARE SUSPENDED BECAUSE THE JUVENILE IS
9 INCOMPETENT TO PROCEED BUT THE COURT FINDS THAT THE JUVENILE MAY BE
10 RESTORED TO COMPETENCY IN THE FORESEEABLE FUTURE, ALL OF THE
11 FOLLOWING APPLY:

12 (A) BEFORE ISSUING A RESTORATION ORDER, THE COURT SHALL HOLD A
13 HEARING TO DETERMINE THE LEAST RESTRICTIVE ENVIRONMENT FOR
14 COMPLETION OF THE RESTORATION.

15 (B) THE COURT MAY ISSUE A RESTORATION ORDER THAT IS VALID FOR
16 60 DAYS FROM THE DATE OF THE INITIAL FINDING OF INCOMPETENCY OR
17 UNTIL 1 OF THE FOLLOWING OCCURS, WHICHEVER OCCURS FIRST:

18 (i) THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER, BASED ON
19 INFORMATION PROVIDED BY THE QUALIFIED RESTORATION PROVIDER, SUBMITS
20 A REPORT THAT THE JUVENILE HAS REGAINED COMPETENCY OR THAT THERE IS
21 NO SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL REGAIN COMPETENCY
22 WITHIN THE PERIOD OF THE ORDER.

23 (ii) THE CHARGES ARE DISMISSED.

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

25 (C) FOLLOWING ISSUANCE OF THE RESTORATION ORDER, THE QUALIFIED
26 RESTORATION PROVIDER SHALL SUBMIT A REPORT TO THE COURT AND THE
27 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER THAT INCLUDES THE

1 INFORMATION REQUIRED UNDER SECTION 1066. THE REPORT SHALL BE
2 SUBMITTED TO THE COURT AND THE QUALIFIED FORENSIC MENTAL HEALTH
3 EXAMINER EVERY 30 DAYS, OR SOONER IF AND AT THE TIME EITHER OF THE
4 FOLLOWING OCCURS:

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

7 (ii) THE QUALIFIED RESTORATION PROVIDER DETERMINES THAT THERE
8 IS NO SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL BE COMPETENT
9 TO PROCEED WITHIN THE PERIOD OF THE ORDER.

10 (3) NOT LATER THAN 14 DAYS BEFORE THE EXPIRATION OF THE
11 INITIAL 60-DAY ORDER, THE QUALIFIED RESTORATION PROVIDER MAY
12 RECOMMEND TO THE COURT AND THE QUALIFIED FORENSIC MENTAL HEALTH
13 EXAMINER THAT THE RESTORATION ORDER BE RENEWED BY THE COURT FOR
14 ANOTHER 60 DAYS, IF THERE IS A SUBSTANTIAL PROBABILITY THAT THE
15 JUVENILE WILL NOT BE INCOMPETENT TO PROCEED WITHIN THE PERIOD OF
16 THAT RENEWED RESTORATION ORDER. THE RESTORATION ORDER AND ANY
17 RENEWED RESTORATION ORDER SHALL NOT EXCEED A TOTAL OF 120 DAYS.

18 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, UPON RECEIPT
19 OF A REPORT THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
20 JUVENILE WILL REMAIN INCOMPETENT TO PROCEED FOR THE FORESEEABLE
21 FUTURE OR WITHIN THE PERIOD OF THE RESTORATION ORDER, THE COURT
22 SHALL DO BOTH OF THE FOLLOWING:

23 (A) DETERMINE CUSTODY OF THE JUVENILE AS FOLLOWS:

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

26 (ii) IF THE COURT DETERMINES THAT COMMITMENT PROCEEDINGS ARE
27 INAPPROPRIATE, THE JUVENILE SHALL BE RELEASED TO THE JUVENILE'S

House Bill No. 4555 (H-3) as amended November 29, 2012

1 PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN UNDER CONDITIONS
2 CONSIDERED APPROPRIATE TO THE COURT.

3 (B) DISMISS THE CHARGES AGAINST THE JUVENILE.

4 (5) UPON RECEIPT OF A REPORT FROM A QUALIFIED FORENSIC MENTAL
5 HEALTH EXAMINER THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
6 JUVENILE IS UNABLE TO BE RESTORED DUE TO SERIOUS EMOTIONAL
7 DISTURBANCE, THE COURT MAY IN ITS DISCRETION, EXCEPT AS PROVIDED
8 UNDER THE YOUTH REHABILITATION SERVICES ACT, 1974 PA 150, MCL
9 803.301 TO 803.309, ORDER THAT MENTAL HEALTH SERVICES BE PROVIDED
10 TO THE JUVENILE BY THE DEPARTMENT, [SUBJECT TO THE AVAILABILITY OF
11 INPATIENT CARE,] A COMMUNITY MENTAL HEALTH
12 SERVICES PROGRAM, THE DEPARTMENT OF HUMAN SERVICES, A COUNTY
13 DEPARTMENT OF HUMAN SERVICES, OR ANOTHER APPROPRIATE MENTAL HEALTH
14 SERVICES PROVIDER FOR A PERIOD NOT TO EXCEED 60 DAYS. THE COURT
15 SHALL RETAIN JURISDICTION OVER THE JUVENILE THROUGHOUT THE DURATION
16 OF THE ORDER. THE ENTITY ORDERED TO PROVIDE SERVICES UNDER THIS
17 SUBSECTION SHALL CONTINUE TO PROVIDE SERVICES FOR THE DURATION OF
18 THE PERIOD OF TREATMENT ORDERED BY THE COURT.

19 (6) NOT LATER THAN 14 DAYS BEFORE THE EXPIRATION OF AN ORDER
20 FOR TREATMENT UNDER THIS SUBSECTION OR SUBSECTION (5), THE ENTITY
21 PROVIDING MENTAL HEALTH SERVICES UNDER THAT ORDER SHALL SUBMIT A
22 REPORT TO THE COURT AND THE QUALIFIED FORENSIC MENTAL HEALTH
23 EXAMINER REGARDING THE JUVENILE. UPON RECEIPT OF THE REPORT, THE
24 COURT SHALL REVIEW THE REPORT AND DO EITHER OF THE FOLLOWING:

25 (A) RENEW THE ORDER FOR ANOTHER PERIOD OF TREATMENT NOT TO
26 EXCEED 60 DAYS. THE ORDER FOR TREATMENT AND ANY RENEWED ORDER SHALL
27 NOT EXCEED A TOTAL OF 120 DAYS.

(B) DETERMINE CUSTODY OF THE JUVENILE AND DISMISS THE CHARGES

1 **AGAINST THE JUVENILE.**

2 Enacting section 1. This amendatory act does not take effect
3 unless Senate Bill No. 246 of the 96th Legislature is enacted into
4 law.