

# SENATE BILL No. 809

February 20, 2014, Introduced by Senators JANSEN, WARREN, CASWELL, BOOHER, SCHUITMAKER, ROBERTSON, CASPERSON, ROCCA, ANDERSON, COLBECK, HOPGOOD, JONES, WHITMER, ANANICH, HANSEN, NOFS, EMMONS, PAPPAGEORGE, BIEDA, HILDENBRAND, MOOLENAAR and JOHNSON and referred to the Committee on Health Policy.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending sections 20a, 21a, and 36 of chapter VIII and section 15g of chapter XVII (MCL 768.20a, 768.21a, 768.36, and 777.15g), section 20a of chapter VIII as amended by 2006 PA 655, section 21a of chapter VIII as amended by 1994 PA 56, section 36 of chapter VIII as amended by 2002 PA 245, and section 15g of chapter XVII as amended by 2008 PA 16.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### CHAPTER VIII

Sec. 20a. (1) If a defendant in a felony case proposes to offer in his or her defense testimony to establish his or her insanity at the time of an alleged offense, the defendant shall file and serve upon the court and the prosecuting attorney a

1 notice in writing of his or her intention to assert the defense  
2 of insanity not less than 30 days before the date set for the  
3 trial of the case, or at such other time as the court directs.

4 (2) Upon receipt of a notice of an intention to assert the  
5 defense of insanity, a court shall order the defendant to undergo  
6 an examination relating to his or her claim of insanity by  
7 personnel of the center for forensic psychiatry or by other  
8 qualified personnel, as applicable, for a period not to exceed 60  
9 days from the date of the order. When the defendant is to be held  
10 in jail pending trial, the center or the other qualified  
11 personnel may perform the examination in the jail, or may notify  
12 the sheriff to transport the defendant to the center or facility  
13 used by the qualified personnel for the examination, and the  
14 sheriff shall return the defendant to the jail upon completion of  
15 the examination. When the defendant is at liberty pending trial,  
16 on bail or otherwise, the defendant shall make himself or herself  
17 available for the examination at the place and time established  
18 by the center or the other qualified personnel. If the defendant,  
19 after being notified of the place and time of the examination,  
20 fails to make himself or herself available for the examination,  
21 the court may, without a hearing, order his or her commitment to  
22 the center.

23 (3) The defendant may, at his or her own expense, secure an  
24 independent psychiatric evaluation by a clinician of his or her  
25 choice on the issue of his or her insanity at the time the  
26 alleged offense was committed. If the defendant is indigent, the  
27 court may, upon showing of good cause, order that the county pay

1 for an independent psychiatric evaluation. The defendant shall  
2 notify the prosecuting attorney at least 5 days before the day  
3 scheduled for the independent evaluation that he or she intends  
4 to secure such an evaluation. The prosecuting attorney may  
5 similarly obtain independent psychiatric evaluation. A clinician  
6 secured by an indigent defendant is entitled to receive a  
7 reasonable fee as approved by the court.

8 (4) The defendant shall fully cooperate in his or her  
9 examination by personnel of the center for forensic psychiatry or  
10 by other qualified personnel, and by any other independent  
11 examiners for the defense and prosecution. If he or she fails to  
12 cooperate, and that failure is established to the satisfaction of  
13 the court at a hearing prior to trial, the defendant shall be  
14 barred from presenting testimony relating to his or her insanity  
15 at the trial of the case.

16 (5) Statements made by the defendant to personnel of the  
17 center for forensic psychiatry, to other qualified personnel, or  
18 to any independent examiner during an examination shall not be  
19 admissible or have probative value in court at the trial of the  
20 case on any issues other than his or her mental illness or  
21 insanity at the time of the alleged offense.

22 (6) Upon conclusion of the examination, the center for  
23 forensic psychiatry or the other qualified personnel, and any  
24 independent examiner, shall prepare a written report and shall  
25 submit the report to the prosecuting attorney and defense  
26 counsel. The report shall contain:

27 (a) The clinical findings of the center, the qualified

1 personnel, or any independent examiner.

2 (b) The facts, in reasonable detail, upon which the findings  
3 were based.

4 (c) The opinion of the center or qualified personnel, and  
5 the independent examiner on the issue of the defendant's insanity  
6 at the time the alleged offense was committed and whether the  
7 defendant was mentally ill or ~~mentally retarded~~ **INTELLECTUALLY**  
8 **DISABLED** at the time the alleged offense was committed.

9 (7) Within 10 days after the receipt of the report from the  
10 center for forensic psychiatry or from the qualified personnel,  
11 or within 10 days after the receipt of the report of an  
12 independent examiner secured by the prosecution, whichever occurs  
13 later, but not later than 5 days before the trial of the case, or  
14 at another time the court directs, the prosecuting attorney shall  
15 file and serve upon the defendant a notice of rebuttal of the  
16 defense of insanity which shall contain the names of the  
17 witnesses whom the prosecuting attorney proposes to call in  
18 rebuttal.

19 (8) The report of the center for forensic psychiatry, the  
20 qualified personnel, or any independent examiner may be  
21 admissible in evidence upon the stipulation of the prosecution  
22 and defense.

23 (9) As used in this section, "qualified personnel" means  
24 personnel meeting standards determined by the department of  
25 community health under rules promulgated pursuant to the  
26 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
27 24.328.

1       Sec. 21a. (1) It is an affirmative defense to a prosecution  
2 for a criminal offense that the defendant was legally insane when  
3 he or she committed the acts constituting the offense. An  
4 individual is legally insane if, as a result of mental illness as  
5 defined in section ~~400a-400~~ of the mental health code, ~~Act No.~~  
6 ~~258 of the Public Acts of 1974, being section 330.1400a of the~~  
7 ~~Michigan Compiled Laws, 1974 PA 258, MCL 330.1400,~~ or as a result  
8 of ~~being mentally retarded~~ **HAVING AN INTELLECTUAL DISABILITY** as  
9 defined in section ~~500(h)-100B~~ of the mental health code, ~~Act No.~~  
10 ~~258 of the Public Acts of 1974, being section 330.1500 of the~~  
11 ~~Michigan Compiled Laws, 1974 PA 258, MCL 330.1100B,~~ that person  
12 lacks substantial capacity either to appreciate the nature and  
13 quality or the wrongfulness of his or her conduct or to conform  
14 his or her conduct to the requirements of the law. Mental illness  
15 or ~~being mentally retarded~~ **HAVING AN INTELLECTUAL DISABILITY** does  
16 not otherwise constitute a defense of legal insanity.

17       (2) An individual who was under the influence of voluntarily  
18 consumed or injected alcohol or controlled substances at the time  
19 of his or her alleged offense is not considered to have been  
20 legally insane solely because of being under the influence of the  
21 alcohol or controlled substances.

22       (3) The defendant has the burden of proving the defense of  
23 insanity by a preponderance of the evidence.

24       Sec. 36. (1) If the defendant asserts a defense of insanity  
25 in compliance with section 20a of this chapter, the defendant may  
26 be found "guilty but mentally ill" if, after trial, the trier of  
27 fact finds all of the following:

1 (a) The defendant is guilty beyond a reasonable doubt of an  
2 offense.

3 (b) The defendant has proven by a preponderance of the  
4 evidence that he or she was mentally ill at the time of the  
5 commission of that offense.

6 (c) The defendant has not established by a preponderance of  
7 the evidence that he or she lacked the substantial capacity  
8 either to appreciate the nature and quality or the wrongfulness  
9 of his or her conduct or to conform his or her conduct to the  
10 requirements of the law.

11 (2) If the defendant asserts a defense of insanity in  
12 compliance with section 20a of this chapter and the defendant  
13 waives his or her right to trial, by jury or by judge, the trial  
14 judge, with the approval of the prosecuting attorney, may accept  
15 a plea of guilty but mentally ill in lieu of a plea of guilty or  
16 a plea of nolo contendere. The judge shall not accept a plea of  
17 guilty but mentally ill until, with the defendant's consent, the  
18 judge has examined the report or reports prepared in compliance  
19 with section 20a of this chapter, the judge has held a hearing on  
20 the issue of the defendant's mental illness at which either party  
21 may present evidence, and the judge is satisfied that the  
22 defendant has proven by a preponderance of the evidence that the  
23 defendant was mentally ill at the time of the offense to which  
24 the plea is entered. The reports shall be made a part of the  
25 record of the case.

26 (3) If a defendant is found guilty but mentally ill or  
27 enters a plea to that effect which is accepted by the court, the

1 court shall impose any sentence that could be imposed by law upon  
2 a defendant who is convicted of the same offense. If the  
3 defendant is committed to the custody of the department of  
4 corrections, the defendant shall undergo further evaluation and  
5 be given such treatment as is psychiatrically indicated for his  
6 or her mental illness or ~~retardation~~. **INTELLECTUAL DISABILITY.**  
7 Treatment may be provided by the department of corrections or by  
8 the department of community health as provided by law. Sections  
9 1004 and 1006 of the mental health code, 1974 PA 258, MCL  
10 330.2004 and 330.2006, apply to the discharge of the defendant  
11 from a facility of the department of community health to which  
12 the defendant has been admitted and to the return of the  
13 defendant to the department of corrections for the balance of the  
14 defendant's sentence. When a treating facility designated by  
15 either the department of corrections or the department of  
16 community health discharges the defendant before the expiration  
17 of the defendant's sentence, that treating facility shall  
18 transmit to the parole board a report on the condition of the  
19 defendant that contains the clinical facts, the diagnosis, the  
20 course of treatment, the prognosis for the remission of symptoms,  
21 the potential for recidivism, the danger of the defendant to  
22 himself or herself or to the public, and recommendations for  
23 future treatment. If the parole board considers the defendant for  
24 parole, the board shall consult with the treating facility at  
25 which the defendant is being treated or from which the defendant  
26 has been discharged and a comparable report on the condition of  
27 the defendant shall be filed with the board. If the defendant is

1 placed on parole, the defendant's treatment shall, upon  
2 recommendation of the treating facility, be made a condition of  
3 parole. Failure to continue treatment except by agreement with  
4 the designated facility and parole board is grounds for  
5 revocation of parole.

6 (4) If a defendant who is found guilty but mentally ill is  
7 placed on probation under the jurisdiction of the sentencing  
8 court as provided by law, the trial judge, upon recommendation of  
9 the center for forensic psychiatry, shall make treatment a  
10 condition of probation. Reports as specified by the trial judge  
11 shall be filed with the probation officer and the sentencing  
12 court. Failure to continue treatment, except by agreement with  
13 the treating agency and the sentencing court, is grounds for  
14 revocation of probation. The period of probation shall not be for  
15 less than 5 years and shall not be shortened without receipt and  
16 consideration of a forensic psychiatric report by the sentencing  
17 court. Treatment shall be provided by an agency of the department  
18 of community health or, with the approval of the sentencing court  
19 and at individual expense, by private agencies, private  
20 physicians, or other mental health personnel. A psychiatric  
21 report shall be filed with the probation officer and the  
22 sentencing court every 3 months during the period of probation.  
23 If a motion on a petition to discontinue probation is made by the  
24 defendant, the probation officer shall request a report as  
25 specified from the center for forensic psychiatry or any other  
26 facility certified by department of community health for the  
27 performance of forensic psychiatric evaluation.



## CHAPTER XVII

Sec. 15g. This chapter applies to the following felonies  
enumerated in chapters 721 to 730 of the Michigan Compiled Laws:

<b>M.C.L.</b>	<b>Category</b>	<b>Class</b>	<b>Description</b>	<b>Stat Max</b>
722.115e(2)(a)	Pub saf	G	Failure to report arraignment for criminal charges – child care centers, day care centers, and employees	2
722.115f(8)(a)	Pub saf	G	Failure to report arraignment on criminal charges – family child care homes and group child care homes	2
<del>722.115h(b)</del>	<del>Pub ord</del>	<del>F</del>	<del>False report initiating special investigation</del>	<del>Variable</del>
722.115i(2)(a)	Pub saf	G	Failure to report arraignment on criminal charges – foster family homes and foster family group homes	2
<b>722.115l(B)</b>	<b>PUB ORD</b>	<b>F</b>	<b>FALSE REPORT INITIATING SPECIAL INVESTIGATION</b>	<b>VARIABLE</b>
722.633(5)(b)	Person	F	Intentional false report of child abuse constituting a felony	Variable
722.675	Pub ord	E	Distributing obscene matter to children	2
722.857	Person	E	Surrogate parenting contracts involving minors, <del>mentally retarded, etc.</del> <b>OR INTELLECTUALLY DISABLED</b>	5

1	722.859(3)	Person	E	Surrogate parenting contracts for compensation	5
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