

# HOUSE BILL No. 5246

November 9, 2017, Introduced by Reps. Kesto, Rendon and Whiteford and referred to the Committee on Law and Justice.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 1026 (MCL 330.2026).

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1026. (1) Upon a showing that the defendant may be  
2 incompetent to stand trial, the court shall order the defendant to  
3 undergo an examination by personnel of either the center for  
4 forensic psychiatry or other facility officially certified by the  
5 department ~~of mental health~~ to perform examinations relating to the  
6 issue of incompetence to stand trial. The defendant shall make  
7 himself **OR HERSELF** available for the examination at the places and  
8 times established by the center or other certified facility. If the  
9 defendant, after being notified, fails to make himself **OR HERSELF**  
10 available for the examination, the court may order his **OR HER**

House Bill No. 5246 as amended February 27, 2018

commitment to the center or other facility without a hearing.

(2) THE TIMES SET FOR THE EXAMINATIONS ESTABLISHED BY THE CENTER OR OTHER CERTIFIED FACILITY MUST BE FOR A REASONABLE PERIOD NOT TO EXCEED 45 DAYS. THE DIRECTOR OF THE CENTER OR OTHER CERTIFIED FACILITY MAY APPLY WITH THE COURT FOR AN EXTENSION, BUT NOT TO EXCEED 15 DAYS, UPON A SHOWING OF GOOD CAUSE THAT THE ADDITIONAL TIME IS NECESSARY TO OBSERVE AND EVALUATE THE DEFENDANT. THIS SUBSECTION DOES NOT LIMIT, EXTEND, OR IN ANY WAY CHANGE THE TIME LIMITATION IN SECTION 1028(2) FOR A WRITTEN REPORT TO BE SUBMITTED TO THE COURT. TO MEET THE TIME LIMITATIONS IN THIS SUBSECTION AND SECTION 1028(2), THE DEPARTMENT [ ] SHALL USE ALL AVAILABLE RESOURCES, INCLUDING, BUT NOT LIMITED TO, WORKING [ ] TO OFFICIALLY CERTIFY OTHER FACILITIES ACROSS THE STATE TO PERFORM EXAMINATIONS RELATING TO THE ISSUE OF INCOMPETENCE TO STAND TRIAL AND TO USE CLINICIANS IN THOSE OTHER CERTIFIED FACILITIES TO PERFORM EXAMINATIONS. IF THE EXAMINATION IS NOT COMPLETED WITHIN THE TIME LIMITATIONS SET FORTH IN THIS SUBSECTION, THE COURT MAY ISSUE AN ORDER THAT INCLUDES IMMEDIATE STEPS TO COMPLETE THE EXAMINATION AS SOON AS POSSIBLE, INCLUDING, BUT NOT LIMITED TO, ORDERING ANOTHER CERTIFIED FACILITY TO CONDUCT THE EXAMINATION.

(3) ~~(2)~~—When the defendant is to be held in a jail or similar place of detention pending trial, the center or other facility may perform the examination in the jail or may notify the sheriff to transport the defendant to the center or other facility for the examination, and the sheriff shall return the defendant to the jail upon completion of the examination. **THE EXAMINATION, WHETHER**

1 COMPLETED IN A JAIL OR AT THE CENTER OR OTHER FACILITY, IS SUBJECT  
2 TO THE TIME LIMITATIONS SET FORTH IN SUBSECTION (2) FOR  
3 EXAMINATIONS.

4 (4) ~~(3)~~—Except as provided in subsection (1), when the  
5 defendant is not to be held in a jail or similar place of detention  
6 pending trial, the court shall commit him **OR HER** to the center or  
7 other facility only when the commitment is necessary for the  
8 performance of the examination.

9 (5) ~~(4)~~—The defendant shall be released by the center or other  
10 facility upon completion of the examination.

11 Enacting section 1. This amendatory act takes effect 90 days  
12 after the date it is enacted into law.

13 Enacting section 2. This amendatory act does not take effect  
14 unless Senate Bill No. \_\_\_\_ or House Bill No. 5244 (request no.  
15 04649'17) of the 99th Legislature is enacted into law.