

HOUSE BILL No. 4882

August 16, 2017, Introduced by Rep. Lucido and referred to the Committee on Law and Justice.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 20a of chapter VIII (MCL 768.20a), as amended by 2014 PA 76.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VIII

1
2 Sec. 20a. (1) If a defendant in a felony **OR MISDEMEANOR** case
3 proposes to offer in his or her defense testimony to establish his
4 or her insanity at the time of an alleged offense, the defendant
5 shall file and serve upon the court and the prosecuting attorney a
6 notice in writing of his or her intention to assert the defense of
7 insanity not less than 30 days before the date set for the trial of
8 the case, or at such other time as the court directs.

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

20 (3) The defendant may, at his or her own expense, secure an
21 independent psychiatric evaluation by a clinician of his or her
22 choice on the issue of his or her insanity at the time the alleged
23 offense was committed. If the defendant is indigent, the court may,
24 upon showing of good cause, order that the county pay for an
25 independent psychiatric evaluation. The defendant shall notify the
26 prosecuting attorney ~~at least~~ **NOT LESS THAN** 5 days before the day
27 scheduled for the independent evaluation that he or she intends to

1 secure such an evaluation. The prosecuting attorney may similarly
2 obtain independent psychiatric evaluation. A clinician secured by
3 an indigent defendant is entitled to receive a reasonable fee as
4 approved by the court.

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

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

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

24 (a) The clinical findings of the center, the qualified
25 personnel, or any independent examiner.

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

1 (c) The opinion of the center or qualified personnel, and the
2 independent examiner on the issue of the defendant's insanity at
3 the time the alleged offense was committed and whether the
4 defendant was mentally ill or intellectually disabled at the time
5 the alleged offense was committed.

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

15 (8) The report of the center for forensic psychiatry, the
16 qualified personnel, or any independent examiner may be ~~admissible~~
17 **ADMITTED** in evidence upon the stipulation of the prosecution and
18 defense.

19 (9) As used in this section, "qualified personnel" means
20 personnel meeting standards determined by the department of
21 ~~community health~~ **AND HUMAN SERVICES** under rules promulgated
22 pursuant to the administrative procedures act of 1969, 1969 PA 306,
23 MCL 24.201 to 24.328.

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