

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**

1 commitment to the center or other facility without a hearing.

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

22 (3) ~~(2)~~—When the defendant is to be held in a jail or similar
23 place of detention pending trial, the center or other facility may
24 perform the examination in the jail or may notify the sheriff to
25 transport the defendant to the center or other facility for the
26 examination, and the sheriff shall return the defendant to the jail
27 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.