

SENATE BILL No. 172

January 29, 2009, Introduced by Senators BRATER, ANDERSON, SWITALSKI, PRUSI,
THOMAS, SCOTT, CLARKE and JACOBS and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding section 85 to chapter VII.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VII

SEC. 85. (1) UPON THE MOTION OF A PARTY OR UPON THE COURT'S
OWN MOTION, THE COURT MAY CONDUCT A HEARING TO DETERMINE WHETHER AN
INDIVIDUAL CHARGED WITH COMMITTING A CRIME DESIRES OR REQUIRES
TREATMENT OR HAS PREVIOUSLY BEEN TREATED OR APPLIED FOR TREATMENT
OR SERVICES FOR A MENTAL ILLNESS, EMOTIONAL DISTURBANCE,
DEVELOPMENTAL DISABILITY, OR MENTAL RETARDATION AND WHETHER THE
INTERESTS OF THE PUBLIC AND THE INDIVIDUAL WOULD BE BEST SERVED BY
REQUIRING THE INDIVIDUAL TO OBTAIN TREATMENT FOR THE MENTAL
ILLNESS, EMOTIONAL DISTURBANCE, DEVELOPMENTAL DISABILITY, OR MENTAL

1 RETARDATION. IN MAKING THE DETERMINATION UNDER THIS SUBSECTION, THE
2 COURT SHALL CONSIDER ALL OF THE FOLLOWING:

3 (A) THE NATURE AND SERIOUSNESS OF THE CRIME ALLEGEDLY
4 COMMITTED.

5 (B) THE INDIVIDUAL'S PRIOR CRIMINAL RECORD.

6 (C) THE INDIVIDUAL'S PRIOR MENTAL HEALTH RECORD.

7 (D) THE LIKELIHOOD THAT THE INDIVIDUAL WOULD BENEFIT FROM
8 MENTAL HEALTH TREATMENT OR SERVICES.

9 (E) OTHER INFORMATION CONSIDERED RELEVANT BY THE COURT.

10 (2) THE COURT SHALL INFORM THE INDIVIDUAL AND HIS OR HER
11 ATTORNEY THAT THE INDIVIDUAL MAY REFUSE TO PARTICIPATE IN A PROGRAM
12 OF TREATMENT OFFERED UNDER THIS SECTION AND INSTEAD ALLOW THE
13 CRIMINAL PROCEEDING TO PROCEED.

14 (3) UNLESS THE INDIVIDUAL INFORMS THE COURT THAT HE OR SHE
15 DOES NOT WISH TO PARTICIPATE IN A MENTAL HEALTH TREATMENT PROGRAM
16 AS PROVIDED IN SUBSECTION (1), THE COURT SHALL PRESENT TO THE
17 INDIVIDUAL A DIVERSION CONTRACT TO BE SIGNED BY THE INDIVIDUAL AND
18 THE COURT. BY SIGNING THE DIVERSION CONTRACT, THE INDIVIDUAL AGREES
19 FOR THE TERM OF THE DIVERSION PERIOD TO ABIDE BY THE TERMS OF ANY
20 COURT ORDER ENTERED WITH RESPECT TO HIS OR HER CASE, TO REMAIN IN
21 SUBSTANTIAL COMPLIANCE WITH ANY COURSE OF TREATMENT RECOMMENDED OR
22 ORDERED UNDER AN ORDER OF THE COURT, AND NOT TO VIOLATE ANY
23 CRIMINAL LAW OR ORDINANCE OF THE UNITED STATES, THIS STATE, OR A
24 POLITICAL SUBDIVISION OF THIS STATE. BY SIGNING THE DIVERSION
25 CONTRACT, THE COURT AGREES TO STAY FURTHER ADJUDICATION OF THE
26 UNDERLYING CRIMINAL CHARGE AND TO DISMISS THE CHARGE AT THE
27 CONCLUSION OF THE PERIOD OF DIVERSION IF THE INDIVIDUAL ABIDES BY

1 THE TERMS OF THE DIVERSION CONTRACT.

2 (4) IF A DIVERSION CONTRACT HAS BEEN SIGNED UNDER SUBSECTION
3 (3), THE COURT SHALL STAY THE CRIMINAL CASE FOR NOT MORE THAN 1
4 YEAR.

5 (5) IF THE COURT IS INFORMED AT ANY TIME DURING THE
6 DIVERSIONARY PERIOD THAT THE INDIVIDUAL HAS NOT ABIDED BY THE TERMS
7 OF THE DIVERSION CONTRACT, THE COURT MAY RESCIND THE DIVERSION
8 CONTRACT AND RENEW ADJUDICATION OF THE CRIMINAL CASE. IF THE COURT
9 CHOOSES NOT TO RESCIND THE DIVERSION CONTRACT, THE CONTRACT REMAINS
10 IN EFFECT AND IS BINDING ON ALL OF THE PARTIES.

11 (6) IF THE COURT RESCINDS THE DIVERSION CONTRACT DURING THE
12 PERIOD OF DIVERSION UNDER SUBSECTION (5), THE COURT SHALL PROVIDE A
13 WRITTEN NOTICE OF THE RESCISSION TO THE INDIVIDUAL AND HIS OR HER
14 ATTORNEY AND TO THE PROSECUTING ATTORNEY.

15 (7) AT THE CONCLUSION OF THE DIVERSION PERIOD, THE COURT SHALL
16 COMPLY WITH THE TERMS OF THE DIVERSION CONTRACT.

17 (8) STATEMENTS MADE BY A DEFENDANT TO A PSYCHIATRIST,
18 PSYCHOLOGIST, OR OTHER MENTAL HEALTH PROFESSIONAL WHO CONDUCTS AN
19 EXAMINATION OF AN INDIVIDUAL UNDER THIS SECTION ARE NOT ADMISSIBLE
20 DURING ANY SUBSEQUENT CRIMINAL PROCEEDING INVOLVING THE ALLEGED
21 CRIMINAL CONDUCT ON ANY ISSUE OTHER THAN THE INDIVIDUAL'S MENTAL
22 ILLNESS, INSANITY, OR DIMINISHED CAPACITY AT THE TIME OF THE
23 ALLEGED OFFENSE.

24 (9) AN INDIVIDUAL WHO HAS A MENTAL ILLNESS, EMOTIONAL
25 DISTURBANCE, DEVELOPMENTAL DISABILITY, OR MENTAL RETARDATION SHALL
26 NOT BE HELD IN A JAIL OR OTHER PLACE OF CRIMINAL DETENTION AS AN
27 ALTERNATIVE TO MENTAL HEALTH TREATMENT UNLESS HE OR SHE IS BEING

1 HELD IN PROTECTIVE CUSTODY AS DEFINED IN SECTION 100C OF THE MENTAL
2 HEALTH CODE, 1974 PA 258, MCL 330.1100C.

3 Enacting section 1. This amendatory act does not take effect
4 unless Senate Bill No. 171

5 of the 95th Legislature is enacted into law.