

HOUSE BILL No. 4555

April 14, 2011, Introduced by Reps. Lipton, Liss, Kowall, Santana, Bauer, Crawford, Irwin and Segal and referred to the Committee on Judiciary.

A bill to amend 1974 PA 258, entitled "Mental health code," by amending sections 498d, 498e, and 498h (MCL 330.1498d, 330.1498e, and 330.1498h), section 498d as amended by 1998 PA 524, section 498e as amended by 1996 PA 588, and section 498h as amended by 2000 PA 57, and by adding sections 1060, 1060a, 1060b, 1060c, 1062, 1064, 1066, 1068, 1070, 1072, and 1074.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 498d. (1) Subject to section 498e and except as otherwise
2 provided in this chapter, **SECTION 1074, AND SECTION 18S OF CHAPTER**
3 **XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18S,** a
4 minor of any age may be hospitalized if both of the following
5 conditions are met:

1 (a) The minor's parent, guardian, or a person acting in loco
2 parentis for the minor or, in compliance with subsection (2) or
3 (3), the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** or
4 county juvenile agency, as applicable, requests hospitalization of
5 the minor under this chapter.

6 (b) The minor is found to be suitable for hospitalization.

7 (2) The ~~family independence agency~~ **DEPARTMENT OF HUMAN**
8 **SERVICES** may request hospitalization of a minor who is committed to
9 the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** under
10 1935 PA 220, MCL 400.201 to 400.214.

11 (3) As applicable, the ~~family independence agency~~ **DEPARTMENT**
12 **OF HUMAN SERVICES** may request hospitalization of, or the county
13 juvenile agency may request an evaluation for hospitalization of, a
14 minor who is 1 of the following:

15 (a) A ward of the court under chapter X or XIIA of 1939 PA
16 288, MCL 710.21 to 710.70 and 712A.1 to 712A.32, if the ~~family~~
17 ~~independence agency~~ **DEPARTMENT OF HUMAN SERVICES** or county juvenile
18 agency is specifically empowered to do so by court order.

19 (b) Committed to the ~~family independence agency~~ **DEPARTMENT OF**
20 **HUMAN SERVICES** or county juvenile agency under the youth
21 rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309,
22 except that if the minor is residing with his or her custodial
23 parent, the consent of the custodial parent is required.

24 (4) Subject to sections 498e, 498f, and 498j, **AND EXCEPT AS**
25 **PROVIDED IN SECTION 1074 AND SECTION 18S OF CHAPTER XIIA OF THE**
26 **PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18S**, a minor 14 years
27 of age or older may be hospitalized if both of the following

1 conditions are met:

2 (a) The minor requests hospitalization under this chapter.

3 (b) The minor is found to be suitable for hospitalization.

4 (5) In making the determination of suitability for
5 hospitalization, a minor shall not be determined to be a minor
6 requiring treatment solely on the basis of 1 or more of the
7 following conditions:

8 (a) Epilepsy.

9 (b) Developmental disability.

10 (c) Brief periods of intoxication caused by substances such as
11 alcohol or drugs or by dependence upon or addiction to those
12 substances.

13 (d) Juvenile offenses, including school truancy, home truancy,
14 or incorrigibility.

15 (e) Sexual activity.

16 (f) Religious activity or beliefs.

17 (g) Political activity or beliefs.

18 (6) As used in this section, "county juvenile agency" means
19 that term as defined in section 2 of the county juvenile agency
20 act, 1998 PA 518, MCL 45.622.

21 Sec. 498e. (1) ~~A—EXCEPT AS PROVIDED IN SECTION 1074 AND~~
22 ~~SECTION 18S OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA~~
23 ~~288, MCL 712A.18S, A~~ minor requesting hospitalization or for whom a
24 request for hospitalization was made shall be evaluated to
25 determine suitability for hospitalization ~~pursuant—~~**ACCORDING** to
26 this section as soon as possible after the request is made.

27 (2) The executive director of the community mental health

1 services program that is responsible for providing services in the
2 county of residence of a minor requesting hospitalization or for
3 whom a request for hospitalization was made shall evaluate the
4 minor to determine his or her suitability for hospitalization
5 ~~pursuant~~**—ACCORDING** to this section. In making a determination of a
6 minor's suitability for hospitalization, the executive director
7 shall utilize the community mental health services program's
8 children's diagnostic and treatment service. If a children's
9 diagnostic and treatment service does not exist in the community
10 mental health services program, the executive director shall,
11 through written agreement, arrange to have a determination made by
12 the children's diagnostic and treatment service of another
13 community mental health services program, or by the appropriate
14 hospital.

15 (3) In evaluating a minor's suitability for hospitalization,
16 the executive director shall do all of the following:

17 (a) Determine both of the following:

18 (i) Whether the minor is a minor requiring treatment.

19 (ii) Whether the minor requires hospitalization and is expected
20 to benefit from hospitalization.

21 (b) Determine whether there is an appropriate, available
22 alternative to hospitalization, and if there is, refer the minor to
23 that program.

24 (c) Consult with the appropriate school, hospital, and other
25 public or private agencies.

26 (d) If the minor is determined to be suitable for
27 hospitalization under subdivision (a), refer the minor to the

1 appropriate hospital.

2 (e) If the minor is determined not to be suitable for
3 hospitalization under subdivision (a), determine if the minor needs
4 mental health services. If it is determined that the minor needs
5 mental health services, the executive director shall offer an
6 appropriate treatment program for the minor, if the program is
7 available, or refer the minor to any other appropriate agency for
8 services.

9 (f) If a minor is assessed and found not to be clinically
10 suitable for hospitalization, the executive director shall inform
11 the individual or individuals requesting hospitalization of the
12 minor of appropriate available alternative services to which a
13 referral should be made and of the process for a request of a
14 second opinion under subsection (4).

15 (4) If the children's diagnostic and treatment service of the
16 community mental health services program denies hospitalization,
17 the parent or guardian of the minor may request a second opinion
18 from the executive director. The executive director shall arrange
19 for an additional evaluation by a psychiatrist, other physician, or
20 licensed psychologist to be performed within 3 days, excluding
21 Sundays and legal holidays, after the executive director receives
22 the request. If the conclusion of the second opinion is different
23 from the conclusion of the children's diagnostic and treatment
24 service, the executive director, in conjunction with the medical
25 director, shall make a decision based on all clinical information
26 available. The executive director's decision shall be confirmed in
27 writing to the individual who requested the second opinion, and the

1 confirming document shall include the signatures of the executive
2 director and medical director or verification that the decision was
3 made in conjunction with the medical director.

4 (5) If a minor has been admitted to a hospital not operated by
5 or under contract with the department or a community mental health
6 services program and the hospital considers it necessary to
7 transfer the minor to a hospital under contract with a community
8 mental health services program, the hospital shall submit an
9 application for transfer to the appropriate community mental health
10 services program. The executive director shall determine if there
11 is an appropriate, available alternative to hospitalization of the
12 minor. If the executive director determines that there is an
13 appropriate, available alternative program, the minor shall be
14 referred to that program. If the executive director determines that
15 there is not an appropriate, alternative program, the minor shall
16 be referred to a hospital under contract with the community mental
17 health services program.

18 (6) Except as provided in subsections (1) and (5), this
19 section only applies to hospitals operated under contract with a
20 community mental health services program.

21 Sec. 498h. (1) ~~A—EXCEPT AS PROVIDED IN SECTION 1074 AND~~
22 ~~SECTION 18S OF CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA~~
23 ~~288, MCL 712A.18S, A~~ minor's parent, guardian, or person in loco
24 parentis may request emergency admission of the minor to a
25 hospital, if the person making the request has reason to believe
26 that the minor is a minor requiring treatment and that the minor
27 presents a serious danger to self or others.

1 (2) If the hospital to which the request for emergency
2 admission is made is not under contract to the community mental
3 health services program, the request for emergency hospitalization
4 shall be made directly to the hospital. If the hospital director
5 agrees that the minor needs emergency admission, the minor shall be
6 hospitalized. If the hospital director does not agree, the person
7 making the request may request hospitalization of the minor under
8 section 498d.

9 (3) If the hospital to which the request for emergency
10 admission is made is under contract to the community mental health
11 services program, the request shall be made to the preadmission
12 screening unit of the community mental health services program
13 serving in the county where the minor resides. If the community
14 mental health services program has a children's diagnostic and
15 treatment service, the preadmission screening unit shall refer the
16 person making the request to that service. In counties where there
17 is no children's diagnostic and treatment service, the preadmission
18 screening unit shall refer the person making the request to the
19 appropriate hospital. If it is determined that emergency admission
20 is not necessary, the person may request hospitalization of the
21 minor under section 498d. If it is determined that emergency
22 admission is necessary, the minor shall be hospitalized or placed
23 in an appropriate alternative program.

24 (4) If a minor is assessed by the preadmission screening unit
25 and found not to be clinically suitable for hospitalization, the
26 preadmission screening unit shall inform the individual or
27 individuals requesting hospitalization of the minor of appropriate

1 available alternative services to which a referral should be made
2 and of the process for a request of a second opinion under
3 subsection (5).

4 (5) If the preadmission screening unit of the community mental
5 health services program denies hospitalization, a minor's parent or
6 guardian may request a second opinion from the executive director.
7 The executive director shall arrange for an additional evaluation
8 by a psychiatrist, other physician, or licensed psychologist to be
9 performed within 3 days, excluding Sundays and legal holidays,
10 after the executive director receives the request. If the
11 conclusion of the second opinion is different from the conclusion
12 of the preadmission screening unit, the executive director, in
13 conjunction with the medical director, shall make a decision based
14 on all clinical information available. The executive director's
15 decision shall be confirmed in writing to the individual who
16 requested the second opinion, and the confirming document shall
17 include the signatures of the executive director and medical
18 director or verification that the decision was made in conjunction
19 with the medical director.

20 (6) If a person in loco parentis makes a request for emergency
21 admission and the minor is admitted to a hospital under this
22 section, the hospital director or the executive director of the
23 community mental health services program immediately shall notify
24 the minor's parent or parents or guardian.

25 (7) If a minor is hospitalized in a hospital that is operated
26 under contract with a community mental health services program, the
27 hospital director shall notify the appropriate executive director

1 within 24 hours after the hospitalization occurs.

2 (8) If a peace officer, as a result of personal observation,
3 has reasonable grounds to believe that a minor is a minor requiring
4 treatment and that the minor presents a serious danger to self or
5 others and if after a reasonable effort to locate the minor's
6 parent, guardian, or person in loco parentis, the minor's parent,
7 guardian, or person in loco parentis cannot be located, the peace
8 officer may take the minor into protective custody and transport
9 the minor to the appropriate community mental health preadmission
10 screening unit, if the community mental health services program has
11 a children's diagnostic and treatment service, or to a hospital if
12 it does not have a children's diagnostic and treatment service.
13 After transporting the minor, the peace officer shall execute a
14 written request for emergency hospitalization of the minor stating
15 the reasons, based upon personal observation, that the peace
16 officer believes that emergency hospitalization is necessary. The
17 written request shall include a statement that a reasonable effort
18 was made by the peace officer to locate the minor's parent,
19 guardian, or person in loco parentis. If it is determined that
20 emergency hospitalization of the minor is not necessary, the minor
21 shall be returned to his or her parent, guardian, or person in loco
22 parentis if an additional attempt to locate the parent, guardian,
23 or person in loco parentis is successful. If the minor's parent,
24 guardian, or person in loco parentis cannot be located, the minor
25 shall be turned over to the protective services program of the
26 family independence agency. If it is determined that emergency
27 admission of the minor is necessary, the minor shall be admitted to

1 the appropriate hospital or to an appropriate alternative program.
2 The executive director immediately shall notify the minor's parent,
3 guardian, or person in loco parentis. If the hospital is under
4 contract with the community mental health services program, the
5 hospital director shall notify the appropriate executive director
6 within 24 hours after the hospitalization occurs.

7 (9) An evaluation of a minor admitted to a hospital under this
8 section shall begin immediately after the minor is admitted. The
9 evaluation shall be conducted in the same manner as provided in
10 section 498e. If the minor is not found to be suitable for
11 hospitalization, the minor shall be released into the custody of
12 his or her parent, guardian, or person in loco parentis, and the
13 minor shall be referred to the executive director who shall
14 determine if the minor needs mental health services. If it is
15 determined that the minor needs mental health services, the
16 executive director shall offer an appropriate treatment program for
17 the minor, if the program is available, or refer the minor to
18 another agency for services.

19 (10) A hospital director shall proceed under either the
20 estates and protected individuals code, 1998 PA 386, MCL 700.1101
21 to ~~700.8102~~**700.8206**, or chapter XIIIA of the probate code of 1939,
22 1939 PA 288, MCL 712A.1 to 712A.32, as warranted by the situation
23 and the best interests of the minor, under any of the following
24 circumstances:

25 (a) The hospital director cannot locate a parent, guardian, or
26 person in loco parentis of a minor admitted to a hospital under
27 subsection (8).

1 (b) The hospital director cannot locate the parent or guardian
2 of a minor admitted to a hospital by a person in loco parentis
3 under this section.

4 SEC. 1060. FOR THE PURPOSES OF SECTIONS 1060A TO 1074, THE
5 WORDS AND PHRASES DEFINED IN SECTIONS 1060A AND 1060B HAVE THE
6 MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

7 SEC. 1060A. (1) "COMPETENCY EVALUATION" MEANS A COURT-ORDERED
8 EXAMINATION OF A JUVENILE DIRECTED TO DEVELOPING INFORMATION
9 RELEVANT TO A DETERMINATION OF HIS OR HER COMPETENCY TO PROCEED AT
10 A PARTICULAR STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO
11 IS THE SUBJECT OF A DELINQUENCY PETITION.

12 (2) "COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER
13 A JUVENILE IS COMPETENT TO PROCEED.

14 (3) "INCOMPETENT TO PROCEED" MEANS THAT A JUVENILE, BASED ON
15 AGE-APPROPRIATE NORMS, LACKS A REASONABLE DEGREE OF RATIONAL AND
16 FACTUAL UNDERSTANDING OF THE PROCEEDING OR IS UNABLE TO DO 1 OR
17 MORE OF THE FOLLOWING:

18 (A) CONSULT WITH AND ASSIST HIS OR HER ATTORNEY IN PREPARING
19 HIS OR HER DEFENSE IN A MEANINGFUL MANNER.

20 (B) SUFFICIENTLY UNDERSTAND THE CHARGES AGAINST HIM OR HER.

21 (4) "JUVENILE" MEANS A PERSON WHO IS LESS THAN 17 YEARS OF AGE
22 WHO IS THE SUBJECT OF A DELINQUENCY PETITION.

23 SEC. 1060B. (1) "LEAST RESTRICTIVE ENVIRONMENT" MEANS A
24 SUPERVISED COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE
25 JUVENILE'S PARENT, GUARDIAN, RELATIVE, OR A FACILITY OR CONDITIONS
26 OF TREATMENT THAT IS A RESIDENTIAL OR INSTITUTIONAL PLACEMENT ONLY
27 UTILIZED AS A LAST RESORT BASED ON THE BEST INTEREST OF THE

1 JUVENILE OR FOR REASONS OF PUBLIC SAFETY.

2 (2) "LICENSED CHILD CARING INSTITUTION" MEANS A CHILD CARING
3 INSTITUTION AS DEFINED AND LICENSED UNDER 1973 PA 116, MCL 722.111
4 TO 722.128.

5 (3) "QUALIFIED FORENSIC MENTAL HEALTH EXAMINER" MEANS 1 OF THE
6 FOLLOWING WHO PERFORMS FORENSIC MENTAL HEALTH EXAMINATIONS FOR THE
7 PURPOSES OF SECTIONS 1062 TO 1074:

8 (A) A PSYCHIATRIST OR PSYCHOLOGIST WHO POSSESSES EXPERIENCE OR
9 TRAINING IN THE FOLLOWING:

10 (i) FORENSIC EVALUATION PROCEDURES FOR JUVENILES.

11 (ii) EVALUATION OR TREATMENT OF CHILDREN AND ADOLESCENTS WITH
12 EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR DEVELOPMENTAL
13 DISABILITIES.

14 (iii) CLINICAL UNDERSTANDING OF CHILD AND ADOLESCENT
15 DEVELOPMENT.

16 (iv) FAMILIARITY WITH COMPETENCY STANDARDS IN THIS STATE.

17 (B) BEGINNING 18 MONTHS AFTER THE EFFECTIVE DATE OF THE
18 AMENDATORY ACT THAT ADDED THIS SECTION, A LICENSED MASTER'S SOCIAL
19 WORKER OR LICENSED PROFESSIONAL COUNSELOR OR LIMITED LICENSE
20 PSYCHOLOGIST WHO MEETS THE CERTIFICATION REQUIREMENTS OF THE
21 PROGRAM ESTABLISHED BY THE DEPARTMENT UNDER SECTION 1072.

22 (4) "SERIOUS MISDEMEANOR" MEANS THAT TERM AS DEFINED IN SECTION
23 61 OF THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA
24 87, MCL 780.811.

25 SEC. 1060C. (1) "QUALIFIED RESTORATION PROVIDER" MEANS AN
26 INDIVIDUAL, WHO THE COURT DETERMINES AS A RESULT OF THE OPINION
27 PROVIDED BY THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER, HAS THE

1 SKILLS AND TRAINING NECESSARY TO PROVIDE RESTORATION SERVICES. THE
2 COURT SHALL TAKE MEASURES TO AVOID ANY CONFLICT OF INTEREST AMONG
3 AGENCIES OR INDIVIDUALS WHO MAY PROVIDE EVALUATION AND RESTORATION.

4 (2) "RESTORATION" MEANS THE PROCESS BY WHICH EDUCATION OR
5 TREATMENT OF A JUVENILE RESULTS IN THAT JUVENILE BECOMING COMPETENT
6 TO PROCEED.

7 SEC. 1062. (1) A JUVENILE 10 YEARS OF AGE OR OLDER IS PRESUMED
8 COMPETENT TO PROCEED UNLESS THE ISSUE OF COMPETENCY IS RAISED BY A
9 PARTY. A JUVENILE LESS THAN 10 YEARS OF AGE IS PRESUMED INCOMPETENT
10 TO PROCEED.

11 (2) THE COURT MAY ORDER, OR A JUVENILE, THE JUVENILE'S
12 ATTORNEY, OR THE PROSECUTING ATTORNEY MAY REQUEST, A COMPETENCY
13 EVALUATION TO DETERMINE WHETHER THE JUVENILE IS INCOMPETENT TO
14 PROCEED IF THE JUVENILE IS BEING CHARGED AS A JUVENILE IN THE COURT.
15 THE ISSUE OF THE JUVENILE'S COMPETENCY MAY BE RAISED BY THE COURT
16 BEFORE WHICH THE PROCEEDINGS ARE PENDING OR BEING HELD, OR BY MOTION
17 OF A PARTY, AT ANY TIME DURING THE PROCEEDING.

18 (3) AT THE TIME AN ISSUE OF THE JUVENILE'S COMPETENCY IS
19 RAISED, THE DELINQUENCY PROCEEDING SHALL TEMPORARILY CEASE UNTIL
20 DETERMINATION IS MADE ON THE COMPETENCE OF THE JUVENILE ACCORDING TO
21 THIS ACT.

22 SEC. 1064. (1) A COMPETENCY EVALUATION ORDERED UNDER SECTION
23 1062 SHALL BE CONDUCTED BY A QUALIFIED FORENSIC MENTAL HEALTH
24 EXAMINER. THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER SHALL PROVIDE
25 THE COURT WITH AN OPINION AS TO WHETHER THE JUVENILE IS COMPETENT TO
26 PROCEED. THE COURT HAS THE FINAL DETERMINATION AS TO WHO IS A
27 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER.

1 (2) THIS SECTION DOES NOT PROHIBIT ANY PARTY FROM RETAINING THE
2 PARTY'S OWN QUALIFIED FORENSIC MENTAL HEALTH EXAMINER TO CONDUCT
3 ADDITIONAL EVALUATIONS AT THE PARTY'S OWN EXPENSE.

4 (3) THE COMPETENCY EVALUATION SHALL BE CONDUCTED IN THE LEAST
5 RESTRICTIVE ENVIRONMENT. THERE IS A PRESUMPTION IN FAVOR OF
6 CONDUCTING A COMPETENCY EVALUATION WHILE THE JUVENILE REMAINS IN THE
7 CUSTODY OF A PARENT OR LEGAL GUARDIAN, UNLESS REMOVAL FROM THE HOME
8 IS NECESSARY FOR THE BEST INTERESTS OF THE JUVENILE, FOR REASONS OF
9 PUBLIC SAFETY, OR BECAUSE THE PARENT OR GUARDIAN HAS REFUSED TO
10 COOPERATE IN THE COMPETENCY EVALUATION PROCESS.

11 SEC. 1066. (1) THE COURT SHALL ORDER THE PROSECUTING ATTORNEY
12 TO PROVIDE TO THE JUVENILE'S ATTORNEY ALL INFORMATION RELATED TO
13 COMPETENCY AND SHALL ORDER THE PROSECUTING ATTORNEY AND JUVENILE'S
14 ATTORNEY TO SUBMIT TO THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER
15 ANY INFORMATION CONSIDERED RELEVANT TO THE COMPETENCY EVALUATION,
16 INCLUDING, BUT NOT LIMITED TO:

17 (A) THE NAMES AND ADDRESSES OF ALL ATTORNEYS INVOLVED.

18 (B) INFORMATION ABOUT THE ALLEGED OFFENSE.

19 (C) ANY INFORMATION ABOUT THE JUVENILE'S BACKGROUND IN THE
20 PROSECUTING ATTORNEY'S POSSESSION.

21 (2) EXCEPT AS PROHIBITED BY FEDERAL LAW, THE COURT SHALL
22 REQUIRE THE JUVENILE'S ATTORNEY TO PROVIDE ANY AVAILABLE RECORDS OF
23 THE JUVENILE OR OTHER INFORMATION RELEVANT TO THE EVALUATION,
24 INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOLLOWING:

25 (A) PSYCHIATRIC RECORDS.

26 (B) SCHOOL RECORDS.

27 (C) MEDICAL RECORDS.

1 (D) CHILD PROTECTIVE SERVICES RECORDS.

2 (3) THE REQUIREMENT TO PROVIDE RECORDS OR INFORMATION UNDER
3 SUBSECTION (2) DOES NOT LIMIT, WAIVE, OR ABROGATE THE WORK PRODUCT
4 DOCTRINE OR THE ATTORNEY-CLIENT PRIVILEGE, AND RELEASE OF RECORDS
5 AND INFORMATION UNDER SUBSECTION (2) IS SUBJECT TO THE WORK PRODUCT
6 DOCTRINE AND THE ATTORNEY-CLIENT PRIVILEGE.

7 (4) ALL INFORMATION REQUIRED UNDER SUBSECTIONS (1) AND (2)
8 MUST BE PROVIDED TO THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER
9 WITHIN 10 DAYS AFTER THE COURT ISSUES THE ORDER FOR THE COMPETENCY
10 EVALUATION. IF POSSIBLE, THE INFORMATION REQUIRED UNDER THIS
11 SECTION SHALL BE RECEIVED BEFORE THE JUVENILE'S COMPETENCY
12 EVALUATION OR THE COMMENCEMENT OF THE COMPETENCY EVALUATION IN AN
13 OUTPATIENT SETTING.

14 (5) A QUALIFIED FORENSIC MENTAL HEALTH EXAMINER WHO CONDUCTS A
15 COMPETENCY EVALUATION SHALL SUBMIT A WRITTEN REPORT TO THE COURT
16 NOT LATER THAN 30 DAYS FROM RECEIPT OF THE COURT ORDER REQUIRING
17 THE COMPETENCY EVALUATION. THE REPORT SHALL CONTAIN, BUT NOT BE
18 LIMITED TO, THE FOLLOWING:

19 (A) A DESCRIPTION OF THE NATURE, CONTENT, AND EXTENT OF THE
20 EXAMINATION, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

21 (i) A DESCRIPTION OF ASSESSMENT PROCEDURES, TECHNIQUES, AND
22 TESTS USED.

23 (ii) AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS
24 REVIEWED.

25 (iii) SOCIAL, CLINICAL, DEVELOPMENTAL, AND LEGAL HISTORY AS
26 AVAILABLE.

27 (B) A CLINICAL ASSESSMENT THAT INCLUDES, BUT IS NOT LIMITED

1 TO, THE FOLLOWING:

2 (i) A MENTAL STATUS EXAMINATION.

3 (ii) THE DIAGNOSIS AND FUNCTIONAL IMPACT OF MENTAL ILLNESS,
4 DEVELOPMENTAL DISABILITY, OR COGNITIVE DEFICIENCY. IF THE JUVENILE
5 IS TAKING MEDICATION, THE IMPACT OF THE MEDICATION ON THE
6 JUVENILE'S MENTAL STATE AND BEHAVIOR.

7 (iii) AN ASSESSMENT OF THE JUVENILE'S INTELLIGENCE.

8 (iv) THE JUVENILE'S AGE, MATURITY LEVEL, DEVELOPMENTAL STAGE,
9 AND DECISION-MAKING ABILITIES.

10 (v) WHETHER THE JUVENILE HAS ANY OTHER FACTOR THAT AFFECTS
11 COMPETENCE.

12 (C) A DESCRIPTION OF ABILITIES AND DEFICITS IN THE FOLLOWING
13 MENTAL COMPETENCY FUNCTIONS RELATED TO THE JUVENILE'S COMPETENCE TO
14 PROCEED:

15 (i) THE ABILITY TO FACTUALLY AS WELL AS RATIONALLY UNDERSTAND
16 AND APPRECIATE THE NATURE AND OBJECT OF THE PROCEEDINGS, INCLUDING,
17 BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

18 (A) AN ABILITY TO UNDERSTAND THE ROLE OF THE PARTICIPANTS IN
19 THE COURT PROCESS, INCLUDING, THE ROLES OF THE JUDGE, THE
20 JUVENILE'S ATTORNEY, THE PROSECUTING ATTORNEY, THE PROBATION
21 OFFICER, WITNESSES, AND THE JURY, AND TO UNDERSTAND THE ADVERSARIAL
22 NATURE OF THE PROCESS.

23 (B) AN ABILITY TO APPRECIATE THE CHARGES AND UNDERSTAND THE
24 SERIOUSNESS OF THE CHARGES.

25 (C) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE
26 LIKELY OUTCOMES.

27 (D) AN ABILITY TO EXTEND THINKING INTO THE FUTURE.

1 (ii) THE ABILITY TO RENDER MEANINGFUL ASSISTANCE TO THE
2 JUVENILE'S ATTORNEY IN THE PREPARATION OF THE CASE, INCLUDING, BUT
3 NOT LIMITED TO, ALL OF THE FOLLOWING:

4 (A) AN ABILITY TO DISCLOSE TO AN ATTORNEY A REASONABLY
5 COHERENT DESCRIPTION OF FACTS AND EVENTS PERTAINING TO THE CHARGE,
6 AS PERCEIVED BY THE JUVENILE.

7 (B) AN ABILITY TO CONSIDER THE IMPACT OF HIS OR HER ACTION ON
8 OTHERS.

9 (C) VERBAL ARTICULATION ABILITIES OR THE ABILITY TO EXPRESS
10 HIMSELF OR HERSELF IN A REASONABLE AND COHERENT MANNER.

11 (D) LOGICAL DECISION-MAKING ABILITIES, PARTICULARLY
12 MULTIFACTORED PROBLEM-SOLVING OR THE ABILITY TO TAKE SEVERAL
13 FACTORS INTO CONSIDERATION IN MAKING A DECISION.

14 (E) AN ABILITY TO REASON ABOUT AVAILABLE OPTIONS BY WEIGHING
15 THE CONSEQUENCES, INCLUDING WEIGHING PLEAS, WAIVERS, AND
16 STRATEGIES.

17 (F) AN ABILITY TO DISPLAY APPROPRIATE COURTROOM BEHAVIOR.

18 (6) THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER SHALL PROVIDE
19 THE COURT WITH AN OPINION ABOUT THE JUVENILE'S COMPETENCY TO
20 PROCEED. IF THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER DETERMINES
21 THAT THE JUVENILE IS INCOMPETENT TO PROCEED, THE QUALIFIED FORENSIC
22 MENTAL HEALTH EXAMINER SHALL COMMENT ON THE NATURE OF MENTAL DISEASE
23 OR DEFECT, THE PROGNOSIS, AND THE SERVICES NEEDED AND EXPERTISE
24 REQUIRED TO RESTORE THE JUVENILE TO COMPETENCY, IF POSSIBLE, WITHIN
25 A PROJECTED TIME FRAME. THE OPINION SHALL INCLUDE AN ASSESSMENT OF
26 WHETHER THE JUVENILE IS A THREAT TO SELF OR OTHERS AND REQUIRES
27 EMERGENCY INTERVENTION.

1 (7) THE COURT IN ITS DISCRETION MAY, FOR GOOD CAUSE, GRANT THE
2 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER A 30-DAY EXTENSION IN
3 FILING THE COMPETENCY EVALUATION REPORT.

4 (8) COPIES OF THE WRITTEN REPORT SHALL BE PROVIDED BY THE COURT
5 TO THE JUVENILE'S ATTORNEY, THE PROSECUTING ATTORNEY, AND ANY
6 GUARDIAN AD LITEM FOR THE JUVENILE NOT LATER THAN 5 WORKING DAYS
7 AFTER RECEIPT OF THE REPORT BY THE COURT.

8 SEC. 1068. (1) NOT LATER THAN 30 DAYS AFTER A REPORT IS FILED
9 UNDER SECTION 1066, THE COURT SHALL HOLD A HEARING TO DETERMINE IF A
10 JUVENILE IS COMPETENT TO PROCEED. AT THE HEARING, THE PARTIES MAY
11 INTRODUCE OTHER EVIDENCE REGARDING THE JUVENILE'S MENTAL CONDITION OR
12 MAY SUBMIT THE MATTER BY WRITTEN STIPULATION BASED ON THE FILED
13 REPORT.

14 (2) UPON A FINDING BY THE COURT THAT A JUVENILE IS INCOMPETENT
15 TO PROCEED AND A FINDING THAT THERE IS A SUBSTANTIAL PROBABILITY THAT
16 THE JUVENILE WILL REMAIN INCOMPETENT TO PROCEED FOR THE FORESEEABLE
17 FUTURE OR WITHIN THE PERIOD OF THE RESTORATION ORDER, THE COURT SHALL
18 DISMISS WITH PREJUDICE THE CHARGES AGAINST THE JUVENILE AND MAY
19 DETERMINE CUSTODY OF THE JUVENILE.

20 (3) THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER APPOINTED BY
21 THE COURT TO DETERMINE THE JUVENILE'S MENTAL CONDITION SHALL BE
22 ALLOWED REASONABLE FEES FOR SERVICES RENDERED.

23 SEC. 1070. (1) THE CONSTITUTIONAL PROTECTIONS AGAINST SELF-
24 INCRIMINATION APPLY TO ALL COMPETENCY EVALUATIONS.

25 (2) ANY EVIDENCE OR STATEMENT OBTAINED DURING A COMPETENCY
26 EVALUATION IS NOT ADMISSIBLE IN ANY PROCEEDING TO DETERMINE THE
27 JUVENILE'S RESPONSIBILITY.

1 (3) A STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY
2 EVALUATION OR EVIDENCE RESULTING FROM THE STATEMENT CONCERNING ANY
3 OTHER EVENT OR TRANSACTION IS NOT ADMISSIBLE IN ANY PROCEEDING TO
4 DETERMINE THE JUVENILE'S RESPONSIBILITY FOR ANY OTHER CHARGES THAT
5 ARE BASED ON THOSE EVENTS OR TRANSACTIONS.

6 (4) A STATEMENT THAT THE JUVENILE MAKES DURING A COMPETENCY
7 EVALUATION MAY NOT BE USED FOR ANY PURPOSE WITHOUT THE WRITTEN
8 CONSENT OF THE JUVENILE OR THE JUVENILE'S GUARDIAN. THE JUVENILE OR
9 THE JUVENILE'S GUARDIAN MUST HAVE AN OPPORTUNITY TO CONSULT WITH
10 HIS OR HER ATTORNEY BEFORE GIVING CONSENT.

11 (5) AFTER THE CASE PROCEEDS TO ADJUDICATION OR THE JUVENILE IS
12 FOUND TO BE UNABLE TO REGAIN COMPETENCE, THE COURT SHALL ORDER ALL
13 OF THE REPORTS THAT ARE SUBMITTED ACCORDING TO SECTIONS 1062 TO
14 1068 TO BE SEALED. THE COURT MAY ORDER THAT THE REPORTS BE OPENED
15 ONLY AS FOLLOWS:

16 (A) FOR FURTHER COMPETENCY OR CRIMINAL RESPONSIBILITY
17 EVALUATIONS.

18 (B) FOR STATISTICAL ANALYSIS.

19 (C) IF THE RECORDS ARE CONSIDERED TO BE NECESSARY TO ASSIST IN
20 MENTAL HEALTH TREATMENT ORDERED UNDER THIS ACT.

21 (D) FOR DATA GATHERING.

22 (E) FOR SCIENTIFIC STUDY OR OTHER LEGITIMATE RESEARCH.

23 (6) IF THE COURT ORDERS REPORTS TO BE OPEN FOR THE PURPOSES OF
24 STATISTICAL ANALYSIS, DATA GATHERING, OR SCIENTIFIC STUDY ACCORDING
25 TO SUBSECTION (5), THE REPORTS SHALL REMAIN CONFIDENTIAL.

26 (7) ANY STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY
27 EVALUATION, OR ANY EVIDENCE RESULTING FROM THAT STATEMENT, IS NOT

1 SUBJECT TO DISCLOSURE.

2 SEC. 1072. NOT LATER THAN 18 MONTHS AFTER THE EFFECTIVE DATE OF
3 THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT, IN
4 CONJUNCTION WITH THE BOARD OF PSYCHOLOGY, THE BOARD OF COUNSELING,
5 AND THE BOARD OF SOCIAL WORK WITHIN THE DEPARTMENT, THE MICHIGAN
6 PSYCHOLOGICAL ASSOCIATION, THE MICHIGAN COUNSELING ASSOCIATION, AND
7 THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, MICHIGAN CHAPTER, SHALL
8 DEVELOP AND IMPLEMENT A PROGRAM TO CERTIFY INDIVIDUALS AS QUALIFIED
9 FORENSIC MENTAL HEALTH EXAMINERS. A PSYCHIATRIST OR PSYCHOLOGIST MAY,
10 BUT IS NOT REQUIRED TO, SEEK CERTIFICATION UNDER THE PROGRAM
11 ESTABLISHED UNDER THIS SECTION.

12 SEC. 1074. (1) IF THE JUVENILE IS INCOMPETENT TO PROCEED, BUT
13 THE COURT FINDS THAT THE JUVENILE MAY BE RESTORED TO COMPETENCY IN
14 THE FORESEEABLE FUTURE, 1 OF THE FOLLOWING APPLIES:

15 (A) IF THE OFFENSE IS A TRAFFIC OFFENSE OR A MISDEMEANOR OTHER
16 THAN A SERIOUS MISDEMEANOR, THE MATTER SHALL BE DISMISSED.

17 (B) IF THE OFFENSE IS A SERIOUS MISDEMEANOR, THE COURT MAY
18 DISMISS THE MATTER OR SUSPEND THE PROCEEDINGS AGAINST THE JUVENILE.

19 (C) IF THE OFFENSE IS A FELONY, THE PROCEEDINGS AGAINST THE
20 JUVENILE SHALL BE FURTHER SUSPENDED.

21 (2) IF PROCEEDINGS ARE SUSPENDED BECAUSE THE JUVENILE IS
22 INCOMPETENT TO PROCEED BUT THE COURT FINDS THAT THE JUVENILE MAY BE
23 RESTORED TO COMPETENCY IN THE FORESEEABLE FUTURE, ALL OF THE
24 FOLLOWING APPLY:

25 (A) BEFORE ISSUING A RESTORATION ORDER, THE COURT SHALL HOLD A
26 HEARING TO DETERMINE THE LEAST RESTRICTIVE ALTERNATIVE SETTING FOR
27 COMPLETION OF THE RESTORATION.

1 (B) THE COURT MAY ISSUE A RESTORATION ORDER THAT IS VALID FOR
2 60 DAYS FROM THE DATE OF THE INITIAL FINDING OF INCOMPETENCY OR
3 UNTIL 1 OF THE FOLLOWING OCCURS, WHICHEVER OCCURS FIRST:

4 (i) THE QUALIFIED RESTORATION PROVIDER SUBMITS A REPORT THAT
5 THE JUVENILE HAS REGAINED COMPETENCY OR THAT THERE IS NO
6 SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL REGAIN COMPETENCY
7 WITHIN THE PERIOD OF THE ORDER.

8 (ii) THE CHARGES ARE DISMISSED.

9 (iii) THE JUVENILE REACHES 18 YEARS OF AGE.

10 (C) FOLLOWING ISSUANCE OF THE RESTORATION ORDER, THE QUALIFIED
11 RESTORATION PROVIDER SHALL SUBMIT A REPORT TO THE COURT AND THE
12 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER THAT INCLUDES THE
13 INFORMATION REQUIRED UNDER SECTION 1066. THE REPORT SHALL BE
14 SUBMITTED TO THE COURT AND THE QUALIFIED FORENSIC MENTAL HEALTH
15 EXAMINER EVERY 30 DAYS, OR SOONER IF AND AT THE TIME EITHER OF THE
16 FOLLOWING OCCURS:

17 (i) THE QUALIFIED RESTORATION PROVIDER DETERMINES THAT THE
18 JUVENILE IS NO LONGER INCOMPETENT TO PROCEED.

19 (ii) THE QUALIFIED RESTORATION PROVIDER DETERMINES THAT THERE
20 IS NO SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL BE COMPETENT
21 TO PROCEED WITHIN THE PERIOD OF THE ORDER.

22 (3) NOT LATER THAN 14 DAYS BEFORE THE EXPIRATION OF THE
23 INITIAL 60-DAY ORDER, THE QUALIFIED RESTORATION PROVIDER MAY
24 RECOMMEND TO THE COURT AND THE QUALIFIED FORENSIC MENTAL HEALTH
25 EXAMINER THAT THE RESTORATION ORDER BE RENEWED BY THE COURT FOR
26 ANOTHER 60 DAYS, IF THERE IS A SUBSTANTIAL PROBABILITY THAT THE
27 JUVENILE WILL NOT BE INCOMPETENT TO PROCEED WITHIN THE PERIOD OF

1 THAT RENEWED RESTORATION ORDER. THE RESTORATION ORDER AND ANY
2 RENEWED RESTORATION ORDER SHALL NOT EXCEED A TOTAL OF 120 DAYS.

3 (4) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, UPON RECEIPT
4 OF A REPORT THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
5 JUVENILE WILL REMAIN INCOMPETENT TO PROCEED FOR THE FORESEEABLE
6 FUTURE OR WITHIN THE PERIOD OF THE RESTORATION ORDER, THE COURT
7 SHALL DO BOTH OF THE FOLLOWING:

8 (A) DETERMINE CUSTODY OF THE JUVENILE AS FOLLOWS:

9 (i) THE COURT MAY DIRECT THAT CIVIL COMMITMENT PROCEEDINGS BE
10 INITIATED, AS ALLOWED UNDER SECTION 498D.

11 (ii) IF THE COURT DETERMINES THAT COMMITMENT PROCEEDINGS ARE
12 INAPPROPRIATE, THE JUVENILE SHALL BE RELEASED TO THE JUVENILE'S
13 PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN UNDER CONDITIONS
14 CONSIDERED APPROPRIATE TO THE COURT.

15 (B) DISMISS THE CHARGES AGAINST THE JUVENILE.

16 (5) UPON RECEIPT OF A REPORT THAT THERE IS A SUBSTANTIAL
17 PROBABILITY THAT THE JUVENILE IS UNABLE TO BE RESTORED DUE TO
18 SERIOUS EMOTIONAL DISTURBANCE, THE COURT MAY IN ITS DISCRETION,
19 EXCEPT AS PROVIDED UNDER THE YOUTH REHABILITATION SERVICES ACT,
20 1974 PA 150, MCL 803.301 TO 803.309, ORDER THAT MENTAL HEALTH
21 SERVICES BE PROVIDED TO THE JUVENILE BY THE DEPARTMENT, A COMMUNITY
22 MENTAL HEALTH SERVICES PROGRAM, THE DEPARTMENT OF HUMAN SERVICES, A
23 COUNTY DEPARTMENT OF HUMAN SERVICES, OR ANOTHER APPROPRIATE MENTAL
24 HEALTH SERVICES PROVIDER FOR A PERIOD NOT TO EXCEED 60 DAYS. THE
25 COURT SHALL RETAIN JURISDICTION OVER THE JUVENILE THROUGHOUT THE
26 DURATION OF THE ORDER. THE ENTITY ORDERED TO PROVIDE SERVICES UNDER
27 THIS SUBSECTION SHALL CONTINUE TO PROVIDE SERVICES FOR THE DURATION

1 OF THE PERIOD OF TREATMENT ORDERED BY THE COURT.

2 (6) NOT LATER THAN 14 DAYS BEFORE THE EXPIRATION OF AN ORDER
3 FOR TREATMENT UNDER THIS SUBSECTION OR SUBSECTION (5), THE ENTITY
4 PROVIDING MENTAL HEALTH SERVICES UNDER THAT ORDER SHALL SUBMIT A
5 REPORT TO THE COURT AND THE QUALIFIED FORENSIC MENTAL HEALTH
6 EXAMINER REGARDING THE JUVENILE. UPON RECEIPT OF THE REPORT, THE
7 COURT SHALL REVIEW THE REPORT AND DO EITHER OF THE FOLLOWING:

8 (A) RENEW THE ORDER FOR ANOTHER PERIOD OF TREATMENT NOT TO
9 EXCEED 60 DAYS.

10 (B) DETERMINE CUSTODY OF THE JUVENILE AND DISMISS THE CHARGES
11 AGAINST THE JUVENILE.

12 (7) A COUNTY MAY APPLY FOR REIMBURSEMENT FROM THE CHILD CARE
13 FUND CREATED UNDER SECTION 117C OF THE SOCIAL WELFARE ACT, 1939 PA
14 280, MCL 400.117C, FOR PROVIDING MENTAL HEALTH SERVICES AS ORDERED
15 BY A COURT UNDER THIS SECTION.