

# Legislative Analysis



## COMPETENCY EVALUATION REVISIONS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5325 as introduced**  
**Sponsor: Rep. Julie Calley**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5326 as introduced**  
**Sponsor: Rep. Abdullah Hammoud**

**House Bill 5327 as introduced**  
**Sponsor: Rep. Douglas C. Wozniak**

**Committee: Judiciary**  
**Complete to 1-28-19**

### BRIEF SUMMARY:

The bills would revise provisions pertaining to criminal cases involving a defendant's competency to stand trial and when a defendant is found not guilty by reason of insanity. In addition to reorganizing and relocating various provisions, the bills would do the following:

#### House Bill 5325:

- If a jail inmate is not evaluated within 30 days after a defense of insanity is asserted, allow the county to deduct the cost of using independent qualified personnel for the evaluation from the county's yearly transmittal to the state.
- Allow one of the professionals signing a clinical certificate that a defendant is a person requiring treatment to be a licensed psychologist.
- Prohibit a determination of incompetency based on the defendant's use of psychotropic drugs or other medication used under proper medical direction.
- Require a court to hold a hearing to determine placement and conditions for bond when the issue of incompetency is raised.
- Require a hearing if a subsequent examination differs from the original opinion regarding a defendant's competency to stand trial.
- Specifically limit the duration of an order or combination of orders for an offense punishable by life imprisonment.
- Allow a court to order the defendant to comply with certain conditions while released pending trial, including complying with all recommended mental health treatment.

#### House Bill 5326:

- Allow the Center for Forensic Psychiatry to discharge a person determined not to be a risk to self or others to his or her home pending a hearing on whether he or she is a person requiring treatment.
- Repeal provisions within the Mental Health Code establishing a procedure to determine competency of juveniles in delinquency proceedings that are duplicative (identical provisions are in the juvenile code).
- Repeal a provision requiring a training program for juvenile forensic mental health examiners (this provision is not duplicated in the juvenile code).

House Bill 5327 would reference provisions within the juvenile code eliminated from the Mental Health Code and added to the Code of Criminal Procedure by HBs 5325 and 5326.

## DETAILED SUMMARY:

**House Bill 5325** would amend the Code of Criminal Procedure to incorporate provisions eliminated or repealed by HB 5326 regarding competency determinations, to make revisions to some of those provisions, and to enact new provisions pertaining to competency of defendants in criminal trials in felony cases. Substantial changes made by the bill include the following:

- Currently, a defendant must be ordered by a court to undergo an examination relating to a claim of insanity within 60 days from the date of the order. If the defendant is held in jail pending trial, the exam may be performed at the jail by either the Center for Forensic Psychiatry or by other qualified personnel. The bill would require the examination to be scheduled within 30 days of the order if the defendant is held in jail pending trial. Further, if the exam is not completed within the 30 days by the Center, the court could appoint independent qualified personnel to complete the examination with payment made by the county but deducted from the county's yearly transmittal to the state. The court would have to transmit information annually to the State Court Administrative Office that records each time the Center was unable to complete the examination within the required time period and the court appointed qualified personnel outside of the Center to complete the examination.
- Currently, a written report must be prepared at the conclusion of the examination and provided to the prosecuting attorney and defense counsel. The bill would require the report to be provided to the court upon the written consent of the defendant.
- Currently, if a defendant is found not guilty by reason of insanity, the court must immediately commit the defendant to the custody of the Center for not more than 60 days and forward a settled record that consists of the facts concerning the crime for which the defendant was acquitted. The bill would require the record to be transmitted within 72 hours of the defendant's being committed to the Center and to include all police reports, all witness statements, and any reports previously generated by the Center or other mental health professional that had been filed with the court regarding the case.
- Currently, within the 60-day period of commitment to the Center, the Center must file a report with the court that includes an opinion as to whether the defendant meets the criteria of a person requiring treatment under provisions of the Mental Health Code relating to involuntary treatment. Under the provision as currently within the Mental Health Code (which would be eliminated by HB 5326), the report must be accompanied by certificates from two physicians, one of whom must be a psychiatrist. The bill would instead require clinical certificates from two ***qualified personnel***, one of whom must be a psychiatrist.

***Qualified personnel*** would be redefined as a licensed psychologist, physician, or psychiatrist in good standing under the licensing law of this state. (Currently, the term means personnel meeting standards determined by the Department of Health and Human Services (DHHS) under departmental rules.)

- Currently, after receiving the report from the Center, a court may direct the prosecuting attorney to file a petition for an order requiring mental health treatment for the defendant. The bill would require the court to respond within 48 hours of receiving the report. Further, the bill would require, instead of allow, the report of the Center to be filed with the petition.

- Currently, the prosecuting attorney must immediately notify the Center in writing if the court does not order a petition to be filed. The bill would require the Center to immediately cause the person to be discharged.
- The bill would add a provision that a defendant could not be determined incompetent to stand trial because psychotropic drugs or other medication have been or are being administered under proper medical direction, even if the defendant might be incompetent to stand trial without such medication. Prior to making its determination on the issue of incompetence to stand trial, the bill would allow the court to require the filing of a statement by the treating physician that such medication will not adversely affect the defendant's understanding of the proceedings or his or her ability to assist in his or her defense.
- If the issue of incompetence were raised, the bill would require the court to hold a hearing to determine placement and conditions for bond. The defendant would bear the burden to prove that he or she should not be placed in the Center and should instead be placed in the community on bond and provided outpatient treatment. Any mental health outpatient treatment ordered under this provision would have to be a condition of bond. A court could commit the defendant to the custody of DHHS if an outpatient mental health treatment plan is ordered as a bond condition.
- If a subsequent examination differed from the original opinion on the issue of incompetency, the bill would require the court to hold a hearing within seven days of receiving the differing opinion to determine if the trial on the original charges should proceed. If a prior evaluation resulted in a determination that the defendant *is incompetent* to stand trial and a subsequent one results in a determination that the defendant *is competent* to stand trial, the court would have to receive clear and convincing evidence to find that the defendant is competent and should proceed to trial.
- For an offense punishable by life imprisonment, the bill would add a provision that an order or combination of orders for an offense punishable by imprisonment for life could not have force and effect for a total period in excess of 24 months or one-third of the maximum sentence the defendant could receive if convicted of the charges against him or her, whichever is less, or after the charges against the defendant are dismissed.
- The bill would allow, notwithstanding any other provision of law, the court to order the defendant to comply with conditions that the court determines to be appropriate, including the following:
  - That the defendant appear before the court as required, not leave the state without court permission, and not commit any crime while released.
  - That the defendant comply with all mental health treatment as recommended, including both inpatient and outpatient treatment.
  - Any other condition or conditions that the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public.
- The bill would make numerous revisions to update language and would remove references to judicial admissions under section 515 of the Mental Health Code. (The provision pertains to civil admission and discharge procedures involving persons with developmental disabilities.)

MCL 768.20a and 768.36 and proposed MCL 768.38 to 768.51

**House Bill 5326** would revise provisions within a division of Chapter 10 of the Mental Health Code (Criminal Provisions). The bill would revise the division title from “Disposition of Persons Found Not Guilty by Reason of Insanity” to “Persons Found Not Guilty by Reason of Insanity.” Several provisions pertaining to a person acquitted of a criminal charge by reason of insanity would be removed from the Mental Health Code by HB 5326 and relocated to the Code of Criminal Procedure by HB 5325.

The bill would add a provision regarding the holding of a hearing under a petition for involuntary commitment if a court directs a prosecuting attorney to file such a petition following the opinion of the Center for Forensic Psychiatry that the person is a person requiring treatment. A certificate that accompanied the report from the Center would have to be filed with the petition and would be sufficient to cause a hearing to be held even if the certificate was not executed within 72 hours after the petition had been filed. The petition and the facts concerning the crime for which the person was acquitted by reason of insanity would be admissible in the hearing. A copy of the report from the Center and a copy of the settled record forwarded from the court to the Center would have to be attached to the petition.

Currently, if the report states the opinion that the person meets the criteria of a person requiring treatment, and if a petition is ordered to be filed, the Center may retain the person pending a hearing on the petition. The bill would allow the Center to discharge the person to his or her residence pending the hearing if the Center determines that the person is not a risk to self or others.

Following the hearing on the petition for involuntary treatment under Chapter 4 of the act, the bill would allow the court to order any and all mental health treatment as provided under the act, including hospitalization and assisted outpatient treatment. DHHS could not discharge a person from a status of not guilty by reason of insanity while the person was under a probate court order for mental health treatment.

The bill would repeal the following sections of the Mental Health Code:

- Sections 1020 to 1044 (MCL 330.2020 to 330.2044). The repealed sections are in a division of Chapter 10 entitled “Incompetence to Stand Trial” and establish the process of determining competency to stand trial for adult defendants. The bill would relocate the repealed provisions, with some changes, to Chapter VIII of the Code of Criminal Procedure (see HB 5325 for a description of the changes).
- Sections 1060 to 1074 (MCL 330.2060 to 330.2074). The bill would repeal provisions regarding the procedure put in place by 2012 PA 540 for determining the competency of juveniles in delinquency proceedings. However, identical provisions were placed in the juvenile code of the Probate Code by 2012 PA 541 (MCL 712A.18n to 712A.18r), with the exception of a requirement for DHHS to establish a training program for juvenile forensic mental health examiners (MCL 330.2072). There is no comparable provision currently within the juvenile code pertaining to the qualifications and training of juvenile forensic mental health examiners. [Note: The definition of the term “qualified juvenile forensic mental health examiner” currently in section 1(1)(o) of Chapter XIA of the Probate Code (MCL 712A.1) would be rendered moot by the repeal of section 1072.]

The bill would also delete a provision requiring a court to immediately commit any person acquitted of a criminal charge by reason of insanity to the custody of the Center for Forensic Psychiatry. However, the deleted provisions would be relocated, with some revisions, to section 20(a)(11) of the Code of Criminal Procedure.

MCL 330.2050 and repealed MCL 330.2020 et seq.

**House Bill 5327** would amend the Michigan juvenile code within the Probate Code to revise a reference to Chapter VIII of the Code of Criminal Procedure to encompass provisions regarding competency hearings that would be added to that act by HB 5325. The bill would also make numerous changes of a technical nature, such as replacing references to the Family Independence Agency with references to the Department of Health and Human Services.

MCL 712A.17

**Tie-bars:** House Bills 5325 and 5326 are tie-barred to each other, and House Bill 5327 is tie-barred to House Bill 5325. A bill cannot take effect unless a bill to which it is tie-barred is also enacted.

Each bill would take effect 90 days after its enactment.

#### **FISCAL IMPACT:**

House Bills 5325 through 5327 would have a minimal to moderate fiscal cost to the state related to any new state costs as a result of courts appointing independent qualified personnel to complete examinations if the Center for Forensic Psychiatry does not schedule an examination within 30 days. Relatedly, the FY 2019-20 Department of Health and Human Services budget includes funding to hire 7 additional forensic evaluators at the Center for Forensic Psychiatry to ameliorate the current forensic evaluation waiting list.

In addition, the bills would have an indeterminate fiscal impact on local court systems. Additional costs to local courts could occur depending on how provisions of the bills affect court caseloads and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.