

# HOUSE BILL NO. 5325

January 09, 2020, Introduced by Reps. Calley, Brann, Wozniak, LaFave and Hammoud and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 20a and 36 of chapter VIII (MCL 768.20a and 768.36), as amended by 2014 PA 76, and by adding sections 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51 to chapter VIII.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1** CHAPTER VIII

**2** Sec. 20a. (1) If a defendant in a felony case proposes to



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

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

26 (3) **If the defendant is to be held in jail pending trial, the**  
27 **center or court-appointed qualified personnel shall schedule an**  
28 **appointment to complete the examination within 30 days of the**  
29 **order. If the center does not schedule and complete the examination**



1 within 30 days, the court may appoint independent qualified  
2 personnel outside of the center to complete the examination in a  
3 number of days as ordered by the court. Payment for the examination  
4 must be made by the county, but the expense to the county to have  
5 an examination completed outside of the center must be deducted  
6 from the county's yearly transmittal to the state. The court shall  
7 transmit information annually to the state court administrative  
8 office in a form and manner approved by the state court  
9 administrative office that records each time the center was unable  
10 to complete the examination within the required time period and the  
11 court appointed qualified personnel outside of the center to  
12 complete the examination.

13 (4) ~~(3)~~—The defendant may, at his or her own expense, secure  
14 an independent psychiatric evaluation by a clinician of his or her  
15 choice on the issue of his or her insanity at the time the alleged  
16 offense was committed. If the defendant is indigent, the court may,  
17 upon showing of good cause, order that the county pay for an  
18 independent psychiatric evaluation. The defendant shall notify the  
19 prosecuting attorney at least 5 days before the day scheduled for  
20 the independent evaluation that he or she intends to secure such an  
21 evaluation. The prosecuting attorney may similarly obtain **an**  
22 independent psychiatric evaluation. A clinician secured by an  
23 indigent defendant is entitled to receive a reasonable fee as  
24 approved by the court.

25 (5) ~~(4)~~—The defendant shall fully cooperate in his or her  
26 examination by personnel of the center for forensic psychiatry or  
27 by other qualified personnel, and by any other independent  
28 examiners for the defense and prosecution. If he or she fails to  
29 cooperate, and that failure is established to the satisfaction of



1 the court at a hearing prior to trial, the defendant ~~shall~~**must** be  
2 barred from presenting testimony relating to his or her insanity at  
3 the trial of the case.

4 (6) ~~(5)~~—Statements made by the defendant to personnel of the  
5 center, ~~for forensic psychiatry,~~ to other qualified personnel, or  
6 to any independent examiner during an examination ~~shall~~**are** not be  
7 admissible ~~or~~**and do not** have probative value in court at the trial  
8 of the case on any issues other than his or her mental illness or  
9 insanity at the time of the alleged offense.

10 (7) ~~(6)~~—Upon conclusion of the examination, the center ~~for~~  
11 ~~forensic psychiatry~~ or the other qualified personnel, and any  
12 independent examiner, shall prepare a written report and shall  
13 submit the report to the prosecuting attorney and defense counsel.  
14 The report ~~shall~~**must** contain **all of the following:**

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

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

19 (c) The opinion of the center or qualified personnel, and the  
20 independent examiner on the issue of the defendant's insanity at  
21 the time the alleged offense was committed and whether the  
22 defendant was mentally ill or intellectually disabled at the time  
23 the alleged offense was committed.

24 (8) **The written report described in subsection (7) must be**  
25 **provided to the court upon the written consent of the defendant.**

26 (9) ~~(7)~~—Within 10 days after the receipt of the report from  
27 the center ~~for forensic psychiatry~~ or from the qualified personnel,  
28 or within 10 days after the receipt of the report of an independent  
29 examiner secured by the prosecution, whichever occurs later, but



1 not later than 5 days before the trial of the case, or at another  
2 time the court directs, the prosecuting attorney shall file and  
3 serve upon the defendant a notice of rebuttal of the defense of  
4 insanity ~~which shall~~ **that must** contain the names of the witnesses  
5 whom the prosecuting attorney proposes to call in rebuttal.

6 (10) ~~(8)~~ The report of the center, ~~for forensic psychiatry,~~  
7 the qualified personnel, or any independent examiner ~~may be~~ **is**  
8 admissible in evidence upon the stipulation of the prosecution and  
9 defense.

10 (11) If a defendant is found not guilty by reason of insanity,  
11 the court shall immediately commit the defendant to the custody of  
12 the center for a period as determined appropriate by the court, but  
13 not to exceed 60 days. Within 72 hours of the court's commitment of  
14 the defendant to the center, the court must forward to the  
15 prosecutor, defense counsel, and center a settled record that  
16 consists of the facts concerning the crime that the defendant was  
17 found to have committed but of which he or she was acquitted by  
18 reason of insanity, including all police reports, all witness  
19 statements, and any reports previously generated by the center or  
20 other mental health professional that were filed with the court  
21 regarding the instant case. The center shall thoroughly examine and  
22 evaluate the present mental condition of the defendant in order to  
23 reach an opinion on whether the defendant meets the criteria of a  
24 person requiring treatment in section 401 of the mental health  
25 code, 1974 PA 258, MCL 330.1401.

26 (12) Within the 60-day period described in subsection (11),  
27 the center shall file a report with the court, prosecuting  
28 attorney, and defense counsel. The report required under this  
29 subsection must contain a summary of the crime which the defendant

1 committed but of which he or she was acquitted by reason of  
2 insanity and an opinion as to whether the defendant meets the  
3 criteria of a person requiring treatment as defined in section 401  
4 of the mental health code, 1974 PA 258, MCL 330.1401, and the facts  
5 upon which the opinion is based. If the opinion stated is that the  
6 defendant is a person requiring treatment, the report must be  
7 accompanied by clinical certificates from 2 qualified personnel, at  
8 least 1 of whom must be a psychiatrist.

9 (13) Within 48 hours of receipt of the report required under  
10 subsection (12), the court may direct the prosecuting attorney to  
11 file a petition on a form approved by the state court  
12 administrative office under section 1050 of the mental health code,  
13 1974 PA 258, MCL 330.2050, for an order requiring mental health  
14 treatment with the probate court of the person's county of  
15 residence or of the county in which the criminal trial was held.  
16 The report and any clinical certificates that accompanied the  
17 report of the center must be filed with the petition and must be  
18 considered sufficient to cause a hearing to be held under section  
19 451 of the mental health code, 1974 PA 258, MCL 330.1451, even if  
20 they were not executed within 72 hours of the filing of the  
21 petition. Upon the order requiring the prosecuting attorney to file  
22 a petition under section 1050 of the mental health code, 1974 PA  
23 258, MCL 330.2050, the prosecutor shall also attach a copy of the  
24 report from the center and a copy of the settled record to the  
25 petition.

26 (14) If the court does not order the prosecuting attorney to  
27 file a petition under section 434 of the mental health code, 1974  
28 PA 258, MCL 330.1434, the prosecutor shall immediately notify the  
29 center in writing. The center, upon receipt of the notification,



1 shall immediately cause the person to be discharged.

2 (15) If the report required under subsection (12) states the  
 3 opinion that the defendant meets the criteria of a person requiring  
 4 treatment, and if a petition is ordered to be filed under  
 5 subsection (13), the center may retain the defendant pending a  
 6 hearing on the petition. If the center determines that the  
 7 individual is not a risk to himself or herself or others, the  
 8 center may release the defendant to his or her residence or to a  
 9 community facility with an outpatient mental health treatment plan  
 10 pending the hearing in probate court. The center shall immediately  
 11 inform the court in writing as to the location of the defendant and  
 12 must continually update the court when that location changes.

13 (16) ~~(9)~~ As used in this section: ~~,"qualified~~

14 (a) "Center" or "center for forensic psychiatry" means the  
 15 center established under section 128 of the mental health code,  
 16 1974 PA 258, MCL 330.1128.

17 (b) "Clinical certificate" means the written conclusion and  
 18 statement of a physician or a licensed psychologist that an  
 19 individual is a person requiring treatment together with the  
 20 information and opinions, in reasonable detail, that underlie the  
 21 conclusion, on the form prescribed by the department of health and  
 22 human services or on a substantially similar form.

23 (c) "Qualified personnel" means ~~personnel meeting standards~~  
 24 ~~determined by the department of community health under rules~~  
 25 ~~promulgated pursuant to the administrative procedures act of 1969,~~  
 26 ~~1969 PA 306, MCL 24.201 to 24.328.~~ a licensed psychologist,  
 27 physician, or psychiatrist in good standing under the licensing  
 28 laws of this state.

29 Sec. 36. (1) If the defendant asserts a defense of insanity in



1 compliance with section 20a of this chapter, the defendant may be  
2 found "guilty but mentally ill" if, after trial, the trier of fact  
3 finds all of the following:

4 (a) The defendant is guilty beyond a reasonable doubt of an  
5 offense.

6 (b) The defendant has proven by a preponderance of the  
7 evidence that he or she was mentally ill at the time of the  
8 commission of that offense.

9 (c) The defendant has not established by a preponderance of  
10 the evidence that he or she lacked the substantial capacity either  
11 to appreciate the nature and quality or the wrongfulness of his or  
12 her conduct or to conform his or her conduct to the requirements of  
13 the law.

14 (2) If the defendant asserts a defense of insanity in  
15 compliance with section 20a of this chapter and the defendant  
16 waives his or her right to trial, by jury or by judge, the trial  
17 judge, with the approval of the prosecuting attorney, may accept a  
18 plea of guilty but mentally ill in lieu of a plea of guilty or a  
19 plea of nolo contendere. The judge shall not accept a plea of  
20 guilty but mentally ill until, with the defendant's consent, the  
21 judge has examined the report or reports prepared in compliance  
22 with section 20a of this chapter, the judge has held a hearing on  
23 the issue of the defendant's mental illness at which either party  
24 may present evidence, and the judge is satisfied that the defendant  
25 has proven by a preponderance of the evidence that the defendant  
26 was mentally ill at the time of the offense to which the plea is  
27 entered. The reports ~~shall~~**must** be made a part of the record of the  
28 case.

29 (3) If a defendant is found guilty but mentally ill or enters





1 a plea to that effect ~~which~~**that** is accepted by the court, the  
2 court shall impose any sentence that could be imposed by law upon a  
3 defendant who is convicted of the same offense. If the defendant is  
4 committed to the custody of the department of corrections, the  
5 defendant ~~shall~~**must** undergo further evaluation and be ~~given such~~  
6 **provided** treatment as is psychiatrically indicated for his or her  
7 mental illness or intellectual disability. Treatment may be  
8 provided by the department of corrections or by the department of  
9 ~~community health~~ **and human services** as provided by law. Sections  
10 1004 and 1006 of the mental health code, 1974 PA 258, MCL 330.2004  
11 and 330.2006, apply to the discharge of the defendant from a  
12 facility of the department of ~~community health~~ **and human services**  
13 to which the defendant has been admitted and to the return of the  
14 defendant to the department of corrections for the balance of the  
15 defendant's sentence. When a treating facility designated by either  
16 the department of corrections or the department of ~~community health~~  
17 **and human services** discharges the defendant before the expiration  
18 of the defendant's sentence, that treating facility shall transmit  
19 to the parole board a report on the condition of the defendant that  
20 contains the clinical facts, the diagnosis, the course of  
21 treatment, the prognosis for the remission of symptoms, the  
22 potential for recidivism, the danger of the defendant to himself or  
23 herself or to the public, and recommendations for future treatment.  
24 If the parole board considers the defendant for parole, the board  
25 shall consult with the treating facility at which the defendant is  
26 being treated or from which the defendant has been discharged and a  
27 comparable report on the condition of the defendant ~~shall~~**must** be  
28 filed with the board. If the defendant is placed on parole, the  
29 defendant's treatment shall, upon recommendation of the treating



1 facility, be made a condition of parole. Failure to continue  
 2 treatment except by agreement with the designated facility and  
 3 parole board is grounds for revocation of parole.

4 (4) If a defendant who is found guilty but mentally ill is  
 5 placed on probation under the jurisdiction of the sentencing court  
 6 as provided by law, the trial judge, upon recommendation of the  
 7 center, ~~for forensic psychiatry,~~ shall make treatment a condition  
 8 of probation. Reports as specified by the trial judge ~~shall~~**must** be  
 9 filed with the probation officer and the sentencing court. Failure  
 10 to continue treatment, except by agreement with the treating agency  
 11 and the sentencing court, is grounds for revocation of probation.  
 12 The period of probation ~~shall~~**must** not be for less than ~~5 years~~**1**  
 13 **year** and ~~shall~~**must** not be shortened without receipt and  
 14 consideration of a forensic psychiatric report by the sentencing  
 15 court. Treatment ~~shall~~**must** be provided by an agency of the  
 16 department of ~~community health~~ **and human services** or, with the  
 17 approval of the sentencing court and at individual expense, by  
 18 private agencies, private physicians, or other mental health  
 19 personnel. A psychiatric report ~~shall~~**must** be filed with the  
 20 probation officer and the sentencing court every 3 months during  
 21 the period of probation. If a motion on a petition to discontinue  
 22 probation is made by the defendant, the probation officer shall  
 23 request a report as specified from the center ~~for forensic~~  
 24 ~~psychiatry~~ or any other facility certified by **the** department of  
 25 ~~community health~~ **and human services** for the performance of forensic  
 26 psychiatric evaluation.

27 (5) **As used in this section and in sections 38, 40, 41, 42,**  
 28 **48, and 51 of this chapter, "center" or "center for forensic**  
 29 **psychiatry" means the center established under section 128 of the**



1 mental health code, 1974 PA 258, MCL 330.1128.

2       Sec. 38. (1) A defendant to a criminal charge is presumed  
3 competent to stand trial. He or she must be determined incompetent  
4 to stand trial only if he or she is incapable, because of his or  
5 her mental condition, of understanding the nature and object of the  
6 proceedings against him or her or of assisting in his or her  
7 defense in a rational manner. The court shall determine the  
8 capacity of a defendant to assist in his or her defense by his or  
9 her ability to perform the tasks reasonably necessary for him or  
10 her to perform in the preparation of his or her defense and during  
11 his or her trial.

12       (2) A defendant must not be determined incompetent to stand  
13 trial because psychotropic drugs or other medication have been or  
14 are being administered under proper medical direction, and even  
15 though without such medication the defendant might be incompetent  
16 to stand trial. However, when the defendant is receiving such  
17 medication, the court may, prior to making its determination on the  
18 issue of incompetence to stand trial, require the filing of a  
19 statement by the treating physician that such medication will not  
20 adversely affect the defendant's understanding of the proceedings  
21 or his or her ability to assist in his or her defense.

22       Sec. 39. (1) A defendant who is determined incompetent to  
23 stand trial must not be proceeded against while he or she is  
24 incompetent.

25       (2) Any pretrial motion may be made by either the defense or  
26 prosecution while a defendant is incompetent to stand trial, and  
27 the issues presented by the motion must be heard and decided if the  
28 presence of the defendant is not essential for a fair hearing and  
29 decision on the motion.



1 (3) If it appears that evidence essential to the case the  
2 defense or prosecution plans to present might not be available at  
3 the time of trial, the court shall allow such evidence to be taken  
4 and preserved. Evidence taken under this subsection is admissible  
5 at the trial only if it is not otherwise available. Procedures for  
6 the taking and preserving of evidence under this subsection, and  
7 the conditions under which the evidence is admissible at trial,  
8 must be provided by court rule.

9 Sec. 40. (1) The issue of incompetence to stand trial may be  
10 raised by the defense, court, or prosecution. The time and form of  
11 the procedure for raising the issue must be provided by court rule.

12 (2) If the issue of incompetence is raised, the court shall  
13 hold a hearing to determine placement and conditions for bond. The  
14 defendant has the burden to prove to the court that he or she  
15 should not be placed in the center for forensic psychiatry and  
16 should instead be placed in the community on bond and provided  
17 outpatient treatment as described in section 468(2)(d) of the  
18 mental health code, 1974 PA 258, MCL 330.1468. Any mental health  
19 outpatient treatment ordered under this section must be a condition  
20 of bond as set under section 47 of this chapter.

21 Sec. 41. (1) Upon a showing that the defendant may be  
22 incompetent to stand trial, the court shall order the defendant to  
23 undergo an examination by personnel of either the center for  
24 forensic psychiatry or other facility officially certified by the  
25 department of health and human services to perform examinations  
26 relating to the issue of incompetence to stand trial. The defendant  
27 must make himself or herself available for the examination at the  
28 places and times established by the center or other certified  
29 facility. If the defendant, after being notified, fails to make

1 himself or herself available for the examination, the court may  
2 order his or her commitment to the center or other facility without  
3 a hearing. If the defendant is to be held in a jail or similar  
4 place of detention pending trial, the center or other facility may  
5 perform the examination in the jail or may notify the sheriff to  
6 transport the defendant to the center for forensic psychiatry or  
7 other facility for the examination, and the sheriff must return the  
8 defendant to the jail upon completion of the examination.

9 (2) Except as provided in subsection (1), if the defendant is  
10 not to be held in a jail or similar place of detention pending  
11 trial, the court shall commit him or her to the center or other  
12 facility only when the commitment is necessary for the performance  
13 of the examination. The defendant must be released by the center or  
14 other facility upon completion of the examination.

15 (3) If any subsequent examination of the defendant is  
16 completed that differs from the original opinion on the issue of  
17 incompetency, the court shall hold a hearing within 7 days of  
18 receipt of the differing opinion to determine if the trial on the  
19 original charges should proceed. If a prior evaluation resulted in  
20 a determination that the defendant is incompetent to stand trial  
21 and a subsequent evaluation results in a determination that the  
22 defendant is competent to stand trial, the court must receive clear  
23 and convincing evidence to find that the defendant is competent and  
24 should proceed to trial.

25 Sec. 42. (1) If the defendant is ordered to undergo an  
26 examination under section 41 of this chapter, the center for  
27 forensic psychiatry or other facility must, for the purpose of  
28 gathering psychiatric and other information pertinent to the issue  
29 of the incompetence of the defendant to stand trial, examine the



1 defendant and consult with defense counsel, and may consult with  
2 the prosecutor or other persons. Defense counsel must make himself  
3 or herself available for consultation with the center or other  
4 facility. The examination must be performed, defense counsel  
5 consulted, and a written report submitted to the court, prosecuting  
6 attorney, and defense counsel within 60 days of the date of the  
7 order for evaluation.

8 (2) The report required under subsection (1) must contain all  
9 of the following:

10 (a) The clinical findings of the center or other facility.

11 (b) The facts, in reasonable detail, upon which the findings  
12 are based, and upon request of the court, defense, or prosecution  
13 additional facts germane to the findings.

14 (c) The opinion of the center or other facility on the issue  
15 of the incompetence of the defendant to stand trial.

16 (d) If the opinion provided under subdivision (c) is that the  
17 defendant is incompetent to stand trial, the opinion of the center  
18 or other facility on the likelihood of the defendant attaining  
19 competence to stand trial, if he or she is provided a course of  
20 treatment, within the time limit established under section 46 of  
21 this chapter.

22 (3) Except as otherwise provided in this subsection, the  
23 opinion concerning competency to stand trial derived from the  
24 examination is not admissible as evidence for any purpose in the  
25 pending criminal proceedings, except on the issues to be determined  
26 in the hearings required or permitted under sections 43 and 49 of  
27 this chapter. The foregoing bar of testimony does not prohibit the  
28 examining qualified clinician from presenting, at other stages in  
29 the criminal proceedings, opinions concerning criminal



1 responsibility, disposition, or other issues if the opinions were  
2 originally requested by the court and are available. Information  
3 gathered in the course of a prior examination that is of historical  
4 value to the examining qualified clinician may be utilized in the  
5 formulation of an opinion in any subsequent court-ordered  
6 evaluation.

7       Sec. 43. (1) Unless the defense or prosecution for good cause  
8 requests a delay for a reasonable time, upon receipt of the written  
9 report required under section 42 of this chapter, the court must  
10 cause the defendant to appear in court and must hold a hearing  
11 within 5 days or upon the conclusion of the case, proceeding, or  
12 other matter then before it, whichever is sooner.

13       (2) On the basis of the evidence admitted at a hearing held  
14 under subsection (1), the court shall determine the issue of the  
15 competence of the defendant to stand trial. If the defendant is  
16 determined to be incompetent to stand trial, the court shall also  
17 determine whether there is a substantial probability that the  
18 defendant, if provided a course of treatment, will attain  
19 competence to stand trial within the time limit established under  
20 section 46 of this chapter.

21       (3) The written report required under section 42 of this  
22 chapter is admissible as competent evidence in a hearing under  
23 subsection (1), unless the defense or prosecution objects, but not  
24 for any other purpose in the pending criminal proceeding. The  
25 defense, the prosecution, and the court on its own motion may  
26 present additional evidence relevant to the issues to be determined  
27 at the hearing.

28       (4) If the defendant is receiving medication and is not  
29 determined incompetent to stand trial, the court may, in order to

1 maintain the competence of the defendant to stand trial, make  
2 orders as the court deems appropriate for the continued  
3 administration of the medication pending and during trial.

4       Sec. 44. If the defendant is determined incompetent to stand  
5 trial, and if the court determines that there is not a substantial  
6 probability that, if provided a course of treatment, he or she will  
7 attain competence to stand trial within the time limit established  
8 under section 46 of this chapter, the court may direct a  
9 prosecuting attorney to file a petition asserting that the  
10 defendant is a person requiring treatment as defined by section 401  
11 of the mental health code, 1974 PA 258, MCL 330.1401, with the  
12 probate court in the defendant's county of residence.

13       Sec. 45. (1) If the defendant is determined incompetent to  
14 stand trial, and if the court determines that there is a  
15 substantial probability that, if provided a course of treatment, he  
16 or she will attain competence to stand trial within the time limit  
17 established under section 46 of this chapter, the court shall order  
18 him or her to undergo treatment to render him or her competent to  
19 stand trial.

20       (2) The court shall appoint a medical supervisor of the course  
21 of treatment. The supervisor may be any person or agency willing to  
22 supervise the course of treatment, or the department of health and  
23 human services.

24       (3) The court may commit the defendant to the custody of the  
25 department of health and human services, or to the custody of any  
26 other inpatient mental health facility if it agrees, only if  
27 commitment is necessary for the effective administration of the  
28 course of treatment or if an outpatient mental health treatment  
29 plan is ordered as a bond condition. If the defendant, absent





1 commitment to an inpatient facility, would otherwise be held in a  
2 jail or similar place of detention pending trial, the court may  
3 enter an order restricting the defendant in his or her movements to  
4 the buildings and grounds of the facility at which he or she is to  
5 be treated.

6       Sec. 46. (1) Except as to an offense punishable by  
7 imprisonment for life, an order or combination of orders issued  
8 under section 45 or 49 of this chapter, or both, must not have  
9 force and effect for a total period in excess of 15 months or 1/3  
10 of the maximum sentence the defendant could receive if convicted of  
11 the charges against him or her, whichever is less, or after the  
12 charges against the defendant are dismissed.

13       (2) An order or combination of orders for an offense  
14 punishable by imprisonment for life issued under section 45 or 49  
15 of this chapter, or both, must not have force and effect for a  
16 total period in excess of 24 months or 1/3 of the maximum sentence  
17 the defendant could receive if convicted of the charges against him  
18 or her, whichever is less, or after the charges against the  
19 defendant are dismissed.

20       (3) The court shall notify defense counsel, the prosecution,  
21 and the medical supervisor of treatment whenever the charges  
22 against the defendant are dismissed or whenever an order is voided  
23 by the court before the stated time period in the order has  
24 elapsed.

25       (4) If the defendant is to be discharged or released because  
26 of the expiration of an order or orders under section 45 or 49 of  
27 this chapter, the supervisor of treatment prior to the discharge or  
28 release may file a petition asserting that the defendant is a  
29 person requiring treatment, as that term is defined in section 401

1 of the mental health code, 1974 PA 258, MCL 330.1401, with the  
2 probate court of the defendant's county of residence.

3       Sec. 47. (1) The right of the defendant to be at liberty  
4 pending trial, on bail or otherwise, must not be impaired because  
5 the issue of incompetence to stand trial has been raised, because  
6 the defendant has been determined incompetent to stand trial, or  
7 because the defendant has been ordered to undergo treatment to  
8 render him or her competent to stand trial, except to the extent  
9 authorized under section 41 of this chapter for the purpose of an  
10 examination or under section 45 of this chapter for the purpose of  
11 administering a course of treatment.

12       (2) Notwithstanding any other provision of law, the court may  
13 order the defendant to comply with conditions that the court  
14 determines are appropriate including any of the following:

15       (a) That the defendant appear before the court as required,  
16 not leave the state without permission of the court, and not commit  
17 any crime while released.

18       (b) That the defendant comply with all mental health treatment  
19 as recommended, including inpatient and outpatient treatment.

20       (c) Any other condition or conditions the court determines are  
21 reasonably necessary to ensure the appearance of the defendant as  
22 required and the safety of the public.

23       Sec. 48. (1) The medical supervisor of treatment ordered under  
24 this chapter must transmit a written report to the court,  
25 prosecuting attorney, defense counsel, and the center for forensic  
26 psychiatry at the following times:

27       (a) Not less than at least once every 90 days from the date of  
28 an order issued under section 45 of this chapter.

29       (b) Whenever he or she is of the opinion that the defendant is



1 no longer incompetent to stand trial.

2 (c) Whenever he or she is of the opinion that there is not a  
3 substantial probability that the defendant, with treatment, will  
4 attain competence to stand trial within the time limit established  
5 under section 46 of this chapter.

6 (2) The reports transmitted under subsection (1) are  
7 admissible in a hearing conducted under section 43 of this chapter  
8 and must contain all of the following:

9 (a) The clinical findings of the supervisor of treatment.

10 (b) The facts, in reasonable detail, upon which the findings  
11 are based, and upon request of the court, defense, or prosecution  
12 additional facts germane to the findings.

13 (c) The opinion of the supervisor of treatment on the issue of  
14 the incompetence of the defendant to stand trial.

15 (d) If the opinion is that the defendant is incompetent to  
16 stand trial, the opinion of the supervisor of treatment on whether  
17 the defendant has made progress toward attaining competence to  
18 stand trial during the course of treatment.

19 Sec. 49. (1) Unless the defense waives the hearing, the court  
20 must hear and redetermine the issue of the incompetence of the  
21 defendant to stand trial and, if the defendant is redetermined  
22 incompetent to stand trial, must hear and determine whether the  
23 defendant has made progress toward attaining competence to stand  
24 trial during his course of treatment, whenever the court receives a  
25 report from the supervisor of treatment, or whenever deemed  
26 appropriate by the court.

27 (2) The procedures provided in section 43 of this chapter  
28 govern hearings held under this section.

29 (3) If the defendant is determined to be competent to stand



1 trial at a hearing held under this section, trial must commence as  
2 soon as practicable. If the defendant is redetermined incompetent  
3 to stand trial, and if the court determines that the defendant has  
4 made progress toward attaining competence to stand trial, the court  
5 may modify or continue any orders it previously issued under  
6 section 45 of this chapter.

7 Sec. 50. Time spent in custody because of orders issued under  
8 sections 41, 45, and 49 of this chapter must be credited against  
9 any sentence imposed on the defendant in the pending criminal case  
10 or in any other case arising from the same transaction.

11 Sec. 51. (1) The charges against a defendant determined  
12 incompetent to stand trial must be dismissed if either of the  
13 following occur, whichever occurs first:

14 (a) The prosecutor notifies the court of his or her intention  
15 not to prosecute the case.

16 (b) Fifteen months have elapsed from the date on which the  
17 defendant was originally determined incompetent to stand trial.

18 (2) Except as provided in this section, if charges are  
19 dismissed under subsection (1), the same charges, or other charges  
20 arising from the transaction that gave rise to the dismissed  
21 charges, must not subsequently be filed against the defendant.

22 (3) If the charges were dismissed under subsection (1)(b) and  
23 if the crime charged was punishable by a sentence of life  
24 imprisonment, the prosecutor may at any time petition the court for  
25 permission to again file charges. In the case of other charges  
26 dismissed under subsection (1)(b), the prosecutor may, within that  
27 period of time after the charges were dismissed equal to 1/3 of the  
28 maximum sentence that the defendant could receive on the charges,  
29 petition the court for permission to again file charges.

1           (4) The court must grant permission to again file charges  
2 under subsection (3) if after a hearing it determines that the  
3 defendant is competent to stand trial. Prior to the hearing, the  
4 court may order the defendant to be examined by personnel of the  
5 center for forensic psychiatry or other qualified person as an  
6 outpatient, but may not commit the defendant to the center or any  
7 other facility for the examination.

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

10           Enacting section 2. This amendatory act does not take effect  
11 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5326 (request no.  
12 01418'19) of the 100th Legislature is enacted into law.

