

HOUSE BILL No. 6525

September 24, 2008, Introduced by Reps. Schuitmaker, Condino, Warren and Dean and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," by amending section 1 of chapter XIIIA (MCL 712A.1), as amended by 2001 PA 211, and by adding sections 18n, 18o, 18p, 18q, and 18r to chapter XIIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) As used in this chapter:

2 (a) "Civil infraction" means that term as defined in section
3 113 of the revised judicature act of 1961, 1961 PA 236, MCL
4 600.113.

5 (b) "COMPETENCY EVALUATION" MEANS A COURT-ORDERED EXAMINATION
6 OF A JUVENILE DIRECTED TO DEVELOPING INFORMATION RELEVANT TO A
7 DETERMINATION OF HIS OR HER COMPETENCY TO PROCEED AT A PARTICULAR

1 STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO IS CHARGED
2 WITH A CRIMINAL OFFENSE OR IS THE SUBJECT OF A DELINQUENCY
3 PETITION.

4 (C) "COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER
5 A JUVENILE IS COMPETENT TO PROCEED.

6 (D) ~~(b)~~—"County juvenile agency" means that term as defined in
7 section 2 of the county juvenile agency act, 1998 PA 518, MCL
8 45.622.

9 (E) ~~(e)~~—"Court" means the family division of circuit court.

10 (F) ~~(d)~~—"Foreign protection order" means that term as defined
11 in section 2950h of the revised judicature act of 1961, 1961 PA
12 236, MCL 600.2950h.

13 (G) "INCOMPETENT TO STAND TRIAL" MEANS THAT A JUVENILE LACKS A
14 REASONABLE DEGREE OF RATIONAL UNDERSTANDING AND IS UNABLE TO DO 1
15 OR BOTH OF THE FOLLOWING:

16 (i) UNDERSTAND THE NATURE OR OBJECT OF THE PROCEEDING.

17 (ii) ASSIST IN HIS OR HER DEFENSE IN A MEANINGFUL WAY.

18 (H) "JUVENILE" MEANS A PERSON WHO IS 16 YEARS OF AGE OR
19 YOUNGER CHARGED WITH A CRIMINAL OFFENSE OR WHO IS THE SUBJECT OF A
20 DELINQUENCY PETITION.

21 (I) "LACKED CAPACITY" MEANS THAT AT THE TIME THE JUVENILE
22 ENGAGED IN THE CONDUCT CHARGED, THE JUVENILE WAS UNABLE TO FUNCTION
23 AS FOLLOWS:

24 (i) THE JUVENILE DID NOT POSSESS THE CAPACITY TO FORM BOTH
25 CRIMINAL INTENT AND ANY MENTAL STATE REQUIRED FOR THE SPECIFIC
26 OFFENSE CHARGED.

27 (ii) THE JUVENILE WAS UNABLE TO CONFORM HIS OR HER CONDUCT TO

1 THE REQUIREMENTS OF THE LAW.

2 (iii) THE JUVENILE DID NOT APPRECIATE THE CRIMINALITY OF HIS OR
3 HER CONDUCT.

4 (J) "LEAST RESTRICTIVE ALTERNATIVE" MEANS A SUPERVISED
5 COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE JUVENILE'S
6 PARENT, GUARDIAN, OR RELATIVE, OR FACILITY OR CONDITIONS OF
7 TREATMENT TO WHICH ALL OF THE FOLLOWING APPLY:

8 (i) A RESIDENTIAL OR INSTITUTIONAL PLACEMENT IS ONLY UTILIZED
9 AS A LAST RESORT BASED ON THE BEST INTEREST OF THE CHILD OR FOR
10 REASONS OF PUBLIC SAFETY.

11 (ii) THE FACILITY OR CONDITION OF TREATMENT IS NO MORE HARSH,
12 HAZARDOUS, OR INTRUSIVE THAN NECESSARY TO ACHIEVE THE TREATMENT
13 OBJECTIVES OF THE JUVENILE.

14 (iii) THE FACILITY OR CONDITION OF TREATMENT INVOLVES NO
15 RESTRICTIONS ON PHYSICAL MOVEMENT OR ON SUPERVISED RESIDENCE OR
16 INPATIENT CARE EXCEPT AS REASONABLY NECESSARY FOR THE
17 ADMINISTRATION OF TREATMENT OR THE PROTECTION OF THE JUVENILE OR
18 OTHERS FROM PHYSICAL INJURY.

19 (K) "LICENSED CHILD CARING INSTITUTION" MEANS THAT TERM AS
20 DEFINED IN SECTION 1 OF 1973 PA 116, MCL 722.111.

21 (l) ~~(e)~~—"MCI" means the Michigan children's institute created
22 and established by 1935 PA 220, MCL 400.201 to 400.214.

23 (M) ~~(f)~~—"Personal protection order" means a personal
24 protection order issued under section 2950 or 2950a of the revised
25 judiciary act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a,
26 and includes a valid foreign protection order.

27 (N) "QUALIFIED EXAMINER" MEANS A LICENSED PSYCHOLOGIST OR

1 PSYCHIATRIST WHO MEETS ALL OF THE FOLLOWING CRITERIA:

2 (i) HAS EXPERTISE IN CHILD DEVELOPMENT.

3 (ii) HAS TRAINING IN FORENSIC EVALUATION PROCEDURES THROUGH
4 FORMAL INSTRUCTION, PROFESSIONAL SUPERVISION, OR BOTH.

5 (iii) IS NOT EMPLOYED OR CONTRACTED BY A STATE INSTITUTION.

6 (O) "RESTORATION" MEANS THAT A JUVENILE IS NO LONGER
7 INCOMPETENT TO STAND TRIAL.

8 (P) "SERIOUS MISDEMEANOR" MEANS THAT TERM AS DEFINED IN SECTION
9 61 OF THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA
10 87, MCL 780.811.

11 (Q) ~~(g)~~ "Valid foreign protection order" means a foreign
12 protection order that satisfies the conditions for validity
13 provided in section 2950i of the revised judicature act of 1961,
14 1961 PA 236, MCL 600.2950i.

15 (2) Except as otherwise provided, proceedings under this
16 chapter are not criminal proceedings.

17 (3) This chapter shall be liberally construed so that each
18 juvenile coming within the court's jurisdiction receives the care,
19 guidance, and control, preferably in his or her own home, conducive
20 to the juvenile's welfare and the best interest of the state. If a
21 juvenile is removed from the control of his or her parents, the
22 juvenile shall be placed in care as nearly as possible equivalent
23 to the care that should have been given to the juvenile by his or
24 her parents.

25 SEC. 18N. (1) A JUVENILE MAY REQUEST AND RECEIVE A COMPETENCY
26 EVALUATION AND A HEARING TO DETERMINE WHETHER HE OR SHE IS
27 INCOMPETENT TO STAND TRIAL AND WHETHER HE OR SHE LACKED CAPACITY,

1 BEFORE TRANSFERRING THE CASE TO CIRCUIT COURT OR BEFORE FILING
2 CHARGES IN CIRCUIT COURT, UNLESS THE JUVENILE WAIVES HIS OR HER RIGHT
3 TO AN EVALUATION. THE RIGHT TO AN EVALUATION MAY ONLY BE WAIVED UNDER
4 1 OF THE FOLLOWING CONDITIONS:

5 (A) AFTER THE JUVENILE HAS HAD THE OPPORTUNITY TO CONSULT WITH
6 AN ATTORNEY.

7 (B) WITH THE CONSENT OF THE JUVENILE'S PARENT OR GUARDIAN.

8 (C) AFTER A HEARING IN OPEN COURT UPON AFFIRMATION BY THE
9 COURT'S DIRECT CONSULTATION WITH THE JUVENILE.

10 (2) A JUVENILE WHO IS 11 YEARS OF AGE OR YOUNGER IS PRESUMED
11 INCOMPETENT TO PROCEED IF CHARGED WITH A FELONY OR SERIOUS
12 MISDEMEANOR AND SHALL RECEIVE A COMPETENCY EVALUATION BEFORE TRIAL,
13 UNLESS HE OR SHE WAIVES THE RIGHT TO AN EVALUATION AFTER CONSULTATION
14 WITH HIS OR HER ATTORNEY.

15 (3) A JUVENILE MAY REQUEST A COMPETENCY EVALUATION IF BEING
16 CHARGED AS A JUVENILE IN THE FAMILY DIVISION OF THE CIRCUIT COURT, OR
17 IN ANY DESIGNATED CASES, AS DESCRIBED IN SECTION 2D OF THIS CHAPTER.
18 UPON A SHOWING THAT THE JUVENILE MAY BE INCOMPETENT TO STAND TRIAL OR
19 LACKED CAPACITY, THE COURT SHALL ORDER THE JUVENILE TO UNDERGO A
20 COMPETENCY EVALUATION.

21 (4) AT THE TIME AN ISSUE OF THE JUVENILE'S COMPETENCY IS
22 RAISED, THE DELINQUENCY PROCEEDING SHALL TEMPORARILY CEASE UNTIL
23 DETERMINATION IS MADE ON THE COMPETENCE OF THE JUVENILE ACCORDING TO
24 THIS ACT.

25 SEC. 180. (1) A COMPETENCY EVALUATION ORDERED UNDER SECTION 18N
26 SHALL BE CONDUCTED BY A QUALIFIED EXAMINER. THE QUALIFIED EXAMINER
27 SHALL MAKE A FINDING AS TO WHETHER THE JUVENILE IS COMPETENT TO STAND

1 TRIAL AND WHETHER THE JUVENILE LACKED CAPACITY.

2 (2) THIS SECTION DOES NOT PROHIBIT ANY PARTY FROM RETAINING THE
3 PARTY'S OWN QUALIFIED EXAMINER TO CONDUCT ADDITIONAL EXAMINATIONS AT
4 THE PARTY'S OWN EXPENSE.

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

12 SEC. 18P. (1) THE COURT SHALL ORDER THE PROSECUTING ATTORNEY
13 TO PROVIDE TO THE DEFENSE ATTORNEY ALL INFORMATION RELATED TO
14 COMPETENCY AND SHALL ORDER THE PROSECUTOR AND DEFENSE ATTORNEY TO
15 SUBMIT TO THE EXAMINER ANY INFORMATION CONSIDERED RELEVANT TO THE
16 EVALUATION, 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 PROSECUTOR'S POSSESSION.

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

25 (A) PSYCHIATRIC RECORDS.

26 (B) SCHOOL RECORDS.

27 (C) MEDICAL RECORDS.

1 (D) CHILD PROTECTIVE SERVICES RECORDS.

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

8 (4) A QUALIFIED EXAMINER WHO CONDUCTS A COMPETENCY EVALUATION
9 SHALL SUBMIT A WRITTEN REPORT TO THE COURT NOT LATER THAN 30 DAYS
10 FROM RECEIPT OF THE COURT ORDER REQUIRING THE COMPETENCY
11 EVALUATION. THE REPORT SHALL CONTAIN, BUT NOT BE LIMITED TO, THE
12 FOLLOWING:

13 (A) THE REASON FOR THE EVALUATION.

14 (B) THE EVALUATION PROCEDURES USED, INCLUDING ANY PSYCHOMETRIC
15 INSTRUMENTS ADMINISTERED, ANY RECORDS REVIEWED, AND THE IDENTITY OF
16 ANY PERSONS INTERVIEWED.

17 (C) ANY AVAILABLE PERTINENT BACKGROUND INFORMATION.

18 (D) THE RESULTS OF A MENTAL STATUS EXAM, INCLUDING THE
19 DIAGNOSIS AND DESCRIPTION OF ANY PSYCHIATRIC SYMPTOMS, COGNITIVE
20 DEFICIENCY, OR BOTH.

21 (E) A DESCRIPTION OF ABILITIES AND DEFICITS IN THE FOLLOWING
22 MENTAL COMPETENCY FUNCTIONS RELATED TO THE JUVENILE'S COMPETENCE TO
23 STAND TRIAL:

24 (i) THE ABILITY TO UNDERSTAND AND APPRECIATE THE NATURE AND
25 OBJECT OF THE PROCEEDINGS.

26 (ii) THE ABILITY TO COMPREHEND HIS OR HER SITUATION IN RELATION
27 TO THE PROCEEDINGS.

1 (iii) THE ABILITY TO RENDER MEANINGFUL ASSISTANCE TO THE DEFENSE
2 ATTORNEY IN THE PREPARATION OF HIS OR HER CASE.

3 (F) AN OPINION REGARDING THE POTENTIAL SIGNIFICANCE OF THE
4 CHILD'S MENTAL COMPETENCY, STRENGTHS, AND DEFICITS.

5 (G) AN OPINION REGARDING WHETHER OR NOT THE JUVENILE LACKED
6 CAPACITY TO FORM A CRIMINAL INTENT.

7 (5) IN REACHING THE OPINION REGARDING COMPETENCY TO STAND
8 TRIAL, THE QUALIFIED EXAMINER SHALL CONSIDER AND MAKE WRITTEN
9 FINDINGS REGARDING, AT A MINIMUM, ALL OF THE FOLLOWING:

10 (A) WHETHER THE JUVENILE'S CAPABILITIES ENTAIL ANY OF THE
11 FOLLOWING:

12 (i) AN ABILITY TO UNDERSTAND AND APPRECIATE THE CHARGES AND
13 THEIR SERIOUSNESS.

14 (ii) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE
15 LIKELY OUTCOMES.

16 (iii) A RELIABLE EPISODIC MEMORY SO THAT HE OR SHE CAN
17 ACCURATELY AND RELIABLY RELATE A SEQUENCE OF EVENTS.

18 (iv) AN ABILITY TO EXTEND THINKING INTO THE FUTURE.

19 (v) AN ABILITY TO CONSIDER THE IMPACT OF HIS OR HER ACTIONS ON
20 OTHERS.

21 (vi) VERBAL ARTICULATION ABILITIES OR THE ABILITY TO EXPRESS
22 HIMSELF OR HERSELF IN A REASONABLE AND COHERENT MANNER.

23 (vii) LOGICAL DECISION-MAKING ABILITIES, PARTICULARLY
24 MULTIFACTORED PROBLEM SOLVING OR THE ABILITY TO TAKE SEVERAL
25 FACTORS INTO CONSIDERATION IN MAKING A DECISION.

26 (B) DEVELOPMENTALLY, WHETHER THE JUVENILE HAS ANY OF THE
27 FOLLOWING:

1 (i) AN ABILITY TO UNDERSTAND THE CHARGES.

2 (ii) AN ABILITY TO UNDERSTAND THE ROLES OF PARTICIPANTS IN THE
3 TRIAL PROCESS, INCLUDING, BUT NOT LIMITED TO, THE ROLES OF THE
4 JUDGE, DEFENSE ATTORNEY, PROSECUTOR, WITNESSES, AND JURY AND
5 UNDERSTAND THE ADVERSARIAL NATURE OF THE PROCESS.

6 (iii) AN ABILITY TO ADEQUATELY TRUST AND TO WORK COLLABORATIVELY
7 AND MEANINGFULLY WITH HIS OR HER ATTORNEY.

8 (iv) AN ABILITY TO DISCLOSE TO AN ATTORNEY A REASONABLY COHERENT
9 DESCRIPTION OF FACTS PERTAINING TO THE CHARGES, AS PERCEIVED BY THE
10 JUVENILE.

11 (v) AN ABILITY TO REASON ABOUT AVAILABLE OPTIONS BY WEIGHING
12 THEIR CONSEQUENCES, INCLUDING, BUT NOT LIMITED TO, WEIGHING PLEAS,
13 WAIVERS, AND STRATEGIES.

14 (vi) AN ABILITY TO ARTICULATE HIS OR HER MOTIVES.

15 (6) IN REACHING THE OPINION REGARDING LACK OF CAPACITY, THE
16 QUALIFIED EXAMINER SHALL CONSIDER AND MAKE WRITTEN FINDINGS
17 REGARDING WHETHER AT THE TIME THE JUVENILE ENGAGED IN THE CONDUCT
18 CHARGED, AS A RESULT OF IMMATURITY OR MENTAL DISEASE OR DEFECT OR OF
19 DEVELOPMENTAL DELAY, THE JUVENILE LACKED CAPACITY FOR ANY OF THE
20 FOLLOWING:

21 (A) POSSESS THE NECESSARY MENTAL STATE REQUIRED FOR THE
22 OFFENSE CHARGED.

23 (B) CONFORM HIS OR HER CONDUCT TO THE REQUIREMENTS OF THE LAW.

24 (C) APPRECIATE THE CRIMINALITY OF HIS OR HER CONDUCT.

25 (7) IN REACHING THE OPINION REGARDING LACK OF CAPACITY, THE
26 QUALIFIED EXAMINER SHALL CONSIDER AND MAKE WRITTEN FINDINGS WITH
27 RESPECT TO THE FOLLOWING QUESTIONS REGARDING THE JUVENILE'S

1 ABILITIES AND CAPACITIES:

2 (A) WAS THE JUVENILE ABLE TO FORM THE NECESSARY INTENT,
3 INCLUDING SPECIFIC INTENT IF THE CRIME CHARGED REQUIRES PROOF OF A
4 SPECIFIC INTENT?

5 (B) DID THE JUVENILE KNOW WHICH ACTIONS WERE WRONG?

6 (C) DID THE JUVENILE HAVE REASONABLY ACCURATE EXPECTATIONS OF
7 THE CONSEQUENCES OF HIS OR HER ACTIONS?

8 (D) WAS THE JUVENILE ABLE TO ACT OF HIS OR HER OWN VOLITION?

9 (E) DID THE JUVENILE HAVE THE CAPACITY TO BEHAVE
10 INTENTIONALLY?

11 (F) DID THE JUVENILE HAVE THE CAPACITY TO ENGAGE IN LOGICAL
12 DECISION MAKING?

13 (G) DID THE JUVENILE HAVE THE CAPACITY TO FORESEE THE
14 CONSEQUENCES OF HIS OR HER ACTIONS?

15 (H) DID THE JUVENILE HAVE THE CAPACITY TO EXERT CONTROL OVER
16 HIS OR HER IMPULSES AND TO RESIST PEER PRESSURE?

17 (8) IF, IN THE OPINION OF THE QUALIFIED EXAMINER, THE JUVENILE
18 SHOULD BE CONSIDERED INCOMPETENT TO STAND TRIAL OR THAT THE
19 JUVENILE LACKED CAPACITY, THE EVALUATION REPORT SHALL ALSO INCLUDE
20 A DIAGNOSIS AS TO WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT
21 THE JUVENILE WILL BE COMPETENT TO STAND TRIAL IN THE FORESEEABLE
22 FUTURE, WHICH SHOULD BE INTERPRETED AS NO MORE THE LESSER OF EITHER
23 OF THE FOLLOWING:

24 (A) TWELVE MONTHS FROM THE DATE OF EVALUATION.

25 (B) ONE-THIRD OF THE MAXIMUM INCARCERATION TIME ALLOWED FOR AN
26 ADULT WHO IS CONVICTED OF THE CRIME FOR WHICH THE JUVENILE IS
27 CHARGED.

1 (9) THE REPORT SHALL ALSO INCLUDE RECOMMENDATIONS FOR THE
2 GENERAL LEVEL AND TYPE OF REMEDIATION NECESSARY FOR SIGNIFICANT
3 DEFICITS AND FOR MODIFICATIONS OF COURT PROCEDURE THAT MAY HELP
4 COMPENSATE FOR MENTAL COMPETENCY WEAKNESSES.

5 (10) THE COURT IN ITS DISCRETION MAY, FOR GOOD CAUSE, GRANT
6 THE QUALIFIED EXAMINER A 30-DAY EXTENSION IN FILING THE EVALUATION
7 REPORT.

8 (11) COPIES OF THE WRITTEN REPORT SHALL BE PROVIDED BY THE
9 COURT TO THE JUVENILE'S ATTORNEY, THE ATTORNEY REPRESENTING THE
10 STATE, THE DISTRICT ATTORNEY OR A MEMBER OF HIS OR HER STAFF, AND ANY
11 GUARDIAN AD LITEM FOR THE JUVENILE NO LATER THAN 5 WORKING DAYS AFTER
12 RECEIPT OF THE REPORT BY THE COURT.

13 SEC. 18Q. (1) NOT LATER THAN 30 DAYS AFTER A REPORT IS FILED
14 UNDER SECTION 1066, THE COURT SHALL HOLD A HEARING TO DETERMINE IF A
15 JUVENILE IS COMPETENT TO STAND TRIAL AND WHETHER HE OR SHE LACKED
16 CAPACITY. AT THIS HEARING, THE PARTIES MAY INTRODUCE OTHER EVIDENCE
17 REGARDING THE JUVENILE'S MENTAL CONDITION OR MAY SUBMIT THE MATTER BY
18 WRITTEN STIPULATION BASED ON THE FILED REPORT.

19 (2) IF THE COURT DETERMINES THAT THE JUVENILE IS COMPETENT TO
20 STAND TRIAL, THE PROCEEDINGS AGAINST THE JUVENILE SHALL RESUME.

21 (3) IF THE JUVENILE IS NOT COMPETENT TO STAND TRIAL, BUT THE
22 COURT FINDS THAT THE JUVENILE MAY BE RESTORED TO COMPETENCY IN THE
23 FORESEEABLE FUTURE, THEN 1 OF THE FOLLOWING APPLIES:

24 (A) IF THE OFFENSE IS A MISDEMEANOR OTHER THAN A SERIOUS
25 MISDEMEANOR OR A JUVENILE TRAFFIC OFFENSE, THE MATTER SHALL BE
26 DISMISSED.

27 (B) IF THE OFFENSE IS A SERIOUS MISDEMEANOR, THE COURT MAY

1 DISMISS THE MATTER OR SUSPEND THE PROCEEDINGS AGAINST THE JUVENILE.

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

4 (4) IF PROCEEDINGS ARE SUSPENDED BECAUSE THE JUVENILE IS NOT
5 COMPETENT TO STAND TRIAL BUT THE COURT FINDS THAT THE JUVENILE MAY BE
6 RESTORED TO COMPETENCY IN THE FORESEEABLE FUTURE, THEN 1 OF THE
7 FOLLOWING APPLIES:

8 (A) THE COURT MAY ISSUE A RESTORATION ORDER THAT IS VALID FOR
9 180 DAYS FROM THE DATE OF THE INITIAL FINDING OF INCOMPETENCY OR
10 UNTIL 1 OF THE FOLLOWING OCCURS, WHICHEVER OCCURS FIRST:

11 (i) THE RESTORATION PROGRAM SUBMITS A REPORT THAT THE JUVENILE
12 HAS REGAINED COMPETENCY OR THAT THERE IS NO SUBSTANTIAL PROBABILITY
13 THAT THE JUVENILE WILL REGAIN COMPETENCY WITHIN THE PERIOD OF THE
14 ORDER.

15 (ii) THE CHARGES ARE DISMISSED.

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

17 (B) BEFORE ISSUING A RESTORATION ORDER, THE COURT SHALL HOLD A
18 HEARING TO DETERMINE THE LEAST RESTRICTIVE ALTERNATIVE SETTING FOR
19 COMPLETION OF THE RESTORATION.

20 (C) FOLLOWING ISSUANCE OF THE RESTORATION ORDER, THE PROVIDER
21 OF RESTORATION SERVICES SHALL SUBMIT A REPORT TO THE COURT THAT
22 INCLUDES THE INFORMATION REQUIRED UNDER SECTION 18P OF THIS CHAPTER.
23 THE REPORT SHALL BE SUBMITTED TO THE COURT EVERY 90 DAYS, OR SOONER
24 IF AND WHEN EITHER OF THE FOLLOWING OCCURS:

25 (i) THE PROVIDER DETERMINES THAT THE JUVENILE IS NO LONGER
26 INCOMPETENT TO STAND TRIAL.

27 (ii) THE PROVIDER DETERMINES THAT THERE IS NO SUBSTANTIAL

1 PROBABILITY THAT THE JUVENILE WILL NOT BE INCOMPETENT TO STAND TRIAL
2 WITHIN THE PERIOD OF THE ORDER.

3 (5) NOT LATER THAN 20 DAYS BEFORE THE EXPIRATION OF THE INITIAL
4 180-DAY ORDER, THE PROVIDER MAY RECOMMEND TO THE COURT THAT THE
5 RESTORATION ORDER BE RENEWED BY THE COURT FOR ANOTHER 90 DAYS, IF
6 THERE IS A SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL NOT BE
7 INCOMPETENT TO STAND TRIAL WITHIN THE PERIOD OF THAT RENEWED
8 RESTORATION ORDER. THE COURT MAY THEN RENEW THAT RESTORATION ORDER
9 FOR NO MORE THAN AN ADDITIONAL 90 DAYS.

10 (6) UPON RECEIPT OF A REPORT THAT THERE IS A SUBSTANTIAL
11 PROBABILITY THAT THE JUVENILE WILL REMAIN INCOMPETENT TO STAND TRIAL
12 FOR THE FORESEEABLE FUTURE OR WITHIN THE PERIOD OF THE RESTORATION
13 ORDER, OR UPON RECEIPT OF A REPORT THAT THE JUVENILE LACKED CAPACITY,
14 THE COURT SHALL DO BOTH OF THE FOLLOWING:

15 (A) DISMISS THE CHARGES AGAINST THE JUVENILE.

16 (B) DETERMINE CUSTODY OF THE JUVENILE AS FOLLOWS:

17 (i) THE COURT MAY DIRECT CIVIL COMMITMENT PROCEEDINGS BE
18 INITIATED, AS ALLOWED UNDER SECTION 498D OF THE MENTAL HEALTH CODE,
19 1974 PA 258, MCL 330.1498D.

20 (ii) IF THE COURT DETERMINES THAT COMMITMENT PROCEEDINGS ARE
21 INAPPROPRIATE, THE JUVENILE SHALL BE RELEASED TO THE JUVENILE'S
22 PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN UNDER CONDITIONS
23 CONSIDERED APPROPRIATE TO THE COURT.

24 (7) IF THE FINDINGS IN THE REPORT ARE THAT THE JUVENILE LACKED
25 CAPACITY, THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE
26 CHARGES SHOULD BE DISMISSED OR WHETHER THE PROCEEDINGS AGAINST THE
27 JUVENILE SHOULD CONTINUE.

1 (8) THE QUALIFIED EXAMINER APPOINTED BY THE COURT TO DETERMINE
2 THE JUVENILE'S MENTAL CONDITION SHALL BE ALLOWED REASONABLE FEES FOR
3 SERVICES RENDERED.

4 (9) THE COSTS OF COMPETENCY EVALUATIONS ORDERED BY A COURT
5 SHALL BE PAID BY THE STATE, WITH THE LOCAL COURT PAYING
6 TRANSPORTATION COSTS ONLY.

7 (10) THE COSTS OF PROVIDING COMPETENCY RESTORATION SHOULD BE
8 PAID EQUALLY BY THE STATE AND THE LOCAL COURT.

9 SEC. 18R. (1) THE CONSTITUTIONAL PROTECTIONS AGAINST SELF-
10 INCRIMINATION APPLY TO ANY EXAMINATION OR ANY STATEMENT THAT IS MADE
11 TO RESTORATION PERSONNEL DURING THE COURSE AND SCOPE OF A COURT-
12 ORDERED RESTORATION PROGRAM.

13 (2) ANY EVIDENCE OR STATEMENT OBTAINED DURING A COMPETENCY
14 EXAMINATION OR ANY EVIDENCE OR STATEMENT MADE TO RESTORATION
15 PERSONNEL DURING THE COURSE AND SCOPE OF A RESTORATION PROGRAM ARE
16 NOT ADMISSIBLE IN ANY PROCEEDING TO DETERMINE THE JUVENILE'S GUILT
17 OR INNOCENCE UNLESS THE JUVENILE PRESENTS EVIDENCE THAT IS INTENDED
18 TO REBUT THE PRESUMPTION OF CRIMINAL RESPONSIBILITY.

19 (3) A STATEMENT THAT A JUVENILE MAKES DURING AN EXAMINATION OR
20 TO RESTORATION PERSONNEL DURING THE COURSE AND SCOPE OF A RESTORATION
21 PROGRAM OR EVIDENCE RESULTING FROM THE STATEMENT CONCERNING ANY OTHER
22 EVENT OR TRANSACTION IS NOT ADMISSIBLE IN ANY PROCEEDING TO DETERMINE
23 THE JUVENILE'S GUILT OR INNOCENCE OF ANY OTHER CHARGES THAT ARE BASED
24 ON THOSE EVENTS OR TRANSACTIONS.

25 (4) A STATEMENT THAT THE JUVENILE MAKES DURING AN EXAMINATION,
26 ANY PART OF THE EVALUATION THAT IS OBTAINED DURING AN EXAMINATION,
27 OR A STATEMENT THAT THE JUVENILE MAKES TO RESTORATION PERSONNEL

1 DURING THE COURSE AND SCOPE OF A RESTORATION PROGRAM MAY NOT BE
2 USED FOR ANY PURPOSE WITHOUT THE WRITTEN CONSENT OF THE JUVENILE OR
3 THE JUVENILE'S GUARDIAN. THE JUVENILE MUST HAVE AN OPPORTUNITY TO
4 CONSULT WITH HIS OR HER ATTORNEY BEFORE GIVING CONSENT.

5 (5) AFTER THE CASE PROCEEDS TO ADJUDICATION OR THE JUVENILE IS
6 FOUND TO BE UNABLE TO REGAIN COMPETENCE, THE COURT SHALL ORDER ALL
7 OF THE REPORTS THAT ARE SUBMITTED ACCORDING TO SECTIONS 18N TO 18Q
8 OF THIS CHAPTER TO BE SEALED. THE COURT MAY ORDER THAT THE REPORTS
9 BE OPENED ONLY AS FOLLOWS:

10 (A) FOR FURTHER COMPETENCY OR CRIMINAL RESPONSIBILITY
11 EVALUATIONS.

12 (B) FOR STATISTICAL ANALYSIS.

13 (C) IF THE RECORDS ARE CONSIDERED TO BE NECESSARY TO ASSIST IN
14 MENTAL HEALTH TREATMENT ORDERED ACCORDING TO THE MENTAL HEALTH
15 CODE, 1974 PA 258, MCL 330.1001 TO 330.2106.

16 (D) FOR DATA GATHERING.

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

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

21 (7) ANY STATEMENT THAT A JUVENILE MAKES DURING AN EXAMINATION,
22 ANY STATEMENT THAT A JUVENILE MAKES TO RESTORATION PERSONNEL DURING
23 THE COURSE AND IN THE SCOPE OF A RESTORATION PROGRAM, OR ANY
24 EVIDENCE RESULTING FROM THAT STATEMENT IS NOT SUBJECT TO DISCLOSURE.