

Legislative Analysis



JUVENILE COMPETENCY

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House Bill 4555 (Substitute H-3)
Sponsor: Rep. Ellen Cogen Lipton

Senate Bill 246 (Substitute H-2)
Sponsor: Sen. Tonya Schuitmaker
House Committee: Families, Children, and Seniors
Senate Committee: Judiciary

Complete to 12-3-12

A SUMMARY OF HOUSE BILL 4555 & SENATE BILL 246 WITH HOUSE FLOOR AMENDMENTS ADOPTED ON 11-29-12

The bills would put the same new provisions in both the Mental Health Code and the Probate Code regarding the manner in which a juvenile's competency to stand trial for the commission of a crime is determined. Senate Bill 246 would amend Chapter XIIA of the Probate Code (entitled "Jurisdiction, Procedure and Disposition Involving Minors") while House Bill 4555 would amend the Mental Health Code. The bills are tied-barred to each other.

The bills would do the following:

****Specify that a juvenile under the age of 10 would be presumed incompetent to stand trial. A juvenile 10 years of age or older would be presumed to be competent to proceed unless the issue of competency is raised by a party. The term "juvenile" refers to a person less than 17 years of age who is the subject of a delinquency petition.**

****Create a process by which the competency of a juvenile to stand trial could be determined.**

****Allow a competency evaluation to be ordered by a court or requested by the juvenile, the juvenile's attorney, or the prosecuting attorney at any time during the proceeding. The delinquency proceeding would temporarily cease until a determination was made on the juvenile's competency. The court would need to maintain a record of how many competency evaluations are required.**

****Define "incompetent to proceed" to mean that a juvenile, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceeding or is unable (1) to consult with and assist his or her attorney in preparing a defense in a meaningful manner and/or (2) to sufficiently understand the charges.**

****Require competency evaluations to be conducted by qualified juvenile forensic mental health examiners. A court would have the final determination as to who is a qualified juvenile forensic mental health examiner.**

****Define "qualified juvenile forensic mental health examiner" to mean, initially, a psychiatrist or psychologist who possesses experience or training in the following: forensic evaluation procedures for juveniles; evaluation, diagnosis and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities; clinical understanding of child and adolescent development; and familiarity with competency standards in the state. Beginning 18 months after the legislation took effect, the term would also include a mental health professional other than psychiatrist or psychologist who has completed a juvenile competency training program for forensic mental health examiners endorsed by the department and who also has the experience and training cited above.**

****Define "qualified restoration provider" as an individual who the court determines, as the result of the opinion provided by the qualified forensic mental health examiner, to have the skills and training necessary to provide restoration services, as specified in the legislation. The court must take measures to avoid conflicts of interest among agencies or individuals providing evaluation and restoration. "Restoration" refers to the process by which education or treatment results in the juvenile becoming competent to proceed.**

****Apply constitutional protections against self-incrimination to statements made during a competency evaluation. Statements made during a competency evaluation could be used as an assessment for competency; however, any evidence resulting from a statement would not be admissible in a proceeding to determine guilt or innocence of any other charges based on those events or transactions.**

****Require a court to order a prosecuting attorney to provide all information related to competency to the juvenile's attorney, require the juvenile's attorney to provide certain records or information relevant to the competency evaluation (except as prohibited by law), and require both attorneys to submit information relevant to the competency evaluation to the qualified juvenile forensic mental health examiner. Information must be provided to the mental health examiner within 10 days after the court issues the order for the competency evaluation. If possible, the information is to be received before the juvenile's competency evaluation or the beginning of the evaluation in an outpatient setting.**

****Allow any party to retain its own qualified forensic mental health examiner, at its own expense, to conduct additional evaluations.**

****Require competency evaluations to be conducted in the least restrictive environment, with a presumption in favor of conducting the evaluation while the juvenile remains in the custody of a parent or legal guardian – unless removal is necessary for the best interests of the juvenile, for reasons of public safety, or because the parent or guardian refuses to cooperate with the evaluation process.**

****Require a qualified juvenile forensic mental health examiner to submit a written report to the court within 30 days after receiving a court order requiring the competency evaluation. The evaluation would need to be based on a Juvenile Adjudicative Competence Interview (JACI) or another interview method approved by the court. The court could grant a 30-day extension. Copies would have to be provided to the juvenile's attorney, the prosecuting attorney, and any guardian ad litem for the juvenile no later than five days after receipt by the court. The bill specifies the interview methods to be used and the nature of the content of the report. The report would have to contain:**

- A description of the nature, content, and extent of the examination, including such things as assessment procedures, techniques, and tests used; the medical, educational, and court records reviewed and the social, clinical, developmental, and legal history of the juvenile as available.
- A clinical assessment that includes a mental status examination; the diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment; the impact of medications; an assessment of the juvenile's intelligence; and other factors affecting competence.
- A description of the abilities and deficits in certain specified mental competency functions, including the ability to factually as well as rationally understand and appreciate the nature and object of the proceedings and the ability to render meaningful assistance to attorneys, including the ability to display appropriate courtroom behavior, among other things.

****Require the mental health examiner to provide the court with an opinion regarding the juvenile's competency to proceed. If the qualified examiner determines the juvenile is incompetent to proceed, the examiner must comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the services needed to restore the juvenile to competency, if possible, within a projected time frame.**

****Require a court to hold a hearing to determine if a juvenile is incompetent to proceed within 30 days of the filing of a competency report by a qualified juvenile forensic mental health examiner. At the hearing, the parties could introduce other evidence regarding the juvenile's mental condition or submit the matter by written stipulation based on the filed report.**

****Allow a court to issue a restoration order if the juvenile is found to be incompetent but able to be restored to competency in the foreseeable future.**

****Require the court, upon a finding by the court that a juvenile is incompetent to proceed and a finding that there is a substantial probability the juvenile will remain incompetent to proceed for the foreseeable future or within the period of the restoration order, to dismiss with prejudice the charges and allow the court to determine custody of the juvenile.**

**If the juvenile is determined to be incompetent to proceed, but a court finds the juvenile may be restored to competency in the foreseeable future: require the charges to be dismissed if the offense is a traffic offense or misdemeanor other than a serious misdemeanor; allow a court to dismiss the charges or suspend the proceedings if the offense is a serious misdemeanor; and require the proceedings to be further suspended if the offense is a felony.

**If proceedings are suspended because the juvenile is incompetent to proceed but the court finds the juvenile may be restored to competency in the foreseeable future, the court, before issuing a restoration order, would be required to hold a hearing to determine the least restrictive alternative setting for completion of the restoration. The court could issue a restoration order that is valid for 60 days from the date of the initial finding of incompetency or until one of the following occurs, whichever is first: the qualified juvenile forensic mental health examiner, based on the information provided by the qualified restoration provider, submits a report that the juvenile has regained competency or there is no substantial probability that he or she will regain competency within the period of the order; the charges are dismissed; or the juvenile reaches 18 years of age.

**After issuance of the restoration order, the qualified restoration provider must submit a report to the court and the qualified juvenile forensic mental health examiner. The report must be submitted to the court and the qualified forensic mental health examiner every 30 days, or sooner if (1) the qualified restoration provider determines that the juvenile is no longer incompetent to proceed or (2) the qualified restoration provider determines that there is no substantial probability that the juvenile will be competent to proceed within the period of the order.

**Allow the restoration provider, not later than 14 days before the expiration of the initial 60-day order, to recommend to the court and mental health examiner that the restoration order be renewed by the court for another 60 days, if there is a substantial probability that the juvenile will not be incompetent to proceed within the period of the renewed restoration order. (The original order and new order together could not exceed a total of 120 days.)

**After the case proceeds to adjudication or the juvenile is found to be unable to regain competence, require the court to order all reports to be sealed. However, the court may order that the reports be opened for further competency or criminal responsibility evaluations, for statistical analysis, if the records are considered to be necessary to assist in mental health treatment order according to the mental health code, for data gathering, or for scientific study or other legitimate research. If the court orders reports to be opened for statistical analysis, data gathering, or scientific study, the reports must remain confidential.

**Upon receipt of a report that there is a substantial probability that the juvenile will remain incompetent to proceed for the foreseeable future, or within the period of the restoration order, the court would be required to (1) dismiss the charges; and (2) determine custody of the juvenile, either by directing that civil commitment proceedings

be initiated as provided under the Mental Health Code or, if the court determines that commitment proceedings are inappropriate, releasing the juvenile to a parent, legal guardian, or legal custodian under conditions considered appropriate to the court.

****Allow a court the discretion to order mental health services to be provided, subject to availability of in-patient care, by an appropriate mental health services provider for up to 60 days if the report from the competency evaluation reported a substantial probability that the juvenile was unable to be restored to competency due to serious emotional disturbance. The court would retain jurisdiction over the juvenile for the duration of the order. The entity providing services would have to submit a report to the court and the qualified juvenile forensic mental health examiner at least 14 days before the order expired. Based on that report, the court could (1) renew the order for another 60 days or (2) determine custody of the juvenile and dismiss the charges. The order for treatment and any renewed order could not exceed a total of 120 days.**

****Allow a qualified examiner to receive reasonable fees for services rendered.**

**** Require the court to report to the State Court Administrator the number of juveniles found to be incompetent to proceed.**

****Define numerous terms, including "competency evaluation" and "least restrictive environment."**

****Permit a county to apply for reimbursement from the Child Care Fund for providing mental health services as ordered by a court under this section.**

House Bill 4555 would add several new sections to the Mental Health Code, MCL 330.1060, 300.1060a, 300.1060b, 300.1060c, 300.1062, 300.1064, 300.1068, 300.1070, and 330.1074, and amend several other sections to conform existing provisions regarding hospitalization of minors for mental health services to the proposed changes.

Senate Bill 246 would amend Section 1 of the Probate Code, MCL 712A.1 and would add Section 18n to the Probate Code (MCL 712A.18n); Section 18o (MCL 712A.18o); Section 18p (MCL 712A.18p); Section 18q (MCL 712A.18q) and Section 18r (MCL 712A.18r).

FISCAL IMPACT:

The bills will increase state costs for the Department of Community Health (DCH) and the Department of Human Services (DHS) for the following reasons. They require DCH to review and endorse a training program for "juvenile forensic mental health examiners" who provide juvenile competency exams; allow a court to order that mental health services be provided to a juvenile by DCH, community mental health services program (CMHSP), DHS, county DHS, or another appropriate mental health services provider, upon receipt of a report from a "qualified juvenile forensic mental health examiner" that there is substantial probability that a juvenile is unable to be restored due to serious

emotional disturbance; and allow counties to seek 50% state reimbursement from the state Child Care Fund for court ordered mental health services .

It is important to note that not all of the court orders for mental health services would increase state and local costs as courts can currently order or recommend placement of delinquent youth at residential facilities, foster homes, and in-home programs that provide mental health services as part of their service array. An increase in state and local costs, therefore, would only occur when current law and policies do not identify a delinquent youth as needing mental health services and that youth is then placed at a facility or home or is referred to an in-home program that is less costly and does not provide the type of mental health services the competency evaluation recommends.

The bills would have an indeterminate fiscal impact on the judiciary. To the extent that the implementation of these standards increases the number of competency evaluations conducted, caseloads may increase for court-appointed mental health examiners. These examiners may be on staff, or available through arrangements with other agencies. If mental health examiners provided by a court currently do not meet the standards set in these bills, either new training would have to be provided or new arrangements for outside mental health examiners may be necessary, potentially resulting in increased costs for the courts. Some courts may already meet the standards set in the bills, in which case they would not likely see a significant fiscal impact. The fiscal impact would most likely vary county to county based on the level of mental health examinations and mental health services currently provided by the county.

POSITIONS:

American Civil Liberties Union supports the bills. (11-27-12)

Michigan Catholic Conference supports the bills. (11-27-12)

Oakland County Prosecutor testified in support of the bills. (11-29-12)

Michigan Association of Counties opposes the bills. (11-27-12)

Michigan Association of Community Mental Health Boards opposes the bills. (11-27-12)

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