

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 246**

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6
7
8

CHAPTER XIIA

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

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

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

1 STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO IS THE SUBJECT
2 OF A DELINQUENCY PETITION.

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

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

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

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

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

16 (i) CONSULT WITH AND ASSIST HIS OR HER ATTORNEY IN PREPARING
17 HIS OR HER DEFENSE IN A MEANINGFUL MANNER.

18 (ii) SUFFICIENTLY UNDERSTAND THE CHARGES AGAINST HIM OR HER.

19 (H) "JUVENILE" MEANS A PERSON WHO IS LESS THAN 17 YEARS OF AGE
20 WHO IS THE SUBJECT OF A DELINQUENCY PETITION.

21 (I) "LEAST RESTRICTIVE ENVIRONMENT" MEANS A SUPERVISED
22 COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE JUVENILE'S
23 PARENT, GUARDIAN, RELATIVE, OR A FACILITY OR CONDITIONS OF
24 TREATMENT THAT IS A RESIDENTIAL OR INSTITUTIONAL PLACEMENT ONLY
25 UTILIZED AS A LAST RESORT BASED ON THE BEST INTEREST OF THE
26 JUVENILE OR FOR REASONS OF PUBLIC SAFETY.

27 (J) "LICENSED CHILD CARING INSTITUTION" MEANS A CHILD CARING

1 INSTITUTION AS DEFINED AND LICENSED UNDER 1973 PA 116, MCL 722.111
2 TO 722.128.

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

5 (I) "MENTAL HEALTH CODE" MEANS THE MENTAL HEALTH CODE, 1974 PA
6 258, MCL 330.1001 TO 330.2106.

7 (M) ~~(f)~~—"Personal protection order" means a personal
8 protection order issued under section 2950 or 2950a of the revised
9 judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a,
10 and includes a valid foreign protection order.

11 (N) "QUALIFIED JUVENILE FORENSIC MENTAL HEALTH EXAMINER" MEANS
12 1 OF THE FOLLOWING WHO PERFORMS FORENSIC MENTAL HEALTH EXAMINATIONS
13 FOR THE PURPOSES OF SECTIONS 1062 TO 1074 OF THE MENTAL HEALTH CODE
14 BUT DOES NOT EXCEED THE SCOPE OF HIS OR HER PRACTICE AS AUTHORIZED
15 BY STATE LAW:

16 (i) A PSYCHIATRIST OR PSYCHOLOGIST WHO POSSESSES EXPERIENCE OR
17 TRAINING IN THE FOLLOWING:

18 (A) FORENSIC EVALUATION PROCEDURES FOR JUVENILES.

19 (B) EVALUATION, DIAGNOSIS, AND TREATMENT OF CHILDREN AND
20 ADOLESCENTS WITH EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR
21 DEVELOPMENTAL DISABILITIES.

22 (C) CLINICAL UNDERSTANDING OF CHILD AND ADOLESCENT
23 DEVELOPMENT.

24 (D) FAMILIARITY WITH COMPETENCY STANDARDS IN THIS STATE.

25 (ii) BEGINNING 18 MONTHS AFTER THE EFFECTIVE DATE OF THE
26 AMENDATORY ACT THAT ADDED SECTION 1072 OF THE MENTAL HEALTH CODE, A
27 MENTAL HEALTH PROFESSIONAL OTHER THAN A PSYCHIATRIST OR

1 PSYCHOLOGIST WHO HAS COMPLETED A JUVENILE COMPETENCY TRAINING
2 PROGRAM FOR FORENSIC MENTAL HEALTH EXAMINERS THAT IS ENDORSED BY
3 THE DEPARTMENT UNDER SECTION 1072 OF THE MENTAL HEALTH CODE AND WHO
4 POSSESSES EXPERIENCE OR TRAINING IN ALL OF THE FOLLOWING:

5 (A) FORENSIC EVALUATION PROCEDURES FOR JUVENILES.

6 (B) EVALUATION, DIAGNOSIS, AND TREATMENT OF CHILDREN AND
7 ADOLESCENTS WITH EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR
8 DEVELOPMENTAL DISABILITIES.

9 (C) CLINICAL UNDERSTANDING OF CHILD AND ADOLESCENT
10 DEVELOPMENT.

11 (D) FAMILIARITY WITH COMPETENCY STANDARDS IN THIS STATE.

12 (O) "QUALIFIED RESTORATION PROVIDER" MEANS AN INDIVIDUAL WHO
13 THE COURT DETERMINES, AS A RESULT OF THE OPINION PROVIDED BY THE
14 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER, HAS THE SKILLS AND
15 TRAINING NECESSARY TO PROVIDE RESTORATION SERVICES. THE COURT SHALL
16 TAKE MEASURES TO AVOID ANY CONFLICT OF INTEREST AMONG AGENCIES OR
17 INDIVIDUALS WHO MAY PROVIDE EVALUATION AND RESTORATION.

18 (P) "RESTORATION" MEANS THE PROCESS BY WHICH EDUCATION OR
19 TREATMENT OF A JUVENILE RESULTS IN THAT JUVENILE BECOMING COMPETENT
20 TO PROCEED.

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

24 (R) ~~(g)~~—"Valid foreign protection order" means a foreign
25 protection order that satisfies the conditions for validity
26 provided in section 2950i of the revised judicature act of 1961,
27 1961 PA 236, MCL 600.2950i.

Senate Bill No. 246 (H-2) as amended November 29, 2012

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

3 (3) This chapter shall be liberally construed so that each
4 juvenile coming within the court's jurisdiction receives the care,
5 guidance, and control, preferably in his or her own home, conducive
6 to the juvenile's welfare and the best interest of the state. If a
7 juvenile is removed from the control of his or her parents, the
8 juvenile shall be placed in care as nearly as possible equivalent
9 to the care that should have been given to the juvenile by his or
10 her parents.

11 SEC. 18N. (1) A JUVENILE 10 YEARS OF AGE OR OLDER IS PRESUMED
12 COMPETENT TO PROCEED UNLESS THE ISSUE OF COMPETENCY IS RAISED BY A
13 PARTY. A JUVENILE LESS THAN 10 YEARS OF AGE IS PRESUMED INCOMPETENT
14 TO PROCEED.

15 (2) THE COURT MAY ORDER ON ITS OWN MOTION, OR AT THE REQUEST OF
16 THE JUVENILE, THE JUVENILE'S ATTORNEY, OR THE PROSECUTING ATTORNEY, A
17 COMPETENCY EVALUATION TO DETERMINE WHETHER THE JUVENILE IS
18 INCOMPETENT TO PROCEED IF THE JUVENILE IS THE SUBJECT OF A
19 DELINQUENCY PETITION IN THE COURT OR IF THE JUVENILE IS UNDER THE
20 COURT'S JURISDICTION UNDER SECTION 2(A)(2) TO (4) OF THIS CHAPTER.
21 THE ISSUE OF THE JUVENILE'S COMPETENCY MAY BE RAISED BY THE COURT
22 BEFORE WHICH THE PROCEEDINGS ARE PENDING OR BEING HELD, OR BY MOTION
23 OF A PARTY, AT ANY TIME DURING THE PROCEEDING.

24 (3) AT THE TIME AN ISSUE OF THE JUVENILE'S COMPETENCY IS
25 RAISED, THE DELINQUENCY PROCEEDING SHALL TEMPORARILY CEASE UNTIL
26 DETERMINATION IS MADE ON THE COMPETENCE OF THE JUVENILE ACCORDING TO
27 THIS ACT.

 [(4) THE COURT SHALL MAINTAIN A RECORD OF HOW MANY COMPETENCY
EVALUATIONS ARE REQUESTED UNDER THIS SECTION.]

1 SEC. 180. (1) A COMPETENCY EVALUATION ORDERED UNDER SECTION 18N
2 OF THIS CHAPTER SHALL BE CONDUCTED BY A QUALIFIED JUVENILE FORENSIC
3 MENTAL HEALTH EXAMINER. THE QUALIFIED JUVENILE FORENSIC MENTAL HEALTH
4 EXAMINER SHALL PROVIDE THE COURT WITH AN OPINION AS TO WHETHER THE
5 JUVENILE IS COMPETENT TO PROCEED. THE COURT HAS THE FINAL
6 DETERMINATION OF AN EXPERT WITNESS SERVING AS A QUALIFIED JUVENILE
7 FORENSIC MENTAL HEALTH EXAMINER.

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

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

18 SEC. 18P. (1) THE COURT SHALL ORDER THE PROSECUTING ATTORNEY
19 TO PROVIDE TO THE JUVENILE'S ATTORNEY ALL INFORMATION RELATED TO
20 COMPETENCY AND SHALL ORDER THE PROSECUTING ATTORNEY AND JUVENILE'S
21 ATTORNEY TO SUBMIT TO THE QUALIFIED JUVENILE FORENSIC MENTAL HEALTH
22 EXAMINER ANY INFORMATION CONSIDERED RELEVANT TO THE COMPETENCY
23 EVALUATION, INCLUDING, BUT NOT LIMITED TO:

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

25 (B) INFORMATION ABOUT THE ALLEGED OFFENSE.

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

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

5 (A) PSYCHIATRIC RECORDS.

6 (B) SCHOOL RECORDS.

7 (C) MEDICAL RECORDS.

8 (D) CHILD PROTECTIVE SERVICES RECORDS.

9 (3) THE REQUIREMENT TO PROVIDE RECORDS OR INFORMATION UNDER
10 SUBSECTION (1) OR (2) DOES NOT LIMIT, WAIVE, OR ABROGATE THE WORK
11 PRODUCT DOCTRINE OR THE ATTORNEY-CLIENT PRIVILEGE, AND RELEASE OF
12 RECORDS AND INFORMATION UNDER SUBSECTION (1) OR (2) IS SUBJECT TO
13 THE WORK PRODUCT DOCTRINE AND THE ATTORNEY-CLIENT PRIVILEGE.

14 (4) ALL INFORMATION REQUIRED UNDER SUBSECTIONS (1) AND (2)
15 MUST BE PROVIDED TO THE QUALIFIED JUVENILE FORENSIC MENTAL HEALTH
16 EXAMINER WITHIN 10 DAYS AFTER THE COURT ISSUES THE ORDER FOR THE
17 COMPETENCY EVALUATION. IF POSSIBLE, THE INFORMATION REQUIRED UNDER
18 THIS SECTION SHALL BE RECEIVED BEFORE THE JUVENILE'S COMPETENCY
19 EVALUATION OR THE COMMENCEMENT OF THE COMPETENCY EVALUATION IN AN
20 OUTPATIENT SETTING.

21 (5) A QUALIFIED JUVENILE FORENSIC MENTAL HEALTH EXAMINER WHO
22 CONDUCTS A COMPETENCY EVALUATION SHALL SUBMIT A WRITTEN REPORT TO
23 THE COURT NOT LATER THAN 30 DAYS FROM RECEIPT OF THE COURT ORDER
24 REQUIRING THE COMPETENCY EVALUATION. THE EVALUATION SHALL BE BASED
25 ON A JUVENILE ADJUDICATIVE COMPETENCE INTERVIEW (JACI) OR ANOTHER
26 INTERVIEW METHOD APPROVED BY THE COURT. THE REPORT SHALL CONTAIN,
27 BUT NOT BE LIMITED TO, THE FOLLOWING:

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

3 (i) A DESCRIPTION OF ASSESSMENT PROCEDURES, TECHNIQUES, AND
4 TESTS USED.

5 (ii) AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS
6 REVIEWED.

7 (iii) SOCIAL, CLINICAL, DEVELOPMENTAL, AND LEGAL HISTORY AS
8 AVAILABLE.

9 (B) A CLINICAL ASSESSMENT THAT INCLUDES, BUT IS NOT LIMITED
10 TO, THE FOLLOWING:

11 (i) A MENTAL STATUS EXAMINATION.

12 (ii) THE DIAGNOSIS AND FUNCTIONAL IMPACT OF MENTAL ILLNESS,
13 DEVELOPMENTAL DISABILITY, OR COGNITIVE IMPAIRMENT. IF THE JUVENILE
14 IS TAKING MEDICATION, THE IMPACT OF THE MEDICATION ON THE
15 JUVENILE'S MENTAL STATE AND BEHAVIOR.

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

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

19 (v) WHETHER THE JUVENILE HAS ANY OTHER FACTOR THAT AFFECTS
20 COMPETENCE.

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

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

27 (A) AN ABILITY TO UNDERSTAND THE ROLE OF THE PARTICIPANTS IN

1 THE COURT PROCESS, INCLUDING, THE ROLES OF THE JUDGE, THE
2 JUVENILE'S ATTORNEY, THE PROSECUTING ATTORNEY, THE PROBATION
3 OFFICER, WITNESSES, AND THE JURY, AND TO UNDERSTAND THE ADVERSARIAL
4 NATURE OF THE PROCESS.

5 (B) AN ABILITY TO APPRECIATE THE CHARGES AND UNDERSTAND THE
6 SERIOUSNESS OF THE CHARGES.

7 (C) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE
8 LIKELY OUTCOMES.

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

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

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

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

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

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

23 (E) AN ABILITY TO REASON ABOUT AVAILABLE OPTIONS BY WEIGHING
24 THE CONSEQUENCES, INCLUDING WEIGHING PLEAS, WAIVERS, AND
25 STRATEGIES.

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

27 (6) THE QUALIFIED JUVENILE FORENSIC MENTAL HEALTH EXAMINER

1 SHALL PROVIDE THE COURT WITH AN OPINION ABOUT THE JUVENILE'S
2 COMPETENCY TO PROCEED. IF THE QUALIFIED JUVENILE FORENSIC MENTAL
3 HEALTH EXAMINER DETERMINES THAT THE JUVENILE IS INCOMPETENT TO
4 PROCEED, THE QUALIFIED JUVENILE FORENSIC MENTAL HEALTH EXAMINER
5 SHALL COMMENT ON THE NATURE OF ANY PSYCHIATRIC OR PSYCHOLOGICAL
6 DISORDER OR COGNITIVE IMPAIRMENT, THE PROGNOSIS, AND THE SERVICES
7 NEEDED TO RESTORE THE JUVENILE TO COMPETENCY, IF POSSIBLE, WITHIN A
8 PROJECTED TIME FRAME.

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

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

16 SEC. 18Q. (1) NOT LATER THAN 30 DAYS AFTER A REPORT IS FILED
17 UNDER SECTION 18P OF THIS CHAPTER, THE COURT SHALL HOLD A HEARING TO
18 DETERMINE IF A JUVENILE IS COMPETENT TO PROCEED. AT THE HEARING, THE
19 PARTIES MAY INTRODUCE OTHER EVIDENCE REGARDING THE JUVENILE'S MENTAL
20 CONDITION OR MAY SUBMIT THE MATTER BY WRITTEN STIPULATION BASED ON
21 THE FILED REPORT.

22 (2) UPON A FINDING BY THE COURT THAT A JUVENILE IS INCOMPETENT
23 TO PROCEED AND A FINDING THAT THERE IS A SUBSTANTIAL PROBABILITY THAT
24 THE JUVENILE WILL REMAIN INCOMPETENT TO PROCEED FOR THE FORESEEABLE
25 FUTURE OR WITHIN THE PERIOD OF THE RESTORATION ORDER, THE COURT SHALL
26 DISMISS WITH PREJUDICE THE CHARGES AGAINST THE JUVENILE AND MAY
27 DETERMINE CUSTODY OF THE JUVENILE.

Senate Bill No. 246 (H-2) as amended November 29, 2012

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

[(4) THE COURT SHALL REPORT TO THE STATE COURT ADMINISTRATOR THE
NUMBER OF JUVENILES FOUND TO BE INCOMPETENT TO PROCEED.]

4 SEC. 18R. (1) THE CONSTITUTIONAL PROTECTIONS AGAINST SELF-
5 INCRIMINATION APPLY TO ALL COMPETENCY EVALUATIONS.

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

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

14 (4) A STATEMENT THAT THE JUVENILE MAKES DURING A COMPETENCY
15 EVALUATION MAY NOT BE USED FOR ANY PURPOSE OTHER THAN ASSESSMENT OF
16 HIS OR HER COMPETENCY WITHOUT THE WRITTEN CONSENT OF THE JUVENILE
17 OR THE JUVENILE'S GUARDIAN. THE JUVENILE OR THE JUVENILE'S GUARDIAN
18 MUST HAVE AN OPPORTUNITY TO CONSULT WITH HIS OR HER ATTORNEY BEFORE
19 GIVING CONSENT.

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

25 (A) FOR FURTHER COMPETENCY OR CRIMINAL RESPONSIBILITY
26 EVALUATIONS.

27 (B) FOR STATISTICAL ANALYSIS.

1 (C) IF THE RECORDS ARE CONSIDERED TO BE NECESSARY TO ASSIST IN
2 MENTAL HEALTH TREATMENT ORDERED ACCORDING TO THE MENTAL HEALTH
3 CODE.

4 (D) FOR DATA GATHERING.

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

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

9 (7) ANY STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY
10 EVALUATION, OR ANY EVIDENCE RESULTING FROM THAT STATEMENT, IS NOT
11 SUBJECT TO DISCLOSURE.

12 SEC. 18S. (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 ENVIRONMENT 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 JUVENILE FORENSIC MENTAL HEALTH EXAMINER,
5 BASED ON INFORMATION PROVIDED BY THE QUALIFIED RESTORATION
6 PROVIDER, SUBMITS A REPORT THAT THE JUVENILE HAS REGAINED
7 COMPETENCY OR THAT THERE IS NO SUBSTANTIAL PROBABILITY THAT THE
8 JUVENILE WILL REGAIN COMPETENCY WITHIN THE PERIOD OF THE ORDER.

9 (ii) THE CHARGES ARE DISMISSED.

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

11 (C) FOLLOWING ISSUANCE OF THE RESTORATION ORDER, THE QUALIFIED
12 RESTORATION PROVIDER SHALL SUBMIT A REPORT TO THE COURT AND THE
13 QUALIFIED JUVENILE FORENSIC MENTAL HEALTH EXAMINER THAT INCLUDES
14 THE INFORMATION REQUIRED UNDER SECTION 18P OF THIS CHAPTER. THE
15 REPORT SHALL BE SUBMITTED TO THE COURT AND THE QUALIFIED JUVENILE
16 FORENSIC MENTAL HEALTH EXAMINER EVERY 30 DAYS, OR SOONER IF AND AT
17 THE TIME EITHER OF THE FOLLOWING OCCURS:

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

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

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

Senate Bill No. 246 (H-2) as amended November 29, 2012

1 JUVENILE WILL NOT BE INCOMPETENT TO PROCEED WITHIN THE PERIOD OF
2 THAT RENEWED RESTORATION ORDER. THE RESTORATION ORDER AND ANY
3 RENEWED RESTORATION ORDER SHALL NOT EXCEED A TOTAL OF 120 DAYS.

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

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

10 (i) THE COURT MAY DIRECT THAT CIVIL COMMITMENT PROCEEDINGS BE
11 INITIATED, AS ALLOWED UNDER SECTION 498D OF THE MENTAL HEALTH CODE,
12 MCL 330.1498D.

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

17 (B) DISMISS THE CHARGES AGAINST THE JUVENILE.

18 (5) UPON RECEIPT OF A REPORT FROM A QUALIFIED JUVENILE
19 FORENSIC MENTAL HEALTH EXAMINER THAT THERE IS A SUBSTANTIAL
20 PROBABILITY THAT THE JUVENILE IS UNABLE TO BE RESTORED DUE TO
21 SERIOUS EMOTIONAL DISTURBANCE, THE COURT MAY IN ITS DISCRETION,
22 EXCEPT AS PROVIDED UNDER THE YOUTH REHABILITATION SERVICES ACT,
23 1974 PA 150, MCL 803.301 TO 803.309, ORDER THAT MENTAL HEALTH
24 SERVICES BE PROVIDED TO THE JUVENILE BY THE DEPARTMENT OF COMMUNITY
25 HEALTH, [SUBJECT TO THE AVAILABILITY OF INPATIENT CARE,] A COMMUNITY
26 MENTAL HEALTH SERVICES PROGRAM, THE DEPARTMENT
27 OF HUMAN SERVICES, A COUNTY DEPARTMENT OF HUMAN SERVICES, OR
ANOTHER APPROPRIATE MENTAL HEALTH SERVICES PROVIDER FOR A PERIOD

Senate Bill No. 246 (H-2) as amended November 29, 2012

1 NOT TO EXCEED 60 DAYS. THE COURT SHALL RETAIN JURISDICTION OVER THE
2 JUVENILE THROUGHOUT THE DURATION OF THE ORDER. THE ENTITY ORDERED
3 TO PROVIDE SERVICES UNDER THIS SUBSECTION SHALL CONTINUE TO PROVIDE
4 SERVICES FOR THE DURATION OF THE PERIOD OF TREATMENT ORDERED BY THE
5 COURT.

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

12 (A) RENEW THE ORDER FOR ANOTHER PERIOD OF TREATMENT NOT TO
13 EXCEED 60 DAYS. THE ORDER FOR TREATMENT AND ANY RENEWED ORDER SHALL
14 NOT EXCEED A TOTAL OF 120 DAYS.

15 (B) DETERMINE CUSTODY OF THE JUVENILE AND DISMISS THE CHARGES
16 AGAINST THE JUVENILE.

17 [(7) THE DEPARTMENT OF COMMUNITY HEALTH SHALL MAINTAIN A RECORD OF
18 THE NUMBER OF JUVENILES FOR WHOM THE COURT ORDERED THAT MENTAL HEALTH
19 SERVICES BE PROVIDED UNDER SUBSECTION (5) OR (6).]

Enacting section 1. This amendatory act does not take effect
unless House Bill No. 4555 of the 96th Legislature is enacted into
law.