

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Schuitmaker

ENROLLED SENATE BILL No. 246

AN ACT to amend 1939 PA 288, entitled "An act to revise and consolidate the statutes relating to certain aspects of the family division of circuit court, to the jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers, to the change of name of adults and children, and to the adoption of adults and children; to prescribe certain jurisdiction, powers, and duties of the family division of circuit court and its judges and other officers; to prescribe the manner and time within which certain actions and proceedings may be brought in the family division of the circuit court; to prescribe pleading, evidence, practice, and procedure in certain actions and proceedings in the family division of circuit court; to provide for appeals from certain actions in the family division of circuit court; to prescribe the powers and duties of certain state departments, agencies, and officers; to provide for certain immunity from liability; and to provide remedies and penalties," by amending section 1 of chapter XIII (MCL 712A.1), as amended by 2001 PA 211, and by adding sections 18n, 18o, 18p, 18q, 18r, and 18s to chapter XIII.

The People of the State of Michigan enact:

CHAPTER XIII

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 stage of a court proceeding involving a juvenile who is the subject of a delinquency petition.

(c) "Competency hearing" means a hearing to determine whether a juvenile is competent to proceed.

(d) "County juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(e) "Court" means the family division of circuit court.

(f) "Foreign protection order" means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(g) "Incompetent to proceed" means that a juvenile, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceeding or is unable to do 1 or more of the following:

(i) Consult with and assist his or her attorney in preparing his or her defense in a meaningful manner.

(ii) Sufficiently understand the charges against him or her.

(h) "Juvenile" means a person who is less than 17 years of age who is the subject of a delinquency petition.

(i) "Least restrictive environment" means a supervised community placement, preferably a placement with the juvenile's parent, guardian, relative, or a facility or conditions of treatment that is a residential or institutional placement only utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

(j) "Licensed child caring institution" means a child caring institution as defined and licensed under 1973 PA 116, MCL 722.111 to 722.128.

(k) "MCI" means the Michigan children's institute created and established by 1935 PA 220, MCL 400.201 to 400.214.

(l) "Mental health code" means the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(m) "Personal protection order" means a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and includes a valid foreign protection order.

(n) "Qualified juvenile forensic mental health examiner" means 1 of the following who performs forensic mental health examinations for the purposes of sections 1062 to 1074 of the mental health code but does not exceed the scope of his or her practice as authorized by state law:

(i) A psychiatrist or psychologist who possesses experience or training in the following:

(A) Forensic evaluation procedures for juveniles.

(B) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(C) Clinical understanding of child and adolescent development.

(D) Familiarity with competency standards in this state.

(ii) Beginning 18 months after the effective date of the amendatory act that added section 1072 of the mental health code, a mental health professional other than a psychiatrist or psychologist who has completed a juvenile competency training program for forensic mental health examiners that is endorsed by the department under section 1072 of the mental health code and who possesses experience or training in all of the following:

(A) Forensic evaluation procedures for juveniles.

(B) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(C) Clinical understanding of child and adolescent development.

(D) Familiarity with competency standards in this state.

(o) "Qualified restoration provider" means an individual who the court determines, as a result of the opinion provided by the qualified forensic mental health examiner, has the skills and training necessary to provide restoration services. The court shall take measures to avoid any conflict of interest among agencies or individuals who may provide evaluation and restoration.

(p) "Restoration" means the process by which education or treatment of a juvenile results in that juvenile becoming competent to proceed.

(q) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

(r) "Valid foreign protection order" means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

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

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

Sec. 18n. (1) A juvenile 10 years of age or older is presumed competent to proceed unless the issue of competency is raised by a party. A juvenile less than 10 years of age is presumed incompetent to proceed.

(2) The court may order on its own motion, or at the request of the juvenile, the juvenile's attorney, or the prosecuting attorney, a competency evaluation to determine whether the juvenile is incompetent to proceed if the juvenile is the subject of a delinquency petition in the court or if the juvenile is under the court's jurisdiction under section 2(a)(2) to (4) of this chapter. The issue of the juvenile's competency may be raised by the court before which the proceedings are pending or being held, or by motion of a party, at any time during the proceeding.

(3) At the time an issue of the juvenile's competency is raised, the delinquency proceeding shall temporarily cease until determination is made on the competence of the juvenile according to this act.

(4) The court shall maintain a record of how many competency evaluations are requested under this section.

Sec. 18o. (1) A competency evaluation ordered under section 18n of this chapter shall be conducted by a qualified juvenile forensic mental health examiner. The qualified juvenile forensic mental health examiner shall provide the court with an opinion as to whether the juvenile is competent to proceed. The court has the final determination of an expert witness serving as a qualified juvenile forensic mental health examiner.

(2) This section does not prohibit any party from retaining the party's own qualified juvenile forensic mental health examiner to conduct additional evaluations at the party's own expense.

(3) The competency evaluation shall be conducted in the least restrictive environment. There is a presumption in favor of conducting a competency evaluation while the juvenile remains in the custody of a parent or legal guardian, unless removal from the home is necessary for the best interests of the juvenile, for reasons of public safety, or because the parent or guardian has refused to cooperate in the competency evaluation process.

Sec. 18p. (1) The court shall order the prosecuting attorney to provide to the juvenile's attorney all information related to competency and shall order the prosecuting attorney and juvenile's attorney to submit to the qualified juvenile forensic mental health examiner any information considered relevant to the competency evaluation, including, but not limited to:

- (a) The names and addresses of all attorneys involved.
- (b) Information about the alleged offense.
- (c) Any information about the juvenile's background in the prosecuting attorney's possession.

(2) Except as prohibited by federal law, the court shall require the juvenile's attorney to provide any available records of the juvenile or other information relevant to the evaluation, including, but not limited to, any of the following:

- (a) Psychiatric records.
- (b) School records.
- (c) Medical records.
- (d) Child protective services records.

(3) The requirement to provide records or information under subsection (1) or (2) does not limit, waive, or abrogate the work product doctrine or the attorney-client privilege, and release of records and information under subsection (1) or (2) is subject to the work product doctrine and the attorney-client privilege.

(4) All information required under subsections (1) and (2) must be provided to the qualified juvenile forensic mental health examiner within 10 days after the court issues the order for the competency evaluation. If possible, the information required under this section shall be received before the juvenile's competency evaluation or the commencement of the competency evaluation in an outpatient setting.

(5) A qualified juvenile forensic mental health examiner who conducts a competency evaluation shall submit a written report to the court not later than 30 days from receipt of the court order requiring the competency evaluation. The evaluation shall be based on a juvenile adjudicative competence interview (JACI) or another interview method approved by the court. The report shall contain, but not be limited to, the following:

(a) A description of the nature, content, and extent of the examination, including, but not limited to, all of the following:

- (i) A description of assessment procedures, techniques, and tests used.
- (ii) Available medical, educational, and court records reviewed.
- (iii) Social, clinical, developmental, and legal history as available.
- (b) A clinical assessment that includes, but is not limited to, the following:

(i) A mental status examination.

(ii) The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the juvenile is taking medication, the impact of the medication on the juvenile's mental state and behavior.

- (iii) An assessment of the juvenile's intelligence.
- (iv) The juvenile's age, maturity level, developmental stage, and decision-making abilities.
- (v) Whether the juvenile has any other factor that affects competence.

(c) A description of abilities and deficits in the following mental competency functions related to the juvenile's competence to proceed:

(i) The ability to factually as well as rationally understand and appreciate the nature and object of the proceedings, including, but not limited to, all of the following:

(A) An ability to understand the role of the participants in the court process, including, the roles of the judge, the juvenile's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process.

(B) An ability to appreciate the charges and understand the seriousness of the charges.

(C) An ability to understand and realistically appraise the likely outcomes.

(D) An ability to extend thinking into the future.

(ii) The ability to render meaningful assistance to the juvenile's attorney in the preparation of the case, including, but not limited to, all of the following:

(A) An ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the juvenile.

(B) An ability to consider the impact of his or her action on others.

(C) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner.

(D) Logical decision-making abilities, particularly multifaceted problem-solving or the ability to take several factors into consideration in making a decision.

(E) An ability to reason about available options by weighing the consequences, including weighing pleas, waivers, and strategies.

(F) An ability to display appropriate courtroom behavior.

(6) The qualified juvenile forensic mental health examiner shall provide the court with an opinion about the juvenile's competency to proceed. If the qualified juvenile forensic mental health examiner determines that the juvenile is incompetent to proceed, the qualified juvenile forensic mental health examiner shall 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.

(7) The court in its discretion may, for good cause, grant the qualified juvenile forensic mental health examiner a 30-day extension in filing the competency evaluation report.

(8) Copies of the written report shall be provided by the court to the juvenile's attorney, the prosecuting attorney, and any guardian ad litem for the juvenile not later than 5 working days after receipt of the report by the court.

Sec. 18q. (1) Not later than 30 days after a report is filed under section 18p of this chapter, the court shall hold a hearing to determine if a juvenile is competent to proceed. At the hearing, the parties may introduce other evidence regarding the juvenile's mental condition or may submit the matter by written stipulation based on the filed report.

(2) Upon a finding by the court that a juvenile is incompetent to proceed and a finding 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 shall dismiss with prejudice the charges against the juvenile and may determine custody of the juvenile.

(3) The qualified juvenile forensic mental health examiner appointed by the court to determine the juvenile's mental condition 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.

Sec. 18r. (1) The constitutional protections against self-incrimination apply to all competency evaluations.

(2) Any evidence or statement obtained during a competency evaluation is not admissible in any proceeding to determine the juvenile's responsibility.

(3) A statement that a juvenile makes during a competency evaluation or evidence resulting from the statement concerning any other event or transaction is not admissible in any proceeding to determine the juvenile's responsibility for any other charges that are based on those events or transactions.

(4) A statement that the juvenile makes during a competency evaluation may not be used for any purpose other than assessment of his or her competency without the written consent of the juvenile or the juvenile's guardian. The juvenile or the juvenile's guardian must have an opportunity to consult with his or her attorney before giving consent.

(5) After the case proceeds to adjudication or the juvenile is found to be unable to regain competence, the court shall order all of the reports that are submitted according to sections 18n to 18q of this chapter to be sealed. The court may order that the reports be opened only as follows:

(a) For further competency or criminal responsibility evaluations.

(b) For statistical analysis.

(c) If the records are considered to be necessary to assist in mental health treatment ordered according to the mental health code.

(d) For data gathering.

(e) For scientific study or other legitimate research.

(6) If the court orders reports to be open for the purposes of statistical analysis, data gathering, or scientific study according to subsection (5), the reports shall remain confidential.

(7) Any statement that a juvenile makes during a competency evaluation, or any evidence resulting from that statement, is not subject to disclosure.

Sec. 18s. (1) If the juvenile is incompetent to proceed but the court finds that the juvenile may be restored to competency in the foreseeable future, 1 of the following applies:

(a) If the offense is a traffic offense or a misdemeanor other than a serious misdemeanor, the matter shall be dismissed.

(b) If the offense is a serious misdemeanor, the court may dismiss the matter or suspend the proceedings against the juvenile.

(c) If the offense is a felony, the proceedings against the juvenile shall be further suspended.

(2) If proceedings are suspended because the juvenile is incompetent to proceed but the court finds that the juvenile may be restored to competency in the foreseeable future, all of the following apply:

(a) Before issuing a restoration order, the court shall hold a hearing to determine the least restrictive environment for completion of the restoration.

(b) The court may issue a restoration order that is valid for 60 days from the date of the initial finding of incompetency or until 1 of the following occurs, whichever occurs first:

(i) The qualified juvenile forensic mental health examiner, based on information provided by the qualified restoration provider, submits a report that the juvenile has regained competency or that there is no substantial probability that the juvenile will regain competency within the period of the order.

(ii) The charges are dismissed.

(iii) The juvenile reaches 18 years of age.

(c) Following issuance of the restoration order, the qualified restoration provider shall submit a report to the court and the qualified juvenile forensic mental health examiner that includes the information required under section 18p of this chapter. The report shall be submitted to the court and the qualified juvenile forensic mental health examiner every 30 days, or sooner if and at the time either of the following occurs:

(i) The qualified restoration provider determines that the juvenile is no longer incompetent to proceed.

(ii) 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.

(3) Not later than 14 days before the expiration of the initial 60-day order, the qualified restoration provider may recommend to the court and the qualified juvenile forensic 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 that renewed restoration order. The restoration order and any renewed restoration order shall not exceed a total of 120 days.

(4) Except as otherwise provided in this section, 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 shall do both of the following:

(a) Determine custody of the juvenile as follows:

(i) The court may direct that civil commitment proceedings be initiated, as allowed under section 498d of the mental health code, MCL 330.1498d.

(ii) If the court determines that commitment proceedings are inappropriate, the juvenile shall be released to the juvenile's parent, legal guardian, or legal custodian under conditions considered appropriate to the court.

(b) Dismiss the charges against the juvenile.

(5) Upon receipt of a report from a qualified juvenile forensic mental health examiner that there is a substantial probability that the juvenile is unable to be restored due to serious emotional disturbance, the court may in its discretion, except as provided under the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, order that mental health services be provided to the juvenile by the department of community health, subject to the availability of inpatient care, a community mental health services program, the department of human services, a county department of human services, or another appropriate mental health services provider for a period not to exceed 60 days. The court shall retain jurisdiction over the juvenile throughout the duration of the order. The entity ordered to provide services under this subsection shall continue to provide services for the duration of the period of treatment ordered by the court.

(6) Not later than 14 days before the expiration of an order for treatment under this subsection or subsection (5), the entity providing mental health services under that order shall submit a report to the court and the qualified juvenile forensic mental health examiner regarding the juvenile. Upon receipt of the report, the court shall review the report and do either of the following:

(a) Renew the order for another period of treatment not to exceed 60 days. The order for treatment and any renewed order shall not exceed a total of 120 days.

(b) Determine custody of the juvenile and dismiss the charges against the juvenile.

(7) The department of community health shall maintain a record of the number of juveniles for whom the court ordered that mental health 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.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor