

HOUSE BILL No. 4556

April 14, 2011, Introduced by Reps. Lipton, Liss, Kowall, Santana, Bauer, Crawford, Irwin and Segal 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, 18r, and 18s to chapter XIIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

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

1 DETERMINATION OF HIS OR HER COMPETENCY TO PROCEED AT A PARTICULAR
2 STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO IS THE SUBJECT
3 OF A DELINQUENCY 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 PROCEED" MEANS THAT A JUVENILE, BASED ON
14 AGE-APPROPRIATE NORMS, LACKS A REASONABLE DEGREE OF RATIONAL AND
15 FACTUAL UNDERSTANDING OF THE PROCEEDING OR IS UNABLE TO DO 1 OR
16 MORE OF THE FOLLOWING:

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

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

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

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

1 (J) "LICENSED CHILD CARING INSTITUTION" MEANS A CHILD CARING
2 INSTITUTION AS DEFINED AND LICENSED UNDER 1973 PA 116, MCL 722.111
3 TO 722.128.

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

6 (L) "MENTAL HEALTH CODE" MEANS THE MENTAL HEALTH CODE, 1974 PA
7 258, MCL 330.1001 TO 330.2106.

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

12 (N) "QUALIFIED FORENSIC MENTAL HEALTH EXAMINER" MEANS 1 OF THE
13 FOLLOWING WHO PERFORMS FORENSIC MENTAL HEALTH EXAMINATIONS FOR THE
14 PURPOSES OF SECTIONS 1062 TO 1074 OF THE MENTAL HEALTH CODE:

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

17 (A) FORENSIC EVALUATION PROCEDURES FOR JUVENILES.

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

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

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

24 (ii) BEGINNING 18 MONTHS AFTER THE EFFECTIVE DATE OF THE
25 AMENDATORY ACT THAT ADDED SECTION 1072 OF THE MENTAL HEALTH CODE, A
26 LICENSED MASTER'S SOCIAL WORKER OR LICENSED PROFESSIONAL COUNSELOR
27 OR LIMITED LICENSE PSYCHOLOGIST WHO MEETS THE CERTIFICATION

1 REQUIREMENTS OF THE PROGRAM ESTABLISHED BY THE DEPARTMENT UNDER
2 SECTION 1072 OF THE MENTAL HEALTH CODE.

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

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

12 (Q) "SERIOUS MISDEMEANOR" MEANS THAT TERM AS DEFINED IN SECTION
13 61 OF THE WILLIAM VAN REGENMORTER CRIME VICTIM'S RIGHTS ACT, 1985 PA
14 87, MCL 780.811.

15 (R) ~~(g)~~—"Valid foreign protection order" means a foreign
16 protection order that satisfies the conditions for validity
17 provided in section 2950i of the revised judicature act of 1961,
18 1961 PA 236, MCL 600.2950i.

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

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

1 her parents.

2 SEC. 18N. (1) A JUVENILE 10 YEARS OF AGE OR OLDER IS PRESUMED
3 COMPETENT TO PROCEED UNLESS THE ISSUE OF COMPETENCY IS RAISED BY A
4 PARTY. A JUVENILE LESS THAN 10 YEARS OF AGE IS PRESUMED INCOMPETENT
5 TO PROCEED.

6 (2) THE COURT MAY ORDER, OR A JUVENILE, THE JUVENILE'S
7 ATTORNEY, OR THE PROSECUTING ATTORNEY MAY REQUEST, A COMPETENCY
8 EVALUATION TO DETERMINE WHETHER THE JUVENILE IS INCOMPETENT TO
9 PROCEED IF THE JUVENILE IS BEING CHARGED AS A JUVENILE IN THE COURT.
10 THE ISSUE OF THE JUVENILE'S COMPETENCY MAY BE RAISED BY THE COURT
11 BEFORE WHICH THE PROCEEDINGS ARE PENDING OR BEING HELD, OR BY MOTION
12 OF A PARTY, AT ANY TIME DURING THE PROCEEDING.

13 (3) AT THE TIME AN ISSUE OF THE JUVENILE'S COMPETENCY IS
14 RAISED, THE DELINQUENCY PROCEEDING SHALL TEMPORARILY CEASE UNTIL
15 DETERMINATION IS MADE ON THE COMPETENCE OF THE JUVENILE ACCORDING TO
16 THIS ACT.

17 SEC. 18O. (1) A COMPETENCY EVALUATION ORDERED UNDER SECTION 18N
18 OF THIS CHAPTER SHALL BE CONDUCTED BY A QUALIFIED FORENSIC MENTAL
19 HEALTH EXAMINER. THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER SHALL
20 PROVIDE THE COURT WITH AN OPINION AS TO WHETHER THE JUVENILE IS
21 COMPETENT TO PROCEED. THE COURT HAS THE FINAL DETERMINATION AS TO WHO
22 IS A QUALIFIED FORENSIC MENTAL HEALTH EXAMINER.

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

26 (3) THE COMPETENCY EVALUATION SHALL BE CONDUCTED IN THE LEAST
27 RESTRICTIVE ENVIRONMENT. THERE IS A PRESUMPTION IN FAVOR OF

1 CONDUCTING A COMPETENCY EVALUATION WHILE THE JUVENILE REMAINS IN THE
2 CUSTODY OF A PARENT OR LEGAL GUARDIAN, UNLESS REMOVAL FROM THE HOME
3 IS NECESSARY FOR THE BEST INTERESTS OF THE JUVENILE, FOR REASONS OF
4 PUBLIC SAFETY, OR BECAUSE THE PARENT OR GUARDIAN HAS REFUSED TO
5 COOPERATE IN THE COMPETENCY EVALUATION PROCESS.

6 SEC. 18P. (1) THE COURT SHALL ORDER THE PROSECUTING ATTORNEY
7 TO PROVIDE TO THE JUVENILE'S ATTORNEY ALL INFORMATION RELATED TO
8 COMPETENCY AND SHALL ORDER THE PROSECUTING ATTORNEY AND JUVENILE'S
9 ATTORNEY TO SUBMIT TO THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER
10 ANY INFORMATION CONSIDERED RELEVANT TO THE COMPETENCY EVALUATION,
11 INCLUDING, BUT NOT LIMITED TO:

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

13 (B) INFORMATION ABOUT THE ALLEGED OFFENSE.

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

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

20 (A) PSYCHIATRIC RECORDS.

21 (B) SCHOOL RECORDS.

22 (C) MEDICAL RECORDS.

23 (D) CHILD PROTECTIVE SERVICES RECORDS.

24 (3) THE REQUIREMENT TO PROVIDE RECORDS OR INFORMATION UNDER
25 SUBSECTION (2) DOES NOT LIMIT, WAIVE, OR ABROGATE THE WORK PRODUCT
26 DOCTRINE OR THE ATTORNEY-CLIENT PRIVILEGE, AND RELEASE OF RECORDS
27 AND INFORMATION UNDER SUBSECTION (2) IS SUBJECT TO THE WORK PRODUCT

1 DOCTRINE AND THE ATTORNEY-CLIENT PRIVILEGE.

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

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

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

16 (i) A DESCRIPTION OF ASSESSMENT PROCEDURES, TECHNIQUES, AND
17 TESTS USED.

18 (ii) AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS
19 REVIEWED.

20 (iii) SOCIAL, CLINICAL, DEVELOPMENTAL, AND LEGAL HISTORY AS
21 AVAILABLE.

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

24 (i) A MENTAL STATUS EXAMINATION.

25 (ii) THE DIAGNOSIS AND FUNCTIONAL IMPACT OF MENTAL ILLNESS,
26 DEVELOPMENTAL DISABILITY, OR COGNITIVE DEFICIENCY. IF THE JUVENILE
27 IS TAKING MEDICATION, THE IMPACT OF THE MEDICATION ON THE

1 JUVENILE'S MENTAL STATE AND BEHAVIOR.

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

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

5 (v) WHETHER THE JUVENILE HAS ANY OTHER FACTOR THAT AFFECTS
6 COMPETENCE.

7 (C) A DESCRIPTION OF ABILITIES AND DEFICITS IN THE FOLLOWING
8 MENTAL COMPETENCY FUNCTIONS RELATED TO THE JUVENILE'S COMPETENCE TO
9 PROCEED:

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

13 (A) AN ABILITY TO UNDERSTAND THE ROLE OF THE PARTICIPANTS IN
14 THE COURT PROCESS, INCLUDING, THE ROLES OF THE JUDGE, THE
15 JUVENILE'S ATTORNEY, THE PROSECUTING ATTORNEY, THE PROBATION
16 OFFICER, WITNESSES, AND THE JURY, AND TO UNDERSTAND THE ADVERSARIAL
17 NATURE OF THE PROCESS.

18 (B) AN ABILITY TO APPRECIATE THE CHARGES AND UNDERSTAND THE
19 SERIOUSNESS OF THE CHARGES.

20 (C) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE
21 LIKELY OUTCOMES.

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

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

26 (A) AN ABILITY TO DISCLOSE TO AN ATTORNEY A REASONABLY
27 COHERENT DESCRIPTION OF FACTS AND EVENTS PERTAINING TO THE CHARGE,

1 AS PERCEIVED BY THE JUVENILE.

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

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

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

9 (E) AN ABILITY TO REASON ABOUT AVAILABLE OPTIONS BY WEIGHING
10 THE CONSEQUENCES, INCLUDING WEIGHING PLEAS, WAIVERS, AND
11 STRATEGIES.

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

13 (6) THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER SHALL
14 PROVIDE THE COURT WITH AN OPINION ABOUT THE JUVENILE'S COMPETENCY
15 TO PROCEED. IF THE QUALIFIED FORENSIC MENTAL HEALTH EXAMINER
16 DETERMINES THAT THE JUVENILE IS INCOMPETENT TO PROCEED, THE
17 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER SHALL COMMENT ON THE
18 NATURE OF MENTAL DISEASE OR DEFECT, THE PROGNOSIS, AND THE SERVICES
19 NEEDED TO RESTORE THE JUVENILE TO COMPETENCY, IF POSSIBLE, WITHIN A
20 PROJECTED TIME FRAME. THE OPINION SHALL INCLUDE AN ASSESSMENT OF
21 WHETHER THE JUVENILE IS A THREAT TO SELF OR OTHERS AND REQUIRES
22 EMERGENCY INTERVENTION.

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

26 (8) COPIES OF THE WRITTEN REPORT SHALL BE PROVIDED BY THE COURT
27 TO THE JUVENILE'S ATTORNEY, THE PROSECUTING ATTORNEY, AND ANY

1 GUARDIAN AD LITEM FOR THE JUVENILE NOT LATER THAN 5 WORKING DAYS
2 AFTER RECEIPT OF THE REPORT BY THE COURT.

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

9 (2) UPON A FINDING BY THE COURT THAT A JUVENILE IS INCOMPETENT
10 TO PROCEED AND A FINDING THAT THERE IS A SUBSTANTIAL PROBABILITY THAT
11 THE JUVENILE WILL REMAIN INCOMPETENT TO PROCEED FOR THE FORESEEABLE
12 FUTURE OR WITHIN THE PERIOD OF THE RESTORATION ORDER, THE COURT SHALL
13 DISMISS WITH PREJUDICE THE CHARGES AGAINST THE JUVENILE AND MAY
14 DETERMINE CUSTODY OF THE JUVENILE.

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

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

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

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

1 (4) A STATEMENT THAT THE JUVENILE MAKES DURING A COMPETENCY
2 EVALUATION MAY NOT BE USED FOR ANY PURPOSE WITHOUT THE WRITTEN
3 CONSENT OF THE JUVENILE OR THE JUVENILE'S GUARDIAN. THE JUVENILE OR
4 THE JUVENILE'S GUARDIAN MUST HAVE AN OPPORTUNITY TO CONSULT WITH
5 HIS OR HER ATTORNEY BEFORE GIVING CONSENT.

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

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

13 (B) FOR STATISTICAL ANALYSIS.

14 (C) IF THE RECORDS ARE CONSIDERED TO BE NECESSARY TO ASSIST IN
15 MENTAL HEALTH TREATMENT ORDERED ACCORDING TO THE MENTAL HEALTH
16 CODE.

17 (D) FOR DATA GATHERING.

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

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

22 (7) ANY STATEMENT THAT A JUVENILE MAKES DURING A COMPETENCY
23 EVALUATION, OR ANY EVIDENCE RESULTING FROM THAT STATEMENT, IS NOT
24 SUBJECT TO DISCLOSURE.

25 SEC. 18S. (1) IF THE JUVENILE IS INCOMPETENT TO PROCEED BUT
26 THE COURT FINDS THAT THE JUVENILE MAY BE RESTORED TO COMPETENCY IN
27 THE FORESEEABLE FUTURE, 1 OF THE FOLLOWING APPLIES:

1 (A) IF THE OFFENSE IS A TRAFFIC OFFENSE OR A MISDEMEANOR OTHER
2 THAN A SERIOUS MISDEMEANOR, THE MATTER SHALL BE DISMISSED.

3 (B) IF THE OFFENSE IS A SERIOUS MISDEMEANOR, THE COURT MAY
4 DISMISS THE MATTER OR SUSPEND THE PROCEEDINGS AGAINST THE JUVENILE.

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

7 (2) IF PROCEEDINGS ARE SUSPENDED BECAUSE THE JUVENILE IS
8 INCOMPETENT TO PROCEED BUT THE COURT FINDS THAT THE JUVENILE MAY BE
9 RESTORED TO COMPETENCY IN THE FORESEEABLE FUTURE, ALL OF THE
10 FOLLOWING APPLY:

11 (A) BEFORE ISSUING A RESTORATION ORDER, THE COURT SHALL HOLD A
12 HEARING TO DETERMINE THE LEAST RESTRICTIVE ALTERNATIVE SETTING FOR
13 COMPLETION OF THE RESTORATION.

14 (B) THE COURT MAY ISSUE A RESTORATION ORDER THAT IS VALID FOR
15 60 DAYS FROM THE DATE OF THE INITIAL FINDING OF INCOMPETENCY OR
16 UNTIL 1 OF THE FOLLOWING OCCURS, WHICHEVER OCCURS FIRST:

17 (i) THE QUALIFIED RESTORATION PROVIDER SUBMITS A REPORT THAT
18 THE JUVENILE HAS REGAINED COMPETENCY OR THAT THERE IS NO
19 SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL REGAIN COMPETENCY
20 WITHIN THE PERIOD OF THE ORDER.

21 (ii) THE CHARGES ARE DISMISSED.

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

23 (C) FOLLOWING ISSUANCE OF THE RESTORATION ORDER, THE QUALIFIED
24 RESTORATION PROVIDER SHALL SUBMIT A REPORT TO THE COURT AND THE
25 QUALIFIED FORENSIC MENTAL HEALTH EXAMINER THAT INCLUDES THE
26 INFORMATION REQUIRED UNDER SECTION 18P OF THIS CHAPTER. THE REPORT
27 SHALL BE SUBMITTED TO THE COURT AND THE QUALIFIED FORENSIC MENTAL

1 HEALTH EXAMINER EVERY 30 DAYS, OR SOONER IF AND AT THE TIME EITHER
2 OF THE FOLLOWING OCCURS:

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

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

8 (3) NOT LATER THAN 14 DAYS BEFORE THE EXPIRATION OF THE
9 INITIAL 60-DAY ORDER, THE QUALIFIED RESTORATION PROVIDER MAY
10 RECOMMEND TO THE COURT AND THE QUALIFIED FORENSIC MENTAL HEALTH
11 EXAMINER THAT THE RESTORATION ORDER BE RENEWED BY THE COURT FOR
12 ANOTHER 60 DAYS, IF THERE IS A SUBSTANTIAL PROBABILITY THAT THE
13 JUVENILE WILL NOT BE INCOMPETENT TO PROCEED WITHIN THE PERIOD OF
14 THAT RENEWED RESTORATION ORDER. THE RESTORATION ORDER AND ANY
15 RENEWED RESTORATION ORDER SHALL NOT EXCEED A TOTAL OF 120 DAYS.

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

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

22 (i) THE COURT MAY DIRECT THAT CIVIL COMMITMENT PROCEEDINGS BE
23 INITIATED, AS ALLOWED UNDER SECTION 498D OF THE MENTAL HEALTH CODE.

24 (ii) IF THE COURT DETERMINES THAT COMMITMENT PROCEEDINGS ARE
25 INAPPROPRIATE, THE JUVENILE SHALL BE RELEASED TO THE JUVENILE'S
26 PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN UNDER CONDITIONS
27 CONSIDERED APPROPRIATE TO THE COURT.

1 (B) DISMISS THE CHARGES AGAINST THE JUVENILE.

2 (5) UPON RECEIPT OF A REPORT THAT THERE IS A SUBSTANTIAL
3 PROBABILITY THAT THE JUVENILE IS UNABLE TO BE RESTORED DUE TO
4 SERIOUS EMOTIONAL DISTURBANCE, THE COURT MAY IN ITS DISCRETION,
5 EXCEPT AS PROVIDED UNDER THE YOUTH REHABILITATION SERVICES ACT,
6 1974 PA 150, MCL 803.301 TO 803.309, ORDER THAT MENTAL HEALTH
7 SERVICES BE PROVIDED TO THE JUVENILE BY THE DEPARTMENT OF COMMUNITY
8 HEALTH, A COMMUNITY MENTAL HEALTH SERVICES PROGRAM, THE DEPARTMENT
9 OF HUMAN SERVICES, A COUNTY DEPARTMENT OF HUMAN SERVICES, OR
10 ANOTHER APPROPRIATE MENTAL HEALTH SERVICES PROVIDER FOR A PERIOD
11 NOT TO EXCEED 60 DAYS. THE COURT SHALL RETAIN JURISDICTION OVER THE
12 JUVENILE THROUGHOUT THE DURATION OF THE ORDER. THE ENTITY ORDERED
13 TO PROVIDE SERVICES UNDER THIS SUBSECTION SHALL CONTINUE TO PROVIDE
14 SERVICES FOR THE DURATION OF THE PERIOD OF TREATMENT ORDERED BY THE
15 COURT.

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

22 (A) RENEW THE ORDER FOR ANOTHER PERIOD OF TREATMENT NOT TO
23 EXCEED 60 DAYS.

24 (B) DETERMINE CUSTODY OF THE JUVENILE AND DISMISS THE CHARGES
25 AGAINST THE JUVENILE.