

SENATE BILL No. 247

March 9, 2011, Introduced by Senator SCHUITMAKER and referred to the Committee on Judiciary.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending sections 498d, 498e, and 498h (MCL 330.1498d,
330.1498e, and 330.1498h), section 498d as amended by 1998 PA 524,
section 498e as amended by 1996 PA 588, and section 498h as amended
by 2000 PA 57, and by adding sections 1060, 1060a, 1060b, 1060c,
1062, 1064, 1066, 1068, 1070, 1072, and 1074.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 498d. (1) Subject to section 498e and except as otherwise
2 provided in this chapter, **SECTION 1074, AND SECTION 18S OF CHAPTER**
3 **XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18S,** a
4 minor of any age may be hospitalized if both of the following
5 conditions are met:

1 (a) The minor's parent, guardian, or a person acting in loco
2 parentis for the minor or, in compliance with subsection (2) or
3 (3), the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** or
4 county juvenile agency, as applicable, requests hospitalization of
5 the minor under this chapter.

6 (b) The minor is found to be suitable for hospitalization.

7 (2) The ~~family independence agency~~ **DEPARTMENT OF HUMAN**
8 **SERVICES** may request hospitalization of a minor who is committed to
9 the ~~family independence agency~~ **DEPARTMENT OF HUMAN SERVICES** under
10 1935 PA 220, MCL 400.201 to 400.214.

11 (3) As applicable, the ~~family independence agency~~ **DEPARTMENT**
12 **OF HUMAN SERVICES** may request hospitalization of, or the county
13 juvenile agency may request an evaluation for hospitalization of, a
14 minor who is 1 of the following:

15 (a) A ward of the court under chapter X or XIIIA of 1939 PA
16 288, MCL 710.21 to 710.70 and 712A.1 to 712A.32, if the ~~family~~
17 ~~independence agency~~ **DEPARTMENT OF HUMAN SERVICES** or county juvenile
18 agency is specifically empowered to do so by court order.

19 (b) Committed to the ~~family independence agency~~ **DEPARTMENT OF**
20 **HUMAN SERVICES** or county juvenile agency under the youth
21 rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309,
22 except that if the minor is residing with his or her custodial
23 parent, the consent of the custodial parent is required.

24 (4) Subject to sections 498e, 498f, and 498j, **AND EXCEPT AS**
25 **PROVIDED IN SECTION 1074 AND SECTION 18S OF CHAPTER XIIIA OF THE**
26 **PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18S**, a minor 14 years
27 of age or older may be hospitalized if both of the following

1 conditions are met:

2 (a) The minor requests hospitalization under this chapter.

3 (b) The minor is found to be suitable for hospitalization.

4 (5) In making the determination of suitability for
5 hospitalization, a minor shall not be determined to be a minor
6 requiring treatment solely on the basis of 1 or more of the
7 following conditions:

8 (a) Epilepsy.

9 (b) Developmental disability.

10 (c) Brief periods of intoxication caused by substances such as
11 alcohol or drugs or by dependence upon or addiction to those
12 substances.

13 (d) Juvenile offenses, including school truancy, home truancy,
14 or incorrigibility.

15 (e) Sexual activity.

16 (f) Religious activity or beliefs.

17 (g) Political activity or beliefs.

18 (6) As used in this section, "county juvenile agency" means
19 that term as defined in section 2 of the county juvenile agency
20 act, 1998 PA 518, MCL 45.622.

21 Sec. 498e. (1) ~~A-EXCEPT AS PROVIDED IN SECTION 1074 AND~~
22 ~~SECTION 18S OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA~~
23 ~~288, MCL 712A.18S, A~~ minor requesting hospitalization or for whom a
24 request for hospitalization was made shall be evaluated to
25 determine suitability for hospitalization ~~pursuant-~~ **ACCORDING** to
26 this section as soon as possible after the request is made.

27 (2) The executive director of the community mental health

1 services program that is responsible for providing services in the
2 county of residence of a minor requesting hospitalization or for
3 whom a request for hospitalization was made shall evaluate the
4 minor to determine his or her suitability for hospitalization
5 ~~pursuant~~**—ACCORDING** to this section. In making a determination of a
6 minor's suitability for hospitalization, the executive director
7 shall utilize the community mental health services program's
8 children's diagnostic and treatment service. If a children's
9 diagnostic and treatment service does not exist in the community
10 mental health services program, the executive director shall,
11 through written agreement, arrange to have a determination made by
12 the children's diagnostic and treatment service of another
13 community mental health services program, or by the appropriate
14 hospital.

15 (3) In evaluating a minor's suitability for hospitalization,
16 the executive director shall do all of the following:

17 (a) Determine both of the following:

18 (i) Whether the minor is a minor requiring treatment.

19 (ii) Whether the minor requires hospitalization and is expected
20 to benefit from hospitalization.

21 (b) Determine whether there is an appropriate, available
22 alternative to hospitalization, and if there is, refer the minor to
23 that program.

24 (c) Consult with the appropriate school, hospital, and other
25 public or private agencies.

26 (d) If the minor is determined to be suitable for
27 hospitalization under subdivision (a), refer the minor to the

1 appropriate hospital.

2 (e) If the minor is determined not to be suitable for
3 hospitalization under subdivision (a), determine if the minor needs
4 mental health services. If it is determined that the minor needs
5 mental health services, the executive director shall offer an
6 appropriate treatment program for the minor, if the program is
7 available, or refer the minor to any other appropriate agency for
8 services.

9 (f) If a minor is assessed and found not to be clinically
10 suitable for hospitalization, the executive director shall inform
11 the individual or individuals requesting hospitalization of the
12 minor of appropriate available alternative services to which a
13 referral should be made and of the process for a request of a
14 second opinion under subsection (4).

15 (4) If the children's diagnostic and treatment service of the
16 community mental health services program denies hospitalization,
17 the parent or guardian of the minor may request a second opinion
18 from the executive director. The executive director shall arrange
19 for an additional evaluation by a psychiatrist, other physician, or
20 licensed psychologist to be performed within 3 days, excluding
21 Sundays and legal holidays, after the executive director receives
22 the request. If the conclusion of the second opinion is different
23 from the conclusion of the children's diagnostic and treatment
24 service, the executive director, in conjunction with the medical
25 director, shall make a decision based on all clinical information
26 available. The executive director's decision shall be confirmed in
27 writing to the individual who requested the second opinion, and the

1 confirming document shall include the signatures of the executive
2 director and medical director or verification that the decision was
3 made in conjunction with the medical director.

4 (5) If a minor has been admitted to a hospital not operated by
5 or under contract with the department or a community mental health
6 services program and the hospital considers it necessary to
7 transfer the minor to a hospital under contract with a community
8 mental health services program, the hospital shall submit an
9 application for transfer to the appropriate community mental health
10 services program. The executive director shall determine if there
11 is an appropriate, available alternative to hospitalization of the
12 minor. If the executive director determines that there is an
13 appropriate, available alternative program, the minor shall be
14 referred to that program. If the executive director determines that
15 there is not an appropriate, alternative program, the minor shall
16 be referred to a hospital under contract with the community mental
17 health services program.

18 (6) Except as provided in subsections (1) and (5), this
19 section only applies to hospitals operated under contract with a
20 community mental health services program.

21 Sec. 498h. (1) ~~A-EXCEPT AS PROVIDED IN SECTION 1074 AND~~
22 **SECTION 18S OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA**
23 **288, MCL 712A.18S, A** minor's parent, guardian, or person in loco
24 parentis may request emergency admission of the minor to a
25 hospital, if the person making the request has reason to believe
26 that the minor is a minor requiring treatment and that the minor
27 presents a serious danger to self or others.

1 (2) If the hospital to which the request for emergency
2 admission is made is not under contract to the community mental
3 health services program, the request for emergency hospitalization
4 shall be made directly to the hospital. If the hospital director
5 agrees that the minor needs emergency admission, the minor shall be
6 hospitalized. If the hospital director does not agree, the person
7 making the request may request hospitalization of the minor under
8 section 498d.

9 (3) If the hospital to which the request for emergency
10 admission is made is under contract to the community mental health
11 services program, the request shall be made to the preadmission
12 screening unit of the community mental health services program
13 serving in the county where the minor resides. If the community
14 mental health services program has a children's diagnostic and
15 treatment service, the preadmission screening unit shall refer the
16 person making the request to that service. In counties where there
17 is no children's diagnostic and treatment service, the preadmission
18 screening unit shall refer the person making the request to the
19 appropriate hospital. If it is determined that emergency admission
20 is not necessary, the person may request hospitalization of the
21 minor under section 498d. If it is determined that emergency
22 admission is necessary, the minor shall be hospitalized or placed
23 in an appropriate alternative program.

24 (4) If a minor is assessed by the preadmission screening unit
25 and found not to be clinically suitable for hospitalization, the
26 preadmission screening unit shall inform the individual or
27 individuals requesting hospitalization of the minor of appropriate

1 available alternative services to which a referral should be made
2 and of the process for a request of a second opinion under
3 subsection (5).

4 (5) If the preadmission screening unit of the community mental
5 health services program denies hospitalization, a minor's parent or
6 guardian may request a second opinion from the executive director.
7 The executive director shall arrange for an additional evaluation
8 by a psychiatrist, other physician, or licensed psychologist to be
9 performed within 3 days, excluding Sundays and legal holidays,
10 after the executive director receives the request. If the
11 conclusion of the second opinion is different from the conclusion
12 of the preadmission screening unit, the executive director, in
13 conjunction with the medical director, shall make a decision based
14 on all clinical information available. The executive director's
15 decision shall be confirmed in writing to the individual who
16 requested the second opinion, and the confirming document shall
17 include the signatures of the executive director and medical
18 director or verification that the decision was made in conjunction
19 with the medical director.

20 (6) If a person in loco parentis makes a request for emergency
21 admission and the minor is admitted to a hospital under this
22 section, the hospital director or the executive director of the
23 community mental health services program immediately shall notify
24 the minor's parent or parents or guardian.

25 (7) If a minor is hospitalized in a hospital that is operated
26 under contract with a community mental health services program, the
27 hospital director shall notify the appropriate executive director

1 within 24 hours after the hospitalization occurs.

2 (8) If a peace officer, as a result of personal observation,
3 has reasonable grounds to believe that a minor is a minor requiring
4 treatment and that the minor presents a serious danger to self or
5 others and if after a reasonable effort to locate the minor's
6 parent, guardian, or person in loco parentis, the minor's parent,
7 guardian, or person in loco parentis cannot be located, the peace
8 officer may take the minor into protective custody and transport
9 the minor to the appropriate community mental health preadmission
10 screening unit, if the community mental health services program has
11 a children's diagnostic and treatment service, or to a hospital if
12 it does not have a children's diagnostic and treatment service.
13 After transporting the minor, the peace officer shall execute a
14 written request for emergency hospitalization of the minor stating
15 the reasons, based upon personal observation, that the peace
16 officer believes that emergency hospitalization is necessary. The
17 written request shall include a statement that a reasonable effort
18 was made by the peace officer to locate the minor's parent,
19 guardian, or person in loco parentis. If it is determined that
20 emergency hospitalization of the minor is not necessary, the minor
21 shall be returned to his or her parent, guardian, or person in loco
22 parentis if an additional attempt to locate the parent, guardian,
23 or person in loco parentis is successful. If the minor's parent,
24 guardian, or person in loco parentis cannot be located, the minor
25 shall be turned over to the protective services program of the
26 family independence agency. If it is determined that emergency
27 admission of the minor is necessary, the minor shall be admitted to

1 the appropriate hospital or to an appropriate alternative program.
2 The executive director immediately shall notify the minor's parent,
3 guardian, or person in loco parentis. If the hospital is under
4 contract with the community mental health services program, the
5 hospital director shall notify the appropriate executive director
6 within 24 hours after the hospitalization occurs.

7 (9) An evaluation of a minor admitted to a hospital under this
8 section shall begin immediately after the minor is admitted. The
9 evaluation shall be conducted in the same manner as provided in
10 section 498e. If the minor is not found to be suitable for
11 hospitalization, the minor shall be released into the custody of
12 his or her parent, guardian, or person in loco parentis, and the
13 minor shall be referred to the executive director who shall
14 determine if the minor needs mental health services. If it is
15 determined that the minor needs mental health services, the
16 executive director shall offer an appropriate treatment program for
17 the minor, if the program is available, or refer the minor to
18 another agency for services.

19 (10) A hospital director shall proceed under either the
20 estates and protected individuals code, 1998 PA 386, MCL 700.1101
21 to ~~700.8102~~ **700.8206**, or chapter XIIIA of the probate code of 1939,
22 1939 PA 288, MCL 712A.1 to 712A.32, as warranted by the situation
23 and the best interests of the minor, under any of the following
24 circumstances:

25 (a) The hospital director cannot locate a parent, guardian, or
26 person in loco parentis of a minor admitted to a hospital under
27 subsection (8).

1 (b) The hospital director cannot locate the parent or guardian
2 of a minor admitted to a hospital by a person in loco parentis
3 under this section.

4 SEC. 1060. FOR THE PURPOSES OF SECTIONS 1060A TO 1074, THE
5 WORDS AND PHRASES DEFINED IN SECTIONS 1060A AND 1060B HAVE THE
6 MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

7 SEC. 1060A. (1) "COMPETENCY EVALUATION" MEANS A COURT-ORDERED
8 EXAMINATION OF A JUVENILE DIRECTED TO DEVELOPING INFORMATION
9 RELEVANT TO A DETERMINATION OF HIS OR HER COMPETENCY TO PROCEED AT
10 A PARTICULAR STAGE OF A COURT PROCEEDING INVOLVING A JUVENILE WHO
11 IS THE SUBJECT OF A DELINQUENCY PETITION.

12 (2) "COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER
13 A JUVENILE IS COMPETENT TO PROCEED.

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

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

20 (B) SUFFICIENTLY UNDERSTAND THE CHARGES AGAINST HIM OR HER.

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

23 SEC. 1060B. (1) "LEAST RESTRICTIVE ENVIRONMENT" MEANS A
24 SUPERVISED COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE
25 JUVENILE'S PARENT, GUARDIAN, RELATIVE, OR A FACILITY OR CONDITIONS
26 OF TREATMENT THAT IS A RESIDENTIAL OR INSTITUTIONAL PLACEMENT ONLY
27 UTILIZED AS A LAST RESORT BASED ON THE BEST INTEREST OF THE

1 JUVENILE OR FOR REASONS OF PUBLIC SAFETY.

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

5 (3) "QUALIFIED FORENSIC MENTAL HEALTH EXAMINER" MEANS 1 OF THE
6 FOLLOWING WHO PERFORMS FORENSIC MENTAL HEALTH EXAMINATIONS FOR THE
7 PURPOSES OF SECTIONS 1062 TO 1074:

8 (A) A PSYCHIATRIST OR PSYCHOLOGIST WHO POSSESSES EXPERIENCE OR
9 TRAINING IN THE FOLLOWING:

10 (i) FORENSIC EVALUATION PROCEDURES FOR JUVENILES.

11 (ii) EVALUATION OR TREATMENT OF CHILDREN AND ADOLESCENTS WITH
12 EMOTIONAL DISTURBANCE, MENTAL ILLNESS, OR DEVELOPMENTAL
13 DISABILITIES.

14 (iii) CLINICAL UNDERSTANDING OF CHILD AND ADOLESCENT
15 DEVELOPMENT.

16 (iv) FAMILIARITY WITH COMPETENCY STANDARDS IN THIS STATE.

17 (B) BEGINNING 18 MONTHS AFTER THE EFFECTIVE DATE OF THE
18 AMENDATORY ACT THAT ADDED THIS SECTION, A LICENSED MASTER'S SOCIAL
19 WORKER OR LICENSED PROFESSIONAL COUNSELOR OR LIMITED LICENSE
20 PSYCHOLOGIST WHO MEETS THE CERTIFICATION REQUIREMENTS OF THE
21 PROGRAM ESTABLISHED BY THE DEPARTMENT UNDER SECTION 1072.

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