

**MENTAL HEALTH CODE (EXCERPT)**  
**Act 258 of 1974**

**DISPOSITION OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY**

**330.2050 Person acquitted of criminal charge by reason of insanity; commitment to center for forensic psychiatry; record; examination and evaluation; report; opinion; certificates; petition; retention or discharge of person; applicability of release provisions; condition to being discharged or placed on leave; extension of leave.**

Sec. 1050. (1) The court shall immediately commit any person who is acquitted of a criminal charge by reason of insanity to the custody of the center for forensic psychiatry, for a period not to exceed 60 days. The court shall forward to the center a full report, in the form of a settled record, of the facts concerning the crime which the patient was found to have committed but of which he was acquitted by reason of insanity. The center shall thoroughly examine and evaluate the present mental condition of the person in order to reach an opinion on whether the person meets the criteria of a person requiring treatment or for judicial admission set forth in section 401 or 515.

(2) Within the 60-day period the center shall file a report with the court, prosecuting attorney, and defense counsel. The report shall contain a summary of the crime which the patient committed but of which he was acquitted by reason of insanity and an opinion as to whether the person meets the criteria of a person requiring treatment or for judicial admission as defined by section 401 or 515, and the facts upon which the opinion is based. If the opinion stated is that the person is a person requiring treatment, the report shall be accompanied by certificates from 2 physicians, at least 1 of whom shall be a psychiatrist, which conform to the requirements of section 400(j).

(3) After receipt of the report, the court may direct the prosecuting attorney to file a petition pursuant to section 434 or 516 for an order of hospitalization or an order of admission to a facility with the probate court of the person's county of residence or of the county in which the criminal trial was held. Any certificates that accompanied the report of the center may be filed with the petition, and shall be sufficient to cause a hearing to be held pursuant to section 451 even if they were not executed within 72 hours of the filing of the petition. The report from the court containing the facts concerning the crime for which he was acquitted by reason of insanity shall be admissible in the hearings.

(4) If the report states the opinion that the person meets the criteria of a person requiring treatment or for judicial admission, and if a petition is to be filed pursuant to subsection (3), the center may retain the person pending a hearing on the petition. If a petition is not to be filed, the prosecutor shall notify the center in writing. The center, upon receipt of the notification, shall cause the person to be discharged.

(5) The release provisions of sections 476 to 479 of this act shall apply to a person found to have committed a crime by a court or jury, but who is acquitted by reason of insanity, except that a person shall not be discharged or placed on leave without first being evaluated and recommended for discharge or leave by the department's program for forensic psychiatry, and authorized leave or absence from the hospital may be extended for a period of 5 years.

**History:** 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1975, Act 179, Eff. Aug. 6, 1975.

**330.2060 Meanings of words and phrases.**

Sec. 1060. For the purposes of sections 1060a to 1074, the words and phrases defined in sections 1060a to 1060c have the meanings ascribed to them in those sections.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

**330.2060a Definitions; C to J.**

Sec. 1060a. (1) "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.

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

(3) "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:

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

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

(4) "Juvenile" means a person who is less than 18 years of age who is the subject of a delinquency petition.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013;—Am. 2019, Act 99, Eff. Oct. 1, 2021.

### **330.2060b Definitions; L to Q.**

Sec. 1060b. (1) "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.

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

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

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

(i) Forensic evaluation procedures for juveniles.

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

(iii) Clinical understanding of child and adolescent development.

(iv) Familiarity with competency standards in this state.

(b) Beginning 18 months after the effective date of the amendatory act that added this section, 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 and who possesses experience or training in all of the following:

(i) Forensic evaluation procedures for juveniles.

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

(iii) Clinical understanding of child and adolescent development.

(iv) Familiarity with competency standards in this state.

(4) "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.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2060c Definitions; R, S.**

Sec. 1060c. (1) "Restoration" means the process by which education or treatment of a juvenile results in that juvenile becoming competent to proceed.

(2) "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.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2062 Competency of juvenile; presumption; order to determine competency during proceeding.**

Sec. 1062. (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 upon 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 chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2. 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.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2064 Competency evaluation; conduct by qualified forensic mental health examiner; expert witness; additional evaluations at party's expense; conduct in least restrictive environment.**

Sec. 1064. (1) A competency evaluation ordered under section 1062 shall be conducted by a qualified forensic mental health examiner. The qualified 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 forensic mental health examiner.

(2) This section does not prohibit any party from retaining the party's own qualified 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.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

**330.2066 Providing information relating to competency; submission of report and comment to court by qualified forensic mental health examiner; extension; copies of report to be provided to certain individuals.**

Sec. 1066. (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 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 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 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 multifactored 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 forensic mental health examiner shall provide the court with an opinion about the juvenile's competency to proceed. If the qualified forensic mental health examiner determines that the juvenile is incompetent to proceed, the qualified forensic mental health examiner shall comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the services needed and expertise required 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 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.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2068 Competency hearing.**

Sec. 1068. (1) Not later than 30 days after a report is filed under section 1066, 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 forensic mental health examiner appointed by the court to determine the juvenile's mental condition shall be allowed reasonable fees for services rendered.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2070 Competency evaluations; self-incrimination; evidence or statements inadmissible in proceeding determining responsibility; sealing reports; order to open reports; purposes; confidentiality; disclosure.**

Sec. 1070. (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 1062 to 1068 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 under this act.
- (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.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2072 Training program for juvenile forensic mental health examiners.**

Sec. 1072. (1) Not later than 18 months after the effective date of the amendatory act that added this section, the department shall review and endorse a training program for juvenile forensic mental health examiners who provide juvenile competency exams. A psychiatrist or psychologist may, but is not required to, seek certification under the program established under this section.

(2) The department may make adaptations or adjustments to the endorsed training program described under subsection (1) based on research and best practices.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2074 Court finding that juvenile may be restored to competency in foreseeable future; restoration order; renewal; report that substantial probability that juvenile will remain incompetent; actions of court; order to provide treatment; report from entity providing services; duties of court.**

Sec. 1074. (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 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 forensic mental health examiner that includes the information required under section 1066. The report shall be submitted to the court and the qualified 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 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.

(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 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, 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 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.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.