

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

768.20a Insanity as defense in felony case; notice of intention to assert defense; examination; independent psychiatric evaluation; cooperation required; admissibility of statements; report; notice of rebuttal; admissibility of reports; "qualified personnel" defined.

Sec. 20a.

(1) If a defendant in a felony case proposes to offer in his or her defense testimony to establish his or her insanity at the time of an alleged offense, the defendant shall file and serve upon the court and the prosecuting attorney a notice in writing of his or her intention to assert the defense of insanity not less than 30 days before the date set for the trial of the case, or at such other time as the court directs.

(2) Upon receipt of a notice of an intention to assert the defense of insanity, a court shall order the defendant to undergo an examination relating to his or her claim of insanity by personnel of the center for forensic psychiatry or by other qualified personnel, as applicable, for a period not to exceed 60 days from the date of the order. When the defendant is to be held in jail pending trial, the center or the other qualified personnel may perform the examination in the jail, or may notify the sheriff to transport the defendant to the center or facility used by the qualified personnel for the examination, and the sheriff shall return the defendant to the jail upon completion of the examination. When the defendant is at liberty pending trial, on bail or otherwise, the defendant shall make himself or herself available for the examination at the place and time established by the center or the other qualified personnel. If the defendant, after being notified of the place and time of the examination, fails to make himself or herself available for the examination, the court may, without a hearing, order his or her commitment to the center.

(3) The defendant may, at his or her own expense, secure an independent psychiatric evaluation by a clinician of his or her choice on the issue of his or her insanity at the time the alleged offense was committed. If the defendant is indigent, the court may, upon showing of good cause, order that the county pay for an independent psychiatric evaluation. The defendant shall notify the prosecuting attorney at least 5 days before the day scheduled for the independent evaluation that he or she intends to secure such an evaluation. The prosecuting attorney may similarly obtain independent psychiatric evaluation. A clinician secured by an indigent defendant is entitled to receive a reasonable fee as approved by the court.

(4) The defendant shall fully cooperate in his or her examination by personnel of the center for forensic psychiatry or by other qualified personnel, and by any other independent examiners for the defense and prosecution. If he or she fails to cooperate, and that failure is established to the satisfaction of the court at a hearing prior to trial, the defendant shall be barred from presenting testimony relating to his or her insanity at the trial of the case.

(5) Statements made by the defendant to personnel of the center for forensic psychiatry, to other qualified personnel, or to any independent examiner during an examination shall not be admissible or have probative value in court at the trial of the case on any issues other than his or her mental illness or insanity at the time of the alleged offense.

(6) Upon conclusion of the examination, the center for forensic psychiatry or the other qualified personnel, and any independent examiner, shall prepare a written report and shall submit the report to the prosecuting attorney and defense counsel. The report shall contain:

(a) The clinical findings of the center, the qualified personnel, or any independent examiner.

(b) The facts, in reasonable detail, upon which the findings were based.

(c) The opinion of the center or qualified personnel, and the independent examiner on the issue of the defendant's insanity at the time the alleged offense was committed and whether the defendant was mentally ill or intellectually disabled at the time the alleged offense was committed.

(7) Within 10 days after the receipt of the report from the center for forensic psychiatry or from the qualified personnel, or within 10 days after the receipt of the report of an independent examiner secured by the prosecution, whichever occurs later, but not later than 5 days before the trial of the case, or at another time the court directs, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal of the defense of insanity which shall contain the names of the witnesses whom the prosecuting attorney proposes to call in rebuttal.

(8) The report of the center for forensic psychiatry, the qualified personnel, or any independent examiner may be admissible in evidence upon the stipulation of the prosecution and defense.

(9) As used in this section, "qualified personnel" means personnel meeting standards determined by the department of community health under rules promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: Add. 1975, Act 180, Eff. Aug. 6, 1975 ;-- Am. 1983, Act 42, Imd. Eff. May 12, 1983 ;-- Am. 2006, Act 655, Imd. Eff. Jan. 9, 2007 ;-- Am. 2014, Act 76, Imd. Eff. Mar. 28, 2014

Constitutionality: The requirement that a defendant who raises an insanity defense cooperate in a psychiatric examination relating to the

claim of insanity or be barred from presenting evidence of insanity at trial does not infringe upon the defendant's right to present a defense; nor is the sanction unconstitutionally vague. *People v Hayes*, 421 Mich 271; 364 NW2d 635 (1984).