

HOUSE BILL No. 5489

September 29, 2009, Introduced by Reps. Haase, Segal, Lipton, Bauer, Byrnes, Crawford, Liss and Kowall and referred to the Committee on Judiciary.

A bill to amend 1939 PA 288, entitled "Probate code of 1939," (MCL 710.21 to 712A.32) by adding section 18p to chapter XIIA.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

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 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) THE COURT SHALL REQUIRE THE JUVENILE'S ATTORNEY TO PROVIDE

1 ANY AVAILABLE RECORDS OF THE JUVENILE OR OTHER INFORMATION RELEVANT
2 TO THE EVALUATION, INCLUDING, BUT NOT LIMITED TO, ANY OF THE
3 FOLLOWING:

4 (A) PSYCHIATRIC RECORDS.

5 (B) SCHOOL RECORDS.

6 (C) MEDICAL RECORDS.

7 (D) CHILD PROTECTIVE SERVICES RECORDS.

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

14 (4) A QUALIFIED EXAMINER WHO CONDUCTS A COMPETENCY EVALUATION
15 SHALL SUBMIT A WRITTEN REPORT TO THE COURT NOT LATER THAN 30 DAYS
16 FROM RECEIPT OF THE COURT ORDER REQUIRING THE COMPETENCY
17 EVALUATION. THE REPORT SHALL CONTAIN, BUT NOT BE LIMITED TO, THE
18 FOLLOWING:

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

21 (i) A DESCRIPTION OF ASSESSMENT PROCEDURES, TECHNIQUES, AND
22 TESTS USED.

23 (ii) AVAILABLE MEDICAL, EDUCATIONAL, AND COURT RECORDS
24 REVIEWED.

25 (iii) SOCIAL, CLINICAL, DEVELOPMENTAL, AND LEGAL HISTORY AS
26 AVAILABLE.

27 (B) A CLINICAL ASSESSMENT THAT INCLUDES, BUT IS NOT LIMITED

1 TO, THE FOLLOWING:

2 (i) A MENTAL STATUS EXAMINATION.

3 (ii) THE DIAGNOSIS AND FUNCTIONAL IMPACT OF MENTAL ILLNESS,
4 DEVELOPMENTAL DISABILITY, OR COGNITIVE DEFICIENCY. IF THE JUVENILE
5 IS TAKING MEDICATION, THE IMPACT OF THE MEDICATION ON THE
6 JUVENILE'S MENTAL STATE AND BEHAVIOR.

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

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

10 (v) WHETHER THE JUVENILE HAS ANY OTHER FACTOR THAT AFFECTS
11 COMPETENCE.

12 (C) A DESCRIPTION OF ABILITIES AND DEFICITS IN THE FOLLOWING
13 MENTAL COMPETENCY FUNCTIONS RELATED TO THE JUVENILE'S COMPETENCE TO
14 PROCEED:

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

18 (A) AN ABILITY TO UNDERSTAND THE ROLE OF THE PARTICIPANTS IN
19 THE COURT PROCESS, INCLUDING, THE ROLES OF JUDGE, THE JUVENILE'S
20 ATTORNEY, THE PROSECUTING ATTORNEY, THE PROBATION OFFICER,
21 WITNESSES, AND THE JURY, AND TO UNDERSTAND THE ADVERSARIAL NATURE
22 OF THE PROCESS.

23 (B) AN ABILITY TO APPRECIATE THE CHARGES AND UNDERSTAND THE
24 SERIOUSNESS OF THE CHARGES.

25 (C) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE
26 LIKELY OUTCOMES.

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

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

4 (A) AN ABILITY TO DISCLOSE TO AN ATTORNEY A REASONABLY
5 COHERENT DESCRIPTION OF FACTS AND EVENTS PERTAINING TO THE CHARGE,
6 AS PERCEIVED BY THE JUVENILE.

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

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

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

14 (E) AN ABILITY TO REASON ABOUT AVAILABLE OPTIONS BY WEIGHING
15 THE CONSEQUENCES, INCLUDING WEIGHING PLEAS, WAIVERS, AND
16 STRATEGIES.

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

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

26 (6) THE COURT IN ITS DISCRETION MAY, FOR GOOD CAUSE, GRANT THE
27 QUALIFIED EXAMINER A 30-DAY EXTENSION IN FILING THE COMPETENCY

1 **EVALUATION REPORT.**

2 (7) COPIES OF THE WRITTEN REPORT SHALL BE PROVIDED BY THE COURT
3 TO THE JUVENILE'S ATTORNEY, THE PROSECUTING ATTORNEY, AND ANY
4 GUARDIAN AD LITEM FOR THE JUVENILE NOT LATER THAN 5 WORKING DAYS
5 AFTER RECEIPT OF THE REPORT BY THE COURT.

6 Enacting section 1. This amendatory act does not take effect
7 unless all of the following bills of the 95th Legislature are
8 enacted into law:

9 (a) Senate Bill No. ____ or House Bill No. 5485 (request no.
10 04134'09).

11 (b) Senate Bill No. ____ or House Bill No. 5487 (request no.
12 04135'09).

13 (c) Senate Bill No. ____ or House Bill No. 5488 (request no.
14 04136'09).

15 (d) Senate Bill No. ____ or House Bill No. 5486 (request no.
16 04138'09).

17 (e) Senate Bill No. ____ or House Bill No. 5484 (request no.
18 04139'09).