

SENATE BILL NO. 723

February 22, 2024, Introduced by Senators SANTANA, CHANG, SHINK, GEISS and BAYER
and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding sections 1080, 1081, 1082, and
1083.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1080. (1) A defendant is presumed to have been competent
2 to waive the defendant's Miranda rights. The issue of a defendant's
3 competence to have waived the defendant's Miranda rights may be
4 raised by the defense, the court, or the prosecution. The court
5 shall determine the procedure for raising the issue by court rule.

1 (2) The court shall determine if the defendant was competent
2 to waive the defendant's Miranda rights. A defendant was competent
3 to waive the defendant's Miranda rights if the defendant's waiver
4 was knowingly and intelligently made, which means that the
5 defendant understood all of the following:

6 (a) The defendant did not have to speak.

7 (b) The defendant had the right to the presence of counsel.

8 (c) What the defendant said could be used in a later trial
9 against the defendant.

10 Sec. 1081. (1) On a showing that a defendant may not have been
11 competent to waive the defendant's Miranda rights, the court shall
12 order the defendant to undergo an examination by a qualified
13 clinician of either the center for forensic psychiatry or another
14 facility officially certified by the department to perform
15 examinations that relate to the issue of competence to waive
16 Miranda rights. The defendant shall make himself or herself
17 available for the examination at the places and times established
18 by the center or other certified facility. If the defendant, after
19 being notified, fails to make himself or herself available for the
20 examination, the court may order the defendant's commitment to the
21 center or other facility without a hearing.

22 (2) When a defendant is to be held in a jail or similar place
23 of detention pending trial, the center or other facility may
24 perform the examination in the place of detention or may notify the
25 sheriff to transport the defendant to the center or other facility
26 for the examination, and the sheriff shall return the defendant to
27 the place of detention on completion of the examination.

28 (3) Except as provided in subsection (1), when a defendant is
29 not to be held in a jail or similar place of detention pending

1 trial, the court shall commit the defendant to the center or other
2 facility only if the commitment is necessary for the performance of
3 the examination.

4 (4) A defendant must be released by the center or other
5 facility on completion of the examination.

6 (5) As used in this section and section 1082, "examination"
7 means a court-ordered examination of a defendant directed to
8 develop information relevant to a determination of the defendant's
9 competence to have waived the defendant's Miranda rights.

10 Sec. 1082. (1) When the defendant is ordered to undergo an
11 examination under section 1081, the center or other facility shall,
12 for the purpose of gathering psychiatric and other information
13 pertinent to the issue of the defendant's competence to have waived
14 the defendant's Miranda rights, examine the defendant and consult
15 with defense counsel, and may consult with the prosecutor or other
16 persons. Defense counsel must be available for consultation with
17 the center or other facility. The examination must be performed,
18 defense counsel must be consulted, and a written report must be
19 submitted to the court, prosecuting attorney, and defense counsel
20 within 60 days of the date of the order.

21 (2) The report described in subsection (1) must contain all of
22 the following:

23 (a) The clinical findings of the center or other facility.

24 (b) The facts, in reasonable detail, on which the findings are
25 based, and, on request of the court, the defense, or the
26 prosecution, additional facts germane to the findings.

27 (c) The opinion of the center or other facility on the issue
28 of the defendant's competence to have waived the defendant's
29 Miranda rights.

1 (3) The qualified clinician's opinion on the defendant's
2 competence to have waived the defendant's Miranda rights derived
3 from the examination may not be admitted as evidence for any
4 purpose in the pending criminal proceedings, except on the issues
5 to be determined in the hearings required or permitted by section
6 1081. This bar to testimony does not prohibit the examining
7 qualified clinician from presenting at other stages in the criminal
8 proceedings opinions that concern criminal responsibility,
9 disposition, or other issues if the opinions were originally
10 requested by the court and are available. Information gathered in
11 the course of a prior examination that is of historical value to
12 the examining qualified clinician may be utilized in the
13 formulation of an opinion in any subsequent court-ordered
14 evaluation.

15 Sec. 1083. (1) On receipt of the written report under section
16 1082, the court shall have the defendant appear in court and hold a
17 hearing within a reasonable time.

18 (2) On the basis of the evidence admitted at the hearing, the
19 court shall determine the issue of whether the defendant was
20 competent to waive the defendant's Miranda rights. If the court
21 finds that the defendant's Miranda rights waiver was not knowingly
22 and intelligently made, the court shall determine the appropriate
23 remedy at law.

24 (3) The written report is admissible as competent evidence in
25 the hearing, unless the defense or prosecution objects, but not for
26 any other purpose in the pending criminal proceeding. The defense,
27 the prosecution, and the court on its own motion may present
28 additional evidence relevant to the issues to be determined at the
29 hearing.

1 (4) The right of the defendant to be at liberty pending trial,
2 on bail or otherwise, must not be impaired because the defendant
3 has raised the issue of the defendant's competence to have waived
4 Miranda rights or because the defendant was determined to be
5 incompetent to have waived Miranda rights.

6 (5) After a hearing under this section, the defendant's trial
7 must commence as soon as practicable.