

Legislative Analysis



EXAMINATIONS TO DETERMINE INCOMPETENCY TO STAND TRIAL

Phone: (517) 373-8080
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House Bills 5244 and 5246 as reported w/o amendment

Sponsor: Rep. Klint Kesto

Committee: Law and Justice

Complete to 2-26-18

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

House Bill 5246 would establish a time limitation for when an examination to determine whether a defendant is competent to stand trial must be completed, allow for an extension if good cause is shown, allow the Department of Corrections to certify additional facilities to conduct the examinations, and allow a court to issue an order to complete the examination as soon as possible.

House Bill 5244 would grant a one-time extension for the completion of a written report that is required to be submitted to the court and both parties regarding the examination.

House Bills 5244 and 5246 are tie-barred to each other, which means that neither can take effect unless both are enacted. Each bill would take effect 90 days after its enactment.

DETAILED SUMMARY:

House Bill 5246 would amend Section 1026 of the Mental Health Code (MCL 330.2026). Currently, upon a showing that a defendant may be incompetent to stand trial, the court is required to order the defendant to undergo an examination by personnel of the Center for Forensic Psychiatry or another facility officially certified by the Michigan Department of Health and Human Services (DHHS) to perform examinations relating to the issue of incompetence to stand trial. The Center for Forensic Psychiatry is a 210-bed psychiatric facility operated by DHHS that provides diagnostic services to the criminal justice system and psychiatric treatment for criminal defendants adjudicated incompetent to stand trial or found not guilty by reason of insanity.

The defendant must make himself or herself available for the examination at the places and times established by the Center or other facility. The court can order the defendant committed to the Center if he or she fails to make himself or herself available for the examination.

HB 5246 would require the times set for the examinations to be for a reasonable period not to exceed 45 days. The director of the Center or other certified facility could apply for an extension of up to 15 days upon a showing of good cause that the additional time was necessary to observe and evaluate the defendant. This provision would not limit, extend, or in any way change the time limitation for a written report proposed by House Bill 5244.

To meet the time limitations under both bills, the Department of Corrections would have to use all available resources, including, but not limited to, working with DHHS to officially certify other facilities across the state to perform incompetency examinations and to use clinicians in those other certified facilities to perform examinations. If an examination was not completed within the bill's time limitations, the court could issue an order that included steps to complete

the examination as soon as possible. This could include, but not be limited to, ordering another certified facility to conduct the examination.

Further, current law allows the examination to be performed by the Center or other facility in the jail and also allows the sheriff to transport a defendant to and from the Center or other facility for the examination. HB 5246 would specify that an examination would be subject to the bill's time limitations whether completed in a jail or at the Center or other facility.

House Bill 5244 would amend Section 1028 of the Mental Health Code (MCL 330.2028). After an examination to determine competency to stand trial is performed, a written report must be submitted to the court, prosecuting attorney, and defense counsel within 60 days of the order to perform the examination.

The bill would allow the director of the Center or other certified facility to apply with the court for an extension of up to 15 days upon a showing of good cause that the additional time is necessary to complete the report. Only one extension could be granted. To meet the time limitation, the Department of Corrections would have to use all available resources, including, but not limited to, working with DHHS to officially certify other facilities across the state to perform the incompetency examinations described in House Bill 5246 and to use clinicians in those other certified facilities to perform those examinations. If the examination was not completed within the bill's time limitations, the court could issue an order that included immediate steps to complete the examination as soon as possible. This could include, but not be limited to, ordering another certified facility to conduct the examination.

FISCAL IMPACT:

House Bills 5244 and 5246 would have an indeterminate fiscal impact. Any increased costs for the Center for Forensic Psychiatry within the Department of Health and Human Services would depend on the degree to which the bills' time limitations differ from the current timeliness standards at the Center for Forensic Psychiatry and on the frequency at which the court decides to grant extensions to submit reports.

POSITIONS:

Representatives of the Alliance for Safety and Justice testified in support of the bills. (11-28-17)

The Citizens Alliance on Prisons and Public Spending (CAPPS) indicated support for the bills. (11-28-17)

The West Michigan Policy Forum indicated support for the bills. (11-28-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.