

# HOUSE BILL No. 5244

November 9, 2017, Introduced by Reps. Kesto, Rendon and Whiteford and referred to the Committee on Law and Justice.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 1028 (MCL 330.2028).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1028. (1) When the defendant is ordered to undergo an  
2 examination ~~pursuant to~~ **UNDER** section 1026, the center or other  
3 facility shall, for the purpose of gathering psychiatric and other  
4 information pertinent to the issue of the incompetence of the  
5 defendant to stand trial, examine the defendant and consult with  
6 defense counsel, and may consult with the prosecutor or other  
7 persons. Defense counsel shall make himself **OR HERSELF** available  
8 for consultation with the center or other facility. The examination  
9 shall be performed, defense counsel consulted, and a written report  
10 submitted to the court, prosecuting attorney, and defense counsel

1 within 60 days of the date of the order.

2 (2) THE DIRECTOR OF THE CENTER OR OTHER CERTIFIED FACILITY MAY  
3 APPLY WITH THE COURT FOR AN EXTENSION, BUT NOT TO EXCEED 15 DAYS,  
4 UPON A SHOWING OF GOOD CAUSE THAT THE ADDITIONAL TIME IS NECESSARY  
5 TO COMPLETE THE REPORT. ONLY 1 EXTENSION MAY BE GRANTED. TO MEET  
6 THE TIME LIMITATIONS IN THIS SUBSECTION AND SECTION 1026(2), THE  
7 DEPARTMENT OF CORRECTIONS SHALL USE ALL AVAILABLE RESOURCES,  
8 INCLUDING, BUT NOT LIMITED TO, WORKING WITH THE DEPARTMENT TO  
9 OFFICIALLY CERTIFY FACILITIES ACROSS THE STATE TO PERFORM  
10 EXAMINATIONS RELATING TO THE ISSUE OF INCOMPETENCE TO STAND TRIAL  
11 AND TO USE CLINICIANS IN THOSE OTHER CERTIFIED FACILITIES TO  
12 PERFORM EXAMINATIONS. IF THE EXAMINATION IS NOT COMPLETED WITHIN  
13 THE TIME LIMITATIONS SET FORTH IN THIS SUBSECTION, THE COURT MAY  
14 ISSUE AN ORDER THAT INCLUDES IMMEDIATE STEPS TO COMPLETE THE  
15 EXAMINATION AS SOON AS POSSIBLE, INCLUDING, BUT NOT LIMITED TO,  
16 ORDERING ANOTHER CERTIFIED FACILITY TO CONDUCT THE EXAMINATION.

17 (3) ~~(2)~~—The report shall contain **THE FOLLOWING**:

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

19 (b) The facts, in reasonable detail, upon which the findings  
20 are based, and upon request of the court, defense, or prosecution  
21 additional facts germane to the findings.

22 (c) The opinion of the center or other facility on the issue  
23 of the incompetence of the defendant to stand trial.

24 (d) If the opinion is that the defendant is incompetent to  
25 stand trial, the opinion of the center or other facility on the  
26 likelihood of the defendant attaining competence to stand trial, if  
27 provided a course of treatment, within the time limit established

1 by section 1034.

2           **(4)** ~~(3)~~—The opinion concerning competency to stand trial  
3 derived from the examination may not be admitted as evidence for  
4 any purpose in the pending criminal proceedings, except on the  
5 issues to be determined in the hearings required or permitted by  
6 sections 1030 and 1040. The foregoing bar of testimony ~~shall~~**DOES**  
7 ~~not be construed to~~ prohibit the examining qualified clinician from  
8 presenting at other stages in the criminal proceedings opinions  
9 concerning criminal responsibility, disposition, or other issues if  
10 they were originally requested by the court and are available.  
11 Information gathered in the course of a prior examination that is  
12 of historical value to the examining qualified clinician may be  
13 utilized in the formulation of an opinion in any subsequent court  
14 ordered evaluation.

15           Enacting section 1. This amendatory act takes effect 90 days  
16 after the date it is enacted into law.

17           Enacting section 2. This amendatory act does not take effect  
18 unless Senate Bill No. \_\_\_\_\_ or House Bill No. 5246 (request no.  
19 04648'17) of the 99th Legislature is enacted into law.