

# Chapter 10

## CHAPTER 10 CRIMINAL PROVISIONS

### TRANSFER OF PRISONERS

#### **330.2000 Repealed. 1978, Act 636, Imd. Eff. Jan. 10, 1979.**

**Compiler's note:** The repealed section pertained to admission of prisoner to facility.

#### **330.2001 Meanings of words and phrases.**

Sec. 1001. For the purposes of sections 1001a to 1006, the words and phrases defined in sections 1001a and 1001b have the meanings ascribed to them in those sections.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979.

#### **330.2001a Definitions; C to M.**

Sec. 1001a. (1) "Center for forensic psychiatry program" means that program established by the center for forensic psychiatry to provide services related to all of the following:

- (a) Persons who are alleged to be incompetent to stand trial.
- (b) Persons who are acquitted of criminal charges by reason of insanity.
- (c) Persons who are transferred to the center from places of detention or from other state psychiatric hospitals.

(2) "Corrections mental health program" means that program of the department of corrections that is responsible for the provision of mental health services to certain prisoners under this chapter.

(3) "Hearing committee" means a committee appointed by the corrections mental health program under section 1003c.

(4) "Mental health services" means the provision of mental health care in a protective environment to prisoners with mental illness or developmental disability, including, but not limited to, chemotherapy and individual and group therapies.

(5) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979; □ Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993; □ Am. 2014, Act 72, Imd. Eff.

Mar. 28, 2014.

#### **330.2001b Definitions; P to S.**

Sec. 1001b. (1) "Place of detention" means a detention facility operated by a political subdivision of the state.

(2) "Prisoner" means a person confined in a state correctional facility, but does not include any of the following:

(a) A person confined pursuant to an order of a juvenile division of the probate court or the family division of circuit court.

(b) A person confined in a place of detention.

(c) A person who is on parole from a state correctional facility.

(3) "Protective environment" means an environment that supports mental health services in accordance with a prisoner's individual plan of services.

(4) "State correctional facility" means a facility that houses prisoners and is operated by the department of corrections, and also includes a youth correctional facility operated by the department of corrections or a private vendor under section 20g of 1953 PA 232, MCL 791.220g.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979; □ Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993; □ Am. 1995, Act 290, Eff. Mar.

28, 1996; □ Am. 1998, Act 508, Imd. Eff. Jan. 8, 1999.

**330.2002 Repealed. 1975, Act 154, Imd. Eff. July 9, 1975.**

**Compiler's note:** The repealed section pertained to admission of prisoner as formal voluntary patient or administrative admittee.

**330.2002a Mental health services for person confined in place of detention; rules for voluntary admission into state mental health facility; involuntary admission.**

Sec. 1002a. (1) For a person confined in a place of detention operated by a political subdivision of the state and who requests mental health services, mental health services shall be provided by the appropriate community mental health program pursuant to the responsibilities described in section 206.

(2) The department of mental health shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, establishing a procedure for the voluntary admission into a state mental health facility of a person confined in a place of detention operated by a political subdivision of the state.

(3) The involuntary admission into a state mental health facility of a person confined in a place of detention operated by a political subdivision of the state shall be governed by sections 423 to 444.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979.

**Administrative rules:** R 330.1001 et seq. of the Michigan Administrative Code.

**330.2003 Corrections mental health program; establishment and operation; appointment and qualifications of program director.**

Sec. 1003. The department of corrections shall establish and operate the corrections mental health program to provide mental health services for prisoners who are developmentally disabled or mentally ill and need those services. The director of the department shall review the program's structure, content, quality standards, and implementation. The department of corrections may contract with the department or third-party providers to operate the corrections mental health program. The director of the department of corrections shall appoint the director of the corrections mental health program. The director of the corrections mental health program shall be an individual with an advanced degree in a mental health field and a minimum of 5 years' experience in a mental health field.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979; □ Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993; □ Am. 2007, Act 112, Imd. Eff.

Oct. 1, 2007; □ Am. 2014, Act 72, Imd. Eff. Mar. 28, 2014.

**330.2003a Involuntary admission; procedures.**

Sec. 1003a. The following procedures apply to involuntary admission to the corrections mental health program:

(a) A person may file with the officer in charge of a state correctional facility a written notice alleging that a particular prisoner is mentally ill or developmentally disabled and requires treatment. Upon receipt of the written notice, the officer in charge of the facility shall contact the corrections mental health program, which shall initiate an evaluation by a mental health professional. If the officer in charge of a state correctional facility receives a report from a mental health professional that a prisoner may be mentally ill, the officer shall ensure that the prisoner is examined by a psychiatrist as soon as administratively possible. If the report from the mental health professional states that the prisoner may be developmentally disabled, the officer shall ensure that the prisoner is examined by a psychologist as soon as administratively possible. Unless the prisoner can be examined within the facility where he or she is housed, the prisoner shall be transferred to an appropriate facility for examination.

(b) Upon completion of the examination described in subdivision (a), the psychiatrist or psychologist shall execute a certificate of findings that specifies whether, in the psychiatrist's or psychologist's opinion, the prisoner is mentally ill or developmentally disabled. If a finding of mental illness or developmental disability is made, the psychiatrist or psychologist shall recommend suitable treatment available within the corrections mental health program.

(c) Upon completion of the examination described in subdivision (a), if the psychiatrist or psychologist determines that the prisoner is mentally ill or developmentally disabled and is a present danger to himself or

herself or to others, and if the prisoner refuses treatment, the psychiatrist may order involuntary administration of psychotropic medication pending a hearing under section 1003c.

(d) Upon completion of the certificate required under subdivision (b), the officer in charge of the state correctional facility shall provide to the prisoner and the guardian of the person, if applicable, a copy of the certificate, a copy of the psychiatrist's or psychologist's report of the examination, and a notice of hearing explaining hearing procedures and rights set forth in section 1003c. The documents shall be provided at least 24 hours before the hearing.

(e) If the prisoner agrees with the treatment recommended under subdivision (b), the prisoner may execute a waiver of hearing and consent to treatment.

(f) If the prisoner refuses the treatment recommended under subdivision (b), a hearing shall be held under section 1003c.

(g) The prisoner shall not be medicated for 24 hours before a hearing held under section 1003c.

(h) If, following a hearing held under section 1003c, the hearing committee finds that the prisoner is not mentally ill or developmentally disabled, the prisoner shall be placed according to normal procedures of the department of corrections. If the hearing committee finds that the prisoner is mentally ill or developmentally disabled and that the proposed services are suitable to the prisoner's condition, the corrections mental health program shall provide the mental health services designated by the hearing committee. If the hearing committee finds that the prisoner is mentally ill or developmentally disabled but that the proposed services are not suitable to the prisoner's condition, the corrections mental health program shall provide services that are available within the corrections mental health program that are suitable to the prisoner's condition as ordered by the hearing committee.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979; □Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993; □Am. 2014, Act 72, Imd. Eff.

Mar. 28, 2014.

### **330.2003b Voluntary admission; procedures.**

Sec. 1003b. The following procedures apply to voluntary admission to the corrections mental health program:

(a) If a prisoner desires to be voluntarily admitted to the corrections mental health program, the officer in charge of the state correctional facility in which the prisoner is housed shall transfer the prisoner, if necessary, to the appropriate location designated by the corrections mental health program for an examination by a psychiatrist or a psychologist, as applicable. If the examining psychiatrist or psychologist certifies to the corrections mental health program that the prisoner is mentally ill or developmentally disabled and is clinically suited for admission, the corrections mental health program shall provide the prisoner with a written individual plan of services according to section 712. Upon the prisoner's consent to the individual plan of services, the corrections mental health program shall admit the prisoner to the program.

(b) Except as otherwise provided in subdivision (c), a prisoner who is voluntarily transferred under this section shall not be admitted to the corrections mental health program for more than 3 days, excluding Sundays and legal holidays, after the prisoner gives written notice of his or her intention to terminate the admission and return to the general population of the state correctional facility. If the corrections mental health program is advised by a prisoner of an intention to terminate admission, the program shall promptly provide the written form required for termination of admission and return the prisoner to the general population of the state correctional facility.

(c) If written notice of termination of admission has been given according to subdivision (b) and has not been withdrawn, and if the director of the corrections mental health program determines that the prisoner continues to require mental health services, the director, or a person designated by the director, within 3 days, excluding Sundays and holidays, after the receipt by the corrections mental health program of the notice, shall provide the prisoner and the guardian of the person, if applicable, with a notice of hearing explaining hearing rights set forth in section 1003c. The prisoner shall not be medicated for 24 hours prior to the hearing. If, following the hearing, the hearing committee finds that the prisoner does not require mental health services, the prisoner shall be placed according to normal procedures of the department of corrections. If the hearing committee finds that the prisoner continues to require mental health services, the corrections mental health program shall continue to provide those services.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979; □Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993; □Am. 2014, Act 72, Imd. Eff.

Mar. 28, 2014.

### **330.2003c Hearing committee.**

Sec. 1003c. (1) If a prisoner refuses treatment or services recommended under section 1003a or if the corrections mental health program determines that a voluntary admittee to the program who wishes to terminate admission continues to require mental health services, the corrections mental health program shall appoint a hearing committee to hear the matter. The hearing committee shall consist of a psychiatrist, a psychologist, and another mental health professional, whose licensure or registration requirements include a minimum of a baccalaureate degree from an accredited college or university, none of whom is, at the time of hearing, involved in the prisoner's treatment or diagnosis.

(2) A hearing under this section shall be held not less than 24 hours after the prisoner and the guardian of the person, if applicable, are provided the documents required under section 1003a(d) or section 1003b(c), but not more than 7 business days after the documents have been provided to the prisoner.

(3) A prisoner has the following rights with respect to the hearing under this section:

(a) Attendance at the hearing, and if the prisoner has a guardian of the person, the guardian's attendance at the hearing.

(b) Presentation of evidence, including witnesses, who may be family members, and cross-examination of witnesses, unless the hearing committee finds that the presentation, confrontation, or cross-examination would present a serious threat to the order and security of the facility or the safety of the prisoner or others.

(c) Assistance of 1 of the following persons designated by the director of the corrections mental health program:

(i) A recipient rights advisor from the office of recipient rights.

(ii) A mental health professional who is not involved in the prisoner's treatment or diagnosis and whose licensure or registration requirements include a minimum of a baccalaureate degree from an accredited college or university.

(4) The hearing committee appointed under subsection (1) shall consider the report of the mental health professional who has alleged that the prisoner is mentally ill or developmentally disabled, the certificate described in section 1003a(b), proof of service of the notice of hearing, proof of nonmedication for 24 hours prior to the hearing, and any other admissible evidence presented at the hearing. To be admissible, evidence shall be relevant, nonrepetitious, and of a type relied upon by a person in the conduct of everyday affairs.

(5) The hearing committee appointed under subsection (1) shall prepare an official record of the hearing including all evidence described in subsection (4). The hearing shall be recorded, but need not be transcribed unless requested by a party. A party who requests transcription shall pay for the transcription of the portion requested.

(6) After a hearing under this section, the hearing committee shall decide by a majority vote that includes an affirmative vote by the psychiatrist whether the prisoner is mentally ill or developmentally disabled and whether the proposed mental health services are suitable to the prisoner's condition. If the hearing committee finds that the prisoner is mentally ill or developmentally disabled but that the proposed services are not suitable to the prisoner's condition, the hearing committee shall order services available within the corrections mental health program that are suitable to the prisoner's condition.

(7) Upon reaching a decision, the hearing committee shall prepare a report and order expressing the findings of the hearing committee and the basis for those findings. Each member shall indicate his or her agreement or disagreement with the hearing committee findings. Within 24 hours after the hearing, the hearing committee shall provide a copy of the hearing committee report and order to the prisoner.

(8) A prisoner may appeal the decision of the hearing committee under this section to the director of the corrections mental health program if the appeal is filed within 48 hours of the prisoner's receipt of the hearing committee's report and order under subsection (7). The director of the corrections mental health program shall render a decision within 2 business days after receipt of the appeal.

(9) A prisoner may appeal the decision of the director of the corrections mental health program under subsection (8) according to section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631, except that no oral argument shall be permitted. If the director of the corrections mental health program upholds the hearing committee's findings of mental illness or developmental disability and the hearing committee's proposed services, the prisoner's treatment shall not be stayed pending the appeal.

**History:** Add. 1993, Act 252, Imd. Eff. Nov. 29, 1993; □ Am. 2014, Act 72, Imd. Eff. Mar. 28, 2014.

**330.2004 Crediting good time credits and other statutory reductions; notice and record of expiration or reduction of sentence.**

Sec. 1004. (1) A prisoner shall continue to be credited with those good time credits and other statutory reductions of his or her penal sentence to which he or she is entitled while in the corrections mental health program, subject to the terms and conditions that are applicable in a state correctional facility. The prisoner shall continue to be subject to all disciplinary sanctions that are not attributable to the prisoner's mental illness or developmental disability.

(2) At the time a prisoner is admitted to the corrections mental health program, the department of corrections shall notify the director of the corrections mental health program of the date on which the sentence of the prisoner is to expire and of any reductions of the sentence recorded to date. The corrections mental health program shall enter the sentence expiration date in the record it maintains for the prisoner.

**History:** 1974, Act 258, Eff. Aug. 6, 1975;□Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993;□Am. 2014, Act 72, Imd. Eff. Mar. 28,

2014.

**330.2004a Rights of prisoners; confidentiality of information.**

Sec. 1004a. (1) In addition to the rights, benefits, and privileges guaranteed to prisoners by other provisions of law, the state constitution of 1963, and the constitution of the United States, a prisoner receiving services from the corrections mental health program has the rights enumerated in this section. The rights enumerated in this section do not replace or limit any other rights, benefits, or privileges of a prisoner.

(2) The rights enumerated in this section pertain to the manner in which mental health services are provided to the prisoner. This section does not affect the regulations and policies of the department of corrections relating to the operation of a state correctional facility. In an instance in which a right enumerated in this section conflicts with a regulation or policy of the department of corrections affecting the security of a state correctional facility or the protection of prisoners, employees, or the public, the department of corrections regulation or policy shall control.

(3) A prisoner is entitled to receive mental health services suitable to his or her condition in a manner that protects and promotes the basic human dignity of the prisoner.

(4) Subject to subsection (2), a prisoner receiving services from the corrections mental health program is entitled to those rights enumerated in sections 706, 710, 712, 714, 716, 722, 740, 742, 744, and 746.

(5) Information in the medical record of a prisoner receiving services from the corrections mental health program and other information acquired in the course of the prisoner's treatment in the program is confidential and shall not be open to public inspection. The corrections mental health program is the holder of the record and may disclose the information only in the circumstances and under the conditions set forth in this subsection. If information made confidential by this subsection is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, if practicable, other information shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought. A person receiving information made confidential by this subsection shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained. With the exception of records, data, and knowledge generated by individuals or committees performing a peer review function, which is not subject to disclosure, information pertaining to a prisoner receiving mental health services from the corrections mental health program may be disclosed under 1 or more of the following circumstances:

(a) Pursuant to orders or subpoenas of a court of record, or subpoenas of the legislature, unless the information is made privileged by law.

(b) To an attorney for the prisoner, with the prisoner's consent.

(c) If necessary to comply with another provision of law.

(d) To the department of corrections if the information is necessary to protect the safety of the prisoner, other prisoners, or the public, or to protect the prisoner's interactions with others in the state correctional facility.

(e) To the department of mental health if the information is necessary for the department to discharge a responsibility placed upon it by law.

(f) To the office of the auditor general if the information is necessary for that office to discharge its

constitutional responsibility.

(g) As necessary to enable a prisoner or the prisoner's surviving spouse or other related person to apply for or receive benefits.

(h) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, if the prisoner can be identified from the disclosure only if that identification is essential in order to achieve the purpose for which the information is sought or if preventing that identification would clearly be impractical, but in no event if the prisoner is likely to be harmed by the identification.

(i) To providers of mental health or other health services or a public agency, when there is a compelling need for disclosure based upon a substantial probability of harm to the prisoner or to other persons.

(j) To a representative of the protection and advocacy system designated by the governor in section 931 if both of the following apply:

(i) A complaint regarding the provision of mental health services by the corrections mental health program has been received by the protection and advocacy system from or on behalf of the prisoner.

(ii) The prisoner does not have a legal guardian, or the state or the designee of the state is the legal guardian of the prisoner.

**History:** Add. 1993, Act 252, Imd. Eff. Nov. 29, 1993.

### **330.2004b Notice of rights.**

Sec. 1004b. (1) Not later than 7 days after a prisoner is admitted to the corrections mental health program, the corrections mental health program shall provide the prisoner with a notice of the rights guaranteed under section 1004a. The program shall also provide the prisoner with an opportunity to consult with 1 of the following persons designated by the director of the corrections mental health program:

(a) A recipient rights advisor from the office of recipient rights.

(b) A field investigator from the office of the legislative corrections ombudsman.

(c) A representative of the protection and advocacy agency designated by the governor pursuant to section 931.

(2) The corrections mental health program shall place in the record of each prisoner admitted to the program a document signed by the prisoner stating that the prisoner received the notice required under subsection (1) and was offered an opportunity to consult with a person described in subsection (1)(a) to (c).

**History:** Add. 1993, Act 252, Imd. Eff. Nov. 29, 1993.

### **330.2005-330.2005c Repealed. 1993, Act 252, Imd. Eff. Nov. 29, 1993.**

**Compiler's note:** The repealed sections pertained to petitions for determination of mental illness or mental retardation; hearings; investigation, evidence and prosecuting petition; findings, testimony, and depositions.

### **330.2005d Treatment period; report requiring continued mental health services; initial order of admission; certificate; statement; placement according to normal procedures.**

Sec. 1005d. (1) An initial order for treatment under section 1003c shall be for a period not to exceed 90 days.

(2) If, before the expiration of the initial 90-day order, the treating psychiatrist or psychologist believes that a prisoner continues to be mentally ill or developmentally disabled and requires mental health services, the treating psychiatrist or psychologist, not less than 14 days before the expiration of the order, shall file with the director of the corrections mental health program or the director's designee a report of the determination that the prisoner continues to require those services. Upon receipt of the report under this subsection and proof of notice to the prisoner of an opportunity for a hearing, and following a hearing, if requested by the prisoner, a hearing committee appointed under section 1003c may authorize continued care in the corrections mental health program for an additional period not to exceed 90 days.

(3) If, before the expiration of the second 90-day order, the treating psychiatrist or psychologist believes that the prisoner continues to be mentally ill or developmentally disabled and requires mental health services, the treating psychiatrist or psychologist, not less than 14 days before the expiration of the order, shall file with the director of the corrections mental health program or the director's designee a report of the determination that the prisoner continues to require those services. Upon receipt of the report under this subsection and proof of notice to the prisoner of an opportunity for a hearing, and following a hearing, if requested by the prisoner, the hearing committee may authorize continued care in the corrections mental health program for an additional period not to exceed 180 days. Upon completion of the order for continuing admission to the corrections mental health program, if the treating psychiatrist or psychologist believes that the prisoner

continues to be mentally ill or developmentally disabled and requires mental health services, the treating psychiatrist or psychologist shall request an initial order of admission under section 1003c.

(4) A report of a determination under subsection (2) or (3) shall be accompanied by a certificate executed by the psychiatrist or psychologist and shall contain a statement setting forth all of the following:

(a) The reasons for the treating psychiatrist's or psychologist's determination that the prisoner continues to be mentally ill or developmentally disabled and requires mental health services.

(b) A statement describing the treatment program provided to the prisoner.

(c) The results of the course of treatment.

(d) A clinical estimate as to the time further treatment will be required.

(5) If at any hearing held under this section the hearing committee appointed under section 1003c finds that the prisoner is not mentally ill or developmentally disabled, the hearing committee shall enter a finding to that effect and the prisoner shall be placed according to normal procedures of the department of corrections.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979; □ Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993; □ Am. 2014, Act 72, Imd. Eff. Mar. 28, 2014.

### **330.2005e Repealed. 1993, Act 252, Imd. Eff. Nov. 29, 1993.**

**Compiler's note:** The repealed section pertained to copies of court order and evidence required for findings.

### **330.2005f Transfer of prisoner between state mental health facilities; administrative hearing; emergency transfer; commingling with other recipients of mental health services; rights and privileges.**

Sec. 1005f. (1) A person may be transferred to the center for forensic psychiatry program under this chapter and may be transferred between state mental health facilities upon authorization by the director of the center for forensic psychiatry program. The person is entitled to an administrative hearing pursuant to rules of the department of mental health regarding the need and appropriateness of a transfer to another state mental health facility upon receipt by the director of the center for forensic psychiatry program of the person's objection to the transfer. If an emergency transfer is required, and if objection is made to the transfer, the hearing will be held at the receiving facility.

(2) A person transferred to another state mental health facility under this section shall not be commingled with other recipients of mental health services except in cases in which it is determined by the director of the center for forensic psychiatry program, after consultation with the department of corrections, and pursuant to rules promulgated by the department of mental health, that the person and the other recipients of mental health services exhibit the same propensity for dangerous behavior and require similar treatment plans and modalities.

(3) A person transferred under this section is entitled to all the rights and privileges afforded to other mental health recipients pursuant to chapter 7, except those rights and privileges specifically excluded or modified by law.

**History:** Add. 1978, Act 636, Imd. Eff. Jan. 10, 1979; □ Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993.

### **330.2006 Discharge; conditions; procedure; aftercare reintegration and community-based mental health services.**

Sec. 1006. (1) A prisoner admitted to the corrections mental health program according to section 1003a or section 1003b shall be discharged from the program when 1 or both of the following occur:

(a) The prisoner ceases to require mental health services.

(b) The prisoner is paroled or discharged from prison.

(2) If a prisoner is to be discharged from the corrections mental health program before the expiration of the prisoner's criminal sentence, the director of the corrections mental health program shall first notify the department of corrections of the pending discharge, and shall transmit a full report on the condition of the prisoner to the department of corrections.

(3) If the prisoner is paroled or discharged from prison, and the corrections mental health program considers the prisoner to be a person requiring treatment, as defined in section 401, or a person who meets the criteria for judicial admission, as prescribed in section 515, the director of the corrections mental health program at least 14 days before the parole date or the date of discharge shall file a petition under section 434 or section 516 asserting that the prisoner is a person requiring treatment or that the prisoner meets the criteria



for judicial admission. The petition shall be filed with the probate court of the prisoner's county of residence.

(4) The department of community health is responsible for assuring that needed aftercare reintegration and community-based mental health services are offered to mentally ill and developmentally disabled persons who are leaving prison, upon referral by the department of corrections. Upon request from the department of corrections, community-based mental health services shall be provided by the department of community health throughout the parole period.

**History:** 1974, Act 258, Eff. Aug. 6, 1975;□Am. 1975, Act 154, Imd. Eff. July 9, 1975;□Am. 1978, Act 636, Imd. Eff. Jan. 10,

1979;□Am. 1993, Act 252, Imd. Eff. Nov. 29, 1993;□Am. 2014, Act 72, Imd. Eff. Mar. 28, 2014.

### **330.2006a Report to legislature.**

Sec. 1006a. (1) Not later than April 1, 1995, the department of corrections and the department of mental health shall submit a report to the legislature, based on a joint evaluation, that includes, but is not limited to, all of the following with respect to the 18-month period preceding the report:

(a) A description of the provision of mental health services to prisoners.

(b) The total number of prisoners served.

(c) The number of hearings held pursuant to section 1003c and the disposition of each hearing.

(d) The number of developmentally disabled prisoners in the corrections system and a description of the services those prisoners received.

(e) The characteristics of the prisoners served and a description of the services they received, including, but not limited to, the length of stay in the corrections mental health program and the type of treatment received.

(2) The report required under subsection (1) shall include recommendations for appropriate changes in mental health programs for prisoners.

**History:** Add. 1993, Act 252, Imd. Eff. Nov. 29, 1993.

## INCOMPETENCE TO STAND TRIAL

### **330.2020 Defendant presumed competent to stand trial; determination of incompetency; effect of medication; statement by physician.**

Sec. 1020. (1) A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in the preparation of his defense and during his trial.

(2) A defendant shall not be determined incompetent to stand trial because psychotropic drugs or other medication have been or are being administered under proper medical direction, and even though without such medication the defendant might be incompetent to stand trial. However, when the defendant is receiving such medication, the court may, prior to making its determination on the issue of incompetence to stand trial, require the filing of a statement by the treating physician that such medication will not adversely affect the defendant's understanding of the proceedings or his ability to assist in his defense.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

### **330.2022 Proceeding against incompetent defendant prohibited; pretrial motions; preservation and admissibility of evidence.**

Sec. 1022. (1) A defendant who is determined incompetent to stand trial shall not be proceeded against while he is incompetent.

(2) Any pretrial motion may be made by either the defense or prosecution while a defendant is incompetent to stand trial, and the issues presented by the motion shall be heard and decided if the presence of the defendant is not essential for a fair hearing and decision on the motion.

(3) When it appears that evidence essential to the case the defense or prosecution plans to present might not be available at the time of trial, the court shall allow such evidence to be taken and preserved. Evidence so taken shall be admissible at the trial only if it is not otherwise available. Procedures for the taking and preserving of evidence under this subsection, and the conditions under which such evidence shall be

admissible at trial, shall be provided by court rule.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

### **330.2024 Raising issue of incompetence to stand trial.**

Sec. 1024. The issue of incompetence to stand trial may be raised by the defense, court, or prosecution. The time and form of the procedure for raising the issue shall be provided by court rule.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

### **330.2026 Examination of defendant.**

Sec. 1026. (1) Upon a showing that the defendant may be incompetent to stand trial, the court shall order the defendant to undergo an examination by personnel of either the center for forensic psychiatry or other facility officially certified by the department of mental health to perform examinations relating to the issue of incompetence to stand trial. The defendant shall make himself available for the examination at the places and times established by the center or other certified facility. If the defendant, after being notified, fails to make himself available for the examination, the court may order his commitment to the center or other facility without a hearing.

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

(3) Except as provided in subsection (1), when the defendant is not to be held in a jail or similar place of detention pending trial, the court shall commit him to the center or other facility only when the commitment is necessary for the performance of the examination.

(4) The defendant shall be released by the center or other facility upon completion of the examination.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

### **330.2028 Consultations; report; admissibility of evidence.**

Sec. 1028. (1) When the defendant is ordered to undergo an examination pursuant to section 1026, the center or other facility shall, for the purpose of gathering psychiatric and other information pertinent to the issue of the incompetence of the defendant to stand trial, examine the defendant and consult with defense counsel, and may consult with the prosecutor or other persons. Defense counsel shall make himself available for consultation with the center or other facility. The examination shall be performed, defense counsel consulted, and a written report submitted to the court, prosecuting attorney, and defense counsel within 60 days of the date of the order.

(2) The report shall contain:

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

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

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

(d) If the opinion is that the defendant is incompetent to stand trial, the opinion of the center or other facility on the likelihood of the defendant attaining competence to stand trial, if provided a course of treatment, within the time limit established by section 1034.

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

**History:** 1974, Act 258, Eff. Aug. 6, 1975; □ Am. 1975, Act 179, Eff. Aug. 6, 1975.

### **330.2030 Hearing; determination; admissibility of report; order for continued administration of**

**medication.**

Sec. 1030. (1) Upon receipt of the written report, the court shall cause the defendant to appear in court and shall hold a hearing within 5 days or upon the conclusion of the case, proceeding, or other matter then before it, whichever is sooner, unless the defense or prosecution for good cause requests a delay for a reasonable time.

(2) On the basis of the evidence admitted at the hearing, the court shall determine the issue of the incompetence of the defendant to stand trial. If the defendant is determined incompetent to stand trial, the court shall also determine whether there is a substantial probability that the defendant, if provided a course of treatment, will attain competence to stand trial within the time limit established by section 1034.

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

(4) If the defendant is receiving medication and is not determined incompetent to stand trial, the court may, in order to maintain the competence of the defendant to stand trial, make such orders as it deems appropriate for the continued administration of such medication pending and during trial.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

**330.2031 Filing of petition by prosecuting attorney.**

Sec. 1031. If the defendant is determined incompetent to stand trial, and if the court determines that there is not a substantial probability that, if provided a course of treatment, he will attain competence to stand trial within the time limit established by section 1034, the court may direct a prosecuting attorney to file a petition asserting that the defendant is a person requiring treatment as defined by section 401 or meets the criteria for judicial admission as defined by section 515 with the probate court of the defendant's county of residence.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

**330.2032 Ordering treatment; medical supervisor; commitment; restriction of movements.**

Sec. 1032. (1) If the defendant is determined incompetent to stand trial, and if the court determines that there is a substantial probability that, if provided a course of treatment, he will attain competence to stand trial within the time limit established by section 1034, the court shall order him to undergo treatment to render him competent to stand trial.

(2) The court shall appoint a medical supervisor of the course of treatment. The supervisor may be any person or agency willing to supervise the course of treatment, or the department of mental health.

(3) The court may commit the defendant to the custody of the department of mental health, or to the custody of any other inpatient mental health facility if it agrees, only if commitment is necessary for the effective administration of the course of treatment. If the defendant, absent commitment to the department of mental health or other inpatient facility, would otherwise be held in a jail or similar place of detention pending trial, the court may enter an order restricting the defendant in his movements to the buildings and grounds of the facility at which he is to be treated.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

**330.2034 Effective duration of order; notice of dismissed charge or voided orders; filing petition prior to discharge or release.**

Sec. 1034. (1) No order or combination of orders issued under section 1032 or 1040, or both, shall have force and effect for a total period in excess of 15 months or 1/3 of the maximum sentence the defendant could receive if convicted of the charges against him, whichever is lesser; nor after the charges against the

defendant are dismissed.

(2) The court shall provide for notification of defense counsel, the prosecution, and the medical supervisor of treatment whenever the charges against the defendant are dismissed and whenever an order whose stated time period has not elapsed is voided by the court.

(3) If the defendant is to be discharged or released because of the expiration of an order or orders under section 1032 or 1040, the supervisor of treatment prior to the discharge or release may file a petition asserting that the defendant is a person requiring treatment as defined by section 401 or meets the criteria for judicial admission as defined by section 515 with the probate court of the defendant's county of residence.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

### **330.2036 Right to liberty pending trial.**

Sec. 1036. The right of the defendant to be at liberty pending trial, on bail or otherwise, shall not be impaired because the issue of incompetence to stand trial has been raised, because the defendant has been determined incompetent to stand trial, or because the defendant has been ordered to undergo treatment to render him competent to stand trial, except to the extent authorized by section 1026 for the purpose of an examination or by section 1032 for the purpose of administering a course of treatment.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

### **330.2038 Reports; admissibility.**

Sec. 1038. (1) The medical supervisor of treatment shall transmit a written report to the court, prosecuting attorney, defense counsel, and the center for forensic psychiatry:

(a) At least once every 90 days from the date of an order issued pursuant to section 1032.

(b) Whenever he is of the opinion that the defendant is no longer incompetent to stand trial.

(c) Whenever he is of the opinion that there is not a substantial probability that the defendant, with treatment, will attain competence to stand trial within the time limit established by section 1034.

(2) The reports shall be admissible pursuant to section 1030(3) and shall contain:

(a) The clinical findings of the supervisor of treatment.

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

(c) The opinion of the supervisor of treatment on the issue of the incompetence of the defendant to stand trial.

(d) If the opinion is that the defendant is incompetent to stand trial, the opinion of the supervisor of treatment on whether the defendant has made progress toward attaining competence to stand trial during the course of treatment.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

### **330.2040 Redetermining issue of incompetence to stand trial; hearing; commencement of trial; modification or continuance of orders.**

Sec. 1040. (1) The court shall forthwith hear and redetermine the issue of the incompetence of the defendant to stand trial and, if the defendant is redetermined incompetent to stand trial, shall hear and determine whether the defendant has made progress toward attaining competence to stand trial during his course of treatment, whenever the court receives a report from the supervisor of treatment, unless the defense waives the hearing, or whenever deemed appropriate by the court.

(2) Section 1030 shall govern hearings held pursuant to this section.

(3) If the defendant is not redetermined incompetent to stand trial at a hearing held pursuant to this section, trial shall commence as soon as practicable. If the defendant is redetermined incompetent to stand trial, and if the court determines that the defendant has made progress toward attaining competence to stand trial, the court may modify or continue any orders it previously issued under section 1032.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

### **330.2042 Crediting time spent in custody.**

Sec. 1042. Time spent in custody because of orders issued pursuant to sections 1026, 1032, and 1040 shall be credited against any sentence imposed on the defendant in the pending criminal case or in any other case arising from the same transaction.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

**330.2044 Dismissal of charge; filing same or other charges; examination of defendant as outpatient.**

Sec. 1044. (1) The charges against a defendant determined incompetent to stand trial shall be dismissed:

- (a) When the prosecutor notifies the court of his intention not to prosecute the case; or
- (b) Fifteen months after the date on which the defendant was originally determined incompetent to stand trial.

(2) When charges are dismissed pursuant to subsection (1), the same charges, or other charges arising from the transaction which gave rise to the dismissed charges, shall not subsequently be filed against the defendant, except as provided in this section.

(3) If the charges were dismissed pursuant to subsection (1) (b) and if the crime charged was punishable by a sentence of life imprisonment, the prosecutor may at any time petition the court for permission to again file charges. In the case of other charges dismissed pursuant to subsection (1) (b), the prosecutor may, within that period of time after the charges were dismissed equal to 1/3 of the maximum sentence that the defendant could receive on the charges, petition the court for permission to again file charges.

(4) The court shall grant permission to again file charges if after a hearing it determines that the defendant is competent to stand trial. Prior to the hearing, the court may order the defendant to be examined by personnel of the center for forensic psychiatry or other qualified person as an outpatient, but may not commit the defendant to the center or any other facility for the examination.

**History:** 1974, Act 258, Eff. Aug. 6, 1975.

DISPOSITION OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY

**330.2050 Person acquitted of criminal charge by reason of insanity; commitment to center for forensic psychiatry; record; examination and evaluation; report; opinion; certificates; petition; retention or discharge of person; applicability of release provisions; condition to being discharged or placed on leave; extension of leave.**

Sec. 1050. (1) The court shall immediately commit any person who is acquitted of a criminal charge by reason of insanity to the custody of the center for forensic psychiatry, for a period not to exceed 60 days. The court shall forward to the center a full report, in the form of a settled record, of the facts concerning the crime which the patient was found to have committed but of which he was acquitted by reason of insanity. The center shall thoroughly examine and evaluate the present mental condition of the person in order to reach an opinion on whether the person meets the criteria of a person requiring treatment or for judicial admission set forth in section 401 or 515.

(2) Within the 60-day period the center shall file a report with the court, prosecuting attorney, and defense counsel. The report shall contain a summary of the crime which the patient committed but of which he was acquitted by reason of insanity and an opinion as to whether the person meets the criteria of a person requiring treatment or for judicial admission as defined by section 401 or 515, and the facts upon which the opinion is based. If the opinion stated is that the person is a person requiring treatment, the report shall be accompanied by certificates from 2 physicians, at least 1 of whom shall be a psychiatrist, which conform to the requirements of section 400(j).

(3) After receipt of the report, the court may direct the prosecuting attorney to file a petition pursuant to section 434 or 516 for an order of hospitalization or an order of admission to a facility with the probate court of the person's county of residence or of the county in which the criminal trial was held. Any certificates that accompanied the report of the center may be filed with the petition, and shall be sufficient to cause a hearing to be held pursuant to section 451 even if they were not executed within 72 hours of the filing of the petition. The report from the court containing the facts concerning the crime for which he was acquitted by reason of insanity shall be admissible in the hearings.

(4) If the report states the opinion that the person meets the criteria of a person requiring treatment or for judicial admission, and if a petition is to be filed pursuant to subsection (3), the center may retain the person pending a hearing on the petition. If a petition is not to be filed, the prosecutor shall notify the center in writing. The center, upon receipt of the notification, shall cause the person to be discharged.

(5) The release provisions of sections 476 to 479 of this act shall apply to a person found to have committed a crime by a court or jury, but who is acquitted by reason of insanity, except that a person shall not be discharged or placed on leave without first being evaluated and recommended for discharge or leave by the department's program for forensic psychiatry, and authorized leave or absence from the hospital may be extended for a period of 5 years.

**History:** 1974, Act 258, Eff. Aug. 6, 1975;□Am. 1975, Act 179, Eff. Aug. 6, 1975.

### **330.2060 Meanings of words and phrases.**

Sec. 1060. For the purposes of sections 1060a to 1074, the words and phrases defined in sections 1060a t to 1060c have the meanings ascribed to them in those sections.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

**\*\*\*\*\* 330.2060a THIS SECTION IS AMENDED EFFECTIVE OCTOBER 1, 2021: See 330.2060a.amended\*\*\*\*\***

### **330.2060a Definitions; C to J.**

Sec. 1060a. (1) "Competency evaluation" means a court-ordered examination of a juvenile directed to developing information relevant to a determination of his or her competency to proceed at a particular stage of a court proceeding involving a juvenile who is the subject of a delinquency petition.

(2) "Competency hearing" means a hearing to determine whether a juvenile is competent to proceed.

(3) "Incompetent to proceed" means that a juvenile, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceeding or is unable to do 1 or more of the following:

(a) Consult with and assist his or her attorney in preparing his or her defense in a meaningful manner.  
(b) Sufficiently understand the charges against him or her.

(4) "Juvenile" means a person who is less than 17 years of age who is the subject of a delinquency petition.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

**\*\*\*\*\* 330.2060a.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 1, 2021 \*\*\*\*\***

### **330.2060a.amended Definitions; C to J.**

Sec. 1060a. (1) "Competency evaluation" means a court-ordered examination of a juvenile directed to developing information relevant to a determination of his or her competency to proceed at a particular stage of a court proceeding involving a juvenile who is the subject of a delinquency petition.

(2) "Competency hearing" means a hearing to determine whether a juvenile is competent to proceed.

(3) "Incompetent to proceed" means that a juvenile, based on age-appropriate norms, lacks a reasonable degree of rational and factual understanding of the proceeding or is unable to do 1 or more of the following:

(a) Consult with and assist his or her attorney in preparing his or her defense in a meaningful manner.  
(b) Sufficiently understand the charges against him or her.

(4) "Juvenile" means a person who is less than 18 years of age who is the subject of a delinquency petition.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013;□Am. 2019, Act 99, Eff. Oct. 1, 2021.

### **330.2060b Definitions; L to Q.**

Sec. 1060b. (1) "Least restrictive environment" means a supervised community placement, preferably a placement with the juvenile's parent, guardian, relative, or a facility or conditions of treatment that is a residential or institutional placement only utilized as a last resort based on the best interest of the juvenile or for reasons of public safety.

(2) "Licensed child caring institution" means a child caring institution as defined and licensed under 1973 PA 116, MCL 722.111 to 722.128.

(3) "Qualified forensic mental health examiner" means 1 of the following who performs forensic mental health examinations for the purposes of sections 1062 to 1074 but does not exceed the scope of his or her practice as authorized by state law:

(a) A psychiatrist or psychologist who possesses experience or training in the following:

(i) Forensic evaluation procedures for juveniles.

(ii) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(iii) Clinical understanding of child and adolescent development.

(iv) Familiarity with competency standards in this state.

(b) Beginning 18 months after the effective date of the amendatory act that added this section, a mental health professional other than a psychiatrist or psychologist who has completed a juvenile competency training program for forensic mental health examiners that is endorsed by the department under section 1072 and who possesses experience or training in all of the following:

(i) Forensic evaluation procedures for juveniles.

(ii) Evaluation, diagnosis, and treatment of children and adolescents with emotional disturbance, mental illness, or developmental disabilities.

(iii) Clinical understanding of child and adolescent development.

(iv) Familiarity with competency standards in this state.

(4) "Qualified restoration provider" means an individual, who the court determines as a result of the opinion provided by the qualified forensic mental health examiner, has the skills and training necessary to provide restoration services. The court shall take measures to avoid any conflict of interest among agencies or individuals who may provide evaluation and restoration.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2060c Definitions; R, S.**

Sec. 1060c. (1) "Restoration" means the process by which education or treatment of a juvenile results in that juvenile becoming competent to proceed.

(2) "Serious misdemeanor" means that term as defined in section 61 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.811.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2062 Competency of juvenile; presumption; order to determine competency during proceeding.**

Sec. 1062. (1) A juvenile 10 years of age or older is presumed competent to proceed unless the issue of competency is raised by a party. A juvenile less than 10 years of age is presumed incompetent to proceed.

(2) The court may order upon its own motion, or at the request of the juvenile, the juvenile's attorney, or the prosecuting attorney, a competency evaluation to determine whether the juvenile is incompetent to proceed if the juvenile is the subject of a delinquency petition in the court or if the juvenile is under the court's jurisdiction under section 2(a)(2) to (4) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2. The issue of the juvenile's competency may be raised by the court before which the proceedings are pending or being held, or by motion of a party, at any time during the proceeding.

(3) At the time an issue of the juvenile's competency is raised, the delinquency proceeding shall temporarily cease until determination is made on the competence of the juvenile according to this act.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2064 Competency evaluation; conduct by qualified forensic mental health examiner; expert witness; additional evaluations at party's expense; conduct in least restrictive environment.**

Sec. 1064. (1) A competency evaluation ordered under section 1062 shall be conducted by a qualified forensic mental health examiner. The qualified forensic mental health examiner shall provide the court with an opinion as to whether the juvenile is competent to proceed. The court has the final determination of an expert witness serving as a qualified forensic mental health examiner.

(2) This section does not prohibit any party from retaining the party's own qualified forensic mental health examiner to conduct additional evaluations at the party's own expense.

(3) The competency evaluation shall be conducted in the least restrictive environment. There is a presumption in favor of conducting a competency evaluation while the juvenile remains in the custody of a parent or legal guardian, unless removal from the home is necessary for the best interests of the juvenile, for reasons of public safety, or because the parent or guardian has refused to cooperate in the competency evaluation process.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2066 Providing information relating to competency; submission of report and comment to court by qualified forensic mental health examiner; extension; copies of report to be provided to certain individuals.**

Sec. 1066. (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

forensic mental health 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) Except as prohibited by federal law, the court shall require the juvenile's attorney to provide any available records of the juvenile or other information relevant to the evaluation, including, but not limited to, any of the following:

- (a) Psychiatric records.
- (b) School records.
- (c) Medical records.
- (d) Child protective services records.

(3) The requirement to provide records or information under subsection (1) or (2) does not limit, waive, or abrogate the work product doctrine or the attorney-client privilege, and release of records and information under subsection (1) or (2) is subject to the work product doctrine and the attorney-client privilege.

(4) All information required under subsections (1) and (2) must be provided to the qualified forensic mental health examiner within 10 days after the court issues the order for the competency evaluation. If possible, the information required under this section shall be received before the juvenile's competency evaluation or the commencement of the competency evaluation in an outpatient setting.

(5) A qualified forensic mental health examiner who conducts a competency evaluation shall submit a written report to the court not later than 30 days from receipt of the court order requiring the competency evaluation. The evaluation shall be based on a juvenile adjudicative competence interview (JACI) or another interview method approved by the court. The report shall contain, but not be limited to, the following:

(a) A description of the nature, content, and extent of the examination, including, but not limited to, all of the following:

- (i) A description of assessment procedures, techniques, and tests used.
- (ii) Available medical, educational, and court records reviewed.
- (iii) Social, clinical, developmental, and legal history as available.
- (b) A clinical assessment that includes, but is not limited to, the following:

(i) A mental status examination.

(ii) The diagnosis and functional impact of mental illness, developmental disability, or cognitive impairment. If the juvenile is taking medication, the impact of the medication on the juvenile's mental state and behavior.

(iii) An assessment of the juvenile's intelligence.

(iv) The juvenile's age, maturity level, developmental stage, and decision-making abilities.

(v) Whether the juvenile has any other factor that affects competence.

(c) A description of abilities and deficits in the following mental competency functions related to the juvenile's competence to proceed:

(i) The ability to factually as well as rationally understand and appreciate the nature and object of the proceedings, including, but not limited to, all of the following:

(A) An ability to understand the role of the participants in the court process, including, the roles of the judge, the juvenile's attorney, the prosecuting attorney, the probation officer, witnesses, and the jury, and to understand the adversarial nature of the process.

(B) An ability to appreciate the charges and understand the seriousness of the charges.

(C) An ability to understand and realistically appraise the likely outcomes.

(D) An ability to extend thinking into the future.

(ii) The ability to render meaningful assistance to the juvenile's attorney in the preparation of the case, including, but not limited to, all of the following:

(A) An ability to disclose to an attorney a reasonably coherent description of facts and events pertaining to the charge, as perceived by the juvenile.

(B) An ability to consider the impact of his or her action on others.

(C) Verbal articulation abilities or the ability to express himself or herself in a reasonable and coherent manner.

(D) Logical decision-making abilities, particularly multifaceted problem-solving or the ability to take several factors into consideration in making a decision.

(E) An ability to reason about available options by weighing the consequences, including weighing pleas, waivers, and strategies.

(F) An ability to display appropriate courtroom behavior.



(6) The qualified forensic mental health examiner shall provide the court with an opinion about the juvenile's competency to proceed. If the qualified forensic mental health examiner determines that the juvenile is incompetent to proceed, the qualified forensic mental health examiner shall comment on the nature of any psychiatric or psychological disorder or cognitive impairment, the prognosis, and the services needed and expertise required to restore the juvenile to competency, if possible, within a projected time frame.

(7) The court in its discretion may, for good cause, grant the qualified forensic mental health examiner a 30-day extension in filing the competency evaluation report.

(8) Copies of the written report shall be provided by the court to the juvenile's attorney, the prosecuting attorney, and any guardian ad litem for the juvenile not later than 5 working days after receipt of the report by the court.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2068 Competency hearing.**

Sec. 1068. (1) Not later than 30 days after a report is filed under section 1066, the court shall hold a hearing to determine if a juvenile is competent to proceed. At the hearing, the parties may introduce other evidence regarding the juvenile's mental condition or may submit the matter by written stipulation based on the filed report.

(2) Upon a finding by the court that a juvenile is incompetent to proceed and a finding that there is a substantial probability that the juvenile will remain incompetent to proceed for the foreseeable future or within the period of the restoration order, the court shall dismiss with prejudice the charges against the juvenile and may determine custody of the juvenile.

(3) The qualified forensic mental health examiner appointed by the court to determine the juvenile's mental condition shall be allowed reasonable fees for services rendered.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2070 Competency evaluations; self-incrimination; evidence or statements inadmissible in proceeding determining responsibility; sealing reports; order to open reports; purposes; confidentiality; disclosure.**

Sec. 1070. (1) The constitutional protections against self-incrimination apply to all competency evaluations.

(2) Any evidence or statement obtained during a competency evaluation is not admissible in any proceeding to determine the juvenile's responsibility.

(3) A statement that a juvenile makes during a competency evaluation or evidence resulting from the statement concerning any other event or transaction is not admissible in any proceeding to determine the juvenile's responsibility for any other charges that are based on those events or transactions.

(4) A statement that the juvenile makes during a competency evaluation may not be used for any purpose other than assessment of his or her competency without the written consent of the juvenile or the juvenile's guardian. The juvenile or the juvenile's guardian must have an opportunity to consult with his or her attorney before giving consent.

(5) After the case proceeds to adjudication or the juvenile is found to be unable to regain competence, the court shall order all of the reports that are submitted according to sections 1062 to 1068 to be sealed. The court may order that the reports be opened only as follows:

(a) For further competency or criminal responsibility evaluations.

(b) For statistical analysis.

(c) If the records are considered to be necessary to assist in mental health treatment ordered under this act.

(d) For data gathering.

(e) For scientific study or other legitimate research.

(6) If the court orders reports to be open for the purposes of statistical analysis, data gathering, or scientific study according to subsection (5), the reports shall remain confidential.

(7) Any statement that a juvenile makes during a competency evaluation, or any evidence resulting from that statement, is not subject to disclosure.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

### **330.2072 Training program for juvenile forensic mental health examiners.**

Sec. 1072. (1) Not later than 18 months after the effective date of the amendatory act that added this section, the department shall review and endorse a training program for juvenile forensic mental health examiners who provide juvenile competency exams. A psychiatrist or psychologist may, but is not required to, seek certification under the program established under this section.

(2) The department may make adaptations or adjustments to the endorsed training program described under subsection (1) based on research and best practices.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.

**330.2074 Court finding that juvenile may be restored to competency in foreseeable future; restoration order; renewal; report that substantial probability that juvenile will remain incompetent; actions of court; order to provide treatment; report from entity providing services; duties of court.**

Sec. 1074. (1) If the juvenile is incompetent to proceed, but the court finds that the juvenile may be restored to competency in the foreseeable future, 1 of the following applies:

(a) If the offense is a traffic offense or a misdemeanor other than a serious misdemeanor, the matter shall be dismissed.

(b) If the offense is a serious misdemeanor, the court may dismiss the matter or suspend the proceedings against the juvenile.

(c) If the offense is a felony, the proceedings against the juvenile shall be further suspended.

(2) If proceedings are suspended because the juvenile is incompetent to proceed but the court finds that the juvenile may be restored to competency in the foreseeable future, all of the following apply:

(a) Before issuing a restoration order, the court shall hold a hearing to determine the least restrictive environment for completion of the restoration.

(b) The court may issue a restoration order that is valid for 60 days from the date of the initial finding of incompetency or until 1 of the following occurs, whichever occurs first:

(i) The qualified forensic mental health examiner, based on information provided by the qualified restoration provider, submits a report that the juvenile has regained competency or that there is no substantial probability that the juvenile will regain competency within the period of the order.

(ii) The charges are dismissed.

(iii) The juvenile reaches 18 years of age.

(c) Following issuance of the restoration order, the qualified restoration provider shall submit a report to the court and the qualified forensic mental health examiner that includes the information required under section 1066. The report shall be submitted to the court and the qualified forensic mental health examiner every 30 days, or sooner if and at the time either of the following occurs:

(i) The qualified restoration provider determines that the juvenile is no longer incompetent to proceed.

(ii) The qualified restoration provider determines that there is no substantial probability that the juvenile will be competent to proceed within the period of the order.

(3) Not later than 14 days before the expiration of the initial 60-day order, the qualified restoration provider may recommend to the court and the qualified forensic mental health examiner that the restoration order be renewed by the court for another 60 days, if there is a substantial probability that the juvenile will not be incompetent to proceed within the period of that renewed restoration order. The restoration order and any renewed restoration order shall not exceed a total of 120 days.

(4) Except as otherwise provided in this section, upon receipt of a report that there is a substantial probability that the juvenile will remain incompetent to proceed for the foreseeable future or within the period of the restoration order, the court shall do both of the following:

(a) Determine custody of the juvenile as follows:

(i) The court may direct that civil commitment proceedings be initiated, as allowed under section 498d.

(ii) If the court determines that commitment proceedings are inappropriate, the juvenile shall be released to the juvenile's parent, legal guardian, or legal custodian under conditions considered appropriate to the court.

(b) Dismiss the charges against the juvenile.

(5) Upon receipt of a report from a qualified forensic mental health examiner that there is a substantial probability that the juvenile is unable to be restored due to serious emotional disturbance, the court may in its discretion, except as provided under the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309, order that mental health services be provided to the juvenile by the department, subject to the availability of inpatient care, a community mental health services program, the department of human services, a county department of human services, or another appropriate mental health services provider for a period not to exceed 60 days. The court shall retain jurisdiction over the juvenile throughout the duration of the order. The entity ordered to provide services under this subsection shall continue to provide services for the duration of the period of treatment ordered by the court.

(6) Not later than 14 days before the expiration of an order for treatment under this subsection or subsection (5), the entity providing mental health services under that order shall submit a report to the court and the qualified forensic mental health examiner regarding the juvenile. Upon receipt of the report, the court shall review the

report and do either of the following:

(a) Renew the order for another period of treatment not to exceed 60 days. The order for treatment and any renewed order shall not exceed a total of 120 days.

(b) Determine custody of the juvenile and dismiss the charges against the juvenile.

**History:** Add. 2012, Act 540, Eff. Mar. 28, 2013.