

# MICHIGAN PROBATE JUDGES ASSOCIATION

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The Michigan Probate Judges Association (MPJA) thanks the sponsors and supporters for this effort to address the challenging issue of assuring that young people are capable of meaningful participation in court proceedings in delinquency cases. This has been a long process, and proponents of this legislation have sought input from a variety of interested groups who did not always agree with each other about the best way to proceed. We thank you for this opportunity for further input.

We need a process to identify juveniles who have problems that affect their ability to participate in court proceedings, reduce or eliminate those problems if possible, and determine what actions are necessary for juveniles who cannot be restored to competency. This legislation does all those things, and we urge its passage.

MPJA would like to address some of the specific provisions of the legislation:

- 1.) We understand that this legislation is not intended to address competence at the time the offense was committed, which is a separate issue.
- 2.) This legislation says that a juvenile ten years old or older is presumed to be competent. There has been debate about the age at which competence should be presumed. In a legal proceeding, a presumption only controls in the absence of any evidence which rebuts the presumption. That means that if juveniles older than ten are not, in fact, competent to assist in their defense, anyone – the prosecutor, the defense attorney, or the court on its own motion – can ask the juvenile's competence be evaluated, and if the juvenile is incompetent, the case will not go forward.
- 3.) The bill sets forth specific standards about what kind of assistance the juvenile should be able to provide, and specific qualifications that are necessary for an examiner to determine if a juvenile is competent or incompetent, and the nature of the examination. MPJA agrees with these specifics, particularly because they require the examiner to have experience relating to children and child development.
- 4.) The bill sets out time limits for producing the evaluation and for efforts to restore competency. MPJA agrees that there should be time limits on these functions.
- 5.) Feedback from the Department of Community Health suggest you remove the terms "mental disease or defect" from Section 1066 (6). These terms originate in appellate court decisions that determined issues of competence in the past. Although they are not currently in vogue, they are a reminder that courts that determine competence should consider the history of previous cases that decided these issues.
- 6.) The Department of Community Health objects to what they refer to as an "unfunded mandate" to develop and certify examiners, and suggests that courts should be required to pay for services for examination and restoration. MPJA suggests that because the specific qualifications of examiners are set forth in the bill, certification of the training process by the Department of Community Health, or any other body, is not necessary. If a person completes the training program and achieves the qualifications to the court's satisfaction, it is immaterial whether the training process is "certified".
- 7.) Costs to counties will be greater if the costs of examination and treatment are funded through the Child Care Fund than if they are funded through the mental health system. Child Care Fund expenditures require 50% state reimbursement; mental health expenses require 90% state reimbursement.
- 8.) For those juveniles who cannot be restored to competency, the bills say the court may invoke the civil commitment process or "determine custody". In either case, the charges must be dismissed. There really is no constitutional alternative to dismissal under these circumstances.
- 9.) SB 247 (S-1) places the competency determination in Section 18 of the Juvenile Code. Technically, Section 18 is the dispositional section of the Juvenile Code. Since the competency determination must take place before adjudication, logically this process should be placed earlier, perhaps in Section 17.