

HOUSE BILL No. 6526

September 24, 2008, Introduced by Reps. Condino, Schuitmaker, Warren and Dean and referred to the Committee on Judiciary.

A bill to amend 1974 PA 258, entitled "Mental health code," (MCL 330.1001 to 330.2106) by adding sections 1060, 1060a, 1060b, 1062, 1064, 1066, and 1068.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CRIMINAL PROVISIONS REGARDING JUVENILES

SEC. 1060. FOR THE PURPOSES OF SECTIONS 1060A TO 1070, THE WORDS AND PHRASES DEFINED IN SECTIONS 1060A AND 1060B HAVE THE MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

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

1 IS CHARGED WITH A CRIMINAL OFFENSE OR IS THE SUBJECT OF A
2 DELINQUENCY PETITION.

3 (2) "COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER
4 A JUVENILE IS COMPETENT TO PROCEED.

5 (3) "INCOMPETENT TO STAND TRIAL" MEANS THAT A JUVENILE LACKS A
6 REASONABLE DEGREE OF RATIONAL UNDERSTANDING AND IS UNABLE TO DO 1
7 OR BOTH OF THE FOLLOWING:

8 (A) UNDERSTAND THE NATURE OR OBJECT OF THE PROCEEDING.

9 (B) ASSIST IN HIS OR HER DEFENSE IN A MEANINGFUL WAY.

10 (4) "JUVENILE" MEANS A PERSON WHO IS 16 YEARS OF AGE OR
11 YOUNGER CHARGED WITH A CRIMINAL OFFENSE OR WHO IS THE SUBJECT OF A
12 DELINQUENCY PETITION.

13 SEC. 1060B. (1) "LACKED CAPACITY" MEANS THAT AT THE TIME THE
14 JUVENILE ENGAGED IN THE CONDUCT CHARGED, THE JUVENILE WAS UNABLE TO
15 FUNCTION AS FOLLOWS:

16 (A) THE JUVENILE DID NOT POSSESS THE CAPACITY TO FORM BOTH
17 CRIMINAL INTENT AND ANY MENTAL STATE REQUIRED FOR THE SPECIFIC
18 OFFENSE CHARGED.

19 (B) THE JUVENILE WAS UNABLE TO CONFORM HIS OR HER CONDUCT TO
20 THE REQUIREMENTS OF THE LAW.

21 (C) THE JUVENILE DID NOT APPRECIATE THE CRIMINALITY OF HIS OR
22 HER CONDUCT.

23 (2) "LEAST RESTRICTIVE ALTERNATIVE" MEANS A SUPERVISED
24 COMMUNITY PLACEMENT, PREFERABLY A PLACEMENT WITH THE YOUTH'S
25 PARENT, GUARDIAN OR RELATIVES, OR FACILITY OR CONDITION OF
26 TREATMENT IN WHICH THE FOLLOWING APPLY:

27 (A) A RESIDENTIAL OR INSTITUTIONAL PLACEMENT IS ONLY UTILIZED

1 AS A LAST RESORT BASED ON THE BEST INTEREST OF THE CHILD OR FOR
2 REASONS OF PUBLIC SAFETY.

3 (B) THE FACILITY OR CONDITION OF TREATMENT IS NOT HARSH,
4 HAZARDOUS, OR INTRUSIVE TO ACHIEVE THE TREATMENT OBJECTIVES OF THE
5 YOUTH.

6 (C) THE FACILITY OR CONDITION OF TREATMENT INVOLVES NO
7 RESTRICTIONS ON PHYSICAL MOVEMENT OR ON SUPERVISED RESIDENCE OR
8 INPATIENT CARE EXCEPT AS REASONABLY NECESSARY FOR THE
9 ADMINISTRATION OF TREATMENT OR THE PROTECTION OF THE YOUTH OR
10 OTHERS FROM PHYSICAL INJURY.

11 (3) "LICENSED CHILD CARING INSTITUTION" MEANS THAT TERM AS
12 DEFINED IN SECTION 1 OF 1973 PA 116, MCL 722.111.

13 (4) "QUALIFIED EXAMINER" MEANS A LICENSED PSYCHOLOGIST OR
14 PSYCHIATRIST WHO MEETS ALL OF THE FOLLOWING CRITERIA:

15 (A) HAS EXPERTISE IN CHILD DEVELOPMENT.

16 (B) HAS TRAINING IN FORENSIC EVALUATION PROCEDURES THROUGH
17 FORMAL INSTRUCTION, PROFESSIONAL SUPERVISION, OR BOTH.

18 (C) IS NOT EMPLOYED OR CONTRACTED BY A STATE INSTITUTION.

19 (5) "RESTORATION" MEANS THAT A JUVENILE IS NO LONGER
20 INCOMPETENT TO STAND TRIAL.

21 (6) "SERIOUS MISDEMEANOR" MEANS THAT TERM AS DEFINED IN SECTION
22 61 OF THE CRIME VICTIM'S RIGHTS ACT, 1985 PA 87, MCL 780.811.

23 SEC. 1062. (1) A JUVENILE MAY REQUEST AND RECEIVE A COMPETENCY
24 EVALUATION AND A HEARING TO DETERMINE WHETHER HE OR SHE IS
25 INCOMPETENT TO STAND TRIAL AND WHETHER HE OR SHE LACKED CAPACITY,
26 BEFORE TRANSFERRING THE CASE TO CIRCUIT COURT OR BEFORE FILING
27 CHARGES IN CIRCUIT COURT, UNLESS THE JUVENILE WAIVES HIS OR HER RIGHT

1 TO AN EVALUATION. THE RIGHT TO AN EVALUATION MAY ONLY BE TAKEN UNDER
2 1 OF THE FOLLOWING CONDITIONS:

3 (A) AFTER THE JUVENILE HAS HAD THE OPPORTUNITY TO CONSULT WITH
4 AN ATTORNEY.

5 (B) WITH THE CONSENT OF THE JUVENILE'S PARENT OR GUARDIAN.

6 (C) AFTER A HEARING IN OPEN COURT UPON AFFIRMATION BY THE
7 COURT'S DIRECT CONSULTATION WITH THE JUVENILE.

8 (2) A JUVENILE BELOW AGE 12 IS PRESUMED INCOMPETENT TO PROCEED
9 IF CHARGED WITH A FELONY OR SERIOUS MISDEMEANOR AND SHALL RECEIVE A
10 COMPETENCY EVALUATION BEFORE TRIAL, UNLESS HE OR SHE WAIVES THE RIGHT
11 TO AN EVALUATION AFTER CONSULTATION WITH HIS OR HER ATTORNEY.

12 (3) A JUVENILE MAY REQUEST A COMPETENCY EVALUATION IF BEING
13 CHARGED AS A JUVENILE IN THE FAMILY DIVISION OF THE CIRCUIT COURT, OR
14 IN ANY DESIGNATED CASES, AS DESCRIBED IN SECTION 2D OF CHAPTER XIIA
15 OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.2D. UPON A SHOWING
16 THAT THE JUVENILE MAY BE INCOMPETENT TO STAND TRIAL OR LACKED
17 CAPACITY, THE COURT SHALL ORDER THE JUVENILE TO UNDERGO A COMPETENCY
18 EVALUATION.

19 (4) AT THE TIME AN ISSUE OF THE JUVENILE'S COMPETENCY IS
20 RAISED, THE DELINQUENCY PROCEEDING SHALL TEMPORARILY CEASE UNTIL
21 DETERMINATION IS MADE ON THE COMPETENCE OF THE JUVENILE ACCORDING TO
22 THIS ACT.

23 SEC. 1064. (1) A COMPETENCY EVALUATION ORDERED UNDER SECTION
24 1062 SHALL BE CONDUCTED BY A QUALIFIED EXAMINER. THE QUALIFIED
25 EXAMINER SHALL MAKE A FINDING AS TO WHETHER THE JUVENILE IS COMPETENT
26 TO STAND TRIAL AND WHETHER THE JUVENILE LACKED CAPACITY.

27 (2) THIS SECTION DOES NOT PROHIBIT ANY PARTY FROM RETAINING THE

1 PARTY'S OWN QUALIFIED EXAMINER TO CONDUCT ADDITIONAL EXAMINATIONS AT
2 THE PARTY'S OWN EXPENSE.

3 (3) THE COMPETENCY EVALUATION SHALL BE CONDUCTED IN THE LEAST
4 RESTRICTIVE ENVIRONMENT. THERE IS A PRESUMPTION IN FAVOR OF
5 CONDUCTING A COMPETENCY EVALUATION WHILE THE JUVENILE REMAINS IN THE
6 CUSTODY OF A PARENT OR LEGAL GUARDIAN, UNLESS REMOVAL FROM THE HOME
7 IS NECESSARY FOR THE BEST INTERESTS OF THE JUVENILE, FOR REASONS OF
8 PUBLIC SAFETY, OR BECAUSE THE PARENT OR GUARDIAN HAS REFUSED TO
9 COOPERATE IN THE EVALUATION PROCESS.

10 SEC. 1066. (1) THE COURT SHALL ORDER THE PROSECUTING ATTORNEY
11 TO PROVIDE TO THE DEFENSE ATTORNEY ALL INFORMATION RELATED TO
12 COMPETENCY AND SHALL ORDER THE PROSECUTOR AND DEFENSE ATTORNEY TO
13 SUBMIT TO THE EXAMINER ANY INFORMATION CONSIDERED RELEVANT TO THE
14 EVALUATION, INCLUDING, BUT NOT LIMITED TO:

15 (A) THE NAMES AND ADDRESSES OF ALL ATTORNEYS INVOLVED.

16 (B) INFORMATION ABOUT THE ALLEGED OFFENSE.

17 (C) ANY INFORMATION ABOUT THE JUVENILE'S BACKGROUND IN THE
18 PROSECUTOR'S POSSESSION.

19 (2) THE COURT SHALL REQUIRE THE JUVENILE'S ATTORNEY TO PROVIDE
20 ANY AVAILABLE RECORDS OF THE JUVENILE OR OTHER INFORMATION RELEVANT
21 TO THE EVALUATION, INCLUDING, BUT NOT LIMITED TO, ANY OF THE
22 FOLLOWING:

23 (A) PSYCHIATRIC RECORDS.

24 (B) SCHOOL RECORDS.

25 (C) MEDICAL RECORDS.

26 (D) CHILD PROTECTIVE SERVICES RECORDS.

27 (3) ALL INFORMATION REQUIRED UNDER SUBSECTIONS (1) AND (2)

1 MUST BE PROVIDED TO THE QUALIFIED EXAMINER WITHIN 10 DAYS AFTER THE
2 COURT ISSUES THE ORDER FOR THE COMPETENCY EVALUATION. WHEN
3 POSSIBLE, THE INFORMATION REQUIRED UNDER THIS SECTION SHALL BE
4 RECEIVED BEFORE THE JUVENILE'S EVALUATION OR THE COMMENCEMENT OF
5 THE EVALUATION IN AN OUTPATIENT SETTING.

6 (4) A QUALIFIED EXAMINER WHO CONDUCTS A COMPETENCY EVALUATION
7 SHALL SUBMIT A WRITTEN REPORT TO THE COURT NOT LATER THAN 30 DAYS
8 FROM RECEIPT OF THE COURT ORDER REQUIRING THE COMPETENCY
9 EVALUATION. THE REPORT SHALL CONTAIN, BUT NOT BE LIMITED TO, THE
10 FOLLOWING:

11 (A) THE REASON FOR THE EVALUATION.

12 (B) THE EVALUATION PROCEDURES USED, INCLUDING ANY PSYCHOMETRIC
13 INSTRUMENTS ADMINISTERED, ANY RECORDS REVIEWED, AND THE IDENTITY OF
14 ANY PERSONS INTERVIEWED.

15 (C) ANY AVAILABLE PERTINENT BACKGROUND INFORMATION.

16 (D) THE RESULTS OF A MENTAL STATUS EXAM, INCLUDING THE
17 DIAGNOSIS AND DESCRIPTION OF ANY PSYCHIATRIC SYMPTOMS, COGNITIVE
18 DEFICIENCY, OR BOTH.

19 (E) A DESCRIPTION OF ABILITIES AND DEFICITS IN THE FOLLOWING
20 MENTAL COMPETENCY FUNCTIONS RELATED TO THE JUVENILE'S COMPETENCE TO
21 STAND TRIAL:

22 (i) THE ABILITY TO UNDERSTAND AND APPRECIATE THE NATURE AND
23 OBJECT OF THE PROCEEDINGS.

24 (ii) THE ABILITY TO COMPREHEND HIS OR HER SITUATION IN RELATION
25 TO THE PROCEEDINGS.

26 (iii) THE ABILITY TO RENDER MEANINGFUL ASSISTANCE TO THE DEFENSE
27 ATTORNEY IN THE PREPARATION OF HIS OR HER CASE.

1 (F) AN OPINION REGARDING THE POTENTIAL SIGNIFICANCE OF THE
2 CHILD'S MENTAL COMPETENCY, STRENGTHS, AND DEFICITS.

3 (G) AN OPINION REGARDING WHETHER OR NOT THE JUVENILE LACKED
4 CAPACITY TO FORM A CRIMINAL INTENT.

5 (5) IN REACHING THE OPINION REGARDING COMPETENCY TO STAND
6 TRIAL, THE QUALIFIED EXAMINER SHALL CONSIDER AND MAKE WRITTEN
7 FINDINGS REGARDING, AT A MINIMUM, ALL OF THE FOLLOWING:

8 (A) WHETHER THE JUVENILE'S CAPABILITIES ENTAIL ANY OF THE
9 FOLLOWING:

10 (i) AN ABILITY TO UNDERSTAND AND APPRECIATE THE CHARGES AND
11 THEIR SERIOUSNESS.

12 (ii) AN ABILITY TO UNDERSTAND AND REALISTICALLY APPRAISE THE
13 LIKELY OUTCOMES.

14 (iii) A RELIABLE EPISODIC MEMORY SO THAT HE OR SHE CAN
15 ACCURATELY AND RELIABLY RELATE A SEQUENCE OF EVENTS.

16 (iv) AN ABILITY TO EXTEND THINKING INTO THE FUTURE.

17 (v) AN ABILITY TO CONSIDER THE IMPACT OF HIS OR HER ACTIONS ON
18 OTHERS.

19 (vi) VERBAL ARTICULATION ABILITIES OR THE ABILITY TO EXPRESS
20 HIMSELF OR HERSELF IN A REASONABLE AND COHERENT MANNER.

21 (vii) LOGICAL DECISION-MAKING ABILITIES, PARTICULARLY
22 MULTIFACTORED PROBLEM SOLVING OR THE ABILITY TO TAKE SEVERAL
23 FACTORS INTO CONSIDERATION IN MAKING A DECISION.

24 (B) DEVELOPMENTALLY, WHETHER THE JUVENILE HAS ANY OF THE
25 FOLLOWING:

26 (i) AN ABILITY TO UNDERSTAND THE CHARGES.

27 (ii) AN ABILITY TO UNDERSTAND THE ROLES OF PARTICIPANTS IN THE

1 TRIAL PROCESS, INCLUDING, BUT NOT LIMITED TO, THE ROLES OF THE
2 JUDGE, DEFENSE ATTORNEY, PROSECUTOR, WITNESSES, AND JURY AND
3 UNDERSTAND THE ADVERSARIAL NATURE OF THE PROCESS.

4 (iii) AN ABILITY TO ADEQUATELY TRUST AND TO WORK COLLABORATIVELY
5 AND MEANINGFULLY WITH HIS OR HER ATTORNEY.

6 (iv) AN ABILITY TO DISCLOSE TO AN ATTORNEY A REASONABLY COHERENT
7 DESCRIPTION OF FACTS PERTAINING TO THE CHARGES, AS PERCEIVED BY THE
8 JUVENILE.

9 (v) AN ABILITY TO REASON ABOUT AVAILABLE OPTIONS BY WEIGHING
10 THEIR CONSEQUENCES, INCLUDING, BUT NOT LIMITED TO, WEIGHING
11 PLEAS, WAIVERS, AND STRATEGIES.

12 (vi) AN ABILITY TO ARTICULATE HIS OR HER MOTIVES.

13 (6) IN REACHING THE OPINION REGARDING LACK OF CAPACITY, THE
14 QUALIFIED EXAMINER SHALL CONSIDER AND MAKE WRITTEN FINDINGS
15 REGARDING WHETHER AT THE TIME THE JUVENILE ENGAGED IN THE CONDUCT
16 CHARGED, AS A RESULT OF IMMATURITY OR MENTAL DISEASE OR DEFECT OR OF
17 DEVELOPMENTAL DELAY, THE JUVENILE LACKED CAPACITY FOR ANY OF THE
18 FOLLOWING:

19 (A) POSSESS THE NECESSARY MENTAL STATE REQUIRED FOR THE
20 OFFENSE CHARGED.

21 (B) CONFORM HIS OR HER CONDUCT TO THE REQUIREMENTS OF THE LAW.

22 (C) APPRECIATE THE CRIMINALITY OF HIS OR HER CONDUCT.

23 (7) IN REACHING THE OPINION REGARDING LACK OF CAPACITY, THE
24 QUALIFIED EXAMINER SHALL CONSIDER AND MAKE WRITTEN FINDINGS WITH
25 RESPECT TO THE FOLLOWING QUESTIONS REGARDING THE JUVENILE'S
26 ABILITIES AND CAPACITIES:

27 (A) WAS THE JUVENILE ABLE TO FORM THE NECESSARY INTENT,

1 INCLUDING SPECIFIC INTENT IF THE CRIME CHARGED REQUIRES PROOF OF A
2 SPECIFIC INTENT?

3 (B) DID THE JUVENILE KNOW WHICH ACTIONS WERE WRONG?

4 (C) DID THE JUVENILE HAVE REASONABLY ACCURATE EXPECTATIONS OF
5 THE CONSEQUENCES OF HIS OR HER ACTIONS?

6 (D) WAS THE JUVENILE ABLE TO ACT OF HIS OR HER OWN VOLITION?

7 (E) DID THE JUVENILE HAVE THE CAPACITY TO BEHAVE
8 INTENTIONALLY?

9 (F) DID THE JUVENILE HAVE THE CAPACITY TO ENGAGE IN LOGICAL
10 DECISION MAKING?

11 (G) DID THE JUVENILE HAVE THE CAPACITY TO FORESEE THE
12 CONSEQUENCES OF HIS OR HER ACTIONS?

13 (H) DID THE JUVENILE HAVE THE CAPACITY TO EXERT CONTROL OVER
14 HIS OR HER IMPULSES AND TO RESIST PEER PRESSURE?

15 (8) IF, IN THE OPINION OF THE QUALIFIED EXAMINER, THE JUVENILE
16 SHOULD BE CONSIDERED INCOMPETENT TO STAND TRIAL OR THAT THE
17 JUVENILE LACKED CAPACITY, THE EVALUATION REPORT SHALL ALSO INCLUDE
18 A DIAGNOSIS AS TO WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT
19 THE JUVENILE WILL BE COMPETENT TO STAND TRIAL IN THE FORESEEABLE
20 FUTURE, WHICH SHOULD BE INTERPRETED AS NO MORE THE LESSER OF EITHER
21 OF THE FOLLOWING:

22 (A) TWELVE MONTHS FROM THE DATE OF EVALUATION.

23 (B) ONE-THIRD OF THE MAXIMUM INCARCERATION TIME ALLOWED FOR AN
24 ADULT WHO IS CONVICTED OF THE CRIME FOR WHICH THE JUVENILE IS
25 CHARGED.

26 (9) THE REPORT SHALL ALSO INCLUDE RECOMMENDATIONS FOR THE
27 GENERAL LEVEL AND TYPE OF REMEDIATION NECESSARY FOR SIGNIFICANT

1 DEFICITS AND FOR MODIFICATIONS OF COURT PROCEDURE THAT MAY HELP
2 COMPENSATE FOR MENTAL COMPETENCY WEAKNESSES.

3 (10) THE COURT IN ITS DISCRETION MAY, FOR GOOD CAUSE, GRANT
4 THE QUALIFIED EXAMINER A 30-DAY EXTENSION IN FILING THE EVALUATION
5 REPORT.

6 (11) COPIES OF THE WRITTEN REPORT SHALL BE PROVIDED BY THE
7 COURT TO THE JUVENILE'S ATTORNEY, THE ATTORNEY REPRESENTING THE
8 STATE, THE DISTRICT ATTORNEY OR A MEMBER OF HIS OR HER STAFF, AND ANY
9 GUARDIAN AD LITEM FOR THE JUVENILE NO LATER THAN 5 WORKING DAYS AFTER
10 RECEIPT OF THE REPORT BY THE COURT.

11 SEC. 1068. (1) NOT LATER THAN 30 DAYS AFTER A REPORT IS FILED
12 UNDER SECTION 1066, THE COURT SHALL HOLD A HEARING TO DETERMINE IF A
13 JUVENILE IS COMPETENT TO STAND TRIAL AND WHETHER HE OR SHE LACKED
14 CAPACITY. AT THIS HEARING, THE PARTIES MAY INTRODUCE OTHER EVIDENCE
15 REGARDING THE JUVENILE'S MENTAL CONDITION OR MAY SUBMIT THE MATTER BY
16 WRITTEN STIPULATION BASED ON THE FILED REPORT.

17 (2) IF THE COURT DETERMINES THAT THE JUVENILE IS COMPETENT TO
18 STAND TRIAL, THE PROCEEDINGS AGAINST THE JUVENILE SHALL RESUME.

19 (3) IF THE JUVENILE IS NOT COMPETENT TO STAND TRIAL, BUT THE
20 COURT FINDS THAT THE JUVENILE MAY BE RESTORED TO COMPETENCY IN THE
21 FORESEEABLE FUTURE, THEN 1 OF THE FOLLOWING APPLIES:

22 (A) IF THE OFFENSE IS A MISDEMEANOR OTHER THAN A SERIOUS
23 MISDEMEANOR OR A JUVENILE TRAFFIC OFFENSE, THE MATTER SHALL BE
24 DISMISSED.

25 (B) IF THE OFFENSE IS A SERIOUS MISDEMEANOR, THE COURT MAY
26 DISMISS THE MATTER OR SUSPEND THE PROCEEDINGS AGAINST THE JUVENILE.

27 (C) IF THE OFFENSE IS A FELONY, THE PROCEEDINGS AGAINST THE

1 JUVENILE SHALL BE FURTHER SUSPENDED.

2 (4) IF PROCEEDINGS ARE SUSPENDED BECAUSE THE JUVENILE IS NOT
3 COMPETENT TO STAND TRIAL BUT THE COURT FINDS THAT THE JUVENILE MAY BE
4 RESTORED TO COMPETENCY IN THE FORESEEABLE FUTURE, THEN 1 OF THE
5 FOLLOWING APPLIES:

6 (A) THE COURT MAY ISSUE A RESTORATION ORDER THAT IS VALID FOR
7 180 DAYS FROM THE DATE OF THE INITIAL FINDING OF INCOMPETENCY OR
8 UNTIL 1 OF THE FOLLOWING OCCURS, WHICHEVER OCCURS FIRST:

9 (i) THE RESTORATION PROGRAM SUBMITS A REPORT THAT THE JUVENILE
10 HAS REGAINED COMPETENCY OR THAT THERE IS NO SUBSTANTIAL PROBABILITY
11 THAT THE JUVENILE WILL REGAIN COMPETENCY WITHIN THE PERIOD OF THE
12 ORDER.

13 (ii) THE CHARGES ARE DISMISSED.

14 (iii) THE JUVENILE REACHES 18 YEARS OF AGE.

15 (B) BEFORE ISSUING A RESTORATION ORDER, THE COURT SHALL HOLD A
16 HEARING TO DETERMINE THE LEAST RESTRICTIVE ALTERNATIVE SETTING FOR
17 COMPLETION OF THE RESTORATION.

18 (C) FOLLOWING ISSUANCE OF THE RESTORATION ORDER, THE PROVIDER
19 OF RESTORATION SERVICES SHALL SUBMIT A REPORT TO THE COURT THAT
20 INCLUDES THE INFORMATION REQUIRED UNDER SECTION 1066. THE REPORT
21 SHALL BE SUBMITTED TO THE COURT EVERY 90 DAYS, OR SOONER IF AND WHEN
22 EITHER OF THE FOLLOWING OCCURS:

23 (i) THE PROVIDER DETERMINES THAT THE JUVENILE IS NO LONGER
24 INCOMPETENT TO STAND TRIAL.

25 (ii) THE PROVIDER DETERMINES THAT THERE IS NO SUBSTANTIAL
26 PROBABILITY THAT THE JUVENILE WILL NOT BE INCOMPETENT TO STAND TRIAL
27 WITHIN THE PERIOD OF THE ORDER.

1 (5) NOT LATER THAN 20 DAYS BEFORE THE EXPIRATION OF THE INITIAL
2 180-DAY ORDER, THE PROVIDER MAY RECOMMEND TO THE COURT THAT THE
3 RESTORATION ORDER BE RENEWED BY THE COURT FOR ANOTHER 90 DAYS, IF
4 THERE IS A SUBSTANTIAL PROBABILITY THAT THE JUVENILE WILL NOT BE
5 INCOMPETENT TO STAND TRIAL WITHIN THE PERIOD OF THAT RENEWED
6 RESTORATION ORDER. THE COURT MAY THEN RENEW THAT RESTORATION ORDER
7 FOR NO MORE THAN AN ADDITIONAL 90 DAYS.

8 (6) UPON RECEIPT OF A REPORT THAT THERE IS A SUBSTANTIAL
9 PROBABILITY THAT THE JUVENILE WILL REMAIN INCOMPETENT TO STAND TRIAL
10 FOR THE FORESEEABLE FUTURE OR WITHIN THE PERIOD OF THE RESTORATION
11 ORDER, OR UPON RECEIPT OF A REPORT THAT THE JUVENILE LACKED CAPACITY,
12 THE COURT SHALL DO BOTH OF THE FOLLOWING:

13 (A) DISMISS THE CHARGES AGAINST THE JUVENILE.

14 (B) DETERMINE CUSTODY OF THE JUVENILE AS FOLLOWS:

15 (i) THE COURT MAY DIRECT CIVIL COMMITMENT PROCEEDINGS BE
16 INITIATED, AS ALLOWED UNDER SECTION 498D.

17 (ii) IF THE COURT DETERMINES THAT COMMITMENT PROCEEDINGS ARE
18 INAPPROPRIATE, THE JUVENILE SHALL BE RELEASED TO THE JUVENILE'S
19 PARENT, LEGAL GUARDIAN, OR LEGAL CUSTODIAN UNDER CONDITIONS
20 CONSIDERED APPROPRIATE TO THE COURT.

21 (7) IF THE FINDINGS IN THE REPORT ARE THAT THE JUVENILE LACKED
22 CAPACITY, THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE
23 CHARGES SHOULD BE DISMISSED OR WHETHER THE PROCEEDINGS AGAINST THE
24 JUVENILE SHOULD CONTINUE.

25 (8) THE QUALIFIED EXAMINER APPOINTED BY THE COURT TO DETERMINE
26 THE JUVENILE'S MENTAL CONDITION SHALL BE ALLOWED REASONABLE FEES FOR
27 SERVICES RENDERED.

1 (9) THE COSTS OF COMPETENCY EVALUATIONS ORDERED BY A COURT
2 SHALL BE PAID BY THE STATE, WITH THE LOCAL COURT PAYING
3 TRANSPORTATION COSTS ONLY.

4 (10) THE COSTS OF PROVIDING COMPETENCY RESTORATION SHOULD BE
5 PAID EQUALLY BY THE STATE AND THE LOCAL COURT.