

## Report on Public Policy Position

### Name of committee:

Criminal Jurisprudence & Practice Committee

### Contact persons:

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### Bill Number:

[HB 5174](#) (Segal) Juveniles; criminal procedure; juvenile competency and culpability; clarify. Amends sec. 1, ch. XIIA of [1939 PA 288](#) (MCL 712A.1) & adds secs. 18n, 18o, 18p, 18q & 18r to ch. XIIA.

[HB 5175](#) (Schuitmaker) Juveniles; criminal procedure; juvenile competency and culpability; clarify. Amends [1974 PA 258](#) (MCL [330.1001](#) - [330.2106](#)) by adding secs. 1060, 1060a, 1060b, 1062, 1064, 1066, 1068 & 1070.

[HB 5482](#) (Liss) Mental health; forensic; restoration of juvenile to competency to proceed; clarify. Amends [1974 PA 258](#) (MCL [330.1001](#) - [330.2106](#)) by adding secs. 1060c & 1072.

[HB 5483](#) (Kowall) Juveniles; criminal procedure; restoration of juvenile to competency to proceed; clarify. Amends sec. 1, ch. XIIA of [1939 PA 288](#) (MCL 712A.1) & adds sec. 18s.

[HB 5484](#) (Segal) Juveniles; criminal procedure; certain statements made during juvenile competency evaluation; clarify. Amends [1939 PA 288](#) (MCL [710.21](#) - 712A.32) by adding sec. 18r to ch. XIIA.

[HB 5485](#) (Lipton) Juveniles; criminal procedure; juvenile competency definitions; clarify. Amends sec. 1, ch. XIIA of [1939 PA 288](#) (MCL 712A.1).

[HB 5486](#) (Crawford) Juveniles; criminal procedure; juvenile competency hearing; require. Amends [1939 PA 288](#) (MCL [710.21](#) - 712A.32) by adding sec. 18q to ch. XIIA.

[HB 5487](#) (Byrnes) Juveniles; criminal procedure; juvenile competency and evaluation; clarify. Amends [1939 PA 288](#) (MCL [710.21](#) - 712A.32) by adding sec. 18n to ch. XIIA.

[HB 5488](#) (Bauer) Juveniles; criminal procedure; juvenile competency evaluation; require use of a qualified examiner. Amends [1939 PA 288](#) (MCL [710.21](#) - 712A.32) by adding sec. 18o to ch. XIIA.

[HB 5489](#) (Haase) Juveniles; criminal procedure; juvenile competency evaluation and report; clarify. Amends [1939 PA 288](#) (MCL [710.21](#) - 712A.32) by adding sec. 18p to ch. XIIA.

**Date position was adopted:**

February 25, 2010

**Process used to take the ideological position:**

Position adopted after discussion and e-vote.

**Number of members in the decision-making body:**

19

**Number who voted in favor and opposed to the position:**

15 Voted for position

0 Voted against position

4 Did not vote

**Position:**

Support and Amend

**Explanation of the position, including any recommended amendments:**

The committee voted unanimously to support the Juvenile Competency legislation, but with requested amendments regarding what constitutes a qualified examiner, who bears the cost of the evaluation, and the issue of age and any presumption thereby of incompetency.

The committee seemed to be unanimous in its belief that this legislation would improve the functioning of the courts by providing standards, a means of evaluation and a legislative authorized disposition for juveniles found to be incompetent.

The concern expressed by the committee was a recognition of our state's economic position and the differing viewpoints between mental health advocates, prosecutors and probate judges. The concern with "Qualified examiner" is that it would allow registered professional nurses, social workers, counselors, and marriage and family therapists to do competency evaluations. As with adults, competency evaluations should be done by the forensic center with a corresponding right for an independent examination.

The concern with a presumptive age is the necessity thereof and the differing maturity levels of male and female juveniles, today and in the future. It would seem to be more fair or appropriate for questions of competency for this to be based on a juvenile and fact specific evaluation. Just as age is no longer a determinative factor in one's competence to testify, it would seem that one's age should not be given undue weight as to competency when age is probably the least determinative factor involved in the actual determination of competency.

The cost factor is related to these difficult economic times and the concerns relating to unfunded mandates. The legislation contains no provision for payment of the evaluation and seems to indicate that the prosecutor or the juvenile or someone else can be required to pay the costs of the evaluation.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2009-HB-5174>

<http://legislature.mi.gov/doc.aspx?2009-HB-5175>

<http://legislature.mi.gov/doc.aspx?2009-HB-5482>

<http://legislature.mi.gov/doc.aspx?2009-HB-5483>

<http://legislature.mi.gov/doc.aspx?2009-HB-5484>

<http://legislature.mi.gov/doc.aspx?2009-HB-5485>

<http://legislature.mi.gov/doc.aspx?2009-HB-5486>

<http://legislature.mi.gov/doc.aspx?2009-HB-5487>

<http://legislature.mi.gov/doc.aspx?2009-HB-5488>

<http://legislature.mi.gov/doc.aspx?2009-HB-5489>

**FOR LEGISLATIVE ISSUES ONLY:**

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- ✓ The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

**Keller-permissible explanation:**

The bills address a direct access to the court issue that is faced by juvenile defendants in the system. A competency determination will determine how a juvenile enters the system.