



# SENATE BILL No. 1181

June 2, 1994, Introduced by Senators DILLINGHAM, BERRYMAN, DINGELL and WELBORN and referred to the Committee on Family Law, Mental Health, and Corrections

A bill to amend section 1050 of Act No 258 of the Public Acts of 1974, entitled as amended

"Mental health code,"

being section 330 2050 of the Michigan Compiled Laws and to add sections 1058, 1059, 1060, 1061, 1062 and 1063

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 1050 of Act No 258 of the Public Acts  
2 of 1974, being section 330 2050 of the Michigan Compiled Laws, is  
3 amended and sections 1058, 1059, 1060, 1061, 1062, and 1063 are  
4 added to read as follows

5 Sec 1050 ~~—(1) The court shall immediately commit any~~  
6 ~~person who is acquitted of a criminal charge by reason of insan-~~  
7 ~~ity to the custody of the center for forensic psychiatry, for a~~  
8 ~~period not to exceed 60 days The court shall forward to the~~  
9 ~~center a full report, in the form of a settled record, of the~~

~~1 facts concerning the crime which the patient was found to have  
2 committed but of which he was acquitted by reason of insanity  
3 The center shall thoroughly examine and evaluate the present  
4 mental condition of the person in order to reach an opinion on  
5 whether the person meets the criteria of a person requiring  
6 treatment or for judicial admission set forth in section 401 or  
7 515—~~

~~8 (2) Within the 60-day period the center shall file a report  
9 with the court, prosecuting attorney, and defense counsel—The  
10 report shall contain a summary of the crime which the patient  
11 committed but of which he was acquitted by reason of insanity and  
12 an opinion as to whether the person meets the criteria of a  
13 person requiring treatment or for judicial admission as defined  
14 by section 401 or 515, and the facts upon which the opinion is  
15 based—If the opinion stated is that the person is a person  
16 requiring treatment, the report shall be accompanied by certifi-  
17 cates from 2 physicians at least 1 of whom shall be a psychia-  
18 trist, which conform to the requirements of section 400(j)—~~

~~19 (3) After receipt of the report, the court may direct the  
20 prosecuting attorney to file a petition pursuant to section 434  
21 or 516 for an order of hospitalization or an order of admission  
22 to a facility with the probate court of the person's county of  
23 residence or of the county in which the criminal trial was held—  
24 Any certificates that accompanied the report of the center may be  
25 filed with the petition, and shall be sufficient to cause a hear-  
26 ing to be held pursuant to section 451 even if they were not  
27 executed within 72 hours of the filing of the petition—The~~

~~1 report from the court containing the facts concerning the crime~~  
~~2 for which he was acquitted by reason of insanity shall be admis-~~  
~~3 sible in the hearings-~~

~~4 (4) If the report states the opinion that the person meets~~  
~~5 the criteria of a person requiring treatment or for judicial~~  
~~6 admission, and if a petition is to be filed pursuant to subsec-~~  
~~7 tion (3), the center may retain the person pending a hearing on~~  
~~8 the petition. If a petition is not to be filed, the prosecutor~~  
~~9 shall notify the center in writing. The center, upon receipt of~~  
~~10 the notification, shall cause the person to be discharged-~~

~~11 (5) The release provisions of sections 476 to 479 of this~~  
~~12 act shall apply to a person found to have committed a crime by a~~  
~~13 court or jury, but who is acquitted by reason of insanity, except~~  
~~14 that a person shall not be discharged or placed on leave without~~  
~~15 first being evaluated and recommended for discharge or leave by~~  
~~16 the department's program for forensic psychiatry, and authorized~~  
~~17 leave or absence from the hospital may be extended for a period~~  
~~18 of 5 years— AS USED IN THIS SECTION AND IN SECTIONS 1051 TO~~  
~~19 1063~~

~~20 (A) "ACQUITTEE" MEANS A PERSON ACQUITTED OF A CRIME BY~~  
~~21 REASON OF INSANITY~~

~~22 (B) "AUTHORIZED COMMUNITY PLACEMENT" MEANS PLACEMENT OTHER~~  
~~23 THAN STATE HOSPITALIZATION, WHICH IS ORDERED BY THE BOARD SUBJECT~~  
~~24 TO CONDITIONS PRESCRIBED BY AN AUTHORIZED COMMUNITY PLACEMENT~~  
~~25 TREATMENT PLAN PURSUANT TO SECTION 1057~~

~~26 (C) "BOARD" MEANS THE FORENSIC REVIEW BOARD CREATED IN~~  
~~27 SECTION 1051~~

1 TREATMENT IF THE ACQUITTEE RECEIVES AUTHORIZED COMMUNITY  
2 PLACEMENT, THE BOARD SHALL ORDER AUTHORIZED COMMUNITY PLACEMENT  
3 AS PROVIDED IN SECTION 1057

4 (C) IF THE BOARD FINDS THAT THE ACQUITTEE MEETS THE CRITERIA  
5 FOR CONTINUING JURISDICTION AND CANNOT BE ADEQUATELY CONTROLLED  
6 UNDER AUTHORIZED COMMUNITY PLACEMENT, THE BOARD SHALL ORDER THE  
7 ACQUITTEE COMMITTED TO, OR RETAINED IN, THE CENTER, A STATE  
8 REGIONAL PSYCHIATRIC HOSPITAL, OR ANOTHER APPROPRIATE TREATMENT  
9 FACILITY FOR CARE, CUSTODY, AND TREATMENT

10 (2) AT ANY TIME THE BOARD MAY APPOINT A PSYCHIATRIST OR PSY-  
11 CHOLOGIST TO EXAMINE THE ACQUITTEE AND SUBMIT A REPORT TO THE  
12 BOARD REPORTS FILED WITH THE BOARD PURSUANT TO THE EXAMINATION  
13 SHALL INCLUDE, BUT NEED NOT BE LIMITED TO AN OPINION AS TO THE  
14 MENTAL CONDITION OF THE ACQUITTEE, WHETHER THE ACQUITTEE PRESENTS  
15 A SUBSTANTIAL DANGER TO OTHERS, AND WHETHER THE ACQUITTEE COULD  
16 BE ADEQUATELY CONTROLLED WITH SUPERVISION AND TREATMENT AS A CON-  
17 DITION OF AUTHORIZED COMMUNITY PLACEMENT TO FACILITATE THE  
18 EXAMINATION OF THE ACQUITTEE, THE BOARD MAY ORDER THE ACQUITTEE  
19 PLACED IN THE TEMPORARY CUSTODY OF ANY APPROPRIATE FACILITY

20 (3) THE BOARD MAY MAKE THE DETERMINATION REGARDING DIS-  
21 CHARGE, HOSPITALIZATION, OR AUTHORIZED COMMUNITY PLACEMENT BASED  
22 UPON THE WRITTEN REPORTS SUBMITTED PURSUANT TO THIS SECTION IF  
23 ANY MEMBER OF THE BOARD DESIRES FURTHER INFORMATION FROM THE  
24 EXAMINING PSYCHIATRIST OR PSYCHOLOGIST WHO SUBMITTED THE REPORT,  
25 THESE PERSONS SHALL BE SUMMONED BY THE BOARD TO GIVE TESTIMONY  
26 THE BOARD SHALL CONSIDER ALL EVIDENCE AVAILABLE TO IT THAT IS  
27 MATERIAL, RELEVANT, AND RELIABLE REGARDING THE ISSUES BEFORE THE

1 BOARD THE EVIDENCE MAY INCLUDE, BUT IS NOT LIMITED TO, THE  
2 RECORD OF TRIAL, THE INFORMATION SUPPLIED BY ANY INTERESTED  
3 PARTY, INCLUDING THE ACQUITTEE, INFORMATION CONCERNING THE  
4 ACQUITTEE'S MENTAL CONDITION, AND THE ENTIRE PSYCHIATRIC AND  
5 CRIMINAL HISTORY OF THE ACQUITTEE THE COURT MAY CONSIDER WRIT-  
6 TEN OR ORAL EVIDENCE SUBMITTED BY INTERESTED THIRD PARTIES  
7 INCLUDING, BUT NOT LIMITED TO, VICTIMS OF THE ACQUITTEE ALL  
8 EVIDENCE OF A TYPE COMMONLY RELIED UPON BY REASONABLY PRUDENT  
9 PERSONS IN THE CONDUCT OF THEIR SERIOUS AFFAIRS IS ADMISSIBLE AT  
10 HEARINGS TESTIMONY SHALL BE TAKEN UPON OATH OR AFFIRMATION OF  
11 THE WITNESS FROM WHOM RECEIVED THE OFFICER PRESIDING AT THE  
12 HEARING SHALL ADMINISTER OATHS OR AFFIRMATIONS TO WITNESSES  
13 (4) THE BOARD SHALL FURNISH TO THE ACQUITTEE, THE ADVOCATE  
14 REPRESENTING THE ACQUITTEE AND THE COURT WRITTEN NOTICE OF ANY  
15 HEARING PENDING UNDER THIS SECTION WITHIN A REASONABLE TIME PRIOR  
16 TO THE HEARING IF REQUESTED, THE BOARD SHALL PROVIDE THE NOTICE  
17 TO VICTIMS IDENTIFIED UNDER SECTION 1053 THE NOTICE SHALL  
18 INCLUDE ALL OF THE FOLLOWING  
19 (A) THE TIME, PLACE AND LOCATION OF THE HEARING  
20 (B) THE NATURE OF THE HEARING AND THE SPECIFIC ACTION FOR  
21 WHICH A HEARING HAS BEEN REQUESTED THE ISSUES TO BE CONSIDERED  
22 AT THE HEARING, AND A REFERENCE TO THE PARTICULAR SECTIONS OF THE  
23 STATUTES AND RULES INVOLVED  
24 (C) A STATEMENT OF THE AUTHORITY AND JURISDICTION UNDER  
25 WHICH THE HEARING IS TO BE HELD  
26 (D) A STATEMENT OF THE ACQUITTEE'S RIGHTS UNDER SUBSECTION  
27 (5)

1 (5) AN ACQUITTEE HAS ALL OF THE FOLLOWING RIGHTS WITH  
2 RESPECT TO A HEARING UNDER THIS SECTION

3 (A) TO APPEAR AT ALL PROCEEDINGS HELD PURSUANT TO THIS SEC-  
4 TION, EXCEPT BOARD DELIBERATIONS

5 (B) TO PRESENT EVIDENCE, INCLUDING WITNESSES, AND TO QUES-  
6 TION ALL WITNESSES APPEARING TO TESTIFY AT THE HEARING

7 (C) TO BE ASSISTED BY AN ADVOCATE AND TO CONSULT WITH THE  
8 ADVOCATE PRIOR TO THE HEARING THE ADVOCATE SHALL BE A MEMBER OF  
9 AN ADVOCACY ORGANIZATION OR A MENTAL HEALTH PROFESSIONAL WHO IS  
10 NOT INVOLVED IN THE TREATMENT OF THE ACQUITTEE

11 (D) TO EXAMINE ALL INFORMATION, DOCUMENTS, AND REPORTS THAT  
12 THE BOARD CONSIDERS IF THEN AVAILABLE TO THE BOARD, THE INFOR-  
13 MATION, DOCUMENTS, AND REPORTS SHALL BE DISCLOSED TO THE ACQUIT-  
14 TEE SO AS TO ALLOW EXAMINATION PRIOR TO THE HEARING

15 (E) TO OBTAIN INDEPENDENT EVALUATION BY AN INDEPENDENT,  
16 FULLY LICENSED, DOCTORAL LEVEL PSYCHOLOGIST, OR A LICENSED PHYSI-  
17 CIAN WHO HAS COMPLETED AN APPROVED PSYCHIATRIC RESIDENCY, WHO  
18 POSSESSES SKILLS AND EXPERIENCE COMMENSURATE WITH THE NATURE AND  
19 COMPLEXITY OF THE CASE IF THE ACQUITTEE IS INDIGENT THE INDE-  
20 PENDENT EVALUATION SHALL BE PERFORMED AT STATE EXPENSE, BUT NOT  
21 MORE OFTEN THAN THE FOLLOWING

22 (1) ONCE EVERY 6 MONTHS FOR THE FIRST 2 YEARS

23 (11) ONCE ANNUALLY FOR THE NEXT 5 YEARS

24 (111) ONCE EVERY 2 YEARS AFTER THE FIRST 7 YEARS

25 (6) A RECORD SHALL BE KEPT OF ALL HEARINGS BEFORE THE BOARD,  
26 EXCEPT BOARD DELIBERATIONS

1 (7) UPON REQUEST OF ANY PARTY BEFORE THE BOARD, OR ON ITS  
2 OWN MOTION THE BOARD MAY CONTINUE A HEARING FOR A REASONABLE  
3 PERIOD NOT TO EXCEED 60 DAYS TO OBTAIN ADDITIONAL INFORMATION OR  
4 TESTIMONY OR FOR OTHER GOOD CAUSE SHOWN

5 (8) WITHIN 15 DAYS AFTER THE CONCLUSION OF THE HEARING, THE  
6 BOARD SHALL PROVIDE TO THE ACQUITTEE, THE ADVOCATE ASSISTING THE  
7 ACQUITTEE, AND ANY VICTIM, IF REQUESTED, WRITTEN NOTICE OF THE  
8 BOARD'S DECISION

9 (9) THE BURDEN OF PROOF ON ALL ISSUES AT HEARINGS OF THE  
10 BOARD SHALL BE BY A PREPONDERANCE OF THE EVIDENCE

11 (10) IF AN ACQUITTEE IS INDIGENT, THE BOARD SHALL DETERMINE  
12 AND ALLOW FAIR COMPENSATION FOR THE INDEPENDENT EVALUATOR  
13 DESCRIBED IN SUBSECTION (5) (E) AND FOR THE REASONABLE EXPENSES OF  
14 THE ACQUITTEE WITH RESPECT TO THE HEARING THE COMPENSATION AND  
15 EXPENSES SHALL BE PAID BY THE BOARD FROM FUNDS AVAILABLE TO THE  
16 BOARD FOR THE PURPOSE

17 SEC 1059 (1) UPON REQUEST OF ANY PARTY TO A HEARING  
18 BEFORE THE BOARD, THE BOARD OR ITS DESIGNATED REPRESENTATIVE  
19 SHALL ISSUE, OR THE BOARD ON ITS OWN MOTION MAY ISSUE, SUBPOENAS  
20 REQUIRING THE ATTENDANCE AND TESTIMONY OF WITNESSES UPON  
21 REQUEST OF ANY PARTY TO THE HEARING AND UPON A PROPER SHOWING OF  
22 THE GENERAL RELEVANCE AND REASONABLE SCOPE OF THE DOCUMENTARY OR  
23 PHYSICAL EVIDENCE SOUGHT, THE BOARD OR ITS DESIGNATED REPRESENTA-  
24 TIVE SHALL ISSUE, OR THE BOARD ON ITS OWN MOTION MAY ISSUE, SUB-  
25 POENAS DUCES TECUM

26 (2) WITNESSES APPEARING UNDER SUBPOENAS, OTHER THAN THE  
27 PARTIES OR STATE OFFICERS OR EMPLOYEES, SHALL RECEIVE FEES AND

1 MILEAGE AS PRESCRIBED BY LAW FOR WITNESSES IF THE BOARD OR ITS  
2 DESIGNATED REPRESENTATIVE CERTIFIES THAT THE TESTIMONY OF A WIT-  
3 NESS WAS RELEVANT AND MATERIAL, ANY PERSON WHO HAS PAID FEES AND  
4 MILEAGE TO THAT WITNESS SHALL BE REIMBURSED BY THE BOARD

5 (3) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA ISSUED UNDER  
6 SUBSECTION (1) OR ANY PARTY OR WITNESS REFUSES TO TESTIFY REGARD-  
7 ING ANY MATTER ON WHICH THE PARTY OR WITNESS MAY BE LAWFULLY  
8 INTERROGATED, THE JUDGE OF THE CIRCUIT COURT OF ANY COUNTY, ON  
9 THE APPLICATION OF THE BOARD OR ITS DESIGNATED REPRESENTATIVE OR  
10 OF THE PARTY REQUESTING THE ISSUANCE OF THE SUBPOENA, SHALL  
11 COMPEL OBEDIENCE BY PROCEEDINGS FOR CONTEMPT AS IN THE CASE OF  
12 DISOBEDIENCE OF THE REQUIREMENTS OF A SUBPOENA ISSUED BY THE  
13 COURT

14 SEC 1060 AN ACQUITTEE WHO HAS BEEN PLACED UNDER THE  
15 JURISDICTION OF THE BOARD PURSUANT TO SECTION 1054 AND WHO HAS  
16 SPENT 5 YEARS ON AUTHORIZED COMMUNITY PLACEMENT SHALL BE BROUGHT  
17 BEFORE THE BOARD FOR HEARING WITHIN 30 DAYS OF THE EXPIRATION OF  
18 THE 5-YEAR PERIOD THE BOARD SHALL REVIEW THE ACQUITTEE'S STATUS  
19 AND DETERMINE WHETHER THE ACQUITTEE SHOULD BE DISCHARGED FROM THE  
20 JURISDICTION OF THE BOARD

21 THE ACQUITTEE SHALL BE DISCHARGED IF THE BOARD FINDS BY A  
22 PREPONDERANCE OF THE EVIDENCE THAT THE ACQUITTEE NO LONGER MEETS  
23 THE CRITERIA FOR CONTINUING JURISDICTION

24 SEC 1061 AN ORDER OF THE COURT UNDER SECTION 1054 IS  
25 APPEALABLE TO THE COURT OF APPEALS BY LEAVE OF THAT COURT PURSU-  
26 ANT TO THE MICHIGAN COURT RULES AN ORDER OF THE BOARD IS  
27 APPEALABLE TO THE CIRCUIT COURT PURSUANT TO THE MICHIGAN COURT



1 RULES REGARDING APPEALS FROM ADMINISTRATIVE AGENCIES IN CONTESTED  
2 CASES THE GROUNDS FOR APPEAL ARE RESTRICTED TO AN ABUSE OF DIS-  
3 CRETION OR AN ERROR OF LAW

4 SEC 1062 (1) BOARD MEMBERS, PEACE OFFICERS, AND INDIVIDU-  
5 ALS PROVIDING SUPERVISION AND TREATMENT OF AN ACQUITTEE WHO ACT  
6 IN COMPLIANCE WITH THIS ACT ARE NOT LIABLE TO THE ACQUITTEE OR TO  
7 PERSONS INJURED BY AN ACQUITTEE FOR DAMAGES SUFFERED AS A CONSE-  
8 QUENCE OF DECISIONS REGARDING COMMITMENT, DISCHARGE, OR AUTHO-  
9 RIZED COMMUNITY PLACEMENT OF THE ACQUITTEE

10 (2) SUBSECTION (1) DOES NOT APPLY TO AN INDIVIDUAL WHO,  
11 WHILE ACTING IN COMPLIANCE WITH THIS ACT, ENGAGES IN BEHAVIOR  
12 THAT CONSTITUTES GROSS NEGLIGENCE OR WILLFUL AND WANTON  
13 MISCONDUCT

14 SEC 1063 AN ACQUITTEE WHO WAS ACQUITTED OF A CRIME BY  
15 REASON OF INSANITY BEFORE THE EFFECTIVE DATE OF THIS SECTION IS  
16 UNDER THE JURISDICTION OF THE BOARD AS OF THE EFFECTIVE DATE OF  
17 THIS SECTION FOR A PERIOD EQUAL TO THE MAXIMUM STATUTORY SENTENCE  
18 FOR THE CRIME OF WHICH HE OR SHE WAS ACQUITTED BY REASON OF  
19 INSANITY LESS THE PERIOD OF TIME THE ACQUITTEE HAS BEEN HOSPITAL-  
20 IZED PURSUANT TO SECTION 468, OR 6 MONTHS, WHICHEVER IS LONGER  
21 THE BOARD SHALL PROVIDE A HEARING FOR EACH ACQUITTEE COMMITTED TO  
22 ITS JURISDICTION UNDER THIS SECTION WITHIN 6 MONTHS AFTER THE  
23 EFFECTIVE DATE OF THIS SECTION TO DETERMINE WHETHER THE ACQUITTEE  
24 MEETS THE CRITERIA FOR CONTINUING JURISDICTION IF THE ACQUITTEE  
25 IS ENTITLED TO A HEARING PURSUANT TO SECTION 531 OR 532 BEFORE  
26 THE EXPIRATION OF 6 MONTHS AFTER THE EFFECTIVE DATE OF THIS

1 SECTION, THE BOARD SHALL HOLD A HEARING FOR THAT ACQUITTEE AT THE  
2 TIME PRESCRIBED BY SECTION 531 OR 532