



ENACTMENT NEWS

Senate Bill 2

Restoration to Competency & PSYPACT

Effective August 3, 2021

On April 27, 2021, Governor DeWine signed Senate Bill 2 (Sen. Gavarone) into law. The bill contains changes to the process of restoration to competency, facilitates sharing information between the criminal and probate courts and enters Ohio into the multi-jurisdictional psychology compact known as PSYPACT.

Competency to Stand Trial Evaluations & Reports

S.B. 2 allows an evaluation to determine competency to stand trial to be conducted through electronic means (R.C. 2945.371(A)).

The bill prohibits courts from ordering a defendant to be held for evaluation in facilities operated by the Ohio Department of Mental Health and Addiction Services (OMHAS) or Ohio Department of Developmental Disabilities (DODD) *unless* the defendant is charged with a felony or offense of violence or the court determines, based on the facts before the court, that the defendant is in need of immediate hospitalization (R.C. 2945.371(E)).

The bill modifies the examiner's written report provisions, requiring them to be filed under seal, and allowing inspection by the defendant, the defendant's guardian, the probate court, an ADAMHS Board and any mental health professional who performs a subsequent mental health evaluation or is involved in treatment with the defendant. (Current law requires copies of the report to be provided to the prosecutor and defense counsel.) Open inspection by the public is prohibited. Anyone not specifically permitted to inspect the report may file a motion with the court, as specified in statute. The sealing provision applies retroactively, and any defendant who is subject to a report may file a motion to seal with the court. (R.C. 2945.371(H)).

In determining a recommendation for the least restrictive placement, the examiner must consider the defendant's housing needs and availability of mental health treatment in the community (R.C. 2945.371(H)(3)(d)).

If the examiner believes the defendant may have an intellectual disability (I.D.), the court must order a separate I.D. evaluation, and the I.D. report must be filed under seal (R.C. 2945.371(I)).

Finding of Incompetence

The bill modifies provisions governing the procedure for when a court finds a defendant incompetent to stand trial (IST) as follows:

If the defendant is charged with a felony or misdemeanor of violence and the court finds the defendant to be IST but the court also finds there is a substantial probability the defendant is restorable to competency within one year, and the prosecutor has not made a recommendation to either dismiss the charges or order the defendant to undergo outpatient competency restoration treatment, the court shall order the defendant to undergo treatment (R.C. 2945.38(B)(1)(a)(i)).

If the defendant is charged with a felony and the court finds the defendant to be IST but the court cannot determine restorability, the court shall order the defendant to undergo continuing evaluation and treatment for up to four months (R.C. 2945.38(B)(1)(a)(ii)).

If the defendant is charged with a misdemeanor of violence and the court finds the defendant to be IST but the court cannot determine restorability, the court may order continuing evaluation and treatment for a maximum period of 30-days for a minor misdemeanor (MM), fourth-degree misdemeanor (M4) or third-degree misdemeanor (M3) or 60-days for a second-degree misdemeanor (M2) or first-degree misdemeanor (M1) (R.C. 2945.38(B)(1)(a)(iii) & (C)(1)).

If the defendant is charged with a non-violent misdemeanor and the court finds the defendant to be IST but the court cannot determine restorability, the court shall dismiss the charges and discharge the defendant unless the court or prosecutor files an affidavit of mental illness in the probate court (R.C. 2945.38(B)(1)(a)(iv) & (v)(I)).

If the defendant is charged with a non-violent misdemeanor or the defendant is charged with a misdemeanor of violence and the prosecutor has made a recommendation and the court finds the defendant to be IST but restorable, the court shall either dismiss the charges and discharge the defendant unless the court or prosecutor files an affidavit of mental illness in the probate court or order the defendant to undergo *outpatient* competency restoration treatment (R.C. 2945.38(B)(1)(a)(v)(I) & (II)).

If the defendant is charged with a misdemeanor of violence and the court finds the defendant to be IST but restorable, the prosecutor may make a recommendation to either dismiss the charges and discharge the defendant (unless an affidavit of mental

health is filed with the probate court) or order outpatient treatment. If the prosecutor makes no recommendation, the court shall order treatment (R.C. 2945.38(B)(1)(a)(vi)).

If the court or prosecutor files an affidavit of mental illness with the probate court, the trial court may hold the defendant for ten days pending a hearing in the probate court and shall send to the probate court copies of all written reports of the defendant's mental condition (R.C. 2945.38(B)(1)(a)(v)(I)).

In determining the place of commitment, the court shall consider the availability of housing and support services, including outpatient mental health services (R.C. 2945.38(B)(1)(b)).

Substance Abuse Civil Commitment

The bill eliminates R.C. 5119.94(D)(1)(b) & (c), which authorized a court to order the hospitalization on an immediate, emergency basis of a respondent found to present an imminent danger or imminent threat of danger to self, family, or others as a result of alcohol or other drug abuse. The eliminated provisions were enacted in H.B. 1 of the 133rd General Assembly, effective April 12, 2021.

Voluntary Mental Health Admissions

The bill modifies the duties of chief clinical officers (CCO) for the discharge of voluntary admission mental health patients who refuse to accept treatment consistent with the written treatment plan. If the patient refuses treatment, the CCO may file an affidavit of mental health. If the CCO wishes to discharge the patient, and the CCO has knowledge that the trial court or prosecutor has filed an affidavit of mental illness in the previous twelve months, the CCO shall notify the trial court or prosecutor of their intent to discharge. The trial court or prosecutor may file an affidavit of mental illness no later than three court days after notice of the intent to discharge. If an affidavit is filed, the patient's discharge must be postponed until a hearing is held. (R.C. 5122.02 & 5122.03.)

Affidavit of Mental Illness

The bill modifies the requirements of the mental illness affidavit form to include a space for the trial court or prosecutor to indicate the affidavit is regarding a defendant whose charge has been dismissed pursuant to R.C. 2945.38 (R.C. 5122.11 & 5122.111).

Probate Court Jurisdiction Termination

The bill enacted R.C. 5122.112 to require a probate court that terminates jurisdiction over a defendant for whom the trial court or prosecutor filed an affidavit of mental illness to immediately notify the trial court or prosecutor of the termination and transmit to the trial court a copy of any records in its possession pertaining to the defendant's mental illness or treatment for mental illness.

PSYPACT

The bill also enters Ohio into the Psychology Interjurisdictional Compact, the multi-jurisdictional psychology compact known as PSYPACT. PSYPACT regulates the practice of telepsychology and temporary in-person psychology across state boundaries for participating states. Ohio joins 24 other states and the District of Columbia in PSYPACT (R.C. 4732.40 & 4732.41).

The Ohio Senate passed the bill by a vote of 32-0 on February 10, 2021, and the House of Representatives passed Substitute S.B. 2 by a vote of 95-0 on March 25, 2021. The Senate concurred with House amendments on April 21, 2021.