

As Introduced

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H. B. No. 778

Representative Gavarone

A BILL

To amend sections 2945.37 and 2945.371 of the
Revised Code to prohibit a court from ordering
certain offenders to undergo an inpatient
competency evaluation at a facility operated by
the Department of Mental Health and Addiction
Services or the Department of Developmental
Disabilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2945.37 and 2945.371 of the
Revised Code be amended to read as follows:

Sec. 2945.37. (A) As used in sections 2945.37 to 2945.402
of the Revised Code:

(1) "Prosecutor" means a prosecuting attorney or a city
director of law, village solicitor, or similar chief legal
officer of a municipal corporation who has authority to
prosecute a criminal case that is before the court or the
criminal case in which a defendant in a criminal case has been
found incompetent to stand trial or not guilty by reason of
insanity.

(2) "Examiner" means either of the following:

(a) A psychiatrist or a licensed clinical psychologist who 20
satisfies the criteria of division (I) of section 5122.01 of the 21
Revised Code or is employed by a certified forensic center 22
designated by the department of mental health and addiction 23
services to conduct examinations or evaluations. 24

(b) For purposes of a separate intellectual disability 25
evaluation that is ordered by a court pursuant to division ~~(H)~~ 26
(I) of section 2945.371 of the Revised Code, a psychologist 27
designated by the director of developmental disabilities 28
pursuant to that section to conduct that separate intellectual 29
disability evaluation. 30

(3) "Nonsecured status" means any unsupervised, off- 31
grounds movement or trial visit from a hospital or institution, 32
or any conditional release, that is granted to a person who is 33
found incompetent to stand trial and is committed pursuant to 34
section 2945.39 of the Revised Code or to a person who is found 35
not guilty by reason of insanity and is committed pursuant to 36
section 2945.40 of the Revised Code. 37

(4) "Unsupervised, off-grounds movement" includes only 38
off-grounds privileges that are unsupervised and that have an 39
expectation of return to the hospital or institution on a daily 40
basis. 41

(5) "Trial visit" means a patient privilege of a longer 42
stated duration of unsupervised community contact with an 43
expectation of return to the hospital or institution at 44
designated times. 45

(6) "Conditional release" means a commitment status under 46
which the trial court at any time may revoke a person's 47
conditional release and order the rehospitalization or 48

reinstitutionalization of the person as described in division 49
(A) of section 2945.402 of the Revised Code and pursuant to 50
which a person who is found incompetent to stand trial or a 51
person who is found not guilty by reason of insanity lives and 52
receives treatment in the community for a period of time that 53
does not exceed the maximum prison term or term of imprisonment 54
that the person could have received for the offense in question 55
had the person been convicted of the offense instead of being 56
found incompetent to stand trial on the charge of the offense or 57
being found not guilty by reason of insanity relative to the 58
offense. 59

(7) "Licensed clinical psychologist," "mentally ill person 60
subject to court order," and "psychiatrist" have the same 61
meanings as in section 5122.01 of the Revised Code. 62

(8) "Person with an intellectual disability subject to 63
institutionalization by court order" has the same meaning as in 64
section 5123.01 of the Revised Code. 65

(B) In a criminal action in a court of common pleas, a 66
county court, or a municipal court, the court, prosecutor, or 67
defense may raise the issue of the defendant's competence to 68
stand trial. If the issue is raised before the trial has 69
commenced, the court shall hold a hearing on the issue as 70
provided in this section. If the issue is raised after the trial 71
has commenced, the court shall hold a hearing on the issue only 72
for good cause shown or on the court's own motion. 73

(C) The court shall conduct the hearing required or 74
authorized under division (B) of this section within thirty days 75
after the issue is raised, unless the defendant has been 76
referred for evaluation in which case the court shall conduct 77
the hearing within ten days after the filing of the report of 78

the evaluation or, in the case of a defendant who is ordered by 79
the court pursuant to division ~~(H)~~ (I) of section 2945.371 of 80
the Revised Code to undergo a separate intellectual disability 81
evaluation conducted by a psychologist designated by the 82
director of developmental disabilities, within ten days after 83
the filing of the report of the separate intellectual disability 84
evaluation under that division. A hearing may be continued for 85
good cause. 86

(D) The defendant shall be represented by counsel at the 87
hearing conducted under division (C) of this section. If the 88
defendant is unable to obtain counsel, the court shall appoint 89
counsel under Chapter 120. of the Revised Code or under the 90
authority recognized in division (C) of section 120.06, division 91
(E) of section 120.16, division (E) of section 120.26, or 92
section 2941.51 of the Revised Code before proceeding with the 93
hearing. 94

(E) The prosecutor and defense counsel may submit evidence 95
on the issue of the defendant's competence to stand trial. A 96
written report of the evaluation of the defendant may be 97
admitted into evidence at the hearing by stipulation, but, if 98
either the prosecution or defense objects to its admission, the 99
report may be admitted under sections 2317.36 to 2317.38 of the 100
Revised Code or any other applicable statute or rule. 101

(F) The court shall not find a defendant incompetent to 102
stand trial solely because the defendant is receiving or has 103
received treatment as a voluntary or involuntary mentally ill 104
patient under Chapter 5122. or a voluntary or involuntary 105
resident with an intellectual disability under Chapter 5123. of 106
the Revised Code or because the defendant is receiving or has 107
received psychotropic drugs or other medication, even if the 108

defendant might become incompetent to stand trial without the 109
drugs or medication. 110

(G) A defendant is presumed to be competent to stand 111
trial. If, after a hearing, the court finds by a preponderance 112
of the evidence that, because of the defendant's present mental 113
condition, the defendant is incapable of understanding the 114
nature and objective of the proceedings against the defendant or 115
of assisting in the defendant's defense, the court shall find 116
the defendant incompetent to stand trial and shall enter an 117
order authorized by section 2945.38 of the Revised Code. 118

(H) Municipal courts shall follow the procedures set forth 119
in sections 2945.37 to 2945.402 of the Revised Code. Except as 120
provided in section 2945.371 of the Revised Code, a municipal 121
court shall not order an evaluation of the defendant's 122
competence to stand trial or the defendant's mental condition at 123
the time of the commission of the offense to be conducted at any 124
hospital operated by the department of mental health and 125
addiction services. Those evaluations shall be performed through 126
community resources including, but not limited to, certified 127
forensic centers, court probation departments, and community 128
mental health services providers. All expenses of the 129
evaluations shall be borne by the legislative authority of the 130
municipal court, as defined in section 1901.03 of the Revised 131
Code, and shall be taxed as costs in the case. If a defendant is 132
found incompetent to stand trial or not guilty by reason of 133
insanity, a municipal court may commit the defendant as provided 134
in sections 2945.38 to 2945.402 of the Revised Code. 135

Sec. 2945.371. (A) If the issue of a defendant's 136
competence to stand trial is raised or if a defendant enters a 137
plea of not guilty by reason of insanity, the court may order 138

one or more evaluations of the defendant's present mental 139
condition or, in the case of a plea of not guilty by reason of 140
insanity, of the defendant's mental condition at the time of the 141
offense charged. An examiner shall conduct the evaluation. 142

(B) If the court orders more than one evaluation under 143
division (A) of this section, the prosecutor and the defendant 144
may recommend to the court an examiner whom each prefers to 145
perform one of the evaluations. If a defendant enters a plea of 146
not guilty by reason of insanity and if the court does not 147
designate an examiner recommended by the defendant, the court 148
shall inform the defendant that the defendant may have 149
independent expert evaluation and that, if the defendant is 150
unable to obtain independent expert evaluation, it will be 151
obtained for the defendant at public expense if the defendant is 152
indigent. 153

(C) (1) If the court orders an evaluation under division 154
(A) of this section, the defendant shall be available at the 155
times and places established by the examiners who are to conduct 156
the evaluation. The court may order a defendant who has been 157
released on bail or recognizance to submit to an evaluation 158
under this section. ~~If~~ 159

(2) Except as provided in division (E) of this section, if 160
a defendant who has been released on bail or recognizance 161
refuses to submit to a complete evaluation, the court may amend 162
the conditions of bail or recognizance and order the sheriff to 163
take the defendant into custody and deliver the defendant to a 164
center, program, or facility operated or certified by the 165
department of mental health and addiction services or the 166
department of developmental disabilities where the defendant may 167
be held for evaluation for a reasonable period of time not to 168

exceed twenty days. 169

(D) (1) A defendant who has not been released on bail or 170
recognizance may be evaluated at the defendant's place of 171
detention. 172

~~Upon~~ (2) Except as provided in division (E) of this 173
section, upon the request of the examiner, the court may order 174
the sheriff to transport the defendant to a program or facility 175
operated or certified by the department of mental health and 176
addiction services or the department of developmental 177
disabilities, where the defendant may be held for evaluation for 178
a reasonable period of time not to exceed twenty days, and to 179
return the defendant to the place of detention after the 180
evaluation. A municipal court may make an order under this 181
division only upon the request of a certified forensic center 182
examiner. 183

(E) The court shall not order a defendant to be held for 184
evaluation in a center, program, or facility operated by the 185
department of mental health and addiction services or the 186
department of developmental disabilities unless the defendant is 187
charged with a felony or an offense of violence. 188

(F) If a court orders the evaluation to determine a 189
defendant's mental condition at the time of the offense charged, 190
the court shall inform the examiner of the offense with which 191
the defendant is charged. 192

~~(F)~~ (G) In conducting an evaluation of a defendant's 193
mental condition at the time of the offense charged, the 194
examiner shall consider all relevant evidence. If the offense 195
charged involves the use of force against another person, the 196
relevant evidence to be considered includes, but is not limited 197

to, any evidence that the defendant suffered, at the time of the 198
commission of the offense, from the "battered woman syndrome." 199

~~(G)~~ (H) The examiner shall file a written report with the 200
court within thirty days after entry of a court order for 201
evaluation, and the court shall provide copies of the report to 202
the prosecutor and defense counsel. The report shall include all 203
of the following: 204

(1) The examiner's findings; 205

(2) The facts in reasonable detail on which the findings 206
are based; 207

(3) If the evaluation was ordered to determine the 208
defendant's competence to stand trial, all of the following 209
findings or recommendations that are applicable: 210

(a) Whether the defendant is capable of understanding the 211
nature and objective of the proceedings against the defendant or 212
of assisting in the defendant's defense; 213

(b) If the examiner's opinion is that the defendant is 214
incapable of understanding the nature and objective of the 215
proceedings against the defendant or of assisting in the 216
defendant's defense, whether the defendant presently is mentally 217
ill or has an intellectual disability and, if the examiner's 218
opinion is that the defendant presently has an intellectual 219
disability, whether the defendant appears to be a person with an 220
intellectual disability subject to institutionalization by court 221
order; 222

(c) If the examiner's opinion is that the defendant is 223
incapable of understanding the nature and objective of the 224
proceedings against the defendant or of assisting in the 225
defendant's defense, the examiner's opinion as to the likelihood 226

of the defendant becoming capable of understanding the nature 227
and objective of the proceedings against the defendant and of 228
assisting in the defendant's defense within one year if the 229
defendant is provided with a course of treatment; 230

(d) If the examiner's opinion is that the defendant is 231
incapable of understanding the nature and objective of the 232
proceedings against the defendant or of assisting in the 233
defendant's defense and that the defendant presently is mentally 234
ill or has an intellectual disability, the examiner's 235
recommendation as to the least restrictive placement or 236
commitment alternative, consistent with the defendant's 237
treatment needs for restoration to competency and with the 238
safety of the community. 239

(4) If the evaluation was ordered to determine the 240
defendant's mental condition at the time of the offense charged, 241
the examiner's findings as to whether the defendant, at the time 242
of the offense charged, did not know, as a result of a severe 243
mental disease or defect, the wrongfulness of the defendant's 244
acts charged. 245

~~(H)~~ (I) If the examiner's report filed under division ~~(G)~~ 246
(H) of this section indicates that in the examiner's opinion the 247
defendant is incapable of understanding the nature and objective 248
of the proceedings against the defendant or of assisting in the 249
defendant's defense and that in the examiner's opinion the 250
defendant appears to be a person with an intellectual disability 251
subject to institutionalization by court order, the court shall 252
order the defendant to undergo a separate intellectual 253
disability evaluation conducted by a psychologist designated by 254
the director of developmental disabilities. Divisions (C) to ~~(F)~~ 255
(G) of this section apply in relation to a separate intellectual 256

disability evaluation conducted under this division. The 257
psychologist appointed under this division to conduct the 258
separate intellectual disability evaluation shall file a written 259
report with the court within thirty days after the entry of the 260
court order requiring the separate intellectual disability 261
evaluation, and the court shall provide copies of the report to 262
the prosecutor and defense counsel. The report shall include all 263
of the information described in divisions ~~(G)~~(H) (1) to (4) of 264
this section. If the court orders a separate intellectual 265
disability evaluation of a defendant under this division, the 266
court shall not conduct a hearing under divisions (B) to (H) of 267
section 2945.37 of the Revised Code regarding that defendant 268
until a report of the separate intellectual disability 269
evaluation conducted under this division has been filed. Upon 270
the filing of that report, the court shall conduct the hearing 271
within the period of time specified in division (C) of section 272
2945.37 of the Revised Code. 273

~~(I)~~(J) An examiner appointed under divisions (A) and (B) 274
of this section or under division ~~(H)~~(I) of this section to 275
evaluate a defendant to determine the defendant's competence to 276
stand trial also may be appointed to evaluate a defendant who 277
has entered a plea of not guilty by reason of insanity, but an 278
examiner of that nature shall prepare separate reports on the 279
issue of competence to stand trial and the defense of not guilty 280
by reason of insanity. 281

(J) No statement that a defendant makes in an evaluation 282
or hearing under divisions (A) to ~~(H)~~(I) of this section 283
relating to the defendant's competence to stand trial or to the 284
defendant's mental condition at the time of the offense charged 285
shall be used against the defendant on the issue of guilt in any 286
criminal action or proceeding, but, in a criminal action or 287

proceeding, the prosecutor or defense counsel may call as a 288
witness any person who evaluated the defendant or prepared a 289
report pursuant to a referral under this section. Neither the 290
appointment nor the testimony of an examiner appointed under 291
this section precludes the prosecutor or defense counsel from 292
calling other witnesses or presenting other evidence on 293
competency or insanity issues. 294

(K) Persons appointed as examiners under divisions (A) and 295
(B) of this section or under division ~~(H)~~ (I) of this section 296
shall be paid a reasonable amount for their services and 297
expenses, as certified by the court. The certified amount shall 298
be paid by the county in the case of county courts and courts of 299
common pleas and by the legislative authority, as defined in 300
section 1901.03 of the Revised Code, in the case of municipal 301
courts. 302

Section 2. That existing sections 2945.37 and 2945.371 of 303
the Revised Code are hereby repealed. 304