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S.B. 58
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Judiciary

Primary Sponsor: Sen. Gavarone

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SUMMARY

- Prohibits a court from ordering a criminal defendant to undergo inpatient competency evaluations at certain facilities operated or certified by the state, unless the defendant is charged with a felony or offense of violence or unless the court determines that the defendant is in need of immediate hospitalization.
- If an evaluation of the defendant's mental condition at the time of the offense is conducted, allows the examination to be conducted through electronic means.
- Requires that the written report filed by the examiner be filed with the court under seal and requires the court to allow for inspection of the report by the defendant, the defendant's guardian, and any mental health professional involved in the treatment of the defendant, but the report is not open to public inspection.
- If the examiner gives a recommendation in the report as to the least restrictive placement or commitment alternative for the defendant due to the defendant's condition, the examiner must consider the housing needs and availability of mental health treatment in the community.
- If the court orders the defendant to undergo treatment or continuing evaluation and treatment, includes among the entities to which a defendant must be committed a county board of alcohol, drug addiction, and mental health services.
- Requires that the Department of Mental Health and Addiction Services, within 48 hours prior to placing the defendant, inform the court and the prosecutor of that placement, rather than obtaining court approval following a hearing.
- Requires the court, when determining the place of commitment for the defendant, to consider the availability of housing and supportive services, including outpatient mental health services.

- Allows the court, if the court or prosecutor files an affidavit for civil commitment for the defendant with the probate court, to enter an interim order of civil commitment for the defendant, pending a hearing in the probate court within 30 days and allows the court to appoint a limited guardian for the purpose of making treatment decisions.
- Specifies that the limited guardianship terminates upon the probate court's disposition of the affidavit for civil commitment.
- Allows the court, if the court or prosecutor files an affidavit for civil commitment in the probate court for a defendant who is charged with a specified felony and is found incompetent to stand trial, and after certain circumstances are met, to enter an interim order of civil commitment pending a hearing in the probate court.
- Appropriates \$250,000 for FYs 2020 and 2021 under the Department of Mental Health and Addiction Services to help pay the costs associated with the appointment of guardians.

DETAILED ANALYSIS

Procedure for court-ordered competency examinations

If the issue of a criminal defendant's competence to stand trial is raised or a defendant enters a plea of not guilty by reason of insanity, a court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. If a court orders an evaluation, the defendant must be available at the times and places established by the examiners who are to conduct the evaluation. The bill provides that the examiners may conduct the evaluation through electronic means.¹

The bill prohibits a court from ordering a defendant to undergo inpatient competency evaluations at a center, program, or facility operated by the Department of Mental Health and Addiction Services (DMHAS) or the Department of Developmental Disabilities (DODD), unless the defendant is charged with a felony or an offense of violence or unless the court determines that the defendant is in need of immediate hospitalization. Generally, an evaluation ordered by a municipal court must be conducted through community resources, such as a certified forensic center, court probation department, or community mental health services provider. A defendant who has not been released on bail or recognizance may be evaluated at the place of detention.²

If a defendant is charged with a felony or an offense of violence, the following provisions in current law would continue to apply:³

¹ R.C. 2945.371(A) and (C)(1).

² R.C. 2945.37(H) and 2945.371(D)(1) and (E).

³ R.C. 2945.371(C)(2) and (D)(2).

1. If a defendant who has been released on bail or recognizance refuses to submit to a competency examination, the court may order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by DMHAS or DODD.

2. If a defendant has not been released on bail or recognizance, upon the examiner's request, the court may order the sheriff to transport the defendant to a program or facility operated or certified by DMHAS or DODD. However, a municipal court may order the inpatient evaluation only upon the request of a certified forensic center examiner.

3. In both circumstances, above, the defendant may be held for inpatient evaluation for a reasonable period of time not exceeding 20 days.

Current law requires the examiner, in conducting an evaluation of the defendant's mental condition at the time of the offense charged, to consider all relevant evidence. The bill allows this examination to be conducted through electronic means.⁴ Current law also requires the examiner to file a written report with the court within 30 days after entry of a court order for evaluation. The court must provide copies of the report to the prosecutor and defense counsel. The bill requires that the written report be filed with the court under seal and requires the court to allow for inspection of the report by the defendant, the defendant's guardian, and any mental health professional involved in the treatment of the defendant, but the report must not be open to public inspection.⁵

Under current law, the report must include, in part, the examiner's findings, the facts in reasonable detail on which the findings are based, and, if the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or has an intellectual disability, the examiner's recommendation as to the least restrictive placement or commitment alternative, consistent with the defendant's treatment needs for restoration to competency and with the safety of the community. The bill requires that the examiner consider the housing needs and the availability of mental health treatment in the community.⁶

Place of commitment

Under current law, if a court orders a defendant to undergo treatment or continuing evaluation and treatment under Ohio law, the court order must specify that the defendant either must be committed to DMHAS for treatment or continuing evaluation and treatment at a hospital, facility, or agency, as determined to be clinically appropriate by DMHAS or must be committed to a facility certified by DMHAS as being qualified to treat mental illness, to a public or community mental health facility, or to a psychiatrist or other mental health professional for

⁴ R.C. 2945.371(G).

⁵ R.C. 2945.371(H).

⁶ R.C. 2945.371(H)(1), (2), and (3)(d).

treatment or continuing evaluation and treatment. Prior to placing the defendant, DMHAS must obtain court approval for that placement following a hearing. The bill includes among the entities to which a defendant must be committed a county board of alcohol, drug addiction, and mental health services and instead requires that DMHAS, within 48 hours prior to placing the defendant, inform the court and the prosecutor of that placement, rather than obtaining court approval following a hearing.⁷

Current law also provides that in determining the place of commitment, the court must consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and must order the least restrictive alternative available that is consistent with public safety and treatment goals. In weighing these factors, the court must give preference to protecting public safety. The bill requires the court to also consider the availability of housing and supportive services in weighing these factors and to consider the availability of housing and supportive services, including outpatient mental health services, when determining the place of commitment.⁸

Under current law, if the court conducts another hearing pursuant to R.C. 2945.38(H) to determine if the defendant is competent to stand trial and if the court finds that the defendant is incompetent to stand trial, if the most serious offense with which the defendant is charged is a misdemeanor or a felony other than certain specified felonies listed in R.C. 2945.38(C)(1), and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even with a course of treatment, or if the maximum time for treatment relative to that felony offense has expired, the court must dismiss the indictment, information, or complaint against the defendant. The court must discharge the defendant unless the court or prosecutor files an affidavit for civil commitment in the probate court. If such an affidavit is filed, the court may detain the defendant for ten days pending civil commitment.

The bill instead provides that if such an affidavit is filed, the court may enter an interim order of civil commitment for the defendant, pending a hearing in the probate court within 30 days, and the court may appoint a limited guardian for the defendant for the purpose of making mental health treatment decisions. The court has jurisdiction to appoint a guardian for the defendant notwithstanding anything to the contrary under R.C. 2101.24 (law regarding probate court jurisdiction). All of the requirements for a guardianship under Ohio law apply to a guardianship created under the bill except that a guardianship created under the bill terminates upon the probate court's disposition of the affidavit for civil commitment.⁹

The bill also appropriates \$250,000 in FY 2020 and in FY 2021 in new GRF line item 336428, Guardianships, under the Department of Mental Health and Addiction Services. The

⁷ R.C. 2945.38(B)(1)(b).

⁸ R.C. 2945.38(B)(1)(b).

⁹ R.C. 2945.38(H)(4).

line item will be used to help pay the costs associated with the appointment of such guardians.¹⁰

Expiration of maximum time limit for treatment of incompetency – affidavit for civil commitment

Under current law, if a defendant who is charged with a specified felony offense under R.C. 2945.38(C)(1) is found incompetent to stand trial, after the expiration of the maximum time for treatment or after the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, the court or the prosecutor may file an affidavit in probate court for the defendant's civil commitment in the manner provided in R.C. Chapter 5122 or 5123. If the court or prosecutor files such an affidavit, the court may detain the defendant for ten days pending civil commitment. The bill instead allows the court, if such an affidavit is filed, to enter an interim order of civil commitment for the defendant pending a civil commitment hearing in the probate court that must be held within 30 days.¹¹

HISTORY

Action	Date
Introduced	02-21-19
Reported, S. Judiciary	10-09-19

S0058-RS-133/ts

¹⁰ Sections 3 and 4.

¹¹ R.C. 2945.39(A)(1).