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Bill Analysis
Legislative Service Commission

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Reps. Flannery, Jerse, Boyd, Jones, Barrett, Van Vyven, Ford, DePiero, Allen, Britton, Patton

BILL SUMMARY

- Requires the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to establish and maintain a database for the storage and retrieval of the information relating to persons who have been found to be mentally ill persons subject to hospitalization by court order or to be mentally retarded persons subject to institutionalization by court order, including persons who are found to be such persons and have been found incompetent to stand trial or not guilty by reason of insanity.
- Requires clerks of trial courts of record to send to the Superintendent a weekly report containing a summary of each case involving any person described in the prior paragraph.
- Requires the Superintendent to establish and operate a statewide toll-free telephone line for the purpose of receiving requests for a mental competence records check.
- Requires a federally licensed firearms dealer or an authorized employee of the dealer, at the time of the sale or transfer of a firearm to any person by the dealer and prior to the completion of the sale or transfer, to call that toll-free telephone line and request a mental competence records check relating to the person who intends to purchase or acquire the firearm.
- Requires the Superintendent, upon receiving such a request, to conduct a mental competence records check and inform the federally licensed firearms dealer or authorized employee whether the person who is the subject of the request is prohibited from acquiring, having, carrying, or using any firearm.

- Prohibits the dealer or employee from completing the sale or transfer if BCII informs the dealer that the person is prohibited from acquiring, having, carrying, or using any firearm.
- Specifies that the information and other data furnished to the Superintendent and stored in the database are not public records and are confidential.
- Prohibits a person who, because of that person's employment or official position, has access to the mental competence database information or data or to the information and password obtained by a federally licensed firearms dealer from knowingly disclosing the information, data, or password to any agency or person that is not entitled to receive it or knowingly using the information, data, or password for any purpose other than as authorized under the bill.
- Prohibits a person without authorization or privilege to obtain information or other data in the database from purposely obtaining any information or data from that database.
- Authorizes any person who has been found by a court to be incompetent to stand trial or not guilty by reason of insanity (NGRI) and to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order and any other person who is found to be such a mentally ill or mentally retarded person and who subsequently is released or discharged from hospitalization or institutionalization to obtain a letter written and signed by a psychiatrist or a licensed physician indicating that the person is no longer a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order and authorizes the person to forward the letter to the clerk of the court in which the person was found incompetent to stand trial or NGRI.
- Requires the Superintendent to expunge from the mental competence database all of the information and other data pertaining to a person upon receiving the date of the release or discharge from hospitalization or institutionalization or the date of final termination of the person's commitment *and* a copy of the letter described in the previous dotpoint.

- Authorizes the Attorney General to adopt rules and the Superintendent of BCII to adopt standard forms to implement the bill.

TABLE OF CONTENTS

Existing prohibitions against mentally incompetent person obtaining firearm or dangerous ordnance	3
Establishment of mental competence database	4
Reporting of information.....	5
Mental competence records checks	6
Confidentiality of database information; prohibitions.....	7
Expungement of data from the mental competence database	8
Duties of the Superintendent	8
Letter indicating that the person is no longer subject to hospitalization or institutionalization by court order.....	8
Miscellaneous	9
Attorney General rules	9
BCII forms	10
Conforming changes.....	10
Background.....	10
Definitions	10
Mentally ill person subject to hospitalization by court order.....	11
Mentally retarded person subject to institutionalization by court order	12
Incompetency to stand trial.....	14
Not guilty by reason of insanity.....	15

CONTENT AND OPERATION

Existing prohibitions against mentally incompetent person obtaining firearm or dangerous ordnance

R.C. 2923.13(A)(5) prohibits a person from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, if the person is under adjudication of mental incompetence. A person who violates the prohibition is guilty of having weapons while under disability and is guilty of a felony of the fifth degree. (R.C. 2923.13(C).)

R.C. 2923.20(A)(1) in pertinent part prohibits a person from recklessly selling, lending, giving, or furnishing any firearm or dangerous ordnance to any person prohibited by R.C. 2923.13 from acquiring or using any firearm or dangerous ordnance. R.C. 2923.20(A)(2) prohibits any person from possessing any firearm or dangerous ordnance with purpose to dispose of it in violation of

R.C. 2923.20(A)(1). A person who violates either prohibition is guilty of unlawful transactions in weapons and is guilty of a felony of the fourth degree (R.C. 2923.20(B)).

R.C. 2923.18 authorizes county sheriffs and safety director and municipal police chiefs to issue to qualified applicants a license or temporary permit to acquire, possess, carry, or use dangerous ordnance. The issuing authority is prohibited from issuing a license if the applicant is prohibited by law from acquiring, having, carrying, or using dangerous ordnance. (R.C. 2923.18(A) and (C).)

For the purposes of R.C. 2923.18 and 2923.20 under existing law, it is unclear how one discovers whether a person is under a disability from obtaining, acquiring, having, carrying, or using any firearm or dangerous ordnance by reason of the person's adjudication as a mental incompetent.

Establishment of mental competence database

Under the bill, the Superintendent of the Bureau of Criminal Identification and Investigation (the Superintendent) must obtain and record information and other data that is pertinent to the following (R.C. 109.574(B)):

(1) All persons who have been found to be mentally ill persons subject to hospitalization by court order (see "**Background**," below);

(2) All persons who have been found to be mentally retarded persons subject to institutionalization by court order (see "**Background**," below);

(3) All persons who have been charged with an offense, found incompetent to stand trial or not guilty by reason of insanity, and found to be mentally ill persons subject to hospitalization by court order or mentally retarded persons subject to institutionalization by court order (see "**Background**," below).

The bill authorizes the Superintendent to establish and maintain a database and database processing center for the storage and retrieval of the information and data sent to the Bureau of Criminal Identification and Investigation (BCII) pertaining to the persons described in (1), (2), and (3) above (mental competence database) (R.C. 109.574(E)).

Reporting of information

Under the bill, every clerk of a court of record, other than the Supreme Court or a court of appeals, must send to the Superintendent a weekly report containing a summary of each case involving any person described above in

"Establishment of mental competence database." The clerk of the court of common pleas must include in the report all applicable information described below regarding a case before the court of appeals that is served by that clerk. The clerk must write each summary on standard forms furnished by the Superintendent (BCII forms) (see also "**Miscellaneous--BCII forms**," below). (R.C. 109.574(C).) A summary must not include the name or address of the person involved but must include the following information (R.C. 109.574(C), 5122.151(B), 5123.761(B), and 2945.403(B)):

- (1) The case or incident tracking number contained on the BCII forms;
- (2) The number of the case;
- (3) The social security number of the person involved;

(4) With respect to a person who has been found to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order and who has not been found incompetent to stand trial or NGRI, the following additional information: (a) the date of the filing of the affidavit in probate court for hospitalization of the mentally ill person by court order or for institutionalization of the mentally retarded person by court order, (b) the date of the court order finding the person a mentally ill person subject to hospitalization or a mentally retarded person subject to institutionalization, (c) if applicable, the date of the release or discharge from hospitalization of the mentally ill person or of the release or discharge from institutionalization of the mentally retarded person, and (d) if the clerk of the court has received from the person involved a letter written and signed by a psychiatrist indicating that the person is no longer a mentally ill person subject to hospitalization by court order or a letter written and signed by a licensed physician indicating that the person involved is no longer a mentally retarded person subject to institutionalization by court order, a copy of the letter (see "**Expungement of data from the mental competence database**," below).

(5) With respect to a person who has been charged with an offense, found incompetent to stand trial or not guilty by reason of insanity, and found to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the following additional information: (a) a statement of the offense of which the person was originally charged and the Revised Code section or municipal ordinance that the person allegedly violated, (b) the dates of the court orders finding the person incompetent to stand trial or not guilty by reason of insanity and finding the person a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, (c) if applicable, the date of the final

termination of commitment of the person, and (d) if the clerk of the court has received from the person involved a letter written and signed by a psychiatrist indicating that the person is no longer a mentally ill person subject to hospitalization by court order or a letter written and signed by a licensed physician indicating that the person is no longer a mentally retarded person subject to institutionalization by court order, a copy of the letter (see "*Expungement of data from the mental competence database*," below).

Mental competence records checks

The bill authorizes the Superintendent to establish and operate a statewide toll-free telephone line for the purpose of receiving requests for a mental competence records check. The Superintendent must establish a secure password for accessing information from the mental competence database for the purpose of responding to a request for a mental competence records check. The Superintendent generally must not provide the password to any person except that, upon the written request of a federally licensed firearms dealer, the Superintendent must provide the password to the dealer. The Superintendent may charge a reasonable fee for performing a mental competence records check and providing information to a dealer. (R.C. 109.575(A)(1) and (4).)

At the time of the sale or transfer of a firearm to any person by a federally licensed firearms dealer and prior to the completion of the sale or transfer, the federally licensed firearms dealer or an authorized employee of the dealer must call the toll-free telephone number established by the Superintendent to request a mental competence records check relating to the person who intends to purchase or acquire the firearm. At the time of the call, the dealer or employee must give the password provided by BCII. (R.C. 2923.201(A).)

Upon receipt of the request, the Superintendent immediately must review or cause to be reviewed any relevant information in the mental competence database that relates to the person who is the subject of the request and must do one of the following depending upon the result of the mental competence records check (R.C. 109.575(A)(2)):

(1) Inform the dealer or employee making the request that the person who intends to purchase or acquire the firearm is under the disability of being under an adjudication of mental incompetence and therefore is prohibited from acquiring, having, carrying, or using any firearm;

(2) If the person who intends to purchase or acquire the firearm is not prohibited by reason of being under the disability of being under an adjudication of mental incompetence from acquiring, having, carrying, or using any firearm,

provide the dealer or employee making the request with a unique approval number for the purchase or transfer of the firearm.

The dealer or employee must not complete the sale or transfer of a firearm to the person who intends to purchase or acquire the firearm if BCII informs the dealer pursuant to the bill's provisions that the person who intends to purchase or acquire the firearm is prohibited by reason of being under an adjudication of mental incompetence from acquiring, having, carrying, or using any firearm (R.C. 2923.201(B)).

If the Superintendent is unable to perform an instant mental competence records check and make an appropriate response due to electronic failure, scheduled computer downtime, or a similar event beyond the control of the Superintendent, the Superintendent immediately must inform the dealer or employee making the request of the reason for and the estimated length of the delay. Upon cessation of the electronic failure, scheduled computer downtime, or similar event, the Superintendent immediately must perform the mental competence records check and make the appropriate response. The Superintendent must respond no later than two business days after receiving the request. (R.C. 109.575(A)(3).)

Confidentiality of database information; prohibitions

The bill specifies that the information and other data furnished to the Superintendent and stored in the database are not public records. Any information obtained by a federally licensed firearms dealer or an authorized employee of that dealer, including, but not limited to, the password provided to the dealer, is confidential and must not be released or disseminated except as specified in the bill. (R.C. 109.575(B)(1), 149.43(A)(1)(s), 5122.31(N), and 5123.89(A)(4).)

The bill also prohibits a person who because of that person's employment or official position has access to the information and other data furnished to the Superintendent for placement in the database or to the information and password obtained by a federally licensed firearms dealer from doing either of the following (R.C. 109.575(B)(2)):

(1) Knowingly disclosing the information, data, or password to any agency or person that is not entitled to receive it;

(2) Knowingly using the information, data, or password for any purpose other than as authorized under the bill.

A person who violates this prohibition is guilty of unlawful disclosure or use of mental competence database information, a misdemeanor of the first degree (R.C. 109.99(E)(1)).

The bill also prohibits a person, without authorization or privilege to obtain information or other data in the database, from purposely obtaining any information or data from that database. A person who violates this prohibition is guilty of unlawful possession of mental competence database information, a misdemeanor of the first degree. (R.C. 109.575(B)(3) and 109.99(E)(2).)

Expungement of data from the mental competence database

Duties of the Superintendent

The Superintendent must expunge from the mental competence database all of the information and other data pertaining to a person upon receiving the date of the release or discharge from hospitalization or institutionalization or the date of final termination of the person's commitment *and* a copy of a psychiatrist's or licensed physician's letter indicating that the person is no longer a mentally ill person subject to hospitalization by court order or is no longer a mentally retarded person subject to institutionalization by court order (R.C. 109.574(E)).

Letter indicating that the person is no longer subject to hospitalization or institutionalization by court order

Mentally ill person subject to hospitalization by court order. Under the bill, any person who has been found by a court to be a mentally ill person subject to hospitalization by court order and who subsequently is released or discharged from hospitalization pursuant to the Hospitalization of Mentally Ill Law may obtain a letter written and signed by a psychiatrist indicating that the person is no longer a mentally ill person subject to hospitalization by court order and may forward the letter to the clerk of the court. In the weekly reports described above under "**Establishment of mental competence database--reporting of information.**" the clerk of the court must send the letter to the Superintendent. The clerk must disclose this otherwise confidential information only to the extent required by the bill. The bill contains a parallel provision for a person who has been found incompetent to stand trial or not guilty by reason of insanity and to be a mentally ill person subject to hospitalization by court order. (R.C. 2945.403(A)(1), 5122.151(A), and 5122.31(N).)

Mentally retarded person subject to institutionalization by court order. Under the bill, any person who has been found by the court to be a mentally retarded person subject to institutionalization by court order and who subsequently is released or discharged from institutionalization pursuant to the MRDD Law may

obtain a letter written and signed by a licensed physician indicating that the person is no longer a mentally retarded person subject to institutionalization by court order and forward the letter to the clerk of the court. In the weekly reports described above under "*Establishment of mental competence database--reporting of information*," the clerk of the court must send the letter to the Superintendent. The clerk must disclose this otherwise confidential information only to the extent required by the bill. The bill contains a parallel provision for a person who has been found incompetent to stand trial or not guilty by reason of insanity and to be a mentally retarded person subject to institutionalization by court order. (R.C. 2945.403(A)(2), 5123.761(A), and 5123.89(A)(4).)

Miscellaneous

Attorney General rules

The bill requires the Attorney General to adopt rules in accordance with the Administrative Procedure Act to implement the creation of the mental competence database and the instant mental competence records check (R.C. 109.575(C)). The rules must include, but are not limited to, the following (R.C. 109.575(C)):

(1) The hours and days of operation of the statewide toll-free telephone line;

(2) The manner of establishing a secure password and providing the password to a federally licensed firearms dealer;

(3) The procedure by which a federally licensed firearms dealer may request a mental competence records check relating to a person who intends to purchase or acquire a firearm from the dealer. The procedure must ensure that only a federally licensed firearms dealer or an authorized employee of the dealer may request and receive the relevant information from the mental competence records check relating to a person who intends to purchase or acquire a firearm from the dealer.

(4) The procedure by which any authorized BCII employee may receive or release information or data gathered by the Superintendent pursuant to the bill's provisions;

(5) The amount of a reasonable fee that may be charged for the mental competence records check.

BCII forms

The bill requires the Superintendent to prepare and furnish to every clerk of a court of record, other than the Supreme Court or a court of appeals, standard forms for reporting the information required under "**Information to be reported.**" The standard forms may be in a tangible format, in an electronic format, or in both tangible format and electronic format. (R.C. 109.574(D).)

Conforming changes

The bill makes a number of conforming changes of a technical nature (R.C. 2945.37(A), 5122.011, 5122.403, and 5123.011 (renumbered to be 5123.013)).

Background

Definitions

Federally licensed firearms dealer. "Federally licensed firearms dealer" means an importer, manufacturer, or dealer that has a license to deal in destructive devices or their ammunition, issued and in effect pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 923, and any amendments or additions to that act or reenactments of that act (R.C. 2923.11(N)).

Firearm. "Firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable. (R.C. 2923.11(B).)

Licensed physician. "Licensed physician" means a person who holds a valid certificate issued by the State Medical Board authorizing the person to practice medicine and surgery or osteopathic medicine and surgery, or a medical officer of the government of the United States while in the performance of the officer's official duties (R.C. 109.574(A)(2) and 2945.37(A)(8), by reference to R.C. 5123.01(I)--not in the bill).

Psychiatrist. "Psychiatrist" means a licensed physician who has satisfactorily completed a residency training program in psychiatry, as approved by the residency review committee of the American Medical Association, the committee on post-graduate education of the American Osteopathic Association, or the American Osteopathic Board of Neurology and Psychiatry, or who on July 1, 1989, has been recognized as a psychiatrist by the Ohio State Medical Association or the Ohio Osteopathic Association on the basis of formal training and five or more years of medical practice limited to psychiatry (R.C.

109.574(A)(4) and 2945.37(A)(7), by reference to R.C. 5122.01(E)--not in the bill).

Mentally ill person subject to hospitalization by court order

"Mentally ill person subject to hospitalization by court order" means a mentally ill person who, because of the person's illness (R.C. 109.574(A)(4) and 2945.37(A)(7), by reference to R.C. 5122.01(B)--not in the bill):¹

(1) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;

(2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;

(3) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community;

(4) Would benefit from treatment in a hospital for his mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or himself.

Existing law specifies procedures by which a probate court may order a mentally ill person into hospitalization. Generally, proceedings for the hospitalization of a mentally ill person subject to hospitalization by court order are commenced by the filing of an affidavit by any person in a prescribed form with the probate court. Upon receipt of the affidavit, the court must send certain statutorily specified notices and investigate the allegation. Existing law specifies the procedures that must be followed to adjudicate a person to be a mentally ill person subject to hospitalization by court order and grants the person who is the subject of the hearings certain rights.

If, after a full hearing, the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order, the

¹ "Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life (R.C. 5122.01(A)--not in the bill).

court must order the person to receive treatment for a period not to exceed 90 days. During the 90-day period, the person or entity treating the person must examine and treat the person. If the person or entity determines that the person's needs could be equally well met in an available and appropriate less restrictive environment, the person or entity must notify the court and other specified persons and release the person; the court must then dismiss the case or order placement in the least restrictive environment. At least ten days before the end of the 90-day period, the alcohol, drug addiction, and mental health services board or the prosecutor may file an application for continued commitment. The court must hold a full hearing on an application for continued commitment at the expiration of the 90-day period and at least every two years after the expiration of that period. If the court, after a hearing for continued commitment, finds clear and convincing evidence that the respondent is a mentally ill person subject to hospitalization by court order, the court may order continued commitment. (R.C. 5122.11 through 5122.15--not in the bill.)

Mentally retarded person subject to institutionalization by court order

"Mentally retarded person subject to institutionalization by court order" means a person 18 years of age or older who is at least moderately mentally retarded and in relation to whom, because of the person's retardation, either of the following conditions exist (R.C. 109.574(A)(2) and 2945.37(A)(8), by reference to R.C. 5123.01(L)--not in the bill):²

(1) The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community;

(2) The person needs and is susceptible to significant habilitation in an institution.

Existing law specifies procedures by which a probate court may order a mentally retarded person into institutionalization. Proceedings for the institutionalization of a mentally retarded person by court order are commenced by the filing of an affidavit with the probate court of the county in which the mentally

² "A person who is at least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate degree and to be functioning at the moderate level of intellectual functioning in accordance with standard measurements as recorded in the most current revision of the manual of terminology and classification in mental retardation published by the American Association on Mental Retardation (R.C. 5123.01(M)--not in the bill).

retarded person is located or institutionalized. Prior to filing the affidavit commencing the proceedings, the affiant must request the county board of mental retardation and developmental disabilities assess the individual's needs. Within 30 days, the board must complete the assessment and provide the person a report of its findings and recommendations. After receipt of the affidavit, the court must send certain statutorily specified notices. Existing law specifies the procedures that must be followed to adjudicate a person to be a mentally retarded person subject to institutionalization by court order and grants the person who is the subject of the hearing certain rights.

If, after a full hearing, the court finds by clear and convincing evidence that the person is a mentally retarded person subject to institutionalization by court order, the court may order the person to be cared for and assessed for a period of 90 days or may order the person discharged. If, at any time, the person or entity having care of the person determines that the person could be equally well habilitated in an available less restrictive environment, the person or entity must release the person and refer the person to the court together with the person's or entity's findings and recommendations and notify specified other persons of this action. The court then must dismiss the case or order placement in the less restrictive environment.

If, at the end of the commitment period, the person has not already been discharged or had requested voluntary admission status, the person or entity having care of the person must discharge the person. At least ten days before the end of the 90-day period, a representative of the Director of Mental Retardation and Developmental Disabilities or the prosecution may file an application with the court for continued commitment. The court must hold a full hearing on the first application for continued commitment at the expiration of the 90-day period. The court may order subsequent periods of commitment not to exceed 180 days if the Director of Mental Retardation and Developmental Disabilities files an application for continued commitment and a hearing (in certain circumstances). A mandatory hearing must be held at least every two years after the initial commitment. If the court determines that the person is a mentally retarded person subject to institutionalization by court order, the court may order the person to continue to be cared for or may order the person discharged. If a person is a mentally retarded person subject to institutionalization by court order because the person needs and is susceptible to significant habilitation in an institution, the person may not be held under involuntary commitment for more than five years. (R.C. 5123.71 through 5123.76--not in the bill.)

Incompetency to stand trial

A defendant is incompetent to stand trial when the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense (R.C. 2945.37(G)--not in the bill). A defendant who is alleged to be incompetent to stand trial must undergo a mental evaluation and receive a hearing on the defendant's competence. If the court finds the defendant to be incompetent to stand trial, the court must order the defendant to undergo treatment at specified facilities or with specified types of persons. Existing law specifies the maximum periods the court may order the defendant to be treated, with the longest period being one year. Existing law also provides that the defendant may not be voluntarily admitted to a hospital or institution under the Mental Health or the Mental Retardation and Developmental Disabilities Law. The person supervising the defendant's treatment must file a written report with the court whenever the person believes the defendant to be competent and at specified other times. After the filing of the written report, the court must hold another hearing to determine whether the defendant is competent to stand trial.

If, after the maximum period for treatment has expired, the court still finds the defendant to be incompetent to stand trial, the court generally must dismiss the charges against the defendant.³ The court must discharge the defendant unless the court or prosecutor files an affidavit in probate court for the civil commitment of the defendant as a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to hospitalization by court order.

If, after the maximum period for treatment has expired, the court still finds the defendant to be incompetent to stand trial and if the defendant has been charged with aggravated murder, murder, an offense of violence for which a sentence of death or life imprisonment may be imposed, an offense of violence that is a felony of the first or second degree, a conspiracy to commit, attempt to commit, or complicity in the commission of any of those offenses, and if the conspiracy, attempt, or complicity is a felony of the first or second degree, one of the following applies:

(1) The court or the prosecutor may file an affidavit in probate court for civil commitment of the defendant as a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order.

³ *The dismissal is not a bar for further prosecution based on the same conduct (R.C. 2945.38(H)(4)--not in the bill).*

(2) On the motion of the prosecutor or in its own motion, the court may retain jurisdiction over the defendant if, at a hearing, the court finds, by clear and convincing evidence, that the defendant committed the offense with which the defendant is charged and that the defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. If, at the hearing, the court does not make both of these findings, the court must dismiss the charges against the defendant and must discharge the defendant, unless the prosecutor or the probate court files an affidavit in probate court for civil commitment of the defendant as a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. If the court makes both of the findings, the court may commit the defendant to an appropriate facility.

Not guilty by reason of insanity

A person who is charged with an offense may plead not guilty by reason of insanity (R.C. 2943.03(E)--not in the bill). If a criminal defendant is found not guilty by reason of insanity, the verdict must state that finding, and the trial court must conduct a full hearing to determine whether the defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. The court must hold the hearing within ten court days after finding the defendant to be not guilty by reason of insanity. Failure to conduct the hearing within the ten-day period causes the immediate discharge of the defendant, unless the judge grants a continuance for not longer than ten court days for good cause shown or for any period of time upon motion of the respondent. Existing law grants the defendant certain rights regarding these hearings and requires the court to inform the defendant of those rights. Existing law also specifies how the proceedings must be conducted.

Upon completion of the hearing, if the court finds there is not clear and convincing evidence that the defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the court generally must discharge the defendant. If the court finds by clear and convincing evidence that the defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, it must commit the defendant to a hospital operated by the Department of Mental Health, a facility operated by the Department of Mental Retardation and Developmental Disabilities, or another medical or psychiatric facility, as appropriate. Existing law prohibits the defendant from being voluntarily admitted to the hospital or institution under the Mental Health or Mental Retardation and Developmental Disabilities Law. (R.C. 2945.40--not in the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
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