



H.B. 137

124th General Assembly
(As Introduced)

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S. Smith**

BILL SUMMARY

- Requires the Franklin County Municipal Court to designate one of its judges as the Franklin County Municipal Court Mental Health Court judge.
- Requires the Mental Health Court judge to accept any criminal action or "qualified misdemeanor case" assigned or transferred to the judge and grants the judge jurisdiction and full authority over that action or case.
- Establishes procedures for the administration of the Mental Health Court and the Mental Health Court's workload and requires the Franklin County Municipal Court to adopt rules governing practice and procedure before the Mental Health Court.
- Permits certain persons to request the Franklin County Municipal Court to assign or transfer a case to the Mental Health Court judge in certain circumstances and enumerates the circumstances in which the case must be so assigned or transferred.
- Requires the Mental Health Court judge, upon the assignment or transfer of a qualified misdemeanor case to the judge, to stay all criminal proceedings in the case and hold an expedited hearing to determine if there is "reasonable cause to believe that the defendant is a mentally ill person or a mentally retarded person."
- If, at the conclusion of the reasonable cause hearing described in the preceding dotpoint, the Mental Health Court judge determines that there is reasonable cause to believe that the defendant is a mentally ill person or a mentally retarded person, requires the judge to order an evaluation of

the mental condition of the defendant by an examiner designated by the judge.

- Requires Columbus City Council to pay for the evaluation described in the preceding dotpoint and related expenses.
- Requires the Mental Health Court judge, within seven days of receiving the examiner's written report, to hold a hearing on the report, and authorizes the judge, at the conclusion of the hearing, to do one of the following, depending upon the circumstances present: (1) transfer the case to the criminal division of the Franklin County Municipal Court for prosecution of the defendant for the qualified misdemeanor, (2) file an involuntary commitment petition in the Franklin County Probate Court and dismiss the proceedings in the qualified misdemeanor case and discharge the defendant, or (3) proceed with the prosecution of the defendant for the qualified misdemeanor, subject to the bill's treatment in lieu of conviction provisions.
- Upon proceeding with the prosecution of the defendant under clause (3) of the preceding dotpoint, if the defendant has not entered a plea and prior to the entry of a plea of guilty to the qualified misdemeanor charge or if the Mental Health Court judge, at the conclusion of trial, finds that there is proof beyond a reasonable doubt that the defendant committed the qualified misdemeanor, in lieu of conviction, requires the judge to order the defendant to undergo a period of treatment in accordance with the examiner's recommendation.
- Requires the person who supervises the treatment of the defendant described in the preceding dotpoint to file a written report with the Mental Health Court judge at the following times: (1) whenever the person believes, based upon an examiner's evaluation of the defendant's mental condition, that the defendant has successfully completed the treatment and the likelihood of the defendant engaging in additional criminal activity has been substantially reduced, (2) at a minimum, after every 30 days of treatment, and (3) upon the termination of the period of treatment ordered by the Mental Health Court judge.
- If the report described in the preceding dotpoint indicates that the defendant has successfully completed the treatment and the likelihood of the defendant engaging in additional criminal activity has been substantially reduced, requires the Mental Health Court judge to hold a

hearing on the report and authorizes the judge, at the conclusion of the hearing, depending upon the circumstances present, to: (1) dismiss the proceedings in the qualified misdemeanor case and discharge the defendant or (2) order that the treatment be continued until the expiration of the period of treatment as ordered by the judge.

- If the 30-day report described in the second preceding dotpoint indicates that the defendant has violated any condition of the treatment plan, requires the Mental Health Court judge to hold a hearing on the report and, at the conclusion of the hearing, authorizes the judge, depending upon the circumstances present to: (1) enter a finding of guilty and impose an appropriate sanction under the law or municipal ordinance that was violated or (2) continue the period of treatment.
- If the report described in the third preceding dotpoint is the report filed upon the termination of the period of treatment ordered by the Mental Health Court judge, authorizes the judge, depending upon the circumstances present, to: (1) continue treatment until the expiration of the maximum period for the treatment specified in the bill, or (2) if the maximum period has expired, enter a finding of guilty and impose an appropriate sanction under the law or municipal ordinance that was violated but permits the judge to suspend any term of imprisonment under certain circumstances.
- Authorizes the Mental Health Court judge to appoint specified employees, officers, and case managers, requires the judge to appoint a Mental Health Court monitor and a Mental Health Court liaison, and establishes the responsibilities of the Mental Health Court monitor, Mental Health Court liaison, and any case managers.
- Makes conforming changes throughout the Revised Code to reflect the creation of the Franklin County Municipal Court Mental Health Court.

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CONTENT AND OPERATION

Designation of Franklin County Municipal Court Mental Health Court judge; jurisdiction, powers, and duties

The bill requires the Franklin County Municipal Court to designate one of its judges as the Mental Health Court judge of the Franklin County Municipal Court, and specifies that the successors to that designated judge are to be elected and designated as Mental Health Court judges of the Franklin County Municipal Court. The Mental Health Court judge and that judge's successors will have the authority and exercise the duties provided in the bill.

The Mental Health Court judge must accept any criminal action or "qualified misdemeanor case" (see "**Definitions of terms used in the bill,**" below) assigned or transferred to the Mental Health Court judge under the bill's provisions. After that acceptance, the Mental Health Court judge has full authority over the action or case, including, but not limited to, the authority to order mental health evaluations and treatment, conduct hearings and trials, make findings and dispositions, render judgments, pronounce sentence, and conduct all proceedings related to the action or case.

If the administrative judge of the Franklin County Municipal Court determines that the volume of cases pending before the Mental Health Court judge does not constitute a sufficient caseload for the Mental Health Court judge, the administrative judge must assign individual cases to the Mental Health Court judge from the general docket of the Court. The administrative judge must cease the assignments when the administrative judge determines that the volume of cases pending before the Mental Health Court judge constitutes a sufficient caseload for the Mental Health Court judge.

If the Mental Health Court judge is on vacation, is sick or absent, or is unavailable because of recusal or another reason, the administrative judge of the Franklin County Municipal Court must assign another judge of the Court to handle any case or proceeding or, if necessary, all cases and proceedings before the Mental Health Court judge during the time that the Mental Health Court judge is unavailable. The Franklin County Municipal Court by rule may adopt procedures for another judge of the Court to handle particular proceedings arising out of cases

assigned or transferred to the Mental Health Court judge under the bill's provisions when the Mental Health Court judge is unable for any reason to handle a particular proceeding at the time, or within the time period, necessary for a timely or appropriate disposition of the proceeding. Upon the adoption of and in accordance with those rules, any judge of the Franklin County Municipal Court may handle any proceeding that arises out of cases assigned or transferred to the Mental Health Court judge. (R.C. 1901.082(A) to (D).)

Under the bill, the Franklin County Municipal Court Mental Health Court judge has jurisdiction of any criminal case assigned or transferred to that judge under the bill's provisions. Except as provided in the preceding paragraph, no judge of the Franklin County Municipal Court other than the Mental Health Court judge is permitted to hear or determine any criminal case or proceeding over which the Mental Health Court judge has jurisdiction. In all criminal cases or proceedings over which the Mental Health Court judge has jurisdiction, the judge must proceed as provided in the bill's provisions. The jurisdiction of the Mental Health Court judge over any criminal case assigned or transferred to that judge terminates upon the completion of the proceedings in that case or, if applicable, under the existing Incompetent to Stand Trial Law or the Not Guilty by Reason of Insanity Law or the transfer of the case to the criminal division of the Franklin County Municipal Court under the bill's provisions. (R.C. 1901.20(D).)

Practice and procedure in municipal court

Existing law specifies that in a criminal case or proceeding in municipal court, the practice, procedure, and mode of bringing and conducting prosecutions for offenses is as provided in the Criminal Rules, and the power of the court in relation to the prosecution is the same as the power that is conferred upon county courts (R.C. 1901.21(A)).

The bill requires the Franklin County Municipal Court by rule to adopt procedures necessary to implement the bill, and subjects the existing provision described in the preceding paragraph to these procedures with respect to criminal cases in the Franklin County Municipal Court. (R.C. 1901.082(E) and 1901.21(A).)

Assignment or transfer of cases to the Mental Health Court judge

Incompetent to Stand Trial or Not Guilty by Reason of Insanity cases

Under the bill, in a criminal action in the Franklin County Municipal Court, if the issue of the defendant's competence to stand trial is raised or the defendant enters a plea of not guilty by reason of insanity, the Court must order the clerk of the court to transfer the case to the Mental Health Court judge for further

proceedings in the action. The Mental Health Court judge then must proceed in accordance with the bill's provisions and the existing Incompetent to Stand Trial and Not Guilty by Reason of Insanity Laws. (R.C. 1901.083(A).)

Qualified misdemeanor cases

Upon the initial appearance in the Franklin County Municipal Court of a defendant who is charged with a qualified misdemeanor or at any time before or during the trial, if the issue of the defendant's competence to stand trial is not raised or the defendant does not enter a plea of not guilty by reason of insanity, any of the following persons may request the Court to assign or transfer the case to the Mental Health Court judge if the person knows or has reason to believe that the defendant is a "mentally ill person" or a "mentally retarded person" (see "**Definitions of terms used in the bill,**" below, for definitions of the terms in quotation marks):

- (1) The defendant or the defendant's counsel;
- (2) The "prosecutor" or other law enforcement officer involved in the arrest or prosecution of the defendant for the qualified misdemeanor;
- (3) An officer of the "detention facility" in which the defendant is confined pending the posting of "bail" or prosecution of the case;
- (4) A "family or household member" of the defendant;
- (5) Any other person who knows or has reason to believe that the defendant is a mentally ill person or a mentally retarded person.

Upon the request of such a person or upon the judge's own initiative if the judge knows or has reason to believe that the defendant is a mentally ill person or a mentally retarded person, the judge before whom the defendant initially appears or who is conducting the trial or other proceedings in the case must order the clerk of the Court to assign or transfer the case to the Mental Health Court judge for proceedings in accordance with the bill.

Upon the assignment or transfer of the case, the defendant may waive the arraignment, unless the arraignment has already occurred. The period within which the defendant must be brought to trial as required by the existing Speedy Trial Law is suspended, unless the defendant's counsel objects to the suspension. (R.C. 1901.083(B) to (D).)

Reasonable cause hearing

Upon the assignment or transfer of a qualified misdemeanor case to the Mental Health Court judge, the Mental Health Court judge must stay all criminal proceedings in the case and hold an expedited hearing to determine if there is reasonable cause to believe that the defendant is a mentally ill person or a mentally retarded person. "Reasonable cause to believe that the defendant is a mentally ill person or a mentally retarded person" includes, but is not limited to, any of the following circumstances:

(1) The defendant has a previous or current diagnosis of mental illness or mental retardation.

(2) The defendant has manifested obvious signs of mental illness or mental retardation during the defendant's arrest, proceedings after arrest, or confinement in a detention facility or before any court.

(3) The defendant has a history of mental illness or mental retardation, and the defendant's current or past behavior, or both, is driven by mental illness or mental retardation.

At the conclusion of the expedited hearing, if the Mental Health Court judge determines that there is no reasonable cause to believe that the defendant is a mentally ill person or a mentally retarded person, the judge must transfer the case to the criminal division of the Franklin County Municipal Court for prosecution of the defendant for the qualified misdemeanor. If the Mental Health Court judge determines that there is reasonable cause to believe that the defendant is a mentally ill person or a mentally retarded person, the judge must order an evaluation of the mental condition of the defendant by an "examiner" (see "**Definitions of terms used in the bill,**" below) designated by the judge. The judge must inform the examiner of the qualified misdemeanor with which the defendant is charged. (R.C. 1901.084(A) and (B).)

Evaluation, examiner's report, and hearing on the report

Evaluation

The Mental Health Court judge must order a defendant who is ordered to undergo an evaluation as described above to submit to an evaluation of the defendant's mental condition at the times and places established by the examiner designated to conduct the evaluation. If the defendant has been released on bail and refuses to submit to the evaluation, the Mental Health Court judge may amend the conditions of bail and order the bailiff of the Court to take the defendant into custody and to deliver the defendant to a "certified forensic center" (see

"Definitions of terms used in the bill," below) or a community mental health program or facility certified by the Department of Mental Health (DMH) or the Department of Mental Retardation and Developmental Disabilities (MRDD). The defendant may be held for an evaluation of the defendant's mental condition in that center, program, or facility for a reasonable period not to exceed five days.

If the defendant has not been released on bail, the judge may order the evaluation to be conducted by the examiner in the detention facility in which the defendant is confined. Upon the request of an examiner who is employed at a certified forensic center, the judge may order the bailiff of the Court to transport the defendant to that certified forensic center or to a community mental health program or facility certified by DMH or MRDD. The defendant may be held for an evaluation of the defendant's mental condition in that center, program, or facility for a reasonable period not to exceed five days. After the evaluation, the bailiff of the Court must return the defendant to the detention facility in which the defendant was confined.

If the examiner conducting the evaluation considers it necessary in order to make an accurate evaluation of the mental condition of the defendant, the examiner may request any family or household member of the defendant to provide the examiner with relevant information about the defendant's mental condition. Upon receipt of the request for information from the examiner, a family or household member of the defendant may, but is not required to, provide information about the defendant's mental condition.

No statement that a defendant makes in an evaluation or a hearing under the bill's Mental Health Court provisions relating to the defendant's mental condition is permitted to be used against the defendant on the issue of guilt in any criminal action or proceeding. But, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated or examined the defendant pursuant to the Mental Health Court provisions of the bill.

The Columbus City Council must pay the persons designated as examiners a reasonable amount for their services and expenses, as certified by the Mental Health Court judge. The Columbus City Council also must pay the expenses of any evaluation of a defendant's mental condition, including any mental examination of the defendant preceding the evaluation, that is ordered under the bill's provisions. The Court must tax those expenses as court costs in the qualified misdemeanor case. (R.C. 1901.084(C) to (F).)

Examiner's written report

Within ten days after entry of the order of the Mental Health Court judge for an evaluation of the defendant's mental condition, the examiner who conducted

the evaluation must file a written report with the judge. The judge must provide copies of the report to the prosecutor and defense counsel. (R.C. 1901.085(A).) The report must include all of the following (R.C. 1901.085(A)):

- (1) The examiner's findings;
- (2) The facts in reasonable detail on which the findings are based;
- (3) The examiner's opinion as to the defendant's mental condition;

(4) The examiner's opinion as to whether the defendant represents a substantial risk of physical harm to the defendant's self or to other persons as manifested by evidence of any of the following: (a) recent violent behavior, (b) recent threats of self-inflicted physical harm, (c) recent threats that placed other persons in reasonable fear of violent behavior and serious physical harm, or (d) present dangerousness.

(5) If the examiner's opinion is that the defendant is a mentally ill person or a mentally retarded person, all of the following: (a) the examiner's opinion as to whether the defendant's mental illness or mental retardation was a factor leading to the commission of the act that constitutes the qualified misdemeanor with which the defendant is charged and whether treatment for the mental illness or mental retardation would substantially reduce the likelihood of additional criminal activity, (b) the examiner's recommendation as to the treatment that the defendant needs, and (c) the examiner's opinion as to 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 under the existing DMH Law or the existing MRDD Law.

(6) If applicable, whether the defendant is being treated for the mental illness or mental retardation in any hospital, facility, or program for the treatment of mental illness or mental retardation or is under the care or treatment of a physician, psychologist, or mental health professional for the mental illness or mental retardation.

Hearing on examiner's report

Within seven days after receipt of the examiner's report, the Mental Health Court judge must hold a hearing on the report (R.C. 1901.085(B)(1)). At the conclusion of the hearing, one of the following applies (R.C. 1901.085(B)(2)):

(1) If the judge determines that the defendant *is not* a mentally ill person or a mentally retarded person, the judge must transfer the case to the criminal division of the Franklin County Municipal Court for prosecution of the defendant for the qualified misdemeanor.

(2) If the judge determines that the defendant *may be* a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order under the existing DMH Law or the existing MRDD Law, the judge, the prosecutor, or the defense counsel must file an affidavit with the Franklin County Probate Court for the hospitalization or institutionalization of the defendant pursuant to the existing DMH Law or the existing MRDD Law. After the affidavit is filed and if the Franklin County Probate Court orders the hospitalization or institutionalization of the defendant pursuant to those Laws, the Mental Health Court judge must dismiss the proceedings in the qualified misdemeanor case and discharge the defendant. This hospitalization or institutionalization of the defendant must be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law upon conviction of a crime. The Mental Health Court judge may order the sealing of records in the manner provided in the existing Sealing of Records Laws.

(3) If an affidavit for the hospitalization or institutionalization of the defendant is filed with the Franklin County Probate Court as described above but the Probate Court does not order the hospitalization or institutionalization of the defendant, or if no such affidavit is filed, and if in either case the Mental Health Court judge determines that the defendant *is* a mentally ill person or a mentally retarded person, that the defendant's mental illness or mental retardation *was not* a factor leading to the commission of the act that constitutes the qualified misdemeanor with which the defendant is charged, and that treatment for the mental illness or mental retardation would not substantially reduce the likelihood of additional criminal activity, the judge must transfer the case to the criminal division of the Franklin County Municipal Court for prosecution of the defendant for the qualified misdemeanor.

(4) If an affidavit for the hospitalization or institutionalization of the defendant is filed with the Franklin County Probate Court as described above but the Probate Court does not order the hospitalization or institutionalization of the defendant, or if no such affidavit is filed, and if in either case the Mental Health Court judge determines that the defendant *is* a mentally ill person or a mentally retarded person, that the defendant's mental illness or mental retardation *was* a factor leading to the commission of the act that constitutes the qualified misdemeanor with which the defendant is charged, and that treatment for the mental illness or mental retardation would substantially reduce the likelihood of additional criminal activity, the judge must proceed with the prosecution of the defendant for the qualified misdemeanor, subject to the treatment in lieu of conviction provisions described below. If the period within which the defendant must be brought to trial as required by the existing Speedy Trial Law was

suspended under the bill's provisions, that period is reinstated upon the judge's determination to proceed with the prosecution of the defendant.

Treatment in lieu of conviction

Treatment order

Upon proceeding with the prosecution of the defendant under paragraph (4) under "**Hearing on examiner's report**," above, if the defendant has not entered a plea and prior to the entry of a plea of guilty to the qualified misdemeanor charge or if the Mental Health Court judge, at the conclusion of trial, finds that there is proof beyond a reasonable doubt that the defendant committed the qualified misdemeanor, in lieu of conviction, the judge must order the defendant to undergo a period of treatment in accordance with the examiner's recommendation (R.C. 1901.086(A)). The judge may order the defendant to undergo any of the following (R.C. 1901.086(A)):

- (1) Treatment in a DMH or MRDD facility;
- (2) Treatment in a facility certified by DMH or MRDD as being qualified to provide treatment for mental illness or mental retardation;
- (3) Treatment in a public or private community mental health or mental retardation facility;
- (4) Private treatment by a "psychiatrist" (see "**Definitions of terms used in the bill**," below) or other mental health or mental retardation professional;
- (5) Any other treatment plan, including, but not limited to, hospitalization under close supervision or otherwise or release on an outpatient status under supervision, that the appropriate mental health or mental retardation facility or professional described in paragraphs (1) to (4), above, considers necessary or desirable for treatment of the defendant's mental illness or mental retardation.

In determining placement alternatives for treatment, the Mental Health Court judge must consider the extent to which the defendant is a danger to the defendant's self or to others, the need for security, the type of qualified misdemeanor involved, and the circumstances surrounding the commission of the qualified misdemeanor. The judge must order the least restrictive alternative placement available that is consistent with public safety and treatment goals. The judge's treatment order may restrict the defendant's freedom of movement as the judge considers necessary. The defendant must be placed under the control and supervision of the Franklin County Municipal Court probation department as if the defendant was on probation. The judge must order the treatment to continue for any period that the judge determines, and may extend the period of treatment, but

the total period of treatment must not exceed nine months. The period of treatment must be conditioned upon the defendant's voluntary admission into an appropriate mental illness or mental retardation facility or program, faithful submission to the prescribed treatment plan, and any other conditions that the judge orders. The defendant may voluntarily admit self or be voluntarily admitted to a hospital or institution under the existing DMH Law or MRDD Law. (R.C. 1901.086(B), (D), and (E).)

To the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person that receives the defendant for treatment, the Mental Health Court judge must send copies of relevant police reports, examiner's reports, medical and mental health records, and other background information that pertains to the defendant and is available to the judge. But the judge is prohibited from releasing any information in those reports, records, or other background information if the release of the information would interfere with the effective prosecution of any person or would create a substantial risk of physical harm to any person. (R.C. 1901.086(C).)

Periodic report to Mental Health Court judge

The person who supervises the treatment of the defendant must file a written report with the Mental Health Court judge at the following times (R.C. 1901.087(A)): (1) whenever the person believes, based upon an examiner's evaluation of the defendant's mental condition, that the defendant has successfully completed the treatment and the likelihood of the defendant engaging in additional criminal activity has been substantially reduced, (2) at a minimum, after every 30 days of treatment, and (3) upon the termination of the period of treatment ordered by the Mental Health Court judge.

Prior to making the report, the person who supervises the treatment of the defendant must request the Mental Health Court judge to order the evaluation of the defendant's mental condition. Upon receipt of that request, the judge must order the evaluation and designate an examiner to conduct it. The report must contain the examiner's findings, the facts in reasonable detail on which the findings are based, and the examiner's opinion as to the defendant's mental condition. If in the examiner's opinion the defendant remains mentally ill or mentally retarded and the likelihood of the defendant engaging in additional criminal activity *has not* been substantially reduced and if the maximum period for the treatment has not expired, the report also must contain the examiner's recommendation as to the least restrictive treatment that is consistent with the defendant's treatment needs and the safety of the community. The Columbus City Council must pay the person designated as an examiner a reasonable amount for their services and expenses, as certified by the Mental Health Court judge. The Columbus City Council also must pay the expenses of any evaluation of a

defendant's mental condition, including any mental examination of the defendant preceding the evaluation. The Court must tax those expenses as court costs in the qualified misdemeanor case. (R.C. 1901.084(F) and 1901.087(B)(1) and (2).)

The Mental Health Court judge must provide copies of the report to the prosecutor and defense counsel (R.C. 1901.087(B)(3)).

Hearing on report of successful completion of treatment

If the report indicates that the person who supervises the treatment of the defendant believes, based upon an examiner's evaluation of the defendant's mental condition, that the defendant has successfully completed the treatment and the likelihood of the defendant engaging in additional criminal activity has been substantially reduced, the Mental Health Court judge must hold a hearing on the report within seven days after receiving the report.

At the conclusion of the hearing, if the judge determines that the defendant has successfully completed the treatment and the likelihood of the defendant engaging in additional criminal activity has been substantially reduced, the judge must dismiss the proceedings in the qualified misdemeanor case and discharge the defendant. The successful completion of the treatment ordered by the Mental Health Court judge must be without adjudication of guilt and is not a criminal conviction for purposes of any disqualification or disability imposed by law upon conviction of a crime. The judge may order the sealing of records in the manner provided in the existing Sealing of Records Laws. (R.C. 1901.088(A).)

If the Mental Health Court judge determines that the defendant has not successfully completed the treatment or the likelihood of the defendant engaging in additional criminal activity has not been substantially reduced and if the period of the treatment as ordered by the judge has not expired, at the conclusion of the hearing the Mental Health Court judge must order that the treatment be continued until the expiration of the period of treatment as ordered by the judge. The judge may change the forensic center, facility, or program in which the treatment is to be continued, and must specify in the order whether the treatment is to be continued in the same or a different forensic center, facility, or program. (R.C. 1901.088(B).)

Hearing on 30-day report

If the report filed after 30 days of treatment, as described above, indicates that the defendant has violated any condition of the treatment plan ordered by the Mental Health Court judge, the judge must hold a hearing on the report within seven days after its receipt. At the conclusion of the hearing, if the Mental Health Court judge determines that the defendant has violated any condition of the

treatment plan ordered by the judge, the judge must enter a finding of guilty and impose an appropriate sanction under the state's existing Criminal Sentencing Law or the municipal ordinance that was violated. If the judge sentences the defendant to a term of imprisonment, the judge must reduce the defendant's sentence by the total number of days the defendant was confined for evaluation to determine the defendant's mental condition under the bill's provisions and by the total number of days the defendant was confined for treatment under the bill's provisions. If the Mental Health Court judge determines that the defendant has not violated any condition of the treatment plan, at the conclusion of the hearing the period of treatment must continue as ordered by the judge. (R.C. 1901.089.)

Hearing on termination of treatment period report

Maximum period for treatment has not expired. If the report filed upon the termination of the period of treatment ordered by the Mental Health Court judge, as described above, indicates that the defendant remains mentally ill or mentally retarded and the likelihood of the defendant engaging in additional criminal activity has not been substantially reduced and if the maximum period for the treatment has not expired, the Mental Health Court judge must order that the treatment be continued until the expiration of the maximum period for the treatment. The Mental Health Court judge may change the forensic center, facility, or program in which the treatment is to be continued and must specify in the order whether the treatment is to be continued in the same or a different forensic center, facility, or program. (R.C. 1901.0810(A).)

Maximum period for treatment has expired. If the report so filed indicates that the defendant remains mentally ill or mentally retarded and the likelihood of the defendant engaging in additional criminal activity has not been substantially reduced and if the maximum period for the treatment has expired, the Mental Health Court judge must hold a hearing on the report within seven days after its receipt.

At the conclusion of the hearing, if the Mental Health Court judge determines that the defendant remains mentally ill or mentally retarded and the likelihood of the defendant engaging in additional criminal activity has not been substantially reduced and if the maximum period for the treatment has expired, the judge must enter a finding of guilty and impose an appropriate sanction under the law or municipal ordinance that was violated. If the judge sentences the defendant to a term of imprisonment, the judge must reduce the defendant's sentence by the total number of days the defendant was confined for evaluation to determine the defendant's mental condition under the bill's provisions and by the total number of days the defendant was confined for treatment under the bill's provisions.

If the Mental Health Court judge determines that the defendant remains mentally ill or mentally retarded but the likelihood of the defendant engaging in additional criminal activity is substantially reduced and if the maximum period for the treatment has expired, at the conclusion of the hearing the judge must enter a finding of guilty and impose an appropriate sanction under the state's existing Criminal Sentencing Law or the municipal ordinance that was violated. If the defendant is sentenced to a term of imprisonment, the judge must suspend the sentence and place the defendant on probation. (R.C. 1901.0810(B), (C), and (D).)

Mental Health Court employees

Appointment and compensation

The Mental Health Court judge must appoint a Mental Health Court monitor and a Mental Health Court liaison to perform duties associated with the proceedings described under the bill pertaining to criminal cases assigned or transferred to the Mental Health Court judge. The Mental Health Court judge may appoint other specified employees, officers, and case managers. Columbus City Council must prescribe the compensation for the Mental Health Court monitor, Mental Health Court liaison, case managers, and other employees and officers appointed by the Mental Health Court judge. The Mental Health Court judge has control of the Mental Health Court monitor, Mental Health Court liaison, case managers, and other employees and officers of that Court.

The administrative judge of the Franklin County Municipal Court may assign other employees or officers of the Court to perform duties for the Mental Health Court judge. The Mental Health Court judge has control of these employees and officers during the time when they are performing duties for the Mental Health Court judge. (R.C. 1901.332(A) and (B).)

Mental Health Court monitor

Responsibilities. The Mental Health Court monitor is responsible for all of the following (R.C. 1901.332(C)):

- (1) The management of criminal cases assigned or transferred to the Mental Health Court judge under the bill's provisions;
- (2) Acting as advisor to the Mental Health Court judge regarding the treatment needs of defendants whose cases are so assigned or transferred to the Mental Health Court judge;

(3) Ensuring that defendants under court-ordered conditional treatment plans comply with those conditional plans and making reports regarding that compliance;

(4) Ensuring and monitoring the effectiveness of mental health services delivered under court-ordered treatment plans;

(5) Performing other social service duties related to the treatment needs of defendants whose cases are assigned or transferred to the Mental Health Court judge;

(6) Performing other duties prescribed by the Mental Health Court judge relating to the management of cases assigned or transferred to the Mental Health Court judge.

Qualifications. The Mental Health Court monitor must have the following qualifications (R.C. 1901.332(D)):

(1) Extensive training and experience in the management of mental health cases, the application of psychiatric rehabilitation principles on behalf of mental health patients, and the development of individualized service treatment planning for mental health patients;

(2) Extensive knowledge of the full range of mental health community agencies, mental health professionals, support services, treatment programs, management programs for mentally retarded persons, and housing and other resources available to mental health patients in the area within the jurisdiction of the Franklin County Municipal Court.

Mental Health Court liaison

The Mental Health Court liaison is responsible for coordinating clinical assessments and mental health evaluations of defendants whose cases are assigned or transferred to the Mental Health Court judge under the bill's provisions and acting as a liaison to existing mental health and alcohol and substance abuse services and agencies in the community or area within the jurisdiction of the Franklin County Municipal Court (R.C. 1901.332(E)).

Case managers

If appointed by the Mental Health Court judge, case managers must provide expert assistance in the areas of their qualifications to the Mental Health Court judge, the Mental Health Court monitor, the Mental Health Court liaison, and the defendants and all parties appearing before the Mental Health Court judge and

must perform any other duties that the Mental Health Court judge prescribes (R.C. 1901.332(F)).

Applicability

The bill's provisions described above apply only to criminal cases in which the defendant is charged in the Franklin County Municipal Court with a violation of a statute that is a misdemeanor or a violation of a municipal ordinance committed on or after the effective date of the bill (R.C. 1901.081(B)).

Conforming changes

The bill makes a number of conforming changes to the Revised Code to reflect its creation of the new Franklin County Municipal Court Mental Health Court.

Writ of habeas corpus

Under the bill, any person detained pursuant to the bill's Mental Health Court provisions (R.C. 1901.086, 1901.088, 1901.089, and 1901.0810) is entitled to the writ of habeas corpus upon proper petition to any court generally empowered to issue the writ of habeas corpus in the county in which the person is detained (R.C. 5122.30).

Confidentiality

DMH Law. All certificates, applications, records, and reports made for the purpose of the bill's Mental Health Court provisions (R.C. 1901.085, 1901.086, 1901.087, 1901.088, and 1901.0810), other than court journal entries or court docket entries, and that directly or indirectly identifying a patient or former patient or person whose hospitalization has been sought, generally must be kept confidential and not be disclosed by any person. But the bill specifically provides that records pertaining to the patient's diagnosis, course of treatment, treatment needs, and prognosis must be disclosed and released to the Mental Health Court judge of the Franklin County Municipal Court if the patient was committed pursuant to the Mental Health Court provisions contained in R.C. 1901.086, 1901.088, 1901.089, or 1901.0810. (R.C. 5122.31 and 5122.31(L).)

MRDD Law. All certificates, applications, records, and reports made for the purpose of the bill's Mental Health Court provisions (R.C. 1901.085 to 1901.0810), other than court journal entries or court docket entries, which directly or indirectly identify a resident or former resident of an institution for the mentally retarded or person whose institutionalization has been sought under the MRDD Laws generally must be kept confidential and not be disclosed by any person except in the certain situations.

But the bill specifically provides that, upon the death of a resident or former resident of an institution for the mentally retarded or a person whose institutionalization was sought under the MRDD Laws, the managing officer of an institution must provide access to the certificates, applications, records, and reports made for the purposes of the Mental Health Court provisions (R.C. 1901.085 to 1901.0810) to the resident's, former resident's, or person's guardian if the guardian makes a written request. If a deceased resident, former resident, or person whose institutionalization was sought did not have a guardian at the time of death, the managing officer must provide access to the certificates, applications, records, and reports to a member of the person's family, upon that family member's written request. (R.C. 5123.89(A) and (C).)

Escape--related provisions

Peace officer's arrest authority--reasonable grounds to make arrest.

Under existing law, when there is reasonable ground to believe that any of a list of specified offenses has been committed within the limits of the territorial jurisdiction of the peace officer, specified peace officers may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation (R.C. 2935.03(B)(1)). The execution of certain types of statements constitutes reasonable ground to believe the offense alleged was committed and reasonable cause to believe the alleged offender committed it. Under the bill, the execution of any of the following constitutes reasonable ground to believe that the offense alleged in the statement was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the violation (R.C. 2935.03(B)(2)(b) and (c)):

(1) A written statement by the administrator of the existing Interstate Compact on Mental Health alleging that a person who had been hospitalized, institutionalized, or confined in any facility under an order made pursuant to or under authority of the bill's Mental Health Court provisions has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside of the facility, in a manner that constitutes the offense of escape;

(2) A written statement by the administrator of any facility in which a person has been hospitalized, institutionalized, or confined under an order made pursuant to or under authority of the bill's Mental Health Court provisions alleging that the person has escaped from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in

the facility and that occurs outside of the facility, in a manner that constitutes the offense of escape.

Arrest authority of DMH or MRDD special police officer. Under the bill, a DMH or MRDD special police officer may arrest without a warrant and detain until a warrant can be obtained any person who has been hospitalized, institutionalized, or confined in an institution under the DMH or MRDD jurisdiction pursuant to or under authority of the bill's Mental Health Court provisions and who is found committing on the premises of the institution the offense of escape (from the premises of the institution). If the special police officer finds any person of that nature committing the offense of escape that involves an escape from the premises of the institution, or if there is reasonable ground to believe that such a violation has been committed and if the special police officer has reasonable cause to believe that the escaped person is guilty of the violation, the special police officer, outside of the premises of the institution, may pursue, arrest, and detain the escapee, until a warrant can be obtained, if both of the following apply: (1) the pursuit takes place without unreasonable delay after the offense is committed, and (2) the pursuit is initiated within the premises of the institution from which the escape occurred. The execution of a written statement by the administrator of the institution alleging that the person has escaped constitutes reasonable ground to believe that the offense was committed and reasonable cause to believe that the person alleged in the statement to have committed the offense is guilty of the offense. (R.C. 2935.03(F).)

Hospitalized patient absent without leave. Under existing law, no patient hospitalized under the DMH Law whose absence without leave was caused or contributed to by the patient's mental illness may be subject to a charge of escape. Under the bill, this provision does not apply to any person (1) who was hospitalized, institutionalized, or confined in a facility under an order made pursuant to or under authority of the bill's Mental Health Court provisions (R.C. 1901.084, 1901.086, 1901.088, 1901.089, and 1901.0810) and (2) who escapes from the facility, from confinement in a vehicle for transportation to or from the facility, or from supervision by an employee of the facility that is incidental to hospitalization, institutionalization, or confinement in the facility and that occurs outside the facility, in commission of the offense of escape. (R.C. 5122.26(B).)

DMH coordinated system for tracking and monitoring persons on conditional release

The bill expands DMH's coordinated system for tracking and monitoring persons found not guilty by reason of insanity and committed who have been granted a conditional release and persons found incompetent to stand trial and committed who have been granted a conditional release to also apply regarding persons ordered to undergo treatment pursuant to the bill's provisions who have

been granted a conditional release under the treatment plan involved (R.C. 5119.57).

Rule changes

DMH rules. The bill requires the Director of Mental Health to adopt rules establishing standards for both of the following (R.C. 5119.01(J)):

(1) The performance of evaluations by a forensic center or other psychiatric program or facility of the mental condition of defendants ordered by the Mental Health Court judge of the Franklin County Municipal Court under the bill's provisions;

(2) The treatment of defendants who have been found to be mentally ill persons and ordered by the Mental Health Court judge of the Franklin County Municipal Court under the bill's provisions to receive treatment in facilities.

MRDD rules. The bill requires the Director of MRDD to adopt rules establishing standards that mental retardation programs and facilities must follow when performing evaluations of the mental condition of defendants ordered by the Mental Health Court judge of the Franklin County Municipal Court under the bill, and for the treatment of defendants who have been found to be mentally retarded persons by that judge and to certify the compliance of such programs and facilities with the standards (R.C. 5123.04(C)).

Mental Health Court provisions control over conflicting provisions

The provisions of the DMH Law and the MRDD Law regarding hospitalization or institutionalization apply to a person who is committed upon an order of the Mental Health Court judge of the Franklin County Municipal Court pursuant to the bill's Mental Health Court provisions to the extent that the DMH Law and MRDD Law provisions are not in conflict with any provision of the bill's Mental Health Court provisions. If a provision of either of those Laws is in conflict with one of the bill's Mental Health Court provisions regarding a person who has been so committed, the Mental Health Court provision controls regarding that person. (R.C. 5122.011(B) and 5123.013(B) (renumbered from R.C. 5123.011).)

Reception into hospital

Under the bill, the chief clinical officer of a hospital may, and the chief clinical officer of a public hospital in all cases of psychiatric medical emergencies, must receive for observation, diagnosis, care, and treatment any person whose admission is applied for under judicial procedure as provided in the bill's Mental Health Court provisions (R.C. 1901.086, 1901.088, 1901.089, and 1901.0810).

Upon application for such admission, the chief clinical officer of a hospital immediately must notify the board of the patient's county of residence. (R.C. 5122.05(A)(2).)

GRF appropriations made for the purposes of hospital personal services, hospital maintenance, and hospital equipment

Existing law specifies how the Director of Mental Health must allocate appropriations to DMH from the General Revenue Fund for the purposes of hospital personal services, hospital maintenance, and hospital equipment. The Director must allocate all of these funds to boards of alcohol, drug addiction, and mental health services for services to severely mentally disabled persons, but excludes from this allocation funds for providing services to persons committed to DMH pursuant to the existing Incompetent to Stand Trial Law, Not Guilty by Reason of Insanity Law, and an interagency agreement with the Department of Youth Services. (R.C. 5119.62(B)(2).)

Under the bill, funds for providing services to persons committed to DMH pursuant to the bill's Mental Health Court provisions also are excluded. (R.C. 5119.62(B)(2).)

Exemption from general affidavit requirements for involuntary hospitalization and institutionalization

Proceedings for the hospitalization of a person pursuant to the Hospitalization of the Mentally Ill Law judicial hospitalization provisions and the involuntary institutionalization of a person pursuant to the Institutionalization of Mentally Retarded Persons Law must be commenced by the filing of an affidavit with the probate division of the court of common pleas of the county where the person resides or where the person is hospitalized or institutionalized, in a specified manner and form. The bill exempts the hospitalization or institutionalization of a person pursuant to its Mental Health Court provisions (R.C. 1901.086, 1901.088, 1901.089, and 1901.0810) from this requirement. (R.C. 5122.11 and 5123.71(A)(1).)

Return of person to family following short-term care under MRDD Law

Under existing law, at the conclusion of each period of short-term care, the person generally must be returned to the person's family or caretaker. Subject to specified exceptions, under no circumstances may a person admitted for short-term care remain in the institution after the period of short-term care. Under the bill, the preceding provision does not apply to a person admitted according to the Mental Health Court order (under R.C. 1901.085, 1901.086, 1901.088, 1901.089, and 1901.0810). (R.C. 5123.701(G).)

Conforming changes to definitions

The bill conforms a number of existing definitions to its Mental Health Court provisions:

Municipal court. It modifies the definition of "municipal court" for the purposes of the Municipal Court Laws to specifically include the Franklin County Municipal Court Mental Health Court judge (R.C. 1901.031).

Detention. It expands the definition of "detention" in R.C. 2921.01(E) to include hospitalization, institutionalization, or confinement in any public or private facility that is ordered pursuant to or under the authority of its Mental Health Court provisions.

Patient. It expands the definition of the term "patient" in the DMH Law to also apply to a person who is admitted either voluntarily or involuntarily to a hospital or other place pursuant to an order of the Mental Health Court judge of the Franklin County Municipal Court. But "patient" does not include a person admitted to a hospital or other place to the extent the reference in that Law, or the context in which the reference occurs, is in conflict with any provision of the bill. (R.C. 5122.01(C)(1) and (2)(b).)

Residence. It limits the existing general definition of "residence" in the DMH Law under which "residence" means a person's physical presence in a county with intent to remain there. Under the bill, if a person is committed pursuant to its Mental Health Court provisions, "residence" means the county where the criminal charges were filed. (R.C. 5122.01(S)(2).)

Resident. It expands the term "resident" as used in the MRDD Laws, to generally include a person who is admitted either voluntarily or involuntarily to an institution or other facility pursuant to an order of the Franklin County Municipal Court Mental Health Court judge (R.C. 1901.086, 1901.088, 1901.089, or 1901.0810), who is under observation or receiving habilitation and care in an institution. But "resident" does not include such a person to the extent that the reference in the MRDD Law, or the context in which the reference occurs, is in conflict with any provision of the bill's Mental Health Court provisions (R.C. 1901.081 to 1901.0810). (R.C. 5123.01(R)(1) and (2)(b).)

Definitions of terms used in the bill

As used in the bill:

Bail

"Bail" includes a recognizance (R.C. 1901.081(A)(1)).

Certified forensic center

"Certified forensic center" means a forensic center that is certified as being in compliance with the standards established by the Director of Mental Health or the Director of Mental Retardation and Developmental Disabilities (R.C. 1901.081(A)(2)).

Detention facility

"Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in Ohio or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in Ohio or another state or under the laws of the United States (R.C. 1901.081(A)(3), by reference to R.C. 2921.01(F)).

Examiner

"Examiner" means any of the following (R.C. 1901.081(A)(4)):

- (1) A psychiatrist (see below);
- (2) A licensed independent social worker who is employed at a certified forensic center;
- (3) A licensed professional clinical counselor who is employed at a certified forensic center;
- (4) A licensed clinical psychologist (see below) who satisfies specified criteria or who is employed to conduct examinations or evaluations by the DMH or MRDD or by a certified forensic center designated by either of those departments.

Family or household member

"Family or household member" means any of the following (R.C. 1901.081(A)(5), by reference to R.C. 2919.25(E)(1)--not in the bill):

- (1) Any of the following who is residing or has resided with the offender:
 - (a) a spouse, a person living as a spouse, or a former spouse of the offender,
 - (b) a parent or a child of the offender, or another person related by consanguinity or affinity to the offender, and
 - (c) a parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by

consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.¹

(2) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

Mental Health Court judge

"Mental Health Court judge" means the judge of the Franklin County Municipal Court who is designated as the Mental Health Court judge of the Franklin County Municipal Court pursuant to the bill's provisions and a successor to that judge (R.C. 1901.081(A)(6)).

Mental illness

"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. 1901.081(A)(7)).

Mental retardation

"Mental retardation" means a mental impairment manifested during the developmental period and characterized by significantly subaverage general intellectual functioning existing concurrently with deficiencies in the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group (R.C. 1901.081(A)(8)).

Mentally ill person

"Mentally ill person" means a person who is at least 18 years of age and who, because of the person's mental illness, would benefit from treatment in a hospital or other facility or program for the person's mental illness and is in need of that treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others (R.C. 1901.081(A)(9)).

¹ R.C. 2919.25 contains the offense of domestic violence. "Offender" refers to the person alleged to have committed domestic violence. "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

Mentally retarded person

"Mentally retarded person" means a person who is at least 18 years of age and who, because of the person's mental retardation, would benefit from treatment or management in a hospital or other facility or program for the person's mental retardation and is in need of that treatment or management as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others (R.C. 1901.081(A)(10)).

Prosecutor

"Prosecutor" means 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 Franklin County Municipal Court (R.C. 1901.081(A)(11)).

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. 1901.081(A)(12), by reference to R.C. 5122.01(E)).

Licensed clinical psychologist

"Licensed clinical psychologist" means a person who holds a current valid psychologist license, and in addition, meets either of the following criteria (R.C. 1901.081(A)(12) by reference to R.C. 5122.01(I)):

(1) Meets specified educational requirements and has a minimum of two years' full-time professional experience, or the equivalent as determined by rule of the State Board of Psychology, at least one year of which is post-doctoral, in clinical psychological work in a public or private hospital or clinic or in private practice, diagnosing and treating problems of mental illness or mental retardation under the supervision of a psychologist who is licensed or who holds a diploma issued by the American Board of Professional Psychology, or whose qualifications are substantially similar to those required for licensure by the State Board of Psychology when the supervision has occurred prior to enactment of laws governing the practice of psychology;

(2) Meets the specified educational requirements and has a minimum of four years' full-time professional experience, or the equivalent as determined by rule of the State Board of Psychology, in clinical psychological work in a public or private hospital or clinic or in private practice, diagnosing and treating problems of mental illness or mental retardation under supervision, as described in the preceding paragraph.

Qualified misdemeanor

"Qualified misdemeanor" means a violation of a statute that is a misdemeanor or a violation of a municipal ordinance, except any of the following (R.C. 1901.081(A)(13)):

- (1) A misdemeanor offense of violence;²
- (2) Domestic violence or violating a protection order or a substantially similar municipal ordinance;
- (3) State OMVI (but not state OMVUAC) or a substantially similar municipal ordinance;
- (4) Assault that is a misdemeanor or of a substantially similar municipal ordinance, unless the victim of the offense assents to the Mental Health Court judge provisions.

Qualified misdemeanor case

Unless the context otherwise requires, "qualified misdemeanor case" or "case" means a criminal case in which the defendant is charged with a qualified misdemeanor (R.C. 1901.081(A)(14)).

² *The misdemeanor offenses of violence are assault (in certain circumstances), aggravated menacing, menacing by stalking (in certain circumstances), menacing, arson (in certain circumstances), inciting to violence (in certain circumstances), riot, inducing panic (in certain circumstances), endangering children (relating to abuse, torture, corporal punishment, or physical restraint) (in certain circumstances), domestic violence, (in certain circumstances), intimidation of attorney, victim or witness in a criminal case (in certain circumstances), and escape (in certain circumstances); a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any of those offenses; an offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons; and a conspiracy or attempt to commit, or complicity in committing, any of those offenses. (R.C. 2901.01.)*

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