



Ohio Revised Code

Section 2945.371 Evaluations and reports of the defendant's mental condition.

Effective: August 3, 2021

Legislation: Senate Bill 2

(A) If the issue of a defendant's competence to stand trial is raised or if a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. An examiner shall conduct the evaluation and the evaluation may be conducted through electronic means.

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

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

(2) If a defendant who has been released on bail or recognizance refuses to submit to a complete evaluation, the court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and, except as provided in division (E) of this section, deliver the defendant to a center, program, or facility operated or certified by the department of mental health and addiction services or the department of developmental disabilities where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days.

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



(2) Upon the request of the examiner, the court may order the sheriff to transport the defendant to a program or facility operated or certified by the department of mental health and addiction services or the department of developmental disabilities, where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days, and to return the defendant to the place of detention after the evaluation. A municipal court may make an order under this division only upon the request of a certified forensic center examiner.

(E) Except as provided in division (D) of this section, the court shall not order a defendant to be held for evaluation in a center, program, or facility operated by the department of mental health and addiction services or the department of developmental disabilities unless the defendant is charged with a felony or an offense of violence or unless the court determines, based on facts before the court, that the defendant is in need of immediate hospitalization.

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

(G) In conducting an evaluation of a defendant's mental condition at the time of the offense charged, the examiner shall consider all relevant evidence and may conduct the evaluation through electronic means. If the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered woman syndrome."

(H) The examiner shall file a written report with the court, under seal, within thirty days after entry of a court order for evaluation. The court shall provide copies of the report to the prosecutor and defense counsel and shall allow for inspection of the report by the defendant, the defendant's guardian, a probate court, a board of alcohol, drug addiction, and mental health services, and any mental health professional who performs a subsequent mental health evaluation of the defendant or who is involved in the treatment of the defendant, but the report shall not be open to public inspection. A person who is not among those permitted to inspect the report as described in this division may file a motion with the court seeking disclosure for good cause. When a motion for disclosure of a report is filed, the court shall notify the defendant of the pending motion and allow



sufficient time for the defendant to object to the disclosure. If the defendant objects to the disclosure, the court shall schedule a hearing to determine whether the party seeking access has demonstrated that access to the report is necessary for treatment of the defendant or for a criminal adjudication of the defendant for which the report was originally created. At that time the defendant shall be allowed an opportunity to provide the court with grounds for the objection. The court shall not provide access to the report unless the party seeking access can demonstrate that access to the report is necessary for treatment of the defendant or for a criminal adjudication of the defendant for which the report was originally created.

A defendant who is the subject of an examiner's report under this section prior to the effective date of this amendment may file a motion with the court to have that report placed under seal. Upon such a motion, the court shall place the report under seal, subject to the access and disclosure provisions provided in this section for reports filed after the effective date.

The report shall include all of the following:

- (1) The examiner's findings;
- (2) The facts in reasonable detail on which the findings are based;
- (3) If the evaluation was ordered to determine the defendant's competence to stand trial, all of the following findings or recommendations that are applicable:
 - (a) Whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense;
 - (b) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, whether the defendant presently is mentally ill or has an intellectual disability and, if the examiner's opinion is that the defendant presently has an intellectual disability, whether the defendant appears to be a person with an intellectual disability subject to institutionalization by court order;
 - (c) If the examiner's opinion is that the defendant is incapable of understanding the nature and



objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner's opinion as to the likelihood of the defendant becoming capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense within one year if the defendant is provided with a course of treatment;

(d) If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or has an intellectual disability, the examiner's recommendation as to the least restrictive placement or commitment alternative, including consideration of housing needs and the availability of mental health treatment in the community, consistent with the defendant's treatment needs for restoration to competency and with the safety of the community.

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

(I) If the examiner's report filed under division (H) of this section indicates that in the examiner's opinion the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that in the examiner's opinion the defendant appears to be a person with an intellectual disability subject to institutionalization by court order, the court shall order the defendant to undergo a separate intellectual disability evaluation conducted by a psychologist designated by the director of developmental disabilities. Divisions (C) to (G) of this section apply in relation to a separate intellectual disability evaluation conducted under this division. The psychologist appointed under this division to conduct the separate intellectual disability evaluation shall file a written report with the court within thirty days after the entry of the court order requiring the separate intellectual disability evaluation. The court shall file the report under seal in the same manner as a report submitted by an examiner under division (H) of this section and shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the information described in divisions (H)(1) to (4) of this section. If the court orders a separate intellectual disability evaluation of a defendant under this division, the court shall not conduct a hearing under divisions (B) to (H) of section 2945.37 of the Revised Code regarding that



defendant until a report of the separate intellectual disability evaluation conducted under this division has been filed. Upon the filing of that report, the court shall conduct the hearing within the period of time specified in division (C) of section 2945.37 of the Revised Code.

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

(K) No statement that a defendant makes in an evaluation or hearing under divisions (A) to (I) of this section relating to the defendant's competence to stand trial or to the defendant's mental condition at the time of the offense charged shall 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 the defendant or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the prosecutor or defense counsel from calling other witnesses or presenting other evidence on competency or insanity issues.

(L) Persons appointed as examiners under divisions (A) and (B) of this section or under division (I) of this section shall be paid a reasonable amount for their services and expenses, as certified by the court. The certified amount shall be paid by the county in the case of county courts and courts of common pleas and by the legislative authority, as defined in section 1901.03 of the Revised Code, in the case of municipal courts.