



## Ohio Revised Code

### Section 2945.40 Acquittal by reason of insanity.

Effective: April 6, 2023

Legislation: House Bill 281

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(A) If a person is found not guilty by reason of insanity, the verdict shall state that finding, and the trial court shall conduct a full hearing to determine whether the person is a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order. Prior to the hearing, if the trial judge believes that there is probable cause that the person found not guilty by reason of insanity is a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order, the trial judge may issue a temporary order of detention for that person to remain in effect for ten court days or until the hearing, whichever occurs first.

Any person detained pursuant to a temporary order of detention issued under this division shall be held in a suitable facility, taking into consideration the place and type of confinement prior to and during trial.

(B) The court shall hold the hearing under division (A) of this section to determine whether the person found not guilty by reason of insanity is a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order within ten court days after the finding of not guilty by reason of insanity. Failure to conduct the hearing within the ten-day period shall cause the immediate discharge of the respondent, 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.

(C) If a person is found not guilty by reason of insanity, the person has the right to attend all hearings conducted pursuant to sections 2945.37 to 2945.402 of the Revised Code. At any hearing conducted pursuant to one of those sections, the court shall inform the person that the person has all of the following rights:

(1) The right to be represented by counsel and to have that counsel provided at public expense if the person is indigent, with the counsel to be appointed by the court under Chapter 120. of the Revised



Code or under the authority recognized in division (C) of section 120.06, division (E) of section 120.16, division (E) of section 120.26, or section 2941.51 of the Revised Code;

(2) The right to have independent expert evaluation and to have that independent expert evaluation provided at public expense if the person is indigent;

(3) The right to subpoena witnesses and documents, to present evidence on the person's behalf, and to cross-examine witnesses against the person;

(4) The right to testify in the person's own behalf and to not be compelled to testify;

(5) The right to have copies of any relevant medical or mental health document in the custody of the state or of any place of commitment other than a document for which the court finds that the release to the person of information contained in the document would create a substantial risk of harm to any person.

(D) The hearing under division (A) of this section shall be open to the public, and the court shall conduct the hearing in accordance with the Rules of Civil Procedure. The court shall make and maintain a full transcript and record of the hearing proceedings. The court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense in relation to which the person was found not guilty by reason of insanity, and any history of the person that is relevant to the person's ability to conform to the law.

(E) Upon completion of the hearing under division (A) of this section, if the court finds there is not clear and convincing evidence that the person is a person with a mental illness subject to court order or a person with an intellectual disability subject to institutionalization by court order, the court shall discharge the person, unless a detainer has been placed upon the person by the department of rehabilitation and correction, in which case the person shall be returned to that department.

(F) If, at the hearing under division (A) of this section, the court finds by clear and convincing evidence that the person is a person with a mental illness subject to court order, the court shall commit the person either to the department of mental health and addiction services for treatment in a



hospital, facility, or agency as determined clinically appropriate by the department of mental health and addiction services or to another medical or psychiatric facility, as appropriate. Prior to placing the defendant, the department of mental health and addiction services shall obtain court approval for that placement. If, at the hearing under division (A) of this section, the court determines by clear and convincing evidence that the person requires treatment for an intellectual disability, it shall commit the person to a facility operated by the department of developmental disabilities or another facility, as appropriate. Further proceedings shall be in accordance with sections 2945.401 and 2945.402 of the Revised Code. In determining the place of commitment, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that is consistent with public safety and the welfare of the person. In weighing these factors, the court shall give preference to protecting public safety.

(G) If a court makes a commitment of a person under division (F) of this section, the prosecutor shall send to the hospital, facility, or agency where the person is placed by the department of mental health and addiction services or to the defendant's place of commitment all reports of the person's current mental condition, and, except as otherwise provided in this division, any other relevant information, including, but not limited to, a transcript of the hearing held pursuant to division (A) of this section, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the person and that the prosecutor possesses. The prosecutor shall send the reports of the person's current mental condition in every case of commitment, and, unless the prosecutor determines that the release of any of the other relevant information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person, the prosecutor also shall send the other relevant information. Upon admission of a person committed under division (F) of this section, the place of commitment shall send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the person were filed a copy of all reports of the person's current mental condition and a copy of the other relevant information provided by the prosecutor under this division, including, if provided, a transcript of the hearing held pursuant to division (A) of this section, the relevant police reports, and the prior arrest and conviction records that pertain to the person and that the prosecutor possesses.

(H) A person who is committed pursuant to this section shall not voluntarily admit the person or be



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voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code.