

**AFTER DEFENDANT FOUND INCOMPETENT TO STAND TRIAL OR NGRI,
AND HOSPITALIZED FOR A WHILE
REQUEST FOR CHANGE OF HOSPITAL STATUS OR FOR RELEASE**

I. WHAT’S GOING ON WITH DEFENDANT?

The defendant has been hospitalized as a result of being found incompetent to stand trial or NGRI (in which case the person is not really a “defendant” any longer.)

The court then receives a request from the defendant or the hospital/facility requesting a change in the terms of defendant’s commitment/hospitalization. A conditional release may also be requested.

II. QUESTION PRESENTED:

Should the court order the change in defendant’s commitment status?

III. RELEVANT STATUTES:

O.R.C. 2945.401: This statute sets forth the procedure a court follows after the defendant is found incompetent to stand trial or NGRI and has been committed. The hospital/facility housing the defendant must make periodic reports to the court indicating whether the defendant continues to be a mentally ill person subject to hospitalization. The court must provide a copy of the report to the prosecutor and defense counsel and hold a hearing within 30 days on whether the defendant’s commitment should continue or be modified.

The defendant or the hospital housing him/her may ask for a change in the status of the defendant’s commitment. The types of requests made of the court may be for:

1. Continuation of the commitment
2. On-grounds unsupervised movement
3. Off-grounds supervised movement
4. Non-secured status (R.C. 2945.37(A)(3))
5. Termination of the commitment.
6. A change in institutionalization of a mentally retarded defendant which is governed by the procedure set forth in R.C. 2945.401(D)(2) and not described herein.
7. Conditional Release: This is a commitment status under which the trial court at anytime may revoke a person’s conditional release and order re-hospitalization. The person may be receiving outpatient treatment in the community. The aggregate conditional release period cannot last longer than the maximum jail sentence that could be imposed. That is, the total of any jail days plus any hospital days plus days in a conditional release status cannot exceed the maximum jail sentence.

Requests for continued or changed commitment status are made by the “Chief Clinical Officer.” “Chief Clinical Officer” means medical director of the hospital, community board of mental health or combined drug alcohol and mental health board or, if none, the licensed physician responsible for the treatment provided by the agency. The chief

clinical officer may delegate this job to defendant's attending physician (R.C. 5122.01(K)).

"Prosecutor" means prosecuting attorney, village solicitor, city director of law or other legal officer who prosecuted or would have prosecuted the criminal case against the defendant but for the finding of incompetence or insanity (R.C. 5122.01(U)).

O.R.C. 2945.401(C): Continuing Commitment

When the report recommends the defendant's status remains the same – that the commitment continues:

1. The report is received by the court
2. The court provides copies to the prosecutor and defense counsel
3. The court sets the matter for hearing, within 30 days of receipt of the report
4. See **Evidence for Hearing**, below.

O.R.C. 2945.401(D)(1)(a): On-grounds unsupervised; Off-grounds supervised

When the department's designee/chief clinical officer recommends on-grounds unsupervised movement or off-grounds supervised movement:

1. The department's designee/chief clinical officer files the report/application with the court AND sends the prosecutor a copy.
2. The prosecutor has 15 days from receipt of the report application to ask for a hearing.
 - a. If the prosecutor requests a hearing:
 - i. The court holds a hearing within 30 days of receiving request.
 - ii. The court gives prosecutor at least 15 days written notice of the hearing.
 - iii. The court conducts hearing. See **Evidence for Hearing**, below.
 - iv. The court approves or disapproves the application by court order.
 - b. If the prosecutor does not request a hearing:
 - 1) The court may approve application by court order
or
The court within five more days may *sua sponte* set a hearing:
 - (a) The court gives the prosecutor at least 15 days written notice of the hearing
 - (b) The court conducts the hearing
 - (c) The court approves or disapproves the application by court order.

O.R.C. 2945.401(D)(1)(b): Non-secured status – the 1st request termination of commitment.

When the department's designee/chief clinical officer recommends non-secured status for the first time or termination of defendant's commitment:

1. The chief clinical officer sends written notice to the court and the "local forensic center" which, for Cuyahoga County is the Cuyahoga County Common Pleas Court Psych Clinic, Justice Center, 6th Floor, 1200 Ontario Street, Cleveland, Ohio, 44113, (216) 443-7330.
2. The forensic center evaluates defendant and sends the court a written report.

3. The court sends a copy of the department's designee/chief clinical officer's recommendation and the forensic center's evaluation to the prosecutor and defense counsel.
4. The court sets the matter for hearing and sends notice thereof:
 - (a) Within 30 days unless.....
 - (b) Unless the prosecutor requests an independent evaluation for which the court may continue the hearing for 30 more days.

O.R.C. 2945.401(D)(2)(b): Mentally retarded defendant.

When the chief clinical officer recommends changes for a mentally retarded defendant, see this O.R.C. section.

O.R.C. 2945.401(C): The defendant's request for change of commitment status.

The defendant (or "person" because he/she is no longer a defendant having been found NGRI) may request a change in commitment status.

1. If fewer than six months have passed since the last hearing concerning defendant's commitment, the court may:
 - (a) deny the request by journal entry OR
 - (b) grant the request for hearing and follow the procedure above that complies with what defendant is requesting:
 - i. On-grounds supervised (R.C. 2945.401(D)(1)(a), above)
 - ii. Off-grounds supervised (R.C. 2945.401(D)(1)(a), above)
 - iii. Non-secured (1st request) (R.C. 2945.401(D)(1)(b), above)
 - iv. Termination of commitment (R.C. 2945.401(D)(1)(b), above)

O.R.C. 2945.401 (F):

The defendant has all the rights at the hearing as at a commitment hearing. See Post NGRI: Hearing on Whether Defendant is Mentally Ill, page 73.

O.R.C. 2945.401(G):

The prosecutor representing the state/public interest has the burden of proof to prove by clear and convincing evidence:

- A. For a change in commitment status: that the proposed change represents a threat to the safety of any person or the public.
- B. For termination: that the defendant remains a mentally ill/retarded person subject to hospitalization/institutionalization.

O.R.C. 2943.401(I):

At conclusion of the hearing, the court by journal entry may approve, disapprove or modify the proposed commitment status.

IV. EVIDENCE TO BE PRESENTED/CONSIDERED:

1. If the defendant is no longer a "mentally ill person subject to hospitalization" pursuant to O.R.C. 5122.01(B), the defendant no longer:
 - (A) 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; or

- (B) 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; or
- (C) 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; or
- (D) Would benefit from treatment in a hospital for the person's 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 the person.

In a hearing to determine non-secured status or termination of commitment, the trial court shall consider all relevant factors, including:

- (1) Whether the defendant currently represents a substantial risk of harm to defendant or others;
- (2) Psychiatric and medical testimony about the current condition of defendant;
- (3) Whether defendant has insight into his/her condition so that the person will continue treatment or get help as needed;
- (4) Grounds prosecution relies on for continuing commitment;
- (5) Past history of defendant's ability to conform with laws, rules, regulations and societal values;
- (6) If defendant is in remission, what is medical probability defendant will continue treatment under the changed circumstances.

V. FORMS OF EVIDENCE:

1. Doctor's Reports/Testimony addressing the following questions:

- a. Does the defendant no longer fit the criteria for "mentally ill person subject to hospitalization" listed under O.R.C. § 5122.01? Why or why not?
- b. Will the defendant stay on medication or adhere to treatment guidelines that will ensure he/she does not become dangerous again?
- c. Will being hospitalized no longer benefit the defendant?

See **Common Evidentiary Issues**, *supra*

2. The Defendant's Medical History (including defendant's records from his commitment addressing the following questions:

- a. How long has the defendant remained competent after prior commitments?
- b. Has the defendant remained competent in less restrictive environments?
- c. Does defendant have an understanding of his/her illness and the treatment required?
- d. Has the defendant continued to take meds and keep appointments in the past?

See **Common Evidentiary Issues**, *supra*.

**IN THE _____ MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO**

| | | |
|--------------------|---|--|
| STATE/MUNICIPALITY |) | CASE NO. _____ |
| vs. |) | JUDGE _____ |
| DEFENDANT |) | JOURNAL ENTRY |
| |) | (Because Court Has Received |
| |) | From Chief Clinical Officer a |
| |) | Request for Termination of |
| |) | Hospitalization or Defendant's Movement |
| |) | to a Less Restrictive Setting) |
| |) | Second Opinion Ordered |

On a previous date, defendant was found incompetent to stand trial or not guilty by reason of insanity.

Based upon the report of Dr. _____ dated _____ recommending a non-secured status or termination of defendant's commitment, this defendant is ordered to have a second opinion evaluation pursuant to R.C. 2945.401(C).

Said evaluation shall be scheduled with Dr. _____ on _____, _____ at the _____
(Date) (Time)

(Name of location and address)

Any transportation required to be done by the _____.
(Custodial Police Dept or appropriate transport agency)

The report of Dr. _____ is ordered submitted to this court within 30 days.

DATE: _____

JUDGE

**IN THE _____ MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO**

| | | |
|--------------------|---|---|
| STATE/MUNICIPALITY |) | CASE NO. _____ |
| vs. |) | JUDGE _____ |
| DEFENDANT |) | JOURNAL ENTRY |
| |) | (Sample of Conditional Release - Change of Status) |

This cause came on for hearing based on the request of _____
(Hospital, facility, program and the
 _____ dated _____ for the Conditional Release of
chief clinical officer thereof)
 the defendant.

Based upon the evidence presented, the court finds by clear and convincing evidence that defendant remains a mentally ill person subject to court ordered commitment pursuant to R.C. 2945.40 and that the least restrictive treatment alternative consistent with community safety is Conditional Release under the following conditions (spell out conditions below):

1. Defendant is to be placed at a group home with 24 hour supervision, as determined by his treatment team and staff from Recovery Resources. Defendant is not to change residence without permission from the court;
2. Defendant shall receive follow up psychiatric care, medication management and case management services through Recovery Resources. Defendant to comply with all rules, regulations and treatment recommendations of her treatment team.
3. Defendant must refrain from use of illicit drugs and alcohol and submit to urine screens and other tests as specified by her treatment team.
4. Defendant must not possess any weapons.

Further conditions of release are set forth in the Conditional Release Plan, attached hereto and incorporated herein.

Commitment to be transferred to the Alcohol, Drug Addiction & Mental Health Services Board of Cuyahoga County.

Judge

cc: Northcoast Behavioral Healthcare Legal Assurance Administrator
 Prosecutor
 Defense Attorney