

INCOMPETENT TO STAND TRIAL / NGRI – MENTALLY RETARDED

I. WHAT'S GOING ON WITH DEFENDANT?

The “examiner”, meaning the psychiatrist or licensed clinical psychologist, says in his/her testimony/stipulated written evaluation that the defendant is incompetent to stand trial AND THE DOCTOR ALSO SAYS THAT DEFENDANT IS A MENTALLY RETARDED PERSON subject to hospitalization. As a result the court must order a second evaluation.

II. QUESTIONS PRESENTED:

What must the court do pursuant to law based upon the doctor’s finding that defendant is a mentally retarded person subject to hospitalization? How does the court cause/order a second evaluation of defendant?

Based on these findings what must the court do before it can hold the competency hearing?

III. RELEVANT STATUTES:

O.R.C. 5123.01(O) “Mentally retarded person subject to institutionalization by court order” means a person eighteen years of age or older who is at least moderately mentally retarded and in relation to whom, because of the person’s retardation, either of the following conditions exist:

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

O.R.C. 2945.371(H): If the examiner’s report indicates that the defendant is incapable of understanding the nature and objective of the proceedings or of assisting in his/her defense and that in the examiner’s opinion the defendant appears to be a mentally retarded person subject to institutionalization by court order, the court **shall** order the defendant to undergo a *separate* mental retardation evaluation conducted by a psychologist designated by the director of developmental disabilities.

The examiner is to provide the court with a report within 30 days of the court’s order. The report shall include, but not be limited to, findings based on the guidelines set for the in O.R.C. 2945.371(G) (1)-(4).

When received, the court must give copies to the prosecutor and defense counsel. A hearing on defendant’s competency pursuant to O.R.C. 2945.371(B) to (H) shall not be conducted until this second report has been filed with the court.

IV. EVIDENCE TO BE PRESENTED:

The examiner’s report shall include **all** of the information described in O.R.C. 2945.371(G):

- A. The examiner’s findings; and

- B. The facts in which the findings are based; and
- C. 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 or not; and
- D. Whether defendant appears to be a mentally retarded person subject to institutionalization by court order; and
- E. Recommendation as to the least restrictive placement or commitment alternative, consistent with the defendant's treatment needs; and
- F. Whether defendant was NGRI.

The court shall hold the competency hearing within 10 days from the date the second report is filed.

See **INCOMPETENT TO STAND TRIAL – RESTORABLE**, *infra*.

See **COMMON EVIDENTIARY ISSUES**, *supra*.

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

STATE/MUNICIPALITY)	CASE NO. _____
vs.)	JUDGE _____
DEFENDANT)	JOURNAL ENTRY
)	Finding Defendant Incompetent to Stand
)	Trial, Ordering a Second Opinion as
)	Defendant Appears to be a Mentally
)	Retarded Person

The cause came on for hearing this _____ day of _____, 20____. Based upon the evidence presented and the opinion of Dr. _____ in his/her report dated _____, the court finds that the defendant’s present mental condition renders him/her incapable of understanding the nature and objective of the proceedings against the defendant or of presently assisting in his/her own defense and therefore the defendant is presently incompetent to stand trial. Furthermore, based on the opinion of Dr. _____ the court finds defendant is a mentally retarded person subject to institutionalization. Therefore, the court orders defendant to undergo a separate, second opinion evaluation which shall be conducted by a psychologist designated by the director of the Cuyahoga County Board of Developmental Disabilities. The examiner is to provide the court with a report within thirty days of this order pursuant to R.C. 2945.371(G). The report shall include, but not be limited to, findings based on the guidelines set forth in R.C. 2945.371(G)(1)-(4).

Once said report is received, the court shall provide prosecution and defense a copy of same and shall set a competency hearing within 10 days.

DATE: _____

JUDGE