

POST NGRI FINDING: HEARING ON WHETHER DEFENDANT IS MENTALLY ILL

I. WHAT'S GOING ON WITH DEFENDANT?

At an earlier hearing, the defendant was found Not Guilty by Reason of Insanity. If the NGRI finding was by jury verdict or by the judge, the court shall state such finding by journal entry.

In the journal entry finding the defendant NGRI, the judge also has made an entry saying that the court has probable cause to believe the defendant is a mentally ill person subject to hospitalization or a mentally retarded person subject to institutionalization. In that entry the court also orders the person evaluated to see if the doctor finds the person mentally ill subject to hospitalization.

As a result of making this finding the court must schedule a hearing. The court may issue a temporary order of detention. The detention lasts until the court holds a hearing to determine whether the defendant is a mentally ill/mentally retarded person subject to hospitalization/institutionalization or for 10 days, whichever occurs first.

(The 10 day limit is critical)

1. If the court simply doesn't hold a hearing the defendant must be immediately discharged or
2. If the court or state request, the court may make an order continuing the hearing for not more than 10 more days upon a finding of good cause shown; or
3. If the respondent/defendant requests, the hearing may be continued for any period of time (R.C. 2945.40(B)).

The defendant shall be temporarily detained at a suitable facility pending the hearing, taking into consideration the type and location of defendant's detention before/during trial.

II. QUESTION PRESENTED: Is defendant who has been found NGRI a mentally ill/retarded person subject to hospitalization/institutionalization?

III. RELEVANT STATUTES AND CASE LAW:

O.R.C. 2945.40(A): For a defendant found NGRI, the court shall state that finding and hold a full hearing to determine if the defendant is a mentally ill/mentally retarded person subject to hospitalization/institutionalization. The defendant has the right to attend the hearing.

O.R.C. 2945.40(C): **At the hearing** the defendant must be advised (so the court should plan ahead) that he/she has:

1. The right to attend the hearings which shall be open to the public;
2. The right to be represented by counsel and to have that counsel provided at public expense if the person is indigent;
3. The right to have independent expert evaluation and to have that independent expert evaluation provided at public expense if the person is indigent;

4. The right to subpoena witnesses and documents, to present evidence on the person's behalf, and to cross-examine witnesses against the person;
5. The right to testify in the person's own behalf and to not be compelled to testify;
6. 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.

Defendant always has the right to be present at hearings however if the defendant is disruptive:

- the defendant's attorney may waive the defendant's presence
- the defendant might be placed in a cell with speakers to hear the proceedings
- the defendant might attend by video conferencing

O.R.C. 2945.40(D): The Rules of Civil Procedure apply.

See **Common Evidentiary Issues**, *infra*.

O.R.C. 2945.40(E): The burden of proof is by clear and convincing evidence.

On issues of the appropriate treatment location for the defendant, neither the prosecutor nor defense counsel has the burden of proof. Rather, the parties have a duty to present relevant, competent evidence to aid the court in its determination of whether the treatment alternatives are appropriate considering the defendant's needs and the safety of the public (extent of danger defendant poses to others, security required and type of crime defendant committed).

O.R.C. 5122.01:

- A "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.
- B "Mentally ill person subject to hospitalization by court order" means a mentally ill person who, because of the person's illness:
1. 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
 2. 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
 3. 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
 4. 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.

IV. EVIDENCE NEEDED:

The court must find by clear and convincing evidence that the defendant is a mentally ill person subject to hospitalization or a mentally retarded person subject to institutionalization.

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 for which the defendant was found NGRI
- any history about the defendant relevant to the person's ability to conform to the law.

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

V. FORMS OF EVIDENCE:

1. Doctor's Reports/Testimony: Does the Defendant meet the criteria of R.C. 5122.01?

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

2. Police Reports/Testimony: Has defendant been arrested or detained from being violent or for disturbing the peace or for any other offenses that would indicate he falls into the above criteria?

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

3. Previous Convictions: Has the defendant been convicted of prior offenses (especially violent ones), and if so, was he taking meds or being treated for underlying mental illness at the time? If he was not then, but presently is, this might indicate that he's not dangerous anymore. If he was taking meds and they did nothing, this might indicate that regardless of medication he can still be dangerous or violent and whether or not he will benefit from hospitalization. If meds do not work, defendant will probably need to be hospitalized.

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

4. TRO/TPO Has a TRO/TPO been issued against the defendant? This might indicate that defendant is violent or whether he would benefit from hospitalization.

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

5. Other Witnesses: Spouse might be especially useful if he/she has had a long term experience with defendant when he/she is off meds. This would help to have knowledge as to how defendant acts across a variety of situations when he/she is on or off meds, which will indicate whether defendant is dangerous and whether

he/she might need hospitalization. The spouse could testify to defendant's behavior and whether he/she is violent and whether he/she is able to take care of him/her self.

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

6. Defendant's Testimony: If defendant is supposed to be taking meds but he/she won't and is dangerous when he/she is off his/her meds, the court might be able to get information from him/her directly as to whether he/she will continue not to take medication, or why he/she doesn't want to take medication which would help determine how necessary or beneficial hospitalization might be.

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

CONCLUSIONS THE COURT MAY COME TO:

- A. If the court finds there is not clear and convincing evidence that defendant is mentally ill/mentally retarded subject to hospitalization/institutionalization, then the court shall:
 1. Discharge the defendant OR
 2. If there is a holder or warrant with another agency have police determine if defendant should be turned over to their custody.
- B. If the court finds there is clear and convincing evidence that defendant is mentally ill/mentally retarded subject to hospitalization/institutionalization, then the court shall order the defendant committed to the appropriate psychiatric/medical hospital or facility that is the least restrictive commitment available consistent with the defendant's welfare and public safety. **The court shall give preference to protecting public safety (R.C. 2945.40(F).)**

The facility will generally be recommended by the expert medical/psychiatric witnesses or their reports.

Note: From here on out, the court's only jurisdiction will be to rule on whether changes in the defendant's medical placement or status is appropriate. Specifically, this jurisdiction is invoked on issues regarding:

1. Discharge
2. Release
3. Transfer
4. Authorize a trial visit, or
5. Grant conditional release

The court does not have the jurisdiction to regulate the defendant's activities within a treatment center, such as ordering a detailed treatment plan or imposing the condition of a private security guard to monitor the movements of the defendant. The court cannot treat defendant as if he/she was on probation. See, State v. Lanzy (Cuyahoga, 1985), 29 Ohio App.3d 244, 504 N.E.2d 1150, 290.B.R.306.

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

STATE/MUNICIPALITY	)	CASE NO. _____
vs.	)	JUDGE _____
DEFENDANT	)	JOURNAL ENTRY
	)	Finding of NGRI
	)	to see if Hospitalization Required
	)	10 Day Hearing Set

This cause came on for trial on this ____ day of _____, 20_____.

Defendant [did] [did not] waive the right to a trial by jury. [The jury] [The court] finds defendant not guilty by reason of insanity to the criminal charges in this case.

Pursuant to R.C. 2945.40(A), the court finds probable cause to believe defendant, having been found not guilty by reason of insanity, is a mentally ill/mentally retarded person subject to hospitalization/institutionalization by court order. Defendant is therefore ordered taken into temporary custody to remain for ten days or until hearing of this issue, whichever first occurs. During detention, defendant shall be referred to _____
Psychiatrist for determination of whether defendant is a mentally ill/mentally retarded person subject to hospitalization/institutionalization.

The court sets this matter for hearing on _____ at _____ a.m./p.m.
(Not later than 10 days or per R.C. 2945.40(B))

By copy of this order, defendant is advised that he/she has the following rights at said hearing.

The right to attend the hearings which shall be open to the public;

The right to be represented by counsel and to have that counsel provided at public expense if the person is indigent;

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

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

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

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.

The court shall make and maintain a full transcript and record of the hearing proceedings.

So ordered.

DATE: _____

JUDGE

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

STATE/MUNICIPALITY	)	CASE NO. _____
vs.	)	JUDGE _____
DEFENDANT	)	JOURNAL ENTRY
	)	Post NGRI
	)	Court's Findings on Whether Defendant is Mentally Ill/Retarded Subject to Hospitalization/Institutionalization

On a prior date, the defendant was found to be not guilty by reason of insanity of the charges brought in this case. Pursuant to R.C. § 2945.40, this court held a hearing to determine whether the defendant is a mentally ill/mentally retarded person subject to hospitalization/institutionalization by order of this court.

Based upon the evidence presented and any stipulations of the parties the court finds that (check only one):

There has not been presented clear and convincing evidence that the defendant is a mentally ill/mentally retarded person subject to hospitalization/institutionalization wherefore, the defendant is discharged.

The defendant is a mentally ill/mentally retarded person subject to hospitalization/institutionalization by court order. Defendant is therefore committed to Northcoast Behavioral Healthcare

(Facility operated by the Department of Mental Health, the Cuyahoga County Board of Developmental Disabilities or other appropriate medical or psychiatric facility)

as this is the least restrictive commitment alternative available that is

consistent with public safety and the defendant's welfare. _____ shall

(Custodial Police Dept. or transport agency)

transport defendant to the facility upon notification from the facility that a bed is available.

The prosecutor is hereby ordered to provide said facility:

- (1) All reports of defendant's current mental condition, and
- (2) Other relevant information including: copies of relevant police reports, and copies of prior arrest and conviction records the prosecutor possesses.

Pursuant to R.C. §2945.401(J)(1)(b) this case will remain under this court's jurisdiction until the defendant is no longer a mentally ill/mentally retarded person subject to hospitalization/institutionalization by court order, as determined by this trial court or the

expiration of the maximum jail sentence defendant could have received if convicted this date of the most serious charge in this case to with:

- 1st degree misdemeanor 180 days
- 2nd degree misdemeanor 90 days
- 3rd degree misdemeanor 60 days
- 4th degree misdemeanor 30 days

DATE: _____

JUDGE