



Ohio Revised Code

Section 5924.504 Finding accused incompetent to stand trial; civil commitment.

Effective: April 6, 2023

Legislation: House Bill 281

(A) If an accused being tried by a general court-martial is found incompetent to stand trial, after the expiration of the maximum time for treatment as specified in division (C) of section 5924.503 of the Revised Code or after the court finds that there is not a substantial probability that the accused will become competent to stand trial even if the accused is provided with a course of treatment, one of the following applies:

(1) The court or the trial counsel may file an affidavit in probate court for civil commitment of the accused in the manner provided in Chapter 5122. of the Revised Code. If the court or trial counsel files an affidavit for civil commitment, the court may detain the accused for ten days pending civil commitment. If the probate court commits the accused subsequent to the court's or trial counsel's filing of an affidavit for civil commitment, the chief clinical officer of the entity, hospital, or facility, the managing officer of the institution, or the person to which the accused is committed or admitted shall send to the trial counsel the notices described in divisions (H)(4)(a)(i) to (iii) of section 5924.503 of the Revised Code within the periods of time and under the circumstances specified in those divisions.

(2) On the motion of the trial counsel or on its own motion, the court may retain jurisdiction over the accused if at a hearing the court finds both of the following by clear and convincing evidence:

(a) The accused committed the offense with which the accused is charged.

(b) The accused is a person with a mental illness subject to hospitalization by court order.

(B) In making its determination under division (A)(2) of this section as to whether to retain jurisdiction over the accused, 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 charged, and any history of the accused that is relevant to the accused's ability to conform to the law.



(C) If the court conducts a hearing as described in division (A)(2) of this section and if the court does not make both findings described in divisions (A)(2)(a) and (b) of this section by clear and convincing evidence, the court shall dismiss the charges against the accused. Upon the dismissal, the court shall discharge the accused unless the court or trial counsel files an affidavit in probate court for civil commitment of the accused pursuant to Chapter 5122. of the Revised Code. If the court or trial counsel files an affidavit for civil commitment, the court may order that the accused be detained for up to ten days pending the civil commitment. If the probate court commits the accused subsequent to the court's or trial counsel's filing of an affidavit for civil commitment, the chief clinical officer of the entity, hospital, or facility, the managing officer of the institution, or the person to which the accused is committed or admitted shall send to the trial counsel the notices described in divisions (H)(4)(a)(i) to (iii) of section 5924.503 of the Revised Code within the periods of time and under the circumstances specified in those divisions. A dismissal of charges under this division is not a bar to further criminal proceedings based on the same conduct.

(D)(1) If the court conducts a hearing as described in division (A)(2) of this section and if the court makes the findings described in divisions (A)(2)(a) and (b) of this section by clear and convincing evidence, the court shall commit the accused, if determined to require mental health treatment, to the department of mental health and addiction services for treatment at a hospital, facility, or services provider as determined clinically appropriate by the department of mental health and addiction services. In committing the accused to the department of mental health and addiction services, the court shall specify the least restrictive limitations on the accused's freedom of movement determined to be necessary to protect public safety.

(2) If a court makes a commitment of an accused under division (D)(1) of this section, the trial counsel shall send to the hospital, facility, or services provider where the accused is placed by the department of mental health and addiction services or to the accused's place of commitment all reports of the accused'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)(2) of this section, copies of relevant investigative reports, and copies of any prior arrest and conviction records that pertain to the accused and that the trial counsel possesses. The trial counsel shall send the reports of the accused's current mental condition in every case of commitment, and, unless the trial counsel 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 trial counsel also shall send the other relevant information.

(3) If a court makes a commitment under division (D)(1) of this section, all further proceedings shall be in accordance with Chapter 5122. of the Revised Code.