

**OHIO** MENTAL HEALTH & ADDICTION SERVICES  
Promoting Wellness and Recovery

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**Forensic Update**  
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**Bureau of Legal & Regulatory Services**  
**November 3, 2016**

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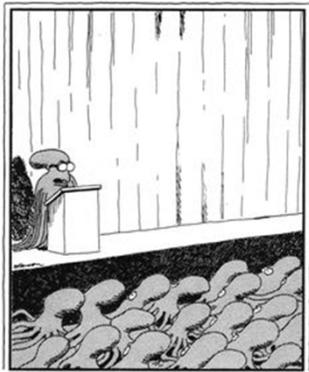
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"Fellow octopi, or octopuses ... octopi? ... Dang, it's hard to start a speech with this crowd."

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**Incompetency**  
**RC 2945.37(G) & 2111.01(D)**

State v Bush, 2016-Ohio-551  
Twelfth District Court of Appeals

- Incompetency under Revised Code Section 2111.01(D) does not mean incompetency to stand trial under Revised Code Section 2945.37(G).
- "The former is not dispositive of the latter."
- Appellant filed application for guardian, but pled guilty in the interim, so the application was dismissed.
- Two separate evaluations found appellant competent to stand trial.

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### Differing Diagnoses

**State v Ortello, 2016-Ohio-1441**  
**Seventh District Court of Appeals**

- Appellant was found NGRI of murder charge.
- Experts disagreed on diagnosis: substance-induced psychosis or psychotic disorder exacerbated by substance abuse?
- Either way, continued court-ordered commitment was appropriate.
- None of the experts recommended unconditional release.
- Level V placement was recommended.

  
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### Forensic Reports: Sealing / Redacting

**United States v Hoyt (2016)**  
**1:15CR-1**  
**U.S. District Court, S.D. Ohio, Western Division**

- 1<sup>st</sup> Amendment issue: newspaper wanting to unseal defendant’s mental health evaluation.
- Balancing test (“experience and logic”) utilized.
- Defendant argued that sealing forensic report essential to privacy protection (“preserve a higher value”).
- Court ordered Defendant to propose redactions to the forensic report under seal.
- Court will determine if any redactions should be unsealed.

  
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### Conflicting Expert Opinions

**State v Murphy**  
**2016-Ohio-1165**  
**Fourth District Court of Appeals**

- Conflicting expert opinions as to Defendant’s sanity.
- Defendant found guilty of aggravated murder of cellmate.
- One of Defendant’s experts not allowed to testify due to procedural error.
- One expert vs two.
- Court of Appeal affirmed – “competent and credible evidence to support the jury’s finding that at the time of the offense, appellant was sane.”

  
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### When Expert Opinions Differ

State v Petrie  
2016-Ohio-4941

Ninth District Court of Appeals

- Three different expert opinions re: NGRI plea and competency evaluation regarding aggravated murder, etc. charges:
  - 1) Defense: SMI and did not know wrongfulness.
  - 2) State: SMI, but did know wrongfulness.
  - 3) Independent: No SMI.
- Found guilty, defendant appealed
- Judgment affirmed – “when expert witnesses differ in their opinions regarding the insanity defense, a jury must make a credibility determination when deciding which experts to believe.”



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### Two Standards: Competency at Trial and Sanity at Time of Offense

State v Flint  
2015-Ohio 3689

Second District Court of Appeals

- Appellant found competent to stand trial and sane at the time of offense.
- Appellant entered NGRI plea, withdrew the plea, then requested another evaluation.
- Trial court denied request and on same date appellant pled guilty.
- Appeals court agreed w/trial court that withdrawal of NGRI plea and subsequent guilty plea waived appellant’s right to an independent evaluation of sanity.
- Appeals court draws excellent distinction b/w competence to stand trial and sanity at the time an offense was committed.



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### State v Flint

“Whether a defendant is legally insane at the time an offense is committed and competent to stand trial are ruled by two different standards. A defendant is presumed competent unless it is proved by a preponderance of the evident that, because of his preponderance of the evident that, because of his present mental condition, he is incapable of understanding the nature and objective of the proceedings against him or of assisting in his own defense. R.C. 2945.37(G).”



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### State v Flint

"In *Dusky v. U.S.*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960), the Supreme Court stated that the test for competency is whether the defendant 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceeding against him.' Conversely, a person cannot be found not guilty by reason of insanity unless he proves that, at the time of the commission of the offense, he did not know, as a result of severe mental disease or defect, the wrongfulness of his acts. R.C. 2901.01(A)(14). *State v. Saini*, 2d Dist. Greene No. 2013 CA 36, 2014-Ohio-5582, ¶16."



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### Let's Get Constitutional (Sorry, we aren't going for a walk!)

**Sell v United States (2003)**  
539 U.S. 166  
U.S. Supreme Court

- Constitutionality of forced medications to mentally ill defendants.
- Defendant Sell: incompetent to stand trial, and use of antipsychotic medication to try to make him competent to stand trial (non-violent offenses).
- "An individual has a 'significant' constitutionally protected 'liberty interest' in avoiding the unwanted administration of antipsychotic drugs" (citing to *Washington v. Harper*) – think we are glad to hear that.
- "The Due Process Clause permits the State to treat a prison inmate who has a serious mental illness w/antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest." (*Washington v. Harper*).



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### Sell v U. S.

- Citing *Washington v. Harper* and *Riggins v. Nevada*:
  - "...the Constitution permits the Government involuntarily to administer antipsychotic drugs to render a mentally ill defendant competent to stand trial on serious criminal charges if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the trial's fairness, and, taking account of less intrusive alternatives, is necessary significantly to further important government trial-related interests."



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**Sell: Four-Part Test:  
(1) Government Interest**

- “First, a court must find that *important* governmental interests are at stake. The Government’s interest in bringing to trial an individual accused of a serious crime is important. That is so whether the offense is a serious crime against the person or a serious crime against property. In both instances, the Government seeks to protect through application of the criminal law, the basic human need for security.”



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**Sell: Four-Part Test:  
(2) Drugs Likely to Render Competence**

- “Second, the court must conclude that involuntary medication will *significantly further* those concomitant state interests. It must find that administration of the drugs is substantially likely to render the defendant competent to stand trial. At the same time, it must find that administration of the drugs is substantially unlikely to have side effects that will interfere significantly with the defendant’s ability to assist counsel in conducting a trial defense, thereby rendering the trial unfair.”



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**Sell: Four-Part Test:  
(3) No Less Intrusive Treatments**

- “Third, the court must conclude that involuntary medication is *necessary* to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results.”



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### Sell: Four-Part Test: (4) Medical Appropriateness

- “Fourth, as we have said, the court must conclude that administration of the drugs is *medically appropriate*, i.e., in the patient’s best medical interest in light of his medical condition. The specific kinds of drugs at issue may matter here as elsewhere. Different kinds of antipsychotic drugs may produce different side effects and enjoy different levels of success.”



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### Sell v U.S. Supreme Court finds for the Appellant

- “For these reasons, we believe that the present orders authorizing forced administration of antipsychotic drugs cannot stand. The Government may pursue its request for forced medication on the grounds discussed in this opinion, including grounds related to the danger Sell poses to himself or others. Since Sell’s medical condition may have changed over time, the Government should do so on the basis of current circumstances.”

- [There were three dissenters to this opinion.]



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### Court-Ordered Jurisdiction

#### State v Williams (2010) 2010-Ohio-2453 Supreme Court of Ohio

- Second District Court of Appeals found O.R.C. statutory scheme under 2945.39 unconstitutional (OMG! ☹).
- Supreme Court of Ohio reversed (☺).
- Seminal case that doesn’t seem to get a lot of attention.
- One of my favs because .....
- Williams found incompetent to stand trial (court-ordered continuation of treatment).
- Max restoration time nears, State then orally moved at a hearing for the trial court to retain jurisdiction under R.C. 2945.39(A)(2).



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### R. C. Section 2945.39(A)(2)

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

- (a) The defendant committed the offense with which the defendant is charged.
- (b) The defendant is a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order.



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### Then there's 2945.39(B)

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



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### State v Williams

"Williams moved to dismiss the indictment, arguing that the trial court's exercise of continuing jurisdiction pursuant to R.C. 2945.39 would deprive him of his rights to due process and equal protection."

- The trial court denied the motion to dismiss and held that R.C. 2945.39 is constitutional.
- The trial court retained jurisdiction subject to R.C. 2945.401 and 2945.402 and ordered Williams to remain hospitalized at Twin Valley.
- Upon Williams' appeal, the Second District Court of Appeals reversed in a divided decision (2 – 1).



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### State v Williams – 2<sup>nd</sup> District Court Ruling

“...statute is ‘criminal, not civil in nature’ and that Williams’ constitutional rights were therefore violated because he had not received all the procedural safeguards in his R.C. 2945.39 commitment hearing that he should have received as a criminal defendant undergoing prosecution.”

- “R.C. 2945.39 violated Williams’ right to equal protection because that statute’s procedures for committing persons *under indictment* for a serious felony offense do not also apply to persons who have been *convicted* of the same offense and because the procedures for terminating commitment are more onerous for a person committed under R.C. 2945.39 than for a person committed under R.C. Chapter 5122.”
- (hmmmm, indictment is different than conviction, sooo.....)



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### State v Williams – 2<sup>nd</sup> District Court Ruling

- “R.C. 2945.39 violated his right to due process because the common pleas court’s retention of jurisdiction pursuant to the criminal indictment and the permitted length of the commitment – the maximum term that he could have received for the most serious offense in the indictment – are not reasonably related to the purpose of commitment, which is to protect society from dangerous persons who are mentally ill.”



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### State v Williams – 2<sup>nd</sup> District Court Ruling

- Intent-effects test to determine whether statute is civil or criminal in nature.
- Used to analyze sex-offender laws in Ohio.
- Used by U.S. Supreme Court in *Kansas v. Hendricks* (1997), 521 U.S. 346.



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### State v Williams 2<sup>nd</sup> District Court Ruling

- “...although R.C. 2945.39 attempts to accomplish some of the same goals as civil commitment, the commitment procedures of R.C. 2945.39 reflect an overriding intent to confine incompetent defendants who have been charged with serious felonies as if they had been convicted or until they can be tried.”

OR



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### State v Williams 2<sup>nd</sup> District Court Ruling

- “...merely a transfer of commitment authority to the criminal court from the probate court for mentally ill persons subject to hospitalization by court order, whose present dangerousness is demonstrated by the commission of a serious felony.”
- Can both be true??



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### State v Williams Ohio Supreme Court Reverses

- Court found that primary purpose of statutes was protection of public, and that present dangerousness of offender was critical.
- “R.C. 2945.39...does not require a finding of scienter, nor does it implicate retribution or deterrence, which are the primary objectives of criminal punishment and the two most telling factors that a particular statute is criminal in nature.”



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### Ohio Supreme Court: Civil, not Criminal

- “R.C. 2945.39 does not implicate deterrence, because a defendant to whom it applies is unlikely, by the very nature of his mental illness, to possess the ability to tailor his behavior to the requirements of the law upon the threat of commitment.”
- “Although it is true that R.C. 2945.39 and its related statutes are contained within Title 29 of the Revised Code, that fact is not dispositive as to whether these statutes are civil or criminal.”

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### Ohio Supreme Court: Civil, not Criminal

- “Similarly, the fact that the statutes refer to the person being considered for commitment as the ‘defendant’ does not mean that the proceedings under R.C. 2945.39 are necessarily criminal in nature. We view both of these statutory characteristics as naturally flowing from the reality that the person has been charged with a serious criminal offense and is subject to proceedings under R.C. 2945.38, and not as any particular indication of an intent to punish.”

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### Ohio Supreme Court: Civil, not Criminal

- “We therefore determine that R.C. 2945.39 is manifestly civil in its intent. As the dissent in the appellate court noted, [I]ndividuals committed under R.C. 2945.39 must be released when they have been found to be no longer a mentally ill person subject to hospitalization by court order. \*\*\*[T]he release provision emphasized that the primary purpose of R.C. 2945.39 is to provide stricter confinement for mentally ill persons who are particularly dangerous.”

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**Ohio Supreme Court:  
Equal Protection Standard**

- "...a statute that does not implicate a fundamental right or a suspect classification does not violate equal-protection principles if it is rationally related to a legitimate government interest."
- "The state argues that R.C. 2945.39 does not violate equal protection rights, because its procedures are justified by the state's interest in restraining mentally ill persons subject to hospitalization who have committed a serious crime. We agree."

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**Ohio Supreme Court:  
Equal Protection Standard**

- Clear and convincing finding actually makes forensic commitment stricter than civil commitment.
- But termination of commitment is harder.
- But 2945.39 committees have been found to have a committed a violent felony.
- Rationally related test carries the day.

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**Ohio Supreme Court:  
Due Process Standard**

- Due process analysis also has rational basis standard.
- "The appellate court's conclusions appear to be based on a belief that the statute's primary goals are to punish the defendant and restore his competency to stand trial.
- However, as discussed in our analysis above, R.C. 2945.39 is a civil statute with a primary goal of protecting the public. It is of great significance to our due-process inquiry that R.C. 2945.39(D)(1) requires the court to order the least-restrictive commitment alternative available consistent with public safety and the defendant's welfare, while also emphasizing that the court 'shall give preference to protecting public safety'."

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### Ohio Supreme Court: Due Process Standard

- “If the person at some point is no longer mentally ill and subject to hospitalization by court order, his commitment under R.C. 2945.39 will terminate, subject to additional court proceedings. R.C. 2945.401(J)(1)(a).”
- Does that occur often? Occasionally? At all? For serious felonies?
- Court emphasized that commitments can terminate sooner than max statutory commitment time.



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### State v Williams Final Notes - 1

- Again, rationally related test carries the day.
- Dissent (4-2-1 decision)
- Chapter 2945 is Criminal; Chapter 5122 is Civil
- Tying length of commitment to prison terms = criminal in nature.
- Once commitment time is served, common pleas court can no longer punish defendant.



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### State v Williams Final Notes - 2

- “Finally, unlike a person committed under the civil process, a defendant who is committed under R.C. 2945.39 remains under a pending indictment. The proceeding occurs as part of the defendant’s criminal case and, therefore, the defendant should be afforded all the rights of a criminal defendant.”



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### SB 162 Proposed Prohibits Death Sentence to Mentally Ill

- Prohibits a person convicted of aggravated murder, who shows that the person had a serious mental illness at the time of the offense, from being sentenced to death for the offense and instead, requires the person to be sentenced to life imprisonment.
- Requires the resentencing of a person previously sentenced to death who proves that the person had a serious mental illness at the time of the offense to life imprisonment, and provides a mechanism for resentencing.
- Defines a "serious mental illness" for purposes of the bill's provisions.

  
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### Questions?

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"Yes, I'd like to ask a very specific question that pertains only to me, and then go on and on and on..."

  
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### Anyone?

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"OK, I have time for just one more question. Anyone have anything other than why I'm not extinct?"

  
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