- Permits a party in a civil action to subpoena a coroner or deputy coroner to give expert testimony at a trial, hearing, or deposition only upon filing with the court a notice with specified information, and prohibits a party that fails to provide such notice, unless good cause is shown, from having the coroner or deputy coroner called to give expert testimony.

- Authorizes a court for good cause shown to permit a coroner or deputy coroner who has not been served with such a subpoena to give expert testimony in a civil action.

- Requires a party that obtains the expert testimony to pay to the county treasury a "deposition fee" or a "testimonial fee," both as defined in the act, and provides a procedure for determining such fees.

- Provides a procedure for the court to resolve a dispute as to the contents of the above notice or whether the testimony sought or given is "expert testimony" or "fact testimony," both as defined in the act.

- Specifically excludes the above provisions from continuing law specifying the fees and mileage allowed for witnesses in civil cases.

- Requires the court to commit a mentally ill criminal defendant who is incompetent to stand trial or not guilty by reason of insanity to the Department of Mental Health for an appropriate placement by the Department for the defendant's treatment and evaluation and not directly to a facility.

- Permits a prosecutor to hold charges against a defendant charged with a nonviolent misdemeanor in abeyance while the defendant engages in mental health treatment or developmental disability services.

- Designates the county or municipal indigent alcohol treatment fund in which the court costs imposed for a violation of an ordinance of a municipal corporation that is a moving violation or for an OVI violation are to be deposited, based on the court with jurisdiction over the municipal corporation.

- Eliminates the duty of the Clerk of the Supreme Court to file annual reports of the transactions and proceedings of the Court with the Governor, the Secretary of State, and the State Library.

- Moves the jurisdiction over the Village of West Millgrove from the Fostoria Municipal Court to the Bowling Green Municipal Court.

- Modifies the experience qualification for a municipal judge, a judge of the court of common pleas, a judge of the court of appeals, and the Chief Justice and a justice of the Supreme Court to hold judicial office by removing the requirement that the minimum of six years of prior practice of law be in Ohio.

- Requires that at least two of the six or more years of prior practice of law or prior service as a judge of a court of record in any jurisdiction in the United States that qualify the judge, Chief Justice, or justice specified in the preceding dot point have been in Ohio.

- Modifies the experience qualification generally for a county court judge to hold judicial office by removing the requirement that the minimum of six years of prior practice of law be in Ohio, requiring that the prior practice of law be in any jurisdiction in the United States, and requiring that at least two of the years of prior practice of law have been in Ohio.

- Provides, as a new option for the disposal of unclaimed or forfeited firearms and dangerous ordnance in the custody of a law enforcement agency, that a court may order the sale of the unclaimed or forfeited firearms and dangerous ordnance, in a manner that the court considers is proper, to a federally licensed firearms dealer.

County coroner: expert testimony in civil cases; fee

(R.C. 2335.061, 2335.05, and 2335.06)

Expert testimony

The act permits a party to subpoena a coroner (defined below) or deputy coroner (a pathologist serving as a deputy coroner) to give expert testimony (testimony given by a coroner or deputy coroner as an expert witness pursuant to the act and the Rules of Evidence) at a trial, hearing, or deposition in a civil action only upon filing with the court a notice that must be served with the subpoena and that includes all of the following:

(1) The name of the coroner or deputy coroner whose testimony is sought;

(2) A brief statement of the issues upon which the party seeks the expert testimony from the coroner or deputy coroner;

(3) An acknowledgment by the party that the giving of that expert testimony at the trial, hearing, or deposition is governed by the act's provisions and that the party will comply with all of the act's requirements;

(4) A statement of the obligations of the coroner or deputy coroner as described below.

The act further provides that for good cause shown, the court may permit a coroner or deputy coroner who has not been served with such a subpoena to give expert testimony at a trial, hearing, or deposition in a civil action. Unless good cause is shown, the failure of a party to file with the court the above described notice prohibits the party from having a coroner or deputy coroner subpoenaed to give expert testimony in a civil action or from otherwise calling the coroner or a deputy coroner to give such expert testimony.

The act requires a party that obtains the expert testimony of a coroner or deputy coroner in a civil action to pay to the treasury of the county in which the coroner or deputy coroner holds office or is appointed or employed a "testimonial fee" or "deposition fee" (both defined below), whichever is applicable, within 30 days after receiving the following described statement. Upon the conclusion of the expert testimony, the coroner or deputy coroner must file a statement with the court on behalf of the county showing the fee due and how the coroner or deputy coroner calculated the fee and must serve a copy of the statement on each of the parties.

The act provides that in the event of a dispute as to the contents of the above notice filed by a party or as to the nature of the testimony sought from or given by a coroner or a deputy coroner in a civil action, the court must determine whether the testimony is expert testimony or fact testimony. In making this determination, the court must consider the act's definitions of "expert testimony" (see above) and "fact testimony" (testimony given by a coroner or deputy coroner regarding the performance of the coroner's duties under the Coroners Law, but not including expert testimony), all applicable rules of evidence, and any other information that the court considers relevant. The act states that nothing in the act is to be construed to alter, amend, or supersede the requirements of the Rules of Civil Procedure or the Rules of Evidence.

The act excludes its provisions from continuing laws that provide for attendance and mileage fees for witnesses in civil cases.

Definitions

The act additionally defines the following terms:

"Coroner" means the coroner of the county in which death occurs or the dead human body is found and includes the coroner of a county other than a county in which the death occurred or the dead human body was found if the coroner of that other county performed services for the county in which the death occurred or the dead human body was found or a medical examiner appointed by the governing authority of a county to perform the duties of a coroner under the Coroners Law.

"Deposition fee" means the amount derived by multiplying the hourly rate by the number of hours a coroner or deputy coroner spent preparing for and giving expert testimony at a deposition in a civil action pursuant to the act.

"Hourly rate" means the compensation established in continuing law's annual compensation schedules and salary increases for a coroner without a private practice of medicine at the class 8 level for calendar year 2001 and thereafter (class population of 1,000,001 or more – $103,480), divided by 2,080.

"Testimonial fee" means the amount derived by multiplying the hourly rate by six and multiplying the product by the number of hours that a coroner or deputy coroner spent preparing for and giving expert testimony at a trial or hearing in a civil action pursuant to the act.

Evaluation of criminal defendant's competence to stand trial

(R.C. 2945.371(A), (D), and (G) and 2945.38)

Under law generally unchanged by the act, if the issue of a defendant's competence to stand trial is raised or if the defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. If the court orders an evaluation, the person who examines the defendant must file a written report with the court within 30 days after the court's entry of an order for an evaluation of the defendant. The written report must contain specified findings and recommendations of the person examining the defendant.

The act specifies an additional recommendation that the examiner must include in the written report if the evaluation was ordered to determine the defendant's competence to stand trial. If the defendant is charged with a misdemeanor offense that is not an offense of violence and the examiner is of the opinion that the defendant is presently mentally ill or mentally retarded and is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner must include a recommendation as to whether the defendant is

amenable to engagement in mental health treatment or developmental disability services.

Under law generally unchanged by the act, the court may order a defendant who has not been released on bail or recognizance to be examined at the defendant's place of detention or to be transported for evaluation to a program or facility *operated* by the Ohio Department of Mental Health (ODMH) or the Ohio Department of Developmental Disabilities (ODODD). The act provides that a court may order the defendant to be examined at the defendant's place of detention or to be transported for evaluation to a program or facility operated *or certified* (added by the act) by ODMH or ODODD.

Commitment of a mentally ill defendant to the Ohio Department of Mental Health (ODMH)

(R.C. 2945.38(B))

Continuing law provides that if a court finds, after taking into consideration all relevant reports, information, and other evidence, that a defendant is incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court must order the defendant to undergo treatment. However, if the court finds that a defendant is incompetent to stand trial but is unable to determine whether the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court must order the defendant, if the defendant is charged with a felony, to undergo continuing evaluation and treatment.

Prior law retained in part by the act provided that if a defendant was found incompetent to stand trial and the court issued an order that required the defendant to undergo treatment or continuing evaluation and treatment, the court order was required to specify that the treatment or continuing evaluation and treatment was to occur at a facility operated by ODMH or ODODD, at a facility certified by either ODMH or ODODD as being qualified to treat mental illness or mental retardation, at a public or private community mental health or mental retardation facility, or by a psychiatrist or other mental health or mental retardation professional. All court orders committed the defendant to a facility or mental health professional and not to ODMH or ODODD.

The act provides that if a defendant requires treatment or continuing evaluation and treatment for a mental illness the court order for treatment or continuing evaluation and treatment must specify that the defendant is to be committed to the ODMH for treatment or continuing evaluation and treatment at a hospital, facility, or agency as

determined to be clinically appropriate by ODMH. Under the act, the court does not commit a mentally ill defendant directly to a facility for treatment or evaluation and treatment. If the court finds that a defendant requires treatment or continuing evaluation and treatment for a developmental disability, the court order for treatment or continuing evaluation and treatment must specify that the defendant receive treatment or continuing evaluation and treatment at an institution or facility operated by ODODD, at a facility certified by ODODD as being qualified to treat mental retardation, at a public or private community mental retardation facility, or by a mental retardation professional. Under continuing law, the court does not commit the defendant to the ODODD.

Technical changes

Because the act requires the court to commit a defendant to the ODMH for treatment in cases of mental illness while continuing to commit a defendant to a facility in cases of developmental disabilities, throughout the act, references in provisions of continuing law related to the commitment of a defendant are amended to differentiate between the commitment of a defendant to the ODMH for placement in cases of mental illness and the commitment of a defendant to a facility in cases of developmental disabilities (*see* R.C. 2945.371(G)(3)(d), 2945.38(B)(1)(b) and (c), (E), and (G), 2945.39(D)(1) and (2), 2945.40(F) and (G), 2945.401(C), (D)(1), (I), and (J)(2), 2945.401 ("chief clinical officer"), and 2945.402).

Abeyance of charges during treatment

(R.C. 2945.38(B)(1)(d))

The act permits the prosecutor, in the case of a defendant who is charged with a misdemeanor offense that is not an offense of violence, to hold the charges in abeyance (suspension) while the defendant engages in mental health treatment or developmental disability services.

Restrictions on a mentally ill defendant's freedom of movement after commitment and placement alternatives for a developmentally disabled defendant

(R.C. 2945.38(B) and (E), 2945.39(D)(1) and (2), and 2945.40(F))

The act provides that in committing a defendant to the ODMH, the court must consider the extent to which the defendant is a danger to the defendant and to others, the need for security, and the type of crime involved. If a court finds that restrictions on the defendant's freedom of movement are necessary, the court must specify the least

restrictive limitations on the defendant's freedom of movement as are determined to be necessary to protect public safety.

Prior law provided that, in determining placement alternatives for a defendant, a court was required to consider the extent to which a defendant was a danger to the defendant and to others, the need for security, and the type of crime involved and order the least restrictive alternative available that was consistent with public safety and treatment goals. The act amends this provision to limit its application to commitment alternatives for defendants who are determined to require treatment or continuing evaluation and treatment for a developmental disability.

The act also amends prior law to require a court to specify the least restrictive limitations on a mentally ill defendant's freedom of movement necessary to protect public safety and to order the least restrictive commitment alternative for a developmentally disabled defendant's commitment in the case of a court committing a defendant for treatment subsequent to retaining jurisdiction over a defendant in given circumstances after the expiration of the maximum time permitted by law for treatment and in the case of committing a defendant for treatment subsequent to finding the defendant not guilty by reason of insanity.

Under law generally unchanged by the act, if a court commits a defendant who has been found incompetent to stand trial for treatment or continuing supervision and treatment, the defendant cannot be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status, except as otherwise provided by this provision. The act states that the court order of commitment may contain provisions that grant the defendant unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status. The prior law did not refer to court orders in connection with exceptions to restrictions on a defendant's unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status.

Reports to be filed by place of defendant's commitment

(R.C. 2945.39(A) and (D) and 2945.40(A), (F), and (G))

Prior law set limits on the length of time that a defendant could be required to undergo treatment or continuing evaluation and treatment for a mental illness or developmental disability (R.C. 2945.38(C)). A court could retain jurisdiction over the defendant under specified circumstances after the expiration of the maximum time permitted for treatment or after the court found that there was not a substantial probability that the defendant would become competent to stand trial even if the defendant was provided with a course of treatment, and to commit the defendant to the ODMH for the defendant's placement by the ODMH for further treatment of the

defendant's mental illness or to commit the defendant for further treatment of the defendant's developmental disability. If a defendant was found not guilty by reason of insanity, the defendant could be committed to the ODMH for treatment of a mental illness or committed to a facility for developmental disability services.

In such cases, the act eliminates a requirement found in prior law that required the place of commitment, following the admission of the defendant, to send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the defendant were filed a copy of all reports of the defendant's current mental condition and other relevant information provided by the prosecutor to the place of the defendant's commitment, including, if provided, a transcript of the hearing held to retain jurisdiction over the defendant following the expiration of the maximum period allowed by law for the defendant's treatment or the hearing held following a finding of not guilty by reason of insanity to determine if the defendant is a mentally ill person subject to hospitalization or a mentally retarded person subject to institutionalization, relevant police reports, and prior arrest and conviction records that pertain to the defendant.

Development of plan to terminate a person's or defendant's commitment or a change in the conditions of the commitment

(R.C. 2945.401)

Prior law, largely unchanged by the act, provided in the case of a court committing a defendant for treatment subsequent to retaining jurisdiction over a defendant in given circumstances after the expiration of the maximum time permitted by law for treatment and in the case of committing a defendant for treatment subsequent to finding the defendant not guilty by reason of insanity (under R.C. 2945.39 and 2945.40) that the "chief clinical officer" of the defendant's place of commitment (amended by the act to the designee of the ODMH or the managing officer of the institution or director of the facility to which a defendant is committed) could recommend the termination of the defendant's or person's commitment or a change in the conditions of the defendant's or person's commitment. If the chief clinical officer, after following specified procedures, proceeded with the officer's recommendation, the chief clinical officer was required to work with the "board of alcohol, drug addiction, and mental health services or community mental health board serving the area" to develop a plan to implement the recommendation. The act amends the entities that must be worked with to "community mental health agencies, programs, facilities, or boards of alcohol, drug addiction, and mental health services."

Commitment to a "program"

The act amends or deletes language in current law, when found in the act, that refers to a defendant's commitment to a "program," because while a defendant may be committed to or placed at an institution or facility, a physical place, a defendant cannot be committed to a program, an ethereal course of treatment.

Indigent drivers alcohol treatment fund

(R.C. 4511.193; conforming changes to R.C. 4503.235 and 4507.164)

The act provides that any court cost imposed as a result of a violation of a municipal ordinance that is a moving violation and designated for an indigent drivers alcohol treatment fund must be deposited into a municipal or county indigent drivers alcohol treatment fund in accordance with continuing law governing the deposit and disbursement of court funds. This court cost must be deposited into the indigent drivers alcohol treatment fund of the county in which the municipal corporation with the applicable ordinance is located if the municipal court that has jurisdiction over that municipal corporation is a county-operated municipal court. The court cost must be deposited into the indigent drivers alcohol treatment fund of the municipal corporation in which the municipal court is located if the municipal court that has jurisdiction over the municipal corporation with the applicable ordinance is not a county-operated municipal court. These provisions apply regardless of whether the court cost is imposed by a municipal court, a mayor's court, or a juvenile court. If the court cost is imposed for a violation of a municipal ordinance of a municipal corporation that is within the jurisdiction of a county court, the court cost must be deposited into the indigent drivers treatment fund of the county in which the county court with jurisdiction over the municipal corporation is located, regardless of whether the court cost is imposed by a county court, a mayor's court, or a juvenile court. The deposit must be made in accordance with continuing law governing the deposit and disbursement of court funds.

Under continuing law, $25 of any fine imposed for a violation of a municipal OVI ordinance is deposited into a municipal or county indigent drivers alcohol treatment fund. The act provides that the $25 must be deposited into the indigent drivers alcohol treatment fund of the county in which that municipal corporation is located if the municipal court with jurisdiction over that municipal corporation is a county operated municipal court. If the municipal court with jurisdiction over that municipal corporation is not a county-operated municipal court, the $25 must be deposited into the indigent drivers alcohol treatment fund of the municipal corporation in which the municipal court is located. These provisions apply regardless of whether the fine is imposed by a municipal court, a mayor's court, or a juvenile court. Under continuing

law, the fines must be deposited in accordance with the law governing the deposit and disbursement of court funds.

Under continuing law, if the fine was imposed for a violation of a municipal OVI ordinance that is within the jurisdiction of a county court, the $25 must be deposited into the indigent drivers treatment fund of the county in which the county court that has jurisdiction over the municipal corporation is located, regardless of whether the fine is imposed by a county court, a mayor's court, or a juvenile court.

The act provides that for purposes of the above provisions, a "county-operated municipal court" means the Auglaize County, Brown County, Carroll County, Clermont County, Columbiana County, Crawford County, Darke County, Erie County, Hamilton County, Hocking County, Holmes County, Jackson County, Lawrence County, Madison County, Miami County, Montgomery County, Morrow County, Ottawa County, Portage County, Putnam County, or Wayne County municipal court.

Report of Clerk of Supreme Court eliminated

(R.C. 149.01)

The act eliminates prior law's requirement for the Clerk of the Supreme Court to make annually, at the end of each fiscal year, in quadruplicate, a report of the transactions and proceedings of the Court for that fiscal year, except receipts and disbursements unless otherwise specifically required by law. Prior law required the report that is eliminated to contain a summary of the Court's official acts and any suggestions and recommendations that were proper. Under former law, on the first day of August of each year, one of the eliminated reports was required to be filed each with the Governor, the Secretary of State, and the State Library, and one kept in the office of the Clerk.

Municipal court jurisdiction over West Millgrove

(R.C. 1901.02)

Prior law provided that the Fostoria Municipal Court had jurisdiction within Perry Township, which included the municipal corporation of West Millgrove. The act moves West Millgrove to the jurisdiction of the Bowling Green Municipal Court.

Qualifications of judges and justices

(R.C. 1901.06, 1907.13, 2301.01, 2501.02, and 2503.01)

The act modifies one of the qualifications under prior law for a municipal judge, a judge of the court of common pleas, a judge of the court of appeals, and the Chief

Justice and a justice of the Supreme Court to hold judicial office by providing that the judge, Chief Justice, or justice has been, for a total of at least six years preceding appointment or the commencement of the judge's, Chief Justice's, or justice's term, engaged in the practice of law (the act eliminates "in this state") or served as a judge of a court of record in any jurisdiction in the United States, or both. The act requires that at least two of the six or more years of prior practice of law or prior service as a judge that qualify the judge, Chief Justice, or justice have been in Ohio.[187]

The act also revises one of the qualifications under continuing law for a county court judge to hold judicial office by providing that the judge has been engaged, for a total of at least six years preceding the judge's appointment or the commencement of the judge's term, in the practice of law (the act eliminates "in this state") *in any jurisdiction in the United States* (added by the act). The act requires that at least two of the six or more years of prior practice of law that qualify the judge have been in Ohio. The act retains the exception under prior law that the six-year legal practice requirement does not apply to a county court judge who is holding office on July 2, 2010, and who subsequently is a candidate for that office.[188]

Law enforcement disposal of unclaimed firearms and dangerous ordnance

(R.C. 2981.12(A))

Continuing law provides for the disposal of unclaimed or forfeited firearms and dangerous ordnance in the custody of a law enforcement agency pursuant to an order of any court of record that has territorial jurisdiction over the political subdivision that employs the law enforcement agency. Firearms and dangerous ordnance suitable for police work may be given to a law enforcement agency for that purpose. Firearms suitable for sporting use or as museum pieces or collector's items may be sold at public auction. The agency must destroy any other unclaimed or forfeited firearms and dangerous ordnance or send the firearms and dangerous ordnance to the Bureau of Criminal Identification and Investigation (BCII) for destruction by the BCII.

The act provides the court with an additional option for the disposal of unclaimed or forfeited firearms and dangerous ordnance in the custody of a law enforcement agency. The court may order a law enforcement agency, prior to the mandatory destruction of the firearms and dangerous ordnance that remain in the custody of the law enforcement agency, to sell the firearms and dangerous ordnance to a federally licensed firearms dealer in a manner that the court considers proper.

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[187] R.C. 1901.06, 2301.01, 2501.02, and 2503.01.

[188] R.C. 1907.13.