OHIO LEGISLATIVE SERVICE COMMISSION

www.lsc.ohio.gov

Office of Research and Drafting

Legislative Budget Office

S.B. 2
134th General Assembly

Bill Analysis

Click here for S.B. 2's Fiscal Note

Version: As Passed by the Senate

Primary Sponsor: Sen. Gavarone

Nicholas A. Keller, Attorney

SUMMARY

Procedure for court-ordered competency examinations

- Generally prohibits a court from ordering a criminal defendant to undergo inpatient competency evaluations at certain facilities operated or certified by the state, unless the defendant is charged with a felony or offense of violence or unless the court determines that the defendant is in need of immediate hospitalization.
- Provides that the prohibition does not apply regarding a court order based on a recommendation from an examiner.
- If an evaluation of the defendant's mental condition at the time of the offense is conducted, allows the examination to be conducted through electronic means.
- Requires that the examiner's written report filed with the court be filed under seal and requires the court to allow inspection of the report by the defendant, the defendant's guardian, probate courts, ADAMHS boards, and mental health professionals involved in the treatment of the defendant, but the report is not open to public inspection.
- Allows a person not among those specified above to inspect the report in certain circumstances and provides a mechanism for determining whether disclosure should be allowed.
- Provides that intellectual disability reports must be filed under seal in the same manner as competency evaluations.
- If the examiner gives a recommendation in the report as to the least restrictive placement or commitment alternative for the defendant due to the defendant's condition, the examiner must consider the housing needs and availability of mental health treatment in the community.

Issue of competence to stand trial raised – finding of incompetence to stand trial

- Modifies and expands the provisions governing a court's issuance of a treatment order for a defendant found incompetent to stand trial.
- Requires the court, when determining the place of commitment for a defendant found incompetent to stand trial, to consider the availability of housing and supportive services, including outpatient mental health services.
- Provides that if a defendant charged with a specified offense is found incompetent to stand trial and committed, if the court subsequently finds that the defendant remains incompetent to stand trial, and the defendant is not discharged because a civil commitment affidavit is filed, the court must send to the probate court copies of all written reports of the defendant's mental condition prepared regarding evaluations.

Misdemeanor defendants undergoing competency restoration

- Enacts a procedure that a hospital chief clinical officer must follow before discharging certain mental health patients found incompetent to stand trial for one or more nonviolent misdemeanor offenses.
- Prohibits a described patient from being discharged from hospitalization before the hospital's chief clinical officer has notified the trial court or prosecutor of the intent to discharge.
- Requires that the Affidavit of Mental Illness, used to initiate involuntary mental health treatment using the process of judicial hospitalization, include a space for the affiant to indicate that the person for whom involuntary mental health treatment is sought is a described patient.

Psychology Interjurisdictional Compact (PSYPACT) – Ohio entry

- Enters Ohio in the multi-jurisdictional psychology compact known as PSYPACT.
- Regulates the practice of telepsychology and temporary in-person psychology across state boundaries for participating states.
- Establishes the Psychology Interjurisdictional Compact Commission.
- Creates the Coordinated Licensure Information System.
- Outlines the procedure for implementing and withdrawing from PSYPACT.

TABLE OF CONTENTS

DETAILED ANALYSIS

Procedure for court-ordered competency examinations

Examination, report, and disclosure

Under current law, if the issue of a criminal defendant's competence to stand trial (IST) is raised or a defendant enters a plea of not guilty by reason of insanity (NGRI), a 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 a court orders an evaluation, the defendant must be available at the times

and places established by the examiners who are to conduct the evaluation. The bill provides that the examiners may conduct the evaluation through electronic means.[1]

The bill prohibits a court, subject to the exceptions described in the next paragraph, from ordering a defendant to undergo inpatient competency evaluations at a center, program, or facility operated by the Department of Mental Health and Addiction Services (DMHAS) or the Department of Developmental Disabilities (DODD), unless the defendant is charged with a felony or an offense of violence or unless the court determines, based on facts before it, that the defendant is in need of immediate hospitalization. Generally, an evaluation ordered by a municipal court must be conducted through community resources, such as a certified forensic center, court probation department, or community mental health services provider. A defendant who has not been released on bail or recognizance may be evaluated at the place of detention.[2]

The bill specifies that the prohibition described above does not apply with respect to two existing provisions, unchanged by the bill. The first existing provision specifies that, if the defendant has not been released on bail, upon the request of the examiner, the court may order the sheriff to transport the defendant to a program or facility operated or certified by DMHAS or DODD, where the defendant may be held for evaluation for a reasonable period of time not to exceed 20 days, and to return the defendant to the place of detention after the evaluation. And under this existing provision, a municipal court may order the inpatient evaluation only upon the request of a certified forensic center examiner. The second existing provision specifies that a defendant who has not been released on bail or recognizance may be evaluated at the defendant's place of detention.[3]

Under a different existing provision, if a defendant who has been released on bail or recognizance refuses to submit to a competency examination, the court may order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by DMHAS or DODD, where the defendant may be held for inpatient evaluation for a reasonable period of time not exceeding 20 days. The bill specifies that this provision is subject to the prohibition described in the second preceding paragraph.[4]

Current law requires the examiner, in conducting an evaluation of the defendant's mental condition at the time of the offense charged, to consider all relevant evidence. The bill allows this examination to be conducted through electronic means.[5] Current law also requires the examiner to file a written report with the court within 30 days after entry of a court order for evaluation, and requires the court to provide copies of the report to the prosecutor and

[1] R.C. 2945.371(A) and (C)(1).

[2] R.C. 2945.37(H) and 2945.371(E).

[3] R.C. 2945.371(D).

[4] R.C. 2945.371(C)(2).

[5] R.C. 2945.371(G).

defense counsel. The bill requires that the written report be filed with the court under seal, and requires the court to allow for inspection of the report by the defendant, the defendant's guardian, a probate court, a board of alcohol, drug addiction, and mental health services (an ADAMHS board), and any mental health professional involved in the treatment of the defendant, but the report must not be open to public inspection.[6]

The bill provides that a person who is not among those permitted to inspect the report as described in the preceding paragraph may file a motion with the court seeking disclosure for good cause. When such a motion is filed, the court must notify the defendant of the pending motion and allow sufficient time for the defendant to object to the disclosure. If the defendant objects to the disclosure, the court must schedule a hearing to determine whether the party seeking access to the report has demonstrated that the access is necessary for treatment of the defendant or for a criminal adjudication of the defendant for which the report was originally created. At that time the defendant must be allowed an opportunity to provide the court with grounds for the objection. The court may not provide access to the report unless the party seeking access can demonstrate that the access is necessary for treatment of the defendant or for a criminal adjudication of the defendant for which the report was originally created.

A defendant who is the subject of an examiner's report prior to the bill's effective date may file a motion with the court to have that report placed under seal and, upon such a motion, the court must place the report under seal, subject to the access and disclosure provisions provided in current law and the bill for reports filed after the effective date.[7]

Content of report

Under current law, the report must include, in part, the examiner's findings, the facts in reasonable detail on which the findings are based, and certain other things, which vary depending upon whether the purpose of the evaluation was to determine the defendant's competence to stand trial or to determine the defendant's mental condition at the time of the offense charged. If the evaluation was for the former purpose, if the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or has an intellectual disability, one of the things required for the report is the examiner's recommendation as to the least restrictive placement or commitment alternative, consistent with the defendant's treatment needs for restoration to competency and with the safety of the community.[8] The bill requires that the examiner's recommendation as to that alternative consider the housing needs and the availability of mental health treatment in the community.[9]

---

[6] R.C. 2945.371(H).

[7] R.C. 2945.371(H).

[8] R.C. 2945.371(H)(1) to (4).

[9] R.C. 2945.371(H)(3)(d).

Intellectual disability report

Current law specifies that if the examiner's report described above indicates that in the examiner's opinion the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that in the examiner's opinion the defendant appears to be a person with an intellectual disability subject to institutionalization by court order, the court must order the defendant to undergo a separate intellectual disability evaluation conducted by a psychologist designated by DODD's Director. The provisions of existing law and the bill described above with respect to the examiner's report apply in relation to the separate intellectual disability evaluation. The psychologist who conducts the separate intellectual disability evaluation must file a written report with the court within 30 days after the entry of the court order requiring the separate intellectual disability evaluation, and the court must provide copies to the prosecutor and defense counsel. The bill also requires that the court must file the report under seal in the same manner as the bill requires a report submitted by an examiner to be filed under seal, as described above.[10]

Technical changes

The bill changes two cross-references in existing law to R.C. 2945.371(H) that the bill redesignates as R.C. 2945.371(I).[11]

Issue of competence to stand trial raised – finding of IST

Order of treatment

The bill modifies and expands the existing provisions governing a court's issuance of a treatment order for a defendant found IST. Under the bill:[12]

1. Under an existing provision the bill modifies, if the defendant is charged with a felony or a misdemeanor offense of violence for which the prosecutor has not recommended the procedures described below in (4) and if, after taking into consideration all relevant reports, information, and other evidence (hereafter, all relevant materials), the court finds that the defendant is IST 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 (current law does not limit the application of the provision to a person charged with a felony offense or a misdemeanor offense of violence for which the prosecutor has not recommended the procedures described below in (4)).
2. Under an existing provision unchanged by the bill, if the defendant is charged with a felony and if, after taking into consideration all relevant materials, the court finds that the defendant is IST, but the court is unable at that time to determine whether there is

[10] R.C. 2945.371(I).

[11] R.C. 2945.37(A)(2)(b) and (C) and 2945.371(K) and (L).

[12] R.C. 2945.38(B)(1)(a).

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 continuing evaluation and treatment of the defendant for a period not to exceed four months to determine whether 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.

3. Under a new provision, if the defendant is not charged with a felony but is charged with a misdemeanor offense of violence and if, after taking into consideration all relevant materials, the court finds that the defendant is IST, but the court is unable at that time to determine whether there is a substantial probability that the defendant will become competent to stand trial within the time frame permitted for treatment under R.C. 2945.38(C)(1), the court may order continuing evaluation and treatment of the defendant for a period not to exceed the maximum period permitted under that division.

4. Under a new provision, if the defendant is not charged with a felony or a misdemeanor offense of violence, but is charged with a misdemeanor offense that is not a misdemeanor offense of violence and if, after taking into consideration all relevant materials, the court finds that the defendant is IST, but the court is unable at that time to determine whether there is a substantial probability that the defendant will become competent to stand trial within the time frame permitted for treatment under R.C. 2945.38(C)(1), the court must dismiss the charges and follow the process outlined in (5)(a), below.

5. Under a new provision, if the defendant is not charged with a felony or a misdemeanor offense of violence, or if the defendant is charged with a misdemeanor offense of violence and the prosecutor has recommended the procedures under (6), below, and if, after taking into consideration all relevant reports, information, and other evidence, the trial court finds that the defendant is IST, the trial court must do one of the following:

   a. Dismiss the charges pending against the defendant. The dismissal is not a bar to further prosecution based on the same conduct. Upon dismissal of the charges, the trial court must discharge the defendant unless the court or prosecutor, after consideration of the requirements of R.C. 5122.11 regarding civil commitment, files an affidavit in probate court alleging that the defendant is a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order. If an affidavit is filed in probate court, the trial court may detain the defendant for ten days pending a hearing in the probate court and must send to the probate court copies of all written reports of the defendant's mental condition that were prepared pursuant to the evaluation provisions of existing law and the bill, as described above. The trial court or prosecutor must specify in the appropriate space on the affidavit that the defendant is a person described in this paragraph.

   b. Order the defendant to undergo outpatient competency restoration treatment at a facility operated or certified by DMHAS as being qualified to treat mental illness, at a

public or community mental health facility, or in the care of a psychiatrist or other mental health professional. If a defendant who has been released on bail or recognizance refuses to comply with court ordered outpatient treatment under this division, the court may dismiss the charges pending against the defendant and proceed as described in (5)(a), above, or may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by DMHAS for treatment.

6. Under a new provision, if the defendant is not charged with a felony offense but is charged with a misdemeanor offense of violence and after taking into consideration all relevant materials, the court finds that the defendant is IST, the prosecutor in the case may recommend that the court follow the procedures prescribed in (5), above. If the prosecutor does not make such a recommendation, the court shall follow the procedures described in (1), above.

Place of commitment

Under current law, unchanged by the bill, if a court orders a defendant to undergo treatment or continuing evaluation and treatment under Ohio law, the court order must specify that the defendant either must be committed to DMHAS for treatment or continuing evaluation and treatment at a hospital, facility, or agency, as determined to be clinically appropriate by DMHAS or must be committed to a facility certified by DMHAS as being qualified to treat mental illness, to a public or community mental health facility, or to a psychiatrist or other mental health professional for treatment or continuing evaluation and treatment. Prior to placing the defendant, DMHAS must obtain court approval for that placement following a hearing.[13]

Current law also provides that in determining the place of commitment, the court must consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and must order the least restrictive alternative available that is consistent with public safety and treatment goals. In weighing these factors, the court must give preference to protecting public safety. The bill requires the court, in determining the place of commitment, to also consider the availability of housing and supportive services in the community and, in weighing all of the current and new factors, to give preference to the availability of housing and supportive services as well as protecting public safety.[14]

Subsequent hearing and actions

Under current law, if a defendant who is found to be IST is committed as described above, the court must conduct another hearing pursuant to R.C. 2945.38(H) within a specified

[13] R.C. 2945.38(B)(1)(b).

[14] R.C. 2945.38(B)(1)(b).

period of time to determine if the defendant is competent to stand trial. If the court finds that the defendant is competent to stand trial, the defendant must be proceeded against as provided by law. If the court finds that the defendant is IST, the court must take one of three specified actions, depending upon the circumstances in the case.[15] The bill does not change two of the specified actions, but modifies the third, which applies when the most serious offense with which the defendant is charged is a misdemeanor or a felony other than certain specified felonies (see below) and the court finds that there is not a substantial probability that the defendant will become competent to stand trial even with a course of treatment, or if the maximum time for treatment relative to that felony offense has expired. The specified felonies with respect to which this provision does not apply are aggravated murder, murder, an offense of violence that is a first or second degree felony or for which a sentence of death or life imprisonment may be imposed, or a conspiracy or attempt to commit, or complicity in the commission of, any of those offenses if the conspiracy, attempt, or complicity is a first or second degree felony. Under current law, unchanged by the bill, the court must dismiss the indictment, information, or complaint against the defendant; the dismissal is not a bar to further prosecution based on the same conduct; the court must discharge the defendant unless the court or prosecutor files an affidavit for civil commitment in the probate court; and if such an affidavit is filed, the court may detain the defendant for ten days pending civil commitment. The bill expands the provision to specify that, if an affidavit for civil commitment is filed, the court must send to the probate court copies of all written reports of the defendant's mental condition prepared pursuant to the provisions of existing law and the bill regarding evaluations, as described above.[16]

Misdemeanor defendants undergoing competency restoration

Background

A defendant charged with a misdemeanor who has been found to be IST is almost always admitted to a state psychiatric hospital for treatment that focuses on restoring competency. Such defendants are restored to competency to stand trial only about 50% of the time, largely because of the limited time available for restoration. If they are restored, they return to court, often have their charges dismissed, receive time served, or are placed on probation and released in the community. If a defendant is not restored, the defendant is then transferred to a probate court and continues mental health treatment in the state psychiatric hospital. This treatment may be on a voluntary or involuntary basis.[17]

[15] R.C. 2945.38(H).

[16] R.C. 2945.38(H)(4).

[17] Ohio Department of Mental Health and Addiction Services, *Key Issues: Overview of the State Psychiatric System and Services*, available here.

Procedures for hospitals and courts

The bill modifies procedures that a hospital chief clinical officer must take with respect to a subset of the described defendants who are undergoing mental health treatment on a voluntary basis.

When defendant refuses to accept treatment plan

Under current law, a chief clinical officer may discharge *any* voluntary patient (not just one charged with a crime) who refuses to accept treatment consistent with his or her written treatment plan. The bill maintains this option to discharge, but also explicitly authorizes the chief clinical officer to file an Affidavit of Mental Illness initiating mental health treatment on an involuntary basis. (Current law does not prevent a chief clinical officer from already doing this.)[18]

If the chief clinical officer chooses to discharge the voluntary patient, the bill requires the following procedure:[19]

First, the chief clinical officer must determine whether the patient meets the following criteria:

1. Has not been charged with a felony or misdemeanor offense of violence;
2. Has been found to be IST;
3. Has had the pending misdemeanor charges dismissed; and
4. Has been, within the past 12 months, the subject of an Affidavit of Mental Illness, because the affiant (a trial court or prosecutor) believed the patient to be a "mentally ill person subject to court order" or a "person with an intellectual disability subject to institutionalization by court order."

If the chief clinical officer believes, based on the officer's knowledge of the patient's prior status, that all of the criteria are satisfied and that the patient is eligible for discharge, the chief clinical officer must immediately notify the trial court or prosecutor of the intent to discharge the patient. (For purposes of this analysis, such a person is known as a "patient-defendant.")

Second, if the trial court or prosecutor receives the notification described above, the court or prosecutor may, not later than three days after receiving the notification, file or cause to be filed with the court of the county where the patient-defendant is hospitalized, or the court of the county where the patient-defendant resides, an Affidavit of Mental Illness to initiate involuntary treatment for mental illness.

Third, if the Affidavit or Mental Illness is filed, as described above, the patient-defendant's discharge must be postponed until the probate court holds the hearing,

[18] R.C. 5122.02(C).

[19] R.C. 5122.02(C).

required by continuing law, to determine whether, in fact, the patient-defendant meets one or more of the five statutory categories to be a "mentally ill person subject to court order" as defined in R.C. 5122.01(B) and, therefore, eligible for mental health treatment on an involuntary basis.

When defendant requests release from voluntary status

Currently

Under current law, a patient who is subject to mental health treatment on a voluntary basis may request, in writing, to be released from such treatment. The patient must be released "forthwith" unless either of the following is the case:[20]

1. The patient was admitted on the patient's own application and the request for release is made by a person other than the patient. In this case the release may be conditional upon the agreement of the parties.
2. The chief clinical officer of the hospital, within three court days from the receipt of the request for release, files or causes to be filed with the court of the county where there the patient is hospitalized or of the county where the patient is a resident an Affidavit of Mental Illness to initiate involuntary treatment for mental illness.

Operation of the bill

The bill adds a third exception: the patient is a patient-defendant. Regarding patient-defendants, steps similar to those discussed above must be taken:[21]

First, the chief clinical officer must immediately notify the trial court or prosecutor of his or her intent to release the patient-defendant; and

Second, not later than three court days after being notified, the trial court or prosecutor may file or cause to be filed with the court of the county where the patient-defendant is hospitalized, or the court where the patient-defendant resides, an Affidavit of Mental Illness to initiate involuntary treatment for mental illness.

Affidavit of Mental Illness

The bill requires the Affidavit of Mental Illness to contain a space for a trial court or prosecutor filing such an affidavit to indicate that the subject of the affidavit is a patient-defendant.[22] The bill modifies R.C. 5122.111, the section in which the Affidavit is codified, to include this space. (The space includes a spot where the trial court or prosecutor can specify the court's or prosecutor's name and address.)[23]

---

[20] R.C. 5122.03.

[21] R.C. 5122.03(B).

[22] R.C. 5122.11.

[23] R.C. 5122.111.

Termination of probate court jurisdiction

Under the bill, a probate court that terminates jurisdiction over patient-defendant must do both of the following:[24]

- Notify the initiating court or prosecutor of the termination; and
- Transmit to the initiating court a copy of any records in its possession that pertain to the defendant's mental illness or treatment for mental illness.

Psychology Interjurisdictional Compact (PSYPACT) – Ohio entry

PSYPACT – purpose and history

The Psychology Interjurisdictional Compact (PSYPACT) is a multi-jurisdictional psychology contract. It was created in 2015 to regulate the practice of telepsychology and temporary in-person, face-to-face, psychology across state boundaries, including the District of Columbia and United States Territories.[25]

As of February 24, 2020, PSYPACT has been enacted by 12 states. There is pending PSYPACT legislation in 15 states, including Ohio, and in the District of Columbia. The Compact became operational when seven states officially enacted legislation.[26] Georgia was the seventh state to do so on April 23, 2019.[27]

PSYPACT and Ohio

This bill enters Ohio into PSYPACT, permitting eligible Ohio psychology license holders to practice telepsychology and temporary in-person, face-to-face, psychology with patients in other Compact States.[28] The Compact does not invalidate or prevent other cooperative agreements between Ohio and non-Compact States.[29]

Under PYSPACT, telepsychology is described as the provision of psychological services using telecommunication technologies.[30] Temporary in-person, face-to-face, psychology is where a psychologist is physically present with a patient in a state other than the one in which the psychologist is licensed for up to 30 days within a calendar year.[31]

---

[24] R.C. 5122.112.

[25] Association of State and Provincial Psychology Boards, "PSYPACT," available here.

[26] Association of State and Provincial Psychology Boards, "PSYPACT Legislative Updates," available here.

[27] ASPPB, "PSYPACT Becomes Operational," available here.

[28] R.C. 4732.40.

[29] Article XIII (of PSYPACT).

[30] Article II(AA).

[31] Article II(CC).

Psychology Interjurisdictional Compact Commission

All states participating in PSYPACT help establish the Psychology Interjurisdictional Compact Commission, a collective governing agency overseeing the implementation of PSYPACT. The Commission consists of one voting member from each participating state, as selected by each state's Psychology Regulatory Authority and has all the powers necessary to administer and carry out the business of the Compact.[32]

Under the bill, the State Board of Psychology is responsible for appointing Ohio's member on the Commission. The initial appointment must be made within 30 days after the bill's effective date. The Board must fill any vacancy in this position within 30 days after the vacancy occurs.[33]

Rulemaking

The Commission has power to make rules for PSYPACT. Rules must be approved by a majority vote of Commission members, and any rule rejected by the legislatures of a majority of member states will no longer have any effect. Before adopting a rule, the Commission must post notice of the proposed rule online and allow for both public comments and a public hearing. This requirement may be waived in the case of an emergency including a threat to public health, safety, or welfare; potential loss of Commission or Compact State funds; or to meet a deadline for an administrative rule established by federal law.[34] PSYPACT itself may be amended only if changes to the Compact are enacted into law in all Compact States.[35]

Oversight, dispute resolution, and enforcement

PSYPACT operates as statutory law and each Compact State is responsible for enforcing its provisions. If the Commission determines that a state has failed to uphold PSYPACT's obligations, they may take actions to enforce compliance including remedial training, technical assistance, litigation, or other available remedies. If the state continues to violate the terms of the Compact, an affirmative vote by the majority of the Compact States may terminate that state's membership. The Commission is responsible for mediating disputes between member states.[36]

Home State licensure

Under PSYPACT, a "Home State" is the state, or states, where a psychologist is licensed. In the practice of telepsychology, this is in contrast to the "Receiving State" where a remote

[32] Article X.

[33] R.C. 4732.41.

[34] Article XI.

[35] Article XIII(E).

[36] Article XII.

patient is physically located.[37] The Compact does not apply when a psychologist is licensed in both the Home and Receiving States.[38]

If a psychologist is licensed in more than one state, for the purposes of telepsychology, the person's Home State is the state where the person is physically present when the services are administered.[39] In the practice of temporary in-person psychology, the Home State is contrasted with the "Distant State" where the psychologist and the patient are in the same physical space away from the psychologist's licensing state.[40]

A Home State's license authorizes a psychologist to practice telepsychology and temporary in-person psychology in other Compact States if the Home State meets the following criteria:

- The Home State must require the psychologist to hold an E.Passport or an Interjurisdictional Practice Certificate (IPC). An E.Passport is a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) authorizing telepsychology practice.[41] An IPC is a certificate issued by the ASPPB that grants Temporary Authority to Practice in a Distant State.[42]
- The Home State must have a mechanism in place for receiving and investigating complaints about licensed individuals.
- The Home State must notify the Commission of any adverse action or significant investigatory information regarding license holders.
- Within ten years of activating the Compact, the Home State must require an Identity History Summary of license applicants. This includes the use of fingerprints or other biometric data checks consistent with the requirements of the FBI.
- The Home State must comply with the Bylaws and Rules of the Commission.[43]

Requirements to practice telepsychology and temporary face-to-face psychology

Educational requirements

To practice telepsychology and temporary in-person, face-to-face, psychology in other Compact States, a psychologist must hold a graduate degree from an institute of higher learning that was appropriately accredited at the time the degree was awarded. This includes regional

[37] Article II(V).

[38] Article I.

[39] Article III(B).

[40] Article II(K).

[41] Article II(L).

[42] Article II(Q).

[43] Article III.

accreditation by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, or regional accreditation by an accrediting body authorized by Provincial Statute or Royal Charter to grant doctoral degrees. Alternatively, a foreign college or university can be deemed equivalent to the former accreditation by a recognized foreign credential evaluation service such as members of the National Association of Credential Evaluation.[44]

Other requirements

To practice telepsychology or temporary in-person, face-to-face, psychology in Receiving and Distant States, a psychologist must possess a current, full, and unrestricted license to practice psychology in the psychologist's Home State. In addition to a license, the psychologist must also possess a current and active E.Passport or IPC. The psychologist must have no history of adverse action that violates the Rules of the Commission and have no criminal record. The psychologist must attest to criminal record, areas of intended practice, conformity with standards of practice, technological competence, knowledge and adherence to legal requirements in both home and receiving states, and provide a release of information to allow for primary source verification. Finally, the psychologist must meet other criteria as defined by the Rules of the Commission.[45]

Scope of practice

A psychologist practicing telepsychology with a patient in a Receiving State is subject to the Receiving State's scope of practice, although the Home State maintains authority over the psychologist's license.[46] A psychologist practicing under the Temporary Authorization to Practice in-person psychology is subject to the scope of practice, authority, and law of the state where the psychologist is practicing.[47]

Disciplinary actions

Regarding telepsychology, a Receiving State's Psychology Regulatory Authority may take adverse action against a psychologist's Authority to Practice Interjurisdictional Telepsychology, and the Home State must investigate reported inappropriate conduct by a licensee in a Receiving State. Regarding temporary in-person, face-to-face, psychology, a Distant State's Psychology Regulatory Authority is responsible for conducting investigations of inappropriate conduct that occurred in that state and may take adverse action against a psychologist's Temporary Authorization to Practice within that Distant State.[48]

A Home State retains the power to impose adverse action against a psychologist's license. Each Compact State has the right to require a psychologist's participation in an

[44] Article IV(B)(1).

[45] Article IV(B)(3) to (8) and Article V.

[46] Article IV(C) and (D).

[47] Article V(C) and (D).

[48] Article VII.

alternative program in lieu of adverse action, and may keep that participation nonpublic if required by the Compact State's law.[49]

Coordinated Licensure Information System

The Commission is responsible for developing and maintaining a Coordinated Licensure Information System to record licensure and disciplinary action information for all psychologists to whom PSYPACT applies. All Compact States must submit uniform data and promptly notify all other Compact States of any adverse action taken against, or any significant investigative information on, any licensee. Compact States may designate information that may not be shared with the public.[50]

Implementation and withdrawal

As noted above, enactment by at least seven states is required to make PSYPACT effective, which has already occurred. Any states that join after this benchmark, such as Ohio, are subject to the rules already created by the Commission. A Compact State may withdraw from the agreement by enacting a repeal statute that must take effect at least six months after enactment.[51] If PSYPACT is found to be contrary to the constitution of any member states, it will still be in effect for the remaining Compact States.[52]

HISTORY

Action	Date
Introduced	01-14-21
Reported, S. Judiciary	02-10-21
Passed Senate (32-0)	02-10-21

S0002-PS-134/ts

[49] Article VII.

[50] Article IX.

[51] Article XIII.

[52] Article XIV.