Office of the Ohio Public Defender

Elizabeth R. Miller, *State Public Defender*

**Senate Bill 295 Opponent Testimony**

Zachary Miller, Legislative Officer

House Judiciary Committee

February 18, 2026

Chair Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and members of the House Judiciary Committee:

On behalf of the Office of the Ohio Public Defender (OPD), thank you for the opportunity to submit opponent testimony on Senate Bill 295 (SB 295). As the provider of legal representation for indigent Ohioans accused of crimes, we support the bill's provisions that close the notification gaps identified in the Hardy case, but we oppose the five-year extension of the competency restoration timeline. This extension is not a safety measure; it is a fundamental shift in how we treat citizens who have not been convicted of any crime.

First, we want to address the information that was presented to this committee last week. This body heard arguments that the current one-year limit on competency restoration is a loophole, and that if a defendant is not restored within one year, victims are simply out of luck and the defendant avoids accountability. The witnesses repeatedly conflated the dismissal of an indictment with the release of a dangerous individual into the community.

Respectfully, that narrative is misleading and is causing unnecessary concern among the public. It is vital that everyone following this case and bill understands how Ohio's competency statutes operate under current law and why this bill is not the legislative emergency it has been made out to be.

Under current law, when the one-year clock runs out for an individual who is incompetent and accused of a violent felony like aggravated murder, that person is not just automatically released to the public. Instead, the expiration of the one-year mark triggers a procedural safeguard under R.C. 2945.39. This statute gives the court or the prosecutor two options beyond releasing the person back into the community. The first option allows the court or prosecutor to file for civil commitment of the defendant, transferring the case over to probate court.

The second, and most likely, option for those accused of violent crimes, is for the court or prosecutor to move to retain jurisdiction over the defendant. Under this option, the court holds a hearing at which it must make two key findings.

- First, the trial court must find that the prosecutor provided clear and convincing evidence that the defendant committed the crime. This is a lower burden of proof than the State would face at trial. Additionally, the State may meet this burden with hearsay evidence. This means that victims and their families would not be forced to testify at this hearing, and the State can generally meet its burden through law enforcement testimony. However, and importantly, this hearing does provide the victims and their families with an opportunity to testify and have their day in court.

- Second, the court must find that the individual remains incompetent to stand trial and is subject to court institutionalization. Where the defendant has already been found incompetent, this is an easy finding to make. At that point, the criminal court retains jurisdiction and commits the defendant to a secure, lock-down facility. For a person accused of aggravated murder, the court can retain its jurisdiction and hold the individual for life. If, at any point, the defendant is restored to competency and is able to stand trial, the state can immediately move to refile the charges and proceed with trial.

If the court makes these two findings, it retains its criminal jurisdiction. But this hearing provides a necessary constitutional check that requires the government to present actual evidence of guilt before sending a person into a long-term secure facility. With this existing process, the State already has the tools to keep the public safe; it must simply meet a now lowered burden of proof. The implication that the public's safety is at risk if the General Assembly does not immediately act by passing SB 295 is disingenuous. Current law provides more than adequate protection for public safety.

Being incompetent to stand trial is not a crime, and a defendant who is incompetent is legally presumed innocent until proven guilty. The OPD is concerned about SB 295's erosion of the due process rights for incompetent defendants who are unable to collaborate with their lawyers to defend their cases. This bill would allow the government to hold a person who is experiencing a mental health condition for half a decade based solely on an indictment. This is a dangerous

precedent for every Ohioan's constitutional right to due process and risks subjecting innocent people with mental health conditions to a substantial loss of liberty.

Furthermore, SB 295 ignores clinical reality and affects a tiny minority of individuals. The vast majority of defendants capable of being restored to competency achieve it within six to 12 months.[1] After one year of quality hospital care, the probability of restoration drops to negligible levels.[2] This bill, however, will target the few individuals who are entirely unresponsive to treatment, giving the government the power to lock them up for four more years in a hospital without having to marshal any evidence of guilt beyond an indictment.

The true "loophole" in the Hardy case was not the one-year limit; it was a breakdown in communication between the hospital and the court. The tolling and reporting provisions in this bill remedy that breakdown. We fully support the portions of SB 295 that mandate hospitals report medication refusal within 14 days and pause the restoration clock when a defendant is non-compliant.

The OPD urges this committee to narrow the scope of SB 295 so that it only addresses the unique cases where tolling of the competency restoration timeline is necessary and just. Otherwise, SB 295 is an unnecessarily broad measure that will infringe on Ohioans' due process rights. For these reasons, the OPD opposes SB 295.

Sincerely,

Zachary J. Miller
Legislative Officer
Office of the Ohio Public Defender
Zachary.miller@opd.ohio.gov

[1] Long-Term Competence Restoration, accessed February 11, 2026, https://jaapl.org/content/42/1/81
[2] *Id*.