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Thank you Chairman Manning, Vice-Chair Reynolds, Ranking Member Hicks-Hudson and members of the Committee for the opportunity to address you this morning and to provide testimony supporting Senate Bill 295. The tragic murders of Cleveland Police Officer Jamieson Ritter and Beatrice Porter revealed a dangerous loophole in Ohio's competency restoration process. This bill closes that gap by preventing violent offenders from exploiting the system by refusing medication or stalling out the restoration timeline. I want to thank Senators Manning and Patton for sponsoring this legislation and for standing up for Ohio's victims of violent crimes by leading the efforts to fix this issue.

During the course of the case of *State v. Delawnte Hardy*, a severe gap in Ohio law has been revealed. Delawnte Hardy was found to be not competent to stand trial in September of 2024, but, both doctors who came to that finding also found that he was likely to be restored to competency through a course of treatment, which both doctors said must include psychotropic medications. Both doctors noted that they believed if the defendant took his medications he could be restored within the one-year timeframe required by Ohio law for aggravated murder cases. These doctors included both the Court Psychiatric Clinic doctor and Hardy's own independent doctor.

After receiving these reports, the state, the defense, and the court agreed to these reports and this course of treatment and sent Hardy to Twin Valley (now Central Ohio Behavioral Health) for this treatment. He arrived at COBH in October of 2024 and within weeks began refusing to take the required medications. This refusal was contrary to the treatment plan that his own lawyers agreed to on his behalf and the court signed off on when it sent him to COBH. COBH did not tell the court about his refusals to take medications until March of 2025 - several months after Hardy's initial refusals. It took a court hearing to discover that the hospital sat on this information for four months. Ohio law did not require the hospital to inform the court of this refusal and, Ohio law did not automatically give that time back to the state. The court had to resort to finding cases where courts interpreted the law to allow for tolling of the one-year statute.

This case has laid bare the huge loophole in the statute. A criminal defendant who wants to beat his or her case can delay the competency process by refusing to take medication and, if the hospital is asleep at the switch or worse and doesn't inform the court, then all of that time might never be given back to the state in the criminal case for the one year the state has to restore the competency.

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The bottom line is this, currently the law puts criminal defendants in the driver's seat - if they decide to refuse to participate in the process, then that refusal can allow them to run out the one year clock without repercussions under the law. Victims and their families deserve better - they deserve more time and for there to be consequences if a defendant refuses to participate.

Under current Ohio law, courts are limited to a one-year restoration period for most felony offenses, regardless of the seriousness of the crime or the complexity of the defendant's mental condition. This forces courts to dismiss serious charges against defendants who remain incompetent, even when restoration is still possible. The result is civil commitment—not accountability or resolution and finality of the criminal case.

Competency can ebb and flow over periods of time. Not everyone follows their course of treatment. Senate Bill 295 recognizes this and offers a more balanced and responsible approach.

It extends the restoration period to five years for the most serious offenses—aggravated murder, murder, and violent crimes punishable by life or death. Five years is reasonable given the gravity of these offenses and the mental health issues potentially involved. Other states have statutes which allow restoration periods of five years or more. For example, Nevada's restoration period is up to 10 years.[1] So is North Carolina's.[2] Maryland's restoration period is 5 years.[3] And Florida describes its 5-year period as "5 continuous, uninterrupted years."[4]

The bill also codifies that treatment pauses the restoration clock when a defendant refuses or lacks the capacity to consent to treatment. It codifies tolling events that courts have approved.[5] The bill also requires timely communication from the provider to the prosecutors. And it applies retroactively to pending cases including when the restoration period has not yet expired.

Most importantly, the bill will ensure finality to criminal cases. This will ensure justice for victims.

Senate Bill 295 is a public safety measure. It gives courts the time and tools to pursue justice in serious cases while ensuring defendants receive appropriate care. And most importantly, it protects victims' rights to justice by ensuring finality and resolution of criminal cases.

We encourage the Senate Judiciary Committee to act favorably in passing this legislation quickly and to close this dangerous loophole by acting promptly on Senate Bill 295.

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[1] Nev. Rev. Stat. § 178.460

[2] N.C. Gen. Stat. § 15A-1008

[3] Md. Crim. Proc. § 3-107

[4] Fla. Stat. § 916.145

[5] *State v. Swanigan*, 2025-Ohio-4648 (1st Dist.), *State v. Barker*, 2007-Ohio-4612 (2nd Dist.)

Selected Competency Restoration Temporal Limitations

States with fixed maximum restoration periods of 5 years or more

- **Nevada:** Up to 10 years, or the maximum period of incarceration if convicted on all charges. **(Nev. Rev. Stat. §§ 178.400, 415, 425, 450, & 460)**
  - "Except as otherwise provided in subsections 4 and 7 of NRS 178.461, no person who is committed under the provisions of this chapter may be held in the custody of the Administrator or the Administrator's designee longer than the longest period of incarceration provided for the crime or crimes with which the person is charged or 10 years, whichever period is shorter."

  NRS § 178.460(5).
- **Maryland:** 5 years for felonies and violent crimes Maryland **(Md. Code Ann. Crim. Proc. §§ 3-101, 105, 106, 107, & 108)**
  - "(a) Whether or not the defendant is confined and unless the State petitions the court for extraordinary cause to extend the time, the court shall dismiss the charge against a defendant found incompetent to stand trial under this subtitle:
    - (1) when charged with a felony or a crime of violence as defined under § 14-101 of the Criminal Law Article, after the lesser of the expiration of 5 years or the maximum sentence for the most serious offense charged; or
    - (2) when charged with an offense not covered under item (1) of this subsection, after the lesser of the expiration of 3 years or the maximum sentence for the most serious offense charged."

  Md. Code Ann., Crim. Proc. § 3-107 (a)(1)-(2).
- **North Carolina:** 10 years for felonies **(N.C. Gen.Stat. §§ 15| A-1001, 1002,1003, & 1008)**
  - "(a) When a defendant lacks capacity to proceed, the court shall dismiss the charges upon the earliest of the following occurrences:
  - (1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed.
  - (2) When as a result of incarceration, involuntary commitment to an inpatient facility, or other court-ordered confinement, the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum term of imprisonment permissible for prior record Level VI for felonies or prior conviction Level III for misdemeanors for the most serious offense charged.
  - (3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges."

  N.C. Gen. Stat. § 15A-1008(a)(1)-(3). **[EFFECTIVE THROUGH 12/1/2025]**
- **Pennsylvania:** Up to 10 years or the maximum period of incarceration, except for first- or second-degree murder, which has no maximum. **(Pa. Stat. 50 §§ 7402 & 7403)**

- "(f) STAY OF PROCEEDINGS. — In no instance, except in cases of first and second degree murder, shall the proceedings be stayed for a period in excess of the maximum sentence of confinement that may be imposed for the crime or crimes charged or ten years, whichever is less. In cases of a charge of first or second degree murder, there shall be no limit on the period during which proceedings may be stayed."

  50 P.S. § 7403(f).

- **Florida:** 5 years, except where restoration is expected within 3 years or for certain felony offenses with no statutory maximum. **(Fl. Stat. §§ 916.12 and 13; Fla. R. Crim. Proc. 3.210 and 213)**
  - "(a) Dismissal without Prejudice during Continuing Incompetency. After a determination that a person is incompetent to stand trial or proceed with a probation or community control violation hearing, the charge(s):
    - (1) shall be dismissed 1 year after a finding if the charge is a misdemeanor;
    - (2) shall be dismissed no later than 2 years after a finding if incompetency is due to intellectual disability or autism;
    - (3) may be dismissed 3 years after a finding, unless a charge is listed in section 916.145, Florida Statutes; or
    - (4) shall be dismissed after a finding that the defendant has remained incompetent for 5 continuous and uninterrupted years;

    provided that the court finds that the defendant remains incompetent to stand trial or proceed with a probation or community control violation hearing unless the court in its order specifies its reasons for believing that the defendant is expected to become competent to proceed. A dismissal under this rule shall be without prejudice to the state to refile the charge(s) should the defendant be declared competent to proceed in the future."

  Fla. R. Crim. P. 3.213(a)(1)-(4).

States with limits tied to the criminal sentence (which can exceed 5 years):

- **Arizona- Maximum Possible Sentence** "An order or combination of orders that is issued pursuant to section 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to section 13-702, section 13-703, section 13-704, subsection A, B, C, D or E, section 13-705, section 13-706, subsection A, section 13-708, subsection D or section 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under section 13-703 or 13-704 for prior convictions." A.R.S. § 13-4515(A).

- **Louisiana- 5 years or the maximum possible sentence for the crime charged, whichever is less.** "In no instance shall such custody, care, and treatment exceed the time of the maximum sentence the defendant could receive if convicted of the crime with which he is charged." La. C.Cr.P. Art. 648(B)(1). "If not dismissed without prejudice at an earlier trial, charges against an unrestorable incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner, except for the following charges:" La. C.Cr.P. Art. 648(B)(3). The list of charges where the time for restoration can exceed 5 years includes crimes of violence as defined by the Louisiana Code. La. C.Cr.P. Art. 648(B)(3)(a).

- **South Dakota- Maximum Possible Sentence for Most Serious Charge** "If the most serious charge against the defendant is a Class A, B, or C felony, the order shall be for a term of years the court determines is reasonable or until the charges have been dismissed by the prosecution. The order may not exceed the maximum penalty allowable for the most serious charge facing the defendant. Upon expiration of the order of detention, the criminal charges against the defendant shall be dismissed. If the prosecutor believes there is probable cause to believe that the defendant is a danger to self or to others at the time of dismissal, the prosecutor may file a petition in accordance with chapter 27A-10 or 27A-11A or title 27B, for further restoration to competency.

  Every twelve months thereafter, the director of the approved facility shall notify the court if the defendant is still in a restoration to competency program under the direction of an approved facility or in the approved facility pursuant to this chapter, and the circuit court shall hold a hearing to review any order of detention to determine if the defendant has become competent to proceed." S.D. Codified Laws § 23A-10A-15.

- **Washington: Maximum Possible Sentence for Most Serious Charge.** "Whenever any person has been: (a) Committed to a correctional facility or inpatient treatment under any provision of this chapter; or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity." Rev. Code Wash. (ARCW) § 10.77.500(1) "Whenever any person committed under any provision of this chapter has not been released within seven days of the maximum possible penal sentence under subsection (1) of this section, and the professional person in charge of the facility believes that the person presents a likelihood of serious harm or is gravely disabled due to a mental disorder, the professional person shall, prior to the expiration of the maximum penal sentence, notify the appropriate designated crisis responder of the impending

expiration and provide a copy of all relevant information regarding the person, including the likely release date and shall indicate why the person should not be released." Rev. Code Wash. (ARCW) § 10.77.500(2).

- **Rhode Island: Two-thirds of the maximum sentence, if a crime punishable by life, then there is a 30-year maximum period.**
    - "When a court commits a defendant pursuant to subsection (i)(2) or (i)(3), it shall compute, counting from the date of entry to the order of commitment, the date of the expiration of the period of time equal to two thirds (⅔) of the maximum term of imprisonment for the most serious offense with which the defendant is charged. If the maximum term for the most serious offense charged is life imprisonment or death, the court shall, for the purpose of computation, deem the offense to be punishable by a maximum term of thirty (30) years. In the order of commitment, the court shall provide that if, on the date so computed, the defendant is still committed under the order, the charges against the defendant shall be dismissed." R.I. Gen. Laws § 40.1-5.3-3(j).

- **Colorado: Maximum Sentence for the Highest Charge if charged with Class 1, 2, or 3 Felonies.** "(5) Subsections (2), (3), and (4) of this section do not apply if the defendant is charged with a class 1, 2, or 3 felony offense; a sex offense as defined in section 18-1.3-1003 (5); a crime of violence as defined in section 18-1.3-406 (2); or a level 1 or level 2 drug felony.
  (6) The court shall dismiss the defendant's case if:
    - (a) The defendant is found incompetent to proceed;
    - (b) The charges against the defendant have not been dismissed pursuant to this section; and
    - (c) The defendant's presentence confinement credit, including any time period the defendant was committed for inpatient restoration, or confined in jail or another detention facility awaiting inpatient restoration services, exceeds the maximum sentence for the defendant's highest charged offense." C.R.S. 16-8.5-116.5(5)-(6)(c).

- **Massachusetts: Maximum Sentence of the Highest Charge.** "If a person is found incompetent to stand trial, the court shall send notice to the department of correction which shall compute the date of the expiration of the period of time equal to the time of imprisonment which the person would have had to serve prior to becoming eligible for parole if he had been convicted of the most serious crime with which he was charged in court and sentenced to the maximum sentence he could have received, if so convicted." ALM GL ch. 123, § 16(f).

- **Michigan: 15 months after determination of incompetence. However, for a crime punishable with life of imprisonment, the State may request to re-file charges after a dismissal at any time.**
    - The charges are to be dismissed 15 months after the date which the defendant was originally determined to be incompetent to stand trial. MCLS § 330.2044(1)(b). However, "[i]f the charges were dismissed pursuant to subsection (1)(b) and if the crime charged was punishable by a sentence of life imprisonment, the prosecutor may at any time petition the court for permission to again file charges. In the case of other charges dismissed pursuant to subsection (1)(b), the prosecutor may, within that period of time after the charges were dismissed equal to 1/3 of the maximum sentence that the defendant could receive on the charges, petition the court for permission to again file charges." MCLS § 330.2044(3).

States with no statutory maximum (indefinite in some cases):

- **Delaware: No statutory maximum; left to court determination.** The patient shall be kept there at all times in a secured building until the Superior Court of the county wherein the case would be tried or was tried is satisfied that the public safety will not be endangered by the patient's release. The Superior Court shall without special motion reconsider the necessity of continued detention of a patient thus committed after the patient has been detained for 1 year. 11 Del. C. § 403(b).
- **Hawaii: No statutory maximum; left to court determination.** States that when a person who has been involuntarily committed will likely remain unfit to stand trial, the court may dismiss the charge and release the defendant. HRS § 704-406(8). No express time frame is provided for what a reasonable time is.
- **Vermont: No statutory maximum; left to court determination.** The relevant code sections outline the procedure for an involuntary commitment for restoration purposes but are silent as to any time frame. 13 V.S.A. §§ 4815 & 4817.
- **Wyoming: No statutory maximum.** Once committed for competency restoration, the continued retention , hospitalization and discharge of the accused is the same as other patients within Wyoming that have been civilly committed. Wyo. Stat. § 7-11-303(g)(i)(E). After a civil commitment, the court must reassess once a year whether the person may be discharged. Wyo. Stat. § 25-10-123.

- **Virginia: No maximum for certain charges such as aggravated murder; otherwise, 5 years from arrest date or the maximum imprisonment for the charges.**
    - "Unless an incompetent defendant is charged with aggravated murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be

dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner." Va. Code Ann. § 19.2-169.3(E).

- "In any case when an incompetent defendant is charged with aggravated murder and has been determined to be unrestorably incompetent, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the aggravated murder case may order that the defendant receive continued treatment." Va. Code Ann. § 19.2-169.3(F).