Office of the Ohio Public Defender

Elizabeth R. Miller, *State Public Defender*

Senate Bill 295 Opponent Testimony

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Senate Judiciary Committee

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Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate 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 have serious concerns over SB 295's massive expansion of the timeline to restore competency, its elimination of common-sense procedural protections, and its retroactive application.

SB 295's increase of the competency restoration timeline from one year to five years for defendants charged with elevated felonies represents a substantial and concerning expansion. While public safety is paramount, extending these treatment timelines so drastically raises concerns about the balance between ensuring competency for trial and subjecting people for extended periods of involuntary confinement without adequate procedural safeguards. This bill will lead to situations where individuals are held involuntarily for five years, not as punishment, but due to their inability to participate in their own defense. This is counterproductive to recovery, due process, and the right to a speedy trial. This is even more true given that existing law allows trial courts to continue jurisdiction over incompetent and unrestorable people charged with serious crimes, to civilly commit people during that period of continued jurisdiction, and to try people accused of the most serious crimes if they are restored to competence during the period of continued jurisdiction.

Furthermore, extending the maximum treatment period for these cases from one to five years will place a substantial, long-term financial and logistical burden on state forensic mental health hospitals and facilities. In the Recommendations Report[1] from the Governor's 2024 Work

[1] Recommendations Report from the Governor's Work Group on Competency Restoration and Diversion.

Group on Competency Restoration and Diversion, the Department of Mental Health and Addiction Services, now the Department of Behavioral Health (DBH), reported that their hospitals are already operating at more than 96% capacity, with around 90% of their bedspace dedicated to forensic use, which includes competency restoration. SB 295 provides no additional funding or resources to offset this strain, yet would now require these facilities to treat these individuals for a substantially longer period of time. Ohio should not be adding further strain to the system in response to an isolated, extraordinary case by creating a broad policy change.

In addition to the strain on resources, the extension of the competency timelines will have no meaningful benefit to public safety. Supporters of SB 295 characterize the need for the bill as a "loophole" in the statute and inaccurately claim that defendants can simply refuse treatment to run out the clock and get released. This characterization is inaccurate. Under current law,[2] a court has continuing jurisdiction over someone who is unrestorable to competency provided that the prosecutor can prove the elements of the indicted offense by clear and convincing evidence. That jurisdiction lasts as long as the maximum available sentence. For a person who is charged with murder, but is incompetent and unrestorable, this often means a lifelong involuntary commitment. And current law further allows the state to try people who are under continued jurisdiction if they return to competency and are charged with "aggravated murder, murder, or an offense of violence for which a sentence of life imprisonment may be imposed," or an offense of violence that is a first- or second- degree felony.[3] These safeguards under current law are more than adequate for public safety, while still requiring that prosecutors meet the procedural burden of proving by clear and convincing evidence that the incompetent person committed the charged crime.

The bill's retroactive application also gives the OPD great concern on constitutional grounds. Applying these extended timelines to individuals whose cases are already in progress could disrupt established legal processes and create uncertainty for those who have been operating under the previous statutory framework. This retroactive expansion of confinement risks violating due process and ex-post facto principles by imposing new consequences after the fact.

[2] *See* R.C. 2945.39 & R.C. 2945.401
[3] *See* R.C. 2945.401(J)(2)(a) and R.C. 2945.38(C)(1).

We understand this bill is in response to the case of Delawnte Hardy. In his case, however, the judicial system worked exactly as it should. Hardy did not stall out the restoration timeline as the bill's supporters claim, nor is he at risk of being released. The Court tolled the time during which Hardy refused treatment, which ensured he did not benefit from his refusal. He will still be required to undergo a year of involuntary treatment before it is determined whether he is competent to stand trial. As the judge in Hardy's case noted, this situation was an extremely rare circumstance where the court was unaware of his refusal of treatment for five months.

To be clear, we support the bill's provisions that codify the court's authority to toll or restart the time limit for restoration of competency when a defendant refuses treatment as well as requiring the treating facility to notify the court in the event a defendant is refusing treatment. Those two changes alone are enough to ensure that any future case similar to Hardy's are appropriately handled. SB 295, however, is a hatchet where only a scalpel is needed and will unjustly impose longer periods of involuntary confinement on individuals without any benefit to public safety.

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 due process rights and further strain our state's mental health facilities. For these reasons, the OPD opposes SB 295.

Sincerely,

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