CUYAHOGA COUNTY OFFICE OF THE PUBLIC DEFENDER
Chief Public Defender – Cullen Sweeney

Senate Judiciary Committee
November 12, 2025
Senate Bill 295 Opponent Testimony

Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee, thank you for the opportunity to provide opponent testimony on Senate Bill 295 (SB 295). My name is Cullen Sweeney, Chief Public Defender at the Cuyahoga County Public Defender's Office. I'm joined today by Christine Julian, our Supervising Attorney for our felony mental health court work. Our Office handles hundreds of cases every year where our clients experience severe mental illness. Our team of specialized attorneys and social workers receive training in working with mentally ill clients and unique legal issues related to competency, restoration, sanity, and civil commitment. We have serious concerns about the ramifications of SB 295.

We would like to begin by acknowledging the tragic circumstances that appear to be the impetus for introducing SB 295. Our Office represents Delawnte Hardy. While we do not intend to focus on the Hardy case, we understand that was the basis of much of the proponent testimony so we also do not want to ignore it. The loss suffered by the two families in this case is unimaginable. We are not here to argue against accountability or finality. We are here to explain that Ohio's competency restoration system has worked effectively for years, is in line with other jurisdictions, and does not contain any "loopholes" to exploit.

Our legal system requires that, before someone is brought to trial, they must be capable of understanding the proceedings and assisting with their defense. Competency is not a technicality—it is a fundamental requirement of due process. The United States Supreme Court's decision in *Jackson v. Indiana*, 406 U.S. 715 (1972), provides that detainment for competency restoration can only be for a "reasonable period of time necessary to determine whether there is a substantial probability that [a person] will attain competency in the foreseeable future." The five year detainment period proposed in SB 295 is a significant departure from a "reasonable" time frame. It removes the necessary balance under *Jackson* in favor of extended involuntary confinement of individuals who have not yet been convicted of a crime. It imposes an arbitrary timeline that is not tethered to an individualized assessment of the possibility of restoration and is likely unconstitutional as a result.

Before voting on a bill that proposes a significant and radical departure from long-standing practice, we urge you to hear from mental health professionals about the

competency restoration process and to consider how it fits in a much larger framework for handling criminal cases involving those with severe mental illness. Just last year, several psychologists published a "Comprehensive Update and Evaluation of State and Federal Statutes on Competency to Stand Trial: *Dusky*, *Jackson*, *Sell*, and *Olmstead* Considerations," Psychology, Public Policy, and Law, Vol. 20, No. 3, 237-259 (2024). This paper highlights the complexity of the mental health and legal issues addressed by these statutes. Ohio's structured and nuanced processes are well-established and consistent with those employed in other jurisdictions. *See* Supreme Court of Ohio's Adult Competency Reference Guide (May 2025).[1]

SB 295 proposes a solution in search of a problem—the existing guardrails under Ohio's court jurisdiction statute (R.C. 2945.401) and the civil commitment scheme (R.C. 5122, 5123) sufficiently protect public safety and the state's interest in pursuing charges. Where a defendant is found not competent and not restorable, they are *not* released to re-enter the community. Instead, they undergo a process whereby the court maintains jurisdiction over them for the maximum amount of time they could have faced on the most serious charge. During this time, the individual's competency is constantly re-evaluated (after 6 months and then again every 2 years thereafter). Any time that the doctor opines the individual has been restored to competency, charges can be reinstated.

This point bears emphasis. Although the initial restoration period is one year, individuals can be restored after that one-year period. And if they are, the State can still prosecute them. We have seen that happen. In cases involving murder, where the Court exercises jurisdiction for life, an individual can be prosecuted if they become restored to competency, whether that happens this year, next year, or 20 years from now.

The arguments in support of a five-year restoration period are based on faulty premises. First, there has been a suggestion that Ohio's restoration process is out of step with other jurisdictions. That is simply not the case. The prosecutor's summaries of a handful of other State statutes do not provide an apples-to-apples comparison to the initial restoration period in Ohio law. A review of the 50-state summary discussed above illustrates that Ohio's restoration process is in line with most other jurisdictions.

Second, there is no evidence that suggests it's necessary to detain individuals beyond one year, let alone five years, before making an initial decision on restoration. Ohio reasonably limits restoration to one-year for high-level felonies, regardless of the nature of the offense or the defendant's condition, as the majority of people that become competent do so within one year. The analysis of competency restoration data spanning 40 years concluded that 81% of people were restored within an average of 175 days. Additional

[1] Available: https://www.supremecourt.ohio.gov/docs/Boards/Sentencing/resources/judPractitioner/OCSCAdultCompetency.pdf

studies found consistent results–492 competency restoration commitments from 2013-2017 were reviewed and on average restoration occurred in under four months.[2]

Third, the assertion that individuals who suffer from serious mental illness are strategically "running out the clock" to sabotage their case demonstrates a fundamental misunderstanding of mental health. In Hardy's case, for example, every medical opinion offered to date demonstrates that he is severely mentally ill. Medical professionals are well-trained to identify those rare cases where defendants are feigning a severe mental illness. No such evidence has been offered in this case.

With that said, we agree there may be opportunities to improve Ohio's restoration statutes. We support a potential provision requiring notice be given to the court for refusal to comply with treatment. But even here, SB 295 needs some adjustment—it does not make sense to require notice when a defendant "lacks capacity to consent" as that is the very nature of being not competent. Any time period for notice should be consistent with best medical practices. However, there is no "loophole" to fix, thus, no need to accelerate this proposed legislation. Under existing law, even in the most complex competency cases, we have sufficient guardrails. The claim that's repeated by the state that "a defendant who wants to beat his or her case by refusing to take medications to delay the competency process" is inaccurate and not rooted in reality.

SB 295's categorical expansion of the restoration period for certain serious felony cases is not only unnecessary and potentially unconstitutional; it will generate additional fiscal and practical burdens on our already stressed mental health system. Consider that the wait time in the Cuyahoga County Jail for transfer to a facility for competency restoration is 45-60 days and in other counties, wait times are between three to six months—this bill would significantly increase these delays since some beds could be occupied for up to five years. This will particularly be true in cases involving murder as there is only one hospital with a maximum security facility, the Timothy B. Moritz Forensic Unit at Central Ohio Behavioral Healthcare. This unit only has 52 beds and serves all 88 counties in Ohio. Our state hospitals are already under strain. According to Governor DeWine, these hospitals "are operating at more than 96% capacity. Alarmingly, more than 90% of the beds are occupied by individuals involved in the criminal justice system – also known as forensic patients," which includes those pending competency restoration. Governor's Work Group on Competency, Restoration, and Diversion Recommendations Report (2024).[3] SB 295 fails to provide any resources or funding to account for a drastic increase to length of stay within a system that is already busting at the seams.

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[2] *See* Comprehensive Update and Evaluation of State and Federal Statutes on Competency to Stand Trial (2024) 238, finding 83.1% were restored within 180 days and 85.8% were restored in 365 days.

[3] Available: https://dam.assets.ohio.gov/image/upload/mha.ohio.gov/KnowOurProgramsandServices/forensic-services/Governor%27sWorkGrouponCompetencyRestorationandDiversion/Governors-Work-Group-on-Competency-Restoration-and-Diversion-Recommendations-Report_2024-11.pdf

One final aspect of SB 295 is particularly troubling as it applies to all cases – this is the provision that resets the competency restoration period if a restored individual becomes incompetent again. This creates the possibility of indefinite pre-trial detention that was rejected as unconstitutional by the Supreme Court in *Jackson*. Moreover, it could mean that individuals being restored on lower level cases could be held for longer than the maximum sentence for the offense if the person cycles through competency and restoration on more than one occasion.

Where there is an appetite to improve the intersection of mental health and the courts, we would welcome the opportunity to be a partner, as would a diverse group of medical experts and mental health advocates, both statewide and nationally. We acknowledge there may be components of Ohio's restoration law that could be improved and the need for those seeking transparency to understand the judicial process. But any attempt to improve or remedy this process must include a meaningful dialogue with experts to ensure changes proposed are appropriate, that they will reasonably serve to enhance public safety and public confidence in our systems, and simultaneously preserve the constitutional rights of the accused.

We thank you for the opportunity to provide opposition testimony on SB 295 and urge this Committee not to vote for this bill in its current form, given the above-listed concerns. We would be happy to answer any questions at this time.

Sincerely,

/s/ Cullen Sweeney
Cullen Sweeney
Chief Public Defender

/s/ Christine Julian
Christine Julian
Assistant Public Defender