As Introduced

136th General Assembly Regular Session 2025-2026

S. B. No. 295

Senators Manning, Patton

То	To amend sections 2945.38, 2945.39,	and 2945.401 of	1
	the Revised Code relative to the	timeline for	2
	restoration of competency in cri	minal cases.	-

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2945.38, 2945.39, and 2945.401 of	4
the Revised Code be amended to read as follows:	5
Sec. 2945.38. (A) If the issue of a defendant's competence	6
to stand trial is raised and if the court, upon conducting the	7
hearing provided for in section 2945.37 of the Revised Code,	8
finds that the defendant is competent to stand trial, the	9
defendant shall be proceeded against as provided by law. If the	10
court finds the defendant competent to stand trial and the	11
defendant is receiving psychotropic drugs or other medication,	12
the court may authorize the continued administration of the	13
drugs or medication or other appropriate treatment in order to	14
maintain the defendant's competence to stand trial, unless the	15
defendant's attending physician advises the court against	16
continuation of the drugs, other medication, or treatment.	17
(B)(1)(a)(i) If the defendant has been charged with a	18
felony offense or a misdemeanor offense of violence for which	19
the prosecutor has not recommended the procedures under division	20

(B) (1) (a) (vi) of this section and if, after taking into 21 consideration all relevant reports, information, and other 22 evidence, the court finds that the defendant is incompetent to 23 stand trial and that there is a substantial probability that the 24 defendant will become competent to stand trial within one year 2.5 the time specified in division (C) of this section if the 2.6 27 defendant is provided with a course of treatment, the court shall order the defendant to undergo treatment. 28

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(ii) If the defendant has been charged with a felony offense and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial, 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 one year the time specified in division (C) of this section if the defendant is provided with a course of treatment, the court shall 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 the time specified in division (C) of this section if the defendant is provided with a course of treatment.

(iii) If the defendant has not been charged with a felony 43 offense but has been charged with a misdemeanor offense of 44 violence and if, after taking into consideration all relevant 45 reports, information, and other evidence, the court finds that 46 the defendant is incompetent to stand trial, but the court is 47 unable at that time to determine whether there is a substantial 48 probability that the defendant will become competent to stand 49 trial within the time frame permitted under division $\frac{(C)}{(1)}$ (C) 50 (4) or (5) of this section, the court may order continuing 51

evaluation and treatment of the defendant for a period not to	52
exceed the maximum period permitted under that division.	53
(iv) If the defendant has not been charged with a felony	54
offense or a misdemeanor offense of violence, but has been	55
charged with a misdemeanor offense that is not a misdemeanor	56
offense of violence and if, after taking into consideration all	57
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relevant reports, information, and other evidence, the court	
finds that the defendant is incompetent to stand trial, but the	59
court is unable at that time to determine whether there is a	60
substantial probability that the defendant will become competent	61
to stand trial within the time frame permitted under division	62
$\frac{(C)(1)}{(C)(4)}$ or (5) of this section, the court shall dismiss the	63
charges and follow the process outlined in division (B)(1)(a)(v)	64
(I) of this section.	65
(v) If the defendant has not been charged with a felony	66
offense or a misdemeanor offense of violence, or if the	67
defendant has been charged with a misdemeanor offense of	68
violence and the prosecutor has recommended the procedures under	69
division (B)(1)(a)(vi) of this section, and if, after taking	70
into consideration all relevant reports, information, and other	71
evidence, the trial court finds that the defendant is	72
incompetent to stand trial, the trial court shall do one of the	73
following:	74
(I) Dismiss the charges pending against the defendant. A	75
dismissal under this division is not a bar to further	76
prosecution based on the same conduct. Upon dismissal of the	77
charges, the trial court shall discharge the defendant unless	78

the court or prosecutor, after consideration of the requirements

of section 5122.11 of the Revised Code, files an affidavit in

probate court alleging that the defendant is a mentally ill

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person subject to court order or a person with an intellectual	82
disability subject to institutionalization by court order. If an	83
affidavit is filed in probate court, the trial court may detain	84
the defendant for ten days pending a hearing in the probate	85
court and shall send to the probate court copies of all written	86
reports of the defendant's mental condition that were prepared	87
pursuant to section 2945.371 of the Revised Code. The trial	88
court or prosecutor shall specify in the appropriate space on	89
the affidavit that the defendant is a person described in this	90
subdivision.	91
(II) Order the defendant to undergo outpatient competency	92
restoration treatment at a facility operated or certified by the	93
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- 3 department of mental health and addiction services as being 94 qualified to treat mental illness, at a public or community 95 mental health facility, at a jail that employs or contracts with 96 an individual or entity listed in division (B)(1)(b)(i) of this 97 section to provide treatment or continuing evaluation and 98 treatment at a jail, or in the care of a psychiatrist or other 99 mental health professional. If a defendant who has been released 100 on bail or recognizance refuses to comply with court-ordered 101 outpatient treatment under this division, the court may dismiss 102 the charges pending against the defendant and proceed under 103 division (B)(1)(a)(v)(I) of this section or may amend the 104 conditions of bail or recognizance and order the sheriff to take 105 the defendant into custody and deliver the defendant to a center 106 or facility operated or certified by the department of mental 107 health and addiction services for treatment. 108
- (vi) If the defendant has not been charged with a felony
 offense but has been charged with a misdemeanor offense of
 violence and after taking into consideration all relevant
 reports, information, and other evidence, the court finds that
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the defendant is incompetent to stand trial, the prosecutor in	113
the case may recommend that the court follow the procedures	114
prescribed in division (B)(1)(a)(v) of this section. If the	115
prosecutor does not make such a recommendation, the court shall	116
follow the procedures in division (B)(1)(a)(i) of this section.	117
(b)(i) The court order for the defendant to undergo	118
treatment or continuing evaluation and treatment under division	119
(B)(1)(a) of this section shall specify that the defendant, if	120
determined to require mental health treatment or continuing	121
evaluation and treatment, shall be committed to one of the	122
following:	123
(I) The department of mental health and addiction services	124
for treatment or continuing evaluation and treatment at a	125
hospital, facility, or agency, as determined to be clinically	126
appropriate by the department;	127
(II) A facility certified by the department of mental	128
health and addiction services as being qualified to treat mental	129
illness;	130
(III) A public or community mental health facility;	131
(IV) A jail that employs or contracts with an entity or	132
individual listed in division (B)(1)(b)(i) of this section to	133
provide treatment or continuing evaluation and treatment at a	134
<pre>jail;</pre>	135
(V) A psychiatrist or another mental health professional	136
for treatment or continuing evaluation and treatment.	137
(ii) Prior to placing the defendant, the department of	138
mental health and addiction services shall obtain court approval	139
for that placement following a hearing. The court order for the	140
defendant to undergo treatment or continuing evaluation and	141

treatment under division (B)(1)(a) of this section shall specify	142
that the defendant, if determined to require treatment or	143
continuing evaluation and treatment for an intellectual	144
disability, shall receive treatment or continuing evaluation and	145
treatment at an institution or facility operated by the	146
department of developmental disabilities, at a facility	147
certified by the department of developmental disabilities as	148
being qualified to treat intellectual disabilities, at a public	149
or private intellectual disabilities facility, or by a	150
psychiatrist or another intellectual disabilities professional.	151
In any case, the order may restrict the defendant's freedom of	152
movement as the court considers necessary. The prosecutor in the	153
defendant's case shall send to the chief clinical officer of the	154
hospital, facility, or agency where the defendant is placed by	155
the department of mental health and addiction services, or to	156
the managing officer or director of the institution, facility,	157
or jail, or the person to which the defendant is committed,	158
copies of relevant police reports and other background	159
information that pertains to the defendant and is available to	160
the prosecutor unless the prosecutor determines that the release	161
of any of the information in the police reports or any of the	162
other background information to unauthorized persons would	163
interfere with the effective prosecution of any person or would	164
create a substantial risk of harm to any person.	165
(iii) In determining the place of commitment, the court	166
shall consider the extent to which the person is a danger to the	167

shall consider the extent to which the person is a danger to the person and to others, the need for security, the availability of housing and supportive services, including outpatient mental health services in the community, and the type of crime involved and shall order the least restrictive alternative available that 171 is consistent with public safety and treatment goals. In 172

weighing these factors, the court shall give preference to	173
protecting public safety and the availability of housing and	174
supportive services.	175
(a) If the defendant is found incompetent to stand trial	176

- 176 (c) If the defendant is found incompetent to stand trial, if the chief clinical officer of the hospital, facility, or 177 agency where the defendant is placed, or the managing officer or 178 director of the institution, facility, or jail, or the person to 179 which the defendant is committed for treatment or continuing 180 evaluation and treatment under division (B)(1)(b) of this 181 182 section determines that medication is necessary to restore the defendant's competency to stand trial, and if the defendant 183 lacks the capacity to give informed consent or refuses 184 medication, the chief clinical officer of the hospital, 185 facility, or agency where the defendant is placed, or the 186 managing officer or director of the institution, facility, or 187 jail, or the person to which the defendant is committed for 188 treatment or continuing evaluation and treatment may petition 189 the court for authorization for the involuntary administration 190 of medication. The court shall hold a hearing on the petition 191 within five days of the filing of the petition if the petition 192 was filed in a municipal court or a county court regarding an 193 incompetent defendant charged with a misdemeanor or within ten 194 days of the filing of the petition if the petition was filed in 195 a court of common pleas regarding an incompetent defendant 196 charged with a felony offense. Following the hearing, the court 197 may authorize the involuntary administration of medication or 198 may dismiss the petition. 199
- (2) If the court finds that the defendant is incompetent 200 to stand trial and that, even if the defendant is provided with 201 a course of treatment, there is not a substantial probability 202 that the defendant will become competent to stand trial within 203

one year the time specified in division (C) of this section, the	204
court shall order the discharge of the defendant, unless upon	205
motion of the prosecutor or on its own motion, the court either	206
seeks to retain jurisdiction over the defendant pursuant to	207
section 2945.39 of the Revised Code or files an affidavit in the	208
probate court for the civil commitment of the defendant pursuant	209
to Chapter 5122. or 5123. of the Revised Code alleging that the	210
defendant is a person with a mental illness subject to court	211
order or a person with an intellectual disability subject to	212
institutionalization by court order. If an affidavit is filed in	213
the probate court, the trial court shall send to the probate	214
court copies of all written reports of the defendant's mental	215
condition that were prepared pursuant to section 2945.371 of the	216
Revised Code.	217
The trial court may issue the temporary order of detention	218
that a probate court may issue under section 5122.11 or 5123.71	219
of the Revised Code, to remain in effect until the probable	220
cause or initial hearing in the probate court. Further	221
proceedings in the probate court are civil proceedings governed	222
by Chapter 5122. or 5123. of the Revised Code.	223
(C) No defendant shall be required to undergo treatment,	224
including any continuing evaluation and treatment, under	225
division (B)(1) of this section for longer than whichever of the	226
following periods is applicable:	227
(1) One year Five years, if the most serious offense with	228
which the defendant is charged is one of the following offenses:	229
(a) Aggravated murder or murder or an ;	230
(b) An offense of violence for which a sentence of death	231

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or life imprisonment may be imposed;

(c) Complicity in committing an offense described in	233
division (C)(1)(a) or (C)(1)(b) of this section.	234
(b) (2) One year, if the most serious offense with which	235
the defendant is charged is one of the following offenses:	236
(a) An offense of violence that is a felony of the first	237
or second degree;	238
$\frac{(c)}{(c)}$ (b) A conspiracy to commit, or an attempt to commit, or	239
complicity in the commission of an offense described in division	240
$\frac{C}{(C)(1)(a)}(C)(1)$ or $\frac{(b)}{(2)}$ of this section if the conspiracy τ or	241
attempt, or complicity is a felony of the first or second	242
degree;	243
(a) Compligity in committing an offence described in	244
(c) Complicity in committing an offense described in	
division (C)(2) of this section if the complicity is a felony of	245
the first or second degree.	246
$\frac{(2)}{(3)}$ Six months, if the most serious offense with which	247
the defendant is charged is a felony other than a felony	248
described in division (C)(1) or (2) of this section;	249
$\frac{(3)}{(4)}$ Sixty days, if the most serious offense with which	250
the defendant is charged is a misdemeanor of the first or second	251
degree;	252
$\frac{(4)}{(5)}$ Thirty days, if the most serious offense with which	253
the defendant is charged is a misdemeanor of the third or fourth	254
degree, a minor misdemeanor, or an unclassified misdemeanor.	255
(D) Any defendant who is committed pursuant to this	256
section shall not voluntarily admit the defendant or be	257
voluntarily admitted to a hospital or institution pursuant to	258
section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised	259
Code.	260

(E) Except as otherwise provided in this division, a	261
defendant who is charged with an offense and is committed by the	262
court under this section to the department of mental health and	263
addiction services or is committed to an institution or facility	264
for the treatment of intellectual disabilities shall not be	265
granted unsupervised on-grounds movement, supervised off-grounds	266
movement, or nonsecured status except in accordance with the	267
court order. The court may grant a defendant supervised off-	268
grounds movement to obtain medical treatment or specialized	269
habilitation treatment services if the person who supervises the	270
treatment or the continuing evaluation and treatment of the	271
defendant ordered under division (B)(1)(a) of this section	272
informs the court that the treatment or continuing evaluation	273
and treatment cannot be provided at the hospital or facility	274
where the defendant is placed by the department of mental health	275
and addiction services or the institution, facility, or jail to	276
which the defendant is committed. The chief clinical officer of	277
the hospital or facility where the defendant is placed by the	278
department of mental health and addiction services or the	279
managing officer or director of the institution, facility, or	280
jail to which the defendant is committed, or a designee of any	281
of those persons, may grant a defendant movement to a medical	282
facility for an emergency medical situation with appropriate	283
supervision to ensure the safety of the defendant, staff, and	284
community during that emergency medical situation. The chief	285
clinical officer of the hospital or facility where the defendant	286
is placed by the department of mental health and addiction	287
services or the managing officer or director of the institution,	288
facility, or jail to which the defendant is committed shall	289
notify the court within twenty-four hours of the defendant's	290
movement to the medical facility for an emergency medical	291
situation under this division.	292

(F) The person who supervises the treatment or continuing	293
evaluation and treatment of a defendant ordered to undergo	294
treatment or continuing evaluation and treatment under division	295
(B)(1)(a) of this section shall file a written report with the	296
court at the following times:	297
(1) Whenever the person believes the defendant is capable	298
of understanding the nature and objective of the proceedings	299
against the defendant and of assisting in the defendant's	300
defense;	301
(2) For a felony offense, fourteen days before expiration	302
of the maximum time for treatment as specified in division (C)	303
of this section and fourteen days before the expiration of the	304
maximum time for continuing evaluation and treatment as	305
specified in division (B)(1)(a) of this section, and, for a	306
misdemeanor offense, ten days before the expiration of the	307
maximum time for treatment, as specified in division (C) of this	308
section;	309
(3) At a minimum, after each six months of treatment;	310
(4) Whenever the person who supervises the treatment or	311
continuing evaluation and treatment of a defendant ordered under	312
division (B)(1)(a) of this section believes that there is not a	313
substantial probability that the defendant will become capable	314
of understanding the nature and objective of the proceedings	315
against the defendant or of assisting in the defendant's defense	316
even if the defendant is provided with a course of treatment.	317
(G) A report under division (F) of this section shall	318
contain the examiner's findings, the facts in reasonable detail	319
on which the findings are based, and the examiner's opinion as	320
to the defendant's capability of understanding the nature and	321

objective of the proceedings against the defendant and of	322
assisting in the defendant's defense. If, in the examiner's	323
opinion, the defendant remains incapable of understanding the	324
nature and objective of the proceedings against the defendant	325
and of assisting in the defendant's defense and there is a	326
substantial probability that the defendant will become capable	327
of understanding the nature and objective of the proceedings	328
against the defendant and of assisting in the defendant's	329
defense if the defendant is provided with a course of treatment,	330
if in the examiner's opinion the defendant continues to have a	331
mental illness or an intellectual disability, and if the maximum	332
time for treatment as specified in division (C) of this section	333
has not expired, the report also shall contain the examiner's	334
recommendation as to the least restrictive placement or	335
commitment alternative that is consistent with the defendant's	336
treatment needs for restoration to competency and with the	337
safety of the community. The court shall provide copies of the	338
report to the prosecutor and defense counsel.	339

(H) If a defendant is committed pursuant to division (B) 340 (1) of this section, within ten days after the treating 341 physician of the defendant or the examiner of the defendant who 342 is employed or retained by the treating facility advises that 343 there is not a substantial probability that the defendant will 344 become capable of understanding the nature and objective of the 345 proceedings against the defendant or of assisting in the 346 defendant's defense even if the defendant is provided with a 347 course of treatment, within ten days after the expiration of the 348 maximum time for treatment as specified in division (C) of this 349 section, within ten days after the expiration of the maximum 350 time for continuing evaluation and treatment as specified in 351 division (B)(1)(a) of this section, within thirty days after a 352

defendant's request for a hearing that is made after six months	353
of treatment, or within thirty days after being advised by the	354
treating physician or examiner that the defendant is competent	355
to stand trial, whichever is the earliest, the court shall	356
conduct another hearing to determine if the defendant is	357
competent to stand trial and shall do whichever of the following	358
is applicable:	359
(1) If the court finds that the defendant is competent to	360
stand trial, the defendant shall be proceeded against as	361
provided by law.	362
(2) If the court finds that the defendant is incompetent	363
to stand trial, but that there is a substantial probability that	364
the defendant will become competent to stand trial if the	365
defendant is provided with a course of treatment, and the	366
maximum time for treatment as specified in division (C) of this	367
section has not expired, the court, after consideration of the	368
examiner's recommendation, shall order that treatment be	369
continued, may change the facility or location at which the	370
treatment is to be continued, and shall specify whether the	371
treatment is to be continued at the same or a different facility	372
or location.	373
(3) If the court finds that the defendant is incompetent	374
to stand trial, if the defendant is charged with an offense	375
listed in division (C)(1) or (2) of this section, and if the	376
court finds that there is not a substantial probability that the	377
defendant will become competent to stand trial even if the	378
defendant is provided with a course of treatment, or if the	379
maximum time for treatment relative to that offense as specified	380
in division (C) of this section has expired, further proceedings	381

shall be as provided in sections 2945.39, 2945.401, and 2945.402

of the Revised Code.

(4) If the court finds that the defendant is incompetent	384
to stand trial, if the most serious offense with which the	385
defendant is charged is a misdemeanor or a felony other than a	386
felony listed in division (C)(1) or (2) of this section, and if	387
the court finds that there is not a substantial probability that	388
the defendant will become competent to stand trial even if the	389
defendant is provided with a course of treatment, or if the	390
maximum time for treatment relative to that offense as specified	391
in division (C) of this section has expired, the court shall	392
dismiss the indictment, information, or complaint against the	393
defendant. A dismissal under this division is not a bar to	394
further prosecution based on the same conduct. The court shall	395
discharge the defendant unless the court or prosecutor files an	396
affidavit in probate court for civil commitment pursuant to	397
Chapter 5122. or 5123. of the Revised Code. If an affidavit for	398
civil commitment is filed, the court may detain the defendant	399
for ten days pending civil commitment and shall send to the	400
probate court copies of all written reports of the defendant's	401
mental condition prepared pursuant to section 2945.371 of the	402
Revised Code.	403

All of the following provisions apply to persons charged 404 with a misdemeanor or a felony other than a felony listed in 405 division (C)(1) or (2) of this section who are committed by the 406 probate court subsequent to the court's or prosecutor's filing 407 of an affidavit for civil commitment under authority of this 408 division:

(a) The chief clinical officer of the entity, hospital, orfacility, the managing officer or director of the institution,facility, or jail, or the person to which the defendant is412

committed or admitted shall do all of the following:	413
(i) Notify the prosecutor, in writing, of the discharge of	414
the defendant, send the notice at least ten days prior to the	415
discharge unless the discharge is by the probate court, and	416
state in the notice the date on which the defendant will be	417
discharged;	418
(ii) Notify the prosecutor, in writing, when the defendant	419
is absent without leave or is granted unsupervised, off-grounds	420
movement, and send this notice promptly after the discovery of	421
the absence without leave or prior to the granting of the	422
unsupervised, off-grounds movement, whichever is applicable;	423
(iii) Notify the prosecutor, in writing, of the change of	424
the defendant's commitment or admission to voluntary status,	425
send the notice promptly upon learning of the change to	426
voluntary status, and state in the notice the date on which the	427
defendant was committed or admitted on a voluntary status.	428
(b) Upon receiving notice that the defendant will be	429
granted unsupervised, off-grounds movement, the prosecutor	430
either shall re-indict the defendant or promptly notify the	431
court that the prosecutor does not intend to prosecute the	432
charges against the defendant.	433
(I) If a defendant is convicted of a crime and sentenced	434
to a jail, the defendant's sentence shall be reduced by the	435
total number of days the defendant is confined for evaluation to	436
determine the defendant's competence to stand trial or treatment	437
under this section and sections 2945.37 and 2945.371 of the	438
Revised Code or by the total number of days the defendant is	439
confined for evaluation to determine the defendant's mental	440
condition at the time of the offense charged.	441

(J) If a defendant is found incompetent to stand trial and	442
the treating facility or responsible clinician determines that	443
the defendant lacks capacity to consent to treatment or refuses	444
treatment, including medication, and no petition is filed under	445
division (B)(1)(c) of this section, the time period for	446
treatment specified in division (C) of this section shall be	447
tolled during any period of time the defendant lacks capacity to	448
consent to treatment or refuses treatment, including medication.	449
(K) If a defendant is found incompetent to stand trial and	450
the treating facility or responsible clinician determines that	451
the defendant lacks capacity to consent to treatment or refuses	452
treatment, including medication, and a petition is filed under	453
division (B)(1)(c) of this section, the time period for	454
treatment specified in division (C) of this section shall be	455
tolled during any period of time the petition is pending.	456
(L) For purposes of this section, the chief clinical	457
officer of the hospital, facility, or agency where the defendant	458
is placed, or the managing officer or director of the	459
institution, facility, or jail, or the person to which the	460
defendant is committed for treatment, shall document the	461
determination that the defendant lacks capacity to consent to	462
treatment or refuses treatment, including medication, and shall	463
notify the court within fourteen days of that determination.	464
(M) If a defendant who has been found incompetent to stand	465
trial is subsequently found competent during the course of	466
treatment or continuing evaluation and treatment and is later	467
again found incompetent to stand trial, the time period for	468
treatment specified in division (C) of this section resets, and	469
the court shall treat the new period of incompetency as a	470
distinct restoration period subject to the limitations in	471

division (C) of this section.	472
(N) The amendments to this section by this act apply	473
retroactively to all defendants who were found incompetent to	474
stand trial prior to the effective date of this amendment and	475
whose restoration to competency is ongoing or whose case remains	476
<pre>pending.</pre>	477
Sec. 2945.39. (A) If a defendant who is charged with an	478
offense described in division (C)(1) or (2) of section 2945.38	479
of the Revised Code is found incompetent to stand trial, after	480
the expiration of the maximum time for treatment as specified in	481
division (C) of that section or after the court finds that there	482
is not a substantial probability that the defendant will become	483
competent to stand trial even if the defendant is provided with	484
a course of treatment, one of the following applies:	485
(1) The court or the prosecutor may file an affidavit in	486
probate court for civil commitment of the defendant in the	487
manner provided in Chapter 5122. or 5123. of the Revised Code.	488
If the court or prosecutor files an affidavit for civil	489
commitment, the court may detain the defendant for ten days	490
pending civil commitment. If the probate court commits the	491
defendant subsequent to the court's or prosecutor's filing of an	492
affidavit for civil commitment, the chief clinical officer of	493
the entity, hospital, or facility, the managing officer of the	494
institution, the director of the program, or the person to which	495
the defendant is committed or admitted shall send to the	496
prosecutor the notices described in divisions (H)(4)(a)(i) to	497
(iii) of section 2945.38 of the Revised Code within the periods	498
of time and under the circumstances specified in those	499
divisions.	500
(2) On the motion of the prosecutor or on its own motion,	501

the court may retain jurisdiction over the defendant if, at a	502
hearing, the court finds both of the following by clear and	503
convincing evidence:	504
(a) The defendant committed the offense with which the	505
defendant is charged.	506
(b) The defendant is a person with a mental illness	507
subject to court order or a person with an intellectual	508
disability subject to institutionalization by court order.	509
(B) In making its determination under division (A)(2) of	510
this section as to whether to retain jurisdiction over the	511
defendant, the court may consider all relevant evidence,	512
including, but not limited to, any relevant psychiatric,	513
psychological, or medical testimony or reports, the acts	514
constituting the offense charged, and any history of the	515
defendant that is relevant to the defendant's ability to conform	516
to the law.	517
(C) If the court conducts a hearing as described in	518
division (A)(2) of this section and if the court does not make	519
both findings described in divisions (A)(2)(a) and (b) of this	520
section by clear and convincing evidence, the court shall	521
dismiss the indictment, information, or complaint against the	522
defendant. Upon the dismissal, the court shall discharge the	523
defendant unless the court or prosecutor files an affidavit in	524
probate court for civil commitment of the defendant pursuant to	525
Chapter 5122. or 5123. of the Revised Code. If the court or	526
prosecutor files an affidavit for civil commitment, the court	527
may order that the defendant be detained for up to ten days	528
pending the civil commitment. If the probate court commits the	529
defendant subsequent to the court's or prosecutor's filing of an	530

affidavit for civil commitment, the chief clinical officer of

the entity, hospital, or facility, the managing officer of the	532
institution, the director of the program, or the person to which	533
the defendant is committed or admitted shall send to the	534
prosecutor the notices described in divisions (H)(4)(a)(i) to	535
(iii) of section 2945.38 of the Revised Code within the periods	536
of time and under the circumstances specified in those	537
divisions. A dismissal of charges under this division is not a	538
bar to further criminal proceedings based on the same conduct.	539
(D)(1) If the court conducts a hearing as described in	540
division (A)(2) of this section and if the court makes the	541
findings described in divisions (A)(2)(a) and (b) of this	542
section by clear and convincing evidence, the court shall commit	543
the defendant, if determined to require mental health treatment,	544
either to the department of mental health and addiction services	545
for treatment at a hospital, facility, or agency as determined	546
clinically appropriate by the department of mental health and	547
addiction services or to another medical or psychiatric	548
facility, as appropriate. Prior to placing the defendant, the	549
department of mental health and addiction services shall obtain	550
court approval for that placement. If the court conducts such a	551
hearing and if it makes those findings by clear and convincing	552
evidence, the court shall commit the defendant, if determined to	553
require treatment for an intellectual disability, to a facility	554
operated by the department of developmental disabilities, or	555
another facility, as appropriate. In determining the place of	556
commitment, the court shall consider the extent to which the	557
person is a danger to the person and to others, the need for	558
security, and the type of crime involved and shall order the	559
least restrictive alternative available that is consistent with	560
public safety and the welfare of the defendant. In weighing	561
these factors, the court shall give preference to protecting	562

public safety. 563

(2) If a court makes a commitment of a defendant under	564
division (D)(1) of this section, the prosecutor shall send to	565
the hospital, facility, or agency where the defendant is placed	566
by the department of mental health and addiction services or to	567
the defendant's place of commitment all reports of the	568
defendant's current mental condition and, except as otherwise	569
provided in this division, any other relevant information,	570
including, but not limited to, a transcript of the hearing held	571
pursuant to division (A)(2) of this section, copies of relevant	572
police reports, and copies of any prior arrest and conviction	573
records that pertain to the defendant and that the prosecutor	574
possesses. The prosecutor shall send the reports of the	575
defendant's current mental condition in every case of	576
commitment, and, unless the prosecutor determines that the	577
release of any of the other relevant information to unauthorized	578
persons would interfere with the effective prosecution of any	579
person or would create a substantial risk of harm to any person,	580
the prosecutor also shall send the other relevant information.	581
Upon admission of a defendant committed under division (D)(1) of	582
this section, the place of commitment shall send to the board of	583
alcohol, drug addiction, and mental health services or the	584
community mental health board serving the county in which the	585
charges against the defendant were filed a copy of all reports	586
of the defendant's current mental condition and a copy of the	587
other relevant information provided by the prosecutor under this	588
division, including, if provided, a transcript of the hearing	589
held pursuant to division (A)(2) of this section, the relevant	590
police reports, and the prior arrest and conviction records that	591
pertain to the defendant and that the prosecutor possesses.	592

(3) If a court makes a commitment under division (D)(1) of 593

this section, all further proceedings shall be in accordance 594 with sections 2945.401 and 2945.402 of the Revised Code. 595

Sec. 2945.401. (A) A defendant found incompetent to stand 596 trial and committed pursuant to section 2945.39 of the Revised 597 Code or a person found not guilty by reason of insanity and 598 committed pursuant to section 2945.40 of the Revised Code shall 599 remain subject to the jurisdiction of the trial court pursuant 600 to that commitment, and to the provisions of this section, until 601 the final termination of the commitment as described in division 602 (J) (1) of this section. If the jurisdiction is terminated under 603 this division because of the final termination of the commitment 604 resulting from the expiration of the maximum prison term or term 605 of imprisonment described in division (J)(1)(b) of this section, 606 the court or prosecutor may file an affidavit for the civil 607 commitment of the defendant or person pursuant to Chapter 5122. 608 or 5123, of the Revised Code. 609

(B) A hearing conducted under any provision of sections 610 2945.37 to 2945.402 of the Revised Code shall not be conducted 611 in accordance with Chapters 5122. and 5123. of the Revised Code. 612 Any person who is committed pursuant to section 2945.39 or 613 2945.40 of the Revised Code shall not voluntarily admit the 614 person or be voluntarily admitted to a hospital or institution 615 pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the 616 Revised Code. All other provisions of Chapters 5122. and 5123. 617 of the Revised Code regarding hospitalization or 618 institutionalization shall apply to the extent they are not in 619 conflict with this chapter. A commitment under section 2945.39 620 or 2945.40 of the Revised Code shall not be terminated and the 621 conditions of the commitment shall not be changed except as 622 otherwise provided in division (D)(2) of this section with 623 respect to a person with an intellectual disability subject to 624

institutionalization by court order or except by order of the	625
trial court.	626
(C) The department of mental health and addiction services	627
or the institution, facility, or program to which a defendant or	628
person has been committed under section 2945.39 or 2945.40 of	629
the Revised Code shall report in writing to the trial court, at	630
the times specified in this division, as to whether the	631
defendant or person remains a person with a mental illness	632
subject to court order or a person with an intellectual	633
disability subject to institutionalization by court order and,	634
in the case of a defendant committed under section 2945.39 of	635
the Revised Code, as to whether the defendant remains	636
incompetent to stand trial. The department, institution,	637
facility, or program shall make the reports after the initial	638
six months of treatment and every two years after the initial	639
report is made. The trial court shall provide copies of the	640
reports to the prosecutor and to the counsel for the defendant	641
or person. Within thirty days after its receipt pursuant to this	642
division of a report from the department, institution, facility,	643
or program, the trial court shall hold a hearing on the	644
continued commitment of the defendant or person or on any	645
changes in the conditions of the commitment of the defendant or	646
person. The defendant or person may request a change in the	647
conditions of confinement, and the trial court shall conduct a	648
hearing on that request if six months or more have elapsed since	649
the most recent hearing was conducted under this section.	650
(D)(1) Except as otherwise provided in division (D)(2) of	651
this section, when a defendant or person has been committed	652
under section 2945.39 or 2945.40 of the Revised Code, at any	653
time after evaluating the risks to public safety and the welfare	654

of the defendant or person, the designee of the department of

mental health and addiction services or the managing officer of	656
the institution or director of the facility or program to which	657
the defendant or person is committed may recommend a termination	658
of the defendant's or person's commitment or a change in the	659
conditions of the defendant's or person's commitment.	660

Except as otherwise provided in division (D)(2) of this

section, if the designee of the department of mental health and

addiction services recommends on-grounds unsupervised movement,

off-grounds supervised movement, or nonsecured status for the

defendant or person or termination of the defendant's or

person's commitment, the following provisions apply:

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(a) If the department's designee recommends on-grounds 667 unsupervised movement or off-grounds supervised movement, the 668 department's designee shall file with the trial court an 669 application for approval of the movement and shall send a copy 670 of the application to the prosecutor. Within fifteen days after 671 receiving the application, the prosecutor may request a hearing 672 on the application and, if a hearing is requested, shall so 673 inform the department's designee. If the prosecutor does not 674 request a hearing within the fifteen-day period, the trial court 675 shall approve the application by entering its order approving 676 the requested movement or, within five days after the expiration 677 of the fifteen-day period, shall set a date for a hearing on the 678 application. If the prosecutor requests a hearing on the 679 application within the fifteen-day period, the trial court shall 680 hold a hearing on the application within thirty days after the 681 hearing is requested. If the trial court, within five days after 682 the expiration of the fifteen-day period, sets a date for a 683 hearing on the application, the trial court shall hold the 684 hearing within thirty days after setting the hearing date. At 685 least fifteen days before any hearing is held under this 686

division, the trial court shall give the prosecutor written

notice of the date, time, and place of the hearing. At the

conclusion of each hearing conducted under this division, the

trial court either shall approve or disapprove the application

and shall enter its order accordingly.

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- 692 (b) If the department's designee recommends termination of the defendant's or person's commitment at any time or if the 693 department's designee recommends the first of any nonsecured 694 status for the defendant or person, the department's designee 695 shall send written notice of this recommendation to the trial 696 court and to the local forensic center. The local forensic 697 center shall evaluate the committed defendant or person and, 698 within thirty days after its receipt of the written notice, 699 shall submit to the trial court and the department's designee a 700 written report of the evaluation. The trial court shall provide 701 a copy of the department's designee's written notice and of the 702 local forensic center's written report to the prosecutor and to 703 the counsel for the defendant or person. Upon the local forensic 704 center's submission of the report to the trial court and the 705 department's designee, all of the following apply: 706
- 707 (i) If the forensic center disagrees with the recommendation of the department's designee, it shall inform the 708 department's designee and the trial court of its decision and 709 the reasons for the decision. The department's designee, after 710 consideration of the forensic center's decision, shall either 711 withdraw, proceed with, or modify and proceed with the 712 recommendation. If the department's designee proceeds with, or 713 modifies and proceeds with, the recommendation, the department's 714 designee shall proceed in accordance with division (D)(1)(b) 715 (iii) of this section. 716

(ii) If the forensic center agrees with the recommendation	717
of the department's designee, it shall inform the department's	718
designee and the trial court of its decision and the reasons for	719
the decision, and the department's designee shall proceed in	720
accordance with division (D)(1)(b)(iii) of this section.	721
(iii) If the forensic center disagrees with the	722
recommendation of the department's designee and the department's	723
designee proceeds with, or modifies and proceeds with, the	724
recommendation or if the forensic center agrees with the	725
recommendation of the department's designee, the department's	726
designee shall work with community mental health services	727
providers, programs, facilities, or boards of alcohol, drug	728
addiction, and mental health services or community mental health	729
boards to develop a plan to implement the recommendation. If the	730
defendant or person is on medication, the plan shall include,	731
but shall not be limited to, a system to monitor the defendant's	732
or person's compliance with the prescribed medication treatment	733
plan. The system shall include a schedule that clearly states	734
when the defendant or person shall report for a medication	735
compliance check. The medication compliance checks shall be	736
based upon the effective duration of the prescribed medication,	737
taking into account the route by which it is taken, and shall be	738
scheduled at intervals sufficiently close together to detect a	739
potential increase in mental illness symptoms that the	740
medication is intended to prevent.	741
The department's designee, after consultation with the	742
board of alcohol, drug addiction, and mental health services or	743
the community mental health board serving the area, shall send	744
the recommendation and plan developed under division (D)(1)(b)	745

(iii) of this section, in writing, to the trial court, the

prosecutor, and the counsel for the committed defendant or

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person. The trial court shall conduct a hearing on the	748
recommendation and plan developed under division (D)(1)(b)(iii)	749
of this section. Divisions (D)(1)(c) and (d) and (E) to (J) of	750
this section apply regarding the hearing.	751
(c) If the department's designee's recommendation is for	752
nonsecured status or termination of commitment, the prosecutor	753
may obtain an independent expert evaluation of the defendant's	754
or person's mental condition, and the trial court may continue	755
the hearing on the recommendation for a period of not more than	756
thirty days to permit time for the evaluation.	757
The prosecutor may introduce the evaluation report or	758
present other evidence at the hearing in accordance with the	759
Rules of Evidence.	760
(d) The trial court shall schedule the hearing on a	761
department's designee's recommendation for nonsecured status or	762
termination of commitment and shall give reasonable notice to	763
the prosecutor and the counsel for the defendant or person.	764
Unless continued for independent evaluation at the prosecutor's	765
request or for other good cause, the hearing shall be held	766
within thirty days after the trial court's receipt of the	767
recommendation and plan.	768
(2)(a) Division (D)(1) of this section does not apply to	769
on-grounds unsupervised movement of a defendant or person who	770
has been committed under section 2945.39 or 2945.40 of the	771
Revised Code, who is a person with an intellectual disability	772
subject to institutionalization by court order, and who is being	773
provided residential habilitation, care, and treatment in a	774
facility operated by the department of developmental	775

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disabilities.

(b) If, pursuant to section 2945.39 of the Revised Code,	777
the trial court commits a defendant who is found incompetent to	778
stand trial and who is a person with an intellectual disability	779
subject to institutionalization by court order, if the defendant	780
is being provided residential habilitation, care, and treatment	781
in a facility operated by the department of developmental	782
disabilities, if an individual who is conducting a survey for	783
the department of health to determine the facility's compliance	784
with the certification requirements of the medicaid program	785
cites the defendant's receipt of the residential habilitation,	786
care, and treatment in the facility as being inappropriate under	787
the certification requirements, if the defendant's receipt of	788
the residential habilitation, care, and treatment in the	789
facility potentially jeopardizes the facility's continued	790
receipt of federal medicaid moneys, and if as a result of the	791
citation the chief clinical officer of the facility determines	792
that the conditions of the defendant's commitment should be	793
changed, the department of developmental disabilities may cause	794
the defendant to be removed from the particular facility and,	795
after evaluating the risks to public safety and the welfare of	796
the defendant and after determining whether another type of	797
placement is consistent with the certification requirements, may	798
place the defendant in another facility that the department	799
selects as an appropriate facility for the defendant's continued	800
receipt of residential habilitation, care, and treatment and	801
that is a no less secure setting than the facility in which the	802
defendant had been placed at the time of the citation. Within	803
three days after the defendant's removal and alternative	804
placement under the circumstances described in division (D)(2)	805
(b) of this section, the department of developmental	806
disabilities shall notify the trial court and the prosecutor in	807
writing of the removal and alternative placement.	808

The trial court shall set a date for a hearing on the	809
removal and alternative placement, and the hearing shall be held	810
within twenty-one days after the trial court's receipt of the	811
notice from the department of developmental disabilities. At	812
least ten days before the hearing is held, the trial court shall	813
give the prosecutor, the department of developmental	814
disabilities, and the counsel for the defendant written notice	815
of the date, time, and place of the hearing. At the hearing, the	816
trial court shall consider the citation issued by the individual	817
who conducted the survey for the department of health to be	818
prima-facie evidence of the fact that the defendant's commitment	819
to the particular facility was inappropriate under the	820
certification requirements of the medicaid program and	821
potentially jeopardizes the particular facility's continued	822
receipt of federal medicaid moneys. At the conclusion of the	823
hearing, the trial court may approve or disapprove the	824
defendant's removal and alternative placement. If the trial	825
court approves the defendant's removal and alternative	826
placement, the department of developmental disabilities may	827
continue the defendant's alternative placement. If the trial	828
court disapproves the defendant's removal and alternative	829
placement, it shall enter an order modifying the defendant's	830
removal and alternative placement, but that order shall not	831
require the department of developmental disabilities to replace	832
the defendant for purposes of continued residential	833
habilitation, care, and treatment in the facility associated	834
with the citation issued by the individual who conducted the	835
survey for the department of health.	836

(E) In making a determination under this section regarding 837 nonsecured status or termination of commitment, the trial court 838 shall consider all relevant factors, including, but not limited 839

to, all of the following:	840
(1) Whether, in the trial court's view, the defendant or	841
person currently represents a substantial risk of physical harm	842
to the defendant or person or others;	843
(2) Psychiatric and medical testimony as to the current	844
mental and physical condition of the defendant or person;	845
(3) Whether the defendant or person has insight into the	846
defendant's or person's condition so that the defendant or	847
person will continue treatment as prescribed or seek	848
professional assistance as needed;	849
(4) The grounds upon which the state relies for the	850
<pre>proposed commitment;</pre>	851
(5) Any past history that is relevant to establish the	852
defendant's or person's degree of conformity to the laws, rules,	853
regulations, and values of society;	854
(6) If there is evidence that the defendant's or person's	855
mental illness is in a state of remission, the medically	856
suggested cause and degree of the remission and the probability	857
that the defendant or person will continue treatment to maintain	858
the remissive state of the defendant's or person's illness	859
should the defendant's or person's commitment conditions be	860
altered.	861
(F) At any hearing held pursuant to division (C) or (D)(1)	862
or (2) of this section, the defendant or the person shall have	863
all the rights of a defendant or person at a commitment hearing	864
as described in section 2945.40 of the Revised Code.	865
(G) In a hearing held pursuant to division (C) or (D)(1)	866
of this section, the prosecutor has the burden of proof as	867

follows:	868
(1) For a recommendation of termination of commitment, to	869
show by clear and convincing evidence that the defendant or	870
person remains a person with a mental illness subject to court	871
order or a person with an intellectual disability subject to	872
institutionalization by court order;	873
(2) For a recommendation for a change in the conditions of	874
the commitment to a less restrictive status, to show by clear	875
and convincing evidence that the proposed change represents a	876
threat to public safety or a threat to the safety of any person.	877
(H) In a hearing held pursuant to division (C) or (D)(1)	878
or (2) of this section, the prosecutor shall represent the state	879
or the public interest.	880
(I) At the conclusion of a hearing conducted under	881
division (D)(1) of this section regarding a recommendation from	882
the designee of the department of mental health and addiction	883
services, managing officer of the institution, or director of a	884
facility or program, the trial court may approve, disapprove, or	885
modify the recommendation and shall enter an order accordingly.	886
(J)(1) A defendant or person who has been committed	887
pursuant to section 2945.39 or 2945.40 of the Revised Code	888
continues to be under the jurisdiction of the trial court until	889
the final termination of the commitment. For purposes of	890
division (J) of this section, the final termination of a	891
commitment occurs upon the earlier of one of the following:	892
(a) The defendant or person no longer is a person with a	893
mental illness subject to court order or a person with an	894
intellectual disability subject to institutionalization by court	895
order, as determined by the trial court;	896

(b) The expiration of the maximum prison term or term of	897
imprisonment that the defendant or person could have received if	898
the defendant or person had been convicted of the most serious	899
offense with which the defendant or person is charged or in	900
relation to which the defendant or person was found not guilty	901
by reason of insanity;	902

(c) The trial court enters an order terminating the commitment under the circumstances described in division (J)(2)(a)(ii) of this section.

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(2) (a) If a defendant is found incompetent to stand trial 906 and committed pursuant to section 2945.39 of the Revised Code, 907 if neither of the circumstances described in divisions (J)(1)(a) 908 and (b) of this section applies to that defendant, and if a 909 report filed with the trial court pursuant to division (C) of 910 this section indicates that the defendant presently is competent 911 to stand trial or if, at any other time during the period of the 912 defendant's commitment, the prosecutor, the counsel for the 913 defendant, or the designee of the department of mental health 914 915 and addiction services or the managing officer of the institution or director of the facility or program to which the 916 defendant is committed files an application with the trial court 917 alleging that the defendant presently is competent to stand 918 trial and requesting a hearing on the competency issue or the 919 trial court otherwise has reasonable cause to believe that the 920 defendant presently is competent to stand trial and determines 921 on its own motion to hold a hearing on the competency issue, the 922 trial court shall schedule a hearing on the competency of the 923 defendant to stand trial, shall give the prosecutor, the counsel 924 for the defendant, and the department's designee or the managing 925 officer of the institution or the director of the facility to 926 which the defendant is committed notice of the date, time, and 927

place of the hearing at least fifteen days before the hearing,	928
and shall conduct the hearing within thirty days of the filing	929
of the application or of its own motion. If, at the conclusion	930
of the hearing, the trial court determines that the defendant	931
presently is capable of understanding the nature and objective	932
of the proceedings against the defendant and of assisting in the	933
defendant's defense, the trial court shall order that the	934
defendant is competent to stand trial and shall be proceeded	935
against as provided by law with respect to the applicable	936
offenses described in division (C)(1) or (2) of section 2945.38	937
of the Revised Code and shall enter whichever of the following	938
additional orders is appropriate:	939

- (i) If the trial court determines that the defendant 940 remains a person with a mental illness subject to court order or 941 a person with an intellectual disability subject to 942 institutionalization by court order, the trial court shall order 943 that the defendant's commitment to the department of mental 944 health and addiction services or to an institution, facility, or 945 program for the treatment of intellectual disabilities be 946 continued during the pendency of the trial on the applicable 947 offenses described in division (C)(1) or (2) of section 2945.38 948 of the Revised Code. 949
- (ii) If the trial court determines that the defendant no 950 longer is a person with a mental illness subject to court order 951 or a person with an intellectual disability subject to 952 institutionalization by court order, the trial court shall order 953 that the defendant's commitment to the department of mental 954 health and addiction services or to an institution, facility, or 955 program for the treatment of intellectual disabilities shall not 956 be continued during the pendency of the trial on the applicable 957 offenses described in division (C)(1) or (2) of section 2945.38 958

of the Revised Code. This order shall be a final termination of	959
the commitment for purposes of division (J)(1)(c) of this	960
section.	961
(b) If, at the conclusion of the hearing described in	962
division (J)(2)(a) of this section, the trial court determines	963
that the defendant remains incapable of understanding the nature	964
and objective of the proceedings against the defendant or of	965
assisting in the defendant's defense, the trial court shall	966
order that the defendant continues to be incompetent to stand	967
trial, that the defendant's commitment to the department of	968
mental health and addiction services or to an institution,	969
facility, or program for the treatment of intellectual	970
disabilities shall be continued, and that the defendant remains	971
subject to the jurisdiction of the trial court pursuant to that	972
commitment, and to the provisions of this section, until the	973
final termination of the commitment as described in division (J)	974
(1) of this section.	975
Section 2. That existing sections 2945.38, 2945.39, and	976
2945.401 of the Revised Code are hereby repealed.	977