

As Introduced

136th General Assembly

Regular Session

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S. B. No. 295

Senators Manning, Patton

To amend sections 2945.38, 2945.39, and 2945.401 of
the Revised Code relative to the timeline for
restoration of competency in criminal 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
the Revised Code be amended to read as follows:

Sec. 2945.38. (A) If the issue of a defendant's competence
to stand trial is raised and if the court, upon conducting the
hearing provided for in section 2945.37 of the Revised Code,
finds that the defendant is competent to stand trial, the
defendant shall be proceeded against as provided by law. If the
court finds the defendant competent to stand trial and the
defendant is receiving psychotropic drugs or other medication,
the court may authorize the continued administration of the
drugs or medication or other appropriate treatment in order to
maintain the defendant's competence to stand trial, unless the
defendant's attending physician advises the court against
continuation of the drugs, other medication, or treatment.

(B) (1) (a) (i) If the defendant has been charged with a
felony offense or a misdemeanor offense of violence for which
the prosecutor has not recommended the procedures under division

(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~~ 25
the time specified in division (C) of this section if the 26
defendant is provided with a course of treatment, the court 27
shall order the defendant to undergo treatment. 28

(ii) If the defendant has been charged with a felony 29
offense and if, after taking into consideration all relevant 30
reports, information, and other evidence, the court finds that 31
the defendant is incompetent to stand trial, but the court is 32
unable at that time to determine whether there is a substantial 33
probability that the defendant will become competent to stand 34
trial within ~~one year~~ the time specified in division (C) of this 35
section if the defendant is provided with a course of treatment, 36
the court shall order continuing evaluation and treatment of the 37
defendant for a period not to exceed four months to determine 38
whether there is a substantial probability that the defendant 39
will become competent to stand trial within ~~one year~~ the time 40
specified in division (C) of this section if the defendant is 41
provided with a course of treatment. 42

(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 ~~(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
relevant reports, information, and other evidence, the court 58
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
~~(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 79
of section 5122.11 of the Revised Code, files an affidavit in 80
probate court alleging that the defendant is a mentally ill 81

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
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 109
offense but has been charged with a misdemeanor offense of 110
violence and after taking into consideration all relevant 111
reports, information, and other evidence, the court finds that 112

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
jail; 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
person and to others, the need for security, the availability of 168
housing and supportive services, including outpatient mental 169
health services in the community, and the type of crime involved 170
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

(c) If the defendant is found incompetent to stand trial, 176
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
section determines that medication is necessary to restore the 182
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
or life imprisonment may be imposed; 232

(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

~~(e)~~ (b) A conspiracy to commit, or an attempt to commit, or 239
complicity in the commission of an offense described in division 240
~~(C) (1) (a)~~ (C) (1) or (b) (2) of this section if the conspiracy, or 241
attempt, or complicity is a felony of the first or second 242
degree; 243

(c) Complicity in committing an offense described in 244
division (C) (2) of this section if the complicity is a felony of 245
the first or second degree. 246

~~(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

~~(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

~~(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
evaluation and treatment of a defendant ordered to undergo
treatment or continuing evaluation and treatment under division
(B) (1) (a) of this section shall file a written report with the
court at the following times:

(1) Whenever the person believes the defendant is capable
of understanding the nature and objective of the proceedings
against the defendant and of assisting in the defendant's
defense;

(2) For a felony offense, fourteen days before expiration
of the maximum time for treatment as specified in division (C)
of this section and fourteen days before the expiration of the
maximum time for continuing evaluation and treatment as
specified in division (B) (1) (a) of this section, and, for a
misdemeanor offense, ten days before the expiration of the
maximum time for treatment, as specified in division (C) of this
section;

(3) At a minimum, after each six months of treatment;

(4) Whenever the person who supervises the treatment or
continuing evaluation and treatment of a defendant ordered under
division (B) (1) (a) of this section believes that there is not a
substantial probability that the defendant will become capable
of understanding the nature and objective of the proceedings
against the defendant or of assisting in the defendant's defense
even if the defendant is provided with a course of treatment.

(G) A report under division (F) of this section shall
contain the examiner's findings, the facts in reasonable detail
on which the findings are based, and the examiner's opinion as
to the defendant's capability of understanding the nature and

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 2945.402 382

of the Revised Code. 383

(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: 409

(a) The chief clinical officer of the entity, hospital, or 410
facility, the managing officer or director of the institution, 411
facility, or jail, or the person to which the defendant is 412

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.

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(N) The amendments to this section by this act apply
retroactively to all defendants who were found incompetent to
stand trial prior to the effective date of this amendment and
whose restoration to competency is ongoing or whose case remains
pending.

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Sec. 2945.39. (A) If a defendant who is charged with an
offense described in division (C) (1) or (2) of section 2945.38
of the Revised Code is found incompetent to stand trial, after
the expiration of the maximum time for treatment as specified in
division (C) of that section or after the court finds that there
is not a substantial probability that the defendant will become
competent to stand trial even if the defendant is provided with
a course of treatment, one of the following applies:

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(1) The court or the prosecutor may file an affidavit in
probate court for civil commitment of the defendant in the
manner provided in Chapter 5122. or 5123. of the Revised Code.
If the court or prosecutor files an affidavit for civil
commitment, the court may detain the defendant for ten days
pending civil commitment. If the probate court commits the
defendant subsequent to the court's or prosecutor's filing of an
affidavit for civil commitment, the chief clinical officer of
the entity, hospital, or facility, the managing officer of the
institution, the director of the program, or the person to which
the defendant is committed or admitted shall send to the
prosecutor the notices described in divisions (H) (4) (a) (i) to
(iii) of section 2945.38 of the Revised Code within the periods
of time and under the circumstances specified in those
divisions.

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(2) On the motion of the prosecutor or on its own motion,

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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 531

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 655

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 661
section, if the designee of the department of mental health and 662
addiction services recommends on-grounds unsupervised movement, 663
off-grounds supervised movement, or nonsecured status for the 664
defendant or person or termination of the defendant's or 665
person's commitment, the following provisions apply: 666

(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 687
notice of the date, time, and place of the hearing. At the 688
conclusion of each hearing conducted under this division, the 689
trial court either shall approve or disapprove the application 690
and shall enter its order accordingly. 691

(b) If the department's designee recommends termination of 692
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

(i) If the forensic center disagrees with the 707
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 746
prosecutor, and the counsel for the committed defendant or 747

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
disabilities. 776

(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 removal and alternative placement, and the hearing shall be held within twenty-one days after the trial court's receipt of the notice from the department of developmental disabilities. At least ten days before the hearing is held, the trial court shall give the prosecutor, the department of developmental disabilities, and the counsel for the defendant written notice of the date, time, and place of the hearing. At the hearing, the trial court shall consider the citation issued by the individual who conducted the survey for the department of health to be prima-facie evidence of the fact that the defendant's commitment to the particular facility was inappropriate under the certification requirements of the medicaid program and potentially jeopardizes the particular facility's continued receipt of federal medicaid moneys. At the conclusion of the hearing, the trial court may approve or disapprove the defendant's removal and alternative placement. If the trial court approves the defendant's removal and alternative placement, the department of developmental disabilities may continue the defendant's alternative placement. If the trial court disapproves the defendant's removal and alternative placement, it shall enter an order modifying the defendant's removal and alternative placement, but that order shall not require the department of developmental disabilities to replace the defendant for purposes of continued residential habilitation, care, and treatment in the facility associated with the citation issued by the individual who conducted the survey for the department of health.

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

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
proposed commitment; 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 903
commitment under the circumstances described in division (J) (2) 904
(a) (ii) of this section. 905

(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
and addiction services or the managing officer of the 915
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