As Reported by the Senate Judiciary Committee

136th General Assembly **Regular Session**

2025-2026

Am. 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 and 3 to declare an emergency.

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

Section 1. That sections 2945.38, 2945.39, and 2945.401 of	5
the Revised Code be amended to read as follows:	6
Sec. 2945.38. (A) If the issue of a defendant's competence	7
to stand trial is raised and if the court, upon conducting the	8
hearing provided for in section 2945.37 of the Revised Code,	9
finds that the defendant is competent to stand trial, the	10
defendant shall be proceeded against as provided by law. If the	11
court finds the defendant competent to stand trial and the	12
defendant is receiving psychotropic drugs or other medication,	13
the court may authorize the continued administration of the	14
drugs or medication or other appropriate treatment in order to	15
maintain the defendant's competence to stand trial, unless the	16
defendant's attending physician advises the court against	17
continuation of the drugs, other medication, or treatment.	18
(B)(1)(a)(i) If the defendant has been charged with a	19
felony offense or a misdemeanor offense of violence for which	20

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the prosecutor has not recommended the procedures under division (B)(1)(a)(vi) of this section and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial and that 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 the defendant to undergo treatment.

- (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 offense but has been charged with a misdemeanor offense of violence 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 the time frame permitted under division $\frac{(C)}{(1)}(C)$

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- (4) or (5) of this section, the court may order continuing evaluation and treatment of the defendant for a period not to exceed the maximum period permitted under that division.
- (iv) If the defendant has not been charged with a felony 55 offense or a misdemeanor offense of violence, but has been 56 charged with a misdemeanor offense that is not a misdemeanor 57 offense of violence and if, after taking into consideration all 58 relevant reports, information, and other evidence, the court 59 finds that the defendant is incompetent to stand trial, but the 60 court is unable at that time to determine whether there is a 61 substantial probability that the defendant will become competent 62 to stand trial within the time frame permitted under division 63 $\frac{(C)(1)}{(1)}(C)(4)$ or (5) of this section, the court shall dismiss the 64 charges and follow the process outlined in division (B) (1) (a) (v) 65 (I) of this section. 66
- (v) If the defendant has not been charged with a felony 67 offense or a misdemeanor offense of violence, or if the 68 defendant has been charged with a misdemeanor offense of 69 violence and the prosecutor has recommended the procedures under 70 division (B)(1)(a)(vi) of this section, and if, after taking 71 into consideration all relevant reports, information, and other 72 evidence, the trial court finds that the defendant is 73 incompetent to stand trial, the trial court shall do one of the 74 following: 75
- (I) Dismiss the charges pending against the defendant. A 76 dismissal under this division is not a bar to further 77 prosecution based on the same conduct. Upon dismissal of the 78 charges, the trial court shall discharge the defendant unless 79 the court or prosecutor, after consideration of the requirements 80 of section 5122.11 of the Revised Code, files an affidavit in 81

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probate court alleging that the defendant is a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order. If an affidavit is filed in probate court, the trial court may detain the defendant for ten days pending a hearing in the probate court and shall send to the probate court copies of all written reports of the defendant's mental condition that were prepared pursuant to section 2945.371 of the Revised Code. The trial court or prosecutor shall specify in the appropriate space on the affidavit that the defendant is a person described in this subdivision.

- (II) Order the defendant to undergo outpatient competency restoration treatment at a facility operated or certified by the department of mental health and addiction services as being qualified to treat mental illness, at a public or community mental health facility, at a jail that employs or contracts with an individual or entity listed in division (B)(1)(b)(i) of this section to provide treatment or continuing evaluation and treatment at a jail, or in the care of a psychiatrist or other mental health professional. If a defendant who has been released on bail or recognizance refuses to comply with court-ordered outpatient treatment under this division, the court may dismiss the charges pending against the defendant and proceed under division (B)(1)(a)(v)(I) of this section or may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center or facility operated or certified by the department of mental health and addiction services for treatment.
- (vi) If the defendant has not been charged with a felonyoffense but has been charged with a misdemeanor offense ofviolence and after taking into consideration all relevant

reports, information, and other evidence, the court finds that	113
the defendant is incompetent to stand trial, the prosecutor in	114
the case may recommend that the court follow the procedures	115
prescribed in division (B)(1)(a)(v) of this section. If the	116
prosecutor does not make such a recommendation, the court shall	117
follow the procedures in division (B)(1)(a)(i) of this section.	118
(b)(i) The court order for the defendant to undergo	119
treatment or continuing evaluation and treatment under division	120
(B)(1)(a) of this section shall specify that the defendant, if	121
determined to require mental health treatment or continuing	122
evaluation and treatment, shall be committed to one of the	123
following:	124
(I) The department of mental health and addiction services	125
for treatment or continuing evaluation and treatment at a	126
hospital, facility, or agency, as determined to be clinically	127
appropriate by the department;	128
(II) A facility certified by the department of mental	129
health and addiction services as being qualified to treat mental	130
illness;	131
(III) A public or community mental health facility;	132
(IV) A jail that employs or contracts with an entity or	133
individual listed in division (B)(1)(b)(i) of this section to	134
provide treatment or continuing evaluation and treatment at a	135
<pre>jail;</pre>	136
(V) A psychiatrist or another mental health professional	137
for treatment or continuing evaluation and treatment.	138
(ii) Prior to placing the defendant, the department of	139
mental health and addiction services shall obtain court approval	140
for that placement following a hearing. The court order for the	141

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

(iii) In determining the place of commitment, the court 167 shall consider the extent to which the person is a danger to the 168 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 172 is consistent with public safety and treatment goals. In 173 weighing these factors, the court shall give preference to 174 protecting public safety and the availability of housing and 175 supportive services. 176

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

that the defendant will become competent to stand trial within	204
one year the time specified in division (C) of this section, the	205
court shall order the discharge of the defendant, unless upon	206
motion of the prosecutor or on its own motion, the court either	207
seeks to retain jurisdiction over the defendant pursuant to	208
section 2945.39 of the Revised Code or files an affidavit in the	209
probate court for the civil commitment of the defendant pursuant	210
to Chapter 5122. or 5123. of the Revised Code alleging that the	211
defendant is a person with a mental illness subject to court	212
order or a person with an intellectual disability subject to	213
institutionalization by court order. If an affidavit is filed in	214
the probate court, the trial court shall send to the probate	215
court copies of all written reports of the defendant's mental	216
condition that were prepared pursuant to section 2945.371 of the	217
Revised Code.	218

The trial court may issue the temporary order of detention 219 that a probate court may issue under section 5122.11 or 5123.71 220 of the Revised Code, to remain in effect until the probable 221 cause or initial hearing in the probate court. Further 222 proceedings in the probate court are civil proceedings governed 223 by Chapter 5122. or 5123. of the Revised Code. 224

- (C) No defendant shall be required to undergo treatment, 225 including any continuing evaluation and treatment, under 226 division (B)(1) of this section for longer than whichever of the 227 following periods is applicable: 228
- (1) One yearFive years, if the most serious offense with
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 which the defendant is charged is one of the following offenses:
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 - (a) Aggravated murder, or murder, or an ; 231
 - (b) An offense of violence for which a sentence of death 232

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Code. 261

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

movement to the medical facility for an emergency medical	292
situation under this division.	293
(F) The person who supervises the treatment or continuing	294
evaluation and treatment of a defendant ordered to undergo	295
treatment or continuing evaluation and treatment under division	296
(B)(1)(a) of this section shall file a written report with the	297
court at the following times:	298
(1) Whenever the person believes the defendant is capable	299
of understanding the nature and objective of the proceedings	300
against the defendant and of assisting in the defendant's	301
defense;	302
(2) For a felony offense, fourteen days before expiration	303
of the maximum time for treatment as specified in division (C)	304
of this section and fourteen days before the expiration of the	305
maximum time for continuing evaluation and treatment as	306
specified in division (B)(1)(a) of this section, and, for a	307
misdemeanor offense, ten days before the expiration of the	308
maximum time for treatment, as specified in division (C) of this	309
section;	310
(3) At a minimum, after each six months of treatment;	311
(4) Whenever the person who supervises the treatment or	312
continuing evaluation and treatment of a defendant ordered under	313
division (B)(1)(a) of this section believes that there is not a	314
substantial probability that the defendant will become capable	315
of understanding the nature and objective of the proceedings	316
against the defendant or of assisting in the defendant's defense	317
even if the defendant is provided with a course of treatment.	318
(G) A report under division (F) of this section shall	319

contain the examiner's findings, the facts in reasonable detail

on which the findings are based, and the examiner's opinion as	321
to the defendant's capability of understanding the nature and	322
objective of the proceedings against the defendant and of	323
assisting in the defendant's defense. If, in the examiner's	324
opinion, the defendant remains incapable of understanding the	325
nature and objective of the proceedings against the defendant	326
and of assisting in the defendant's defense and there is a	327
substantial probability that the defendant will become capable	328
of understanding the nature and objective of the proceedings	329
against the defendant and of assisting in the defendant's	330
defense if the defendant is provided with a course of treatment,	331
if in the examiner's opinion the defendant continues to have a	332
mental illness or an intellectual disability, and if the maximum	333
time for treatment as specified in division (C) of this section	334
has not expired, the report also shall contain the examiner's	335
recommendation as to the least restrictive placement or	336
commitment alternative that is consistent with the defendant's	337
treatment needs for restoration to competency and with the	338
safety of the community. The court shall provide copies of the	339
report to the prosecutor and defense counsel.	340

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

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time for continuing evaluation and treatment as specified in	352
division (B)(1)(a) of this section, within thirty days after a	353
defendant's request for a hearing that is made after six months	354
of treatment, or within thirty days after being advised by the	355
treating physician or examiner that the defendant is competent	356
to stand trial, whichever is the earliest, the court shall	357
conduct another hearing to determine if the defendant is	358
competent to stand trial and shall do whichever of the following	359
is applicable:	360

- (1) If the court finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law.
- (2) If the court finds that the defendant is incompetent 364 to stand trial, but that there is a substantial probability that 365 the defendant will become competent to stand trial if the 366 defendant is provided with a course of treatment, and the 367 maximum time for treatment as specified in division (C) of this 368 section has not expired, the court, after consideration of the 369 examiner's recommendation, shall order that treatment be 370 continued, may change the facility or location at which the 371 treatment is to be continued, and shall specify whether the 372 treatment is to be continued at the same or a different facility 373 or location. 374
- (3) If the court finds that the defendant is incompetent

 to stand trial, if the defendant is charged with an offense

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 listed in division (C) (1) or (2) of this section, and if the

 court finds that there is not a substantial probability that the

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 defendant will become competent to stand trial even if the

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 defendant is provided with a course of treatment, or if the

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 maximum time for treatment relative to that offense as specified

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in division (C) of this section has expired, further proceedings 382 shall be as provided in sections 2945.39, 2945.401, and 2945.402 383 of the Revised Code. 384

(4) If the court finds that the defendant is incompetent 385 to stand trial, if the most serious offense with which the 386 defendant is charged is a misdemeanor or a felony other than a 387 felony listed in division (C)(1) or (2) of this section, and if 388 the court finds that there is not a substantial probability that 389 the defendant will become competent to stand trial even if the 390 defendant is provided with a course of treatment, or if the 391 maximum time for treatment relative to that offense as specified 392 in division (C) of this section has expired, the court shall 393 dismiss the indictment, information, or complaint against the 394 defendant. A dismissal under this division is not a bar to 395 further prosecution based on the same conduct. The court shall 396 discharge the defendant unless the court or prosecutor files an 397 affidavit in probate court for civil commitment pursuant to 398 Chapter 5122. or 5123. of the Revised Code. If an affidavit for 399 civil commitment is filed, the court may detain the defendant 400 for ten days pending civil commitment and shall send to the 401 probate court copies of all written reports of the defendant's 402 mental condition prepared pursuant to section 2945.371 of the 403 Revised Code. 404

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

(a) The chief clinical officer of the entity, hospital, or

facility, the managing officer or director of the institution,	412
facility, or jail, or the person to which the defendant is	413
committed or admitted shall do all of the following:	414
(i) Notify the prosecutor, in writing, of the discharge of	415
the defendant, send the notice at least ten days prior to the	416
discharge unless the discharge is by the probate court, and	417
state in the notice the date on which the defendant will be	418
discharged;	419
(ii) Notify the prosecutor, in writing, when the defendant	420
is absent without leave or is granted unsupervised, off-grounds	421
movement, and send this notice promptly after the discovery of	422
the absence without leave or prior to the granting of the	423
unsupervised, off-grounds movement, whichever is applicable;	424
(iii) Notify the prosecutor, in writing, of the change of	425
the defendant's commitment or admission to voluntary status,	426
send the notice promptly upon learning of the change to	427
voluntary status, and state in the notice the date on which the	428
defendant was committed or admitted on a voluntary status.	429
(b) Upon receiving notice that the defendant will be	430
granted unsupervised, off-grounds movement, the prosecutor	431
either shall re-indict the defendant or promptly notify the	432
court that the prosecutor does not intend to prosecute the	433
charges against the defendant.	434
(I) If a defendant is convicted of a crime and sentenced	435
to a jail, the defendant's sentence shall be reduced by the	436
total number of days the defendant is confined for evaluation to	437
determine the defendant's competence to stand trial or treatment	438
under this section and sections 2945.37 and 2945.371 of the	439
Revised Code or by the total number of days the defendant is	440

confined for evaluation to determine the defendant's mental	441
condition at the time of the offense charged.	442
(J) If a defendant is found incompetent to stand trial and	443
the treating facility or responsible clinician determines that	444
the defendant lacks capacity to consent to treatment or refuses	445
treatment, including medication, and no petition is filed under	446
division (B)(1)(c) of this section, the time period for	447
treatment specified in division (C) of this section shall be	448
tolled during any period of time the defendant lacks capacity to	449
consent to treatment or refuses treatment, including medication.	450
(K) If a defendant is found incompetent to stand trial and	451
the treating facility or responsible clinician determines that	452
the defendant lacks capacity to consent to treatment or refuses	453
treatment, including medication, and a petition is filed under	454
division (B)(1)(c) of this section, the time period for	455
treatment specified in division (C) of this section shall be	456
tolled during any period of time the petition is pending.	457
(L) For purposes of this section, the chief clinical	458
officer of the hospital, facility, or agency where the defendant	459
is placed, or the managing officer or director of the	460
institution, facility, or jail, or the person to which the	461
defendant is committed for treatment, shall document the	462
determination that the defendant lacks capacity to consent to	463
treatment or refuses treatment, including medication, and shall	464
notify the court within fourteen days of that determination.	465
(M) If a defendant who has been found incompetent to stand	466
trial is subsequently found competent during the course of	467
treatment or continuing evaluation and treatment and is later	468
again found incompetent to stand trial, the time period for	469
treatment specified in division (C) of this section resets, and	470

the court shall treat the new period of incompetency as a	471
distinct restoration period subject to the limitations in	472
division (C) of this section.	473
(N) The amendments to this section by this act apply	474
retroactively to all defendants who were found incompetent to	475
stand trial prior to the effective date of this amendment and	476
whose restoration to competency is ongoing or whose case remains	477
pending.	478
Sec. 2945.39. (A) If a defendant who is charged with an	479
offense described in division (C)(1) or (2) of section 2945.38	480
of the Revised Code is found incompetent to stand trial, after	481
the expiration of the maximum time for treatment as specified in	482
division (C) of that section or after the court finds that there	483
is not a substantial probability that the defendant will become	484
competent to stand trial even if the defendant is provided with	485
a course of treatment, one of the following applies:	486
(1) The court or the prosecutor may file an affidavit in	487
probate court for civil commitment of the defendant in the	488
manner provided in Chapter 5122. or 5123. of the Revised Code.	489
If the court or prosecutor files an affidavit for civil	490
commitment, the court may detain the defendant for ten days	491
pending civil commitment. If the probate court commits the	492
defendant subsequent to the court's or prosecutor's filing of an	493
affidavit for civil commitment, the chief clinical officer of	494
the entity, hospital, or facility, the managing officer of the	495
institution, the director of the program, or the person to which	496
the defendant is committed or admitted shall send to the	497
prosecutor the notices described in divisions (H)(4)(a)(i) to	498
(iii) of section 2945.38 of the Revised Code within the periods	499
of time and under the circumstances specified in those	500

divisions.	501
(2) On the motion of the prosecutor or on its own motion,	502
the court may retain jurisdiction over the defendant if, at a	503
hearing, the court finds both of the following by clear and	504
convincing evidence:	505
(a) The defendant committed the offense with which the	506
defendant is charged.	507
(b) The defendant is a person with a mental illness	508
subject to court order or a person with an intellectual	509
disability subject to institutionalization by court order.	510
(B) In making its determination under division (A)(2) of	511
this section as to whether to retain jurisdiction over the	512
defendant, the court may consider all relevant evidence,	513
including, but not limited to, any relevant psychiatric,	514
psychological, or medical testimony or reports, the acts	515
constituting the offense charged, and any history of the	516
defendant that is relevant to the defendant's ability to conform	517
to the law.	518
(C) If the court conducts a hearing as described in	519
division (A)(2) of this section and if the court does not make	520
both findings described in divisions (A)(2)(a) and (b) of this	521
section by clear and convincing evidence, the court shall	522
dismiss the indictment, information, or complaint against the	523
defendant. Upon the dismissal, the court shall discharge the	524
defendant unless the court or prosecutor files an affidavit in	525
probate court for civil commitment of the defendant pursuant to	526
Chapter 5122. or 5123. of the Revised Code. If the court or	527
prosecutor files an affidavit for civil commitment, the court	528
may order that the defendant be detained for up to ten days	529

pending the civil commitment. If the probate court commits the 530 defendant subsequent to the court's or prosecutor's filing of an 531 affidavit for civil commitment, the chief clinical officer of 532 the entity, hospital, or facility, the managing officer of the 533 institution, the director of the program, or the person to which 534 the defendant is committed or admitted shall send to the 535 prosecutor the notices described in divisions (H)(4)(a)(i) to 536 (iii) of section 2945.38 of the Revised Code within the periods 537 of time and under the circumstances specified in those 538 divisions. A dismissal of charges under this division is not a 539 bar to further criminal proceedings based on the same conduct. 540

(D) (1) If the court conducts a hearing as described in 541 division (A)(2) of this section and if the court makes the 542 findings described in divisions (A)(2)(a) and (b) of this 543 section by clear and convincing evidence, the court shall commit 544 the defendant, if determined to require mental health treatment, 545 either to the department of mental health and addiction services 546 for treatment at a hospital, facility, or agency as determined 547 clinically appropriate by the department of mental health and 548 addiction services or to another medical or psychiatric 549 facility, as appropriate. Prior to placing the defendant, the 550 department of mental health and addiction services shall obtain 551 court approval for that placement. If the court conducts such a 552 hearing and if it makes those findings by clear and convincing 553 evidence, the court shall commit the defendant, if determined to 554 require treatment for an intellectual disability, to a facility 555 operated by the department of developmental disabilities, or 556 another facility, as appropriate. In determining the place of 557 commitment, the court shall consider the extent to which the 558 person is a danger to the person and to others, the need for 559 security, and the type of crime involved and shall order the 560

least restrictive alternative available that is consistent with 561 public safety and the welfare of the defendant. In weighing 562 these factors, the court shall give preference to protecting 563 public safety. 564

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

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police reports, and the prior arrest and conviction records that 592 pertain to the defendant and that the prosecutor possesses. 593

- (3) If a court makes a commitment under division (D)(1) of this section, all further proceedings shall be in accordance with sections 2945.401 and 2945.402 of the Revised Code.
- Sec. 2945.401. (A) A defendant found incompetent to stand 597 trial and committed pursuant to section 2945.39 of the Revised 598 Code or a person found not guilty by reason of insanity and 599 committed pursuant to section 2945.40 of the Revised Code shall 600 remain subject to the jurisdiction of the trial court pursuant 601 to that commitment, and to the provisions of this section, until 602 the final termination of the commitment as described in division 603 (J)(1) of this section. If the jurisdiction is terminated under 604 this division because of the final termination of the commitment 605 resulting from the expiration of the maximum prison term or term 606 of imprisonment described in division (J)(1)(b) of this section, 607 the court or prosecutor may file an affidavit for the civil 608 commitment of the defendant or person pursuant to Chapter 5122. 609 or 5123. of the Revised Code. 610
- (B) A hearing conducted under any provision of sections 611 2945.37 to 2945.402 of the Revised Code shall not be conducted 612 in accordance with Chapters 5122. and 5123. of the Revised Code. 613 Any person who is committed pursuant to section 2945.39 or 614 2945.40 of the Revised Code shall not voluntarily admit the 615 person or be voluntarily admitted to a hospital or institution 616 pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the 617 Revised Code. All other provisions of Chapters 5122. and 5123. 618 of the Revised Code regarding hospitalization or 619 institutionalization shall apply to the extent they are not in 620 conflict with this chapter. A commitment under section 2945.39 621

or 2945.40 of the Revised Code shall not be terminated and the conditions of the commitment shall not be changed except as 623 otherwise provided in division (D)(2) of this section with 624 respect to a person with an intellectual disability subject to 625 institutionalization by court order or except by order of the 626 trial court.

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

(D) (1) Except as otherwise provided in division (D) (2) of

this section, when a defendant or person has been committed 653 under section 2945.39 or 2945.40 of the Revised Code, at any 654 time after evaluating the risks to public safety and the welfare 655 of the defendant or person, the designee of the department of 656 mental health and addiction services or the managing officer of 657 the institution or director of the facility or program to which 658 the defendant or person is committed may recommend a termination 659 of the defendant's or person's commitment or a change in the 660 conditions of the defendant's or person's commitment. 661

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

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the expiration of the fifteen-day period, sets a date for a 684 hearing on the application, the trial court shall hold the 685 hearing within thirty days after setting the hearing date. At 686 least fifteen days before any hearing is held under this 687 division, the trial court shall give the prosecutor written 688 notice of the date, time, and place of the hearing. At the 689 conclusion of each hearing conducted under this division, the 690 691 trial court either shall approve or disapprove the application and shall enter its order accordingly. 692

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

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modifies	and proceeds with, the recommendation, the department's	715
designee	shall proceed in accordance with division (D)(1)(b)	716
(iii) of	this section.	717

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

The department's designee, after consultation with the 743 board of alcohol, drug addiction, and mental health services or 744

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the community mental health board serving the area, shall send	745
the recommendation and plan developed under division (D)(1)(b)	746
(iii) of this section, in writing, to the trial court, the	747
prosecutor, and the counsel for the committed defendant or	748
person. The trial court shall conduct a hearing on the	749
recommendation and plan developed under division (D)(1)(b)(iii)	750
of this section. Divisions (D)(1)(c) and (d) and (E) to (J) of	751
this section apply regarding the hearing.	752

(c) If the department's designee's recommendation is for 753 nonsecured status or termination of commitment, the prosecutor 754 may obtain an independent expert evaluation of the defendant's 755 or person's mental condition, and the trial court may continue 756 757 the hearing on the recommendation for a period of not more than thirty days to permit time for the evaluation. 758

The prosecutor may introduce the evaluation report or present other evidence at the hearing in accordance with the Rules of Evidence.

- (d) The trial court shall schedule the hearing on a department's designee's recommendation for nonsecured status or termination of commitment and shall give reasonable notice to the prosecutor and the counsel for the defendant or person. Unless continued for independent evaluation at the prosecutor's request or for other good cause, the hearing shall be held within thirty days after the trial court's receipt of the recommendation and plan.
- (2)(a) Division (D)(1) of this section does not apply to on-grounds unsupervised movement of a defendant or person who has been committed under section 2945.39 or 2945.40 of the Revised Code, who is a person with an intellectual disability subject to institutionalization by court order, and who is being

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provided residential habilitation, care, and treatment in a facility operated by the department of developmental disabilities.

777 (b) If, pursuant to section 2945.39 of the Revised Code, 778 the trial court commits a defendant who is found incompetent to 779 stand trial and who is a person with an intellectual disability 780 subject to institutionalization by court order, if the defendant 781 is being provided residential habilitation, care, and treatment 782 in a facility operated by the department of developmental 783 784 disabilities, if an individual who is conducting a survey for the department of health to determine the facility's compliance 785 with the certification requirements of the medicaid program 786 cites the defendant's receipt of the residential habilitation, 787 care, and treatment in the facility as being inappropriate under 788 the certification requirements, if the defendant's receipt of 789 the residential habilitation, care, and treatment in the 790 facility potentially jeopardizes the facility's continued 791 receipt of federal medicaid moneys, and if as a result of the 792 citation the chief clinical officer of the facility determines 793 that the conditions of the defendant's commitment should be 794 795 changed, the department of developmental disabilities may cause the defendant to be removed from the particular facility and, 796 after evaluating the risks to public safety and the welfare of 797 the defendant and after determining whether another type of 798 placement is consistent with the certification requirements, may 799 place the defendant in another facility that the department 800 selects as an appropriate facility for the defendant's continued 801 receipt of residential habilitation, care, and treatment and 802 that is a no less secure setting than the facility in which the 803 defendant had been placed at the time of the citation. Within 804 three days after the defendant's removal and alternative 805 placement under the circumstances described in division (D)(2) 806
(b) of this section, the department of developmental 807
disabilities shall notify the trial court and the prosecutor in 808
writing of the removal and alternative placement. 809

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

survey for the department of health.		
(E) In making a determination under this section regarding	838	
nonsecured status or termination of commitment, the trial court		
shall consider all relevant factors, including, but not limited		
to, all of the following:	841	
(1) Whether, in the trial court's view, the defendant or	842	
person currently represents a substantial risk of physical harm		
to the defendant or person or others;	844	
(2) Psychiatric and medical testimony as to the current	845	
mental and physical condition of the defendant or person;	846	
(3) Whether the defendant or person has insight into the	847	
defendant's or person's condition so that the defendant or		
person will continue treatment as prescribed or seek		
professional assistance as needed;	850	
(4) The grounds upon which the state relies for the	851	
<pre>proposed commitment;</pre>		
(5) Any past history that is relevant to establish the	853	
defendant's or person's degree of conformity to the laws, rules,		
regulations, and values of society;	855	
(6) If there is evidence that the defendant's or person's	856	
mental illness is in a state of remission, the medically		
suggested cause and degree of the remission and the probability	858	
that the defendant or person will continue treatment to maintain	859	
the remissive state of the defendant's or person's illness	860	
should the defendant's or person's commitment conditions be	861	
altered.	862	
(F) At any hearing held pursuant to division (C) or (D)(1)	863	
or (2) of this section, the defendant or the person shall have	864	

all the rights of a defendant or person at a commitment hearing	865
as described in section 2945.40 of the Revised Code.	866
(G) In a hearing held pursuant to division (C) or (D)(1)	867
of this section, the prosecutor has the burden of proof as	868
follows:	869
(1) For a recommendation of termination of commitment, to	870
show by clear and convincing evidence that the defendant or	871
person remains a person with a mental illness subject to court	872
order or a person with an intellectual disability subject to	873
institutionalization by court order;	874
(2) For a recommendation for a change in the conditions of	875
the commitment to a less restrictive status, to show by clear	876
and convincing evidence that the proposed change represents a	877
threat to public safety or a threat to the safety of any person.	878
(H) In a hearing held pursuant to division (C) or (D)(1)	879
or (2) of this section, the prosecutor shall represent the state	880
or the public interest.	881
(I) At the conclusion of a hearing conducted under	882
division (D)(1) of this section regarding a recommendation from	883
the designee of the department of mental health and addiction	884
services, managing officer of the institution, or director of a	885
facility or program, the trial court may approve, disapprove, or	886
modify the recommendation and shall enter an order accordingly.	887
(J)(1) A defendant or person who has been committed	888
pursuant to section 2945.39 or 2945.40 of the Revised Code	889
continues to be under the jurisdiction of the trial court until	890
the final termination of the commitment. For purposes of	891
division (J) of this section, the final termination of a	892
commitment occurs upon the earlier of one of the following:	

- (a) The defendant or person no longer is a person with a 894 mental illness subject to court order or a person with an 895 intellectual disability subject to institutionalization by court 896 order, as determined by the trial court; 897
- (b) The expiration of the maximum prison term or term of 898 imprisonment that the defendant or person could have received if 899 the defendant or person had been convicted of the most serious 900 offense with which the defendant or person is charged or in 901 relation to which the defendant or person was found not guilty 902 by reason of insanity; 903
- (c) The trial court enters an order terminating the 904 commitment under the circumstances described in division (J)(2) 905 (a)(ii) of this section. 906
- (2)(a) If a defendant is found incompetent to stand trial 907 and committed pursuant to section 2945.39 of the Revised Code, 908 if neither of the circumstances described in divisions (J)(1)(a) 909 and (b) of this section applies to that defendant, and if a 910 report filed with the trial court pursuant to division (C) of 911 this section indicates that the defendant presently is competent 912 to stand trial or if, at any other time during the period of the 913 defendant's commitment, the prosecutor, the counsel for the 914 defendant, or the designee of the department of mental health 915 and addiction services or the managing officer of the 916 institution or director of the facility or program to which the 917 defendant is committed files an application with the trial court 918 alleging that the defendant presently is competent to stand 919 trial and requesting a hearing on the competency issue or the 920 trial court otherwise has reasonable cause to believe that the 921 defendant presently is competent to stand trial and determines 922 on its own motion to hold a hearing on the competency issue, the 923

trial court shall schedule a hearing on the competency of the	924
defendant to stand trial, shall give the prosecutor, the counsel	925
for the defendant, and the department's designee or the managing	926
officer of the institution or the director of the facility to	927
which the defendant is committed notice of the date, time, and	928
place of the hearing at least fifteen days before the hearing,	929
and shall conduct the hearing within thirty days of the filing	930
of the application or of its own motion. If, at the conclusion	931
of the hearing, the trial court determines that the defendant	932
presently is capable of understanding the nature and objective	933
of the proceedings against the defendant and of assisting in the	934
defendant's defense, the trial court shall order that the	935
defendant is competent to stand trial and shall be proceeded	936
against as provided by law with respect to the applicable	937
offenses described in division (C)(1) or (2) of section 2945.38	938
of the Revised Code and shall enter whichever of the following	939
additional orders is appropriate:	940

- (i) If the trial court determines that the defendant 941 remains a person with a mental illness subject to court order or 942 a person with an intellectual disability subject to 943 944 institutionalization by court order, the trial court shall order that the defendant's commitment to the department of mental 945 health and addiction services or to an institution, facility, or 946 program for the treatment of intellectual disabilities be 947 continued during the pendency of the trial on the applicable 948 offenses described in division (C)(1) or (2) of section 2945.38 949 of the Revised Code. 950
- (ii) If the trial court determines that the defendant no 951 longer is a person with a mental illness subject to court order 952 or a person with an intellectual disability subject to 953 institutionalization by court order, the trial court shall order 954

that the defendant's commitment to the department of mental	955
health and addiction services or to an institution, facility, or	956
program for the treatment of intellectual disabilities shall not	957
be continued during the pendency of the trial on the applicable	958
offenses described in division (C)(1) or (2) of section 2945.38	959
of the Revised Code. This order shall be a final termination of	960
the commitment for purposes of division (J)(1)(c) of this	961
section.	962

(b) If, at the conclusion of the hearing described in division (J)(2)(a) of this section, the trial court determines that the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the trial court shall order that the defendant continues to be incompetent to stand trial, that the defendant's commitment to the department of mental health and addiction services or to an institution, facility, or program for the treatment of intellectual disabilities shall be continued, and that the defendant remains subject to the jurisdiction of the trial court pursuant to that commitment, and to the provisions of this section, until the final termination of the commitment as described in division (J) (1) of this section.

Section 2. That existing sections 2945.38, 2945.39, and 2945.401 of the Revised Code are hereby repealed.

Section 3. This act is hereby declared to be an emergency 979 measure necessary for the immediate preservation of the public 980 peace, health, and safety. The reason for such necessity is that 981 immediate action is necessary to effect the change on existing 982 cases where existing restoration of competency time limitations 983 are waning. Therefore, this act shall go into immediate effect. 984