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Am. S. B. No. 295

Senators Manning, Patton

Cosponsors: Senators Cirino, Gavarone, Reineke, Romanchuk, Schaffer, Smith

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
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
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 20
the prosecutor has not recommended the procedures under division 21
(B) (1) (a) (vi) of this section and if, after taking into 22
consideration all relevant reports, information, and other 23
evidence, the court finds that the defendant is incompetent to 24
stand trial and that there is a substantial probability that the 25
defendant will become competent to stand trial within ~~one year~~ 26
the time specified in division (C) of this section if the 27
defendant is provided with a course of treatment, the court 28
shall order the defendant to undergo treatment. 29

(ii) If the defendant has been charged with a felony 30
offense and if, after taking into consideration all relevant 31
reports, information, and other evidence, the court finds that 32
the defendant is incompetent to stand trial, but the court is 33
unable at that time to determine whether there is a substantial 34
probability that the defendant will become competent to stand 35
trial within ~~one year~~ the time specified in division (C) of this 36
section if the defendant is provided with a course of treatment, 37
the court shall order continuing evaluation and treatment of the 38
defendant for a period not to exceed four months to determine 39
whether there is a substantial probability that the defendant 40
will become competent to stand trial within ~~one year~~ the time 41
specified in division (C) of this section if the defendant is 42
provided with a course of treatment. 43

(iii) If the defendant has not been charged with a felony 44
offense but has been charged with a misdemeanor offense of 45
violence and if, after taking into consideration all relevant 46
reports, information, and other evidence, the court finds that 47
the defendant is incompetent to stand trial, but the court is 48
unable at that time to determine whether there is a substantial 49
probability that the defendant will become competent to stand 50

trial within the time frame permitted under division ~~(C)(1)~~(C)
(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
offense or a misdemeanor offense of violence, but has been
charged with a misdemeanor offense that is not 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
~~(C)(1)~~(C) (4) or (5) of this section, the court shall dismiss the
charges and follow the process outlined in division (B) (1) (a) (v)
(I) of this section.

(v) If the defendant has not been charged with a felony
offense or a misdemeanor offense of violence, or if the
defendant has been charged with a misdemeanor offense of
violence and the prosecutor has 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 trial court finds that the defendant is
incompetent to stand trial, the trial court shall do one of the
following:

(I) Dismiss the charges pending against the defendant. A
dismissal under this division is not a bar to further
prosecution based on the same conduct. Upon dismissal of the
charges, the trial court shall discharge the defendant unless
the court or prosecutor, after consideration of the requirements

of section 5122.11 of the Revised Code, files an affidavit in 81
probate court alleging that the defendant is a mentally ill 82
person subject to court order or a person with an intellectual 83
disability subject to institutionalization by court order. If an 84
affidavit is filed in probate court, the trial court may detain 85
the defendant for ten days pending a hearing in the probate 86
court and shall send to the probate court copies of all written 87
reports of the defendant's mental condition that were prepared 88
pursuant to section 2945.371 of the Revised Code. The trial 89
court or prosecutor shall specify in the appropriate space on 90
the affidavit that the defendant is a person described in this 91
subdivision. 92

(II) Order the defendant to undergo outpatient competency 93
restoration treatment at a facility operated or certified by the 94
department of mental health and addiction services as being 95
qualified to treat mental illness, at a public or community 96
mental health facility, at a jail that employs or contracts with 97
an individual or entity listed in division (B) (1) (b) (i) of this 98
section to provide treatment or continuing evaluation and 99
treatment at a jail, or in the care of a psychiatrist or other 100
mental health professional. If a defendant who has been released 101
on bail or recognizance refuses to comply with court-ordered 102
outpatient treatment under this division, the court may dismiss 103
the charges pending against the defendant and proceed under 104
division (B) (1) (a) (v) (I) of this section or may amend the 105
conditions of bail or recognizance and order the sheriff to take 106
the defendant into custody and deliver the defendant to a center 107
or facility operated or certified by the department of mental 108
health and addiction services for treatment. 109

(vi) If the defendant has not been charged with a felony 110
offense but has been charged with a misdemeanor offense of 111

violence and after taking into consideration all relevant 112
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
jail; 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
defendant to undergo treatment or continuing evaluation and
treatment under division (B)(1)(a) of this section shall specify
that the defendant, if determined to require treatment or
continuing evaluation and treatment for an intellectual
disability, shall receive treatment or continuing evaluation and
treatment at an institution or facility operated by the
department of developmental disabilities, at a facility
certified by the department of developmental disabilities as
being qualified to treat intellectual disabilities, at a public
or private intellectual disabilities facility, or by a
psychiatrist or another intellectual disabilities professional.
In any case, the order may restrict the defendant's freedom of
movement as the court considers necessary. The prosecutor in the
defendant's case shall send to the chief clinical officer of the
hospital, facility, or agency where the defendant is placed by
the department of mental health and addiction services, or to
the managing officer or director of the institution, facility,
or jail, or the person to which the defendant is committed,
copies of relevant police reports and other background
information that pertains to the defendant and is available to
the prosecutor unless the prosecutor determines that the release
of any of the information in the police reports or any of the
other background information to unauthorized persons would
interfere with the effective prosecution of any person or would
create a substantial risk of harm to any person.

(iii) In determining the place of commitment, the court
shall consider the extent to which the person is a danger to the
person and to others, the need for security, the availability of
housing and supportive services, including outpatient mental
health services in the community, and the type of crime involved

and shall order the least restrictive alternative available that 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 year~~Five years, if the most serious offense with 229
which the defendant is charged is one of the following offenses: 230

(a) Aggravated murder, or murder, ~~or an~~; 231

(b) An offense of violence for which a sentence of death 232
or life imprisonment may be imposed; 233

(c) Complicity in committing an offense described in 234
division (C) (1) (a) or (C) (1) (b) of this section. 235

~~(b)~~ (2) One year, if the most serious offense with which 236
the defendant is charged is one of the following offenses: 237

(a) An offense of violence that is a felony of the first 238
or second degree; 239

~~(e)~~ (b) A conspiracy to commit, or an attempt to commit, or 240
~~complicity in the commission of~~ an offense described in division 241
~~(C) (1) (a)~~ (C) (1) or (b) (2) of this section if the conspiracy, or 242
~~attempt, or complicity~~ is a felony of the first or second 243
degree; 244

(c) Complicity in committing an offense described in 245
division (C) (2) of this section if the complicity is a felony of 246
the first or second degree. 247

~~(2)~~ (3) Six months, if the most serious offense with which 248
the defendant is charged is a felony other than a felony 249
described in division (C) (1) or (2) of this section; 250

~~(3)~~ (4) Sixty days, if the most serious offense with which 251
the defendant is charged is a misdemeanor of the first or second 252
degree; 253

~~(4)~~ (5) Thirty days, if the most serious offense with which 254
the defendant is charged is a misdemeanor of the third or fourth 255
degree, a minor misdemeanor, or an unclassified misdemeanor. 256

(D) Any defendant who is committed pursuant to this 257
section shall not voluntarily admit the defendant or be 258
voluntarily admitted to a hospital or institution pursuant to 259

section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised 260
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 320
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
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 361
stand trial, the defendant shall be proceeded against as 362
provided by law. 363

(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 375
to stand trial, if the defendant is charged with an offense 376
listed in division (C) (1) or (2) of this section, and if the 377
court finds that there is not a substantial probability that the 378
defendant will become competent to stand trial even if the 379
defendant is provided with a course of treatment, or if the 380

maximum time for treatment relative to that offense as specified 381
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 405
with a misdemeanor or a felony other than a felony listed in 406
division (C) (1) or (2) of this section who are committed by the 407
probate court subsequent to the court's or prosecutor's filing 408
of an affidavit for civil commitment under authority of this 409
division: 410

(a) The chief clinical officer of the entity, hospital, or 411
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
defendant's current mental condition and, except as otherwise 570
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
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 594
this section, all further proceedings shall be in accordance 595
with sections 2945.401 and 2945.402 of the Revised Code. 596

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 622
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. 627

(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
six months of treatment and every two years after the initial 640
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 652
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 662
section, if the designee of the department of mental health and 663
addiction services recommends on-grounds unsupervised movement, 664
off-grounds supervised movement, or nonsecured status for the 665
defendant or person or termination of the defendant's or 666
person's commitment, the following provisions apply: 667

(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
receiving the application, the prosecutor may request a hearing 673
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
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
trial court either shall approve or disapprove the application 691
and shall enter its order accordingly. 692

(b) If the department's designee recommends termination of 693
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 708
recommendation of the department's designee, it shall inform the 709
department's designee and the trial court of its decision and 710
the reasons for the decision. The department's designee, after 711
consideration of the forensic center's decision, shall either 712
withdraw, proceed with, or modify and proceed with the 713

recommendation. If the department's designee proceeds with, or 714
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 718
of the department's designee, it shall inform the department's 719
designee and the trial court of its decision and the reasons for 720
the decision, and the department's designee shall proceed in 721
accordance with division (D) (1) (b) (iii) of this section. 722

(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
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
the hearing on the recommendation for a period of not more than 757
thirty days to permit time for the evaluation. 758

The prosecutor may introduce the evaluation report or 759
present other evidence at the hearing in accordance with the 760
Rules of Evidence. 761

(d) The trial court shall schedule the hearing on a 762
department's designee's recommendation for nonsecured status or 763
termination of commitment and shall give reasonable notice to 764
the prosecutor and the counsel for the defendant or person. 765
Unless continued for independent evaluation at the prosecutor's 766
request or for other good cause, the hearing shall be held 767
within thirty days after the trial court's receipt of the 768
recommendation and plan. 769

(2) (a) Division (D) (1) of this section does not apply to 770
on-grounds unsupervised movement of a defendant or person who 771
has been committed under section 2945.39 or 2945.40 of the 772
Revised Code, who is a person with an intellectual disability 773

subject to institutionalization by court order, and who is being 774
provided residential habilitation, care, and treatment in a 775
facility operated by the department of developmental 776
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
disabilities, if an individual who is conducting a survey for 784
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
changed, the department of developmental disabilities may cause 795
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
give the prosecutor, the department of developmental 815
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
defendant's removal and alternative placement. If the trial 826
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. 837

(E) In making a determination under this section regarding 838
nonsecured status or termination of commitment, the trial court 839
shall consider all relevant factors, including, but not limited 840
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 843
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 848
person will continue treatment as prescribed or seek 849
professional assistance as needed; 850

(4) The grounds upon which the state relies for the 851
proposed commitment; 852

(5) Any past history that is relevant to establish the 853
defendant's or person's degree of conformity to the laws, rules, 854
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 857
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: 893

(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
institutionalization by court order, the trial court shall order 944
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 963
division (J) (2) (a) of this section, the trial court determines 964
that the defendant remains incapable of understanding the nature 965
and objective of the proceedings against the defendant or of 966
assisting in the defendant's defense, the trial court shall 967
order that the defendant continues to be incompetent to stand 968
trial, that the defendant's commitment to the department of 969
mental health and addiction services or to an institution, 970
facility, or program for the treatment of intellectual 971
disabilities shall be continued, and that the defendant remains 972
subject to the jurisdiction of the trial court pursuant to that 973
commitment, and to the provisions of this section, until the 974
final termination of the commitment as described in division (J) 975
(1) of this section. 976

Section 2. That existing sections 2945.38, 2945.39, and 977
2945.401 of the Revised Code are hereby repealed. 978

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