



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

## **Testimony in Support of Senate Bill 2 Competency Evaluation – Criminal Cases Sponsor Senator Gavarone**

Chair Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee. Thank you for the opportunity to provide testimony in support of Senate Bill 2 (SB2) on behalf of the Office of the Ohio Public Defender (OPD).

OPD supports the goal of SB2 to ensure beds and resources of facilities operated by the Department of Mental Health and Addiction Services or the Department of Developmental Disabilities (herein referred to as “state hospitals”) are available for individuals suffering from serious mental illness, rather than being occupied by individuals charged with nonviolent misdemeanors who are in need of competency evaluations or competency restoration. OPD agrees that state hospital resources are better spent helping those Ohioans most in need of mental health services, and not ensuring an individual is prosecuted for a nonviolent misdemeanor. Because the bill addresses nonviolent misdemeanors, offenses like trespass, loitering, and disorderly conduct, OPD believes these cases should be dismissed when a defendant is determined to be incompetent to stand trial. However, OPD appreciates that SB2 attempts to give those individuals access to some treatment and support. OPD is grateful to Senator Gavarone for addressing OPD’s concerns with the compromises reflected in SB2.

By altogether barring access for individuals charged with nonviolent misdemeanors to state hospitals, OPD was concerned defendants would be held in jail while competency restoration is attempted. However, SB2 specifies that defendants can be released on bond or their personal recognition for competency evaluations and restoration. The bill requires the court to consider the availability of housing and supportive services, including outpatient mental health services, when determining the place of commitment.

The bill also specifies that if the court finds a defendant, charged with a nonviolent misdemeanor, 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, the court must dismiss the criminal case. If appropriate, the court or prosecutor can file an affidavit in 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. The court can hold the defendant for 10 days pending a probate court hearing.

If the court finds the defendant, charged with a nonviolent misdemeanor, incompetent to stand trial, the court can dismiss the case or order outpatient competency restoration. If the case is dismissed, the court and prosecutor can file an affidavit with the probate court as discussed above. If the defendant is noncompliant with outpatient treatment, the court can dismiss the case or have the defendant transferred to a state hospital for treatment.

SB2 proposes a thoughtful compromise for addressing circumstances where an individual is charged with nonviolent misdemeanors but may be incompetent to stand trial. Thank you for the opportunity to provide testimony in support of the bill.

