

As Introduced

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H. B. No. 658

REPRESENTATIVES Carmichael, Blasdel, Calvert, Otterman, Setzer, Seitz,
Carano, Hartnett, Schmidt, Roman, Husted, Latta, Hollister, Allen,
Willamowski, Lendrum, G. Smith, Peterson

A B I L L

To amend sections 2945.38, 2945.40, 2950.09, 5122.01, 1
5122.011, 5122.05, 5122.15, and 5122.38 and to 2
enact sections 5122.51, 5122.52, 5122.53, 5122.54, 3
5122.55, and 5122.56 of the Revised Code to expand 4
the victim and community notification provision of 5
the SORN Law and to authorize the civil commitment 6
of certain sexually aberrant persons. 7

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

Section 1. That sections 2945.38, 2945.40, 2950.09, 5122.01, 8
5122.011, 5122.05, 5122.15, and 5122.38 be amended and sections 9
5122.51, 5122.52, 5122.53, 5122.54, 5122.55, and 5122.56 of the 10
Revised Code be enacted to read as follows: 11

Sec. 2945.38. (A) If the issue of a defendant's competence to 12
stand trial is raised and if the court, upon conducting the 13
hearing provided for in section 2945.37 of the Revised Code, finds 14
that the defendant is competent to stand trial, the defendant 15
shall be proceeded against as provided by law. If the court finds 16
the defendant competent to stand trial and the defendant is 17
receiving psychotropic drugs or other medication, the court may 18

authorize the continued administration of the drugs or medication 19
or other appropriate treatment in order to maintain the 20
defendant's competence to stand trial, unless the defendant's 21
attending physician advises the court against continuation of the 22
drugs, other medication, or treatment. 23

(B)(1)(a) If, after taking into consideration all relevant 24
reports, information, and other evidence, the court finds that the 25
defendant is incompetent to stand trial and that there is a 26
substantial probability that the defendant will become competent 27
to stand trial within one year if the defendant is provided with a 28
course of treatment, the court shall order the defendant to 29
undergo treatment. 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 the 32
defendant is incompetent to stand trial, but the court is unable 33
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 if the defendant is provided with a course 36
of treatment, the court shall order continuing evaluation and 37
treatment of the defendant for a period not to exceed four months 38
to determine whether there is a substantial probability that the 39
defendant will become competent to stand trial within one year if 40
the defendant is provided with a course of treatment. 41

(b) The court order for the defendant to undergo treatment or 42
continuing evaluation and treatment under division (B)(1)(a) of 43
this section shall specify that the treatment or continuing 44
evaluation and treatment shall occur at a facility operated by the 45
department of mental health or the department of mental 46
retardation and developmental disabilities, at a facility 47
certified by either of those departments as being qualified to 48
treat mental illness or mental retardation, at a public or private 49
community mental health or mental retardation facility, or by a 50

psychiatrist or another mental health or mental retardation professional. 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 or facility, the managing officer of the institution, the director of the program, 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.

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In determining placement alternatives, the court shall consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that is consistent with public safety and treatment goals. In weighing these factors, the court shall give preference to protecting public safety.

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(c) If the defendant is found incompetent to stand trial, if the chief clinical officer of the hospital or facility, the managing officer of the institution, the director of the program, or the person to which the defendant is committed for treatment or continuing evaluation and treatment under division (B)(1)(b) of this section determines that medication is necessary to restore the defendant's competency to stand trial, and if the defendant lacks the capacity to give informed consent or refuses medication, the chief clinical officer, managing officer, director, or person to which the defendant is committed for treatment or continuing evaluation and treatment may petition the court for authorization for the involuntary administration of medication. The court shall

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hold a hearing on the petition within five days of the filing of
the petition if the petition was filed in a municipal court or a
county court regarding an incompetent defendant charged with a
misdemeanor or within ten days of the filing of the petition if
the petition was filed in a court of common pleas regarding an
incompetent defendant charged with a felony offense. Following the
hearing, the court may authorize the involuntary administration of
medication or may dismiss the petition.

(2) If the court finds that the defendant is incompetent to
stand trial and that, even if the defendant is provided with a
course of treatment, there is not a substantial probability that
the defendant will become competent to stand trial within one
year, the court shall order the discharge of the defendant, unless
upon motion of the prosecutor or on its own motion, the court
either seeks to retain jurisdiction over the defendant pursuant to
section 2945.39 of the Revised Code or files an affidavit in the
probate court for the civil commitment of the defendant pursuant
to Chapter 5122. or 5123. of the Revised Code alleging that the
defendant is a mentally ill person subject to hospitalization by
court order or a mentally retarded person subject to
institutionalization by court order. If an affidavit is filed in
the probate court, the trial court 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 may issue the temporary order of detention
that a probate court may issue under section 5122.11 or 5123.71 of
the Revised Code, to remain in effect until the probable cause or
initial hearing in the probate court. Further proceedings in the
probate court are civil proceedings governed by Chapter 5122. or
5123. of the Revised Code.

(C) No defendant shall be required to undergo treatment,

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including any continuing evaluation and treatment, under division 115
(B)(1) of this section for longer than whichever of the following 116
periods is applicable: 117

(1) One year, if the most serious offense with which the 118
defendant is charged is one of the following offenses: 119

(a) Aggravated murder, murder, or an offense of violence for 120
which a sentence of death or life imprisonment may be imposed; 121

(b) An offense of violence that is a felony of the first or 122
second degree; 123

(c) A conspiracy to commit, an attempt to commit, or 124
complicity in the commission of an offense described in division 125
(C)(1)(a) or (b) of this section if the conspiracy, attempt, or 126
complicity is a felony of the first or second degree. 127

(2) Six months, if the most serious offense with which the 128
defendant is charged is a felony other than a felony described in 129
division (C)(1) of this section; 130

(3) Sixty days, if the most serious offense with which the 131
defendant is charged is a misdemeanor of the first or second 132
degree; 133

(4) Thirty days, if the most serious offense with which the 134
defendant is charged is a misdemeanor of the third or fourth 135
degree, a minor misdemeanor, or an unclassified misdemeanor. 136

(D) Any defendant who is committed pursuant to this section 137
shall not voluntarily admit the defendant or be voluntarily 138
admitted to a hospital or institution pursuant to section 5122.02, 139
5122.15, 5123.69, or 5123.76 of the Revised Code. 140

(E) Except as otherwise provided in this division, a 141
defendant who is charged with an offense and is committed to a 142
hospital or other institution by the court under this section 143
shall not be granted unsupervised on-grounds movement, supervised 144

off-grounds movement, or nonsecured status. The court may grant a
defendant supervised off-grounds movement to obtain medical
treatment or specialized habilitation treatment services if the
person who supervises the treatment or the continuing evaluation
and treatment of the defendant ordered under division (B)(1)(a) of
this section informs the court that the treatment or continuing
evaluation and treatment cannot be provided at the hospital or the
institution to which the defendant is committed. The chief
clinical officer of the hospital or the managing officer of the
institution to which the defendant is committed or a designee of
either of those persons may grant a defendant movement to a
medical facility for an emergency medical situation with
appropriate supervision to ensure the safety of the defendant,
staff, and community during that emergency medical situation. The
chief clinical officer of the hospital or the managing officer of
the institution shall notify the court within twenty-four hours of
the defendant's movement to the medical facility for an emergency
medical situation under this division.

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

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

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

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treatment, as specified in division (C) of this section; 177

(3) At a minimum, after each six months of treatment; 178

(4) Whenever the person who supervises the treatment or 179
continuing evaluation and treatment of a defendant ordered under 180
division (B)(1)(a) of this section believes that there is not a 181
substantial probability that the defendant will become capable of 182
understanding the nature and objective of the proceedings against 183
the defendant or of assisting in the defendant's defense even if 184
the defendant is provided with a course of treatment. 185

(G) A report under division (F) of this section shall contain 186
the examiner's findings, the facts in reasonable detail on which 187
the findings are based, and the examiner's opinion as to the 188
defendant's capability of understanding the nature and objective 189
of the proceedings against the defendant and of assisting in the 190
defendant's defense. If, in the examiner's opinion, the defendant 191
remains incapable of understanding the nature and objective of the 192
proceedings against the defendant and of assisting in the 193
defendant's defense and there is a substantial probability that 194
the defendant will become capable of understanding the nature and 195
objective of the proceedings against the defendant and of 196
assisting in the defendant's defense if the defendant is provided 197
with a course of treatment, if in the examiner's opinion the 198
defendant remains mentally ill or mentally retarded, and if the 199
maximum time for treatment as specified in division (C) of this 200
section has not expired, the report also shall contain the 201
examiner's recommendation as to the least restrictive treatment 202
alternative that is consistent with the defendant's treatment 203
needs for restoration to competency and with the safety of the 204
community. The court shall provide copies of the report to the 205
prosecutor and defense counsel. 206

(H) If a defendant is committed pursuant to division (B)(1) 207
of this section, within ten days after the treating physician of 208

the defendant or the examiner of the defendant who is employed or retained by the treating facility advises that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment, within ten days after the expiration of the maximum time for treatment as specified in division (C) of this section, within ten days after the expiration of the maximum time for continuing evaluation and treatment as specified in division (B)(1)(a) of this section, within thirty days after a defendant's request for a hearing that is made after six months of treatment, or within thirty days after being advised by the treating physician or examiner that the defendant is competent to stand trial, whichever is the earliest, the court shall conduct another hearing to determine if the defendant is competent to stand trial and shall do whichever of the following is applicable:

(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 to stand trial, but that there is a substantial probability that the defendant will become competent to stand trial if the defendant is provided with a course of treatment, and the maximum time for treatment as specified in division (C) of this section has not expired, the court, after consideration of the examiner's recommendation, shall order that treatment be continued, may change the facility or program at which the treatment is to be continued, and shall specify whether the treatment is to be continued at the same or a different facility or program.

(3) If the court finds that the defendant is incompetent to stand trial, if the defendant is charged with an offense listed in

division (C)(1) of this section, and if the court finds that there
is not a substantial probability that the defendant will become
competent to stand trial even if the defendant is provided with a
course of treatment, or if the maximum time for treatment relative
to that offense as specified in division (C) of this section has
expired, further proceedings shall be as provided in sections
2945.39, 2945.401, and 2945.402 of the Revised Code.

(4) If the court finds that the defendant is incompetent to
stand trial, if the most serious offense with which the defendant
is charged is a misdemeanor or a felony other than a felony listed
in division (C)(1) of this section, and if the court finds that
there is not a substantial probability that the defendant will
become competent to stand trial even if the defendant is provided
with a course of treatment, or if the maximum time for treatment
relative to that offense as specified in division (C) of this
section has expired, the court shall dismiss the indictment,
information, or complaint against the defendant. A dismissal under
this division is not a bar to further prosecution based on the
same conduct. The court shall discharge the defendant unless the
court or prosecutor files an affidavit in probate court for civil
commitment pursuant to Chapter 5122. or 5123. of the Revised Code
or files a petition in probate court for civil commitment as a
sexually aberrant person pursuant to section 5122.51 of the
Revised Code. If an affidavit for civil commitment or a petition
for civil commitment as a sexually aberrant person is filed, the
court may detain the defendant for ten days pending civil
commitment or the probable cause hearing for civil commitment as a
sexually aberrant person. All of the following provisions apply to
persons charged with a misdemeanor or a felony other than a felony
listed in division (C)(1) 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

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division:	273
(a) The chief clinical officer of the hospital or facility,	274
the managing officer of the institution, the director of the	275
program, or the person to which the defendant is committed or	276
admitted shall do all of the following:	277
(i) Notify the prosecutor, in writing, of the discharge of	278
the defendant, send the notice at least ten days prior to the	279
discharge unless the discharge is by the probate court, and state	280
in the notice the date on which the defendant will be discharged;	281
(ii) Notify the prosecutor, in writing, when the defendant is	282
absent without leave or is granted unsupervised, off-grounds	283
movement, and send this notice promptly after the discovery of the	284
absence without leave or prior to the granting of the	285
unsupervised, off-grounds movement, whichever is applicable;	286
(iii) Notify the prosecutor, in writing, of the change of the	287
defendant's commitment or admission to voluntary status, send the	288
notice promptly upon learning of the change to voluntary status,	289
and state in the notice the date on which the defendant was	290
committed or admitted on a voluntary status.	291
(b) Upon receiving notice that the defendant will be granted	292
unsupervised, off-grounds movement, the prosecutor either shall	293
re-indict the defendant or promptly notify the court that the	294
prosecutor does not intend to prosecute the charges against the	295
defendant.	296
(I) If a defendant is convicted of a crime and sentenced to a	297
jail or workhouse, the defendant's sentence shall be reduced by	298
the total number of days the defendant is confined for evaluation	299
to determine the defendant's competence to stand trial or	300
treatment under this section and sections 2945.37 and 2945.371 of	301
the Revised Code or by the total number of days the defendant is	302
confined for evaluation to determine the defendant's mental	303

condition at the time of the offense charged.

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Sec. 2945.40. (A) If a person is found not guilty by reason of insanity, the verdict shall state that finding, and the trial court shall conduct a full hearing to determine whether the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. If the prosecuting attorney files pursuant to section 5122.51 of the Revised Code a petition alleging that the person is a sexually aberrant person, the court shall conduct the hearing authorized by this division after the probate court determines pursuant to section 5122.52 of the Revised Code that there is not probable cause to believe the person is a sexually aberrant person, after the person is found pursuant to section 5122.53 of the Revised Code not to be a sexually aberrant person, or after the person is found to be a sexually aberrant person and is granted a conditional release pursuant to section 5122.54 of the Revised Code. Prior to the hearing, if the trial judge believes that there is probable cause that the person found not guilty by reason of insanity will be subject to commitment as a sexually aberrant person or is a mentally ill person subject to hospitalization by court order or mentally retarded person subject to institutionalization by court order, the trial judge may issue a temporary order of detention for that person to remain in effect for ten court days or until the hearing, whichever occurs first.

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Any person detained pursuant to a temporary order of detention issued under this division shall be held in a suitable facility, taking into consideration the place and type of confinement prior to and during trial.

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(B) The court shall hold the hearing under division (A) of this section to determine whether the person found not guilty by reason of insanity is a mentally ill person subject to

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hospitalization by court order or a mentally retarded person 335
subject to institutionalization by court order within ten court 336
days after the finding of not guilty by reason of insanity. 337
Failure to conduct the hearing within the ten-day period shall 338
cause the immediate discharge of the respondent, unless the judge 339
grants a continuance for not longer than ten court days for good 340
cause shown or for any period of time upon motion of the 341
respondent. 342

(C) If a person is found not guilty by reason of insanity, 343
the person has the right to attend all hearings conducted pursuant 344
to sections 2945.37 to 2945.402 of the Revised Code. At any 345
hearing conducted pursuant to one of those sections, the court 346
shall inform the person that the person has all of the following 347
rights: 348

(1) The right to be represented by counsel and to have that 349
counsel provided at public expense if the person is indigent, with 350
the counsel to be appointed by the court under Chapter 120. of the 351
Revised Code or under the authority recognized in division (C) of 352
section 120.06, division (E) of section 120.16, division (E) of 353
section 120.26, or section 2941.51 of the Revised Code; 354

(2) The right to have independent expert evaluation and to 355
have that independent expert evaluation provided at public expense 356
if the person is indigent; 357

(3) The right to subpoena witnesses and documents, to present 358
evidence on the person's behalf, and to cross-examine witnesses 359
against the person; 360

(4) The right to testify in the person's own behalf and to 361
not be compelled to testify; 362

(5) The right to have copies of any relevant medical or 363
mental health document in the custody of the state or of any place 364
of commitment other than a document for which the court finds that 365

the release to the person of information contained in the document
would create a substantial risk of harm to any person.

(D) The hearing under division (A) of this section shall be
open to the public, and the court shall conduct the hearing in
accordance with the Rules of Civil Procedure. The court shall make
and maintain a full transcript and record of the hearing
proceedings. The court may consider all relevant evidence,
including, but not limited to, any relevant psychiatric,
psychological, or medical testimony or reports, the acts
constituting the offense in relation to which the person was found
not guilty by reason of insanity, and any history of the person
that is relevant to the person's ability to conform to the law.

(E) Upon completion of the hearing under division (A) of this
section, if the court finds there is not clear and convincing
evidence that the person is a mentally ill person subject to
hospitalization by court order or a mentally retarded person
subject to institutionalization by court order, the court shall
discharge the person, unless a detainer has been placed upon the
person by the department of rehabilitation and correction, in
which case the person shall be returned to that department.

(F) If, at the hearing under division (A) of this section,
the court finds by clear and convincing evidence that the person
is a mentally ill person subject to hospitalization by court order
or a mentally retarded person subject to institutionalization by
court order, it shall commit the person to a hospital operated by
the department of mental health, a facility operated by the
department of mental retardation and developmental disabilities,
or another medical or psychiatric facility, as appropriate, and
further proceedings shall be in accordance with sections 2945.401
and 2945.402 of the Revised Code. In determining the place and
nature of the commitment, the court shall order the least
restrictive commitment alternative available that is consistent

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with public safety and the welfare of the person. In weighing 398
these factors, the court shall give preference to protecting 399
public safety. 400

(G) If a court makes a commitment of a person under division 401
(F) of this section, the prosecutor shall send to the place of 402
commitment all reports of the person's current mental condition, 403
and, except as otherwise provided in this division, any other 404
relevant information, including, but not limited to, a transcript 405
of the hearing held pursuant to division (A) of this section, 406
copies of relevant police reports, and copies of any prior arrest 407
and conviction records that pertain to the person and that the 408
prosecutor possesses. The prosecutor shall send the reports of the 409
person's current mental condition in every case of commitment, 410
and, unless the prosecutor determines that the release of any of 411
the other relevant information to unauthorized persons would 412
interfere with the effective prosecution of any person or would 413
create a substantial risk of harm to any person, the prosecutor 414
also shall send the other relevant information. Upon admission of 415
a person committed under division (F) of this section, the place 416
of commitment shall send to the board of alcohol, drug addiction, 417
and mental health services or the community mental health board 418
serving the county in which the charges against the person were 419
filed a copy of all reports of the person's current mental 420
condition and a copy of the other relevant information provided by 421
the prosecutor under this division, including, if provided, a 422
transcript of the hearing held pursuant to division (A) of this 423
section, the relevant police reports, and the prior arrest and 424
conviction records that pertain to the person and that the 425
prosecutor possesses. 426

(H) A person who is committed pursuant to this section shall 427
not voluntarily admit the person or be voluntarily admitted to a 428
hospital or institution pursuant to ~~sections~~ section 5122.02, 429

5122.15, 5123.69, or 5123.76 of the Revised Code. 430

Sec. 2950.09. (A) If a person is convicted of or pleads 431
guilty to committing, on or after January 1, 1997, a sexually 432
oriented offense that is a sexually violent offense and also is 433
convicted of or pleads guilty to a sexually violent predator 434
specification that was included in the indictment, count in the 435
indictment, or information charging the sexually violent offense, 436
the conviction of or plea of guilty to the specification 437
automatically classifies the offender as a sexual predator for 438
purposes of this chapter. If a person is convicted of, pleads 439
guilty to, or is adjudicated a delinquent child for committing, a 440
sexually oriented offense in another state, or in a federal court, 441
military court, or an Indian tribal court and if, as a result of 442
that conviction, plea of guilty, or adjudication, the person is 443
required, under the law of the jurisdiction in which the person 444
was convicted, pleaded guilty, or was adjudicated, to register as 445
a sex offender until the person's death and is required to verify 446
the person's address on at least a quarterly basis each year, that 447
conviction, plea of guilty, or adjudication automatically 448
classifies the person as a sexual predator for the purposes of 449
this chapter, but the person may challenge that classification 450
pursuant to division (F) of this section. If a person is convicted 451
of or pleads guilty to committing, on or after the effective date 452
of this amendment, a violation of section 2907.02 of the Revised 453
Code, the conviction or plea of guilty automatically classifies 454
the offender as a sexual predator for purposes of this chapter. If 455
a person is convicted of or pleads guilty to committing, on or 456
after the effective date of this amendment, a violation of an 457
offense substantially similar to section 2907.02 of the Revised 458
Code in another state, a federal court, a military court, or an 459
Indian tribal court, that conviction or plea of guilty 460
automatically classifies the person as a sexual predator for the 461

purposes of this chapter, but the person may challenge that 462
classification pursuant to division (F) of this section. In all 463
other cases, a person who is convicted of or pleads guilty to, has 464
been convicted of or pleaded guilty to, or is adjudicated a 465
delinquent child for committing, a sexually oriented offense may 466
be classified as a sexual predator for purposes of this chapter 467
only in accordance with division (B) or (C) of this section or, 468
regarding delinquent children, divisions (B) and (C) of section 469
2152.83 of the Revised Code. 470

(B)(1)(a) The judge who is to impose sentence on a person who 471
is convicted of or pleads guilty to a sexually oriented offense 472
shall conduct a hearing to determine whether the offender is a 473
sexual predator if any of the following circumstances apply: 474

(i) Regardless of when the sexually oriented offense was 475
committed, the offender is to be sentenced on or after January 1, 476
1997, for a sexually oriented offense that is not a sexually 477
violent offense. 478

(ii) Regardless of when the sexually oriented offense was 479
committed, the offender is to be sentenced on or after January 1, 480
1997, for a sexually oriented offense that is a sexually violent 481
offense and a sexually violent predator specification was not 482
included in the indictment, count in the indictment, or 483
information charging the sexually violent offense. 484

(iii) Regardless of when the sexually oriented offense was 485
committed, the offender is to be sentenced on or after May 7, 486
2002, for a sexually oriented offense, and that offender was 487
acquitted of a sexually violent predator specification that was 488
included in the indictment, count in the indictment, or 489
information charging the sexually oriented offense. 490

(b) The judge who is to impose or has imposed an order of 491
disposition upon a child who is adjudicated a delinquent child for 492
committing on or after January 1, 2002, a sexually oriented 493

offense shall conduct a hearing as provided in this division to 494
determine whether the child is to be classified as a sexual 495
predator if either of the following applies: 496

(i) The judge is required by section 2152.82 or division (A) 497
of section 2152.83 of the Revised Code to classify the child a 498
juvenile sex offender registrant. 499

(ii) Division (B) of section 2152.83 of the Revised Code 500
applies regarding the child, the judge conducts a hearing under 501
that division for the purposes described in that division, and the 502
judge determines at that hearing that the child will be classified 503
a juvenile sex offender registrant. 504

(2) Regarding an offender, the judge shall conduct the 505
hearing required by division (B)(1)(a) of this section prior to 506
sentencing and, if the sexually oriented offense is a felony and 507
if the hearing is being conducted under division (B)(1)(a) of this 508
section, the judge may conduct it as part of the sentencing 509
hearing required by section 2929.19 of the Revised Code. Regarding 510
a delinquent child, the judge may conduct the hearing required by 511
division (B)(1)(b) of this section at the same time as, or 512
separate from, the dispositional hearing, as specified in the 513
applicable provision of section 2152.82 or 2152.83 of the Revised 514
Code. The court shall give the offender or delinquent child and 515
the prosecutor who prosecuted the offender or handled the case 516
against the delinquent child for the sexually oriented offense 517
notice of the date, time, and location of the hearing. At the 518
hearing, the offender or delinquent child and the prosecutor shall 519
have an opportunity to testify, present evidence, call and examine 520
witnesses and expert witnesses, and cross-examine witnesses and 521
expert witnesses regarding the determination as to whether the 522
offender or delinquent child is a sexual predator. The offender or 523
delinquent child shall have the right to be represented by counsel 524
and, if indigent, the right to have counsel appointed to represent 525

the offender or delinquent child. 526

(3) In making a determination under divisions (B)(1) and (4) 527
of this section as to whether an offender or delinquent child is a 528
sexual predator, the judge shall consider all relevant factors, 529
including, but not limited to, all of the following: 530

(a) The offender's or delinquent child's age; 531

(b) The offender's or delinquent child's prior criminal or 532
delinquency record regarding all offenses, including, but not 533
limited to, all sexual offenses; 534

(c) The age of the victim of the sexually oriented offense 535
for which sentence is to be imposed or the order of disposition is 536
to be made; 537

(d) Whether the sexually oriented offense for which sentence 538
is to be imposed or the order of disposition is to be made 539
involved multiple victims; 540

(e) Whether the offender or delinquent child used drugs or 541
alcohol to impair the victim of the sexually oriented offense or 542
to prevent the victim from resisting; 543

(f) If the offender or delinquent child previously has been 544
convicted of or pleaded guilty to, or been adjudicated a 545
delinquent child for committing an act that if committed by an 546
adult would be, a criminal offense, whether the offender or 547
delinquent child completed any sentence or dispositional order 548
imposed for the prior offense or act and, if the prior offense or 549
act was a sex offense or a sexually oriented offense, whether the 550
offender or delinquent child participated in available programs 551
for sexual offenders; 552

(g) Any mental illness or mental disability of the offender 553
or delinquent child; 554

(h) The nature of the offender's or delinquent child's sexual 555

conduct, sexual contact, or interaction in a sexual context with 556
the victim of the sexually oriented offense and whether the sexual 557
conduct, sexual contact, or interaction in a sexual context was 558
part of a demonstrated pattern of abuse; 559

(i) Whether the offender or delinquent child, during the 560
commission of the sexually oriented offense for which sentence is 561
to be imposed or the order of disposition is to be made, displayed 562
cruelty or made one or more threats of cruelty; 563

(j) Any additional behavioral characteristics that contribute 564
to the offender's or delinquent child's conduct. 565

(4) After reviewing all testimony and evidence presented at 566
the hearing conducted under division (B)(1) of this section and 567
the factors specified in division (B)(3) of this section, the 568
court shall determine by clear and convincing evidence whether the 569
subject offender or delinquent child is a sexual predator. If the 570
court determines that the subject offender or delinquent child is 571
not a sexual predator, the court shall specify in the offender's 572
sentence and the judgment of conviction that contains the sentence 573
or in the delinquent child's dispositional order, as appropriate, 574
that the court has determined that the offender or delinquent 575
child is not a sexual predator. If the court determines by clear 576
and convincing evidence that the subject offender or delinquent 577
child is a sexual predator, the court shall specify in the 578
offender's sentence and the judgment of conviction that contains 579
the sentence or in the delinquent child's dispositional order, as 580
appropriate, that the court has determined that the offender or 581
delinquent child is a sexual predator and shall specify that the 582
determination was pursuant to division (B) of this section. In any 583
case in which the sexually oriented offense in question is an 584
aggravated sexually oriented offense committed on or after ~~the~~ 585
~~effective date of this amendment~~ June 13, 2002, the court shall 586
specify in the offender's sentence and the judgment of conviction 587

that contains the sentence that the offender's offense is an 588
aggravated sexually oriented offense. The offender or delinquent 589
child and the prosecutor who prosecuted the offender or handled 590
the case against the delinquent child for the sexually oriented 591
offense in question may appeal as a matter of right the court's 592
determination under this division as to whether the offender or 593
delinquent child is, or is not, a sexual predator. 594

(5) A hearing shall not be conducted under division (B) of 595
this section regarding an offender if the sexually oriented 596
offense in question is a sexually violent offense, if the 597
indictment, count in the indictment, or information charging the 598
offense also included a sexually violent predator specification, 599
and if the offender is convicted of or pleads guilty to that 600
sexually violent predator specification. 601

(C)(1) If a person was convicted of or pleaded guilty to a 602
sexually oriented offense prior to January 1, 1997, if the person 603
was not sentenced for the offense on or after January 1, 1997, and 604
if, on or after January 1, 1997, the offender is serving a term of 605
imprisonment in a state correctional institution, the department 606
of rehabilitation and correction shall determine whether to 607
recommend that the offender be adjudicated as being a sexual 608
predator. In making a determination under this division as to 609
whether to recommend that the offender be adjudicated as being a 610
sexual predator, the department shall consider all relevant 611
factors, including, but not limited to, all of the factors 612
specified in division (B)(2) of this section. If the department 613
determines that it will recommend that the offender be adjudicated 614
as being a sexual predator, it immediately shall send the 615
recommendation to the court that sentenced the offender and shall 616
enter its determination and recommendation in the offender's 617
institutional record, and the court shall proceed in accordance 618
with division (C)(2) of this section. 619

(2)(a) If, pursuant to division (C)(1) of this section, the department of rehabilitation and correction sends to a court a recommendation that an offender who has been convicted of or pleaded guilty to a sexually oriented offense be adjudicated as being a sexual predator, the court is not bound by the department's recommendation, and the court may conduct a hearing to determine whether the offender is a sexual predator. The court may deny the recommendation and determine that the offender is not a sexual predator without a hearing but shall not make a determination that the offender is a sexual predator in any case without a hearing. The court may hold the hearing and make the determination prior to the offender's release from imprisonment or at any time within one year following the offender's release from that imprisonment. If the court determines without a hearing that the offender is not a sexual predator, it shall include its determination in the offender's institutional record and shall determine whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense other than the offense in relation to which the court determined that the offender is not a sexual predator.

The court may make the determination as to whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense without a hearing, but, if the court determines that the offender previously has been convicted of or pleaded guilty to such an offense, it shall not impose a requirement that the offender be subject to the community notification provisions regarding the offender's place of residence that are contained in sections 2950.10 and 2950.11 of the Revised Code without a hearing. The court may conduct a hearing to determine both whether the offender previously has been convicted of or pleaded guilty to a sexually oriented offense and whether to impose a requirement that the offender be subject to

the community notification provisions as described in this
division, or may conduct a hearing solely to make the latter
determination. The court shall include in the offender's
institutional record any determination made under this division as
to whether the offender previously has been convicted of or
pleaded guilty to a sexually oriented offense, and, as such,
whether the offender is a habitual sex offender.

(b) If the court schedules a hearing under division (C)(2)(a)
of this section, the court shall give the offender and the
prosecutor who prosecuted the offender for the sexually oriented
offense, or that prosecutor's successor in office, notice of the
date, time, and place of the hearing. If the hearing is to
determine whether the offender is a sexual predator, it shall be
conducted in the manner described in division (B)(1) of this
section regarding hearings conducted under that division and, in
making a determination under this division as to whether the
offender is a sexual predator, the court shall consider all
relevant factors, including, but not limited to, all of the
factors specified in division (B)(2) of this section. After
reviewing all testimony and evidence presented at the sexual
predator hearing and the factors specified in division (B)(2) of
this section, the court shall determine by clear and convincing
evidence whether the offender is a sexual predator. If the court
determines that the offender is not a sexual predator, it also
shall determine whether the offender previously has been convicted
of or pleaded guilty to a sexually oriented offense other than the
offense in relation to which the hearing is being conducted.

Upon making its determinations at the hearing, the court
shall proceed as follows:

(i) If the hearing is to determine whether the offender is a
sexual predator, and if the court determines that the offender is
not a sexual predator and that the offender previously has not

been convicted of or pleaded guilty to a sexually oriented offense
other than the offense in relation to which the hearing is being
conducted, it shall include its determinations in the offender's
institutional record.

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(ii) If the hearing is to determine whether the offender is a
sexual predator, and if the court determines that the offender is
not a sexual predator but that the offender previously has been
convicted of or pleaded guilty to a sexually oriented offense
other than the offense in relation to which the hearing is being
conducted, it shall include its determination that the offender is
not a sexual predator but is a habitual sex offender in the
offender's institutional record, shall attach the determinations
to the offender's sentence, shall specify that the determinations
were pursuant to division (C) of this section, shall provide a
copy of the determinations to the offender, to the prosecuting
attorney, and to the department of rehabilitation and correction,
and may impose a requirement that the offender be subject to the
community notification provisions regarding the offender's place
of residence that are contained in sections 2950.10 and 2950.11 of
the Revised Code. The offender shall not be subject to those
community notification provisions relative to the sexually
oriented offense in question if the court does not so impose the
requirement described in this division. If the court imposes those
community notification provisions, the offender may appeal the
judge's determination that the offender is a habitual sex
offender.

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(iii) If the hearing is to determine whether the offender
previously has been convicted of or pleaded guilty to a sexually
oriented offense other than the offense in relation to which the
hearing is being conducted and whether to impose a requirement
that the offender be subject to the specified community
notification provisions, and if the court determines that the

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offender previously has been convicted of or pleaded guilty to 716
such an offense, the court shall proceed as described in division 717
(C)(2)(b)(ii) of this section and may impose a community 718
notification requirement as described in that division. The 719
offender shall not be subject to the specified community 720
notification provisions relative to the sexually oriented offense 721
in question if the court does not so impose the requirement 722
described in that division. If the court imposes those community 723
notification provisions, the offender may appeal the judge's 724
determination that the offender is a habitual sex offender. 725

(iv) If the court determined without a hearing that the 726
offender previously has been convicted of or pleaded guilty to a 727
sexually oriented offense other than the offense in relation to 728
which the court determined that the offender is not a sexual 729
predator, and, as such, is a habitual sex offender, and the 730
hearing is solely to determine whether to impose a requirement 731
that the offender be subject to the specified community 732
notification provisions, after the hearing, the court may impose a 733
community notification requirement as described in division 734
(C)(2)(b)(ii) of this section. The offender shall not be subject 735
to the specified community notification provisions relative to the 736
sexually oriented offense in question if the court does not so 737
impose the requirement described in that division. If the court 738
imposes those community notification provisions, the offender may 739
appeal the judge's determination that the offender is a habitual 740
sex offender. 741

(v) If the hearing is to determine whether the offender is a 742
sexual predator, and if the court determines by clear and 743
convincing evidence that the offender is a sexual predator, it 744
shall enter its determination in the offender's institutional 745
record, shall attach the determination to the offender's sentence, 746
shall specify that the determination was pursuant to division (C) 747

of this section, and shall provide a copy of the determination to
the offender, to the prosecuting attorney, and to the department
of rehabilitation and correction. The offender and the prosecutor
may appeal as a matter of right the judge's determination under
this division as to whether the offender is, or is not, a sexual
predator.

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(D)(1) Division (D) of this section applies to persons who
have been convicted of or pleaded guilty to a sexually oriented
offense and also applies as provided in Chapter 2152. of the
Revised Code. A person who has been adjudicated a delinquent child
for committing a sexually oriented offense and who has been
classified by a juvenile court judge a juvenile sex offender
registrant or, if applicable, additionally has been determined by
a juvenile court judge to be a sexual predator or habitual sex
offender, may petition the adjudicating court for a
reclassification or declassification pursuant to section 2152.85
of the Revised Code.

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Upon the expiration of the applicable period of time
specified in division (D)(1)(a) or (b) of this section, an
offender who has been convicted of or pleaded guilty to a sexually
oriented offense and who has been adjudicated as being a sexual
predator relative to the sexually oriented offense in the manner
described in division (B) or (C) of this section may petition the
judge who made the determination that the offender was a sexual
predator, or that judge's successor in office, to enter a
determination that the offender no longer is a sexual predator.
Upon the filing of the petition, the judge may review the prior
sexual predator determination that comprises the sexual predator
adjudication, and, upon consideration of all relevant evidence and
information, including, but not limited to, the factors set forth
in division (B)(3) of this section, either shall enter a
determination that the offender no longer is a sexual predator or

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shall enter an order denying the petition. The judge shall not
enter a determination under this division that the offender no
longer is a sexual predator unless the judge determines by clear
and convincing evidence that the offender is unlikely to commit a
sexually oriented offense in the future. If the judge enters a
determination under this division that the offender no longer is a
sexual predator, the judge shall notify the bureau of criminal
identification and investigation and the parole board of the
determination. Upon receipt of the notification, the bureau
promptly shall notify the sheriff with whom the offender most
recently registered under section 2950.04 or 2950.05 of the
Revised Code of the determination that the offender no longer is a
sexual predator. If the judge enters a determination under this
division that the offender no longer is a sexual predator and if
the offender has a duty to register under section 2950.04 of the
Revised Code resulting from the offender's conviction of or plea
of guilty to committing on or after ~~the effective date of this~~
~~amendment~~ June 13, 2002, an aggravated sexually oriented offense,
the entry of the determination under this division does not affect
any duties imposed upon the offender under this chapter as a
result of that conviction of or plea of guilty to the aggravated
sexually oriented offense. If the judge enters an order denying
the petition, the prior adjudication of the offender as a sexual
predator shall remain in effect. An offender determined to be a
sexual predator in the manner described in division (B) or (C) of
this section may file a petition under this division after the
expiration of the following periods of time:

(a) Regardless of when the sexually oriented offense was
committed, if, on or after January 1, 1997, the offender is
imprisoned or sentenced to a prison term or other confinement for
the sexually oriented offense in relation to which the
determination was made, the offender initially may file the

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petition not earlier than one year prior to the offender's release
from the imprisonment, prison term, or other confinement by
discharge, parole, judicial release, or any other final release.
If the offender is sentenced on or after January 1, 1997, for the
sexually oriented offense in relation to which the determination
is made and is not imprisoned or sentenced to a prison term or
other confinement for the sexually oriented offense, the offender
initially may file the petition upon the expiration of one year
after the entry of the offender's judgment of conviction.

(b) After the offender's initial filing of a petition under
division (D)(1)(a) of this section, thereafter, an offender may
file a petition under this division upon the expiration of five
years after the court has entered an order denying the petition
under division (D)(1)(a) of this section or the most recent
petition the offender has filed under this division.

(2) Except as otherwise provided in this division, division
(D)(1) of this section does not apply to a person who is
classified as a sexual predator pursuant to division (A) of this
section. If a person who is so classified was sentenced to a
prison term pursuant to division (A)(3) of section 2971.03 of the
Revised Code and if the sentencing court terminates the offender's
prison term as provided in division (D) of section 2971.05 of the
Revised Code, the court's termination of the prison term
automatically shall constitute a determination by the court that
the offender no longer is a sexual predator. However, if there is
a determination under this division that the offender no longer is
a sexual predator and if the offender has a duty to register under
section 2950.04 of the Revised Code resulting from the offender's
conviction of or plea of guilty to committing on or after ~~the~~
~~effective date of this amendment~~ June 13, 2002, an aggravated
sexually oriented offense, the determination under this division
does not affect any duties imposed upon the offender under this

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chapter as a result of that conviction of or plea of guilty to the 844
aggravated sexually oriented offense. If the court so terminates 845
the offender's prison term, the court shall notify the bureau of 846
criminal identification and investigation and the parole board of 847
the determination that the offender no longer is a sexual 848
predator. Upon receipt of the notification, the bureau promptly 849
shall notify the sheriff with whom the offender most recently 850
registered under section 2950.04 or 2950.05 of the Revised Code 851
that the offender no longer is a sexual predator. If an offender 852
who is classified as a sexual predator pursuant to division (A) of 853
this section is released from prison pursuant to a pardon or 854
commutation, the classification of the offender as a sexual 855
predator shall remain in effect after the offender's release, and 856
the offender may file one or more petitions in accordance with the 857
procedures and time limitations contained in division (D)(1) of 858
this section for a determination that the offender no longer is a 859
sexual predator. 860

(E)(1) If a person is convicted of or pleads guilty to 861
committing, on or after January 1, 1997, a sexually oriented 862
offense, the judge who is to impose sentence on the offender shall 863
determine, prior to sentencing, whether the offender previously 864
has been convicted of or pleaded guilty to, or adjudicated a 865
delinquent child for committing, a sexually oriented offense and 866
is a habitual sex offender. The judge who is to impose or has 867
imposed an order of disposition upon a child who is adjudicated a 868
delinquent child for committing on or after January 1, 2002, a 869
sexually oriented offense shall determine, prior to entering the 870
order classifying the delinquent child a juvenile sex offender 871
registrant, whether the delinquent child previously has been 872
convicted of or pleaded guilty to, or adjudicated a delinquent 873
child for committing, a sexually oriented offense and is a 874
habitual sex offender, if either of the following applies: 875

(a) The judge is required by section 2152.82 or division (A) 876
of section 2152.83 of the Revised Code to classify the child a 877
juvenile sex offender registrant; 878

(b) Division (B) of section 2152.83 of the Revised Code 879
applies regarding the child, the judge conducts a hearing under 880
that division for the purposes described in that division, and the 881
judge determines at that hearing that the child will be classified 882
a juvenile sex offender registrant. 883

(2) If, under division (E)(1) of this section, the judge 884
determines that the offender or delinquent child previously has 885
not been convicted of or pleaded guilty to, or been adjudicated a 886
delinquent child for committing, a sexually oriented offense or 887
that the offender otherwise does not satisfy the criteria for 888
being a habitual sex offender, the judge shall specify in the 889
offender's sentence or in the order classifying the delinquent 890
child a juvenile sex offender registrant that the judge has 891
determined that the offender or delinquent child is not a habitual 892
sex offender. If the judge determines that the offender or 893
delinquent child previously has been convicted of or pleaded 894
guilty to, or been adjudicated a delinquent child for committing, 895
a sexually oriented offense and that the offender satisfies all 896
other criteria for being a habitual sex offender, the judge shall 897
specify in the offender's sentence and the judgment of conviction 898
that contains the sentence or in the order classifying the 899
delinquent child a juvenile sex offender registrant that the judge 900
has determined that the offender or delinquent child is a habitual 901
sex offender and may impose a requirement in that sentence and 902
judgment of conviction or in that order that the offender or 903
delinquent child be subject to the community notification 904
provisions regarding the offender's or delinquent child's place of 905
residence that are contained in sections 2950.10 and 2950.11 of 906
the Revised Code. Unless the habitual sex offender also has been 907

adjudicated as being a sexual predator relative to the sexually
oriented offense in question or the habitual sex offender was
convicted of or pleaded guilty to an aggravated sexually oriented
offense that was committed on or after ~~the effective date of this~~
~~amendment~~ June 13, 2002, the offender or delinquent child shall be
subject to those community notification provisions only if the
court imposes the requirement described in this division in the
offender's sentence and the judgment of conviction or in the order
classifying the delinquent child a juvenile sex offender
registrant.

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(F)(1) An offender or delinquent child classified as a sexual
predator may petition the court of common pleas or, for a
delinquent child, the juvenile court of the county in which the
offender or delinquent child resides or temporarily is domiciled
to enter a determination that the offender or delinquent child is
not an adjudicated sexual predator in this state for purposes of
the sex offender registration requirements of this chapter or the
community notification provisions contained in sections 2950.10
and 2950.11 of the Revised Code if all of the following apply:

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(a) The offender or delinquent child was convicted of,
pleaded guilty to, or was adjudicated a delinquent child for
committing, a sexually oriented offense in another state or in a
federal court, a military court, or an Indian tribal court.

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(b) As a result of the conviction, plea of guilty, or
adjudication described in division (F)(1)(a) of this section, the
offender or delinquent child is required under the law of the
jurisdiction under which the offender or delinquent child was
convicted, pleaded guilty, or was adjudicated to register as a sex
offender until the offender's or delinquent child's death and is
required to verify the offender's or delinquent child's address on
at least a quarterly basis each year.

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(c) The offender or delinquent child was automatically

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classified as a sexual predator under division (A) of this section 940
in relation to the conviction, guilty plea, or adjudication 941
described in division (F)(1)(a) of this section. 942

(2) The court may enter a determination that the offender or 943
delinquent child filing the petition described in division (F)(1) 944
of this section is not an adjudicated sexual predator in this 945
state for purposes of the sex offender registration requirements 946
of this chapter or the community notification provisions contained 947
in sections 2950.10 and 2950.11 of the Revised Code only if the 948
offender or delinquent child proves by clear and convincing 949
evidence that the requirement of the other jurisdiction that the 950
offender or delinquent child register as a sex offender until the 951
offender's or delinquent child's death and the requirement that 952
the offender or delinquent child verify the offender's or 953
delinquent child's address on at least a quarterly basis each year 954
is not substantially similar to a classification as a sexual 955
predator for purposes of this chapter. 956

Sec. 5122.01. As used in this chapter and Chapter 5119. of 957
the Revised Code: 958

(A) "Mental illness" means a substantial disorder of thought, 959
mood, perception, orientation, or memory that grossly impairs 960
judgment, behavior, capacity to recognize reality, or ability to 961
meet the ordinary demands of life. 962

(B) "Mentally ill person subject to hospitalization by court 963
order" means a mentally ill person who, because of the person's 964
illness: 965

(1) Represents a substantial risk of physical harm to self as 966
manifested by evidence of threats of, or attempts at, suicide or 967
serious self-inflicted bodily harm; 968

(2) Represents a substantial risk of physical harm to others 969

as manifested by evidence of recent homicidal or other violent
behavior, evidence of recent threats that place another in
reasonable fear of violent behavior and serious physical harm, or
other evidence of present dangerousness;

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(3) Represents a substantial and immediate risk of serious
physical impairment or injury to self as manifested by evidence
that the person is unable to provide for and is not providing for
the person's basic physical needs because of the person's mental
illness and that appropriate provision for those needs cannot be
made immediately available in the community; or

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(4) Would benefit from treatment in a hospital for ~~his~~ the
person's mental illness and is in need of such treatment as
manifested by evidence of behavior that creates a grave and
imminent risk to substantial rights of others or ~~himself~~ the
person.

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(C)(1) "Patient" means, subject to division (C)(2) of this
section, a person who is admitted either voluntarily or
involuntarily to a hospital or other place under section 2945.39,
2945.40, 2945.401, or 2945.402 of the Revised Code subsequent to a
finding of not guilty by reason of insanity or incompetence to
stand trial or under this chapter, who is under observation or
receiving treatment in such place.

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(2) "Patient" does not include a person admitted to a
hospital or other place under section 2945.39, 2945.40, 2945.401,
or 2945.402 of the Revised Code to the extent that the reference
in this chapter to patient, or the context in which the reference
occurs, is in conflict with any provision of sections 2945.37 to
2945.402 of the Revised Code.

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(D) "Licensed physician" means a person licensed under the
laws of this state to practice medicine or a medical officer of
the government of the United States while in this state in the

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performance of the person's official duties. 1001

(E) "Psychiatrist" means a licensed physician who has 1002
satisfactorily completed a residency training program in 1003
psychiatry, as approved by the residency review committee of the 1004
American medical association, the committee on post-graduate 1005
education of the American osteopathic association, or the American 1006
osteopathic board of neurology and psychiatry, or who on July 1, 1007
1989, has been recognized as a psychiatrist by the Ohio state 1008
medical association or the Ohio osteopathic association on the 1009
basis of formal training and five or more years of medical 1010
practice limited to psychiatry. 1011

(F) "Hospital" means a hospital or inpatient unit licensed by 1012
the department of mental health under section 5119.20 of the 1013
Revised Code, and any institution, hospital, or other place 1014
established, controlled, or supervised by the department under 1015
Chapter 5119. of the Revised Code. 1016

(G) "Public hospital" means a facility that is tax-supported 1017
and under the jurisdiction of the department of mental health. 1018

(H) "Community mental health agency" means any agency, 1019
program, or facility with which a board of alcohol, drug 1020
addiction, and mental health services contracts to provide the 1021
mental health services listed in section 340.09 of the Revised 1022
Code. 1023

(I) "Licensed clinical psychologist" means a person who holds 1024
a current valid psychologist license issued under section 4732.12 1025
or 4732.15 of the Revised Code, and in addition, meets either of 1026
the following criteria: 1027

(1) Meets the educational requirements set forth in division 1028
(B) of section 4732.10 of the Revised Code and has a minimum of 1029
two years' full-time professional experience, or the equivalent as 1030
determined by rule of the state board of psychology, at least one 1031

year of which shall be post-doctoral, in clinical psychological 1032
work in a public or private hospital or clinic or in private 1033
practice, diagnosing and treating problems of mental illness or 1034
mental retardation under the supervision of a psychologist who is 1035
licensed or who holds a diploma issued by the American board of 1036
professional psychology, or whose qualifications are substantially 1037
similar to those required for licensure by the state board of 1038
psychology when the supervision has occurred prior to enactment of 1039
laws governing the practice of psychology; 1040

(2) Meets the educational requirements set forth in division 1041
(B) of section 4732.15 of the Revised Code and has a minimum of 1042
four years' full-time professional experience, or the equivalent 1043
as determined by rule of the state board of psychology, in 1044
clinical psychological work in a public or private hospital or 1045
clinic or in private practice, diagnosing and treating problems of 1046
mental illness or mental retardation under supervision, as set 1047
forth in division (I)(1) of this section. 1048

(J) "Health officer" means any public health physician; 1049
public health nurse; or other person authorized by or designated 1050
by a city health district; a general health district; or a board 1051
of alcohol, drug addiction, and mental health services to perform 1052
the duties of a health officer under this chapter. 1053

(K) "Chief clinical officer" means the medical director of a 1054
hospital, or a community mental health agency, or a board of 1055
alcohol, drug addiction, and mental health services, or, if there 1056
is no medical director, the licensed physician responsible for the 1057
treatment a hospital or community mental health agency provides. 1058
The chief clinical officer may delegate to the attending physician 1059
responsible for a patient's care the duties imposed on the chief 1060
clinical officer by this chapter. Within a community mental health 1061
agency, the chief clinical officer shall be designated by the 1062
governing body of the agency and shall be a licensed physician or 1063

licensed clinical psychologist who supervises diagnostic and 1064
treatment services. A licensed physician or licensed clinical 1065
psychologist designated by the chief clinical officer may perform 1066
the duties and accept the responsibilities of the chief clinical 1067
officer in ~~his~~ the chief clinical officer's absence. 1068

(L) "Working day" or "court day" means Monday, Tuesday, 1069
Wednesday, Thursday, and Friday, except when such day is a 1070
holiday. 1071

(M) "Indigent" means unable without deprivation of 1072
satisfaction of basic needs to provide for the payment of an 1073
attorney and other necessary expenses of legal representation, 1074
including expert testimony. 1075

(N) "Respondent" means the person whose detention, 1076
commitment, hospitalization, continued hospitalization or 1077
commitment, or discharge is being sought in any proceeding under 1078
this chapter. 1079

(O) "Legal rights service" means the service established 1080
under section 5123.60 of the Revised Code. 1081

(P) "Independent expert evaluation" means an evaluation 1082
conducted by a licensed clinical psychologist, psychiatrist, or 1083
licensed physician who has been selected by the respondent or ~~his~~ 1084
the respondent's counsel and who consents to conducting the 1085
evaluation. 1086

(Q) "Court" means the probate division of the court of common 1087
pleas. 1088

(R) "Expunge" means: 1089

(1) The removal and destruction of court files and records, 1090
originals and copies, and the deletion of all index references; 1091

(2) The reporting to the person of the nature and extent of 1092
any information about ~~him~~ the person transmitted to any other 1093

person by the court; 1094

(3) Otherwise insuring that any examination of court files 1095
and records in question shall show no record whatever with respect 1096
to the person; 1097

(4) That all rights and privileges are restored, and that the 1098
person, the court, and any other person may properly reply that no 1099
such record exists, as to any matter expunged. 1100

(S) "Residence" means a person's physical presence in a 1101
county with intent to remain there, except that: 1102

(1) If a person is receiving a mental health service at a 1103
facility that includes nighttime sleeping accommodations, 1104
residence means that county in which the person maintained ~~his~~ the 1105
person's primary place of residence at the time ~~he~~ the person 1106
entered the facility~~+~~. 1107

(2) If a person is committed pursuant to section 2945.38, 1108
2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code, 1109
residence means the county where the criminal charges were filed. 1110

When the residence of a person is disputed, the matter of 1111
residence shall be referred to the department of mental health for 1112
investigation and determination. Residence shall not be a basis 1113
for a board's denying services to any person present in the 1114
board's service district, and the board shall provide services for 1115
a person whose residence is in dispute while residence is being 1116
determined and for a person in an emergency situation. 1117

(T) "Admission" to a hospital or other place means that a 1118
patient is accepted for and stays at least one night at the 1119
hospital or other place. 1120

(U) "Prosecutor" means the prosecuting attorney, village 1121
solicitor, city director of law, or similar chief legal officer 1122
who prosecuted a criminal case in which a person was found not 1123
guilty by reason of insanity, who would have had the authority to 1124

prosecute a criminal case against a person if the person had not
been found incompetent to stand trial, or who prosecuted a case in
which a person was found guilty.

(V) "Treatment plan" means a written statement of reasonable
objectives and goals for an individual established by the
treatment team, with specific criteria to evaluate progress
towards achieving those objectives. The active participation of
the patient in establishing the objectives and goals shall be
documented. The treatment plan shall be based on patient needs and
include services to be provided to the patient while ~~he~~ the
patient is hospitalized and after ~~he~~ the patient is discharged.
The treatment plan shall address services to be provided upon
discharge, including but not limited to housing, financial, and
vocational services.

(W) "Sexually aberrant person" means a person who has been
convicted of or charged with committing a sexually aberrant act
and who suffers from a mental abnormality or personality disorder
that makes the person likely to engage in predatory acts of sexual
violence.

(X) "Predatory act" means an act directed toward strangers or
individuals with whom relationships have been established or
promoted for the primary purpose of victimization.

(Y) "Mental abnormality" means a congenital or acquired
condition affecting the emotional or volitional capacity that
predisposes the person to commit a sexually aberrant act in a
degree constituting the person a menace to the health and safety
of others.

(Z) "Sexually aberrant act" means any of the following:

(1) A violation of section 2907.02, 2907.03, 2907.04, or
2907.05, division (A)(2), (3), or (4) of section 2907.06, division
(A) or (C) of section 2907.07, or section 2907.321, 2907.322, or

2907.323 of the Revised Code; 1156

(2) A felony violation of a former law of this state that is 1157
substantially equivalent to a violation listed in division (Z)(1) 1158
of this section or of an existing or former law of the United 1159
States or of another state that is substantially equivalent to a 1160
violation listed in division (Z)(1) of this section; 1161

(3) An attempt to commit or complicity in committing a 1162
violation listed in division (Z)(1) or (2) of this section. 1163

Sec. 5122.011. The provisions of ~~this chapter~~ sections 1164
5122.011 to 5122.43 of the Revised Code regarding hospitalization 1165
apply to a person who is found incompetent to stand trial or not 1166
guilty by reason of insanity and is committed pursuant to section 1167
2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code to the 1168
extent that the provisions are not in conflict with any provision 1169
of sections 2945.37 to 2945.402 of the Revised Code. If a 1170
provision of ~~this chapter~~ sections 5122.011 to 5122.43 of the 1171
Revised Code is in conflict with a provision in sections 2945.37 1172
to 2945.402 of the Revised Code regarding a person who has been so 1173
committed, the provision in sections 2945.37 to 2945.402 of the 1174
Revised Code shall control regarding that person. 1175

Sec. 5122.05. (A) The chief clinical officer of a hospital 1176
may, and the chief clinical officer of a public hospital in all 1177
cases of psychiatric medical emergencies, shall, receive for 1178
observation, diagnosis, care, and treatment any person whose 1179
admission is applied for under any of the following procedures: 1180

(1) Emergency procedure, as provided in section 5122.10 of 1181
the Revised Code; 1182

(2) Judicial procedure as provided in sections 2945.38, 1183
2945.39, 2945.40, 2945.401, 2945.402, and 5122.11 to 5122.15 of 1184
the Revised Code. 1185

Upon application for such admission, the chief clinical officer of a hospital immediately shall notify the board of the patient's county of residence. To assist the hospital in determining whether the patient is subject to involuntary hospitalization and whether alternative services are available, the board or an agency the board designates promptly shall assess the patient unless the board or agency already has performed such assessment, or unless the commitment is pursuant to section 2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code.

(B) No person who is being treated by spiritual means through prayer alone, in accordance with a recognized religious method of healing, may be involuntarily committed unless the court has determined that the person represents a substantial risk of impairment or injury to self or others;

(C) Any person who is involuntarily detained in a hospital or otherwise is in custody under ~~this chapter~~ sections 5122.011 to 5122.43 of the Revised Code, immediately upon being taken into custody, shall be informed and provided with a written statement that the person may do any of the following:

(1) Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a licensed physician, or a licensed clinical psychologist, to contact any other person or persons to secure representation by counsel, or to obtain medical or psychological assistance, and be provided assistance in making calls if the assistance is needed and requested;

(2) Retain counsel and have independent expert evaluation of the person's mental condition and, if the person is unable to obtain an attorney or independent expert evaluation, be represented by court-appointed counsel or have independent expert evaluation of the person's mental condition, or both, at public

expense if the person is indigent; 1218

(3) Have a hearing to determine whether or not the person is 1219
a mentally ill person subject to hospitalization by court order. 1220

Sec. 5122.15. (A) Full hearings shall be conducted in a 1221
manner consistent with ~~this chapter~~ sections 5122.011 to 5122.43 1222
of the Revised Code and with due process of law. The hearings 1223
shall be conducted by a judge of the probate court or a referee 1224
designated by a judge of the probate court and may be conducted in 1225
or out of the county in which the respondent is held. Any referee 1226
designated under this division shall be an attorney. 1227

(1) With the consent of the respondent, the following shall 1228
be made available to counsel for the respondent: 1229

(a) All relevant documents, information, and evidence in the 1230
custody or control of the state or prosecutor; 1231

(b) All relevant documents, information, and evidence in the 1232
custody or control of the hospital in which the respondent 1233
currently is held, or in which the respondent has been held 1234
pursuant to this chapter; 1235

(c) All relevant documents, information, and evidence in the 1236
custody or control of any hospital, facility, or person not 1237
included in division (A)(1)(a) or (b) of this section. 1238

(2) The respondent has the right to attend the hearing and to 1239
be represented by counsel of the respondent's choice. The right to 1240
attend the hearing may be waived only by the respondent or counsel 1241
for the respondent after consultation with the respondent. 1242
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(3) If the respondent is not represented by counsel, is 1244
absent from the hearing, and has not validly waived the right to 1245
counsel, the court shall appoint counsel immediately to represent 1246
the respondent at the hearing, reserving the right to tax costs of 1247

appointed counsel to the respondent, unless it is shown that the
respondent is indigent. If the court appoints counsel, or if the
court determines that the evidence relevant to the respondent's
absence does not justify the absence, the court shall continue the
case.

(4) The respondent shall be informed that the respondent may
retain counsel and have independent expert evaluation. If the
respondent is unable to obtain an attorney, the respondent shall
be represented by court-appointed counsel. If the respondent is
indigent, court-appointed counsel and independent expert
evaluation shall be provided as an expense under section 5122.43
of the Revised Code.

(5) The hearing shall be closed to the public, unless counsel
for the respondent, with the permission of the respondent,
requests that the hearing be open to the public.

(6) If the hearing is closed to the public, the court, for
good cause shown, may admit persons who have a legitimate interest
in the proceedings. If the respondent, the respondent's counsel,
the designee of the director or of the chief clinical officer
objects to the admission of any person, the court shall hear the
objection and any opposing argument and shall rule upon the
admission of the person to the hearing.

(7) The affiant under section 5122.11 of the Revised Code
shall be subject to subpoena by either party.

(8) The court shall examine the sufficiency of all documents
filed and shall inform the respondent, if present, and the
respondent's counsel of the nature and content of the documents
and the reason for which the respondent is being detained, or for
which the respondent's placement is being sought.

(9) The court shall receive only reliable, competent, and
material evidence.

(10) Unless proceedings are initiated pursuant to section 1279
5120.17 or 5139.08 of the Revised Code or proceedings are 1280
initiated regarding a resident of the service district of a board 1281
of alcohol, drug addiction, and mental health services that elects 1282
under division (B)(3)(b) of section 5119.62 of the Revised Code 1283
not to accept the amount allocated to it under division (B)(1) of 1284
that section, an attorney that the board designates shall present 1285
the case demonstrating that the respondent is a mentally ill 1286
person subject to hospitalization by court order. The attorney 1287
shall offer evidence of the diagnosis, prognosis, record of 1288
treatment, if any, and less restrictive treatment plans, if any. 1289
In proceedings pursuant to section 5120.17 or 5139.08 of the 1290
Revised Code and in proceedings in which the respondent is a 1291
resident of a service district of a board that elects under 1292
division (B)(3)(b) of section 5119.62 of the Revised Code not to 1293
accept the amount allocated to it under division (B)(1) of that 1294
section, the attorney general shall designate an attorney who 1295
shall present the case demonstrating that the respondent is a 1296
mentally ill person subject to hospitalization by court order. The 1297
attorney shall offer evidence of the diagnosis, prognosis, record 1298
of treatment, if any, and less restrictive treatment plans, if 1299
any. 1300

(11) The respondent or the respondent's counsel has the right 1301
to subpoena witnesses and documents and to examine and 1302
cross-examine witnesses. 1303

(12) The respondent has the right, but shall not be 1304
compelled, to testify, and shall be so advised by the court. 1305

(13) On motion of the respondent or the respondent's counsel 1306
for good cause shown, or on the court's own motion, the court may 1307
order a continuance of the hearing. 1308

(14) If the respondent is represented by counsel and the 1309
respondent's counsel requests a transcript and record, or if the 1310

respondent is not represented by counsel, the court shall make and
maintain a full transcript and record of the proceeding. If the
respondent is indigent and the transcript and record is made, a
copy shall be provided to the respondent upon request and be
treated as an expense under section 5122.43 of the Revised Code.

(15) To the extent not inconsistent with ~~this chapter~~
sections 5122.011 to 5122.43 of the Revised Code, the Rules of
Civil Procedure are applicable.

(B) Unless, upon completion of the hearing the court finds by
clear and convincing evidence that the respondent is a mentally
ill person subject to hospitalization by court order, it shall
order the respondent's discharge immediately.

(C) If, upon completion of the hearing, the court finds by
clear and convincing evidence that the respondent is a mentally
ill person subject to hospitalization by court order, the court
shall order the respondent for a period not to exceed ninety days
to any of the following:

(1) A hospital operated by the department of mental health if
the respondent is committed pursuant to section 5139.08 of the
Revised Code;

(2) A nonpublic hospital;

(3) The veterans' administration or other agency of the
United States government;

(4) A board of alcohol, drug addiction, and mental health
services or agency the board designates;

(5) Receive private psychiatric or psychological care and
treatment;

(6) Any other suitable facility or person consistent with the
diagnosis, prognosis, and treatment needs of the respondent.

(D) Any order made pursuant to division (C)(2), (3), (5), or

(6) of this section shall be conditioned upon the receipt by the
court of consent by the hospital, facility, agency, or person to
accept the respondent.

(E) In determining the place to which, or the person with
whom, the respondent is to be committed, the court shall consider
the diagnosis, prognosis, preferences of the respondent and the
projected treatment plan for the respondent and shall order the
implementation of the least restrictive alternative available and
consistent with treatment goals. If the court determines that the
least restrictive alternative available that is consistent with
treatment goals is inpatient hospitalization, the court's order
shall so state.

(F) During such ninety-day period, the hospital; facility;
board of alcohol, drug addiction, and mental health services;
agency the board designates; or person shall examine and treat the
individual. If, at any time prior to the expiration of the
ninety-day period, it is determined by the hospital, facility,
board, agency, or person that the respondent's treatment needs
could be equally well met in an available and appropriate less
restrictive environment, both of the following apply:

(1) The respondent shall be released from the care of the
hospital, agency, facility, or person immediately and shall be
referred to the court together with a report of the findings and
recommendations of the hospital, agency, facility, or person; and

(2) The hospital, agency, facility, or person shall notify
the respondent's counsel or the attorney designated by a board of
alcohol, drug addiction, and mental health services or, if the
respondent was committed to a board or an agency designated by the
board, it shall place the respondent in the least restrictive
environment available consistent with treatment goals and notify
the court and the respondent's counsel of the placement.

The court shall dismiss the case or order placement in the 1372
least restrictive environment. 1373

(G)(1) Except as provided in divisions (G)(2) and (3) of this 1374
section, any person who has been committed under this section, or 1375
for whom proceedings for hospitalization have been commenced 1376
pursuant to section 5122.11 of the Revised Code, may apply at any 1377
time for voluntary admission to the hospital, facility, agency 1378
that the board designates, or person to which the person was 1379
committed. Upon admission as a voluntary patient the chief 1380
clinical officer of the hospital, agency, or other facility, or 1381
the person immediately shall notify the court, the patient's 1382
counsel, and the attorney designated by the board, if the attorney 1383
has entered the proceedings, in writing of that fact, and, upon 1384
receipt of the notice, the court shall dismiss the case. 1385

(2) A person who is found incompetent to stand trial or not 1386
guilty by reason of insanity and who is committed pursuant to 1387
section 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised 1388
Code shall not voluntarily commit ~~the person~~ self pursuant to this 1389
section until after the final termination of the commitment, as 1390
described in division (J) of section 2945.401 of the Revised Code. 1391

(H) If, at the end of the first ninety-day period or any 1392
subsequent period of continued commitment, there has been no 1393
disposition of the case, either by discharge or voluntary 1394
admission, the hospital, facility, board, agency, or person shall 1395
discharge the patient immediately, unless at least ten days before 1396
the expiration of the period the attorney the board designates or 1397
the prosecutor files with the court an application for continued 1398
commitment. The application of the attorney or the prosecutor 1399
shall include a written report containing the diagnosis, 1400
prognosis, past treatment, a list of alternative treatment 1401
settings and plans, and identification of the treatment setting 1402
that is the least restrictive consistent with treatment needs. The 1403

attorney the board designates or the prosecutor shall file the
written report at least three days prior to the full hearing. A
copy of the application and written report shall be provided to
the respondent's counsel immediately.

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The court shall hold a full hearing on applications for
continued commitment at the expiration of the first ninety-day
period and at least every two years after the expiration of the
first ninety-day period.

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Hearings following any application for continued commitment
are mandatory and may not be waived.

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Upon request of a person who is involuntarily committed under
this section, or the person's counsel, that is made more than one
hundred eighty days after the person's last full hearing,
mandatory or requested, the court shall hold a full hearing on the
person's continued commitment. Upon the application of a person
involuntarily committed under this section, supported by an
affidavit of a psychiatrist or licensed clinical psychologist,
alleging that the person no longer is a mentally ill person
subject to hospitalization by court order, the court for good
cause shown may hold a full hearing on the person's continued
commitment prior to the expiration of one hundred eighty days
after the person's last full hearing. Section 5122.12 of the
Revised Code applies to all hearings on continued commitment.

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If the court, after a hearing for continued commitment finds
by clear and convincing evidence that the respondent is a mentally
ill person subject to hospitalization by court order, the court
may order continued commitment at places specified in division (C)
of this section.

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(I) Unless the admission is pursuant to section 5120.17 or
5139.08 of the Revised Code, the chief clinical officer of the
hospital or agency admitting a respondent pursuant to a judicial

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proceeding, within ten working days of the admission, shall make a
report of the admission to the board of alcohol, drug addiction,
and mental health services serving the respondent's county of
residence.

(J) A referee appointed by the court may make all orders that
a judge may make under this section and sections 5122.11 and
5122.141 of the Revised Code, except an order of contempt of
court. The orders of a referee take effect immediately. Within
fourteen days of the making of an order by a referee, a party may
file written objections to the order with the court. The filed
objections shall be considered a motion, shall be specific, and
shall state their grounds with particularity. Within ten days of
the filing of the objections, a judge of the court shall hold a
hearing on the objections and may hear and consider any testimony
or other evidence relating to the respondent's mental condition.
At the conclusion of the hearing, the judge may ratify, rescind,
or modify the referee's order.

(K) An order of the court under division (C), (H), or (J) of
this section is a final order.

(L) Before a board, or an agency the board designates, may
place an unconsenting respondent in an inpatient setting from a
less restrictive placement, the board or agency shall do all of
the following:

(1) Determine that the respondent is in immediate need of
treatment in an inpatient setting because the respondent
represents a substantial risk of physical harm to the respondent
or others if allowed to remain in a less restrictive setting;

(2) On the day of placement in the inpatient setting or on
the next court day, file with the court a motion for transfer to
an inpatient setting or communicate to the court by telephone that
the required motion has been mailed;

(3) Ensure that every reasonable and appropriate effort is made to take the respondent to the inpatient setting in the least conspicuous manner possible;

(4) Immediately notify the board's designated attorney and the respondent's attorney.

At the respondent's request, the court shall hold a hearing on the motion and make a determination pursuant to division (E) of this section within five days of the placement.

(M) Before a board, or an agency the board designates, may move a respondent from one residential placement to another, the board or agency shall consult with the respondent about the placement. If the respondent objects to the placement, the proposed placement and the need for it shall be reviewed by a qualified mental health professional who otherwise is not involved in the treatment of the respondent.

Sec. 5122.38. Each individual now or formerly hospitalized pursuant to ~~this chapter~~ sections 5122.011 to 5122.43 of the Revised Code or former Chapter 5123. of the Revised Code, is entitled to an adjudication of competency or incompetency or termination of guardianship upon written request by ~~any such the~~ individual, his the individual's guardian, or the chief clinical officer to the probate court. The court, on its own motion, may initiate such a hearing.

Upon filing of such application, or on the court's own motion, notice of the purpose, time, and place of the hearing shall be given to the person upon whose affidavit ~~such the~~ adjudication was made, to the guardian of the applicant, and to his the person's spouse at his the spouse's residence, if ~~such the~~ spouse's residence address is known.

Upon hearing, if it is proven that such applicant is

competent, the court shall so find and enter the finding on its journal. The adjudicating court shall send a transcript of the adjudication to the county of the patient's residence.

Sec. 5122.51. (A)(1) The department of rehabilitation and correction shall send the notice described in division (B) of this section to the prosecuting attorney and to the multidisciplinary team established in division (D) of this section at least six months prior to the scheduled release from imprisonment of a person if both of the following circumstances apply:

(a) The person has not been adjudicated a sexually violent predator pursuant to section 2971.03 of the Revised Code.

(b) The person was convicted of or pleaded guilty to a sexually aberrant act.

(2) The prosecuting attorney promptly shall send the notice described in division (B) of this section to the multidisciplinary team established in division (D) of this section if the person was charged with a sexually aberrant act, and the person was adjudicated incompetent to stand trial or not guilty by reason of insanity.

(B) The notice sent pursuant to division (A) of this section shall be in writing and shall contain all of the following with respect to the person who is the subject of the notice:

(1) The date on which the person is scheduled to be released or the date on which the person is adjudicated incompetent to stand trial or not guilty by reason of insanity;

(2) The person's name, identifying factors, anticipated future residence, and offense history;

(3) Documentation of the institutional adjustment of the person if institutionalized and of any treatment the person has received.

(C) The department of rehabilitation and correction, its employees and officials, the members of the multidisciplinary team established pursuant to division (D) of this section, the members of the prosecutor's review committee appointed as provided in division (E) of this section, and any individual contracting, appointed, or volunteering to perform services under this section shall be immune from civil liability in damages for any injury, death, or loss allegedly caused by any actions or omissions made in good faith under this section.

(D) The director of rehabilitation and correction shall establish a multidisciplinary team that may include individuals from other state agencies. The team shall determine whether a person described in a notice the team receives pursuant to division (A) of this section is a sexually aberrant person, shall examine the person, and shall review available records of the person. Within thirty days of receiving a notice under division (A)(1) of this section or as soon as practicable but not later than thirty days after receiving a notice under division (A)(2) of this section, the team shall determine whether or not the person who is the subject of the notice meets the definition of a sexually aberrant person. The team shall send the prosecuting attorney a copy of its determination.

(E) Each prosecuting attorney shall appoint a prosecutor's review committee to review the records of any person described in a notice the prosecuting attorney receives or sends pursuant to division (A) of this section. The prosecutor's review committee shall assist the prosecuting attorney in determining whether or not the person meets the definition of a sexually aberrant person. The prosecuting attorney shall make available to the prosecutor's review committee for any person described in a notice the prosecuting attorney receives or sends pursuant to division (A) of this section the determination with respect to that person of the

multidisciplinary team that is made pursuant to division (D) of 1558
this section. 1559

(F) When a prosecutor's review committee appointed pursuant 1560
to division (E) of this section determines that a person who is 1561
the subject of a notice described in division (A)(1) of this 1562
section meets the definition of a sexually aberrant person or at 1563
any time after the prosecuting attorney sends the notice described 1564
in division (A)(2) of this section, the prosecuting attorney may 1565
file a petition in the probate court of the county in which the 1566
person was convicted of or pleaded guilty to the offense for which 1567
the person is serving a prison term, was adjudicated incompetent 1568
to stand trial, or was found not guilty by reason of insanity. The 1569
petition shall allege that the person is a sexually aberrant 1570
person and shall state sufficient facts to support the allegation. 1571
The prosecuting attorney shall file the petition with respect to a 1572
person within seventy-five days of the date the prosecuting 1573
attorney received or sent the written notice with respect to the 1574
person pursuant to divisions (A) and (B) of this section. 1575

Sec. 5122.52. (A) Upon the filing of a petition under 1576
division (F) of section 5122.51 of the Revised Code, the court 1577
shall determine whether probable cause exists to believe that the 1578
person named in the petition is a sexually aberrant person. If the 1579
court determines that probable cause exists to believe that the 1580
person is a sexually aberrant person, the court shall direct that 1581
the sheriff take the person into custody. 1582

(B) Within seventy-two hours after an alleged sexually 1583
aberrant person is taken into custody pursuant to division (A) of 1584
this section, the court shall provide the alleged sexually 1585
aberrant person with notice of, and an opportunity to appear in 1586
person at, a hearing to contest probable cause as to whether the 1587
alleged sexually aberrant person is a sexually aberrant person. At 1588

the probable cause hearing, the court shall verify the alleged 1589
sexually aberrant person's identity and determine whether probable 1590
cause exists to believe that the alleged sexually aberrant person 1591
is a sexually aberrant person. The prosecuting attorney may 1592
supplement the petition with testimony or additional documentary 1593
evidence. 1594

(C) At the probable cause hearing held pursuant to division 1595
(B) of this section, the alleged sexually aberrant person has the 1596
following rights in addition to the rights described in division 1597
(B) of this section: 1598

(1) The right to be represented by counsel; 1599

(2) The right to present evidence on the alleged sexually 1600
aberrant person's behalf; 1601

(3) The right to cross-examine witnesses who testify against 1602
the alleged sexually aberrant person; 1603

(4) The right to view and copy all petitions and reports in 1604
the court file. 1605

(D) If the court determines at a probable cause hearing held 1606
pursuant to division (B) of this section that probable cause 1607
exists that an alleged sexually aberrant person is a sexually 1608
aberrant person, the court shall direct that the alleged sexually 1609
aberrant person be transferred to an appropriate secure facility, 1610
including, but not limited to, a county jail, and shall schedule a 1611
trial to be held pursuant to division (A) of section 5122.53 of 1612
the Revised Code. The court shall order that, upon the transfer of 1613
the alleged sexually aberrant person to the appropriate secure 1614
facility, a qualified professional person shall evaluate the 1615
alleged sexually aberrant person to determine whether the person 1616
is a sexually aberrant person. The alleged sexually aberrant 1617
person also may retain qualified professional persons to perform 1618
an examination of the alleged sexually aberrant person. When the 1619

alleged sexually aberrant person desires to be examined by a 1620
qualified professional person of the alleged sexually aberrant 1621
person's own choice, the qualified professional person shall be 1622
permitted to have reasonable access to the alleged sexually 1623
aberrant person for the purpose of the examination and to all 1624
relevant medical and psychological records and reports. If an 1625
alleged sexually aberrant person is indigent, the court, upon the 1626
alleged sexually aberrant person's request, shall determine 1627
whether the services are necessary and shall determine reasonable 1628
compensation for the services. If the court determines that the 1629
services are necessary and that the professional person's 1630
requested compensation for the services is reasonable, the court 1631
shall assist the alleged sexually aberrant person in obtaining a 1632
professional person to perform an examination or to participate in 1633
the trial on the alleged sexually aberrant person's behalf. The 1634
court shall approve payment for the services of the professional 1635
person upon the filing of a certified claim for compensation 1636
supported by a written statement specifying the time expended, the 1637
services rendered, the expenses incurred on behalf of the alleged 1638
sexually aberrant person, and the compensation received in the 1639
same case or for the same services from any other source. 1640

Sec. 5122.53. (A) Within sixty days after the completion of 1641
the probable cause hearing held pursuant to division (B) of 1642
section 5122.52 of the Revised Code, the court shall conduct a 1643
trial to determine whether the person who was the subject of the 1644
probable cause hearing is a sexually aberrant person. If a 1645
continuance will not substantially prejudice the alleged sexually 1646
aberrant person, the court may continue the trial upon the request 1647
of either party and a showing of good cause or upon its own motion 1648
in the due administration of justice. At all stages of the 1649
proceedings under this section, the alleged sexually aberrant 1650
person is entitled to the assistance of counsel, and, if the 1651

alleged sexually aberrant person is indigent, the court shall 1652
appoint counsel to assist the alleged sexually aberrant person. 1653
The alleged sexually aberrant person or the prosecuting attorney 1654
may demand that the trial be tried before a jury. The court, on 1655
its own motion, may require that the trial be tried before a jury. 1656
A demand for a jury trial shall be filed or motion shall be made, 1657
in writing, at least four days prior to trial. If no demand or 1658
motion is made, the trial shall be tried before the court. 1659

(B)(1) If the person who is the subject of a trial conducted 1660
pursuant to division (A) of this section has been found 1661
incompetent to stand trial, the court shall hear evidence and 1662
determine whether the person committed the act or acts charged 1663
prior to hearing evidence and determining whether the person is a 1664
sexually aberrant person. The procedures specified in division (A) 1665
of this section apply to the hearing held pursuant to division 1666
(B)(1) of this section. In addition, the rules of evidence 1667
applicable in criminal cases and all constitutional rights 1668
available to criminal defendants at criminal trials, other than 1669
the right not to be tried while incompetent, apply to the hearing 1670
held pursuant to division (B)(1) of this section. 1671

(2) After the hearing held pursuant to division (B)(1) of 1672
this section, the court shall enter an order containing the 1673
following specific findings: 1674

(a) Whether, beyond a reasonable doubt, the person committed 1675
the act or acts charged; 1676

(b) The extent to which the person's incompetence affected 1677
the outcome of the hearing, including its effect on the person's 1678
ability to consult with and assist counsel and to testify on the 1679
person's own behalf; 1680

(c) The extent to which the evidence could be reconstructed 1681
without the assistance of the person; 1682

(d) The strength of the prosecution's case. 1683

(3) If the court finds, beyond a reasonable doubt, that the person committed the act or acts charged, the court may proceed to hold the hearing pursuant to division (A) of this section. The order that the court enters pursuant to division (B)(2) of this section is a final order that may be appealed. 1684
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(C)(1) At the trial held pursuant to division (A) of this section, the court or the jury if the trial is tried before a jury shall determine by proof beyond a reasonable doubt whether the person has a mental abnormality or personality disorder that makes the person unsafe to be at large and whether the person is likely to engage in predatory acts of sexual violence if the person is at large. If the determination is made by a jury, the jury shall make the determination by unanimous verdict. The determination is a final order that may be appealed. 1689
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(2) At the conclusion of the trial, the court shall do one of the following: 1698
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(a) If the court or jury determines that the alleged sexually aberrant person has a mental abnormality or personality disorder that makes the alleged sexually aberrant person unsafe to be at large and that the alleged sexually aberrant person is likely to engage in predatory acts of sexual violence if the alleged sexually aberrant person is at large, the court shall adjudicate the person a sexually aberrant person. If the sexually aberrant person is serving a prison term, the court shall commit the sexually aberrant person to the custody of the director of rehabilitation and correction for the completion of the prison term and, upon the completion of the prison term, civilly commit the sexually aberrant person to the custody of the director of mental health for control, care, and treatment. If the sexually aberrant person is not serving a prison term, the court shall civilly commit the sexually aberrant person to the custody of the 1700
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director of mental health for control, care, and treatment. 1715

(b) If the court or jury does not determine that the alleged 1716
sexually aberrant person has a mental abnormality or personality 1717
disorder that makes the alleged sexually aberrant person unsafe to 1718
be at large and that the alleged sexually aberrant person is 1719
likely to engage in predatory acts of sexual violence if the 1720
alleged sexually aberrant person is at large and if the alleged 1721
sexually aberrant person is serving a prison term, the court shall 1722
commit the alleged sexually aberrant person to the custody of the 1723
director of rehabilitation and correction for the completion of 1724
the prison term. 1725

(c) If the court or jury does not determine that the alleged 1726
sexually aberrant person has a mental abnormality or personality 1727
disorder that makes the alleged sexually aberrant person unsafe to 1728
be at large and that the alleged sexually aberrant person is 1729
likely to engage in predatory acts of sexual violence if the 1730
alleged sexually aberrant person is at large and if the alleged 1731
sexually aberrant person is not serving a prison term, the court 1732
shall release the alleged sexually aberrant person. 1733

(d) If the court or jury does not determine that the alleged 1734
sexually aberrant person has a mental abnormality or personality 1735
disorder that makes the alleged sexually aberrant person unsafe to 1736
be at large and that the alleged sexually aberrant person is 1737
likely to engage in predatory acts of sexual violence if the 1738
alleged sexually aberrant person is at large and if the alleged 1739
sexually aberrant person was found incompetent to stand trial or 1740
not guilty by reason of insanity, the court shall release the 1741
alleged sexually aberrant person unless the prosecuting attorney 1742
files an affidavit for civil commitment under section 2945.38 of 1743
the Revised Code or unless the court is required to hold a civil 1744
commitment hearing pursuant to section 2945.40 of the Revised 1745
Code. 1746

(e) If the trial results in a mistrial, the court shall 1747
direct that the alleged sexually aberrant person be held at an 1748
appropriate secure facility until another trial is conducted. Any 1749
subsequent trial following a mistrial shall be held within ninety 1750
days of the previous trial, unless the subsequent trial is 1751
continued. The subsequent trial may be continued in the same 1752
manner and for the same reasons as the original trial. 1753

(D) At all times, the department of mental health shall keep 1754
all sexually aberrant persons civilly committed to the department 1755
for control, care, and treatment pursuant to division (C)(2) of 1756
this section in a secure facility, and the department shall 1757
segregate sexually aberrant persons at all times from any other 1758
patient under the supervision of the department. The department of 1759
mental health may enter into an interagency agreement with the 1760
department of rehabilitation and correction for the confinement of 1761
sexually aberrant persons. The department of rehabilitation and 1762
correction shall house and manage sexually aberrant persons who 1763
are in the confinement of the department pursuant to an 1764
interagency agreement separately from prisoners in the custody of 1765
the department and, except for occasional instances of supervised 1766
incidental contact, shall segregate the sexually aberrant persons 1767
from prisoners. 1768

(E) The department of mental health and the department of 1769
rehabilitation and correction jointly shall develop a structured 1770
treatment protocol for each person who has been civilly committed 1771
as a sexually aberrant person, and the department of mental 1772
health, with the assistance of the department of rehabilitation 1773
and correction, shall provide the treatment for sexually aberrant 1774
persons. 1775

Sec. 5122.54. (A)(1) The department of mental health shall do 1776
all of the following with respect to each sexually aberrant person 1777

civilly committed to the department's custody pursuant to section 1778
5122.53 of the Revised Code: 1779

(a) Annually prepare a report describing the current mental 1780
condition of the sexually aberrant person; 1781

(b) At least thirty days prior to the anniversary of the date 1782
the sexually aberrant person was civilly committed to the 1783
department's custody, provide a copy of the report to the court 1784
that civilly committed the sexually aberrant person; 1785

(c) Provide the sexually aberrant person written notice of 1786
the sexually aberrant person's right to petition the court that 1787
civilly committed the sexually aberrant person for conditional 1788
release and a form for a waiver of that right and forward a copy 1789
of the notice and any waiver form completed by the sexually 1790
aberrant person to the court that civilly committed the sexually 1791
aberrant person along with the annual report of that sexually 1792
aberrant person. 1793

(2) A sexually aberrant person civilly committed to the 1794
department of mental health may retain a qualified professional 1795
person to examine the sexually aberrant person. If the sexually 1796
aberrant person is indigent, the court, upon the request of the 1797
sexually aberrant person, shall appoint a qualified professional 1798
person to examine the sexually aberrant person. The court shall 1799
appoint not more than one professional person per year to examine 1800
a sexually aberrant person. The professional person retained or 1801
appointed for a sexually aberrant person shall have access to all 1802
records concerning the sexually aberrant person and shall provide 1803
a report containing the professional person's findings to the 1804
court that committed the sexually aberrant person. 1805

(B)(1) Unless a sexually aberrant person civilly committed to 1806
the department of health affirmatively waives the right to 1807
petition the court for conditional release, the court shall hold a 1808

probable cause hearing to review the status of the sexually
aberrant person at least fifteen days prior to the anniversary of
the date the sexually aberrant person was civilly committed to the
department of mental health. The sexually aberrant person may
petition the court for conditional release at this probable cause
hearing. The sexually aberrant person has the right to be
represented by counsel at the probable cause hearing but is not
entitled to be present at the probable cause hearing. If the court
at the probable cause hearing held pursuant to division (B)(1) of
this section determines that probable cause exists to believe that
the sexually aberrant person's mental abnormality or personality
disorder has so changed that the sexually aberrant person is safe
to be at large and is not likely to engage in predatory acts of
sexual violence if conditionally released, the court shall hold a
hearing on that issue at least seven days prior to the anniversary
of the date the sexually aberrant person was committed to the
department.

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(2) If at least fifteen days prior to the anniversary of the
date a sexually aberrant person was committed to the department of
mental health the prosecuting attorney requests a hearing on
whether the sexually aberrant person continues to have a mental
abnormality or personality disorder so as to make the sexually
aberrant person unsafe to be at large and likely to engage in
predatory acts of sexual violence if conditionally released, the
court shall hold a hearing on the issue at least seven days prior
to that anniversary date.

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(C) If the director of mental health determines that a
sexually aberrant person civilly committed to the department
pursuant to section 5122.53 of the Revised Code is safe to be at
large and that if conditionally released the sexually aberrant
person is not likely to engage in predatory acts of sexual
violence, the director shall authorize the sexually aberrant

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person to petition the court that civilly committed the sexually
aberrant person for a conditional release. The sexually aberrant
person shall serve a copy of the petition upon the prosecuting
attorney. After the court receives a petition for conditional
release under this section, it shall schedule a hearing to be held
within thirty days after its receipt of the petition. 1841
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(D) At a hearing held pursuant to division (B) or (C) of this
section or division (A) of section 5122.55 of the Revised Code,
all of the following apply: 1847
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(1) The sexually aberrant person is entitled to be present
and is entitled to the benefit of all constitutional protections
that were afforded the sexually aberrant person at the initial
commitment proceeding held pursuant to section 5122.53 of the
Revised Code. 1850
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(2) The prosecuting attorney shall represent the state. 1855

(3) Both parties shall have a right to a jury trial and to
have the sexually aberrant person evaluated by qualified
professional persons chosen by the party. If the sexually aberrant
person is indigent, the court shall appoint an expert to evaluate
the sexually aberrant person upon the request of the sexually
aberrant person. 1856
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(4) The state has the burden of proving by proof beyond a
reasonable doubt that the sexually aberrant person's mental
abnormality or personality disorder remains so as to make the
sexually aberrant person unsafe to be at large and that if
conditionally released the sexually aberrant person is likely to
engage in predatory acts of sexual violence. 1862
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(5) At the conclusion of the hearing, the court shall do one
of the following: 1868
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(a) If the court or jury determines by proof beyond a
reasonable doubt that the sexually aberrant person's mental 1870
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abnormality or personality disorder remains so as to make the sexually aberrant person unsafe to be at large and that if conditionally released the sexually aberrant person is likely to engage in predatory acts of sexual violence, the court shall return the sexually aberrant person to the custody of the director of mental health for control, care, and treatment.

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(b) If the court or jury does not find by proof beyond a reasonable doubt that the sexually aberrant person's mental abnormality or personality disorder remains so as to make the sexually aberrant person unsafe to be at large and that if conditionally released the sexually aberrant person is likely to engage in predatory acts of sexual violence, the court shall order the conditional release of the person pursuant to section 5122.56 of the Revised Code and subject to sections 2945.38 and 2945.40 of the Revised Code. If the sexually aberrant person was found incompetent to stand trial or not guilty by reason of insanity and was civilly committed as a sexually aberrant person, the sexually aberrant person may be civilly committed pursuant to section 2945.38 or 2945.40 of the Revised Code and a commitment under either of those sections shall delay the conditional release until the person is released from the commitment.

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Sec. 5122.55. (A) Nothing in sections 5122.51 to 5122.56 of the Revised Code prohibits a person civilly committed as a sexually aberrant person from filing a petition for conditional release in situations other than those described in section 5122.54 of the Revised Code. A sexually aberrant person shall file a petition for conditional release pursuant to this section with the court that civilly committed the sexually aberrant person to the department of mental health and shall serve a copy of the petition upon the prosecuting attorney.

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If a person files a petition for conditional release without

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being authorized to do so by the director of mental health 1903
pursuant to division (C) of section 5122.54 of the Revised Code, 1904
if the person previously has filed a petition for conditional 1905
release without being authorized to do so by the director of 1906
mental health pursuant to division (C) of section 5122.54 of the 1907
Revised Code, and if the court determines, either upon review of 1908
the petition or following a hearing on the petition, that the 1909
petition was frivolous or that the sexually aberrant person's 1910
condition has not so changed that the sexually aberrant person is 1911
safe to be at large, the court shall deny the subsequent petition. 1912
If the subsequent petition contains facts upon which a court could 1913
find that the condition of the sexually aberrant person has so 1914
changed that a hearing is warranted, the court may schedule a 1915
hearing on the petition to be held pursuant to division (D) of 1916
section 5122.54 of the Revised Code. 1917

(B) Upon receipt of a petition for conditional release from a 1918
sexually aberrant person without the director's authorization, the 1919
court shall endeavor whenever possible to review the petition and 1920
determine if the petition is based upon frivolous grounds, and, if 1921
the petition is based upon frivolous grounds, the court, within 1922
thirty days of receiving the petition, shall deny the petition 1923
without a hearing. 1924

Sec. 5122.56. (A) A court that civilly commits a sexually 1925
aberrant person to the department of mental health shall order 1926
that the sexually aberrant person be placed with an appropriate 1927
conditional release program operated by the department of mental 1928
health for the year immediately subsequent to the sexually 1929
aberrant person's discharge from the department. The court shall 1930
retain jurisdiction of the sexually aberrant person throughout the 1931
course of the program. Before the court places a sexually aberrant 1932
person in a conditional release program under this division, the 1933
department of mental health shall submit a written recommendation 1934

to the court describing the type of program that is most
appropriate for supervising and treating the sexually aberrant
person. If the court does not accept the department's
recommendation, the court shall specify on the record the reasons
for not accepting the recommendation. A conditional release issued
pursuant to division (D) of section 5122.54 of the Revised Code
does not relieve the sexually aberrant person from any duty to
register pursuant to Chapter 2950. of the Revised Code.

(B) Upon receiving notice from a court that the court has
placed a sexually aberrant person in a conditional release
program, the department of mental health shall make the necessary
arrangements for the placement of the sexually aberrant person
and, within twenty-one days after receiving notice of the court's
placement, shall place the sexually aberrant person in the
community in accordance with the treatment and supervision plan
recommended by the department or adopted by the court unless the
department shows to the court good cause for not doing so.

(C) At the end of the one-year period of conditional release
ordered pursuant to division (A) of this section, the court shall
hold a hearing to determine if the sexually aberrant person who
had been placed in a conditional release program pursuant to
division (A) of this section should be unconditionally discharged.
The court shall notify the director of mental health and the
prosecuting attorney of the hearing date. The court shall
unconditionally discharge the sexually aberrant person after one
year of conditional release unless the court determines that the
sexually aberrant person has a mental abnormality or personality
disorder that makes the sexually aberrant person unsafe to be
unconditionally released and that the sexually aberrant person is
likely to engage in predatory acts of sexual violence if the
sexually aberrant person is unconditionally released. If the court
determines that the sexually aberrant person has a mental

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abnormality or personality disorder that makes the sexually 1967
aberrant person unsafe to be unconditionally released and that the 1968
sexually aberrant person is likely to engage in predatory acts of 1969
sexual violence if the sexually aberrant person is unconditionally 1970
released, the court may extend the sexually aberrant person's 1971
period of conditional release for an additional year. 1972

An unconditional discharge issued pursuant to this division 1973
does not relieve the sexually aberrant person from any requirement 1974
to register pursuant to Chapter 2950. of the Revised Code. 1975

(D) The department of mental health shall develop and operate 1976
programs of conditional release for discharged sexually aberrant 1977
persons. A substantial portion of the conditional release program 1978
shall include outpatient supervision and treatment. 1979

Section 2. That existing sections 2945.38, 2945.40, 2950.09, 1981
5122.01, 5122.011, 5122.05, 5122.15, and 5122.38 of the Revised 1982
Code are hereby repealed. 1983

Section 3. This act is a remedial measure that shall apply to 1984
persons who are convicted of or plead guilty to an offense 1985
described in division (A)(1) of section 5122.51 of the Revised 1986
Code prior to the effective date of this act but who are scheduled 1987
to be released from imprisonment after the effective date of this 1988
act. 1989