

As Introduced

**124th General Assembly
Regular Session
2001-2002**

S. B. No. 122

SENATOR Oelslager

A B I L L

To amend sections 2945.371, 2945.39, and 2945.401, to 1
revive and amend section 2945.38, and to repeal 2
section 2945.38 of the Revised Code as it results 3
from Am. Sub. S.B. 285 of the 121st General 4
Assembly relative to the determination of a 5
defendant's competency to stand trial and whether 6
or not there is a substantial probability that the 7
defendant will become competent to stand trial if 8
provided with a course of treatment. 9

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

Section 1. That sections 2945.371, 2945.38, 2945.39, and 10
2945.401 of the Revised Code be amended to read as follows: 11

Sec. 2945.371. (A) If the issue of a defendant's competence 12
to stand trial is raised or if a defendant enters a plea of not 13
guilty by reason of insanity, the court may order one or more 14
evaluations of the defendant's present mental condition or, in the 15
case of a plea of not guilty by reason of insanity, of the 16
defendant's mental condition at the time of the offense charged. 17
An examiner shall conduct the evaluation. 18

(B) If the court orders more than one evaluation under 19
division (A) of this section, the prosecutor and the defendant may 20

recommend to the court an examiner whom each prefers to perform
one of the evaluations. If a defendant enters a plea of not guilty
by reason of insanity and if the court does not designate an
examiner recommended by the defendant, the court shall inform the
defendant that the defendant may have independent expert
evaluation and that, if the defendant is unable to obtain
independent expert evaluation, it will be obtained for the
defendant at public expense if the defendant is indigent.

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(C) If the court orders an evaluation under division (A) of
this section, the defendant shall be available at the times and
places established by the examiners who are to conduct the
evaluation. The court may order a defendant who has been released
on bail or recognizance to submit to an evaluation under this
section. If a defendant who has been released on bail or
recognizance refuses to submit to a complete evaluation, the court
may amend the conditions of bail or recognizance and order the
sheriff to take the defendant into custody and deliver the
defendant to a center, program, or facility operated or certified
by the department of mental health or the department of mental
retardation and developmental disabilities where the defendant may
be held for evaluation for a reasonable period of time not to
exceed twenty days.

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(D) A defendant who has not been released on bail or
recognizance may be evaluated at the defendant's place of
detention. Upon the request of the examiner, the court may order
the sheriff to transport the defendant to a program or facility
operated by the department of mental health or the department of
mental retardation and developmental disabilities, where the
defendant may be held for evaluation for a reasonable period of
time not to exceed twenty days, and to return the defendant to the
place of detention after the evaluation. A municipal court may
make an order under this division only upon the request of a

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certified forensic center examiner. 53

(E) If a court orders the evaluation to determine a 54
defendant's mental condition at the time of the offense charged, 55
the court shall inform the examiner of the offense with which the 56
defendant is charged. 57

(F) In conducting an evaluation of a defendant's mental 58
condition at the time of the offense charged, the examiner shall 59
consider all relevant evidence. If the offense charged involves 60
the use of force against another person, the relevant evidence to 61
be considered includes, but is not limited to, any evidence that 62
the defendant suffered, at the time of the commission of the 63
offense, from the "battered woman syndrome." 64

(G) The examiner shall file a written report with the court 65
within thirty days after entry of a court order for evaluation, 66
and the court shall provide copies of the report to the prosecutor 67
and defense counsel. The report shall include all of the 68
following: 69

(1) The examiner's findings; 70

(2) The facts in reasonable detail on which the findings are 71
based; 72

(3) If the evaluation was ordered to determine the 73
defendant's competence to stand trial, all of the following 74
findings or recommendations that are applicable: 75

(a) Whether the defendant is capable of understanding the 76
nature and objective of the proceedings against the defendant or 77
of assisting in the defendant's defense; 78

(b) If the examiner's opinion is that the defendant is 79
incapable of understanding the nature and objective of the 80
proceedings against the defendant or of assisting in the 81
defendant's defense, whether the defendant presently is mentally 82

ill or mentally retarded and, if the examiner's opinion is that
the defendant presently is mentally retarded, whether the
defendant appears to be a mentally retarded person subject to
institutionalization by court order;

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(c) If the examiner's opinion is that the defendant is
incapable of understanding the nature and objective of the
proceedings against the defendant or of assisting in the
defendant's defense, the examiner's opinion as to the likelihood
of the defendant becoming capable of understanding the nature and
objective of the proceedings against the defendant or of assisting
in the defendant's defense within one year if the defendant is
provided with a course of treatment;

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(d) If the examiner's opinion is that the defendant is
incapable of understanding the nature and objective of the
proceedings against the defendant or of assisting in the
defendant's defense and that the defendant presently is mentally
ill or mentally retarded, the examiner's recommendation as to the
least restrictive treatment alternative, consistent with the
defendant's treatment needs for restoration to competency and with
the safety of the community;

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(4) If the evaluation was ordered to determine the
defendant's mental condition at the time of the offense charged,
the examiner's findings as to whether the defendant, at the time
of the offense charged, did not know, as a result of a severe
mental disease or defect, the wrongfulness of the defendant's acts
charged.

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(H) If the examiner's report filed under division (G) of this
section indicates that in the examiner's opinion the defendant is
incapable of understanding the nature and objective of the
proceedings against the defendant or of assisting in the
defendant's defense and that in the examiner's opinion the
defendant appears to be a mentally retarded person subject to

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institutionalization by court order, the court shall order the
defendant to undergo a separate mental retardation evaluation
conducted by a psychologist designated by the director of mental
retardation and developmental disabilities. Divisions (C) to (F)
of this section apply in relation to a separate mental retardation
evaluation conducted under this division. The psychologist
appointed under this division to conduct the separate mental
retardation evaluation shall file a written report with the court
within thirty days after the entry of the court order requiring
the separate mental retardation evaluation, and the court shall
provide copies of the report to the prosecutor and defense
counsel. The report shall include all of the information described
in divisions (G)(1) to (4) of this section. If the court orders a
separate mental retardation evaluation of a defendant under this
division, the court shall not conduct a hearing under divisions
(B) to (H) of section 2945.37 of the Revised Code regarding that
defendant until a report of the separate mental retardation
evaluation conducted under this division has been filed. Upon the
filing of that report, the court shall conduct the hearing within
the period of time specified in division (C) of section 2945.37 of
the Revised Code.

(I) An examiner appointed under divisions (A) and (B) of this
section or under division (H) of this section to evaluate a
defendant to determine the defendant's competence to stand trial
also may be appointed to evaluate a defendant who has entered a
plea of not guilty by reason of insanity, but an examiner of that
nature shall prepare separate reports on the issue of competence
to stand trial and the defense of not guilty by reason of
insanity.

(J) No statement that a defendant makes in an evaluation or
hearing under divisions (A) to (H) of this section relating to the
defendant's competence to stand trial or to the defendant's mental

condition at the time of the offense charged shall be used against
the defendant on the issue of guilt in any criminal action or
proceeding, but, in a criminal action or proceeding, the
prosecutor or defense counsel may call as a witness any person who
evaluated the defendant or prepared a report pursuant to a
referral under this section. Neither the appointment nor the
testimony of an examiner appointed under this section precludes
the prosecutor or defense counsel from calling other witnesses or
presenting other evidence on competency or insanity issues.

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(K) Persons appointed as examiners under divisions (A) and
(B) of this section or under division (H) of this section shall be
paid a reasonable amount for their services and expenses, as
certified by the court. The certified amount shall be paid by the
county in the case of county courts and courts of common pleas and
by the legislative authority, as defined in section 1901.03 of the
Revised Code, in the case of municipal courts.

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

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(B)(1) If, after taking into consideration all relevant
reports, information, and other evidence, the court finds that the
defendant is incompetent to stand trial, ~~it shall also make a~~

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finding based on the evidence as to whether and that there is a 178
substantial probability that the defendant will become competent 179
to stand trial within one year, if the defendant is provided with 180
a course of treatment, the court shall order the defendant to 181
undergo treatment. If the defendant has been charged with a felony 182
offense and if, after taking into consideration all relevant 183
reports, information, and other evidence, the court finds that the 184
defendant is incompetent to stand trial, but the court is unable 185
at that time to determine whether there is a substantial 186
probability that the defendant will become competent to stand 187
trial within one year if the defendant is provided with a course 188
of treatment, the court shall order continuing evaluation and 189
treatment of the defendant for a period not to exceed four months 190
to determine whether there is a substantial probability that the 191
defendant will become competent to stand trial within one year if 192
the defendant is provided with a course of treatment. 193

(2) The court order for the defendant to undergo treatment or 194
continuing evaluation and treatment under division (B)(1) of this 195
section shall specify that the treatment or continuing evaluation 196
and treatment shall occur at a facility operated by the department 197
of mental health or the department of mental retardation and 198
developmental disabilities, at a facility certified by either of 199
those departments as being qualified to treat mental illness or 200
mental retardation, at a public or private community mental health 201
or mental retardation facility, or by a psychiatrist or another 202
mental health or mental retardation professional. The order may 203
restrict the defendant's freedom of movement as the court 204
considers necessary. The prosecutor in the defendant's case shall 205
send to the chief clinical officer of the hospital or facility, 206
the managing officer of the institution, the director of the 207
program, or the person to which the defendant is committed copies 208
of relevant police reports and other background information that 209
pertains to the defendant and is available to the prosecutor 210

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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(3) 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)(2) 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 for, and the court may authorize, the involuntary administration of medication.

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(C) 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, and it appears to the court, through a review of the report of an examiner under section 2945.371 of the Revised Code or otherwise, that the defendant is mentally ill or mentally retarded shall order the discharge of the defendant, unless upon motion of

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~~the prosecutor or on its own motion, the court may cause either~~ 243
~~seeks to retain jurisdiction over the defendant pursuant to~~ 244
~~section 2945.39 of the Revised Code or files an affidavit to be~~ 245
~~filed in the probate court under section 5122.11 or 5123.71 for~~ 246
~~the civil commitment of the defendant pursuant to Chapter 5122. or~~ 247
~~5123. of the Revised Code alleging that the defendant is a~~ 248
~~mentally ill person subject to hospitalization by court order or a~~ 249
~~mentally retarded person subject to institutionalization by court~~ 250
~~order, as defined in sections 5122.01 and 5123.01 of the Revised~~ 251
~~Code. When the~~ If an affidavit is filed in the probate court, the 252
~~trial court shall send to the probate court a copy~~ copies of all 253
written reports of the defendant's mental condition that were 254
prepared pursuant to section 2945.371 of the Revised Code. 255

The trial court may issue the temporary order of detention 256
that a probate court may issue under section 5122.11 or 5123.71 of 257
the Revised Code, to remain in effect until the probable cause or 258
initial hearing in the probate court. Further proceedings in the 259
probate court are ~~then~~ civil proceedings governed by Chapter 5122. 260
or 5123. of the Revised Code. 261

~~The chief clinical officer of the hospital or facility, the~~ 262
~~managing officer of the institution, the director of the program,~~ 263
~~or the person to which the defendant is committed or admitted~~ 264
~~shall send, at least ten days prior to the discharge or~~ 265
~~immediately upon learning of a change to voluntary status, written~~ 266
~~notice to the prosecutor of the date on which the defendant will~~ 267
~~be discharged or has been admitted on voluntary status.~~ 268

~~(D) If the court finds that the defendant is incompetent to~~ 269
~~stand trial and it appears to the court, through a review of the~~ 270
~~report of an examiner or otherwise, that the defendant is mentally~~ 271
~~ill or mentally retarded, but that there is a substantial~~ 272
~~probability the defendant will become competent to stand trial~~ 273
~~within one year if provided a course of treatment, and the offense~~ 274

~~is one for which the defendant could be incarcerated, if
convicted, the court shall order the defendant to undergo
treatment at a facility operated by the department of mental
health or the department of mental retardation and developmental
disabilities, at a facility certified by the appropriate
department as qualified to treat mental illness or mental
retardation, or at a public or private community mental health or
mental retardation facility, or it may order private treatment by
a psychiatrist or other mental health or mental retardation
professional. The order may restrict the defendant's freedom of
movement, as the court considers necessary. In determining
placement alternatives, the court shall consider the dangerousness
of the defendant to self and 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.~~

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(D) No defendant shall be required to undergo treatment,
including any continuing evaluation and treatment, under this
division (B) of this section for longer than the lesser of fifteen
months or one-third of the longest prison term that might
whichever of the following periods is applicable:

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

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

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(b) An offense of violence that is a felony or one-third of
the longest term of imprisonment that might be imposed for
conviction of of the first or second degree;

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(c) A conspiracy to commit, an attempt to commit, or
complicity in the commission of an offense described in division

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(D)(1)(a) or (b) of this section if the conspiracy, attempt, or
complicity is a felony of the first or second degree.

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

(3) Sixty days, if the most serious offense with which the
defendant is charged is a misdemeanor if the defendant is found
guilty of the most serious crime with which the defendant was
charged at the time of the hearing. No order issued under this
division shall remain in effect after the indictment, information,
or complaint is dismissed. The court shall notify the prosecutor,
defense counsel, and the chief clinical officer of the facility or
the managing officer of the institution or facility at which, or
person with whom, the defendant was ordered to undergo treatment
pursuant to this division whenever an indictment, information, or
complaint against a defendant is dismissed and whenever the court
revokes an order made under this division. If the maximum time
during which an order of the court may be in effect expires, the
court, within three days, shall conduct another hearing under
section 2945.37 of the Revised Code to determine if the defendant
is competent to stand trial, but at the close of such a hearing, a
disposition shall be made under division (A) of this section or if
the defendant is found incompetent to stand trial, disposition
shall be made as under division (C) of this section of the first
or second degree;

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

(E) Any defendant who is committed pursuant to this division
section shall not voluntarily admit self the defendant or be
voluntarily admitted to a hospital or institution pursuant to
section 5122.02 of the Revised Code or to an institution pursuant

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~~to section, 5122.15, 5123.69, or 5123.76 of the Revised Code.~~ 338

~~(E)(F) Except as otherwise provided in this division, a~~ 339
~~defendant who is charged with an offense and is committed to a~~ 340
~~hospital or other institution by the court under this section~~ 341
~~shall not be granted unsupervised on-grounds movement, supervised~~ 342
~~off-grounds movement, or nonsecured status. The court may grant a~~ 343
~~defendant supervised off-grounds movement to obtain medical~~ 344
~~treatment or specialized habilitation treatment services if the~~ 345
~~person who supervises the treatment or the continuing evaluation~~ 346
~~and treatment of the defendant ordered under division (B)(1) of~~ 347
~~this section informs the court that the treatment or continuing~~ 348
~~evaluation and treatment cannot be provided at the hospital or the~~ 349
~~institution to which the defendant is committed. The chief~~ 350
~~clinical officer of the hospital or the managing officer of the~~ 351
~~institution to which the defendant is committed or a designee of~~ 352
~~either of those persons may grant a defendant movement to a~~ 353
~~medical facility for an emergency medical situation with~~ 354
~~appropriate supervision to ensure the safety of the defendant,~~ 355
~~staff, and community during that emergency medical situation. The~~ 356
~~chief clinical officer of the hospital or the managing officer of~~ 357
~~the institution shall notify the court within twenty-four hours of~~ 358
~~the defendant's movement to the medical facility for an emergency~~ 359
~~medical situation under this division.~~ 360

~~(G) The person who supervises the treatment or continuing~~ 361
~~evaluation and treatment of a defendant ordered to undergo~~ 362
~~treatment or continuing evaluation and treatment under division~~ 363
~~(D)(B)(1) of this section shall file a written report with the~~ 364
~~court and send copies to the prosecutor and defense counsel at the~~ 365
~~following times:~~ 366

~~(1) After the first ninety days of treatment and after each~~ 367
~~one hundred eighty days of treatment thereafter;~~ 368

~~(2) Whenever the person believes the defendant is competent~~ 369

~~to stand trial;~~ 370

~~(3) Whenever the person believes that there is not a~~ 371
~~substantial probability that the defendant will become competent~~ 372
~~to stand trial;~~ 373

~~(4) Fourteen capable of understanding the nature and~~ 374
~~objective of the proceedings against the defendant or of assisting~~ 375
~~in the defendant's defense;~~ 376

~~(2) For a felony offense, fourteen days before expiration of~~ 377
~~the maximum time an order issued under for treatment as specified~~ 378
~~in division (D) of this section may be in effect and fourteen days~~ 379
~~before the expiration of the maximum time for continuing~~ 380
~~evaluation and treatment as specified in division (B)(1) of this~~ 381
~~section, and, for a misdemeanor offense, ten days before the~~ 382
~~expiration of the maximum time for treatment, as specified in that~~ 383
~~division (D) of this section;~~ 384

~~(3) At a minimum, after each six months of treatment;~~ 385

~~(4) Whenever the person who supervises the treatment or~~ 386
~~continuing evaluation and treatment of a defendant ordered under~~ 387
~~division (B)(1) of this section believes that there is not a~~ 388
~~substantial probability that the defendant will become capable of~~ 389
~~understanding the nature and objective of the proceedings against~~ 390
~~the defendant or of assisting in the defendant's defense even if~~ 391
~~the defendant is provided with a course of treatment.~~ 392

~~(H) A report under division (G) of this section shall contain~~ 393
~~the examiner's findings of the examiner, the facts in reasonable~~ 394
~~detail on which the findings are based, and the examiner's opinion~~ 395
~~of the examiner as to the defendant's competence to stand trial~~ 396
~~capability of understanding the nature and objective of the~~ 397
~~proceedings against the defendant or of assisting in the~~ 398
~~defendant's defense. If, in the examiner finds that the defendant~~ 399
~~is incompetent to stand trial, the examiner shall state an opinion~~ 400

~~in the report on the likelihood of the defendant's becoming~~ 401
~~competent to stand trial within one year~~ ~~examiner's opinion, the~~ 402
~~defendant remains incapable of understanding the nature and~~ 403
~~objective of the proceedings against the defendant or of assisting~~ 404
~~in the defendant's defense and there is a substantial probability~~ 405
~~that the defendant will become capable of understanding the nature~~ 406
~~and objective of the proceedings against the defendant or of~~ 407
~~assisting in the defendant's defense if the defendant is provided~~ 408
~~with a course of treatment, and the defendant also remains~~ 409
~~mentally ill or mentally retarded, and if the maximum time for~~ 410
~~treatment as specified in division (D) of this section has not~~ 411
~~expired, the report also shall contain the examiner's~~ 412
~~recommendation as to the least restrictive treatment alternative~~ 413
~~that is consistent with the defendant's treatment needs for~~ 414
~~restoration to competency and with the safety of the community.~~ 415
~~The court shall provide copies of the report to the prosecutor and~~ 416
~~defense counsel.~~ 417

~~(F)(I) Within ten days after receipt of a report required by~~ 418
~~division (E) of this section the treating physician of a mentally~~ 419
~~ill defendant or the examiner, as defined in division (A)(2)(b) of~~ 420
~~section 2945.37 of the Revised Code, of a mentally retarded~~ 421
~~defendant advises that there is not a substantial probability that~~ 422
~~the defendant will become capable of understanding the nature and~~ 423
~~objective of the proceedings against the defendant or of assisting~~ 424
~~in the defendant's defense even if the defendant is provided with~~ 425
~~a course of treatment, within ten days after the expiration of the~~ 426
~~maximum time for treatment as specified in division (D) of this~~ 427
~~section, within ten days after the expiration of the maximum time~~ 428
~~for continuing evaluation and treatment as specified in division~~ 429
~~(B)(1) of this section, within thirty days after a defendant's~~ 430
~~request for a hearing that is made after six months of treatment,~~ 431
~~or within thirty days after being advised by the treating~~ 432
~~physician or examiner that the defendant is competent to stand~~ 433

~~trial, whichever is the earliest, the court shall hold a conduct~~ 434
~~another hearing on the issue of the competence of to determine if~~ 435
~~the defendant is competent to stand trial, as provided in section~~ 436
~~2945.37 of the Revised Code. and shall do whichever of the~~ 437
~~following is applicable:~~ 438

~~(1) If at the conclusion of the hearing the court finds that~~ 439
~~the defendant is competent to stand trial, the defendant shall be~~ 440
~~proceeded against as provided by law. If~~ 441

~~(a) If the court finds that the defendant is incompetent to~~ 442
~~stand trial, but that there is a substantial probability that the~~ 443
~~defendant will become competent to stand trial before expiration~~ 444
~~of if the defendant is provided with a course of treatment, and~~ 445
~~the maximum time limit specified for treatment under as specified~~ 446
~~in division (D) of this section has not expired, the court may~~ 447
~~modify or continue in effect orders made at a previous hearing,~~ 448
~~still subject to the maximum time that orders may be in effect, as~~ 449
~~originally established under division (D) of this section. If,~~ 450
~~after consideration of the examiner's recommendation, shall order~~ 451
~~that treatment be continued, may change the facility or program at~~ 452
~~which the treatment is to be continued, and shall specify whether~~ 453
~~the treatment is to be continued at the same or a different~~ 454
~~facility or program.~~ 455

~~(3) If the court finds that the defendant is incompetent to~~ 456
~~stand trial, if the defendant is charged with an offense listed in~~ 457
~~division (D)(1) of this section, and if the court finds that there~~ 458
~~is not a substantial probability that the defendant will become~~ 459
~~competent to stand trial within even if the defendant is provided~~ 460
~~with a course of treatment, or if the maximum time that orders may~~ 461
~~be in effect, as originally established under for treatment~~ 462
~~relative to that offense as specified in division (D) of this~~ 463
~~section, the court shall make a disposition as under division (C)~~ 464
~~of this section.~~ 465

~~(G) The has expired, further proceedings shall be as provided 466
in sections 2945.39, 2945.401, and 2945.402 of the Revised Code. 467~~

~~(4) If the court finds that the defendant is incompetent to 469
stand trial, if the most serious offense with which the defendant 470
is charged is a misdemeanor or a felony other than a felony listed 471
in division (D)(1) of this section, and if the court finds that 472
there is not a substantial probability that the defendant will 473
become competent to stand trial even if the defendant is provided 474
with a course of treatment, or if the maximum time for treatment 475
relative to that offense as specified in division (D) of this 476
section has expired, the court shall dismiss the indictment, 477
information, or complaint against a the defendant finally found 478
incompetent to stand trial under division (C), (D), or (F) of this 479
section or whenever the prosecutor notifies the court the 480
prosecutor does not intend to prosecute the charges specified in 481
the indictment, information, or complaint. A 482~~

~~(H) A dismissal under this division ~~(G) of this section~~ is 483
not a bar to further criminal proceedings prosecution based on the 484
same conduct unless all of the following conditions are present: 485~~

~~(1) After a finding under division (C), (D), or (F) of this 486
section that the defendant was incompetent to stand trial, an 487
affidavit alleging that the defendant was mentally ill and subject 488
to hospitalization by court order or mentally retarded and subject 489
to institutionalization by court order was filed and the defendant 490
either was found mentally ill or mentally retarded and subject to 491
hospitalization or institutionalization by court order, but was 492
later released, or was not so found. Whenever the issue of 493
competence to stand trial is raised, but no finding under division 494
(C), (D), or (F) of this section occurs because, before such a 495
finding, the court dismisses the indictment, information, or 496
complaint upon notice from the prosecutor that the prosecutor does 497~~

~~not intend to prosecute the charges, this division does not bar
further criminal proceedings based on the same conduct, but
divisions (H)(2), (3), and (4) of this section may bar further
proceedings, if the conditions they specify are not present.~~

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~~(2) The time the defendant has been involuntarily detained
for examination or treatment under Chapter 5122. or 5123. of the
Revised Code pursuant to the filing of an affidavit under division
(C), (D), or (F) of this section and under this section and
sections 2945.37 and 2945.371 of the Revised Code does not exceed
one-third of the maximum prison term or term of imprisonment the
defendant might have received if convicted of the most serious
charge that was dismissed.~~

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~~(3) Further criminal proceedings are not barred under
sections 2945.71 to 2945.73 of the Revised Code.~~

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~~(4) The period of limitation for the offense committed has
not expired under section 2901.13 of the Revised Code, computed
without regard to division (H) of that section. 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. If an affidavit for
civil commitment is filed, the court may detain the defendant for
ten days pending civil commitment. All of the following provisions
apply to persons charged with a misdemeanor or a felony other than
a felony listed in division (D)(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 division:~~

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~~(a) 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 or
admitted shall do all of the following:~~

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(i) Notify the prosecutor, in writing, of the discharge of the defendant, send the notice at least ten days prior to the discharge unless the discharge is by the probate court, and state in the notice the date on which the defendant will be discharged; 529
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(ii) Notify the prosecutor, in writing, when the defendant is absent without leave or is granted unsupervised, off-grounds movement, and send this notice promptly after the discovery of the absence without leave or prior to the granting of the unsupervised, off-grounds movement, whichever is applicable; 533
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(iii) Notify the prosecutor, in writing, of the change of the defendant's commitment or admission to voluntary status, send the notice promptly upon learning of the change to voluntary status, and state in the notice the date on which the defendant was committed or admitted on a voluntary status. 538
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(b) Upon receiving notice that the defendant will be granted unsupervised, off-grounds movement, the prosecutor either shall re-indict the defendant or promptly notify the court that the prosecutor does not intend to prosecute the charges against the defendant. 543
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(I)(J) If a defendant is convicted of a crime and sentenced to a jail or workhouse, the defendant's sentence shall be reduced by the total number of days the defendant is confined for examination evaluation to determine the defendant's competence to stand trial or treatment under this section and sections 2945.37 and 2945.371 of the Revised Code or by the total number of days the defendant is confined for evaluation to determine the defendant's mental condition at the time of the offense charged. 548
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~~(J) No statement made by a defendant in an examination or hearing relating to the defendant's competence to stand trial shall be used in evidence against the defendant on the issue of guilt in any criminal action.~~ 556
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~~(K) Each court of common pleas and municipal court shall designate a permanent court officer or employee to file affidavits under division (C) of this section and section 2945.40 of the Revised Code.~~

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

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

(2) On the motion of the prosecutor or on its own motion, the court may retain jurisdiction over the defendant if, at a hearing, the court finds both of the following by clear and convincing evidence:

(a) The defendant committed the offense with which the

defendant is charged. 591

(b) The defendant is a mentally ill person subject to 592
hospitalization by court order or a mentally retarded person 593
subject to institutionalization by court order. 594

(B) In making its determination under division (A)(2) of this 595
section as to whether to retain jurisdiction over the defendant, 596
the court may consider all relevant evidence, including, but not 597
limited to, any relevant psychiatric, psychological, or medical 598
testimony or reports, the acts constituting the offense charged, 599
and any history of the defendant that is relevant to the 600
defendant's ability to conform to the law. 601

(C) If the court conducts a hearing as described in division 602
(A)(2) of this section and if the court does not make both 603
findings described in divisions (A)(2)(a) and (b) of this section 604
by clear and convincing evidence, the court shall dismiss the 605
indictment, information, or complaint against the defendant. Upon 606
the dismissal, the court shall discharge the defendant unless the 607
court or prosecutor files an affidavit in probate court for civil 608
commitment of the defendant pursuant to ~~chapter~~ Chapter 5122. or 609
5123. of the Revised Code. If the court or prosecutor files an 610
affidavit for civil commitment, the court may order that the 611
defendant be detained for up to ten days pending the civil 612
commitment. If the probate court commits the defendant subsequent 613
to the court's or prosecutor's filing of an affidavit for civil 614
commitment, the chief clinical officer of the hospital or 615
facility, the managing officer of the institution, the director of 616
the program, or the person to which the defendant is committed or 617
admitted shall send to the prosecutor the notices described in 618
divisions ~~(H)~~(I)(4)(a)(i) to (iii) of section 2945.38 of the 619
Revised Code within the periods of time and under the 620
circumstances specified in those divisions. A dismissal of charges 621
under this division is not a bar to further criminal proceedings 622

based on the same conduct. 623

(D)(1) If the court conducts a hearing as described in 624
division (A)(2) of this section and if the court makes the 625
findings described in divisions (A)(2)(a) and (b) of this section 626
by clear and convincing evidence, the court shall commit the 627
defendant to a hospital operated by the department of mental 628
health, a facility operated by the department of mental 629
retardation and developmental disabilities, or another medical or 630
psychiatric facility, as appropriate. In determining the place and 631
nature of the commitment, the court shall order the least 632
restrictive commitment alternative available that is consistent 633
with public safety and the welfare of the defendant. In weighing 634
these factors, the court shall give preference to protecting 635
public safety. 636

(2) If a court makes a commitment of a defendant under 637
division (D)(1) of this section, the prosecutor shall send to the 638
place of commitment all reports of the defendant's current mental 639
condition and, except as otherwise provided in this division, any 640
other relevant information, including, but not limited to, a 641
transcript of the hearing held pursuant to division (A)(2) of this 642
section, copies of relevant police reports, and copies of any 643
prior arrest and conviction records that pertain to the defendant 644
and that the prosecutor possesses. The prosecutor shall send the 645
reports of the defendant's current mental condition in every case 646
of commitment, and, unless the prosecutor determines that the 647
release of any of the other relevant information to unauthorized 648
persons would interfere with the effective prosecution of any 649
person or would create a substantial risk of harm to any person, 650
the prosecutor also shall send the other relevant information. 651
Upon admission of a defendant committed under division (D)(1) of 652
this section, the place of commitment shall send to the board of 653
alcohol, drug addiction, and mental health services or the 654

community mental health board serving the county in which the
charges against the defendant were filed a copy of all reports of
the defendant's current mental condition and a copy of the other
relevant information provided by the prosecutor under this
division, including, if provided, a transcript of the hearing held
pursuant to division (A)(2) of this section, the relevant police
reports, and the prior arrest and conviction records that pertain
to the defendant and that the prosecutor possesses.

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(3) If a court makes a commitment under division (D)(1) of
this section, all further proceedings shall be in accordance with
sections 2945.401 and 2945.402 of the Revised Code.

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Sec. 2945.401. (A) A defendant found incompetent to stand
trial and committed pursuant to section 2945.39 of the Revised
Code or a person found not guilty by reason of insanity and
committed pursuant to section 2945.40 of the Revised Code shall
remain subject to the jurisdiction of the trial court pursuant to
that commitment, and to the provisions of this section, until the
final termination of the commitment as described in division
(J)(1) of this section. If the jurisdiction is terminated under
this division because of the final termination of the commitment
resulting from the expiration of the maximum prison term or term
of imprisonment described in division (J)(1)(b) of this section,
the court or prosecutor may file an affidavit for the civil
commitment of the defendant or person pursuant to Chapter 5122. or
5123. of the Revised Code.

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(B) A hearing conducted under any provision of sections
2945.37 to 2945.402 of the Revised Code shall not be conducted in
accordance with Chapters 5122. and 5123. of the Revised Code. Any
person who is committed pursuant to section 2945.39 or 2945.40 of
the Revised Code shall not voluntarily admit the person or be
voluntarily admitted to a hospital or institution pursuant to

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section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code. 686
All other provisions of Chapters 5122. and 5123. of the Revised 687
Code regarding hospitalization or institutionalization shall apply 688
to the extent they are not in conflict with this chapter. A 689
commitment under section 2945.39 or 2945.40 of the Revised Code 690
shall not be terminated and the conditions of the commitment shall 691
not be changed except as otherwise provided in division (D)(2) of 692
this section with respect to a mentally retarded person subject to 693
institutionalization by court order or except by order of the 694
trial court. 695

(C) The hospital, facility, or program to which a defendant 696
or person has been committed under section 2945.39 or 2945.40 of 697
the Revised Code shall report in writing to the trial court, at 698
the times specified in this division, as to whether the defendant 699
or person remains a mentally ill person subject to hospitalization 700
by court order or a mentally retarded person subject to 701
institutionalization by court order and, in the case of a 702
defendant committed under section 2945.39 of the Revised Code, as 703
to whether the defendant remains incompetent to stand trial. The 704
hospital, facility, or program shall make the reports after the 705
initial six months of treatment and every two years after the 706
initial report is made. The trial court shall provide copies of 707
the reports to the prosecutor and to the counsel for the defendant 708
or person. Within thirty days after its receipt pursuant to this 709
division of a report from a hospital, facility, or program, the 710
trial court shall hold a hearing on the continued commitment of 711
the defendant or person or on any changes in the conditions of the 712
commitment of the defendant or person. The defendant or person may 713
request a change in the conditions of confinement, and the trial 714
court shall conduct a hearing on that request if six months or 715
more have elapsed since the most recent hearing was conducted 716
under this section. 717

(D)(1) Except as otherwise provided in division (D)(2) of 718
this section, when a defendant or person has been committed under 719
section 2945.39 or 2945.40 of the Revised Code, at any time after 720
evaluating the risks to public safety and the welfare of the 721
defendant or person, the chief clinical officer of the hospital, 722
facility, or program to which the defendant or person is committed 723
may recommend a termination of the defendant's or person's 724
commitment or a change in the conditions of the defendant's or 725
person's commitment. 726

Except as otherwise provided in division (D)(2) of this 727
section, if the chief clinical officer recommends on-grounds 728
unsupervised movement, off-grounds supervised movement, or 729
nonsecured status for the defendant or person or termination of 730
the defendant's or person's commitment, the following provisions 731
apply: 732

(a) If the chief clinical officer recommends on-grounds 733
unsupervised movement or off-grounds supervised movement, the 734
chief clinical officer shall file with the trial court an 735
application for approval of the movement and shall send a copy of 736
the application to the prosecutor. Within fifteen days after 737
receiving the application, the prosecutor may request a hearing on 738
the application and, if a hearing is requested, shall so inform 739
the chief clinical officer. If the prosecutor does not request a 740
hearing within the fifteen-day period, the trial court shall 741
approve the application by entering its order approving the 742
requested movement or, within five days after the expiration of 743
the fifteen-day period, shall set a date for a hearing on the 744
application. If the prosecutor requests a hearing on the 745
application within the fifteen-day period, the trial court shall 746
hold a hearing on the application within thirty days after the 747
hearing is requested. If the trial court, within five days after 748
the expiration of the fifteen-day period, sets a date for a 749

hearing on the application, the trial court shall hold the hearing
within thirty days after setting the hearing date. At least
fifteen days before any hearing is held under this division, the
trial court shall give the prosecutor written notice of the date,
time, and place of the hearing. At the conclusion of each hearing
conducted under this division, the trial court either shall
approve or disapprove the application and shall enter its order
accordingly.

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(b) If the chief clinical officer recommends termination of
the defendant's or person's commitment at any time or if the chief
clinical officer recommends the first of any nonsecured status for
the defendant or person, the chief clinical officer shall send
written notice of this recommendation to the trial court and to
the local forensic center. The local forensic center shall
evaluate the committed defendant or person and, within thirty days
after its receipt of the written notice, shall submit to the trial
court and the chief clinical officer a written report of the
evaluation. The trial court shall provide a copy of the chief
clinical officer's written notice and of the local forensic
center's written report to the prosecutor and to the counsel for
the defendant or person. Upon the local forensic center's
submission of the report to the trial court and the chief clinical
officer, all of the following apply:

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(i) If the forensic center disagrees with the recommendation
of the chief clinical officer, it shall inform the chief clinical
officer and the trial court of its decision and the reasons for
the decision. The chief clinical officer, after consideration of
the forensic center's decision, shall either withdraw, proceed
with, or modify and proceed with the recommendation. If the chief
clinical officer proceeds with, or modifies and proceeds with, the
recommendation, the chief clinical officer shall proceed in
accordance with division (D)(1)(b)(iii) of this section.

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(ii) If the forensic center agrees with the recommendation of the chief clinical officer, it shall inform the chief clinical officer and the trial court of its decision and the reasons for the decision, and the chief clinical officer shall proceed in accordance with division (D)(1)(b)(iii) of this section.

(iii) If the forensic center disagrees with the recommendation of the chief clinical officer and the chief clinical officer proceeds with, or modifies and proceeds with, the recommendation or if the forensic center agrees with the recommendation of the chief clinical officer, the chief clinical officer shall work with the board of alcohol, drug addiction, and mental health services or community mental health board serving the area, as appropriate, to develop a plan to implement the recommendation. If the defendant or person is on medication, the plan shall include, but shall not be limited to, a system to monitor the defendant's or person's compliance with the prescribed medication treatment plan. The system shall include a schedule that clearly states when the defendant or person shall report for a medication compliance check. The medication compliance checks shall be based upon the effective duration of the prescribed medication, taking into account the route by which it is taken, and shall be scheduled at intervals sufficiently close together to detect a potential increase in mental illness symptoms that the medication is intended to prevent.

The chief clinical officer, after consultation with the board of alcohol, drug addiction, and mental health services or the community mental health board serving the area, shall send the recommendation and plan developed under division (D)(1)(b)(iii) of this section, in writing, to the trial court, the prosecutor and the counsel for the committed defendant or person. The trial court shall conduct a hearing on the recommendation and plan developed under division (D)(1)(b)(iii) of this section. Divisions (D)(1)(c)

and (d) and (E) to (J) of this section apply regarding the 814
hearing. 815

(c) If the chief clinical officer's recommendation is for 816
nonsecured status or termination of commitment, the prosecutor may 817
obtain an independent expert evaluation of the defendant's or 818
person's mental condition, and the trial court may continue the 819
hearing on the recommendation for a period of not more than thirty 820
days to permit time for the evaluation. 821

The prosecutor may introduce the evaluation report or present 822
other evidence at the hearing in accordance with the Rules of 823
Evidence. 824

(d) The trial court shall schedule the hearing on a chief 825
clinical officer's recommendation for nonsecured status or 826
termination of commitment and shall give reasonable notice to the 827
prosecutor and the counsel for the defendant or person. Unless 828
continued for independent evaluation at the prosecutor's request 829
or for other good cause, the hearing shall be held within thirty 830
days after the trial court's receipt of the recommendation and 831
plan. 832

(2)(a) Division (D)(1) of this section does not apply to 833
on-grounds unsupervised movement of a defendant or person who has 834
been committed under section 2945.39 or 2945.40 of the Revised 835
Code, who is a mentally retarded person subject to 836
institutionalization by court order, and who is being provided 837
residential habilitation, care, and treatment in a facility 838
operated by the department of mental retardation and developmental 839
disabilities. 840

(b) If, pursuant to section 2945.39 of the Revised Code, the 841
trial court commits a defendant who is found incompetent to stand 842
trial and who is a mentally retarded person subject to 843
institutionalization by court order, if the defendant is being 844

provided residential habilitation, care, and treatment in a 845
facility operated by the department of mental retardation and 846
developmental disabilities, if an individual who is conducting a 847
survey for the department of health to determine the facility's 848
compliance with the certification requirements of the medicaid 849
program under ~~chapter~~ Chapter 5111. of the Revised Code and Title 850
XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 851
301, as amended, cites the defendant's receipt of the residential 852
habilitation, care, and treatment in the facility as being 853
inappropriate under the certification requirements, if the 854
defendant's receipt of the residential habilitation, care, and 855
treatment in the facility potentially jeopardizes the facility's 856
continued receipt of federal medicaid moneys, and if as a result 857
of the citation the chief clinical officer of the facility 858
determines that the conditions of the defendant's commitment 859
should be changed, the department of mental retardation and 860
developmental disabilities may cause the defendant to be removed 861
from the particular facility and, after evaluating the risks to 862
public safety and the welfare of the defendant and after 863
determining whether another type of placement is consistent with 864
the certification requirements, may place the defendant in another 865
facility that the department selects as an appropriate facility 866
for the defendant's continued receipt of residential habilitation, 867
care, and treatment and that is a no less secure setting than the 868
facility in which the defendant had been placed at the time of the 869
citation. Within three days after the defendant's removal and 870
alternative placement under the circumstances described in 871
division (D)(2)(b) of this section, the department of mental 872
retardation and developmental disabilities shall notify the trial 873
court and the prosecutor in writing of the removal and alternative 874
placement. 875

The trial court shall set a date for a hearing on the removal 876

and alternative placement, and the hearing shall be held within 877
twenty-one days after the trial court's receipt of the notice from 878
the department of mental retardation and developmental 879
disabilities. At least ~~ten days~~ ten days before the hearing is 880
held, the trial court shall give the prosecutor, the department of 881
mental retardation and developmental disabilities, and the counsel 882
for the defendant written notice of the date, time, and place of 883
the hearing. At the hearing, the trial court shall consider the 884
citation issued by the individual who conducted the survey for the 885
department of health to be prima-facie evidence of the fact that 886
the defendant's commitment to the particular facility was 887
inappropriate under the certification requirements of the medicaid 888
program under Chapter 5111. of the Revised Code and Title XIX of 889
the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, 890
as amended, and potentially jeopardizes the particular facility's 891
continued receipt of federal medicaid moneys. At the conclusion of 892
the hearing, the trial court may approve or disapprove the 893
defendant's removal and alternative placement. If the trial court 894
approves the defendant's removal and alternative placement, the 895
department of mental retardation and developmental disabilities 896
may continue the defendant's alternative placement. If the trial 897
court disapproves the defendant's removal and alternative 898
placement, it shall enter an order modifying the defendant's 899
removal and alternative placement, but that order shall not 900
require the department of mental retardation and developmental 901
disabilities to replace the defendant for purposes of continued 902
residential habilitation, care, and treatment in the facility 903
associated with the citation issued by the individual who 904
conducted the survey for the department of health. 905

(E) In making a determination under this section regarding 906
nonsecured status or termination of commitment, the trial court 907
shall consider all relevant factors, including, but not limited 908

to, all of the following: 909

(1) Whether, in the trial court's view, the defendant or 910
person currently represents a substantial risk of physical harm to 911
the defendant or person or others; 912

(2) Psychiatric and medical testimony as to the current 913
mental and physical condition of the defendant or person; 914

(3) Whether the defendant or person has insight into the 915
defendant's or person's condition so that the defendant or person 916
will continue treatment as prescribed or seek professional 917
assistance as needed; 918

(4) The grounds upon which the state relies for the proposed 919
commitment; 920

(5) Any past history that is relevant to establish the 921
defendant's or person's degree of conformity to the laws, rules, 922
regulations, and values of society; 923

(6) If there is evidence that the defendant's or person's 924
mental illness is in a state of remission, the medically suggested 925
cause and degree of the remission and the probability that the 926
defendant or person will continue treatment to maintain the 927
remissive state of the defendant's or person's illness should the 928
defendant's or person's commitment conditions be altered. 929

(F) At any hearing held pursuant to division (C) or (D)(1) or 930
(2) of this section, the defendant or the person shall have all 931
the rights of a defendant or person at a commitment hearing as 932
described in section 2945.40 of the Revised Code. 933

(G) In a hearing held pursuant to division (C) or (D)(1) of 934
this section, the prosecutor has the burden of proof as follows: 935

(1) For a recommendation of termination of commitment, to 936
show by clear and convincing evidence that the defendant or person 937
remains a mentally ill person subject to hospitalization by court 938

order or a mentally retarded person subject to 939
institutionalization by court order; 940

(2) For a recommendation for a change in the conditions of 941
the commitment to a less restrictive status, to show by clear and 942
convincing evidence that the proposed change represents a threat 943
to public safety or a threat to the safety of any person. 944

(H) In a hearing held pursuant to division (C) or (D)(1) or 945
(2) of this section, the prosecutor shall represent the state or 946
the public interest. 947

(I) At the conclusion of a hearing conducted under division 948
(D)(1) of this section regarding a recommendation from the chief 949
clinical officer of a hospital, program, or facility, the trial 950
court may approve, disapprove, or modify the recommendation and 951
shall enter an order accordingly. 952

(J)(1) A defendant or person who has been committed pursuant 953
to section 2945.39 or 2945.40 of the Revised Code continues to be 954
under the jurisdiction of the trial court until the final 955
termination of the commitment. For purposes of division (J) of 956
this section, the final termination of a commitment occurs upon 957
the earlier of one of the following: 958

(a) The defendant or person no longer is a mentally ill 959
person subject to hospitalization by court order or a mentally 960
retarded person subject to institutionalization by court order, as 961
determined by the trial court; 962

(b) The expiration of the maximum prison term or term of 963
imprisonment that the defendant or person could have received if 964
the defendant or person had been convicted of the most serious 965
offense with which the defendant or person is charged or in 966
relation to which the defendant or person was found not guilty by 967
reason of insanity; 968

(c) The trial court enters an order terminating the 969

commitment under the circumstances described in division 970
(J)(2)(a)(ii) of this section. 971

(2)(a) If a defendant is found incompetent to stand trial and 972
committed pursuant to section 2945.39 of the Revised Code, if 973
neither of the circumstances described in divisions (J)(1)(a) and 974
(b) of this section applies to that defendant, and if a report 975
filed with the trial court pursuant to division (C) of this 976
section indicates that the defendant presently is competent to 977
stand trial or if, at any other time during the period of the 978
defendant's commitment, the prosecutor, the counsel for the 979
defendant, or the chief clinical officer of the hospital, 980
facility, or program to which the defendant is committed files an 981
application with the trial court alleging that the defendant 982
presently is competent to stand trial and requesting a hearing on 983
the competency issue or the trial court otherwise has reasonable 984
cause to believe that the defendant presently is competent to 985
stand trial and determines on its own motion to hold a hearing on 986
the competency issue, the trial court shall schedule a hearing on 987
the competency of the defendant to stand trial, shall give the 988
prosecutor, the counsel for the defendant, and the chief clinical 989
officer notice of the date, time, and place of the hearing at 990
least fifteen days before the hearing, and shall conduct the 991
hearing within thirty days of the filing of the application or of 992
its own motion. If, at the conclusion of the hearing, the trial 993
court determines that the defendant presently is capable of 994
understanding the nature and objective of the proceedings against 995
the defendant and of assisting in the defendant's defense, the 996
trial court shall order that the defendant is competent to stand 997
trial and shall be proceeded against as provided by law with 998
respect to the applicable offenses described in division ~~(C)~~(D)(1) 999
of section 2945.38 of the Revised Code and shall enter whichever 1000
of the following additional orders is appropriate: 1001

(i) If the trial court determines that the defendant remains a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the trial court shall order that the defendant's commitment to the hospital, facility, or program be continued during the pendency of the trial on the applicable offenses described in division ~~(C)~~(D)(1) of section 2945.38 of the Revised Code.

(ii) If the trial court determines that the defendant no longer is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the trial court shall order that the defendant's commitment to the hospital, facility, or program shall not be continued during the pendency of the trial on the applicable offenses described in division ~~(C)~~(D)(1) of section 2945.38 of the Revised Code. This order shall be a final termination of the commitment for purposes of division (J)(1)(c) of this section.

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

Section 2. That existing sections 2945.371, 2945.39, and

2945.401 and section 2945.38 of the Revised Code as it results 1033
from Am. Sub. S.B. 285 of the 121st General Assembly are hereby 1034
repealed. 1035

Section 3. This act presents section 2945.38 of the Revised 1036
Code as it existed prior to its amendment by Am. Sub. S.B. 285 of 1037
the 121st General Assembly. The revived version of that section 1038
supersedes the version of that section repealed by Section 2 of 1039
this act and omits and repeals all changes made to that section by 1040
Am. Sub. S.B. 285 of the 121st General Assembly. The omission and 1041
repeal of those changes is not intended to have any substantive 1042
effect and is intended to present in this act the version of 1043
section 2945.38 of the Revised Code that is currently effective. 1044
The repeal of section 2945.38 of the Revised Code by Section 2 of 1045
this act is to give effect to the holding of the Ohio Supreme 1046
Court in *State v. Sullivan* (2001), 90 Ohio St.3d 502, that section 1047
2945.38 of the Revised Code, as amended by Am. Sub. S.B. 285 of 1048
the 121st General Assembly, is unconstitutional. 1049