

**As Passed by the House**

**124th General Assembly**

**Regular Session**

**2001-2002**

**Am. Sub. S. B. No. 122**

**SENATORS Oelslager, Espy**

**REPRESENTATIVES Womer Benjamin, Schmidt**

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**A B I L L**

To amend sections 2945.371 and 2945.39, to revive and 1  
amend section 2945.38, and to repeal section 2  
2945.38 of the Revised Code as it results from Am. 3  
Sub. S.B. 285 of the 121st General Assembly 4  
relative to the determination of a defendant's 5  
competency to stand trial and whether or not there 6  
is a substantial probability that the defendant 7  
will become competent to stand trial if provided 8  
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, and 2945.39 of 10  
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  
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

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make an order under this division only upon the request of a  
certified forensic center examiner.

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

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

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

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(1) The examiner's findings;

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

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

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

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(b) 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

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defendant's defense, whether the defendant presently is mentally  
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;

(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 and of  
assisting in the defendant's defense within one year if the  
defendant is provided with a course of treatment;

(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+.

(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.

(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

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defendant appears to be a mentally retarded person subject to 114  
institutionalization by court order, the court shall order the 115  
defendant to undergo a separate mental retardation evaluation 116  
conducted by a psychologist designated by the director of mental 117  
retardation and developmental disabilities. Divisions (C) to (F) 118  
of this section apply in relation to a separate mental retardation 119  
evaluation conducted under this division. The psychologist 120  
appointed under this division to conduct the separate mental 121  
retardation evaluation shall file a written report with the court 122  
within thirty days after the entry of the court order requiring 123  
the separate mental retardation evaluation, and the court shall 124  
provide copies of the report to the prosecutor and defense 125  
counsel. The report shall include all of the information described 126  
in divisions (G)(1) to (4) of this section. If the court orders a 127  
separate mental retardation evaluation of a defendant under this 128  
division, the court shall not conduct a hearing under divisions 129  
(B) to (H) of section 2945.37 of the Revised Code regarding that 130  
defendant until a report of the separate mental retardation 131  
evaluation conducted under this division has been filed. Upon the 132  
filing of that report, the court shall conduct the hearing within 133  
the period of time specified in division (C) of section 2945.37 of 134  
the Revised Code. 135

(I) An examiner appointed under divisions (A) and (B) of this 136  
section or under division (H) of this section to evaluate a 137  
defendant to determine the defendant's competence to stand trial 138  
also may be appointed to evaluate a defendant who has entered a 139  
plea of not guilty by reason of insanity, but an examiner of that 140  
nature shall prepare separate reports on the issue of competence 141  
to stand trial and the defense of not guilty by reason of 142  
insanity. 143

(J) No statement that a defendant makes in an evaluation or 144  
hearing under divisions (A) to (H) of this section relating to the 145

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)(a) If, after taking into consideration all relevant  
reports, information, and other evidence, the court finds that the

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defendant is incompetent to stand trial, ~~it shall also make a~~ 177  
~~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

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

information that pertains to the defendant and is available to the 210  
prosecutor unless the prosecutor determines that the release of 211  
any of the information in the police reports or any of the other 212  
background information to unauthorized persons would interfere 213  
with the effective prosecution of any person or would create a 214  
substantial risk of harm to any person. 215

In determining placement alternatives, the court shall 216  
consider the extent to which the person is a danger to the person 217  
and to others, the need for security, and the type of crime 218  
involved and shall order the least restrictive alternative 219  
available that is consistent with public safety and treatment 220  
goals. In weighing these factors, the court shall give preference 221  
to protecting public safety. 222

(c) If the defendant is found incompetent to stand trial, if 223  
the chief clinical officer of the hospital or facility, the 224  
managing officer of the institution, the director of the program, 225  
or the person to which the defendant is committed for treatment or 226  
continuing evaluation and treatment under division (B)(1)(b) of 227  
this section determines that medication is necessary to restore 228  
the defendant's competency to stand trial, and if the defendant 229  
lacks the capacity to give informed consent or refuses medication, 230  
the chief clinical officer, managing officer, director, or person 231  
to which the defendant is committed for treatment or continuing 232  
evaluation and treatment may petition the court for authorization 233  
for the involuntary administration of medication. The court shall 234  
hold a hearing on the petition within five days of the filing of 235  
the petition if the petition was filed in a municipal court or a 236  
county court regarding an incompetent defendant charged with a 237  
misdemeanor or within ten days of the filing of the petition if 238  
the petition was filed in a court of common pleas regarding an 239  
incompetent defendant charged with a felony offense. Following the 240  
hearing, the court may authorize the involuntary administration of 241

medication or may dismiss the petition. 242

~~(c)(2) If the court finds that the defendant is incompetent~~ 243  
~~to stand trial and that, even if the defendant is provided with a~~ 244  
~~course of treatment, there is not a substantial probability that~~ 245  
~~the defendant will become competent to stand trial within one~~ 246  
~~year, and it appears to the court, through a review of the report~~ 247  
~~of an examiner under section 2945.371 of the Revised Code or~~ 248  
~~otherwise, that the defendant is mentally ill or mentally retarded~~ 249  
shall order the discharge of the defendant, unless upon motion of 250  
the prosecutor or on its own motion, the court may cause either 251  
seeks to retain jurisdiction over the defendant pursuant to 252  
section 2945.39 of the Revised Code or files an affidavit to be 253  
~~filed in the probate court under section 5122.11 or 5123.71 for~~ 254  
the civil commitment of the defendant pursuant to Chapter 5122. or 255  
5123. of the Revised Code alleging that the defendant is a 256  
mentally ill person subject to hospitalization by court order or a 257  
mentally retarded person subject to institutionalization by court 258  
order, ~~as defined in sections 5122.01 and 5123.01 of the Revised~~ 259  
~~Code. When the~~ If an affidavit is filed in the probate court, the 260  
trial court shall send to the probate court ~~a copy~~ copies of all 261  
written reports of the defendant's mental condition that were 262  
prepared pursuant to section 2945.371 of the Revised Code. 263

The trial court may issue the temporary order of detention 264  
that a probate court may issue under section 5122.11 or 5123.71 of 265  
the Revised Code, to remain in effect until the probable cause or 266  
initial hearing in the probate court. Further proceedings in the 267  
probate court are ~~then~~ civil proceedings governed by Chapter 5122. 268  
or 5123. of the Revised Code. 269

~~The chief clinical officer of the hospital or facility, the~~ 270  
~~managing officer of the institution, the director of the program,~~ 271  
~~or the person to which the defendant is committed or admitted~~ 272  
~~shall send, at least ten days prior to the discharge or~~ 273

~~immediately upon learning of a change to voluntary status, written  
notice to the prosecutor of the date on which the defendant will  
be discharged or has been admitted on voluntary status.~~

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

~~(C) No defendant shall be required to undergo treatment,  
including any continuing evaluation and treatment, under this  
division (B)(1) 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:~~

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

(a) Aggravated murder, murder, or an offense of violence for 306  
which a sentence of death or life imprisonment may be imposed for 307  
conviction of; 308

(b) An offense of violence that is a felony or one-third of 309  
the longest term of imprisonment that might be imposed for 310  
conviction of of the first or second degree; 311

(c) A conspiracy to commit, an attempt to commit, or 312  
complicity in the commission of an offense described in division 313  
(C)(1)(a) or (b) of this section if the conspiracy, attempt, or 314  
complicity is a felony of the first or second degree. 315

(2) Six months, if the most serious offense with which the 316  
defendant is charged is a felony other than a felony described in 317  
division (C)(1) of this section; 318

(3) Sixty days, if the most serious offense with which the 319  
defendant is charged is a misdemeanor if the defendant is found 320  
guilty of the most serious crime with which the defendant was 321  
charged at the time of the hearing. No order issued under this 322  
division shall remain in effect after the indictment, information, 323  
or complaint is dismissed. The court shall notify the prosecutor, 324  
defense counsel, and the chief clinical officer of the facility or 325  
the managing officer of the institution or facility at which, or 326  
person with whom, the defendant was ordered to undergo treatment 327  
pursuant to this division whenever an indictment, information, or 328  
complaint against a defendant is dismissed and whenever the court 329  
revokes an order made under this division. If the maximum time 330  
during which an order of the court may be in effect expires, the 331  
court, within three days, shall conduct another hearing under 332  
section 2945.37 of the Revised Code to determine if the defendant 333  
is competent to stand trial, but at the close of such a hearing, a 334  
disposition shall be made under division (A) of this section or if 335  
the defendant is found incompetent to stand trial, disposition 336  
shall be made as under division (C) of this section of the first 337

or second degree; 338

(4) Thirty days, if the most serious offense with which the 339  
defendant is charged is a misdemeanor of the third or fourth 340  
degree, a minor misdemeanor, or an unclassified misdemeanor. 341

(D) Any defendant who is committed pursuant to this division 342  
section shall not voluntarily admit self the defendant or be 343  
voluntarily admitted to a hospital or institution pursuant to 344  
section 5122.02 of the Revised Code or to an institution pursuant 345  
to section, 5122.15, 5123.69, or 5123.76 of the Revised Code. 346

(E) Except as otherwise provided in this division, a 347  
defendant who is charged with an offense and is committed to a 348  
hospital or other institution by the court under this section 349  
shall not be granted unsupervised on-grounds movement, supervised 350  
off-grounds movement, or nonsecured status. The court may grant a 351  
defendant supervised off-grounds movement to obtain medical 352  
treatment or specialized habilitation treatment services if the 353  
person who supervises the treatment or the continuing evaluation 354  
and treatment of the defendant ordered under division (B)(1)(a) of 355  
this section informs the court that the treatment or continuing 356  
evaluation and treatment cannot be provided at the hospital or the 357  
institution to which the defendant is committed. The chief 358  
clinical officer of the hospital or the managing officer of the 359  
institution to which the defendant is committed or a designee of 360  
either of those persons may grant a defendant movement to a 361  
medical facility for an emergency medical situation with 362  
appropriate supervision to ensure the safety of the defendant, 363  
staff, and community during that emergency medical situation. The 364  
chief clinical officer of the hospital or the managing officer of 365  
the institution shall notify the court within twenty-four hours of 366  
the defendant's movement to the medical facility for an emergency 367  
medical situation under this division. 368

(F) The person who supervises the treatment or continuing 369

evaluation and treatment of a defendant ordered to undergo 370  
treatment or continuing evaluation and treatment under division 371  
~~(D)(B)(1)(a)~~ of this section shall file a written report with the 372  
court ~~and send copies to the prosecutor and defense counsel~~ at the 373  
following times: 374

~~(1) After the first ninety days of treatment and after each 375  
one hundred eighty days of treatment thereafter;~~ 376

~~(2) Whenever the person believes the defendant is competent 377  
to stand trial;~~ 378

~~(3) Whenever the person believes that there is not a 379  
substantial probability that the defendant will become competent 380  
to stand trial;~~ 381

~~(4) Fourteen capable of understanding the nature and 382  
objective of the proceedings against the defendant and of 383  
assisting in the defendant's defense;~~ 384

(2) For a felony offense, fourteen days before expiration of 385  
the maximum time ~~an order issued under for treatment as specified 386  
in~~ division ~~(D)(C)~~ of this section ~~may be in effect and fourteen 387  
days before the expiration of the maximum time for continuing 388  
evaluation and treatment as specified in division (B)(1)(a) of 389  
this section, and, for a misdemeanor offense, ten days before the 390  
expiration of the maximum time for treatment, as specified in that 391  
division.~~ ~~(C) of this section;~~ 392

(3) At a minimum, after each six months of treatment; 393

(4) Whenever the person who supervises the treatment or 394  
continuing evaluation and treatment of a defendant ordered under 395  
division (B)(1)(a) of this section believes that there is not a 396  
substantial probability that the defendant will become capable of 397  
understanding the nature and objective of the proceedings against 398  
the defendant or of assisting in the defendant's defense even if 399  
the defendant is provided with a course of treatment. 400

(G) A report under division (F) of this section shall contain 401  
the examiner's findings of the examiner, the facts in reasonable 402  
detail on which the findings are based, and the examiner's opinion 403  
of the examiner as to the defendant's competence to stand trial 404  
capability of understanding the nature and objective of the 405  
proceedings against the defendant and of assisting in the 406  
defendant's defense. If, in the examiner finds that the defendant 407  
is incompetent to stand trial, the examiner shall state an opinion 408  
in the report on the likelihood of the defendant's becoming 409  
competent to stand trial within one year examiner's opinion, the 410  
defendant remains incapable of understanding the nature and 411  
objective of the proceedings against the defendant and of 412  
assisting in the defendant's defense and there is a substantial 413  
probability that the defendant will become capable of 414  
understanding the nature and objective of the proceedings against 415  
the defendant and of assisting in the defendant's defense if the 416  
defendant is provided with a course of treatment, if in the 417  
examiner's opinion the defendant remains mentally ill or mentally 418  
retarded, and if the maximum time for treatment as specified in 419  
division (C) of this section has not expired, the report also 420  
shall contain the examiner's recommendation as to the least 421  
restrictive treatment alternative that is consistent with the 422  
defendant's treatment needs for restoration to competency and with 423  
the safety of the community. The court shall provide copies of the 424  
report to the prosecutor and defense counsel. 425

(F) Within (H) If a defendant is committed pursuant to 427  
division (B)(1) of this section, within ten days after receipt of 428  
a report required by division (E) of this section the treating 429  
physician of the defendant or the examiner of the defendant who is 430  
employed or retained by the treating facility advises that there 431  
is not a substantial probability that the defendant will become 432

capable of understanding the nature and objective of the 433  
proceedings against the defendant or of assisting in the 434  
defendant's defense even if the defendant is provided with a 435  
course of treatment, within ten days after the expiration of the 436  
maximum time for treatment as specified in division (C) of this 437  
section, within ten days after the expiration of the maximum time 438  
for continuing evaluation and treatment as specified in division 439  
(B)(1)(a) of this section, within thirty days after a defendant's 440  
request for a hearing that is made after six months of treatment, 441  
or within thirty days after being advised by the treating 442  
physician or examiner that the defendant is competent to stand 443  
trial, whichever is the earliest, the court shall hold a conduct 444  
another hearing on the issue of the competence of to determine if 445  
the defendant is competent to stand trial, as provided in section 446  
2945.37 of the Revised Code. and shall do whichever of the 447  
following is applicable: 448

(1) If at the conclusion of the hearing the court finds that 449  
the defendant is competent to stand trial, the defendant shall be 450  
proceeded against as provided by law. If 451

(2) If the court finds that the defendant is incompetent to 452  
stand trial, but that there is a substantial probability that the 453  
defendant will become competent to stand trial before expiration 454  
of if the defendant is provided with a course of treatment, and 455  
the maximum time limit specified for treatment under as specified 456  
in division (D)(C) of this section has not expired, the court may 457  
modify or continue in effect orders made at a previous hearing, 458  
still subject to the maximum time that orders may be in effect, as 459  
originally established under division (D) of this section. If, 460  
after consideration of the examiner's recommendation, shall order 461  
that treatment be continued, may change the facility or program at 462  
which the treatment is to be continued, and shall specify whether 463  
the treatment is to be continued at the same or a different 464

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 within even if the defendant is provided with a course of treatment, or if the maximum time that orders may be in effect, as originally established under for treatment relative to that offense as specified in division (D)(C) of this section, the court shall make a disposition as under division (C) of this section.

(G) The 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 a the defendant finally found incompetent to stand trial under division (C), (D), or (F) of this section or whenever the prosecutor notifies the court the prosecutor does not intend to prosecute the charges specified in the indictment, information, or complaint. A

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

(1) After a finding under division (C), (D), or (F) of this

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

~~(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.~~

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

~~(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~~

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ten days pending civil commitment. All of the following provisions 529  
apply to persons charged with a misdemeanor or a felony other than 530  
a felony listed in division (C)(1) of this section who are 531  
committed by the probate court subsequent to the court's or 532  
prosecutor's filing of an affidavit for civil commitment under 533  
authority of this division: 534

(a) The chief clinical officer of the hospital or facility, 535  
the managing officer of the institution, the director of the 536  
program, or the person to which the defendant is committed or 537  
admitted shall do all of the following: 538

(i) Notify the prosecutor, in writing, of the discharge of 539  
the defendant, send the notice at least ten days prior to the 540  
discharge unless the discharge is by the probate court, and state 541  
in the notice the date on which the defendant will be discharged; 542

(ii) Notify the prosecutor, in writing, when the defendant is 543  
absent without leave or is granted unsupervised, off-grounds 544  
movement, and send this notice promptly after the discovery of the 545  
absence without leave or prior to the granting of the 546  
unsupervised, off-grounds movement, whichever is applicable; 547

(iii) Notify the prosecutor, in writing, of the change of the 548  
defendant's commitment or admission to voluntary status, send the 549  
notice promptly upon learning of the change to voluntary status, 550  
and state in the notice the date on which the defendant was 551  
committed or admitted on a voluntary status. 552

(b) Upon receiving notice that the defendant will be granted 553  
unsupervised, off-grounds movement, the prosecutor either shall 554  
re-indict the defendant or promptly notify the court that the 555  
prosecutor does not intend to prosecute the charges against the 556  
defendant. 557

(I) If a defendant is convicted of a crime and sentenced to a 558  
jail or workhouse, the defendant's sentence shall be reduced by 559

the total number of days the defendant is confined for ~~examination~~ 560  
evaluation to determine the defendant's competence to stand trial 561  
or treatment under this section and sections 2945.37 and 2945.371 562  
of the Revised Code or by the total number of days the defendant 563  
is confined for evaluation to determine the defendant's mental 564  
condition at the time of the offense charged. 565

~~(J) No statement made by a defendant in an examination or~~ 566  
~~hearing relating to the defendant's competence to stand trial~~ 567  
~~shall be used in evidence against the defendant on the issue of~~ 568  
~~guilt in any criminal action.~~ 569

~~(K) Each court of common pleas and municipal court shall~~ 570  
~~designate a permanent court officer or employee to file affidavits~~ 571  
~~under division (C) of this section and section 2945.40 of the~~ 572  
~~Revised Code.~~ 573

**Sec. 2945.39.** (A) If a defendant who is charged with an 574  
offense described in division (C)(1) of section 2945.38 of the 575  
Revised Code is found incompetent to stand trial, after the 576  
expiration of the maximum time for treatment as specified in 577  
division (C) of that section or after the court finds that there 578  
is not a substantial probability that the defendant will become 579  
competent to stand trial even if the defendant is provided with a 580  
course of treatment, one of the following applies: 581

(1) The court or the prosecutor may file an affidavit in 582  
probate court for civil commitment of the defendant in the manner 583  
provided in Chapter 5122. or 5123. of the Revised Code. If the 584  
court or prosecutor files an affidavit for civil commitment, the 585  
court may detain the defendant for ten days pending civil 586  
commitment. If the probate court commits the defendant subsequent 587  
to the court's or prosecutor's filing of an affidavit for civil 588  
commitment, the chief clinical officer of the hospital or 589  
facility, the managing officer of the institution, the director of 590

the program, or the person to which the defendant is committed or  
admitted shall send to the prosecutor the notices described in  
divisions (H)(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.

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(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:

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(a) The defendant committed the offense with which the  
defendant is charged.

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

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(B) In making its determination under division (A)(2) of this  
section as to whether to retain jurisdiction over the defendant,  
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 charged,  
and any history of the defendant that is relevant to the  
defendant's ability to conform to the law.

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(C) If the court conducts a hearing as described in division  
(A)(2) of this section and if the court does not make both  
findings described in divisions (A)(2)(a) and (b) of this section  
by clear and convincing evidence, the court shall dismiss the  
indictment, information, or complaint against the defendant. Upon  
the dismissal, the court shall discharge the defendant unless the  
court or prosecutor files an affidavit in probate court for civil  
commitment of the defendant pursuant to ~~chapter~~ Chapter 5122. or  
5123. of the Revised Code. If the court or prosecutor files an  
affidavit for civil commitment, the court may order that the

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defendant be detained for up to ten days pending the civil 622  
commitment. If the probate court commits the defendant subsequent 623  
to the court's or prosecutor's filing of an affidavit for civil 624  
commitment, the chief clinical officer of the hospital or 625  
facility, the managing officer of the institution, the director of 626  
the program, or the person to which the defendant is committed or 627  
admitted shall send to the prosecutor the notices described in 628  
divisions (H)(4)(a)(i) to (iii) of section 2945.38 of the Revised 629  
Code within the periods of time and under the circumstances 630  
specified in those divisions. A dismissal of charges under this 631  
division is not a bar to further criminal proceedings based on the 632  
same conduct. 633

(D)(1) If the court conducts a hearing as described in 634  
division (A)(2) of this section and if the court makes the 635  
findings described in divisions (A)(2)(a) and (b) of this section 636  
by clear and convincing evidence, the court shall commit the 637  
defendant to a hospital operated by the department of mental 638  
health, a facility operated by the department of mental 639  
retardation and developmental disabilities, or another medical or 640  
psychiatric facility, as appropriate. In determining the place and 641  
nature of the commitment, the court shall order the least 642  
restrictive commitment alternative available that is consistent 643  
with public safety and the welfare of the defendant. In weighing 644  
these factors, the court shall give preference to protecting 645  
public safety. 646

(2) If a court makes a commitment of a defendant under 647  
division (D)(1) of this section, the prosecutor shall send to the 648  
place of commitment all reports of the defendant's current mental 649  
condition and, except as otherwise provided in this division, any 650  
other relevant information, including, but not limited to, a 651  
transcript of the hearing held pursuant to division (A)(2) of this 652  
section, copies of relevant police reports, and copies of any 653

prior arrest and conviction records that pertain to the defendant  
and that the prosecutor possesses. The prosecutor shall send the  
reports of the defendant's current mental condition in every case  
of commitment, and, unless the prosecutor determines that the  
release of any of the other relevant information to unauthorized  
persons would interfere with the effective prosecution of any  
person or would create a substantial risk of harm to any person,  
the prosecutor also shall send the other relevant information.  
Upon admission of a defendant committed under division (D)(1) of  
this section, the place of commitment shall send to the board of  
alcohol, drug addiction, and mental health services or the  
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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**Section 2.** That existing sections 2945.371 and 2945.39 and  
section 2945.38 of the Revised Code as it results from Am. Sub.  
S.B. 285 of the 121st General Assembly are hereby repealed.

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**Section 3.** This act presents section 2945.38 of the Revised  
Code as it existed prior to its amendment by Am. Sub. S.B. 285 of  
the 121st General Assembly. The revived version of that section  
supersedes the version of that section repealed by Section 2 of  
this act and omits and repeals all changes made to that section by  
Am. Sub. S.B. 285 of the 121st General Assembly. The omission and

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repeal of those changes is not intended to have any substantive 685  
effect and is intended to present in this act the version of 686  
section 2945.38 of the Revised Code that is currently effective. 687  
The repeal of section 2945.38 of the Revised Code by Section 2 of 688  
this act is to give effect to the holding of the Ohio Supreme 689  
Court in *State v. Sullivan* (2001), 90 Ohio St.3d 502, that section 690  
2945.38 of the Revised Code, as amended by Am. Sub. S.B. 285 of 691  
the 121st General Assembly, is unconstitutional. 692