

As Passed by the Senate

**124th General Assembly
Regular Session
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Sub. S. B. No. 122

SENATORS Oelslager, Espy

A B I L L

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

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

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

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

(B) If the court orders more than one evaluation under
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.

(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.

(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;

(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;

(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
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)(a) 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

(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
any of the information in the police reports or any of the other
background information to unauthorized persons would interfere
with the effective prosecution of any person or would create a
substantial risk of harm to any person.

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

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

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(c)(2) If the court finds that the defendant is incompetent
to stand trial and that, even if the defendant is provided with a
course of treatment, there is not a substantial probability that
the defendant will become competent to stand trial within one
year, and it appears to the court, through a review of the report
of an examiner under section 2945.371 of the Revised Code or

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~~otherwise, that the defendant is mentally ill or mentally retarded~~ 243
~~shall order the discharge of the defendant, unless upon motion of~~ 244
~~the prosecutor or on its own motion, the court may cause either~~ 245
~~seeks to retain jurisdiction over the defendant pursuant to~~ 246
~~section 2945.39 of the Revised Code or files an affidavit to be~~ 247
~~filed in the probate court under section 5122.11 or 5123.71 for~~ 248
~~the civil commitment of the defendant pursuant to Chapter 5122. or~~ 249
~~5123. of the Revised Code alleging that the defendant is a~~ 250
~~mentally ill person subject to hospitalization by court order or a~~ 251
~~mentally retarded person subject to institutionalization by court~~ 252
~~order, as defined in sections 5122.01 and 5123.01 of the Revised~~ 253
~~Code. When the If an affidavit is filed in the probate court, the~~ 254
~~trial court shall send to the probate court a copy copies of all~~ 255
~~written reports of the defendant's mental condition that were~~ 256
~~prepared pursuant to section 2945.371 of the Revised Code.~~ 257

The trial court may issue the temporary order of detention 258
that a probate court may issue under section 5122.11 or 5123.71 of 259
the Revised Code, to remain in effect until the probable cause or 260
initial hearing in the probate court. Further proceedings in the 261
probate court are ~~then~~ civil proceedings governed by Chapter 5122. 262
or 5123. of the Revised Code. 263

~~The chief clinical officer of the hospital or facility, the~~ 264
~~managing officer of the institution, the director of the program,~~ 265
~~or the person to which the defendant is committed or admitted~~ 266
~~shall send, at least ten days prior to the discharge or~~ 267
~~immediately upon learning of a change to voluntary status, written~~ 268
~~notice to the prosecutor of the date on which the defendant will~~ 269
~~be discharged or has been admitted on voluntary status.~~ 270

~~(D) If the court finds that the defendant is incompetent to~~ 271
~~stand trial and it appears to the court, through a review of the~~ 272
~~report of an examiner or otherwise, that the defendant is mentally~~ 273
~~ill or mentally retarded, but that there is a substantial~~ 274

~~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
which a sentence of death or life imprisonment may be imposed for
conviction of;

(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;

(c) A conspiracy to commit, an attempt to commit, or complicity in the commission of an offense described in division (C)(1)(a) or (b) of this section if the conspiracy, attempt, or complicity is a felony of the first or second degree. 306
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(2) Six months, if the most serious offense with which the defendant is charged is a felony other than a felony described in division (C)(1) of this section; 310
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(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; 313
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(4) Thirty days, if the most serious offense with which the defendant is charged is a misdemeanor of the third or fourth degree, a minor misdemeanor, or an unclassified misdemeanor. 333
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(D) Any defendant who is committed pursuant to this division section shall not voluntarily admit self the defendant or be 336
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voluntarily admitted to a hospital or institution pursuant to 338
section 5122.02 ~~of the Revised Code or to an institution pursuant~~ 339
~~to section, 5122.15, 5123.69, or 5123.76~~ of the Revised Code. 340

(E) Except as otherwise provided in this division, a 341
defendant who is charged with an offense and is committed to a 342
hospital or other institution by the court under this section 343
shall not be granted unsupervised on-grounds movement, supervised 344
off-grounds movement, or nonsecured status. The court may grant a 345
defendant supervised off-grounds movement to obtain medical 346
treatment or specialized habilitation treatment services if the 347
person who supervises the treatment or the continuing evaluation 348
and treatment of the defendant ordered under division (B)(1)(a) of 349
this section informs the court that the treatment or continuing 350
evaluation and treatment cannot be provided at the hospital or the 351
institution to which the defendant is committed. The chief 352
clinical officer of the hospital or the managing officer of the 353
institution to which the defendant is committed or a designee of 354
either of those persons may grant a defendant movement to a 355
medical facility for an emergency medical situation with 356
appropriate supervision to ensure the safety of the defendant, 357
staff, and community during that emergency medical situation. The 358
chief clinical officer of the hospital or the managing officer of 359
the institution shall notify the court within twenty-four hours of 360
the defendant's movement to the medical facility for an emergency 361
medical situation under this division. 362

(F) The person who supervises the treatment or continuing 363
evaluation and treatment of a defendant ordered to undergo 364
treatment or continuing evaluation and treatment under division 365
~~(D)~~(B)(1)(a) of this section shall file a written report with the 366
court ~~and send copies to the prosecutor and defense counsel~~ at the 367
following times: 368

(1) ~~After the first ninety days of treatment and after each~~ 369

~~one hundred eighty days of treatment thereafter;~~ 370

~~(2) Whenever the person believes the defendant is competent
to stand trial;~~ 371
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~~(3) Whenever the person believes that there is not a
substantial probability that the defendant will become competent
to stand trial;~~ 373
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~~(4) Fourteen capable of understanding the nature and
objective of the proceedings against the defendant or of assisting
in the defendant's defense;~~ 376
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~~(2) For a felony offense, fourteen days before expiration of
the maximum time an order issued under for treatment as specified
in division (D)(C) of this section may be in effect and fourteen
days before the expiration of the maximum time for continuing
evaluation and treatment as specified in division (B)(1)(a) of
this section, and, for a misdemeanor offense, ten days before the
expiration of the maximum time for treatment, as specified in that
division. (C) of this section;~~ 379
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~~(3) At a minimum, after each six months of treatment;~~ 387

~~(4) Whenever the person who supervises the treatment or
continuing evaluation and treatment of a defendant ordered under
division (B)(1)(a) of this section believes that there is not a
substantial probability that the defendant will become capable of
understanding the nature and objective of the proceedings against
the defendant or of assisting in the defendant's defense even if
the defendant is provided with a course of treatment.~~ 388
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~~(G) A report under division (F) of this section shall contain 395
the examiner's findings of the examiner, the facts in reasonable 396
detail on which the findings are based, and the examiner's opinion 397
of the examiner as to the defendant's ~~competence to stand trial~~ 398
capability of understanding the nature and objective of the 399
proceedings against the defendant or of assisting in the 400~~

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

~~(F) Within (H) If a defendant is committed pursuant to~~ 421
~~division (B)(1) of this section, within ten days after receipt of~~ 422
~~a report required by division (E) of this section the treating~~ 423
~~physician of the defendant or the examiner of the defendant who is~~ 424
~~employed or retained by the treating facility advises that there~~ 425
~~is not a substantial probability that the defendant will become~~ 426
~~capable of understanding the nature and objective of the~~ 427
~~proceedings against the defendant or of assisting in the~~ 428
~~defendant's defense even if the defendant is provided with a~~ 429
~~course of treatment, within ten days after the expiration of the~~ 430
~~maximum time for treatment as specified in division (C) of this~~ 431
~~section, within ten days after the expiration of the maximum time~~ 432
~~for continuing evaluation and treatment as specified in division~~ 433

(B)(1)(a) of this section, within thirty days after a defendant's 434
request for a hearing that is made after six months of treatment, 435
or within thirty days after being advised by the treating 436
physician or examiner that the defendant is competent to stand 437
trial, whichever is the earliest, the court shall hold a conduct 438
another hearing on the issue of the competence of to determine if 439
the defendant is competent to stand trial, as provided in section 440
2945.37 of the Revised Code, and shall do whichever of the 441
following is applicable: 442

(1) If at the conclusion of the hearing the court finds that 443
the defendant is competent to stand trial, the defendant shall be 444
proceeded against as provided by law. If 445

(2) If the court finds that the defendant is incompetent to 446
stand trial, but that there is a substantial probability that the 447
defendant will become competent to stand trial before expiration 448
of if the defendant is provided with a course of treatment, and 449
the maximum time limit specified for treatment under as specified 450
in division (D)(C) of this section has not expired, the court may 451
modify or continue in effect orders made at a previous hearing, 452
still subject to the maximum time that orders may be in effect, as 453
originally established under division (D) of this section. If, 454
after consideration of the examiner's recommendation, shall order 455
that treatment be continued, may change the facility or program at 456
which the treatment is to be continued, and shall specify whether 457
the treatment is to be continued at the same or a different 458
facility or program. 459

(3) If the court finds that the defendant is incompetent to 460
stand trial, if the defendant is charged with an offense listed in 461
division (C)(1) of this section, and if the court finds that there 462
is not a substantial probability that the defendant will become 463
competent to stand trial within even if the defendant is provided 464
with a course of treatment, or if the maximum time that orders may 465

~~be in effect, as originally established under for treatment 466
relative to that offense as specified in division (D)(C) of this 467
section, the court shall make a disposition as under division (C) 468
of this section. 469~~

~~(G) The has expired, further proceedings shall be as provided 470
in sections 2945.39, 2945.401, and 2945.402 of the Revised Code. 471
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~~(4) If the court finds that the defendant is incompetent to 473
stand trial, if the most serious offense with which the defendant 474
is charged is a misdemeanor or a felony other than a felony listed 475
in division (C)(1) of this section, and if the court finds that 476
there is not a substantial probability that the defendant will 477
become competent to stand trial even if the defendant is provided 478
with a course of treatment, or if the maximum time for treatment 479
relative to that offense as specified in division (C) of this 480
section has expired, the court shall dismiss the indictment, 481
information, or complaint against a the defendant finally found 482
incompetent to stand trial under division (C), (D), or (F) of this 483
section or whenever the prosecutor notifies the court the 484
prosecutor does not intend to prosecute the charges specified in 485
the indictment, information, or complaint. A 486~~

~~(H) A dismissal under this division (G) of this section is 487
not a bar to further criminal proceedings prosecution based on the 488
same conduct unless all of the following conditions are present: 489~~

~~(1) After a finding under division (C), (D), or (F) of this 490
section that the defendant was incompetent to stand trial, an 491
affidavit alleging that the defendant was mentally ill and subject 492
to hospitalization by court order or mentally retarded and subject 493
to institutionalization by court order was filed and the defendant 494
either was found mentally ill or mentally retarded and subject to 495
hospitalization or institutionalization by court order, but was 496
later released, or was not so found. Whenever the issue of 497~~

~~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.~~

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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 (C)(1) of this section who are
committed by the probate court subsequent to the court's or
prosecutor's filing of an affidavit for civil commitment under
authority of this division:~~

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~~(a) The chief clinical officer of the hospital or facility,~~

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the managing officer of the institution, the director of the 530
program, or the person to which the defendant is committed or 531
admitted shall do all of the following: 532

(i) Notify the prosecutor, in writing, of the discharge of 533
the defendant, send the notice at least ten days prior to the 534
discharge unless the discharge is by the probate court, and state 535
in the notice the date on which the defendant will be discharged; 536

(ii) Notify the prosecutor, in writing, when the defendant is 537
absent without leave or is granted unsupervised, off-grounds 538
movement, and send this notice promptly after the discovery of the 539
absence without leave or prior to the granting of the 540
unsupervised, off-grounds movement, whichever is applicable; 541

(iii) Notify the prosecutor, in writing, of the change of the 542
defendant's commitment or admission to voluntary status, send the 543
notice promptly upon learning of the change to voluntary status, 544
and state in the notice the date on which the defendant was 545
committed or admitted on a voluntary status. 546

(b) Upon receiving notice that the defendant will be granted 547
unsupervised, off-grounds movement, the prosecutor either shall 548
re-indict the defendant or promptly notify the court that the 549
prosecutor does not intend to prosecute the charges against the 550
defendant. 551

(I) If a defendant is convicted of a crime and sentenced to a 552
jail or workhouse, the defendant's sentence shall be reduced by 553
the total number of days the defendant is confined for ~~examination~~ 554
evaluation to determine the defendant's competence to stand trial 555
or treatment under this section and sections 2945.37 and 2945.371 556
of the Revised Code or by the total number of days the defendant 557
is confined for evaluation to determine the defendant's mental 558
condition at the time of the offense charged. 559

~~(J) No statement made by a defendant in an examination or~~ 560

~~hearing relating to the defendant's competence to stand trial~~ 561
~~shall be used in evidence against the defendant on the issue of~~ 562
~~guilt in any criminal action.~~ 563

~~(K) Each court of common pleas and municipal court shall~~ 564
~~designate a permanent court officer or employee to file affidavits~~ 565
~~under division (C) of this section and section 2945.40 of the~~ 566
~~Revised Code.~~ 567

Sec. 2945.39. (A) If a defendant who is charged with an 568
offense described in division (C)(1) of section 2945.38 of the 569
Revised Code is found incompetent to stand trial, after the 570
expiration of the maximum time for treatment as specified in 571
division (C) of that section or after the court finds that there 572
is not a substantial probability that the defendant will become 573
competent to stand trial even if the defendant is provided with a 574
course of treatment, one of the following applies: 575

(1) The court or the prosecutor may file an affidavit in 576
probate court for civil commitment of the defendant in the manner 577
provided in Chapter 5122. or 5123. of the Revised Code. If the 578
court or prosecutor files an affidavit for civil commitment, the 579
court may detain the defendant for ten days pending civil 580
commitment. If the probate court commits the defendant subsequent 581
to the court's or prosecutor's filing of an affidavit for civil 582
commitment, the chief clinical officer of the hospital or 583
facility, the managing officer of the institution, the director of 584
the program, or the person to which the defendant is committed or 585
admitted shall send to the prosecutor the notices described in 586
divisions (H)(4)(a)(i) to (iii) of section 2945.38 of the Revised 587
Code within the periods of time and under the circumstances 588
specified in those divisions. 589

(2) On the motion of the prosecutor or on its own motion, the 590
court may retain jurisdiction over the defendant if, at a hearing, 591

the court finds both of the following by clear and convincing evidence: 592
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(a) The defendant committed the offense with which the defendant is charged. 594
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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. 596
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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. 599
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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 defendant be detained for up to ten days pending the 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)(4)(a)(i) to (iii) of section 2945.38 of the Revised 606
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Code within the periods of time and under the circumstances 624
specified in those divisions. A dismissal of charges under this 625
division is not a bar to further criminal proceedings based on the 626
same conduct. 627

(D)(1) If the court conducts a hearing as described in 628
division (A)(2) of this section and if the court makes the 629
findings described in divisions (A)(2)(a) and (b) of this section 630
by clear and convincing evidence, the court shall commit the 631
defendant to a hospital operated by the department of mental 632
health, a facility operated by the department of mental 633
retardation and developmental disabilities, or another medical or 634
psychiatric facility, as appropriate. In determining the place and 635
nature of the commitment, the court shall order the least 636
restrictive commitment alternative available that is consistent 637
with public safety and the welfare of the defendant. In weighing 638
these factors, the court shall give preference to protecting 639
public safety. 640

(2) If a court makes a commitment of a defendant under 641
division (D)(1) of this section, the prosecutor shall send to the 642
place of commitment all reports of the defendant's current mental 643
condition and, except as otherwise provided in this division, any 644
other relevant information, including, but not limited to, a 645
transcript of the hearing held pursuant to division (A)(2) of this 646
section, copies of relevant police reports, and copies of any 647
prior arrest and conviction records that pertain to the defendant 648
and that the prosecutor possesses. The prosecutor shall send the 649
reports of the defendant's current mental condition in every case 650
of commitment, and, unless the prosecutor determines that the 651
release of any of the other relevant information to unauthorized 652
persons would interfere with the effective prosecution of any 653
person or would create a substantial risk of harm to any person, 654
the prosecutor also shall send the other relevant information. 655

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

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