

# As Reported by the House Criminal Justice Committee

124th General Assembly

Regular Session

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Am. Sub. S. B. No. 122

SENATORS Oelslager, Espy

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## A BILL

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

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~~(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~~ 274

~~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~~

~~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.~~

~~(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;~~

~~(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;~~

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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. 339  
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(D) 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 to section, 5122.15, 5123.69, or 5123.76 of the Revised Code. 342  
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(E) Except as otherwise provided in this division, a defendant who is charged with an offense and is committed to a hospital or other institution by the court under this section shall not be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status. The court may grant a defendant supervised off-grounds movement to obtain medical treatment or specialized habilitation treatment services if the person who supervises the treatment or the continuing evaluation and treatment of the defendant ordered under division (B)(1)(a) of this section informs the court that the treatment or continuing evaluation and treatment cannot be provided at the hospital or the institution to which the defendant is committed. The chief clinical officer of the hospital or the managing officer of the institution to which the defendant is committed or a designee of either of those persons may grant a defendant movement to a medical facility for an emergency medical situation with appropriate supervision to ensure the safety of the defendant, staff, and community during that emergency medical situation. The chief clinical officer of the hospital or the managing officer of the institution shall notify the court within twenty-four hours of the defendant's movement to the medical facility for an emergency medical situation under this division. 347  
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(F) The person who supervises the treatment or continuing evaluation and treatment of a defendant ordered to undergo 369  
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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. 465

(3) If the court finds that the defendant is incompetent to 466

~~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 criminal 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  
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 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 591  
admitted shall send to the prosecutor the notices described in 592

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.

(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.

(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.

(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.

(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 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 654  
and that the prosecutor possesses. The prosecutor shall send the 655

reports of the defendant's current mental condition in every case 656  
of commitment, and, unless the prosecutor determines that the 657  
release of any of the other relevant information to unauthorized 658  
persons would interfere with the effective prosecution of any 659  
person or would create a substantial risk of harm to any person, 660  
the prosecutor also shall send the other relevant information. 661  
Upon admission of a defendant committed under division (D)(1) of 662  
this section, the place of commitment shall send to the board of 663  
alcohol, drug addiction, and mental health services or the 664  
community mental health board serving the county in which the 665  
charges against the defendant were filed a copy of all reports of 666  
the defendant's current mental condition and a copy of the other 667  
relevant information provided by the prosecutor under this 668  
division, including, if provided, a transcript of the hearing held 669  
pursuant to division (A)(2) of this section, the relevant police 670  
reports, and the prior arrest and conviction records that pertain 671  
to the defendant and that the prosecutor possesses. 672

(3) If a court makes a commitment under division (D)(1) of 673  
this section, all further proceedings shall be in accordance with 674  
sections 2945.401 and 2945.402 of the Revised Code. 675

**Section 2.** That existing sections 2945.371 and 2945.39 and 676  
section 2945.38 of the Revised Code as it results from Am. Sub. 677  
S.B. 285 of the 121st General Assembly are hereby repealed. 678

**Section 3.** This act presents section 2945.38 of the Revised 679  
Code as it existed prior to its amendment by Am. Sub. S.B. 285 of 680  
the 121st General Assembly. The revived version of that section 681  
supersedes the version of that section repealed by Section 2 of 682  
this act and omits and repeals all changes made to that section by 683  
Am. Sub. S.B. 285 of the 121st General Assembly. The omission and 684  
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