

As Reported by the Senate Judiciary Committee

133rd General Assembly

Regular Session

2019-2020

Sub. S. B. No. 58

Senator Gavarone

Cosponsor: Senator Eklund

A BILL

To amend sections 2945.37, 2945.371, 2945.38, and 1
2945.39 of the Revised Code to make changes to 2
the requirements for competency evaluations and 3
mental health treatment in criminal cases and to 4
make an appropriation. 5

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

Section 1. That sections 2945.37, 2945.371, 2945.38, and 6
2945.39 of the Revised Code be amended to read as follows: 7

Sec. 2945.37. (A) As used in sections 2945.37 to 2945.402 8
of the Revised Code: 9

(1) "Prosecutor" means a prosecuting attorney or a city 10
director of law, village solicitor, or similar chief legal 11
officer of a municipal corporation who has authority to 12
prosecute a criminal case that is before the court or the 13
criminal case in which a defendant in a criminal case has been 14
found incompetent to stand trial or not guilty by reason of 15
insanity. 16

(2) "Examiner" means either of the following: 17

(a) A psychiatrist or a licensed clinical psychologist who 18
satisfies the criteria of division (I) of section 5122.01 of the 19
Revised Code or is employed by a certified forensic center 20
designated by the department of mental health and addiction 21
services to conduct examinations or evaluations. 22

(b) For purposes of a separate intellectual disability 23
evaluation that is ordered by a court pursuant to division ~~(H)~~ 24
(I) of section 2945.371 of the Revised Code, a psychologist 25
designated by the director of developmental disabilities 26
pursuant to that section to conduct that separate intellectual 27
disability evaluation. 28

(3) "Nonsecured status" means any unsupervised, off- 29
grounds movement or trial visit from a hospital or institution, 30
or any conditional release, that is granted to a person who is 31
found incompetent to stand trial and is committed pursuant to 32
section 2945.39 of the Revised Code or to a person who is found 33
not guilty by reason of insanity and is committed pursuant to 34
section 2945.40 of the Revised Code. 35

(4) "Unsupervised, off-grounds movement" includes only 36
off-grounds privileges that are unsupervised and that have an 37
expectation of return to the hospital or institution on a daily 38
basis. 39

(5) "Trial visit" means a patient privilege of a longer 40
stated duration of unsupervised community contact with an 41
expectation of return to the hospital or institution at 42
designated times. 43

(6) "Conditional release" means a commitment status under 44
which the trial court at any time may revoke a person's 45
conditional release and order the rehospitalization or 46

reinstitutionalization of the person as described in division 47
(A) of section 2945.402 of the Revised Code and pursuant to 48
which a person who is found incompetent to stand trial or a 49
person who is found not guilty by reason of insanity lives and 50
receives treatment in the community for a period of time that 51
does not exceed the maximum prison term or term of imprisonment 52
that the person could have received for the offense in question 53
had the person been convicted of the offense instead of being 54
found incompetent to stand trial on the charge of the offense or 55
being found not guilty by reason of insanity relative to the 56
offense. 57

(7) "Licensed clinical psychologist," "mentally ill person 58
subject to court order," and "psychiatrist" have the same 59
meanings as in section 5122.01 of the Revised Code. 60

(8) "Person with an intellectual disability subject to 61
institutionalization by court order" has the same meaning as in 62
section 5123.01 of the Revised Code. 63

(B) In a criminal action in a court of common pleas, a 64
county court, or a municipal court, the court, prosecutor, or 65
defense may raise the issue of the defendant's competence to 66
stand trial. If the issue is raised before the trial has 67
commenced, the court shall hold a hearing on the issue as 68
provided in this section. If the issue is raised after the trial 69
has commenced, the court shall hold a hearing on the issue only 70
for good cause shown or on the court's own motion. 71

(C) The court shall conduct the hearing required or 72
authorized under division (B) of this section within thirty days 73
after the issue is raised, unless the defendant has been 74
referred for evaluation in which case the court shall conduct 75
the hearing within ten days after the filing of the report of 76

the evaluation or, in the case of a defendant who is ordered by 77
the court pursuant to division ~~(H)~~ (I) of section 2945.371 of 78
the Revised Code to undergo a separate intellectual disability 79
evaluation conducted by a psychologist designated by the 80
director of developmental disabilities, within ten days after 81
the filing of the report of the separate intellectual disability 82
evaluation under that division. A hearing may be continued for 83
good cause. 84

(D) The defendant shall be represented by counsel at the 85
hearing conducted under division (C) of this section. If the 86
defendant is unable to obtain counsel, the court shall appoint 87
counsel under Chapter 120. of the Revised Code or under the 88
authority recognized in division (C) of section 120.06, division 89
(E) of section 120.16, division (E) of section 120.26, or 90
section 2941.51 of the Revised Code before proceeding with the 91
hearing. 92

(E) The prosecutor and defense counsel may submit evidence 93
on the issue of the defendant's competence to stand trial. A 94
written report of the evaluation of the defendant may be 95
admitted into evidence at the hearing by stipulation, but, if 96
either the prosecution or defense objects to its admission, the 97
report may be admitted under sections 2317.36 to 2317.38 of the 98
Revised Code or any other applicable statute or rule. 99

(F) The court shall not find a defendant incompetent to 100
stand trial solely because the defendant is receiving or has 101
received treatment as a voluntary or involuntary mentally ill 102
patient under Chapter 5122. or a voluntary or involuntary 103
resident with an intellectual disability under Chapter 5123. of 104
the Revised Code or because the defendant is receiving or has 105
received psychotropic drugs or other medication, even if the 106

defendant might become incompetent to stand trial without the 107
drugs or medication. 108

(G) A defendant is presumed to be competent to stand 109
trial. If, after a hearing, the court finds by a preponderance 110
of the evidence that, because of the defendant's present mental 111
condition, the defendant is incapable of understanding the 112
nature and objective of the proceedings against the defendant or 113
of assisting in the defendant's defense, the court shall find 114
the defendant incompetent to stand trial and shall enter an 115
order authorized by section 2945.38 of the Revised Code. 116

(H) Municipal courts shall follow the procedures set forth 117
in sections 2945.37 to 2945.402 of the Revised Code. Except as 118
provided in section 2945.371 of the Revised Code, a municipal 119
court shall not order an evaluation of the defendant's 120
competence to stand trial or the defendant's mental condition at 121
the time of the commission of the offense to be conducted at any 122
hospital operated by the department of mental health and 123
addiction services. Those evaluations shall be performed through 124
community resources including, but not limited to, certified 125
forensic centers, court probation departments, and community 126
mental health services providers. All expenses of the 127
evaluations shall be borne by the legislative authority of the 128
municipal court, as defined in section 1901.03 of the Revised 129
Code, and shall be taxed as costs in the case. If a defendant is 130
found incompetent to stand trial or not guilty by reason of 131
insanity, a municipal court may commit the defendant as provided 132
in sections 2945.38 to 2945.402 of the Revised Code. 133

Sec. 2945.371. (A) If the issue of a defendant's 134
competence to stand trial is raised or if a defendant enters a 135
plea of not guilty by reason of insanity, the court may order 136

one or more evaluations of the defendant's present mental 137
condition or, in the case of a plea of not guilty by reason of 138
insanity, of the defendant's mental condition at the time of the 139
offense charged. An examiner shall conduct the evaluation. 140

(B) If the court orders more than one evaluation under 141
division (A) of this section, the prosecutor and the defendant 142
may recommend to the court an examiner whom each prefers to 143
perform one of the evaluations. If a defendant enters a plea of 144
not guilty by reason of insanity and if the court does not 145
designate an examiner recommended by the defendant, the court 146
shall inform the defendant that the defendant may have 147
independent expert evaluation and that, if the defendant is 148
unable to obtain independent expert evaluation, it will be 149
obtained for the defendant at public expense if the defendant is 150
indigent. 151

(C) (1) If the court orders an evaluation under division 152
(A) of this section, the defendant shall be available at the 153
times and places established by the examiners who are to conduct 154
the evaluation. The examiners may conduct the evaluation through 155
electronic means. The court may order a defendant who has been 156
released on bail or recognizance to submit to an evaluation 157
under this section. ~~If~~ 158

(2) Except as provided in division (E) of this section, if 159
a defendant who has been released on bail or recognizance 160
refuses to submit to a complete evaluation, the court may amend 161
the conditions of bail or recognizance and order the sheriff to 162
take the defendant into custody and deliver the defendant to a 163
center, program, or facility operated or certified by the 164
department of mental health and addiction services or the 165
department of developmental disabilities where the defendant may 166

be held for evaluation for a reasonable period of time not to 167
exceed twenty days. 168

(D) (1) A defendant who has not been released on bail or 169
recognizance may be evaluated at the defendant's place of 170
detention. ~~Upon~~ 171

(2) Except as provided in division (E) of this section, 172
upon the request of the examiner, the court may order the 173
sheriff to transport the defendant to a program or facility 174
operated or certified by the department of mental health and 175
addiction services or the department of developmental 176
disabilities, where the defendant may be held for evaluation for 177
a reasonable period of time not to exceed twenty days, and to 178
return the defendant to the place of detention after the 179
evaluation. A municipal court may make an order under this 180
division only upon the request of a certified forensic center 181
examiner. 182

(E) The court shall not order a defendant to be held for 183
evaluation in a center, program, or facility operated by the 184
department of mental health and addiction services or the 185
department of developmental disabilities unless the defendant is 186
charged with a felony or an offense of violence or unless the 187
court determines that the defendant is in need of immediate 188
hospitalization. 189

(F) If a court orders the evaluation to determine a 190
defendant's mental condition at the time of the offense charged, 191
the court shall inform the examiner of the offense with which 192
the defendant is charged. 193

~~(F)~~ (G) In conducting an evaluation of a defendant's 194
mental condition at the time of the offense charged, the 195

examiner shall consider all relevant evidence and may conduct 196
the evaluation through electronic means. If the offense charged 197
involves the use of force against another person, the relevant 198
evidence to be considered includes, but is not limited to, any 199
evidence that the defendant suffered, at the time of the 200
commission of the offense, from the "battered woman syndrome." 201

~~(G)~~ (H) The examiner shall file a written report with the 202
court, under seal, within thirty days after entry of a court 203
order for evaluation, ~~and the~~. The court shall provide copies 204
of the report to the prosecutor and defense counsel and shall 205
allow for inspection of the report by the defendant, the 206
defendant's guardian, and any mental health professional 207
involved in the treatment of the defendant, but the report shall 208
not be open to public inspection. The report shall include all 209
of the following: 210

(1) The examiner's findings; 211

(2) The facts in reasonable detail on which the findings 212
are based; 213

(3) If the evaluation was ordered to determine the 214
defendant's competence to stand trial, all of the following 215
findings or recommendations that are applicable: 216

(a) Whether the defendant is capable of understanding the 217
nature and objective of the proceedings against the defendant or 218
of assisting in the defendant's defense; 219

(b) If the examiner's opinion is that the defendant is 220
incapable of understanding the nature and objective of the 221
proceedings against the defendant or of assisting in the 222
defendant's defense, whether the defendant presently is mentally 223
ill or has an intellectual disability and, if the examiner's 224

opinion is that the defendant presently has an intellectual 225
disability, whether the defendant appears to be a person with an 226
intellectual disability subject to institutionalization by court 227
order; 228

(c) If the examiner's opinion is that the defendant is 229
incapable of understanding the nature and objective of the 230
proceedings against the defendant or of assisting in the 231
defendant's defense, the examiner's opinion as to the likelihood 232
of the defendant becoming capable of understanding the nature 233
and objective of the proceedings against the defendant and of 234
assisting in the defendant's defense within one year if the 235
defendant is provided with a course of treatment; 236

(d) If the examiner's opinion is that the defendant is 237
incapable of understanding the nature and objective of the 238
proceedings against the defendant or of assisting in the 239
defendant's defense and that the defendant presently is mentally 240
ill or has an intellectual disability, the examiner's 241
recommendation as to the least restrictive placement or 242
commitment alternative, including consideration of housing needs 243
and the availability of mental health treatment in the 244
community, consistent with the defendant's treatment needs for 245
restoration to competency and with the safety of the community. 246

(4) If the evaluation was ordered to determine the 247
defendant's mental condition at the time of the offense charged, 248
the examiner's findings as to whether the defendant, at the time 249
of the offense charged, did not know, as a result of a severe 250
mental disease or defect, the wrongfulness of the defendant's 251
acts charged. 252

~~(H)~~ (I) If the examiner's report filed under division ~~(G)~~ 253
(H) of this section indicates that in the examiner's opinion the 254

defendant is incapable of understanding the nature and objective 255
of the proceedings against the defendant or of assisting in the 256
defendant's defense and that in the examiner's opinion the 257
defendant appears to be a person with an intellectual disability 258
subject to institutionalization by court order, the court shall 259
order the defendant to undergo a separate intellectual 260
disability evaluation conducted by a psychologist designated by 261
the director of developmental disabilities. Divisions (C) to ~~(F)~~ 262
(G) of this section apply in relation to a separate intellectual 263
disability evaluation conducted under this division. The 264
psychologist appointed under this division to conduct the 265
separate intellectual disability evaluation shall file a written 266
report with the court within thirty days after the entry of the 267
court order requiring the separate intellectual disability 268
evaluation, and the court shall provide copies of the report to 269
the prosecutor and defense counsel. The report shall include all 270
of the information described in divisions ~~(G) (1)~~ (H) (1) to (4) 271
of this section. If the court orders a separate intellectual 272
disability evaluation of a defendant under this division, the 273
court shall not conduct a hearing under divisions (B) to (H) of 274
section 2945.37 of the Revised Code regarding that defendant 275
until a report of the separate intellectual disability 276
evaluation conducted under this division has been filed. Upon 277
the filing of that report, the court shall conduct the hearing 278
within the period of time specified in division (C) of section 279
2945.37 of the Revised Code. 280

~~(I)~~ (J) An examiner appointed under divisions (A) and (B) 281
of this section or under division ~~(H)~~ (I) of this section to 282
evaluate a defendant to determine the defendant's competence to 283
stand trial also may be appointed to evaluate a defendant who 284
has entered a plea of not guilty by reason of insanity, but an 285

examiner of that nature shall prepare separate reports on the 286
issue of competence to stand trial and the defense of not guilty 287
by reason of insanity. 288

~~(J)~~ (K) No statement that a defendant makes in an 289
evaluation or hearing under divisions (A) to ~~(H)~~ (I) of this 290
section relating to the defendant's competence to stand trial or 291
to the defendant's mental condition at the time of the offense 292
charged shall be used against the defendant on the issue of 293
guilt in any criminal action or proceeding, but, in a criminal 294
action or proceeding, the prosecutor or defense counsel may call 295
as a witness any person who evaluated the defendant or prepared 296
a report pursuant to a referral under this section. Neither the 297
appointment nor the testimony of an examiner appointed under 298
this section precludes the prosecutor or defense counsel from 299
calling other witnesses or presenting other evidence on 300
competency or insanity issues. 301

~~(K)~~ (L) Persons appointed as examiners under divisions (A) 302
and (B) of this section or under division ~~(H)~~ (I) of this 303
section shall be paid a reasonable amount for their services and 304
expenses, as certified by the court. The certified amount shall 305
be paid by the county in the case of county courts and courts of 306
common pleas and by the legislative authority, as defined in 307
section 1901.03 of the Revised Code, in the case of municipal 308
courts. 309

Sec. 2945.38. (A) If the issue of a defendant's competence 310
to stand trial is raised and if the court, upon conducting the 311
hearing provided for in section 2945.37 of the Revised Code, 312
finds that the defendant is competent to stand trial, the 313
defendant shall be proceeded against as provided by law. If the 314
court finds the defendant competent to stand trial and the 315

defendant is receiving psychotropic drugs or other medication, 316
the court may authorize the continued administration of the 317
drugs or medication or other appropriate treatment in order to 318
maintain the defendant's competence to stand trial, unless the 319
defendant's attending physician advises the court against 320
continuation of the drugs, other medication, or treatment. 321

(B) (1) (a) If, after taking into consideration all relevant 322
reports, information, and other evidence, the court finds that 323
the defendant is incompetent to stand trial and that there is a 324
substantial probability that the defendant will become competent 325
to stand trial within one year if the defendant is provided with 326
a course of treatment, the court shall order the defendant to 327
undergo treatment. If the defendant has been charged with a 328
felony offense and if, after taking into consideration all 329
relevant reports, information, and other evidence, the court 330
finds that the defendant is incompetent to stand trial, but the 331
court is unable at that time to determine whether there is a 332
substantial probability that the defendant will become competent 333
to stand trial within one year if the defendant is provided with 334
a course of treatment, the court shall order continuing 335
evaluation and treatment of the defendant for a period not to 336
exceed four months to determine whether there is a substantial 337
probability that the defendant will become competent to stand 338
trial within one year if the defendant is provided with a course 339
of treatment. 340

(b) The court order for the defendant to undergo treatment 341
or continuing evaluation and treatment under division (B) (1) (a) 342
of this section shall specify that the defendant, if determined 343
to require mental health treatment or continuing evaluation and 344
treatment, either shall be committed to the department of mental 345
health and addiction services for treatment or continuing 346

evaluation and treatment at a hospital, facility, or agency, as 347
determined to be clinically appropriate by the department of 348
mental health and addiction services or shall be committed to a 349
facility certified by the department of mental health and 350
addiction services as being qualified to treat mental illness, 351
to a public or community mental health facility, to a county 352
board of alcohol, drug addiction, and mental health services, or 353
to a psychiatrist or another mental health professional for 354
treatment or continuing evaluation and treatment. ~~Prior-Within~~ 355
forty-eight hours prior to placing the defendant, the department 356
of mental health and addiction services shall ~~obtain-inform the~~ 357
court ~~approval-for-and the prosecutor of~~ that placement 358
~~following a hearing~~. The court order for the defendant to 359
undergo treatment or continuing evaluation and treatment under 360
division (B)(1)(a) of this section shall specify that the 361
defendant, if determined to require treatment or continuing 362
evaluation and treatment for an intellectual disability, shall 363
receive treatment or continuing evaluation and treatment at an 364
institution or facility operated by the department of 365
developmental disabilities, at a facility certified by the 366
department of developmental disabilities as being qualified to 367
treat intellectual disabilities, at a public or private 368
intellectual disabilities facility, or by a psychiatrist or 369
another intellectual disabilities professional. In any case, the 370
order may restrict the defendant's freedom of movement as the 371
court considers necessary. The prosecutor in the defendant's 372
case shall send to the chief clinical officer of the hospital, 373
facility, or agency where the defendant is placed by the 374
department of mental health and addiction services, or to the 375
managing officer of the institution, the director of the program 376
or facility, or the person to which the defendant is committed, 377
copies of relevant police reports and other background 378

information that pertains to the defendant and is available to 379
the prosecutor unless the prosecutor determines that the release 380
of any of the information in the police reports or any of the 381
other background information to unauthorized persons would 382
interfere with the effective prosecution of any person or would 383
create a substantial risk of harm to any person. 384

In determining the place of commitment, the court shall 385
consider the extent to which the person is a danger to the 386
person and to others, the need for security, the availability of 387
housing and supportive services, including outpatient mental 388
health services, and the type of crime involved and shall order 389
the least restrictive alternative available that is consistent 390
with public safety and treatment goals. In weighing these 391
factors, the court shall give preference to protecting public 392
safety and the availability of housing and supportive services. 393

(c) If the defendant is found incompetent to stand trial, 394
if the chief clinical officer of the hospital, facility, or 395
agency where the defendant is placed, or the managing officer of 396
the institution, the director of the program or facility, or the 397
person to which the defendant is committed for treatment or 398
continuing evaluation and treatment under division (B)(1)(b) of 399
this section determines that medication is necessary to restore 400
the defendant's competency to stand trial, and if the defendant 401
lacks the capacity to give informed consent or refuses 402
medication, the chief clinical officer of the hospital, 403
facility, or agency where the defendant is placed, or the 404
managing officer of the institution, the director of the program 405
or facility, or the person to which the defendant is committed 406
for treatment or continuing evaluation and treatment may 407
petition the court for authorization for the involuntary 408
administration of medication. The court shall hold a hearing on 409

the petition within five days of the filing of the petition if 410
the petition was filed in a municipal court or a county court 411
regarding an incompetent defendant charged with a misdemeanor or 412
within ten days of the filing of the petition if the petition 413
was filed in a court of common pleas regarding an incompetent 414
defendant charged with a felony offense. Following the hearing, 415
the court may authorize the involuntary administration of 416
medication or may dismiss the petition. 417

(2) If the court finds that the defendant is incompetent 418
to stand trial and that, even if the defendant is provided with 419
a course of treatment, there is not a substantial probability 420
that the defendant will become competent to stand trial within 421
one year, the court shall order the discharge of the defendant, 422
unless upon motion of the prosecutor or on its own motion, the 423
court either seeks to retain jurisdiction over the defendant 424
pursuant to section 2945.39 of the Revised Code or files an 425
affidavit in the probate court for the civil commitment of the 426
defendant pursuant to Chapter 5122. or 5123. of the Revised Code 427
alleging that the defendant is a mentally ill person subject to 428
court order or a person with an intellectual disability subject 429
to institutionalization by court order. If an affidavit is filed 430
in the probate court, the trial court shall send to the probate 431
court copies of all written reports of the defendant's mental 432
condition that were prepared pursuant to section 2945.371 of the 433
Revised Code. 434

The trial court may issue the temporary order of detention 435
that a probate court may issue under section 5122.11 or 5123.71 436
of the Revised Code, to remain in effect until the probable 437
cause or initial hearing in the probate court. Further 438
proceedings in the probate court are civil proceedings governed 439
by Chapter 5122. or 5123. of the Revised Code. 440

(C) No defendant shall be required to undergo treatment, 441
including any continuing evaluation and treatment, under 442
division (B) (1) of this section for longer than whichever of the 443
following periods is applicable: 444

(1) One year, if the most serious offense with which the 445
defendant is charged is one of the following offenses: 446

(a) Aggravated murder, murder, or an offense of violence 447
for which a sentence of death or life imprisonment may be 448
imposed; 449

(b) An offense of violence that is a felony of the first 450
or second degree; 451

(c) A conspiracy to commit, an attempt to commit, or 452
complicity in the commission of an offense described in division 453
(C) (1) (a) or (b) of this section if the conspiracy, attempt, or 454
complicity is a felony of the first or second degree. 455

(2) Six months, if the most serious offense with which the 456
defendant is charged is a felony other than a felony described 457
in division (C) (1) of this section; 458

(3) Sixty days, if the most serious offense with which the 459
defendant is charged is a misdemeanor of the first or second 460
degree; 461

(4) Thirty days, if the most serious offense with which 462
the defendant is charged is a misdemeanor of the third or fourth 463
degree, a minor misdemeanor, or an unclassified misdemeanor. 464

(D) Any defendant who is committed pursuant to this 465
section shall not voluntarily admit the defendant or be 466
voluntarily admitted to a hospital or institution pursuant to 467
section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised 468

Code. 469

(E) Except as otherwise provided in this division, a 470
defendant who is charged with an offense and is committed by the 471
court under this section to the department of mental health and 472
addiction services or is committed to an institution or facility 473
for the treatment of intellectual disabilities shall not be 474
granted unsupervised on-grounds movement, supervised off-grounds 475
movement, or nonsecured status except in accordance with the 476
court order. The court may grant a defendant supervised off- 477
grounds movement to obtain medical treatment or specialized 478
habilitation treatment services if the person who supervises the 479
treatment or the continuing evaluation and treatment of the 480
defendant ordered under division (B)(1)(a) of this section 481
informs the court that the treatment or continuing evaluation 482
and treatment cannot be provided at the hospital or facility 483
where the defendant is placed by the department of mental health 484
and addiction services or the institution or facility to which 485
the defendant is committed. The chief clinical officer of the 486
hospital or facility where the defendant is placed by the 487
department of mental health and addiction services or the 488
managing officer of the institution or director of the facility 489
to which the defendant is committed, or a designee of any of 490
those persons, may grant a defendant movement to a medical 491
facility for an emergency medical situation with appropriate 492
supervision to ensure the safety of the defendant, staff, and 493
community during that emergency medical situation. The chief 494
clinical officer of the hospital or facility where the defendant 495
is placed by the department of mental health and addiction 496
services or the managing officer of the institution or director 497
of the facility to which the defendant is committed shall notify 498
the court within twenty-four hours of the defendant's movement 499

to the medical facility for an emergency medical situation under 500
this division. 501

(F) The person who supervises the treatment or continuing 502
evaluation and treatment of a defendant ordered to undergo 503
treatment or continuing evaluation and treatment under division 504
(B) (1) (a) of this section shall file a written report with the 505
court at the following times: 506

(1) Whenever the person believes the defendant is capable 507
of understanding the nature and objective of the proceedings 508
against the defendant and of assisting in the defendant's 509
defense; 510

(2) For a felony offense, fourteen days before expiration 511
of the maximum time for treatment as specified in division (C) 512
of this section and fourteen days before the expiration of the 513
maximum time for continuing evaluation and treatment as 514
specified in division (B) (1) (a) of this section, and, for a 515
misdemeanor offense, ten days before the expiration of the 516
maximum time for treatment, as specified in division (C) of this 517
section; 518

(3) At a minimum, after each six months of treatment; 519

(4) Whenever the person who supervises the treatment or 520
continuing evaluation and treatment of a defendant ordered under 521
division (B) (1) (a) of this section believes that there is not a 522
substantial probability that the defendant will become capable 523
of understanding the nature and objective of the proceedings 524
against the defendant or of assisting in the defendant's defense 525
even if the defendant is provided with a course of treatment. 526

(G) A report under division (F) of this section shall 527
contain the examiner's findings, the facts in reasonable detail 528

on which the findings are based, and the examiner's opinion as to the defendant's capability of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense. If, in the examiner's opinion, the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense and there is a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense if the defendant is provided with a course of treatment, if in the examiner's opinion the defendant remains mentally ill or continues to have an intellectual disability, and if the maximum time for treatment as specified in division (C) of this section has not expired, the report also shall contain the examiner's recommendation as to the least restrictive placement or commitment alternative that is consistent with the defendant's treatment needs for restoration to competency and with the safety of the community. The court shall provide copies of the report to the prosecutor and defense counsel.

(H) If a defendant is committed pursuant to division (B) (1) of this section, within ten days after the treating physician of the defendant or the examiner of the defendant who is employed or retained by the treating facility advises that there is not a substantial probability that the defendant will become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense even if the defendant is provided with a course of treatment, within ten days after the expiration of the maximum time for treatment as specified in division (C) of this section, within ten days after the expiration of the maximum

time for continuing evaluation and treatment as specified in 560
division (B) (1) (a) of this section, within thirty days after a 561
defendant's request for a hearing that is made after six months 562
of treatment, or within thirty days after being advised by the 563
treating physician or examiner that the defendant is competent 564
to stand trial, whichever is the earliest, the court shall 565
conduct another hearing to determine if the defendant is 566
competent to stand trial and shall do whichever of the following 567
is applicable: 568

(1) If the court finds that the defendant is competent to 569
stand trial, the defendant shall be proceeded against as 570
provided by law. 571

(2) If the court finds that the defendant is incompetent 572
to stand trial, but that there is a substantial probability that 573
the defendant will become competent to stand trial if the 574
defendant is provided with a course of treatment, and the 575
maximum time for treatment as specified in division (C) of this 576
section has not expired, the court, after consideration of the 577
examiner's recommendation, shall order that treatment be 578
continued, may change the facility or program at which the 579
treatment is to be continued, and shall specify whether the 580
treatment is to be continued at the same or a different facility 581
or program. 582

(3) If the court finds that the defendant is incompetent 583
to stand trial, if the defendant is charged with an offense 584
listed in division (C) (1) of this section, and if the court 585
finds that there is not a substantial probability that the 586
defendant will become competent to stand trial even if the 587
defendant is provided with a course of treatment, or if the 588
maximum time for treatment relative to that offense as specified 589

in division (C) of this section has expired, further proceedings 590
shall be as provided in sections 2945.39, 2945.401, and 2945.402 591
of the Revised Code. 592

(4) If the court finds that the defendant is incompetent 593
to stand trial, if the most serious offense with which the 594
defendant is charged is a misdemeanor or a felony other than a 595
felony listed in division (C)(1) of this section, and if the 596
court finds that there is not a substantial probability that the 597
defendant will become competent to stand trial even if the 598
defendant is provided with a course of treatment, or if the 599
maximum time for treatment relative to that offense as specified 600
in division (C) of this section has expired, the court shall 601
dismiss the indictment, information, or complaint against the 602
defendant. A dismissal under this division is not a bar to 603
further prosecution based on the same conduct. The court shall 604
discharge the defendant unless the court or prosecutor files an 605
affidavit in probate court for civil commitment pursuant to 606
Chapter 5122. or 5123. of the Revised Code. If an affidavit for 607
civil commitment is filed, the court may ~~detain the defendant~~ 608
~~for ten days~~ enter an interim order of civil commitment for the 609
defendant, pending civil commitmenta hearing in the probate 610
court within thirty days, and the court may appoint a limited 611
guardian for the defendant for the purpose of making mental 612
health treatment decisions. The court has jurisdiction to 613
appoint a guardian for the defendant notwithstanding anything to 614
the contrary in section 2101.24 of the Revised Code. All of the 615
requirements for a guardianship under Chapter 2112. of the 616
Revised Code shall apply to a guardianship created under this 617
division except that a guardianship under this division is 618
temporary and terminates upon the probate court's disposition of 619
the affidavit for civil commitment. All of the following 620

provisions apply to persons charged with a misdemeanor or a 621
felony other than a felony listed in division (C)(1) of this 622
section who are committed by the probate court subsequent to the 623
court's or prosecutor's filing of an affidavit for civil 624
commitment under authority of this division: 625

(a) The chief clinical officer of the entity, hospital, or 626
facility, the managing officer of the institution, the director 627
of the program, or the person to which the defendant is 628
committed or admitted shall do all of the following: 629

(i) Notify the prosecutor, in writing, of the discharge of 630
the defendant, send the notice at least ten days prior to the 631
discharge unless the discharge is by the probate court, and 632
state in the notice the date on which the defendant will be 633
discharged; 634

(ii) Notify the prosecutor, in writing, when the defendant 635
is absent without leave or is granted unsupervised, off-grounds 636
movement, and send this notice promptly after the discovery of 637
the absence without leave or prior to the granting of the 638
unsupervised, off-grounds movement, whichever is applicable; 639

(iii) Notify the prosecutor, in writing, of the change of 640
the defendant's commitment or admission to voluntary status, 641
send the notice promptly upon learning of the change to 642
voluntary status, and state in the notice the date on which the 643
defendant was committed or admitted on a voluntary status. 644

(b) Upon receiving notice that the defendant will be 645
granted unsupervised, off-grounds movement, the prosecutor 646
either shall re-indict the defendant or promptly notify the 647
court that the prosecutor does not intend to prosecute the 648
charges against the defendant. 649

(I) If a defendant is convicted of a crime and sentenced 650
to a jail or workhouse, the defendant's sentence shall be 651
reduced by the total number of days the defendant is confined 652
for evaluation to determine the defendant's competence to stand 653
trial or treatment under this section and sections 2945.37 and 654
2945.371 of the Revised Code or by the total number of days the 655
defendant is confined for evaluation to determine the 656
defendant's mental condition at the time of the offense charged. 657

Sec. 2945.39. (A) If a defendant who is charged with an 658
offense described in division (C) (1) of section 2945.38 of the 659
Revised Code is found incompetent to stand trial, after the 660
expiration of the maximum time for treatment as specified in 661
division (C) of that section or after the court finds that there 662
is not a substantial probability that the defendant will become 663
competent to stand trial even if the defendant is provided with 664
a course of treatment, one of the following applies: 665

(1) The court or the prosecutor may file an affidavit in 666
probate court for civil commitment of the defendant in the 667
manner provided in Chapter 5122. or 5123. of the Revised Code. 668
If the court or prosecutor files an affidavit for civil 669
commitment, the court may ~~detain the defendant for ten days~~ 670
enter an interim order of civil commitment for the defendant, 671
pending a civil commitment hearing in the probate court that 672
shall be held within thirty days. If the probate court commits 673
the defendant subsequent to the court's or prosecutor's filing 674
of an affidavit for civil commitment, the chief clinical officer 675
of the entity, hospital, or facility, the managing officer of 676
the institution, the director of the program, or the person to 677
which the defendant is committed or admitted shall send to the 678
prosecutor the notices described in divisions (H) (4) (a) (i) to 679
(iii) of section 2945.38 of the Revised Code within the periods 680

of time and under the circumstances specified in those 681
divisions. 682

(2) On the motion of the prosecutor or on its own motion, 683
the court may retain jurisdiction over the defendant if, at a 684
hearing, the court finds both of the following by clear and 685
convincing evidence: 686

(a) The defendant committed the offense with which the 687
defendant is charged. 688

(b) The defendant is a mentally ill person subject to 689
court order or a person with an intellectual disability subject 690
to institutionalization by court order. 691

(B) In making its determination under division (A) (2) of 692
this section as to whether to retain jurisdiction over the 693
defendant, the court may consider all relevant evidence, 694
including, but not limited to, any relevant psychiatric, 695
psychological, or medical testimony or reports, the acts 696
constituting the offense charged, and any history of the 697
defendant that is relevant to the defendant's ability to conform 698
to the law. 699

(C) If the court conducts a hearing as described in 700
division (A) (2) of this section and if the court does not make 701
both findings described in divisions (A) (2) (a) and (b) of this 702
section by clear and convincing evidence, the court shall 703
dismiss the indictment, information, or complaint against the 704
defendant. Upon the dismissal, the court shall discharge the 705
defendant unless the court or prosecutor files an affidavit in 706
probate court for civil commitment of the defendant pursuant to 707
Chapter 5122. or 5123. of the Revised Code. If the court or 708
prosecutor files an affidavit for civil commitment, the court 709

may order that the defendant be detained for up to ten days 710
pending the civil commitment. If the probate court commits the 711
defendant subsequent to the court's or prosecutor's filing of an 712
affidavit for civil commitment, the chief clinical officer of 713
the entity, hospital, or facility, the managing officer of the 714
institution, the director of the program, or the person to which 715
the defendant is committed or admitted shall send to the 716
prosecutor the notices described in divisions (H) (4) (a) (i) to 717
(iii) of section 2945.38 of the Revised Code within the periods 718
of time and under the circumstances specified in those 719
divisions. A dismissal of charges under this division is not a 720
bar to further criminal proceedings based on the same conduct. 721

(D) (1) If the court conducts a hearing as described in 722
division (A) (2) of this section and if the court makes the 723
findings described in divisions (A) (2) (a) and (b) of this 724
section by clear and convincing evidence, the court shall commit 725
the defendant, if determined to require mental health treatment, 726
either to the department of mental health and addiction services 727
for treatment at a hospital, facility, or agency as determined 728
clinically appropriate by the department of mental health and 729
addiction services or to another medical or psychiatric 730
facility, as appropriate. Prior to placing the defendant, the 731
department of mental health and addiction services shall obtain 732
court approval for that placement. If the court conducts such a 733
hearing and if it makes those findings by clear and convincing 734
evidence, the court shall commit the defendant, if determined to 735
require treatment for an intellectual disability, to a facility 736
operated by the department of developmental disabilities, or 737
another facility, as appropriate. In determining the place of 738
commitment, the court shall consider the extent to which the 739
person is a danger to the person and to others, the need for 740

security, and the type of crime involved and shall order the 741
least restrictive alternative available that is consistent with 742
public safety and the welfare of the defendant. In weighing 743
these factors, the court shall give preference to protecting 744
public safety. 745

(2) If a court makes a commitment of a defendant under 746
division (D)(1) of this section, the prosecutor shall send to 747
the hospital, facility, or agency where the defendant is placed 748
by the department of mental health and addiction services or to 749
the defendant's place of commitment all reports of the 750
defendant's current mental condition and, except as otherwise 751
provided in this division, any other relevant information, 752
including, but not limited to, a transcript of the hearing held 753
pursuant to division (A)(2) of this section, copies of relevant 754
police reports, and copies of any prior arrest and conviction 755
records that pertain to the defendant and that the prosecutor 756
possesses. The prosecutor shall send the reports of the 757
defendant's current mental condition in every case of 758
commitment, and, unless the prosecutor determines that the 759
release of any of the other relevant information to unauthorized 760
persons would interfere with the effective prosecution of any 761
person or would create a substantial risk of harm to any person, 762
the prosecutor also shall send the other relevant information. 763
Upon admission of a defendant committed under division (D)(1) of 764
this section, the place of commitment shall send to the board of 765
alcohol, drug addiction, and mental health services or the 766
community mental health board serving the county in which the 767
charges against the defendant were filed a copy of all reports 768
of the defendant's current mental condition and a copy of the 769
other relevant information provided by the prosecutor under this 770
division, including, if provided, a transcript of the hearing 771

held pursuant to division (A) (2) of this section, the relevant 772
police reports, and the prior arrest and conviction records that 773
pertain to the defendant and that the prosecutor possesses. 774

(3) If a court makes a commitment under division (D) (1) of 775
this section, all further proceedings shall be in accordance 776
with sections 2945.401 and 2945.402 of the Revised Code. 777

Section 2. That existing sections 2945.37, 2945.371, 778
2945.38, and 2945.39 of the Revised Code are hereby repealed. 779

Section 3. All items in this section are hereby 780
appropriated as designated out of any moneys in the state 781
treasury to the credit of the designated fund. For all 782
appropriations made in this act, those in the first column are 783
for fiscal year 2020 and those in the second column are for 784
fiscal year 2021. The appropriations made in this act are in 785
addition to any other appropriations made for the FY 2020-FY 786
2021 biennium. 787

788

	1	2	3	4	5
A	DMH DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES				
B	General Revenue Fund				
C	GRF	336428	Guardianships	\$ 250,000	\$ 250,000
D	TOTAL GRF General Revenue Fund			\$ 250,000	\$ 250,000
GUARDIANSHIPS					
The foregoing appropriation item 336428, Guardianships,					

shall be used to help pay the costs associated with the 791
appointment of guardians in accordance with section 2945.38 of 792
the Revised Code. 793

Section 4. Within the limits set forth in this act, the 794
Director of Budget and Management shall establish accounts 795
indicating the source and amount of funds for each appropriation 796
made in this act, and shall determine the form and manner in 797
which appropriation accounts shall be maintained. Expenditures 798
from appropriations contained in this act shall be accounted for 799
as though made in Am. Sub. H.B. 166 of the 133rd General 800
Assembly. 801

The appropriations made in this act are subject to all 802
provisions of Am. Sub. H.B. 166 of the 133rd General Assembly 803
that are generally applicable to such appropriations. 804