

**As Introduced**

**132nd General Assembly  
Regular Session  
2017-2018**

**H. B. No. 778**

**Representative Gavarone**

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**A BILL**

To amend sections 2945.37 and 2945.371 of the 1  
Revised Code to prohibit a court from ordering 2  
certain offenders to undergo an inpatient 3  
competency evaluation at a facility operated by 4  
the Department of Mental Health and Addiction 5  
Services or the Department of Developmental 6  
Disabilities. 7

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

**Section 1.** That sections 2945.37 and 2945.371 of the 8  
Revised Code be amended to read as follows: 9

**Sec. 2945.37.** (A) As used in sections 2945.37 to 2945.402 10  
of the Revised Code: 11

(1) "Prosecutor" means a prosecuting attorney or a city 12  
director of law, village solicitor, or similar chief legal 13  
officer of a municipal corporation who has authority to 14  
prosecute a criminal case that is before the court or the 15  
criminal case in which a defendant in a criminal case has been 16  
found incompetent to stand trial or not guilty by reason of 17  
insanity. 18

(2) "Examiner" means either of the following: 19

(a) A psychiatrist or a licensed clinical psychologist who 20  
satisfies the criteria of division (I) of section 5122.01 of the 21  
Revised Code or is employed by a certified forensic center 22  
designated by the department of mental health and addiction 23  
services to conduct examinations or evaluations. 24

(b) For purposes of a separate intellectual disability 25  
evaluation that is ordered by a court pursuant to division ~~(H)~~ 26  
(I) of section 2945.371 of the Revised Code, a psychologist 27  
designated by the director of developmental disabilities 28  
pursuant to that section to conduct that separate intellectual 29  
disability evaluation. 30

(3) "Nonsecured status" means any unsupervised, off- 31  
grounds movement or trial visit from a hospital or institution, 32  
or any conditional release, that is granted to a person who is 33  
found incompetent to stand trial and is committed pursuant to 34  
section 2945.39 of the Revised Code or to a person who is found 35  
not guilty by reason of insanity and is committed pursuant to 36  
section 2945.40 of the Revised Code. 37

(4) "Unsupervised, off-grounds movement" includes only 38  
off-grounds privileges that are unsupervised and that have an 39  
expectation of return to the hospital or institution on a daily 40  
basis. 41

(5) "Trial visit" means a patient privilege of a longer 42  
stated duration of unsupervised community contact with an 43  
expectation of return to the hospital or institution at 44  
designated times. 45

(6) "Conditional release" means a commitment status under 46  
which the trial court at any time may revoke a person's 47  
conditional release and order the rehospitalization or 48

reinstitutionalization of the person as described in division 49  
(A) of section 2945.402 of the Revised Code and pursuant to 50  
which a person who is found incompetent to stand trial or a 51  
person who is found not guilty by reason of insanity lives and 52  
receives treatment in the community for a period of time that 53  
does not exceed the maximum prison term or term of imprisonment 54  
that the person could have received for the offense in question 55  
had the person been convicted of the offense instead of being 56  
found incompetent to stand trial on the charge of the offense or 57  
being found not guilty by reason of insanity relative to the 58  
offense. 59

(7) "Licensed clinical psychologist," "mentally ill person 60  
subject to court order," and "psychiatrist" have the same 61  
meanings as in section 5122.01 of the Revised Code. 62

(8) "Person with an intellectual disability subject to 63  
institutionalization by court order" has the same meaning as in 64  
section 5123.01 of the Revised Code. 65

(B) In a criminal action in a court of common pleas, a 66  
county court, or a municipal court, the court, prosecutor, or 67  
defense may raise the issue of the defendant's competence to 68  
stand trial. If the issue is raised before the trial has 69  
commenced, the court shall hold a hearing on the issue as 70  
provided in this section. If the issue is raised after the trial 71  
has commenced, the court shall hold a hearing on the issue only 72  
for good cause shown or on the court's own motion. 73

(C) The court shall conduct the hearing required or 74  
authorized under division (B) of this section within thirty days 75  
after the issue is raised, unless the defendant has been 76  
referred for evaluation in which case the court shall conduct 77  
the hearing within ten days after the filing of the report of 78

the evaluation or, in the case of a defendant who is ordered by 79  
the court pursuant to division ~~(H)~~(I) of section 2945.371 of 80  
the Revised Code to undergo a separate intellectual disability 81  
evaluation conducted by a psychologist designated by the 82  
director of developmental disabilities, within ten days after 83  
the filing of the report of the separate intellectual disability 84  
evaluation under that division. A hearing may be continued for 85  
good cause. 86

(D) The defendant shall be represented by counsel at the 87  
hearing conducted under division (C) of this section. If the 88  
defendant is unable to obtain counsel, the court shall appoint 89  
counsel under Chapter 120. of the Revised Code or under the 90  
authority recognized in division (C) of section 120.06, division 91  
(E) of section 120.16, division (E) of section 120.26, or 92  
section 2941.51 of the Revised Code before proceeding with the 93  
hearing. 94

(E) The prosecutor and defense counsel may submit evidence 95  
on the issue of the defendant's competence to stand trial. A 96  
written report of the evaluation of the defendant may be 97  
admitted into evidence at the hearing by stipulation, but, if 98  
either the prosecution or defense objects to its admission, the 99  
report may be admitted under sections 2317.36 to 2317.38 of the 100  
Revised Code or any other applicable statute or rule. 101

(F) The court shall not find a defendant incompetent to 102  
stand trial solely because the defendant is receiving or has 103  
received treatment as a voluntary or involuntary mentally ill 104  
patient under Chapter 5122. or a voluntary or involuntary 105  
resident with an intellectual disability under Chapter 5123. of 106  
the Revised Code or because the defendant is receiving or has 107  
received psychotropic drugs or other medication, even if the 108

defendant might become incompetent to stand trial without the 109  
drugs or medication. 110

(G) A defendant is presumed to be competent to stand 111  
trial. If, after a hearing, the court finds by a preponderance 112  
of the evidence that, because of the defendant's present mental 113  
condition, the defendant is incapable of understanding the 114  
nature and objective of the proceedings against the defendant or 115  
of assisting in the defendant's defense, the court shall find 116  
the defendant incompetent to stand trial and shall enter an 117  
order authorized by section 2945.38 of the Revised Code. 118

(H) Municipal courts shall follow the procedures set forth 119  
in sections 2945.37 to 2945.402 of the Revised Code. Except as 120  
provided in section 2945.371 of the Revised Code, a municipal 121  
court shall not order an evaluation of the defendant's 122  
competence to stand trial or the defendant's mental condition at 123  
the time of the commission of the offense to be conducted at any 124  
hospital operated by the department of mental health and 125  
addiction services. Those evaluations shall be performed through 126  
community resources including, but not limited to, certified 127  
forensic centers, court probation departments, and community 128  
mental health services providers. All expenses of the 129  
evaluations shall be borne by the legislative authority of the 130  
municipal court, as defined in section 1901.03 of the Revised 131  
Code, and shall be taxed as costs in the case. If a defendant is 132  
found incompetent to stand trial or not guilty by reason of 133  
insanity, a municipal court may commit the defendant as provided 134  
in sections 2945.38 to 2945.402 of the Revised Code. 135

**Sec. 2945.371.** (A) If the issue of a defendant's 136  
competence to stand trial is raised or if a defendant enters a 137  
plea of not guilty by reason of insanity, the court may order 138

one or more evaluations of the defendant's present mental 139  
condition or, in the case of a plea of not guilty by reason of 140  
insanity, of the defendant's mental condition at the time of the 141  
offense charged. An examiner shall conduct the evaluation. 142

(B) If the court orders more than one evaluation under 143  
division (A) of this section, the prosecutor and the defendant 144  
may recommend to the court an examiner whom each prefers to 145  
perform one of the evaluations. If a defendant enters a plea of 146  
not guilty by reason of insanity and if the court does not 147  
designate an examiner recommended by the defendant, the court 148  
shall inform the defendant that the defendant may have 149  
independent expert evaluation and that, if the defendant is 150  
unable to obtain independent expert evaluation, it will be 151  
obtained for the defendant at public expense if the defendant is 152  
indigent. 153

(C) (1) If the court orders an evaluation under division 154  
(A) of this section, the defendant shall be available at the 155  
times and places established by the examiners who are to conduct 156  
the evaluation. The court may order a defendant who has been 157  
released on bail or recognizance to submit to an evaluation 158  
under this section. ~~If~~ 159

(2) Except as provided in division (E) of this section, if 160  
a defendant who has been released on bail or recognizance 161  
refuses to submit to a complete evaluation, the court may amend 162  
the conditions of bail or recognizance and order the sheriff to 163  
take the defendant into custody and deliver the defendant to a 164  
center, program, or facility operated or certified by the 165  
department of mental health and addiction services or the 166  
department of developmental disabilities where the defendant may 167  
be held for evaluation for a reasonable period of time not to 168

exceed twenty days. 169

(D) (1) A defendant who has not been released on bail or 170  
recognizance may be evaluated at the defendant's place of 171  
detention. 172

~~Upon~~ (2) Except as provided in division (E) of this 173  
section, upon the request of the examiner, the court may order 174  
the sheriff to transport the defendant to a program or facility 175  
operated or certified by the department of mental health and 176  
addiction services or the department of developmental 177  
disabilities, where the defendant may be held for evaluation for 178  
a reasonable period of time not to exceed twenty days, and to 179  
return the defendant to the place of detention after the 180  
evaluation. A municipal court may make an order under this 181  
division only upon the request of a certified forensic center 182  
examiner. 183

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

(F) If a court orders the evaluation to determine a 189  
defendant's mental condition at the time of the offense charged, 190  
the court shall inform the examiner of the offense with which 191  
the defendant is charged. 192

~~(F)~~ (G) In conducting an evaluation of a defendant's 193  
mental condition at the time of the offense charged, the 194  
examiner shall consider all relevant evidence. If the offense 195  
charged involves the use of force against another person, the 196  
relevant evidence to be considered includes, but is not limited 197

to, any evidence that the defendant suffered, at the time of the 198  
commission of the offense, from the "battered woman syndrome." 199

~~(G)~~ (H) The examiner shall file a written report with the 200  
court within thirty days after entry of a court order for 201  
evaluation, and the court shall provide copies of the report to 202  
the prosecutor and defense counsel. The report shall include all 203  
of the following: 204

(1) The examiner's findings; 205

(2) The facts in reasonable detail on which the findings 206  
are based; 207

(3) If the evaluation was ordered to determine the 208  
defendant's competence to stand trial, all of the following 209  
findings or recommendations that are applicable: 210

(a) Whether the defendant is capable of understanding the 211  
nature and objective of the proceedings against the defendant or 212  
of assisting in the defendant's defense; 213

(b) If the examiner's opinion is that the defendant is 214  
incapable of understanding the nature and objective of the 215  
proceedings against the defendant or of assisting in the 216  
defendant's defense, whether the defendant presently is mentally 217  
ill or has an intellectual disability and, if the examiner's 218  
opinion is that the defendant presently has an intellectual 219  
disability, whether the defendant appears to be a person with an 220  
intellectual disability subject to institutionalization by court 221  
order; 222

(c) If the examiner's opinion is that the defendant is 223  
incapable of understanding the nature and objective of the 224  
proceedings against the defendant or of assisting in the 225  
defendant's defense, the examiner's opinion as to the likelihood 226



of the defendant becoming capable of understanding the nature 227  
and objective of the proceedings against the defendant and of 228  
assisting in the defendant's defense within one year if the 229  
defendant is provided with a course of treatment; 230

(d) If the examiner's opinion is that the defendant is 231  
incapable of understanding the nature and objective of the 232  
proceedings against the defendant or of assisting in the 233  
defendant's defense and that the defendant presently is mentally 234  
ill or has an intellectual disability, the examiner's 235  
recommendation as to the least restrictive placement or 236  
commitment alternative, consistent with the defendant's 237  
treatment needs for restoration to competency and with the 238  
safety of the community. 239

(4) If the evaluation was ordered to determine the 240  
defendant's mental condition at the time of the offense charged, 241  
the examiner's findings as to whether the defendant, at the time 242  
of the offense charged, did not know, as a result of a severe 243  
mental disease or defect, the wrongfulness of the defendant's 244  
acts charged. 245

~~(H)~~(I) If the examiner's report filed under division ~~(G)~~ 246  
(H) of this section indicates that in the examiner's opinion the 247  
defendant is incapable of understanding the nature and objective 248  
of the proceedings against the defendant or of assisting in the 249  
defendant's defense and that in the examiner's opinion the 250  
defendant appears to be a person with an intellectual disability 251  
subject to institutionalization by court order, the court shall 252  
order the defendant to undergo a separate intellectual 253  
disability evaluation conducted by a psychologist designated by 254  
the director of developmental disabilities. Divisions (C) to ~~(F)~~ 255  
(G) of this section apply in relation to a separate intellectual 256

disability evaluation conducted under this division. The 257  
psychologist appointed under this division to conduct the 258  
separate intellectual disability evaluation shall file a written 259  
report with the court within thirty days after the entry of the 260  
court order requiring the separate intellectual disability 261  
evaluation, and the court shall provide copies of the report to 262  
the prosecutor and defense counsel. The report shall include all 263  
of the information described in divisions ~~(G)~~(H) (1) to (4) of 264  
this section. If the court orders a separate intellectual 265  
disability evaluation of a defendant under this division, the 266  
court shall not conduct a hearing under divisions (B) to (H) of 267  
section 2945.37 of the Revised Code regarding that defendant 268  
until a report of the separate intellectual disability 269  
evaluation conducted under this division has been filed. Upon 270  
the filing of that report, the court shall conduct the hearing 271  
within the period of time specified in division (C) of section 272  
2945.37 of the Revised Code. 273

~~(I)~~(J) An examiner appointed under divisions (A) and (B) 274  
of this section or under division ~~(H)~~(I) of this section to 275  
evaluate a defendant to determine the defendant's competence to 276  
stand trial also may be appointed to evaluate a defendant who 277  
has entered a plea of not guilty by reason of insanity, but an 278  
examiner of that nature shall prepare separate reports on the 279  
issue of competence to stand trial and the defense of not guilty 280  
by reason of insanity. 281

(J) No statement that a defendant makes in an evaluation 282  
or hearing under divisions (A) to ~~(H)~~(I) of this section 283  
relating to the defendant's competence to stand trial or to the 284  
defendant's mental condition at the time of the offense charged 285  
shall be used against the defendant on the issue of guilt in any 286  
criminal action or proceeding, but, in a criminal action or 287

proceeding, the prosecutor or defense counsel may call as a 288  
witness any person who evaluated the defendant or prepared a 289  
report pursuant to a referral under this section. Neither the 290  
appointment nor the testimony of an examiner appointed under 291  
this section precludes the prosecutor or defense counsel from 292  
calling other witnesses or presenting other evidence on 293  
competency or insanity issues. 294

(K) Persons appointed as examiners under divisions (A) and 295  
(B) of this section or under division ~~(H)~~(I) of this section 296  
shall be paid a reasonable amount for their services and 297  
expenses, as certified by the court. The certified amount shall 298  
be paid by the county in the case of county courts and courts of 299  
common pleas and by the legislative authority, as defined in 300  
section 1901.03 of the Revised Code, in the case of municipal 301  
courts. 302

**Section 2.** That existing sections 2945.37 and 2945.371 of 303  
the Revised Code are hereby repealed. 304