Department of Behavioral Health

Competency to Stand Trial and Dispositions

The information contained in this resource is a compilation of statutes, court rules, and court decisions in the State of Ohio, and it is intended as a summary of the law to assist judges, lawyers, and the general public. The information does not represent binding statements of law by the Supreme Court of Ohio.

Competency to Stand Trial and Dispositions

February 2026

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Gina White Palmer
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Office of Court Services

Stephanie Graubner Nelson

DIRECTOR

Sarah Schregardus

POLICY COUNSEL

Ryan Stickel

POLICY COUNSEL

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Planning Committee:

Judge Alison Breaux, *Summit County Court of Common Pleas, General Division*

Judge Joyce Campbell, (ret.), *Fairfield Municipal Court*

Chris Freeman-Clark, *Coordinator of Forensic Services, Summit County Alcohol, Drug Addiction & Mental Health Services Board*

Amy Gerstmeyer, *Director of Clinical Services, Ohio Department of Behavioral Health*

Dr. Lisa Gordish, *Director of Forensic Services, Ohio Department of Behavioral Health*

April Jones, *Forensic Coordinator, Ohio Department of Behavioral Health*

Tara Schultz, *Assistant Director of Forensic Services, Ohio Department of Behavioral Health*

Misdemeanor Competency Evaluations & Orders

Circumstance	Competency Hearing (CH) Type	Time Requirements for Hearing	R.C. Section
Competency is raised	Initial	30 calendar days of competency being raised. Court will decide whether to order a competency evaluation	R.C. 2945.37 (C)
Court orders competency evaluation and evaluation is received	Evaluator's opinion	CH is due within 10 days of filing of the competency report	R.C. 2945.37 (C)
Competency report identifies defendant to be a person with intellectual disability (ID), court will order separate report and report to be received	After ID evaluation	CH is due within 10 days of the filing of the competency report	R.C. 2945.37 (C); R.C. 2945.371 (I)
Defendant is unable or unwilling to submit to a competency evaluation	Uncooperative defendant	Once notified by examiner of uncooperative defendant, hearing must be within 10 days	R.C. 2945.37 (C)
Competency restoration provider opines defendant competent after treatment prior to maximum timeframe reached	Post restoration treatment opinion	Opinion is competent – CH is due within 30 days of filing of competency report or letter from examiner	R.C. 2945.38(H)
Competency restoration provider opines defendant unrestorable within timeframe after treatment period	Post restoration treatment, unrestorable opinion	CH is due within 10 days of filing of competency report or letter from examiner	R.C. 2945.38(H)
Maximum time for restoration treatment or continuing evaluation of treatment has been reached	Post restoration treatment, maximum time reached	CH is due within 10 days of filing of competency report or letter from examiner	R.C. 2945.38(H)

Misdemeanor Competency Disposition Findings

Disposition	Court Action	R.C. Section
Defendant uncooperative with competency evaluation	Defendant remains uncooperative, court may then order 20 day inpatient evaluation for offenses of violence	R.C. 2945.371 (C)(2); R.C. 2945.371 (D)(2); R.C. 2945.371 (E)
Incompetent to stand trial AND NOT restorable	Dismiss the case, OR court/prosecutor files affidavit for civil commitment	R.C. 2945.38 (B)(2); R.C. 2945.38 (H)(4)
Incompetent to stand trial AND restorable (violent misdemeanor)	Order restoration treatment in least restrictive environment	R.C. 2945.38 (B)(1)(a)(vi)
Incompetent to stand trial AND restorable (non-violent misdemeanor)	Order outpatient restoration treatment OR dismiss and court/prosecutor files affidavit for civil commitment	R.C. 2945.38 (B)(1)(a)(v)
Incompetent to stand trial, but restoration is uncertain (violent misdemeanor)	Order restoration treatment in least restrictive environment	R.C. 2945.38 (B)(1)(a)(iii); R.C. 2945.38 (C)
Incompetent to stand trial, but restoration is uncertain (non-violent misdemeanor)	Dismiss charges and court/prosecutor files affidavit for civil commitment	R.C. 2945.38 (B)(1)(a)(iv)

Stakeholder's Responsibilities

- Competency Restoration Timeframes - 60 Days (misdemeanor 1 or 2) OR 30 days (misdemeanor 3, 4, or minor misdemeanor).
- Ohio Department of Behavioral Health hospital must notify court within 24 hours of any outside emergency medical transport - R.C. 2945.38 (E).
- Treatment provider's competency post-restoration report is due to court within 10 days prior to the expiration of treatment time frame – R.C. 2945.38 (H).

Violent Misdemeanors

- Procedural similarities: Many procedures mirror those for felonies, including competency hearings, treatment options, and medication. Treatment time is considerably shorter.
- Prosecutorial discretion: If incompetent to stand trial, the prosecutor may recommend dismissal, civil commitment, or competency restoration treatment in an inpatient or outpatient setting (R.C. 2945.38 (B)(1)(a)(vi)).
- If unrestorable: Court may not retain jurisdiction but prosecutor may recommend civil commitment procedures, or request the court order continued evaluation and treatment in the least restrictive environment.

Non-Violent Misdemeanors

- Disposition Pathways: Outpatient competency restoration, civil commitment, or dismissal of case.
- If unrestorable: If restoration is unlikely, charges shall be dismissed, and court may file an affidavit for civil commitment (R.C. 2945.38 (B)(1)(a)(iv)).

Maximum Time for Restoration

- Sixty days: Misdemeanors of the first or second degree.
- Thirty days: Misdemeanors of the third or fourth degree, minor misdemeanors, or unclassified misdemeanors.
- *Note that these are maximum timeframes, and defendant may regain competency before these periods expire.*

Additional Considerations

- Individualized assessments: Each case requires a thorough evaluation to determine the appropriate course of action.
- Least restrictive alternative: The court must prioritize the least restrictive treatment or placement option, inclusive of the forensic examiner's opinion.
- Defendant's rights: Safeguards are in place to protect the defendant's rights throughout the process (See below).

Procedural Safeguards

- Right to a hearing: Defendants have the right to a hearing to determine their competency.
- Least restrictive alternative: The court must consider the least restrictive placement or commitment alternative for the defendant.
- Involuntary medication: Strict procedures are in place for the involuntary administration of medication, including a court hearing. Jurisdictional case law may dictate response to involuntary medication requests (see *Cleveland v. Tarver*, 2017-Ohio-1165).
- Regular reports: Regular reports on the defendant's progress must be filed with the court (at maximum time expiration for misdemeanor offenses).
- Discharge or commitment: If competency cannot be restored, specific procedures are outlined for discharging the defendant or initiating civil commitment proceedings.
- Time limits: Time limits are imposed on treatment to prevent indefinite confinement.

Key Points

- Competency evaluation: Motions for competency may be accompanied by motions for sanity evaluations. The court order shall clearly state only if opined to be competent to stand trial, then proceed with sanity evaluation.
- Evaluation process: evaluations can be conducted in person or electronically, often via one of Ohio's certified Forensic Evaluation Centers and the defendant must cooperate. If released on bail, the defendant may be detained for evaluation if they refuse.
- Expert involvement: If the court orders more than one evaluation, the prosecutor and defendant can recommend evaluators, and the defendant has the right to independent evaluation.
- Report and findings: Evaluators must submit a sealed report to the court within 30 days. The report includes findings on competency and potential treatment recommendations.
- Burden of proof: Parties can stipulate to the evaluator's report. Court makes finding by clear and convincing evidence that (a) the defendant committed the offense and (b) the defendant has a mental illness subject to court order or is a person with an intellectual disability subject to institutionalization by court order.
- Confidentiality: The report is confidential, but can be accessed by certain parties under specific circumstances (R.C. 2945.371(H)).
- Intellectual disability evaluation: If intellectual disability is suspected, a separate evaluation is ordered.
- Use of statements: Statements made during evaluations cannot be used against the defendant in a criminal trial.
- Expert compensation: All evaluations are the financial responsibility of the defendant, county, or municipality.

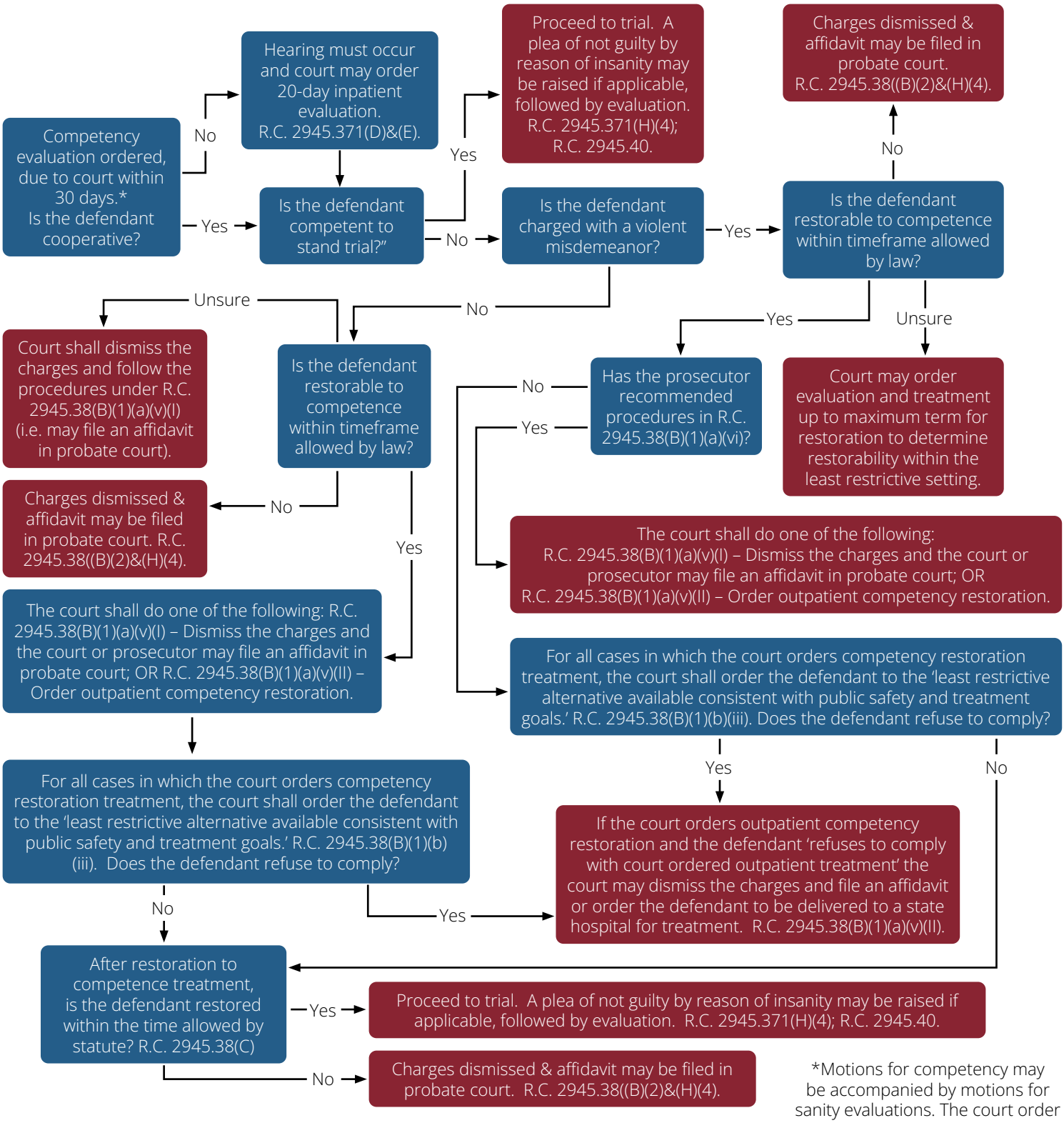
Civil Commitment Procedures

- Civil commitment procedures are outlined in the Ohio Revised Code, primarily under Chapter 5112. Or 5123. These chapters detail the process for determining whether an individual is a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization.
- If a court determines that a defendant is incompetent to stand trial and there's a substantial risk of physical harm to themselves or others, the court or prosecutor can file an affidavit in probate court initiating the civil commitment process.

Key Steps in the Civil Commitment Process Typically Include:

- Filing of affidavit: The trial court or prosecutor files an affidavit in probate court alleging that the defendant meets the criteria for civil commitment.
- Temporary detention: The trial court may detain the defendant for up to ten days pending a hearing in probate court.
- Probate court hearing: The probate court conducts a hearing to determine if the individual meets the criteria for civil commitment.
- Commitment order: If the probate court finds that the individual meets the criteria, a civil commitment order is issued, specifying the terms of the commitment.

Competence to Stand Trial Process: Misdemeanor Offenses



This flowchart is a simplified overview of the forensic mental health system, as it relates to misdemeanor offenses. Some information is not included. Please consult Ohio Revised Code Sections 2945.37 to 2945.402 for complete information.

*Motions for competency may be accompanied by motions for sanity evaluations. The court order shall clearly state only if opined to be competent to stand trial, then proceed with sanity evaluation.

Felony Competency Evaluations & Orders

Circumstance	Competency Hearing (CH) Type	Time Requirements for Hearing	R.C. Section
Competency is raised	Initial	30 calendar days of competency being raised. Court will decide whether to order a competency evaluation	R.C. 2945.37 (C)
Court orders competency evaluation and evaluation is received	Evaluator's opinion	CH is due within 10 days of filing of the competency report	R.C. 2945.37 (C)
Competency report identifies defendant to be a person with intellectual disability (ID), court will order separate report and report to be received	After ID evaluation	CH is due within 10 days of the filing of the competency report	R.C. 2945.37 (C); R.C. 2945.371 (I)
Defendant is unable or unwilling to submit to a competency evaluation	Uncooperative defendant	Once notified by examiner of uncooperative defendant, hearing must be within 10 days	R.C. 2945.37 (C)
Competency restoration provider opines defendant competent after treatment prior to maximum timeframe reached	Post restoration treatment opinion	Opinion is competent - CH is due within 30 days of filing of competency report or letter from examiner	R.C. 945.38(H)
Competency restoration provider opines defendant unrestorable within timeframe after treatment period	Post restoration treatment, unrestorable opinion	CH is due within 10 days of filing of competency report or letter from examiner	R.C. 945.38(H)
Maximum time for restoration treatment or continuing evaluation of treatment has been reached	Post restoration treatment, maximum time reached	CH is due within 10 days of filing of competency report or letter from examiner	R.C. 945.38(H)
Defendant requests a competency hearing after undergoing at least 6 months of treatment (applies to violent felony 1 & 2 only)	Defendant requested hearing	CH is due within 30 days after request for hearing is made	R.C. 945.38(H)

Felony Competency Disposition Findings

Disposition	Court Action	R.C. Section
Defendant uncooperative with competency evaluation	Defendant remains uncooperative, court may then order 20 day inpatient evaluation for offenses of violence	R.C. 2945.371 (C)(2); R.C. 2945.371 (D)(2); R.C. 2945.371 (E)
Incompetent to stand trial AND unrestorable (IST-U) (Felony 3, 4, and 5)	Dismiss the case, OR court/prosecutor files affidavit for civil commitment	R.C. 2945.38 (H)(4)
Incompetent to stand trial AND unrestorable (IST-U-CJ/IST-U) (For violent felony 1 or 2)	Dismiss the case, OR court/prosecutor files affidavit for civil commitment, OR court retains jurisdiction	R.C. 2945.38 (B)(2); R.C. 2945.39 (A)
Incompetent to stand trial AND restorable (IST-R)	Order restoration treatment in least restrictive environment for either up to 6 months (felony 3, 4, and 5) OR 1 year (felony 1 or 2)	R.C. 2945.38 (C) R.C. 2945.39 (B)
Incompetent to stand trial, but restoration is uncertain (violent misdemeanor)	Court can order defendant to an Ohio DBH hospital for up to 4 months to evaluate for competency probability	R.C. 2945.38 (B)(1)(a)(ii)

Stakeholder's Responsibilities

- Ohio Department of Behavioral Health hospital must notify court within 24 hours of any outside emergency medical transport - R.C. 2945.38 (E)
- Treatment provider's competency post-restoration report is due to court within 14 days prior to the expiration of treatment time frame for felony offenses - R.C. 2945.38 (F)(2)
- Treatment provider shall submit competency restoration status report to the court after 6 months of restoration treatment. This only applies for violent felony 1 and 2 who have been ordered for 1 year competency restoration - R.C. 2945.38 (F)(3)

Statutory Authority

- Competency determination: Hearing to determine if defendant is competent to stand trial. (R.C. 2945.37)
- Incompetency and potential restoration within a year: Court orders treatment. (R.C. 2945.38 (B)(1)(a)(i))
- Incompetency and uncertain restoration: Restoration within a year is uncertain, continued evaluation and treatment for up to four months is ordered. (R.C. 2945.38 (B)(1)(a)(ii))
- Incompetency and no likelihood of restoration: Restoration is unlikely after evaluation and treatment, the court may seek to retain jurisdiction (felony 1 and 2 only R.C. 2945.39) OR initiate civil commitment (Chapter 5122. Or 5123).
- Medication if necessary to restore competency: The court can authorize involuntary medication upon petition from provider, must hold court hearing within 5 days of petition.(R.C. 2945.38(B)(1)(c))
- Reports and hearings: Regular reports on the defendant's progress are required, and periodic hearings are held to reassess competency. (R.C. 2945.38 (F) and (H))

Maximum Time for Restoration R.C. 2945.38 (C)

- One year: Felonies of first or second degree
- Six months: Felonies of third, fourth and fifth degree
- *Note: that these are maximum timeframes, and defendant may regain competency before these periods expire.*

Additional Considerations

- Individualized assessments: Each case requires a thorough evaluation to determine the appropriate course of action.
- Least restrictive alternative: The court must prioritize the least restrictive environment for restoration, inclusive of medication if necessary.
- Defendant's rights: Safeguards are in place to protect the defendant's rights throughout the process.

Procedural Safeguards

- Right to a hearing: Defendants have the right to a hearing to determine their competency.
- Least restrictive alternative: The court must choose the least restrictive environment or commitment alternative for the defendant.
- Involuntary medication: Strict procedures are in place for the authorization of involuntary medication, including court hearing.
- Regular reports: Regular reports on the defendant's progress must be filed with court (every 6 months for felony offenses).
- Discharge or commitment: If competency cannot be restored, the court may order discharge or commitment for felonies of first or second degree.
- Time limits: Time limits are imposed on treatment to prevent indefinite commitment.

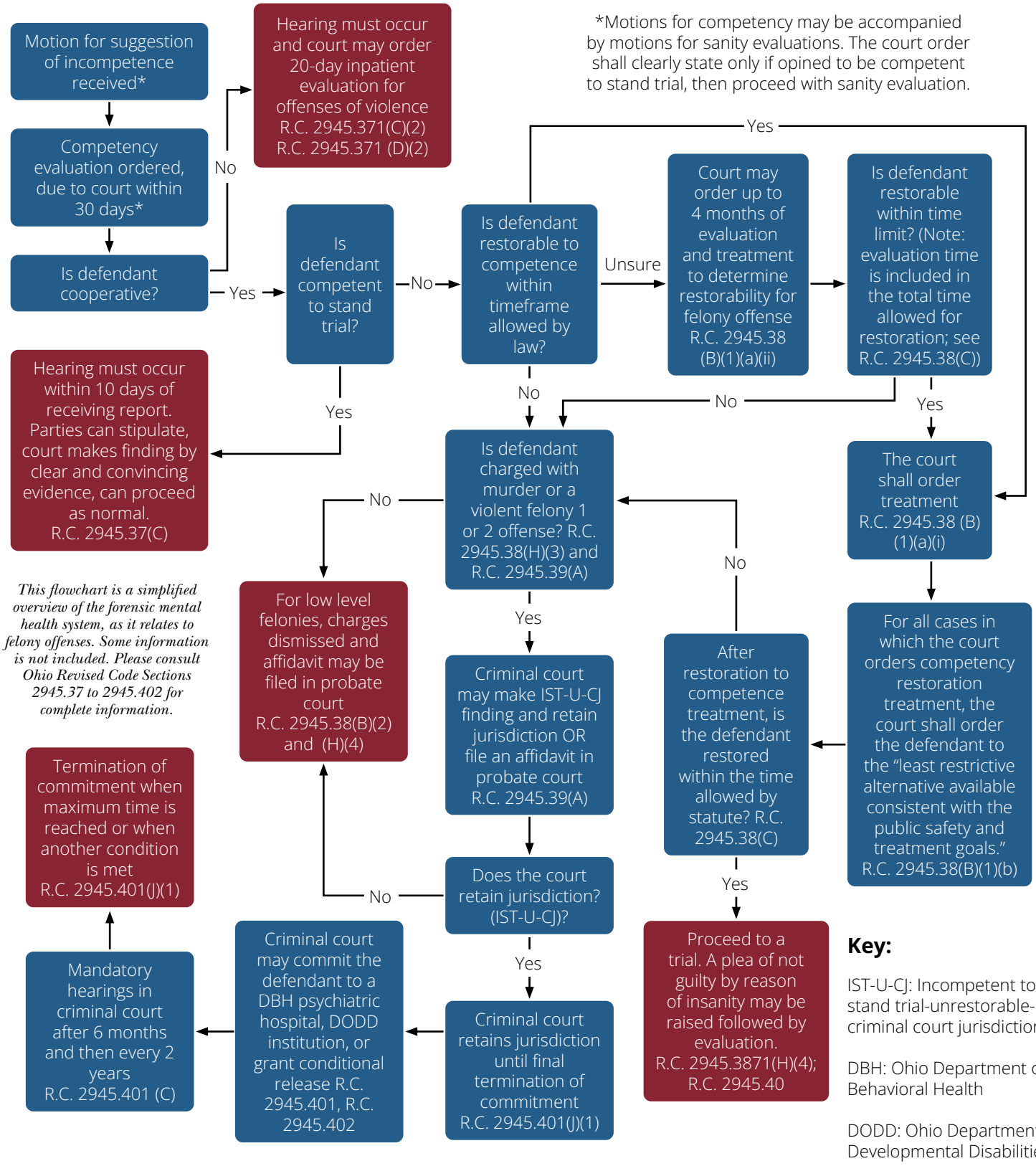
Key Points

- Competency evaluation: Motions for competency may be accompanied by motions for sanity evaluations. The court order shall clearly state only if opined to be competent to stand trial, then proceed with sanity evaluation.
- Evaluation process: Evaluations can be conducted in person or electronically, often via one of Ohio's certified Forensic Evaluation Centers and the defendant must cooperate. If released on bail, the defendant may be detained for evaluation if they are uncooperative.
- Expert involvement: If the court orders more than one evaluation, the prosecutor and defendant can recommend evaluators, and the defendant has the right to independent evaluation.
- Report and findings: Evaluators must submit a sealed report to the court within 30 days. The report includes findings on competency and potential treatment recommendations.
- Burden of proof: Parties can stipulate to the evaluator's report. Court makes finding by clear and convincing evidence that (a) the defendant committed the offense and (b) the defendant has a mental illness subject to court order or is a person with an intellectual disability subject to institutionalization by court order.
- Confidentiality: The report is confidential and placed under seal, but can be accessed by certain parties under specific circumstances. (R.C. 2945.371 (H)).
- Intellectual disability evaluation: If intellectual disability is suspected, a separate evaluation is ordered.
- Use of statements: Statements made during evaluations cannot be used against the defendant in a criminal trial.
- Expert compensation: Certified Forensic Evaluation Center initial evaluations are funded by Ohio DBH. All other evaluations are the financial responsibility of the defendant, county, or municipality.

Civil Commitment Procedures

- Civil commitment procedures are outlined in the Ohio Revised Code, primarily under Chapter 5112. Or 5123. These chapters detail the process for determining whether an individual is a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order.
- If a court determines that a defendant is incompetent to stand trial and there's a substantial risk of physical harm to themselves or others, then the court or prosecutor can file an affidavit in probate court initiating the civil commitment process.
- Key steps in the civil commitment process typically include:
  - Filing of affidavit: The court or prosecutor files an affidavit in probate court alleging that the defendant meets the criteria for civil commitment.
  - Temporary detention: The trial court may detain the defendant for up to three days pending a hearing in probate court.
  - Probate court hearing: The probate court conducts a hearing to determine if the individual meets the criteria for civil commitment.
  - Commitment order: If the court finds that the defendant meets the criteria, a civil commitment order is issued for treatment.

Competence to Stand Trial Process: Felony Offenses



*Motions for competency may be accompanied by motions for sanity evaluations. The court order shall clearly state only if opined to be competent to stand trial, then proceed with sanity evaluation.

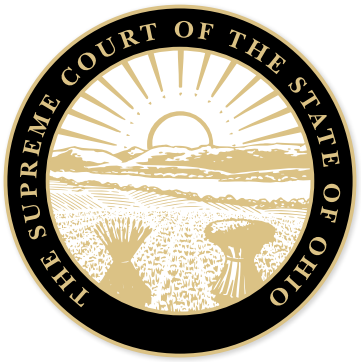
This flowchart is a simplified overview of the forensic mental health system, as it relates to felony offenses. Some information is not included. Please consult Ohio Revised Code Sections 2945.37 to 2945.402 for complete information.

Key:

IST-U-CJ: Incompetent to stand trial-unrestorable-criminal court jurisdiction

DBH: Ohio Department of Behavioral Health

DODD: Ohio Department of Developmental Disabilities



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