



**Department of
Mental Health &
Addiction Services**

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Forensic Monitor Orientation Manual

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Ohio Department of Mental Health and Addiction Services
Bureau of Forensic Services
Forensic Monitor Orientation Manual

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Forensic Monitor Orientation Manual

Introduction

This manual is intended to introduce new Forensic Monitors to the responsibilities involved in the forensic monitoring role, but it should also serve as a helpful reference for experienced Monitors. One of the purposes of this orientation manual is to present the information most frequently needed by Forensic Monitors in one easy-to-use document. This manual is not intended to replace the *Forensic Manual*. Forensic Monitors still need to be familiar with the information contained in the *Forensic Manual*.

The position of Forensic Monitor was established in 1996 by House Bill 152 and became further defined in Senate Bill 285, which became effective in 1997. ORC [340.08\(D\)](#) and [5119.29](#) define the responsibilities of each Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board, in conjunction with OhioMHAS, to develop a centralized responsibility for tracking and monitoring individuals found Not Guilty by Reason of Insanity (NGRI) or Incompetent to Stand Trial, Unrestorable, under Criminal Court Jurisdiction (IST-U-CJ) after release. These statutes further mandate the development of a uniform tracking system for individuals committed under criminal statutes ORC [2945.39](#) or [2945.40](#) from their Board area, which is the Forensic Monitoring and Tracking System ([FTAMS](#)). The third, and perhaps most important responsibility assigned to a forensic monitor, is to develop mechanisms to allow for the prompt rehospitalization, detention, or reinstitutionalization of individuals being monitored if they decompensate and represent safety risks for themselves or others in the community. The Forensic Monitor may be employed by one Board or a consortium of Boards, a Forensic Evaluation Center, a Community Support Network (CSN), or any other entity designated by the Board.

The Forensic Monitor position was created to ensure that persons who have been found NGRI or IST-U-CJ and released to the community on Conditional Release are receiving effective outpatient mental health treatment, regular risk assessments, and comprehensive risk management services. Thus, the Forensic Monitor plays an essential role in the forensic mental health system and must be well informed about how to perform this role.

The next section of this manual discusses issues commonly encountered by new Forensic Monitors, followed by a description of the specific duties of the Monitor. Then, an introduction to the criminal justice system is presented with an emphasis on the interface between mental health issues and the legal system. The following section deals with the mental health system, including the inpatient forensic system and the outpatient system as it relates to Conditional Release. Then, some of the recurring questions and difficult issues faced by Monitors are described. Finally, the Appendix contains various resources, relevant information reproduced from other sources, and sample forms.

Becoming Oriented to the Role of Forensic Monitor

You may have inherited this position with little or no orientation to this job and little experience in the forensic mental health field. This section is designed to provide some information that will help you learn your job more quickly and easily.

While some Forensic Monitors are mental health professionals, the role of Forensic Monitor is different than most roles of mental health professionals. It is *not a treatment role* and the Monitor has responsibilities to entities other than the consumer, primarily the Court that has granted Conditional Release (CR). For example, the Monitor is responsible to inform the Court when the person being monitored has violated provisions of a Conditional Release Plan that has been approved by the Court. For some Forensic Monitors, this may be an uncomfortable position, especially if the Monitor is coming from a traditional mental health background, but it is nevertheless an essential part of the role. The Monitor needs to be assertive with both clients and community mental health providers and learn to use the

leverage of the Court to ensure that the Conditional Release Plan is followed. In fact, the law requires the Monitor to inform the Court when certain events occur. [[ORC 2945.402\(C\)](#)]

It is essential to understand that a Conditional Release is a commitment by the Court. The trial court may set conditions on the release that are respectful of the treatment and welfare of the consumer but that also *emphasize the protection of public safety*. (See [ORC 2945.402](#).) It is the job of the Forensic Monitor to assist in coordinating the services that best meet those needs but he or she must always be conscious of public safety issues. Thus, Monitors need to adopt a different kind of philosophy, using the empathy of a therapist and the assertiveness of a probation officer to effectively fulfill their responsibilities.

The Forensic Monitor plays an important boundary-spanning role and must be knowledgeable about, and able to operate in, the various systems that make up the forensic mental health system. Although the Monitor must be conversant primarily with the criminal justice system and the mental health system, he or she must also be familiar with court proceedings, forensic statutes, the procedures of Regional Psychiatric Hospitals (RPHs), and the principles of risk assessment and risk management.

In addition to the Court, the Forensic Monitor is responsible to the ADAMH Board. The Board needs to be informed about the Monitor's cases because, most often, the Court's commitment is to the Board when a person is placed on CR. In some locations the commitment is to the treatment provider.

Another responsibility is to the RPHs. This is especially true when developing a new Conditional Release plan for a person who has never been on CR before, when working with the hospital staff in order to prepare a person for return to CR after a revocation, and when a person on CR needs to be returned to the hospital for stabilization.

A new Forensic Monitor should arrange to meet with the Legal Assurance Administrator(s) (LAA) of the local RPH(s). A list of the LAAs can be found on the [OhioMHAS website](#). The LAA serves as a liaison between the RPH and the courts, Forensic Monitors and community agencies. Having a good working relationship with the LAA will assist Monitors in developing Conditional Release Plans as well as being informed about their hospitalized patients and other procedures involving the RPHs, such as Movement Levels. (See [FOR-04 Movement Level policy](#).) Some Monitors meet with the LAA on a regular basis, usually monthly or quarterly, to remain informed about the status of their clients in the RPH.

A new Monitor should also arrange to meet with the director of the local Forensic Evaluation Center. Examiners at the Forensic Center, among other evaluations, perform "second opinion" evaluations of persons in the RPHs who are being considered for "Nonsecured Status," including Conditional Release (CR). The forensic center plays an important role in the process of a person being released on CR. A list of the Forensic Centers can be found [here](#).

As noted above, the Forensic Monitors' primary responsibility is to the Trial Court and therefore it is important that they have a contact person in each Court with which they work. In many courts, this person is the Bailiff, but some courts may have designated another person to handle the court's criminal docket. Court secretaries may be responsible for preparing journal entries. They may be grateful if the Monitor is able to provide a sample journal entry for the specific situation facing the court. This is especially true in courts where forensic mental health issues are infrequently encountered. Some sample entries are included in [Appendix](#) of this Manual. Some courts need reminders about when a hearing is required for someone on CR. This process can be simplified if the Monitor knows who to contact in order to have the hearing scheduled. In areas where there are several judges, there may be several different contact people.

It is also helpful to know the Prosecuting Attorneys who handle the Monitor's cases. Through the Prosecutor, the Monitor may be able to obtain information that will assist in learning more about the client's prior mental health evaluations and criminal history that is relevant for the risk

assessment/management process. Such a relationship would also help to provide education to the attorneys about the mental health issues involved.

It is strongly recommended that Forensic Monitors meet with the Judge(s) in their area. This can be arranged through the Court Administrator who schedules the regular judges' meetings. The Court frequently calls upon the Forensic Monitor for advice regarding how to proceed with cases involving mental health issues. This can occur only if the Court is aware of the identity of the Monitor and the kinds of services that he or she can provide.

Some Monitors, especially those with several people on CR, have made arrangements with the local jail to send to the Monitor a list of people who are in jail each day. In this way, the Monitor can learn very quickly when one of their people being monitored has been arrested. Some jails have a mental health liaison or social worker on staff who can also assist in this process.

One of our experienced Forensic Monitors has made the following suggestions that have worked well in developing effective working relationships with court personnel:

- Introduce yourself to each court bailiff and leave a business card.
- Carry copies of the [Ohio Supreme Court Reference Guides for Ohio Competency](#) and give them to defense attorneys and prosecutors who would like one. Many attorneys have found them to be very helpful. Periodically check the Ohio Supreme Court website for future reference guides that may be of use,
- Attend each court hearing regarding competency and sanity. The more often you are visible in court, the more the Court will rely on you for advice and assistance.
- Provide sample journal entries and share with court secretaries and bailiffs.
- Encourage court staff to call you with questions.

Forensic Monitors also learn about their role by attending the statewide Forensic Monitor meetings that are held three times a year. *All Monitors are expected and required to attend these meetings.* This is the best way to meet other Monitors, address current issues, and learn various “tricks of the trade.” Presentations are made about changes in the law, trends in the monitoring data, and other relevant topics. Time is available for Monitors to ask questions and to discuss difficult situations that they face. Cases involving risk management issues are often discussed and can provide valuable information to Monitors.

The Annual Forensic Conference, sponsored by the Bureau of Forensic Services, is another valuable way to learn about relevant forensic mental health issues.

Managing the tasks of Forensic Monitor is made easier if the Monitor uses a data management system to keep track of their clients, reporting deadlines, court hearings, and other pertinent information related to the specific duties listed below. In addition, some data management techniques and forms that have been developed by Monitors are included in [Appendices](#) of this Manual.

The Bureau of Forensic Services is able to assist Monitors with questions they have. For general questions, contact the Bureau of Forensic Services at forensicservices@mha.ohio.gov, or for case specific questions, contact [Tara Schultz](#), Assistant Director or [Amy Gerstmeier](#), Forensic Coordinator.

Specific Forensic Monitor Duties

The *Forensic Manual* specifies various responsibilities for Forensic Monitors. Some of the more important duties or those requiring a more detailed explanation are described here.

Conditional Release Planning

If Released from RPH. Monitors should stay informed of the status of any of their NGRI/IST-U-CJ inpatients through regular interactions with the LAA. However, the actual conditional release planning process for persons found NGRI or IST-U-CJ typically begins at the OhioMHAS Regional Psychiatric Hospital (RPH) when the hospital treatment team deems that an individual is an appropriate candidate for release to the community. The process begins with a pre-discharge meeting that involves the patient, members of the hospital treatment team, the Legal Assurance Administrator of the RPH, the Forensic Monitor, and the community mental health provider. The purpose of the pre-discharge meeting is to review the patient's progress, determine outpatient treatment needs, assess risk factors, and to develop strategies aimed at minimizing and managing risk. It is during this meeting that the Conditional Release Plan is developed with input from the above listed parties and family members/support systems if deemed appropriate.

The Conditional Release Plan is a comprehensive plan that contains several components:

1. Standard conditions that apply to all persons on Conditional Release (e.g., obeying all federal, state, and local laws, refraining from the use of illicit drugs and alcohol, etc.).
2. The specific conditions related to the individual's treatment plan, including the management of unique risk factors.
3. A signed Release of Information permitting communication between the RPH, Forensic Monitor, community treatment agency, the Court, the ADAMH Board, and any other entity involved in the treatment or monitoring of the individual.
4. A plan to monitor compliance with each of the conditions of release and the individuals who will be responsible for monitoring compliance with each condition.
5. A statement of the potential consequences if the patient fails to comply with the Conditional Release Plan or if the patient's mental status deteriorates.
6. A statement that the patient's commitment be transferred to the local mental health board or treatment provider upon discharge from the hospital.
7. The name and telephone number of the individual's assigned Case Manager and/or community treatment team.
8. A statement of understanding that the terms of the Conditional Release Plan terminate at the same time the individual's case is terminated from the court's docket.
9. A statement that the trial judge is identified as the individual to resolve any conflicts that arise between an individual's rights as a client of a mental health agency and the obligation of the Forensic Monitor to perform his/her monitoring duties.
10. Client statement of understanding and consent to community forensic monitoring and agency agreement to treat

Once the Conditional Release Plan is developed, reviewed and agreed upon, the document should be signed by the patient, Forensic Monitor, Legal Assurance Administrator, the hospital's attending psychiatrist, social worker, nurse, and psychologist, as well as the case manager, and perhaps the program manager, of the community mental health agency where the individual will receive his or her outpatient treatment.

The Conditional Release Plan shall be reviewed and approved by the RPH designated Forensic Review Team (FRT). The FRT at each RPH is appointed by the CCO/designee and must include 2 or more clinical staff with forensic expertise, one of which must be a psychiatrist or psychologist, and at least one other independently licensed clinicians with forensic expertise. The FRT shall assess the thoroughness of the risk assessment and whether or not the Conditional Release Plan adequately addresses risk management issues in the community. The FRT shall focus on whether all of the required elements are included in the plan and whether all persons who should be involved in the process are involved.

A copy of the plan should then be submitted to the trial judge with a request that the terms of conditional release be journalized.

If Released from Court. Although the majority of individuals found NGRI or IST-U-CJ will be hospitalized following the finding, some of these individuals will be placed on Conditional Release directly from Court. **It is very important that the Forensic Monitor be made aware of this situation by the Court as soon as possible.** Preferably, the Monitor would learn that the Court is planning this type of Conditional Release before the actual release occurs so that appropriate, advance planning may occur. In some cases, however, the individual may be released to the community without the Forensic Monitor being notified. In these situations, when the Monitor does discover such an individual, weeks or months later, the development of a Conditional Release Plan, and ensuring compliance with the plan, can be quite difficult. **Thus, it is important that Forensic Monitors maintain excellent communication with the Court and with the director of the local Forensic Psychiatry Center. Monitors should establish a process with the Court's bailiff or other staff person to ensure that they are notified whenever a person is found NGRI or IST-U-CJ. They should also maintain communication with the director of the local Forensic Psychiatry Center about upcoming NGRI/IST-U-CJ recommendations and findings so that the Monitor can be involved in the conditional release planning process as early as possible.** The Monitors should request that the Forensic Center director inform them whenever an NGRI or IST-U-CJ opinion is being sent to the Court. The Monitor should then follow up with the Court to determine the Court's finding and disposition concerning the least restrictive commitment alternative [ORC 2945.40 (F) for NGRI and ORC2945.39(D) for ISTU-CJ].

In the event that a person is released to CR directly from Court, the process for the development of the Conditional Release Plan is as follows:

1. The Forensic Monitor should gather and review (a) all reports from Forensic Psychiatric Center, (b) other forensic mental health assessments, if available, (c) records from current and former mental health treatment agencies, and (d) copies of needed journal entries (for example, the finding of NGRI or IST-U-CJ);
2. The Forensic Monitor and a representative from the designated community mental health agency should meet with the individual to assess treatment needs, complete a community risk assessment, and develop the Conditional Release Plan (as outlined above);
3. Once the Conditional Release Plan is developed, reviewed, and signed by the patient, the Forensic Monitor, the program manager, and the community psychiatric treatment specialist/case manager of the community agency, a copy should be submitted to the trial court judge with a request that the terms of conditional release be journalized. In some cases, the Court may wish to have a status hearing with the NGRI Acquittee or IST-U-CJ client to formalize the Court's acceptance of the conditional release plan and any further orders the Court wishes to issue.

Risk Assessment and Risk Management in the Community

Most Forensic Monitors and some Courts require that the treatment agency provide monthly reports on each person being monitored. The treatment agency staff may need to be educated by the Monitor about the importance of these reports and the expectation of the courts to monitor for community safety, which includes reporting any noncompliance with the CR Plan by the individual being served to the Monitor immediately

Clients also need to be educated about their responsibilities as outlined in the Conditional Release Plan and the specific conditions of the Court Order granting them Conditional Release. The Monitor should review these responsibilities and conditions with the client and community service provider. The service provider should continue to reinforce compliance with the conditions of release.

Forensic Monitors should keep information about specific violence risk factors relevant to each client on Conditional Release. These should be developed using the information provided by the RPH, Forensic Center reports, and the community treatment staff. The forensic monitor ensures the risk assessment is completed, either directly by the treating agency, or in collaboration with the treating agency. The completion of risk assessments should be part of the treatment planning process and should address specific static and dynamic risk factors.

Per ORC 5122.29 and OAC 340.08(D), there is to be uniformity in monitoring of individuals on this status. The Forensic Monitor or their designee is responsible for the completion of Risk Assessments following [OhioMHAS Community Risk Assessment Guidelines](#). In general, risk assessment tools used in the community must be validated tools that have been approved by the Director of the Forensic Bureau. The Bureau will maintain a list of approved validated tools that can be accessed upon request. The HCR-20v3 is the risk assessment tool used in the RPHs and is the tool recommended for use in the community. Whatever tool is used, the risk assessment completed by the community designee and updates are signed by the treatment providers and by the Forensic Monitor. Copies of the assessments are maintained by the treatment provider. It is recommended that the Forensic Monitor also maintain a copy of the risk assessments.

Decisions regarding when to contact the Court regarding noncompliance with court orders are occasionally difficult. The Monitor first needs to be aware of and understand individual Judge's requirements. Some Judges want to be notified of every infraction—no matter how minor. Other Judges have informed various Monitors that they do not want to be notified of minor infractions and expect the Monitor to use professional discretion.

However, the law states that, “a person, agency, or facility that is assigned to monitor a defendant or person on conditional release immediately shall notify the trial court on learning that the defendant or person being monitored has violated the terms of the conditional release. Upon learning of any violation of the terms of the conditional release, the trial court may issue a temporary order of detention or, if necessary, an arrest warrant for the defendant or person” [ORC 2945.402(C)]. Thus, it is important that the Monitor report any violation to the Court, as stated in the law. Modifications to this practice should be made only after specific direction from the Court.

Some behaviors, infractions, or situations that clearly indicate the need for immediate Court notification include, but are not limited to:

- Arrest on new charge(s)
- AWOL from approved housing
- Threatening and/or assaultive behavior which does not result in arrest, but does place others at risk
- Self-injurious behavior, suicidal gestures
- Noncompliance with medication that impacts the person's mental status, that leads to decompensation, or otherwise may lead to an increase in risk of harm to others or self
- Noncompliance with treatment, whereabouts unknown
- Admission to the psychiatric unit of a hospital

If there are immediate safety issues, the forensic monitor should take immediate action to notify the court and safely secure the individual being monitored, either through order of the court, or through emergency psychiatric hospitalization procedures. If the individual is secured through a civil process

such as a “pink slip” it is important to remember that the criminal court retains jurisdiction and must procedurally address the status of the individual as follow up to any civil process that may have been initiated to secure the individual in the moment.

Other behaviors, infractions, or situations that some Judges have not acted upon in the past include the following:

- Positive drug screens, alcohol use
- Noncompliance with medications that have a brief or minimal impact upon the person
- Noncompliance with court ordered groups, counseling, vocational programming
- Admission to local hospital for medical reasons
- Evaluation/admission at local crisis center
- Any other requirements in the journal entry granting CR

If in doubt, report to the Court!

Initial reports of CR violations to the Court may be verbal; however, a written report should follow.

Data Management and Reporting

Every Monitor should adopt a system to keep track of the cases for which they are responsible. Some samples that other Monitors have developed are included in [Appendix](#) of this Manual.

One important duty for the Forensic Monitor is to keep track of when reports to the trial court and hearings are due. NGRI and IST-U-CJ clients on Conditional Release are required to have an initial court hearing six months after the finding, and every two years thereafter, until the Court terminates the commitment. ([ORC 2945.401\(C\) through \(J\)](#)). A report must be sent by the “hospital, facility or program” to which a person on CR has been committed. The report should indicate whether the person found NGRI or IST-U-CJ continues to be a person with mental illness subject to court order, or a person with an intellectual disability subject to institutionalization by court order. In the case of the person found IST-U-CJ, the report must also indicate whether the person remains incompetent to stand trial. The report submitted to the Court should contain sufficient detail so that the Court can make the appropriate finding about whether to continue the individual on conditional release, to place the person in a more restrictive treatment setting, or to terminate the commitment. These two-year court hearings must continue until the client’s time on Conditional Release expires or the Court determines the individual no longer meets commitment criteria.

Forensic Tracking and Monitoring System (FTAMS). Each Forensic Monitor who has at least one person on Conditional Release for any length of time must comply with the quarterly reporting requirements of the FTAMS. This information has been summarized in the [FTAMS Instructions](#).

Reporting of data should be completed using the FTAMS application on the [MHAS iportal](#). The Monitor should use official Court, Jail, RPH, and mental health treatment agency records as the source of the data. Client self-report should not be the sole source of data for these reports.

The termination of CR cases must be properly documented and reported as a part of the FTAMS reporting system. Ideally, the Court would hold a hearing and issue a journal entry noting the date and reason for the termination of the commitment. The commitment can be terminated for several reasons as described in [ORC 2945.401\(J\)\(1\) and \(2\)](#). Forensic Monitors are able to upload copies of journal entries documenting the termination of the commitment status into their quarterly FTAMS reports when they are available.

However, there are situations in which a Court may decide not to have a hearing or issue an entry, as they are not statutorily required. This kind of situation usually arises when a person on CR reaches the

maximum time allowed by law for the commitment. Although the Forensic Tracking and Monitoring System (FTAMS) report has a place for the maximum time to be entered on the court information page, this date does not necessarily reflect the maximum time as determined by the Court. Thus, Forensic Monitors should not assume that this date is correct. When the maximum date, as calculated by the Forensic Monitor, is approaching, the Monitor should contact the prosecuting attorney requesting the maximum date according to their calculations. This should provide confirmation concerning the accuracy of the maximum date as calculated by the Monitor. ***The Forensic Monitor should not assume that the Court will automatically terminate the commitment when this date is reached.*** Forensic Monitors should assume the responsibility of sending formal correspondence to the court notifying them the maximum commitment has been reached.

If the Court has not responded to the Monitor's request for either a hearing on the matter or an entry documenting the termination of the case, the prosecuting attorney may be able to provide assistance in obtaining this from the Court.

If a journal entry is not available, a copy of the certified letter should be uploaded into FTAMS report on the court termination page in lieu of a journal entry.

Reporting According to the Concealed Carry Law ([ORC 5122.311](#))

On April 8, 2004, the Concealed Carry of firearms law went into effect. Certain groups of individuals were excluded from the right to buy a concealed firearm. One excluded group was individuals who were committed by the Court due to mental illness. Those persons civilly committed by the probate court (under [ORC 5122.141](#) and [5122.15](#)) are not eligible to carry a concealed weapon.

Other individuals committed by the criminal court as Incompetent to Stand Trial, but Restorable ([ORC 2945.38](#)), as Incompetent to Stand Trial, Unrestorable under Criminal Court Jurisdiction ([ORC 2945.39](#)), acquitted by reason of insanity ([ORC 2945.40](#)) or committed to the community on Conditional Release ([ORC 2945.402](#)) are also excluded from being able to carry a concealed weapon.

For civilly committed patients, either the probate court or the hospital to which they may be committed has an obligation to report information to the Bureau of Criminal Identification and Investigation (BCII) on a designated form, or within the Ohio Courts Network electronic database, within seven days after the court finding. Similarly, the hospital (not the criminal court) to which the individual may be committed under criminal court statutes will do the reporting.

However, some of our consumers who are found NGRI or IST-U-CJ and directly committed to an outpatient program on Conditional Release are the responsibility of the Forensic Monitor to report to BCII within seven days, either by completing the reporting form themselves, or working with court staff, such as probation, to ensure the court completes and submits the form. The form may be obtained on the website of the Ohio Attorney General by following this [link](#). The address of BCII is P.O. Box 365, London, OH 43140. It is suggested that the form be sent to BCII by Certified Mail, return receipt requested and retained.

The Criminal Justice System

The Forensic Monitor should have at least a basic understanding of how the criminal justice system operates, and especially of how the mental health system interfaces with it. The description that follows is a simplified, chronological depiction of the steps involved in the criminal justice system, with an emphasis on people who have mental illness. More detailed information is contained in the Forensic Manual about the criminal justice system, diversion alternatives, the Community Linkage Program, and the various legal statuses described below.

Diversion Alternatives

When a person is arrested after being suspected of committing a crime, he or she is usually processed at a local jail and then, depending on the severity of the crime and other factors, may be released on bond or detained in jail until further court proceedings. In some jurisdictions, when police make contact with a person who manifests signs of mental illness and is suspected of committing a crime (usually a nonviolent misdemeanor), the police may divert the person from the typical arrest path and instead take him or her to a mental health facility that has agreed to provide treatment for these individuals. This occurs more often in areas where police officers have undergone CIT (Crisis Intervention Team) training. CIT constitutes an effective way to divert people whose misdemeanor offenses may be the result of mental illness and who are better served in the mental health system than the criminal justice system. This type of “front-door” diversion is appropriate in limited circumstances, that is, when the offense is not a serious offense, and there is a mental health facility that will accept the person without delay and allow law enforcement officers to return to their job quickly.

Additional diversion efforts may occur while a person is in jail awaiting trial or after conviction as part of a program that involves a reduced sentence in exchange for an agreement to participate in outpatient mental health treatment. Mental Health Courts typically utilize this kind of procedure to divert people from spending additional time in jail. All of these diversion efforts are usually designed for people who have been charged with misdemeanor or low-level, nonviolent felonies. People with mental illnesses who have been charged with more serious crimes are typically not eligible for these kinds of diversion efforts.

Additional information is available at the website of the [Criminal Justice-Coordinating Center of Excellence \(CJ-CCOE\)](#)

Arraignment

By the time of arraignment, the defendant has usually had some contact with an attorney, who may begin to suspect that his or her client has some mental health problems that are either affecting the defendant’s current ability to work with the attorney on the case or that may have played a role in the defendant’s behavior leading to the offense.

At this point, or at a later time before trial, the attorney may ask the Court to order an evaluation of the defendant’s competency to stand trial and/or mental condition at the time of the alleged offense ([ORC 2945.37](#) and [2945.371](#)). These evaluations are typically conducted by an examiner (psychologist or psychiatrist) with one of Ohio’s 10 certified Community Forensic Evaluation Centers within 30 days of the Court Order. In a small minority of cases, in which the examination cannot be conducted on an outpatient basis, they are performed on an inpatient basis at an RPH.

Competency to Stand Trial

If the Court finds the defendant to be not competent to stand trial, then, in most cases the person is admitted to an RPH for treatment in order to restore the person to competency. In some cases, the person may be appropriate for competency restoration on an outpatient basis. On August 3, 2021, Senate Bill 2 went into effect. SB2 changed the competency restoration statute to state that for individuals charged with nonviolent misdemeanor charges, inpatient competency restoration is not an option. There are 10 regional Outpatient Competency Restoration providers across the state, and they are appropriate for a variety of persons with different levels of charges. The Court may also choose to dismiss the criminal charges and

file an affidavit in Probate Court if the individual is in need of inpatient psychiatric care. This [flowchart](#) provides an overview of the forensic mental health system pathways in Criminal Court proceedings.

The law allows up to one year for restoration to competency for the most serious offenses, six months for lower level felonies and 60 or 30 days for misdemeanors ([ORC 2945.38](#)). If the person is not restored to competency within the time allowed, the person may be referred to Probate Court and the charges dismissed, as noted above. If the person has been charged with a violent first or second degree felony or murder the Criminal Court may decide to retain jurisdiction over the person if certain criteria are met ([ORC 2945.39](#)). If the Court makes the findings as described in this part of the law, the person's legal status is designated IST-U-CJ (Incompetent to Stand Trial—Unrestorable—under Criminal Court Jurisdiction). Usually, persons found IST-U-CJ are committed to an RPH and may be granted Conditional Release (CR) when the hospital recommends it and the Court agrees that this is the most appropriate treatment setting. It is also possible for the Court to grant CR to someone immediately after being found IST-U-CJ. The length of time of hospital treatment can last from a few months up to many years. If the person is found to be competent to stand trial at any time during the commitment (either inpatient or on CR), the person may then return to court and face the charges.

Not Guilty by Reason of Insanity

If a person is competent to stand trial, then the defendant may decide to plead not guilty by reason of insanity (NGRI), asserting that, because of a severe mental disease or defect, the defendant did not know the wrongfulness of his or her acts [[ORC 2945.391](#)]. If the Court finds the defendant NGRI, in most cases the person is committed to an RPH for treatment until he or she is appropriate for, and granted, CR. The time in the hospital can last from a few months up to many years. Some people who are admitted as NGRI to a RPH remain there until the NGRI commitment is terminated and are not granted CR.

Occasionally, the Court grants the defendant CR immediately at the time of the NGRI finding and does not commit the person to the RPH. As discussed earlier in this manual, the Forensic Monitor needs to be aware of this situation as soon as possible so that conditional release planning can take place.

If no evaluations of a defendant's mental health are ordered, or if the Court finds that the person is both competent to stand trial and "sane," then he or she would proceed through the criminal justice system. There are a number of possible outcomes including the dismissal of the charges, being found not guilty at trial, pleading guilty as part of a plea agreement, or conviction at trial. A competent defendant may be placed on a Mental Health Court docket. If pleading guilty to, or convicted of the offense, the defendant could be sentenced to jail or prison, or given probation/community control, among other possible dispositions.

Community Linkage Program

In the event that a person is sentenced to a state prison and receives treatment for a serious mental illness, this person will have the opportunity to receive the services of the Community Linkage Program. If the inmate is on the prison's mental health caseload and meets certain diagnostic criteria, then a Community Linkage Social Worker (CLSW) sets up a meeting with the inmate shortly before release. If the inmate consents to participate, the CLSW gathers mental health information, sets up an appointment at a mental health agency in the community where the inmate intends to reside, and forwards the mental health information to the community agency. In this way, the inmate is able to maintain continuity of treatment and reduce the likelihood of relapse and possible re-offense. For more information about the Community Linkage Program, contact the Community Linkage Administrator, 614-466-1325 or follow [this link](#).

The Forensic Mental Health System

Certified Forensic Evaluation Centers

OhioMHAS has certified the operation of [10 regional forensic evaluation centers](#). Each of the Forensic Centers is required to be certified as a mental health agency to provide forensic evaluation services as defined in OAC [5122-29-07](#). The certification process, performed by the Office of Licensure and Certification and the Bureau of Forensic Services of OhioMHAS, ensures compliance with the requirements of OAC [5122-32-01](#) on designated forensic evaluation centers.

Forensic evaluators conduct high-quality, court-ordered evaluations as defined in ORC [2945.371](#) in the most efficient manner possible to protect the needs of people with mental illness or intellectual disability who become involved in the criminal justice system. These evaluations may be conducted in person or virtually via telehealth. Prior to the development of the current system, most court-ordered sanity and competency to stand trial evaluations occurred on an inpatient basis at one location. The community forensic center system was developed to allow for the local provision of evaluations on an outpatient basis. This decreases the cost of the evaluation process and reduces delays in the court proceedings. The centers provide timely, comprehensive and professional evaluations locally, eliminating the stigma of inpatient hospitalization and increased costs.

Forensic center staff also provide consultation and training services for local criminal justice systems, county boards and community mental health agencies, as well as expert testimony for their local courts. They also provide second opinion evaluations for the RPHs on patients being considered for non-secured status, including either unsupervised community movement or conditional release.

Outpatient Competency Restoration Programs

After [statutory changes](#) occurred in 2021 which allows the criminal courts to divert nonviolent misdemeanors to outpatient competency restoration, the Ohio Department of Mental Health and Addiction Services provided funding for the operation of [outpatient restoration programs](#) throughout the state. OhioMHAS works with county alcohol, drug addiction and mental health (ADAMH) boards and local providers to provide services to individuals found incompetent to stand trial (IST) and ordered to outpatient competency restoration services. These programs serve several counties and services may be provided in a variety of modalities including in-person, virtual, individually or in a group setting. Although the new statute specifically [diverts](#) nonviolent misdemeanor cases to inpatient non-forensic treatment or outpatient competency restoration, the outpatient programs may also serve individuals with other levels of offenses. For a list of what is defined as offenses of violence, please see Appendix [here](#).

Defendants are referred to an OCR program by court order from a Judge presiding in the county with criminal court jurisdiction pursuant to the Ohio Revised Codes, and in accordance with the Ohio Mental Health and Addiction Services Standards. The process begins when a Judge refers the defendant for a competency evaluation, determines competence to stand trial, and if IST, determines the least restrictive setting for competency restoration to occur. The OCR programming will provide judicial process education and skill based training within specified Ohio Revised Code timelines. The programming will occur on a regular basis, in person or via telehealth, depending on defendant needs and/or circumstances. Following OCR program completion, an assessment/reassessment will be completed to assess the defendant's current capability to understand the nature and objective of the proceedings and the defendant's capability of assisting in their defense and this opinion will be offered to the Court.

When applicable, community mental health case managers, service providers, and/or support persons will be expected to work collaboratively during the competency restoration process to ensure optimal coordination of care. If not linked with a mental health treatment agency, appropriate referrals may be made during this time. The OCR provider will alert the Court should there be any concerns regarding

noncompliance with sessions, active substance abuse, medical and/or psychiatric instability, or limited benefit from outpatient competency restoration services.

In addition to The Forensic Manual (rev.2023), there are several additional resources that can be used by forensic monitors working with a variety of stakeholders, such as. family members, court personnel, or treatment providers, to assist with explaining various parts of the forensic mental health system:

- to help explain the court processing of cases that involve defendants with special considerations beginning with competency to stand trial click [here](#).
- Outpatient Competency Restoration [fact sheet](#)
- Outpatient Competency Restoration [FAQ](#)

Inpatient Forensic

As described above, most people with a forensic legal status (IST-R, IST-U, IST-U-CJ, NGRI) spend some time as an inpatient in an RPH. (Please refer to the *Forensic Manual* for more detailed information concerning the inpatient procedures that involve patients with a forensic legal status). **An individual committed to an RPH under these legal statuses can not sign in voluntarily.**

Forensic Monitors need to know about any people from their monitoring area who have a forensic legal status (NGRI and IST-U-CJ) and are patients in an RPH. Monitors need to be aware of the RPH procedures involving these patients because these are the people who are eligible for Conditional Release (CR) and who they will be responsible for monitoring when released from the hospital.

Patients with an NGRI or IST-U-CJ legal status are eligible for increasing levels of privileges or “movement” while in the hospital. All patients begin at Level 1 which means that the person must always be in a locked area unless being escorted one-to-one by staff to another locked area. The other Movement Levels are: Level 2: On Grounds, Supervised; Level 3: On Grounds, Unsupervised, Level 4: Off Grounds, Supervised, and Level 5: Off Grounds, Unsupervised, Trial Visit or Conditional Release. Level 5 Movement, Trial Visits, and Conditional Release are also known as “Nonsecured Status.” The Trial Court must approve any movement at level 3 or above. This process is explained more fully in the Movement of Patients Committed under a Forensic Status Policy, [FOR-04](#).

When a Forensic Monitor is aware of someone from their monitoring area with a forensic legal status (NGRI and IST-U-CJ) who is a patient in an RPH, the Monitor should contact a member of the patient’s treatment team (most likely, the social worker) to monitor the progress of the patient in the hospital. The forensic monitor may first contact the RPH Legal Assurance administrator. When the patient progresses to Level 3, the Monitor should begin to attend Treatment Team meetings in order to become better acquainted with the patient and to provide assistance in planning for Conditional Release (CR). As the person approaches CR, the Monitor should be increasingly involved with both the RPH staff and the community agency treatment staff who will be assuming care for the person in the community. The activity should focus on identifying the most appropriate living arrangements, ensuring continuity of mental health treatment, updating risk assessments, and developing risk management plans. This and other information should be used in developing the CR plan that will be presented to the Court at the appropriate time.

Conditional Release

When the Court determines that a person found NGRI or IST-U-CJ can be released to the community, the individual is placed on Conditional Release (CR), [ORC 2945.402](#). Conditional Release is a commitment status in which the criminal court retains jurisdiction but finds that the least restrictive treatment setting for the person is to live in the community. Thus, it is a criminal commitment status although the criteria used

for making the commitment are the same as the civil commitment criteria ([ORC 5122.01](#)). The Court has the option of placing someone on CR immediately following the NGRI finding. This is more likely to happen if the person has been released on bond prior to the finding of Not Guilty by Reason of Insanity. In most cases however, a person found NGRI or IST-U-CJ will be released to the community from the RPH.

Prior to any request for Nonsecured Status, including CR, the hospitalized forensic patient must be evaluated by the treatment team, the Forensic Review Team (FRT) at the hospital, and by the local Forensic Evaluation Center for an independent, “second opinion” evaluation. During this process the designated Forensic Monitor and the outpatient treatment provider work closely with the patient and the RPH in developing a plan for CR. When all these parties agree that the patient is ready to return to the community, the hospital submits a detailed conditional release plan and recommendations to the Court. A conditional release hearing is held in which the Court considers the hospital’s recommendations for release against the backdrop of public safety. Once CR is granted, the Court sets down the conditions which the NGRI or IST-U-CJ individual must follow in a written journal entry. The patient cannot actually be released from the hospital until the journal entry is completed by the Court and received by the hospital.

The role of the Forensic Monitor becomes especially important once the NGRI or IST-U-CJ individual is released to the community, because the monitor must ensure that the client is actually following the conditions which the Court has ordered. In this regard, the monitor maintains regular contact with the treatment provider in order to assess the client’s psychiatric stability, readjustment to the community, and compliance with the conditions of release. The Forensic Monitor serves as a consultant to the community treatment team in managing issues of risk, and in helping to determine what to do when conditions are violated and/or other problems arise.

The Forensic Monitor is responsible for reporting to the Court when the client has violated the terms of CR, has violated court orders and/or become psychiatrically unstable. The monitor works with the treatment provider and the Court to ensure that the client is hospitalized or temporarily held in custody when necessary to maintain the safety of the client and the community. In many situations the monitor may be able to recommend additional treatment options rather than hospitalization, such as substance abuse treatment or a more supervised living arrangement. If necessary, the Forensic Monitor may recommend to the Court that the Conditional Release be revoked, and the client be returned to the hospital.

When a client on CR destabilizes, sometimes the court may order the person to be hospitalized, but not revoke the CR. This may be different from situations when the court revokes the CR, often due to new criminal behavior, egregious safety concerns, or other serious violations. When a CR is not revoked, the hospital staff will work to stabilize the individual’s symptoms and release the individual back to an often modified or revised CR plan at the Court’s discretion. When a CR is revoked, the individual will need to return to court for approval of movement levels 3 or higher once again.

Additional Issues

Some questions recur with some regularity. This section is presented in order to help answer some of these questions.

Confidentiality

In order to properly perform his or her duties, the Forensic Monitor must have access to mental health information from Forensic Center reports, RPHs, ADAMH Boards, community mental health agencies, the Court, and others involved in the treatment of a person on Conditional Release. The sharing of information among relevant parties is essential to ensure that appropriate continuity of care and effective

risk management services are provided. Forensic Monitors must have a good understanding of when, and with whom, to share information and when such disclosure would be inappropriate.

Although confidentiality is an integral part of the treatment relationship, generally the criminal justice system is not required to protect an individual's information. Information that is discussed during NGRI and IST-U-CJ court hearings is public record and may be shared with those entities who are involved with the people served by the Monitors. A resource regarding confidentiality for Forensic Monitors interacting with criminal justice can be found [here](#).

In several locations, the Ohio Revised Code makes provision for the sharing of information involving persons found NGRI and IST-U-CJ. [ORC 2945.40\(G\)](#) describes the information that the prosecutor is required to share with those to whom an NGRI acquittee has been committed. [ORC 2945.402](#) states that the Monitor is required to notify the court when a violation of conditional release occurs. [ORC 5119.29](#) and [OAC 340.08\(D\)](#) provides the statutory basis for the Forensic Tracking and Monitoring System (FTAMS). Thus, the Forensic Monitor is required to share certain information with the Court, the Ohio Department of Mental Health and Addiction Services, and county ADAMH Boards, and to this, they must be able to receive certain information from the community treatment agency. When people are committed in one county's court but allowed to live in an area served by another Forensic Monitor and Board area, it is essential that information be shared between Boards and Monitors.

A Release of Information (ROI) should be sought from the patient in all instances, even though it may not be legally required in all situations involving the sharing of information. Obtaining consent may be a way of demonstrating respect for the individual's autonomy. If the individual being monitored refuses to sign the ROI, it may be an indication that he or she is not ready for Conditional Release. On the journal entry, the Court could order the sharing of information among the entities carrying out the CR Plan. Signing the ROI may also be one of the specific conditions on the CR Plan.

There may be situations in which entities are not named in the CR plan, but who are nevertheless involved in the consumer's community treatment and risk management plan. Such entities could include housing providers, family members, community organizations, and other treatment providers. A specific ROI signed by the consumer would be required by the Monitor in these situations.

In special situations, health care provider organizations are permitted to use and disclose information for treatment purposes in an emergency. In addition, a treatment provider is required to share information when there is threat of danger to a potential victim ([ORC 2305.51](#)), when there is a court order, and when requested by the coroner to assist in an investigation.

By having the client sign a ROI at the time when CR is instituted, the Forensic Monitor can deal with most, if not all, concerns about the sharing of information with various parties.

Record Keeping

Forensic Monitors should maintain accurate records concerning their work. For each person currently on Conditional Release (CR) and for each person found NGRI/IST-U-CJ in the RPH who may be released on CR at a future time, it is recommended that the following documents be kept:

1. All Journal Entries pertaining to the cases for which the person was committed
2. Indictment regarding the initial charges filed against the individual
3. Conditional Release Plan, if not completely contained in a Journal Entry
4. Copies of BCI reporting/notification forms completed by the forensic monitor
5. Monthly reports from Treatment Provider
6. Community Risk Assessments (and Hospital Risk Assessments, if applicable)

7. Past Hearing Dates, along with the reason for the hearing and the decisions made by the Court at each hearing
8. Copies of completed [Form 95](#) (often completed by the Court): NCIC Mental Health Notice (Hopper Act Form)

Record Retention and Storage Guidelines

Forensic Monitors should consult legal counsel at their agencies concerning how long to retain their records of people who have been on CR. As a guide, Medicaid requires records to be retained for seven (7) years after the case becomes inactive. Some Monitors have been advised to retain records for ten (10) years after a case becomes inactive.

Residency Issues

When a person on Conditional Release lives in a county other than the County of Committing Court, arrangements need to be made between the ADAMH Boards of the County of Committing Court and the County of Service Provision (the county in which the person resides and receives services) for the provision of those services. [Guidelines](#) for making these arrangements are provided in the appendix of this Manual.

Should questions regarding residency arise, contact the [Forensic Bureau](#).

List of Abbreviations

| | |
|----------|---|
| ADAMH | Alcohol, Drug Addiction and Mental Health (Board) |
| RPH | Regional Psychiatric Hospital, formerly known as state hospital |
| CLSW | Community Linkage Social Worker |
| CR | Conditional Release |
| CSN | Community Support Network |
| FRT | Forensic Review Team |
| FTAMS | Forensic Tracking and Monitoring System |
| HIPAA | Health Insurance Portability and Accountability Act of 1996 |
| IST-R | Incompetent to Stand Trial—Restorable |
| IST-U | Incompetent to Stand Trial—Unrestorable |
| IST-U-CJ | Incompetent to Stand Trial—Unrestorable—Under Criminal Court Jurisdiction |
| LAA | Legal Assurance Administrator |
| ID | Intellectual Disabilities |
| NGRI | Not Guilty by Reason of Insanity |
| OhioMHAS | Ohio Department of Mental Health and Addiction Services |
| DODD | Ohio Department of Developmental Disabilities |
| OCR | Outpatient Competency Restoration |
| ODRC | Ohio Department of Rehabilitation and Correction |
| ORC | Ohio Revised Code |
| ROI | Release of Information |

**THIS IS THE END OF MANUAL CONTENT
APPENDICES FOLLOW**

APPENDICES

[Forensic Monitor Duties](#)

[FOR-04 OhioMHAS Policy Movement of Patients Committed under a Forensic Status](#)

[Felony Sentencing Guidelines](#)

[Offenses of Violence defined](#)

[Ohio Supreme Court Adult Competency Reference Guide](#)

[Outpatient Competency Restoration Fact sheet](#)

[Outpatient Competency Restoration FAQ](#)

[OhioMHAS Community Risk Assessment Guidelines](#)

[Forensic Tracking and Monitoring System \(FTAMS\) Reporting Instructions](#)

Contacts:

- [Central Office](#)
- [Legal Assurance Administrators \(LAA\)](#)
- [Forensic Evaluation Centers](#)
- [OCR programs](#)
- [Forensic Monitors](#)

Sample Journal Entries:

- [Order for competency evaluation](#)
- [Order for Inpatient Competency Restoration](#)
- [Order for Outpatient Competency Restoration](#)
- [Order for ISTU finding charges dismissed](#)
- [Order for ISTU finding referred to probate](#)
- [Order for ISTU-CJ](#)
- [Order for sanity evaluation](#)
- [Order for NGRI finding with least restrictive setting evaluation](#)
- [Order for Continued inpatient commitment \(NGRI or ISTU\)](#)
- [Order for Continued Conditional Release \(NGRI or ISTU\)](#)

Forensic System Flowcharts

- [*Forensic System Flowchart*](#)
- [*Senate Bill 2 flowchart*](#)

Data Management Tools:

- [Monthly Conditional Release Report \(from treatment provider\)](#)
- [Forensic Monitor database template](#)

Sample documents for court

- [Conditional Release Plan Template](#)
- [Request for 2 year review hearing](#)
- [Letter to report CR violation](#)
- [Letter to request termination of case](#)

[Guidelines for Memorandum of Understanding Regarding Agreements Between County of Legal Residence and Service Provision County](#)

Forms:

- [Notification for Record Checks \(pursuant to Conceal and Carry statute: 5122.311\)](#)
- [Form 95](#)

Forensic Monitor/Designee Duties

The Forensic Monitor or designee shall participate with both RPH and community treatment providers in planning and coordinating services for persons found NGRI or IST-U-CJ.

Required duties:

- Interacting with the RPH Legal Assurance Administrator (LAA) regarding case status.
- Serving as liaison between the Criminal Justice System, the LAA and other RPH staff, and community treatment providers.
- Meeting with community provider treatment teams and/or case managers to develop and implement the person's conditions of release.
- Monitoring treatment provided to the person by the service provider in accordance with the conditional release plan and the orders of the court.
- Involvement in the development of the conditional release plan, to include participation with the RPH treatment staff in the development of the conditional release plan prior to discharge.
- Monitoring reports of the person's criminal activity.

Optional duties (include but are not limited to):

- Maintaining regular direct contact with the person while in a hospital setting.
- Interacting with the RPH Forensic Review Team regarding conditional release readiness.
- Making recommendations for treatment to assist in the development of conditional release plans.

The Forensic Monitor or designee shall interact with the Criminal Court.

Required duties:

- Attending hearings following a conditional release commitment.
- Reporting compliance with conditional release plans as required by the court.
- Immediately reporting to the court any violations of the terms of conditional release or deterioration in the individual's mental status.

- Initiating or participating in legal and/or administrative procedures, if necessary, to facilitate hospitalization or incarceration of the person who is NGRI or IST-U-CJ on conditional release.
- Ensuring that required reports for persons in the community are submitted to the court.
- Reporting information regarding court hearing outcomes to treatment providers and, when appropriate, notifying the RPH LAA.
- For those persons found NGRI or IST-U-CJ and released directly to the community from the court, developing a mechanism to identify these persons, and working with the court and treatment providers to develop and implement a conditional release plan.

Optional duties:

Provide advice and consultation to the court about required hearings and other timelines as requested by the court. (NOTE: Each court may have different expectations for this duty, so it is recommended that the monitor work with the judge and/or the court administrator to work this out.)

The Forensic Monitor or designee shall work with the county ADAMH Boards, which are responsible for developing community services for persons found NGRI or IST-U-CJ.

Required duties:

- Notifying the Board of major unusual incidents and violations of the conditional release terms as determined by the Board.
- Preparing statistical or narrative reports as required by the Board.
- In conjunction with Board staff, assisting in out-of-county service planning, including monitoring responsibility for those services.
- Providing training to Board members and staff on forensic issues.
- Consulting with the Board on forensic policy and procedure development and implementation.

- Working with the Board to develop and implement effective community risk management policies and procedures for persons on conditional release.

The Forensic Monitor or designee shall cooperate with the Ohio Department of Mental Health and Addiction Services.

Required duties:

- Assisting in the ongoing implementation of the Forensic Tracking and Monitoring System (FTAMS).
- Submitting required quarterly FTAMS reports to OhioMHAS electronically.
- Attending statewide Community Forensic Monitor meetings.
- Participating on subgroups to further the development of the statewide Forensic Monitor Program, including making recommendations on policy, procedure and guidelines as necessary.

Ohio Department of Mental Health and Addiction Services

| | |
|---------------------------------|---|
| Document Number: FOR-04 | |
| Type of Document: | Policy |
| Authority Source: | RC §§ 5119.10 and 5119.11 |
| Document Title: | Movement of Patients Committed under a Forensic Status |
| Applicability Statement: | RPHs |
| Effective Date: | 3-4-2020 |
| Replaces: | ODMH: MH-P-FS-06 (10-13-1995); 20 (7-1-1997); 98-33 (1-29-1999); 00-33 (10-13-2000); MF-04 (12-1-2002, 11-8-2004, 4-28-2006, 8-12-2008, 10-20-2009; 2-16-2014). |
| Distributed by: | Office of the Medical Director |

A. Purpose.

This policy contains procedures for determining and recommending movement levels based on a patient's clinical condition and hospital/community safety for those patients committed under a forensic legal status, and/or for those patients who have been identified as being at high risk for violence. In addition, this policy recognizes the importance of maintaining access for those who require hospital level of care by ensuring that patients are appropriately evaluated for increased movement and/or discharge. The movement level system provides for the safety of patients and staff, and fulfills MHAS' responsibilities regarding custody, while providing appropriate treatment.

B. Applicability.

"Forensic status" for the purpose of this policy includes people who are admitted under one of the following categories:

1. Jail transfers or police holds;
2. Competency and/or sanity evaluation – R.C. Section 2945.371(G)(3) and (4);
3. Incompetent to stand trial - Restorable – R.C. Section 2945.38(B);
4. Incompetent to stand trial – Unrestorable - R.C. Section 2945.38(H)(4);
5. Maintain competency - R.C. Section 2945.38(A);
6. Incompetent to stand trial - Unrestorable - criminal court jurisdiction –R.C. Section 2945.39(A);
7. Not guilty by reason of insanity –R.C. Section 2945.40;
8. Mentally ill probationer or parolee – R.C. Section 2967.22 and Chapter 5122;
9. Continuing evaluation and treatment of restorability to competency – R.C. Section

2945.38(B)(1).

C. Definitions and policy.

1. Levels of movement – definitions.

a. Level 1: On Residential Unit, Restricted.

The patient shall not be permitted out of a locked residential area *except* under at least one-to-one escort (also known as one-to-one supervision) to another locked area. A locked area is a unit, building, or other area from which a person cannot leave without someone unlocking two doors, gates, etc.

b. Level 2: Off Residential Unit, Supervised.

The patient shall be permitted access to all locked areas of the regional psychiatric hospital (RPH) according to hospital policy except those restricted for all patients, but shall not be permitted off grounds. Supervision means a patient is in the same space (room or area) with a staff member and the patient shall be within view of the staff member at all times.

c. Level 3: On Grounds, Unsupervised.

The patient shall be permitted access to specified off-unit locked areas of the RPH according to hospital policy except those restricted for all patients, but shall not be permitted off grounds.

d. Level 4: Off Grounds, Supervised.

Supervised by RPH or community provider staff; the patient shall be permitted to leave the grounds with RPH or community provider staff supervision and shall remain under staff supervision until his/her return. Supervision means a patient is in the same space (room or area) with a staff member and the patient shall be within view of the staff member at all times.

e. Level 5: Off Grounds, Unsupervised.

The patient shall be permitted to leave the grounds without supervision for a specified period of time, with an expectation of return to the RPH on a daily basis.

f. Trial visit - Unsupervised community contact with an expectation of return to the RPH at designated times.

g. Conditional release - A commitment status under which a person lives and receives treatment in the community for a period of time not to exceed the maximum term of imprisonment that the person could have received if convicted of the most serious offense charged (R.C. 2945.37 [A][6]).

2. “High risk patient” means a patient admitted to the RPH who represents an elevated risk of escape, violence, other dangerousness, or who is a high profile case.

3. Medical Movement.

a. Emergency Medical Movement.

Pursuant to R.C. Section 2945.38(E), the RPH chief clinical officer (CCO) or designee may grant a defendant committed under this section movement to a medical facility for emergency medical treatment. Recognizing MHAS’ responsibilities regarding custody, movement under this section should

be made with appropriate supervision to ensure the safety of the defendant, staff, and community during the emergency medical situation. The CCO/designee shall notify the court within twenty-four hours of the defendant's movement to the medical facility.

b. Non-emergency Medical Movement.

Pursuant to R.C. section 2945.38(E), the court may grant a defendant supervised off- grounds movement to obtain medical treatment or specialized habilitation treatment services, if the CCO informs the court that this treatment cannot be provided at the RPH.

- c. In practice, the above procedures may be applied to patients of any legal status if they have Movement Levels 1, 2, or 3.

4. Levels of movement allowed by forensic status:

a. Jail transfers/police holds – R.C. Section 5122.10;

- i. Definition: Persons transferred from law enforcement custody on an emergency basis for stabilization.
- ii. Movement permitted: Level 1 – On Residential Unit, Restricted.
- iii. Discharge: When the CCO or designee determines that the patient is no longer a person subject to court order, as defined in R.C. Section 5122.01(B), s/he shall notify the Legal Assurance Administrator (LAA) or designee. The LAA/designee will coordinate the discharge with the sheriff or other law enforcement agency that placed the hold on the patient. The LAA/designee will notify the sheriff by email or telephone or other law enforcement agency of the patient's readiness for discharge. If there is no response, the LAA/designee shall send notification by certified mail, return receipt requested. The sheriff or other law enforcement agency shall take custody of the patient. The patient shall not be released to anyone except the sheriff or other law enforcement agency unless the sheriff or other law enforcement agency notifies the hospital in writing that they no longer want to hold the patient.

b. Competency/sanity evaluation – R.C. Section 2945.371(C), (D), (G)(3) and (G)(4);

- i. Definition: A person committed to an RPH by the court to determine the person's competence to stand trial or sanity at the time of the alleged offense. This commitment shall not exceed twenty days, pursuant to R.C. 2945.371(C). A municipal court may order

a person to an RPH for a competency or sanity evaluation only upon the request of a designated forensic evaluation center (forensic center) examiner, pursuant to R.C.

2945.371(D).

- ii. Movement permitted: Level 1 – On Residential Unit, Restricted

The patient may not apply for voluntary admission.

- iii. Discharge: The CCO/designee shall notify the LAA/designee who will coordinate the patient's release with the court when the examination has been completed. The patient shall not be released except as directed by the court.

- c. Incompetent to stand trial – Restorable (IST-R) – R.C. Section 2945.38(B);

- i. Definition. A person found by the court to be incompetent to stand trial due to mental illness and/or intellectual disability and committed for competency restoration treatment within time limits prescribed by law.

- ii. Movement Permitted.

Level 1 – On Residential Unit, Restricted; Level 2 – Off

Residential Unit Supervised;

The patient may not apply for voluntary admission.

- iii. Discharge.

- a. The CCO/designee shall notify the LAA/designee when s/he determines that: 1) The defendant is competent to stand trial; 2) The defendant is unrestorable to competency; or 3) The defendant's maximum period for commitment for restoration is about to expire.

- b. The LAA/designee shall send a report to the court prior to the expiration date of the maximum time allowed by law for restoration. The report shall be sent to the court fourteen days prior to the expiration date for a felony charge and ten days prior to the expiration date for a misdemeanor charge.

- c. The LAA/designee shall coordinate the patient's discharge. The patient shall not be released except as directed by the court.

- d. Maintain Competency – R.C. section 2945.38(A);

- i. Definition: A defendant who has been found competent to stand trial by the court, most of the time is receiving psychotropic drugs or other medication, and the court has authorized continued commitment at the RPH in order to maintain the defendant's competence to stand trial.

- ii. Movement Permitted.

Level 1 - On Residential Unit, Restricted Level 2 - Off Residential Unit, Supervised

The patient may not apply for voluntary admission.

iii. Discharge. The patient shall not be released except as directed by the court.

e. Incompetent to Stand Trial - Unrestorable (IST-U) – R.C. section 2945.38(H)(4);

i. Definition. A person who has been found by the criminal court to be incompetent to stand trial, unrestorable and subsequently found to be a mentally ill person subject to probate court order, or who has subsequently agreed to voluntary hospitalization.

ii. Prompt notification is required to the prosecutor, in writing, of the patient's change to voluntary status, and shall include the date the patient was committed or admitted on a voluntary status.

iii. Movement Permitted and Discharge.

Level 1 – On Residential Unit, Restricted;

Level 2 – Off Residential Unit, Supervised;

Level 3 – On Grounds, Unsupervised;

Level 4 – Off Grounds, Supervised;

Level 5 – Off Grounds Unsupervised, or Trial Visit.

a. The prosecutor shall be notified, in writing, prior to Level 5 movement or discharge being granted. Upon receiving this notice, the prosecutor shall either re-indict or promptly notify the court of intention not to prosecute charges.

b. Discharge: When the CCO/designee or the probate court determines that the patient is no longer in need of hospitalization by court order or no longer requires hospital level care, the LAA/designee shall notify the prosecutor in writing with confirmed receipt of notification, either through certified mail, return receipt or email notification, at least ten days prior to discharge (unless the discharge is granted by the probate court). It shall state in the notice the date on which the patient is anticipated to be discharged.

f. Incompetent to Stand Trial – Unrestorable - Under Criminal Court Jurisdiction (IST-U-CJ) – R.C. section 2945.39(A)(2);

i. Definition. A person who has been charged with murder or a violent felony offense of the first or second degree and has been found by the criminal court to be incompetent to stand trial, unrestorable; and upon motion of the prosecutor or the court has been found by clear and convincing evidence at a hearing to have committed the charged offense and is a mentally ill individual subject to court order under the continuing jurisdiction of the criminal court.

ii. Movement Permitted.

Level 1 – On Residential Unit, Restricted;

Level 2 – Off Residential Unit, Supervised;

Level 3 – On Grounds, Unsupervised;

Requires court approval. Discretionary hearing at the request of the court or prosecutor.

Level 4 – Off Grounds, Supervised;

Requires court approval. Discretionary hearing at the request of the court or prosecutor.

Level 5 – Off Grounds, Unsupervised, Trial Visit, or Conditional Release Nonsecured status);

Requires nonsecured status evaluation from forensic center for the first of any nonsecured status movement.

Requires court approval. Mandatory court hearing.

For conditional release, a collaborative plan involving the community mental health provider and the community forensic monitor is required.

The patient may not apply for voluntary status.

The court shall be notified if, at any time, the person is clinically assessed as competent to stand trial (R.C. 2945.401[C]).

- iii. Discharge. Requires nonsecured status evaluation from the forensic center. Requires court approval. Mandatory court hearing.

The person or hospital may petition the court for discharge if the person no longer is a person subject to court order, as defined in R.C. Section 5122.01(B).

The maximum time of commitment is the longest prison term or term of imprisonment that the person could have received if convicted of the most serious charged offense. When the maximum time of commitment occurs, the patient must be discharged or civilly committed.

The LAA/designee shall coordinate all notification and movement with the court, prosecutor, and forensic center.

- g. Not Guilty by Reason of Insanity (NGRI) – R.C. section 2945.40;

- i. Definition. A person found not guilty by reason of insanity and who has been found by the trial court to be a mentally ill person subject to court order.

- ii. Movement Permitted.

Level 1 – On Residential Unit, Restricted;

Level 2 – Off Residential Unit, Supervised;

Level 3 – On Grounds, Unsupervised;

Requires court approval. Discretionary hearing at the request of the court or prosecutor.

Level 4 – Off Grounds, Supervised;

Requires court approval. Discretionary hearing at the request of the court or prosecutor.

Level 5 – Off Grounds, Unsupervised, Trial Visit, or Conditional Release (Nonsecured status);

Requires nonsecured status evaluation from forensic center for the first of any nonsecured status movement.

Requires court approval. Mandatory court hearing.

For conditional release, a collaborative plan involving the community mental health provider and the community forensic monitor is required.

The patient may not apply for voluntary status.

iii. Discharge.

Requires nonsecured status evaluation from forensic center. Requires court

approval. Mandatory court hearing.

The maximum time of commitment is the longest prison term or term of imprisonment that the person could have received if convicted of the most serious charged offense. When the maximum time of commitment occurs, the patient must be discharged or civilly committed.

The LAA/designee shall coordinate all notifications and movement with the court, prosecutor and forensic center.

h. Parolee or probationer who is mentally ill; R.C. section 2967.22 or Chapter 5122.

i. Definition. A person on parole or probation who is considered mentally ill. If the affidavit is filed by a parole or probation officer, the patient is committed pursuant to

R.C. section 2967.22. If the affidavit is filed by another person, or the patient signs an application for voluntary admission, the patient is admitted pursuant to R.C. Chapter 5122.

ii. Movement Permitted.

Level 1 – On Residential Unit, Restricted Level 2 – Off Residential Unit, Supervised

Level 3 – On Grounds, Unsupervised Level 4 – Off Grounds, Supervised

Level 5 – Off Grounds, Unsupervised or Trial Visit

The LAA/designee may notify the parole or probation officer, with the patient's consent in writing, prior to granting Level 5 movement. The LAA/designee shall notify the parole or probation officer when the patient is absent without leave (AWOL) if the person is committed pursuant to R.C. section 2967.22.

- iii. Discharge. When the CCO/designee determines that the patient is no longer in need of hospitalization by court order or no longer requires hospital level care, the patient shall be discharged. If the patient consents in writing, the LAA/designee shall notify the parole or probation officer of the release.

5. Treatment Team Requirements.

- a. The patient's forensic status shall be documented on the treatment plan and shall be identified as a focus of treatment.
- b. Prior to a request for Level 2 movement (Off Residential Unit, Supervised) for forensic patients charged with aggravated murder, murder, and Felony 1 or Felony 2 offenses, the treatment team shall conduct a current risk assessment update. For forensic patients charged with a violent misdemeanor or any felony offense, the treatment team shall conduct a current risk assessment update prior to requesting Level 3 movement (On Grounds, Unsupervised) or higher.
- c. The treatment plan shall include risk management interventions that address the factors of special relevance identified in the risk assessment.

6. Procedure for Movement.

- a. No one admitted or returned from AWOL shall be permitted movement from a locked unit until reviewed by the treatment team. A risk assessment update must be completed prior to the granting of Level 3 and above movement. RPHs shall develop policies and procedures regarding the treatment team review of movement after a patient returns from AWOL.
- b. No patient shall be permitted movement without initiation by and approval of the treatment team (see MHAS policy FOR-03, "Risk Assessment Policy"). Patient movement to Levels 3, 4, and 5 must be documented in the medical record by the treatment team, and the physician's order must be specific as to location of movement, including: in-building, on- grounds, and off-grounds movement. In-building and on-grounds movement must be consistent with hospital policy in terms of location.
- c. All movements at Level 2 (Off Residential Unit, Supervised) and above, shall be coordinated with the LAA to ensure legal issues are addressed properly.
- d. A Forensic Review Team (FRT) shall review:
 - i. Movement of forensic patients charged with aggravated murder, murder, and Felony

1 or Felony 2 offenses prior to granting Level 2 movement outside of the residential unit in which they reside; and

- ii. Movement of all forensic patients charged with a violent misdemeanor or any felony offense prior to granting Level 3 movement or above.
- e. Movement of forensic patients charged with nonviolent misdemeanors may be determined by the treatment team without FRT review.
- f. Before Level 2 (Off Residential Unit, Supervised) or above movement is granted, justification for the rationale for increased movement and the parameters of the movement must be documented in the patient's medical record.
- g. Prior to exercising Level 2 or above movement, on a daily basis, a member of the treatment team shall screen patients for any conditions that may preclude movement. Documentation of this screening (DMH-5453) must be contained in the patient's medical record.
- h. Movement to highly crowded social and community events such as fairs, fireworks, theaters, etc. is restricted to those patients who have approved Level 5 movement (Off Grounds Unsupervised). Patients who have Level 4 movement (Off Grounds Supervised) may be considered for such events if prior to the event.
 - i. Specific justification for the event is documented in the treatment team notes;
 - ii. Approval by the chief clinical officer or designee is documented in the medical record; and
 - iii. Enhanced supervision above and beyond the usual supervision for groups on Level 4 is arranged.
- i. Prior to the implementation of any changes in movement level, the CCO shall review and approve the recommendations of the FRT.
- j. The treatment team may consider utilizing electronic GPS monitoring for a patient on Level 4 or Level 5 movement. These situations would include, but not be limited to, patients who have a history of AWOL while under supervision. If the treatment team is considering this option, the CCO should contact the Office of the Medical Director and the Director of Forensic Services in Central Office for further guidance. See MHAS FOR-08 Electronic Monitoring in Regional Psychiatric Hospitals.

7. Forensic Review Team (FRT).

- a. The FRT shall be appointed by the CCO/designee and consist of two or more clinical staff with expertise in forensic work. The FRT must include:
 - i. Psychiatrist or psychologist with clinical expertise and forensic experience who is

- not involved in the treatment of the patient being evaluated for movement; and
- ii. At least one other independently licensed clinician with forensic experience whom the CCO assigns. If the LAA is an independently licensed mental health professional, he or she may serve in this capacity.
- b. The FRT may also include a non-clinician LAA, or LAA designee.
 - c. Responsibilities of the FRT shall include reviewing all requests for movement under Procedure for Movement (above). The FRT shall:
 - i. Review the initial clinical risk assessment and any updates;
 - ii. Conduct a clinical interview with the patient; and
 - iii. Review any other relevant material i.e., clinical records, conduct an interview with treatment team staff, etc.
 - d. Approval or denial (by FRT or CCO) of the requested movement shall be communicated in writing to the treatment team within fourteen days. If denied, the FRT shall provide to the patient and treatment team clear expectations regarding the patient's treatment and/or behavior in order to be granted future movement or to be recommended to the court for future movement. The treatment team shall discuss the results of the review with the patient.
 - e. As the patient moves toward nonsecured status, the treatment team and/or FRT shall consult with the forensic monitor or community case managers for input.
 - f. The patient may appeal a denial of movement at any level as provided in the client's rights grievance procedure. The patient shall be notified of the right to appeal by the treatment team.

D. Monitoring.

1. The treatment team shall meet and review the treatment plan, the patient's current approved movement, and compliance with movement at least monthly or more frequently when (a) an event or incident occurs which is related to the patient's identified risk factors or (b) when one or more of the following events occur:
 - a. Positive drug or alcohol screen;
 - b. Deterioration in the patient's mental status or return of overt symptomatology;
 - c. AWOL;
 - d. Violation of hospital rules regarding significant contraband;
 - e. Incidents with family or others in the community while on pass; and/or
 - f. Any threatening or violent behavior.

2. The treatment team shall review all written notes regarding the patient's handling of off- grounds movement.
3. Before a patient is granted nonsecured movement (Off Grounds, Unsupervised, Trial Visit), the patient shall sign a form titled "Agreement and Conditions for Unsupervised Leave." (DMH- 0447; DMH-FORS-004). Patients who work or visit family on a regularly scheduled basis must sign this form prior to the first visit. The treatment team shall review the form with the patient monthly and the patient shall initial and date the form. Any changes in conditions shall prompt completion and signing of a new form.
4. The form will include a statement of the time and place of the off-grounds activity, including a return time, and any limitation on activities. The patient shall consent to drug and alcohol screening if indicated. The patient will also consent to allow staff to interview persons (family, friends, employer) as indicated in section (D)(5)(b) and (5)(c) of this policy.
5. When a patient leaves the grounds of the RPH:
 - a. With supervision from RPH or community provider staff: hospital staff shall interview the patient within twenty-four hours of return and complete a form which contains questions about the patient's reaction to various settings, relationships, etc. This form shall be placed in the medical record. (DMH-0452, DMH-005)
 - b. Without staff supervision: staff shall interview the patient and the family or person with whom the patient visited within twenty-four hours of return and complete documentation, that contains the answers to questions about the patient's reaction to various settings, relationships, etc. (Family/Other Interview; DMH-0454; DMH-FORS-006). This documentation shall be placed in the medical record.
 - c. To work on a regular basis: staff shall interview the work supervisor at least once per month and complete documentation that contains the answers to questions about the patient's reaction to the work setting, relationships with others in the work setting, etc. (Employer Interview: DMH-0457; DMH-FORS-007) This documentation shall be placed in the medical record.

E. Documentation.

1. The results of each review of movement by the (approval or denial) shall be documented on a form developed by the RPH, which shall be placed in the patient's medical record in the progress notes and legal section.
2. A mechanism shall be in place to ensure staff are aware of each patient's legal status and approved movement.

F. Clinical Risk Assessment.

1. Risks assessments shall be completed in accordance with MHAS policy FOR-03,

“Risk Assessment Policy.”

2. Each RPH may require additional, more restrictive policies which should be followed as applicable.

G. Training.

1. All CCOs, Client Rights Specialists, LAAs, and other FRT members shall read, understand, and be able to implement this policy.
2. CCOs, LAAs, and FRT members will train their RPH's treatment team staff to implement this policy.
3. Each RPH shall schedule regular meetings to discuss forensic issues. All levels of staff shall be involved in these meetings consistent with the philosophy of quality improvement.
4. At least annually, in-service training shall be offered to staff regarding forensic issues.

H. Procedures.

1. Each RPH shall develop internal policies and procedures which are consistent with this MHAS policy and are approved by the CEO and CCO.
2. On an ongoing basis, each RPH shall review the quality of performance regarding the forensic movement process defined in this policy.
3. Each RPH CCO/designee shall conduct periodic review, no less than every three years, of the RPH's policy and procedures related to treatment and movement of forensic patients, implementation of policy and procedures, and continuous quality improvement efforts and training regarding forensic issues. If problems or concerns arise with the implementation of the policy, the CCO shall consult with the Office of the Medical Director.
4. An RPH may apply to the Medical Director for a variance to this policy if unusual circumstances hinder its effective and efficient implementation.



OHIO

CRIMINAL SENTENCING COMMISSION

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FELONY SENTENCING QUICK REFERENCE GUIDE

PURPOSES & PRINCIPLES OF SENTENCING [R.C. 2929.11(A)]

Overriding Purposes:

To protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender while “using the **minimum sanctions** that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.”

Principles:

- Always consider the need for incapacitation, deterrence, rehabilitation of the offender, and restitution to the victim and/or the public. [R.C. 2929.11(A)]
- Sentences should be commensurate with, and not demeaning to, the seriousness of offender’s conduct and its impact on the victim, and consistent with sentences for similar crimes by similar offenders. [R.C. 2929.11(B)]
- Courts shall not sentence based on the offender’s race, ethnicity, gender, or religion. [R.C. 2929.11(C)]

SERIOUSNESS & RECIDIVISM FACTORS - CONSIDER IN EVERY CASE

The court must weigh the following factors, if present, as well as any other relevant factors.

OFFENDER’S CONDUCT MORE SERIOUS

[R.C. 2929.12(B)]

- Injury exacerbated by victim’s physical or mental condition or age
- Victim suffered serious physical, psychological, or economic harm
- Offender held public office or position of trust related to the offense
- Offender’s occupation, elected office, or profession obliged the offender to prevent the offense or to bring those committing it to justice
- Offender’s professional reputation or occupation, elected office, or profession facilitated the offense or is likely to influence others’ conduct
- Offender’s relationship with the victim facilitated the offense
- Offender acted for hire or as part of organized criminal activity
- Offender was motivated by prejudice based on race, ethnicity, gender, sexual orientation, or religion
- In a domestic violence or assault case, offender is parent or custodian, the victim was a family or household member, and the offense was committed in the vicinity of one or more children other than the victim

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OFFENDER'S CONDUCT LESS SERIOUS

[R.C. 2929.12(C)]

- Victim induced and/or facilitated the offense
- Offender acted under strong provocation
- Offender did not cause or expect to cause physical harm to person or property
- Substantial grounds exist to mitigate the offender's conduct, even if they do not constitute a defense

OFFENDER'S RECIDIVISM MORE LIKELY

[R.C. 2929.12(D)]

- Offense was committed while on bail, awaiting sentencing, on felony community control or PRC, or after PRC unfavorably terminated
- Offender has a history of criminal convictions or juvenile delinquency adjudications

Offender has not responded favorably to sanctions previously imposed in adult or juvenile court

- Offender shows pattern of alcohol/drug use related to offense and doesn't acknowledge it or refuses treatment
- Offender shows no genuine remorse

OFFENDER'S RECIDIVISM LESS LIKELY [R.C. 2929.12(E)]

- Offender has no prior juvenile delinquency adjudication and/or no prior adult conviction
- Offender has led a law-abiding life for a significant number of years
- Offense was committed under circumstances unlikely to recur
- Offender shows genuine remorse

OFFENDER'S VETERAN STATUS [R.C. 2929.12(F)]

MANDATORY PRISON TERMS

Note: Factors other than prior convictions that enhance the penalty for a given offense must be specified in the indictment.

The General Assembly frequently changes this list and doesn't always include changes in R.C. 2929.13(F).

AGGRAVATED MURDER OR MURDER

The court must impose a prison term specified by R.C. 2929.02 - 03. [R.C. 2929.13(F)(1)].

ANY F-1 OR F-2

A prison sentence is mandatory when offender has a prior conviction for aggravated murder, murder, or any F-1 or F-2 offense. [R.C. 2929.13(F)(6)]

ASSAULTS ON PEACE OFFICERS

Felonious, aggravated, or simple assault when victim is a peace officer or BCII investigator who suffered serious physical harm. [R.C. 2929.13(F)(4) and (13)]

- 7-year specification if offender shot at peace or corrections officer while committing or attempting a homicide or assault offense [R.C. 2941.1412]; [R.C. 2929.14(B)(1)(f)(i)]
- 5-year specification for aggravated vehicular homicide (AVH) with peace-officer victim [R.C. 2941.1414]; [R.C. 2929.14(B)(5)]

ASSAULTS ON PREGNANT WOMEN

Mandatory, within felony range, for felonious, aggravated, or simple assault if offender knew of the

pregnancy, with specification in [R.C. 2941.1423]; [R.C. 2913(F)(18)]; [R.C. 2929.14(B)(8)].

REPEAT VIOLENT OFFENDER SPECIFICATION (RVO)

Defined as person who commits aggravated murder, murder, a violent F-1 or F-2, or an F-1 or F-2 attempt of violence, with a prior conviction for one or more of the same. [R.C. 2929.01(CC)]; [R.C. 2941.149]

- Discretionary RVO time: If court elects the maximum from range for underlying offense and LWOP is not imposed, it may add 1 to 10 more years if the court finds under R.C. 2929.14(B)(2)(a)(i-v) that the prison term for the underlying offense is:
 - Inadequate to punish the offender and protect the public (see recidivism factors in [R.C. 2929.12(D) - (E)]); **and**
 - Demeaning to seriousness of offense (see seriousness factors in [R.C. 2929.12(B) - (C)])
 - For F-2 offenses, the court also must find serious physical harm or attempt or threat to do so
- Under R.C. 2929.14(B)(2)(b), the court must impose the maximum prison term authorized for the offense, plus an additional 1 - 10 years for:
 - RVO with ≥ 3 RVO offenses in 20 years, including current, if LWOP not required or imposed

VIOLENT F-3 OFFENSES WITH PRIOR

F-3 involuntary manslaughter or an attempt to commit a violent F-2 offense involving attempted or actual serious physical harm when offender has prior conviction for aggravated murder, murder, involuntary manslaughter, rape, or other F-1 or

F-2 that involved causing or attempting to cause serious physical harm. [R.C. 2929.13(F)(4) and (7)]

- Mandatory 30-day jail term for misdemeanor violation with specification [R.C. 2929.24(G)]

CERTAIN SEX OFFENSES

Any offense with a sexually violent predator (SVP) specification: Under R.C. 2929.13(F)(2), (11), and (15) and [R.C. 2971.03], at least 2 years to Life for specification, consecutive to underlying offense.

Any rape: See [R.C. 2929.13(F)(2)] and our [Rape Penalty Chart](#) for range of sentences.

- Attempted rape, if victim < 13 and, if completed, would be a sexual predator [R.C. 2929.13(F)(2)]
- 5 to 25 years for attempted statutory rape if offender ≥ 16 and victim < 13 [R.C. 2941.1418]; [R.C. 2971.03(A)(3)(e)(ii) or (B)(2)(a)]; [R.C. 2929.14(E)]
- 10 years to Life for attempted statutory rape if offender ≥ 16 and victim < 10 [R.C. 2941.1419]; [R.C. 2971.03(A)(3)(e)(iii) or (B)(2)(b)]
- 15 years to Life for attempted rape, if offender has prior attempted statutory rape [R.C. 2941.1420]; [R.C. 2971.03(A)(3)(e)(iv) or (B)(2)(c)]

Sexual battery after Aug. 3, 2006, if victim < 13 [R.C. 2929.13(F)(3)(c)(ii)]; or

- Before Aug. 3, 2006, if victim < 13 , with prior rape, FSP, GSI, or sexual battery [R.C. 2929.13(F)(3)(c)(i)]

Gross Sexual Imposition if victim < 13 [R.C. 2929.13(F)(3)(a) - (b)]:

- With prior rape, FSP, GSI, or sexual battery; or
- On or after Aug. 3, 2006, with corroboration of victim's testimony¹

Importuning, with victim < 13 , if offender has prior sex offense or child-victim-oriented offense [R.C. 2929.13(F)(4)]; [R.C. 2907.07(A), (C), and (F)(2)]

SORN Registration: Repeat failure to register [R.C. 2950.99(A)(2)(b)] – mandatory sentence of at least 3 years

1 In *State v. Bevely*, 2015-Ohio-475, the Ohio Supreme Court held that a mandatory prison term based upon corroborating evidence is unconstitutional.

Any OVI-related aggravated vehicular homicide (AVH) and aggravated vehicular assault (AVA) [R.C. 2903.06 and .08]

CERTAIN DRUG OFFENSES

F-1, F-2, and F-3 Drug Offenses: Generally mandatory from range when required by statute [R.C. 2929.13(F)(5)] and [R.C. Chapter 2925]. See our [Drug Offense Guide](#) for specific guidance.²

F-2 Marijuana/Hashish Trafficking, Possession, or Cultivation: [R.C. 2925.03 - .04 and .11]

- 20 to <40k. marijuana, 1 to <2 k. solid hashish, or 200 to <400 g. liquid hashish: 5, 6, 7, or 8 years
- ≥40 k. marijuana, ≥2 k. solid hashish, or ≥400 g. liquid hashish: 8 years
- If in vicinity of school/juvenile: F-1 maximum

Major Drug Offenders (MDO): Defined in [R.C. 2929.01(W)]

- F-1 maximum for specified, high-quantity amounts [R.C. 2941.1410(A)]
- Additional 3- to 8-year specification when drug involved is a fentanyl-related compound [R.C. 2941.1410(B)]
-

CORRUPT ACTIVITY

Engaging in a pattern of corrupt activity in violation of R.C. 2923.32 when the most serious predicate offense is an F-1. [R.C. 2929.13(F)(10)]

CERTAIN TRAFFIC OFFENSES

Felony OVI when local incarceration is not imposed and for 5 priors in 20 years specified [R.C. 4511.19]; [R.C. 2941.1413]

- At least 60 days or at least 120 days, as specified for felony OVI [R.C. 4511.19(G)]; [R.C. 2929.13(G)(1) - (2)]
- 6 months or 1, 2, 3, 4, or 5 years on 6th OVI in 20 years [R.C. 2929.13(G)(1) - (2)], plus [R.C. 2941.1413]; [R.C. 2929.24(E)], plus [R.C. 2941.1416]

Certain other involuntary manslaughters, AVHs, vehicular homicides, AVAs when specified

[R.C. 2929.13(F)(14)]; [R.C. 2903.04, .06, and .08]

- 3 years for AVH with 3 or more prior OVIs or equivalent offenses [R.C. 2941.1415]; [R.C. 2929.14(B)(6)]

HUMAN TRAFFICKING

Violations of R.C. 2905.32(E) punishable by 10, 11, 12, 13, 14, or 15 years.

- Specification for offenses committed in furtherance of human trafficking (see [R.C. 2941.1422] and penalties in [R.C. 2929.14(B)(7)])

FELONY DOMESTIC VIOLENCE

When offender knew the victim was pregnant and/or caused serious physical harm to unborn child [R.C. 2929.13(F)(17)]; [R.C. 2919.25(D)(3) - (6)]

2 Certain F-3 drug offenses are subject to a 5-year mandatory term. See *State v. Pribble*, 2017-Ohio-8499

- 2 years, if wearing or carrying body armor [R.C. 2941.1411]
- 1, 2, or 3 years for participating in a criminal gang [R.C. 2941.142]; [R.C. 2929.14(G)]
- 2 years for aggravated murder, murder, or a violent F-1, F-2, or F-3 in a school zone [R.C. 2941.143]; [R.C. 2929.14(H)(1)]

ILLEGAL CONVEYANCE

When prison or detention employee takes weapons, ammunition, or drugs into the facility [R.C. 2929.13(F)(12)]; [R.C. 2921.36]

OTHER SPECIFICATIONS IN R.C. 2941

See [R.C. 2929.13(F)(8) - (9)] and [R.C. 2929.14(B)(1), (5) - (7), (E), (G) - (H)]etc.;

NOTE: Time for specification is mandatory; term for the underlying offense may or may not be.

- 6 years for automatic or muffled/silenced firearm [R.C. 2941.144] (9 years with prior)(cannot combine with 3- or 1-year gun specification)
- 3 years, if firearm used, displayed, brandished, or otherwise indicated [R.C. 2941.145] (54 months with prior)
- 1 year, if firearm possessed, but not used, displayed, brandished, or otherwise indicated [R.C. 2941.141](18 months with prior)
- 5 years, if a drive-by shooting, in addition to gun specification above [R.C. 2941.146]

- 6 years for causing permanent, serious disfigurement or permanent, substantial incapacity when using an accelerant to commit felonious assault [R.C. 2941.1425]; [R.C. 2929.14(B)(9)]
- 6 years for causing permanent, disabling harm to a victim <10 years old [R.C. 2941.1426]; [R.C. 2929.14(B)(10)]

DISCRETIONARY PRISON OR COMMUNITY CONTROL

For anyone not facing a mandatory prison term, judge has discretion to choose a prison term from

R.C. 2929.14(A) ranges, or they may impose a term of community control of up to 5 years [R.C. 2929.13(A)]; [R.C. 2929.15(A)], etc.

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PRESUMPTIVE PRISON TERM

F-1s, F-2s, “In Favor” Drug Offenses, and Certain F-3s: Presumption in favor of a prison term [R.C. 2929.13(D)(1)]. To rebut presumption, court must find that non-prison sanction(s) would both

[Appendices](#)

[R.C. 2929.13(D)(2)]:

- Adequately protect the public and punish the offender because the factors indicating recidivism is less likely outweigh the factors indicating recidivism is more likely; and
- Not demean seriousness of the offense because less-serious factors outweigh more-serious factors

If no prison term imposed (or if judicial release is later granted) state has appeal of right [R.C. 2953.08(B)(1)]

F-3 offenses are theft of firearm [R.C. 2913.02(B)(4)], certain GSI offenses [R.C. 2907.05(A)(4) or (B)], or F-3 importuning [R.C. 2907.07(F)]

NO PRESUMPTIVE SENTENCE

Other F-3s or “Div. C” Drug Offense: No guidance other than Purposes and Principles [R.C. 2929.13(C)]

- Offense related to public office/position held; position obligated offender to prevent it or to bring others to justice; or offender’s reputation/position facilitated the crime or likely to influence others
- Offense was for-hire or part of organized criminal activity
- Offense was a sex offense
- Offender served a prior prison term or was in prison at time of offense
- Offense was committed while offender was under community control or on bail or bond
- Offender committed the offense while in possession of a firearm

If R.C. 2929.13(B)(1) mandate does not apply, court must comply with R.C. 2929.11(A) purposes and principles of sentencing.

MANDATORY COMMUNITY CONTROL

F-4s and F-5s or “Div. B” Drug Offenses:

[R.C. 2929.13(B)(1)(a)(i-iv)]:

Mandatory* Community Control if most serious charge is an F-4 or F-5 that is not an offense of violence or qualifying assault offense and the offender:

- Did not have prior felony at any time or prior misdemeanor offense of violence within 2 years
- Court made request of DRC and was provided with available community-control sanctions under R.C. 2929.13(B)(1)(c)
 - Court may impose prison term if DRC does not name an appropriate sanction within 45 days [R.C. 2929.13(B)(1)(b)(iv) and (B)(1)(c)]

***HOWEVER**, the court *may* impose a prison term if *any* of the following 11 factors apply

[R.C. 2929.13(B)(1)(b)]:

- Physical harm to a person
- Attempt or actual threat of physical harm to a person with a deadly weapon
- Attempt or actual threat of physical harm to a person, plus prior conviction for causing such harm

If a prison term is imposed, defendant has appeal of right under R.C. 2953.08(A)(2).

- If a sentence is given with a prison term for a F-4 or F-5 or a “Div. B” Drug Offense and the court specifies one or more factor found in R.C. 2929.13(B)(1)(b), then defendant is not entitled to an appeal as a matter of right

TARGETED COMMUNITY ALTERNATIVES TO PRISON (TCAP)

In participating counties, F-5 offenders who are sentenced to a prison term ≤ 12 months cannot be sent to prison, unless:

- The offense was an offense of violence, a sex offense, a trafficking offense, or other mandatory prison term
- The offender has a prior conviction for a sex offense or felony offense of violence
- The sentence is to be served concurrently to a prison-eligible felony offense

TCAP is a voluntary statewide program following the passage of 133 GA HB 166.

PROBATION VIOLATOR CAPS

F-4 and F-5 offenders found to be in violation of their community-control sanctions solely for

so-called “**technical violations**” can only be sent to prison for 90 days on an F5 sentence and 180 days on an F4 sentence. [R.C. 2929.15(B)]

“**Technical violation**” is currently undefined and subject to conflicting interpretation throughout the state. Consult your local appellate decisions pending further legislative guidance.

INDEFINITE & DEFINITE SENTENCING

Ohio now operates under a system of both definite and indefinite sentencing. Felony offenses may be subject to a life sentence, a non– life indefinite sentence, or a definite sentence.

LIFE-SENTENCE OFFENSES

Offender is sentenced to a term of years up to life with release determinations by parole board.

- Aggravated murder (if death sentence not imposed) and murder (LWOP or X years – Life) [R.C. 2903.01 - .02]; [2929.02 - .03]
- Rape of a person <13 (LWOP); other rape or sexual battery; or GSI of a person <13, with an SVP spec (2 years - Life) [R.C. 2907.02]; [R.C. 2971.03(A)]; and [R.C. 2941.147 spec]

- **Minimum Term:** Judges select a minimum term from the R.C. 2929.14(A) range
 - For offenses that specify a different term, that term is considered the minimum term
 - For offenses that carry a mandatory term, the minimum term is a mandatory term
- **Maximum Term:** Generally calculated as the minimum term plus 50 percent of itself [R.C. 2929.144(B)(1)]
 - **Concurrent Sentences:** The maximum term is equal to the longest minimum term

- Aggravated murder, murder, involuntary manslaughter in felony, felonious assault, and kidnapping with SVP and sexual motive (SM) specs (LWOP for murders, 2 years - Life for others) [R.C. 2971.03(A)]; [R.C. 2941.147 (SM spec)]; [R.C. 2941.148 (SVP spec)]

NON-LIFE FELONY INDEFINITE PRISON TERMS – 132 GA SB 201

F-1 and F2 offenses committed on or after **March 22, 2019** that are not subject to life imprisonment. Judges impose both a minimum and maximum term. Release is presumed at the expiration of the minimum term. See the SB 201 Resources for further guidance.

imposed, plus 50 percent of the longest minimum term for the most serious qualifying felony being sentenced [R.C. 2929.144(B)(3)]

- **Consecutive Sentences:** The maximum term is the sum of ALL indefinite minimum terms imposed, PLUS any

definite terms imposed, PLUS an additional 50 percent of the longest minimum term, OR definite term for the most serious felony being sentenced [R.C. 2929.144(B)(2)]

NOTE: Non-mandatory qualifying offenses are eligible for community control if presumption is overcome. Judges would then reserve an indefinite sentence.

DEFINITE PRISON TERMS

Offender sentenced to a definite term under

R.C. 2929.14(A), unless offense specifies a different term. Release at the expiration of term, subject to reductions below.

- **F-3, F-4, and F-5 offenses**, as well as **Non-life F-1 and F-2 offenses committed before March 22, 2019**

COMMUNITY CONTROL & FINANCIAL SANCTIONS

RESIDENTIAL SANCTIONS

Include, but not limited to R.C. 2929.16; (See [R.C. 2929.01] for definitions):

- Community-based correctional facility (CBCF) for up to 6 months
- Jail or minimum-security jail for up to 6 months (or up to 1 year for certain F-4 OVIs)
- Halfway house; no stated time limit
- Alternative residential facility: Another place for employment, training, education, treatment, etc.

NON-RESIDENTIAL SANCTIONS

Include, but not limited to R.C. 2929.17; (See [R.C. 2929.01] for definitions):

- Day reporting: Report to an approved location to participate in work, training, treatment, etc.
- House arrest and/or electronic monitoring and/or continuous alcohol monitoring
- Victim-offender mediation, with the victim's prior consent
- License violation report: Inform an agency granting a business or professional license of the violation
- Counseling generally. In particular, if a parent or custodian sentenced for domestic violence or assault involving a family or household member committed in the vicinity of a child other than

the victim

- Community service for up to 500 hours for felonies, which may be imposed on indigent and non-indigent persons; the 40-hour/ month cap is no longer the law; community service is credited at judge's discretion
- Drug treatment: Inpatient, outpatient, or both; court determines level of security
- Drug- and alcohol-use monitoring, including random drug testing
- Intensive probation supervision; frequent contact with supervising officer, etc.
- Basic probation supervision, subject to conditions set by the court
- Monitored time: Under court control, subject to no conditions other than leading a law-abiding life
- Curfew
- Employment: Obtain or retain a job
- Education or training

SEX-OFFENDER REGISTRATION DUTIES

- **Tier 3 Offender:** Must report every 90 days for life
- **Tier 2 Offender:** Must report every 180 days for 25 years (Juveniles report for 20 years, unless modified)

- **Tier 1 Offender:** Must report every 12 months for 15 years (Juveniles report for 10 years, unless modified)

FINANCIAL SANCTIONS GENERALLY

Include, but not limited to [R.C. 2929.18\(A\)](#) (See [\[R.C. 2929.01\]](#) for definitions):

- **Restitution:** For any economic loss (Plus up to 5-percent collection charge), but not “non-economic” loss [\[R.C. 2929.18\(A\)\(1\)\]](#)
 - Also see provisions specific to human trafficking in [R.C. 2929.18\(B\)\(8\)](#)
- **Fines**, including [\[R.C. 2929.18\(A\)\(2\) - \(4\)\]](#):
 - Conventional fine from ranges in [R.C. 2929.18\(A\)\(3\)](#) (See Felony Sentencing Table, p. 14)
 - For organizational offenders see [\[R.C. 2929.31\]](#)
 - “State fine” or costs: Imposed by statute for victims, public defense, law libraries [\[R.C. 2929.31\(A\)\(4\)\]](#)

- “Day fine”: Standard percentage of offender’s daily income over time, based on offense seriousness [\[R.C. 2929.31\(A\)\(2\)\]](#)
- **Reimbursement of costs to administer any sanction** [\[R.C. 2929.18\(A\)\(5\)\]](#) and monitoring devices, including:
 - Pay-for-stay in jail, prison, etc. up to actual costs (Jail repayment must be authorized by local government)
- **Court Costs:** Costs of the prosecution and jury fees [\[R.C. 2947.23\]](#). See [Supreme Court bench card on fines and fees](#).
- **Present and future ability to pay** must be considered when imposing fines, restitution, and many types of costs including appointed counsel fees, the costs of supervision, confinement costs, the costs of an immobilizing or disabling device, and reimbursement for controlled substance tests or arson investigation costs.
 - Courts may hold a hearing on present and future ability to pay, if necessary [\[R.C. 2929.18\(E\)\]](#)
 - Ability to pay considerations are not required to impose the costs of prosecution and any jury fees under [R.C. 2947.23](#)³
 - Courts must impose the costs of prosecution and jury fees under [R.C. 2947.23](#), but may waive, modify, or suspend those costs at their discretion pursuant to [R.C. 2947.23\(C\)](#)

3 See *State v. Taylor*, Slip Opinion No. 2020-Ohio-3514 (Decided July 2, 2020).

CRIME-SPECIFIC FINANCIAL SANCTIONS

Drug offense fines [\[R.C. Chapter 2925\]](#) and [\[R.C. 2929.18\(B\)\]](#):

- **F-1, F-2, F-3 Drug Offenses:** Mandatory fine at least 50 percent of the maximum conventional fine [\[R.C. 2929.18\(B\)\(1\)\]](#)
- **F-1, F-2, F-3 Drug Trafficking:**

“Additional” fine equals value of offender’s property involved in or realized from the offense, or, if no property or undetermined value, additional fine under the [R.C. 2929.18\(A\)\(3\)](#) ranges; capped at conventional fine maximum [\[R.C. 2929.18\(B\)\(4\) - \(7\)\]](#); (Also see million-dollar fine below)

Up to \$1 million for aggravated murder, murder, or F-1, or for F-1, F-2, or F-3 drug offense, if 3 or

more victims in instant or all such past crimes

[\[R.C. 2929.32\]](#)

Felony OVI, mandatory fine specified by offense level [\[R.C. 2929.18\(B\)\(3\)\]](#); [\[R.C. 4511.19\(G\)\(1\)\(d\) or \(e\)\]](#)

Arson: Mandatory investigation and prosecution costs reimbursement [\[R.C. 2929.71\]](#)

Forfeitures [\[R.C. Chapter 2981\]](#) and Title 45:

- Asset forfeiture, particularly in corrupt activity, drug, gang, and Medicaid fraud cases [\[R.C. Chapter 2981\]](#)
- Motor vehicle forfeiture for certain OVIs, DUSs, and wrongful entrustments [\[R.C. 4510.11, .19, and .203\]](#), etc.

SENTENCING CONSIDERATIONS & HEARING NOTICE REQUIREMENTS

PRESENTENCE INVESTIGATION (PSI)

No offender may be placed on a term of community control without a written PSI being considered by the court, unless both the defendant and the state waive the requirement. [\[R.C. 2951.03\(A\)\(1\)\]](#)

RISK ASSESSMENT

The court and its probation officers must use the risk-assessment tool selected by DRC if the court orders an assessment of an offender for sentencing or other purposes [\[R.C. 5120.114\(A\)\]](#).

SENTENCING HEARING

A hearing is necessary before imposing sentence for a felony. [\[R.C. 2929.19\(A\)\]](#)

When Imposing a Prison Term [\[R.C. 2929.19\(B\)\(2\)\]](#):

- **Prison Term(s):** State a prison term, plus any gun specification, RVO, MDO, consecutives, etc.
 - **For SB 201-qualifying offenses** subject to indefinite sentencing, impose minimum terms on each qualifying count **and** the maximum term on the record

- **Indefinite Sentencing Advisements:** For qualifying offenses, see specific required advisements in [R.C. 2929.19\(B\)\(2\)\(c\)](#)
- **Post-Release Control:** Notify that, as part of sentence, PRC is mandatory (for F-1, F-2, violent F-3, or sex offense) or discretionary (for all others) for 5 years (for F-1 or sex offense) or 3 years (for all other offenses). Discretionary PRC may be terminated prior to the end of the 3-year term
 - Notify that violator could be sent to prison for up to 9 months, with maximum for repeated violations equal to 50 percent of stated prison term
 - For a new felony, offender may be sent to prison for the remaining PRC period, or 12 months, whichever is greater, plus a prison term for the new crime [\[R.C. 2929.141\]](#)
 - The defendant has a potential post-release control obligation on each felony count, but may be subject to only one post-release control period (the longest) per case, pursuant to [R.C. 2967.28\(F\)\(4\)\(c\)](#)

- **Jail Time Credit:** Notify the offender of the number of days they have been confined for the offense and include in sentencing entry [R.C. 2929.19(B)(2)(h)(i)]
- **Earned Credit Notice:** Notify that the offender may be eligible to earn credit while in prison and that the credit isn't automatic [R.C. 2929.14(D)(3)]; [R.C. 2929.19(B)(2)(g)]
- **SORN Notice:** Provide notices required by SORN Law [R.C. Chapter 2950], including duty to register [R.C. 2929.19(B)(3)]
- **Arson Registry Notice:** Notify of duty to register to arson offender who has not been sentenced to confinement in any institution [R.C. 2909.15]
- **Violent Offender Database (VOD) Notice:** See [SB 231 VOD Database Guide](#) for details. Court must provide notice **before** sentencing hearing for all offenders found or pleading guilty to:
 - Aggravated murder, murder, voluntary manslaughter, kidnapping, abduction (as F-2), or an attempt, conspiracy, or complicity conviction for any of these offenses

When Not Imposing a Prison Term

[R.C. 2929.19(B)(4)]: Directly sentence to community- control sanction(s) and:

- Notify that, if violated, court may impose longer time, more restrictive sanction, or a specified, reserved prison term
- Before imposing financial sanction(s), court must consider offender's present and future ability to pay [R.C. 2929.19(B)(5)] (See "Financial Sanctions" above)
- If local incarceration imposed, specify, if appropriate, that offender must reimburse costs of confinement [R.C. 2929.19(B)(6)]
- **LEADS Notification:** Court must submit certain information to LEADS if either:
 - Court orders mental health evaluation or treatment for mental illness upon conviction of offense of violence;
 - Court approves conditional release;

Court orders sex offender, arson, or violent offender registration

MERGER DOCTRINE

In cases with multiple counts, courts must consider whether sentences for allied offenses of similar import must be merged (a separate decision from consecutive/concurrent sentencing). See [R.C. 2941.25].

CONSECUTIVE PRISON TERMS

General Rule: Presumption of concurrent terms [R.C. 2929.41(A)] with court discretion to impose consecutive sentences if necessary to protect/ punish, not disproportionate, and makes findings in R.C. 2929.14(C)(4):

- Crimes committed while awaiting trial/ sentencing, under sanction, or under post-release control;
- Two or more of the multiple offenses committed as a single course of conduct; and harm so great or unusual that a single term does not adequately reflect seriousness of the conduct; or
- Offender's criminal history shows that consecutive terms are needed to protect the public

Defendant may appeal consecutives exceeding the maximum penalty for the worst offense involved [R.C. 2953.08(C)]

Consecutive Prison Terms Required:

[R.C. 2929.14(C)(1) - (3)]:

- **Specifications:** Sentence for gun and other specifications served before underlying offense [R.C. 2929.14(C)(1)(a) - (c)]
- **Certain crimes** committed by an inmate or escapee from a detention facility (e.g., riot, many escapes, etc.) [R.C. 2929.14(C)(2)]
- **Aggravated robbery** of a deadly weapon from a law enforcement officer [R.C. 2911.01(B)]; [R.C. 2929.14(C)(3)]
- **Theft of a firearm** (Grand Theft) where a prison term is imposed [R.C. 2913.04(B)(4)]; [R.C. 2929.14(C)(3)]

- **Sexually violent predators** [R.C. 2971.03)(E)]
- **Felony failure to comply:** Fleeing in a vehicle from an officer, causing substantial injury or risk of it [R.C. 2921.331(C) - (D)]; [R.C. 2929.14(C)(3)]

SENTENCING JUVENILES

Recent U.S. Supreme Court decisions prohibit mandatory life-without-parole sentences for juvenile offenders. The Ohio Supreme Court has extended this decision to include sentences that exceed a juvenile's life expectancy for non- homicide offenses.

REVERSE BINDOVERS

Under certain circumstances, the court sentencing an offender who was transferred from a juvenile court where the ultimate conviction

is for an offense that would not be subject to mandatory bindover, the court must transfer the case back to juvenile court for disposition. See [R.C. 2152.122(B)].

CONCURRENT SUPERVISION

For the rules governing supervision of offenders subject to supervision by more than one court, see [R.C. 2951.022].

RELEASE & SENTENCE-REDUCTION MECHANISMS

JUDICIAL RELEASE

Eligibility: Any non-mandatory term, except certain offenses by public office holders

[R.C. 2929.20(A)(1)(b)]

- If serving an eligible term consecutive to a mandatory term, eligible after serving the mandatory term
- A PSI is not necessary to grant judicial release

Filing Deadlines [R.C. 2929.20(C)]:

- If <2 years, can file any time after entering prison or after mandatory term(s) expires
- If 2 to <5 years, can file 180 days after entering prison or 180 days after mandatory term(s) expires
- If 5 years, can file after serving 4 years of stated prison term or 4 years after mandatory term expires
- If >5 to <10 years, can file after serving 5 years of their stated prison term or 5 years after mandatory term expires
- If >10 years, can file after serving 50 percent of stated prison term or 5 years after expiration of mandatory term, whichever is later

Hearings: The court may deny judicial release without a hearing, but must schedule a hearing to grant the petition.

- If denied at a hearing, offender cannot re-file;
- Court must make findings under R.C. 2929.20(J) to grant judicial release on an eligible F-1 or F-2. The state may appeal under R.C. 2953.08(B)(3)

RISK-REDUCTION SENTENCE

Court may recommend a "risk-reduction sentence" under which the inmate may be released by DRC after serving 80 percent of their term [R.C. 2929.143]; [R.C. 5120.036].

- Murder offenses, violent F-1 or F-2 offenses, or sexually oriented offenses not eligible
- Sentence cannot include a mandatory term
- Offender must agree to assessment and to participate in any recommended programming

80-PERCENT RELEASE RECOMMENDATION

- **“80-Percent Release”:** DRC director may petition the sentencing court to release certain eligible offenders after having served 80 percent of their term [\[R.C. 2967.19\]](#).
 - Must be serving a term of 1 year or more
 - Disqualifying prisons found in [R.C. 2967.19\(A\)\(2\)](#)
 - Mandatory prison terms may be eligible if not a “restricting prison term” under [R.C. 2967.19\(A\)\(4\)](#)
 - Eligible offenders are reviewed by the Ohio Parole Board before being considered by the director, who then makes recommendation to the sentencing court and notifies the prosecutor of the recommendation
 - Sentencing court then must either schedule a hearing or notify DRC that it will not hold a hearing. The offender cannot be released early without a hearing. See [R.C. 2967.19\(H\)](#) for hearing requirements
 - If 80-percent release is granted, the court must place the offender on community control for up to 5 years and reserve the right to reimpose the original sentence

EARNED CREDIT

An inmate may earn either one or five days of credit per month of incarceration for productive participation in education, vocational training, employment in prison industries, substance abuse treatment, or other constructive DRC program [\[R.C. 2967.193\]](#).

- Determination on the number of days that may be earned is based upon the most serious offense for which the offender is being confined
- Earned credit may not exceed 8 percent of the total prison term
- An award of the lesser of 90 days’ credit or a 10-

is possible for completion of programming listed in [R.C. 2967.193\(A\)\(2\)](#)

- Administrative rules of the earned credit program are laid out in [Ohio Adm.Code 5120-2-06](#). For additional information, see [DRC Earned Credit policy](#)

TRANSITIONAL CONTROL

Certain eligible inmates able to be transitioned into the community during the final 180 days of their sentence. DRC to monitor offender's reentry into community. [\[R.C. 2967.26\]](#)

- Sentencing court may disapprove of transition for offenders serving a prison term of two years or less
- Offenders on transitional-control status must stay in sanctioned facility or housing, and are subject to electronic monitoring

EARNED REDUCTION OF MINIMUM TERM

Offenders sentenced to an indefinite term for an SB 201-qualifying offense may

receive a 5- to 15-percent reduction of their minimum

term for "exceptional conduct or adjustment to incarceration" at the request of DRC and with approval of the sentencing court [\[R.C. 2967.271\(F\)\(7\)\]](#)

- See the [SB 201 Resources](#) for further guidance

SUBSTANCE ABUSE DISORDER TREATMENT

DRC may place certain prisoners into community-based substance abuse treatment for those individuals who suffer from a substance abuse disorder [\[R.C. 5120.035\]](#).

- Qualified offenders must be serving a prison term for an F-4 or F-5 and must not have a prior conviction for a felony offense of violence, or for a misdemeanor offense within the past five years. For other qualifications, see [R.C. 5120.035\(A\)\(4\)](#)
- Time must be served at a facility properly licensed as a halfway house or community residential center, pursuant to [R.C. 2967.14](#)

MEDICAL RELEASE

The DRC director may recommend that an inmate who is terminally ill, medically

incapacitated, or in imminent danger of death be released as if on parole [\[R.C. 2967.05\]](#)

- DRC recommendation must include certification by attending physician
- Inmates serving a sentence of death, life without parole, for aggravated murder or murder, for a F-1 or F-2 under [R.C. 2971](#), or for a mandatory prison term for an offense of violence or an [R.C. 2941](#)-specification are ineligible

OVERCROWDING EMERGENCY

When the total prison population exceeds capacity, the DRC director may notify the Correctional Institution Inspection Committee (CIIC) of an overcrowding emergency. The CIIC must review

[Appendices](#)

the situation and make a recommendation to the governor to reduce prison terms for eligible offenders by 30, 60, or 90 days. The governor then may declare an

emergency on a recommendation from the CIIC.

[\[R.C. 2967.18\]](#)

- See [R.C. 2967.18\(E\)](#) for sentences ineligible for the reduction
- Released offenders still may be subject to post-release control

EXECUTIVE CLEMENCY

The governor may, upon recommendation of the parole board, grant relief from a criminal conviction through pardons, commutations, or reprieves.

Recommendations may come from the parole board [\[R.C. 2967.03\]](#).

- **Pardons** may be conditional or unconditional, alleviating some or all of the consequences of criminal convictions

- **Commutations** also may be conditional or unconditional, reducing the penalty of a criminal conviction
- **Reprieves** temporarily postpone the imposition or execution of a sentence. A temporary, definite reprieve of a sentence of death may be granted without notice or application [\[R.C. 2967.08\]](#)
- Applications for pardons must be filed in accordance with [R.C. 2967.07](#)

SHOCK PROBATION/PAROLE

Offenders with an offense date prior to July 1, 1996 (Senate Bill 2) still may be eligible for shock probation [\[Former R.C. 2947.061\]](#) or shock parole [\[Former R.C. 2967.31\]](#).

- **Shock probation** currently is referenced in [R.C. 2929.201](#). Shock probation was available for non-repeat, non-dangerous offenders within 30 - 60 days of incarceration for certain non-aggravated F-1, F-2, or F-3 offenses, or after 6 months for certain aggravated F-1, F-2, or F-3 offenses
- **Shock parole** is a power granted to the parole board to grant parole to eligible pre-SB2 offenders who had not previously served a prison term of greater than 30 days. See [Ohio Adm.Code 5120:1-1-06](#) for additional information

INTENSIVE PROGRAM PRISON

IPP Recommendation: At sentencing, the court may recommend for or against boot camp or intensive program prison. [\[R.C. 2929.19\(D\)\]](#); [\[R.C. 2929.14\(I\)\]](#)

- DRC has rescinded the administrative rules regarding this program. It is no longer in use

FELONY SENTENCING TABLE - DECEMBER 2019

| Felony Level | Sentencing Guidance [R.C. 2929.13(B) - (E)] | Prison Terms [R.C. 2929.14(A)] | Maximum Fines ^a [R.C. 2929.18(A)(2) - (3)] | Repeat Violent Offender Enhancement [R.C. 2929.14(B)(2)]; [R.C. 2941.149] | Is Post-Release Control (PRC) Required? [R.C. 2967.28(B) - (C)] | PRC Period [R.C. 2967.28(B)] |
|--------------|--|---|--|---|--|--|
| F-1 | Presumption for prison | 3, 4, 5, 6, 7, 8, 9, 10, or 11 years | \$20,000 | 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years | Yes | 5 years |
| F-2 | (Also applies to “in favor” drug offenses) | 2, 3, 4, 5, 6, 7, or 8 years | \$15,000 | | | 3 years 5 years, if sex offense |
| F-3 | No guidance, other than PURPOSES AND PRINCIPLES (Also applies to “Div. (C)” drug offenses) | 9, 12, 18, 24, 30, or 36 months or ^b 12, 18, 24, 30, 36, 42, 48, 54, or 60 months | \$10,000 | For F-2 involving att. serious harm or for involuntary manslaughter: 1, 2, 3, 4, 5, 6, 7, 8, 9, or 10 years; otherwise none | Yes, if sex or violent offense; otherwise optional | 3 years; 5 years, if sex offense |
| F-4 | Mandatory 1-year community control for non-violent, no prior felony, etc. ^c | 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months | \$5,000 | None | Yes, if sex offense; otherwise optional | Up to 3 years; 5 years, if sex offense |
| F-5 | Otherwise: If any of 11 [R.C. 2929.13(B)(2)] factors and not amenable to other sanction(s), guidance in favor of prison term. ^c If none of 11 factors, guidance against prison term (Also applies to “Div.(B)” drug offenses) | 6, 7, 8, 9, 10, 11, or 12 months | \$2,500 | | | |

Exceptions: Indeterminate (Life) sentences for aggravated murder, murder, human trafficking, and certain sex offenses and crimes with sexual motivation.

Indefinite Sentences (132 GA SB 201) – Non-life F-1 and offenses committed after March 22, 2019 receive both a minimum and maximum term

Drug Offenses – Penalties track degree of offense, but the sentencing guidance may be different than for other offenses at that felony level. See [Drug Offense Quick Reference](#).

Post-Release Control [R.C. 2967.28D(3)]: The board or court shall review the releasee’s behavior and may reduce the duration. The reduction shall not be a period less than the length of the original stated prison term, and in no case shall the board or court permit the releasee to leave the state without permission of the court or the parole or probation officer.

^a **Maximum Fines:** Covers conventional and day fines. There are exceptions in drug trafficking cases [R.C. 2929.18(B)(4) - (7)].

Some offenses call for a superfine of up to \$1 million [R.C. 2929.32]. For organizational offenders, see [R.C. 2929.31].

In addition to any other fine that is or may be imposed under this section, the court imposing sentence for a felony that is a sexually oriented offense or a child-victim- oriented offense as defined in R.C. 2950.01 may impose a fine of \$50-\$500 [R.C. 2929.18(B)(9)].

^b **Higher F-3s:** The longer-sentence range applies to aggravated vehicular homicides and assaults, sexual battery, GSI, sex with a minor, and robbery or burglary with 2 or more separate aggravated or non- aggravated robberies or burglaries (See [R.C. 2929.14(A)(3)(a)]), and certain F-3 drug offenses [See, e.g., R.C. 2925.041(C)(i)].

^c **F-4s & F-5s:** Certain F-4s and F-5s [R.C. 2929.13(B)(1)(a) - (c)]; other F-4s, F-5s, or “Div. B.” Drug Offenses [R.C. 2929.13(B)(2) - (3)].

Ohio Revised Code 2901.01(A)(9)(a): Offenses of Violence

| ORC Reference | Name of Charge | Severity |
|----------------------------------|---|--|
| 2905.02 | Abduction | F2 or F3 |
| 2909.02 | Aggravated Arson | F1 or F2 |
| 2903.12 | Aggravated Assault | F4; F3 if police officer |
| 2911.11 | Aggravated Burglary | F1 |
| 2903.21 | Aggravated Menacing | M1; can be F4, F5 |
| 2903.01 | Aggravated Murder | Unclassified Felony (FX) |
| 2917.02 | Aggravated Riot | F3, F4, F5 |
| 2911.01 | Aggravated Robbery | F1 |
| 2909.03 | Arson | M1; can be F3 or F4 |
| 2903.13 | Assault | M1; Can be F3, F4, F5 |
| 2911.12(A)(1)(2)(3) | Burglary | F2 or F3 |
| 2919.25 | Domestic Violence | M1, M2, M3, M4, F3, F4, F5 |
| 2919.22(B)(1)(2)(3)(4) | Endangering Children | M1, F2, F3, F4, F5 |
| 2921.34 | Escape | M1, F2, F3, F5 |
| 2905.11 | Extortion | F3 |
| 2903.11 | Felonious Assault | F2; F1 if police officer |
| 2907.05 (former section 2907.12) | Gross Sexual Imposition (formerly Felonious Sexual Penetration) | F3 or F4 |
| 2923.161 | Improperly Discharging Firearm at or Into Habitation, in School Safety Zone, or with Intent to Cause Harm or Panic to Persons in School Building or School Function | F2 |
| 2917.01 | Inciting to Violence | M1 or F3 |
| 2917.31 | Inducing Panic | M1, F2, F3, F4, F5 |
| 2921.03 | Intimidation | F3 |
| 2921.04 | Intimidation of Attorney, Victim, or Witness in Criminal Case or Delinquent Child Action Proceeding | M1, F3 |
| 2903.04 | Involuntary Manslaughter | F1 or F3 |
| 2903.22 | Menacing | M1; can be F4, F5 |
| 2903.211 | Menacing by Stalking | M1; can be F4, F5 |
| 2903.02 | Murder | Unclassified Felony (FX) |
| 2903.34(A)(1) | Patient Abuse | F3 or F4 |
| 2903.15 | Permitting Child Abuse | F3; F1 if death of child |
| 2907.02 | Rape | F1 |
| 2917.03 | Riot | M1 |
| 2911.02 | Robbery | F2 or F3 |
| 2907.03 | Sexual Battery | F3; F2 if under 13 |
| 2909.24 | Terrorism | One degree higher than most serious underlying offense |
| 2905.32 | Trafficking in Persons | F1 |
| 2093.03 | Voluntary Manslaughter | F1 |

ORC 2945.38(C) states the maximum time of restoration is based upon the severity of the most serious charge. One year restoration periods are limited to those charged with violent F1 and F2 offenses. **There are some F1 and F2 offenses that are NOT violent as defined by the ORC.**

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Adult Competency Reference Guide

What is Competency¹ to Stand Trial?

A defendant is not competent to stand trial if either or both of these are true: (1) the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or (2) the defendant is incapable of assisting in the defendant's own defense. [R.C. 2945.37(G)]

- An individual who is found incompetent may not be tried or convicted unless and until the individual attains competency.
- An individual must be competent before waiving the right to counsel or entering a guilty or no-contest plea.

How is Competency Different from a Not Guilty by Reason of Insanity Plea?

Competency to stand trial is a determination by the judge about a defendant's present mental condition and about the defendant's capacity to understand the proceedings and assist in the defendant's own defense. [R.C. 2945.37(G)]

A plea of not guilty by reason of insanity (NGRI) asserts an affirmative defense regarding defendant's mental condition at the time of the offense and focuses on the defendant's capacity to know the wrongfulness of the defendant's actions at that time. [R.C. 2901.01(A)(14)]

Competency to Stand Trial and NGRI are separate and independent issues in a case. While both issues may be raised in the same case and the court can request joint evaluations, if both are raised the trial court will likely want to resolve the competency issue prior to addressing the NGRI issue.

If only one issue is present in a case, then that is the only evaluation that needs to be conducted.

Raising the Issue of Competency

Defendants are presumed to be competent. [R.C. 2945.37(G)]

- This is a rebuttable presumption. The court is the final arbiter as to the defendant's competency.

Who Can Raise Competency? [R.C. 2945.37(B)]

The defense or the prosecutor or the court itself can each raise the issue of competency by motion in adult court.

Appeal Of Competency Determinations

A finding that a defendant is incompetent to stand trial accompanied by an order that the defendant undergo

inpatient competency-restoration treatment is a final appealable order. [*State v. Upshaw*, 100 Ohio St.3d 189, 2006-Ohio-4253.](#)

Other types of competency orders are subject to review under R.C. 2505.02(B)(4) to

determine if the orders constitute final appealable orders. [*In re JW*, 2010-Ohio-707](#) (11th Dist.).

When Can Competency be Raised? [R.C.

The issue of competency can be raised before or after a trial begins. If raised before trial, the court must hold a hearing on the issue. If competency is raised after a trial begins, the court may choose to hold a competency hearing and should if good cause is shown.

Types of factors relevant to good-cause finding (not exclusive)²:

- Medical reports related to competency.
- Evidence of irrational behavior.
- The defendant's demeanor during trial.
- Doubts about the defendant's competency raised by defense counsel.

Competency Hearings

At any hearing on the issue of competency, the defendant must be represented by counsel. [R.C. 2945.37(D)]

See *State v. Bock*, 28 Ohio St.3d 108 (1986) for the holding that failure to hold a hearing may be considered harmless error where there are insufficient "indicia of incompetency" present on the record.

Timing of Hearing [R.C. 2945.37(C)]

Any competency hearing must be held within:

- 30 days after the issue of competency is raised, or;
- If the defendant is referred for an evaluation before the hearing, within 10 days after the filing of the evaluation report, or;
- If the initial examiner's report recommends further evaluation for intellectual disability, 10 days after the filing of that additional, separate report.

The hearing may be continued by the court for good cause shown. In the case of multiple evaluations, the statute is silent as to whether the 10-day time period starts when one evaluation or all evaluations are filed. Given the good-cause exception, courts are likely safe to wait to schedule the hearing until all evaluations are complete.³

Levels of Movement⁴ and Forensic Status

Once a defendant has been committed to an Ohio Department of Mental Health and Addiction Services (OMHAS) facility, depending on the defendant's forensic status, various levels of movement are permitted within the facility:

- Level 1 – restricted to unit placement.
- Level 2 – supervised on-grounds movement.
- Level 3 – unsupervised on-grounds movement.
- Level 4 – supervised off-grounds movement.
- Level 5 – unsupervised off-grounds movement.
- Trial Visit – unsupervised community contact with expectation to return.
- Conditional release – treatment in community for a period of time, not to exceed maximum term of imprisonment for most serious offense.
- Medical movement - emergency and non-emergency.

Hospitals may move an individual from Level One to Level Two with an attending psychiatrist's order. Approval of levels 3-5

and conditional release may be granted only by court order. [R.C. 2945.401(D)(1)]

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How is Competency Determined?

Courts have authority to order competency evaluations under R.C. 2945.371, and the prosecution or defense may submit relevant evidence at the hearing.

The court cannot find incompetency solely based on the defendant's: [R.C. 2945.37(F)]

- Current or previous treatment for mental illness under R.C. Chapter 5122.
- Institutionalization or treatment for intellectual disability under R.C. Chapter 5123.
- Or because the defendant is receiving medication, even if incompetence may occur without the medication.

[R.C. 2945.37(C)]: Any finding of incompetency must be grounded in the court's finding that by a preponderance of the evidence and due to a present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings OR is incapable of assisting in the defendant's own defense.

Waiver of Competency Hearing

A stipulation by the parties to the expertise of the examiner and the contents of the examiner's report may alleviate the requirement for a formal hearing.⁵

Statutory Speedy Trial Tolling

From the date the defense files a motion challenging competency to stand trial, the right-to-a-speedy-trial clock is tolled. [R.C. 2945.72(B)] The clock begins again only after the trial court makes a competency determination, regardless of whether the examiner fails to issue a report within the prescribed time limits.⁶

Court-Ordered Competency Evaluations [R.C. 2945.371]

Courts may order one or more professional evaluations of the defendant's competency for the court's consideration in making a competency determination.

Who Conducts the Evaluation? [R.C. 2945.371]

If the court orders an evaluation, it must be conducted by an "examiner" as defined by R.C. 2945.37(A)(2) of the court's choosing. The examiner must be a qualified psychiatrist or clinical psychologist or be one employed by the OMHAS to conduct such examinations.

Levels of Movement and Forensic Status, Continued

Forensic Status

1. Jail transfers and police holds - (Level 1).
2. Competency/sanity evaluation [R.C. 2945.371(H) (3) and (4)] – (Level 1).
3. Incompetent, restorable [R.C. 2945.38(B)] – (Levels 1-2).
4. Incompetent, unrestorable, probate court jurisdiction [R.C. 2945.38(H)(4)] – (Levels 1-5).
5. Maintain competency [R.C. 2945.38(A)] – (Levels 1-2).
6. Incompetent, unrestorable, criminal court jurisdiction [R.C. 2945.39(A)] – (Levels 1-5).
7. Not Guilty by Reason of Insanity [R.C. 2945.40] – (Levels 1-5).
8. Mentally-ill probationer or parolee [R.C. 2967.22 and Chapter 5122] – (Levels 1-5).



In Municipal Courts:

Except as provided in R.C. 2945.371, evaluations must be performed through community resources and not at any hospital operated by the Ohio Department of Mental Health and Addiction Services. [R.C. 2945.37(H)]

Is Participation with Court-Ordered Competency Evaluations Mandatory?

Yes. If a court orders an examination, the defendant must submit to the evaluation. [R.C. 2945.371(C)]

An incarcerated or uncooperative defendant charged with a felony or an offense of violence, or who has been determined to be in need of immediate hospitalization, may be held for evaluation for a reasonable time not to exceed 20 days at a facility operated or certified by the Department of Mental Health and Addiction Services or the Department of Developmental Disabilities.

[R.C. 2945.371(C-D)]

- Municipal courts may make such an order only at the request of a certified forensic-center examiner, unless the defendant requires immediate hospitalization or is charged with an offense of violence. [R.C. 2945.371(D)(2)]

A defendant who has not been released on bail or recognizance may be evaluated at the defendant's place of detention. [R.C. 2945.371(D)(1)]

What is the timeframe and format for an evaluation?

An examiner must send a report to the court within 30 days after the court orders the evaluation under R.C. 2945.371(H). Those evaluations may take place electronically. [R.C. 2945.37(H) and R.C. 2945.371(A)]

What must be included in the evaluation report? [R.C. 2945.371(H)]

The report must lay out the examiner's findings as well as the facts upon which the findings were based. Findings and recommendations in the report should include:

- Is the defendant capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's own defense?
- If the defendant is not competent, in the examiner's opinion, does the defendant have a mental illness or intellectual disability?
- If there is an intellectual disability, is the defendant subject to institutionalization by court order?⁷
- If the defendant is not competent, what is the likelihood⁸ that the defendant can be restored to competency in one year⁹?
- If the defendant is not competent, what is the least restrictive placement or commitment alternative that can provide the means for restoration without endangering the safety of the community?



Can statements made to examiners during competency evaluations or hearings be used against the defendant?

No. Statements made by the defendant during evaluations or hearings cannot be used to determine guilt. [R.C. 2945.371(J)]

What about a second opinion?

Courts may order multiple evaluations in adult cases, including by examiners recommended by the prosecution or the defendant. [R.C. 2945.371(A) & (B)]. There is no statutory right to a second competency evaluation, or to an evaluation by a doctor of the parties' choosing, and denial of such a request is reviewed on an abuse-of-discretion standard. On review, the record will be reviewed to determine if sufficient indicia of competency existed, with deference given to the trial court.¹⁰

A second-opinion evaluation should be ordered in the same manner as the first. Use of the 20-day- observation provisions under R.C. 2945.371(C-D) is not the correct avenue and often causes a longer wait for an evaluation to be conducted.

Defendants may request an independent evaluation of an NGRI claim by an evaluator of the defendant's choice, with the cost paid at public expense for indigent defendants. [R.C. 2945.371(B)]

Who pays the cost of the evaluations?

Competency examiners are paid a reasonable amount. Costs are borne by the court¹¹ and may be taxed as costs in the case. [R.C. 2945.371(L)]

Competency Determinations

Once a hearing on competency has been conducted, and any and all evaluations are in evidence, the court then makes the final determination as to competency.

What are the types of competency determinations?

1. Competent to stand trial: [R.C. 2945.38(A)]

After consideration of all evidence, the court determines that the defendant is competent to stand trial.¹²

Result: Defendant is competent to stand trial. Case proceeds as normal.

2. Incompetent, but restorable: [R.C. 2945.38(B)(1)(a)(i)]

The court finds that defendant is currently incompetent but that there is a substantial probability¹³ that competency will be restored within 1 year if provided treatment.¹⁴

Result: Court orders defendant to treatment to restore competency. See time limits on following page.

Forced Medication Hearings [R.C. 2945.38(B)(1)(c)]

A treatment center may petition the court for involuntary administration of drugs if it determines they are needed

to restore the defendant's competency and the defendant lacks the capacity or refuses to consent.

Time Frame for hearings:

Misdemeanor: The hearing is within 5 days of the filing of the petition.

Felony: The hearing is within 10 days of the filing of the petition.

Elements: When authorizing for the purpose of competency restoration, the court determines that treatment is:

1. Medically appropriate.
2. Substantially unlikely to have side effects that may undermine the fairness of the trial.
3. Necessary to further important governmental trial- related interests, considering less-intrusive alternatives.

Sell v. United States, 539 U.S. 166 (2003).

Tolling Effect: The 1-year time period for restoring a defendant's competency is tolled during

any appeal of an order granting involuntary administration of medication. *State v. Barker*, 2007-Ohio-4612 (2nd Dist.).

The court should choose the least restrictive option available, consistent with public safety and treatment needs.

3. Incompetent, additional time needed to determine if restorable:¹⁵

For felony offenses – The defendant is currently incompetent, and the court is unable to determine if a substantial probability exists that competency can be restored within 1 year if treatment is provided. [R.C. 2945.38(B)(1)(a)(ii)]

Result: The court may order up to 4 months of continued evaluation and treatment of the defendant to determine if competency can be restored. An additional hearing will be necessary in accordance with timelines below.

For misdemeanor offenses of violence – The defendant is currently incompetent, and the court is unable to determine if a substantial probability exists that competency will be restored within the applicable time period provided by R.C. 2945.38(C) if treatment is provided. [R.C. 2945.38(B)(1)(a)(iii)]

Result: The court may order continued evaluation and treatment of the defendant to determine if competency can be restored up to the statutory limits provided in R.C. 2945.38(C). An additional hearing will be necessary in accordance with timelines below.

For all other misdemeanor offenses – The defendant is currently incompetent, and the court is unable to determine if a substantial probability exists that competency can be restored within the applicable time period provided by R.C. 2945.38(C) if treatment is provided. [R.C. 2945.38(B)(1)(a)(iv)]

Result: The court must dismiss the charges and proceed under R.C. 2945.38(B)(1)(a)(v)(I): discharge the defendant unless the prosecutor files a probate affidavit alleging that the defendant is a mentally-ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order.

4. Incompetent, unrestorable:

For Felony Cases:

Currently incompetent and there is not a substantial probability that competency can be restored within 1 year.
[R.C. 2945.38(B)(2)]

Result: The Court must dismiss the charges and discharge the defendant unless:

- *The Court or prosecution files an affidavit in probate court for civil commitment¹⁶ of the defendant under R.C. 2945.38(B)(2).*
- *The Court on its own or at the request of the prosecutor may retain jurisdiction over the defendant under R.C. 2945.38(B)(2) or R.C. 2945.39(A)(2).¹⁷*

Legal Guardians and Criminal Competency Proceedings

Courts may encounter criminal defendants who have had a legal guardian appointed for them by a probate court. It is important to note that a criminal competency determination is separate and distinct from that of the probate court, and the defendant's probate guardian does not have statutory authority to intervene in a criminal case. [See *State v.*

Brooks, 1992 Ohio App. LEXIS 357, 1992 WL 15961 (9th Dist.)

and [*State v. Calabrese*, 2017-Ohio- 7316 \(8th Dist.\)](#). See also R.C. 2111.13.]



For Misdemeanor Cases:

Currently incompetent and there is not a substantial probability that competency will be restored within statutory timeframe.

[R.C. 2945.38(B)(1)(a)(v)(I)]

Result:

- *The Court must dismiss the charges and discharge the defendant unless: the Court or prosecution files an affidavit in probate court for civil commitment¹⁸ of the defendant under R.C. 2945.38(B)(1)(a)(v)(I).¹⁹*

Does a defendant receive credit for confinement time while under evaluation, treatment, or commitment for competency?

If a defendant is convicted and sentenced to incarceration, the defendant must receive credit for the total number of days confined for any evaluation, treatment, and commitment.

[R.C. 2945.38(I) and R.C. 2967.191]

What effect does a dismissal for incompetency have on future prosecution for the offense(s)?

A dismissal due to incompetency does not bar future prosecution for those offenses. Prosecutor may re-indict the defendant for the same charges if the defendant is restored within the statute of limitations.

[R.C. 2945.38(H)(4)]

Maximum Length of Competency-Restoration Treatment [R.C. 2945.38]

When a criminal defendant is incompetent to stand trial, the court must determine whether there is a substantial probability that the defendant can be restored within this timeframe set by R.C. 2945.38(C):

Time Clock for Competency-Restoration Treatment

Courts have generally held that the time clock for the competency restoration begins once the treatment has started, and not when the judge makes the order.

- See [City of Cleveland v. Allen, 2009-Ohio-860 \(8th Dist.\)](#), [State v. Barker, 2007-Ohio-4612 \(2nd Dist.\)](#).

Decompensation and Restoration Timelines

What happens when a defendant is restored to competency within the statutory timeframe, but then the defendant's circumstances change, and the defendant is found no longer competent to stand trial?

- [State v. Hudkins, 2022-Ohio-249 \(12th Dist.\)](#) held that the time period for restorative treatment does not begin anew or "restart" when there is a period of competency in between incompetency findings.

| Offense | Maximum Time Allowed in Treatment |
|--|-----------------------------------|
| <ul style="list-style-type: none">• Aggravated murder• Murder• First- or second-degree felony offenses of violence• First- or second-degree attempt, complicity, or conspiracy in committing an offense above | 1 year |
| <ul style="list-style-type: none">• All other felonies | 6 months |
| <ul style="list-style-type: none">• First- or second-degree misdemeanors | 60 days |
| <ul style="list-style-type: none">• All other misdemeanors | 30 days |



- [*State v. Henderson*, 2014-Ohio-2991 \(5th Dist.\)](#) held that an entirely new restoration period commenced and the deadline for continuing jurisdiction was extended.
- [*Hudkins*](#) distinguished [*Henderson*](#) by finding that *Henderson* was a unique and unusual fact pattern, and therefore no certified question was submitted to the Supreme Court.

Competency-Treatment-Review Hearings

When an individual is not competent to stand trial but has been found to be restorable and is undergoing treatment, the Revised Code dictates timeframes for required written reporting by treatment providers and deadlines for hearings after those reports are received.

When must treatment providers report to the court? [R.C. 2945.38(F)]

Whenever the treatment provider believes that the defendant is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense and:

- At a minimum, after each 6 months of treatment.
- For a felony offense, 14 days before expiration of the maximum time for treatment or 14 days before the expiration of the maximum time for continuing evaluation and treatment.
- For a misdemeanor offense, 10 days before the expiration of the maximum time for treatment.
- Whenever the treatment provider believes that there is not a substantial probability that the defendant can be restored even if the defendant is provided with a course of treatment.

When must additional competency hearings be conducted? [R.C. 2945.38(H)]

Additional competency hearings are conducted during the following times:

- Within 10 days after the treatment center advises that there is no substantial probability that the defendant will regain competency within one year.
- Within 10 days after the expiration of the maximum time allowed for the longest possible sentence defendant is facing.
- Within 10 days after expiration of the maximum time allowed for continued evaluation.
- Within 30 days after the defendant requests a hearing after receiving 6 months or more of treatment.
- Within 30 days after a treatment provider advises that the defendant is competent.

What determinations can be made at an competency hearing? [R.C. 2945.38(H)(1)-(4)]

- Defendant's competency has been restored.
- Defendant remains incompetent, but a substantial probability of restoration exists and time is still left to achieve it. The court can order the defendant to continue treatment.
- Defendant is incompetent and a substantial probability that competency can be restored exists, but time has expired for restoration. The court then has the same options as with an incompetent, unrestorable defendant above.
- Defendant is incompetent and even with treatment there is not a substantial probability that competency will be restored within 1 year. The court then has the same options as with an incompetent, unrestorable defendant above.

Motion to Retain Jurisdiction [R.C. 2945.38, 2945.39, 2945.401]

When is a hearing to maintain jurisdiction allowed?

A motion for the trial court to maintain jurisdiction over an incompetent, unrestorable defendant is permitted only when:

1. A defendant is charged with aggravated murder, murder, first- or second-degree felony offenses of violence, or first- or second-degree attempt, complicity, or conspiracy in committing one of those offenses, AND
2. The defendant has been found to be incompetent and either cannot be restored or the time period to restore competency has expired.

Who requests a hearing to maintain jurisdiction?

The prosecutor may request one, or the court may schedule one on its own.

What are the elements for maintaining jurisdiction?

The prosecutor has the burden to prove by clear and convincing evidence that the defendant both committed the offense and is a mentally ill person subject to court order and/or an intellectually disabled person subject to institutionalization by court order.²⁰

What if the state fails to meet its burden?

The case must be dismissed and the defendant discharged unless the court or prosecutor file for civil commitment of the defendant. That dismissal is not a bar to future prosecution should the defendant be restored to competency. [R.C. 2945.39(C)]

Common Pleas vs Probate Court Competency Definitions

It is important to note that competency to stand trial is a separate and distinct determination from the

definition of incompetency in probate court. R.C. 2111.021(D) defines "incompetent" for probate court statutes as:

1. Any person who is so mentally impaired, as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide;
2. Any person confined to a correctional institution within this state.



Is a commitment ordered through this process considered a civil commitment?

Yes. An involuntary commitment under R.C. 2945.39 does not violate equal protection or due process because it is a civil commitment that does not grant the same constitutional protections as criminal prosecutions do.²¹

How long can a defendant be involuntarily committed? [R.C. 2945.401(J)]

A defendant will remain under the court's jurisdiction and involuntarily committed until:

- The trial court finds that the defendant is no longer a mentally ill person subject to court order or a person with an intellectual disability subject to institutionalization by court order,
- The expiration of the maximum sentence²² that the defendant could have received if the defendant was convicted of the highest offense that was charged, or
- After another competency hearing, the trial court finds the defendant competent and orders termination of the commitment.

What are the reporting requirements? [R.C. 2945.401(C)]

The facility in which the defendant is committed must report to the trial court as to whether defendant remains subject to court order and/or whether defendant remains incompetent at the following times:

- After the initial 6 months of treatment,
- Every two years after the initial report is made,
- When the facility recommends termination of the defendant's commitment or recommends for the first time any non-secured status for the defendant.

What factors are relevant when evaluating whether to terminate commitment or change the commitment to non-secured status? [R.C. 2945.401(E)]

The court must consider:

- Whether the defendant currently represents a substantial risk of physical harm to self or others.
- Psychiatric and medical testimony regarding the defendant's current mental and physical conditions.
- Whether the defendant has the insight to continue treatment as prescribed or seek assistance when needed.

Relevant Case Law

[Rance v. Watson, Slip Opinion No. 2022-Ohio-1822](#). Competency provisions of R.C. 2945.37(B) were not triggered where the trial court's statements showed that the judge ordered a psychological report, pursuant to R.C. 2947.06, as part of the presentence investigation, not as an inquiry into defendant's competency to stand trial.

[State v. Ferguson, 108 Ohio St.3d 451, 2006-Ohio-1502](#).

Competency evaluation by a clinical psychologist properly considered the psychotropic medications the defendant had taken or was taking, his medical diagnoses, his suicide attempts, and his hospitalizations. Greater scrutiny is not required in conducting a competency evaluation merely because a defendant seeks to receive the death penalty.

[Weaver v. Gill, 633 F.2d 737 \(6th Cir. 1980\)](#). A defendant is not entitled to the assistance of counsel or to *Miranda* warnings at a psychiatric examination into his competency to stand trial where the results of the examination are not used against him at trial.

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- Grounds upon which the state relies for the proposed commitment.
- The defendant's history relevant to following rules and laws.
- Evidence that the defendant's mental illness is in remission and the probability that the defendant will continue treatment to maintain remissive state.

Who has the burden of proof in hearings regarding terminating or changing a commitment? [R.C. 2945.401(G)]

Re: facility's recommendation of termination of commitment:

To maintain the court's jurisdiction, the prosecutor must show by clear and convincing evidence that the defendant remains mentally ill or intellectually disabled subject to court order.

Re: facility's recommendation to a less restrictive status:

The prosecutor must show by clear and convincing evidence that the proposed changes are a threat to public safety or a threat to any person.

What are a defendant's rights at hearings regarding commitment terminations or changes? [R.C. 2945.40(C)(1)-(5)]

Defendant has a right:

- To attend hearings.
- To counsel.
- To independent expert evaluation.
- To subpoena witnesses and documents.
- To present evidence.
- To cross-examine witnesses.
- To testify or not be compelled to testify.
- To have copies of any relevant medical or mental health document in the custody of the state, unless release of such a document would create substantial risk of harm to any person.

Relevant Case Law, Continued

[*State v. Montgomery*, 148 Ohio St.3d 347, 2016-Ohio-5487.](#)

Three-judge panel in a capital case did not err by failing to sua sponte order defendant to undergo a competency evaluation, as no request was made to evaluate defendant's

competency before or during the plea hearing, and defendant's behavior throughout the plea colloquy and hearing was

not outrageous, irrational, or confused.

[*State v. Craig*, 159 Ohio St.3d 398, 2020-Ohio-455.](#)

When a criminal defendant is convicted and sentenced on fewer than all counts of a multicount indictment and the state is prevented from retrying the defendant on the remaining counts after a mistrial due to a later finding that the defendant

is incompetent to stand trial, the incompetency finding operates to sever the charges, and the defendant may appeal his conviction and sentence.

[*State v. Hix*, 38 Ohio St.3d 129, 527 N.E.2d 784 \(1988\).](#)

A defendant does not have the right to an independent

psychiatric examiner, pursuant to [R.C. 2945.39\(C\)](#), unless the trial court has ordered more than one psychiatric evaluation and the trial court has refused to appoint an examiner recommended by the defendant.



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*Director of Forensic and Specialized Assessment
Services, Netcare Forensic Center*

Hon. Gene Zmuda
Sixth District Court of Appeals

Endnotes

- 1 See *State v. Bock*, 28 Ohio St. 3d 108, 110 (1986) – “Incompetency must not be equated with mere mental or emotional instability or even with outright insanity. A defendant may be emotionally disturbed or even psychotic and still be capable of understanding the charges against him and of assisting his counsel.”
- 2 *State v. Chapin*, 67 Ohio St. 2d 437, 439 (1981) citing *Pate v. Robinson*, 383 U.S. 375 (1966), and *Drope v. Missouri*, 420 U.S. 162 (1975).
- 3 These statutory timelines have been held to be “directory rather than mandatory.” See *State v. Brown*, 2018-Ohio-2635 (4th Dist.) ¶26, citing *State v. Hilyard*, 2005-Ohio-4957 (4th Dist.).
- 4 See Appendix D <https://mha.ohio.gov/static/AboutUs/MediaCenter/PublicationsandFactSheets/ohio-forensic-manual.pdf> or for more guidance contact OMHAS Director of Forensic Services, Lisa Gordish, PsyD, lisa.gordish@mha.ohio.gov.
- 5 *State v. Lewis*, 2017-Ohio-461, ¶29 (8th Dist.).
- 6 *State v. Palmer*, 84 Ohio St.3d 103 (1998)
- 7 A “person with an intellectual disability subject to institutionalization by court order” is defined by R.C. 5123.01(O) as “a person eighteen years of age or older with at least a moderate level of intellectual disability and in relation to whom, because of the person’s disability, either of the following conditions exists:
 - a. The person represents a very substantial risk of physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person’s most basic physical needs and that provision for those needs is not available in the community.
 - b. The person needs and is susceptible to significant habilitation in an institution.” Under R.C. 2945.371(I), a defendant who suffers from an intellectual disability, and who, in the opinion of the competency examiner appears to be subject to institutionalization by court order, must have a separate intellectual disability evaluation performed before a final competency hearing is held under R.C. 2945.37(B-H).
- 8 R.C. 2945.371 uses different language than R.C. 2945.38. Under these statutes, the trial court makes a finding of “substantial probability” of restoration, whereas the examiner’s report opines on “likelihood” of restoration.
- 9 A defendant may be required to undergo treatment for the purpose of restoration of competency to stand trial for a period of 6 months to 1 year, depending on the severity of the felony offense, and 30 days to 60 days depending on the severity of the misdemeanor offense. R.C. 2945.38(C).
- 10 See *State v. Neyland*, 139 Ohio St.3d 353, 2014-Ohio-1914, ¶59, citing *State v. Cowans*, 87 Ohio St.3d 68, 84, 1999-Ohio-250.
- 11 OMHAS has been funding initial competency evaluations in common-pleas courts.
- 12 Adult defendants found competent who are receiving medication to maintain competence may be ordered by the court to submit to continued administration of the medication (see “Forced Medication Hearings” on page 5).
- 13 R.C. 2945.371 uses different language than R.C. 2945.38. Under these statutes the trial court makes a finding of “substantial probability” of restoration, whereas the examiner’s report opines on “likelihood” of restoration.
- 14 A defendant may be required to undergo treatment for the purpose of restoration of competency to stand trial for a period of 6 months to 1 year, depending upon the severity of the felony offense, and 30 days to 60 days depending on the severity of the misdemeanor offense. R.C. 2945.38(C).
- 15 R.C. 2945.38(B)(1)(a)(ii) – this additional 4-month evaluation period is available only for defendants facing felony charges.
- 16 As provided for under R.C. Chapters 5122 or 5123.
- 17 Only applies to R.C. 2945.38(C)(1) offenses: aggravated murder, murder, first- or second-degree felony offenses of violence, or first- or second-degree attempt, complicity, or conspiracy in committing one of those offenses.

Endnotes, Continued

18 As provided for under R.C. Chapters 5122 or 5123.

19 There is a discrepancy in R.C. 2945.38(B)(1)(a)(v)
(II). The accepted interpretation and usual practice is to choose dismissal or file the affidavit for probate.

20 For an in-depth review of the elements required in a continuing-jurisdiction finding, as well as its distinctions from the competency finding itself, see [State v. Decker, 2017-Ohio-4266](#) (10th Dist.). *Decker* was reconsidered on ineffective-assistance grounds in [State v. Decker, 2020-Ohio-1464](#).
[State v. Williams, 126 Ohio St.3d 65, 2010-Ohio-2453](#).

21 R.C. 2945.401(J)(1)(b) places the limit at the maximum prison term that the defendant could have received for the most serious offense charged. The statute is unclear if this is the “maximum term” under Ohio’s non-life felony indefinite sentencing scheme instituted by 132 GA SB 201 in 2019.



Department of
Mental Health &
Addiction Services

Outpatient Competency Restoration (OCR)

Mike DeWine, Governor
LeeAnne Cornyn, Director

Defendants who are Incompetent to Stand Trial (IST) do not always need a hospital level of care for competency restoration. This is because being IST can be related to a lack of knowledge or awareness of the basic facts of the judicial process given an intellectual disability or symptoms of a mental illness. Sometimes the mental illness can be treated in the community rather than the hospital. Ohio Revised Code (ORC) 2945.38 diverts all non-violent misdemeanors to either outpatient competency restoration or dedicated mental health treatment through probate court. However, the court can order defendants with any level of charge to OCR if it is the least restrictive environment for the individual.

Ohio has 10 Outpatient Competency Restoration (OCR) programs that serve Ohio's 88 counties. These programs provide the needed educational components to the defendant through individual or group sessions. These sessions may be in person or conducted by virtual means when necessary or appropriate. Meetings may be once or several times per week.

Content covered in these educational sessions will cover topics including:

- What is the role of the judge, prosecutors, defense attorney, court reporter, bailiff, and others in the courtroom?
- What kind of plea options will you likely have?
- What does Guilty and Not Guilty mean? What does No Contest and NGRI mean?
- What is a plea bargain?
- What is the process of a trial?
- How can I assist my attorney?
- How should I present to the court?
- How can I manage my anxiety around court?

Linkage to Community Treatment

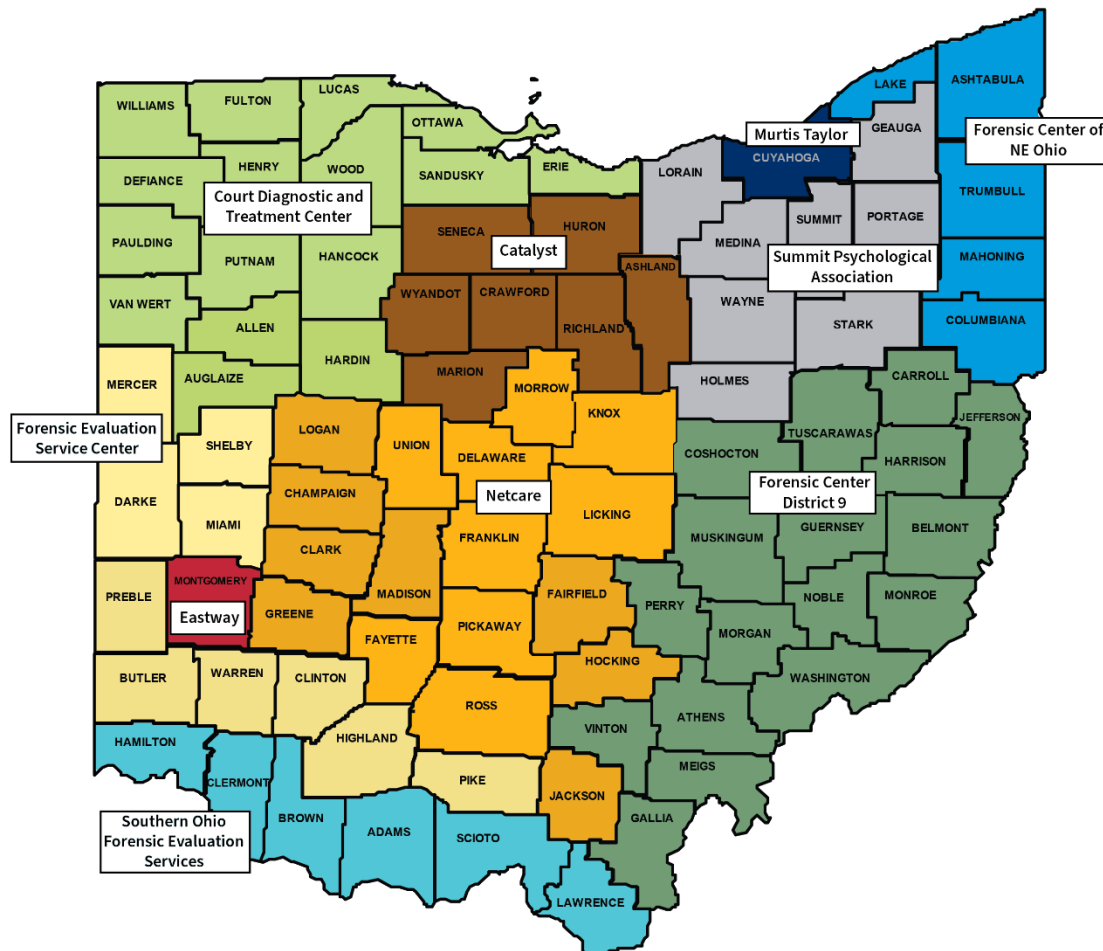
Individuals referred to OCR programs are expected to be linked to a community mental health provider, provider of services from a Board of Developmental Disabilities, or a private provider. They will be asked to link to services appropriate for them if they are not already connected. They will be asked to sign a Release of Information for their primary service provider to provide continuity of care (i.e., psychotropic medication, case management) during the competency restoration process. Some OCR providers may also be able to link to mental health services at their current location, if indicated. Multi-system adult funding through OhioMHAS and your local ADAMHS Board may be accessed for additional supports and needs of the defendant, such as assistance with housing, transportation, and other needs.

Court personnel can assist by:

- Providing the journal entry for an explicitly stated order from the court ordering Outpatient Competency Restoration.
- Make sure the defendant is aware of the expectation of the court relevant to attendance and participation in OCR.
- Provide the OCR program current contact information for the defendant.
- Consider ordering pre-trial probation with expectation of compliance with OCR and treatment as part of OCR, if available and if applicable.
- In some cases, the court may be approached with a need for a private space for telehealth sessions. Regular feedback to the Court during the course of OCR is encouraged.

What happens after OCR is completed?

An assessment/reassessment will be completed to assess the defendant's current capability to understand the nature and objective of the proceedings and the defendant's capability of assisting in their defense. This opinion will be offered to the Court.



See <https://mha.ohio.gov/know-our-programs-and-services/forensic-services-sitearea/outpatient-competency-restoration> for contact information for OCR programs.

OCR is not a direct cost to the court and is funded by the OhioMHAS.

Outpatient Competency Restoration Frequently Asked Questions

Mike DeWine, Governor
LeeAnne Cornyn, Director

What does it mean to be Incompetent to Stand Trial (IST)?

If you are deemed IST, that means that the court does not think that you can fairly participate in your case because you need better understanding of what happens in the courtroom, or you may have mental health symptoms that interfere with your ability to work with your attorney.

What is Outpatient Competency Restoration (OCR)?

OCR occurs when the court has ordered you to attend informational sessions (either in person or virtually) to learn more about what happens in court. This helps you address your legal issues. These sessions are required and court-ordered.

If you are not already, you may be required to connect with mental health or developmental disability services. You will sign a Release of Information form, allowing for communication among your service providers and the court. If you are prescribed medications for mental health-related issues, you are required to take them as prescribed or discuss this with your prescriber if you have concerns.

How will my sessions be provided?

OCR sessions may be provided in person or via telehealth, depending on your needs and circumstances.

Your OCR provider will discuss these options with you and call to set up an intake (first) session and make a schedule for additional sessions. At the end of your sessions, your OCR provider will arrange for a reassessment of your competency to stand trial for the court and, an opinion will be provided to the court in writing.

What happens if I miss my OCR appointments?

If you miss one appointment, the OCR provider will contact you to reschedule. If the provider cannot reach you, or if you miss more than one appointment, your defense attorney and/or the judge will be notified. The judge may decide to keep you on your bond and in OCR, or they may revoke your bond to conduct competency restoration on an inpatient basis. In some jurisdictions, they may provide competency restoration in jail. Staying on bond and in OCR is the least restrictive option to receive these services.

Can my OCR provider get me out of my legal case?

No. Your case is paused while we work with you to restore competency to stand trial. The OCR providers only focus on helping you prepare to return to the court to resolve your case. OCR providers want to help you so that you can do your best to work with your attorney.

What if I am deaf, hard of hearing, or English is not my primary language?

OCR providers will schedule an interpreter to be available for your sessions to aid in communication and the learning process.

OHIO DEPARTMENT OF MENTAL HEALTH AND ADDICITON SERVICES GUIDELINE FOR COMMUNITY RISK ASSESSMENT OF PERSONS ON CONDITIONAL RELEASE

A. PURPOSE

This guideline provides to the community mental health system suggested procedures for clinical risk assessment of patients that carry a specific forensic legal status as defined below and who are conditionally released into the community. The risk assessment is an important part of the clinical record and will guide such activities as:

1. Treatment Planning,
2. Violence Prevention Planning,
3. Modification of Conditions of Release including Hospitalization and Revocation.

B. APPLICATION

This guideline applies to all Alcohol, Drug Abuse and Mental Health (ADAMH) Boards, their designated Forensic Monitors, and Community Agency staff providing mental health services to the patients who carry a specific forensic legal status as defined below.

C. DEFINITIONS

“Forensic Legal Status” for the purpose of this guideline refers to persons found:

1. ORC 2945.39(A)(2) Incompetent to Stand Trial-Unrestorable Under Criminal Court Jurisdiction (IST-U-CJ) and placed on Conditional Release pursuant to ORC 2945.401 and 2945.402; or
2. ORC 2945.40 Not Guilty by Reason of Insanity (NGRI) and placed on Conditional Release pursuant to ORC 2945.401 and 2945.402.

D. PROCEDURES

1. Clinical risk assessment and management of a patient on Conditional Release is the responsibility of the agency treatment team and/or clinician designated by the ADAMH Board.
2. Per ORC 5122.29 and OAC 340.08(D), there is to be uniformity in monitoring of individuals on this status. Therefore, risk assessment tools used in the community must be validated tools that have been approved by the Director of the Forensic Bureau. The Bureau will maintain a list of approved validated tools that can be accessed upon request. The HCR-20v3 is the risk assessment tool used in the RPHs and is the tool recommended for use in the community. The Forensic Bureau will provide support periodically for training community staff in the use of the HCR-20v3, making the cost to the community nominal. If the agency treatment team and/or clinician designated by the ADAMH Board to complete the risk assessment decides to use an alternative validated tool that is approved by the Director of the Forensic Bureau, they may use any portion of the forensic monitoring allocation to cover all costs related to the use of that tool, including any required training.
3. For all patients who are placed on Conditional Release directly from Court, an Initial Risk Assessment should be completed within 30 days after the patient is placed on Conditional Release. Additional

information received after completion of the initial assessment should be appended to the initial risk assessment. A risk assessment update should be completed by the community designee any time there is a change in dynamic risk factors, or at least annually if there is no change throughout the term of the Conditional Release Commitment.

4. For all patients who are released from an OhioMHAS hospital to Conditional Release, a copy of the hospital's Initial HCR-20v3 Risk Assessment, and/or most recent HCR-20v3 risk assessment update should be obtained by the agency treatment team and/or clinician designated to complete community risk assessments. A risk assessment update should be completed by the community designee within 90 days after the patient is placed on Conditional Release, any time there is a change in dynamic risk factors and at least every annually if there is no change throughout the term of Conditional Release Commitment.
5. The Initial Risk Assessment consists of a thorough review of the current individual and family history, mental status and present condition of the patient; and a review of past mental health, juvenile justice, adult criminal, military, court, forensic center, and corrections records. Documented reasonable efforts should be made to acquire the above information.
6. A risk assessment update should be completed by the community designee on all Conditionally Released patients on the following occasions:
 - a. whenever an incident occurs which raises concern about whether the patient poses an increased risk of violence and, therefore, may be in need of increased risk management interventions. Such incidents include, but are not limited to an increase in psychiatric symptoms, noncompliance with medication and/or other treatment, suicidal ideation, threatening comments, assault or property damage, weapon possession, substance abuse, arrest, or any other change in behavior which, for this patient, has been associated with violent behavior.
 - b. at least annually (since the last Update).
7. The Initial Risk Assessment and Updates should be placed in the medical record. The Initial Risk Assessment and the two most recent Updates should not be removed from the current record.
8. Risk factors of special relevance should be identified and specifically addressed in the treatment plan.

This guideline was revised 3-30-2023, guidelines originally issued by Dr. Michael Hogan to the ADAMH Boards on 10-23-97.

Ohio Department of Mental Health and Addiction Services

Bureau of Forensic Services

Forensic Tracking and Monitoring System (FTAMS)

Instructions for Data Entry

The FTAMS was established in 1996 as a result of statutory changes enacted as a part of Senate Bill 285. Section [5119.29](#) of the Ohio Revised Code states:

“The department of mental health and addiction services, in conjunction with boards of alcohol, drug addiction, and mental health services and community mental health boards, shall develop a coordinated system for tracking and monitoring persons found not guilty by reason of insanity and committed pursuant to section [2945.40](#) of the Revised Code who have been granted a conditional release and persons found incompetent to stand trial and committed pursuant to section [2945.39](#) of the Revised Code who have been granted a conditional release. The system shall do all of the following:

- (A) Centralize responsibility for the tracking of those persons;
- (B) Develop uniformity in monitoring those persons;
- (C) Develop a mechanism to allow prompt rehospitalization, reinstitutionalization, or detention when a violation of the conditional release or decompensation occurs.”

These instructions are intended to guide Forensic Monitors as they enter and update data regarding the people on Conditional Release within the counties for which they are responsible.

Please note that any item with a red asterisk * is a required item. The system will not allow you to submit data if any of the required items are missing.

1. *Entering data for a new person in the system*

When entering a person into the FTAMS for the first time it is important that you have gathered all of the information you will need to enter the case. It is very important that you enter the identifying and demographic data accurately because it is very difficult to change it later.

a. Identifying and Demographic data.

***Name:** Please double check the spelling of the person’s name before entering and saving this data. If someone has an alias, you can also enter it after the name that you have on the court’s Journal Entry (e.g. John Smith, (aka Jack Jones)). There are some people who have different names on the court documents and in the State Regional Psychiatric Hospital database. In that case enter the name on the court document and the other as an alias.

***DOB:** Please ensure that you enter the date of birth accurately.

***Race and Ethnicity:** Enter data according to how the individual identifies him/herself.

***County of Committing Court:** This information should fill in automatically when you log in. If you monitor several counties, please make sure that you are entering data into the person’s correct county, that is, the county where the criminal charges were filed.

***Docket/Court Case Number:** It is **extremely** important that you enter this data in correctly. It is this number (along with the county of the court) that identifies this case as unique from all other cases. Please make sure that you do not

enter twice the same case with slight variations as to how you enter this number. The system will think that you are entering a separate case. This will require extra work by the system administrator to delete the extra case.

Also, some people have more than one case number arising from multiple charges. If these offenses occurred around the same time, the courts often combine or consolidate the cases into one case number for the ease of future proceedings. If that occurs, make sure that you enter all charges relevant to both cases unless the court specifically dismisses some charges. The length of the maximum commitment is governed by the most serious charge.

Reporting Period—Quarter and Year:* The system will begin with the current year and quarter—the one when you are entering the data. If the person's Conditional Release (CR) commitment began in a different year and/or quarter, then please manually change those fields to match the time period **when the Court granted CR. It is important that the person's FTAMS data should begin in the quarter when the Court granted CR, which may not match the time when a person is released from the state hospital or the jail to the community.

b. Charge Information

On the Charge Information page, click "add" to enter the person's criminal offense information. You will need to answer various items for each criminal offense.

- i. **Attempted Offense:* Click "yes" only if the indictment or other court documents indicate that this was an "attempted _____." This means that the person attempted but did not complete the offense.
- ii. **Has the Offense Occurred Before 7/1/96:* If the offense occurred prior to 7/1/96, click "yes." This question is relevant because Ohio's sentencing laws changed on that date. Prior to 7/1/96 the maximum sentences for offenses were generally higher. Some people whose offenses occurred prior to this date had a maximum commitment term of 25 years or perhaps even more. The same offense would have had a maximum commitment time of 10 years. The sentencing laws have been revised even further and determining the maximum time is much more complicated, particularly after the passage of the Reagan Tokes Act.
- iii. **Severity of Charge:* Select the appropriate severity for the offense you wish to enter. The severity of the offense governs the maximum commitment. It is generally best to select this item before selecting the name of the offense because the selection of this item limits the choices in the menu for the "Name of Charge" item.
- iv. **Name of Charge:* Select from the menu the appropriate charge. Although the menu of charges is extensive, it does not contain every possible charge. If you cannot find the charge you want to enter, select one that is close, as long as it is the same severity. Also in the comments make a note of the charge that is not on the list.
- v. **Statute No.:* Select the appropriate statute number for the charge you entered.
- vi. **Counts:* Enter the number of counts of that particular charge. This should be specified on the indictment or other court documents. If a person has two or more counts of the same charge, there is no need to enter each of those charges separately. Just indicate that there are 2, 3, etc. counts of that charge.

c. Court Information

- i. **Date of Court Finding (NGRI or IST-U-CJ):* Enter the date when the court made its official finding in this case. This should be specified on a Journal Entry. This is not the date of hospital admission or discharge.
- ii. **Life Sentence?:* For the most serious charge, is Life the maximum term of imprisonment? A Life sentence can be imposed for murder and some rape charges. Check with the prosecutor if there is any doubt. If Life is the maximum, then check "Yes," otherwise check "No."
- iii. **Legal Status/Type of Finding:* Enter the type of Court Finding—either NGRI or IST-U-CJ.

iv. **Maximum Commitment Time:* Calculating the maximum commitment time used to be more straightforward than it is currently, due to changes in the sentencing laws. The statute specifies that the maximum time should be based upon the single most serious charge. See <https://codes.ohio.gov/ohio-revised-code/section-2945.401> (J)(1)(b): “The expiration of the maximum prison term or term of imprisonment that the defendant or person could have received if the defendant or person had been convicted of the most serious offense with which the defendant or person is charged or in relation to which the defendant or person was found not guilty by reason of insanity;”

In particular, the Reagan Tokes Act has affected the maximum time for people charged with more serious offenses. Because of the complexity involved, it is best to have the Court or prosecutor provide the maximum term of imprisonment to you in writing. This prevents confusion that has previously occurred when the person on CR has been told that the commitment ends on a specific date, only to be told a few months prior to the expiration date that the actual length of time is much longer.

The FTAMS system automatically adds the commitment time to the Date of Finding producing the Maximum Commitment date (below).

vi. **Basis of Finding:* Please enter whether the finding (NGRI or IST-U-CJ) was based primarily on mental illness, intellectual disability, or both of these.

vi. **Maximum Commitment Date:* This field is automatically filled in based upon the Date of Finding and the Maximum Commitment Time. This is a crude measure of the diagnostic composition of the people on conditional release.

vii. **Date The CR Was First Granted by The Court:* Enter the date that the court granted CR for the first time. This should be reflected in a Journal Entry when the court made this decision. This date is not necessarily the same as the hospital discharge date. A person may be granted CR by the court but remain in the hospital for some time until a community placement is available or other reasons.

viii. **Originally Placed on Conditional Release From:* Please enter the appropriate option: Hospital or Court. This item refers to the original disposition by the court when the finding of NGRI or IST-U-CJ is made. After such a finding the statute requires that the court have a hearing to determine the least restrictive commitment alternative. Most of the time the court commits the person to a state hospital but it is not unusual for the court to commit the person to the community (ADAMHS Board or Provider). At times, the court will commit to a DODD Developmental Center or a community DDS Board. If the court commits to the community, then the date of the CR will be the same as the date of the finding. It may also be shortly thereafter. If a significant amount of time elapses between the date of the finding and the date of the CR, then this item may not correctly completed.

ix. **Hospital:* If the item above is check “hospital” then please select the appropriate OhioMHAS hospital. If you selected “court” this item will not appear. Unfortunately, when the system was developed it was not designed to accommodate DODD facilities and this was an oversight that needs to be corrected. If the person was committed to a DODD facility, then you will need to check “court” (for now) and then specify the placement in a later item.

x. **Date of Most Recent Court Hearing:* This is a required item. Please enter the appropriate date.

xi. *Date of Next Court Hearing (If Scheduled):* This is an optional item. If you have this information, please enter it.

d. Location Information

i. **County of Client’s Current Address:* Enter the county where the person on CR maintains his or her residence.

ii. **Does the Client on CR Live in a County Not Served by You?:* If the person on CR does not live in county that is monitored by you, select “yes” and then the following items (iii – v) appear requesting additional information.

iii. **Forensic Monitor's County:* This item provides no unique information, so you may enter the county entered in the previous item or your own county.

iv. **Have You And The Other Forensic Monitor For The County Made Arrangements For The Sharing of Information That is Necessary For The Provision of Effective Risk Management?:* Select "yes" or "no." Generally, this should be answered "yes" although there are some situations in which sharing of information is not necessary (such as a nursing home placement). As a courtesy, however, it is a good practice to inform the monitor for the county in which the person is living that there is a person on CR residing in that county.

v. **Describe These Arrangements, or if no Arrangements Have Been Made, Please Explain Why:* Provide a description regarding the information sharing process or an explanation as to why this is not necessary.

vi. **Has the Client Been in Any of the Following Locations During the Reporting Period? (Select All That Apply):* Choose as many "locations" in which the person was during this quarter. This should also include the location that is specified in the next item—location at the end of the quarter. If the person was in a DODD Developmental Center, please select "Other" and indicate that information in the new text box that appears. This also applies to any other location that is not on the list.

vii. **Client Location at the End of the Reporting Period:* Select the appropriate option for the person's location on the last day of the quarter. You may select only one option.

Date of the Most Recent Report Received From the Treating Agency: If this information is known, please fill it in. This is not a required item.

**Name of Primary Treating Agency:* Enter the name of the treatment provider in the community.

**County of Treating Agency:* Enter the county in which the treatment provider is located. If the provider serves multiple counties, enter the one in which the person is receiving services.

e. Hospital Admission

When a person is released to CR for the first time and the person is being released from the hospital, you will need to enter the date when the person was initially admitted to the hospital, along with the reason for the admission. This could be that the person was found NGRI and committed to the hospital. Then, enter the date of the hospital discharge. This must be reported in the appropriate reporting period. For example, a person may be granted CR during the January-March quarter but not discharged until the April-June quarter. Thus, the initial reporting period for the case would be in January-March and the date of the CR entered there. The location would be OhioMHAS hospital for the entire quarter and at the end of the quarter. In the April-June quarter, the dates of the hospital admission and discharge would be reported.

f. Tracking Information

i. **Did The Client Return to CR During This Quarter After Having CR Revoked Previously?:* If the person's CR was revoked at any time in the past and he/she was granted a new Conditional Release during this reporting period/quarter, then click Yes. If you click "yes" another field will open for the date to be entered. Please enter the date that the court granted the new CR.

ii. **Has The CR Been Revoked?* If the person's CR was revoked during this reporting period, then click Yes. If so, two additional fields will open. Please enter the date that the court decided to revoke the CR and also enter the reason(s) for the revocation from the items in the menu. You may select all that apply.

iii. **Has a Temporary Order of Detention Been Issued by The Court?* If the court has entered a TOD, click Yes. No further information is required.

g. *Offense History*

- i. *Detentions:* If the person was detained in jail during this reporting period, click on the down arrow next to Detentions. Then click Add. Additional fields will open. Enter the date of the detention and the reasons for it. If the person was also released from jail during this quarter, then click Yes and enter the date accordingly.
- ii. *Arrests:* If the person was arrested during this reporting period, click on the downward arrow next to Arrests and complete the data required. Select whether the charge was a Felony or Misdemeanor. If the person has both types of charges, select Felony. Then enter the date of the arrest, and then select the most serious charge. The system allows you to enter only one charge.
- iii. *Convictions:* If the person was convicted during this reporting period, click on the downward arrow next to Convictions and complete the data required. Enter the date of the conviction according to court records. Select whether the charge was a Felony or Misdemeanor. If the person has both types of charges, select Felony. Then select the most serious charge. The system allows you to enter only one charge. Finally, enter the court disposition, such as probation, time-served in jail, or some other jail or prison sentence.
- iv. *If the Client is sentenced to state prison and if the NGRI/IST-U-CJ commitment is not terminated, has a detainer been issued by the prosecutor?* If both of these situations apply, then note that the prosecutor should file a detainer with DRC. Click the appropriate response after checking with the prosecutor. This is important because, for some individuals, their prison sentence will end before their NGRI/IST-U-CJ commitment. If DRC has a detainer, they will not release the person to the community. They should be returned to the local jail after the completion of their prison sentence so that they may be assessed regarding the least restrictive commitment alternative that is appropriate at that time. Based on the evaluation, the court may commit the person to the hospital or to Conditional Release. Without a detainer the person will be released to the community inappropriately.
- v. *Elevated Risk of Violence.* If the person has manifested any indications of elevated risk of violence during this quarter, please enter that information in this text box, whether or not this behavior resulted in an arrest, hospitalization, or revocation. Any violation of the CR plan should be noted here.

h. **Is There a Court Termination?*

If the court has terminated the NGRI/IST-U-CJ commitment (not just a revocation) during this reporting period, please click Yes and complete the additional data fields that appear. Enter the date that the court formalized the termination, and if you have a copy of the court entry, please upload the document according to the instructions on the web page. Enter the reason for the termination. There are 5 choices:

- (a) The person is no longer a mentally ill person subject to court order or is no longer an intellectually disabled person subject to institutionalization by court order.
- (b) The maximum date of the commitment has been reached. The date you enter here should match or be close to the Date of Maximum Commitment on the Court Information page.
- (c) The commitment can be terminated for people who were found to be IST-U-CJ and then subsequently found to be competent to stand trial and returned to court to have their criminal case resolved. The possible dispositions include conviction, acquittal or an NGRI finding.
- (d) Death. If the person passes away during this reporting period, please enter the date of death as the date of the termination of the commitment. If you choose this option, please enter the general cause of death in the text box. The reason does not have to be very specific (for example: natural causes, overdose, suicide, homicide).
- (e) Other. If none of the above reasons apply, then choose this option and then enter the reason for the termination in the text box.

i. Review and Submit the Case.

There is a place to enter any additional comments about the case. This would be the place to note any criminal charges that are not in the menu list so that they can be added later. You may also make any other comments that are not appropriate for the previous comment boxes.

When all of the required items have been entered and you have confirmed their accuracy, then click Submit. You must wait until after the end of the quarter before submitting the case. The system will not allow it to be submitted earlier.

2. *What Happens After I Submit a Case?*

After a case is submitted it appears in the System Administrator's (SA) "Cases to be Reviewed" list. At this point, the SA reviews the case information for any issues that seem to be inconsistent or irregular. The SA also checks for missing data, such as missing OhioMHAS hospitalization admission and discharge dates, when the location information notes a change in hospital/community status.

If there are problems noted, the SA will note that issue in the comment section on the last tab for the case and then click "Return for Revision." This case will show up in your folder for cases that need to be revised. Make sure that you check the comment on the last page of the case so that you know what needs to be corrected. After making the correction, please resubmit the case.

Most of the time, the SA approves the case and it then appears in your Draft cases. The system automatically updates the quarter and year to the next quarter chronologically. However, if the case was terminated, it will not appear in your draft cases. Previously approved cases are stored in the system and can be viewed by using the Search function (see below).

- *Updating data for subsequent quarterly reporting periods*

After a case is approved and appears in your Draft cases, please review each case and revise or re-enter data as needed. There are a number of items that are pre-populated and these are items that are "static," that is, they should not change. These include items such as the demographic items, the criminal charges, the maximum commitment time, and the dates of the finding and initial CR. Other items may or may not change in subsequent quarters.

Much of the information below has been repeated from that contained above in the descriptions of each item.

- *Court Information*

On this page, the following items may need to be updated:

- **Date of Most Recent Court Hearing:* This is a required item. Please enter the appropriate date. Hearings are required at least every two years and may be held more often depending upon circumstances.

ii. *Date of Next Court Hearing (If Scheduled):* This is an optional item. If you have this information, please enter it.

b. *Location Information*

The following items *may* change and thus they need to be re-entered just to ensure that you have confirmed that they are either the same or have changed. For your convenience, the previous quarter's information is contained in a section at the bottom of most of the pages.

- **County of Client's Current Address:* Enter the county where the person on CR maintains his or her residence.

ii. **Does the Client on CR Live in a County Not Served by You?:* If the person on CR does not live in county that is monitored by you, select “yes” and then the following items (iii – v) appear requesting additional information.

iii. **Forensic Monitor’s County:* This item provides no unique information, so you may enter the county entered in the previous item or your own county. This item will likely be deleted in the future.

iv. **Have You And The Other Forensic Monitor For The County Made Arrangements For The Sharing of Information That is Necessary For The Provision of Effective Risk Management?:* Select “yes” or “no.” Generally, this should be answered “yes” although there are some situations in which sharing of information is not necessary (such as a nursing home placement). As a courtesy, however, it is a good practice to inform the monitor for the county in which the person is living that there is a person on CR residing in that county.

v. **Describe These Arrangements, or if no Arrangements Have Been Made, Please Explain Why:* Provide a description regarding the information sharing process or an explanation as to why this is not necessary.

vi. **Has the Client Been in Any of the Following Locations During the Reporting Period? (Select All That Apply):* Choose as many “locations” in which the person was during this quarter. This should also include the location that is specified in the next item—location at the end of the quarter. If the person was in a DODD Developmental Center, please select “Other” and indicate that information in the new text box that appears. This also applies to any other location that is not on the list.

vii. **Client Location at the End of the Reporting Period:* Select the appropriate option for the person’s location on the last day of the quarter. You may select only one option.

Date of the Most Recent Report Received From the Treating Agency: If this information is known, please fill it in. This is not a required item.

**Name of Primary Treating Agency:* Enter the name of the treatment provider in the community.

**County of Treating Agency:* Enter the county in which the treatment provider is located. If the provider serves multiple counties, enter the one in which the person is receiving services.

e. Hospital Admission

If the person was admitted to an OhioMHAS hospital from CR during this reporting period, enter date and the reason for the admission. If the person was not discharged in the same quarter, leave the discharge field blank until the discharge occurs. You may also leave this information in future reporting periods without any changes until the person is discharged.

Note that if you report a hospital discharge date, there must also be an admission date and reason for admission entered. If you do not know the admission date you can contact the hospital LAA or the System Administrator.

The system allows more than one hospital admission during a quarter if that were to occur.

f. Tracking Information

i. **Did The Client Return to CR During This Quarter After Having CR Revoked Previously?:* If the person’s CR was revoked at any time in the past and he/she was granted a new Conditional Release during this reporting period/quarter, then click Yes. If you click “yes” another field will open for the date to be entered. Please enter the date that the court granted the new CR.

ii. **Has The CR Been Revoked?* If the person’s CR was revoked during this reporting period, then click Yes. If so, two additional fields will open. Please enter the date that the court decided to revoke the CR and also enter the reason(s) for the revocation from the items in the menu. You may select all that apply.

iii. **Has a Temporary Order of Detention Been Issued by The Court?* If the court has entered a TOD, click Yes. No further information is required.

g. *Offense History*

i. *Detentions:* If the person was detained in jail during this reporting period, click on the down arrow next to Detentions. Then click Add. Additional fields will open. Enter the date of the detention and the reasons for it. If the person was also released from jail during this quarter, then click Yes and enter the date accordingly.

ii. *Arrests:* If the person was arrested during this reporting period, click on the downward arrow next to Arrests and complete the data required. Select whether the charge was a Felony or Misdemeanor. If the person has both types of charges, select Felony. Then enter the date of the arrest, and then select the most serious charge. The system allows you to enter only one charge.

iii. *Convictions:* If the person was convicted during this reporting period, click on the downward arrow next to Convictions and complete the data required. Enter the date of the conviction according to court records. Select whether the charge was a Felony or Misdemeanor. If the person has both types of charges, select Felony. Then select the most serious charge. The system allows you to enter only one charge. Finally, enter the court disposition, such as probation, time-served in jail, or some other jail or prison sentence.

iv. *If the Client is sentenced to state prison and if the NGRI/IST-U-CJ commitment is not terminated, has a detainer been issued by the prosecutor?* If both of these situations apply, then note that the prosecutor should file a detainer with DRC. Click the appropriate response after checking with the prosecutor. This is important because, for some individuals, their prison sentence will end before their NGRI/IST-U-CJ commitment. If DRC has a detainer, they will not release the person to the community. They should be returned to the local jail after the completion of their prison sentence so that they may be assessed regarding the least restrictive commitment alternative that is appropriate at that time. Based on the evaluation, the court may commit the person to the hospital or to Conditional Release. Without a detainer the person will be released to the community inappropriately.

v. *Elevated Risk of Violence.* If the person has manifested any indications of elevated risk of violence during this quarter, please enter that information in this text box, whether or not this behavior resulted in an arrest, hospitalization, or revocation. Any violation of the CR plan should be noted here.

h. **Is There a Court Termination?*

If the court has terminated the NGRI/IST-U-CJ commitment (not just a revocation) during this reporting period, please click Yes and complete the additional data fields that appear. Enter the date that the court formalized the termination, and if you have a copy of the court entry, please upload the document according to the instructions on the web page. Enter the reason for the termination. There are 5 choices:

(a) The person is no longer a mentally ill person subject to court order or is no longer an intellectually disabled person subject to institutionalization by court order.

(b) The maximum date of the commitment has been reached. The date you enter here should match or be close to the Date of Maximum Commitment on the Court Information page.

I The commitment can be terminated for people who were found to be IST-U-CJ and then subsequently found to be competent to stand trial and returned to court to have their criminal case resolved. The possible dispositions include conviction, acquittal or an NGRI finding.

(d) Death. If the person passes away during this reporting period, please enter the date of death as the date of the termination of the commitment. If you choose this option, please enter the general cause of death in the text box. The reason does not have to be very specific (for example: natural causes, overdose, suicide, homicide).

I Other. If none of the above reasons apply, then choose this option and then enter the reason for the termination in the text box.

i. Review and Submit the Case.

There is a place to enter any additional comments about the case. This would be the place to note any criminal charges that are not in the menu list so that they can be added later. You may also make any other comments that are not appropriate for the previous comment boxes.

When all of the required items have been entered and you have confirmed their accuracy, then click Submit. You must wait until after the end of the quarter before submitting the case. The system will not allow it to be submitted earlier.

- *Using the Search Function*

You can review previously approved cases by using the Search function at the top of the page.

Click on the Search function. You do not need to complete every field. You will need to enter the year and at least the first and last initials of the person's name. The search will give you each entry for the particular year for which you searched. You can click on each report and review the information that was reported and approved. You are not able to change any information.

Order for Competency Evaluation

This matter came for hearing this _____ day of _____, 20____, the Defendant, _____ (name) being present before the Court and represented by counsel, _____ (name), and the State being represented by the Prosecuting Attorney _____ (name).

The question of the Defendant's competence to stand trial having come to the attention of the Court, it is ORDERED that:

1. The _____ (name of forensic center), a certified forensic center designated by the Ohio Department of Mental Health and Addiction Services, will examine the Defendant to determine whether the Defendant is capable of understanding the nature and objective of the proceedings against **him/her** and of assisting in **his/her** defense. The person conducting the examination will be an examiner as defined in ORC Section 2945.37
2. The examination will be conducted at the _____ (name of forensic center) if the Defendant is released on bail or recognizance, or at the Defendant's place of detention.
3. The examiner shall complete the examination within thirty (30) days after the date of this order and shall prepare and provide to the Court a written report of the examination.
4. The examiner's report shall contain the examiner's findings, the facts in reasonable detail on which the findings are based, and the examiner's opinion as to whether the Defendant is capable of understanding the nature and objective of the proceedings against **him/her** and of assisting in **his/her** defense.
5. If the examiner's opinion is that the Defendant is incapable of understanding the nature and objective of the proceedings against **him/her** or of assisting in **his/her** defense, the report shall also include the examiner's opinion as to whether the Defendant is presently mentally ill or mentally retarded.

If the examiner's opinion is that the Defendant is presently intellectually disabled (I/D), the report shall include the examiner's opinion as to whether the Defendant appears to be a intellectually disabled (DD/ID) person subject to institutionalization.

If the examiner's opinion is that the Defendant is presently mentally ill or DD/ID, the report shall include 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.

Date: _____

Judge: _____

cc: Prosecutor
 Defense counsel
 Name of Forensic Center
 Forensic Monitor

Incompetent to Stand Trial- Restorable (inpatient restoration)

This matter came for hearing this ____ day of ____, 20__, the Defendant, ____ (name) being present before the Court and represented by counsel, ____ (name) , and the State being represented by the Prosecuting Attorney ____ (name).

The issue of the Defendant's competency to stand trial having previously been raised, the Defendant was referred to the ____ (name of forensic center) for examination pursuant to ORC Section 2945.371. The written report of the examination has been filed with the Court and copies provided to the Prosecuting Attorney and defense counsel. All parties stipulate to the ____ (name of forensic center) report dated ____.

On consideration of the report and other evidence before the Court, the Court finds that:

1. The Defendant is not capable of understanding the nature and objective of the proceedings against **him/her** and is not capable of presently assisting in **his/her** defense.
2. The Defendant is mentally ill (or intellectually disabled)
3. There is a substantial probability that the Defendant will become capable of understanding the nature and objective of the proceedings against him or capable of assisting in his defense within the time allowed by statute if **he/she** is provided with a course of treatment.

It is therefore ORDERED:

1. The Defendant shall undergo treatment at ____ (name of RPH) pursuant to ORC Section 2945.38D which is the least restrictive alternative available that is consistent with public safety and treatment goals, and further orders the person who supervises the treatment to file written reports with the Court pursuant to Section 2945.38(F) of the Ohio Revised Code.
2. The Defendant shall not be released or discharged from ____ (name of RPH) except as authorized by this order or future order of this court.
3. This order shall remain in effect for ____ (twelve months for murder, F1 or F2; 6 months for F3,4,5; 60 days for M1, M2 and 30 days for all other misdemeanors).

IT IS THE FURTHER ORDER OF THIS COURT that xxxxxx County Sheriff's Office transport the defendant to ____ (name of RPH) as soon as a bed is available.

cc: Prosecutor
Defense Attorney
Forensic Center
Forensic Monitor
RPH

Incompetent to Stand Trial – Restorable (outpatient restoration)

This matter came for hearing this ____ day of ____, 20__, the Defendant, ____ (name) being present before the Court and represented by counsel, ____ (name) , and the State being represented by the Prosecuting Attorney ____ (name).

The issue of the Defendant's competency to stand trial having previously been raised, the Defendant was referred to the ____ (name of forensic center) for examination pursuant to Section 2945.371, R.C. The written report of the examination has been filed with the Court and copies provided to the Prosecuting Attorney and defense counsel. All parties stipulate to the ____ (name of forensic center) report dated ____.

On consideration of the report and other evidence before the Court, the Court finds that:

1. The Defendant is not capable of understanding the nature and objective of the proceedings against **him/her** and is not capable of presently assisting in **his/her** defense.
2. The Defendant is mentally ill (or intellectually disabled)
3. There is a substantial probability that the Defendant will become capable of understanding the nature and objective of the proceedings against him or capable of assisting in his defense within the time allowed by statute if he is provided with a course of treatment.

It is therefore ORDERED:

1. The Defendant shall undergo treatment at ____ (name of community agency) pursuant to ORC Section 2945.38D which is the least restrictive alternative available that is consistent with public safety and treatment goals, and further orders the person who supervises the treatment to file written reports with the Court pursuant to Section 2945.38(F) of the Ohio Revised Code.
2. The Defendant shall not be discharged from ____ (name of community agency) except as authorized by this order or future order of this court.
3. This order shall remain in effect for ____ (twelve months for F1 or F2; 6 months for F3,4,5; 60 days for M1, M2 and 30 days for all other misdemeanors).

THE COURT FURTHER ORDERS that ____ (name of forensic center) shall release a copy of their report to ____ (name of community agency) in order to facilitate the restoration process.

Date: _____

Judge: _____

cc: Prosecutor
Defense Attorney
Forensic Center
Forensic Monitor
Outpatient Competency Restoration Program

Incompetent to Stand Trial- Unrestorable, charges dismissed

This matter came for hearing this _____ day of _____, 20____, the defendant, _____ (name) being present before the Court and represented by counsel, _____ (name), and the State being represented by the Prosecuting Attorney _____ (name).

The Prosecution and the Defense stipulate to the report from _____ (forensic center) dated _____ .

The Court finds that the Defendant is incompetent to stand trial and is unlikely to be restored to competency within the time allowed by law.

It is therefore ORDERED: The charge(s) shall be dismissed.

Date: _____

Judge: _____

cc: Prosecutor
 Defense Attorney
 ADAMH Board
 xxxxxxx County Jail

Incompetent to Stand Trial- Unrestorable, referred to probate

This matter came for hearing this ____ day of ____, 20__, the defendant, _____ (name) being present before the Court and represented by counsel, _____ (name), and the State being represented by the Prosecuting Attorney _____ (name).

The Prosecution and the Defense stipulate to the report from _____ (name of OhioMHAS RPH or forensic center) dated _____. The Court finds that the Defendant remains incompetent to stand trial and is a mentally ill person subject to hospitalization.

The Court further finds that pursuant to ORC 2945.38 I, the Defendant has completed the maximum period of hospitalization for the offenses for which he has been found incompetent to stand trial.

It is therefore ORDERED:

1. _____ (Name of OhioMHAS RPH) shall file an affidavit at Probate Court alleging that the Defendant is a mentally ill individual subject to hospitalization by Court Order, as defined in ORC Sections 5122.01 and 5123.68.
2. The Defendant shall be detained in _____ (Name of OhioMHAS RPH or xxxxx County Jail) for not more than ten (10) court days pending the probable cause hearing in Probate Court pursuant to ORC Sections 5122.11 or 5123.71.
3. The charge(s) shall be dismissed upon filing of the appropriate affidavit.

Date: _____

Judge: _____

cc: Prosecutor
Defense Attorney
ADAMH Board
RPH or Forensic Center
xxxxxx Co. Probate Court
xxxxxx County Jail

Finding of Incompetent to Stand Trial-Unrestorable-Criminal Court Jurisdiction

STATE OF OHIO
VS.
DEFENDANT

CASE NO:
JUDGE
JUDGMENT ENTRY

This matter came on for hearing on Defendants Competency to Stand Trial pursuant to ORC 2945.38 & 2945.39 this _____ day of _____. Present were the Defendant, _____ his/her counsel, _____ and representing the State of Ohio Assistant Prosecutor _____.

Counsel for the State and for the Defendant stipulated to the report of _____ (doctor) with _____ (hospital), dated _____. The report was received into evidence.

This Court finds the Defendant remains Incompetent to Stand Trial, and that the Defendant does not understand the nature and objectives of the proceedings against (him/her) and is not capable of assisting in (his/her) defense, despite a period of treatment for (his/her) major mental illness. The Court further finds the Defendant could not be restored to Competency within the time set by statute.

This matter then came on for hearing on the motion of the Prosecutor pursuant to ORC 2945.39(A)(2) as to the Court retaining jurisdiction over the Defendant. The Court received testimony from _____. Additionally, the Court received evidence from the State by way of several exhibits. The Defense also presented testimony from _____. The Court considered all relevant evidence, including, but not limited to the relevant psychiatric, psychological and medical reports, the acts constituting the offense charged, and the history of the Defendant that is relevant to (his/her) ability to conform to the law.

This Court finds pursuant to ORC 2945.39(A)(2)(a)&(b) that the State has proved by clear and convincing evidence that the Defendant committed the offense with which (he/she) is charged and the Defendant is a mentally ill person subject to Court ordered hospitalization.

Therefore, the Court finds the Defendant is Incompetent to Stand Trial Unrestorable and shall remain under the Criminal Court's jurisdiction (IST-U-CJ). This Court further finds that the least restrictive commitment alternative available consistent with public safety and the welfare and treatment needs of the Defendant is _____ (hospital). The length of time of the Defendant's commitment is based on the maximum time of the most serious felony charge, to wit: _____ (charge), a felony of the _____ degree, making this commitment _____ (years) and _____ (months).

As required by ORC 2945.40I a report from the treating facility shall be made to this Court after the initial six (6) months of treatment and every two (2) years after the initial report is made, up to and including the end of the _____ year period or until the Defendant is found to be restored to competency.

The _____ (county name) County Sheriff's Department is ordered to transport the Defendant to _____ (hospital) pursuant to this order as soon as a bed becomes available.

Date: _____ Judge _____

cc: Prosecutor, Name
Defense Atty., Name
LAA of RPH, Name
Forensic Monitor, Name

Order for Sanity Evaluation

This matter came for hearing this _____ day of _____, 20____, the Defendant, _____ (name) being present before the Court and represented by counsel, _____ (name), and the State being represented by the Prosecuting Attorney _____ (name).

The Defendant having entered a plea of Not Guilty by Reason of Insanity in this matter, it is ORDERED that:

1. The _____ (name of forensic center), a certified forensic center designated by the Ohio Department of Mental Health and Addiction Services, will examine the Defendant to determine the Defendant's mental condition at the time of the commission of the offense with which he is charged, pursuant to ORC Section 2945.371
2. The examination will be conducted at the _____ (name of forensic center) if the Defendant is released on bail or recognizance, or at the Defendant's place of detention.
3. The examiner shall complete the examination within thirty (30) days after the date of this order and shall prepare and provide to the Court a written report of the examination.
4. The examiner's report shall contain the examiner's findings as to whether the Defendant, at the time of the offense(s) charged, did not know, as a result of a severe mental disease or defect, the wrongfulness of the acts with which *he/she* is charged.
5. The Defendant stands charged in this matter with having committed the offense(s) of _____ (name of charge) on or about _____ (date).

IT IS FURTHER ORDERED that the Defendant be (*released on bond OR remanded to xxxxxxxx County Jail*) to await further hearing set for _____ (date).

Date: _____

Judge: _____

cc: Prosecutor
 Defense counsel
 Name of Forensic Center
 Forensic Monitor

Finding of NGRI and order for Post NGRI evaluation

This matter came for hearing this _____ day of _____, 20___. The Defendant, _____ (name), being present before the Court and represented by counsel, _____ (name), and the State being represented by the Prosecuting Attorney _____ (name).

The Question of the Defendant's sanity having previously been raised, the Defendant was referred to the _____ (name of forensic center), for examination. The written report of the examination has been filed with the Court and copies provided to the Prosecuting Attorney and defense counsel. All parties stipulate to the _____ (name of forensic center) report.

In consideration of all evidence, the Court finds that the Defendant, _____ (name) is a mentally ill person subject to hospitalization by Court order as defined in ORC Section 5122.01 and further the Court finds the Defendant Not Guilty by Reason of Insanity of the charge(s) of _____ [name of Legal charge(s); ORC Section, severity of charge]. The length of time of the Defendant's commitment is based on the maximum time of the most serious felony charge, to wit: _____ (charge), a felony of the _____ degree, making this commitment _____ (years) and _____ (months).

It is therefore ORDERED that _____ (name of forensic center) shall perform a level of commitment evaluation pursuant to ORC Section 2945.40 to assist the Court in determining whether the respondent is a mentally ill person subject to hospitalization by Court order, and, if so, the least restrictive setting consistent with his treatment needs and the safety of the community.

IT IS FURTHER ORDERED that a hearing be set up receipt of this evaluation to order the setting in which the respondent will begin their treatment commitment.

Date: _____

Judge: _____

cc: Prosecutor
Defense Attorney
Forensic Center
ADAMH Board
Forensic Monitor

Continued Hospitalization- NGRI/ISTU-CJ

This matter came for hearing this _____ day of _____, 20____. The respondent, _____ (name), being present before the Court and represented by counsel, _____ (name), and the State being represented by the Prosecuting Attorney _____ (name).

The respondent having previously been found (**specify Not Guilty by Reason of Insanity/Incompetent to Stand Trial Unrestorable-Criminal Jurisdiction**) of the charge(s) of _____ (name of charges, ORC code and severity of charges) and committed to _____ (name of RPH), a hearing was held pursuant to ORC 2945.401 I to determine whether the respondent's commitment should be continued.

The Court is in receipt of a report from _____ (name of RPH) and copies have been provided to the Prosecuting Attorney and defense counsel. All parties stipulate to the report.

In consideration of all the evidence, the Court finds that the respondent remains a mentally ill person subject to hospitalization by Court order as defined in Section 5122.01 Revised Code.

It is therefore ORDERED that:

- The respondent shall be committed to _____ (name of RPH), the least restrictive commitment alternative available consistent with public safety and the welfare of the respondent, pursuant to Ohio Revised Code Section 2945.40.
- The respondent shall not be transferred or discharged from _____ (name of RPH), without Court approval.

Date: _____

Judge: _____

cc: Prosecutor
Defense Attorney
Forensic Monitor
RPH

Continued Conditional Release (NGRI/ISTU-CJ)

This matter came for hearing this _____ day of _____, 20___. The respondent, _____ (name), being present before the Court and represented by counsel, _____ (name), and the State being represented by the Prosecuting Attorney _____ (name).

The respondent having previously been found (**specify Not Guilty by Reason of Insanity or Incompetent to Stand Trial Unrestorable-Criminal Jurisdiction**) of the charge(s) of _____ (name of charges, ORC code and severity of charge) and placed on Conditional Release a hearing was held pursuant to ORC 2945.401I to determine whether the respondent's commitment and Conditional Release should be continued.

In consideration of all the evidence, the Court finds by clear and convincing evidence that the respondent is a mentally ill person subject to hospitalization by Court order as defined in Section 5122.01 Revised Code.

The Court has further considered the current quantity of psychotropic medications and other treatment that the respondent is receiving and the likelihood that the respondent will continue to take the drugs and continue with treatment. Further considering the risks to public safety and the welfare of the respondent, the Court finds that the respondent should be continued on Conditional Release.

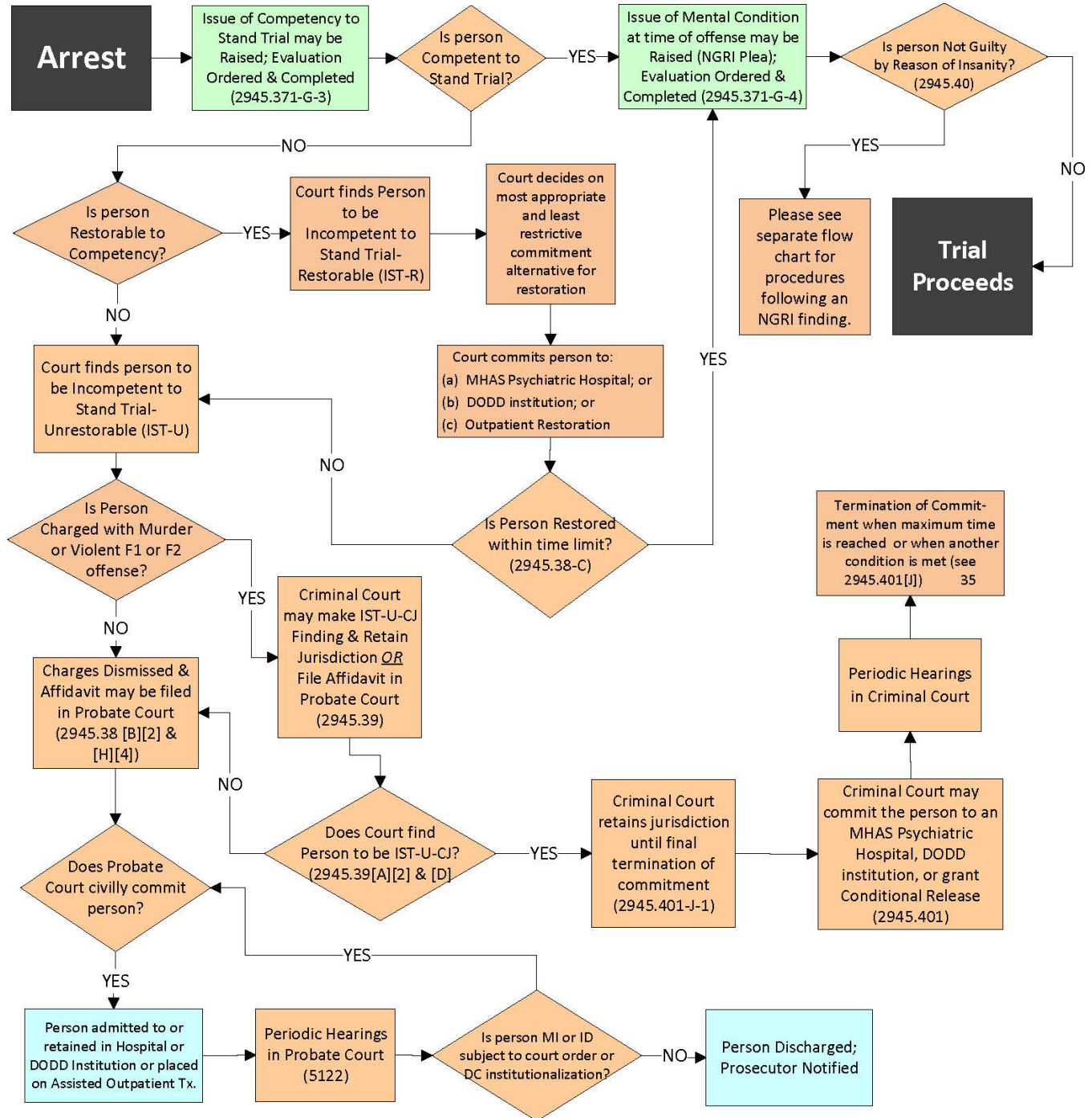
It is therefore ORDERED that the respondent shall be committed to _____ (name of treatment agency), the least restrictive commitment alternative available consistent with public safety and the welfare of the respondent, pursuant to Ohio Revised Code Section (specify **2945.40 NGRI or 2945.39 ISTU-CJ**). It is further ordered that _____ (name of the defendant) continue to comply with all terms of **his/her** Conditional Release Plan.

Date: _____

Judge: _____

cc: Prosecutor
 Defense Attorney
 Forensic Monitor
 Treatment Agency

The Forensic Mental Health System of Ohio: Competency to Stand Trial



Forensic Center or Other Examiner

ID: Intellectual Disability MI: Mentally Ill
 IST-R: Incompetent to Stand Trial-Restorable
 IST-U-CJ: Incompetent to Stand Trial-Unrestorable-Criminal Court Jurisdiction
 DODD: Dept. of Developmental Disabilities
 DC: Developmental Center

State Hospital or DODD Institutional Treatment
 Court Decisions and Involvement

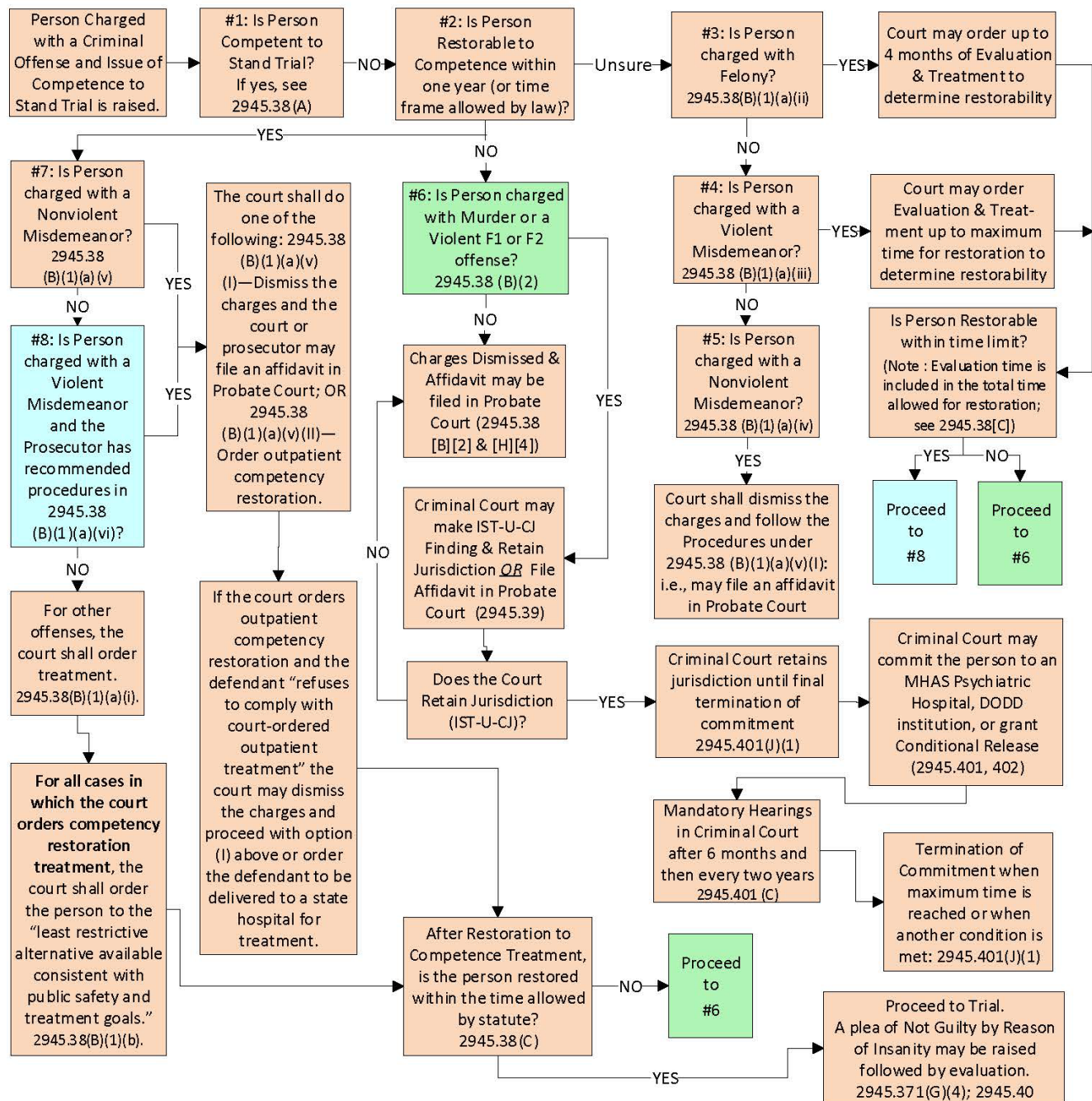
ForensicServices@mha.ohio.gov

Please Note: This flowchart is a simplified overview of the forensic mental health system. Some information is not included. Please consult Revised Code Sections 2945.37 to 2945.402 for complete information.

Developed by
 Robert N. Baker, PhD

Updated: August 25, 2020

Senate Bill 2 Processes for Competence to Stand Trial



IST-R: Incompetent to Stand Trial-Restorable
IST-U: Incompetent to Stand Trial-Unrestorable
IST-U-CJ: Incompetent to Stand Trial-
Unrestorable-Criminal Court Jurisdiction
MHAS: Ohio Department of Mental Health &
Addiction Services
DODD: Ohio Department of Developmental
Disabilities

Developed by
Robert N. Baker, PhD.

Updated:
September 29, 2021

Please Note: This flowchart is a simplified overview of the forensic mental health system. Some information is not included. Please consult Revised Code Sections 2945.37 to 2945.402 for complete information.

| FORENSIC CONDITIONAL RELEASE MONTHLY PROGRESS REPORT | | |
|--|-----------------------|---------------------|
| Consumer Name (last) (first) | | SSN |
| Date of Assessment: | Current Legal Status: | Committing Offense: |
| Month Served: | | |

| services provided in the past month | | |
|---|-----------------|--------|
| SERVICE | DATE OF CONTACT | AGENCY |
| <i>Case Management / Service Coordination</i> | | |
| <i>Individual Therapy</i> | | |
| <i>Group Therapy</i> | | |
| <i>Family Therapy</i> | | |
| <i>Medical-Somatic</i> | | |
| <i>Nursing Services</i> | | |
| <i>Peer Support Services</i> | | |
| <i>Vocational Programs</i> | | |
| <i>Substance Abuse Treatment</i> | | |
| <i>Drug Screen</i> | | |
| <i>Residential Services</i> | | |
| <i>Crisis Intervention</i> | | |

Has the consumer failed to keep any appointments? YES NO

If so, was the appointment rescheduled?

Present Status/Level of Functioning:

Present medication (dose, delivery method, ex. IM, oral, etc):

Method of Verification: ☐Confirmed by Significant Other ☐ Drug Screen
 ☐ Administered by Treatment Staff ☐ Other
 ☐ Consumer Self Report

Significant changes in consumer's circumstances (job change, death of significant other, etc.):

Report by significant other (family, friends, AA sponsors, etc.)

Consumer's present address/living arrangements:

How does consumer occupy time?

Results of drug screen obtained during the month (include dates and substances tested):

Has the Treatment Plan changed? ☐ NO ☐YES (please attach new plan if changed)

Additional Comments:

PROGRESS SUMMARY PREPARED BY:

Signature

Date: _____

Print Name

Forensic Monitor Database Template

[illegible]

Conditional Release Plan

Name:

Case Number:

Date Plan Submitted:

Judge _____, (Name of County) County Common Pleas Court

General Conditions:

I, _____, understand that I have been found by the Court to be (choose as indicated) *NGRI pursuant to ORC Section 2945.40* **or** *Incompetent to Stand Trial, Unrestorable-Criminal Court Jurisdiction pursuant to ORC Section 2945.39* and that I am being committed by the Court on a Conditional Release status. I understand that I will be expected to follow the conditions listed below in order to remain living in the community. I specifically agree:

1. To obey all municipal, state, and federal laws.
2. Not to leave the state of Ohio without written permission from the judge who maintains jurisdiction over my case.
3. To live at _____. I agree not to change my address/living situation without approval of the (name of primary treatment provider, including all contact information) and (name of Forensic Monitor, including all contact information).
4. Not to own, possess, or have access to firearms or any other illegal weapons (can be more restrictive if indicated).
5. To provide any release of information requested by my assigned psychiatrist/nurse practitioner, (name of primary treatment provider), the Forensic Monitor, or other treatment staff concerning my mental health and compliance with the conditions of this Conditional Release Plan. I understand release of information for family is required.
6. Not to consume alcoholic beverages (can be more restrictive if indicated).
7. Not to use or possess any illegal drugs (including medicinal marijuana or recreational marijuana). Not to use or possess any prescription medication and/or over the counter medication, including mind altering substances, which may be legal (e.g. bath salts), unless prescribed by my treating physician or with my treating physician's permission.
8. To follow the terms of my treatment plan, whether or not they are specified in this Conditional Release Plan and the Court Journey Entry.

9. To complete any necessary forms for payment of services. I understand that all services will be at my expense.
10. I understand that, even though I may not have violated any conditions of my release, I may be returned to a state hospital or placed in a crisis stabilization facility if my mental health deteriorates to such a point that hospitalization or stabilization is necessary for my safety and/or the safety of the community. I understand that this hospitalization or placement may or may not result in a formal revocation of my Conditional Release.

Specific Conditions (enter any specific conditions developed based on management of dynamic risk factors as assessed, examples below not all inclusive) :

1. I will meet with staff members of (enter primary treatment provider, address and phone number) Frequency and length of meetings is at the discretion of (treatment provider). These meetings may include scheduled and/or random home visits and/or be held at (provider organization). The purpose for the meetings is to provide care and treatment and monitor compliance with the Conditional Release Plan.
2. I will see (primary treatment provider) (enter frequency) for case management services and medication monitoring services. I will see my therapist (enter frequency). I will attend (any other treatment services as applicable).
3. I will take all medications as prescribed by my assigned psychiatrist and/or Certified Nurse Practitioner at (provider organization) I agree to meet with the psychiatrist and/or certified nurse practitioner at least (enter frequency) to receive psychiatric services and the monitoring of my medications.
4. I will receive my medications (enter frequency and method of medication monitoring). My medications will be delivered and monitored by (enter responsible provider). I will tell (responsible provider) where I am daily so that they can deliver my medications to me.
5. I will attend (enter community groups as applicable, i.e. AA, NA, peer support, etc.)
6. I will cooperate with the collection of laboratory specimens including the testing of blood, breath, hair, skin or urine for alcohol, illicit drugs, and therapeutic medications levels. I understand that some of these requests may be random and unscheduled. This will happen at least (enter frequency) and at my expense
7. I will meet with the Community Forensic Monitor as scheduled to discuss progress and include evaluation with respect to my mental illness and compliance with this Conditional Release Plan. These meetings may include scheduled and/or random home visits.
8. I will cooperate with all requests for Psychological Testing.
9. I will comply with any other special conditions deemed necessary by the mental health staff responsible for my treatment.
10. If I am unable to attend a meeting or session as required by this Conditional Release Plan, I will provide advance notice by telephoning the person with whom I was scheduled to meet. If I am unable to contact this person, I will call one of the two following individuals:

Alternative Contact #1: (enter name and contact information for primary treatment provider)

Alternative Contact #2: (enter name and contact information for forensic monitor if different)

11. I will make arrangements for my transportation between my home and meetings required by this Plan. I understand that missing activities because of a lack of transportation will not be accepted as an excuse.

12. If a conflict arises between my rights as a client of a mental health agency and the obligations of the Forensic Monitor to monitor my conditional release status and this conflict persists despite attempts at resolution at the agency or in mediation, the Forensic Monitor may bring this conflict to the attention of the Judge who hears my case in order to resolve the conflict.
13. All conditionally released clients are responsible for keeping the treatment team aware of there whereabouts and activities so that the client can be easily contacted if needed. If a client on conditional release status is reasonably believed to be absent without leave, (community agency and/or FM) will notify the ADAMHS board and the court and immediate efforts will be made to locate the client as soon as possible."

Client Agreement:

I have read or had read to me and understand and accept the conditions under which I will be released by the court. I agree to abide by and conform to them and fully understand that my failure to do so may result in:

- a) Revocation of the Conditional Release Plan.
- b) Modification of the Conditional Release Plan.
- c) Notification of the Court and proper legal authorities.
- d) Emergency hospitalization, pursuant to Section 5122.10.
- e) Arrest and prosecution.

Client Signature: _____ **Date:** _____

Other Signatures:

Primary treatment provider **Date**

Forensic Monitor **Date**

Other **Date**

Other **Date**

Judge **Date**

2-year review hearing request letter

(agency/organization letterhead)

The Honorable Judge (enter name)
(County name) County Common Pleas Court
(address)

RE: (client name)

Case: (case number)

Dear Judge (enter name):

(client name) was found (Not Guilty by Reason of Insanity or Incompetent to Stand Trial, Unrestorable) on one charge of (enter charge/level of felony), on (date of finding) (He/She) was approved for Conditional Release on (date approved for CR). Per ORC 2945.401I, (Client name) is required to have a review hearing every two years, which is due (enter date). I am respectfully requesting that the court order a forensic evaluation to be completed by the (enter name of regional forensic center) and schedule an oral hearing upon receipt of this evaluation to comply with applicable ORC requirements.

(Client name) receives mental health services through (enter name of primary treatment provider and any other relevant brief status information, including whether compliant with CR)

If you have any questions or concerns, I can be reached at (contact number for forensic monitor).

Sincerely,

(name of forensic monitor)

CC: (prosecutor name/address)

(primary treatment provider name address if different from FM)

(Adult court service contact, if applicable)

(Client name/address and/or defense attorney)

Letter to report CR violation template

(agency/organization letterhead)

The Honorable Judge (enter name)
(County name) County Common Pleas Court
(address)

RE: (client name)

Case: (case number)

Dear Judge (enter name):

This letter is intended to advise the court of (client name) current status and concerns related to violating terms of (his/her) CR plan. (client name) was found (Not Guilty by Reason of Insanity or Incompetent to Stand Trial, Unrestorable) on one charge of (enter charge/level of felony), on (date of finding) (He/She) was approved for Conditional Release on (date approved for CR). (enter specific details of CR violation, including dates as indicated of positive drug screens, missed appts., non-compliance with medications, etc.; also include plan to address concerns which could include amendments to CR plan, additional treatment services, change in placement, request for status review hearing etc.; can also include recommendation for revocation of CR as indicated, though immediate safety issues should be dealt with concurrently or even prior to formal notification to court, recognizing client may need to be secured safely prior to any formal court hearings)

If you have any questions or concerns, I can be reached at (contact number for forensic monitor).

Sincerely,

(name of forensic monitor)

CC: (prosecutor name/address)
(primary treatment provider name address if different from FM)
(Adult court service contact, if applicable)
(Client name/address and/or defense attorney)

Letter of Termination Template

(agency/organization letterhead)

(Date)

The Honorable Judge (enter name)

(County name) County Common Pleas Court

(address)

RE: (Name of Client)

Case: (Case number)

Dear Judge (enter name):

(Client Name) was found (Not Guilty by Reason of Insanity or Incompetent to Stand Trial, Unrestorable) on (enter date of finding) on one charge of (Charge with level of felony) (He/She) has been on Conditional Release in the community since (date approved for CR). Per ORC 2945.401(J)(b), the maximum time of treatment allowed will expire on (date of termination). It is therefore respectfully requested that (client name) Conditional Release be terminated and (he/she) be released from any further responsibility in this case. I would further request that a journal entry be provided indicating the same. If I do not receive communication from the Court within 30 days, the case will be considered terminated and monitoring activities will cease.

(Client name) will continued to be offered recommended mental health services through (enter name of primary treatment provider, if applicable)

If you have any questions or concerns, I can be reached at (contact number for FM).

Sincerely,

(Forensic Monitor name)

CC: (prosecutor name/address)

(primary treatment provider name address if different from FM)

(Adult court service contact, if applicable)

(Client name/address and/or defense attorney)

Example

MEMORANDUM OF UNDERSTANDING REGARDING AGREEMENTS BETWEEN COUNTY OF LEGAL RESIDENCE AND SERVICE PROVISION COUNTY

As a service to Alcohol, Drug Addiction, and Mental Health (ADAMH) Boards, OhioMHAS in collaboration with the Community Forensic Monitors is attempting to diminish potential conflicts when persons are Court ordered to receive mental health services outside of the county of court jurisdiction as a result of a conditional release plan. This situation is restricted to individuals who are to be treated while on conditional release status, under the jurisdiction of a criminal court, pursuant to Ohio Revised Code sections 2945.38 — 2945.402, as having been found Not Guilty By Reason of Insanity or Incompetent to Stand Trial, Unrestorable, under Criminal Court jurisdiction.

ORC 5122.01(S) defines “residence” in two ways — either the place where a person maintains his/her primary place of residence **or if committed pursuant to ORC sections 2945.38 -- 2945.402, the county where the criminal charges were filed.** In order to avoid confusion in these guidelines, the following terms are used:

County of Legal Residence (home county) — the county of the person’s usual residence

County of Committing Court — the county where criminal charges were filed

County of Service Provision — a county where a person may be receiving mental health services, other than the county of legal residence or committing court

In the vast majority of cases, the County of Legal Residence and County of Committing Court are the same. The individual has his or her home in the same county as the charges were filed. The County of Committing Court has jurisdiction over the individual and may order appropriate treatment services be arranged for the individual by the county ADAMH board or provided by community mental health agencies in that county. (Some criminal courts commit the individual on conditional release to the Board while others commit to a specific agency.) The Committing Court ADAMH Board is responsible for monitoring and tracking the individual on conditional release. Conditional release to the community is a commitment status under which a person meets civil commitment criteria, but does not require hospital level care. Conditional release may be maintained by the criminal court for the length of time the individual could have been incarcerated if convicted of the most serious offense charged.

Problems often arise when the County of the Committing Court and County of Legal Residence are different, and the County of the Committing Court seeks to have services provided by either the County of Legal Residence or a different County of Service Provision.

Usual Reasons Why the Committing Court County Seeks Services Outside That County:

1. The mental health services recommended by the hospital are not available through the County of Committing Court-ADAMH board or agencies. (e.g. intensive treatment services or housing)
2. To distance the person from victims.
3. To be closer to family, other support, or job.
4. Person preference.
5. The person has made significant attachments to mental health services in the county where he/she was hospitalized.
6. Adverse extensive media coverage would be heightened in the County of the Committing Court reducing the chances for successful community reintegration.
7. Other risk factors are present for the person (e.g. threats of reprisal toward the person)
8. Criminal connections in the County of the Committing Court.

Reasons for a Legal County (* or Service Provision county) ADAMH board or agency to refuse services requested by the Committing Court County:

- *1. The services requested in the conditional release plan are not available
- *2. Clinical expertise necessary to carry out the conditional release plan is not available.
- *3. Service programs are at maximum utilization (particularly residential and others—needs to be clearly documented).
- *4. No involvement (and disagreement) with the conditional release plan.
 - 5. The person has been transient and actually has no home.
 - 6. Family and/or prior victims prefer distance from the person
 - 7. Criminal connections in the Legal County.

Reasons for Committing Court County ADAMH Board to Refuse to Fund Services proposed in the conditional release plan:

- 1. Disagreement with the conditional release plan to have treatment provided in Legal or Service Provision County.
- 2. Too few services mandated in conditional release plan to be provided in Legal or Service Provision County.
- 3. Too many or too expensive services to be provided in Legal or Service Provision County.
- 4. Lack of funds to cover services proposed in the conditional release plan and not paid for by Medicaid or other third party. (Documentation needed.)

Disputes regarding contracts for services and/or monitoring should be worked out by the ADAMH Boards involved. Boards should utilize the current residency dispute guideline, if applicable.

Additional Issues

- 1. Boards may wish to consider arrangements to share costs for ongoing community services if an individual is charged with a subsequent offense in a Legal or Service Provision county, which now becomes a second legal county involved.
- 2. Boards may wish to consider arrangements to establish or re-establish residency in their Legal or Service Provision county providing services according to eligibility requirements (e.g. Medicaid) to end the financial liability of the Committing Court county for the services (even though the monitoring responsibility remains with the Committing Court county).
- 3. The Forensic Monitor needs to be notified promptly by any treatment agency if there is any violation of the conditional release plan or breakdown in services. The Forensic Monitor needs to notify the Committing Court County and assist the court in plans to safeguard the client and the public.

DRAFT

AGREEMENT FOR PROVISION OF SERVICES FOR OUT-OF-COUNTY FORENSIC CLIENTS

This Agreement is entered into by and between the [ADAMH Board] (the “County of Committing Court”) and the [ADAMH Board] (the “County of Service Provision.”) The purpose of this Agreement is to specify services, costs and administrative duties associated with the provision of services for out-of-county forensic clients subject to criminal court jurisdiction. A specific and distinct Agreement will be entered into for each individual to be served.

INDIVIDUAL TO BE SERVED: [name or other relevant identifying information for individual to be served]

TERM

This Agreement shall commence on [date] and terminate on [date]. Upon expiration, the Agreement may be renewed by mutual consent, or renegotiated. The estimate of time remaining on the named individual’s conditional release is [time period].

SERVICES

Generally

The services specified in Attachment I shall be provided to the named individual by the County of Service Provision, up to the maximum amounts listed, during the term of this agreement. The listed unit costs for such services shall not exceed the actual cost of providing those services.

Additionally, the County of Committing Court shall reimburse the County of Service Provision for the time and travel expenses of individuals who travel to the County of Committing Court Residence for court hearings or otherwise in conjunction with carrying out their duties under this Agreement.

Monitoring Services

The Forensic Monitor for the [ADAMH Board] will be providing the forensic monitoring services for the named individual.

[If the County of Service Provision to the named individual is also providing forensic monitoring services for the individual]: The Monitor providing such services is acting as an agent for the County of Committing Court, and as such, shall coordinate those services through [named individual] at the ADAMH Board of the County of Committing Court and shall provide the County of Committing Court Board with adequate documentation and assurances that appropriate tracking, supervision and reporting activities are performed in a timely and satisfactory manner.

Reporting

The County of Service Provision shall provide to the County of Committing Court updates to the treatment plan [timetables or events which trigger];

- a program and fiscal summary every ninety (90) days;
- an initial risk assessment, and a follow-up risk assessment every six (6) months;
- [all other forensic tracking requirements per policy];

- all other information necessary to enable the County of Legal Residence to fulfill its MHIS and other OhioMHAS reporting responsibilities;

COSTS/REIMBURSEMENTS

The County of Legal Residence shall reimburse the County of Service Provision for the services actually provided per Attachment I, up to the caps designated in Attachment I, and for time and travel expenses incurred in travel to and from the County of Committing Court in conjunction with carrying out duties under this Agreement. [billing procedures—include procedures and timelines for billing and reimbursement, including process for approval of travel expenses] [is there a Medicaid match issue here?]

RELEASE OF INFORMATION

Pursuant to ORC Sections 2945.39(D)(2), 2945.40(G), the records sent with the client to the place of commitment shall be shared with the ADAMH Board of the County of Committing Court. Also, pursuant to ORC Section 5122.31(H), community agencies may exchange medication history, physical health status and history, financial status, summary of course of treatment, summary of treatment needs, and discharge summary information with ADAMH Boards and other agencies in order to provide services to persons involuntarily committed to the Board. Records can also be shared pursuant to a properly executed consent for the release of information, ORC Section 5122.31(A) or court order, ORC Section 5122.31(D).

CONTINUITY OF CARE

The County of Service Provision and the County of Committing Court [or other county, if applicable] shall work together in advance planning for the transition/transfer of the named individual into services provided through the County of Committing Court [or other county] upon the termination of this Agreement.

TERMINATION

This Agreement may be terminated at any time by mutual agreement, or upon the unilateral action of either party with at least sixty (60) days advance written notice to the other party.

DISPUTE RESOLUTION

Any issues in dispute regarding the terms or implementation of this Agreement shall be first referred to the Executive Directors of the parties for resolution. The current Residency Dispute Process will be utilized if applicable. Problems requiring additional intervention will be referred first to an outside [certified] mediator, and lacking resolution through that process, to the appropriate Area Director(s) from the Ohio Department of Mental Health and Addiction Services for resolution.

[ADAMH Board]

[ADAMH Board]

[name]
Executive Director

[name]
Executive Director

Date

Date

Notification Form for Record Checks

Under O.R.C. 5122.311
Please Type or Print in Ink

Pursuant to Ohio Revised Code 5122.311,

I, _____, ☐ **Probate Judge** ☐ **Chief Clinical Officer**
Name of Reporting Official

of _____ ☐ **County** ☐ **Hospital,** ☐ **Other**
Name of Reporting Entity **Agency or Facility**

Street Address

City

State

Zip

County

report the following regarding a mentally ill person subject to court order or involuntary patient other than one who is a patient only for purposes of observation, to the best of the current knowledge and information available.

Reporting County Court Case #: _____

Name: _____
Last First Middle

Social Security #: _____

Last Known

Residence: _____
Street Address City State Zip County

Mailing Address

(if different from above): _____
Street Address City State Zip County

Date of Birth: ____ I ____ I ____ **Place of Birth:** _____
City State County

Sex: B Male **Race/National Origin:** B White B Hispanic B American Indian/Alaskan Native
B Female B Black B Asian/Pacific Islander B Other _____

The information contained in this document is true and correct to the best of my knowledge.

Date

Signature of Judge or Chief Clinical Officer

109: 5-3-01 Procedure for reporting incompetency records.

(A) Not later than seven (7) days after a person is found to be a mentally ill person subject to court order or becomes an involuntary patient other than one who is a patient only for purposes of observation, the Probate Judge who made the adjudication or the Chief Clinical Officer of the hospital, agency, or facility in which the person is an involuntary patient must transmit this form to the bureau of criminal identification and investigation.

(B) The foregoing shall be submitted to the Attorney General's Office Bureau of Criminal Identification (BCI) in one of the following ways:

(1) Through the mail to the Attorney General's Office Bureau of Criminal Identification, P.O. Box 365, London, Ohio 43140.

(2) Electronically in a format designated by the superintendent.

(C) This notification is required under R.C. 5122.311 for the purpose of conducting incompetency records checks pursuant to R.C. 311.41 (application to sheriff for concealed handgun permit).

- (D) "Involuntary patient" means a person who is ordered to undergo treatment or continuing evaluation and treatment at a hospital, agency, or facility, or through an individual professional, under sections 2945.38, 2945.39, 2945.40, 2945.402 or committed to a hospital, facility, agency, Alcohol Drug Addiction Mental Health Services/Community Mental Health board or other person or place under section 5122.141 or 5122.15 of the Revised Code. "Involuntary patient" does not include persons admitted for purposes of evaluation pursuant to section 2945.371 of the Revised Code, or for care, observation and treatment pending examination or hearing under section 5122.10 or 5122.11 of the Revised Code.
- (E) "For purposes of observation" means held at a center, program or facility for purposes of evaluation pursuant to section 2945.371 of the Revised Code or admitted for purposes of care, observation and treatment pending examination or hearing pursuant to section 5122.10 or 5122.11 of the Revised Code.
- (F) "Mentally ill person subject to court order" and "patient" are defined at O.R.C. 5122.01.

Rev. 10/29/14

**AMENDMENTS TO THE
RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO**

On December 12, 2013, the Supreme Court of Ohio adopted a new rule and new form to the Rules of Superintendence for the Courts of Ohio (new Sup.R. 95 and new Form 95) effective January 1, 2014.

RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

RULE 95. Notifying Law Enforcement Agencies of Mental Illness.

(A) Definitions

As used in this rule:

- (1) “Local law enforcement agency” means the police department of a municipal corporation in which an offense occurred or, if the offense did not occur in a municipal corporation, the sheriff of the county in which the offense occurred.
- (2) “Mental illness” has the same meaning as in R.C. 5122.01.
- (3) “Offense of violence” has the same meaning as in R.C. 2901.01.

(B) Completion of form

A court shall complete “Form 95” upon issuance, modification, or termination of a court order doing any of the following:

- (1) Ordering a person who pled guilty to or who was convicted of an offense of violence to receive a mental health evaluation;
- (2) Ordering a person who pled guilty to or who was convicted of an offense of violence to receive treatment for mental illness;
- (3) Approving a conditional release of a person who was found not guilty by reason of insanity;
- (4) Approving a conditional release of a person who was found incompetent to stand trial with no substantial probability of becoming competent again even with a course of treatment.

(C) Filing of form

Upon completion of “Form 95,” a court shall submit a copy of the court order and the form to the local law enforcement agency for entrance of the information into the “National Crime Information Center Supervised Release File” through the “Law Enforcement Automated Data System” pursuant to R.C. 2929.44(B) and 2945.402(E)(1).

FORM 95: NCIC MENTAL HEALTH NOTICE☐ Initial NCIC Notice☐ Modification of Previous Notice☐ Termination of Previous Notice**NAME**

Last

First

M.I.

ADDRESS

Street

City

State

Zip

PHYSICAL DESCRIPTION

HGT

WGT

Hair

Eyes

Race

Sex

NUMERICAL IDENTIFIER (Only one identifier is required. Complete the entire line for identifiers #3 and #4.)

1. SSN _____ 2. DOB _____ / _____ / _____

3. Driver's Lic. No. _____ State _____ Expiration YR. _____

4. Vehicle Lic. No. _____ State _____ Expiration YR. _____ Lic. Type _____

COURT NAME Franklin County Municipal Court**CASE/ORDER NO.** _____**COURT ORI** OH 025343J

(9 digit number assigned by NCIC)

OFFENSES

| | | | |
|---|---|---|---|
| <input type="checkbox"/> R.C. 2903.01 Aggravated Murder | <input type="checkbox"/> R.C. 2903.02 Murder | <input type="checkbox"/> R.C. 2903.03 Voluntary Manslaughter | <input type="checkbox"/> R.C. 2903.04 Involuntary Manslaughter |
| <input type="checkbox"/> R.C. 2903.11 Felony Assault | <input type="checkbox"/> R.C. 2903.12 Aggravated Assault | <input type="checkbox"/> R.C. 2903.13 Assault | <input type="checkbox"/> R.C. 2903.15 Permitting Child Abuse |
| <input type="checkbox"/> R.C. 2903.21 Aggravated Menacing | <input type="checkbox"/> R.C. 2903.211 Menacing by Stalking | <input type="checkbox"/> R.C. 2903.22 Menacing | <input type="checkbox"/> R.C. 2905.01 Kidnapping |
| <input type="checkbox"/> R.C. 2905.02 Abduction | <input type="checkbox"/> R.C. 2905.11 Extortion | <input type="checkbox"/> R.C. 2905.32 Trafficking in Persons | <input type="checkbox"/> R.C. 2907.02 Rape |
| <input type="checkbox"/> R.C. 2907.03 Sexual Battery | <input type="checkbox"/> R.C. 2907.05 Gross Sexual Imposition | <input type="checkbox"/> R.C. 2909.02 Aggravated Arson | <input type="checkbox"/> R.C. 2909.03 Arson |
| <input type="checkbox"/> R.C. 2909.24 Terrorism | <input type="checkbox"/> R.C. 2911.01 Aggravated Robbery | <input type="checkbox"/> R.C. 2911.02 Robbery | <input type="checkbox"/> R.C. 2911.11 Aggravated Burglary |
| <input type="checkbox"/> R.C. 2911.12(A)(1) Burglary | <input type="checkbox"/> R.C. 2911.12(A)(2) Burglary | <input type="checkbox"/> R.C. 2911.12(A)(3) Burglary | <input type="checkbox"/> R.C. 2917.01 Inciting Violence |
| <input type="checkbox"/> R.C. 2917.02 Aggravated Riot | <input type="checkbox"/> R.C. 2917.03 Riot | <input type="checkbox"/> R.C. 2917.31 Inducing Panic | <input type="checkbox"/> R.C. 2919.22(B)(1) Endangering Children |
| <input type="checkbox"/> R.C. 2919.22(B)(2) Endangering Children | <input type="checkbox"/> R.C. 2919.22(B)(3) Endangering Children | <input type="checkbox"/> R.C. 2919.22(B)(4) Endangering Children | <input type="checkbox"/> R.C. 2919.25 Domestic Violence |
| <input type="checkbox"/> R.C. 2921.03 Intimidation | <input type="checkbox"/> R.C. 2921.04 Intimidate Witness/ Attorney | | <input type="checkbox"/> R.C. 2921.34 Escape |
| <input type="checkbox"/> Former R.C. 2907.12 Felony Sexual Penetration | <input type="checkbox"/> R.C. 2923.161 Discharging Firearm in School or Home | | <input type="checkbox"/> Other: <i>Indicate offense below</i> |

☐ A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed as an offense of violence. R.C. or Ord. _____

☐ An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons. R.C. or Ord. _____

☐ A conspiracy or attempt to commit, or complicity in committing, any offense of violence. R.C. or Ord. _____

MISCELLANEOUS FIELD

☐ Defendant pled guilty to or was convicted of an offense of violence and was ordered by the court to receive a mental health evaluation.

☐ Defendant pled guilty to or was convicted of an offense of violence and was ordered by the court to receive treatment for mental illness.

☐ Defendant was found not guilty by reason of insanity. If you have contact with this person, please notify the Department of Mental Health and Addiction Services at mha.notify@mha.ohio.gov. The court approved the conditional release for the following reasons:

☐ Defendant was found incompetent to stand trial with no substantial probability of becoming competent again even with a course of treatment. If you have contact with this person, please notify the Department of Mental Health and Addiction Services at mha.notify@mha.ohio.gov. The court approved the conditional release for the following reasons:

DATE OF ORDER: _____ / _____ / _____

NOTE: Indicate date on which the court ordered the defendant to receive a mental health evaluation or treatment, or approved conditional release.

TERMINATION OF ORDER FOR MENTAL HEALTH EVALUATION OR TREATMENT:

☐ **NONEXPIRING** (NONEXP) OR _____ / _____ / _____

TERMINATION OF CONDITIONAL RELEASE OR COMMITMENT:

☐ **NONEXPIRING** (NONEXP) OR _____ / _____ / _____

NOTE: Indicate "NONEXPIRING" if the date on which the order for mental health evaluation, mental health treatment, or conditional release or commitment would terminate is not known to the court at the time the order is issued. When the termination date is known, complete a new Form 95 and check "Termination of Previous Notice" on page 1.

POINT OF CONTACT:

Last Name

First Name

Agency/Department

Telephone

E-mail

NOTE: "POINT OF CONTACT" may be a probation officer or forensic monitor to whom the defendant reports.

FINAL PAGE