

# REGIONAL FORENSIC TRAINING—2013

(Excerpts from the ODMH Forensic Manual)

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*Please Note: Because of the fact that this document contains only excerpts of the Forensic Manual, some of the references to other parts of the manual do not apply. For a complete copy of the Forensic Manual please visit:*

<http://mentalhealth.ohio.gov/assets/forensic-services/ohio-forensic-manual.pdf>



**Excerpts from the  
ODMH FORENSIC MANUAL (2012 Edition)**

**INTRODUCTION**

***The Ohio Forensic Mental Health System***

The Ohio Forensic Mental Health System is made up of components from various systems. These components include the [ODMH Regional Psychiatric Hospitals](#) (RPH; see Appendix A), [Community Forensic Psychiatry Centers](#), [Community Forensic Monitors](#), ODMH central office staff, representatives from the Judicial System, staff from Alcohol, Drug Addiction, & Mental Health Services/ Community Mental Health (ADAMHS/CMH) boards, community mental health agencies/providers, and private psychiatric hospitals. These entities work together to form a comprehensive forensic mental health system. Additional information regarding these components and their roles in the system will be found within this Manual.

***ODMH Inpatient Forensic and Risk Management Services***

There are currently six ODMH-operated Regional Psychiatric Hospitals (see Appendix A). Each RPH provides inpatient psychiatric services for adults who are civil and forensic admissions. Also, through Community Support Network (CSN) Adult teams, RPH staff provide community-based mental health services to adults. The Department works in coordination with the ADAMHS and CMH Boards to ensure that persons with mental illness in the community receive quality mental health services. The ADAMHS and CMH Boards are responsible for the planning, funding, monitoring and oversight of the community service system. The Boards contract with the ODMH RPHs and private hospitals to provide inpatient services, and with the ODMH-operated CSN programs for outpatient services.

At the end of Fiscal Year 2002, there were a total of 606 forensic patients on rolls, which represented 54% of the total ODMH inpatient population of 1121. In contrast, at the end of Fiscal Year 2011, there were a total of 603 forensic patients on rolls, which represented 67% of the total ODMH inpatient census of 901. Each RPH serves designated counties (see Appendix B) by providing services to persons admitted in the following forensic categories: Incompetent to Stand Trial—Restoration Treatment (IST-R), Incompetent to Stand Trial—Unrestorable (Probate Court Jurisdiction; IST-U-PJ), Incompetent to Stand Trial—Unrestorable—Criminal Court Jurisdiction (IST-U-CJ); Not Guilty by Reason of Insanity acquittees (NGRI), Sanity/Competency Evaluations, Mentally Ill Probationers/Parolees, Jail Transfers, Police Holds and Conditional Release admissions.

The ODMH Hospital Services system provides two levels of care in civil and maximum security settings. Historically, the RPH's civil units provided services to individuals in a voluntary admission status or those who were committed through the Probate Court as a civil admission. Currently, forensic and civil status patients are integrated on these units. The Department's Maximum Security Unit, Timothy B. Moritz Forensic Unit, is located at Twin Valley Behavioral Healthcare (TVBH) in Columbus. The Maximum Security Unit provides a higher level of security and allows for patient movement to be safely managed within the confines of the facility.

The RPH staff monitor patients for violence risk through regularly-conducted clinical risk assessments and through the development of treatment plans to manage identified risks. Since forensic status patients generally present higher risk, movement and privileges are restricted, and in some cases require the trial court's approval. Special risk management procedures are followed for certain forensic patients in the hospitals. (See Appendix C, Risk Assessment Policy, MF-03). In 2009, ODMH hospitals adopted the HCR-20 (Historical, Risk, Clinical Management-20) as the basis for violence risk assessments. The ODMH policy "Movement of Patients Committed under a Forensic Status" (MF-04, Appendix D) identifies who is eligible for movement based on the patient's legal status. An increase in movement level requires a recommendation from the patient's treatment team, an internal review of the patient's clinical condition, consideration of the original and updated risk assessments, and for many individuals, review by the RPH Forensic Review Team (FRT) and the approval of the Chief Clinical Officer (CCO). The RPH is required to request a Nonsecured Status ("Second Opinion") evaluation, performed by the local Community Forensic Psychiatry Center, prior to recommending that the trial court approve an increase in movement level to Nonsecured Status for some forensic status patients. The system was established to allow for a series of checks and balances to decrease risk and increase quality clinical care.

The RPH treatment staff, the community treatment provider, and when applicable, the community Forensic Monitor, work together to coordinate services when a person with mental illness is involved in the court system. Generally, this begins prior to the time when an individual is preparing for hospital discharge. Forensic patients who are eligible for Conditional Release are involved in the development of their conditional release plan with the RPH treatment staff, the Forensic Monitor, and the community treatment providers. The conditional release plan identifies the terms or conditions that the person agrees to abide by while on conditional release commitment and while being monitored by the Forensic Monitor, the community treatment provider, and the Criminal Court. The community mental health service providers may be part of a community mental health center or a Community Support Network (CSN) program. The CSN teams work in the community to provide services and are employed by ODMH.

A more detailed description of inpatient forensic services is provided in this Manual in the section titled [Ohio Department of Mental Health Forensic Inpatient Services](#).

### ***Office of Forensic Services***

The Office of Forensic Services (OFS) administers, supports and manages the system of services provided to people with mental illness involved in the criminal justice system in Ohio. OFS staff work with ADAMHS/CMH Boards, community agencies, RPHs, other state agencies, judges and criminal justice system staff, and various state legislators on issues that impact the forensic population. OFS is an office within the Division of Program and Policy Development. This office works with other ODMH offices on issues that affect the forensic population and providers in the community and RPH settings. A forensic newsletter is published to keep the hospitals, community boards and agencies, courts, and other stakeholders informed of legal changes and other forensic issues.

The Office of Forensic Services is made up of four functional areas: (a) Community Linkage, (b) RPH/Community Mental Health Services, (c) Mental Health Diversion Alternatives, and (d) Community Monitoring Program.

The *Community Linkage Program* was developed by ODMH in coordination with the Ohio

Department of Rehabilitation and Correction (ODRC) as a response to an identified need. The primary purpose of the Community Linkage Program is the improvement of continuity of mental health care for offenders entering and leaving the prison system.

The Community Linkage Program, under the supervision of the Chief of the Office of Forensic Services, consists of a Community Linkage Manager (CLM) and Community Linkage Social Workers (CLSWs). The duties of the CLM include supervision of the CLSWs, collaboration and liaison with the area Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Boards or Community Mental Health (CMH) Boards and other stakeholders on linkage procedures, and program coordination with the prisons, jails, psychiatric hospitals, and community mental health and substance abuse service providers within their areas. Each ODRC prison has an assigned/designated CLSW who is responsible for providing linkage services to that prison's mental health. More detailed information regarding this program is provided on page 46.

The *RPH/Community Mental Health Services* function of the office works with the ODMH Regional Psychiatric Hospitals (RPH), Community Forensic Psychiatry Centers, ADAMHS/CMH Boards, and community mental health agencies to develop consistent and effective forensic evaluation and treatment practices. OFS staff work with various constituencies to develop policies and programs, share concerns, and make recommendations for improvement. They assist in the review and development of policies, procedures, and guidelines for inpatient psychiatric services for those persons who are committed to ODMH RPHs by the Criminal Courts, in part through their oversight of the Forensic Service Line. These staff also work with local communities to develop locally-managed systems of care for persons in the community with a forensic status. Staff provide training, work in conjunction with the ODMH Legislative Liaison regarding forensic legislation, and coordinate the certification of Community Forensic Psychiatry Centers with the Office of Licensure and Certification.

The Office of Forensic Services' *Mental Health Reentry and Diversion Alternatives* function promotes jail diversion and reentry programs for persons with mental illness through several means. One of these includes directing the Criminal Justice Coordinating Center of Excellence (CJ-CCOE). The mission of the CCOE is to promote the adoption of evidence-based practices in jail diversion around Ohio. OFS encourages and supports improved consumer outcomes through collaboration of the mental health and criminal justice systems. At the national, state and local levels, OFS staff members participate in advisory boards, work groups, and committees, providing input and guidance leading to improved systems development. ODMH Office of Forensic Services also seeks grants and may issue grants for reentry/diversion projects as appropriate. More detailed information is provided on page 58.

Through the *Community Monitoring Program* function, OFS gathers data from the community Forensic Monitors and ADAMHS/CMH Boards in order to monitor and evaluate the effectiveness of community forensic programs. One of these programs involves the Forensic Tracking and Monitoring System. This database was established in 1997 pursuant to section 5119.57 of the Revised Code, which calls for "a coordinated system for tracking and monitoring persons" who have been placed on Conditional Release by the Court. Various outcomes, including arrests, revocations, and hospitalizations are tracked through this system. More information about the Forensic Monitoring Program may be found on page 46.

## COMMUNITY FORENSIC PSYCHIATRY CENTERS

### *Introduction*

There are currently ten Community Forensic Psychiatry Centers providing forensic evaluation services for the Criminal Court system in Ohio. They also provide Nonsecured Status or “Second Opinion” evaluations for the ODMH Regional Psychiatric Hospitals (RPHs) on patients being considered for Nonsecured Status (Level 5, Trial Visit or Conditional Release).

The Forensic Centers are located in various regions throughout the state and each provides services to designated counties. Prior to the development of the current system, most court-ordered sanity and competency evaluations occurred on an inpatient basis at one location. The 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 court proceedings. The centers provide timely, comprehensive, and professional evaluations locally, eliminating the stigma of inpatient hospitalization and increasing cost effectiveness.

The Forensic Centers also provide consultation and training services for the local criminal justice system, the ADAMHS/CMH Boards, and community mental health agencies. As part of the community forensic mental health system, the centers assist the boards and community mental health agencies in identifying the needs of this population for program and service planning purposes. In addition, the staff of these centers provide expert testimony for their local courts.

Each of the Forensic Centers is required to be certified as a mental health agency to provide forensic evaluation services and to be a certified Community Forensic Psychiatry Center. The certification process, performed by the Office of Licensure and Certification and the Office of Forensic Services of ODMH ensures compliance with the requirements of Administrative Rules [5122-29-07](#) regarding Forensic Evaluation Service and [5122-32-01](#) on Community Forensic Psychiatry Centers.

The organizational structure of each of the Forensic Centers varies throughout the state, although each is required to be either a free standing organization or a specifically designated subdivision of a larger organization. Each center is required to have a mission statement, a table of organization that clearly delineates the authority and responsibility of all staff, and a description of the services provided to Criminal Courts. The centers employ qualified examiners, pursuant to the requirements defined in section [2945.37](#) (A)(2) of the Revised Code.

In 1974, the directors of the Community Forensic Psychiatry Centers in Toledo, Dayton, and Columbus began meeting informally to discuss policies, procedures, and problems. This group was expanded as more centers were established, eventually evolving into the Association of the Ohio Forensic Psychiatric Center Directors. The goals of this organization include sharing of information, planning and sponsoring educational events, maintaining quality standards, monitoring legislative activity, and advocating for shared concerns.

### *Competency to Stand Trial Evaluation Services*

One function of the Community Forensic Psychiatry Centers is to provide competency to stand trial evaluation services for the local courts. For details regarding criminal court processes and procedures relevant to the issue of a defendant's competence to stand trial, please see the Competency to Stand Trial segment in the Criminal Courts of Ohio section of this document .

The purpose of an evaluation of a defendant's competency to stand trial is to determine whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense.

Competency evaluations shall be conducted by an "examiner," as defined in section [2945.37\(A\)\(2\)](#) of the Revised Code.

The court shall inform the examiner of the offense with which the defendant is charged.

When the court orders an evaluation, the defendant is required to be available at the times and places established by the examiner(s) conducting the evaluation under section [2945.371\(C\)](#) of the Revised Code. The court may order a defendant who has been released on bail or recognizance to submit to an evaluation. If a defendant who has been released on bail or recognizance refuses to submit to a complete evaluation, the court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to an ODMH facility, or a Department of Developmental Disabilities ([DODD](#)) facility where the defendant may be held for evaluation for a reasonable period of time not to exceed 20 days<sup>1</sup>. A County or Municipal Court judge may commit the defendant for an inpatient evaluation only upon the request of an examiner from a certified Community Forensic Psychiatry Center. (See R.C. [2945.37 \[H\]](#) and R.C. [2945.371 \[D\]](#)).

The examiner shall file a written report with the court within 30 days<sup>1</sup> after the entry of a court order for the evaluation. The court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the following:

1. The examiner's findings;
2. The facts in reasonable detail on which the findings are based;
3. Whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's own defense;
4. If the defendant does *not* meet the criteria in (3) above, whether the defendant is presently mentally ill or mentally retarded and, if the examiner's opinion is that the defendant is presently mentally retarded, whether the defendant appears to be a mentally retarded person subject to institutionalization by court order;

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<sup>1</sup> In the Revised Code, the word "days" means calendar days unless the law specifically uses the words "court days." However, if the final day of a period falls on a weekend or holiday, then the final day is the next business day.

5. A prediction from the examiner as to the likelihood of a defendant assessed as incompetent to become capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense within one year<sup>2</sup> if the defendant is provided with a course of treatment.
6. If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or mentally retarded and likely to be restored within a year, 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.

No conclusory statement is required about the defendant's competence to stand trial.

An examiner appointed under section [2945.371](#) of the Revised Code to evaluate the defendant's competence to stand trial may also be appointed to evaluate a defendant who has entered a plea of not guilty by reason of insanity (i.e., a sanity evaluation). The examiner shall prepare separate reports on the issue of competence to stand trial and the defense of not guilty by reason of insanity. If an examiner assesses the defendant as not meeting the criteria for competency to stand trial, the examiner should not prepare a report regarding sanity until the defendant is restored to competency.

### ***Sanity Evaluation Services***

The Community Forensic Psychiatry Centers also provide sanity/criminal responsibility evaluation services for the local court system.

For details regarding criminal court processes and procedures relevant to the issue of entering a plea of not guilty by reason of insanity—and being evaluated for eligibility for an NGRI plea—please see the Not Guilty by Reason of Insanity segment in the Criminal Courts of Ohio section of this Manual.

The purpose of a sanity evaluation is to determine whether the defendant did not know, at the time of the offense charged, as a result of a severe mental disease or defect, the wrongfulness of the defendant's acts charged. (R.C. [2901.01 \[A\]\[14\]](#)).

Also, according to section [2901.21\(C\)](#) of the Revised Code, “voluntary intoxication may not be taken into consideration in determining the existence of a mental state that is an element of a criminal offense. Voluntary intoxication does not relieve a person of a duty to act if failure to act constitutes a criminal offense.”

The evaluation shall be conducted by an “examiner,” as defined in section [2945.37\(A\)\(2\)](#) of the Revised Code.

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<sup>2</sup> A defendant may be required to undergo treatment for the purpose of restoration of competency to stand trial for a period of thirty days to one year, depending upon the severity of the offense, pursuant to section [2945.38\(C\)](#) of the Revised Code.

The court shall inform the examiner of the offense with which the defendant is charged.

When the court orders an evaluation, the defendant is required to be available at the times and places established by the examiner(s) conducting the evaluation under section [2945.371\(C\)](#) of the Revised Code. The court may order a defendant who has been released on bail or recognizance to submit to an evaluation. If a defendant who has been released on bail or recognizance refuses to submit to a complete evaluation, the court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to an ODMH facility or a Department of Developmental Disabilities ([DODD](#)) facility where the defendant may be held for evaluation for a reasonable period of time not to exceed twenty days. A County or Municipal Court judge may commit the defendant for an inpatient evaluation only upon the request of an examiner from a certified Community Forensic Psychiatry Center. (See R.C. [2945.37 \[H\]](#) and [2945.371 \[D\]](#)).

In conducting an evaluation of a defendant's mental condition at the time of the offense charged, the examiner shall consider all relevant evidence. According to section [2945.392](#) of the Revised Code, if the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from "battered woman syndrome."

The examiner shall file a written report with the court within thirty days after the entry of a court order for evaluation and the court shall provide copies of the report to the prosecutor and defense counsel. The report shall include all of the following:

1. The examiner's findings;
2. The facts in reasonable detail on which the findings are based;
3. Whether the defendant, at the time of the offense charged, did not know, as a result of a severe mental disease or defect, the wrongfulness of the defendant's acts charged pursuant to section [2901.01\(A\)\(14\)](#) of the Revised Code.

An examiner appointed under section [2945.371](#) of the Revised Code to evaluate a defendant who has entered a plea of not guilty by reason of insanity may also be appointed to evaluate a defendant's competence to stand trial. The examiner shall prepare separate reports on the issue of competence to stand trial and the defense of not guilty by reason of insanity (NGRI). If an examiner assesses the defendant as not meeting the criteria for competency to stand trial, the examiner should not proceed with the sanity (NGRI) report until the defendant is restored to competency.

### ***Post-NGRI Evaluation Services***

The purpose of a Post-NGRI evaluation is to assist the court in determining whether the person is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, pursuant to sections [2945.40 \(A\)](#) and [\(B\)](#).

A hearing to determine the most appropriate placement and level of security necessary for the acquittee must be held within ten days of the finding of not guilty by reason of insanity. The

statute does not require that a forensic evaluation be completed on this issue. However, the court does, on occasion, order such an evaluation from the Forensic Center.

### ***Nonsecured Status (“Second Opinion”) Evaluation Services***

When persons committed under sections [2945.39\(A\)\(2\)](#) (IST-U-CJ) and [2945.40](#) (NGRI) are in an ODMH Regional Psychiatric Hospital (RPH), the committing court must approve an increase in some levels of movement (i.e., Level 3—On-Grounds Unsupervised, Level 4—Off-Grounds Supervised, and Level 5—Nonsecured Status; See Appendix E Movement Policy, MF-04).

When the designee of the department of mental health recommends discharge, termination of the original commitment, or granting the first nonsecured level of movement, a “Second Opinion” evaluation is conducted by the local Community Forensic Psychiatry Center (R.C. [2945.401\(D\)](#)). Nonsecured status is defined as any unsupervised off-grounds movement, a trial visit from the RPH, or conditional release.

In accordance with the ODMH policy, when it has been determined that a request for the first nonsecured status movement is appropriate, the RPH shall send written notification of the recommendation to both the trial court and the local Forensic Center. (The “local” Forensic Center refers to the center that serves the county in which the criminal charges were filed). Included in the notification is the request for a Nonsecured Status evaluation from the Forensic Center. A separate entry from the court is not required. (An example notification form is provided in Appendix F).

The Forensic Center has thirty days from receipt of the written notice to complete the evaluation. The examiner will interview the patient, review the clinical record, the initial and updated risk assessments, and the conditional release plan, if the request is for conditional release. The evaluation is to be conducted at an ODMH RPH. The Nonsecured Status evaluation report is sent by the Forensic Center to the court and the department’s designee. The court shall provide a copy of the department’s designee’s written request for movement and the center’s written report to the prosecutor and to the counsel for the patient.

The Nonsecured Status report shall indicate agreement or disagreement with the recommendation of the department’s designee. When there is disagreement, the court and the department’s designee shall be informed of the reasons. The department’s designee shall review the Nonsecured Status report, and if the report supports the recommendation of the department’s designee, the court’s approval will be requested. In cases where the Nonsecured Status evaluation is not supportive of the recommendation of the department’s designee, the department’s designee may withdraw, proceed with, or modify and proceed with the request to the court. The court shall make the final decision regarding the request for an increase in movement level.

### ***Additional Evaluations***

The evaluation types listed below are not funded by ODMH, but some Forensic Centers perform them under separate contracts with their courts.

### ***Mitigation of Sentence Evaluation Services***

Following a plea of guilty or a conviction, the judge may order the probation department to prepare a presentence investigation on the offender. Either the probation department (pursuant to R.C. [2951.03](#)) or the judge (pursuant to R.C. [2947.06](#)) may request an evaluation of the person's mental condition by a psychiatrist or psychologist as part of the presentence investigation.

An offender cannot be admitted to an ODMH facility solely for the purpose of a mitigation of sentence or presentence evaluation. The court may order a private psychiatrist, psychologist, or a Community Forensic Psychiatry Center to perform the evaluation. If the offender had been released on bail or recognizance, the evaluation should be performed on an outpatient basis. If the offender has not been released, the evaluation should be conducted at the place of detention.

### ***Competence to Stand Trial Evaluation—Juveniles***

On September 30, 2011, legislation became effective regarding the evaluation of juveniles' competence to stand trial in juvenile court. Some Community Forensic Psychiatry Centers perform these evaluations. The legislation is included in sections [2152.51](#) to [2152.59](#) of the Revised Code. These laws are not reviewed in this manual because ODMH hospitals are not involved in the treatment of juveniles who have been found to be incompetent to stand trial (with the rare exception of older juveniles who have been bound over to adult court).

### ***Other Evaluations***

The Community Forensic Psychiatry Centers provide a number of other evaluations for the courts. Each Forensic Center has made arrangements with their local courts to provide certain kinds of evaluations and these arrangements vary by center. Some of these evaluations include the following: Intervention in Lieu of Conviction (R.C. [2951.041](#)); Juvenile Bindover (Ohio Rules of Juvenile Procedure [Rule 30](#)); Post Sentence Evaluation, Probation or Parole (R.C. [2967.22](#)); Domestic Violence (R.C. [2919.271](#)) and Competence to be a Witness (R.C. [2317.01](#)).

## OHIO DEPARTMENT OF MENTAL HEALTH FORENSIC INPATIENT SERVICES

The Ohio Department of Mental Health (ODMH) staff work in collaboration with state and local judicial systems to ensure that people with a mental illness involved in the criminal justice system receive appropriate evaluation and treatment services. The following overview provides more detailed information about the services and procedures provided by ODMH to persons with a forensic status on an inpatient basis.

### Inpatient Evaluation Services

Although the vast majority of Competency to Stand Trial (CST) and Sanity (NGRI) Evaluations are conducted on an outpatient basis by the Community Forensic Psychiatry Center examiners, some individuals require inpatient evaluation. This usually occurs when a Forensic Center examiner is unable to conduct an evaluation due to the defendant's lack of cooperation or availability. However, a person may be court ordered for an inpatient competency evaluation without having been referred to a Forensic Center. A Court of Common Pleas may order the person to be admitted to an ODMH Regional Psychiatric Hospital (RPH) for up to 20 days<sup>3</sup> in order to be evaluated (R.C. [2945.371\[C\]](#) and [\[D\]](#)). However, when the offense charged is a misdemeanor, the Municipal or County Court may commit the defendant to an RPH for a competency and/or sanity evaluation *only* when this is recommended by a Forensic Center examiner (R.C. [2945.37\[H\]](#) and [2945.371\[D\]](#)). A court-ordered inpatient evaluation should be conducted by an examiner employed by the Regional Psychiatric Hospital to which the defendant was admitted unless otherwise ordered by the court.

When the RPH Legal Assurance Administrator (LAA) receives a court order for an evaluation of a person charged with a misdemeanor, the LAA will inquire whether the Forensic Center examiner recommended an inpatient evaluation and the reason(s) for the recommendation. If the Forensic Center examiner did not make this recommendation, the LAA will determine the reason(s) that the court ordered an inpatient evaluation and inform the court that a recommendation from a Forensic Center examiner is required by statute.

The Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board or Community Mental Health (CMH) Board for the county of the committing court is financially responsible for the payment of inpatient evaluation services, so the LAA must notify the Board about the admission.

All of ODMH RPHs provide competency and sanity evaluations. See Appendix A for a list of the RPHs and Appendix B for their catchment areas.

### ***Competence to Stand Trial Evaluation – [Section 2945.371\(G\)\(3\)](#)***

When the issue of a defendant's competence to stand trial is raised, the judge may order an inpatient evaluation of the person's competence to stand trial.

*Appropriate Admission:* A person should be admitted to an ODMH RPH for a competency to stand trial evaluation only in situations in which the Community Forensic Psychiatry Center

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<sup>3</sup> In the Revised Code, the word "days" means calendar days unless the law specifically uses the words "court days." However, if the final day of a period falls on a weekend or holiday, then the final day is the next business day.

examiner is unable to complete the evaluation in the community. Defendants who have been charged with a misdemeanor and who have not been released on bail or recognizance should not be admitted for an inpatient evaluation unless an examiner from a certified Community Forensic Psychiatry Center makes this recommendation (R.C. [2945.371\(D\)](#)). For defendants who have been charged with a felony and who have not been released on bail or recognizance, courts should use the services of their Forensic Center, but may order an inpatient evaluation in rare circumstances. If a defendant has been released on bail or recognizance, the court may order an inpatient evaluation without an examiner's recommendation if the defendant refuses to voluntarily submit to an outpatient examination. The court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program or facility operated or certified by ODMH or the Ohio Department of Developmental Disabilities ([DODD](#)). Defendants admitted for an inpatient evaluation may not change their legal status to a voluntary admission status.

*Court Order:* The court order (journal entry) should contain the following information: the date filed; the defendant's name; the Criminal Court case number; the names of the judge, prosecutor, and defense attorney; the offense(s) charged; an indication of whether the defendant has been released on bail or recognizance; the name of the examiner recommending inpatient evaluation for competency; a statement to the effect that the court is ordering an inpatient evaluation for competency pursuant to section [2945.371\(G\)\(3\)](#) of the Revised Code; and the name of the person to notify when the evaluation is completed. If these items are not included in the court order, the LAA may contact the court administrator to request the necessary information.

*Reasonable Time Limit:* When a defendant is admitted to an ODMH RPH for an inpatient evaluation, the defendant may be retained for a reasonable period of time not to exceed twenty days. If a delay between the court order and the defendant's admission to the RPH does not allow adequate time to complete the evaluation, the LAA should seek an amended entry from the court. In extraordinary situations, if the examiner requires additional time to complete the evaluation, an extension should be requested from the court. If either of these situations occurs, the LAA shall notify the ADAMHS or CMH Board for the County of the Committing Court.

Upon the completion of the competency evaluation and within the designated time, the RPH Chief Clinical Officer (CCO) or designee, shall contact the person named in the court order to convey the patient.

*Reporting Requirements:* The examiner must submit a written report to the court within thirty days of the filing date of the journal entry ordering the evaluation. The court will distribute the report to the prosecutor and defense counsel. If the court orders an evaluation of both the defendant's competence to stand trial and mental condition at the time of the offense (sanity), the examiner must file two separate reports addressing competency and sanity. If the defendant is assessed as not meeting the criteria for competency to stand trial, the sanity report should not be prepared until the defendant is restored to competency.

*Report Contents:* The examiner's report shall contain a description of the person's current mental status and a reasonably detailed description of the basis for the clinical findings. (See Appendix G: Examination and Report Formats for Competence to Stand Trial and Not Guilty by Reason of Insanity evaluations.)

The report shall include all of the following:

1. The examiner's findings;
2. The facts in reasonable detail on which the findings are based;
3. Whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's own defense;
4. If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, whether the defendant presently is mentally ill or mentally retarded and, if the examiner's opinion is that the defendant is presently mentally retarded, whether the defendant appears to be a mentally retarded person subject to institutionalization by court order;
5. If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner's opinion as to the likelihood of the defendant becoming capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense within one year<sup>4</sup> if the defendant is provided with a course of treatment.
6. If the examiner's opinion is that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant presently is mentally ill or mentally retarded and likely to be restored within a year, 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.

No conclusory statement is required about the defendant's competence to stand trial.

No statement that a defendant makes in a competency evaluation or hearing under sections [2945.371](#) (A) through (H) of the Revised Code may be used against the defendant to prove guilt. However, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated the defendant or prepared a report concerning a defendant's competence. If the examiner's report indicates that the defendant does not meet the competency criteria and appears to be a mentally retarded person subject to institutionalization by court order, the court will order a separate mental retardation evaluation conducted by a psychologist designated by the Director of the Department of Developmental Disabilities.

*Rights and Movement:* A patient committed for evaluation under Section 2945.371 is not eligible for voluntary admission or movement. (See Appendix D, Movement Policy, MF-04).

*Time Served:* Pursuant to section [2945.38\(I\)](#) of the Revised Code, if a defendant is convicted of a crime and sentenced to a jail or workhouse, the defendant's sentence shall be reduced by the total

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<sup>4</sup> A defendant may be required to undergo treatment for the purpose of restoration of competency to stand trial for a period of thirty days to one year, depending upon the severity of the offense, pursuant to section [2945.38\(C\)](#) of the Revised Code.

number of days the defendant is confined for evaluation to determine the defendant's competence to stand trial or treatment under that section and sections [2945.37](#) and [2945.371](#) of the Revised Code or by the total number of days the defendant is confined for evaluation to determine the defendant's mental condition at the time of the offense charged.

*(NOTE: For the proceedings following a competency evaluation, please refer to the section of the manual titled Procedures Following an Evaluation of Competence to Stand Trial ).*

### **Sanity Evaluation – [Section 2945.371 \(G\)\(4\)](#)**

When a defendant enters a plea of not guilty by reason of insanity, the judge may order an inpatient evaluation of the person's mental condition at the time of the offense charged.

*Appropriate Admission:* A person should be admitted to an ODMH RPH for a sanity evaluation only in situations in which the Community Forensic Psychiatry Center examiner is unable to complete the evaluation in the community. Defendants who have been charged with a misdemeanor and who have not been released on bail or recognizance should not be admitted for an inpatient evaluation unless an examiner from a certified Forensic Center makes this recommendation (R.C. [2945.371\(D\)](#)). For defendants who have been charged with a felony and who have not been released on bail or recognizance, courts should use the services of their Forensic Center, but may order an inpatient evaluation in rare circumstances. If a defendant has been released on bail or recognizance, the court may order an inpatient evaluation without an examiner's recommendation if the defendant refuses to voluntarily submit to an outpatient examination. The court may amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program or facility operated or certified by ODMH or the [Ohio Department of Developmental Disabilities](#) (DODD). Defendants admitted for inpatient evaluation may not change their legal status to a voluntary admission status.

*Court Order:* The court order (journal entry) should contain the following information: the date filed; the defendant's name; the Criminal Court case number; the names of the judge, prosecutor, and defense attorney; the offense(s) charged; an indication whether the defendant has been released on bail or recognizance; the name of the examiner recommending inpatient evaluation for mental condition at the time of the offense; a statement to the effect that the court is ordering an inpatient evaluation pursuant to section [2945.371\(G\)\(4\)](#) of the Revised Code; and, the name of the person to notify when the evaluation is completed. If these items are not included in the court order, the LAA should contact the court administrator to request the necessary information.

*Reasonable Time Limit:* When a defendant is admitted to an ODMH RPH for an inpatient evaluation, the defendant may be retained for a reasonable period of time not to exceed twenty days. If a delay between the date of the court order and the defendant's admission to the RPH does not allow adequate time to complete the evaluation, the LAA should seek an amended entry from the court. In extraordinary situations, if the examiner requires additional time to complete the evaluation, an extension should be requested from the court. If either of these situations occurs, the LAA shall notify the ADAMHS or CMH Board for the County of the Committing Court.

Upon the completion of the evaluation and within the designated time, the RPH Chief Clinical Officer (CCO) or designee shall contact the person named in the court order to convey the patient.

*Reporting Requirements:* The examiner must submit a written report to the court within thirty days of the filing date on the court order for the evaluation. The court will distribute the report to the prosecutor and defense counsel. If the court orders an evaluation of both the defendant's competence to stand trial and mental condition at the time of the offense (sanity), the examiner must file two separate reports addressing competency and sanity. If the defendant is assessed as not meeting the criteria for competency to stand trial, the sanity report should not be prepared until the defendant is restored to competency. If the hospital receives a court order to perform a sanity evaluation on a defendant who is assessed as not meeting the criteria for competency to stand trial or has already been found by the court to be not competent to stand trial, the RPH CCO should contact central office. The legal services office, forensic services office and medical director's office will provide further guidance.

In conducting an evaluation of a defendant's mental condition at the time of the offense charged, the examiner shall consider all relevant evidence. If the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered woman syndrome" (R.C. [2945.392](#)).

*Report Contents:* The examiner's report should contain:

1. The examiner's findings;
2. The facts in reasonable detail on which the findings are based;
3. The examiner's findings as to whether the defendant, at the time of the offense charged, did not know, as a result of severe mental disease or defect, the wrongfulness of the defendant's acts charged.

(See Appendix G: Examination and Report Format for Competence to Stand Trial and Not Guilty by Reason of Insanity Evaluations.)

*Rights and Movement:* A patient committed for evaluation under Section 2945.371 is not eligible for voluntary admission or movement. (See Appendix D, Movement Policy, MF-04).

*Time Served:* Pursuant to section [2945.38\(I\)](#) of the Revised Code, if a defendant is convicted of a crime and sentenced to a jail or workhouse, the defendant's sentence shall be reduced by the total number of days the defendant is confined for evaluation to determine the defendant's competence to stand trial or treatment under that section and sections [2945.37](#) and [2945.371](#) of the Revised Code or by the total number of days the defendant is confined for evaluation to determine the defendant's mental condition at the time of the offense charged.

*(NOTE: For the proceedings following a Sanity Evaluation, please refer to the section of the manual titled Procedures Following a Finding of Not Guilty by Reason of Insanity.)*

## Procedures Following an Evaluation of Competence to Stand Trial

If the issue of a defendant's competence to stand trial is raised and the court finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law. If the court finds the defendant is competent to stand trial and the defendant is receiving psychotropic drugs or other medication, the court may authorize the continued administration of medication to maintain competence if this is in accordance with the attending physician's orders.

If the court finds that the defendant is incompetent to stand trial and that, even if provided with a course of treatment, there is not a substantial probability that the defendant will become competent to stand trial within one year, the court shall order the discharge of the defendant, unless upon motion of the prosecutor or on its own motion, the court either seeks to retain jurisdiction over the defendant pursuant to section [2945.39\(A\)\(2\)](#) of the Revised Code, or files an affidavit in the probate court for the civil commitment of the defendant pursuant to Chapter [5122](#) or [5123](#). If an affidavit is filed in the probate court, the trial court shall send to the probate court copies of all written reports of the defendant's mental condition that were prepared pursuant to section [2945.371](#) of the Revised Code.

The trial court may issue a temporary order of detention pursuant to sections [5122.11](#), [5123.74](#), or [5123.77](#) of the Revised Code to remain in effect until the probable cause or initial hearing in the probate court.

If after taking into consideration all relevant reports, information, and other evidence, the court finds a defendant incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if provided with a course of treatment, the court shall order the defendant to undergo treatment.

### ***Incompetent to Stand Trial—Restoration Treatment—Section 2945.38 (B)***

When a defendant has been found incompetent to stand trial, the Common Pleas or Municipal Court may order that the defendant undergo treatment.

If the defendant has been charged with a felony offense and if, after taking into consideration all relevant reports, information, and other evidence, the court finds that the defendant is incompetent to stand trial, but the court is unable at that time to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year<sup>5</sup> if the defendant is provided with a course of treatment, the court shall order continuing evaluation and treatment of the defendant for a period not to exceed four months to determine whether there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment (R.C. [2945.38\[B\]\[1\]\[a\]](#)).

If the defendant is determined to require mental health treatment or continuing evaluation and treatment, the defendant either shall be committed to the department of mental health for treatment or continuing evaluation and treatment at a hospital, facility, or agency, as determined

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<sup>5</sup> A defendant may be required to undergo treatment for the purpose of restoration of competency to stand trial for a period of six months to one year, depending upon the severity of the *felony* offense, pursuant to section [2945.38\(C\)](#) of the Revised Code. See Appendix F.

to be clinically appropriate by the Department of Mental Health or shall be committed to a facility certified by ODMH as being qualified to treat mental illness, to a public or community mental health facility, or to a psychiatrist or another mental health professional for treatment or continuing evaluation and treatment. If the defendant is determined to require treatment or continuing evaluation and treatment for mental retardation, the defendant shall receive treatment or continuing evaluation and treatment at an institution or facility operated by [DODD](#), at a facility certified by DODD as being qualified to treat mental retardation, at a public or private mental retardation facility, or by a psychiatrist or another mental retardation professional.

*Admission to an ODMH Facility:* In determining the place of commitment, the court shall consider the extent to which the person is a danger to self and to others, the need for security, and the type of crime involved and shall order the least restrictive alternative available that is consistent with public safety and treatment goals. In weighing these factors, the court shall give preference to protecting public safety.

When an individual is admitted to an ODMH RPH for restoration treatment or continuing evaluation and treatment, the RPH Legal Assurance Administrator (LAA) shall notify the ADAMHS or CMH Board for the County of the Committing Court (county where the criminal charges were filed) **and** the County of Legal Residence (home county) if this is a different county.

*Admission Documents:* The following documents should accompany the defendant when he or she is committed to an ODMH RPH in this status:

1. A court order (journal entry) which states that the commitment is pursuant to section [2945.38\(B\)](#) of the Revised Code; the commitment date; the criminal court case number; the names of the judge, prosecutor, and defense attorney; and a clear statement of the maximum length of time for which the person has been committed. The order may restrict the defendant's movement, as the court considers necessary.
2. A copy of the indictment stating the offense(s) with which the defendant has been charged.
3. Copies of relevant police reports and other background information that pertain to the defendant and are available to the prosecutor, unless the prosecutor determines that the release of any of the information in the police reports or any of the other background information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person.
4. Copies of any psychiatric and psychological evaluations that were prepared for the court in order to determine the defendant's competence to stand trial.

If any of the above documents are not received by the RPH, the LAA should contact the prosecutor.

*Placement:* The placement of a defendant committed as incompetent to stand trial is guided by the Department of Mental Health's service areas established for each of its facilities unless it is determined by the court that a maximum security setting is required or unless the department determines that placement in another hospital, facility or agency is clinically appropriate. Before

moving the defendant from a hospital to another facility or agency, the approval of the trial court must be obtained. All ODMH RPHs provide inpatient restoration treatment at all six hospital sites: Appalachian Behavioral Healthcare in Athens; Northcoast Behavioral Healthcare in Northfield; Northwest Ohio Psychiatric Hospital in Toledo; Twin Valley Behavioral Healthcare in Columbus; Summit Behavioral Healthcare in Cincinnati; and Heartland Behavioral Healthcare in Massillon. See the Catchment Area Maps in Appendix B for the counties served by each RPH.

*Amended Placement:* Refer to the Transfer Policy (I-02) in Appendix H.

*Medication:* When a defendant is committed pursuant to section [2945.38\(B\)](#) of the Revised Code for restoration treatment or continuing evaluation and treatment to an ODMH RPH, the Chief Clinical Officer (CCO) of the RPH may determine that medication is necessary to restore the defendant's competence to stand trial. If the defendant lacks the capacity to give informed consent or refuses medication, the CCO may petition the court for authorization for the involuntary administration of medication. If the defendant is charged with a misdemeanor, the petition is filed in a Municipal Court or a County Court and the court shall hold a hearing within five days of the filing. For defendants with felony charges, the petition is filed with the Common Pleas Court and the court shall hold a hearing within ten days of the petition being filed.

Following the hearing, the court may authorize the involuntary administration of medication or may dismiss the petition.

(For additional information, please see the Guidelines for ODMH RPH Informed Consent Policy (MD-11) in Appendix I).

*Reporting Requirements:* The person who supervises the treatment of a defendant ordered to undergo restoration treatment service must submit a written report prepared by a psychiatrist or licensed clinical psychologist to the court at the following times:

1. Whenever the person believes the defendant is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense;
2. For a felony offense, fourteen days before the expiration of the maximum time for treatment as specified in section [2945.38\(C\)](#) of the Revised Code or fourteen days before the expiration of the maximum time for continuing evaluation and treatment as specified in (B)(1)(a) of that section, and for a misdemeanor offense, ten days before the expiration of the maximum time for treatment as specified in section 2945.38(C);
3. At a minimum, after each six months of treatment; or
4. Whenever the person who supervises the treatment or continuing evaluation and treatment of a defendant committed under section [2945.38\(B\)\(1\)\(a\)](#) of the Revised Code believes that there is not a substantial probability that the defendant will meet Ohio's competence criteria even if the defendant continues to receive treatment.

*Report Guidelines:* Each report must contain a description of the defendant's history, current mental status, the examiner's findings, the facts in reasonable detail on which the findings are

based, and the examiner's opinion as to the defendant's capability of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense. If, in the examiner's opinion, the defendant remains incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and there is a substantial probability that the defendant will meet Ohio's competence criteria if provided with a course of treatment and in the examiner's opinion the defendant remains mentally ill or mentally retarded, and if the maximum time for treatment as specified in section [2945.38\(C\)](#) of the Revised Code has not expired, the report shall contain the examiner's recommendation as to the least restrictive treatment alternative that is consistent with the defendant's treatment needs for restoration to competency and with the safety of the community.

Using the criteria outlined in the report guidelines, (See Appendix G) an internal review should occur prior to the report being sent to the court. The review should be conducted by the CCO or designee. The court will provide copies of the report to the prosecutor and defense counsel.

*Movement:* A defendant committed to an RPH for competency restoration may not be permitted to apply for voluntary admission and is limited to Level 1 and Level 2 movement. The court may grant a defendant Supervised Off-Grounds movement (Level 4) to obtain medical treatment or specialized habilitation treatment services if the person who supervises the treatment informs the court that the treatment cannot be provided at the RPH. In emergencies, the CCO or designee of the RPH may grant a defendant movement to a medical facility with appropriate supervision to ensure the safety of the defendant, staff, and community. The CCO or designee shall notify the court within twenty-four hours if this occurs. See Movement Policy (MF-04) in Appendix D.

*Expiration of Commitment:* The maximum length of time for which the defendant may be committed under an order from the Criminal Court should appear in the court order. Pursuant to section [2945.38\(C\)](#) of the Revised Code no defendant shall be required to undergo restoration treatment, including any continuing evaluation and treatment, longer than whichever of the following periods is applicable:

1. One year, if the most serious offense with which the defendant is charged is one of the following offenses:
  - a. Aggravated murder, murder, or an offense of violence for which the defendant could receive a sentence of death or life imprisonment;
  - b. An offense of violence that is a felony of the first or second degree;
  - c. A conspiracy to commit, an attempt to commit, or complicity in the commission of an offense described in (a) or (b) above if the conspiracy, attempt, or complicity is a felony of the first or second degree.
2. Six months if the most serious offense with which the defendant is charged is a felony other than a felony described above.
3. Sixty days, if the most serious offense with which the defendant is charged is a misdemeanor of the first or second degree.

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

Pursuant to section [2945.38\(H\)](#) of the Revised Code, within ten (10) days after the treating physician or examiner advises that there is not a substantial probability that the defendant will be restored to competency even if provided with a course of treatment, or within ten (10) days after the expiration of the maximum time for treatment as specified in section [2945.38\(C\)](#), or within ten (10) days after the expiration of the maximum time for continuing evaluation and treatment, or within thirty (30) days after a defendant's request for a hearing that is made after six months of treatment, or within thirty (30) days after being advised by the treating physician that the defendant is competent to stand trial, whichever is earliest, the court shall conduct another hearing to determine if the defendant is competent to stand trial and shall do whichever of the following is applicable:

1. If the court finds that the defendant is competent to stand trial, the defendant shall be proceeded against as provided by law.
2. If the court finds that the defendant is incompetent to stand trial, but there is a substantial probability that the defendant will become competent to stand trial if the defendant is provided with a course of treatment and the maximum time for treatment as specified in section [2945.38\(C\)](#) of the Revised Code has not expired, the court, after consideration of the examiner's recommendation, shall order that treatment be continued until the expiration of the maximum time for treatment. The court may change the place of commitment at which the treatment is to be continued, and shall specify this in the court order.
3. If the court finds that the defendant is incompetent to stand trial, if the defendant is charged with an offense listed in section [2945.38\(C\)\(1\)](#) of the Revised Code and the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, or if the maximum time for treatment relative to that offense as specified in Section 2945.38(C) has expired, further proceedings shall be as provided in sections [2945.39](#), [2945.401](#) and [2945.402](#). of the Revised Code.
4. If the court finds that the defendant is incompetent to stand trial, if the most serious offense with which the defendant is charged is a misdemeanor or a felony other than those listed in section [2945.38\(C\)\(1\)](#) of the Revised Code, and if the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if provided with a course of treatment, or if the maximum time for treatment has expired, the court shall dismiss the indictment, information, or complaint against the defendant. A dismissal under this division is not a bar to further prosecution based on the same conduct.

The court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment pursuant to chapter [5122](#) or [5123](#) of the Revised Code.

***Incompetent to Stand Trial—Unrestorable—Probate Court Jurisdiction***  
***Section 2945.38 (H)(4)***

If an affidavit for civil commitment has been filed, the trial court may detain the defendant for ten days pending civil commitment. If the defendant is committed by the probate court to an ODMH Regional Psychiatric Hospital (RPH), the Chief Clinical Officer (CCO) shall ensure that the required notices are sent to the prosecutor as outlined in section [2945.38\(H\)\(4\)\(a\)\(i-iii\)](#) of the Revised Code. See the *Reporting Requirements* below for additional information.

*Admission Criteria:* Persons who are found incompetent to stand trial and unrestorable, and who require inpatient mental health services, can be probated to an ODMH hospital. When this occurs, all future court proceedings will be civil proceedings in the probate court as provided for in chapter [5122](#) of the Revised Code. These patients are still considered to be on a forensic status, and the forensic and risk management policies (MF-03, MF-04) and procedures apply to them.

The RPH Legal Assurance Administrator (LAA) shall notify the Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board or the Community Mental Health (CMH) Board of the County of Legal Residence (home county) when a resident of their county is hospitalized in an IST-U status. The ADAMHS/CMH Board is financially responsible for patients hospitalized under this legal status.

*Court Documents:* The probate court will send to the RPH a copy of the order for commitment, a copy of the court order (journal entry) stating that the person was found incompetent to stand trial and unlikely to be restored, and the examiner's report. If any of these items are missing the LAA should contact the prosecutor.

*Criminal Charge:* When the trial court finds a defendant incompetent to stand trial and unlikely to be restored, the criminal charges are to be dismissed pursuant to section [2945.38\(H\)\(4\)](#) of the Revised Code.

*Reporting Requirements:* The RPH CCO/designee, the director of the program, or the person to whom the defendant is committed shall do all of the following:

1. Notify the prosecutor, in writing, of the discharge of the defendant at least ten days prior to the discharge unless the discharge is by the probate court, and state in the notice the date on which the defendant will be discharged;
2. Notify the prosecutor, in writing, when the defendant is absent without leave or is granted unsupervised, off-grounds movement, promptly after the discovery of the absence without leave or prior to the granting of unsupervised, off grounds movement, whichever is applicable;
3. Notify the prosecutor, in writing, of the change of the defendant's commitment or admission to voluntary status, send the notice promptly upon learning of the change to voluntary status, and state in the notice the date on which the defendant was committed or admitted on a voluntary status.

Upon receiving notice that the defendant will be granted unsupervised, off-grounds movement, the prosecutor will either reindict the defendant or promptly notify the trial court that the prosecutor does not intend to prosecute the charges against the defendant.

*Rights and Movement:* A person committed by the probate court, after being found incompetent to stand trial and unlikely to be restored, shall be permitted to apply for a voluntary admission under the following conditions:

1. The treating physician must sign a statement for the medical record that the patient has the capacity to comprehend the implications of a voluntary admission; or
2. The patient's adjudicated legal guardian applies for the patient's voluntary admission and the implications of a voluntary admission have been explained to the legal guardian.

Persons who are committed pursuant to section [2945.38\(H\)\(4\)](#) of the Revised Code are permitted Level 1 through Level 5 movement, according to the Movement Policy (MF-04) in Appendix D.

*Discharge:* A person who is committed as incompetent to stand trial and unlikely to be restored may be discharged when the person is found to no longer require inpatient services, and a lesser restrictive environment is a more appropriate placement. The prosecutor shall be notified in writing, usually by certified mail, of the planned discharge. This notification is required to occur at least ten days prior to the patient's discharge, unless the discharge is by the probate court.

The ADAMHS/CMH Board's designated community treatment representative(s) should work with the RPH staff in gathering information and developing a plan for the patient's discharge. This should include attendance and participation in the RPH treatment team meetings, and individual meetings with the patient to prepare for discharge. The importance of community and RPH service providers working together to develop a comprehensive and appropriate discharge plan is key to a successful transition for the individual involved.

***Incompetent to Stand Trial—Unrestorable—Criminal Court Jurisdiction***  
***Section 2945.39(A)(2)***

*Court Process:* In accordance with section [2945.39\(A\)\(2\)](#) of the Revised Code, if a defendant charged with an offense described in section [2945.38\(C\)\(1\)](#) is found incompetent to stand trial, and either the maximum time for treatment has expired, or the court has found that the defendant is unlikely to become competent to stand trial even if the defendant is provided with a course of treatment, and upon the motion of the court or the prosecutor, the trial court can retain jurisdiction over the defendant if, at a hearing, the court finds both of the following by clear and convincing evidence:

1. The defendant committed the offense with which the defendant is charged, and
2. The defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded individual subject to institutionalization by court order.

In making its determination under section [2945.39\(A\)\(2\)](#) of the Revised Code as to whether to retain jurisdiction over the defendant, the court may consider all relevant evidence, including, but

not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense charged, and the defendant's history that is relevant to the defendant's ability to conform to the law.

A defendant who is committed under section [2945.39\(A\)\(2\)](#) of the Revised Code as Incompetent to Stand Trial—Unrestorable—Criminal Court Jurisdiction (IST-U-CJ), shall remain under the trial court's jurisdiction until the final termination of the commitment as described in section [2945.401\(J\)\(1\)](#). At the time that the jurisdiction is terminated due to the expiration of the maximum prison term or term of imprisonment described in section [2945.401\(J\)\(1\)\(b\)](#), the court or prosecutor may file an affidavit for civil commitment with the probate court if it is believed that the individual meets the criteria for hospitalization.

A defendant with an IST-U-CJ status, if determined to require mental health treatment, shall be committed either to the Department of Mental Health for treatment at a hospital, facility, or agency as determined clinically appropriate by ODMH, or to another medical or psychiatric facility as appropriate. Before moving the defendant from a hospital to another facility or agency, the approval of the trial court must be obtained. If determined to require treatment for mental retardation the court shall commit the defendant to a facility operated by the Department of Developmental Disabilities ([DODD](#)), or another facility, as appropriate. The court shall be notified at any time during this commitment if the defendant is assessed as competent to stand trial (See R.C. [2945.401\[C\]](#) and [2945.401\[J\]\[2\]\[a\]](#)).

The court may commit the defendant to an ADAMHS/CMH Board or a community mental health agency under a conditional release commitment pursuant to section [2945.402\(A\)](#) of the Revised Code. The defendant remains under the trial court's jurisdiction, receives the necessary community mental health services, and is monitored in the community by the Forensic Monitor for the ADAMHS/CMH Board of the county of the committing court. (See Community Forensic Monitoring Program Section for the Guidelines for Conditional Release Directly from the Court to the Community).

If the court does *not* find, by clear and convincing evidence, that the defendant committed the offense charged and that the defendant is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the court shall dismiss the indictment against the defendant. Upon dismissal, the court shall discharge the defendant unless the court or prosecutor files an affidavit in probate court for civil commitment. A dismissal of the charges is not a bar to further criminal proceedings based on the same conduct.

*Admission Criteria:* If the defendant is found by clear and convincing evidence to have committed the act charged and is a mentally ill person subject to hospitalization, the court may commit the defendant to ODMH.

A person who is committed pursuant to section [2945.39](#) of the Revised Code shall not be voluntarily admitted to a hospital or institution pursuant to sections [5122.02](#), [5122.15](#), [5123.69](#) or [5123.76](#).

*Court Documents:* The RPH or facility where the defendant is committed will receive a copy of the court order from the trial court stating that the person is Incompetent to Stand Trial—

Unrestorable under Criminal Court Jurisdiction (IST-U-CJ). The court should also send a copy of the indictment or complaint and a copy of each examiner's report and any other information that the court deems relevant. The prosecutor will send to the place of commitment all reports of the defendant's current mental condition and other relevant information including but not limited to, a transcript of the hearing held pursuant to section [2945.39\(D\)\(2\)](#), copies of relevant police reports, copies of any prior arrest and conviction records that pertain to the defendant and that the prosecutor possesses. The prosecutor will send the reports of the defendant's current mental condition in every case of commitment, and, unless the prosecutor determines that the release of any of the other relevant information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person, the prosecutor will also send the other relevant information.

The RPH LAA will work with the court and prosecutor to obtain this information in order to assist staff in preparing evaluations, social histories, risk assessments and treatment plans.

*Community Notification Requirements:* When a defendant is committed by the court to ODMH under section [2945.39\(A\)\(2\)](#) of the Revised Code, the LAA of the RPH where the person is placed shall notify the ADAMHS or CMH Board of the County of the Committing Court (the county where the charges were filed) about the admission. The LAA will provide the Board with a copy of all reports of the person's current mental condition, a copy of all relevant information provided by the prosecutor, including, if provided, a copy of the transcript of the hearing held pursuant to section [2945.39\(A\)\(2\)](#), the relevant police reports, and the prior arrest and conviction records that pertain to the defendant and that the prosecutor possesses. If the individual is directly committed by the court to a community agency, the agency will send the above documents to the ADAMHS or CMH Board for the County of the Committing Court.

*Reporting Requirements:* The RPH LAA will ensure that a written report is submitted to the court at the end of the initial six months of treatment and every two years after the initial report. The report will indicate whether the defendant remains a mentally ill person subject to hospitalization by court order and whether the defendant remains incompetent to stand trial. The court will give copies of the report to the prosecutor and defense counsel. Within thirty days after receipt of a report from the RPH, the trial court will hold a hearing on the continued commitment of the defendant, or regarding any changes in the conditions of the commitment of the defendant. If the defendant requests a change in the conditions of commitment, the trial court will conduct a hearing on that request if six months or more have elapsed since the most recent hearing was conducted under section [2945.401\(C\)](#).

#### *Movement - Level 2*

A defendant who is in an IST-U-CJ status and committed to ODMH and placed at an RPH remains under the trial court's jurisdiction. Patients charged with aggravated murder, murder, or felony 1 or felony 2 offenses must have approval of the RPH treatment team and the RPH Forensic Review Team (FRT) prior to granting Level 2 movement. Patients charged with lesser offenses are allowed Level 2 (Off Residential Unit, Supervised Movement) after review and approval by only the RPH treatment team.

#### *Movement - Levels 3 and 4*

Prior to a request for an additional movement level, the treatment team will review all risk assessments that have been conducted on the individual, and will conduct a current risk assessment update. After an evaluation of the risks to public safety along with a consideration of the welfare of the patient, their recommendation for movement will be forwarded to the RPH Forensic Review Team (FRT). The FRT will review all movements of patients with an IST-U-CJ status prior to Level 3 movement or above. If the FRT is in agreement, the request will be sent to the RPH CCO.

The department's designee/CCO will review the request for movement and the related documents. If the department's designee/ CCO agrees, an application will be filed with the trial court for approval of On-Grounds, Unsupervised Movement (Level 3), or Off-Grounds, Supervised Movement (Level 4). A copy of the application for approval of movement will be sent to the prosecutor. If the prosecutor does not request a hearing within 15 days, the trial court will either approve the request of the department's designee/CCO or may hold a hearing on its own accord within 30 days. If the prosecutor requests a hearing, the court must hold a hearing within 30 days of the request, and the court must notify the prosecutor 15 days prior to the hearing date. The court will make a decision regarding the request for movement, and will enter its order accordingly. See the Movement Policy (MF-04) in Appendix D.

At any time after evaluating the risks to public safety and the welfare of the defendant, the department's designee/CCO may recommend a termination of the commitment or a change in the conditions of the commitment (R.C. [2945.401\[D\]\[1\]](#)).

*Movement - Nonsecured Status: Level 5 Movement, Off Grounds, Unsupervised; Trial Visit; or Conditional Release*

A nonsecured status is defined as any unsupervised, off-grounds movement, trial visit from an RPH or institution, or conditional release, that is granted to a person who has been committed under sections [2945.39](#) (IST-U-CJ) or [2945.40](#) (NGRI). The RPH treatment team and FRT review process for this movement level remain the same as required prior to requesting a Level 3 or 4 movement. When the treatment team and the FRT are in agreement that the individual should be granted the first nonsecured status, the request is sent to the CCO.

The department's designee/CCO will review the related information and if in agreement with the request, will send written notification of this recommendation to the trial court and the local Community Forensic Psychiatry Center. (The "local" Forensic Center refers to the center that serves the county in which the criminal charges were filed). Included in the notification is the request for a Nonsecured Status ("Second Opinion") evaluation of the patient by a Forensic Center examiner and the conditional release plan when the request is for conditional release. The RPH LAA shall coordinate this process and ensure that the appropriate documentation is sent. A separate entry from the court is not required. Some RPHs have developed forms to notify the court of the recommendation of the department's designee/CCO and simultaneously request a Second Opinion evaluation from the Community Forensic Psychiatry Center. (An example notification form is provided in Appendix F).

The Community Forensic Psychiatry Center will conduct a Nonsecured Status evaluation of the individual at the RPH and within thirty days after receiving the notification will send a written report to the department's designee/CCO and the trial court. The court will provide a copy of the

department designee's/CCO's written notice and the Forensic Center's written report to the prosecutor and the counsel for the defendant. Upon the submission of the Nonsecured Status evaluation report to the court and the department's designee/CCO, all of the following apply:

1. If the Forensic Center disagrees with the recommendation of the department's designee/CCO, the Forensic Center shall inform the department's designee/CCO and the trial court of the disagreement and the reasons for the decision. The department's designee/CCO, after consideration of the Forensic Center's decision, shall either withdraw, proceed with, or modify and proceed with the recommendation. If the department's designee/CCO proceeds with, or modifies and proceeds with, the recommendation, the department's designee/CCO shall proceed in accordance with section [2945.401\(D\)\(1\)\(b\)\(iii\)](#) of the Revised Code. (See Number 3 below).
2. If the Forensic Center agrees with the recommendation of the department's designee/CCO, it shall inform the department's designee/CCO and the court of this decision and the reasons for the decision. The department's designee/CCO shall proceed as indicated below.
3. If the Forensic Center disagrees with the recommendation of the department's designee/CCO, and the department's designee/CCO proceeds with or modifies and proceeds with the recommendation, or if the Forensic Center agrees with the recommendation of the department's designee/CCO, the department's designee/CCO or designee shall work with community mental health agencies, programs, facilities or the ADAMHS/CMH Board for the County of the Committing Court to develop a plan to implement the recommendation. The board-designated community Forensic Monitor and the community mental health service provider should work with the RPH staff to develop this plan. If the recommendation is for conditional release, the conditional release (CR) plan will identify the specific conditions that the individual is required to follow in the community. The CR plan will also include the steps to be taken and the parties responsible to carry out those steps if the defendant violates the conditions of the plan. (See Appendix J for the Discharge and Conditional Release Plan Guidelines). If the defendant is taking medication, the plan shall include, but not be limited to, a system to monitor the defendant's compliance with the prescribed medication treatment plan. The plan/system shall include a schedule that clearly states when the defendant reports for medication compliance checks. The medication compliance checks will be based on the effective duration of the prescribed medication, taking into account the route by which it is taken, and will be scheduled at intervals sufficiently close together to detect a potential increase in mental illness symptoms that the medication is intended to prevent (R.C. [2945.401 \[D\]\[1\]\[b\]\[iii\]](#)).

The department's designee/CCO, after consultation with the ADAMHS or CMH Board, will send the recommendation and written plan to the trial court, the prosecutor, and the defendant's counsel. The trial court will conduct a hearing on the recommendation and plan. In accordance with R.C. Section 2945.401(D)(1)(c) and (d) and (E) to (J), the following applies to these hearings:

1. If the department's designee's/CCO's recommendation is for nonsecured status or termination of the commitment, the prosecutor may obtain an independent expert evaluation of the defendant's mental condition, and the trial court may continue the hearing

on the recommendation for a period of not more than 30 days to permit time for the evaluation. The prosecutor may introduce the evaluation report or present other evidence at the hearing in accordance with the rules of evidence.

2. The trial court will schedule the hearing on the department's designee's/CCO's recommendation for nonsecured status or termination of commitment and will give reasonable notice to the prosecutor and the defendant's counsel. Unless continued for independent evaluation at the prosecutor's request or for other good cause, the hearing will be held within 30 days after the trial court's receipt of the recommendation and plan.

The trial court, in making a determination regarding nonsecured status or termination of commitment, will consider all relevant factors including, but not limited to, all of the following:

1. Whether, in the trial court's view, the defendant currently represents a substantial risk of physical harm to the defendant or others;
2. Psychiatric and medical testimony as to the current mental and physical condition of the defendant;
3. Whether the defendant has insight into the defendant's condition so that the defendant will continue treatment as prescribed or seek professional assistance as needed;
4. The grounds upon which the state relies for the proposed commitment;
5. Any past history that is relevant to establish the defendant's degree of conformity to the laws, rules, regulations, and values of society;
6. If the defendant's mental illness is in a state of remission, the medically suggested cause and degree of the remission, and the probability that the defendant will continue treatment to maintain the remissive state if the commitment conditions were to be altered.<sup>6</sup>

At a hearing held pursuant to sections [2945.401](#)(C) or (D)(1) or (2) of the Revised Code, the defendant shall have all of the rights of a defendant at a commitment hearing as described in section [2945.40](#). These rights are listed in Appendix K.

At these hearings, the prosecutor has the burden of proof as follows (R.C. [2945.401\[G\]](#)):

1. For a recommendation of termination of commitment, to show by clear and convincing evidence that the defendant remains a mentally ill person subject to hospitalization by court order;
2. For a recommendation for a change in the conditions of the commitment to a less restrictive status, to show by clear and convincing evidence that the proposed change represents a threat to public safety or a threat to the safety of any person.

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<sup>6</sup> Based upon criteria in *In Re Burton*, 11 Ohio St. 3d 147

In a hearing held pursuant to this section, the prosecutor will represent the state or the public interest. At the conclusion of the hearing, the trial court may approve, disapprove, or modify the recommendation and shall enter an order accordingly.

*Conditional Release:* Pursuant to section [2945.402](#) of the Revised Code, if the trial court approves a conditional release, the court may set any conditions on the release with respect to the treatment, evaluation, counseling, or control of the defendant that the court considers necessary to protect the public safety and the welfare of the defendant.

A conditional release is a commitment. The hearings on continued commitment as described in section [2945.401](#) of the Revised Code apply to defendants on conditional release.

The RPH LAA and/or Forensic Monitor/designee should ensure that the court order clearly states or references the conditions of the release and allows communication between the involved individuals during the period of the conditional release commitment. The Forensic Monitor/designee shall ensure that the community treatment agency receives a copy of the court order and shall coordinate with the treating agency to prepare the required court reports. The LAA shall ensure that the Forensic Monitor receives a copy of the hospital's most recent HCR-20 risk assessment.

In accordance with section [5119.57](#) of the Revised Code, the Forensic Monitors are to report specified data to the Department of Mental Health on a quarterly basis. Please see the Community Forensic Monitoring Program section of this manual. Forensic Monitors should also consult the [Forensic Monitor Orientation Manual](#) for more detailed instructions on data submissions.

*Conditional Release Revocation:* Pursuant to section [2945.402](#) of the Revised Code, the trial court may revoke a defendant's conditional release and order rehospitalization or reinstitutionalization at any time the conditions of the release have not been satisfied, provided that the revocation shall be in accordance with that section.

A defendant who is on conditional release may be admitted to an ODMH RPH without a revocation of the conditional release. Under these circumstances, the person's legal status while in the hospital remains [2945.402](#). Please see the section on Procedures for Hospitalization of People on Conditional Release for more information about this process.

A person, agency or facility that is assigned to monitor a defendant on conditional release will immediately notify the trial court upon learning that the defendant being monitored has violated the terms of the conditional release. In almost all cases, it is the board-designated Forensic Monitor/designee who will notify the court of the violation. Upon learning of any violation, the court may issue a temporary order of detention or, if necessary, an arrest warrant for the defendant. Within ten court days after the defendant's detention or arrest, the court will conduct a hearing to determine whether the conditional release should be modified or revoked. At the hearing, the defendant will have the same rights as are described in section [2945.40\(C\)](#) of the Revised Code. The court may order a continuance of the ten-court-day period for no longer than ten days for good cause shown or for any period on motion of the defendant. If the court fails to conduct the hearing within the ten-court-day period and does not order a continuance in

accordance with statute (R.C. [2945.402](#)), the defendant will be restored to the prior conditional release status.

The trial court will give all parties reasonable notice of a hearing conducted under section [2945.402](#) of the Revised Code. At the hearing, the prosecutor shall present the case demonstrating that the defendant violated the terms of the conditional release. If the court finds by a preponderance of the evidence that the defendant violated the terms of the conditional release, the court may continue, modify, or revoke the conditional release and will enter its order accordingly.

*Competency Hearings for Persons with an IST-U-CJ Status:* The trial court will hold a competency hearing if, at any time during the defendant's commitment under section [2945.39](#) of the Revised Code, there is cause to believe the defendant is competent to stand trial. The court may hold a hearing based on information contained in the periodic reports to the court made by the RPH, facility or program to which the defendant is committed (as described under Reporting Requirements, page 30). Also, if the prosecutor, the counsel for the defendant, or the department's designee/Chief Clinical Officer (CCO) of the RPH, facility, or program to which the defendant is committed files an application with the trial court alleging that the defendant presently is competent to stand trial and requests a hearing on the competency issue or if the trial court otherwise has reasonable cause to believe that the defendant presently is competent to stand trial and determines on its own motion to hold a hearing on the competency issue, the court will schedule a hearing on the competence of the defendant to stand trial. The trial court will give the prosecutor, the counsel for the defendant, and the chief clinical officer/department's designee notice of the date, time, and place of the hearing at least fifteen days before the hearing, and will conduct the hearing within thirty days of the filing of the application or of its own motion.

If at the conclusion of the hearing, the trial court determines that the defendant presently is capable of understanding the nature and objective of the proceedings against the defendant and of assisting in the defendant's defense, the court will order that the defendant is competent to stand trial, will be proceeded against as provided by law with respect to the applicable offenses described in section [2945.38\(C\)\(1\)](#) of the Revised Code, and will enter whichever of the following additional orders is appropriate:

1. If the court determines that the defendant remains a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the court will order that the defendant's commitment to the Department of Mental Health or, facility, or program be continued during the pendency of the trial on the applicable offenses described in section [2945.38\(C\)\(1\)](#).
2. If the court determines that the defendant no longer is a mentally ill person subject to hospitalization by court order, or a mentally retarded person subject to institutionalization by court order, the court will order that the defendant's commitment to the Department of Mental Health or, facility, or program will not be continued during the pendency of the trial on the applicable offenses described in section [2945.38\(C\)\(1\)](#). This order will be a final termination of the commitment for purposes of section [2945.401\(J\)\(1\)\(c\)](#).

If the trial court determines, at the conclusion of the competency hearing, that the defendant remains incapable of understanding the nature and objective of the proceedings against the

defendant or of assisting in his or her own defense, the court will order that the defendant continues to be incompetent to stand trial under criminal court jurisdiction. The court will continue the defendant's commitment to the Department of Mental Health or, facility, or program and the individual will remain under the jurisdiction of the court until the final termination of the commitment.

*Termination of Commitment:* Pursuant to section [2945.401\(J\)\(1\)](#) of the Revised Code, a defendant who has been committed as IST-U-CJ continues to be under the jurisdiction of the trial court until the final termination of the commitment. The final termination of a commitment occurs upon the earlier of one of the following:

1. The defendant no longer is a mentally ill person subject to hospitalization by court order, as determined by the trial court.
2. The expiration of the maximum prison term or term of imprisonment that the defendant could have received if the defendant had been convicted of the most serious offense with which the defendant was charged.
3. The defendant is found to be competent to stand trial and the trial court enters an order terminating the commitment under the conditions described in section [2945.401\(J\)\(2\)\(a\)\(ii\)](#), which is described above.

See Appendix J for Guidelines for Discharge of Persons on Conditional Release Commitment.

### **Procedures Following a Finding of Not Guilty by Reason of Insanity**

*Court Process:* In accordance with section [2945.40](#) of the Revised Code, when an individual is found not guilty by reason of insanity (NGRI), the verdict will state that finding, and the trial court will conduct a full hearing to determine whether the individual is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order. Prior to the hearing, if the judge believes that there is probable cause that the individual found NGRI is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, the judge may issue a temporary order of detention for that individual to remain in effect for ten court days or until the hearing, whichever comes first. Any person detained pursuant to such a temporary order of detention shall be held in a suitable facility (such as an ODMH RPH or other medical or psychiatric facility), taking into consideration the place and type of confinement prior to and during trial.

Failure to conduct the hearing within the ten court-day period shall cause the immediate discharge of the respondent, unless the judge grants a continuance for not longer than ten court days for good cause shown or for any period of time upon the motion of the respondent.

*Rights:* An individual who has been committed as NGRI has the right to attend all hearings conducted pursuant to sections [2945.37](#) to [2945.402](#) of the Revised Code. The court will inform the person of their additional rights in these proceedings. These rights are listed in Appendix K.

The hearing under section [2945.40\(A\)](#) of the Revised Code will be open to the public and the court will conduct the hearing in accordance with the rules of civil procedure. The court will make and maintain a full transcript and record of the hearing procedure. The court may consider all relevant evidence, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the offense in relation to which the person was found not guilty by reason of insanity, and any history of the person that is relevant to the person's ability to conform to the law. If the court finds that there is not clear and convincing evidence that the person is a mentally ill person subject to hospitalization, the person will be discharged. If a detainer has been placed upon the person by the [Department of Rehabilitation and Correction](#), the person shall be returned to that department.

If the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order the court will commit the person either to the Department of Mental Health for treatment in a hospital, facility, or agency as determined clinically appropriate by ODMH or to another medical or psychiatric facility, as appropriate. If the court determines by clear and convincing evidence that the person requires treatment for mental retardation, it will commit the person to a facility operated by the [Department of Developmental Disabilities](#), or another facility, as appropriate. All further proceedings will be in accordance with sections [2945.401](#) and [2945.402](#) of the Revised Code. In determining the place of commitment, the court will consider the extent to which the person is a danger to the person and to others, the need for security, and the type of crime involved and will order the least restrictive alternative available that is consistent with public safety and the welfare of the person. In weighing these factors, the court will give preference to protecting public safety.

The court may commit the person to an Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board or a Community Mental Health (CMH) Board, or to a community mental health agency, and place the individual on conditional release in the community pursuant to section [2945.402\(A\)](#) of the Revised Code. The person remains under the trial court's jurisdiction, is monitored in the community by the Forensic Monitor for the ADAMHS/CMH Board of the county of the committing court, and receives mental health services from the community mental health agency. The person will remain under the court's jurisdiction until the termination of the commitment as described in section [2945.401 \(J\)](#) of the Revised Code.

*Admission Criteria:* If the court finds by clear and convincing evidence that the person is a mentally ill person subject to hospitalization by court order, it may commit the person to ODMH.

A person who is committed pursuant to this Section shall not be voluntarily admitted to a RPH or institution pursuant to sections [5122.02](#), [5122.15](#), [5123.69](#) or [5123.76](#) of the Revised Code.

*Court Documents:* The place of commitment will receive a copy of the court order from the trial court stating that the person was found NGRI and mentally ill and subject to hospitalization. The court will also send a copy of the indictment or complaint and a copy of each examiner's report and any other information that the court deems relevant. The prosecutor will send to the place of commitment all reports of the person's current mental condition and any other relevant information, including but not limited to, a transcript of the hearing held pursuant to section [2945.40\(A\)](#) of the Revised Code, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the person and that the prosecutor possesses.

The prosecutor will send the reports of the person's current mental condition in every case of commitment, and unless the prosecutor determines that the release of any of the other relevant information to unauthorized persons would interfere with the effective prosecution of any person or would create a substantial risk of harm to any person, the prosecutor will send the other relevant information.

The RPH Legal Assurance Administrator (LAA) should attempt to obtain as much collateral information as possible to assist in the preparation of evaluations, social histories, violence risk assessments, and treatment plans.

*Criminal Charge:* An NGRI verdict has the same effect as a verdict of "not guilty" in that the person cannot be further prosecuted for the same criminal conduct for which the person was found NGRI.

*Community Notification Requirements:* When an individual is committed to ODMH as NGRI and admitted to an ODMH RPH, the LAA will notify the ADAMHS or the CMH Board for the County of the Committing Court about the admission. The LAA will send to the Board a copy of all reports of the person's current mental condition; a copy of all relevant information provided by the prosecutor (see above), including, if provided, a copy of the transcript of the hearing held pursuant to section [2945.40\(A\)](#) of the Revised Code; the relevant police reports; and the prior arrest and conviction records that pertain to the person and that the prosecutor possesses. If the individual is directly committed by the court to a community agency, the agency will send the above documents to the ADAMHS or CMH Board for the County of the Committing Court.

*Reporting Requirements:* The RPH LAA, or a person with similar duties in another facility or program, will ensure that a written report is submitted to the trial court at the end of the initial six months of treatment and every two years after the initial report. The report will indicate if the individual remains a mentally ill person subject to hospitalization by court order. The court will give copies of the report to the prosecutor and defense counsel. Within thirty days after receipt of a report from the RPH or other facility or program the trial court will hold a hearing on the continued commitment of the individual, or regarding any changes in the conditions of the commitment. If the individual requests a change in the conditions of commitment, the trial court will conduct a hearing on that request if six months or more have elapsed since the most recent hearing was conducted under section [2945.401\(C\)](#) of the Revised Code.

#### *Movement - Level 2*

An individual who is in an NGRI status, committed to ODMH and placed at an RPH, remains under the trial court's jurisdiction. Patients charged with aggravated murder, murder, or felony 1 or felony 2 offenses must have approval by the RPH treatment team and the RPH Forensic Review Team (FRT) prior to granting Level 2 movement. Patients charged with lesser offenses are allowed Level 2 (Supervised, On Grounds Movement) after review and approval by only the RPH treatment team.

#### *Movement - Levels 3 and 4*

Prior to a request for an additional movement level, the treatment team will review all risk assessments that have been conducted on the individual, and will conduct a current risk

assessment update. After evaluation of the risks to public safety along with consideration of the welfare of the patient, their recommendation for movement will be forwarded to the RPH Forensic Review Team (FRT). The FRT will review all movements of patients with an NGRI status prior to movement of Level 3 or above. If the FRT is in agreement, the request will be sent to the RPH CCO.

The department's designee/CCO will review the request for movement and the related documents. If the department's designee/CCO is in agreement, an application will be filed with the trial court for approval of On-Grounds, Unsupervised Movement (Level 3), or Off-Grounds, Supervised Movement (Level 4). A copy of the application for approval of movement will be sent to the prosecutor. If the prosecutor does not request a hearing within 15 days, the trial court either approves the department's designee's/CCO request or may hold a hearing on its own accord within 30 days. If the prosecutor requests a hearing, the court must hold a hearing within 30 days of the request, and the court must notify the prosecutor 15 days prior to the hearing date. The court will make a decision regarding the request for movement, and will enter its order accordingly. See the Movement Policy (MF-04) in Appendix D.

At any time after evaluating the risks to public safety and the welfare of the person, the department's designee/CCO may recommend a termination of the commitment or a change in the conditions of the commitment (R.C. [2945.401\[D\]\[1\]](#)).

*Nonsecured Status: Level 5 Movement, Off Grounds, Unsupervised; Trial Visit; or Conditional Release*

A nonsecured status is defined as any unsupervised off-grounds movement, trial visit from an RPH or institution, or conditional release, that is granted to a person who has been committed under section [2945.39](#) (IST-U-CJ) or [2945.40](#) (NGRI) of the Revised Code. The RPH treatment team and FRT review process for this movement level is the same as that required prior to requesting a Level 3 or 4 movement. When the treatment team and the FRT are in agreement that the individual should be granted the first nonsecured status, the request is sent to the CCO.

The department's designee/CCO will review the related information and if in agreement with the request, will send written notification of this recommendation to the trial court and the local Community Forensic Psychiatry Center. (The "local" Forensic Center refers to the center that serves the county in which the criminal charges were filed). Included in the notification is the request for a Nonsecured Status ("second opinion") evaluation of the patient by a Forensic Center examiner and the conditional release plan when the request is for conditional release. The RPH LAA shall coordinate this process and ensure that the appropriate documentation is sent. A separate entry from the court is not required. Some RPHs have developed forms to notify the court of the recommendation of the department's designee/CCO and simultaneously request a second opinion evaluation. (See Appendix F for a sample notification form.)

The Community Forensic Psychiatry Center will conduct a Nonsecured Status evaluation of the individual at the RPH and within thirty days after receiving the notification will send a written report to the department's designee/CCO and the trial court. The court will provide a copy of the department designee's/CCO's written notice and the Forensic Center's written report to the prosecutor and the counsel for the defendant. Upon the submission of the Nonsecured Status

evaluation report to the trial court and the department's designee/CCO, all of the following apply:

1. If the Forensic Center disagrees with the recommendation of the department's designee/CCO, the Forensic Center will inform the department's designee/CCO and the trial court of the disagreement and the reasons for the decision. The department's designee/CCO, after consideration of the Forensic Center's decision, will either withdraw, proceed with, or modify and proceed with the recommendation. If the department's designee/CCO proceeds with, or modifies and proceeds with the recommendation, the department's designee/CCO will proceed in accordance with section [2945.401\(D\)\(1\)\(b\)\(iii\)](#) of the Revised Code. (See Number 3 below).
2. If the Forensic Center agrees with the recommendation of the department's designee/CCO, it will inform the department's designee/CCO and the court of this decision and the reasons for the decision. The department's designee/CCO will proceed as indicated below.
3. If the Forensic Center disagrees with the recommendation of the department's designee/CCO, and the department's designee/CCO proceeds with or modifies and proceeds with the recommendation, or if the Forensic Center agrees with the recommendation of the department's designee/CCO, the department's designee/CCO or designee will work with the ADAMHS or CMH Board for the County of the Committing Court (county where the charges were filed) to develop a plan to implement the recommendation. The board-designated community Forensic Monitor and the community mental health service provider should work with the RPH staff to develop this plan. If the recommendation is for conditional release, the conditional release (CR) plan will identify the specific conditions that the individual is required to follow in the community. The CR plan will also include the steps to be taken and the parties responsible to carry out those steps if the person violates the conditions of the plan. (See Appendix J for the Conditional Release Plan Guidelines). If the person is on medication, the plan will include, but not be limited to, a system to monitor the person's compliance with the prescribed medication treatment plan. The plan/system will include a schedule that clearly states when the person reports for medication compliance checks. The medication compliance checks will be based on the effective duration of the prescribed medication, taking into account the route by which it is taken, and will be scheduled at intervals sufficiently close together to detect a potential increase in mental illness symptoms that the medication is intended to prevent (R.C. [2945.401\[D\]\[1\]\[b\]\[iii\]](#)).

The department's designee/RPH CCO, after consultation with the ADAMHS or CMH Board, will send the recommendation and written plan to the trial court, the prosecutor and the person's defense counsel. The trial court will conduct a hearing on the recommendation and plan. In accordance with section [2945.401\(D\)\(1\)\(c\)](#) and (d) and (E) to (J) of the Revised Code, the following applies to these hearings:

1. If the department's designee/CCO's recommendation is for nonsecured status or termination of the commitment, the prosecutor may obtain an independent expert evaluation of the person's mental condition, and the court may continue the hearing on the recommendation for a period of not more than 30 days to permit time for the evaluation.

The prosecutor may introduce the evaluation report or present other evidence at the hearing in accordance with the rules of evidence.

2. The court will schedule the hearing on the department's designee/CCO's recommendation for nonsecured status or termination of commitment and will give reasonable notice to the prosecutor and the person's defense counsel. Unless continued for independent evaluation at the prosecutor's request or for other good cause, the hearing will be held within 30 days after the court's receipt of the recommendation and plan.

The trial court, in making a determination regarding nonsecured status or termination of commitment, will consider all relevant factors including, but not limited to, all of the following:

1. Whether, in the trial court's view, the person currently represents a substantial risk of physical harm to the person or others;
2. Psychiatric and medical testimony as to the current mental and physical condition of the person;
3. Whether the person has insight into the person's condition so that the person will continue treatment as prescribed or seek professional assistance as needed;
4. The grounds upon which the state relies for the proposed commitment;
5. Any past history that is relevant to establish the person's degree of conformity to the laws, rules, regulations, and values of society;
6. If the person's mental illness is in a state of remission, the medically suggested cause and degree of the remission, and the probability that the person will continue treatment to maintain the remissive state if the commitment conditions were to be altered.<sup>7</sup>

At any hearing held pursuant to section [2945.401](#)(C) or (D)(1) or (2) of the Revised Code, the person will have all of the rights of a person at a commitment hearing described in section [2945.40](#) (see Appendix K).

At these hearings, the prosecutor has the burden of proof as follows (R.C. [2945.401\[G\]](#)):

1. For a recommendation of termination of commitment, to show by clear and convincing evidence that the person remains a mentally ill person subject to hospitalization by court order;
2. For a recommendation for a change in the conditions of the commitment to a less restrictive status, to show by clear and convincing evidence that the proposed change represents a threat to public safety or a threat to the safety of any person.

In a hearing held pursuant to this section, the prosecutor shall represent the state or the public interest. At the conclusion of the hearing, the trial court may approve, disapprove, or modify the recommendation and will enter an order accordingly.

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<sup>7</sup> Based upon criteria in *In Re Burton*, 11 Ohio St. 3d 147 (1984)

*Conditional Release:* Pursuant to section [2945.402](#) of the Revised Code, if the trial court approves a conditional release, the court may set any conditions on the release with respect to the treatment, evaluation, counseling, or control of the person that the court considers necessary to protect the public safety and the welfare of the person.

A conditional release is a commitment. The hearings on continued commitment as described in section [2945.401](#) of the Revised Code apply to persons on conditional release.

The RPH LAA and/or Forensic Monitor should ensure that the court order clearly states or references the conditions of the release and allows communication between the involved individuals during the period of the conditional release commitment. The Forensic Monitor/designee shall ensure that the community treatment agency receives a copy of the court order and shall coordinate with the treating agency to prepare the required court reports. The RPH LAA will ensure that the Forensic Monitor receives a copy of the hospital's most recent HCR-20 risk assessment.

In accordance with section [5119.57](#) of the Revised Code, the Forensic Monitors are to report specified data to the Department of Mental Health on a quarterly basis. Please see the Community Forensic Monitoring Program section of this manual for additional information on this process. Forensic Monitors should also consult the [Forensic Monitor Orientation Manual](#) for more detailed instructions on data submissions.

*Conditional Release Revocation:* Pursuant to section [2945.402](#) of the Revised Code, the trial court may revoke a person's conditional release and order rehospitalization or reinstitutionalization at any time if the conditions of the release have not been satisfied, provided that the revocation will be in accordance with that section.

A person who is on conditional release may be admitted to an ODMH RPH without a revocation of the conditional release. Under these circumstances, the person's legal status while in the hospital remains [2945.402](#). Please see Guidelines for Hospitalization for more information about this process.

A person, agency or facility that is assigned to monitor a person on conditional release will immediately notify the trial court upon learning that the person being monitored has violated the terms of the conditional release (R.C. [2945.402\[C\]](#)). In almost all cases, it is the board-designated Forensic Monitor/designee who will notify the court of the violation. Upon learning of any violation, the court may issue a temporary order of detention, or if necessary, an arrest warrant for the person. Within ten court days after the person's detention or arrest, the court will conduct a hearing to determine whether the conditional release should be modified or terminated. At the hearing, the person will have the same rights as are described in section [2945.40\(C\)](#) of the Revised Code. The court may order a continuance of the ten-court-day period for no longer than ten days for good cause shown or for any period on motion of the person. If the court fails to conduct the hearing within the ten-court-day period and does not order a continuance in accordance with statute (R.C. [2945.402](#)), the person will be restored to the prior conditional release status.

The trial court will give all parties reasonable notice of a hearing conducted under section [2945.402](#) of the Revised Code. At the hearing, the prosecutor will present the case demonstrating that the person violated the terms of the conditional release. If the court finds by a preponderance of the evidence that the person violated the terms of the conditional release, the court may continue, modify or revoke the conditional release and will enter its order accordingly.

*Termination of the Commitment:* Pursuant to section [2945.401\(J\)\(1\)](#) of the Revised Code, a person who has been committed as NGRI continues to be under the jurisdiction of the trial court until the final termination of the commitment. The final termination of a commitment occurs upon the earlier of one of the following:

1. The person no longer is a mentally ill person subject to hospitalization by court order, as determined by the trial court.
2. The expiration of the maximum prison term or term of imprisonment that the individual could have received if the individual had been convicted of the most serious offense with which the individual was charged, or in relation to which the individual was found not guilty by reason of insanity. (See Guidelines for Discharge of Persons on Conditional Release Commitment in Appendix J).

The maximum time of the commitment for a person found NGRI is calculated from the date of the NGRI finding. Time that is served in jail prior to the NGRI finding cannot be used to reduce the maximum time of commitment (*State v. Tuomala*, 104 Ohio St.3d 93, 2004).

### **Parolees and Probationers**

A mentally ill offender who is under the custody of the Ohio Department of Rehabilitation and Correction (ODRC) and released on parole or probation, is subject to hospitalization at an ODMH Regional Psychiatric Hospital (RPH). A responsible party may file an affidavit with the probate court, or the individual's parole/probation officer, or the individual can voluntarily seek admission. If the parole/probation officer files an affidavit, the commitment is pursuant to section [2967.22](#) of the Revised Code. If a person other than the parole/probation officer files the affidavit or if the patient voluntarily seeks admission, the admission is pursuant to chapter [5122](#) of the Revised Code.

*Admission Criteria:* When a mentally ill parolee or probationer is admitted to a facility operated by the Department of Mental Health, all of the court proceedings are civil proceedings in the probate court as provided by chapter [5122](#) of the Revised Code. The individual must have a pre-hospitalization screening assessment completed by the designated agency for the Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board or a Community Mental Health (CMH) Board for the County of Legal Residence (the county of the person's usual residence).

*Rights and Movement:* Offenders who are on parole or probation and involuntarily committed for treatment can be granted Movement Levels 1 through 5 according to the ODMH Movement Policy. See Appendix D for the Movement Policy (MF-04). Parolees and probationers who are voluntarily committed have the same movement rights as any voluntary patient.

If the person is admitted pursuant to section [2967.22](#) of the Revised Code, the RPH staff can share information with the offender's parole or probation officer without a signed release from the offender. When the individual is admitted under a voluntary status, the RPH staff is required to request the patient's authorization prior to sharing of information with the parole or probation officer. If the patient consents, the LAA shall notify the parole or probation officer before the individual is granted Level 5—Nonsecured Status.

The RPH staff *must* notify the parole or probation officer of any occurrence of Absent Without Leave (AWOL) involving the individual when admission status is pursuant to section [2967.22](#).

*Credit for Time:* The offender shall be given credit against his/her period of parole or probation for all time spent in the RPH.

*Discharge:* The offender may be discharged when it is determined that there is no longer a need for hospitalization. When the individual is admitted under section [2967.22](#) of the Revised Code and provides consent the parole or probation officer shall be notified prior to discharge and may provide assistance in the development of the post discharge plan. The probate court should be notified of the offender's discharge when the offender is civilly committed.

### **Jail Transfer**

When an individual is incarcerated in a jail and requires inpatient hospitalization, the jail administrator should initiate the process for pre-hospitalization screening. The pre-hospitalization screening will be conducted by the identified agency of the Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board or the Community Mental Health (CMH) Board for the County of Legal Residence (the county of the person's usual residence). If the individual meets the criteria for hospitalization and refuses voluntary admission, the person may be hospitalized through emergency procedures and, if necessary an affidavit will be subsequently filed with the probate court for involuntary admission.

*Rights and Movement:* Persons admitted to an RPH as a Jail Transfer are not permitted movement above Level 1 in accordance with the Movement Policy (MF-04; see Appendix D).

*Discharge:* If after the initial examination, or at any time thereafter, the RPH CCO or designee finds the inmate not to be a mentally ill person subject to hospitalization by court order, or no longer needs inpatient care, the police or other law enforcement entity will be notified that the individual is ready for discharge. The LAA/designee will verbally notify the law enforcement agency, and if there is no response, notification by certified mail, return receipt requested, will be made. The law enforcement staff is responsible to pick up the individual, unless written information is sent to the RPH from the jail that indicates that the person is no longer under their custody, in which case, the person shall be discharged.

### **Police Hold**

At times, an individual may be taken into custody by a law enforcement officer, and subsequently transported to a mental health facility or an ODMH RPH for a mental health assessment or mental health treatment. No criminal charges will have been filed at the time the individual is brought in for services.

The agency specified by the Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board or the Community Mental Health (CMH) Board for the County of Legal Residence (the county of the person's usual residence) is responsible for the pre-hospitalization screening assessment. If the individual meets the criteria for hospitalization and refuses voluntary admission, the person may be hospitalized through emergency procedures, and if necessary an affidavit will be subsequently filed with the probate court for involuntary admission.

*Rights and Movement:* Persons admitted to an RPH as a Police Hold are not permitted movement above Level 1 in accordance with the Movement Policy (MF-04; see Appendix D).

*Discharge:* When the individual meets the criteria for discharge from the RPH as determined by the RPH CCO or designee, the police or other law enforcement entity will be notified that the individual is appropriate for discharge. The LAA/designee will verbally notify the law enforcement agency, and if there is no response, notification by certified mail, return receipt requested, will be made. The law enforcement staff are responsible to pick up the individual, unless written information is sent to the RPH from the jail that indicates that the person is no longer under their custody, in which case, the person will be discharged.

### **Department of Youth Services**

The Department of Youth Services (DYS) may request inpatient services for persons in their custody who are between the ages of 18 to 21. Please refer to Appendix L for the Admission Procedures for Referrals from DYS.

### **Department of Developmental Disabilities**

ODMH and the Department of Developmental Disabilities (DODD) frequently serve individuals who have a forensic legal status and who are diagnosed with both a serious mental illness and an intellectual disability (MI-DD). Several years ago, in an effort to increase collaboration between the two systems that serve people with MI-DD who are on Conditional Release, the DODD distributed a memorandum to their county DD Boards describing the role of the Forensic Monitor (Appendix Y). The monitors work with all people on conditional release regardless of whether they receive services from the mental health system, the mental retardation system or both. This memorandum helps to clarify this part of the Forensic Monitors' role.

## COMMUNITY FORENSIC SERVICES

Since the early to mid-1990s, Ohio has seen an increase in the variety of community-based services offered to individuals who are mentally ill and involved in the criminal justice system. This increase in the array of services has occurred as a result of legislative requirements and collaborative efforts between ADAMHS/CMH Boards and service providers. These services support the provision of treatment in the least restrictive setting, with an emphasis on the assessment and management of violence risk to ensure public safety, and an increased focus on the recovery of persons with a forensic status.

### Community Forensic Monitoring Program

#### *Introduction*

The position of Forensic Monitor was formally created in 1996 as a result of House Bill 152 and became further defined with the enactment of Senate Bill 285, which became effective in 1997. Each Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board and Community Mental Health (CMH) Board in Ohio is responsible to ensure that a Forensic Monitor is providing certain services for their board area. The Forensic Monitor may be employed by one Board or a consortium of Boards, by a community mental health agency, by a Community Forensic Psychiatry Center, or by a Community Support Network (CSN). Frequently, the Forensic Monitors have additional duties along with their monitoring responsibilities and/or another person may act as designee for the Forensic Monitor by performing many of the monitoring duties.

Forensic Monitors should consult Appendix J of this manual and the [Forensic Monitor Orientation Manual](#) located on the [ODMH website](#) for additional information about fulfilling their roles.

As described later in this section, all of the *required* Forensic Monitor duties are administrative. However, it is recommended that the monitor have a strong clinical background and knowledge of forensic mental health treatment. The Forensic Monitor plays a crucial role as the liaison among the individual, the court, the Boards, the community providers, and the Regional Psychiatric Hospitals (RPHs). The monitor needs to be knowledgeable about the criminal justice system, court proceedings, forensic statutes, the RPH procedures, community mental health treatment, and most importantly, risk management principles and methods to ensure public safety.

#### *Value Statement*

The Community Forensic Monitoring Program values the provision of mental health services in the least restrictive treatment setting, with a priority of public safety that is supported through regular risk assessment and risk management practices and through utilization of available evidence-based practices and implementation of the Recovery Model.

### ***Forensic Monitoring Program Components***

The Forensic Monitor is responsible to monitor persons found by a court to be Not Guilty by Reason of Insanity (NGRI; R.C. [2945.40](#)) or Incompetent to Stand Trial—Unrestorable—under Criminal Court Jurisdiction (IST-U-CJ; R.C. [2945.39](#)) and who have been granted conditional release (CR). The Forensic Monitor or designee also serves as a forensic resource for ADAMHS/CMH Boards, community mental health agencies, Community Forensic Psychiatry Centers, ODMH RPHs, and the criminal justice system. In collaboration with the board, the Forensic Monitor provides education, training, consultation, liaison services, collects data, and compiles required reports.

The Forensic Monitor is typically involved with an individual prior to release from an ODMH RPH. Beginning at the time when the patient is granted Level 3 movement, the Forensic Monitor participates in the development of the CR plan with the patient, RPH treatment team, and the community mental health service provider, as indicated. The exception to this practice occurs when an individual is released directly from the court to CR in which case the RPH staff would not be involved. (See the section on Conditional Release Commitment Directly from Court on page 54).

When the court grants CR, the RPH LAA and Forensic Monitor should ensure that the conditional release court order clearly states or references the conditions of the release and allows communication among all of the individuals and entities involved in carrying out the CR plan during the period of the CR commitment. The RPH LAA shall ensure that the Forensic Monitor receives a copy of the hospital's most recent HCR-20 risk assessment. The LAA shall also send a copy of the final CR plan to all signatories of the plan including the ADAMHS/CMH Board(s) that are involved with the case, whether or not the Board(s) sign the plan. If the person on CR is not being released from an RPH, the Forensic Monitor shall send a copy of the final CR plan to all signatories of the plan, including the ADAMHS/CMH Board(s) that are involved with the case, whether or not the Board(s) sign the plan.

The Forensic Monitor shall do everything possible to ensure that the community treatment agency is made aware of all of the requirements of the CR plan and their responsibilities when the person on CR violates any requirement on the CR plan. The Forensic Monitor shall coordinate with the treating agency to prepare the required court reports. The Forensic Monitor maintains regular contact with the community mental health providers to monitor the person's progress and to ensure that the community risk assessment instrument is being completed as recommended in the guideline (see Appendix M). The monitor also ensures that the court is informed about the individual's status and that all required reports are sent to the court. The monitor shall attend the mandatory two-year hearings (and six-month hearing, if applicable) following the conditional release commitment and shall provide the court with information as requested.

Section [5119.57](#) of the Revised Code requires that a coordinated system be developed to track and monitor persons who are found NGRI or IST-U-CJ and are on CR. This system is known as the Forensic Tracking and Monitoring System (FTMS). The Forensic Monitors are required to

complete quarterly reports on these individuals and provide designated information to ODMH, Office of Forensic Services (OFS). Additional information about data submission is included in the [Forensic Monitor Orientation Manual](#).

The Forensic Monitor monitors individuals granted CR who have been charged with either felony or misdemeanor offenses through Common Pleas and Municipal/County Court systems. The monitor needs to be aware that the time requirements for the Municipal Court proceedings are different than those for the Common Pleas Courts. FTMS data must be submitted on all individuals on CR regardless of whether they are under the jurisdiction of the Common Pleas or Municipal/County court.

On a regular basis, the Forensic Monitors convene as a group with staff from OFS, the ODMH RPH Legal Assurance Administrators (LAAs), other ODMH office representatives, and other invited guests from the judicial system, the community mental health service provider system, and other state departments. The function of these meetings is to encourage communication and education among members, to identify and resolve problems, and to support the development of standardized monitoring practices. Subcommittees from the larger group have developed and formalized the Guidelines for Forensic Monitor Duties, the Forensic Monitor Orientation Manual, the Community Risk Assessment of Persons on Conditional Release, the Forensic Tracking and Monitoring System Guidelines, and the Conditional Release Report Guidelines, all of which are included in this manual or on the [ODMH website](#).

### ***Community Forensic Principles***

1. The Board serving the County of the Committing Court (i.e., the county where the charges were filed) for a person committed as Not Guilty by Reason of Insanity (NGRI) or Incompetent to Stand Trial—Unrestorable—Criminal Court Jurisdiction (IST-U-CJ) and on Conditional Release (CR) is financially and programmatically responsible for the person until the individual's CR is terminated by the court. Persons should be placed in their home communities when possible and practical. Two involved Boards can reach agreement about payment of services when the court has approved the person residing outside of the county of the committing court. For a draft agreement, see Appendix Q.
2. Each Board, or a consortium of Boards, will designate a Forensic Monitor to be responsible for coordinating forensic cases and monitoring persons on CR. Each Board or its designee must plan and coordinate services with the RPH, community providers, and the criminal justice system for persons found NGRI or IST-U-CJ and other identified forensic persons<sup>8</sup>. Forensic monitoring services must be available in each Board area. The Board, or representative of a consortium of Boards, is responsible to notify the Office of Forensic Services at ODMH when the Forensic Monitor changes.
3. Early and ongoing involvement of the Boards and community providers with the criminal justice system is essential for effective treatment, discharge planning, risk management, and provision of appropriate services. The RPH LAA shall notify the Forensic Monitor, Board and community agency when a patient is granted Level 3 Movement in order to facilitate their early involvement. Each Board is encouraged to designate an agency as the primary service provider for clients with a forensic legal status.

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<sup>8</sup> These persons could include former prison inmates and other high-risk individuals identified by the Board.

4. The court is a primary partner and has ultimate decision-making authority when serving persons found IST-U-CJ and NGRI.
5. NGRI acquittees and persons found IST-U-CJ, like others with mental illness, should have access to a continuum of care that provides a broad range of services and supports that are culturally appropriate and based on individual treatment needs. These services may be provided by a variety of service systems.
6. Treatment planning should be driven by the circumstances of the offense, community safety, clinical needs, recent risk assessments, and the current conditions outlined in the conditional release plan. Regular review and update of the treatment plan should continue to address the offense, the person's mental health status and compliance with the conditional release plan, and additional factors as outlined below.
  - a. Collateral information should be used in addition to the person's account of the offense and incorporated into the treatment plan as appropriate.
  - b. The circumstances of the offense should be explicitly considered in release recommendations and addressed as necessary in the treatment planning process
  - c. Risk management criteria should always be addressed, especially when developing and updating the treatment plan:
    - Whether the person represents a substantial risk of physical harm to self or others;
    - Attention to the current status of the person's mental and physical condition and any significant changes to either;
    - The person's insight into his/her condition, including compliance with treatment as prescribed and whether the person will seek professional assistance if needed;
    - As appropriate and necessary, the grounds upon which the state relies for commitment;
    - Any past history that is relevant to establish the person's degree of conformity to the laws, rules, regulations, and values of society; current behavior or concerns related to any of these areas;
    - If there is evidence that the person's mental illness is in a state of remission, the probability that the person will continue treatment to maintain the remissive state if considering a recommendation that the commitment conditions be altered.<sup>9</sup>
7. There must be a process in place to allow prompt rehospitalization or reinstitutionalization when a lesser restrictive alternative is inappropriate, unavailable, or does not protect public safety or the safety of the person on conditional release. The Forensic Monitor must be aware of this process and know how to quickly implement this process when necessary.
8. NGRI acquittees and persons found IST-U-CJ should participate in treatment planning and have the right to make decisions regarding treatment options within the parameters and restrictions imposed by the court. Confidentiality should be considered and every effort to

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<sup>9</sup> Based upon criteria in *In Re Burton*, 11 Ohio St. 3d 147 (1984)

involve the individual's family and significant others in the treatment planning process should be made, within the restrictions imposed by the court. Treatment planning for conditional release shall include consideration of risk assessment(s), public safety, clinical appropriateness, and any restrictions imposed by the court.

9. Violence risk assessment and risk management should be a central part of treatment and monitoring. The Forensic Monitor should be involved in the risk management process. For persons who have a potential for dangerous behavior and present relevant risk factors, treatment plans must encompass risk management plans. Identified risk factors must be periodically reassessed, and continually monitored to decrease the probability of a repeated violent or dangerous act.
10. The Forensic Tracking and Monitoring System (FTMS) for persons found NGRI and IST-U-CJ on conditional release has been established to include data collected from both the mental health system and the criminal justice system. Board areas are encouraged to develop local centralized tracking systems with local criminal justice agencies.

### ***Forensic Monitor/Designee Duties***

1. ***The Forensic Monitor or designee shall participate with both Regional Psychiatric Hospitals (RPH) and community treatment providers in planning and coordinating services for persons found NGRI or IST-U-CJ.***

#### ***Required duties:***

- a. Interacting with the RPH Legal Assurance Administrator (LAA) regarding case status.
- b. Serving as liaison between the courts/criminal justice system, the LAA and other RPH staff, community treatment providers, and ADAMHS/CMH boards.
- c. Involvement in the development of the conditional release plan, including participation with the RPH treatment staff in the development of the conditional release plan prior to discharge.
- d. Meeting with community provider treatment teams and/or case managers to develop and implement the person's conditions of release.
- e. Monitoring treatment provided to the person by the service provider in accordance with the conditional release plan and the orders of the court.
- f. Monitoring reports of the person's criminal activity.

#### ***Optional duties (include but are not limited to):***

- g. Maintaining regular direct contact with the person on CR while in a community setting. (This direct contact should occur only after any conflict of interest issues have been addressed.)
- h. Interacting with the RPH Forensic Review Team regarding conditional release readiness.

- i. Making recommendations for treatment to assist in the development of conditional release plans.

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

***Required duties:***

- a. Attending hearings following a conditional release commitment.
- b. Reporting compliance with conditional release plans as required by the court.
- c. Immediately reporting to the court any violations of the terms of conditional release or deterioration in the individual's mental status.
- d. Initiating or participating in legal and/or administrative procedures, if necessary, to facilitate hospitalization, institutionalization, or incarceration of the person who is on conditional release.
- e. Ensuring that required reports for persons on conditional release are submitted to the court.
- f. Reporting information regarding court hearing outcomes to treatment providers and, when appropriate, the RPH LAA. Upon the termination of the commitment of a person who has been released from an RPH, the Forensic Monitor shall notify the LAA of this termination.
- g. 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 conditional release plans for them.

***Optional duties:***

- h. Providing advice and consultation to the court about required hearings and other time lines 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 jointly develop procedures.)

**3. *The Forensic Monitor or designee shall work with the ADAMHS/CMH Boards, which are responsible for developing community services for persons found NGRI or IST-U-CJ.***

***Required duties:***

- a. Notifying the Board of major unusual incidents and violations of the conditional release terms as determined by the Board.
- b. Preparing statistical or narrative reports as required by the Board.

- c. In conjunction with Board staff, assisting in out-of-county service planning, including monitoring responsibility for those services.
- d. Providing training to Board members and staff on forensic issues.
- e. Consulting with the Board on forensic policy and procedure development and implementation.
- f. Working with the Board to develop and implement effective community risk management policies and procedures for persons on conditional release.

**4. *The Forensic Monitor or designee shall cooperate with the Ohio Department of Mental Health.***

***Required duties:***

- a. Assisting in the ongoing implementation of the Forensic Tracking and Monitoring System (FTMS).
- b. Sending required quarterly FTMS reports to Office of Forensic Services, ODMH.
- c. Reporting to OFS any instances in which the monitor experiences difficulty obtaining requested reports from the treating agency or is unable to have a court schedule a mandated two-year hearing.
- d. Attending statewide Forensic Monitor meetings.
- e. Participating on subgroups to further the development of the statewide Forensic Monitor Program, including making recommendations on policy, procedure and guidelines as necessary.

***Hospitalization/Detention of Persons on Conditional Release***

Persons found NGRI or IST-U-CJ placed on conditional release (CR) remain under a criminal court commitment. These individuals are monitored by the Forensic Monitor as assigned by the ADAMHS/CMH Board for the County of the Committing Court (county where the charges were filed).

At times, an individual on CR may experience difficulty in the community and may require inpatient psychiatric services. A person on conditional release may be hospitalized for a number of reasons, including, but not limited to the following: acute symptoms of mental illness, medication adjustment problems, situational crises resulting in instability or increased violence risk, or a violation of one or more conditions that are contained in the CR plan.

***Guidelines for Emergency Hospitalization.*** If it becomes apparent to the community service provider or the Forensic Monitor that an individual on conditional release may be appropriate for inpatient mental health services, the procedures to be followed are much the same as for any

individual who is experiencing a psychiatric crisis. In most cases, the community service provider or the Forensic Monitor will assist in arranging for a pre-hospitalization screening by the designated agency. A family member or other concerned party may also seek psychiatric emergency services for the individual or the individual may seek services independently. If the individual meets the criteria for hospitalization, the individual can be admitted to an ODMH RPH or another psychiatric facility as designated by the local ADAMHS/CMH Board.

The Forensic Monitor shall coordinate with the local ADAMHS/CMH Board or the designated pre-hospitalization screening agency to develop a system that will assist in identifying individuals who are on CR and appear for emergency psychiatric services and/or may be hospitalized. The monitor and community service provider shall ensure that both are informed about the individual's status in these situations. It is the responsibility of the Forensic Monitor to notify the court in writing and the Board (for the Committing County) if the individual is hospitalized.

The Forensic Monitor shall advise the court of the circumstances of the hospitalization and recommend a course of action if requested by the judge. In most cases, if the person needs a short-term hospitalization for stabilization of symptoms of mental illness, the CR would not be revoked. Generally, if the person needs to be hospitalized for a violation of the CR plan, then the CR would be revoked. (See below for more detail.) The court may choose not to revoke the CR but rather amend the conditional release order to provide for temporary hospitalization until it is determined that the individual is appropriate to return to the community. The court may also choose to revoke the conditional release before admission or at any time. In either case, when the individual is hospitalized, the Forensic Monitor shall continue to monitor the individual's progress. When a person on CR is hospitalized in an RPH the Forensic Monitor will work with the Legal Assurance Administrator (LAA) to coordinate discharge plans. As appropriate, the community treatment provider should continue to have contact with the individual during hospitalization.

If the person is hospitalized for a short term, and the conditional release is *not* revoked, the person may be returned to the community when appropriate for discharge. The RPH staff may decide, for clinical reasons, that a "second opinion" evaluation is needed prior to recommending that the individual return to the community. The court can require that a second opinion evaluation be conducted prior to returning the individual to the community. These evaluations will be conducted by the local Community Forensic Psychiatry Center.

When a court revokes a conditional release commitment, the individual will be admitted with either an IST-U-CJ (R.C. [2945.39](#)) or NGRI (R.C. [2945.40](#)) forensic legal status. The RPH staff must follow the original procedures to return the patient to conditional release status.

***Guidelines for Hospitalization due to a Conditional Release Plan Violation.*** When a person on CR violates one or more of the conditions of the CR plan, the community treatment provider must notify the Forensic Monitor. The monitor should immediately inform the trial court of the violation and the risk issues. If the monitor is unavailable, the community mental health treatment provider should notify the court.

A determination should be made as to the imminence and level of violence risk that the person's noncompliance poses to the community. The judge may consult with the Forensic Monitor,

community treatment provider, or other knowledgeable individuals in order to determine the most appropriate course of action.

After gathering information and reviewing the risks involved, the judge may issue a *capias*, have the person detained in jail, and then issue a Temporary Order of Detention to allow for the person to be evaluated. The judge also has the option to issue a Temporary Order of Detention requiring that the individual be hospitalized for an evaluation. In most cases, the judge will consult with the Forensic Monitor to determine the best placement for the individual, which could include jail, the RPH, or continued placement in the community depending upon the seriousness of the violation.

Pursuant to section [2945.402 \(C\)](#) of the Revised Code, within ten court days after the person's detention or arrest, the court shall conduct a hearing to determine whether the conditional release should be modified or terminated. The court may order a continuance of the ten-court-day period for no longer than ten days for good cause shown or for any period on motion of the individual. The Forensic Monitor should attend these hearings. If the court decides to continue the conditional release commitment, the individual may return to the community, or if appropriate, may be committed to a psychiatric facility for short-term stabilization treatment. In most cases, the judge will consider the status of the individual, the conditional release violation, and input from the Forensic Monitor.

The court may decide to revoke the conditional release commitment, and commit the individual to an ODMH RPH. The individual will be admitted with either an IST-U-CJ (R.C. [2945.39](#)) or NGRI (R.C. [2945.40](#)) forensic legal status. When a court revokes a conditional release commitment, the RPH staff must follow the original procedures to return the patient to conditional release status. When the individual is hospitalized, the Forensic Monitor shall continue to monitor the individual's progress. When a person on CR is hospitalized in an RPH the Forensic Monitor will work with the Legal Assurance Administrator (LAA) to coordinate discharge plans. As appropriate, the community treatment provider should continue to have contact with the individual during hospitalization.

If the court fails to conduct the hearing within the ten court day period and does not order a continuance, the individual will be restored to the prior conditional release status.

The court may, at any time, alter the original conditional release plan and the conditional release order. The Forensic Monitor shall inform the community provider of any changes in the individual's status or conditional release plan.

### ***Conditional Release Commitment Directly from the Court to the Community***

When a person has been found Not Guilty by Reason of Insanity, pursuant to section [2945.40](#) of the Revised Code, or a defendant has been committed as Incompetent to Stand Trial—Unrestorable—Under Criminal Court Jurisdiction, pursuant to section [2945.39\(A\)](#) of the Revised Code, the court shall hold a hearing to determine if the person is a mentally ill person subject to hospitalization by court order. At the hearing pursuant to section [2945.39\(D\)\(1\)](#) or [2945.40\(A\)](#) of the Revised Code, the court may consider all relevant information, including, but not limited to, any relevant psychiatric, psychological, or medical testimony or reports, the acts constituting the

offense, and any history of the person or defendant that is relevant to the person's or defendant's ability to conform to the law.

If the trial court determines that the person is a mentally ill person subject to hospitalization, the court may commit the person or defendant to the Ohio Department of Mental Health, a facility operated by the Department of Developmental Disabilities, or another medical or psychiatric facility, as appropriate. In determining the place and nature of the commitment, the court shall order the least restrictive commitment alternative available that is consistent with public safety and the welfare of the person or defendant. In weighing these factors, the court shall give preference to protecting public safety.

The trial court may elect to commit the person or defendant to conditional release in the community when it has been determined that this is the least restrictive commitment alternative. In these situations, the court will typically commit the individual to an ADAMHS/CMH board or a community mental health treatment agency. When this occurs, a Nonsecured Status ("second opinion") evaluation from a Community Forensic Psychiatric Center is *not* required. The court may choose to order an evaluation of the individual, but this would not be considered a "second opinion" evaluation as described in section [2945.401\(D\)\(1\)\(b\)](#) of the Revised Code.

When an individual is placed on a conditional release commitment directly from the court, the Forensic Monitor is responsible to monitor the individual and provide reports from the treating agency to the court after the initial six months of treatment and every two years after the initial report is made. Each report shall indicate whether the person continues to be a mentally ill person subject to hospitalization by court order. For defendants committed as IST-U-CJ, the report shall also contain a statement as to whether the defendant remains incompetent to stand trial (R.C. [2945.401\(C\)](#)).

In cases where the individual is directly committed to conditional release in the community, the following guidelines should be followed to ensure that public safety and the welfare of the individual are considered and addressed:

1. If the Community Forensic Psychiatry Center examiner conducts an evaluation of a person found NGRI in order to offer an opinion concerning the least restrictive setting pursuant to section [2945.40\(A\)](#) of the Revised Code and recommends that the community is the least restrictive setting, the examiner will also recommend that the court notify the local Forensic Monitor to ensure that the required monitoring activities occur. If the court's decision is to commit the individual directly to conditional release in the community, such notification would allow the Forensic Monitor to become involved at the time that the commitment is made and to perform the required monitoring duties as soon as possible.
2. If the court decides to retain jurisdiction over a defendant found IST-U-CJ pursuant to section [2945.39\(D\)](#) of the Revised Code, and if the court decides, at that point, that the least restrictive treatment alternative is the community (so that the person is immediately placed on conditional release), the court should notify the local Forensic Monitor of its decision. This notification would allow the Forensic Monitor to become involved and provide the required monitoring duties as soon as possible.

3. Forensic Monitors shall proactively maintain communication with the courts in the areas that they serve. This will facilitate the court's early notification of the monitor in cases where the court directly commits an individual to conditional release. Depending upon the preferences of the court, the monitor may maintain communication with bailiffs, other court administrative personnel, or the judges themselves.
4. Whenever a person is found NGRI or IST-U-CJ, the prosecutor is required to send to the place of commitment all reports of the defendant's current mental condition and additional information including a transcript of the hearing, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the person and that the prosecutor possesses, unless the release of the information would interfere with the effective prosecution of any person or would create substantial risk of harm to any person (R.C. [2945.39\[D\]\[2\]](#), [2945.40\[G\]](#)). If the person is committed to an ADAMHS/CMH board, then the prosecutor will send the above information to the board. If the person is committed to a community agency, program or facility, then the prosecutor will send the above information to that agency, program or facility, which will then send the information to the ADAMHS/CMH board of the committing county. When the Forensic Monitor receives copies of the above documents, the Forensic Monitor will send this information to the place of commitment, the Board, and the treating agency, if they have not already received this information.
5. The Forensic Monitor shall work in coordination with the designated mental health treatment agency and the individual to identify risk factors, to develop the conditional release plan, and the treatment plan.
6. As in any other conditional release commitment, the court may set any conditions on the release with respect to treatment, evaluation, counseling, or control of the individual that the court considers necessary to protect the public safety and the welfare of the individual. The trial court may revoke an individual's conditional release and order placement in a more restrictive environment at any time the conditions of the release have not been satisfied. The revocation shall be in accordance with section [2945.402](#) of the Revised Code. The procedures described above under "Hospitalization of Persons on Conditional Release" should be followed.
7. The Forensic Monitor shall ensure that the community mental health treatment providers follow the Guidelines for Community Risk Assessment of Persons on Conditional Release. These guidelines recommend the completion of the initial risk assessment within thirty (30) days after the person has been on conditional release. After the initial risk assessment, an update should be completed at least every 180 days, or at any time when an incident occurs that raises concern about whether the person poses an increased risk of violence. (Please see Appendix M, Risk Assessment Guidelines for People on Conditional Release).