

# The Development and Implementation of Outpatient Competency Attainment/Restoration Programs

A Presentation at the 2015 Conference  
Contemporary Challenges in Forensic Mental Health

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## November 18, 2015

### Presenters

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- ▶ Carla S. Dreyer, Psy.D., Court Clinic Forensic Services (Cincinnati, OH)

### Panel

- ▶ Lisa Gordish, Psy.D., LICDC-CS, Twin Valley Behavioral Healthcare (Columbus, OH)
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## Objectives

- ▶ To develop an understanding of Competency to Stand Trial (CST)
- ▶ To understand the issues related to the appropriateness of Outpatient Competency Restoration (OCR)
- ▶ To learn about the potential types of OCR models
- ▶ To identify the process for development of an OCR program

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### Why do a training on this?

- ▶ Efficient and cost-effective models of restoration are available
- ▶ Promote efficient use of inpatient competency restoration beds
- ▶ Identify appropriate and least restrictive settings for restoration defendants with ID + SMI conditions
- ▶ Address the long-standing issues of balancing the needs of the defendant and those of the court

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### What is CST?

#### ◦ Ohio Law

- a defendant is considered incompetent to stand trial if “the court finds a preponderance of the evidence that, because of the defendant’s present mental condition, the defendant is incapable of understanding the objective of the proceedings against the defendant or of assisting in the defendant’s defense” (Ohio Revised Code § 2945.37)

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### Legal Incompetency *is not*

- Guaranteed due *solely* the presence of a Mental illness or Intellectual disability
- Predicated on the need for psychiatric treatment
- Directly related to criminal responsibility
- Determined by the Legal Examiner

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### Components of CST

- **Understanding**
  - factual understanding of legal system and process
- **Reasoning**
  - ability to assist counsel
  - ability to recognize relevance and evaluate legal alternatives
- **Appreciation**
  - capacity to appreciate legal situation, circumstances

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### Legal Process for CST

- Raising the question
- Judge orders CST evaluation
- Evaluation takes place
- Hearing re: CST takes place
- Establishing the Least Restrictive Setting for Restoration/Attainment
- Establishing Restored (or not)
  - May require a new objective evaluation

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### Restoration/Attainment Issues

- ▶ Inpatient v. outpatient
  - Issues considered include psychiatric stability, risk of violence, support resources, ongoing substance use or other destabilizing behaviors.
- ▶ Restorable v. non-restorable
  - Issues considered include severity of difficulties and amount of time allowed by law for restoration.

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### Intellectual Disability (ID)

- ▶ “If the defendant appears to be a mentally retarded person subject to institutionalization by court order, **the court shall order the defendant to undergo a separate mental retardation evaluation** conducted by a psychologist designated by the director of mental retardation and developmental disabilities. The psychologist appointed under this division to conduct the separate mental retardation evaluation shall file a written report with the court within thirty days after the entry of the court order requiring the separate mental retardation evaluation.” (Ohio Revised Code § 2945.371 (H))

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### ICST

Incompetent to Stand Trial

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### What happens if someone is ICST and Unrestorable?

- ▶ Dismissal
- ▶ Court may file affidavit for civil commitment with probate court
- ▶ Criminal Court retains jurisdiction (IST-U-CJ) when the *charges* are F1 & F2

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### What happens if someone is ICST and Restorable?

- ▶ The least restrictive setting
- ▶ Either inpatient or outpatient restoration is recommended
  - If inpatient, a recommendation of a state psychiatric hospital vs. developmental center is made (depending on the diagnoses/primary problems)
  - If outpatient, a recommendation is made for a viable site with an established competency restoration program

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### Outpatient Restoration Options

- ▶ Defendant referred to OCR from community (while on bond).
- ▶ Released from state hospital after being psychiatrically stabilized to begin OCR.
- ▶ Jail/Prison\* OCR is somewhat controversial, but possible.

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### Why *Outpatient* Competency Restoration?

- ▶ Least Restrictive Setting
- ▶ Cost of Inpatient Bed Days
- ▶ Decrease Wait List for State Hospital Beds
- ▶ Minimizes ID clients going to SMI facilities
- ▶ Avoids disruption of client-connected community based services

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### Who is appropriate for outpatient competency restoration?

- ▶ Risk Factors\*
  - Potential for violence
  - Presence or absence of active substance use or abuse
  - Potential for recidivism
- ▶ Psychiatric Stability
- ▶ Previous treatment compliance
- ▶ Accessibility to services
- ▶ Funding Restrictions

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### Issues addressed in outpatient restoration

- ▶ Psycho-legal education
- ▶ Psychiatric and Emotional symptom management
- ▶ Communication skills
- ▶ Decision making

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### Models of OCR Clinics

- ▶ FESC and Central Clinic/Court Clinic
  - Individual
  - Group
- ▶ TVBH
  - Transitional – hospital-based
- ▶ Prison-based programs

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### Process for Creating an OCR Program

- ▶ Identify funding streams
- ▶ Collaboration with Courts, Forensic Monitor, State Hospital and local psychiatric service providers
- ▶ Development of Curriculum, materials and media
- ▶ Establish accessible location
- ▶ Identify and train staff
- ▶ Establish reporting procedures
- ▶ Develop data tracking mechanism

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### Challenges to Outpatient Competency Restoration

- ▶ Funding
- ▶ The **decompensating defendant** (and discuss how court is notified of need for change in least restrictive setting)
- ▶ The **uncooperative defendant or their family or treatment providers** (i.e., don't bring them to appointments, do not communicate with restoration staff)
- ▶ Managing referral frequency

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### Case Examples

- ▶ 23-year-old man with a TBI, living in supported housing, working in a supported workshop, receiving SSI. Accused of CCW.
- ▶ 68-year-old man with early dementia. Living with adult son, receiving medical services for liver failure. Accused of sexual offenses from 20 years prior.
- ▶ 21-year-old female living with her partner, 8 months pregnant, mildly intellectually disabled (IQ 58; AF = 69), receiving SSI and subsidized housing. Not connected to DD services. Accused of DV (misdemeanor).
- ▶ 35-year-old man with Autism living in a group home with multiple agencies providing services. Charged with Assault (Felony 3) No history of restoration.
- ▶ 32 year-old man with Asperger's Disorder living with family, connected to supportive services. Charged with sex offenses (F1 & 2).
- ▶ 45 year-old man with Major Depression with Psychosis living with family, not connected to mental health treatment. Charged with DV (misdemeanor).

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