

# Forensic Focus Conference 2011

New Directions in Forensic Mental Health

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# New Directions in Forensic Mental Health

- Funding Changes
- Legislative Changes
- Increased Inpatient Efficiencies
- New Training in Forensic Issues
- Diversion strategies
- Increased Interagency Collaboration
- New Juvenile Competency Law

# Forensic Strategies Workgroup

- A number of these new initiatives are based on the work of the ***Forensic Strategies Workgroup***, whose report was issued in January 2010.
- Report is available on the ODMH website:  
[www.mh.state.oh.us](http://www.mh.state.oh.us)
- Implementation work began in 2010 and is continuing.

# Funding

- One result was a change in the funding of inpatient and community mental health care.
- Line item 408 no longer exists.
- Inpatient care is now funded in line item 412 .
- Separation of inpatient funds from community funds allows for flexibility in the use of 412 funds for ***innovative forensic programs***, when the opportunity exists.

# Legislative Changes

- One of several legislative changes deals with the commitment language of people in the following forensic legal statuses:
  - Incompetent to Stand Trial-Restorable (IST-R)
  - Incompetent to Stand Trial-Unrestorable-Criminal Court Jurisdiction (IST-U-CJ)
  - Not Guilty by Reason of Insanity (NGRI)
- Previously the court commitment was to a *hospital* operated by ODMH

# Legislative Changes

- Now, the commitment is to the ***Department of Mental Health***, (if the person needs inpatient treatment for mental illness), with placement in a hospital, facility or agency as determined to be clinically appropriate by ODMH.
- Other commitment alternatives are still available as in previous law (with changes made in pending corrections bill).
- No changes to DODD commitment language
- No changes in current placement practices; the court should still specify the name of the hospital in the commitment entry.

# Legislative Changes

- Provides the department with flexibility concerning the *level of care* needed by patients.
- The *level of security* will still be determined by the court.
- Movement levels beyond Level 3 still require court approval.
- When funding is available, this legislative flexibility will allow ODMH to place individuals in a secure setting with a level of care appropriate to their needs.

# Increased Inpatient Efficiencies

- *Forensic Strategy #7*: Recommended that ODMH, with input from ADAMH/CMH boards and community providers, review and revise its internal forensic processes with the goal of accomplishing the process steps more efficiently, within community safety and risk considerations.
- Two lines of work developed:
  - Forensic Utilization Management Plan
  - Regional Forensic Trainings

# Increased Inpatient Efficiencies

- Inpatient Forensic Processes Reviewed
- Variation in Hospital Practices
- Some Excellent Administrative and Utilization Practices
- Adoption of these Best Practices should:
  - reduce variation among hospitals
  - result in increased system-wide efficiencies
  - improve access to hospitals
- Developed a Forensic Utilization Plan

# Increased Inpatient Efficiencies

Some of the best practices identified in UM Plan:

- Designated ***Senior Clinician*** that oversees inpatient forensic processes
- ***Patient Movement Matrix***: monitor NGRI, IST-U-CJ and IST-U Probate patients to identify reasons for lack of patient movement
- ***Court Report Matrix***: monitor court reports to ensure that they are completed and submitted as soon as possible
- Review data and maintain ***regular communication*** with Boards and Providers

# Increased Inpatient Efficiencies

- The Forensic Utilization Plan was adopted by the newly created **Access** group that is among several groups working on the Hospital System of Care Strategic Plan.
- The practices identified in the UM Plan have been incorporated into the Access Group's strategy including the Senior Clinician, the standardized Discharge Matrix and the Legal Assurance Monitoring matrix.
- Training beginning in 2011 and implementation of various steps throughout 2012

# Regional Forensic Trainings

- Strategy #7 also called for obtaining feedback from the ADAMHS/CMH Boards and Providers.
- As a result of meeting with Board and Provider representatives, the need for training in forensic issues became apparent.
- Thus, planning for six hospital-based regional trainings began.

# Regional Forensic Trainings

- Co-Sponsored by OACBHA, Ohio Council of Behavioral Health Care Authorities, & ODMH
- Possibly adding the Ohio Judicial Conference as another sponsor
- Designed for board, provider and court staff
- Focus on the roles of boards, judges, providers, hospitals, forensic centers and forensic monitors
- Transition from hospital to community
- Risk management tools, roles, and responsibilities

# Diversion Strategies

- Nonviolent misdemeanants who are not competent to stand trial (Forensic Strategy #2)
- Intervention in Lieu of Conviction (HB 86)

# Diversion of People Charged with Misdemeanors

- Forensic Strategies Workgroup discovered that hospital resources are being devoted to people who are charged with misdemeanors, found incompetent to stand trial (IST-R) and committed to the hospital for competency restoration.
- Also found that at least half of them have the charges dismissed after being restored.

# Diversion of People Charged with Misdemeanors

- Apparently, the primary goal for these admissions was to provide treatment and stabilization.
- Significant resources are used to restore someone to competency *in addition to* the resources needed for treatment and stabilization.
- Began to explore diversion options

# Diversion of People Charged with Misdemeanors

- Outpatient restoration is an option that has been in existence for years
- Programs in existence:
  - Columbus (11-12 referrals per year)
  - Youngstown (3 per year)
  - Akron (3-4 per year)
  - Ashtabula, Trumbull & Columbiana Counties (1-2 per year)
  - Cincinnati (2 programs: one has 5-10 per year; the other 2-3/year)

# Diversion of People Charged with Misdemeanors

- Cleveland had such a program (5 to 10 referrals a year) but it was not cost effective; thus, it was discontinued.
- Outpatient competency restoration works best for people who
  - are at a low risk of violence,
  - have transportation,
  - have a stable living situation and support system,
  - are already receiving mental health or mental retardation services.

# Diversion of People Charged with Misdemeanors

- “Hybrid” Competency Restoration program
- At the state hospital in Cincinnati, the restoration process begins in the hospital.
- If the person is clinically appropriate, agrees to comply with program requirements, and “passes” a background check performed by Pre-Trial Services (e.g., history of violence), then the hospital requests that the Court amend the order to allow restoration to continue on an outpatient basis.
- Average about 4 to 8 per year

# Diversion of People Charged with Misdemeanors

- Other options include:
  - Dismiss the charges and divert the person from the justice system to probate court with civil commitment to a hospital
  - Dismiss the charges and refer the person to outpatient mental health services or habilitation services for someone with an intellectual disability
  - Hold charges in abeyance during which time the person engages in outpatient services. If successful, then charges could be dismissed.
  - New legislation was included in HB 153 to provide some structure for these options to occur.

# Diversion of People Charged with Nonviolent Misdemeanors

- ORC 2945.371 (G)(3)(e) If the defendant is charged with a misdemeanor offense that is not an offense of violence and 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 is presently mentally ill or mentally retarded, the examiner's recommendation for either restoration to competency treatment ***or other services in lieu of competency restoration treatment.***

# Diversion of People Charged with Nonviolent Misdemeanors

- New language requires a forensic examiner who is offering an opinion about competence to stand trial to offer a recommendation as to whether the person would be appropriate for other services instead of the usual competence restoration services.
- If no other appropriate services exist in that particular community for this particular individual, then the usual restoration treatment would be provided.
- The diversion could be to probate court (charges dismissed) or to outpatient treatment, with or without the charges being dismissed.

# Diversion of People Charged with Nonviolent Misdemeanors

- Other new statutory language:
- ORC 2945.38 (B)(1)(d) If the defendant is charged with a misdemeanor offense that is not an offense of violence, the prosecutor may hold the charges in abeyance while the defendant engages in mental health treatment or mental retardation services.
- This does not represent a new option, but it makes an existing option more explicit.

# Intervention in Lieu of Conviction

- R.C. 2951.041 (HB 86 effective 9/30/11)
- An expansion of the previous statute
- **Previous law** allowed a person to request, and the court to grant, intervention in lieu of conviction if “drug or alcohol usage by the offender was a factor leading to the offender’s criminal behavior” (2951.041[A][1]).
- **New law** adds, “at the time of committing the offense, the offender had a mental illness or was a person with an intellectual disability” and that the MI or ID “was a factor leading to the offender’s criminal behavior.”

# Intervention in Lieu of Conviction

- The court may reject the request without a hearing.
- If the court elects to consider the request, the court shall:
  - conduct a **hearing** to determine the offender's eligibility,
  - **stay** all criminal proceedings,
  - order an **assessment** for the purpose of determining eligibility and recommending an appropriate intervention plan.

# Intervention in Lieu of Conviction

- A number of exclusions or conditions apply
- Offender is eligible if:
  - not been convicted of or pleaded guilty to a felony offense of violence or any felony that is not an offense of violence
  - prosecuting attorney recommends that the offender be found eligible
  - has not previously been through a similar program
  - is not currently charged with F1, F2, or F3, an offense of violence, and a number of other charges

# Intervention in Lieu of Conviction

- Some Other Conditions (see statute for all conditions)
  - Intervention in Lieu of conviction would not demean the seriousness of the offense
  - Would substantially reduce the likelihood of any future criminal activity,
  - Victim of the current offense is not 65 years old or older, permanently and totally disabled, under 13 years of age, or a peace officer engaged in official duties at the time of offense,
  - Offender is willing to comply with terms and conditions imposed by the court.

# Intervention in Lieu of Conviction

- If offender alleges that ***drug or alcohol usage*** was a factor leading to the offense, the assessment shall be performed at a program certified pursuant to R.C. 3793.06 or by a properly credentialed professional.
- If offender alleges that ***mental illness or intellectual disability*** was a factor leading to the offense, the assessment shall be performed by a psychiatrist, psychologist, independent social worker, or professional clinical counselor.
- Assessment shall include a recommendation for an ***appropriate intervention plan***.

# Intervention in Lieu of Conviction

- If the court grants the request:
  - The offender shall plead guilty and the court may stay all criminal proceedings and order the offender to comply with all terms and conditions imposed by the court.
  - Offender shall be placed under supervision of county probation or adult parole authority or another appropriate local agency.

# Intervention in Lieu of Conviction

- Court shall establish an intervention plan, that shall require abstention from using drugs and alcohol, to participate in treatment and recovery support services, and to submit to regular random testing for *illegal* drug and alcohol use, and possibly other conditions (such as community service or restitution), for at least one year.
- If the offender successfully completes the program, the court shall dismiss the proceedings
- No adjudication of guilt; court may order sealing of records.

# Intervention in Lieu of Conviction

- If the offender fails to comply with any term or condition in the intervention plan, the supervising authority shall advise the court.
- Court shall hold a hearing and if the court determines that the person has failed to comply, it shall enter a finding of guilty and shall impose an appropriate sanction.

# Intervention in Lieu of Conviction

- Implications of the changes for people with mental illness or intellectual disability:
  - Payment for the assessments and services
  - Making a determination of the role of MI or ID in the commission of an offense
  - Who will be diverted?
  - Fewer convictions?
  - Fewer hospitalizations?
  - More people in outpatient treatment?

# Interagency Collaboration

- Forensic Strategy 3.1: Recommended that a special task force of ODMH and DODD and other stakeholder representatives be convened to develop collaborative approaches to funding, service delivery and possible court processes for that group of individuals who have traditionally not received services or have been historically underserved.
- A task force met from March to October 2011
- Produced a draft revision of an Interagency Agreement that is being reviewed

# Interagency Collaboration

- Revised agreement seeks to include more provisions related to people with a dual diagnosis (MI-ID) who also have a forensic legal status
- Addresses cross training of Forensic Monitors
- Introduces a “dispute resolution process”
- Seeks to increase information sharing so that court evaluations can occur more quickly

# Juvenile Competency to Stand Trial

- HB 86, Sec. 2152.51 (A)(1) (effective 9/30/11)
- Definition: “competent and competency refer to a child’s ability to understand the nature and objectives of a proceeding against the child and to assist in the child’s defense.”
- “A child is incompetent if, due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity, the child is presently incapable of understanding the nature and objective of proceedings against the child or of assisting in the child’s defense.”

# Juvenile Competency to Stand Trial

- R.C. 2152.52 (A)
  - Any party or the court may raise the issue
  - For a child who is 14 years of age or older and who is not mentally ill, intellectually disabled or developmentally disabled, “it is rebuttably presumed that the child does not have a lack of mental capacity.”

# Juvenile Competency to Stand Trial

- Court may find a child incompetent without an evaluation if:
  - The prosecutor, the defense attorney and at least one parent agree
  - The court relies on a prior finding of IST and could not attain competency
- Court may decide to have an evaluation conducted with or without a hearing

# Juvenile Competency to Stand Trial

- R.C. 2152.54 (A) Evaluators; Qualifications
- If the child ***does not appear*** to be “***moderately intellectually disabled***,” then the evaluation shall be conducted by:
  - “a professional employed by a psychiatric facility or center certified by the department of mental health to provide forensic services and appointed by the director of the facility or center to conduct the evaluation;
  - “a psychiatrist or a licensed clinical psychologist who satisfies the criteria of division (I)(1) of section 5122.01 of the Revised Code and has specialized education, training, or experience in forensic evaluations of children or adolescents.”

# Juvenile Competency to Stand Trial

- R.C. 2152.54 (B) Qualifications of Evaluators
  - “An evaluation of a child who ***appears to the court*** to be a person who is ***at least moderately intellectually disabled*** shall be made by a psychiatrist or licensed clinical psychologist who satisfies the criteria of division (I)(1) of section 5122.01 of the Revised Code and has specialized education, training, or experience in forensic evaluations of children or adolescents who have intellectual disability.”

# Juvenile Competency to Stand Trial

- R.C. 2152.54 (C)
- If an evaluator begins the evaluation of a person who does not appear to be moderately intellectually disabled and then concludes that the child is moderately intellectually disabled, he or she will discontinue the evaluation and notify the court.

# Juvenile Competency to Stand Trial

- R.C. 2152.56 (A): Competency Assessment Report
- The report shall include opinion “as to whether the child due to mental illness, intellectual disability, or developmental disability, or otherwise due to a lack of mental capacity is presently incapable of understanding the nature and objective of the proceedings against the child or of assisting in the child’s defense.”
- The report shall not address sanity, details of the alleged offense as reported by the child, or an opinion as to whether the child committed the offense or could have been culpable for committing the offense.

# Juvenile Competency to Stand Trial

- R.C. 2152.56 (B)
- The report shall address the child's capacity to:
  - Comprehend and appreciate the charges;
  - Understand the adversarial nature of the proceedings, including the role of the judge, defense counsel, prosecuting attorney, guardian ad litem or court-appointed special assistant, and witnesses;
  - Assist in the child's defense and communicate with counsel;
  - Comprehend and appreciate the consequences that may result.

# Juvenile Competency to Stand Trial

- R.C. 2152.56 (B)
- Also shall include opinion regarding the extent to which competency is impaired by the above criteria and recommendations for reasonable accommodations if such would enable the child to become competent.

# Juvenile Competency to Stand Trial

- R.C. 2152.56 (D) Competency Assessment Report
- If opinion is incompetent but attainable within time limits, the evaluator shall include:
  - a recommendation as to the least restrictive setting for attainment services consistent with child's ability and with the safety of the child and community
  - "A list of providers of child competency attainment services ***known to the evaluator*** that are located most closely to the child's current residence."

# Juvenile Competency to Stand Trial

- R.C. 2152.57 (A)
  - Report is due as soon as possible but no later than 45 days after the court order, with one extension of reasonable length allowed.
  - Up to three reports may be ordered.

# Juvenile Competency to Stand Trial

- R.C. 2152.59 Procedures
- If not competent and unattainable—charges are dismissed and shall:
  - Refer to a public children service agency and request that agency determine whether to file an action alleging the child is a dependent, neglected or abused child;
  - Assign court staff to refer the child/child's family to the local family and children first council or an agency funded by ODMH or DODD or otherwise secure services to reduce the potential of a recurrence of the behavior.

# Juvenile Competency to Stand Trial

- R.C. 2152.59 Procedures
- If not competent but attainable with services, the court may order the child to participate in services specifically designed to help the child develop competency at court expense. The court shall name a reliable provider to deliver the services.

# Juvenile Competency to Stand Trial

- R.C. 2152.59 Time Limits for Attainment Services
  - Outside of a Residential Setting (if ordered to participate in competency attainment services):
    - 3 months for equivalent of a misdemeanor
    - 6 months for F3, F4, or F5 equivalent
    - 12 months for F1, F2, or murder/agg murder equivalent

# Juvenile Competency to Stand Trial

- R.C. 2152.59 Time Limits for Attainment Services
  - In a Residential Setting (if ordered to participate in competency attainment services):
    - 45 calendar days for misdemeanor equivalent
    - 3 months for F3, F4, F5 equivalent
    - 6 months for F1, F2, or murder/agg murder equivalent

# Juvenile Competency to Stand Trial

- R.C. 2152.59 Time Limits for Attainment Services
- If ordered into a residential, detention or other secured setting for reasons other than competency attainment services, but also ordered to participate in attainment services concurrently, then:
  - 3 months for equivalent of a misdemeanor
  - 6 months for F3, F4, or F5 equivalent
  - 12 months for F1, F2, or murder/agg murder equivalent

# Juvenile Competency to Stand Trial

- The provider that is named by the court to provide attainment services shall submit to the court a plan for the child to attain competency
- Provider provides regular reports to the court
- Court may change the setting if necessary or end services if it is clear that the child will not attain competency.

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