

Regional Forensic Trainings—2013

Pathways to Conditional Release: An Overview of the Forensic Mental Health System

Robert N. Baker, PhD

Assistant Chief

Office of Forensic Services, ODMH

Objectives

- Provide an overview of the forensic system that involves people with mental illnesses and/or intellectual disabilities
- Describe the psycho-legal issues within the system
- Outline the steps patients take toward conditional release
- Review outcome data of the Forensic Tracking and Monitoring System

Forensic Legal Statuses

- ***Competency to Stand Trial Evaluation (CST)*** R.C. 2945.371 (G)(3)
- ***Sanity Evaluation (NGRI)*** (Criminal Responsibility or Mental Condition at the time of the Offense)
R.C. 2945.371 (G)(4)

Forensic Legal Statuses

- ***Competency and Sanity Evaluations***
 - These evaluations are almost always conducted by the Community Forensic Psychiatry Centers (Common Pleas Courts)
 - Rarely, these evaluations are conducted in ODMH Regional Psychiatric Hospitals

Community Forensic Psychiatry Centers

- **Ten Centers:** Columbus, Cincinnati, Cleveland, Akron, Toledo, Dayton, Youngstown, Byesville, Hamilton, & Mansfield
- ODMH funded
- CST, NGRI, and Nonsecured Status evaluations for Common Pleas Courts and for ODMH hospitals.

Competency Evaluation

- **Competency to Stand Trial, R.C. 2945.37(G):**
- “If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant’s **present mental condition***, the defendant is **incapable of understanding the nature and objective of the proceedings . . . or of assisting in the defendant’s defense**, the court shall find the defendant incompetent to stand trial”
- *(see R.C. 2945.371-G: i.e., mental illness or “mental retardation”/intellectual disability)

Competency Evaluation

- Present mental condition:
 - Mental Illness, or
 - Intellectual Disability (“Mental Retardation”)
- Incapable of understanding:
 - The nature and objective of the proceedings, or of
 - Assisting in one’s defense
- Incapable?

Competency Evaluation

- If opinion is: ***not competent to stand trial***, then the examiner offers an opinion about:
 - Restorability to competence (within 1 year)
 - Least Restrictive Commitment Alternative in which restoration treatment will occur

Competency Evaluation

- If opinion is: ***not competent to stand trial***, then also need an opinion about:
 - Whether the defendant is mentally ill or mentally retarded, and if mentally retarded, whether the defendant “appears to be a ***mentally retarded person subject to institutionalization***” (R.C. 2945.371-G)

Competency Evaluation

- If the examiner opines that the defendant appears to be a mentally retarded person subject to institutionalization by court order, then “the court shall order the defendant to ***undergo a separate mental retardation evaluation*** conducted by a psychologist designated by the director of developmental disabilities” (2945.371 [H])

Competency Evaluation

- For the separate mental retardation evaluation, contact ***Vicki Jenkins***, Associate General Counsel
- Department of Developmental Disabilities
- 614-466-5855

Competency Restoration

- If a person is not Competent to Stand Trial but restorable (*IST-R*), then **Competency Restoration** occurs. R.C. 2945.38 (B)
- Usually this treatment occurs within an ODMH Regional Psychiatric Hospital.

Competency Restoration

- Occasionally Competency restoration occurs:
 - outpatient basis at a community mental health center or program,
 - in an institution operated by DODD.

Competency Restoration

- ***Incompetent to Stand Trial-Unrestorable (IST-U)***
 - Some individuals cannot be restored to competency within the time frame allowed by statute; R.C. 2945.38 (C)
 - Time frame for Restoration:
 - 1 Year: violent 1st & 2nd second degree felonies and murder.
 - 6 months: all other felonies
 - 60 days: M1 and M2
 - 30 days: M3, M4 and MM

Unrestorable to Competency

Those who are found **unrestorable** to competency (**IST-U**) fall into 2 categories

1. Those charged with violent first or second degree felonies or murder; R.C. 2945.38 (C), 2945.39 (A);
2. Those charged with any other offense.

These two groups **follow different paths.**

Unrestorable to Competency

- First Group: Those charged with a violent first or second degree felonies or murder
- May be held under the ***jurisdiction of the trial court***
- Court must hold a hearing pursuant to R.C. 2945.39 (A) to maintain this jurisdiction

Unrestorable to Competency

- “The court may retain jurisdiction over the defendant if . . . the court finds both of the following by **clear and convincing evidence**:
 - (a) The defendant **committed the offense** with which the defendant is charged.
 - (b) The defendant is a **mentally ill person** subject to hospitalization by court order or a **mentally retarded person** subject to institutionalization by court order.”

Unrestorable to Competency

- Designated ***IST-U-CJ*** (Incompetent to Stand Trial-Unrestorable-Criminal Court Jurisdiction)
- Eligible for ***conditional release***.
- ***Maximum length of commitment*** is the amount of time that the person could have served if he or she was convicted of the most serious offense charged.

Unrestorable to Competency

- Second Group: charged with offenses that are not violent first or second degree felonies or murder, or those who are not found IST-U-CJ.
- Charges are dismissed and an affidavit may be filed in **Probate Court**; R.C. 2945.38(H)(4).

Unrestorable to Competency

- Typically people found unrestorable under Probate Court jurisdiction remain in the Regional Psychiatric Hospital for treatment until a hospital level of care is no longer needed.
- ***IST-U*** or ***IST-U-PJ*** (Incompetent to Stand Trial-Unrestorable-Probate Court jurisdiction)

Plea of Not Guilty by Reason of Insanity

- Individuals who are competent to stand trial may plead ***Not Guilty by Reason of Insanity*** (R.C. 2945.40).
- An evaluation(s) of the person's mental condition at the time of the alleged offense is conducted (usually by Forensic Center).

Sanity Evaluation

- **R.C. 2901.01(A)(14):**
- “A person is ‘not guilty by reason of insanity’ relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the **time of the commission of the offense**, the person **did not know, as a result of a severe mental disease or defect, the wrongfulness of the person’s acts.**”

Mental Disease and Defect

- **Not Defined in Statute**
 - Intentionally vague?
- **Mental Disease**
 - Usually interpreted to mean a serious mental illness, the symptoms of which can be reduced with treatment
- **Mental Defect**
 - Usually interpreted to mean an intellectual disability or brain damage
 - Treatment typically does not improve “mental defects”

Forensic Legal Statuses

- The court may find the person to be **NGRI**.
- People found NGRI are eligible for **conditional release**.
- **Maximum commitment time**: the amount of time that the person could have served if he or she was convicted of the most serious offense charged (same as IST-U-CJ)

Forensic Legal Statuses

- After a finding of NGRI, then the court must decide if the person is “**a mentally ill person** subject to hospitalization by court order” or “**a mentally retarded person** subject to institutionalization by court order.”
- If so, then the court decides on the **least restrictive commitment alternative** consistent with public safety and the welfare of the person.

Forensic Legal Statuses

- After a finding of NGRI, most people are committed to **Regional Psychiatric Hospital** operated by ODMH
- Some are committed directly to conditional release.
- Some are committed to an institution operated by DODD

Forensic Legal Statuses

- Treatment in the hospital involves progression towards increasing privilege levels, or “**movement levels.**”
- At each movement level a violence risk assessment is conducted.
- The **trial court must approve** each increased movement level above Level 2.

Forensic Legal Statuses

- ***Movement levels:***
- 1: On Unit, Restricted
- 2: Off Residential Unit, Supervised
- 3: On Grounds, Unsupervised
- 4: Off Grounds, Supervised
- 5: Off Grounds, Unsupervised; Trial Visit; Conditional Release (Nonsecured Status)

Forensic Legal Statuses

- Treatment is focused on reducing violence risk and preparing people for life in the community.
- When **Nonsecured Status** (including **Conditional Release**) is being considered, the Forensic Center conducts an independent evaluation, per statute: R.C. 2945.401(D)(1)(b).

Forensic Legal Statuses

- **Conditional Release;** R.C. 2945.402
- “In approving a conditional release, the ***trial court may set any conditions*** on the release with respect to the treatment, evaluation, counseling, or control of the defendant or person that the court considers necessary to protect the public safety and the welfare of the defendant or person.”

Forensic Legal Statuses

- **Conditional Release**, continued;
- “A person, agency, or facility that is assigned to monitor a defendant or person on conditional release ***immediately shall notify the trial court*** on learning that the defendant or person being monitored has violated the terms of the conditional release.”

Forensic Legal Statuses

- **Conditional Release**, continued“
- “Upon learning of any violation of the terms of the conditional release, the trial court may issue a **temporary order of detention** or, if necessary, an **arrest warrant** for the defendant or person.”

Forensic Tracking and Monitoring System

- Centralized Monitoring System began in 1997 with passage of SB 285 (R.C. 5119.57)
- This statute called for a coordinated system for tracking and monitoring people who have been found **NGRI** or **IST-U-CJ** and who have been granted a **conditional release** by the trial court.

Forensic Tracking and Monitoring System

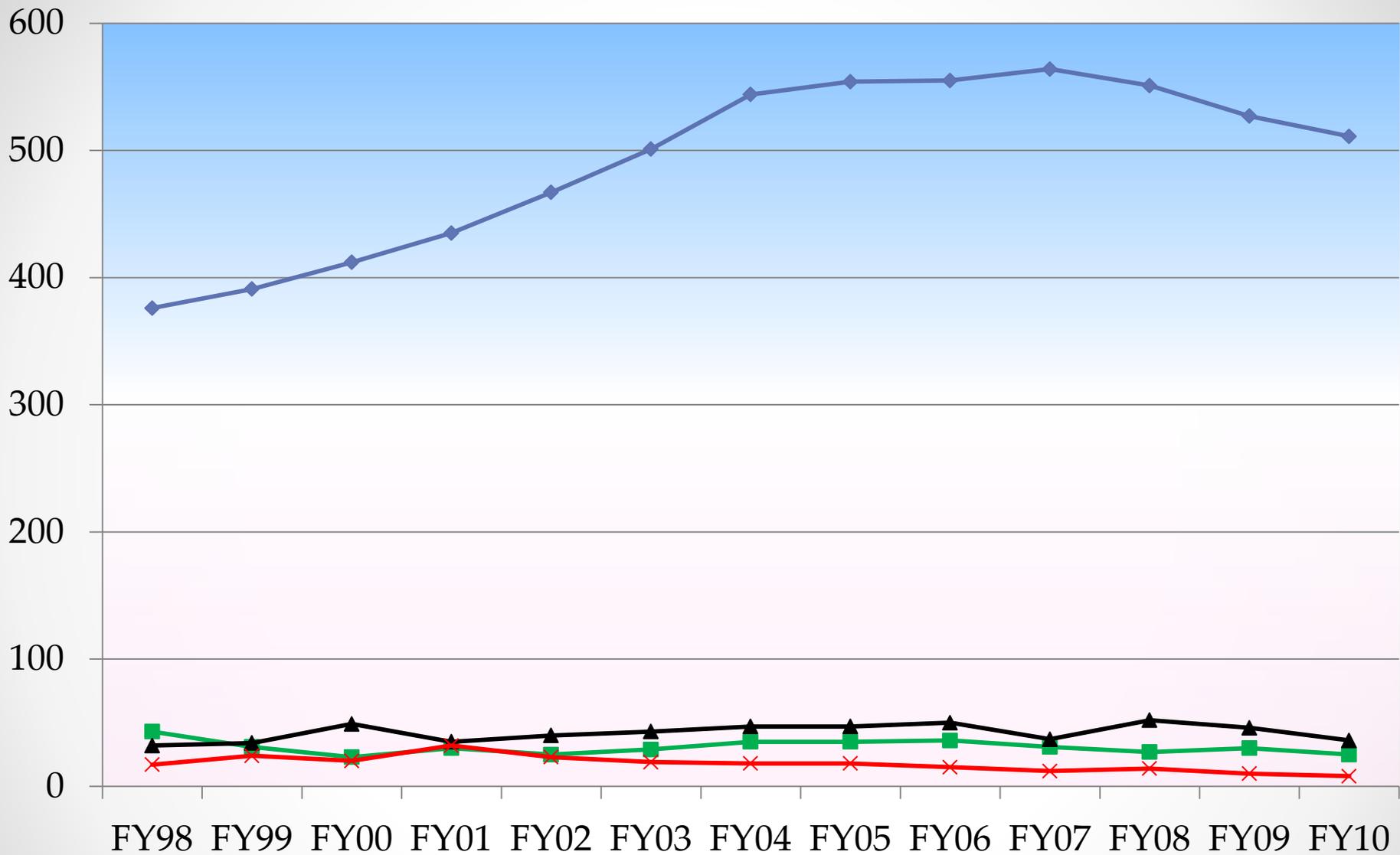
- Local programs for monitoring people on Conditional Release have existed for many years.
- Statewide system of Forensic Monitors was established in 1997.

Forensic Tracking and Monitoring System

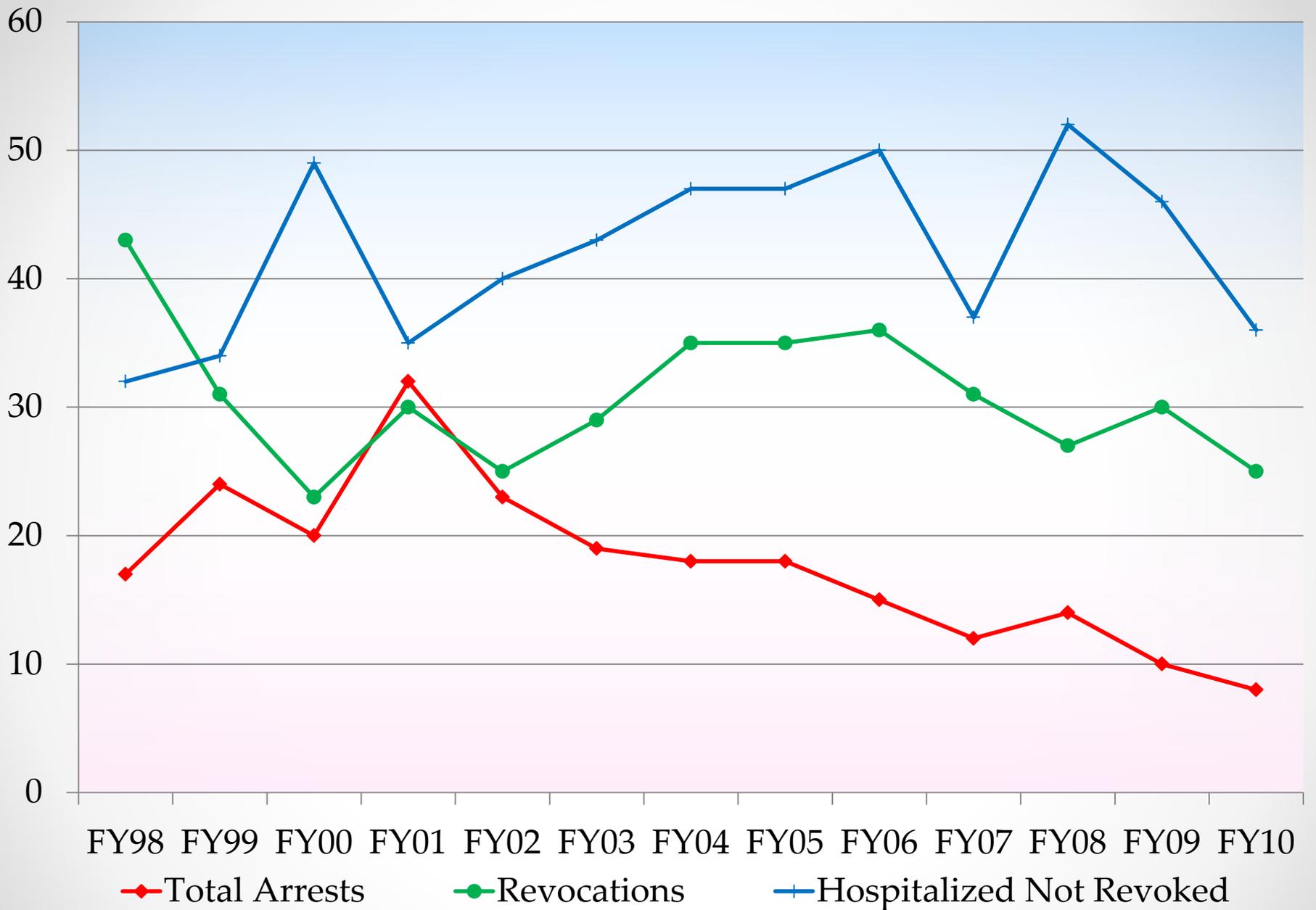
- Forensic Monitors report data to ODMH concerning the people on Conditional Release (CR).
- We track a number of data elements, only a few of which will be presented here:

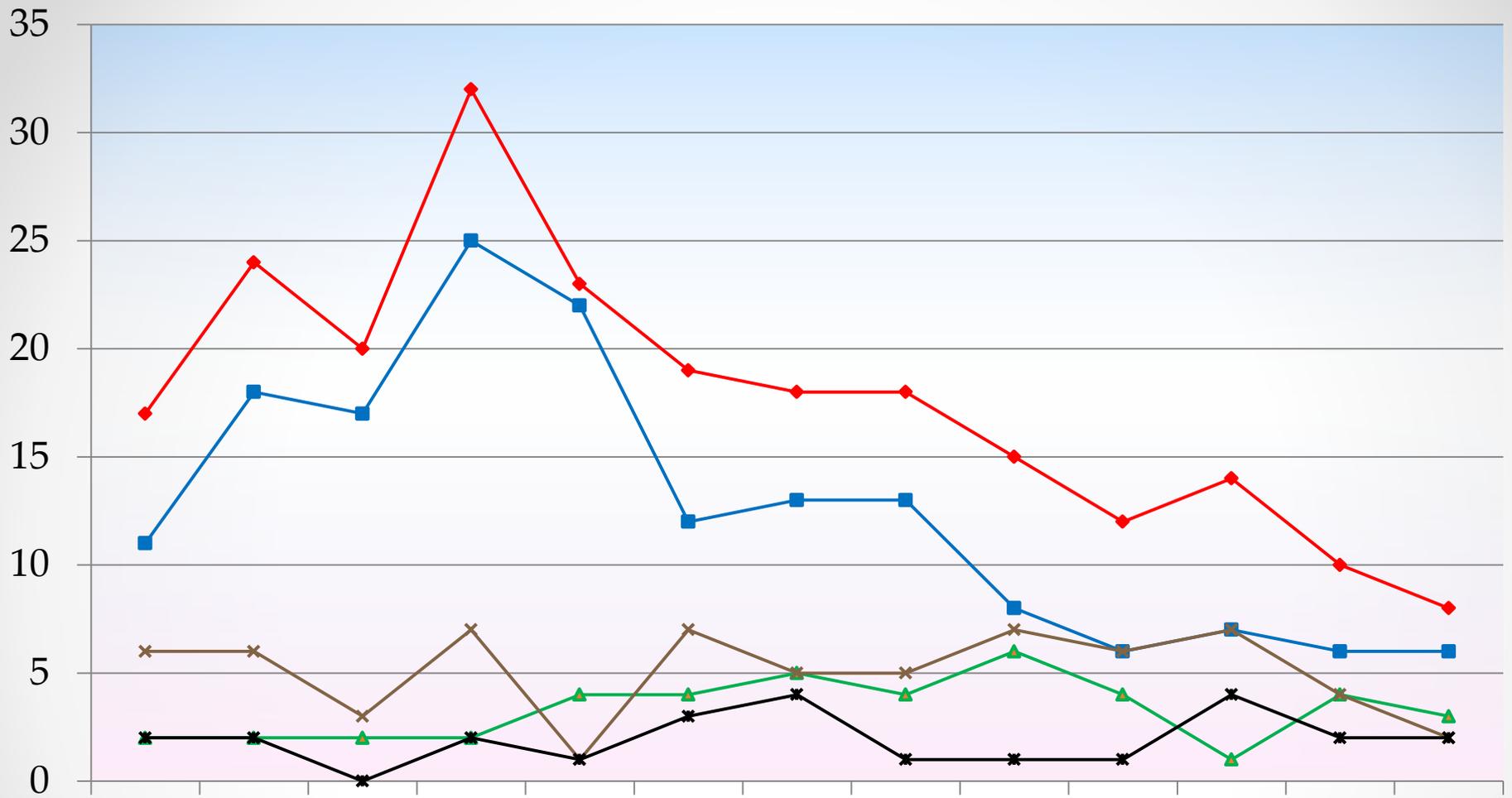
Forensic Tracking and Monitoring System

- Number of People on Conditional Release
- Hospitalizations (without revocation of CR legal status)
- Revocations
- Arrests and Convictions (misdemeanors and felonies)



◆ Total on CR ■ Revocations ▲ Hospitalized Not Revoked × Total Arrests





FY98 FY99 FY00 FY01 FY02 FY03 FY04 FY05 FY06 FY07 FY08 FY09 FY10

- ◆ Total Arrests
- ▲ Misdemeanor Convictions
- * Felony Convictions
- Misdemeanor Arrests
- × Felony Arrests

Contact Information

Robert N. Baker, PhD

Assistant Chief,

Office of Forensic Services, ODMH

30 East Broad Street, 8th Floor

Columbus, OH 43215

614-644-6996

Bob.Baker@mh.ohio.gov