

12/3/13 DRAFT

PROPOSAL FOR A SUPERIOR COURT MENTAL HEALTH DEFERRED PROSECUTION PROGRAM

I. Purpose

To use existing resources in a more cost-effective manner by diverting eligible seriously mentally ill (“SMI”) defendants from the traditional court setting to case managed programs. Upon successful completion of required programs and treatment, charges will be dismissed. Upon unsuccessful completion of required programs and treatment, charges will be reinstated.

II. Eligibility

The discretion to offer mental health diversion shall reside with the County Attorney’s Office (CAO) and, if the offense involves a victim, require victim notification pursuant to the Victim’s Bill of Rights and an agreement from the victim that he/she agrees to forego seeking restitution as part of the criminal case. Eligible Offenses are misdemeanors and Class 4, 5 and 6 felonies filed in the County Justice Courts or Superior Court that are committed by individuals who are being case-managed for serious mental illness at the time that mental health diversion is being offered. Case management services shall be provided by Magellan, the Division of Developmental Disabilities, the Arizona Long Term Care System, or a fully licensed private mental health care facility. Defendants will be disqualified from consideration if they do not fall within the scope of ARS §11-361.

III. Process

Resources currently being used to identify the Continuity of Care Calendar (“COC”) will form the primary basis for identifying potential defendants. The COC is created shortly after Initial Appearance and is comprised of individuals identified as SMI and/or otherwise in need of regular mental health treatment. Optimally, this information will be provided to the CAO and assigned defense counsel at least 2 days prior to a defendant’s next court appearance. In addition, assigned defense counsel can provide the CAO with relevant mental health information establishing a defendant’s need for ongoing mental health treatment and defendant’s current case manager.

If the CAO determines that a defendant should be offered Mental Health Diversion, defendant shall be required to waive his /her preliminary hearing and sign a Mental Health Diversion Contract and Consent to Participate, which will include (1) the defendant’s avowal that he/she is competent to agree to enter into diversion and suspend Rule 8 while the defendant seeks to successfully complete diversion; (2) defendant’s agreement to be placed on Pretrial Services Supervision as part of the Mental Health Diversion; (3) defendant’s agreement to the length of diversion; and (4) defendant’s agreement to attend status conferences, as scheduled, in the Comprehensive Mental Health Court as part of Mental Health Diversion. If the defendant is in custody but is not competent to sign the necessary diversion documents and all parties, the defendant’s behavioral health provider and the court agree that the defendant is an appropriate candidate for diversion and can be competent to make such a decision if defendant is compliant with prescribed medication for 30 days or less, the court should consider

continuing the matter for 30 days and releasing the defendant to defendant's behavioral health provider under a 3rd party release with pretrial monitoring for compliance with prescribed medication.

Upon receipt of all fully executed documents, the Court shall order the defendant into Mental Health Diversion pursuant to the terms of the Mental Health Diversion Contract, place the defendant on Pretrial Services Supervision, and set a status conference within 120 days. The court will further inform defendant that Pretrial Services will be sending any reports of noncompliance to the Comprehensive Mental Health Court, prosecution and defense counsel and that noncompliance may lead to the need for the defendant to attend review hearings in the Comprehensive Mental Health Court or reinstating the criminal case in the Criminal Court.

Status conferences shall occur every 120 days until the diversion aspect of the matter is resolved. Upon receiving from the provider notice of successful completion of diversion, Pretrial Services shall verify successful completion, provide notice to the Court, the prosecution and defense counsel and the case shall be dismissed with prejudice by the Court at or before the scheduled status conference. Upon unsuccessful completion of diversion, the case shall be taken off of the inactive calendar and the Court will set a pretrial conference for the defendant in the assigned trial court.