ARIZONA SUPREME COURT
TASK FORCE ON RULE 11

Final Report | October 2023

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SECTION I: INTRODUCTION

Created by Administrative Order 2022-45, the Task Force on Rule 11 (hereinafter Task Force) of the Arizona Rules of Criminal Procedure and Related Matters, known as the Rule 11 Task Force, began meeting in May of 2022 to develop a comprehensive approach to working with individuals who may not be competent to stand trial in a criminal misdemeanor case. The Task Force set out to develop evidence-based best practices as alternatives to current practices to improve restoration and treatment of those who suffer from a mental illness and find themselves involved with the criminal justice system.

Combined, the Task Force possesses over 400 years of experience in the legal, judicial, behavioral health, and advocacy fields, and many members have dedicated their careers to serving individuals and families who are living with mental health conditions.

Information on Task Force meetings and resources can be found on its website.

The remaining sections of this report include an executive summary, findings and recommendations, concluding statements, and an appendix which includes proposed best practices and statutory changes.

The Task Force wishes to thank all of the subject matter experts and key stakeholders who provided critical input to its work and who had a significant impact on these final findings and recommendations.

SECTION II: EXECUTIVE SUMMARY

The Arizona Judicial Branch is recognized as a nationwide leader in addressing individuals' mental health conditions and their impact on communities, the individuals themselves, and families who encounter the behavioral health and justice systems. In keeping with this leadership role, the Arizona Supreme Court issued Administrative Order 2022-45 which charged the Task Force on Rule 11 with studying and making recommendations as follows:

- Review the current practice of evaluation of competency and restoration to competency to stand trial in misdemeanor criminal cases to determine if the current Rule 11 process for handling cases should be changed or replaced.
- Determine if there are more effective alternatives to evaluating misdemeanor defendants who repeatedly fail to appear other than an in-custody evaluation process.
- Determine if there are alternative practices that should be considered to provide restoration or treatment when an individual is found not competent yet restorable.

The Task Force recognized the work of prior Supreme Court committees on the topic of mental health and the courts, particularly the Committee on Mental Health and the Justice System (AO 2018-71) which issued its final report on September 4, 2020. The Committee's findings and recommendations had a significant impact on policies and practices concerning the evaluation of competency to stand trial and restoration to competency. This includes Templates and Best Practices developed by Court Services, Appendix L, and Best Practices for Restoration to Competency, Appendix N. Some of the findings, recommendations and appendices of the Task Force directly reflect the work of this Committee.

As found previously in the work done by the Committee on Mental Health and the Justice System,[1] people living with a mental illness experience disproportionate contact with the criminal justice system - from law enforcement interactions to arrest, pre-trial detention, conviction, and incarceration. Research reveals that more than 25 percent of incarcerated inmates have a recent history of mental illness and require ongoing

While the number of individuals with a mental illness is evenly distributed across the general population (5.6% of all individuals have a serious mental illness*) we see significant variation of the number of evaluations across jurisdictions (FY 2019 numbers)

Justice Courts**	74 evaluations in 108,691 cases	.068%
Municipal Courts**	337 evaluations in 171,319 cases	.197%
Superior Court	2,278 evaluations in 42,627 cases	5.344%

*National Alliance on Mental Illness 2020 numbers
**If no AO allowing LJ Courts to Hear Rule 11, case is transferred to GJ Court

[1] https://www.azcourts.gov/Portals/74/MHJS/MHJSReport090420.pdf?ver=2020-09-04-152744-557

mental health services. [2] As many as 70 percent of youth in the juvenile justice system have been identified as living with at least one mental health condition and 20 percent experience a severe mental illness.

Judge Steven Leifman, Associate Administrative Judge of Miami-Dade County Court of Florida, reported to the Task Force that a study in the Miami-Dade Court in 2000, revealed the court was spending between one and two million dollars per defendant on psychological evaluations and other services.[3] He shared that the predominate outcome in these matters was a finding that the individual was incompetent, and the person was released back to the community without any mental health or other related services. In short there was no legal resolution to the underlying court case and there was no change or improvement to the individual's situation that may prevent or reduce interactions with the criminal justice system.[4]

In Arizona, the number of competency evaluations performed at the misdemeanor level are not proportionate to the number of individuals in the general population who have a serious mental illness. There are two possible reasons for this – either misdemeanor cases are being dismissed before a competency evaluation is ordered, or, more likely, persons charged with misdemeanors are being prosecuted without being evaluated to determine whether they are competent. This illustrates an understanding that the evaluation process is cumbersome, expensive, and not considered practical in working with defendants who are charged "only" with a misdemeanor.

In misdemeanor cases where a person is found incompetent but restorable after evaluation, the case is almost always dismissed without pursuing restoration. Although the reason for dismissal is not tracked in Arizona, local authorities informed the Task Force that dismissals were due to the unavailability of and high costs of restoration services, making the process impractical for misdemeanor cases. Unfortunately, this pattern resulted in many defendants reappearing repeatedly in the same courts with new charges shortly after the dismissal of a prior matter.

When mental health hospitals were eliminated decades ago as part of the deinstitutionalization of mental illness, the intent was that a corresponding increase in community-based access to care would be available to meet the need for treatment. The services to meet these needs never materialized. Instead, there was an increase in jail bookings of individuals with mental health issues who committed

Criminalization of mental illness

When mental health hospitals were eliminated, and funding for and access to appropriate care never ramped up accordingly, jail bookings of individuals with mental health concerns who committed low-level misdemeanors increased partly as a way for law enforcement officers to secure treatment for people who needed it.

By abandoning mental health hospitals, patients were simply transferred to **jails and prisons**, making them **de facto mental health facilities**. CITE???

[2] Arizona Department of Corrections. *Corrections at a Glance*.
[3] New study examines the nation's courts and mental illness – The Florida Bar
[4] Context of costs were focused on high-utilizers of the justice system and included system-wide costs.

low-level misdemeanors. Often these arrests and bookings were the only way law enforcement had to secure mental health treatment for those who needed it. Thus, the abandonment of mental health hospitals simply transferred patients to jails and prisons, making them de facto mental health facilities.

Alternative solutions that enable or enhance diversion from jails and prisons to suitable mental health treatment, including residential treatment, where individuals and their families can access the necessary treatment and support to stabilize and improves their lives. Those diversion pathways should be rooted in a treatment model versus merely raising the issue of competency in a criminal matter and relying on restoration services and possible incarceration. Moreover, these diversion pathways should be out-of-custody, out-patient models.[5] This can create new patterns for individuals who are living with a mental illness rather than cycling through the criminal justice system multiple times.

WE NEED TO FIND APPROPRIATE LIMITS TO THE RESORATION TO COMPETENCY PROCESS

The mental health of individuals involved in the justice system has a significant impact on public safety, community health, and wellness, as well as the short and long-term costs of the justice system. With the participation of the judicial branch, Arizona is well-positioned to develop a cross-system approach to significantly enhances outcomes for individuals in need of behavioral health services and support. Based on research and experiences the Task Force analyzed, it is recommended that competency restoration should be limited in misdemeanor cases. Competency restoration is a necessary and important part of the justice system, it should not be used as a stand-in for mental health services that are needed to address mental health issues that are significant contributors to criminal acts, in particular misdemeanor acts. Restoration programs were never about implementing punishment, rather they exist as a way to both protect the rights of the accused and allow, where possible, the carrying out of justice. What Arizona needs is a system that is about sending the right people to the right system while still fully protecting individual rights. The reality is most crimes committed by this population are moderate and do not occur with any more frequency than with those who do not have a mental illness.[6] Sometimes crimes can be horrific, thus a system is needed to address them. But when all offenders are treated the same the justice system ends up responding to those who have a minor violation in the same manner as those accused of a much more serious crime. If an individual is not looking at a long-term prison sentence, we recommend diversion or treatment. This will end up costing less money,

[5] *Reforming Competence Restoration Statutes: An Outpatient Model*

[6] "How Often and How Consistently do Symptoms Directly Precede Criminal Behavior Among Offenders With Mental Illness?"; Jillian Peterson, PhD, Normandale Community College; Patrick Kennealy, PhD, University of South Florida; Jennifer Skeem, PhD, University of California-Irvine; Beth Bray, BA, University of North Dakota; and Andrea Zvonkovic, BA, Columbia University; *Law and Human Behavior*, online April 15, 2014.

be more effective and improve public safety whereas competency restoration does not. While it is essential to ensure the competency of individuals accused of certain offenses to proceed with a trial, it is unnecessary for most cases. Moreover, there are more effective approaches to achieve better outcomes.

The Committee encourages the Arizona Judicial Council and AOC leadership to review all recommendations in detail (Section III: Findings and Recommendations), but emphasizes the following six recommendations, in no order, as immediate action items:

6 RECOMMENDATIONS

To reduce the use of evaluation and restoration of competency the Court should work to develop alternative assessment and diversion opportunities prior to a Rule 11 evaluation and restoration at the misdemeanor level.

Expand A.R.S. 13-4504, A.R.S. 13-4510, and Rule 11.5 to provide the option of limited civil oversight with assisted outpatient treatment of defendants following the dismissal of misdemeanor cases.

Consider developing a criminal mental health program with court oversight of assisted outpatient treatment for defendants charged with misdemeanor offenses.

Courts/Prosecutors should consider offering pre-plea diversion to defendants instead of putting them through Rule 11 evaluations. Dismissal of cases should be offered to those defendants who engage in treatment for an appropriate period of time and do not acquire new charges.

Modify Rule 6, Ariz. R. Crim. P., to allow the appointment of counsel, regardless of indigency, upon a reasonable belief that the defendant may have diminished or limited capacity and could benefit from the assistance of counsel.

A risk/needs behavioral health assessment tool should be utilized to assist the court in making a determination of the most appropriate path forward for a defendant including whether or not further evaluation should be performed.

SECTION III: FINDINGS AND RECOMMENDATIONS

Findings and recommendations presented here are based on the work of the Task Force, research, analysis, discussion, and stakeholder input.

Findings

- Jails in Arizona have emerged as the largest behavioral health facilities, with an estimated 70% of individuals involved in the criminal justice system having a behavioral health disorder.
- Restoration to Competency (RTC) is not ongoing clinical treatment. The goal of RTC is to restore an individual to the level of competency to be able to stand trial. It does not include ongoing treatment support for an individual's needs.
- Large numbers of individuals, including those charged with non-victim misdemeanors, spend excessive time in jail waiting for competency evaluations and restoration. They often spend more time incarcerated than they would have if they had been convicted of the crime of which they were accused.
- Individuals who have been perceived as having mental health conditions are more likely to be detained pretrial and stay longer in detention due to the lack of sufficient inpatient treatment and community-based outpatient treatment options.
- Individuals who are identified or perceived as not being competent to stand trial in misdemeanor cases are often incarcerated and then released when their case is dismissed due to a lack of resources available for restoration. In some jurisdictions, when these individuals are released, no treatment care options are coordinated and, consequently, they often return to the justice system.
- Arizona must address the unique needs and challenges its rural communities face in providing services and treatment for those with mental health conditions who encounter the justice system.
- Information sharing among the courts, within the justice system, and between the justice system and the behavioral health community is inadequate. This undermines opportunities to identify needs and target resources to meet those needs.

Recommendations

Due to the addition of three recommendations made by the Task Force since the submission of its initial report in October of 2022, the total number of recommendations is now 18. The previous recommendations stay the same except for rewording of recommendation 6.

1 To reduce the use of evaluation and restoration of competency the Court should work to develop alternative assessment and diversion opportunities prior to a Rule 11 evaluation and restoration at the misdemeanor level.

2 Expand A.R.S. 13-4504, A.R.S. 13-4510, and Rule 11.5 to provide the option of limited civil oversight with assisted outpatient treatment of defendants following the dismissal of misdemeanor cases.

3 Consider developing a criminal mental health program with court oversight of assisted outpatient treatment for defendants charged with misdemeanor offenses.

4 Courts/Prosecutors should consider offering pre-plea diversion to defendants instead of putting them through Rule 11 evaluations. Dismissal of cases should be offered to those defendants who engage in treatment for an appropriate period of time and do not acquire new charges.

5 Modify Rule 6, Ariz. R. Crim. P., to allow the appointment of counsel, regardless of indigency, upon a reasonable belief that the defendant may have diminished or limited capacity and could benefit from the assistance of counsel.

6 Assemble a team to review the complete physical and mental social determinants of health of defendants utilizing the Clinical Liaison position required by A.R.S. § 13-4501(1) or other similar positions, if available.

7 Create a statewide database to coordinate the sharing of information on competency evaluations and assessments. Enhance the court's ability to exercise the authority provided in A.R.S. § 13-4504 through the use of this database.

8 A standardized/approved risk/needs behavioral health assessment tool should be utilized to assist the court in deciding the most appropriate path forward for a defendant including whether further evaluation should be conducted.

9 The determination whether to perform a competency or SMI evaluation should be incorporated into a court's Mental Health Court proceedings if a Mental Health Court is available.

10 Work with Stakeholders to develop and leverage capital improvement projects for mental health diversion and treatment facilities, with a focus on community-based treatment, patterned after the Miami Center for Mental Health and Recovery for jurisdictions throughout the State.

11 Work with the Regional Behavioral Health Authorities (RBHAs) to have someone at court available to schedule or complete an on-site SMI evaluation when appropriate.

12 To improve overall access to services, the Supreme Court should seek or support funding for peer support and/or case managers to work in misdemeanor mental health courts. Their role would be to increase access to services by helping defendants get enrolled with treatment providers, facilitate evaluations and improve overall access to services.

13 For those individuals who need competency evaluations, courts should streamline the Rule 11 process by making timely decisions and providing additional assessments as needed.

14 Rule 11 evaluations and restoration services should be provided at an easily accessible location, or, at a minimum, transportation should be provided to cut down on misdemeanor defendants being held in custody because they did not appear for those services.

15 Maintain an appropriate number of certified doctors, psychiatrists, and psychologists to complete Rule 11 evaluations to decrease incarceration time and speed up the criminal justice process.

16 Develop ongoing and expanded training for judges, attorneys, and court staff to include topics related to working with those who have mental and behavioral health issues along with a broader understanding of criminal and civil case process for justice involved individuals.

17 Based on national best practices include a list of areas that would be explored within the competency evaluation process. Specific questions could be designed to assess a defendant's functionality within a topic that an evaluator typically assesses during a competence interview. These would be included within the AOC approved form for performing Rule 11 evaluations and within Rule 11 as specifics for judges to consider.

18 Continue to support the efforts of the justice system in working with those who have a mental illness by continuing the work and recommendations of the Fair Justice Task Force, the Committee on Mental Health and the Justice System and the Rule 11 Task Force by establishing a standing committee with the focus of working with both the civil and criminal cases which include those who have a mental illness.

SECTION IV: IMPLEMENTATION STRATEGIES

To implement the recommendations presented, the Task Force is considering implementation strategies that provide for several options or "Paths" to best respond to those that may have challenges related to their mental health and are involved in the justice system.[7] The Task Force fully supports the implementation of intercepts represented in Intercept 0 and Intercept 1 of the Sequential Intercept Model (Appendix S) to divert individuals away from the justice system at the earliest possible time. Deflection to minimize court involvement should always be emphasized. The Paths described here represent options that a court may consider in working with those who have been charged with a misdemeanor and may suffer from mental health issues.

A screening tool becomes critical at the beginning of the process. Identifying the needs of those who have a mental illness should take place as early as possible including a validated screening for mental health needs, along with criminogenic risk. However, even if an individual is not screened at one of these initial opportunities, any professional in the system thereafter should be empowered to initiate a screening process, and then an additional assessment may be performed if the screening instrument so indicates.

These Paths assume that an arrest has been made and therefore that the criminal justice process has begun. While this suggested model begins at arrest, the importance of law enforcement deflection and prosecutorial diversion cannot be overstated. Appendix K includes a flowchart showing six Paths in the context of the flow of a case.

Eligibility and evaluation would need to be completed to help determine which Path would be most appropriate for the individual. The evaluation process should include determining any mental illness and substance abuse disorder contributing factors, criminogenic risk, the needs of the individual, the level of interest by the State, and if the individual would participate willingly or not. All Paths are designed to minimize Court intervention and seek to connect people to appropriate care.

Path #1 – Referral to Community Based Treatment – If a case is dismissed there may still be an opportunity to connect individuals with opportunities for care and clear obstacles that may stand in their way.

Path #2 - Limited Civil Proceedings with Assisted Outpatient Treatment (AOT) – This is a new option for individuals charged with a misdemeanor and have been previously or currently determined not competent to stand trial . This Path is seeking to move the individual out of the criminal system into a civil oversight process that the court is still involved in, but with care and direct supervision being managed through an Assisted Outpatient Treatment process.

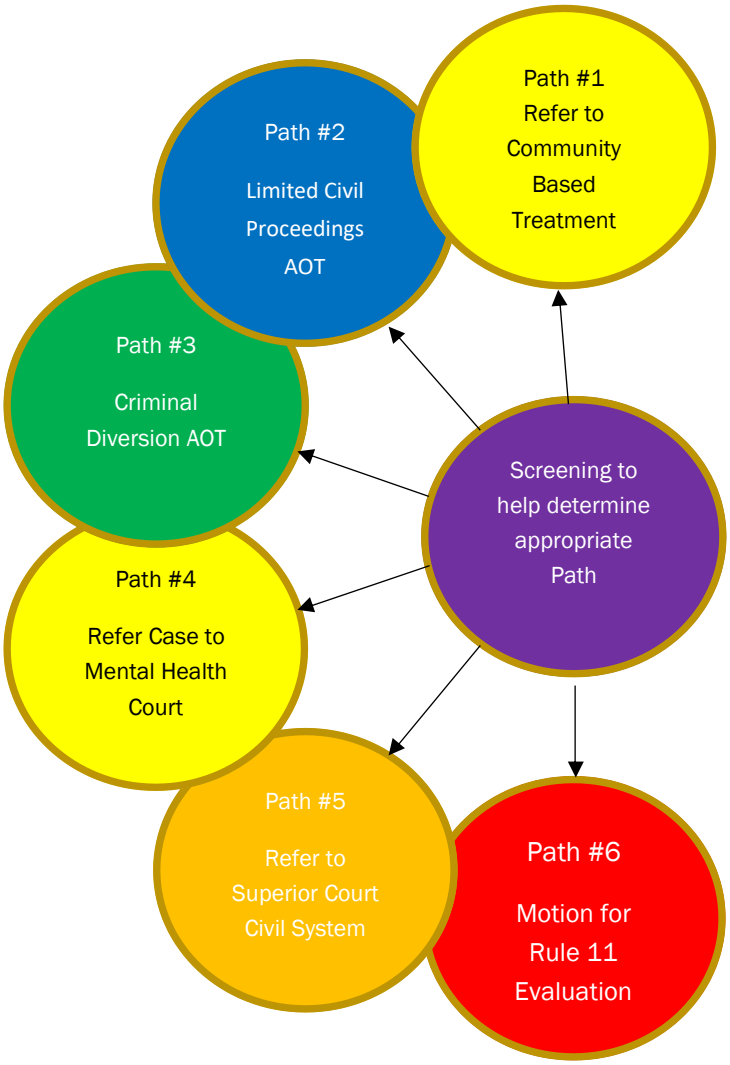
[7] The Task Force depended heavily on the work done in Colorado, *Model Legal Processes to Support Clinical Intervention for Persons with Serious Mental Illnesses* https://www.mentalhealthcolorado.org/wp-content/uploads/2022/09/Model-Legal-Processes-to-Support-Clinical-Intervention-for-Persons-with-Serious-Mental-Illnesses-Final-9.2.2022.pdf

Path #3 – Criminal Diversion AOT – This keeps the supervision and progress of the AOT program under the auspices of the criminal/mental health court process. While maintaining a strong focus on treatment and the treatment program supervised by care givers, the court will have a more proactive approach to the management and ongoing supervision of treatment.

Path #4 – Refer the Case to a Mental Health Court (MHC) - "Traditional" Pathway with ongoing treatment being provided in those jurisdictions who have an MHC already developed. This approach is often limited to SMI individuals.

Path #5 - Refer to Superior Court Civil System for Supervision and Treatment – If appropriate the Court should take advantage of the civil process of Title 36 or Title 14.

Path #6 - Motion for Rule 11, Restoration to Competency – While this option is to be used sparingly, it is necessary when an individual who has not previously been found to be incompetent, or for other reasons, needs to be restored to competency to stand trial for a misdemeanor. If the individual has been determined not competent to stand trial the Court may refer them for restoration or an assisted outpatient treatment program.



To make these recommendations a reality, several major steps will be required to implement the Task Force's recommendations and the subsequent Paths envisioned by the proposals:

- Approve an appropriate standardized screening tool for use in determining mental health and substance use care needs, along with criminogenic risk.
- Modify statues and rules to provide for court supervised AOT in both criminal and civil settings. See Appendix Q for proposed language from other states and Appendix R for proposed language from the Colorado Mental Health Report.
- Establish policy, procedure, forms and training related to the new Court supervised treatment options.
- Generate/Request funding and resources for AOT and other programs. The opportunity for treatment options needs to be created throughout the State.
- Continue to support the development of a Rule 11 database.
- Expand training opportunities for forensic psychiatrists.

SECTION V: UPDATES AND ACCOMPLISHMENTS

The Task Force has examined each recommendation and provided a set of Goals, Strategies, Anticipated Outcomes and Progress made to date for each of the Task Force Recommendations.

1 **To reduce the use of evaluation and restoration of competency the Court should work to develop alternative assessment and diversion opportunities prior to a Rule 11 evaluation and restoration at the misdemeanor level.**

Goals: By 2025, have an Assisted Outpatient Treatment (AOT) program established in Rule and Law.

Strategies: Propose legislation and rules that create a program that are acceptable to most stakeholders.

Anticipated Outcomes: A reduction of the use of the Rule 11 evaluation and restoration process at the misdemeanor level along with an increase of the use of AOT.

Threats, Opportunities and Successes: Obstacles include convincing the legislature to create laws that support treatment versus punishment, convincing prosecutors to take advantage of increased opportunities for diversion and finding ways for law enforcement to utilize referrals to AOT. Opportunities include the development of partnerships, including training, with prosecutors and law enforcement. Successes can be seen in Tucson City Court Mental Health Court and other mental health courts in the state.

Accomplishments: An outline of an AOT program has been developed (Appendix J) along with proposed rule and statute changes that would allow for its implementation (Appendix B, C, D and E). Pilot programs are being developed in the Mesa Municipal Court and the Tucson City Court (Appendix F).

2 **Expand A.R.S. 13-4504, A.R.S. 13-4510, and Rule 11.5 to provide the option of limited civil oversight with assisted outpatient treatment of defendants following the dismissal of misdemeanor cases.**

Goals: To have legislative proposals prepared and approved to include in the legislative package for the 2024 legislative session.

Strategies: Develop pilot programs in at least two courts: one in a rural court and one in an urban court to test these proposals through actual implementation and show results to assist in efforts to advance the proposed legislation.

Anticipated Outcomes: Refine the elements to be included in the legislative and rule change proposals and test feasibility, impacts and outcomes of the recommendations.

Threats, Opportunities and Successes: Threats include making sure that due process concerns are fully addressed and overcome resistance to change. Opportunities include the ability to model alternative approaches to working with the target population and leverage experiences

from other efforts in this area such as the Miami-Dade model. Other opportunities include discovering possible resource savings to the criminal justice system in areas such as jail, prosecutorial and court time and to garner positive publicity regarding an alternative approach.

Accomplishments: Proposed changes to the legislation have been developed to present to the Arizona Judicial Council for consideration to include in the legislative packet (Appendix B and C).

3 Consider developing of a criminal mental health program with court oversight of assisted outpatient treatment for defendants charged with misdemeanor offenses.

Goals: By the end of 2024: 1) establish paths for misdemeanor defendants to have access to AOT when needed; and 2) Partner with prosecutors to develop a path to increase the use of diversion programs with a focus on AOT.

Strategies: Identify specific avenues of program development and specified resource support for those approaches.

Outcomes: Provide coordinated care for justice involved individuals who would benefit from AOT.

Threats, Opportunities and Successes: Threats include working through the details and security protocols related to data and information sharing needed to establish a comprehensive approach to the path to AOT. Opportunities exist to be able consolidate cases. Successes may be seen in the efforts of regional court models such as Tucson's Compass Court, Tempe's East Valley Regional Veteran's Court or Glendale's West Valley Regional Veteran's Court.

Accomplishments: Two pilot programs are under development at the Mesa Municipal Court and the Tucson City Court in conjunction with each court's community court program (Appendix F).

4 Courts/Prosecutors should consider offering pre-plea diversion to defendants instead of putting them through Rule 11 evaluations. Dismissal of cases should be offered to those defendants who engage in treatment for an appropriate period of time and do not acquire new charges.

Goals: By the end of 2023 establish pilot programs to determine the feasibility of diversion to AOT. Review current statutes on diversion and determine if changes should be proposed to reduce the use of Rule 11 in misdemeanor cases.

Strategies: Reach out to prosecutors and defense attorneys regarding support for legislative proposals to modify diversion program statutes. Reach out to victim and DV groups regarding impacts related to legislative proposals.

Anticipated Outcomes: Establish pre-plea diversion options using AOT that have been piloted and are supported by various stakeholder groups.

Threats, Opportunities and Successes: Threats include misidentifying low-risk, low-need individuals versus high-risk, high-need individuals. An assessment must be part of the diversion process as one-size does-not-fit-all.

Accomplishments: Prosecutorial diversion programs have been in existence for some time, the implementation of additional avenues to enter into diversion are being sought in the proposed changes to A.R.S. § 13-4504 (Appendix B) and A.R.S. § 13-720 and new Article 5 of Title 36 (Appendix C).

5 Modify Rule 6, Ariz. R. Crim. P., to allow the appointment of counsel, regardless of indigency, upon a reasonable belief that the defendant may have diminished or limited capacity and could benefit from the assistance of counsel.

Goals: Develop recommendations for modifying Rules.

Strategies: Establish a workgroup within the Rule 11 Task Force to review the criminal and civil court rules and make recommendations that will improve the Rule 11 process.

Anticipated Outcomes: Rule language improvements.

Threats, Opportunities and Successes: Opportunities for additional training may be needed regarding appointment of counsel.

Accomplishments: A proposal to change to Rule 6.1, ARCrP has been developed (Appendix D).

6 Assemble a team to review the complete physical and mental social determinants of health in defendants utilizing the Clinical Liaison position required by A.R.S. § 13-4501(1) or other similar positions, if available.

Goals: To provide the option of assigning an individual to a case that can assist in screening and provide oversight and coordination of treatment.

Strategies: Expand the statute, if needed, and help the courts obtaining funding to encourage utilization of these positions.

Anticipated Outcomes: To provide better coordination of case treatment and have these positions available and accessible by all key stakeholders.

Threats, Opportunities and Successes: Obstacles include clearly defining the Clinical Liaison position and identifying possible funding sources. Opportunities include being able to provide a better understanding of and utilization of these positions and see successes in higher levels of treatment, expanded use in Mental Health Courts and better coordination of case processes, parties and treatment.

Accomplishments: This concept is included in both the legislative proposals for court advisor positions included in the proposed A.R.S. § 13-720 and new Article 5 of Title 36 (Appendix C).

7 Create a statewide database to coordinate the sharing of information on competency evaluations and assessments. Enhance the court's ability to exercise the authority provided in A.R.S. § 13-4504 through the use of this database.

Goals: By the end of 2024 have a statewide database available for access by critical participants in the criminal process.

Strategies: By leveraging the efforts of AOC's eCourt Services Unit with the implementation of SB1114 (2022) we can develop additional bandwidth by including key events related to Rule 11.

Anticipated Outcomes: Have a database that is accessible/searchable by all the courts, both LJ and GJ, to be able to determine if Rule 11 actions have taken place in any other jurisdiction throughout the State. This includes adding a central coordinator to help disseminate information as needed throughout the State as part of the AOC's Center for Forensic Science and Psychology.

Threats, Opportunities and Successes: An obstacle is being able to fold AOT into future opportunities for data sharing.

Accomplishments: With the implementation of a mental health database for Title 36 cases we will have a platform to move forward with coordinating the sharing of information on Rule 11 cases (Appendix M).

8 A standardized/approved risk/needs behavioral health assessment tool should be utilized to assist the court in deciding the most appropriate path forward for a defendant including whether further evaluation should be conducted.

Goals: Identify an existing behavioral health assessment tool and create a pathway to implement its use in all misdemeanor competency assessments.

Strategies: Review existing assessment tools and identify what each tool is intending to accomplish and how the court could utilize the tool in specific cases. Develop a funding framework and identify how and when funding will be provided.

Anticipated Outcomes: Approval of a risk/needs behavioral health assessment tool and making it available to the courts and others within the justice system.

Threats, Opportunities and Successes: Use the Supreme Court Center for Forensic Science and Psychology to help identify and verify the correct tool.

Accomplishments: A State-wide review of evaluation of tools used with those who have a mental illness is being developed (Appendix G) with the intent to reduce the number of evaluations used and standardize.

9 The determination whether to perform a competency or serious mental illness (SMI) evaluation should be incorporated into a court's Mental Health Court proceedings if a Mental Health Court is available.

Goals: Identify a comprehensive list of specialty courts that may benefit from this recommendation. Provide guidance as to when an SMI determination would be beneficial to an individual and moving their case into a path that would improve the possibility of beneficial outcomes.

Strategies: Review nationally established best practices for mental health courts and develop tools and processes for Arizona courts with the specific intent to provide support and expansion, yet not in any way limit their function.

Anticipated Outcomes: To provide needed support to specialty courts and provide additional resources when appropriate.

Threats, Opportunities and Successes: A threat exists in how we define a Mental Health Court, we need to be broad and inclusive so that we do not leave out specialty dockets or Community Courts that often provide the same or similar services. An opportunity exists to collaborate with AOC's Adult Probation Division and work with their specialty court unit to identify mental health court programs that already exist in Arizona.

Accomplishments: A State-wide review of evaluation of tools used with those who have a mental illness is being developed (Appendix G) with the intent to reduce the number of evaluations used and standardize. Discussions with the RBHAs to encourage the provision of SMI evaluations that take place.

10 Work with Stakeholders to develop and leverage capital improvement projects for mental health diversion and treatment facilities, with a focus on community-based treatment, patterned after the Miami Center for Mental Health and Recovery for jurisdictions throughout the State.

Goals: To pilot a community-based treatment facility tied to a local detention facility. Create law enforcement drop-off centers in areas that currently do not have one located within easy travel distance.

Strategies: Work with detention facilities, Counties, legislature, AHCCCS, RBHAs and others to develop a project concept and pilot location for the creation of a mental health diversion and treatment facility.

Anticipated Outcomes: Have an established community-based mental health diversion and treatment facility in at least one location in the State.

Threats, Opportunities and Successes: Finding funding sources and coordinating multiple agencies/jurisdictions create a challenge to developing a treatment facility that supplements law enforcement drop-off centers which would be an alternative to current incarceration practices.

Accomplishments: We are seeing the Yavapai County Reach Out model being duplicated in other counties. AHCCCS continues to support the expansion of law enforcement drop-off centers.

11 Work with the Regional Behavioral Health Authorities (RBHAs) to have someone at court available to schedule or complete an on-site SMI evaluation when appropriate.

Goals: Have established, clear lines of communication and expectations between the courts and community service providers regarding who will be performing an SMI evaluation and when they should be performed.

Strategies: Work with each of the RBHAs and AHCCCS Health Plans along with their respective Counties to set up protocols for performing SMI evaluations.

Anticipated Outcomes: SMI evaluations will be conducted timely and when appropriate.

Threats, Opportunities and Successes: Understanding when an SMI evaluation should be conducted is key to having a positive impact on individuals who have a mental illness and come into the justice system.

Accomplishments: The Task Force has encouraged the RBHAs to provide SMI evaluation services.

12 To improve overall access to services, the Supreme Court should seek or support funding for peer support and/or case managers to work in misdemeanor mental health courts. Their role would be to increase access to services by helping defendants get enrolled with treatment providers and facilitate evaluations.

Goals: Establish peer AND OTHER support networks in misdemeanor mental health courts.

Strategies: Seek partnerships and grant opportunities to provide adequate number of support personnel for misdemeanor courts.

Anticipated Outcomes: Each misdemeanor court in the State will have access, at least remotely if not personally, to peer support and case managers to cover the case load within their jurisdiction.

Threats, Opportunities and Successes: Providing consistent and ongoing services is key to the success of this type of support network. This requires a robust volunteer network and a possible funding stream to maintain this program.

Accomplishments: Creation of court advisor positions included in the legislative proposal to modify A.R.S. § 13-720 and create a new Article 5 of Title 36 (Appendix C).

13 For those individuals who need competency evaluations, courts should streamline the Rule 11 process by making timely decisions and providing additional assessments as needed.

Goals: Review the current Rule 11 processes and provide recommendations to improve the Rule. This will include the incorporation of operational best practices for all types of cases related to mental health.

Strategies: Develop a workgroup within the Rule 11 Task Force to review various aspects of Rule 11 and recommend changes. This should include a review of operational practices throughout various jurisdictions that are supportive of best practices related to Rule 11.

Anticipated Outcomes: File a Rule petition that incorporates the recommendations from the Task Force for Rule 11.

Threats, Opportunities and Successes: Being comprehensive in approaching the Rule petition and making sure that the elements put forward have been well vetted.

Accomplishments: Proposed changes to Rule 11 (Appendix E).

14 Rule 11 evaluations and restoration services should be provided at an easily accessible location, or, at a minimum, transportation should be provided to cut down on misdemeanor defendants being held in custody because they did not appear for those services.

Goals: Improve access to evaluations and restoration services.

Strategies: Meet with stakeholder groups and discuss how to increase the options of where and how evaluations and restoration are performed including tele-health options and centralized locations that would include courthouses.

Anticipated Outcomes: Courts will have locations either on-site or in conjunction with other services or telehealth services that will be able to provide evaluations and restoration.

Threats, Opportunities and Successes: Ease of access to Rule 11 evaluation and restoration services should not be seen as an encouragement for increasing their use. Ease of access to services should be used to encourage additional help to individuals suffering from a mental illness beyond the restoration process. Success can be seen in Mesa Municipal Court where the time to process a Rule 11 case has decreased dramatically since the court took measures including arranging for practitioners to conduct evaluations at the courthouse.

Accomplishments: Encouraged the use of a centralized location as piloted in the Mesa and Glendale Municipal Courts as well as setting best practices to encourage telehealth in competency matters (Appendix O).

15 Maintain an appropriate number of certified doctors, psychiatrists, and psychologists to complete Rule 11 evaluations to decrease incarceration time and speed up the criminal justice process.

Goals: Increase the number of individuals who are certified to perform competency evaluations.

Strategies: Expand the Legal Competency and Restoration Summit to include online elements, increasing participation and allowing certification on an ongoing basis. Develop ways to improve

coordination of information and providing it to appropriate entities including other courts, RBHAs, AHCCCS and care providers.

Anticipated Outcomes: Reduced time that cases are in the Rule 11 process (from ordering the evaluation to the outcome of the final Rule 11 Hearing) and reduced time that defendants who are held on bond during the Rule 11 process spend incarcerated.

Threats, Opportunities and Successes: An obstacle would be those who are performing evaluations do not understand the expanded opportunities for treatment that may be provided in the future. There are opportunities to provide information to evaluators via memos, training, and advertising about the updated process.

Accomplishments: The Legal Competency and Restoration Conference, which is the mandatory training for Rule 11 evaluators, has been redesigned. Additionally, an agreement has been established with ASU to offer the certification process online and on-demand.

16 **Develop ongoing and expanded training for judges, attorneys, and court staff to include topics related to working with those who have mental and behavioral health issues along with a broader understanding of criminal and civil case process for justice involved individuals.**

Goal: Improve the opportunity for judges, attorneys, and court staff to receive specific training on how to interact with those who suffer from a mental illness.

Strategies: Work with AOC's Education Services Division and ASU to increase the type of trainings provided to judges, attorneys, and court staff while also providing in-depth training on how to respond and what appropriate options are available in interacting with mentally ill individuals. Create opportunities for mental health professionals who work with justice involved individuals to learn about court processes and their role and responsibilities within it.

Anticipated Outcomes: Increased training available to judges, attorneys, and court staff. Courts will have an educated bench and staff that understand the elements of interacting with those who have a mental illness and a professional cadre of mental health professionals who understand the role of the judicial branch in working with their clients.

Threats, Opportunities and Successes:

Accomplishments: An agreement has been established with ASU to offer the certification process online and on-demand.

17 **Based on national best practices include a list of areas that would be explored within the competency evaluation process. Specific questions could be designed to assess a defendant's functionality within a topic that an evaluator typically assesses during a competence interview. These would be included within the AOC approved form for performing Rule 11 evaluations and within Rule 11 as specifics for judges to consider.**

Goals:

Strategies:

Anticipated Outcomes:

Threats, Opportunities and Successes:

Accomplishments:

18 Continue to support the efforts of the justice system in working with those who have a mental illness by continuing the work and recommendations of the Fair Justice Task Force, the Committee on Mental Health and the Justice System and the Rule 11 Task Force by establishing a STANDING committee with the focus of working with both the civil and criminal cases which involve those who have a mental illness.

Goals: To have on ongoing group dedicated to responding to the specialized needs of the mentally ill in the justice system at both the felony and misdemeanor levels as well as civil mental health cases.

Strategies: Create a committee, or series of subject focused committees, that have the charge of continuing to develop an improved response within the judicial branch to those who have a mental illness.

Anticipated Outcomes: Courts will have an entity that will continue to develop improvements at the State level for the courts as we work with justice involved individuals who have a mental illness.

Threats, Opportunities and Successes: With all the various responsibilities and initiatives that the judicial branch is responsible for, carving out the resources and continuing the focus or working with the mentally ill must be balanced with all the other areas of judicial responsibility.

Accomplishments: Proposed.

SECTION VI: WORKGROUPS AND PROPOSALS

Workgroups were developed within the Task Force to refine the recommendations that were developed and create specific changes that might be made to statute, rule and practice that could be presented to the Chief Justice and the Arizona Judicial Council to consider. Results of the recommendations made by each of the workgroups can be found throughout this report. Workgroups had an indicated focus area and designated lead.

Workgroups – Focus Areas

Pilot Programs – Lead: Don Jacobson, Senior Special Project Consultant, AOC Court Services Division

This Workgroup will focus on developing 2-3 pilot programs that will implement, to the greatest extent possible, the recommendations put forth by the Task Force. Common goals will be established for all courts to meet although different implementation frameworks will be developed for each court based on size, jurisdiction, structure and resources available. An AO will be considered if temporary suspension or addition of authorities is needed in order to move the pilots forward. Measurements will be developed to review impacts on various areas such as law enforcement contacts, social determinants of health, time incarcerated or court operations.

Report of the workgroup's efforts can be found in Appendix F.

Identifying/Creating a Screening Tool – Lead: Jennifer Albright, Director of the Arizona Supreme Court Center for Forensic Science and Psychology

This Workgroup will focus on identifying, or if needed developing, a screening tool to help the justice system identify those who have a mental illness and provide insight into what types of services would be best suited to meet the needs of these justice involved individuals.

Report of the workgroup's efforts can be found in Appendix G.

Definition of Incompetent – Lead: Susan McMahon, Associate Clinical Professor of Law, Sandra Day O'Connor College of Law

This Workgroup will focus on examining the U.S. Supreme Court definition of competence to stand trial and how that definition has been applied in other States. They will then review the current definition of competence and its application in Arizona and see if modifications or clarifications would benefit the practical application of legal competency and restoration in the State.

Report of the workgroup's efforts can be found in Appendix H.

Modifications to Rule 11 Pre-Screen Evaluation – Lead: Paul Thomas

This Workgroup will focus on the concept of modifying the Rule 11 Pre-screen into a Court Ordered Evaluation (ARS § 13-4503, CrR 11.2) with the intent to have a comprehensive clinical evaluation as the basis and justification for a civil response to the criminal charge. This Workgroup will also make recommendations on how the Rule 11 Pre-screen might fit into and overall best practices proposal for operational processes including how various information would be shared with other jurisdictions.

Report of the workgroup's efforts can be found in Appendix I.

Developing an AOT program – Lead: Jami Snyder, JSN Strategies, Former Director of AHCCCS

This Workgroup will focus on the development of a proposal for an Assisted Outpatient Treatment (AOT) program for the State of Arizona. A central element of the recommendations of the Task Force is to have an AOT program available to be utilized by the Courts through various paths to help those who find themselves involved in the justice and have a mental illness. This proposal will include policy suggestions for Justice System partners, AHCCCS, RBHAs and providers as well as possible rule changes and legislative proposals to make the AOT program a practical reality for all areas of the State.

Report of the workgroup's efforts can be found in Appendix J.

SECTION VII: CONCLUSION

The current evaluation and restoration process for those who are incompetent to stand trial does not provide any ongoing treatment or help for those who find themselves caught in a revolving door in the justice system. This is particularly true in misdemeanor cases where the negative impact of that involvement is most pronounced. To help individuals who have a behavioral health problem and find themselves justice-involved, there is a need to establish a new set of protocols to divert them from the RTC process and find ways to improve lives, better allocate resources and provide improved community safety.

Along with the work of this Task Force, Arizona's judicial branch has been working for years to develop protocols and resources that cross disciplines and focus on the Sequential Intercept Model – to identify opportunities to intervene as early as possible and prevent justice-involved individuals living with mental illness from entering or further penetrating the system. The Task Force strongly believes the Supreme Court can further its leadership role in serving this vulnerable population. To this end, it recommends that the Supreme Court accept the recommendations set forth in this report on restoration to competency, continue the mental health initiatives set forth in the strategic agenda, *Justice for the Future,* implement the recommendations of the Committee on Mental Health and the Justice System and encourage state leaders to enhance the capacity of the justice and behavioral health systems to work together to implement sound, innovative, and sustainable practices.

SECTION VIII: APPENDICES

A. Task Force Membership
B. Proposed A.R.S. § 13-4504
C. Proposed A.R.S. § 13-720 and TITLE 36, CHAPTER 5, NEW ARTICLE 5
D. Proposed Changes to Rule 6.1
E. Proposed Changes to Rule 11
F. Workgroup Report: Pilot Programs
G. Workgroup Report: Identifying/Creating Screening Tools
H. Workgroup Report: Definition of Competence
I. Workgroup Report: Proposed Rule 11 Changes
J. Workgroup Report: Recommendations on Assisted Outpatient Treatment
K. Flowcharts of Rule 11 Process
L. "Templates and Best Practices" Statewide Memorandum (May 12, 2020)
M. Cross-Jurisdiction Mental Health Data Repository (Committee on Mental Health and the Justice System)
N. Best Practices Restoration to Competency (Committee on Mental Health and the Justice System)
O. Telehealth in Competency Matters
P. Order of Transfer Protocol
Q. AOT Criteria: State Statutory Language Selection
R. Mental Health Colorado Proposed Legislative Language
S. Sequential Intercept Model

Appendix A: Task Force on Rule 11 of the Arizona Rules of Criminal Procedure and Related Matters

Membership

Chair
Donald Jacobson
Sr. Special Project Consultant
Administrative Office of the Courts
Court Services Division

Vice-Chair
Hon. John Tatz
Presiding Judge,
Mesa Municipal Court

Shelley Curran
Mercy Care

Asim Dietrich
Arizona Center for Disability Law

Paul Galdys
RI International

Barton Fears
General Council,
Phoenix Municipal Court

Jack Fields
Assistant Yavapai County Administrator

Will Gonzales
Court Administrator,
Phoenix Municipal Court

Elizabeth Herbert
Chandler City Prosecutor

Susan A. McMahon
Associate Clinical Professor of Law,
Arizona State University

Kristin McManus
Assistant City Prosecutor,
Yuma

Kate Milewski,
Public Defender,
Pinal County

Chris Phelps
Court Administrator,
Glendale Municipal Court

Beya Thayer
Yavapai Justice & Mental Health Coalition,
Yavapai County Sheriff's Office

Hon. Joshua Steinlage
JP Pro Tem
Flagstaff Justice Court

Lisa Struble
Interim Director
Maricopa Correctional Health Services.

Marianne Sullivan
Flagstaff Police Department

Hon. Lisa Surhio
Magistrate,
Tucson Municipal Court

Juli Warzynski
Maricopa County Attorney's Office

Dr. Megan Woods
AHCCCS

Appendix B: Proposed A.R.S. § 13-4504

13-4504. Dismissal of misdemeanor charges; notice

A. Notwithstanding any law to the contrary, if the TRIAL court finds that a person has been CURRENTLY OR previously adjudicated incompetent to stand trial pursuant to this chapter, the court may hold a hearing to dismiss any misdemeanor charge against the incompetent person. The court shall give ten days' notice to the prosecutor and the defendant of this hearing. On receipt of the notice, the prosecutor shall notify the victim of the hearing.

B. IN A LIMITED JURISDICTION COURT I~~f~~ a misdemeanor charge is dismissed pursuant to this section, the court may ~~order~~ REFER THE CASE TO THE SUPERIOR COURT IN ORDER TO DETERMINE IF the ~~prosecutor~~ APPROPRIATE AGENCY SHOULD ~~to~~ initiate civil commitment COURT-ORDERED EVALUATION AND TREATMENT PROCEEDINGS UNDER ARTICLES 4 AND 5, CHAPTER 5, TITLE 36, or guardianship proceedings UNDER ARTICLE 3, CHAPTER 5, TITLE 14, OR BOTH. ALTERNATIVELY, IF THE TRIAL COURT FINDS THAT THE DEFENDANT MAY BENEFIT FROM ASSISTED OUTPATIENT TREATMENT, THE TRIAL COURT MAY APPOINT AN ADVISOR AS PROVIDED IN SECTION 13-720E. IF THE MISDEMEANOR CHARGE IS NOT DISMISSED PURSUANT TO THIS SECTION, AND UPON AGREEMENT OF THE PARTIES, THE TRIAL COURT MAY REQUIRE THE DEFENDANT TO PARTICIPATE IN AN ASSISTED OUTPATIENT TREATMENT PROGRAM APPROVED BY THE COURT.

Appendix C: Proposed A.R.S. § 13-720 and TITLE 36, CHAPTER 5, NEW ARTICLE 5

13-720. Assisted outpatient treatment; misdemeanors

A. IN A CASE WHERE A DEFENDANT HAS BEEN ALLEGED TO HAVE COMMITTED A MISDEMEANOR, A PETITION MAY BE FILED BY A DEFENDANT, THEIR ATTORNEY, OR THE STATE ASKING THE COURT TO FIND THAT THE DEFENDANT MAY BE A PERSON WHO WOULD BENEFIT FROM ASSISTED OUTPATIENT TREATMENT.

B. "ASSISTED OUTPATIENT TREATMENT" MEANS A TREATMENT PROGRAM ORDERED BY THE COURT TO PROVIDE BEHAVIORAL HEALTH TREATMENT TO ADULTS WITH MENTAL ILLNESS OR SUBSTANCE USE DISORDER.

C. "MENTAL ILLNESS" MEANS A BEHAVIOR EXHIBITED IN A PERSON WHO AS A RESULT OF A MENTAL DISORDER AS DEFINED IN TITLE 36, CHAPTER 5, EXHIBITS EMOTIONAL OR BEHAVIORAL FUNCTIONING THAT IS SO IMPAIRED AS TO INTERFERE SUBSTANTIALLY WITH THEIR CAPACITY TO REMAIN IN THE COMMUNITY WITHOUT SUPPORTIVE TREATMENT OR SERVICES.

D. "PERSON BENEFITING FROM ASSISTED OUTPATIENT TREATMENT" MEANS AN INDIVIDUAL EIGHTEEN YEARS OR OLDER WHO, AS A RESULT OF MENTAL ILLNESS AND BASED ON RECENT ACTIONS, OMISSIONS, OR BEHAVIORS:

1. PRESENTS A SUBSTANTIAL RISK OF HARM TO SELF OR OTHERS IN THE NEAR FUTURE, WHICH INCLUDES:
    (a) SUICIDAL BEHAVIOR OR INFLICTING SIGNIFICANT SELF-INJURY; OR
    (b) ATTEMPTING, CAUSING, OR THREATENING TO CAUSE SERIOUS INJURY TO OTHERS; OR
2. HAS DEMONSTRATED AN INABILITY TO:
    (a) ATTEND TO BASIC PHYSICAL NEEDS SUCH AS MEDICAL CARE, FOOD, CLOTHING, OR SHELTER; OR
    (b) PROTECT THE SELF FROM HARM OR VICTIMIZATION BY OTHERS; OR
    (c) EXERCISE SUFFICIENT BEHAVIORAL CONTROL TO AVOID SERIOUS CRIMINAL JUSTICE INVOLVEMENT; OR
3. LACKS THE CAPACITY TO RECOGNIZE THAT THE INDIVIDUAL IS EXPERIENCING SYMPTOMS OF A MENTAL ILLNESS AND THEREFORE IS UNABLE TO:
    (a) MAKE A DECISION REGARDING TREATMENT; OR
    (b) UNDERSTAND OR RETAIN INFORMATION RELEVANT TO THE TREATMENT DECISION; OR
    (c) USE, WEIGH OR APPRECIATE THAT INFORMATION AS PART OF THE PROCESS OF MAKING THE TREATMENT DECISION; OR
    (d) COMMUNICATE THE DECISION; OR
    (e) APPRECIATE THE RISKS OR BENEFITS OF TREATMENT; AND

f) IN THE ABSENCE OF TREATMENT IS LIKELY TO EXPERIENCE A RELAPSE OR DETERIORATION OF CONDITION THAT WOULD MEET THE CRITERIA IN (a) OR (b).

E. UPON A FILING OF A PETITION PURSUANT TO SECTION “A”, THE COURT SHALL APPOINT A COURT ADVISOR FOR THE DEFENDANT.

F. THE COURT APPOINTED ADVISOR SHALL CONDUCT AN INVESTIGATION AND REPORT BACK TO THE COURT, WITHIN NO MORE THAN THIRTY DAYS, ONE OF THE FOLLOWING RECOMMENDATIONS:

1. CONTINUE WITH MISDEMEANOR PROCEEDINGS.
2. RECOMMEND ASSISTED OUTPATIENT TREATMENT, PURSUANT TO TITLE 36.
3. RECOMMEND COURT ORDERED EVALUATION, PURSUANT TO TITLE 36.
4. RECOMMEND EVALUATION FOR COMPETENCY TO STAND TRIAL, PURSUANT TO TITLE 13.
5. RECOMMEND RESTORATION TO COMPETENCY, PURSUANT TO TITLE 13.

G. THE COURT SHALL CONSIDER:

1. THE RECOMMENDATION OF THE COURT APPOINTED ADVISOR.
2. INPUT FROM THE STATE.
3. INPUT FROM THE DEFENSE ATTORNEY.
4. TESTIMONY FROM ANY VICTIMS.
5. TESTIMONY FROM ANY FAMILY MEMBERS OR THOSE CLOSE TO THE DEFENDANT.

H. THE COURT MAY:

1. RESUME MISDEMEANOR PROCEEDINGS;
2. DISMISS THE MISDEMEANOR CHARGES;
3. TRANSFER THE DEFENDANT FOR FURTHER PROCEEDINGS UNDER TITLE 36;
4. COMMENCE COMPETENCY EVALUATION PURSUANT TO TITLE 13; OR
5. COMMENCE COMPETENCY RESTORATION PURSUANT TO TITLE 13, IF THE DEFENDANT HAS PREVIOUSLY BEEN DEEMED INCOMPETENT TO STAND TRIAL.

I. AN ORDER TO RECEIVE ASSISTED OUTPATIENT TREATMENT SHALL NOT EXCEED THREE HUNDRED SIXTY-FIVE DAYS.

J. IF THE DEFENDANT IS TRANSFERRED FOR PROCEEDINGS PURSUANT TO TITLE 36, THE MISDEMEANOR CASE AGAINST THE DEFENDANT SHALL REMAIN OPEN UNTIL THE DEFENDANT HAS COMPLETED OUTPATIENT TREATMENT AND THE COURT HAS ORDERED THE DISMISSAL OF THE CHARGE. THE CASE MAY CONTINUE FOLLOWING NONCOMPLIANCE OF TREATMENT.

TITLE 36, CHAPTER 5, NEW ARTICLE 5 (between COE and COT)

Renumber statutes

36-532. Definitions

A. “ASSISTED OUTPATIENT TREATMENT” MEANS COMMUNITY BASED TREATMENT NOT REQUIRING ADMITTANCE TO A MENTAL HEALTH FACILITY.

B. “PERSON REQUIRING ASSISTED OUTPATIENT TREATMENT” MEANS AN INDIVIDUAL WHO, AS A RESULT OF MENTAL ILLNESS AND BASED ON RECENT ACTIONS, OMISSIONS, OR BEHAVIORS:

1. PRESENTS A SUBSTANTIAL RISK OF HARM TO SELF OR OTHERS IN THE NEAR FUTURE, WHICH INCLUDES:

(a) SUICIDAL BEHAVIOR OR INFLICTING SIGNIFICANT SELF-INJURY; OR

(b) ATTEMPTING, CAUSING, OR THREATENING TO CAUSE SERIOUS INJURY TO OTHERS; OR

2. HAS DEMONSTRATED AN INABILITY TO:

(a) ATTEND TO BASIC PHYSICAL NEEDS SUCH AS MEDICAL CARE, FOOD, CLOTHING, OR SHELTER; OR

(b) PROTECT THE SELF FROM HARM OR VICTIMIZATION BY OTHERS; OR

(c) EXERCISE SUFFICIENT BEHAVIORAL CONTROL TO AVOID SERIOUS CRIMINAL JUSTICE INVOLVEMENT; OR

3. LACKS THE CAPACITY TO RECOGNIZE THAT THEY ARE EXPERIENCING SYMPTOMS OF A SERIOUS MENTAL ILLNESS AND THEREFORE ARE UNABLE TO:

(a) MAKE A DECISION REGARDING TREATMENT; OR

(b) UNDERSTAND OR RETAIN INFORMATION RELEVANT TO THE TREATMENT DECISION; OR

(c) USE, WEIGH OR APPRECIATE THAT INFORMATION AS PART OF THE PROCESS OF MAKING THE TREATMENT DECISION; OR

(d) COMMUNICATE THE DECISION; OR

(e) TO APPRECIATE THE RISKS OR BENEFITS OF TREATMENT; AND

(f) IN THE ABSENCE OF TREATMENT IS LIKELY TO EXPERIENCE A RELAPSE OR DETERIORATION OF CONDITION THAT WOULD MEET THE CRITERIA IN (a) OR (b).

C. GUARDIAN AD LITEM IS THE SAME AS DEFINED IN TITLE 14, CHAPTER 5.

36-533. Guardian ad litem

A. A PERSON IN A PROCEEDING PURSUANT TO TITLE 36, CHAPTER 5, ARTICLE 5, SHALL BE ASSIGNED A GUARDIAN AD LITEM.

B. THE GUARDIAN AD LITEM SHALL BE THE SAME GUARDIAN AD LITEM APPOINTED TO THE PERSON PURSUANT TO SECTION 13-720.

36-534. Notice of hearing

A. AT LEAST SEVENTY-TWO HOURS BEFORE THE COURT CONDUCTS THE HEARING ON THE PETITION FOR ASSISTED OUTPATIENT TREATMENT, A COPY OF THE PETITION, AFFIDAVITS IN SUPPORT OF THE PETITION AND THE NOTICE OF THE HEARING SHALL BE SERVED ON THE PERSON, WHO SHALL BE INFORMED OF THE PURPOSE OF THE HEARING.

B. THE NOTICE PROVISIONS OF THIS SECTION CANNOT BE WAIVED.

C. THE NOTICE OF THE HEARING SHALL FIX THE TIME AND PLACE FOR THE HEARING, WHICH SHALL BE HELD IN THE COURTROOM OR OTHER PLACE WITHIN THE COUNTY WHERE THE ORIGINAL MISDEMEANOR CHARGE OCCURRED.

D. A COPY OF THE PETITION, AFFIDAVITS IN SUPPORT OF THE PETITION AND NOTICE OF HEARING SHALL BE PERSONALLY SERVED ON THE PROPOSED PATIENT AS PRESCRIBED BY LAW OR COURT RULE OR AS ORDERED BY THE COURT.

36-535. Order for assisted outpatient treatment; dismissal of misdemeanor

A. WITHIN FOURTEEN COURTS DAYS FOLLOWING TRANSFER PURSUANT TO SECTION 13-720, THE COURT SHALL HOLD PROCEEDINGS TO DETERMINE WHETHER THE PERSON REQUIRES ASSISTED OUTPATIENT TREATMENT.

B. THE COURT SHALL CONSIDER:

1. THE RECOMMENDATION OF THE GUARDIAN AD LITEM.

2. INPUT FROM THE STATE.

3. INPUT FROM THE DEFENSE ATTORNEY.

4. TESTIMONY FROM ANY VICTIMS.

5. TESTIMONY FROM ANY FAMILY MEMBERS OR THOSE CLOSE TO THE DEFENDANT.

C. THE COURT MAY ORDER THE DEFENDANT TO PARTICIPATE IN ASSISTED OUTPATIENT TREATMENT IF THE COURT FINDS THAT THE INDIVIDUAL MEETS THE CRITERIA PURSUANT TO SECTION 13-720 AND WOULD BENEFIT FROM ASSISTED OUTPATIENT TREATMENT.

D. THE COURT SHALL DETERMINE THE LENGTH OF TREATMENT AND PROGRAM.

E. IF THE COURT ORDERS ASSISTED OUTPATIENT TREATMENT, A HEARING SHALL BE SET FOR A DATE NO MORE THAN SEVEN COURT DAYS AFTER THE TREATMENT ORDER TERMINATES. THE HEARING SHALL DETERMINE IF THE DEFENDANT HAS COMPLETED THEIR TREATMENT OR IF AN EXTENSION FOR TREATMENT IS REQUIRED.

F. IF THE COURT FINDS THAT THE DEFENDANT HAS COMPLIED WITH THE ORDER FOR ASSISTED OUTPATIENT TREATMENT, THE COURT MAY REFER THE CASE BACK TO THE COURT WITH ORIGINAL JURISDICTION OVER THE MISDEMEANOR CASE AND ORDER THE CASE BE DISMISSED.

G. IF THE COURT FINDS THAT AN EXTENSION FOR TREATMENT IS REQUIRED, THE COURT MAY EXTEND THE TERM OF TREATMENT FOR NO MORE THAN 90 DAYS.

H. IF THE COURT FINDS THAT THE DEFENDANT HAS NOT COMPLIED WITH THE ORDER FOR ASSISTED OUTPATIENT TREATMENT, THE COURT MAY REFER THE DEFENDANT BACK TO THE COURT IN WHICH THE ORIGINAL MISDEMEANOR CHARGE WAS HEARD AND RESUME PROCEEDINGS.

36-546. Judicial review; right to be informed; request; jurisdiction

A. In addition to the procedure for applying for a writ of habeas corpus, as provided in title 13, chapter 38, article 26, a patient receiving court-ordered treatment, ASSISTED OUTPATIENT TREATMENT, or any person acting on the patient's behalf may request the patient's release pursuant to the following:

1. A request in writing may be presented to any member of the treatment staff of the agency providing the patient's treatment. The request may be made on a prescribed form that shall be

prepared by the facility and made available for use by any person. The completed form shall identify:

(a) The patient being treated and the agency at which the patient is being treated.

(b) The person to whom the request for release was made.

(c) The person making the request for release, indicating whether the person is the patient being treated or someone acting on the person's behalf.

2. The request, when signed and dated by the person making the request for release, shall be delivered to the medical director of the agency. Within three days of receipt of the request, the medical director shall deliver the form, along with a current psychiatric report of the patient's condition, to the clerk of the court. If the person presenting the request refuses to sign the form, the medical director of the agency shall proceed as if the form had been signed and shall note on the form the circumstances as to why the form was not signed.

B. The patient shall be informed of the patient's right to judicial review by the medical director of the agency and the patient's right to consult with counsel at least once each sixty days while the patient is undergoing court-ordered treatment. The notification required by this subsection shall be recorded in the clinical record of the patient by the individual who gave the notice.

C. With the exception of requests made pursuant to section 36-540, subsection E, paragraphs 5 and 6 and section 36-540.01, subsection K for judicial review, a request for judicial review may not be made sooner than sixty days after the issuance of the order for treatment or a hearing on a previous petition for habeas corpus or the issuance of the court order or other final resolution determining a previous request for judicial review by the patient.

D. Judicial review shall be in the superior court in the county in which the patient is being treated. That court may review the additional material presented and enter its order without necessity of further hearing.

E. The reviewing court may order a further hearing on the affidavit of the attorney for the patient setting forth the need for further evidentiary hearing and the reasons why the hearing is necessary before the time set for the release of the patient.

F. The patient shall be informed of the patient's right to consult an attorney by the person or court to whom the patient makes the request for release at the time the patient makes the request and, in the case of confinement in an agency, by the reviewing court within one day of its receipt of notice from the medical director of the agency where the patient is being treated. The patient shall be permitted to consult an attorney to assist in preparation of a petition for the writ of habeas corpus and to represent the patient in the hearing. If the patient is not represented by an attorney, the reviewing court, within two days of its notice to the patient of the

patient's right to counsel, shall appoint an attorney to assist the patient in the preparation of a petition and to represent the patient in the hearing.

G. The medical director of the mental health treatment agency, at least twenty-four hours before the hearing, shall provide the patient's attorney with a copy of the patient's medical records.

H. The patient's attorney shall fulfill all of the following minimal duties:

1. Within twenty-four hours of appointment, conduct an interview with the patient.

2. At least twenty-four hours before the hearing, interview the patient's treatment physician or psychiatric and mental health nurse practitioner if available.

3. Before the hearing, examine the clinical record of the patient.

4. Before the hearing, examine the patient's court records as to the patient's involuntary treatment.

I. An attorney who does not fulfill the duties prescribed by subsection H of this section is subject to contempt of court.

36-546.01. Expedited appeal to the court of appeals

An order for court ordered treatment OR ASSISTED OUTPATIENT TREATMENT may be reviewed by appeal to the court of appeals as prescribed in the Arizona rules of civil procedure or by special action. Such appeal or special action shall be entitled to preference.

Appendix D: Proposed Changes to Rule 6.1

Rule 6.1. Right to Counsel; Right to Appointment of an Attorney; Waiver of the Right to Counsel; Authority of a Legal Paraprofessional

(a) Right to Be Represented by Counsel. A defendant has the right to be represented by counsel in any criminal proceeding. The right to be represented by counsel includes the right to consult privately with counsel, or the counsel's agent, as soon as feasible after a defendant has been taken into custody, at reasonable times after being taken into custody, and sufficiently in advance of a proceeding to allow counsel to adequately prepare for the proceeding.

(b) Right to Appointment of an Attorney.

(1) *As of Right.* An indigent defendant is entitled to a court-appointed attorney:

(A) in any criminal proceeding that may result in punishment involving a loss of liberty;

(B) for the limited purpose of determining release conditions at or following the initial appearance, if the defendant is detained after a misdemeanor charge is filed; or

(C) if the defendant is held on bond at the initial appearance.

(2) *Discretionary.* In any other criminal proceeding, the court may appoint an attorney for an indigent defendant if required by the interests of justice. THE COURT MAY APPOINT AN ATTORNEY REGARDLESS OF INDIGENCY UPON A REASONABLE BELIEF THAT THE DEFENDANT MAY HAVE DIMINISHED OR LIMITED CAPACITY AND COULD BENEFIT FROM THE ASSISTANCE OF COUNSEL.

(c) Waiver of Right to Counsel. A defendant may waive the right to counsel if the waiver is in writing and if the court finds that the defendant's waiver is knowing, intelligent, and voluntary. After a defendant waives the right to counsel, the court may appoint advisory counsel for the defendant at any stage of the proceedings. In all further matters, the court must give advisory counsel the same notice that is given to the defendant.

(d) Unreasonable Delay in Retaining Counsel. If a defendant appears at a proceeding without counsel, the court may proceed if:

(1) the defendant is indigent and has refused appointed counsel; or

(2) the defendant is not indigent and has had a reasonable opportunity to obtain counsel.

(e) Withdrawal of Waiver. A defendant may withdraw a waiver of the right to counsel at any time. But the fact that counsel is later appointed or retained does not alone establish a basis for repeating any proceeding previously held or waived.

(f) Right to Be Represented by a Legal Paraprofessional. A defendant may be represented by a legal paraprofessional in criminal cases and proceedings as provided in ACJA § 7-210. This does not affect the right to appointment of an attorney under (b)(1)(B). A legal paraprofessional must be permitted to consult privately with the defendant as soon as feasible after a defendant has been taken into custody, at reasonable times after being taken into custody, and sufficiently in advance of a proceeding to allow a legal paraprofessional to adequately prepare for the proceeding. A legal paraprofessional must comply with all duties in Rule 6.3(a), (c), and (d).

(g) Definition of Indigency. For the purposes of this rule, "indigent" means a person who is not financially able to retain counsel.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018. Amended Aug. 30, 2021, effective Jan. 1, 2022; Aug. 29, 2022, effective Jan. 1, 2023.

16A A. R. S. Rules Crim. Proc., Rule 6.1, AZ ST RCRP Rule 6.1

State Court Rules are current with amendments received and effective through July 15, 2023. The Code of Judicial Administration is current with amendments received through July 15, 2023.

Appendix E: Proposed Changes to Rule 11

Rule 11.2. Motion for an Examination of a Defendant's Competence to Stand Trial

(a) Motion and Order for Examination.
(1) *Generally.* At any time after an information is filed or an indictment is returned in superior court or a misdemeanor complaint is filed, the court may, on motion or on its own, order a defendant's examination to determine whether the defendant is competent to stand trial.
(2) *Motion to Determine Competence.* The moving party or the court must state facts for the requested mental examination.
(3) *Parties Authorized to Move for Competence Determination.* Any party, including a co-defendant, may move for a competence evaluation.
(4) *Proposed Examiners.* A party's motion may include a list of 3 mental health experts qualified under Rule 11.3 to conduct the examination. Any other party may include such a list in its response to the motion.
(b) Medical and Criminal History Records. No later than 3 days after the appointment of experts, the parties must provide the examining mental health experts with all of the defendant's available medical and criminal history records.
(c) Preliminary Examination. A court MAY order the defendant to undergo a preliminary examination to assist the court in determining if reasonable grounds exist to order the defendant's further examination OR TREATMENT. THE PRELIMINARY EXAMINATION SHALL INCLUDE A DETERMINATION IF THE DEFENDANT HAS PREVIOUSLY BEEN ADJUDICATED TO BE INCOMPETENT TO STAND TRIAL TO ASSIST THE COURT DETERMINING ELGIBILITY FOR DISMISSAL UNDER A.R.S. § 13-4504 FOR MISDEMEANOR CASES. IT SHALL INCLUDE A SUMMARY OF THE SOCIAL DETERMINANTS OF HEALTH RELATED TO THE DEFENDANT AND MAY INCLUDE A RECOMMENDATION FOR ASSISTED OUTPATIENT TREATMENT.

(d) Jurisdiction.
(1) *Superior Court.* The superior court has exclusive jurisdiction over all competence hearings except as provided in (d)(2). If a limited jurisdiction court determines that reasonable grounds exist for further competence hearings, it must immediately transfer the matter to the superior court for the appointment of mental health experts.
(2) *Limited Jurisdiction Court.* If the matter of a defendant's competence arises in a misdemeanor case in a limited jurisdiction court, a limited jurisdiction court judge may hear the matter if the presiding superior court judge has issued an administrative order authorizing the limited jurisdiction court to do so.
(e) If Defendant Is Competent. If any court determines that a defendant is either competent or restored to competence, regular proceedings must proceed without delay.
(f) Dismissal of Misdemeanor Charges. If the court finds that a person has been previously adjudicated incompetent to stand trial under this rule, the court may hold a hearing to dismiss any misdemeanor charge against the incompetent person under A.R.S. § 13-4504.

Rule 11.3. Appointment of Experts

Rule 11.3. Appointment of Experts

(a) Appointment of Experts.

(1) *Definition of a "Mental Health Expert."* "Mental health expert" means a physician licensed under A.R.S. §§ 32-1421 to -1437 or 32-1721 1821 to -1730 -1830; or a psychologist licensed under A.R.S. §§ 32-2071 to -2076.

(2) *Generally.* If the court finds that reasonable grounds exist for a competence examination, it must appoint one or more qualified mental health experts for a defendant charged with only a misdemeanor, or two or more qualified mental health experts for a defendant charged with a felony to:

(A) examine the defendant;

(B) report to the court in writing no later than 10 business days after examining the defendant; and

(C) testify, if necessary, about the defendant's competence.

(3) *Psychiatry Background.* A party may request or the court may order that at least one of the mental health experts be a physician specializing in psychiatry.

(4) *Stipulation for Only One Examiner.* With the court's approval, the State and the defendant may stipulate to the appointment of only one expert.

(5) *Examiner Qualifications.* A mental health expert must be:

(A) familiar with Arizona's standards and statutes for competence and criminal and involuntary commitment statutes;

(B) familiar with the treatment, training, and restoration programs that are available in Arizona; and

(C) approved by the court as meeting court-developed guidelines, including demonstrated experience in forensics matters, required attendance at a court-approved training program of not less than 16 hours and any court-required continuing forensic education programs, and annual review criteria.

(6) *Replacement.* If the appointed expert is unable to examine the defendant within the time allotted, the expert must immediately inform the court, and the court may appoint a different expert to perform the examination.

(b) Custody Status of the Defendant During Competence Proceedings. Pending the court's determination of competence, the court must determine the defendant's custody status under A.R.S. § 13-4507.

(c) Expert Report. An expert's report must conform to A.R.S. § 13-4509. THE REPORT SHOULD INCLUDE ADDITIONAL CRITERIA ASSESSED DURING A COMPETENCE INTERVIEW. EACH OF THESE AREAS WILL ASSESS A DEFENDANT'S FUNCTIONALITY WITH THAT TOPIC:

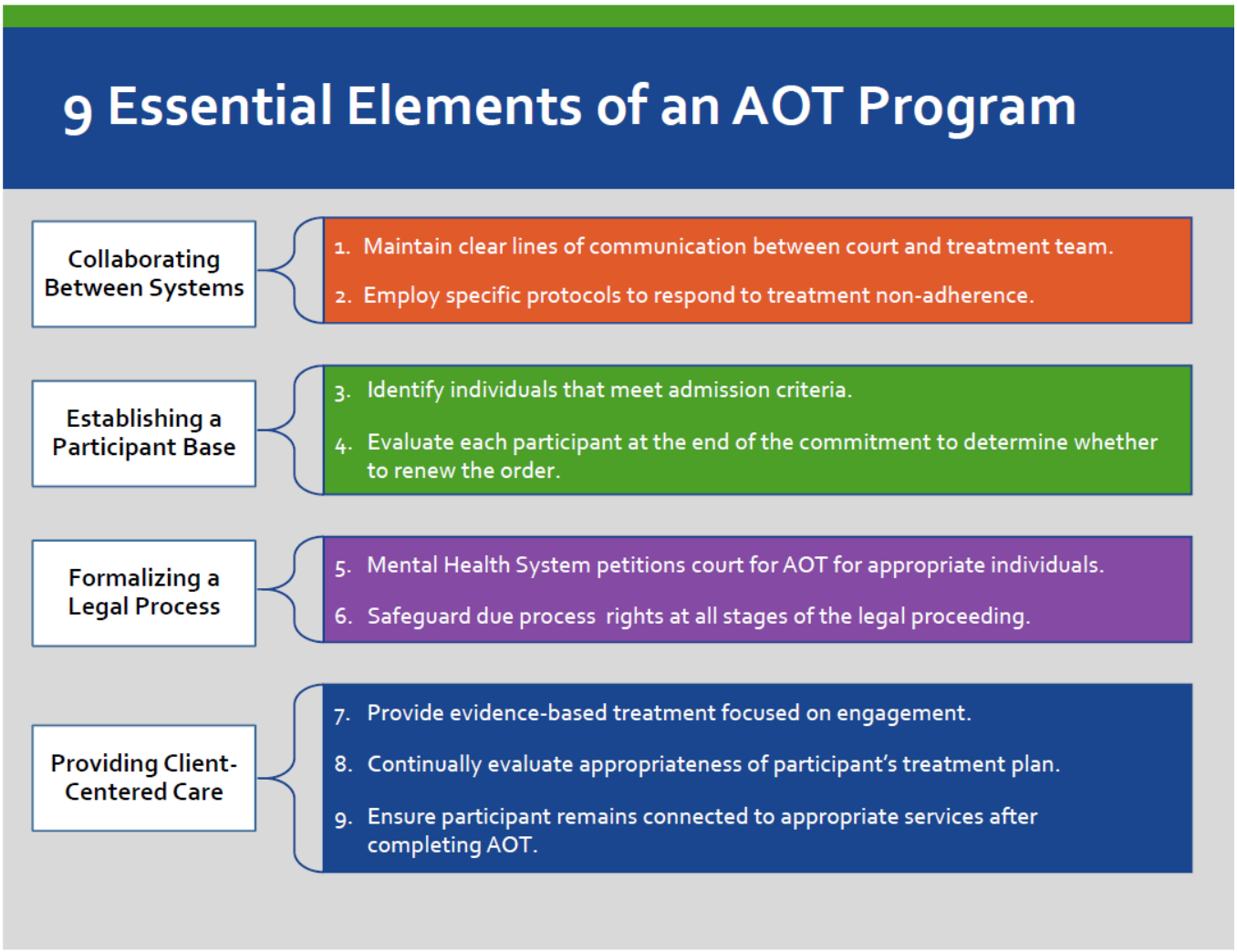
1. KNOWLEDGE ABOUT THE ROLES OF PRINCIPAL COURTROOM PERSONNEL (THE JUDGE, JURY, WITNESSES, DEFENSE ATTORNEY, AND PROSECUTOR) AND OF THE EVALUEE'S ROLE AS A DEFENDANT
2. AWARENESS OF BEING CHARGED WITH A CRIME AND FACING PROSECUTION
3. KNOWLEDGE OF SPECIFIC CHARGES, THE MEANINGS OF THOSE CHARGES, AND POTENTIAL PENALTIES IF CONVICTED
4. KNOWLEDGE ABOUT WHAT SPECIFIC ACTIONS THE STATE ALLEGES ("WHAT THE POLICE SAY YOU DID" TO GENERATE THE CHARGES)
5. CAPACITY TO APPRAISE THE IMPACT OF EVIDENCE (E.G., ADVERSE WITNESS TESTIMONY) THAT COULD BE ADDUCED
6. UNDERSTANDING OF AVAILABLE PLEAS AND THEIR IMPLICATIONS, INCLUDING PLEA BARGAINING AND POTENTIAL PENALTIES UNDER AVAILABLE PLEAS
7. PERCEPTIONS AND EXPECTATIONS OF DEFENSE COUNSEL
8. DESCRIPTION OF THE QUALITY AND QUANTITY OF PREVIOUS INTERACTIONS WITH DEFENSE COUNSEL
9. THE DEFENDANT'S CAPACITY FOR AND WILLINGNESS TO ENGAGE IN APPROPRIATE, SELF-PROTECTIVE BEHAVIOR
10. IF PRESENT, THE EXTENT AND IMPACT OF THE DEFENDANT'S SELF-DEFEATING BEHAVIOR, AND THE REASONS FOR THE BEHAVIOR
11. THE DEFENDANT'S ABILITY TO RETAIN AND APPLY NEW INFORMATION EFFECTIVELY
12. THE DEFENDANT'S CAPACITY TO PAY ATTENTION AT TRIAL AND REMEMBER WHAT HAS OCCURRED
13. THE DEFENDANT'S CAPACITY TO USE INFORMATION TO MAKE REASONABLE DECISIONS RELATED TO HIS DEFENSE
14. WHETHER THE DEFENDANT HAS SUFFICIENT IMPULSE CONTROL TO MAINTAIN PROPER COURTROOM DECORUM
15. THE DEFENDANT'S ABILITY TO PROVIDE A RATIONAL, CONSISTENT, AND COHERENT ACCOUNT OF THE OFFENSE.

THE COURT SHOULD TAKE THESE ADDITIONAL CRITERIA INTO CONSIDERATION WHEN DETERMINING THE DEFENDANT'S COMPETENCE.

(d) Additional Expert Assistance. If necessary for an adequate determination of the defendant's mental competence, the court may appoint additional experts and order the defendant to submit to additional physical, neurological, or psychological examinations.

Appendix F: Workgroup Reports: Pilot Programs

Essential elements of an AOT program:



DRAFT

Rule 11 Task Force Pilot Program

_____ Court

Policy and Procedure

Planning and Administration

Assisted outpatient treatment (AOT) should be made available to individuals who meet court established criteria. Individuals can only be placed in the program by the court which has made a determination of qualification based on an evaluation as described below.

Once the court identifies a potential participant it will schedule a hearing and give notice to appropriate parties. The individual is provided with legal representation and extensive due process protections throughout the assisted outpatient treatment process.

At the hearing, the court will hear testimony and take evidence from all the parties, including a clinician who has examined the individual. If the court finds the individual meets all the criteria for placement in assisted outpatient treatment, it will have a treatment plan developed and order the individual to comply with it and the mental health system to provide it.

Individual compliance with the court's order is monitored through case managers. If an individual fails to comply with his or her treatment plan, interventions are triggered which may include sanctions, arrest or hospitalization.

Initial assisted outpatient treatment orders are for a minimum of one year and each renewal can be for up to two years.

Target Population

Eligibility criteria is based on the specific nature of the criminal offense and the nature and severity of a person's mental illness. The court should target individuals whose mental illness is related to their current criminal justice involvement and whose participation in the court will not create an increased risk to public safety. Assisted outpatient treatment will be for those who have been evaluated and determined to be Seriously Mentally Ill (SMI) at any point either prior to or during a case being filed at the _____ Court.

Participant Qualifications:

An individual may be placed in assisted outpatient treatment only if, after a hearing, the court finds that all of the following have been met. The individual must:

1. be eighteen years of age or older; and
2. suffer from a mental illness; and
3. have a history of non-compliance with treatment that has been a significant factor in his or her being in a hospital, being arrested or being in prison or jail at least twice within the last thirty-six

months or; resulted in one or more acts, attempts or threats of serious violent behavior toward self or others within the last forty-eight months; and
4. be unlikely to voluntarily participate in treatment; and
5. be, in view of his or her treatment history and current behavior, in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in: a substantial risk of physical harm to the individual or others or exhibit an inability to care for themselves or their property; and
6. be likely to benefit from assisted outpatient treatment.

Participant Identification and Evaluation

Defendants with mental illness cannot be identified on the basis of their criminal charges, and their symptoms and/or psychiatric history may not be readily apparent to lawyers and judges. In order to identify potential participants, the court should ascertain all possible referral sources and develop tools and procedures for identifying, referring, and screening such individuals. The court should also have resources available for thorough psychosocial and/or psychiatric assessments of potential participants so that the court can determine whether an individual is eligible for participation and understand what community-based services will be required to meet the individual's treatment goals and the community's public safety goals.

Linkage to Services

Participants in assisted outpatient treatment may need to be connected to a wide array of individualized, adequate, and appropriate treatments and services, including mental health treatment, substance abuse treatment, case management services, supported housing, educational and vocational services, and assistance with public benefits. The courts must work closely with service providers to ensure that individuals obtain appropriate services throughout their participation in the program. An individual ordered into assisted outpatient treatment is required to follow a treatment plan approved by the court. The plan is determined through consultation between the patient, attorneys, the mental health system, service providers and possibly others.

If the court finds that the patient meets the criteria, but a treatment plan has not been developed, the court will order _____to provide one to the court. In developing a treatment plan, the service provider will provide the patient with an opportunity to actively participate in its development. The treatment plan will state:

1. which categories of assisted outpatient treatment are recommended and the rationale for each;
2. facts which establish that such treatment is the least restrictive alternative; and,
3. if the proposed treatment plan includes medication, the types or classes recommended, physical and mental effects of such medication (both beneficial and detrimental), and whether such medication should be self-administered or administered by a professional.

The clinician should specify the types and dosage ranges of medication most likely to provide "maximum benefit," since the court will consider what will be to the patient's maximum benefit when ordering treatment.

Terms of Participation

Terms of participation in assisted outpatient treatment are based on both criminal justice criteria and mental health considerations. The court will develop program guidelines regarding whether participation takes place before or after a plea and/or sentencing, the length of the court's treatment mandate, requirements for graduation from the courts, rewards for successful completion of all court mandates, and consequences for failing to comply with or complete court mandates. Individuals ordered to participate in assisted outpatient treatment must comply with all court orders and elements of the approved treatment plan. Failure to do so may result in sanctions by the court including incarceration, hospitalization, imposition of sentence or other sanctions.

Informed Choice

A person's decision to participate in assisted outpatient treatment must be voluntary and based on informed choice. The court will establish procedures for ensuring that each participant fully understands the terms of participation, including the impact on his/her criminal case and the proposed treatment alternatives. Consent by participants should be obtained through individual counsel. An informed decision is crucial to provide full treatment services as determined in the treatment order. A consent form should be developed and may include the following elements*:

Date Name of Patient Date of Birth

Policy Statement
In order for us to proceed with the care and treatment, we would like seek first the consent of our patients in order to secure legally our patient's rights.

Scope
This consent covers the healthcare and welfare of our patients. It is our responsibility to ensure that the necessary treatment or procedure is performed. But we cannot do this on our own and without the knowledge of the patient. We respect that the right of the person with his or her own body is a fundamental right and thus, we need to ensure that the person is giving his or her express acknowledgment and consent to the treatments and that the said patient is aware of the risks or consequences, if there is any, with regard to our actions.

Purpose
We would like to let you know about the care and treatment that you will receive from us and obtain your consent to allow us to provide you the care you will need. For patients who are not capable of making informed decisions on their own under the law, parents or guardians may sign this form and make informed choices on the patient's behalf.

Patient's Withdrawal
The patient understands that he/she can decline and withdraw his/her consent and participation at any time, provided that such withdrawal shall be made in writing and signed by the withdrawing party.

Emergency Cases
There might be instances where the exigencies in situations, may prompt the Clinic to make urgent decisions on behalf of the patient. In these instances, the acceptance of this consent shall give the Clinic authority to make such decisions under such circumstances.

Billing and Collection

For any treatment and care conducted permission is given to share information with the patient's insurance company for the expenses incurred, as well as any third party that may be involved for the billing.
The patient, parent, or guardian may be notified beforehand should the former prefer not to disclose such information and may opt to make other modes of payment other than insurance.

Injuries or Disabilities

The Patient understands that certain information may be disclosed to the employer for work-related injuries or illnesses for evaluation and to help the employer address safety concerns in the workplace relative to the incident.

Authentication of Identification

The patient or guardian may be required to provide identification in connection with the treatment and care to be requested. This helps ensure that the person treated is an authorized person under the insurance policy.
If the patient, parent, or guardian is not able to provide the necessary identification, the former may have an option to make payment in cash in order to be given treatment and care.

Signature

Treatment Services

Assisted Outpatient Treatment orders must include case management services or assertive community treatment team services and may also include:

1. medication;
2. blood or urinalysis tests to determine compliance with prescribed medications;
3. individual or group therapy;
4. day or partial day programs;
5. educational and vocational training;
6. supervised living;
7. alcohol or substance abuse treatment;
8. alcohol and/or substance abuse testing;
9. any other services prescribed to treat the person's mental illness and to either assist the person in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.

Confidentiality

Client confidentiality extends to all members of the team by requiring them to not discuss contents of a patient's therapy outside of the confines of the treatment, treatment team meetings or other court process unless specifically permitted by the client or medical necessity.

Team Members

Monitoring adherence to Court Requirements

Judicial monitoring and the coordination of judicial and clinical actions to motivate compliance with treatment provide elements of success in ongoing clinical treatment. The court will consider information received from service providers when implementing graduated rewards and sanctions to motivate compliance with court mandates.

*Consent to Care and Treatment Form - Jotform Form Builder

Appendix G: Workgroup Reports Identifying/Creating Screening Tools

Arizona Supreme Court
Center for Forensic Science & Psychology

To: Rule 11 Task Force

From: Jennifer Albright

Re: Workgroup on Evaluation Tools

The Rule 11 Task Force requested assistance in looking at assessment tools that may be appropriate for use in identifying individuals that would benefit from assisted outpatient treatment programming. This request was made in order to assist with the Task Force's development of a recommendation that an Assisted Outpatient Treatment (AOT) Program be developed in Arizona as part of the continuum of services available to those persons who are justice system involved and who have mental health issues.

Jennifer Albright, Director of the Supreme Court Center for Forensic Science and Psychology reached out to several Arizona court employees who were known to have a deep knowledge of various assessment tolls used in the criminal justice system by jails, pretrial services and specialty court staff, and regional behavioral health agencies. In addition, through the Center's partnership with Arizona State University's Future of Forensic Science Initiative and the ASU New College, the assistance of Asst. Professor Tess Neal was sought.

The group met virtually to identify the most prevalent tools that had components assessment mental health needs in the state's justice system. Professor Neal shared input on how to evaluate those tools for purposes of assessing a candidate for inclusion in an AOT program. The group was provided the draft AOT program qualifications developed by the task Force for which to consider various tools by. Many of the tools were determined to be useful in identifying general mental health needs, but not necessarily useful in determining specific mental health issues or needs.

The Task Force then asked for specific input on the K6/K10 and MHSF III tools. Professor Neal, due to her expertise in this area, took a close look at these instruments. Her initial feedback was that the K6/K10 had reasonably good psychometric properties but were designed to be mostly used to screen for

psychological distress specific to anxiety and depression. As such they may not be sensitive to other types of symptoms (e.g., psychosis). She shared that MHSF-III did have a wider scope (not just specific to anxiety and depression) and did have some psychometric information for forensic uses (e.g., the link below).

After further consideration of the tools Professor Neal reported that Kessler instrument (K6 / K10) did not have specific items about psychosis but was a widely used screening instrument and had a lot of validation data for multiple contexts. She opined that the Kessler instrument was a robust tool and could be appropriate for the use proposed. She pointed out that in one validation study there was a note about how there are no items in the instrument directed at identifying people with psychosis, but the study noted that "identifying people with psychosis by brief questionnaire is difficult" and that "the K10 may still be appropriate simply because people with psychosis do get distressed."

Professor Neal also opined, based on the program eligibility criteria provided by the task Force, the MHSF-III would also a good toll for the purpose proposed.

Professor Neal suggested the use of both instruments for all persons considered for the AOT program, noting both are short and use of both instruments would require less than 10-15 min to administer. It was suggested that use of both, in the manner proposed by the Task Force, that is to screen in people without any mental health history, as well as those with indicators of mental health history through other records or assessments (such as prior competency evaluations, assessments at a local jail, etc.) would lead to a robust database to then analyze the performance of the tools and make sure that they perform as intended for the screening. Such data, it was urged, could be part of a dataset that is used for study of pilot programs.

This information was then shared with the task Force Chair and the task Force membership through the Chair.

Appendix H: Workgroup Report: Definition of Competency

MEMORANDUM

To: Rule 11 Task Force
From: Definition of Competence Working Group
Date: 7/18/2023
Subject: Competence Definitions

This memo lays out the spectrum of approaches states have taken to defining competence to stand trial with the goal of understanding how much flexibility Arizona may have to amend its own rules. As the below survey shows, states have taken a wide variety of approaches to defining competence, and Arizona thus has substantial room to clarify its competence standard while remaining within constitutional boundaries.

Many states largely adopt the wording in *Dusky v. United States*, which laid out the constitutional requirement for competence, but include subtle changes to the language of the test that limit competence proceedings just to those suffering from mental disability. A handful of states have expanded the reach of competence doctrine, laying out additional considerations for courts and experts to analyze that were not captured by *Dusky*. Arizona has straddled these two approaches, tracking *Dusky* in its statute but identifying more specific considerations in its case law.

The below analysis first lays out the constitutional background for competence, then details the approaches across states.

CONSTITUTIONAL BACKGROUND

Competence to stand trial has been a requirement for criminal prosecutions dating back to English common law. Four primary justifications have emerged for the competence requirement: (1) preventing the erroneous conviction of a defendant who cannot communicate crucial facts to his defense attorney, (2) preserving the integrity of the criminal process, which would be threatened in the public mind by trying defendants without an understanding of the proceedings, and (3)

protecting the defendant's interest in autonomous decision-making on important matters such as whether to plead guilty. Bruce J. Winick, *Reforming Incompetency to Stand Trial and Plead Guilty: A Restated Proposal and A Response to Professor Bonnie*, 85 J. CRIM. L. & CRIMINOLOGY 571, 575-76 (1995).

The modern standard for assessing competence was laid out by the Supreme Court in 1960. In *Dusky v. United States*, 362 U.S. 402 (1960), the Supreme Court held that federal law requires that a defendant must "[have] sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and [have] a rational as well as factual understanding of the proceedings against him." Fifteen years later, the *Dusky* standard was slightly clarified, requiring that a defendant be able "to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense." *See Drope v. Missouri*, 420 U.S. 162, 171 (1975). Some theorists have argued that this standard lays out two separate aspects of competence: (1) competence to assist counsel, which includes being able to understand the adversarial process and the charges against the defendant, as well as the ability to provide information to the attorney, and (2) decisional competence, which is the ability to make the decisions entrusted to a defendant, such as whether to plead guilty. *See* Richard J. Bonnie, *The Competence of Criminal Defendants: Beyond Dusky and Drope*, 47 U. MIAMI L. REV. 539, 554 (1993).

The Supreme Court has called the aims of this standard "modest" and noted that "[s]tates are free to adopt competency standards that are more elaborate than the *Dusky* formulation." *Godinez v. Moran*, 509 U.S. 389, 402 (1993). Most states—forty-seven at last count—have included a definition of competence to stand trial in their statutory scheme. The below section outlines how those statutes have added nuance to the *Dusky/Drope* standard.

STATE DEFINITIONS OF COMPETENCE

Most states track the *Dusky* standard in their definitions of competence. While some have adopted the standard in its original wording ("Whether the defendant has a rational and factual

understanding of the proceedings against him or her, and sufficient present ability to consult with and assist his or her lawyer on the case with a reasonable degree of rational understanding,"), *e.g.*, N.H. Rev. Stat. Ann. § 135:17(II)(b), other states have chosen to integrate the *Drope* clarification ("A person who . . . is unable to understand the proceedings against [them] or to assist in the person's own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures."), *e.g.*, Mont. Code Ann. § 46-14-103.

Yet, even for those states that have explicitly adopted *Dusky* and *Drope*, the statutes often surround that language with other requirements that may either narrow or expand what the Supreme Court has required. For instance, at least twenty-two states, including Arizona, have narrowed the competence proceedings only to individuals who are incompetent due to mental illness or other mental disability. *See, e.g.*, Alaska Stat. Ann. § 12.47.100; Ariz. Rev. Stat. § 13-4501; Ark. Code Ann. § 5-2-302. *Dusky* contained no such explicit requirement and conceivably could be applied to a broader swath of defendants, such as those who did not understand legal proceedings due to cultural differences. *See* J.W. Looney, *The Arkansas Approach to Competency to Stand Trial: "Nailing Jelly to a Tree,"* 62 Ark. L. Rev. 683, 688-89 (2009). Yet the implication that incompetence can only be found in cases of mental disability could also be drawn from the facts of *Dusky* itself, which involved "psychiatric testimony." *Dusky*, 362 U.S. at 403. Thus, if a state wishes to narrow the reach of *Dusky*, it can do so if it relies on some aspect of the factual record in *Dusky* itself (or one of the other line of Supreme Court competence cases, such as *Drope*, *Pate*, or *Godinez*).

But *Dusky* provides a floor, not a ceiling, and states are free to include language in their statutes or court rules that expands the reach of competence questions. A variety of states have added additional express considerations to competency adjudication that either provide more detail to the *Dusky/Drope* standard or capture considerations not explicitly reflected in the rules stated in

those cases. In some states, case law has also filled in the gaps. The below sections lay out the substance of those additions.

a. **Additional Comprehension Requirement**

Both New Mexico and Wyoming add a specific comprehension requirement above and beyond the "understanding of the proceedings" requirement from *Dusky*. New Mexico's criminal court rules require that the defendant must also have the capacity to "comprehend the reasons for punishment," New Mex. Rules Ann., Rule 5-602.1(B)(1), while Wyoming requires that a defendant must have the ability to "comprehend his position," Wyo. Stat. Ann. § 7-11-302. This may indicate that both states want to avoid the specter of a defendant being convicted of a crime without understanding his punishment (which may differ from being able to understand the *proceedings*, which is what *Dusky* requires). The requirement that a defendant "comprehend the reasons for punishment" language, for example, builds into the competence analysis concerns about states' retributive or deterrence goals in punishment, which are frustrated when the individual does not understand why he is being punished. *See* Note, *Incompetency to Stand Trial,* 81 Harv. L. Rev. 454, 458-59 (1967) (cited in State v. Rotherham, 122 N.M. 246, 252 (1996)). *Dusky*'s original standard did not explicitly raise similar concerns.

b. Elemental Mental Processes

New Jersey differs from the other states in that its statute enumerates specific "elemental mental processes" that must be demonstrated to document competency of a defendant:

> A person shall be considered mentally competent to stand on trial on criminal charges if the proofs shall establish:
>
> 1) That the defendant has the mental capacity to appreciate his presence in relation to time, place and things; and
>
> 2) That his elemental mental processes are such that he comprehends:
>
> (a) That he is in a court of justice charged with a criminal offense;
> (b) That there is a judge on the bench;

> (c) That there is a prosecutor present who will try to convict him of a criminal charge;
> (d) That he has a lawyer who will undertake to defend him against that charge;
> (e) That he will be expected to tell to the best of his mental ability the facts surrounding him at the time and place where the alleged violation was committed if he chooses to testify and understands the right not to testify;
> (f) That there is or may be a jury present to pass upon evidence adduced as to guilt or innocence of such charge or, that if he should choose to enter into plea negotiations or to plead guilty, that he comprehend the consequences of a guilty plea and that he be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea; and
> (g) That he has the ability to participate in an adequate presentation of his defense.
> N.J. Stat. Ann. § 2C:4-4(b).

New Jersey's enumerations include the key components of the *Dusky* standard, but also specify certain mental understandings that demonstrate the ability to participate in one's defense and understand the charges against them. For example, rather than vague notions about "nature of the proceedings," the standard requires that the defendant be able to understand the roles of the judge, prosecutor, and defense attorney.

Other states, including Louisiana and Nebraska, have also fleshed out the specifics of competence through common law. Arizona's Supreme Court cited to both of these cases as examples of "the criteria which the judge may consider in making the [competency] determination." *Bishop v. Superior Ct.*, 724 P.2d 23, 28 (Ariz. 1986). Louisiana's Supreme Court provided a list of factors for judges to consider as they assess competence:

1. [the defendant's] awareness of the nature of the charge and his appreciation of its seriousness
2. his understanding of available defenses
3. his ability to distinguish between pleas of guilty and not guilty and the consequences of each
4. his awareness of legal rights
5. his comprehension of the range of possible verdicts and of the consequences of conviction
6. his recall and relation of facts pertaining to his actions and whereabouts at certain times
7. his ability to assist counsel in locating and examining witnesses
8. his maintenance of a consistent defense
9. his ability to inform his attorney of any distortion of misstatements in the testimony of the other witnesses
10. his capacity to make simple decisions in response to well-explained alternatives
11. his ability to testify in his own defense

12. whether his mental condition will deteriorate under the stress of trial. *State v. Lawrence*, 368 So.2d 699, 701 (La. 1979)

The factors considered by this case differ significantly than those laid out by the New Jersey statute. While the bulk of New Jersey's factors relate ensure that the defendant understand the roles of the personnel in the courtroom—who the judge and prosecutor are, what they do, etc.—Louisiana's considerations are more focused on trial strategy, decision-making ability, and consequences.

A concurrence from a Nebraska Supreme Court case—also cited by the Arizona Supreme Court with approval in *Bishop*—combined the New Jersey and Louisiana approaches, encouraging judges to assess all of the above (as well as a few additional considerations) in their competence decisions:

(1) That the defendant has sufficient mental capacity to appreciate his presence in relation to time, place, and things;
(2) That his elementary mental processes are such that he understands that he is in a court of law charged with a criminal offense;
(3) That he realizes there is a judge on the bench;
(4) That he understands that there is a prosecutor present who will try to convict him of a criminal charge;
(5) That he has a lawyer who will undertake to defend him against the charge;
(6) That he knows that he will be expected to tell his lawyer all he knows or remembers about the events involved in the alleged crime;
(7) That he understands that there will be a jury present to pass upon evidence in determining his guilt or innocence;
(8) That he has sufficient memory to relate answers to questions posed to him;
(9) That he has established rapport with his lawyer;
(10) That he can follow the testimony reasonably well;
(11) That he has the ability to meet stresses without his rationality or judgment breaking down;
(12) That he has at least minimal contact with reality;
(13) That he has the minimum intelligence necessary to grasp the events taking place;
(14) That he can confer coherently with some appreciation of proceedings;
(15) That he can both give and receive advice from his attorneys;
(16) That he can divulge facts without paranoid distress;
(17) That he can decide upon a plea;
(18) That he can testify, if necessary;
(19) That he can make simple decisions; and
(20) That he has a desire for justice rather than undeserved punishment. *State v. Guatney*, 299 N.W.2d 538, 545 (Neb. 1980) (Krivosha, C.J., concurring).

This list includes the defendant's understanding of the roles of the parties in the courtroom, as well as his decision-making capabilities, ability to provide facts or give testimony, and ability to grasp consequences.

c. <u>Considerations for the Expert</u>

Florida, Texas and Utah do not have additional requirements that a defendant must meet to be competent or specific factors that a judge should look to in assessing competence, but they instead lay out a list of items for experts to consider as they evaluate defendant's competence. These lists differ from the previous states as they are not criteria that the court must assess to establish competence, but instead are items of information that an expert must include in her report to the court.

i. Florida

Florida's statute defines competency under the *Dusky* and *Drope* standard, referring to whether a defendant has sufficient present ability to consult with their lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against them. Fla. Stat. Ann. § 916.12. In addition, Florida enumerates the following factors for consideration:

> In considering the issue of competence to proceed, an examining expert shall first consider and specifically include in his or her report the defendant's capacity to:
>
> (a) Appreciate the charges or allegations against the defendant.
> (b) Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant.
> (c) Understand the adversarial nature of the legal process.
> (d) Disclose to counsel facts pertinent to the proceedings at issue.
> (e) *Manifest appropriate courtroom behavior.*
> (f) Testify relevantly. *Id.*

This instruction provides some concrete heft to Dusky's vague language. For instance, it requires experts to assess both the charges against him and "appreciate the range and nature of possible

penalties." This provides courts with some sense of what, specifically, it means to understand the "nature of proceedings."

But these factors also add substance to Dusky. The instruction includes assessment of defendant's ability to act appropriately while in the courtroom, which appears nowhere in the *Dusky* standard and is not directly related either to the defendant's ability to understand proceedings or consult with his counsel.

ii. Texas

Texas' statute defines competency under the *Dusky* and *Drope* standard, referring to whether a defendant has: (1) a sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding, or (2) a rational as well as factual understanding of the proceedings against the person. Tex. Code Crim. Proc. Ann. art. 46B.003.

In addition to the standard wording, Texas provides the following enumerated factors that an expert shall consider, including:

> the capacity of the defendant during criminal proceedings to:
>
> - rationally understand the charges against the defendant and the potential consequences of the pending criminal proceedings;
> - disclose to counsel pertinent facts, events, and states of mind;
> - *engage in a reasoned choice of legal strategies and options*;
> - understand the adversarial nature of criminal proceedings;
> - *exhibit appropriate courtroom behavior*; and
> - testify;

As with Florida, Texas requires that experts assess whether the defendant can "exhibit appropriate courtroom behavior." But it also asks experts to assess whether the defendant can "engage in a reasoned choice of legal strategies and options," a requirement that perhaps is even broader than Dusky's command that defendants be able to "consult with counsel," since many decisions of "legal strategy" are made by attorneys with only implied consent from the defendant. *See* American Bar

Ass'n, Model Rule 1.2(a) ("[A] lawyer may . . . take such action on behalf of the client as is impliedly authorized to carry out the representation.").

iii. Utah

Utah's statute defines competency under the *Dusky* and *Drope* standard, stating that a defendant who is competent to stand trial has (1) a rational and factual understanding of the criminal proceedings against the defendant and of the punishment specified for the offense charged; and (2) the ability to consult with the defendant's legal counsel with a reasonable degree of rational understanding in order to assist in the defense. Utah Code Ann. § 77-15-2. In addition to the standard wording, the statute further enumerates the factors that a forensic evaluator shall consider and address, including:

- understand the charges or allegations against the defendant
- communicate facts, events, and states of mind
- understand the range of possible penalties associated with the charges or allegations against the defendant
- *engage in reasoned choice of legal strategies and options*
- understand the adversarial nature of the proceedings against the defendant
- *manifest behavior sufficient to allow the court to proceed*
- testify relevantly. *Id.*

Utah's factors combine the various considerations of both Florida and Texas, requiring that defendants behave appropriately in court and engage in reasoned choice of legal strategies, both of which may be extensions of what is explicitly required by Dusky.

iv. Professional Organizations

Groups such as the American Academy of Psychiatry and the Law (AAPL) have also put forward lists of criteria for experts to assess, which go more in-depth than those promulgated by Florida, Texas and Utah. For example, in its practice guide for evaluating competence, AAPL laid out a list of areas that an evaluator typically assesses during a competence interview. Each of these areas would be explored with specific questions designed to assess a defendant's functionality with that topic:

1. knowledge about the roles of principal courtroom personnel (the judge, jury, witnesses, defense attorney, and prosecutor) and of the evaluee's role as a defendant
2. awareness of being charged with a crime and facing prosecution;
3. knowledge of specific charges, the meanings of those charges, and potential penalties if convicted
4. knowledge about what specific actions the state alleges ("what the police say you did" to generate the charges)
5. ability to behave properly during court proceedings and at trial;
6. capacity to appraise the impact of evidence (e.g., adverse witness testimony) that could be adduced
7. understanding of available pleas and their implications, including plea bargaining
8. perceptions and expectations of defense counsel
9. description of the quality and quantity of previous interactions with defense counsel
10. the defendant's capacity for and willingness to engage in appropriate, self-protective behavior
11. if present, the extent and impact of the defendant's self-defeating behavior, and the reasons for the behavior
12. the defendant's ability to retain and apply new information effectively
13. the defendant's capacity to pay attention at trial and remember what has occurred
14. the defendant's capacity to use information to make reasonable decisions related to his defense
15. whether the defendant has sufficient impulse control to maintain proper courtroom decorum
16. the defendant's ability to provide a rational, consistent, and coherent account of the offense.

Douglas Mossman et al., *AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial*, 35 J. AM. ACADEMY OF PSYCH. & L. 1, 3 (2007 Supplement).

CONCLUSION

States have adopted a wide variety of approaches that add detail to the vague commands of *Dusky* and *Drope*. If nothing else, this survey gives us confidence that Arizona has the ability to do something similar, perhaps including in its statutory scheme specific considerations for judges to assess as they determine competence. Moreover, states have wide latitude in what factors they find as relevant, with some focusing on an understand of the role of the parties in the courtroom, others focused on the defendant's ability to understand consequences of guilt, and others laying out specific contours of a defendant's ability to recall facts or make decisions. As this survey shows, there is no uniform approach to competence across the states, and Arizona therefore has substantial flexibility to modify its statute and remain within the boundaries of what is constitutional.

Appendix I: Workgroup Reports Proposed Rule 11 Changes

MEMORANDUM

August 21, 2023

TO: Don Jacobson, Chair Rule 11 Task Force

FR: Paul Thomas, Advisor to the Task Force

RE: Rule 11 Report

Background

The Rule 11 Task Force, having been charged with examination of the Criminal and Civil Rules of Procedure for misdemeanor competency matters, has taken a broad approach, including consideration of alternatives to the formal Rule 11 process. The practical reality of competency matters in misdemeanor cases is restoration to competency remains extremely rare. The costs associated with restoration are not justified by city governments, given that charges are typically minor misdemeanors. Another restrictive factor is the statutory requirement that restoration should be completed within the maximum sentencing time for the offense. For example, a class-three misdemeanor offense would be limited to thirty (30) days. These remain the principal reasons that have historically made misdemeanor restorations nearly non-existent.

In the period 2004 -2020, the Mesa Municipal Court concluded over 1500 Rule 11 cases with only 1 restoration.

Accordingly, the Rule 11 Task Force recognizes that there is not currently a structural alternative for defendants found incompetent other than a

dismissal of the case. Many re-offend and create a cycle of arrest and dismissal. Most misdemeanor defendants caught in this situation are clearly in need of mental health services. The Rule 11 Task Force has centered significant time and effort to creating a procedural alternative. An alternative offering mental health services as a diversion to the competency process resulting in a dismissal of charges.

Rule Change

The challenge for the Task Force has been to create such an alternative within the Statutes and Criminal Rules governing the competency process. Primary attention has focused on the ability to identify changes to the Rules of Procedure that would expedite the diversion sought by the Task Force without the necessity of statutory changes. Examination of the Criminal Rules has led to significant attention to Criminal Rule 11.2 (Competency Pre-screen) and 8.4 (Excluded Time).

The motivation behind Criminal Rule 11.2 is the fact that procedurally, it offers the earliest opportunity to engage a preliminary examination of the defendant's mental state, since it is required. Assuming the Rule can be modified to include a recommendation for assisted out-patient treatment or mental health services, this could provide the basis for a diversion opportunity.

The attention to Criminal Rule 8.4 is meant to exclude time while a defendant is receiving assisted out-patient treatment or mental health services. This is to clarify and relieve concerns about speedy trial time obligations. This excluded time would not be unlimited.

Final language regarding both CrR 11.2 and CrR 8.4 remains a work in progress at this time.

Appendix J: Recommendations on Assisted Outpatient Treatment

June 2023

Recommendations of the Assisted Outpatient Workgroup

In October 2022, the Task Force on Rule 11 of the Arizona Rules of Criminal Procedure and Related Matters, created by Administrative Order 2022-45 and known as the Rule 11 Task Force, issued a report detailing a series of recommendations regarding the development of an alternative assessment and diversion opportunity for individuals who may not be competent to stand trial in a misdemeanor case. Specifically, the Task Force noted that the competency evaluation process under Rule 11 may not be the most appropriate or effective approach for individuals who have committed minor offenses. Instead, they recommended the establishment of a process that allows for the diversion to assisted outpatient treatment in lieu of a competency evaluation or competency restoration for individuals alleged to have committed misdemeanor offenses.

Key findings detailed in the report support the Rule 11 Task Force's recommendations, including:

- 70% of individuals involved in the criminal justice system have a behavioral health condition.
- When a determination is made under Rule 11 that an individual is not competent to stand trial, the restoration to competency process does not constitute ongoing clinical treatment. It is simply a process to restore an individual to the level of competency to be able to stand trial.
- Many defendants spend more time in jail awaiting a competency evaluation than they would have spent in a correctional setting if they had been convicted of the crime of which they were accused.
- Individuals who are identified as possibly not being competent to stand trial in misdemeanor cases are often incarcerated and then released when their case is dismissed due to a lack of resources available to complete the competency evaluation and/or restoration process.

In response to the recommendations of the Task Force, a workgroup was formed in April 2023 to develop basic parameters related to the establishment of a diversion program aimed at providing individuals who have committed misdemeanor offenses with the opportunity to engage in community-based care through an Assisted Outpatient Treatment (AOT) program.

The following individuals participated in the AOT workgroup:

- Jay Polk - Presiding Judge, Probate and Mental Health Department, Superior Court of Arizona for Maricopa County
- Alexandrea Ruth - Justice Program Administrator, Arizona Health Care Cost Containment System
- Shelley Curran - Director of Crisis, Cultural, Prevention, and Court Services, Mercy Care
- Dana Flannery - Chief Executive Officer, DSF Consulting
- Donald Jacobson - Chair, Rule 11 Task Force and Senior Special Projects Consultant, Arizona Supreme Court
- John Napper - Presiding Judge, Superior Court of Yavapai County
- Keith Kaplan – Probate and Mental Health Court Administrator, Superior Court of Arizona for Maricopa County
- Gene Cavallo - Senior Vice President for Behavioral Health Programs, Valleywise Health
- Karen Hoffman Tepper – President and Chief Executive Officer, Terros Health
- Leila Reynolds - Attorney, Office of the Public Advocate
- Dan Haley - Chief Executive Officer, HOPE Incorporated

● Jen Albright - Director, Center for Forensic Science & Psychology, Arizona Supreme Court
● Jami Snyder - Facilitator

The workgroup met a total of five times over the months of April and May 2023. Meetings occurred on:

- • April 5, 2023
- • April 11, 2023
- • April 18, 2023
- • April 25, 2023
- • May 2, 2023

The workgroup was charged with the following:
● Defining who could benefit from AOT.
● Detailing the process for referring individuals alleged to have committed a misdemeanor crime to AOT.
● Developing minimum expectations for individuals referred to AOT.
● Beginning to outline the parameters for ongoing court oversight of individuals participating in AOT. ○ Present a substantial risk of harm to self or others in the near future, which includes: ■ suicidal behavior or inflicting significant self-injury; or
■ attempting, causing, or threatening to cause serious injury to others; or

○ Have demonstrated an inability to: ■ attend to basic physical needs such as medical care, food, clothing, or shelter; or
■ protect the self from harm or victimization by others; or
■ exercise sufficient behavioral control to avoid serious criminal justice involvement; or

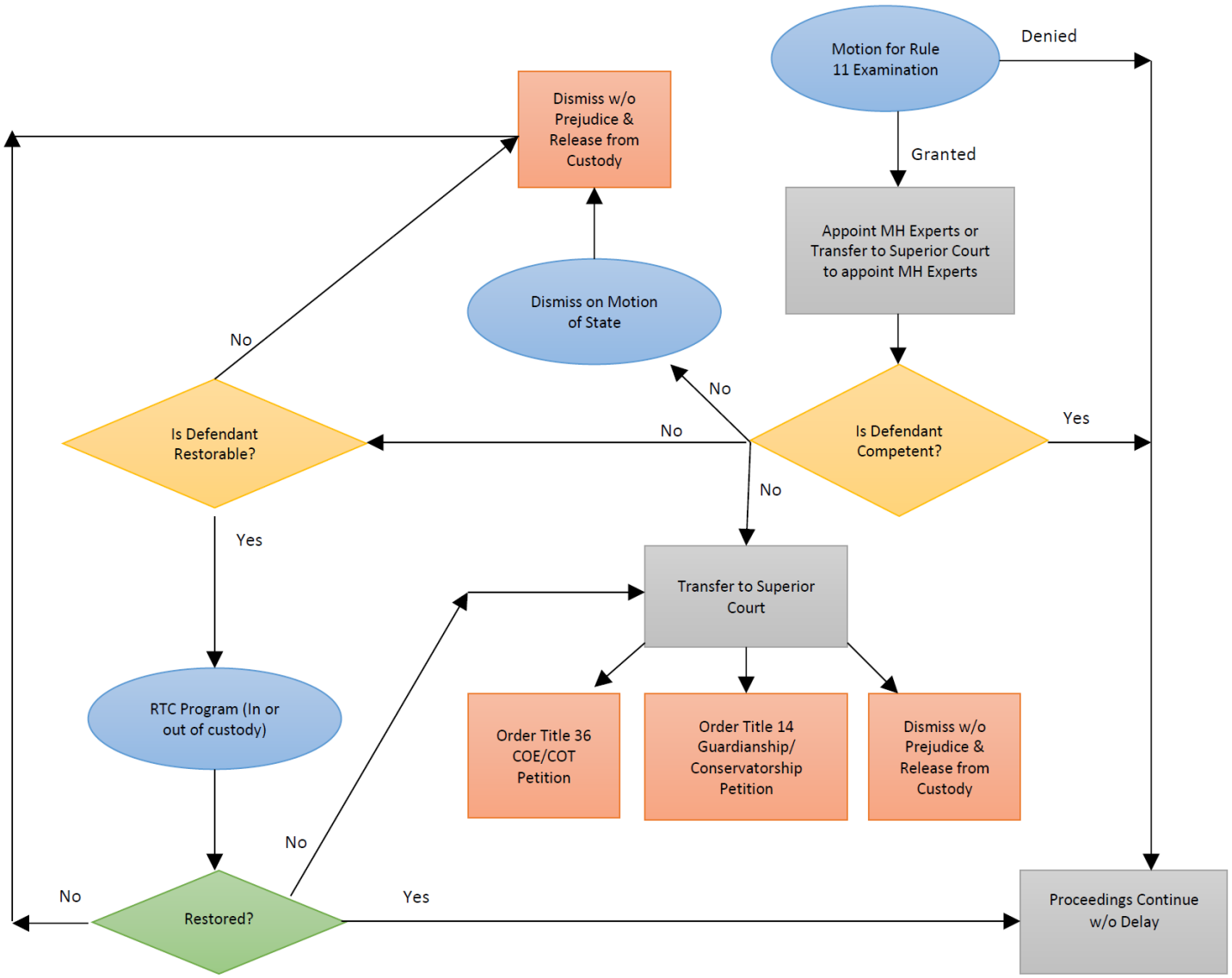
○ Lack the capacity to recognize that they are experiencing symptoms of a serious mental illness and therefore are unable to: ■ make a decision regarding treatment; or
■ understand or retain information relevant to the treatment decision; or
■ use, weigh or appreciate that information as part of the process of making the treatment decision; or
■ communicate the decision; or
■ appreciate the risks or benefits of treatment; and
■ in the absence of treatment are likely to experience a relapse or deterioration of condition that would impact their ability to make a decision regarding treatment or understand or retain information relevant to the treatment decision.

In defining who could benefit from AOT, the workgroup recommended that it be limited to individuals eighteen years or older who, as a result of mental illness and based on recent actions, omissions, or behaviors:
The workgroup also detailed a process for referring individuals alleged to have committed misdemeanor crimes to AOT. Workgroup members suggested that the process be initiated with the filing of a petition by the defendant, their attorney, or the state, asking the court to find that the defendant may be a

person who could benefit from AOT. Following the filing of the petition, the workgroup recommended that the court appoint a court advisor to conduct an investigation and report back to the court no more than thirty days later with a recommendation to: continue with misdemeanor proceedings, refer the defendant to assisted outpatient treatment, refer the defendant to court-ordered treatment, refer the defendant to an evaluation for competency to stand trial, or restore the defendant to competency.
The workgroup recommended that the court consider the following in making a final determination as to the most appropriate course of action: the recommendation of the court-appointed advisor, input from the state, input from the defense attorney, testimony from any victims, and testimony from family members or those close to the defendant. Ultimately, the workgroup suggested that this input inform the court's final decision regarding the most appropriate course of action (continuation of misdemeanor proceedings, dismissal of the misdemeanor, referral to AOT or court-ordered treatment, or referral to a competency evaluation or competency restoration).
For those defendants agreeing to AOT upon referral, the workgroup recommended that their cases be dismissed without prejudice, understanding that a case could be refiled in the event of failure to comply with treatment expectations.
The workgroup also recommended that additional steps for transitioning individuals referred to AOT be defined in rule.
In regard to ongoing court oversight of individuals participating in AOT, workgroup members suggested that the courts, managed care organizations, and treating providers consider using existing protocols established for individuals engaged in court-ordered treatment (COT). Existing protocols require treating providers to attest to individuals' adherence to treatment in a file supplied to their managed care organization of enrollment. Managed care organizations then supply the information regarding treatment adherence to the courts. While the established COT process serves as a good starting point, more detailed expectations related to the oversight of individuals participating in AOT must be established in order to facilitate the successful completion of AOT.
The recommendations of the workgroup are largely reflected in the attached documents, outlining the parameters of AOT in A.R.S § 13-720 and suggested revisions to A.R.S. § 13-4504.
On behalf of the AOT workgroup, I would like to take this opportunity to thank the Arizona Supreme Court, the Rule 11 Task Force, and Donald Jacobson for soliciting the input and expertise of invested community stakeholders in the development of a model for individuals alleged to have committed non-violent misdemeanor crimes – a model that is guided by the goal of fostering ready access to needed behavioral health treatment and reducing re-offenses and repeated engagement with Arizona's judicial system.

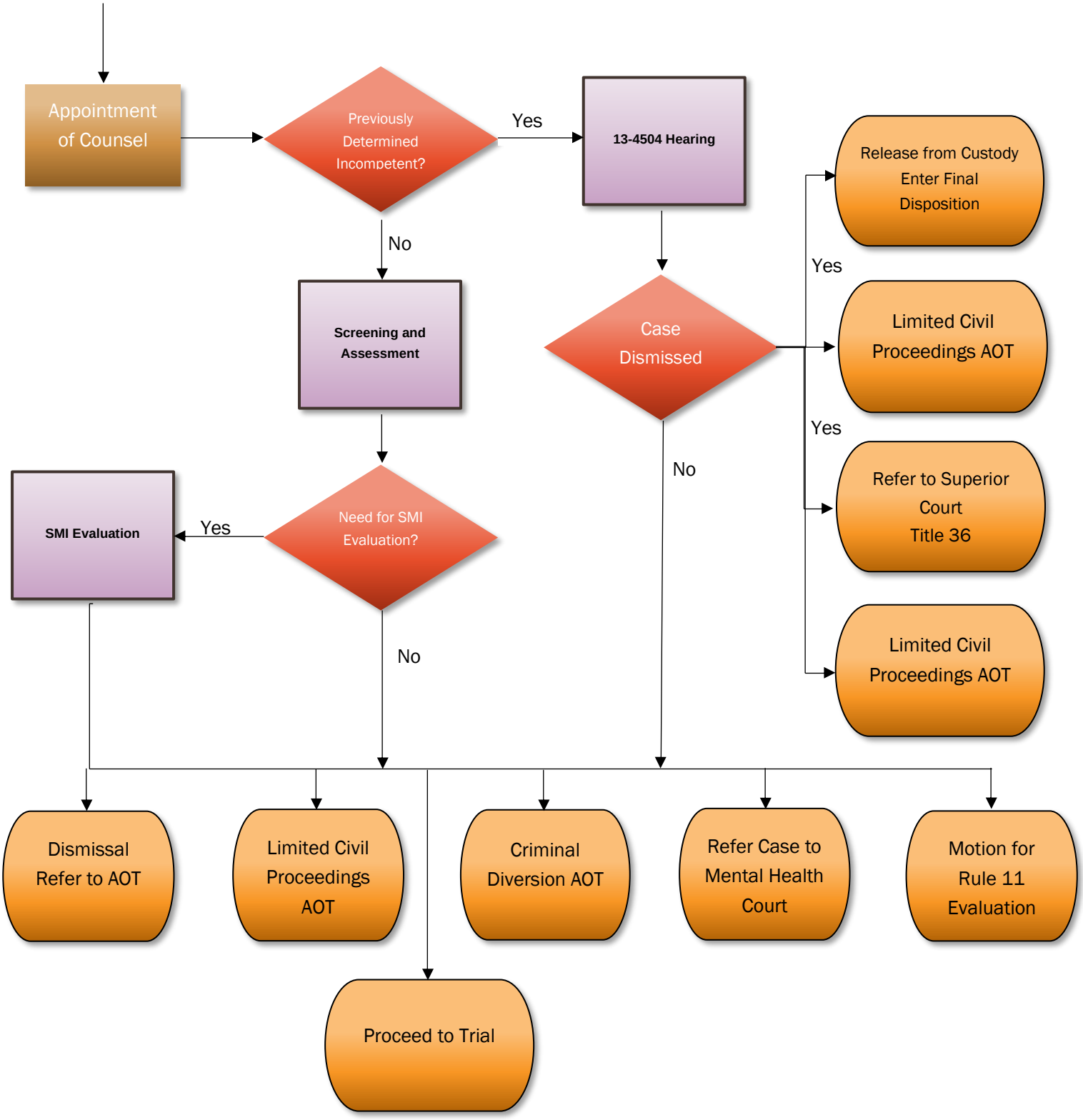
Appendix K: Rule 11 Flowcharts

CURRENT MISDEMEANOR RULE 11 FLOW CHART



Question of Diminished or Limited Capacity

Prior to Rule 11 – Proposed Process for Misdemeanors


Appointment of Counsel
Previously Determined Incompetent?
Yes
13-4504 Hearing
No
Screening and Assessment
Case Dismissed
Release from Custody Enter Final Disposition
Yes
Limited Civil Proceedings AOT
Yes
Refer to Superior Court Title 36
No
Limited Civil Proceedings AOT
SMI Evaluation
Yes
Need for SMI Evaluation?
No
Dismissal Refer to AOT
Limited Civil Proceedings AOT
Criminal Diversion AOT
Refer Case to Mental Health Court
Motion for Rule 11 Evaluation
Proceed to Trial

Appendix L: Templates and Best Practices" Statewide Memorandum (May 12, 2020)

Supreme Court of Arizona
Administrative Office of the Courts
Court Services Division
1501 West Washington, Suite 410
Phoenix, AZ. 85007

MEMORANDUM

To: Superior Court Presiding Judges
Superior Court Administrators
Limited Jurisdiction Court Presiding Judges
Limited Jurisdiction Court Administrators

From: Marcus W. Reinkensmeyer, Court Services Director

CC: Court Services Division, Dave Byers, Mike Baumstark, Paul Julien, Arron Nash

Date: May 12, 2020

RE: **Templates for Competency Evaluation Process: Guidelines and Standardized Forms, and Best Practices in Restoration to Competency Programs**

The Committee on Mental Health and the Justice System (Committee), established by Administrative Order 2018-71, is charged with studying and making recommendations to effectively address how the justice system responds to people in need of behavioral health services.

A key component of the Committee's charge is to examine evidence-based and best practices for competency evaluations and restoration to competency programs and train accordingly. As such, the Committee submitted its recommendations to the Arizona Judicial Council in October 2019 which approved the enclosed standardized competency guidelines and form templates for Courts to adopt and for mental health experts to use, as required in Rule 11.3 (a)(5), Ariz.R.Crim.P.

Further, the Arizona Supreme Court COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup recommended using telehealth technology in competency proceedings, and to adopt the Committee's guidelines and templates/forms for mental health evaluators in order to implement telehealth practices.

The guidelines and forms are also available through these links:

- Guidelines: click here
- Forms: click here

The Arizona Administrative Office of the Courts requests Courts adopt these standardized guidelines and forms throughout the evaluation process by mental health experts in criminal Rule 11 competency evaluations.

Further, each Superior Court and Limited Jurisdiction Court who employs or contracts with mental health experts for Rule 11 proceedings should notify the mental health experts and provide them with the revised guidelines and forms for their use.

The court-approved Legal Competency and Restoration Conference for mental health experts, as required by Rule 11.3 (a)(5) will update its training materials accordingly, and this memo will be sent to all participants of the most recent conference (August 2019) to reinforce implementation.

In addition, the Committee on Mental Health and the Justice System, the COVID-19 Emergency Workgroup and the AOC recommends Courts adopt the enclosed Best Practices in Restoration to Competency Programs. As our knowledge and awareness of these practices improves and changes, this Guide will be reviewed for needed updates.

- Best Practices in Restoration to Competency: click here.

Finally, Courts should implement protocols and orders for limited jurisdiction court judges to transfer a case to the superior court for further proceedings pursuant to Arizona Revised Statute § 13-4517 where the defendant has been found incompetent and not restorable, as allowed by Rule 11.5, Arizona Rules of Criminal Procedure.

- Rule 11 Transfer Protocol: click here.

References:

- Committee on Mental Health and the Justice System
- Arizona Revised Statutes, Title 13, Chapter 41: Incompetency to Stand Trial
- Arizona Rules of Criminal Procedure: Rules 11.1 through 11.3

If you have any questions regarding these templates, please contact Stacy Reinstein at sreinstein@courts.az.gov.

Thank you,

Marcus W. Reinkensmeyer
Director, Court Services Division
1501 W. Washington
Phoenix, AZ 85007
602.452.3334
602.452.3480 (fax)

Appendix M: Cross-Jurisdiction Mental Health Data Repository

INTRODUCTION

In its Interim Report and Recommendations (October 2019), the Committee on Mental Health and the Justice System recommended the creation of a workgroup to analyze and make recommendations to improve processes and coordination among courts handling Title 13, Title 36 or Title 14 proceedings involving a single individual. A component of this recommendation is for the Administrative Office of the Courts (AOC) to build a mechanism for judges and attorneys involved in Rule 11, Title 36 or Title 14 proceedings to access remotely the basic information on a defendant's involvement in other mental health proceedings, including current location, findings, or pending proceedings in another court.

Currently, there is no way for an attorney or judge to know which court contains records for an individual involved in a Rule 11 case. The Committee's consensus is that it is very helpful to know when a Rule 11, Title 36 or Title 14 matter exists – both past and current – before another court or entity initiates a new filing or a finding that may be contradictory to other pending matters. This knowledge also impacts a Rule 11 proceeding or a subsequent Petition. It may not be necessary to have the minute entries, but the knowledge of a prior or current Rule 11, Title 36 or 14 would be helpful to: (1) avoid duplication; and (2) coordinate with a current Title 36, 14 or Rule 11 process, assuming court orders are in place already.

The data repository will include the basic information needed for the attorney, having received an order from a court, to properly secure the release of the records from the correct court. This document will provide what information the data repository can display but will not include the technical details of how the requirements will be implemented. The AOC IT Division has engaged in discussions with Committee members and is well positioned to begin implementation of this case repository, in conjunction with subject matter experts identified by the Committee.

REQUIREMENTS

All Arizona courts must be responsible for the supply of the following Rule 11 information for the data repository:

a. The defendant's first middle and last name.
b. The defendant's date of birth.
c. Any Rule 11 Case Numbers associated to the defendant.
d. Court name where the Rule 11 case(s) took place.
e. Charge Description of all charges associated to the Rule 11 case (Optional).
f. All Type of Rule 11 Reports associated to the case (Optional).
g. All Rule 11 Findings for the defendant's evaluation: Competent; Incompetent (Restorable); Incompetent (Non-restorable)
h. Any current or pending Title 14 Guardianships for the defendant.
i. Any current or pending civil commitment orders for evaluation or treatment for the defendant.
j. Date of each Finding.
k. Outcome for the Rule 11 Case (Optional).

This data repository will not include medical reports or other case documents. The Attorney and/or court will still be responsible for requesting the release of the records.

Appendix N: Developing Best Practices in Restoration to Competency Programs

OVERVIEW

The Committee on Mental Health and the Justice System (Committee), established by Administrative Order 2018-71, has been tasked with studying, and if necessary, making recommendations to effectively address how the justice system responds to persons in need of behavioral health services. The Committee is also charged with reviewing court rules and state statutes for changes that can result in improved court processes in competency proceedings, court-ordered treatment hearings and other hearings where a litigant may need mental health treatment.

The Committee's Competency Practices Workgroup has been charged with examining evidence-based and best practices for competency evaluations and restoration to competency programs and making recommendations for Restoration to Competency (RTC) programs statewide.

Arizona is one of the first states in the country to develop such a Best Practices Guide. The workgroup has invited many subject matter experts to review its proposal including practitioners, mental health experts, and treatment and correctional health staff professionals from the psychology and psychiatry community. As our knowledge and awareness of these practices improves and changes, this Guide will be reviewed for needed updates.

In addition, Arizona is currently participating on a working team with the National Center for State Courts and Council of State Governments. This national team is focused on developing recommendations for states' competency programs, including immediately addressing delays that cause people to languish in jail without treatment; limiting competency proceedings to only the most serious offenses; emphasize diversion and a continuum approach to treatment; and assessing the appropriate use of jail-based restoration.

The workgroup believes that it is well-positioned to make these recommendations for Best Practices and recognizes that implementation of these guidelines will require an intentional approach by the Court and local jurisdictions, as well as the behavioral health provider community.

The workgroup also strongly recommends the creation of a university-based partnership, focused on forensic psychology and the law, to further improve the training, education, and career development pipeline for those who work in the fields of forensic psychology, psychiatry, nursing, social work, and the medical and legal fields. Finally, the compensation and contracts for individuals and providers must be reviewed in order to ensure implementation of these best practices.

Please click HERE for the full Best Practices content:

(1) RTC Flowchart
(2) Qualifications
(3) Duties
(4) RTC Program Instructions
(5) Sub-Appendices with Additional Resources

Appendix O: Telehealth Infrastructure for Rule 11-Competency Proceedings

In its 2019 interim report and recommendations, the Committee on Mental Health and the Justice System recommended that the AOC and individual Courts "Explore opportunities for creating or expanding a telehealth infrastructure for the courts and other justice system partners to increase access to services for people with mental health conditions who have contact with the criminal justice system, including:

a. Provide a telehealth option for competency evaluations.
b. Evaluate the feasibility of the use of telehealth for mental health assessments in jails; crisis consultations for law enforcement; crisis response for people who have encounters with law enforcement; probation mental health services; and, jail mental health services.

The Committee's Competency workgroup has conducted research and discussed the standards and criteria that need to be established for these specific evaluations, including language, development of best practices, and how to ensure access to the best options to achieve an equal standard of care and administration of justice, particularly in rural communities.

Overall, the research concludes that conducting videoconference evaluations does not produce meaningful different outcomes compared to in-person evaluations. Furthermore, utilizing video conferencing offers jurisdictions who are located far from providers a more cost effective and safe option compared to transporting forensic psychiatric patients securely and timely. Researchers indicate that the telehealth options also present the opportunity to improve the procedural justice of examinations by increasing access to mental health evaluators with forensic expertise.

Furthermore, the National Center for State Courts formed a Focus Group this year centered around Competency Practices. This work has also concluded that telehealth for competency proceedings is necessary to ensure administration of justice to individuals, particularly in rural areas that do not have access to evaluators in their communities, as well as for larger jurisdictions with a high number of defendants/patients but a low number of evaluators.

Due to the COVID-19 pandemic emergency, Arizona's courts have acted to protect the health and safety of the public and court employees, while ensuring constitutional and statutory obligations are met. The pandemic presents an opportunity for Courts to move some hearings and requirements to a virtual platform. While a virtual environment is not always ideal in all mental health related court proceedings, the Competency workgroup maintains that utilizing telehealth for mental health evaluations and restoration to competency education are a recommended practice for the Courts, provided the defendant is given access to technology and the following practices are in place:

- Language is aligned with national best practices/standards for competency and mental health evaluations and implemented as an alternative to in-person examinations under a defined set of circumstances.

- Access to standards of care and administration of justice, including time requirements; geographic differences; and the standards/requirements for the person who may be accompanying the defendant in the room during the evaluation.
- Timely access to medical records for attorneys and evaluators.

One example in Arizona where this is already in place and working well is Graham County. As a rural community, it is cost prohibitive for the County to transport defendants to another jurisdiction – out of County – to receive their competency evaluation and restoration to competency education, or to set up an in-custody program. To ensure access to justice for defendants in these matters, Graham County contracts with a psychologist who conducts the restoration sessions remotely.

As a result of the COVID-19 pandemic, in order to ensure access to justice, other courts have begun to conduct mental health evaluations remotely. The workgroup recommends that these practices continue, and that teleconferencing for both mental health evaluations and restoration to competency be authorized as a statewide practice.

In order to implement these practices, the workgroup strongly encourages the AOC and courts take action on the following:

- Embed the revised guidelines and templates/forms for mental health evaluators into practice;
- Adopt the recommended best practices for restoration to competency into practice;
- Communicate the revised guidelines, templates/forms and best practices to all current practitioners/mental health evaluators; and
- Create an intermediary, required training for practitioners in advance of the next Legal Competency and Restoration Conference.[8]

After hearing from experts in the forensic psychiatry and psychology field who are currently practicing today, the workgroup also recommends that the AOC and courts reconsider the current rates of the mental health experts' contracts. Doing so will enhance access to mental health experts who may not currently engage with the courts due to the current low rates.

In addition, Workgroup members and AOC staff have been involved in discussions with the AOC Adult and Juvenile Probation Services Division regarding the development of a Teleservice Request for Quotation (RFQ) for providers contracted with the AOC to deliver specific teleservices ranging from assessments to treatment, individual to group, evaluations and screenings, group work and education for services particular to mental health, family counseling, DUI/SUD, sex offender counseling, crisis intervention, and more. After the establishment of those contracts, each county/court/department under AOC can create their own accounts with the chosen service provider(s) for payment. The hope is that the more the teleservice providers are utilized, other jails and agencies will enter into their own contracts for their population's needs. The Competency workgroup recommends that this RFQ and future RFP incorporate the above noted considerations, specific to mental health and competency evaluation telehealth services related to language, best practices, access to standards of care, and timely access to records.

[8] Please see Recommendations on Practice Improvement: University Partnership for further enhancements to the training and education for mental health evaluators.

RESOURCES:

- AMERICAN PSYCHOLOGICAL ASSOCIATION:
    - Medicare and Medicaid's expanded telehealth coverage and more. Link: www.apaservices.org/practice/reimbursement/government/medicare-updates-covid-19
    - Neuropsychology via telehealth: Guidance on CPT codes, technical requirements and more. Link: www.apaservices.org/practice/reimbursement/health-codes/testing/teleneuropsychology-resources
    - New APA COVID-19 tele-assessment principles. Link: www.apaservices.org/practice/reimbursement/health-codes/testing/tele-assessment-covid-19
- EPSTEIN BECKER GREEN. 50 STATE SURVEY OF TELEMENTAL/TELEBEHAVIORAL HEALTH (2017). LINK: WWW.EBGLAW.COM/CONTENT/UPLOADS/2017/10/EPSTEIN-BECKER-GREEN-2017-APPENDIX-50-STATE-TELEMENTAL-HEALTH-SURVEY.PDF
- NATIONAL CENTER FOR STATE COURTS:
    - *LIGHTS, CAMERA, MOTION! - A TIMELY PRIMER ON HOW TO IMPLEMENT REMOTE JUDICIAL HEARINGS*. WEBINAR, APRIL 7, 2020.
    - *STATE COURT JUDGES EMBRACE VIRTUAL HEARINGS AS PART OF THE NEW NORMAL.* LINK: NCSC.ORG/NEWSROOM/PUBLIC-HEALTH-EMERGENCY/STORIES/VIDEOCONFERENCING.ASPX
- PROFESSIONAL PSYCHOLOGY RESEARCH AND PRACTICES. LUXTON AND LEXCEN. *FORENSIC COMPETENCY EVALUATIONS VIA VIDEOCONFERENCING: A FEASIBILITY REVIEW AND BEST PRACTICE* RECOMMENDATIONS. 2018.
- Psychiatric Services. Luxton et al. *Use of video conferencing for psychiatric and forensic evaluations*. 2006.
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Appendix P: Order of Transfer Protocol

The Committee on Mental Health and the Justice System was tasked to develop protocol for Limited Jurisdiction Court (LJC) judges to transfer a case where the defendant has been found incompetent and not restorable to Superior Court, as allowed under A.R.S. § 13-4517 (Rule 11.5). This protocol was developed in partnership with the Maricopa County Superior Court, Maricopa County Attorney's Office, judicial officers and court administrators from municipal courts with expertise in handling Rule 11 matters – Phoenix Municipal Court, Glendale City Court and Mesa Municipal Court, as well as the Maricopa County AHCCCS Complete Care (ACC)/Regional Behavioral Health Authority (RBHA) provider, Mercy Care.

This team of local and statewide experts has developed a clear, workable mechanism to move a misdemeanor defendant between criminal and civil court in a timely fashion when the originating case is at the LJC level, including:

(1) Transfer Protocol
(2) Order of Transfer from LJ to Superior Court and Order Accepting Transfer

Maricopa County Superior Court has taken the lead to implement this protocol and process as an extension of being the only current Superior court with municipal courts conducting Rule 11 proceedings. It is further recommended that other Superior Courts adopt this protocol and process, so it is in place when municipal courts within the county begin to handle Rule 11 matters. The adopted protocol and orders can be found here.

Appendix Q: AOT Criteria: State Statutory Language Selection

CALIFORNIA:* *Available only in counties that have "opted in" by Board of Supervisors action; otherwise outpatient commitment only permitted via conservatorship process.*

Criteria:

CALIF. WELF. & INST. CODE § 5346(a). In any county in which services are available …, a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment if the court finds, by clear and convincing evidence, that the facts stated in the verified petition filed in accordance with this section are true and establish that all of the requisite criteria set forth in this section are met, including, but not limited to, each of the following:

(1) The person is 18 years of age or older.
(2) The person is suffering from a mental illness[.]
(3) There has been a clinical determination that the person is unlikely to survive safely in the community without supervision.
(4) The person has a history of lack of compliance with treatment for his or her mental illness, in that at least one of the following is true:
    (A) The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
    (B) The person's mental illness has resulted in one or more acts of serious and violent behavior toward himself or herself or another, or threats, or attempts to cause serious physical harm to himself or herself or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
(5) The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or his or her designee, provided the treatment plan includes [comprehensive services], and the person continues to fail to engage in treatment.
(6) The person's condition is substantially deteriorating.
(7) Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability.
(8) In view of the person's treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others[.]
(9) It is likely that the person will benefit from assisted outpatient treatment.

LOUISIANA:

LA. REV. STAT. ANN. § 28:66 (A) A patient may be ordered to obtain civil involuntary outpatient treatment if the court finds that all of the following conditions apply:

(1) The patient is 18 years of age or older.
(2) The patient is suffering from a mental illness.
(3) The patient is unlikely to survive safely in the community without supervision, based on a clinical determination.

(4) The patient has a history of lack of compliance with treatment for mental illness that has resulted in either of the following:
   (a) At least twice within the last thirty-six months, the lack of compliance with treatment for mental illness has been a significant factor resulting in an emergency certificate for hospitalization, or receipt of services in a forensic or other mental health unit of a correctional facility or a local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.
   (b) One or more acts of serious violent behavior toward self or others or threats of, or attempts of, serious physical harm to self or others within the last thirty-six months as a result of mental illness, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(5) The patient is, as a result of his mental illness, unlikely to voluntarily participate in the recommended treatment pursuant to the treatment plan.

(6) In view of the treatment history and current behavior of the patient, the patient is in need of involuntary outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in the patient becoming dangerous to self or others or gravely disabled as defined in R.S. 28:2.

(7) It is likely that the patient will benefit from involuntary outpatient treatment.

MICHIGAN:

MICH. COMP. LAWS § 330.1401(1).

(d) An individual who has mental illness, whose understanding of the need for treatment is impaired to the point that he or she is unlikely to voluntarily participate in or adhere to treatment that has been determined necessary to prevent a relapse or harmful deterioration of his or her condition, and whose noncompliance with treatment has been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least 2 times within the last 48 months or whose noncompliance with treatment has been a factor in the individual's committing 1 or more acts, attempts, or threats of serious violent behavior within the last 48 months. An individual under this subdivision is only eligible to receive assisted outpatient treatment.

NEW MEXICO:

Available only in jurisdictions that have "opted in" with a memorandum of understanding between the jurisdiction and the local district court.

N.M. STAT. ANN. § 43-1B-3. A person may be ordered to participate in assisted outpatient treatment if the court finds by clear and convincing evidence that the person:

A. is eighteen years of age or older and is a resident of a participating municipality or county;

B. has a primary diagnosis of a mental disorder;

C. has demonstrated a history of lack of compliance with treatment for a mental disorder that has:
   (1) at least twice within the last forty-eight months, been a significant factor in necessitating hospitalization or necessitating receipt of services in a forensic or other mental health unit or a jail, prison or detention center; provided that the forty-eight-month period shall be extended by the length of any hospitalization, incarceration or detention of the person that occurred within the forty-eight-month period;
   (2) resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last forty-eight months; provided

that the forty-eight-month period shall be extended by the length of any hospitalization, incarceration or detention of the person that occurred within the forty-eight-month period; or

(3) resulted in the person being hospitalized, incarcerated or detained for six months or more and the person is to be discharged or released within the next thirty days or was discharged or released within the past sixty days;

D. is unwilling or unlikely, as a result of a mental disorder, to participate voluntarily in outpatient treatment that would enable the person to live safely in the community without court supervision;

E. is in need of assisted outpatient treatment as the least restrictive appropriate alternative to prevent a relapse or deterioration likely to result in serious harm to self or likely to result in serious harm to others; and

F. will likely benefit from, and the person's best interests will be served by, receiving assisted outpatient treatment.

NEW YORK:

N.Y. MENTAL HYG. LAW § 9.60(c). A person may be ordered to receive assisted outpatient treatment if the court finds that such person:

(1) is eighteen years of age or older; and

(2) is suffering from a mental illness; and

(3) is unlikely to survive safely in the community without supervision, based on a clinical determination; and

(4) has a history of lack of compliance with treatment for mental illness that has:

(i) prior to the filing of the petition, at least twice within the last thirty-six months been a significant factor in necessitating hospitalization in a hospital, or receipt of services in a forensic or other mental health unit of a correctional facility, not including any current period, or period ending within the last six months, in which the person was or is hospitalized or incarcerated; or

(ii) prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last forty-eight months, not including any period, or period ending within the last six months, in which the person was or is hospitalized or incarcerated; and

(5) is, as a result of his or her mental illness, unlikely to voluntarily participate in the outpatient treatment that would enable him or her to live safely in the community; and

(6) in view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others as defined in section 9.01 of this article; and

(7) is likely to benefit from assisted outpatient treatment.

OHIO:

OHIO REV. CODE ANN. § 5122.01(B).

(5) (a) Would benefit from treatment as manifested by evidence of behavior that indicates all of the following:

(i) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.

(ii) The person has a history of lack of compliance with treatment for mental illness and one of the following applies:

(I) At least twice within the thirty-six months prior to the filing of an affidavit seeking court-ordered treatment of the person… he lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the thirty-six-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the thirty-six-month period.

(II) Within the forty-eight months prior to the filing of an affidavit seeking court-ordered treatment of the person …, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others, provided that the forty-eight-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the forty-eight-month period.

(III) The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.

(IV) In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to the person or others.

(b) An individual who meets only the criteria described in division (B)(5)(a) of this section is not subject to hospitalization.

OKLAHOMA:

43A OKL. ST. § 1-103(20). "Assisted outpatient" means a person who:

(a) is eighteen (18) years of age or older,

(b) is either currently under the care of a facility certified by the Department of Mental Health and Substance Abuse Services as a Community Mental Health Center, or is being discharged from the custody of the Oklahoma Department of Corrections,

(c) is suffering from a mental illness,

(d) is unlikely to survive safely in the community without supervision, based on a clinical determination,

(e) has a history of lack of compliance with treatment for mental illness that has:

(1) prior to the filing of a petition, at least twice within the last thirty-six (36) months been a significant factor in necessitating hospitalization or treatment in a hospital or residential facility, or receipt of services in a forensic or other mental health unit of a correctional facility, or

(2) prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last twenty-four (24) months,

(f) is, as a result of his or her mental illness, unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community,

(g) in view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in serious harm to the person or persons as defined in this section, and

(h) is likely to benefit from assisted outpatient treatment.

Appendix R: Mental Health Colorado Proposed Legislative Language

Statutory Language

1. "Person requiring court ordered treatment" means an individual who, as a result of mental illness and based on recent actions, omissions, or behaviors:

(a) presents a substantial risk of harm to self or others in the near future, which includes:

(i) suicidal behavior or inflicting significant self-injury; or

(ii) attempting, causing, or threatening to cause serious injury to others; or

(b) has demonstrated an inability to:

(i) attend to basic physical needs such as medical care, food, clothing, or shelter; or

(ii) protect the self from harm or victimization by others; or

(iii) exercise sufficient behavioral control to avoid serious criminal justice involvement; or

(c) lacks the capacity to recognize that they are experiencing symptoms of a serious mental illness and therefore are unable to:

(i) make a decision regarding treatment; or

(ii) understand or retain information relevant to the treatment decision; or

(iii) use, weigh or appreciate that information as part of the process of making the treatment decision; or

(iv) communicate the decision; or

(v) to appreciate the risks or benefits of treatment; and

(vi) in the absence of treatment is likely to experience a relapse or deterioration of condition that would meet the criteria in (a) or (b).

2. The court shall order treatment of a person requiring court ordered treatment in an outpatient setting unless the court determines that outpatient treatment will not provide reasonable assurances for the safety of the individual or others or would not meet the person's treatment needs.

Court-ordered psychiatric treatment is reserved for individuals with a mental illness for which treatment is likely to be effective. Treatment must be provided in the least restrictive setting consistent with the needs of the individual and the interests of the public.

Appendix S: Sequential Intercept Model

The Sequential Intercept Model was developed as a conceptual model to inform community-based responses to the involvement of people with mental and substance use disorders in the criminal justice system. It was developed over several years in the early 2000s by Mark Munetz, MD and Patricia A. Griffin, PhD, along with Henry J. Steadman, PhD, of Policy Research Associates, Inc.

Responses to divert individuals away from the criminal justice system should be developed at each intercept point in order to minimize the time and involvement of individuals with behavioral health problems within the system.