ARIZONA SUPREME COURT
TASK FORCE ON RULE 11

Interim Report | October 2022

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SECTION I: INTRODUCTION

Created by Administrative Order 2022-45, the Task Force on Rule 11 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 with proposed best practices and statutory changes.

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

SECTION II: EXECUTIVE SUMMARY

The Arizona judicial branch is recognized as a leader, nationwide, in addressing individuals' mental health conditions and their impact on communities, the individuals themselves, and families who encounter the behavioral health and justice systems. Administrative Order 2022-45 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 is building on the work done by the Committee on Mental Health and the Justice System (AO 2018-71). Among the findings and recommendations of the Committee, there were many items that impacted the policy and practice related to evaluation of competency to stand trial and restoration to competency. This includes Best Practices for Restoration to Competency, Appendix E, and Templates and Best Practices developed by Court Services, Appendix C. 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 mental health services. 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.[2]

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
[2] Arizona Department of Corrections. *Corrections at a Glance*.

As Judge Steven Leifman, Associate Administrative Judge of Miami-Dade County Court of Florida reported to the Task Force, during a study in their district back in 2000 they were spending between one and two million dollars per defendant on psychological evaluations and other services to find people incompetent and then release them back to the street without any services. Cases didn't go to trial and individuals did not improve their situation.[3]

In Arizona the number of evaluations performed at the misdemeanor level do not come close to the proportionate number of individuals in the general population who have a serious mental illness. This means that either these cases are being dismissed prior to an evaluation being ordered or, more likely, people are being prosecuted without being evaluated to determine whether they are competent to face charges. This illustrates an understanding that the evaluation process is cumbersome, expensive, and not considered practical in working with those who are charged "only" with a misdemeanor.

In misdemeanor cases that do proceed to evaluation where the person is found incompetent but restorable, the case is almost always dismissed without pursuing restoration. While the reason that cases are dismissed is not tracked, the Task Force heard reports related to the availability of and high costs for restoration services that made the process impractical for misdemeanor cases. Many of these people will likely be seen again with new charges sooner rather than later.

When mental health hospitals were eliminated decades ago as part of the deinstitutionalization of mental illness, the intent was to see a corresponding increase in community-based access to care to meet the need for treatment. The services to meet these needs never materialized in communities. 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. Thus, the abandonment of mental health hospitals simply transferred patients to jails and prisons, making them de facto mental health facilities.

Alternative solutions need to be developed that can improve diversion into the mental health system where individuals and their families can find the treatment and support that improves their lives. This can create new patterns for individuals who are living with a mental illness

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**.

[3] Context of costs were focused on high-utilizers of the justice system and included system-wide costs.

rather than cycling through the criminal justice system multiple times.

The mental health of justice-involved individuals has a tremendous impact on public safety, community health and wellness, and both the short and long-term costs of the justice system. With the participation of the judicial branch, Arizona finds itself well-positioned to create a cross-system approach to significantly improve outcomes for people in need of behavioral health services and supports.

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

The bottom line, from all the research and experiences we've gathered, is that we should attempt to limit competency restoration. We need to make sure we provide competency restoration in appropriate situations. Restoration programs were never about implementing punishment, they were created to protect the rights of the accused. What we need is a system that is about sending the right people to the right system while still fully protecting individual rights. The reality is that the vast majority of 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.[4] Sometimes crimes can be horrific and we need a system in place to address them. But when we use this incredibly wide net that treats all offenders the same and we end 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 into treatment. This will end up costing less money, be more effective and improve public safety whereas competency restoration does not. There are offenses when we need to make sure that the individual accused is competent so they can go to trial. But for the vast majority it's unnecessary, and there are better ways to create 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 particular order, as immediate action items:

[4] "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.

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 the development of 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 require 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

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

Findings

- Jails have become the largest behavioral health facilities in Arizona with an estimated 70% of individuals involved in the criminal justice system having a behavioral health disorder.
- Restoration to Competency is not ongoing clinical treatment. The goal of RTC is only 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 defendants, including those charged with non-victim misdemeanors, spend excessive time in jail waiting for competency evaluation 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.
- People who have been identified as having mental health conditions are more likely to be detained pretrial and to stay longer in detention due to the lack of sufficient inpatient treatment and community-based outpatient treatment options.
- 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 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 between the courts, within the justice system and between the justice system and the behavioral health community are inadequate and undermine opportunities to identify needs and target resources to meet those needs.

Recommendations

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.

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 the development of 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 require 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 Use the Clinical Liaison, A.R.S. § 13-4501(1), position or other similar positions if available and develop a team approach to review complete physical and mental social determinants of health of defendants.

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 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.

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 RBHAs to have someone at court available to schedule or complete an on-site SMI evaluation when appropriate.

12 The Supreme Court should seek or support funding for peer support or case managers to work in misdemeanor courts to help defendants get enrolled with treatment providers, to get to evaluations and improve overall access to services.

13 Courts should streamline the Rule 11 process, including speeding up 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 in order to decrease incarceration time and speed up the criminal justice process.

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.[6] The Task Force fully supports the implementation of intercepts represented in Intercept 0 and Intercept 1 of the Sequential Intercept Model, see Appendix K, 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 screen 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 started. While this suggested model begins at that point, the importance of law enforcement deflection and prosecutorial diversion cannot be overstated. Appendix C 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 Assisted Outpatient Treatment (AOT) – 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 AOT – This is a new option for those charged with a misdemeanor and have been determined not competent to stand trial either previously or in a current case. 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.

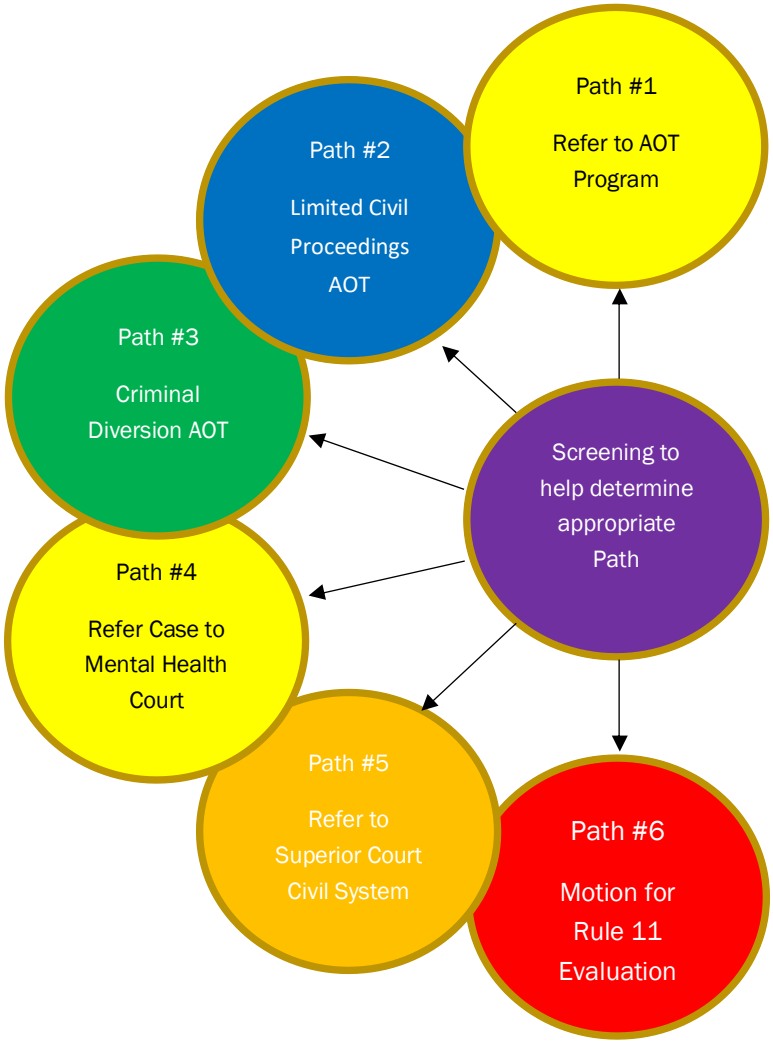
[6] The Task Force depended heavily on the work done in Colorado, *Model Legal Processes to Support Clinical Intervention for Persons with Serious Mental Illnesses* https://www.mentalhealthcolorado.org/wp-content/uploads/2022/09/Model-Legal-Processes-to-Support-Clinical-Intervention-for-Persons-with-Serious-Mental-Illnesses-Final-9.2.2022.pdf

Path #3 – Criminal Diversion AOT – This keeps the supervision and the progress of the AOT program still under the auspices of the criminal court process. While still focused on treatment and the treatment program supervised by care givers the court is in a much more "hands-on" 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 implement the recommendations of the Task Force, and the subsequent Paths that the proposals envision, several major steps will be needed to for this to become a reality:

- Determine 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 a criminal and a civil setting. See appendices I for language from other States and Appendix J for proposed language from Mental Health Colorado Report.
- Establish policy, procedure, forms and training related to the new Court supervised treatment options.
- 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 data base.
- Expand the training opportunities for forensic psychiatrists.

SECTION V: CONCLUSION

The 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 justice system. This is particularly true in misdemeanor cases where the negative impact of that involvement is most pronounced. To help those individuals who, have a behavioral health problem and find themselves justice-involved, we need to establish a new set of protocols to divert them from the RTC process and find ways to improve their lives, better allocate our 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 VI: APPENDICES

A. Task Force Membership
B. A.R.S. § 13-4504
C. Flowcharts of Rule 11 Process
D. “Templates and Best Practices” Statewide Memorandum (May 12, 2020)
E. Cross-Jurisdiction Mental Health Data Repository (Committee on Mental Health and the Justice System)
F. Best Practices Restoration to Competency (Committee on Mental Health and the Justice System)
G. Telehealth in Competency Matters
H. Order of Transfer Protocol
I. AOT Criteria: State Statutory Language Selection
J. Mental Health Colorado Proposed Legislative Language
K. 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
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Will Gonzales
Court Administrator,
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Elizabeth Herbert
Chandler City Prosecutor

Susan A. McMahon
Associate Clinical Professor of Law,
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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: A.R.S. § 13-4504

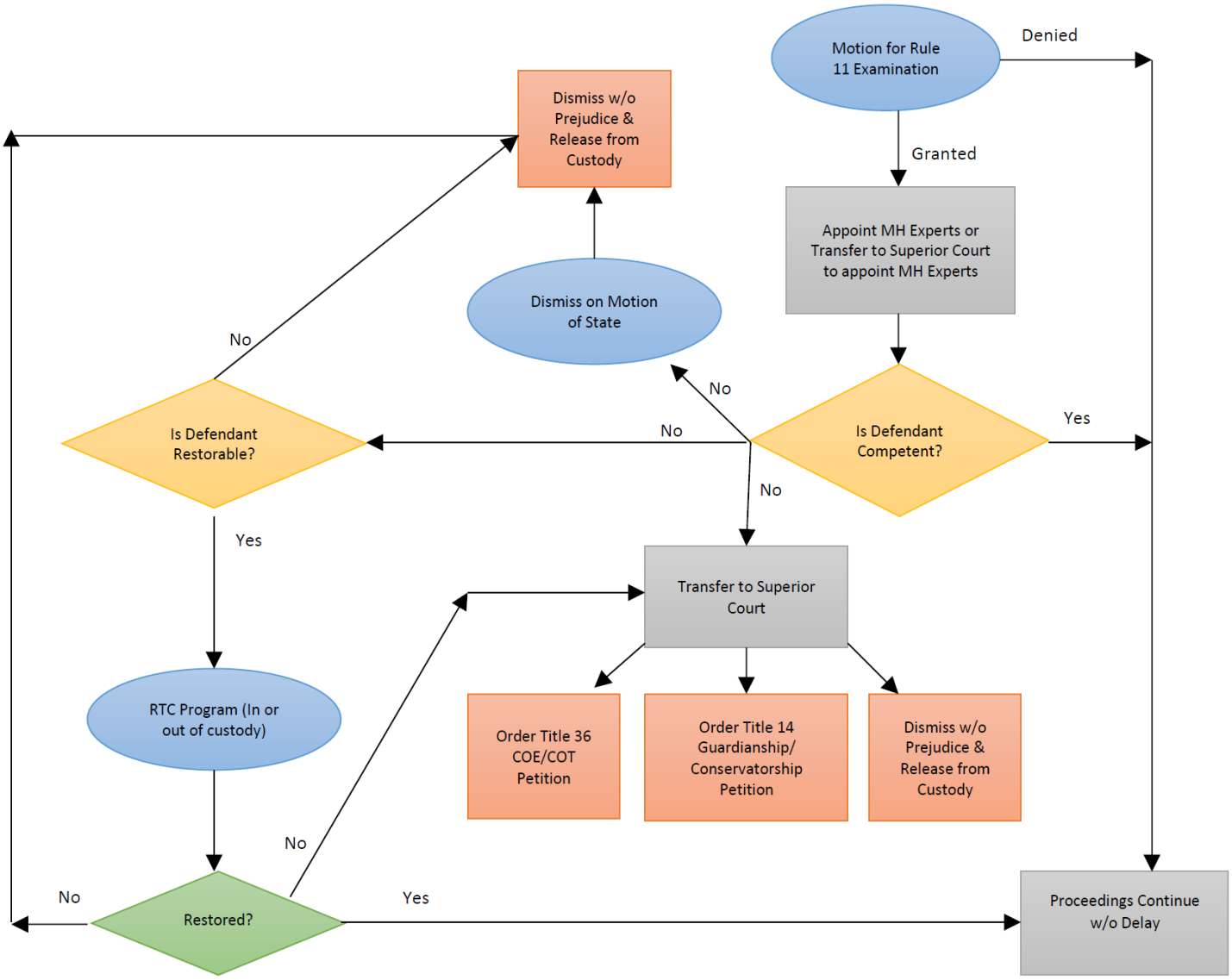
13-4504. Dismissal of misdemeanor charges; notice

A. Notwithstanding any law to the contrary, if the court finds that a person has been 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.

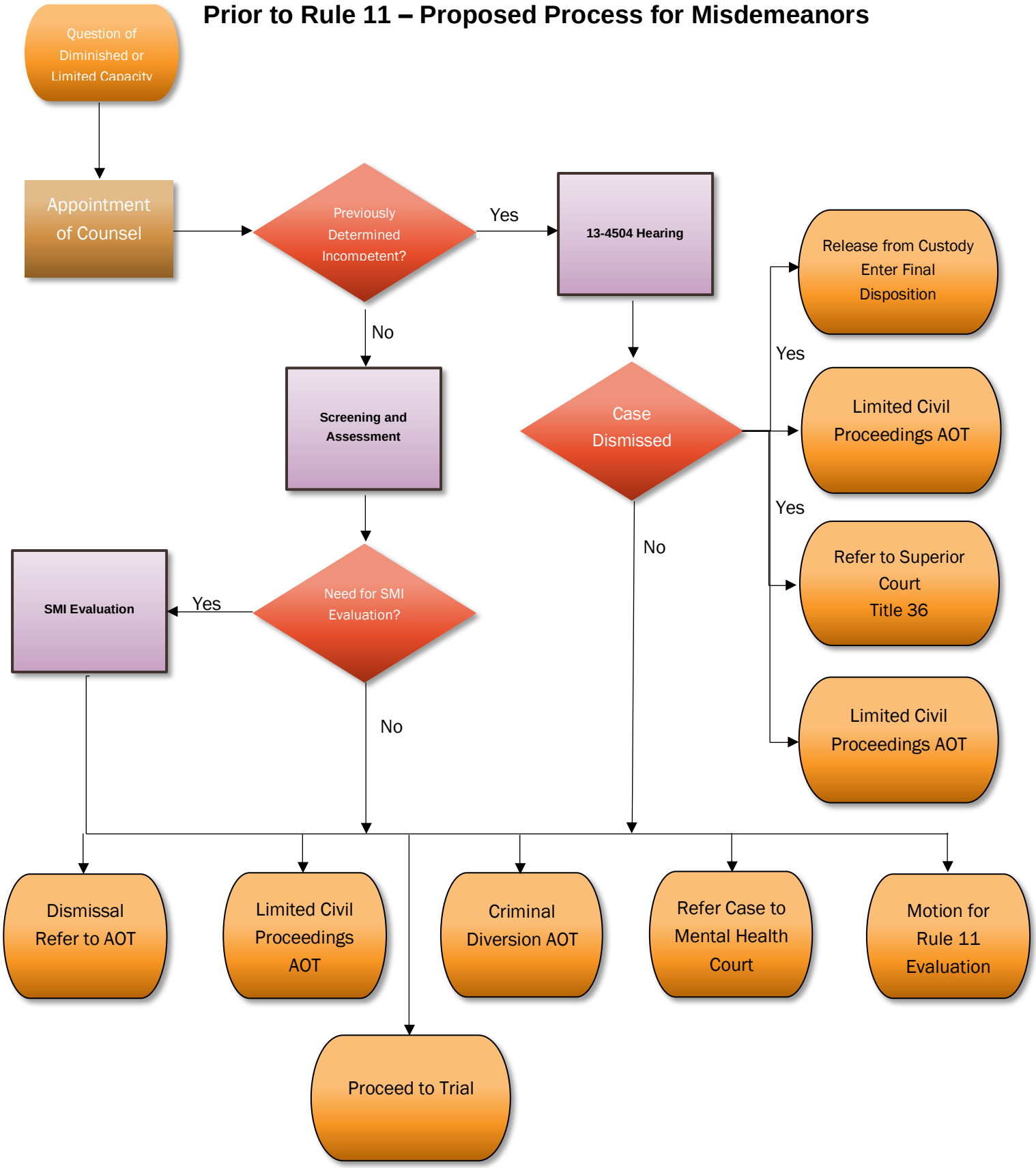
B. If a misdemeanor charge is dismissed pursuant to this section, the court may order the prosecutor to initiate civil commitment or guardianship proceedings.

Appendix C: Rule 11 Flowcharts

CURRENT MISDEMEANOR RULE 11 FLOW CHART



Prior to Rule 11 – Proposed Process for Misdemeanors



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
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Appendix E: 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 F: 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 G: 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.[7]

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.

[7] 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.
- Psychology, Crime and Law. Batastini, Pike, Thoen, Jones, Davis and Escalera. *Perceptions and use of videoconferencing in forensic mental health assessments: A survey of evaluators and legal personnel*. 2019. Link: doi.org/10.1080/1068316X.2019.1708355.
- Telemedicine and E-health. *Implementation and Evaluation of Videoconferencing for Forensic Competency Evaluation*. Link: www.liebertpub.com/doi/abs/10.1089/tmj.2019.0150.
- THE TELEMEDICINE AND TELECONSULTATION SYSTEM APPLICATION IN CLINICAL MEDICINE. LINK: IEEEXPLORE.IEEE.ORG/DOCUMENT/1403953.

Appendix H: 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 I: 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 J: 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 K: 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.