

# **Committee on Mental Health and the Justice System**

## **Developing Best Practices in Restoration to Competency Programs**

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### **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 on 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.

The content that follows this Best Practice Guide includes:

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

## Best Practices: Restoration to Competency

### Section 1: Qualifications

This section details the recommended qualifications for the primary staff involved in a Restoration to Competency program.

#### **CLINICAL LIAISON**

##### Minimum Qualifications:

- Must meet the Statutory Definition found in [A.R.S.§13-4501](#):
  - A mental health expert or any other individual who has experience and training in mental health or developmental disabilities.
  - Who is qualified and appointed by the court to aid in coordinating the treatment or training of individuals who are found incompetent to stand trial.
  - If intellectual disability is an issue, the clinical liaison shall be an expert in intellectual and developmental disabilities.

##### Preferred Qualifications:

- Experience and knowledge of the Arizona Behavioral Health System
- Experience and knowledge of the Arizona Department of Economic Security (DES) Division of Developmental Disabilities (DDD).
- Experience and knowledge of the Arizona Long Term Care System

#### **RESTORATION SPECIALIST**

##### Minimum Qualifications:

- Bachelor's degree with minimum of 5 years' experience working in a field of Social Work, Counseling, Education, Legal, Behavioral Health, or with vulnerable populations (i.e. – aging/adult, developmental disabilities, homeless, etc.).
- Demonstrated knowledge of working legal terminology and court processes specific to criminal proceedings.
- Demonstrated knowledge of Arizona's competency standards and statutes.
- Restoration Specialist must be proficient in the defendant's primary language or in order of preference:
  - Request the Court provide an interpreter through the Arizona Court Interpreter Credentialing Program;
  - Utilize a Court approved language line.
- Experience and/or education related to at-risk learners and will utilize that knowledge to create an individualized Restoration Education Program for each referred defendant.

##### Preferred Qualifications:

- Master's degree in Education or in a Human Services field.
- Experience teaching persons with special needs and/or at-risk learners.
- Experience with, and knowledge of the Arizona Behavioral Health System.

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- Experience and knowledge of the Arizona Department of Economic Security (DES) Division of Developmental Disabilities (DDD).
- Experience and knowledge of the Arizona Long Term Care System.

### **MENTAL HEALTH EXPERT (MHE)**

#### Minimum Qualifications:

- Must meet the Statutory Definition in A.R.S.§13-4501:
  - A physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is:
    - Familiar with this state's competency standards and statutes and criminal and involuntary commitment statutes.
    - Familiar with the treatment, training and restoration programs that are available in this state.
    - Certified by the court as meeting court developed guidelines using recognized programs or standards.
- MHE must be proficient in the defendant's primary language or in order of preference:
  - Request the Court provide an interpreter through the Arizona Court Interpreter Credentialing Program;
  - Utilize a Court approved language line.

#### Preferred Qualifications:

- Experience teaching persons with special needs and/or at-risk learners
- Experience and knowledge of the Arizona Behavioral Health System
- Experience and knowledge of the Arizona Department of Economic Security (DES) Division of Developmental Disabilities (DDD).
- Experience and knowledge of the Arizona Long Term Care System.
- Experience and knowledge of other special populations with unique needs, including individuals with traumatic brain injury.

### **RESTORATION TO COMPETENCY PSYCHIATRIST:**

#### Minimum Qualifications:

- Must meet the Statutory Definition in A.R.S.§13-4501.
  - A physician who is licensed pursuant to title 32, chapter 13 or 17 and who is:
    - Familiar with this state's competency standards and statutes and criminal and involuntary commitment statutes.
    - Familiar with the treatment, training and restoration programs that are available in this state.
    - Certified by the court as meeting court developed guidelines using recognized programs or standards.
- The Psychiatrist must be proficient in the defendant's primary language, or in order of preference:

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- Request the Court provide an interpreter through the Arizona Court Interpreter Credentialing Program;
- Utilize a Court approved language line.

### Preferred Qualifications:

- Experience teaching persons with special needs and/or at-risk learners
- Experience and knowledge of the Arizona Behavioral Health System
- Experience and knowledge of the Arizona Department of Economic Security (DES) Division of Developmental Disabilities (DDD)
- Experience and knowledge of the Arizona Long Term Care System.
- Experience and knowledge of other special populations with unique needs, including individuals with traumatic brain injury.

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### **Section 2: Duties**

This section details the recommended duties to be included for each of the primary staff involved in a Restoration to Competency program.

#### **CLINICAL LIAISON**

The Clinical Liaison is responsible for the coordination of care for individuals who encounter the Restoration to Competency process. The Clinical Liaison shall ensure continuity of care and is responsible for release coordination.

If the defendant is found not competent and unable to be restored, the Clinical Liaison will assist in the defendant's coordination of care through the Title 36 (civil commitment) process and/or the Title 14 (guardianship) process with the Superior Court.

#### **RESTORATION SPECIALIST**

The Restoration Specialist is designated to provide the Education Program for the defendant, and to consult with the assigned Mental Health Expert in the provision of those services, with the goal of achieving or restoring the defendant's mental competency.

The Restoration Specialist is required to meet and participate in an initial consultation with the Competency Mental Health Expert (MHE) to develop the restoration plan and then to continue to engage in consultation during the entirety of the restoration process.

Meetings between the Restoration Specialist and the MHE will include:

- Review of the most recent Rule 11 reports, and prior Rule 11 reports, if available.
- Development of a Restoration Plan (within 10 business days from the date of appointment of the MHE) to include:
  - Identify areas where the defendant is already competent, if any.
  - Evaluate the specific deficits or problems that are barriers to competence (i.e. lack of knowledge, psychosis, developmental delay, etc.).
  - Obtain additional information from the Court/Attorneys to assist in developing the Restoration Plan.
  - Incorporate recommendations from the Rule 11 reports.
  - List recommendations by the MHE.
  - Describe individualized methods of instruction appropriate for the defendant, including the multimodal formats in which instruction will be delivered.
  - Signed by the Restoration Specialist and the MHE.
- Revision of the Restoration Plan every 60 days and submission of the Plan with the required status report to the Court.
- Telehealth or other video conferencing instruction is acceptable as long as an in-person visit is completed every fourteen (14) days.

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### MENTAL HEALTH EXPERT (MHE)

- The Mental Health Expert meets face-to-face with each Restoration Participant a minimum of every 30 days.
- Engage in ongoing consultation with the Restoration Specialist and Psychiatrist (if any) throughout the restoration services.
- The MHE and the Restoration Specialist will develop a Restoration Plan within ten (10) business days from the date of appointment of the MHE and revise the Restoration Plan every 60 days.
- The Restoration Plan will:
  - Identify areas where the defendant is already competent, if any.
  - Evaluate the specific deficits or problems that are barriers to competence (i.e. lack of knowledge, psychosis, developmental delay, etc.).
  - Obtain additional information from the Court/Attorneys to assist in developing the Restoration Plan.
  - Incorporate recommendations from the Rule 11 reports.
  - List recommendations by the MHE.
  - Describe individualized methods of instruction appropriate for the defendant, including the multimodal formats in which instruction will be delivered.
  - Signed by the Restoration Specialist and the MHE.
- The Restoration Plan should have goals in these areas:
  - The defendant will evidence a sufficient level of factual understanding of court related issues as to be found competent to stand trial, including:
    - Knowledge of the charge(s);
    - Knowledge of the possible consequences of the charge(s);
    - Pleas and plea bargaining;
    - Roles of the courtroom personnel;
    - Adversarial nature of the process;
    - Understanding and evaluating evidence; and
    - Knowledge of courtroom procedures.
  - The defendant will evidence a sufficient level of rational understanding of court related issues so as to be found competent to stand trial.
  - The defendant shall evidence sufficient ability to assist counsel in developing a defense so as to be found competent to stand trial.
    - Including ability to communicate rationally with defense counsel.
    - Including the capacity to integrate and efficiently use the knowledge and abilities outlined in either a trial or a plea bargain situation.
  - Stress-reduction techniques related to the court proceedings, if necessary.
    - This may include providing specific accommodations related to the defendant's mental health/developmental diagnosis, such as: slowing the process down for defendants who have auditory processing issues; allowing for breaks for defendants who are overwhelmed with anxiety or have another condition such as IBS; etc.

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- For each Goal of the plan, the MHE will need to list interventions such as:
  - The defendant will meet with the Restoration Specialist 2 to 3 times per week to receive education about the legal system to improve factual understanding of court processes.
  - The defendant will meet with the Restoration Specialist 2 to 3 times per week to discuss court processes in order to improve rational understanding.
  - The defendant agrees to a referral to a psychiatric evaluation of presenting symptoms which contribute to the on-going questions regarding the defendant's legal competency to stand trial.
  - The defendant will receive supportive education to encourage full engagement with the restoration process to develop legal competency.
  - The defendant will sign releases of information to allow the Restoration Specialist and Mental Health Expert to acquire prior treatment records for restoration education purposes.
- If at any time the MHE is unable to meet the requirement of submitting the report ten (10) working days prior to the competency hearing, the MHE shall contact the appointed Clinical Liaison.
- Clinical interview, analysis, interpretations, report writing, and recommendations may be conducted only by the licensed psychologist or psychiatrist.
- If the defendant is not able to be restored, the MHE must identify if Title 14 and/or Title 36 recommendations to the Court will be made in the final report.
- Telehealth or other video conferencing services are acceptable, but not exclusively. An in-person assessment is required every thirty (30) days.

### **RESTORATION SPECIALIST AND MENTAL HEALTH EXPERT MUST:**

- Engage in ongoing consultation throughout the restoration services.
- Review case progress at least once every fourteen (14) calendar days throughout the service provision period, or more often as needed.
- Consultation may occur in person or telephonically, and may be accompanied or confirmed by email, but the consultation cannot be completed solely via email correspondence.
- Discussion shall include the defendant's progress, barriers to progress, and the ongoing determination of whether there is a substantial probability that the defendant will regain/achieve competency and if not, if recommendations for Title 14 and/or Title 36 will be made.

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- Modify the training material and instruction methods as necessary to meet the individualized needs for the defendant, and to consider all cultural, educational, developmental, behavioral and mental health needs.
- Modify the frequency and content of instruction after consideration of the defendant's individual needs.
- Identify stress-reduction techniques related to the court proceedings, if necessary. This may include providing specific accommodations related to the defendant's mental health/developmental diagnosis, such as: slowing the process down for defendants who have auditory processing issues; allowing for breaks for defendants who are overwhelmed with anxiety or have another condition such as IBS; etc.
- It is the responsibility of the Restoration Specialist and MHE to translate legal terminology into a level of language that is appropriate for the individual defendant and his/her needs.

### **RESTORATION TO COMPETENCY PSYCHIATRIST MUST:**

- Engage in ongoing consultation with the MHE throughout the restoration services.
- Review case progress with the MHE at least once every 45 calendar days, throughout the service provision period, or more often as needed.
- Such consultation may occur in person or telephonically, and may be accompanied or confirmed by email, but the consultation cannot be completed solely via email correspondence.
- Monitor the defendant during the restoration process for increased or decreased symptoms requiring a medication adjustment.
- Medication adjustments must be communicated to the MHE and Restoration Specialist.
- Discussion shall include the defendant's progress, barriers to progress, and the ongoing determination of whether there is a substantial probability that the defendant will regain/achieve competency and if not, if Title 14 and/or Title 36 recommendations will be made in the Final RTC report to the Court.
- An in-person evaluation is required every thirty (30) days. Telehealth or other video conferencing services are acceptable, but not exclusively.

## Best Practices: Restoration to Competency

### **Section 3: Restoration to Competency Instruction**

- Initial session may be scheduled through the Defense Attorney or Clinical Liaison.
- Instruction will occur a minimum of 2 times per week.
- Restoration sessions should last a minimum of 45 to 60 minutes unless otherwise indicated due to disability.
- For Defendants with cognitive impairments, the sessions should occur more frequently but with a shorter duration.
- Sessions should be scheduled quickly and frequently.
- Groups are the preferred method of restoration education delivery.
- Group and individual sessions should be no less than 30 minutes, and:
  - Group sessions should be no more than 8 defendants.
  - Group sessions can be divided by learning styles and information deficits.
- Refusals or absences will be documented in the report to the Court.
- Non-attendance after 3 groups/sessions will be reported to the appointed Clinical Liaison.
- Individual sessions are acceptable when group sessions are not feasible, as determined by the Mental Health Expert's evaluation.
- Instruction methods should take into consideration the defendant's most effective learning style, and utilize a mixture of visual, auditory, and kinesthetic learning approaches to reinforce concepts.
- The Mental Health Expert may also provide insight and recommendations as to approaches suitable for the individual defendant.
- All adjunct training materials and instruction methods must be designed by the Restoration Specialist and/or MHE and modified as necessary to meet the individualized needs for defendant, considering all cultural, educational, behavioral and mental health needs.
- Documentation of initial and all ongoing consultation is the responsibility of the MHE and Restoration Specialist and shall be retained for 6 years, in accordance with Arizona Administrative Code for Psychologists R4-26-106.
- The MHE will be notified by the Superior Court/Clinical Liaison of all dates of hearings and reviews, and of any changes in hearing dates or reviews.
- Assessment methods must be appropriate to the defendant's language preference and proficiency at this language, unless the use of an alternative language is relevant to the assessment issues.
- Must describe the strengths and limitations of any tests used.<sup>1</sup>
- Must explain how examination results can be affected by factors unique to, or differentially present in, forensic contexts including response style, voluntariness of participation, and situational stress associated with involvement in forensic or legal matters.

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<sup>1</sup> NOTE: Jurisdictions may use additional testing methods, including psychometry. The RTC program shall determine whether additional testing methods will be used in the competency proceeding or not. However, psychometry is not available in all jurisdictions, nor is it currently defined in AZ Statute. Therefore, the Committee is not choosing to recognize this as a statewide best practice.

## Best Practices: Restoration to Competency

- Identify any significant strengths and limitations of procedures and interpretations used for RTC education.
- Must make language accommodations as possible and consider such when interpreting and communicating the results of the assessment.
- Telehealth or other video conferencing services are acceptable and encouraged if travelling to the Restoration Specialist is geographically problematic.
- Restoration Specialist is required to complete an in person visit every fourteen (14) days. It would be required that there is a person available to ask questions to regarding the physical presentation of the defendant for Telehealth or other video conferencing instruction.
- The MHE may provide Telehealth or other video conferencing evaluations as long as an in-person assessment is completed every thirty (30) days.
- The Psychiatrist (if appointed) may provide Telehealth or other video conferencing evaluations as long as an in-person evaluation is completed every thirty (30) days.
- If the defendant is experiencing adverse effects with the use of telehealth or videoconferencing, the practice must be suspended and revisited. This may require notification to the Superior Court/Court Liaison that RTC is interrupted until alternative arrangements are made.

## **Section 4: Appendices**

### **Appendix A: Arizona Legal Criteria Overview**

The following provide a short summary of Arizona's legal criteria for competency evaluation. Hyperlinks are included, where available:

In Arizona, upon motion of any party or *sua sponte*, the court may order an examination to determine if a defendant is competent to stand trial. See:

[Ariz. R. Crim. P. 11.2 \(a\)\(1\), \(a\)\(2\), \(3\), \(4\)](#); and [A.R.S. §13-4503](#)

[Rules 11.2 \(c\)](#) and [11.3](#), Ariz. R. Crim. P. provide for preliminary examination to assist the court in determining if reasonable grounds exist to order a defendant's further examination and appointment of mental health experts.

Restoration to Competency developed from the Supreme Court of the United States Dusky Decision which says that a person who is not mentally competent may not be tried in a court of law.

## Best Practices: Restoration to Competency

### Appendix B: Restoration Plan

The Restoration Plan will include the following components:

- Identify areas where the defendant is already competent, if any.
- Evaluate the specific deficits or problems that are barriers to competence (i.e. lack of knowledge, psychosis, developmental delay, etc.).
- Obtain additional information from the Court/Attorneys to assist in developing the Restoration Plan.
- Incorporate recommendations from the Rule 11 reports.
- Describe individualized methods of instruction appropriate for the defendant, including the multimodal formats in which instruction will be delivered.
- Signed by the Restoration Specialist and the Mental Health Expert.

The Restoration Plan will incorporate the following goals:

- The defendant will evidence a sufficient level of factual understanding of court related issues as to be found competent to stand trial, including:
  - Knowledge of the charge(s);
  - Knowledge of the possible consequences of the charge(s);
  - Pleas and plea bargaining;
  - Roles of the courtroom personnel;
  - Adversarial nature of the process;
  - Understanding and evaluating evidence; and
  - Knowledge of courtroom procedures.
- The defendant will evidence a sufficient level of rational understanding of court related issues so as to be found competent to stand trial.
- The defendant shall evidence sufficient ability to assist counsel in developing a defense so as to be found competent to stand trial.
  - Including ability to communicate rationally with defense counsel.
  - Including the capacity to integrate and efficiently use the knowledge and abilities outlined in either a trial or a plea bargain situation.
  - Stress-reduction techniques related to the court proceedings, if necessary.
    - This may include providing specific accommodations related to the defendant's mental health/developmental diagnosis, such as: slowing the process down for defendants who have auditory processing issues; allowing for breaks for defendants who are overwhelmed with anxiety or have another condition such as IBS; etc.

## Best Practices: Restoration to Competency

### Appendix C: Sources

**The following resources were used in the development of this Guide. Hyperlinks are included, where available and known.**

American Academy of Psychiatry and the Law. [LINK 1](#); [LINK 2](#).

American Bar Association. Criminal Justice Standards on Mental Health. [LINK](#).

American Board of Forensic Psychology. [LINK](#).

Arizona Administrative Office of the Courts. Juvenile Competency Restoration Services Mental Health Expert Contract Scope of Work.

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Fogel, Michael H., and Schiffman, Wendy. *Competency to Stand Trial*.

The General Court of the Commonwealth of Massachusetts. General Laws, Part I, Title XVII, Chapter 123, Section 15: *Competency to Stand Trial or Criminal Responsibility; Examination; Period of Observation; Reports; Hearing; Commitment; Delinquents*. [LINK](#).

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## Best Practices: Restoration to Competency

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U.S. Supreme Court. *Dusky v. United States*, 362 U.S. 402 (1960). [LINK](#).

Virginia Department of Behavioral Health and Developmental Services. [LINK](#).

Warren, Nannette, JD. *Review of Case Law on Competency to Stand Trial*. March 2007; Updated August 2008.

Washington State Institute for Public Policy. *Standardizing Protocols for Treatment to Restore Competency to Stand Trial: Interventions and Clinically Appropriate Time Periods*. 2013. [LINK](#).

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Zapf, Patricia A. *Best Practices in the Evaluation of Competency to Stand Trial*. PowerPoint presentation. [LINK](#).