Committee on Mental Health and the Justice System

AGENDA

Thursday, January 24, 2019
10:00 a.m. – 3:00 p.m.

State Courts Building • 1501 W. Washington St. • Phoenix, Arizona • Conference Room 329/330

REGULAR BUSINESS

10:00 a.m.	**Welcoming Remarks**	Mr. Kent Batty, ***Chair***
10:10 a.m.	**Approval of Minutes** ☐ **Formal Action**	Mr. Batty
10:15 a.m.	**Discussion: Arizona State Hospital**	Q&A with ASH: Dr. Aaron Bowen, CEO Dr. Steven Dingle, CMO
11:00 p.m.	**Discussion:** **Housing, Mental Health and the Justice System**	Mr. Batty All
12:00 p.m.	**LUNCH**	
12:30 p.m.	**Recent News & Updates**	Mr. Batty All
1:00 p.m.	**Key Issues Workgroup Report**	James McDougall
2:00 p.m.	**Discussion: Additional Committee Workgroups**	Mr. Batty All
2:45 p.m.	**Good of the Order/Call to the Public**	Mr. Batty
3:00	**Adjourn**	Mr. Batty

Next Meeting:	**Remaining Meetings:**
February 25, 2019	March 25, 2019 April 29, 2019 May 20, 2019 June 24, 2019 July 22, 2019

All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Stacy Reinstein at (602) 452-3255 with any questions. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Angela Pennington at (602) 452-3547. Requests should be made as early as possible to allow time to arrange the accommodation.

Committee on Mental Health and the Justice System
Draft Minutes

Monday, December 17, 2018

10:00 a.m. – 3:00 p.m.
State Courts Building • 1501 W. Washington St. • Phoenix, Arizona • Conference Room 119 A/B

Present: Kent Batty (Chair), Mary Lou Brncik, Brad Carlyon, Amelia Cramer, Shelley Curran, Jim Dunn, Chief Kathleen Elliott, Judge Elizabeth Finn, Judge Michael Hintze, Josephine Jones, Dianna Kalandros, Judge Cynthia Kuhn, Chief Chris Magnus, James McDougall, Chief Deputy David Rhodes, Commissioner Barbara Spencer, Judge Christopher Staring, Fanny Steinlage, Paul Thomas

Telephonic: Michal Rudnick

Absent/Excused: Kathleen Elliot, Carol Olson, Ron Overholt

Guests/Presenters: Michael Trailor, Director, Arizona Department of Economic Security; Andrea Bell, Housing Integration Administrator, Mercy Care; Josh Crites, Housing Administrator, AHCCCS; Beya Thayer, Yavapai County Sherriff's Office (with David Rhodes); Josh Springer, Magellan Health Care (with Jim Dunn)

Administrative Office of the Courts (AOC) Staff: Jennifer Albright, Theresa Barrett, Stacy Reinstein

Regular Business

Welcome and Opening Remarks

Mr. Kent Batty (Chair), introduced himself and asked that members give a brief introduction of themselves. Guests and staff were also asked to identify themselves. The Chair then provided information on what was available in members' meeting packets, a refresher on statistics of co-occurring mental health and substance use disorders, as well as reminders to sign in and remit payment for lunch.

Approval of Minutes

Members were asked to approve minutes from October 30, 2018, noting they were in the meeting packet and provided electronically in advance of the meeting. No changes to the minutes were noted. A motion to approve the minutes was made by Mr. Dunn and seconded by Mr. Thomas. Motion was approved unanimously.

Discussion: Housing and Mental Health

The Chair, Mr. Batty, introduced Director Mike Trailor, Andrea Bell and Josh Crites to the Committee, noting that each of the presenters were invited to speak to the Committee today and provide an overview of their respective system as it relates to housing, and to touch upon the intersects with mental health and the justice system.

Guest Speaker: Michael Trailor, Director, Arizona Department of Economic Security, presented information to the Committee related to the Governor's Goal Council on Ending Homelessness, specifically noting that unsheltered homelessness in Maricopa County has increased 149% since 2014 to present. The proposed goals of the Ending Chronic Homelessness initiative are:

1. Reduce chronic homelessness in downtown Phoenix by 80% by 2021.
2. Reduce ex-offenders reentering our communities into homelessness by 50% by 2022, thereby improving public safety for our communities.
3. Increase affordable housing.

Director Trailor provided examples of work being done successfully in Portland, Oregon, as well as information on improvements to the Maricopa Human Services Campus to increase accountability, reduce silos, and improve capacity.

Committee members posed questions to Director Trailor regarding work outside of Maricopa County, particularly in rural areas of the state, as well as partnerships with the Department of Corrections and health care entities. Director Trailor's answers indicated that the primary focus of the work today is on making improvements in Phoenix and its surrounding areas.

Guest Speakers: Andrea Bell, Housing Integration Administrator, Mercy Care; and Josh Crites, Housing Administrator, AHCCCS, provided an overview of their respective agencies and roles.

Mr. Crites explained that AHCCCS is the third largest housing authority behind Phoenix and Tucson, with 3,000 units of affordable housing statewide for people with Serious Mental Illness (SMI) and some for people with General Mental Health disorders. Mr. Crites also acknowledged that while more capacity is required, the SMI Housing Trust Fund will be providing 18 new units/year beginning in 2019, as well as 15 additional units through the HUD Rental Assistance Demonstration (RAD) program. AHCCCS also provides $30 million per year in rental subsidies.

Ms. Bell stated for the Committee that Mercy Care has gone from 104 rental assistance subsidies for members with SMI, experiencing homelessness in 2014 to 3,500 today. Ms. Bell noted that the application and approval process used to be first come-first served, and now the vulnerability index tool is used. Ms. Bell also pointed the Committee to a new process improvement where a staff member is co-located in the jail to work with individuals coming out, who have identified as homeless, to ensure their housing application is completed while in jail, including a briefing on how to use the subsidy.

Committee members posed questions to both Mr. Crites and Ms. Bell, and Committee member Ms. Rudnick contributed to the responses. The Committee thanked Mr. Crites and Ms. Bell for the information, candor, and work they are doing to help serve this population.

Committee Questions for ASH (taken out of order)
The Chair, Mr. Batty noted that next month's meeting will include guests from the Arizona State Hospital who will take questions from the Committee. Committee members suggested a number

of questions to be submitted ahead of time to Dr. Bowen and Dr. Dingle, but it will not prevent the Committee from asking further questions at the meeting.

Committee Process & Formation of Additional Workgroups
The Chair, Mr. Batty reviewed the Committee process and discussed the possible formation of at least two additional workgroups focused on public education and a website to begin in early 2019.

> Committee work relevant to these areas (Sources: Administrative Order #2018-71 and Report and Recommendations of the Fair Justice Task Force's Subcommittee on Mental Health and the Criminal Justice System):
>
> "Identify ways the court can work collaboratively with other stakeholders to educate the public on the use of advance healthcare directives."
>
> "Identify opportunities to educate the public on court processes involving individuals involved in the justice system who have behavioral health treatment needs."
>
> "Recommend the AOC develop an informational guide explaining the civil commitment process in both web-based and paper formats. Paper guides would be available at courthouse self-service centers and the webpage would be posted on AZCourtHelp.org and on the self-service webpages of the superior courts."

The Committee reviewed the website from the Minnesota Department of Human Services: dhs.state.mn.us/Training/cc/story_html5.html as reference to the Committee charge to develop a guide explaining the civil commitment process in Arizona.

The Chair noted that Jeff Shrade from AOC Education Services could meet with the Committee to discuss openings on the judicial training calendar where potential information could be shared with judicial officers and court staff.

Committee members agreed that an informational guide to help navigate the system is needed, particularly for members of the public. Committee members also touched upon the importance of having localized information available. Chief Deputy Rhodes passed around a draft flow chart that his office has developed, as a possible starting point for the informational guide.

Questions were raised regarding education for judicial officers and court personnel, versus other justice system partners such as law enforcement, and the broader community and public.

No workgroups were formed during the meeting; rather, staff will review the website requirements with the Bar Foundation and civil commitment process and begin to develop a draft outline for Committee review for materials. Committee members who have existing materials to review will send to staff.

Key Issues Workgroup Report
Mr. McDougall provided an update from the Key Issues workgroup, including the four items the group is currently focused on, and the two primary items being worked on right now – definition of mental disorder and new statutory language on an enhanced services program. Following completion of these items (and bringing them to the Committee for discussion and approval), the workgroup will be looking at an amended definition of Persistently or Acutely Disabled (PAD) and Incompetent Not Restorable (INR): Expanding Options for MH Treatment. Mr. McDougall also noted other issues that are raised by the workgroup and the committee will be captured by staff and brought to the Committee to review, discuss, and add to in the future.

What Can We Learn from High Profile Cases?
Next, the Chair shared key facts from the shooting death of U.S. Deputy Marshal Chase White in Pima County, and the perpetrator's history with the mental health and justice systems. The Chair noted that the public, which includes policy makers, will often take cues from high profile cases with respect to what changes are needed in the system. Accordingly, he reminded members to keep in mind that the Committee's focus is on systemic improvements and encouraged them to be mindful of crafting not only aspirational goals but also those that are reasonably achievable and incremental in order to ensure that change is brought about.

Ms. Steinlage suggested the possibility of implementing a mental health fatality review team, similar to that of the Statewide review teams for child fatalities and domestic violence fatalities.

Summit Prep/Save the Date: March 26-27, 2019
Theresa Barrett provided a progress report to the Committee on the status of planning for the statewide Summit on Mental Health and the Justice System. She noted that the Summit is one of the ongoing projects resulting from a recommendation from the Fair Justice Task Force's Subcommittee. Ms. Barrett advised members the Superior Court Presiding Judges were briefed last week at their quarterly meeting. The purpose of the presentation was to give them advanced logistical information, offer general guidance on the composition of membership for their county teams, and to provide a high-level overview of the program's agenda. Ms. Barrett noted that while this Committee's role for the Summit is not yet formed, there will likely be Committee members who are designated as County team members.

2019 Meeting Dates
A conflict with three of the months was noted by Committee members. Staff will take a look at available meeting space and send out a Doodle poll for new dates.

Good of the Order / Call to the Public
No comments from the public.

Adjournment
The meeting was adjourned at 2:25 p.m. by order of the Chair.

New Definition of Mental Disorder

Current Statute
ARS 36-501 (25)

25. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:
(a) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder.
(b) The declining mental abilities that directly accompany impending death.
(c) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

Recommendation of Fair Justice Task Force 2018

Recommended language to expand definition of Mental Disorder to include neurological and psychiatric disorders, as well as mental conditions resulting from injury, disease, cognitive disabilities or co-occurring substance abuse disorders in conjunction with a mental disorder as follows:

25) “Mental Disorder” means a substantial **neurological or psychiatric** disorder of the person's emotional processes, thought, cognition, ~~**or**~~ memory **or behavior, including mental conditions resulting from injury or disease, ~~and~~ cognitive disabilities as defined in A.R.S. § 36-551, and substance use disorders which co-occur with a mental disorder.**
Mental disorder is distinguished from:
~~**(a) Conditions that are primarily those of drug abuse or alcoholism unless, in addition to one or more of these conditions, the person has a mental disorder**.~~
~~**(b)**~~ **(a)** The declining mental abilities that directly accompany impending death.
~~**(c)**~~ **(b)** Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

Committee on Mental Health and the Justice System
Key Issues Workgroup

The Key Issues Workgroup was tasked with reviewing and, if necessary, refining the recommendation forwarded to it by the Task Force. The workgroup met a total of four times on this subject and recommends the following for consideration by the full Committee:

§36-501(25). DRAFT REVISION PROPOSED BY KI WORKGROUP 1-16-19

"Mental Disorder" means a ~~substantial neurologic or psychiatric~~ disorder that **substantially impairs** ~~of the~~ **a** person's emotional processes, thought, cognition, ~~or~~-memory **or behavior~~, including mental conditions resulting from injury or disease, and cognitive disabilities as defined in A.R.S. § 36-551, and substance use disorders which co-occur with a mental disorder~~. The mental disorder may be related to, caused by or associated with a psychiatric or neurologic condition, or an injury or disease, and may co-occur with a substance use disorder.**

A. A person with an antisocial personality disorder or sexual disorder shall not be considered to have a mental disorder unless that person also has a substantial impairment of emotional process, thought, cognition or memory, and the impairment is likely to improve with psychiatric treatment.

B. A person with a fixed or progressive deficit in cognition or memory due to a neurologic disease, a brain injury or an intellectual or cognitive disability may be considered to have a mental disorder if the person also has a substantial impairment of emotional processes, thought or behavior, and that impairment is likely to improve with psychiatric treatment.

OPTION 1C. Mental disorder includes a person presenting with impairments consistent with both a mental disorder and substance use disorder if, considering the person's history and an appropriate examination of the person, the impairments of a mental disorder persist or recur even after detoxification.

OPTION 2C. A person presenting with impairments consistent with both a mental disorder and substance use disorder may *(OR shall)* be considered to have a mental disorder after:
1. an appropriate examination of the person;
2. consideration of the person's history; and

3. the impairments of a mental disorder persist or recur even after detoxification.

OPTION 3C. A person presenting with impairments of both a mental disorder and a substance use disorder may *(OR shall)* not be disqualified from treatment for a mental disorder unless the impairments of a mental disorder cease to exist after an appropriate period of detoxification. In making this determination the evaluation must consider any available relevant history of the patient.

~~**Mental disorder is distinguished from:**~~
~~**(a) Conditions that are primarily those of drug abuse or alcoholism unless, in addition to one or more of these conditions, the person has a mental disorder.**~~
~~**(b) (a) The declining mental abilities that directly accompany impending death.**~~
~~**(c) (b) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.**~~

Breakdown of the work of the Workgroup

1st paragraph – General Definition: The revision makes it clear that the term Mental Disorder focuses not on a "substantial disorder" but rather on a disorder that **substantially impairs** certain functions. It also makes it clear that a mental disorder can be related to, caused by or associated with a psychiatric or neurologic condition, or an injury or disease, and may co-occur with a substance use disorder.

Subsection A - antisocial personality or sexual disorders: This is our attempt to deal specifically with the category of antisocial personality or sexual disorders. Both of these disorders will always have a substantial impairment of behavior, but many also have treatable impairments of a mental disorder. Therefore, we have attempted to make clear that if the person with an antisocial personality or sexual disorder also has a substantial impairment of emotional process, thought, cognition or memory, the person may be considered to have a mental disorder for the purpose of involuntary treatment. We also felt it was important to add the requirement that the impairment attributable to the mental disorder must be likely to improve with psychiatric treatment.

Current law addresses this category of people by attempting to distinguish them in this way:

Mental disorder is distinguished from:
Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

The workgroup believes that this attempt to distinguish antisocial and sexual disorders from mental disorders has resulted in a persons identified as having such disorders being excluded from involuntary treatment even when they have treatable impairments associated with a mental disorder and that our revision more clearly states what should be considered.

Subsection B – neurologic disease (dementia), brain injury and intellectual disabilities: This is our attempt to deal specifically with people with neurologic disease (dementia), brain injury and cognitive or intellectual disabilities. People in all of these categories are always likely to have a substantial impairment of memory and cognition and should not be eligible for involuntary treatment based upon those impairments alone. Therefore, we have attempted to make clear that it is only when such a person also has a substantial impairment of emotional processes, thought or behavior that the person may be considered to have a mental disorder for purposes of involuntary treatment. And, as with the people in Subsection A, we felt it was important to add the requirement that the impairment attributable to the mental disorder must be likely to improve with psychiatric treatment.

Current law does not address brain injuries and addresses the dementia and intellectual disability categories by attempting to distinguish them from having a mental disorder in this way:
Mental disorder is distinguished from:
(a) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder.
(b)The declining mental abilities that directly accompany impending death.

As with the people in Subsection A we believe this attempt to distinguish people in this category has resulted in many cases of people identified as having an intellectual disability or dementia being excluded form involuntary treatment even when they have treatable impairments associated with a mental disorder and that our revision more clearly states what should be considered.

Subsection C – Substance Use Disorder:

The Workgroup felt that the attempt in our current statute to distinguish substance use disorder from mental disorder has actually, in many cases resulted in persons seen as having a substance use disorder being excluded form involuntary treatment even when they have treatable impairments associated with a mental disorder. Our new general definition of

Mental Disorder does make clear that a mental disorder and a substance use disorder may co-occur, but many in the Workgroup felt that we should attempt to go further, making it clear that clinicians, tasked with determining whether a person has a mental disorder eligible for involuntary treatment, should make an effort to determine whether the impairments presented are solely due to substance use or are more reasonably attributable to a mental disorder.

The Workgroup had lengthy discussions on this subject and brings to the Committee for consideration the following four potential options:

1. Option 1 – keep only the statement in the general definition that makes clear that a mental disorder and a substance use disorder may co-occur.
2. Option 1C – makes a person eligible for involuntary treatment for a mental disorder IF the impairments of a mental disorder persist or recur after detox;
3. Option 2C – same as above, separating each factor into 1, 2, 3;
4. Option 3C – specifies that the co-occurring disorder does not disqualify a person from treatment unless the impairment associated with a mental disorder ceases to exist after detox. This option requires consideration of relevant history (which could be important in determining whether by history the person often stabilizes after detox with the impairments of a mental disorder returning resulting in a return to substance use).

Other relevant discussions of the Workgroup:

- There will be considerable pushback form stakeholder groups in regard to all of the issues in Subsections A, B and C.
- We need to consider how any new language will or might affect Rule 11 proceedings.
- The issue of co-occurring substance use disorder may be something that can and should be considered as a training issue.
- Although the Workgroup members struggled with how to handle substance use in the definition of Mental Disorder, the Workgroup members all felt that the behavior resulting from substance use disorder is just as dangerous and treatable as behavior attributable to mental disorder and that the State of Arizona is in need of a statute and a program to deal with the involuntary treatment for substance use disorder. The only question being – do we include it as a mental disorder or create a new section of the law that is specific to substance use disorder? It is a difficult question to answer when we are well aware that the two disorders often exist together and each makes the other more difficult to treat unless treated together.