Committee on Mental Health and the Justice System
AGENDA

Monday, July 22, 2019
10:00 a.m. – 3:00 p.m.

State Courts Building • 1501 W. Washington St. • Phoenix, Arizona • Conference Room 119A/B

REGULAR BUSINESS

10:00 a.m.	**Welcoming Remarks**	Mr. Kent Batty, *Chair*
10:10 a.m.	**Approval of June 24, 2019 Minutes** ☐ **Formal Action**	Kent Batty
10:15 a.m.	**Recent News & Updates**	Kent Batty
10:45 a.m.	**AHCCCS Overview & Discussion**	Michal Rudnick All
12:00 p.m.	**LUNCH**	
12:30 p.m.	**Workgroup Report: Competency Practices** ☐ **Formal Action: Approval of Competency Evaluation Templates**	Dianna Kalandros
1:00 p.m.	**Interim Report Review**	Kent Batty All
2:30 p.m.	**Preview: Next Meeting**	Kent Batty
2:40 p.m.	**Call to the Public**	Kent Batty

Next Meeting:	**Remaining Meetings:**
August 26, 2019	October 28, 2019 November 18, 2019 December 16, 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, June 24, 2019
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, Amelia Cramer, Brad Carlyon, Jim Dunn Hon. Michael Hintze, Josephine Jones, Natalie Jones, Dianna Kalandros, James McDougall, Kristin McManus, Carol Olson, Ron Overholt, Chief Deputy David Rhodes, Hon. Barbara Spencer, Hon. Fanny Steinlage, Paul Thomas, Sergeant Jason Winsky (Proxy for Chris Magnus), Megan Woods (Proxy for Michal Rudnick)

Telephonic: Shelley Curran, Hon. Elizabeth Finn, Hon. Cynthia Kuhn

Absent/Excused: J.J. Rico, Dr. Michael Shafer, Hon. Christopher Staring

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Guests/Presenters: Chief Justice Scott Bales; Alex Demyan, AHCCCS

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Don Jacobson, Amy Love, Stacy Reinstein

Regular Business

Welcome and Opening Remarks

Mr. Kent Batty (Chair), introduced Chief Justice Scott Bales who thanked the Committee for its work in this area, and emphasized that the work we are doing has an impact. The Chief Justice shared that at this month's Presiding Judges meeting there were three presentations on what local jurisdictions are doing in the area, including from David Rhodes in Yavapai, and the Presiding Judges in Coconino and Maricopa Counties. Under incoming Chief Justice Brutinel, mental health issues in the justice system will a topic at all quarterly Presiding Judges and Arizona Judicial Council meetings and is reaffirmed in the new Strategic Agenda.

Mr. Batty and the Committee members expressed their gratitude to Chief Justice Bales for elevating the important of addressing mental health in the justice system.

Mr. Batty asked Committee members and guests to briefly introduce themselves.

Approval of Minutes

Members were asked to approve minutes from April 29, 2019, 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 Amelia Cramer and seconded by Judge Hintze. Motion was approved unanimously.

Recent News & Updates

Mr. Batty notified the Committee that its current recommendations were presented to the Committees on Superior Court and Limited Jurisdiction Courts in May, as highlighted in the May staff update to the Committee. Mr. Batty noted that both meetings went very well, and while more discussion will take place as we proceed with our interim reporting process, it is clear that the courts and other system stakeholders are supportive of the work the Committee is doing.

Mr. Batty also shared that staff and some Committee members held a stakeholder meeting with the Arizona Department of Juvenile Corrections to discuss concerns regarding the definition of mental disorder changes. While not previously raised in Committee, the proposed definition change could impact ADJC, as the ADJC commitment statute (A.R.S. 8-342) allows for a youth who has been adjudicated on a non-felony offense to be committed to ADJC if they are "seriously mentally ill." The presenting issue is that the definition ties back to "mental disorder" as defined in A.R.S. 36-501 and "seriously mentally ill" in 36-550. At this point, there was no conclusion that the Committee would recommend any changes to the mental disorder proposal right now, as ADJC and the Committee on Juvenile Court Judges may want to look more closely at A.R.S. 8-342 and the impact of that statute. However, it is an important point to be aware of, as children's behavioral health and juvenile justice issues surface within AOC/Supreme Court leadership's strategic agenda.

Mr. Batty notified the Committee of the passing of the gavel from Chief Justice Bales to incoming Chief Justice Brutinel that took place recently at the Arizona Judicial Conference. Justice Brutinel shared the new Strategic Agenda with the judiciary, and it will be shared with the Committee as soon as it is published. Mr. Batty referenced a section in the strategic agenda which highlights continued focus on mental health issues in the justice system.

The Western Regional Conference of State Court Administrators (COSCA) meeting took place at the end of May in Idaho with a focus on mental health, with AOC and Supreme Court leadership and others in attendance including Mr. Batty, Michal Rudnick, Don Jacobson, Joe Kelroy from AOC Juvenile Justice Services, and Superior Court Judges Quigley and Moran. The learning sessions were organized along the sequential intercept model and included presentations from colleagues across the country on current efforts to address mental health issues in the justice system, including law enforcement interaction and crisis response, competency evaluation, and jail and corrections-based mental health programming. Mr. Batty noted that it was clear that Arizona's judicial branch has made a great deal of progress in its focus on mental health, but we still have plenty to learn and consider.

Mr. Batty detailed additional areas that may be considered by the courts and the Committee in its second year, including: triage for youth with mental health concerns, juvenile justice, non-urban jurisdictions, expanding the Reach Out model, enhancing access to resources for veterans, looking into the population currently served through Mental Health Courts to determine if it could be expanded to serve other defendants, restoration to competency for misdemeanants, enhancing the follow-up with local jurisdictions that participated in the Mental Health Protocols Summit, AHCCCS justice liaisons, utilizing competency evaluations beyond a finding of competence or incompetence, telehealth concepts, and more.

Mental Health Protocols Update

Don Jacobson presented the Committee with an overview and update of the current work underway as a result of both the Mental Health Protocols Summit and the Arizona team's discussion at the Conference of State Court Administrators (COSCA). The planned initiatives for Arizona include:

- Expand use of crisis drop-off centers
- Expand the 'Arizona Model' to juveniles
- Expand training for judges and staff
- Roll out protocols county by county

Mr. Jacobson highlighted the development of tools and training for judges using the resources from the Protocol Guide and the SIM, and specifically a train-the-trainer program that will take place in August that ultimately is geared to provide training for judges and court staff including probation.

Committee members asked Mr. Jacobson if a survey or analysis would be done of what is currently going on, to prevent duplication before new initiatives are created, noting that many jurisdictions have existing community mapping projects in place or underway that detail what it looks like for a person in the community to navigate mental health resources. Several Committee members shared with Mr. Jacobson where existing crisis stabilization units or "drop off" centers currently exist, including Maricopa County, Yavapai County, Pima County, Coconino and Pinal County. Committee member David Rhodes also noted the mobile crisis response funded in rural areas in Northern Arizona. Committee members also underscored the need for any mapping that is done through the protocol teams to include an identification of the gaps and how to fill them, as well as mapping what should be available to people in an optimal system. Examples of specific gaps that Committee members shared include vast differences in rural jurisdictions, varying resources for law enforcement which would like to implement a CIT approach but are thwarted by there are geographic and provider access considerations , or different rules for whether an individual can be dropped off and served. Judge Hintze noted that a recent census in Maricopa County jail showed that the number of female inmates has risen to an all-time high, and that the majority are there due to mental health and substance abuse issues.

Preview July Discussion: AHCCCS Contracts, Justice Liaisons, COE/COT Process

Mr. Batty provided the Committee with an overview of the agenda item, asking the Committee if it would be worthwhile to have a more complete picture of AHCCCS' interaction with the judicial system, as there is a great deal of interest and discussion around the work AHCCCS is doing, in particular the justice liaisons, the Targeted Investment ("one stop centers"), the alternative centers for law enforcement (in Maricopa and Pima only right now), as well as the COE/COT process and how it works or is not working across the entire state. Mr. Batty also noted recent conversations with Dr. Margie Balfour from Tucson's Crisis Recovery Center who presented at COSCA and can help contribute to the conversation as it relates to crisis services.

Committee members discussed the desire to have such a presentation, particularly addressing the differences across the state, the relationship between crisis response and COE/COT, and the County vs. Health Plan functions for justice-involved individuals with mental health concerns. A suggestion was made to hear from or about the Justice Liaisons and their work with the system. Clarification was requested as to the differences between the RBHAs and ACC Plans – and Shelly

Curran noted there is one justice liaison per health plan, for a total of seven. Because three of the seven ACC providers are also RBHA providers which continue to provide specific crisis services, and services for members determined to be SMI, children in foster care, and members served by DES/DDD, the role the justice liaisons play and involvement throughout the justice system varies as well.

Megan Woods, AHCCCS noted that the Arizona Association of Health Plans is currently developing recommendations for AHCCCS related to the justice liaisons, and there is work underway to develop collaborative protocols and focus on upcoming changes to the ACC Health Plans and RBHA Health Plans.

Mr. Batty concluded that the presentation and discussion next month will aim to educate the Committee on the way the system works and is interrelated with the justice system.

Legislation Review: HB 2754; A.R.S. 36-550.09

Committee members Jim McDougall and Dr. Carol Olson reviewed new legislation that was included in the legislative budget. Several stakeholder meetings were held during the session regarding how different funds, including the housing trust fund would be used for people with mental illness. Mr. McDougall and Dr. Olson were asked very late in the session to assist with establishing criteria for a new secure treatment facility. Suggested language was put forward that the Committee included in the enhanced services program criteria, however that did not go through and will continue to be worked on in the future.

Committee discussion regarding the legislation centered around what a judge will be expected to find as it relates to "chronically resistant to treatment" – how we will identify and treat the individuals who are in the revolving door of our system, including as it relates to individuals with a co-occurring substance abuse and mental health disorder. Dr. Olson noted that the legislators they worked with are very interested in the fact that a small number of individuals who are resistant to treatment are having a big impact on the systems. Mr. McDougall noted that while the legislation includes $3.5 million in funding to create the pilot program, it will take time to be up and running due to facilities needing to be found or built, the licensing process, selecting providers, County Attorney criteria and evidence for selection of the individuals who will go into the secure setting for treatment, and the procedure for tracking how the individual is doing in treatment and when the individual has demonstrated that they no longer need this setting.

Committee members agreed that while the funding included is small for what is needed, this legislation is an important start, and provides an example of the discussions that the Committee has been having to continue to be addressed by others.

Workgroup Report: Competency Practice

Workgroup chair Dianna Kalandros requested final approval on the Guidelines for Mental Health Evaluators and the templates for the Rule 11 competency forms. The Committee agreed that the Guidelines have been approved. Mr. McDougall noted some suggested changes. Members with additional edits to the templates for the mental health evaluator competency forms were asked to send suggestions to staff by July 3rd.

Ms. Kalandros noted the upcoming training conference for mental health evaluators that will take place in August, and the desire to have judicial officers and staff attend, in addition to mental health evaluators. Discussion also took place to request including the sample templates in the packet so we can begin to integrate the Committee's work and recommendations for improvement. Judge Hintze also noted that there is more education and training needed on Title 14 and Title 36 for judges and other court officers hearing Rule 11 matters at both the limited jurisdiction and superior court levels.

Ms. Kalandros informed the Committee about the workgroup's ongoing priorities, including: work with the AOC IT department on a mechanism to share Rule 11, Title 36, and Title 14 data points across jurisdictions; continuing to improve the process for the Rule 11 for limited jurisdiction courts as allowed for in the 2018 statute and rule change process.

Finally, Ms. Kalandros noted ongoing discussion around a visionary idea for an education pipeline across forensic psychiatry and law, paired with a university to develop and track education and continuous improvement opportunities, as well as increase the pool of individuals who have expertise and work in this area. Committee members also commented on the need to address the price Arizona pays for evaluators, and how that likely contributes to the lack of available evaluators and experts.

Workgroup Report: Key Issues

Workgroup chair Mr. McDougall noted the workgroup's discussion on current Arizona Assisted Outpatient Treatment (AOT) statutes, and when considering what this statute allows for and the Committee's enhanced services treatment proposal, the workgroup is not recommending any changes to AOT statute at this time.

Mr. McDougall presented an update on the current work underway to address the linkage issues between for a person found incompetent and not restorable in the limited jurisdiction court and the transfer order to superior court (currently only in Maricopa County) as contemplated in Rule 11.5. A small team has put together some ideas, as well as met with the Maricopa County judicial leadership. When reviewing data from Glendale and Mesa, it is clear there are not a great number of cases that would move forward – less than 20 total in 2018. At present, the team will continue to draft a protocol and associated documents for the order of transfer, and come back to the Committee, Maricopa County Superior Court leadership and the County Attorney's Office for presentation and discussion.

Finally, Mr. McDougall presented for discussion the requested Committee statement in support for some type of programming or process to address the population of individuals who are dangerous and found incompetent and not restorable. Committee members were provided a document in their packets, as well as the latest version of the Pima County Attorney's Office draft proposed legislation. After review and discussion, the Committee agreed to the following language: *The Committee requests the Arizona Judicial Council and Administrative Office of the Courts support efforts to address the population of incompetent and not restorable defendants determined to be "dangerous," through the creation and adoption of a constitutional process, procedure or program to provide treatment to the individual and protect the public safety.*

Priority Setting Exercise Review

Mr. Batty stated that the purpose of this discussion is to review the final votes from the April Committee priority setting exercise and determine how the Committee sees the four areas that received the most "votes" fitting in with its work moving forward, in particular – what would the Committee's recommendation be in each area? The four areas identified:

1. Address the lack of bed space statewide for persons with mental health needs by increasing the number of:

- *Inpatient, secure beds;*
- *Community based, secure residential placements; and*
- *Community based supportive housing, including group homes.*

6/24/19 Discussion: Recommend to the legislature that there be planning and financial support for these kinds of beds, and a report that Arizona can anticipate that there would be cost savings over time due to a reduction in costs to jails and emergency rooms, and these cost savings should be directed toward more supportive housing. There was a further recommendation to address the gaps and ask the Protocol teams to engage in resource mapping across the Sequential Intercept Model, including services available in each county and community, identifying the people in need of services, and their needs. Committee members noted its interim report must include the facts needed to influence public policy, and to underscore the housing scarcity for people with mental illness and how that directly ties in to the Committee's work and recommendations to improve the system.

Committee member David Rhodes emphasized that housing is a key data point tracked in Yavapai County's Reach Out program, and when working on coordinating release for individuals, approximately 30 percent have no place to go after release, making for a bleak outlook for reducing recidivism. He further noted that while the housing voucher program sounds good, if the housing authority does not allow someone who has been convicted of a felony, then success is even more unlikely. Committee member Paul Thomas noted at the six-month mark, for the 66 graduates in Mesa Community Court (mostly homeless and mentally ill), with cases going back to 2006 – cumulatively, the 66 graduates had 2,500 police contacts and 650 arrests – indicative of the issues we are dealing with and hoping to address.

2. For people with co-occurring disorders, define and mandate comprehensive case management services that include face to face contact in the community and additional supports to coordinate a person's need for:

- *Treatment for mental health & co-occurring substance use disorders;*
- *Housing;*
- *Transportation; and*
- *Other needed services.*

6/24/19 Discussion: Committee members noted that connecting people to treatment is more effective with support and engagement daily. Further discussion ensued around the immense amount of system resources that is put in when an individual is treated with co-occurring disorders, and then wasted when they are discharged "to homelessness" and without other coordinated

systems of care. Mr. Rhodes provided Reach Out as an example, as well as true diversion work in Harris County (Houston) and Davidson County (Nashville) Sheriff's offices for pre-trial defendants on conditions of release under a case management system run by the county – not under the authority of the court or probation.

Potential avenues discussed include changes to the AHCCCS contracts, possible legislation that mandates supportive case management for this population, and the recognition that this does not all fall under the court's purview, but the Committee is using the convening power of the court and the court's leadership to move these discussions and changes forward, while also recommending outcome-based measures for effective oversight.

3. Examine changes to statute to allow evidence of mental disorder as an affirmative defense to a defendant's mens rea

6/24/19 Discussion: Create a new workgroup to research and recommend changes. Membership identified includes: Mary Lou Brncik, Brad Carlyon, Natalie Jones, Fanny Steinlage, Paul Thomas.

4. Examine mandates for and improvement of oversight of the public mental health treatment system, both voluntary and involuntary. Recommend creation of a State Department of Mental Health Services.

6/24/19 Discussion: The Committee engaged in discussion regarding the desire to have a state body independent of the payor to improve oversight. Members noted the importance of developing and recommending comprehensive, cross-agency protocols to prevent further fragmentation and silos in the system, including across the Department of Health Services, ASH, the housing trust fund through the Department of Housing, AHCCCS and the health plans. Mr. Rhodes noted the collaboration taking place in Yavapai County, using highly integrated communication, and the economies of scale of existing infrastructures in place to form a joint criminal justice-behavioral health-county responsibility to route people where they need to go. Mr. Batty confirmed this beneficial approach in Pima County through the MacArthur grant that enhances collaboration and breaks down siloes. Mr. Dunn noted Rep. Barto's independent oversight committee with over 11 different groups across the state could be a good resource for this Committee, and to ensure we keep our finger on the pulse of what is happening.

Mr. Batty reminded the Committee that it will be presenting an interim report to the Arizona Judicial Council (AJC) Standing Committees and AJC in October 2019 with several recommendations related to discussions that have taken place over the last 10 months. The goal is to have a copy of the draft interim report to the Committee for review at the July meeting – or August at the latest.

Good of the Order / Call to the Public
No members of the public asked to speak.

Adjournment
The meeting was adjourned at 2:55 p.m. by order of the Chair.

AHCCCS Criminal Justice Initiatives

Michal Rudnick

Project Manager

July 22, 2019

Topics

- AHCCCS Complete Care
- Eligibility and Enrollment
- Reach-In
- Targeted Investments
- Opioid Use Disorder
- AHCCCS Partnerships

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Arizona Health Care Cost Containment System

2018 Changes to Health Plans

AHCCCS Complete Care

Suspending/Reinstating Enrollment

- IGAs with counties and ADC to send daily booking and release files to AHCCCS
- In State Fiscal Year 2018
  - Incarcerated member enrollment was suspended (instead of terminated) approximately 120,000 times.
  - AHCCCS avoided $42,433,657.00 in capitation for incarcerated members

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Pre-release Medicaid Applications

- All state prisons and most counties are submitting pre-release AHCCCS applications (30 days before release).
- Approximately **10,711** inmate pre-release medical assistance applications submitted by corrections assistors in SFY2018.
- Of those pre-release applications, there was an approval rate of over 80%.

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Reach-In

- All AHCCCS health plans are required to “reach-in” to releasing individuals who are at high health risk
- Since October 2016…
  - More than 5,000 high health risk individuals have been contacted pre-release to coordinate care with a community provider

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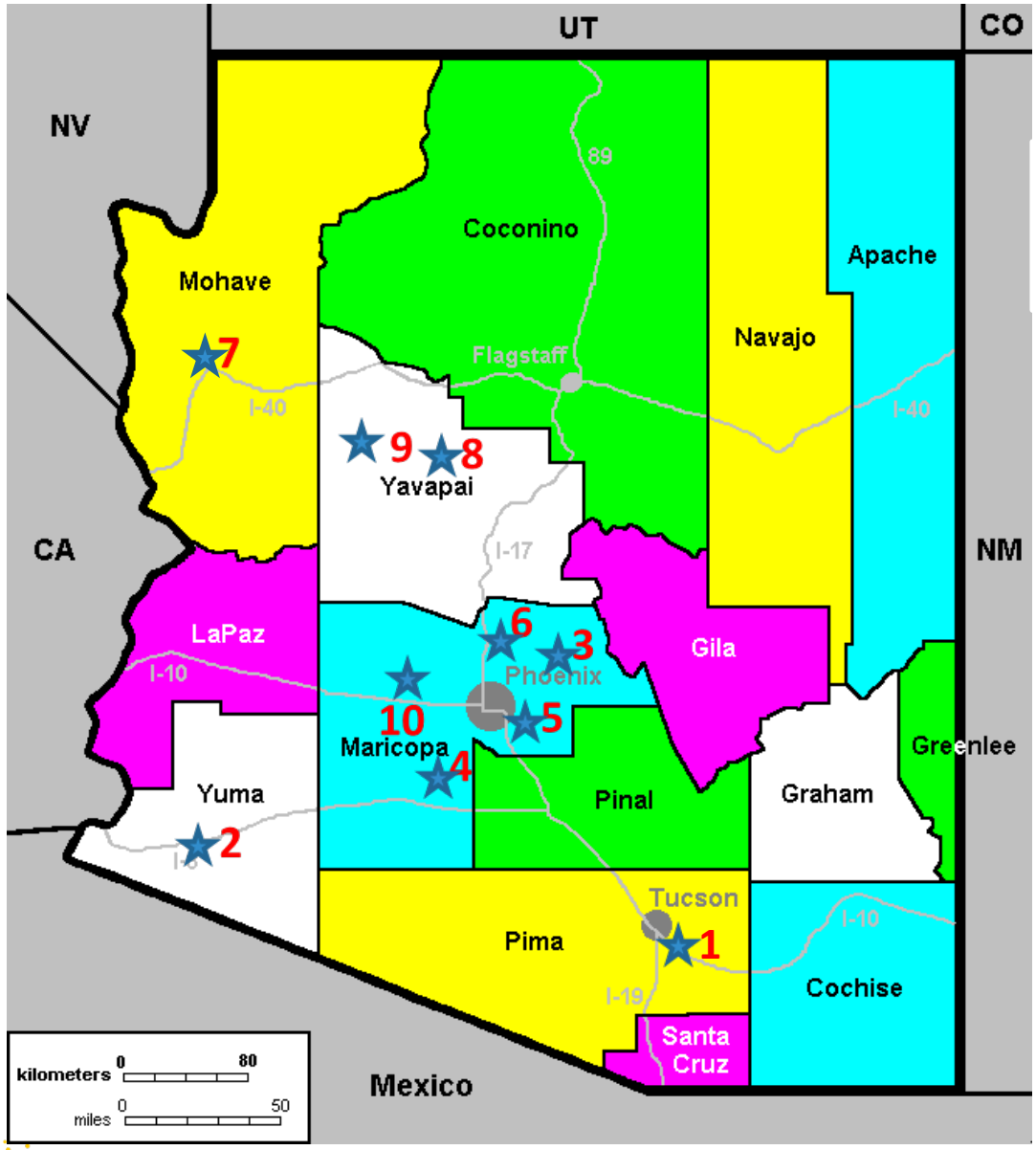
Targeted Investments

- 13 co-located (with probation/parole), integrated health clinics statewide to serve probationers/parolees.
- Services include on-site MAT, physical, behavioral, employment support, support for food insecurity, housing and forensic peer and family support.



1. 1773 W. St. Mary's Rd, Suite 102, Tucson, 85745
2. 410 S. Maiden Lane, Yuma, AZ 85364
3. 801 S. 16th Street, Phoenix, AZ 85034
4. 460 North Mesa Drive #211 Mesa, AZ 85210 or 85201
5. 3864 N 27th Avenue, Phoenix, AZ 85017
6. 2445 W Indianola Ave, Phoenix, AZ 85015
7. 2215 Hualapai Mountain Road, Suite H & I, Kingman, AZ 86401
8. 452 W Finnie Flat Road, Camp Verde, AZ 86322
9. 651 W Mingus Avenue, Cottonwood, AZ 86326
10. 1111 S. Stapley Dr. Mesa
11. 6153 W. Olive Ave Glendale, AZ 85302
12. 1923 N Trekell Rd. Casa Grande, AZ 85122
13. 950 E Van Buren St, Avondale, AZ 85323

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Targeted Investments- Justice

TI Justice Clinics

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Opioid Use Disorder

- AHCCCS is contracted with 43 of the 54 AZ licensed Opioid Treatment Programs
- 6 Centers of Excellence sites statewide:
  - Provide 24/7 crisis stabilization
  - 3 sites stabilize and provide warm handoff; 3 of these sites offer full range of care (CODAC in Tucson, CMS in Phoenix, ITS in Phoenix)
- Accessing and Locating Treatment

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Crisis Services

- All AZ residents can receive crisis services regardless of insurance
- List of Crisis hotlines in AZ
- FAQs on Crisis Services

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Access to Services

- AHCCCS Strategic Plan includes a measure to:
  - Increase access to a Medicaid service from 43% to 50% for members within 90 days of their release

- From the period of June 1, 2018 through August 31, 2018:

49% of the people released from jail or prison received a service within 90 days of their release!

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ADC – Second Chance Reentry Centers

Prison / SCC Name	Lewis: Eagle Point Unit	Perryville: Piestewa Unit	Tucson: Manzanita Unit	Total
# Currently Participating	257	52	45	**354**
# Completed	1301	323	377	**2,001**
# Individuals Employed	594	156	236	**986**
# Placements	713	189	341	**1,243**
				Data as of: 12/13/2018

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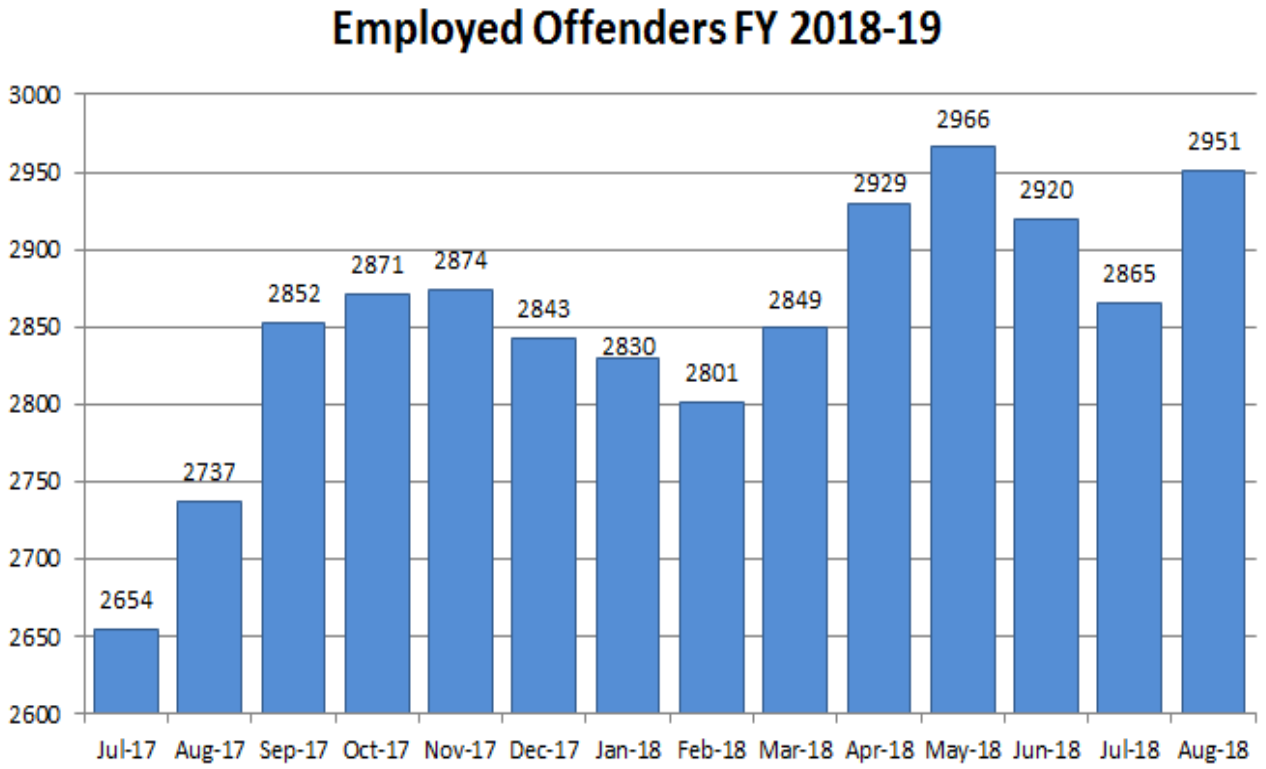
Employment

AZ Department of Corrections



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From DHS – Tobacco

- Partnership with ADC and ASHLine for follow up coaching of inmates after participation and release from the Second Chance Centers.
- Completed pilots at 2nd Chance facilities, with a reported **50% reduction in tobacco use**.
- Both the inmate population and ADC staff received the program with great enthusiasm.
- Two new pilots launching in January (both at Lewis), based on our review of the original pilots, which include a train-the-trainer model with select inmates.
- The initiative has **received rave reviews** from the TRUST Commission, which advises ADHS on the use of tobacco tax revenues.

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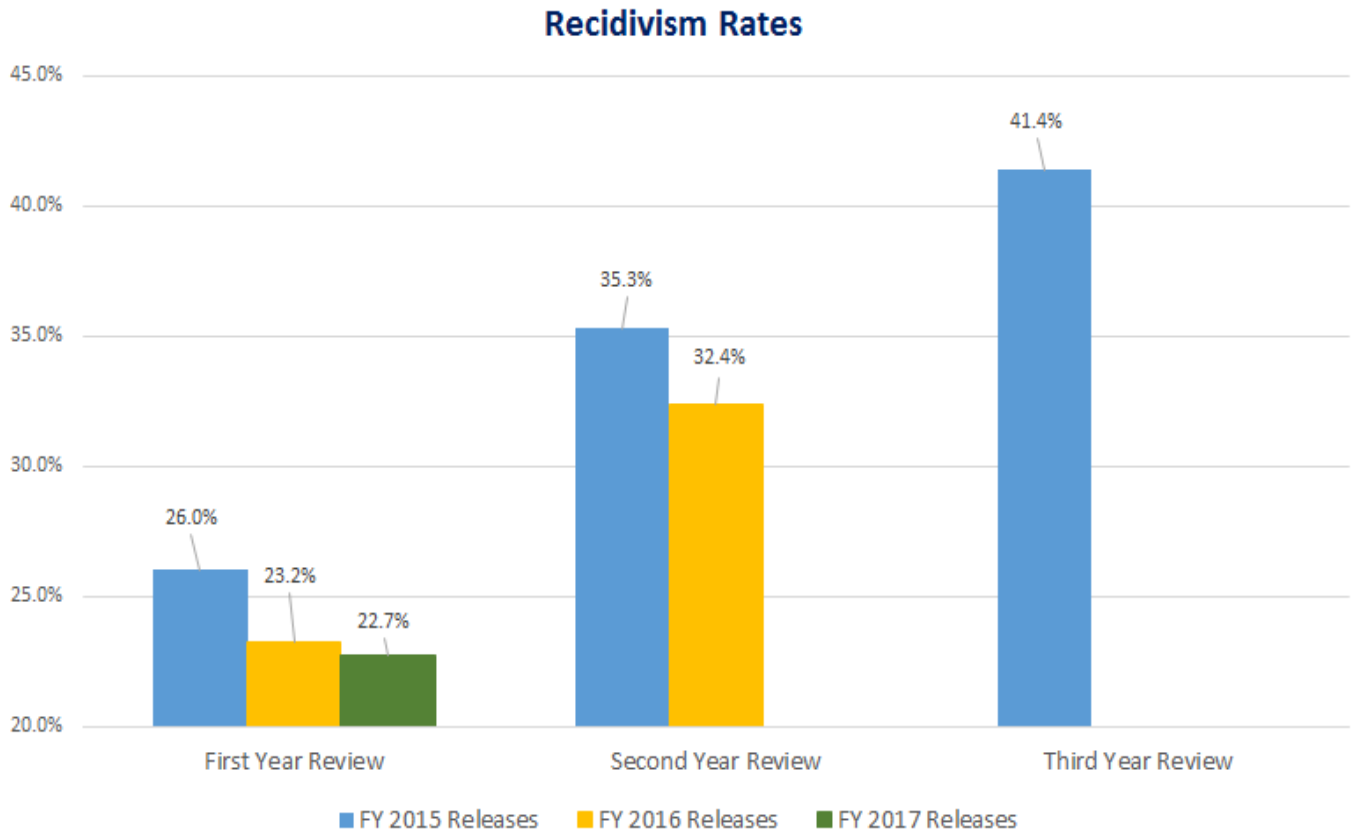
Reduced Recidivism

AZ Department of Corrections



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Resources

- AHCCCS Website:
  https://www.azahcccs.gov/AHCCCS/Initiatives/CareCoordination/justiceinitiatives.html; templates on this page that address:
  - Enrollment Suspense/Reinstatement IGA
  - Technical Requirements for Enrollment Suspense Agreement
  - Hospitalization IGA

- AHCCCS Contracts with Health Plans Describing Reentry:
  https://www.azahcccs.gov/Resources/Downloads/ContractAmendments/ACC/ACC_Contract_Amend_1.pdf

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Thank you!

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Committee on Mental Health and the Justice System
Competency Workgroup Proposal:
Standardized Templates for Mental Health Evaluation in Rule 11 Proceedings

TEMPLATES BEGIN ON FOLLOWING PAGE

A. Pre-Screen – Rule 11 Competency Evaluation
B. Rule 11 Competency Evaluation
C. Status Competency Report – RTC Program
D. Final Competency Report – RTC Program

APPENDIX A: PRE-SCREEN RULE 11 COMPETENCY EVALUATION

PSYCHOLOGICAL PRE-EVALUATION
Pursuant to Rule 11.2 and A.R.S. §13-4503

Defendant:
Case number:
Court:
Date of report
Name of Evaluator:

Referred By: Honorable *Judge's name*, (Name of Court, County/City), Arizona

1. Can the defendant adequately relate the following information:
   yes/no- Identifying data (i.e. Name, Age, DOB, Marital Status, etc.)
   yes/no - Family history, education, medical (including psychiatric and substance abuse) history
   yes/no - Date and location of evaluation

2. Does the defendant understand the following:
   yes/no - Reason for his/her arrest (the nature of the charges or allegations
   yes/no - Seriousness of the offense and potential penalties
   yes/no - The adversarial nature of the legal process
   yes/no - The roles of the pertinent parties (i.e. Judge, Defense Counsel, Prosecutor)

3. Does the defendant have the capacity to:
   yes/no - Disclose relevant or pertinent facts to defense counsel?
   (Assist counsel w/effective communication).
   yes/no - Manifest appropriate courtroom behavior?
   yes/no - Testify relevantly about the case?

4. Is the defendant currently prescribed any medications? ☐ yes/no/unknown
   Is the defendant currently taking any medications? ☐ yes/no/unknown

   If so, describe: *list the type and dose of medications (if dose is known)*

5. Examiner's Impressions:
   ☐yes/no/unknown - The defendant is capable of understanding the nature of the proceedings against him/her.
   ☐yes/no/unknown - The defendant is capable of assisting in his/her own defense.
   ☐yes/no/unknown - Further evaluation of the defendant is warranted.
   ☐yes/no/unknown - Further evaluation of the defendant is unwarranted

☐yes/no/unknown - The defendant may be malingering symptoms of mental illness.

Diagnostic Hypothesis:

Comments

Please elaborate in paragraph form: an explanation of the defendant's competency or lack thereof, if malingering is present, and if there is a need for further evaluation

Respectfully submitted,

[Evaluator signature/electronic signature]

_____

[Evaluator Name]
[Evaluator Credentials]
[Evaluator Address]
[Date]

_____

This report was generated for use by forensic professionals for purposes of a Court proceeding and Court order, pursuant to A.R.S. §13-4508 and Ariz.R.Crim.P. Rule 11.7[c]. The opinions and recommendations stated in this report are based on information available at the time this evaluation was conducted. If further information becomes available relative to the issues cited above, I reserve the right to alter these opinions and recommendations

APPENDIX B: RULE 11 COMPETENCY EVALUATION

Honorable [name]
Court – [County/City]
[Address Line 1]

[Address Line 2]

[Address Line 3]

[Evaluator Name:]

[Date of Report Submission = MM/DD/YYYY]

[Date of Evaluation = MM/DD/YYYY]

Re: **[Defendant's Name]**
Date of Birth: [Defendant's DOB = MM/DD/YYYY]
[Defendant Location – *i.e. In-Custody, MCSO Booking***]**
[Defendant's Booking #] (if applicable)
[Case Number]

RULE 11 COMPETENCY EVALUATION

Dear Honorable [Name]

This is a report opining on the competency of the above-named defendant pursuant to A.R.S. §§ 13-4507 and 13-4509 and Rule 11.3 Ariz.R.Crim.Proc. This report shall reproduce in bold type the relevant provisions of A.R.S. § 13-4509. The response appears in regular type below each provision.

Opinion as to Competency of Defendant

Defendant is:

☐ Competent to Stand Trial
☐ Competency is Medication Dependent [Defendant is currently competent by virtue of ongoing treatment with psychotropic medication]
☐ Not Competent but Restorable within statutory timeline
☐ Not Competent and Not Restorable within statutory time frame

If Not Competent and Not Restorable, select from the following options:
☐ Yes/no Defendant is/may be DTS, DTO, GD or PAD as a result of a mental disorder as defined in A.R.S. § 36-501 and Court Ordered Evaluation/Civil Commitment is recommended pursuant to Title 36, Chapter 5, Articles 4 and 5, A.R.S. §§ 36-520 -544.
☐ Yes/no Defendant is/ may be an "incapacitated person" as defined in A.R.S. § 14-5101 and appointment of a guardian should be considered pursuant to Title 14, Chapter 5, Article 3, A.R.S. 14-5301 et. seq.

§ 13-4509. Expert's report

A. An expert's report shall include the examiner's findings and the information required under A.R.S. § 13-4509:

1. Name of each Mental Health Expert who examined the defendant

Name of each Mental Health Expert who examined the defendant

2. A description of the nature, content, extent and results of the examination and any test conducted.

The Defendant is charged with the crime(s) of: Count 1: *Name of charge, Class of felony* , committed on or about *Date*

Sources of Information:

Please list the sources of information used for this report here

Defendant's Name was evaluated on *date* in *location of interview*. I explained to the defendant, the nature and purpose of the present evaluation, that I was not a representative of either prosecution nor defense, and limitations of confidentiality. The defendant was advised that I would be taking notes and issuing a subsequent report back to the court.

☐ Yes/no/unknown The defendant indicated understanding of these warnings
☐ Yes/no/unknown The defendant agreed to speak with me.

Doctor to elaborate if necessary:

3. The facts on which the findings are based.

4. An opinion as to the competency of the defendant.

B. If the mental health expert determines that the defendant is incompetent to stand trial, the report shall also include the following information:

1. **The nature of the mental disease, defect or disability that is the cause of the incompetency.**

   Explanation or N/A

2. **The defendant's prognosis.**

   Explanation of prognosis or N/A.

3. **The most appropriate form and place of treatment in this state, based on the defendant's therapeutic needs and potential threat to public safety.**

   Explanation of treatment form and place or N/A

4. **Whether the defendant is incompetent to refuse treatment and should be subject to involuntary treatment.**

   If incompetent to refuse treatment or N/A

C. If the mental health examiner determines that the defendant is currently competent by virtue of ongoing treatment with psychotropic medication, the report shall address: (1) the necessity of continuing that treatment; and (2) shall include a description of any of the limitations that medication may have on competency.

Medication dependent or N/A

Respectfully submitted,

[Evaluator signature/electronic signature]

_____

[Evaluator Name]
[Evaluator Credentials]
[Date]

_____

FOOTER

This report was generated for use by forensic professionals for purposes of a Court proceeding and Court order, pursuant to A.R.S. §13-4508 and Ariz.R.Crim.P. Rule 11.7[c]. The opinions and recommendations stated in this report are based on information available at the time this evaluation was conducted. If further information becomes available relative to the issues cited above, I reserve the right to alter these opinions and recommendations

APPENDIX C: STATUS COMPETENCY REPORT – RESTORATION TO COMPETENCY PROGRAM

Honorable [name]
Court – [County/City]
[Address Line 1]

[Address Line 2]

[Address Line 3]

[Evaluator Name:]

[Date of Report Submission = MM/DD/YYYY]

[Date of Evaluation = MM/DD/YYYY]

Re: **[Defendant's Name]**
Date of Birth: [Defendant's DOB = MM/DD/YYYY]
[Defendant Location – *i.e. In-Custody, MCSO Booking***]**
[Defendant's Booking #] (if applicable)
[Case Number]

COMPETENCY STATUS REPORT

On Date of RTC admission *Defendant's Name*, the defendant was found incompetent to stand trial pursuant to A.R.S § 13-4510 (C) and placed into the *Location of Defendant* Restoration to Competency Program (RTC). I am writing to apprise you of the status of this matter pursuant to the provisions of Rule 11.5(d) set forth in italics below:

> *The court shall order the person supervising defendant's court-ordered restoration treatment to file a report with the court, the prosecutor, the defense attorney and the clinical liaison as follows: 1) for inpatient treatment, 120 days after the court's original treatment order and each 180 days thereafter; 2) for outpatient treatment, every 60 days; 3) when the person supervising the defendant believes defendant is competent to stand trial; 4) when the person supervising the defendant concludes defendant will not be restored to competence within 21 months of the court's finding of incompetence; 5) 14 days before the expiration of the court's treatment order. The treatment supervisor's report must include at least the following:*

1. The name of the treatment supervisor;
[*name and credentials of the supervisor*]

2. A description of the nature, content, extent and results of the examination and any test conducted.

A description of the nature, content, extent and results of the examination and any test conducted.

The Defendant is charged with the crime(s) of: Count 1: *Name of charge, Class of felony* , committed on or about *Date*

Sources of Information:

Please list the sources of information used for this report here

The opinions in this report were based on a review of records, competency evaluation on [*Date of evaluation*], and consultation with RTC staff members, *Name of each Mental Health Expert who examined the defendant* , including psychological testing results described below.

The defendant was evaluated on [*Date of Evaluation*] in *location of interview*. I explained to the defendant the nature and purpose of the present evaluation, that I was not a representative of either prosecution or defense, and limitations of confidentiality. The defendant was advised that I would be taking notes and issuing a subsequent report back to the court.

☐ The defendant indicated understanding of these warnings and agreed to speak with me.
☐ The defendant was unable/refused to indicate understanding

Doctor to elaborate if necessary:

[Additional Text if Necessary]

3. Facts on which the treatment supervisor's findings are based:

[Facts on which the findings are based]

4. Treatment supervisor's opinion as to defendant's capacity to understand the nature of the court proceeding and assist in his or her defense.

[Opinion on capacity to understand]

If the treatment supervisor finds the defendant remains incompetent, the report must also include:

5. Nature of the mental disease, defect or disability that is the cause of the incompetency:

[Explanation or N/A]

6. Prognosis as to defendant's restoration to competency and estimated time period for restoration to competence:

[Prognosis for restoration and estimated time]

7. Recommendations for treatment modifications.

[Recommendations for treatment modifications]

I respectfully request an additional [ ]30 days [ ] 45 days [ ] 60 days to assess and educate the defendant.

Thank you for your consideration in this matter.

Respectfully submitted,

[Evaluator signature/electronic signature]

_____

[Evaluator Name]
[Evaluator Credentials]
[Evaluator Address]
[Date]

_____

This report was generated for use by forensic professionals for purposes of a Court proceeding and Court order, pursuant to A.R.S. §13-4508 and Ariz.R.Crim.P. Rule 11.7[c]. The opinions and recommendations stated in this report are based on information available at the time this evaluation was conducted. If further information becomes available relative to the issues cited above, I reserve the right to alter these opinions and recommendations

APPENDIX D: FINAL COMPETENCY REPORT – RESTORATION TO COMPETENCY PROGRAM

Honorable [name]
Court – [County/City]
[Address Line 1]

[Address Line 2]

[Address Line 3]

[Evaluator Name:]

[Date of Report Submission = MM/DD/YYYY]

[Date of Evaluation = MM/DD/YYYY]

Re: **[Defendant's Name]**
Date of Birth: [Defendant's DOB = MM/DD/YYYY]
[Defendant Location – *i.e. In-Custody, MCSO Booking***]**
[Defendant's Booking #] (if applicable)
[Case Number]

FINAL COMPETENCY REPORT – RESTORATION TO COMPETENCY PROGRAM

Dear Honorable [Name]:

This is a final report on the above defendant's competency to stand trial, pursuant to A.R.S. §§ 13-4514 (B) and 13-4509 and Rule 11.5 Ariz.R.Crim.Proc. On Date of RTC admission *Defendant's Name*, the defendant was found incompetent to stand trial pursuant to A.R.S § 13-4510 (C) and placed into the *Location of Defendant* Restoration to Competency Program (RTC). This report shall reproduce in bold type the relevant provisions of A.R.S. § 13-4509. The response appears below each provision.

Opinion as to Competency of Defendant

Defendant is:

☐ Competent to Stand Trial
☐ Competency is Medication Dependent [Defendant is currently competent by virtue of ongoing treatment with psychotropic medication]
☐ Not Competent and Not Restorable within statutory time frame

If Not Competent and Not Restorable, select from the following options:
☐ Yes/no Defendant is/may be DTS, DTO, GD or PAD as a result of a mental disorder as defined in A.R.S. § 36-501 and Court Ordered Evaluation/Civil Commitment is recommended pursuant to Title 36, Chapter 5, Articles 4 and 5, A.R.S. §§ 36-520 -544.

☐ Yes/no Defendant is/ may be an "incapacitated person" as defined in A.R.S. § 14-5101 and appointment of a guardian should be considered pursuant to Title 14, Chapter 5, Article 3, A.R.S. 14-5301 et. seq

§ 13-4509. Expert's report

A. An expert's report shall include the examiner's findings and the information required under A.R.S. § 13-4509:

1. Name of each Mental Health Expert who examined the defendant

Name of each Mental Health Expert who examined the defendant

2. A description of the nature, content, extent and results of the examination and any test conducted.

A description of the nature, content, extent and results of the examination and any test conducted.

The Defendant is charged with the crime(s) of: Count 1: *Name of charge Class of felony* , committed on or about *Date*

Sources of Information:

Please list the sources of information used for this report here

Defendant's Name was evaluated on *date* in *location of interview*. I explained to the defendant the nature and purpose of the present evaluation, that I was not a representative of either prosecution nor defense, and limitations of confidentiality. The defendant was advised that I would be taking notes and issuing a subsequent report back to the court.

Doctor to elaborate if necessary:

3. The facts on which the findings are based.

4. An opinion as to the competency of the defendant.

B. If the mental health expert determines that the defendant is incompetent to stand trial, the report shall also include the following information:

1. The nature of the mental disease, defect or disability that is the cause of the incompetency.

Explanation or N/A

2. The defendant's prognosis.

Explanation of prognosis or N/A.

3. The most appropriate form and place of treatment in this state, based on the defendant's therapeutic needs and potential threat to public safety.

Explanation of treatment form and place or N/A

4. Whether the defendant is incompetent to refuse treatment and should be subject to involuntary treatment.

If incompetent to refuse treatment or N/A

C. If the mental health examiner determines that the defendant is currently competent by virtue of ongoing treatment with psychotropic medication, the report shall address (1) the necessity of continuing that treatment and (2) shall include a description of any of the limitations that medication may have on competency.

Medication dependent or N/A

Respectfully submitted,

[Evaluator signature/electronic signature]

_____

[Evaluator Name]
[Evaluator Credentials]
[Evaluator Address]
[Date]

This report was generated for use by forensic professionals for purposes of a Court proceeding and Court order, pursuant to A.R.S. §13-4508 and Ariz.R.Crim.P. Rule 11.7[c]. The opinions and recommendations stated in this report are based on information available at the time this evaluation was conducted. If further information becomes available relative to the issues cited above, I reserve the right to alter these opinions and recommendations

INTERIM REPORT AND RECOMMENDATIONS

Committee on Mental Health and the Justice System

OCTOBER 2019
ARIZONA SUPREME COURT

Contents

Executive Summary

The Committee on Mental Health and the Justice System (Committee) submits this interim report to the Arizona Judicial Council, as required by Administrative Order 2018-71. Since September 2018, the Committee has worked collaboratively to research and address ways for the courts and other justice system stakeholders to more effectively address how the justice system responds to people with mental illness in need of behavioral health services.

The Committee recognizes that its charge extends beyond the courtroom and directly impacts public safety, community health and wellness, and the costs of the justice system. Strategies for addressing mental health and wellness are being studied and implemented across the country and internationally. Utilizing the influence of the judiciary as a convening force, Arizona is well-positioned to create a cross-system approach to significantly improve outcomes for people in need of behavioral health services and supports.

Mental Health and Wellness

Mental health is a universal human experience that includes emotional, psychological, and social well-being, affecting how people think, feel, and act. An individual's mental health and wellness are determinants for handling stress, relating to others, and how choices are made.

In its most recent report, using data reported by 50 states and the District of Columbia to the Substance Abuse and Mental Health Services Administration (SAMHSA), the Centers for Disease Control and the Department of Education, Mental Health America reports that over 18 percent of Americans – over 43 million – have a mental health condition, and nearly half have a co-occurring substance abuse disorder. The study found 56 percent of American adults with a mental health condition did not receive treatment, and 1 in 5 report an unmet behavioral health need. In the same study, Arizona was ranked 49th out of 51, using 15 measures that capture prevalence of overall mental health concerns, substance use, and access to insurance and treatment.[1]

For youth, mental health and wellness are worsening and access to care continues to be limited. In the Mental Health America study, Arizona was ranked 50th out of 51 using 7 measures capturing prevalence of mental illness and access to care for youth specifically. In order to meet the need for mental health care, the study found that providers in the lower-ranked states would need to treat six times as many people as providers in the highest ranked states.[2]

[1] Nguyen, T., Hellebuyck, M., Halpern, M., (2019). *The State of Mental Health in America 2018.* Retrieved from LINK.
[2] *Id.*

Mental Health and the Justice System

Today, a person experiencing a mental health crisis is more likely to encounter law enforcement in a time of need than they are to receive medical assistance. Local law enforcement reports across the country reveal approximately one in ten police calls involve mental health situations.[3] Local court users and jail populations reflect this reality. Nationwide, rates of serious mental illness in jails are four to six times higher than in the general population.[4] According to the National Alliance on Mental Illness (NAMI), 2 million people with mental illness are booked into jails each year. Nearly 15% of men and 30% of women booked into jails have a serious mental health condition. Further, the majority of these individuals are misdemeanor offenders, or are serving time in jail for non-violent offenses. In fact, most people in jail have not yet gone to trial.[5]

In Arizona, 26 percent (n=12,257) of current Arizona Department of Corrections inmates require ongoing mental health services (May 2019).[6] According to a recent Arizona Town Hall report, 78 percent of Arizona's prisoners have a moderate to intense need for substance abuse treatment.[7] Some attribute the reduction or closure of psychiatric hospitals to the increase in the number of incarcerated people with mental illness. In turn, community resources have not been able to adequately keep up with the needs of chronic patients.[8] Without access to adequate inpatient psychiatric treatment, many hospitals and emergency departments are the first option for an individual or first responders to seek treatment for a person experiencing a mental health crisis. However, hospitals are often forced to discharge patients before they have received sufficient treatment.[9]

In the 2016 *Extreme Chronic Offenders* study of individuals booked in the Maricopa County Sheriff's Office (MCSO) jail in calendar year (CY) 2014-2015, MCSO recorded a total of 204,744 bookings which comprised 119,954 unique individuals. Of the 119,954 unique individuals booked in CY2014-2015, 34 percent (n=40,308) were booked more than once and 59 individuals were

[3] Maciag, Mike, (2016). *The Daily Crisis Cops Aren't Trained to Handle*. Retrieved from LINK.
[4] National Conference of State Legislatures. *The Legislative Primer Series on Front End Justice: Mental Health*. Retrieved from LINK.
[5] National Alliance on Mental Illness. *Jailing People with Mental Illness*. Retrieved from LINK.
[6] Arizona Department of Corrections. *Corrections at a Glance: May 2019*. Retrieved from LINK.
[7] Arizona State University. Morrison Institute for Public Policy. *Arizona Town Hall: Criminal Justice in Arizona 2018*. Retrieved from LINK.
[8] Conference of State Court Administrators, (2016). *Decriminalization of Mental Illness: Fixing a Broken System.* Retrieved from LINK.
[9] Lamb, H. R., & Weinberger, L. E. (2005). Journal of the American Academy of Psychiatry and the Law Online. *The shift of psychiatric inpatient care from hospitals to jails and prisons*.

identified as extreme chronic offenders (booked fifteen or more times for a felony or misdemeanor).

These 59 individuals were responsible for 1,026 bookings, and for most individuals, misdemeanor charges made up over 75 percent of their charges. The average total length of time in jail was 225 days. Over 90 percent of the extreme chronic offenders reported homelessness, and 24 percent had a Serious Mental Illness (SMI) flag – with all individuals with SMI identified as being homeless.[10] Using fiscal year 2019 Maricopa County jail per diem rates, these 59 extreme chronic offenders would cost approximately $376,039 in booking costs and approximately $1.4 million in jail "housing" costs.

We are facing significant challenges as a state and a nation in addressing people's critical behavioral health needs. These challenges are further compounded when an individual with mental illness encounters the justice system – not limited to the criminal justice system. Thus, the Committee has focused its work and discussions on multiple decision points that fall under the justice system's purview – from law enforcement to court, diversion to re-entry, and community-based treatment to more secure treatment options.

The Sequential Intercept Model and Developing Mental Health Protocols

Embedded throughout these recommendations is the Committee's support for Arizona's work in implementing the Sequential Intercept Model (SIM) which establishes a framework for identifying individuals with mental illness at various intercept points within the justice system and for creating a community-based collaborative support system that allows a person to be rerouted into treatment. The SIM requires proper screening and triage at each intercept point in the justice system (arrest, court, incarceration, supervision after release from incarceration), with goals to produce more therapeutic and desirable results and to decrease further criminal justice involvement. In turn, savings are realized through real economic returns such as reduction in jail populations and emergency department visits, and in ways that are harder to quantify but make a huge impact to communities such as improved quality of life, community safety, and reduced costs to businesses no longer encountering repeat misdemeanor offenders.[11] Clear examples of the SIM in practice in Arizona are Yavapai County's Reach Out program (Intercept 0-5), the Crisis Response Center – Connections Model in Pima County (Intercept 0-1), and Mesa Municipal Court's Community Court (Intercept 2).

[10] Cotter, R, PhD. (2016) Maricopa County, Justice System Planning and Information. *Extreme Chronic Offenders*.
[11] Conference of State Court Administrators, (2016). *Decriminalization of Mental Illness: Fixing a Broken System.* Retrieved from LINK.

Several Committee members participated directly in the 2019 *Developing Mental Health Protocols* Summit. This work is a key piece of the Arizona Supreme Court's ongoing implementation of the Fair Justice for All Task Force recommendations, and the Committee's charge in Administrative Order 2018-71:

> *Oversee the development of a model guide to help presiding judges develop protocols to work with justice system involved individuals with mental and behavioral health care needs. Coordinate a statewide Summit to share the Guide with judges, court personnel, mental health professionals, and justice system stakeholders.*

Through leadership from each Presiding Judge, the Summit and its ongoing work are a collaborative effort for Arizona's courts to improve the justice system's response to persons with mental health issues by mapping resources and community needs in order to fill critical gaps in the system and to establish protocols at each intercept of the SIM.

Overview: Committee Recommendations

The Committee recommends addressing the issues faced by persons with mental illness as early as possible, from a cross-systems and cross-judiciary approach. By supporting efforts focused on early identification, intervention and treatment, the state and local communities have opportunities to shift resources to better approaches and make significant improvements in the system.

The Committee's interim report recommendations are based on its charge in Administrative Order 2018-71, as well as research, findings and discussion that has taken place during its first year. Several recommendations focus on the concepts of early intervention and diversion and highlight the significant need for enhanced service delivery and coordination for people with behavioral health needs. They are designed to improve community response and resource application and to halt the current trajectory of jails and prisons being the de facto psychiatric facilities for persons with mental illness. Finally, the Committee has been intentional in highlighting recommendations that underscore the need to address the unique challenges and opportunities faced by Arizona's rural courts.

Legislation, Policy and Procedure

- Amend the statutory definition of "mental disorder" found in A.R.S. §36-501(25) to include neurological and psychiatric disorders, substance use disorders which co-occur with mental illness, along with mental conditions resulting from injury, disease, and cognitive disabilities for the purpose of

being eligible to receive mental health services pursuant to the Title 36 civil commitment statutes. See Appendix B.

- Amend A.R.S. §36-540 to permit judges to enter an "enhanced services" order to a mental health treatment agency to provide such service to a person whose history shows that the person cannot or will not adhere to treatment and who poses a substantial risk of harm to themselves or others. See Appendix C.
- Amend A.R.S. §36-501 to clarify the definition of persistent or acute disability (PAD) by reorganizing it and adding that the disability, if untreated, will result in a substantial probability of causing harm to self or others. With these definitional changes to PAD, amend A.R.S. §§36-524 and 36-526 to include PAD or grave disability, allowing screeners and evaluators to immediately hospitalize a person under such circumstances if the emergency standard in the statute is met. See Appendix D.
- Amend statutes in both Title 13 and Title 36 to address the gap between the criminal justice system and the civil mental health treatment system that allows defendants who are mentally ill and dangerous, and who are repeatedly found incompetent and not restorable (INR), to be returned to the community. See Appendix E.
- Provide courts with and encourage use of standardized templates for the Guidelines and Forms used by Mental Health Evaluators in Rule 11 Competency Proceedings in accordance with A.R.S. § 13-4501, et seq., and Rule 11, Ariz.R.Crim.P. See Appendices G-H.
- Continue to address improvements to the implementation of changes to A.R.S. §13-4503 (E) and Rule 11.2, that specifically impact cases involving misdemeanor defendants in limited jurisdiction court competency proceedings.
- Create a workgroup to analyze and make recommendations to develop a coordinated approach between the courts handling Title 13, Title 36 and Title 14 proceedings.

Training and Education

- Ensure adequate training for judges and court staff in the areas of behavioral health and crisis response.
- Encourage and support comprehensive mental health training for other justice system stakeholders.
- Embed the Committee's recommendations for standardized Guidelines and Forms in the *Legal Competency & Restoration Conference* – the AOC training required by statute and rule.

- Explore the development of a university-court partnership to provide continuous training and best practices in competency evaluation and methodology for mental health evaluators, judges and other practitioners.
- In partnership with the Arizona Foundation for Legal Services and Education (Bar Foundation), finalize content to be included on the Arizona Supreme Court and AzCourtHelp.org websites that provides information to the public on Arizona's civil commitment/involuntary treatment law and the use of advanced health care directives.

Data Resources and Analysis

- Encourage the development of data and information gathering regarding individuals facing mental health issues as a means for data driven decision making and as a tool for change.
- Create 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.
- Encourage the Administrative Office of the Courts to partner with a research institution to study the impact of implementation of the Sequential Intercept Model as well as the impact of chronic, repeat offenders, particularly as it relates to community-based techniques, recidivism, and a reduction in costs to the judicial system.

Court Improvement

- Review Arizona's Mental Health Court standards to ensure their statewide relevance and currency and develop a continuum of options for courts and local communities that addresses individual and community behavioral health treatment and service needs.
- Support local courts' development and implementation of mental health protocols by providing leadership and expertise, and through resource mapping and training.
- Establish a clear, workable mechanism to transfer a misdemeanor defendant between criminal and civil courts in a timely fashion when the originating case is at the Limited Jurisdiction Court level. See Appendix F.
- Partner with AHCCCS to ensure its Justice Liaisons and Court Coordinators are utilized by courts statewide and to explore expanding their capacity to serve the justice system.

Community Services and Supports

- Support ongoing statewide efforts to address mental health care for youth.

- Address the lack of behavioral health treatment bed space statewide by encouraging increases in the number of: inpatient, secure beds; community-based, secure residential placements; and community-based supportive housing, including group homes.
- Support expanding the use of peer supports and navigators for people with mental illness within the crisis response delivery system and throughout an individual's involvement with the justice system.

Diversion and Early Intervention Programming and Partnerships

- Support improvements that strengthen the ability of law enforcement to identify mental illness, safely address crisis situations, and understand diversion options, including a process to connect people with mental health services when they are released from jail.
- Explore and expand existing models for courts to support early intervention, crisis response and enhanced treatment for people with behavioral health needs, in partnership with law enforcement, behavioral health and community stakeholders.
- Support expansion of the "Arizona Model" of crisis services statewide particularly in rural communities and for youth, including the availability of community-based, mobile crisis teams and alternative drop-in centers for law enforcement to take individuals who present mental health issues, rather than to jail.

Access to Technology

- Explore opportunities for creating or expanding telehealth services for people with mental illness who have contact with the criminal justice system, particularly in rural areas. Telehealth services may include crisis consultations with a provider for law enforcement and other first responders, competency evaluations, mental health assessment in jail, probation and jail-based mental health services. competency evaluations.

Accountability

- Examine mandates for and improvement of oversight of the public mental health treatment system.
- Encourage the development of mental health related data collection and reporting at multiple points in the justice system process.

Details on these proposals and recommendations can be found in the Recommendations and Appendix sections.

Introduction

The Committee on Mental Health and the Justice System (Committee) was created as a result of the work and recommendations of the Fair Justice Task Force and its Subcommittee on Mental Health and the Criminal Justice System. In his Administrative Order establishing the Committee, Chief Justice Bales (ret.) emphasized:

> *The judiciary is in a unique position to bring community stakeholders together to develop solutions to improve the administration of justice for those with mental and behavioral healthcare needs.* – Administrative Order 2018-71

Further, in the Arizona Supreme Court's most recent Strategic Agenda set forth by Chief Justice Brutinel, the Court continues to place great significance on this work.

Committee members represent a cross-section of individuals and partner agencies that interact with the justice system and persons with behavioral health needs. The Committee includes members of the judiciary and court administration from both the general jurisdiction and limited jurisdiction courts, as well as the Court of Appeals; representatives from the prosecutorial and civil and criminal defense bars; law enforcement; behavioral health providers; AHCCCS; advocates from NAMI-Arizona and David's Hope; the Arizona Center for Disability Law; and members from rural and urban communities across the state.

The Committee has met nine (9) times since its establishment and held several workgroup and stakeholder meetings. The Committee's workgroups include a mix of Committee and non-Committee members, as subject matter experts, and have solicited input from stakeholders and partners.

Over the course of the year since the Committee was established, members have heard from several speakers in Committee, Workgroup and stakeholder meetings which led to its key findings and recommendations.

Detailed information on each Committee meeting can be found on its website.

Topics have included:

- Arizona Health Care Cost Containment System (AHCCCS) Housing Liaisons
- AHCCCS Justice Liaisons
- Arizona State Hospital – current and historical perspective
- Assisted Outpatient Treatment[12]

[12] The Committee is not recommending changes to Arizona's AOT statutes, as existing statute A.R.S. §36-540 allows an assisted court-ordered involuntary outpatient treatment path through a petition for evaluation and a petition for court ordered treatment using the PAD, DTS/DTO and GD standards. Statute also allows the court to order AOT under an outpatient program or a combined outpatient-inpatient order. Further, the

- Community-based Crisis Intervention and Crisis Response
- Court Ordered Evaluation and Court Ordered Treatment
- Developing Mental Health Protocols, specifically the Sequential Intercept Model
- Housing for persons with mental illness
- Homelessness
- Impact of Committee proposals and discussions on the juvenile justice system, including youth who are adjudicated to the Arizona Department of Juvenile Corrections (ADJC)
- Impact of the justice system on individuals and families via personal accounts from family members who have a loved one with a mental illness and involvement with the justice system
- Impact of recent changes to Rule 11.5 on Limited Jurisdiction and General Jurisdiction Courts
- Incompetent Not Restorable overview and statutory proposal changes for handling cases involving mentally ill defendants who are determined to be dangerous and found incompetent and not restorable
- Jail-based diversion, specifically Yavapai County's Reach Out program
- Law enforcement response to persons with mental illness
- Legislative proposals to improve the court's and community response to persons with behavioral health needs
- Legislative updates from AOC staff
- Mental Health Courts and other problem-solving court models such as Mesa's Community Court
- Variations across the state – by county and community – in both court processes and systems of care for persons with behavioral health needs

Following this introduction, the report includes the Committee's Findings, Recommendations, Conclusion and Next Steps, and an Appendix section with reference documents, including proposed statutory changes.

proposed *Enhanced Services* statute will provide the court additional options which are found in other states' AOT statutes. The Committee emphasizes there is a need for enhanced judicial education around use of the orders and standards as provided in A.R.S. §36-540.

Findings

The Committee's exploration into best practices and protocols for improving the administration of justice for people with mental illness has resulted in five key findings. These findings inform the Committee's recommendations that follow.

The Committee has found, statewide that:

The civil and criminal justice systems require additional procedures and resources to identify mental illness early, both prior to arrest and once an arrest has been made.

Within Arizona and nationally, attention is turning to the need for a cohesive, collaboration-based mental health crisis response system – one that provides direct support and triage options. The Arizona Health Care Cost Containment System is currently engaged in reviewing crisis services statewide, as well as the relationship between crisis services and court-ordered evaluation/court-ordered treatment.

Based on current research, recommendations and models already in place in Arizona, the Committee finds that an integrated model of crisis mental health care is needed, and that it should contain core elements including high-tech crisis call centers, 24/7 mobile crisis, and crisis stabilization programs where hospitalization is not required.[13]

While options to divert individuals from the civil or criminal justice system are statutorily authorized, these options are not available or are underutilized across the state, often due to a real or perceived lack of resources.

Across Arizona, counties and local jurisdictions have embraced the Sequential Intercept Model and established initiatives that aim to reduce the number of people with mental illness who are arrested and held in jail or corrections facilities. However, when appropriate options for treatment, housing and levels of care are unavailable, individuals in need of treatment continue to encounter the justice system where their mental health may deteriorate and prospects for success are lessened.

People who have been identified as having a mental illness 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 with varying levels of security. In some jurisdictions, these individuals are released without a full continuum of treatment care options and, consequently, often return to the justice system.

[13] National Action Alliance for Suicide Prevention: Crisis Services Task Force. (2016). *Crisis now: Transforming services is within our reach.*

A whole continuum of care approach necessitates holistic screening and assessment, connections to treatment with daily support, including warm hand-offs, engagement, peer support, housing and a trauma-informed community.

Individuals, families and communities are not currently able to access adequate behavioral health services in times of need that would allow for an appropriate level of care along a continuum of services ranging from no justice involvement to diversion, and from the justice system to inpatient, secure care.

For our communities to be safe and healthy, a continuum of mental health and wellness services and supports is needed that requires access to treatment at all levels of care, regardless of geography. In the Arizona court system, a coordinated approach is needed between the civil, criminal and probate judicial divisions handling Title 36, Title 13 and Title 14 proceedings.

Arizona must address the unique needs and challenges its rural communities face in providing services and treatment for those with mental illness who come into contact with the justice system.

Rural courts in Arizona face unique challenges due to limited resources (even by statute) and a large geographic span. Access to health care and legal resources is a huge barrier to improving mental health and wellness in rural communities. At the same time, rural courts have an opportunity that an urban jurisdiction may not experience with respect to stronger relationships and a willingness to test new initiatives. In partnership with AHCCCS, its health plans and providers, the courts can help rural communities overcome these obstacles by supporting and improving court operations, shared resources, enhanced training, and updated technology.

Recommendations

Throughout these recommendations, the Committee emphasizes the Judiciary's leadership role in driving change forward by addressing improvements to the supports, services and systems for people, families and communities troubled by mental illness. By assuming that role, the Court can uphold its commitment to promoting access to justice and protecting Arizona's children, families and communities.

Each recommendation presents an opportunity for direct impact on Arizonans in need of behavioral health services and supports, both within the justice system and in our communities.

Recommendations fall under the categories of:

- Legislation, Policy and Procedure
- Training and Education
- Data Resources and Analysis
- Court Improvement
- Community Services and Supports
- Diversion and Early Intervention
- Programming and Partnerships
- Access to Technology
- Accountability

The Committee's recommendations are grounded in its five key findings and focus on these important questions:

- What can be done to more effectively **identify those with mental illness early** in the justice system to connect them with services and supports in their communities?
- What options can be developed or expanded to **divert more people into community-based mental health services**?
- What can be done to better ensure **access to services and fair justice** for those with mental illness in the justice system in order to reduce their likelihood of future involvement?
- Are there opportunities to **shift investments** into less costly and more effective community-based alternatives?
- Are there ways to **increase accountability** in the behavioral health system to enhance the effectiveness of the justice system's response to mental illness?

Identify Mental Health Issues Early

1. Support ongoing statewide efforts to address mental illness and implement trauma-based care with youth in schools and youth who encounter both the child protection and juvenile justice systems.

2. Encourage and support models that strengthen the ability of law enforcement to identify mental illness, safely address crisis situations, and understand diversion options, including:
    a. Expanded crisis intervention training for all first responders.
    b. A statewide or regional warm line for first responders to find and access resources, including crisis response teams and mobile crisis centers.
    c. An option for law enforcement and first responders to utilize telehealth services in the field to contact a provider immediately for screening, and for the provider to partner with law enforcement on a recommendation to address the individual's needs at that moment.

3. Encourage the state and local jurisdictions fully fund intensive outpatient and crisis stabilization programs, particularly in rural areas that will divert individuals from emergency departments, inpatient facilities and the criminal justice system.
    a. Core elements of a comprehensive crisis stabilization program include regional or statewide crisis call centers coordinating access to care in real time, centrally deployed mobile crisis units available 24/7, and short-term, sub-acute residential crisis stabilization program.

4. Develop comprehensive training for judges and court staff in the areas of behavioral health and crisis response.
    a. Training should incorporate the latest models, knowledge and information on identifying signs of mental illness in others, de-escalation techniques, trauma, Adverse Childhood Experiences (ACEs), and social determinants of health.
    b. Integrate training with information on available resources and options for behavioral health supports and services in each county.

5. Explore the development of a university-court partnership to provide continuous training and best practices in competency evaluation and methodology for mental health evaluators, judges and other practitioners. This partnership is intended to increase the pipeline of forensic psychiatrists and psychologists and members of the legal community who

are educated in current law, methodology and best practices around competency and forensic mental health services.

Expand Opportunities to Divert People with Mental Illness from the Criminal Justice System

1. Continue to support the development of therapeutic or problem solving courts which incorporate law enforcement, prosecutors, defense attorneys and community providers to provide access to treatment for individuals with behavioral health and co-occurring disorders. Existing models already in place or in development in Arizona include:
    a. Mental Health Court
    b. Community Court
    c. Veterans Treatment Court
    d. Homeless Court
    e. Drug Court
    f. Co-Occurring Substance Abuse-Mental Health Court Program
    g. Wellness Court Program

2. Encourage court leadership to partner with community stakeholders and explore existing models that offer immediate crisis response assessment and screening, peer support, navigators, and transportation to treatment. Existing models include:
    a. Yavapai County's Reach Out Program;
    b. Maricopa County's Criminal Justice Engagement Team;
    c. Crisis Response Network in central and northern Arizona;
    d. Crisis Response Center in Pima County.

3. Support the expansion and availability of crisis services statewide, particularly in rural areas and for youth, including community-based, mobile crisis teams and drop-in alternative centers for law enforcement to take individuals who present mental health issues, rather than to jail.
    a. Encourage expansion of the existing AHCCCS crisis stabilization unit model in place in urban counties for expansion, specifically for youth and in rural communities.

Ensure Access to Appropriate Services and Fair Justice

1. Develop the concept of a tiered approach to the "Mental Health Court" designation, which includes providing support for jurisdictions along a continuum.

a. Work with jurisdictions that have existing specialty courts, or that are interested in developing a specialty court or integrated behavioral health court program that addresses individual and community behavioral health treatment and service needs.
b. Leverage existing resources to create a justice system/behavioral health position available in each court, allowing for coordination of services and supports with AHCCCS and providers for justice-involved individuals with behavioral health needs.
c. Review requirements for reporting process and outcome measures from courts which are engaged in services to defendants with behavioral health needs.

2. Encourage the development or expansion of processes to connect people with mental health services when they are released from jail.
    a. Ensure all counties are aware of and utilizing Medicaid suspension while an individual is incarcerated, to provide immediate access to services upon release.
    b. Encourage AHCCCS and the RBHAs to continue to engage with judicial partners statewide, particularly in rural communities and communities that have identified issues with their Title 36 treatment system.
    c. Encourage support for the development of a separate "*X11*" line for people in a mental health crisis and first responders.
    d. Encourage the expansion of "warm lines" with peer support for faster response to those in crisis.

3. 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 illness 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.

4. Encourage the development of mandated comprehensive case management services with face to face contact in the community to coordinate treatment for mental health and co-occurring substance use disorders, as well as housing, transportation, and other needs.

5. Change the definition of Mental Disorder found in A.R.S. §36-501(25) to include neurological and psychiatric disorders, substance use disorders which co-occur with mental illness, along with mental conditions resulting

from injury, disease, and cognitive disabilities for the purpose of being eligible to receive mental health services pursuant to Title 36 civil commitment statutes. See Appendix B.

6. Amend the definition of persistent of acute disability (PAD) in A.R.S. §36-501 to identify a substantial probability of causing harm to others as a possible consequence of the condition not being treated. In addition, changes are recommended under A.R.S. §§36-524 and 36-526 to allow screeners and evaluators to immediately hospitalize a person regardless of the category presented if the emergency standard in the statute is met. See Appendix D.

7. Recommend necessary statute, rule or procedural changes that will improve the implementation of A.R.S. §13-4503 (E) and Rule 11.2 for cases involving misdemeanor defendants in limited jurisdiction court competency proceedings, including:
    a. Establish a simple, effective mechanism for transferring a misdemeanor defendant involved in Rule 11 proceedings between criminal and civil court in a timely fashion when the originating case is at the limited jurisdiction court level, as allowed for in 16A A.R.S. Rules Crim.Proc., Rule 11.5. See Appendix F.
    b. Modifications to A.R.S. §13-405(A) – the "two expert" requirement; A.R.S. §13-4503 (B) – the "three working days" requirement; and A.R.S. §13-4514 – progress report timelines.

8. Provide courts with a template for guidelines and standardized forms to be used throughout the competency evaluation process by mental health experts in Criminal Rule 11 competency evaluations.[14] The Committee's recommended templates for Court Guidelines and Forms can be found in Appendices G-H.
    a. Changes will need to be made to the AOC training for Mental Health Evaluators, in accordance with the revised Guidelines and forms, including a practice guide that incorporates what the mental health expert should include in their report and findings.

9. Implement additional changes to the AOC training for Mental Health Evaluators including:
    a. Review of current statute and case law impacting mental health evaluation;

[14] Under A.R.S. § 13-4501(3)(c), a "mental health expert" must be certified by the court as meeting court developed guidelines using recognized programs or standards. Similarly, Rule 11.3(b), Ariz.R.Crim.P. states a "mental health expert" must be familiar with this state's competency standards and statutes; familiar with the treatment, training and restoration programs that are available in this state; and approved by the court as meeting court developed guidelines.

b. Review what is in the records that are included in the Status Report and Final Report to the Court;
c. Best practices for restoration to competency programs;
d. Specialized training on writing the mental health expert report, including technical and professional terms that can be avoided or explained for non-clinical readers;
e. Consideration for a multi-disciplinary approach to training that includes forensic evaluators, judges and attorneys; and
f. Development of a quality control mechanism for mental health evaluators through the training process such as inclusion of a written exam and required annual recertification training.

c. Work with the Administrative Office of the Courts to create a mechanism for judges and attorneys involved in a Rule 11, Title 36 or Title 14 proceeding 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.
    i. At present, there is no way for an attorney or judge to know which court contains records for an individual involved in a Rule 11, Title 36 or Title 14 proceeding. The mechanism to be developed 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. Having a mechanism to locate and request the release of these records is critical to informing the doctors, the attorneys, and the judge in determining the most appropriate response to the case and is most important for defendants with serious mental health issues. The ability to do this is fundamental to the delivery of fairness in these cases.

10. Examine changes to statute to allow evidence of mental disorder as an affirmative defense to a defendant's *mens rea*.

Cost Shift Opportunities

By creating better responses to persons with mental illness through early intervention and diversion from court and jail, there is an opportunity to shift costs toward higher-need individuals who commit more serious, dangerous offenses, and toward those found to be incompetent and not restorable who require a higher level of treatment. The Sequential Intercept Model (SIM) offers such cost shift opportunities through its objectives: preventing initial involvement in the criminal justice system, decreasing admissions to jail,

engaging individuals in treatment as soon as possible, minimizing time spent moving through the criminal justice system, linking individuals to community treatment upon release from incarceration, and decreasing the rate of return to the criminal justice system.[15] Jurisdictions across Arizona are already engaged in how to use the SIM as a framework to reduce the number of people with mental illness in the criminal justice system while maintaining public safety and efficient use of resources.

Cost shift opportunities are intended to be an ongoing discussion as the Committee and the state make adjustments at the front end of the system to implement diversion and treatment options for individuals experiencing mental health issues.

Current Committee recommendations that may present opportunities for such cost shifts:

1. Explore the option of eliminating competency evaluations for misdemeanor defendants and providing immediate access to services through other accountability-based mechanisms, such as the Community Court model.

2. Create an "Enhanced Services" program in A.R.S. §36-540 allowing a judge to mandate the provision of specific services for individuals who have shown that they cannot or will not adhere to treatment and who, as a result, pose a substantial risk of harm to themselves or others, and to require the court to provide hands-on, in-court oversight. See Appendix C.

3. Support amendments to statute in both Title 13 and Title 36 to address the gap between the criminal justice system and the civil mental health treatment system for defendants who are mentally ill and dangerous, and who are repeatedly found incompetent and not restorable (INR). See Appendix E.

4. Encourage state and local agencies to address the lack of behavioral health treatment bed space statewide by increasing the number of: inpatient, secure beds; community based, secure residential placements; and community based supportive housing, including group homes.

System Accountability

1. Examine mandates for and improvement of oversight of the public mental health treatment system.

[15] Munetz, M.R. & Griffin, P.A. (2006). *Use of the Sequential Intercept Model as an approach to decriminalization of people with serious mental illness.* Retrieved from LINK.

a. Recommend creation of a State Department of Mental Health Services.

2. Encourage and support mental health training and information for justice system stakeholders, including:
    a. Signs and symptoms of mental illness, including mental health first aid, as well as eligibility criteria for and availability of mental health services.
    b. Mental health training on Title 13, Title 36 and Title 14 statute and case law as it relates to persons with mental illness.
    c. Use of the orders and standards as provided in A.R.S. §36-540 that allow for assisted court ordered involuntary outpatient treatment or a combined outpatient-inpatient order.
    d. Secondary trauma training and comprehensive training on Adverse Childhood Experiences (ACEs) for judicial officers, court staff, law enforcement, probation, and corrections officers and staff.

3. Partner with AHCCCS to compile a list to be updated annually and distributed to the courts and law enforcement agencies of services available statewide through the AHCCCS Health Plans and the eligibility criteria for each service.

4. Encourage the Administrative Office of the Courts to partner with a research-based institution to study the impact of implementation of the Sequential Intercept Model as well as the impact of chronic, repeat offenders, particularly as it relates to community-based techniques, recidivism, and a reduction in costs to the judicial system.
    a. Utilize impact data to recommend funding be redirected to other areas of high need involving people with behavioral health needs.

Conclusion and Next Steps

Over the past year, the Committee has addressed its purpose and charges in accordance with Administrative Order 2018-71. It encompasses a diverse group of dedicated members, many of whom have put in scores of hours of hard work.

This report presents a number of opportunities for addressing how the justice system might respond more effectively to people with behavioral health needs. While discussions on these topics may lead to some discomfort within the group, as both strengths and gaps in the system are exposed, the Committee must work through those issues and propose solutions that will achieve significant, meaningful change. This is a long-term effort, and there is still much work to be done.

During its second year, the Committee will continue to study and make recommendations in accordance with its charge. It will also continue its emphasis, exploring and understanding the variations in processes and practices among the courts and behavioral health treatment systems. The Committee will use the unique experiences of both rural and urban jurisdictions to find opportunities to improve the administration of justice for people with behavioral health needs.

The Committee will continue to seek improvements to the changes made in 2018 to A.R.S. §13-4503 (E) and Rule 11.2, which allow the presiding judge of each county to authorize a justice or municipal court to exercise jurisdiction over a competency hearing in a misdemeanor case. Further, members believe that attention should be given to the interconnectedness among jurisdictions that persons with mental illness encounter, and, consequently, the Committee analyze and make recommendations to develop a coordinated approach between the courts handling Title 13, Title 36 and Title 14 proceedings.

The Committee will continue to play an active role in the Supreme Court's focused work and attention on the Sequential Intercept Model and on developing mental health protocols in each jurisdiction, supporting a front-end response, which includes deflection when possible, to an individual's involvement with the justice system. Through this process, the Committee will explore recommendations for technology enhancements, and data collection and analysis to ensure courts and system partners have the tools they need to make decisions.

APPENDICES

Appendix A: Committee Membership

Appendix B: Amendments to Mental Disorder Definition

Appendix C: Proposed Enhanced Services Order

Appendix D: Amendments to PAD Definition and Standards for Emergency Hospitalization

Appendix E: Addressing the Population of Incompetent and Not Restorable Dangerous Defendants

Appendix F: Proposed Order of Transfer Process for Rule 11.5 *(still vetting through Committee)*

Appendix G: Standardized Competency Evaluation Guidelines

Appendix H: Competency Evaluation Forms and Templates