

Committee on Mental Health and the Justice System | Minutes

Monday, August 24, 2020

Virtual meeting

10:00 a.m. – 12:00 p.m.

Present (telephonically): Kent Batty (Chair), Mary Lou Brncik, Brad Carlyon, Amelia Cramer, Shelley Curran, Jim Dunn, Hon. Elizabeth Finn, Hon. Michael Hintze, Dianna Kalandros, Michael Lipscomb, James McDougall, Dr. Carol Olson, Chief Deputy David Rhodes, proxy for J.J. Rico-Asim Dietrich, Hon. Barbara Spencer, Hon. Christopher Staring, Hon. Fanny Steinlage

Absent/Excused: Hon. Cynthia Kuhn, Kristin McManus, Chief Chris Magnus, Josephine Jones, Ronald Overholt, Michael Shafer, Paul Thomas

Guests/Presenters: Hon. Mark Armstrong (ret.), Bernardo Garcia, Greg Honig

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Don Jacobson, Diana Tovar

Regular Business

Approval of Minutes

The draft minutes from July 27, 2020, MHJS meeting were presented for approval.

Motion: To approve the July 27, 2020, minutes. Vote requested by Mr. Kent Batty. Motion passed unanimously.

Panel Presentation: Recommendation #27

Judge Mark Armstrong (ret.), Staff Attorney, Arizona Supreme Court Staff Attorney's Office and Bernardo Garcia, criminal defense attorney, Garcia Law Firm, PLC, appeared to discuss issues related to the *mens rea* recommendation. J. Armstrong shared a PowerPoint presentation on allowing evidence of a mental disorder as an affirmative defense to a defendant's *mens rea*. His overview covered recent case law summaries within the last three years, sources of Arizona evidence law, character and expert testimony, and the proposed amendment of ARE 404(b) by the Advisory Committee on Rules of Evidence. The proposed amendment to Rule 404(b) requires notice of the purpose for which the state intends to offer evidence and reasoning to support the purpose no later than 45 days prior to the final setting or at such later time as the court may allow for good cause.

Following Judge Armstrong's overview, Mr. Garcia shared his support of the committee's recommendation. He stated that having the ability to use a client's mental health disorder as an affirmative defense to charges against them would change his practice and provide opportunities for his clients to get appropriate treatment. As a defense attorney, Mr. Garcia indicated his defense is typically focused on whether the client will be eligible for probation, sentenced to prison, or sent to the Arizona State Hospital under the Psychiatric Review Board. He noted that for more serious offenses the conversation with the prosecution shifts, and more opportunities arise for those individuals living with mental illness such as court ordered treatment or being assigned to a specialized probation caseload.

Discussion:

A member asked if the proposed change is a matter of substantive law or procedure? Based on the current state of case law it is a matter of substantive law and should go to the legislature.

How would affirmative defense shift the sentencing option from incarceration to hospitalization or probation? With the possibility of a defendant's *mens rea* being considered as a defense, options like probation and court ordered treatment will become viable sentencing options.

Review and Discussion of Draft Final Report

Mr. Don Jacobson, Sr. Special Projects Consultant, Administrative Office of the Courts, updated the committee on edits to the report made since the last meeting. He highlighted three major changes.

1. "Enhanced Services Order" Recommendation: titling of the recommendation was changed to "Strengthening Judicial Oversight" to better identify the aim of the recommendation and to address concerns about scope and costs received from stakeholders during vetting. The language from the Interim Report for this proposal was moved into Appendix K for ease of reference by the reader. An appendix was chosen as the means to make the report itself more concise and to improve readability.
2. Two introductory paragraphs were added to Appendix D: Collaborative Court Model Examples, and a link was also included to the judicial branch website. The website provides a summary of current mental health courts and the program contacts.
3. Appendix L was added. Appendix L includes a copy of the statewide memo regarding the templates for Competency Evaluation guidelines and standardized forms and Best Practices in Restoration to Competency Programs. The forms were included to show

actions completed since the interim report and that the information was shared with court leadership.

Discussion: Concerns were voiced regarding whether substantive changes were made to the report. Don clarified that there were no further language substantive changes to the report except the title *Enhanced Services Order to Strengthening Judicial Oversight*, which was addressed earlier in the meeting.

Roadmap (taken out of order)

Mr. Batty provided a schedule of when the report would be presented to the identified standing committees of the Arizona Judicial Council. In order: Committee on Superior Court (COSC), Sept 11, 2020; Committee on Limited Jurisdiction Courts (LJC), September 23, 2020; Superior Court Presiding Judges, October 21, 2020; and the Arizona Judicial Council on October 22, 2020. Mr. Batty mentioned that the presentation has been edited and revised to highlight key issues and topics had been organized into topic areas. Any final comments or suggestions need to be submitted to staff by Aug 31st to meet the deadline.

Committee New/ Updates

Mr. Batty advised the committee that the September 21st meeting would likely be cancelled, and staff would send a notice to confirm the status.

Good of the Order / Call to the Public

No one responded to the call to the public.

Adjournment

The meeting was adjourned at 11:52 a.m. by order of the chair.