Committee on Mental Health and the Justice System
Minutes

Thursday, January 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, Shelley Curran, Jim Dunn, Chief Kathleen Elliott, Judge Elizabeth Finn, Judge Michael Hintze, Josephine Jones, Melissa Knight (PROXY for Dianna Kalandros), Judge Cynthia Kuhn, James McDougall, Carol Olson, Ron Overholt, Chief Deputy David Rhodes, Michal Rudnick, Commissioner Barbara Spencer, Paul Thomas

Telephonic: Amelia Cramer, Chief Chris Magnus, Judge Christopher Staring, Judge Fanny Steinlage

Absent/Excused: Brad Carlyon, Judge Elizabeth Finn, Dianna Kalandros, Dr. Michael Shafer

Guests/Presenters: Chief Justice Scott Bales, Arizona Supreme Court; Dr. Aaron Bowen, Arizona State Hospital; Dr. Steven Dingle, Arizona State Hospital; Erin Cohen, Arizona Attorney General's Office; Louis Caputo, Arizona Attorney General's Office; Amy Love, Administrative Office of the Courts.

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

Regular Business

Welcome and Opening Remarks
Mr. Kent Batty (Chair), introduced himself and asked Committee members and guests to briefly introduce themselves. Mr. Batty introduced Chief Justice Scott Bales. Chief Justice Bales thanked the Committee for its work, noting the importance of this work and Arizona's leadership in addressing the impact of mental health on our courts.

Approval of Minutes
Members were asked to approve minutes from December 17, 2018, noting they were in the meeting packet and provided electronically in advance of the meeting. No changes to the minutes were noted. A motion to approve the minutes was made by Mr. Dunn and seconded by Mr. Thomas. Motion was approved unanimously.

Discussion: Arizona State Hospital
The Chair, Mr. Batty, introduced guest presenters, Dr. Bowen, CEO – Arizona State Hospital and Dr. Dingle, CMO – Arizona State Hospital. Dr. Bowen and Dr. Dingle noted the questions sent by the Committee prior to the meeting and fielded answers to those and other questions.

The Arizona State Hospital (ASH) is a 93-acre plot of land which provides long-term inpatient psychiatric care to Arizonans with mental illnesses who are under court order for treatment, with 3 separate, licensed facilities including the Arizona Community Protection and Treatment Center

(ACPTC) for civilly committed sexually violent patients (131 beds; 98 individuals – current; length of stay approximately 10.5 years), the "main" civil hospital with individuals under Court-Ordered Treatment (117 licensed beds; 90 individuals – current; length of stay approximately 6 years), and the forensic hospital with restoration to competency patients (census has remained less than 6 patients in recent years due to the jail-based RTC programs) and patients who are found guilty except insane (143 licensed beds; 118 patients – current; length of stay approximately 6.3 years).

Programming and clinical services provided by the hospital include a full range of services – psychiatry, rehabilitation services, dentistry, physical medical care, and dietary and nutrition services. There are a total of 142 full time employees plus contractors, totally approximately 1,000 employees at any one time. Operations are 24/7.

Cost model of $714/day, is set based on AHCCCS bed rates as well as costs of patient care, number of staff needed to maintain 24/7, professional services provided, and census of hospital.

One key statistic raised by the Committee is the 55-bed limitation on individuals from Maricopa County in the civil/main hospital, set through the Arnold v. Sarn litigation exit stipulations. All 55 of those beds are currently filled. There is no allocation for individuals from any other county. A question was raised whether the State Hospital maintains a waiting list, and the answer is that it does not maintain such a list; however, the RBHAs or others may do so.

Committee members posed additional questions to Dr. Bowen and Dr. Dingle:

If an individual meets the criteria for admission to ASH and there are no beds available, where do we put them, and does ASH have a suggestion for what to do? Dr. Dingle noted that the question should be raised with AHCCCS, as the responsibility now lies with them as the administrative agency for behavioral health services.

When asked *if patients can be transferred between the forensic and civil units of the state hospital*, the response was no – under licensure rules individuals cannot be transferred; the patient would need to be discharged and then readmitted. That process has only occurred 5 times in the last three years.

An additional question was posed *if there are criteria or rules for admission to the state hospital and other treatment facilities at ASH*? The State Hospital policy is that it will accept patients whom it can treat. As a licensed facility, ASH is not required to maintain admission criteria. ASH has a utilization management committee comprised of three psychiatrists who receive applications for ASH to consider. The criteria are based on an internal algorithm that consists of two questions – is ASH the least restrictive option for the patient, and can the programs at ASH meet the individual's needs?

The Committee asked the leadership from ASH to have an honest discussion about the 55 bed limit for Maricopa County, including the difference between the initial census and lawsuit requirement and current need. Drs. Bowen and Dingle noted that because the Department of Health Services was the defendant in the case, they would have to ask for that capitation to be lifted, and DHS has not yet asked for lifting the 55-bed requirement after the exit stipulation. It was noted that prior to the signing of the exit stipulation, the DHS Division of Behavioral Health Services at the time did ask for the capitation to be lifted, and the Plaintiffs in the case were clear that the capitation rate of 55 beds could not be changed.

A Committee member noted that this causes a revolving door of individuals who have a need for treatment coming through Maricopa Integrated Health System (MIHS) and Desert Vista, and the setting is not ideal for caring for individuals longer than 3 weeks. A Committee member noted that there is a proportion of patients with treatment resistant symptoms who require long term care in a hospital setting, and with only 55 beds, it does not meet the need of a population of Maricopa's size. Not offering appropriate treatment to those categories of treatment creates a huge stigma for people with mental health issues as a whole and makes others fear the mentally ill;, and the way the situation is being handled is creating other problems and expenses. This Committee could do some good to focus on this area that is impacting this population within the justice system.

The Committee asked *if transitional living or alternative housing funds were available, could the grounds at ASH be used for this type of housing*? The response was, that this would take a significant amount of funding in order to outfit the space for adequate housing, as it is not currently set up or habitable under current conditions. There are also policy questions – which entity is the appropriate entity to provide resources and accept responsibility for those resources? And, is the state hospital location and environment the right place to add residential space, and in the evolving landscape, where does residential programming belong in the continuum of services in the mental health system?

The Committee expressed great appreciation to Dr. Bowen and Dr. Dingle for appearing before the Committee and being willing to engage in this important discussion.

Discussion: Housing, Mental Health and the Justice System

The Chair, Mr. Batty led the Committee in a discussion regarding all of the previous housing conversations that have taken place, including from ASH, DES/Governor's Goal Council, AHCCCS and Mercy Care.

Committee members provided specific ideas for future consideration, including:

- Exploring how to get ASH out of the 55-bed requirement for Maricopa County;
- Definition in legislation for secure treatment to provide this type of housing along the continuum of care, including but not limited to incompetent not restorable defendants who are a danger to community;
- Housing voucher programs that provide safe, high-quality affordable housing options with an oversight function in place to ensure safety and quality.

- Revisiting the Miami-Dade County program for justice-involved individuals, and alternative secure treatment settings, diversion facilities, and giving law enforcement options for residential treatment.
- Oversight or appeal process for intake/application process when individuals are denied services at ASH.
- An effort must be made to treating the whole person, and providing services, not just a place where individuals are housed.

Recent News & Updates
Mr. Batty updated the Committee on the upcoming Developing Mental Health Protocols Summit. Don Jacobson, AOC, reminded the Committee that the teams are made up of individuals identified by the Presiding Judges to represent their County or LJC team, and focus on the response protocols within the Sequential Intercept Model. Future work will take place in the community with key stakeholders. A comment was made by a Committee member to note that each RBHA is required to have collaborative protocols with justice partners in place, and each health plan has a justice liaison.

Mr. Batty noted that some issues were raised with respect to prosecutorial discretion by the Pima County Criminal Justice Advisory Committee in the recent Arizona Town Hall report that was sent to the Committee.

Mr. Batty noted that there will be some new Committee members named representing public defenders, as Committee members Fanny Steinlage and Josephine Jones have taken new positions, and the Arizona Center for Disability Law will also be joining the Committee.

Mr. Batty noted that the Committee and Supreme Court have recently received a request from the Arizona Psychiatric Society interested in data regarding the Rule 11 process.

Key Issues Workgroup Report
Mr. McDougall presented to the Committee the workgroup's proposal for a revised definition of mental disorder and requested the Committee's response to the proposed definition prior to being sent to stakeholders for review. Mr. McDougall also requested the Committee submit additional names for individuals to review the definition which will be sent by staff with comments collected for future Committee review. The Committee noted that this definition change provides an opportunity to recognize the impact that these other disorders have on the first responders, law enforcement and judicial system, and if the definition is changed, there will be a need for further discussion on what screeners and evaluators can do under the law, and under what conditions and timeframes. After review and discussion, the Committee made a motion to vet the proposed Mental Disorder definition to stakeholders "as is" including a language change to match existing statute with "reasonable prospect of being treatable." There is a recognition from the Committee that this language change will likely be met with a good deal of resistance and require further conversation and analysis, should the Committee move this language change forward to the Arizona Judicial Council for consideration.

Additional Committee Workgroups

Mr. Batty reminded the Committee of the additional charges within the Administrative Order, and the formation of two workgroups that will focus specifically on best practices in restoration to competency, and on the development of public education materials through a website and brochure explaining the civil commitment process. Future work may fall under these workgroups including the recent report and recommendations from the Supreme Court Study Committee on Domestic Violence and Mental Illness in Family Court Cases; however, the current resulting workgroup charges and objectives are:

Competency workgroup

- Evaluate and recommend best practices for determining competency by psychological evaluators, to include techniques, methods, tests, etc.
    - Determine whether the subject matter in the current AOC training program matches well to those best practices.
    - Recommend any necessary updates.

- Evaluate and recommend best practices for Restoration to Competency programs.

- Determine and recommend the minimum necessary documents to be placed in a statewide Rule 11 data depository (i.e. What will judges need to know about what happened in another jurisdiction?).
    - Recommend the framework for a system for LJCs to report Rule 11 outcomes, as required under A.R.S. §13-609 and NICS.

- Examine statutes and court rules and recommend changes that would improve court processes around competency.

Education workgroup

- Civil Commitment (website & brochure) Content Review
    - Develop an informational guide explaining the civil commitment process in both web-based and paper formats. Paper guides would be available at courthouse self-service centers and the webpage would be posted on AZCourtHelp.org and on the self-service webpages of the superior courts. (*May 2018 Subcommittee)*
- Identify ways the court can work collaboratively with other stakeholders to educate the public on the use of advance healthcare directives. (*Administrative Order 2018-71*)
- Future Work:
    - Identify opportunities to educate the public on court processes involving individuals involved in the justice system who have behavioral health treatment needs. (*Administrative Order 2018-71;* see also *Domestic Violence & Mental Illness in Family Court Cases: Report and Recommendations*)

Committee members identified themselves, a designee and individuals recommended to participate on these workgroups for staff to follow-up with and meet before the next Committee meeting.

Good of the Order / Call to the Public
Ms. Holly Gieszl spoke to the Committee regarding concerns she sees as a result of taking pro bono cases in criminal cases with people with high needs who have been involved in the public behavioral health system who do not have access to the resources needed to adequately assess competency and treat their needs.

Adjournment
The meeting was adjourned at 2:47 p.m. by order of the Chair.