Fair Justice Subcommittee on Mental Health and the Criminal Justice System

Tuesday, October 24, 2017; 10:00 a.m. – 2:00 p.m.
Conference Room 101
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007
Subcommittee on Mental Health Home Page

Time*	Agenda Items	Presenter
10:00 a.m.	**Welcome**	***Kent Batty**, Chair*
10:05 a.m.	**Approval of Minutes from September 12, 2017** ☐ Formal Action/Request	
10:15 a.m.	**Legislative Update**	***Amy Love**, AOC* *Deputy Director, Government Affairs*
10:35 a.m.	**Report from Rule 11 Workgroup** Review draft administrative order and policies and procedures for limited jurisdiction courts to conduct Rule 11 proceedings	***Don Jacobson**, AOC* *Sr. Special Consultant*
11:35 a.m.	**Review of the Sequential Intercept Model**	***Kent Batty***
	********** **Lunch ($5.00)** **********	
12:15 p.m.	**Develop recommendations relating to the Subcommittee's charges.** **Charge #1**: Identify rules and procedures to implement SB1157 • Adoption of a draft Administrative Order for presiding judges to authorize limited jurisdiction courts to conduct Rule 11 proceedings. • Identify a process to allow limited jurisdiction courts access to Rule 11 documents from other jurisdictions. • Discuss whether holding Rule 11 medical evaluations at the courthouse should be considered a best practice for Rule 11 proceedings.	

**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 Jodi Jerich, staff, at (602) 452-3255 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.*

- Identify how courts transmit Rule 11 case information as required by ARS §13-609 and discuss whether case management or court automation changes are needed for limited jurisdiction courts to comply with statutory reporting requirements.

Charge #2: Determine if the standard for ordering court-ordered treatment should be altered to allow for earlier intervention.

- Identify changes to either the standard or the procedures for court ordered treatment.

- Review Arizona's statutes for advance mental health care directives, how they may be improved, and how the courts can encourage their use.

Charge #3: Identify ways courts can more effectively address individuals in the justice system who have mental health issues.

- Identify other specific weak points the justice system has in addressing persons with mental health problems.

- Discuss how courts can better identify persons with mental health care needs through increased training, including the use of the Sequential Intercept Model.

Charge #4: Develop a Model Protocol Guide for Presiding Judges to use to implement the Task Force's recommendations.

- Develop a document to assist Presiding Judges in convening stakeholder meetings to address how the courts can better serve persons with mental health issues who have been brought to court.

1:55 **Good of the Order/Call to the Public** ***Kent Batty***
Adjournment

Next Meeting
November 13, 2017
Conference Room 101
Arizona State Courts Building

Remaining 2017 Meeting Dates
December 12, 2017

**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 Jodi Jerich, staff, at (602) 452-3255 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.*

Fair Justice Task Force
Subcommittee on Mental Health and the Criminal Justice System

DRAFT MINUTES
Thursday, September 12, 2017
Conference Room 101, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Kent Batty, Chair, Susan Alameda, Mary Lou Brncik, India Davis, Jim Dunn, Vicki Hill, Josephine Jones, Kathleen Mayer, Judge Joe Mikitish, Dr. Dawn Noggle, Dr. Carol Olson, Nancy Rodriguez, Dr. Michael Shafer, Mary Ellen Sheppard, Judge Susan Shetter, Commissioner Barbara Spencer, Lisa Surhio, Detective Sabrina Taylor, Paul Thomas, Juli Warzynski, Danna Whiting

Telephonic: Dr. Tommy Begay

Absent/Excused: Detective Kelsey Commisso

Administrative Office of the Courts (AOC) Staff: Jennifer Albright, Theresa Barrett, Jennifer Greene, Don Jacobson, Jodi Jerich, Sabrina Nash, Kathy Sekardi

I. WELCOME, INTRODUCTION AND OPERNING REMARKS

Kent Batty, Chair, called the meeting of Fair Justice Task Force Subcommittee on Mental Health and the Criminal Justice System ("Subcommittee") to order at 1:05 p.m.

Mr. Batty gave welcoming comments and invited Subcommittee members to introduce themselves. He also recognized the members of the Rule 11 Workgroup, noted that Don Jacobson will serve as the Workgroup's Chair, and explained the role of the Rule 11 Workgroup.

Mr. Batty reviewed the charge of the Subcommittee:

1. Recommend rules and procedures needed to implement new provisions of SB1157 relating to competency.

2. Determine if the current standard for ordering court ordered treatment should be altered to allow earlier intervention.

3. Recommend if any current court rule or statute should be modified to enable the courts to more effectively handle individuals in the justice system that have mental health issues.

4. Develop a Model Protocol Guide for presiding judges to use to implement the task force's recommendations.

Mr. Batty noted that the Subcommittee will report its recommendations to the Fair Justice Task Force and further noted that three (3) Subcommittee members (Mr. Dunn, Ms. Sheppard, and himself) also serve on the Task Force.

Finally, Mr. Batty reviewed the rules for conducting subcommittee business.

I. OVERVIEW OF THE FAIR JUSTICE TASK FORCE (TASK FORCE) RECOMMENDATIONS AND IMPLEMENTATION EFFORTS

Brief History of the Fair Justice Task Force

Mr. Batty provided the Subcommittee a history of the Task Force's work and summarized its Final Report. He noted that at the time Chief Justice Scott Bales established the Task Force by Administrative Order No. 2016-16, Arizona was at the forefront of a national trend to examine, and change where possible the impact of courts' practices regarding the administration of court-ordered, monetary sanctions and pretrial release polices. This effort arises from the belief that too many people are incarcerated simply because they cannot afford to pay bonds, fees, fines and penalties or because they have behavioral or mental health issues that inhibit their release. He recalled the Task Force met a total of seven (7) times and issued 65 recommendations based on 11 core principles. To further develop many of the Task Force's recommendations, additional subcommittees or workgroups were generated. To date, these groups include:

1) The Order to Show Cause Workgroup
2) The Rules Workgroup
3) The Post Conviction Relief Workgroup, and most recently
4) The Subcommittee on Mental Health and the Criminal Justice System and its Rule 11 Workgroup

Next, Mr. Batty reviewed the specific Task Force recommendations that correspond to the Subcommittee's charge. He explained that SB1157 (Laws 2017, Ch. 14) amended A.R.S. §13-4503 to allow limited jurisdiction courts, with the agreement of the Presiding Judge of the superior court of that county, to conduct Rule 11 competency proceedings. This statutory change reflects the Task Force's Recommendation No. 34 to revise current statutes for expediting mental competency proceedings for misdemeanor cases. Other statutory changes recommended by the Task Force and supported by the Arizona Judicial Council and the Supreme Court will be presented to the Legislature for its consideration at the next regular legislative session. The Court has already undertaken certain rule changes and intends to promptly consider any additional changes recommended by the Task Force.

Finally, Mr. Batty noted that Pima County was selected to receive a grant from the MacArthur Foundation to develop innovative policies that seek to reduce the misuse and overuse of jails. He further noted the Conference of State Court Administrators (COSCA) is looking at these same issues and expects to publish a white paper on the topic later this year.

Implementation Efforts of the Task Force's Recommendations

Mr. Don Jacobson, Senior Special Projects Consultant, reported on current efforts to implement the Task Force's recommendations. He noted that the courts have been working diligently to implement many of the recommendations. He reviewed several efforts currently in progress:

1. Pretrial Release Initiatives
   Mr. Jacobson reviewed efforts to change pre-trial release policies and to eliminate bond

schedules. He noted that courts are encouraged to use the public safety assessment tool ("PSA") to calculate individual risk as an alternative to defaulting to one size fits all bond schedules. He noted that the PSA is implemented in all 15 counties at the superior court level but is not in use broadly in the limited jurisdiction courts due to resource challenges. Subcommittee members discussed the differences between the new screening tool and the one previously used by Pima County. It was noted that the new tool has only been in use in Pima County for approximately one year. Mesa Municipal Court piloted the PSA and found, among its challenges, that the tool required the compilation of information that Mesa did not regularly collect. Specifically, Mesa lacked the resources to gather criminal history data.

2. Ability to Pay Initiatives
   Mr. Jacobson noted legislative changes are being proposed to amend statute to provide courts more flexibility when levying penalties and financial sanctions. The Subcommittee discussed how Arizona is on the forefront in the nationwide effort to recognize that fair justice should apply to all and that those without financial means should not be disparately punished simply because they are poor. Mr. Jacobson noted efforts toward a more individualized approach when holding a person accountable. These efforts include the flexibility to reduce base fines for persons at or near the federal poverty level, expand the use of installment payments and on-line payment options, and eliminate the practice of suspending a person's driver's license for failure to pay a fine.

3. Judicial and Court Staff Training Initiatives
   Mr. Jacobson noted that "fair justice" includes flexibility to provide individualized justice while still holding people accountable. Training judges on the options available to them through current rules and laws plays an important role in the successful implementation of the Task Force's goals. To that point, training for judges and court staff has begun and planning for future training is ongoing.

II. OVERVIEW OF MENTAL HEALTH COMPETENCY PROCESSES

Rule 11 Process

Ms. Cassandra Urias, Deputy Administrator for Pima County Superior Court, provided a presentation on the Rule 11 process. Following her presentation, discussion ensued. Discussion included Pima County's average length of time for both evaluation and restoration to competency of a defendant. It was noted that a court can anticipate six (6) weeks to conduct evaluations with restoration to competency for inpatient defendants averaging 110 days, but five (5) months for defendants not in custody. One member noted that she has observed restoration to competency for inpatient defendants in Maricopa County to be about 60-75 days and up to one year for defendants not in custody.

Overview of the Mesa & Glendale Court Pilot Projects

Mr. Paul Thomas, Mesa Municipal Court Administrator, and Judge Elizabeth Finn, Presiding Judge of the Glendale Municipal Court, reported on their courts' implementations of their respective pilot projects authorized by Administrative Order No. 2015-92 to conduct criminal Rule 11 competency proceedings.

The Mesa Municipal Court Pilot Program – Mr. Thomas stated Mesa's new, streamlined process for Rules 11 hearings was very effective in reducing the average case processing times from initial motion to conclusion. He noted that, to date, Mesa has completed 168 cases finding 100 defendants competent and 68 defendants not competent. In most cases, the prosecutor and defense counsel stipulated to a single evaluation. However, there were some cases where the parties did not stipulate to one evaluation. Of the 27 cases with two evaluations, 21 of those second evaluations were consistent with the conclusions of the first evaluation. Only six (6) cases had three (3) evaluations.

Mr. Thomas identified several changes made by the Mesa Municipal Court that resulted in the expedited resolution of Rule 11 proceedings. First, the court largely eliminated motion practice and ordered a competency evaluation if a party requested one. Additionally, Mesa eliminated the pre-screening process and encouraged parties to stipulate to a single evaluation. Mesa also set up standing, weekly appointments where mental health experts would conduct competency examinations at the courthouse. Mr. Thomas noted that having a defendant come to the courthouse instead of sending the defendants to the expert's medical office saved considerable time and increased the likelihood the defendant would show up for the examination.

Mr. Thomas summarized key components of Mesa's pilot project which included:

- Proper training of judges and court staff;
- Setting up appropriate procedures for the secure filing and sealing of doctors' reports
- Scheduling standing, weekly appointment times at the courthouse for doctors to conduct competency evaluations; and
- A willingness of the parties to stipulate to a single evaluation.

Mr. Thomas concluded that Mesa's streamlined Rule 11 process produced significant benefits. He noted that it improved service to the defendants and reduced the failure to appear rate. Other benefits he attributed to the pilot project included faster case processing times, increased cost savings, and an overarching fulfillment to promote "Access to Justice".

Some members expressed concern that stipulating to one evaluation may not be suitable in felony cases. It was also noted that some doctors tend to be predisposed to make certain findings and that a single evaluation could lead to a disproportionate number of defendants being found competent or not competent depending on the reliance of a particular doctor.

The Glendale City Court Pilot Program – Next, Judge Finn reviewed the Glendale City Court's Rule 11 pilot program. She noted that unlike Mesa, Glendale has a mental health court (MHC) to address defendants with mental health problems.

Judge Finn informed the Subcommittee that Glendale has completed 44 Rule 11 cases since her pilot launched. The court found 4 defendants to be competent, 39 not competent, and one case was withdrawn for felony prosecution. Two evaluations were done in all cases but one with 11 cases going to a third evaluation. Judge Finn commented that the Glendale Mental Health Court Program Coordinator has been granted access to the Maricopa County Superior Court's case management system and can obtain sealed doctor reports from previous Rules 11

proceedings. Additionally, Glendale has established an email address where evaluating doctors send all their reports and invoices. Judge Finn reported Glendale's Rule 11 case processing time from initial motion to conclusion was 48 days.

Subcommittee members identified a disparity in the percentage of persons found incompetent between the two pilot programs. With its MHC, Glendale can offer services to defendants with mental health issues. Although Glendale had conducted far fewer Rule 11 proceedings than Mesa, it had a much higher percentage of cases where the defendant was found to be incompetent. Judge Finn attributed this to Glendale's MHC operations and defense counsel's selective use of Rule 11 motions. She noted that since Glendale has a public defender who handles Rule 11 matters exclusively and who has a breadth of experience with mental health cases, she is able to effectively screen cases and limit the number of Rule 11 motions.

Discussion ensued. The Subcommittee discussed possible benefits of a limited jurisdiction MHC in combination with Rule 11 proceedings.

- When a limited jurisdiction court has a MHC which offers pre-adjudication diversionary treatment and also conducts Rule 11 proceedings, the court can offer more options to get services to seriously mentally ill defendants.

- The existence of a MHC may influence defense counsel's decision to file a Rule 11 motion for their seriously mentally ill defendant because treatment services can be obtained through the MHC.

- Defendants may be willing more receptive to treatment when diversionary treatment options are on the table.

- Crisis Intervention Teams (CITs) are less likely to encounter persons when they are participating in MHC diversionary treatment programs.

Additional discussion centered around a desire to better connect a limited jurisdiction court's Rule 11 proceedings with the ability to provide Title 36 treatment in an expeditious manner. Currently, a limited jurisdiction court that finds a defendant to be incompetent can only dismiss the charges or remand the matter back to superior court which delays getting a person needed treatment. Other members questioned whether some cities may be hesitant to hear Rule 11 matters for cases originating in their jurisdictions because they may not be able to bear the costs associated with those proceedings.

Recent Amendments to Rule 11

Ms. Jennifer Greene, AOC staff attorney, reviewed recent changes to Rule 11, including Order No. R-17-0041 which approved changes to Rule 11 on an emergency basis. These changes became effective August 9, 2017 and were intended to align the Rule with recent statutory changes from SB1157. Most notably, the amended Rule 11 allows a limited jurisdiction court to exercise jurisdiction over competency hearings in misdemeanor cases if authorized by the presiding judge of the superior court in the country. The comment period for the emergency rule is open until October 11, 2017.

Additionally, Ms. Greene reported that on August 29, 2017, the Supreme Court issued Order No. R-17-002 which largely restyled the entire Arizona Rules of Criminal Procedure, including Rule

11. In this Order, the Court adopted the substantive changes to Rule 11 that were authorized in the emergency rule petition along with changes for style and added clarity. Those Rules go in effect on January 1, 2018.

It was noted that another piece of legislation, HB2239 (Laws 2017, Ch. 59), has generated some ambiguity regarding whether a court can retain jurisdiction if a defendant has been found to be incompetent and not restorable.

Court-Ordered Evaluations and Treatment

Judge Barbara Spencer, Dr. Carol Olson, and Ms. Josephine Jones provided information to the Subcommittee on the process for court ordered evaluations and treatment pursuant to the Title 36 civil commitment statutes. They noted that there have been over 5,000 Title 36 court ordered evaluations to date in Maricopa County. However, only 5-7% of persons receiving Title 36 court ordered treatment were from cases where a court remanded a matter after a Rule 11 hearing.

The presenters further noted that many people who receive court ordered treatment services have substance abuse problems. Typically, a person will do well in an inpatient setting. However, once released, those with substance abuse problems will start using drugs, stop taking their prescribed medications, and will decompose. Discussion ensued. Comments included:

- Some defendants come to court with multiple court ordered treatment (COT) orders spanning several years.

- There should be efforts made at building better bridges between Title 36 treatment and the criminal justice system.

- HB2239 states that if a prosecutor files a petition for Title 36 court ordered evaluation, the petition must include all known criminal history including Rule 11 proceedings.

Operation of Mental Health Courts

Mr. Batty and Mr. Jacobson shared a high level overview of the differences between MHCs in superior courts and those in limited jurisdiction courts. Generally, superior courts create a post adjudication MHC. If a defendant is eligible for MHC, then the court can attach mental health terms to their probation. On the other hand, limited jurisdictions typically create pre-adjudication MHCs. In this model, the defendant will waive his right to a trial, agree to treatment terms, and hopefully make sufficient progress to "graduate." One factor in the difference in approach is that limited jurisdiction courts typically lack probation staff.

III. DISCUSSION REGARDING SPECIFIC CHARGES TO THE SUBCOMMITTEE

Mr. Batty opened the floor for general discussion of what issues the members wish to explore relating to the charges of the Subcommittee. The discussion generated these issues:

- Identify best practices for limited jurisdiction courts to consider when developing procedures to conduct Rules 11 hearings.

- Determine whether it is practicable to create a statewide repository to be accessible to all jurisdictions that conduct Rule 11 proceedings or have MHCs.

- Identify best practices for limited jurisdiction courts to report persons who are classified as prohibited possessors pursuant to ARS §13-3101.

- Consider developing a statewide plan to implement a Sequential Intercept Model.

- Explore expanding eligibility for treatment to persons who are mentally developmentally disabled or who have physical brain disorders.

- Identify barriers to treatment and propose solutions. Discuss whether eligibility for MHC court should be expanded to persons who have a general mental health (GMH) designation but are not designated as seriously mentally ill (SMI).

- Consider how to encourage the use of advance directives and the appointment of guardians for persons who are receiving court ordered mental health services.

- Explore opportunities to educate the public about the services that MHCs provide.

IV. DISCUSS OTHER CONCERNS

Mr. Batty explained how Michigan had enacted "Kevin's Law" designed for earlier intervention for people with mental health issues. He further noted that the Michigan law encourages those facilities that provide mental health services to educate their patients about advance directives, as a means of lowering the number of crisis-based involuntary commitment proceedings. Our subcommittee has been asked to consider whether Arizona should provide for the use of such tools.

V. PROCESS MOVING FORWARD

Mr. Batty suggested a team approach to develop recommendations to be put forward to the Task Force. Members concurred.

VI. GOOD OF THE ORDER/CALL TO THE PUBLIC

No members of the public wished to address the Subcommittee.

Adjournment: The meeting adjourned at 2:08 p.m.

Next Meeting: Tuesday, October 24, 2017; 10:00 a.m.
Arizona State Courts Building, Conference Room 345A&B

SUPERIOR COURT OF ARIZONA
[XXXXXXXX] COUNTY

IN THE MATTER OF IMPLEMENTATION OF MENTAL COMPETENCY PROCEEDINGS IN CRIMINAL MATTERS IN LIMITED JURISDICTION COURTS	)	ADMINISTRATIVE ORDER No. [year] - ___

On August 9, 2017, legislation amending A.R.S. § 13-4503 became effective granting the Presiding Judge in each county the authority to authorize a municipal court or a justice court to exercise jurisdiction over competency hearings in misdemeanor cases that arise out of the justice court or municipal court. It further provides that the limited jurisdiction court may refer a competency hearing to another limited jurisdiction court in that county with the approval of the presiding judge. Thereafter, the Supreme Court amended Rule 11 of the Arizona Rules of Criminal Procedure (hereinafter "Rule 11") to conform to the jurisdictional changes the legislature made to A.R.S. § 13-4503.

Having considered A.R.S. § 13-4503 and Rule 11, this Order addresses how [insert name of court(s)] may conduct Rule 11 competency proceedings in [XXX] County.

IT IS ORDERED [insert name of court(s)] shall exercise jurisdiction over competency hearings in misdemeanor cases that arise out of its court in compliance with the policies and procedures set forth below.

IT IS FURTHER ORDERED that beginning on [insert date], [insert name of court(s)] shall:

1. Conduct Rule 11 proceedings in compliance with the policies and procedures approved by the Presiding Judge and attached to this Order.

2. Ensure an accurate and complete recording of all Rule 11 courtroom proceedings is taken and maintained in accordance with applicable retention schedules. This includes completion of all automation tasks to ensure the local case management system is properly configured for docketing and retaining case records.

3. Establish a process approved by the Presiding Judge for the issuance, filing, distribution of minute entries and orders, and for the handling of evaluations and medical reports as required by law.

4. Appoint mental health experts who meet the requirements set by statute and rule, and who are appointed pursuant to statutory and local procurement requirements.

5. Transmit necessary findings to the Administrative Office of the Courts for the Department of Public Safety to use for firearm background checks.

6. Pay any costs associated with holding Rule 11 competency proceedings as dictated by applicable statute, rule, or funding source at their court.

IT IS FURTHER ORDERED:

7. Judges who conduct Rule 11 proceedings shall have the authority to order the unsealing of past Rule 11 evaluations for the limited purposes of the Rule 11 proceeding held in their courts. In accordance with A.R.S. § 13-4508, and Arizona Supreme Court Rule 123, judges shall take all necessary steps to ensure the confidentiality of past Rule 11 evaluations and that those records are to be treated as confidential records by all who have access to them, including attorneys.

8. The Superior Court and the Clerk of the Superior Court shall ensure that when [insert name of court(s)] conducts Rule 11 competency proceedings, [insert name of court(s)] has access to any records necessary to conduct the proceedings, including past Rule 11 evaluations in the Superior Court.

9. [Name of court(s)] shall provide access to any records necessary to conducting Rule 11 proceedings to any Superior Court or limited jurisdiction court authorized to conduct such proceedings in the requesting court

IT IS FURTHER ORDERED if [insert name of court(s)] wishes to refer competency hearings to another court authorized to conduct these hearings pursuant to A.R.S. § 13-4503(F) it shall notify the Presiding Judge of its policies and procedures regarding referral of these matters.

IT IS FURTHER ORDERED the Presiding Judge may revoke the [insert name of court(s)] authorization to conduct or refer Rule 11 competency proceedings if the Presiding Judge determines that the court fails to comply with the conditions of this Order or any subsequent related order.

Dated this ____day of _____, 20___.

_____
[NAME]
Presiding Judge

Document Name:	Rule 11 Proceedings
Effective Date:	Select effective date.
Document Status:	

1.0 Appointment of Counsel

This section should contain language clarifying that counsel should be appointed for all defendants that enter into Rule 11 proceedings and should delineate how that appointment should take place.

2.0 Assignment of Judicial Officer

Courts should decide how they want to assign Rule 11 proceedings to judicial officers, they may wish to consolidate into a single division within the court, move through a rotation, or assign on whatever manner they currently assign criminal cases. Courts should consider expertise and training as part of the assignment matrix.

3.0 Assignment of Judicial Staff

Since limited jurisdiction courts have not managed Rule 11 proceedings in the same manner as this new jurisdiction permits, judicial staff likely will be unfamiliar with various requirements such as sealing or otherwise marking as confidential certain documents, new event codes, and other case management topics. Courts should assign appropriately trained or experienced staff to management of Rule 11 proceedings.

4.0 Rule 11 Calendar and Proceedings

Courts should consider the timing of events in relationship to availability of experts and information as well as judicial workload. Courts may consider discussing these topics with other limited jurisdiction courts that have already begun conducting Rule 11 proceedings for ideas and best practices.

5.0 Access to Prior Rule 11 Mental Health Expert Reports

Procedures for gaining access to previous Rule 11 reports will need to be negotiated with the Superior Court Clerk and other local courts who are authorized to conduct Rule 11 proceedings. A process to have access to reports from other counties should also be considered.

6.0 Access to Rule 11 Reports

The court should establish procedures by which other courts who may perform Rule 11 evaluations may access the expert reports that they have on record.

7.0 Procurement Process of Mental Health Experts for Rule 11

All contracts for services must be obtained through appropriate local, county or state procurement procedures. Should the court use a contract from other agencies it should be sure that procurement policies have been complied with in the process.

8.0 Appointment of Mental Health Experts for Rule 11

Depending on the availability of experts and the volume of Rule 11 cases, the court should establish a process by which Mental Health Experts are appointed to cases. Court should ensure they are familiar the requirements of Rule 11.3 as to who is qualified to be appointed as a mental health expert.

9.0 Mental Health Experts Report Format and Filing

For consistency, courts should provide a template or format for the filing of Rule 11 evaluations. The court should work with other courts within the county that are

performing Rule 11 evaluations and seek to use the same or similar formats to improve readability across jurisdictions.

10.0 Record Keeping

Policies will need to be established regarding the development of the record of Rule 11 events and of the maintenance of those records within appropriate retention schedules. This should include recordings, transcripts, dockets, register of actions, the case record and all other related court records.

11.0 Training

With Rule 11 events being unique within criminal case types, appropriate training and refreshers should be required of all assigned experts, judicial officers and court staff.

12.0 Competing Rule 11 Matters

Should the court become aware that a Rule 11 evaluation is being ordered in another court there is to be a process where a single evaluation or a consolidation or transfer of the case(s) may take place in accordance with A.R.S. § 13-4503(F).

13.0 Restoration

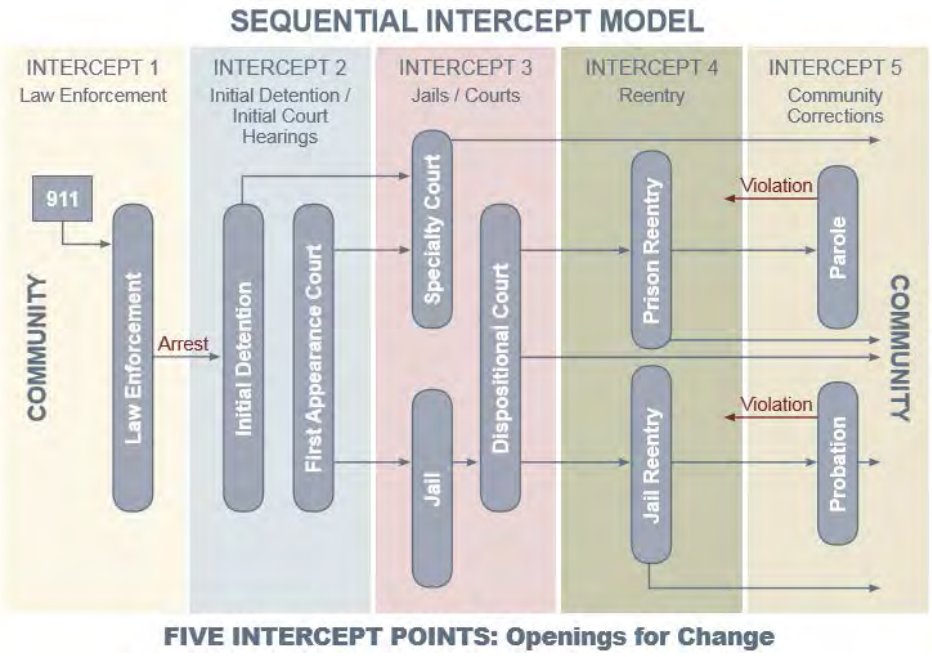
Procedures are to be developed that outline the process by which restoration to competency is to be accomplished. This should include the mechanism for funding of the restoration.

SIM's AID:

Sequential Intercepts Model (SIM): Assess- Identify and Divert or Incarcerate and Document (AID)

Sequential Intercepts Model

The Sequential Intercepts Model (SIM's) was developed by Dr. Mark Munetz and Dr. Patricia Griffin in conjunction with the GAINS Center to provide a conceptual framework for communities to organize targeted strategies for diverting individuals with behavioral health disorders from the criminal justice system. They identified several intercept points that provide opportunities for individuals to be identified and linked with services and divert them from the criminal justice system. This model has been used as a focal point for states and communities to assess available resources, determine gaps in services, and plan for community change.



Intercept 1- Law Enforcement

Assess- Has safety been restored? Should law enforcement continue to be involved? Has a crime occurred? Do I have probable cause for an arrest? Is an arrest mandatory? What are the root-causes of the crime or crisis? Is there a better

Identify-Is mental illness, brain injury, illness or disability, substance abuse, or developmental disability a primary factor in the incident or a secondary factor in the incident? Is there a screening or data collection tool to assist?

Divert- Can the crisis be resolved in place? Is there a mental health team that could assist on scene? Does this person need medical treatment from an Emergency Room? Is there a drop off facility that may be of assistance? Is the individual voluntary? Is the individual a danger to themselves or others? Will force be required to enforce an involuntary application? Does this individual have a guardian?

Incarcerate- If an individual should be arrested incarcerate them. Some crimes may be mandated for arrest by statute or policy.

Document- Document all factors that may be relevant to the crime investigated including actus reus, and mens rea with specific articulable facts.

Intercept 2: Initial Detention/ Initial Court Hearings

Assess- Ask questions to identify whether the individual has a mental illness, brain injury, illness or disability, substance abuse, or developmental disability.

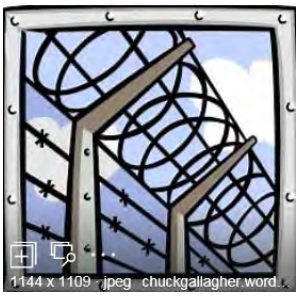
Identify- Booking: If yes: Document and provide information to medical staff and judge.

Divert- Initial Appearance- They judge may take information into account and divert individuals from custody into health institutions are treatment if they are available. They may also have leeway in reference to bond appearances to secure future appearances in court.

Incarcerate- Remand to custody and provide medical staff information of in custody care and treatment.

Document- Complete assessment tool that is shared with all individuals involved in next step of process. This tool can be completed by either detention staff and/or court staff.

Assess- Give Ask questions to identify whether the individual has a mental illness, brain injury, illness or disability, substance abuse, or developmental



Identify- Booking: If yes: Document and provide information to medical staff and judge.

Divert-Initial Appearance- They judge may take information into account and divert individuals from custody into health institutions are treatment if they are available. They may also have leeway in reference to bond amounts to secure future appearances in court. Services must be available to assist CJ system to secure court appearance, verify subject has a low risk for violence, and is unlikely to commit crimes on release.

Incarcerate- Remand to custody and provide medical staff information of in custody care and treatment.

Document- Complete assessment tool that is shared with all individuals involved in next step of process. This tool can be completed by either detention staff and/or court staff.

Intercept 3: Jails/ Courts- Specialty Courts

Assess- Ask questions to identify whether the individual has a mental illness, brain injury, illness or disability, substance abuse, or developmental disability.

Identify- Document and provide information to all individuals responsible for the care and custody of the inmate. At times the initial court judge may not release the subject because risk factors are too high. Some communities have programs for early release that are able to be facilitated after the initial court appearance. If an individual is identified conditions may be set for release that provides external services time to facilitate a response to reduce risk factors for individual.

Divert- Initial Appearance- The judge may take information into account and divert individuals from custody into health institutions are treatment if they are available. They may also have leeway in reference to bond appearances to secure future appearances in court. Often this time period may have other options for release through pre-trial services or other early release programs.

Incarcerate- Remand to custody and provide medical staff information of in custody care and treatment. Many jails have programming available that can assist individuals in recovery or managing their illness.

Document- Complete assessment tool that is shared with all individuals involved in next step of process. This tool can be completed by either detention staff and/or court staff.

Intercept 4: Reentry

Assess- Ask questions to identify whether the individual has a mental illness, brain injury, illness or disability, substance abuse, or developmental disability.

Identify- If yes: There may be services in the community to assist the individual with re-entry and care coordination immediately upon release. “Warm handoffs” are recommended to treatment facilities, probation/ parole facilities or case managers.

Divert- At each opportunity the individual should be diverted to health facilities if this is safe and within the mandates of the courts orders.

Intercept 5: Community Corrections

Assess- Ask questions to identify whether the individual has a mental illness, brain injury, illness or disability, substance abuse, or developmental disability.

Identify- There are multiple options for individual who have been involved in the criminal justice system to have their medical needs identified. Often probation and parole offices have completed assessments to make recommendations to assist the individual in maintaining themselves in the community under supervision. Please provide information to medical staff and judge.

Incarcerate- Remand to custody and provide medical staff information of in custody care and treatment. This is generally a difficult decision but sometimes community safety or other criminogenic factors may dictate that the individual should be returned to custody.

Divert- Many individuals commit violations of the conditions of release or violations that would not ordinarily be considered criminal except that they are under supervision. Probation/ parole staff and judges may have discretion available to divert the individual from custody. If there are available health resources they may have leeway as to their decision to remand the individual into custody or have conditions of supervision modified.

Document- Complete assessment tool that is shared with all individuals involved in next step of process. This tool can be completed by either detention staff and/or court staff.

13-609. Transfer of criminal justice information; definition

A. If a person is found incompetent by a court pursuant to rule 11, Arizona rules of criminal procedure, the court shall transmit the case information and the date of the incompetency finding to the supreme court. The supreme court shall transmit the case information and the date of the incompetency finding to the department of public safety. The department of public safety shall transmit the case information and the date of the incompetency finding to the national instant criminal background check system.

B. If a person is subsequently found competent, the court shall transmit the case information to the supreme court. The supreme court shall transmit the finding of competency to the department of public safety. The department of public safety shall transmit the finding of competency to the national instant criminal background check system.

C. If a person is found guilty except insane, the court shall transmit the case information and the date of the verdict to the supreme court. The supreme court shall transmit the case information and the date of the verdict to the department of public safety. The department of public safety shall transmit the case information and the date of the verdict to the national instant criminal background check system.

D. On request, the clerk of the court that originally found the defendant incompetent or in which the defendant was found guilty except insane shall provide certified copies of the order to a law enforcement or prosecuting agency that is investigating or prosecuting a prohibited possessor as defined in section 13-3101.

E. For the purposes of this section, "case information" means the person's name, sex and date of birth, the last four digits of the person's social security number, if available, the court case number and the court originating agency identification number.

Title 36, Chapter 5 Mental Health Services

36-501. Definitions
In this chapter, unless the context otherwise requires:

7. **"Danger to others"** means that the judgment of a person who has a mental disorder is so impaired that the person is unable to understand the person's need for treatment and as a result of the person's mental disorder the person's continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.

8. **"Danger to self":**

(a) Means behavior that, as a result of a mental disorder:

(i) Constitutes a danger of inflicting serious physical harm on oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out.

(ii) Without hospitalization will result in serious physical harm or serious illness to the person.

(b) Does not include behavior that establishes only the condition of having a grave disability.

15. **"Grave disability"** means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because the person is unable to provide for the person's own basic physical needs.

(b) The declining mental abilities that directly accompany impending death.

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

25. **"Mental disorder"** means a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:

(a) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder.

32. **"Persistent or acute disability"** means a severe mental disorder that meets all the following criteria:

(a) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.

(b) Substantially impairs the person's capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

(c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

36-540. Court options

A. If the court finds by clear and convincing evidence that the proposed patient, as a result of mental disorder, is a danger to self, is a danger to others, has a persistent or acute disability or a grave disability and is in need of treatment, and is either unwilling or unable to accept voluntary treatment, the court shall order the patient to undergo one of the following:

1. Treatment in a program of outpatient treatment.

2. Treatment in a program consisting of combined inpatient and outpatient treatment.

3. Inpatient treatment in a mental health treatment agency, in a hospital operated by or under contract with the United States department of veterans affairs to provide treatment to eligible veterans pursuant to article 9 of this chapter, in the state hospital or in a private hospital, if the private hospital agrees, subject to the limitations of section 36-541.

B. The court shall consider all available and appropriate alternatives for the treatment and care of the patient. The court shall order the least restrictive treatment alternative available.

C. The court may order the proposed patient to undergo outpatient or combined inpatient and outpatient treatment pursuant to subsection A, paragraph 1 or 2 of this section if the court:

1. Determines that all of the following apply:

(a) The patient does not require continuous inpatient hospitalization.

(b) The patient will be more appropriately treated in an outpatient treatment program or in a combined inpatient and outpatient treatment program.

(c) The patient will follow a prescribed outpatient treatment plan.

(d) The patient will not likely become dangerous or suffer more serious physical harm or serious illness or further deterioration if the patient follows a prescribed outpatient treatment plan.

2. Is presented with and approves a written treatment plan that conforms with the requirements of section 36-540.01, subsection B. If the treatment plan presented to the court pursuant to this subsection provides for supervision of the patient under court order by a mental health agency that is other than the mental health agency that petitioned or requested the county attorney to petition the court for treatment pursuant to section 36-531, the treatment plan must be approved by the medical director of the mental health agency that will supervise the treatment pursuant to subsection E of this section.

D. An order to receive treatment pursuant to subsection A, paragraph 1 or 2 of this section shall not exceed three hundred sixty-five days. The period of inpatient treatment under a combined treatment order pursuant to subsection A, paragraph 2 of this section shall not exceed the

maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section.

E. If the court enters an order for treatment pursuant to subsection A, paragraph 1 or 2 of this section, all of the following apply:

1. The court shall designate the medical director of the mental health treatment agency that will supervise and administer the patient's treatment program.

2. The medical director shall not use the services of any person, agency or organization to supervise a patient's outpatient treatment program unless the person, agency or organization has agreed to provide these services in the individual patient's case and unless the department has determined that the person, agency or organization is capable and competent to do so.

3. The person, agency or organization assigned to supervise an outpatient treatment program or the outpatient portion of a combined treatment program shall be notified at least three days before a referral. The medical director making the referral and the person, agency or organization assigned to supervise the treatment program shall share relevant information about the patient to provide continuity of treatment.

4. The court may order the medical director to provide notice to the court of any noncompliance with the terms of a treatment order.

5. During any period of outpatient treatment under subsection A, paragraph 2 of this section, if the court, on its own motion or on motion by the medical director of the patient's outpatient mental health treatment facility, determines that the patient is not complying with the terms of the order or that the outpatient treatment plan is no longer appropriate and the patient needs inpatient treatment, the court, without a hearing and based on the court record, the patient's medical record, the affidavits and recommendations of the medical director, and the advice of staff and physicians or the psychiatric and mental health nurse practitioner familiar with the treatment of the patient, may enter an order amending its original order. The amended order may alter the outpatient treatment plan or order the patient to inpatient treatment pursuant to subsection A, paragraph 3 of this section. The amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section. If the patient refuses to comply with an amended order for inpatient treatment, the court, on its own motion or on the request of the medical director, may authorize and direct a peace officer to take the patient into protective custody and transport the patient to the agency for inpatient treatment. Any authorization, directive or order issued to a peace officer to take the patient into protective custody shall include the patient's criminal history and the name and telephone numbers of the patient's case manager, guardian, spouse, next of kin or significant other, as applicable. When reporting to or being returned to a treatment agency for inpatient treatment pursuant to an amended order, the patient shall be informed of the patient's right to judicial review and the patient's right to consult with counsel pursuant to section 36-546.

6. During any period of outpatient treatment under subsection A, paragraph 2 of this section, if the medical director of the outpatient treatment facility in charge of the patient's care determines, in concert with the medical director of an inpatient mental health treatment facility who has agreed to accept the patient, that the patient is in need of immediate acute inpatient psychiatric care because of behavior that is dangerous to self or to others, the medical director of the outpatient treatment facility may order a peace officer to apprehend and transport the patient to the inpatient treatment facility pending a court determination on an amended order under paragraph 5 of this subsection. The patient may be detained and treated at the inpatient treatment facility for a period of no more than forty-eight hours, exclusive of weekends and holidays, from the time that the patient is taken to the inpatient treatment facility. The medical director of the outpatient treatment facility shall file the motion for an amended court order requesting inpatient treatment no later than the next working day following the patient being taken to the inpatient treatment facility. Any period of detention within the inpatient treatment facility pending issuance of an amended order shall not increase the total period of commitment originally ordered by the court or, when added to the period of inpatient treatment provided by the original order and any other amended orders, exceed the maximum period allowed for an order for inpatient treatment pursuant to subsection F of this section. If a patient is ordered to undergo inpatient treatment pursuant to an amended order, the medical director of the outpatient treatment facility shall inform the patient of the patient's right to judicial review and to consult with an attorney pursuant to section 36-546.

F. The maximum periods of inpatient treatment that the court may order, subject to the limitations of section 36-541, are as follows:

1. Ninety days for a person found to be a danger to self.

2. One hundred eighty days for a person found to be a danger to others.

3. One hundred eighty days for a person found to have a persistent or acute disability.

4. Three hundred sixty-five days for a person found to have a grave disability.

G. If, on finding that the patient meets the criteria for court-ordered treatment pursuant to subsection A of this section, the court also finds that there is reasonable cause to believe that the patient is an incapacitated person as defined in section 14-5101 or is a person in need of protection pursuant to section 14-5401 and that the patient is or may be in need of guardianship or conservatorship, or both, the court may order an investigation concerning the need for a guardian or conservator, or both, and may appoint a suitable person or agency to conduct the investigation. The appointee may include a court appointed guardian ad litem, an investigator appointed pursuant to section 14-5308 or the public fiduciary if there is no person willing and qualified to act in that capacity. The court shall give notice of the appointment to the appointee within three days of the appointment. The appointee shall submit the report of the investigation to the court within twenty-one days. The report shall include recommendations as to who should be guardian or who should be conservator, or both, and a report of the findings and reasons for the recommendation. If the investigation and report so indicate, the court shall order the

appropriate person to submit a petition to become the guardian or conservator, or both, of the patient.

H. In any proceeding for court-ordered treatment in which the petition alleges that the patient is in need of a guardian or conservator and states the grounds for that allegation, the court may appoint an emergency temporary guardian or conservator, or both, for a specific purpose or purposes identified in its order and for a specific period of time not to exceed thirty days if the court finds that all of the following are true:

1. The patient meets the criteria for court-ordered treatment pursuant to subsection A of this section.

2. There is reasonable cause to believe that the patient is an incapacitated person as defined in section 14-5101 or is in need of protection pursuant to section 14-5401, paragraph 2.

3. The patient does not have a guardian or conservator and the welfare of the patient requires immediate action to protect the patient or the ward's property.

4. The conditions prescribed pursuant to section 14-5310, subsection B or section 14-5401.01, subsection B have been met.

I. The court may appoint as a temporary guardian or conservator pursuant to subsection H of this section a suitable person or the public fiduciary if there is no person qualified and willing to act in that capacity. The court shall issue an order for an investigation as prescribed pursuant to subsection G of this section and, unless the patient is represented by independent counsel, the court shall appoint an attorney to represent the patient in further proceedings regarding the appointment of a guardian or conservator. The court shall schedule a further hearing within fourteen days on the appropriate court calendar of a court that has authority over guardianship or conservatorship matters pursuant to this title to consider the continued need for an emergency temporary guardian or conservator and the appropriateness of the temporary guardian or conservator appointed, and shall order the appointed guardian or conservator to give notice to persons entitled to notice pursuant to section 14-5309, subsection A or section 14-5405, subsection A. The court shall authorize certified letters of temporary emergency guardianship or conservatorship to be issued on presentation of a copy of the court's order. If a temporary emergency conservator other than the public fiduciary is appointed pursuant to this subsection, the court shall order that the use of the money and property of the patient by the conservator is restricted and not to be sold, used, transferred or encumbered, except that the court may authorize the conservator to use money or property of the patient specifically identified as needed to pay an expense to provide for the care, treatment or welfare of the patient pending further hearing. This subsection and subsection H of this section do not:

1. Prevent the evaluation or treatment agency from seeking guardianship and conservatorship in any other manner allowed by law at any time during the period of court-ordered evaluation and treatment.

2. Relieve the evaluation or treatment agency from its obligations concerning the suspected abuse of a vulnerable adult pursuant to title 46, chapter 4.

J. If, on finding that a patient meets the criteria for court-ordered treatment pursuant to subsection A of this section, the court also learns that the patient has a guardian appointed under title 14, the court with notice may impose on the existing guardian additional duties pursuant to section 14-5312.01. If the court imposes additional duties on an existing guardian as prescribed in this subsection, the court may determine that the patient needs to continue treatment under a court order for treatment and may issue the order or determine that the patient's needs can be adequately met by the guardian with the additional duties pursuant to section 14-5312.01 and decline to issue the court order for treatment. If at any time after the issuance of a court order for treatment the court finds that the patient's needs can be adequately met by the guardian with the additional duties pursuant to section 14-5312.01 and that a court order for treatment is no longer necessary to assure compliance with necessary treatment, the court may terminate the court order for treatment. If there is a court order for treatment and a guardianship with additional mental health authority pursuant to section 14-5312.01 existing at the same time, the treatment and placement decisions made by the treatment agency assigned by the court to supervise and administer the patient's treatment program pursuant to the court order for treatment are controlling unless the court orders otherwise.

K. The court shall file a report as part of the court record on its findings of alternatives for treatment.

L. Treatment shall not include psychosurgery, lobotomy or any other brain surgery without specific informed consent of the patient or the patient's legal guardian and an order of the superior court in the county in which the treatment is proposed, approving with specificity the use of the treatment.

M. The medical director or any person, agency or organization used by the medical director to supervise the terms of an outpatient treatment plan is not civilly liable for any acts committed by a patient while on outpatient treatment if the medical director, person, agency or organization has in good faith followed the requirements of this section.

N. A peace officer who in good faith apprehends and transports a patient to an inpatient treatment facility on the order of the medical director of the outpatient treatment facility pursuant to subsection E, paragraph 6 of this section is not subject to civil liability.

O. If a person has been found, as a result of a mental disorder, to constitute a danger to self or others or to have a persistent or acute disability or a grave disability and the court enters an order for treatment pursuant to subsection A of this section, the court shall transmit the person's name, sex, date of birth, social security number, if available, and date of the order for treatment to the supreme court. The supreme court shall transmit the information to the department of public safety to comply with the requirements of title 13, chapter 31 and title 32, chapter 26. The department of public safety shall transmit the information to the national instant criminal background check system. The superior court may access the information of a person who is ordered into treatment to enforce or facilitate a treatment order.

P. On request, the clerk of the court shall provide certified copies of the commitment order to a law enforcement or prosecuting agency that is investigating or prosecuting a prohibited possessor as defined in section 13-3101.

Q. If the court does not find a person to be in need of treatment and a prosecutor filed a petition pursuant to section 13-4517, the evaluation agency, within twenty-four hours, shall notify the prosecuting agency of its finding. The court shall order the medical director to detain the person for an additional twenty-four hours to allow the prosecuting agency to be notified. If the court has retained jurisdiction pursuant to section 13-4517, subsection C, the court may remand the person to the custody of the sheriff for further disposition pursuant to section 13-4517, subsection A, paragraph 2 or 3.

36-540.01. Conditional outpatient treatment

A. The medical director may issue an order for conditional outpatient treatment for a patient ordered to undergo treatment pursuant to section 36-540 if, after consultation with staff familiar with the patient's case history, the medical director determines with a reasonable degree of medical probability that all of the following apply:

1. The patient no longer requires continuous inpatient hospitalization.

2. The patient will be more appropriately treated in an outpatient treatment program.

3. The patient will follow a prescribed outpatient treatment plan.

4. The patient will not likely become dangerous, suffer more serious physical harm or serious illness or further deteriorate if the patient follows a prescribed outpatient treatment plan.

B. The order for conditional outpatient treatment issued by the medical director shall include a written outpatient treatment plan prepared by staff familiar with the patient's case history and approved by the medical director. If a petition has been filed pursuant to section 13-4517. The prosecuting agency may provide the court with information that is contained in the patient's criminal history and that may be relevant to protecting the well-being of the patient and the public. The plan shall include all of the following:

1. A statement of the patient's requirements, if any, for supervision, medication and assistance in obtaining basic needs such as employment, food, clothing or shelter.

2. The address of the residence where the patient is to live and the name of the person in charge of the residence, if any.

3. The name and address of any person, agency or organization assigned to supervise an outpatient treatment plan or care for the patient, and the extent of authority of the person, agency or organization in carrying out the terms of the plan.

4. The conditions for continued outpatient treatment, which may require periodic reporting, continuation of medication and submission to testing, and may restrict travel, consumption of spirituous liquor and drugs, associations with others and incurrence of debts and obligations or such other reasonable conditions as the medical director may specify.

5. Any other provisions that the medical director or the court believes are necessary to protect the well-being of the patient and the public.

C. The court may order that the medical director provide notice to the court of specific instances of noncompliance as specified by the court.

D. Before release for conditional outpatient treatment, the patient shall be provided with copies and full explanations of the medical director's order and the treatment plan. If, after full explanation, the patient objects to the plan or any part of it, the objection and reasons for the objection shall be noted in the patient's record. The medical director's order and treatment plan shall be filed in the patient's medical file and shall also be filed with the court.

E. The period for which conditional outpatient treatment may be ordered may not exceed the remainder of the period of court-ordered treatment.

F. Before the release of a patient for outpatient treatment, the medical director shall give notice pursuant to section 36-541.01, subsection C and a motion for a determination by the court as to whether the standard for conditional release of the patient has been met may be made by the persons and in the manner provided for in section 36-541.01, subsection I. Before the release of a person found to be a danger to self or others or found to have a persistent or acute disability or a grave disability for outpatient treatment, the medical director shall give notice to the court that ordered the patient to undergo treatment. If criminal charges against a patient involving death or serious physical injury or a violation of title 13, chapter 14 are dismissed pursuant to section 13-4517, the medical director shall notify the prosecuting agency if a civil commitment order issued pursuant to this chapter expires or is terminated, or if the patient is discharged to outpatient treatment. The medical director shall provide this notice by mail at least five days before the anticipated date of the expiration, termination or discharge.

G. The medical director shall require periodic reports concerning the condition of patients on conditional outpatient treatment from any person, agency or organization assigned to supervise an outpatient treatment plan. The medical director shall require these reports at intervals not to exceed thirty days.

H. The medical director shall review the condition of a patient on conditional outpatient treatment at least once every thirty days and enter the findings in writing in the patient's file. In conducting the review, the medical director shall consider all reports and information received and may require the patient to report for further evaluation.

I. The medical director may amend any part of the outpatient treatment plan during the course of conditional outpatient treatment. If the plan is amended, the medical director shall issue a new order including the amended outpatient treatment plan. The new order and amended outpatient

treatment plan shall be filed in the patient's medical file. Copies of the new order and outpatient treatment plan shall be immediately provided to the patient and to any person, agency or organization assigned to supervise an outpatient treatment plan. Copies of the new order and outpatient treatment plan shall be immediately filed with the court and, if a prosecutor filed a petition pursuant to section 13-4517, with the prosecuting agency.

J. The medical director may rescind an order for conditional outpatient treatment and order the patient to return to a mental health treatment agency at any time during the period of court ordered treatment if, in the medical director's judgment, the patient has failed to comply with a term of the outpatient treatment plan or if, for any reason, the medical director determines that the patient needs inpatient treatment or that conditional outpatient treatment is no longer appropriate. The medical director shall give notice to the court that issued the treatment order and the prosecuting agency if a prosecutor filed a petition pursuant to section 13-4517.

K. If the medical director rescinds an order for conditional outpatient treatment and the patient is returned to a mental health treatment agency for inpatient treatment, the patient shall be informed of the patient's right to judicial review and right to consult with counsel pursuant to section 36-546.

L. If the medical director rescinds an order for conditional outpatient treatment and orders the patient to return to a mental health treatment agency, the medical director may request, or a court may order, a peace officer or a designated officer or employee of the treatment agency to take the patient into custody for immediate delivery to the agency pursuant to section 36-544.

M. The medical director is not civilly liable for any act committed by a patient while on conditional outpatient treatment if the medical director has in good faith followed the requirements of this section.

N. This section does not prevent the medical director from authorizing a patient ordered to undergo treatment pursuant to section 36-540 as a danger to self or a danger to others or a patient with a persistent or acute disability or a grave disability to leave the treatment agency for periods of no more than five days under the care, custody and control of a spouse, relative or other responsible person if the medical director determines that the patient will not become dangerous or suffer serious physical harm or illness during that time.

O. The medical director may authorize a patient who is civilly committed pursuant to section 36-540 to leave the state hospital grounds unaccompanied if the leave is part of an inpatient individualized treatment and discharge plan and the medical director determines that the patient will not become dangerous or suffer serious physical harm or illness during that time.

Article 6, Mental Health Care Power of Attorney, 36-3281 – 36-3287 was added by Laws 1999, ch. 83. Amended by Laws 2000, Ch. 191 and Laws 2016, Ch. 268.

36-3281. Mental health care power of attorney; scope; definition

A. An adult, known as the principal, pursuant to section 36-3282 may designate another adult or adults, known as the agent, to act as an agent and to make mental health care decisions on that person's behalf. The principal may also designate an alternate adult or adults to act as agent if the original designated agent or agents are unwilling or unable to act.

B. An agent under section 36-3283 may make decisions about mental health treatment on behalf of the principal if the principal is found incapable. If an adult does not have a mental health care power of attorney pursuant to this section, an agent with a health care power of attorney under section 36-3221 may make decisions about mental health treatment on behalf of the principal if the principal is found incapable, except as provided in section 36-3283, subsection F. These decisions shall be consistent with any wishes the principal has expressed in the mental health care directive, mental health care power of attorney, health care power of attorney or other advance directive.

C. An agent shall not be a person who is directly involved with the provision of health care to the principal at the time the mental health care power of attorney is executed.

D. For the purposes of this section, "incapable" means that in the opinion of a physician who is licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in neurology or psychiatry or a psychologist who is licensed pursuant to title 32, chapter 19.1, a person lacks the ability to give informed consent as defined in section 36-501.

36-3282. Execution requirements

A. To be valid, a mental health care power of attorney shall:

1. Be executed by a principal who is not incapable, as defined in section 36-3281.

2. Be in writing.

3. Contain language that clearly indicates that the principal intends to create a mental health care power of attorney.

4. Except as provided pursuant to subsection C of this section, be dated and signed or marked by the principal.

5. Be notarized or witnessed in writing by at least one adult who affirms that the notary or witness was present when the principal dated and signed or marked the mental health care power of attorney and that the principal appeared to be of sound mind and free from duress, fraud or undue influence at that time.

B. If a mental health care power of attorney expressly provides that the agent can admit the principal to an inpatient psychiatric facility licensed by the department of health services, each paragraph that grants this authority must be separately initialed by the principal at the time the mental health care power of attorney is signed and witnessed.

C. If the principal is physically unable to sign or mark a mental health care power of attorney, the notary and each witness shall verify on the document that the principal indicated to the notary or witness that the mental health care power of attorney expressed the principal's wishes and that the principal intended to adopt the mental health care power of attorney at that time.

D. A notary or witness shall not be any of the following:

1. A person designated to make medical decisions on the principal's behalf.

2. A professional care provider directly involved with the provision of care to the principal at the time the mental health care power of attorney is executed.

E. If a mental health care power of attorney is witnessed by only one person, that person shall not be either:

1. Related to the principal by blood, marriage or adoption.

2. Entitled to any part of the principal's estate by will or by operation of law at the time that the power of attorney is executed.

F. A mental health care power of attorney may be used as part of or independent of a health care power of attorney as defined in section 36-3201.

36-3283. Powers and duties of an agent

A. An agent may make mental health care decisions for the principal while the principal is incapable, as defined in section 36-3281.

B. Except as limited by subsection F of this section, an agent's authority to make mental health care decisions is limited only by the express language of the mental health care power of attorney or by a court order pursuant to section 36-3206.

C. The appointment of a person to act as an agent is effective until that authority is revoked by the principal or by a court order.

D. An agent has the same right as the principal to receive information and to review the principal's medical records regarding proposed mental health treatment and to receive, review and consent to the disclosure of medical records relating to that treatment.

E. An agent shall act consistently with the wishes of the principal as expressed in the mental health care power of attorney. Except as limited by subsection F of this section, if the principal's wishes are not expressed in the mental health care power of attorney and are not otherwise known by the agent, the agent shall act in accordance with what the agent in good faith believes to be in the principal's best interests.

F. An agent may consent to admit the principal to an inpatient psychiatric facility licensed by the department of health services if this authority is expressly stated in the mental health care power of attorney or health care power of attorney under section 36-3221.

G. An agent is not subject to criminal or civil liability for decisions made in good faith pursuant to subsection E of this section.

36-3284. Operation of mental health care power of attorney; admission for evaluation and treatment by agent; duties of physician or mental health care provider

A. A mental health care power of attorney is effective when it is executed and remains in effect until it is revoked by the principal pursuant to section 36-3285 or by court order.

B. Notwithstanding the procedures and requirements prescribed in chapter 5, articles 4 and 5 of this title relating to involuntary court-ordered evaluation or treatment, if the mental health care power of attorney specifically authorizes the agent to admit the principal to an inpatient psychiatric facility and the agent has reasonable cause to believe that the principal is in need of an evaluation or treatment, the agent may apply for admission of the principal for evaluation or treatment at an inpatient psychiatric facility. The agent must present the facility with a copy of the power of attorney that specifically authorizes the agent to admit the principal to an inpatient psychiatric facility. If admission is requested by the agent, the facility to which the agent applies may admit the principal if before admission a physician who is licensed pursuant to title 32, chapter 13 or 17 does all of the following:

1. Conducts an investigation that carefully probes the principal's psychiatric and psychological history, diagnosis and treatment needs.

2. Conducts a thorough interview with the principal and the agent.

3. Obtains the agent's informed consent, as defined in section 36-501.

4. Makes a written determination that the principal needs an evaluation or will benefit from inpatient care and treatment of a mental disorder or other personality disorder or emotional condition and that the evaluation or treatment cannot be accomplished in a less restrictive setting.

5. Documents in the principal's medical chart a summary of the doctor's findings and recommendations for treatment.

C. If a patient admitted to or being treated in an inpatient psychiatric facility under the authority of an agent pursuant to a mental health care power of attorney manifests the desire to disqualify an agent or to revoke a mental health care power of attorney and requests in writing to be discharged from the facility, the facility shall either discharge the patient or initiate proceedings for court ordered evaluation or treatment pursuant to chapter 5 of this title:

1. Within forty-eight hours after the facility receives this request, excluding weekends and legal holidays.

2. On the following court day if the forty-eight-hour period expires on a weekend or holiday.

D. The discharge requirement prescribed in subsection C of this section does not apply if the facility is prohibited from discharging the person under federal law or if the principal has been determined to be incapable as defined in section 36-3281, the treating physician believes that further inpatient treatment is necessary or advisable and the agent under the power of attorney has consented to the continued treatment.

E. After admission, if the patient refuses treatment or requests discharge and the treating physician believes that further inpatient treatment is necessary or advisable, the facility may rely on the consent of the agent for treatment, release and discharge decisions pursuant to the agent's authority under the power of attorney.

F. The inpatient psychiatric facility licensed by the department of health services shall conduct a review of the principal's condition and need for admission into the facility and assess the appropriateness of the principal's placement at least once every thirty days. The agent may participate in each review. If possible the agent shall participate in person.

36-3285. Revocation; disqualification of agent

A. Except during times when the principal has been found to be incapable as defined in section 36-3281, a principal under a mental health care power of attorney may disqualify an agent or revoke all or any portion of the power of attorney.

B. Unless a principal is incapable as defined in section 36-3281, a principal may revoke all or any part of the principal's mental health care power of attorney by doing any of the following:

1. Making a written revocation of the mental health care power of attorney or a written statement to disqualify an agent.

2. Orally notifying the agent or a mental health care provider.

3. Making a new mental health care power of attorney.

4. Any other act that demonstrates a specific intent to revoke a mental health care power of attorney or disqualify an agent.

36-3286. Sample mental health care power of attorney

A person may use any writing that meets the requirements of sections 36-3281 and 36-3282 to create a mental health care power of attorney. The following form is offered as a sample only and does not prevent a person from using other language or another form:

Mental Health Care Power of Attorney

I, _____, being an adult of sound mind, voluntarily make this declaration for mental treatment. I want this declaration to be followed if I am incapable, as defined in section 36-3281, Arizona Revised Statutes. I designate _____ as my agent for all matters relating to my mental health care including, without limitation, full power to give or refuse consent to all medical care related to my mental health condition. If my agent is unable or unwilling to serve or continue to serve, I appoint _____ as my agent. I want my agent to make decisions for my mental health care treatment that are consistent with my wishes as expressed in this document or, if not specifically expressed, as are otherwise known to my agent.

If my wishes are unknown to my agent, I want my agent to make decisions regarding my mental health care that are consistent with what my agent in good faith believes to be in my best interests. My agent is also authorized to receive information regarding proposed mental health treatment and to receive, review and consent to disclosure of any medical records relating to that treatment.

This declaration allows me to state my wishes regarding mental health care treatment including medications, admission to and retention in a health care facility for mental health treatment and outpatient services.

This mental health care power of attorney or any portion of it may not be revoked and any designated agent may not be disqualified by me during times that I am found to be unable to give informed consent. However, at all other times I retain the right to revoke all or any portion of this mental health care power of attorney or to disqualify any agent designated by me in this document.

The following are my wishes regarding my mental health care treatment if I become incapable, as defined in section 36-3281, Arizona Revised Statutes:

I consent to the following mental health treatments:

_____

_____

_____

_____

By initialing here, I consent to giving my agent the power to admit me to an inpatient or partial psychiatric hospitalization program, please initial here: ____ (initial if you consent)

I do not consent to the following mental health treatments:

_____

_____

_____

_____

Additional information about my mental health care treatment needs (consider including mental or physical health history, dietary requirements, religious concerns, people to notify and any other matters that you feel are important):

_____

_____

_____

This mental health care power of attorney is made pursuant to title 36, chapter 32, article 6, Arizona Revised Statutes, and continues in effect for all who may rely on it except to those I have given notice of its revocation pursuant to section 36-3285, Arizona Revised Statutes.

_____

(signature of principal)

Address of agent_____

_____

Telephone number of agent_____

Address of backup agent_____

_____

Telephone number of backup agent_____

Affirmation of witnesses:

I affirm that the person signing this mental health care power of attorney:

1. Is personally known to me.

2. Signed or acknowledged by his or her signature on this declaration in my presence.

3. Appears to be of sound mind and not under duress, fraud or undue influence.

4. Is not related to me by blood, marriage or adoption.

5. Is not a person for whom I directly provide care as a professional.

6. Has not appointed me as an agent to make medical decisions on his or her behalf.

Witnessed by:

_____ (signature and date)

_____ (signature and date)

Acceptance of appointment as agent: (optional)

I accept this appointment and agree to serve as agent to make mental health treatment decisions for the principal. I understand that I must act consistently with the wishes of the person I represent, as expressed in this mental health care power of attorney, or if not expressed, as otherwise known by me. If I do not know the principal's wishes, I have a duty to act in what I in good faith believe to be that person's best interests. I understand that this document gives me the authority to make decisions about mental health treatment only while that person has been determined to be incapable as that term is defined in section 36-3281, Arizona Revised Statutes.

_____

(signature of agent)

_____

(printed name of agent)

36-3287. Surrogate; mental health care power of attorney

The provisions of this chapter that relate to the powers and duties of surrogates apply to a mental health care

36-3206. Enforcement or challenge of a directive or decision; judicial proceedings; automatic stays

A. An interested person may file a verified petition with the superior court to determine the validity or effect of a health care directive or the decision of a surrogate.

B. The petition shall include the following information:

1. The name and current location of the patient and any surrogate or guardian authorized to make decisions for the patient.

2. The name and address of any health care provider known by the petitioner to be providing health care to the principal.

3. If a health care directive exists, a description or a copy of the health care directive.

4. The judicial relief sought by the petitioner.

C. On the filing of the petition, the court shall enter a temporary order directing compliance with section 36-3203, subsection E. Notice of this order shall be provided by personal service on the surrogate, the patient, the health care providers immediately responsible for the patient's care and other persons the court requires to be notified.

D. The court shall review the petition, any other pleadings on file and any evidence offered by the petitioner to determine if it should order temporary orders without a further hearing. The court may enter a temporary order directing the provision or the withholding of specific medical treatment pending a further hearing if the court determines that there is reasonable cause to believe that health care decisions are being made by a surrogate or a health care provider that derogate the patient's wishes or, if the patient's wishes are not known, the patient's best interests.

E. The court shall schedule and conduct a hearing within five working days of the filing of a petition. Notice shall be provided by personal service on the surrogate, the patient, the health care providers immediately responsible for the patient's care, and other persons the court requires to be notified.

F. On the filing of the petition the court may:

1. Appoint an attorney for the patient if it appears that this is in the patient's best interests.

2. Appoint an investigator as provided under section 14-5308 or a physician, or both, to evaluate the patient and submit a written report to the court before the hearing.

3. Enter other temporary orders that the court determines are necessary and appropriate to protect the wishes or the best interests of the patient, including an order exercising the power of a guardian or appointing a temporary guardian as provided under section 14-5310.

G. A person filing a petition under this section is not required to post a bond unless the court determines that a bond is necessary to protect the interests of any party.

H. If a petition is filed to challenge the decision of a guardian to permanently withdraw the artificial administration of food and fluid from a patient who is in an irreversible coma or is in a persistent vegetative state that the patient's doctor believes is irreversible or incurable, there is a rebuttable presumption that a patient who does not have a valid living will, power of attorney or other health care directive has directed the patient's health care providers to provide the patient with food and fluid to a degree that is sufficient to sustain life, including, if necessary, through a medically invasive procedure, by way of the gastrointestinal tract or intravenously, and that that provision is in the patient's best interests.

I. The presumption pursuant to subsection H of this section may be rebutted only if either of the following applies:

1. In reasonable medical judgment any of the following applies:

(a) The provision of food or fluid is not medically possible.

(b) The provision of food or fluid would hasten death.

(c) Because of the medical condition of the patient, the patient would be incapable of digesting or absorbing the food or fluid so that its provision would not contribute to sustaining the patient's life or provide physical comfort to the patient.

2. The court finds both of the following by clear and convincing evidence:

(a) The patient is in an irreversible coma or is in a persistent vegetative state that is irreversible or incurable. Evidence that the patient is in an irreversible coma or is in a persistent vegetative state that is irreversible or incurable must be supported by either of the following:

(i) The opinion of an independent physician who is licensed pursuant to title 32, chapter 13 or 17 and who is a specialist in neurology. The petitioner, the patient or the patient's attorney may present additional evidence of the patient's medical condition that is supported by the opinion of a physician selected by that party.

(ii) If a specialist in neurology is not available, the opinion of an independent physician who is licensed pursuant to title 32, chapter 13 or 17 and who has examined the patient specifically to assess whether the patient is in an irreversible coma or a persistent vegetative state that is irreversible or incurable supported by a recommendation of the institutional bioethics committee of the health care facility.

(b) While competent the patient manifested the patient's intent that medically invasive life prolonging treatment, including the artificial administration of food or fluid, not be administered in the case of an irreversible coma or a persistent vegetative state that is irreversible or incurable.

J. On notice and a hearing, the court may enter appropriate orders to safeguard the wishes of the patient. If the court is unable to determine those wishes, the court may enter appropriate orders to safeguard the patient's best interest. These orders may include:

1. Appointing a surrogate if the procedural requirements of title 14, chapter 5, article 3 have been met.

2. Removing an agent or any other surrogate and appointing a successor.

3. Directing compliance with the terms of the patient's health care directive, including the provisional removal or withholding of treatment if the court finds that this conforms with the patient's wishes or, if the patient's wishes are not known, is in the patient's best interest.

4. Directing the transfer of the patient to a suitable facility or to the care of a health care provider who is willing to comply with the patient's wishes.

5. Assessing court costs and attorney fees against a party found to have proceeded in bad faith.

K. Notwithstanding a person's **incapacity,** the court may deny a petition to appoint a guardian for that person based on the existence of a valid and unrevoked health care directive.

L. A guardian appointed pursuant to this section is immune from civil and criminal liability to the same extent as any other surrogate pursuant to section 36-3203, subsection D.

M. A superior court order that authorizes a guardian to permanently withdraw food or fluid from a patient who is in an irreversible coma or in a persistent vegetative state that is irreversible or incurable is automatically stayed for five business days to allow a party, or that party's successor in interest in the event of the original party's death, to seek an expedited appeal with the court of appeals. A decision from the court of appeals is automatically stayed for five business days to allow a party, or that party's successor in interest in the event of the original party's death, to seek review by the supreme court. Food or fluid shall not be permanently withdrawn pending a decision on the merits of the case by the court of appeals or a decision on a petition by the supreme court.

MENTAL HEALTH CODE (EXCERPT)
Act 258 of 1974

330.1468 Treatment; disposition; order of assisted outpatient treatment.

Sec. 468. (1) For a petition filed under section 434, if the court finds that an individual is not a person requiring treatment, the court shall enter a finding to that effect and, if the person has been hospitalized before the hearing, shall order that the person be discharged immediately.

(2) For a petition filed under section 434, if an individual is found to be a person requiring treatment, the court shall do 1 of the following:

(a) Order the individual hospitalized in a hospital recommended by the community mental health services program or other entity as designated by the department.

(b) Order the individual hospitalized in a private or veterans administration hospital at the request of the individual or his or her family, if private or federal funds are to be utilized and if the hospital agrees. If the individual is hospitalized in a private or Veterans Administration hospital under this subdivision, any financial obligation for the hospitalization shall be satisfied from funding sources other than the community mental health services program, the department, or other state or county funding.

(c) Order the individual to undergo a program of treatment that is an alternative to hospitalization and that is recommended by the community mental health services program or other entity as designated by the department.

(d) Order the individual to undergo a program of combined hospitalization and alternative treatment or hospitalization and assisted outpatient treatment, as recommended by the community mental health services program or other entity as designated by the department.

(e) Order the individual to receive assisted outpatient treatment through a community mental health services program, or other entity as designated by the department, capable of providing the necessary treatment and services to assist the individual to live and function in the community as specified in the order. The court may include case management services and 1 or more of the following:

(*i*) Medication.

(*ii*) Blood or urinalysis tests to determine compliance with or effectiveness of prescribed medication.

(*iii*) Individual or group therapy, or both.

(*iv*) Day or partial day programs.

(*v*) Educational or vocational training.

(*vi*) Supervised living.

(*vii*) Assisted community treatment team services.

(*viii*) Substance use disorder treatment.

(*ix*) Substance use disorder testing for individuals with a history of alcohol or substance use and for whom that testing is necessary to assist the court in ordering treatment designed to prevent deterioration. A court order for substance use testing is subject to review once every 180 days.

(*x*) Any other services prescribed to treat the individual's mental illness and either to assist the individual in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.

(3) In developing an assisted outpatient treatment order, the court shall consider any preference or medication experience reported by the individual or his or her designated representative, whether or not the individual has an existing individual plan of services under section 712, and any direction included in a durable power of attorney or advance directive that exists.

(4) Before an order of assisted outpatient treatment expires, if the individual has not previously designated a patient advocate or executed a durable power of attorney or an advance directive, the responsible community mental health services program or other entity as designated by the department shall ascertain whether the individual desires to establish a durable power of attorney or an advance directive. If so, the community mental health services program or other entity as designated by the department shall direct the individual to the appropriate community resource for assistance in developing a durable power of attorney or an advance directive.

(5) If an order for assisted outpatient treatment conflicts with the provisions of an existing durable power of attorney, advance directive, or individual plan of services developed under section 712, the assisted outpatient treatment order shall be reviewed for possible adjustment by a psychiatrist not previously involved with developing the assisted outpatient treatment order. If an order for assisted outpatient treatment conflicts with the provisions of an existing advance directive, durable power of attorney, or individual plan of services developed under section 712, the court shall state the court's findings on the record or in writing if the court takes the matter under advisement, including the reason for the conflict.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1980, Act 138, Imd. Eff. May 29, 1980;—Am. 1982, Act 178, Imd. Eff. June 14, 1982;—Am. 1986, Act 117, Eff. Mar. 31, 1987;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017.