Fair Justice Task Force

Mental Health and Criminal Justice Subcommittee

November 13, 2017

Fair Justice Subcommittee on Mental Health and the Criminal Justice System

Monday, November 13, 2017; 10:00 a.m. – 2:30 p.m.
Conference Room 101
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007
Click Here for Subcommittee Web Page

Time*	Agenda Items	Presenter
10:00 a.m.	**Welcome**	***Kent Batty**, Chair*
10:05 a.m. Page 5	**Approval of Minutes from October 24, 2017 meeting** □ Formal Action/Request	***Kent Batty***
10:10 a.m.	**How the justice system can better serve persons with mental illness: Perspectives on Court Ordered Treatment and the Incarceration of Persons with Mental Illness** 1. ***Patti Tobias***, Principal Consultant, National Center for State Courts 2. ***Judge Christopher Staring***, Court of Appeals, Division II 3. ***Commissioner Barbara Spencer***, Maricopa County Superior Court 4. ***Sgt. Cory Runge***, Flagstaff Police Dept., CIT Supervisor	
	********** **Lunch ($5.00)** **********	
12:15 p.m.	**Items for Status Report to the Fair Justice Task Force**	***Kent Batty***
Pages 13-19	1. Draft Administrative Order for Presiding Judges with policies and procedures. □ Formal Action/Request	
Page 20	2. Proposed changes to Rule 11.5 to give LJCs jurisdiction to order competency restoration treatment if the defendant is found incompetent but restorable. □ Formal Action/Request	
	3. Recommendation that the Sequential Intercept Model (SIM) be considered a best practice in local jurisdictions and that judges and staff be encouraged to receive training on the SIM and other tools to recognize mental illness in persons who come to court. □ Formal Action/Request	

**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.*

4. Recommendation that the Fair Justice Task Force create a workgroup to develop options and alternatives for the development of a centralized repository for courts holding Rule 11 proceedings to be able to access prior Rule 11 and Title 36 records from other courts.
   □ Formal Action/Request

5. Recommendation that the Fair Justice Task Force find that it is a best practice for courts to identify a centralized location where defendants may go for Rule 11 medical evaluations – whether that be in the courthouse itself or in another location. A court should identify a location that is easily accessible by public transportation.
   □ Formal Action/Request

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6. Recommendation that the Fair Justice Task Force direct the AOC take steps to develop a method for LJCs to report the outcomes of competency hearings as required by ARS § 13-609.
   □ Formal Action/Request

1:15 p.m. **Roundtable Discussion of Issues Raised in Past Meetings** ***All***

1. Encouragement of more inpatient and outpatient treatment options
2. Review of pre-trial risk assessment for mentally ill defendants
3. Discussion of a diminished capacity standard

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4. Discussion of the definition and scope of ARS §36-501(24) "mental disorder"

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5. Other Issues

2:25 **Good of the Order/Call to the Public** ***Kent Batty***
Adjournment

Next Meeting
December 12, 2017
Conference Room 101
Arizona State Courts Building

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

DRAFT MINUTES
Tuesday, October 24, 2017
Conference Room 345, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Kent Batty, Chair, Mary Lou Brncik Jim Dunn, Vicki Hill, Josephine Jones, Kathleen Mayer, Judge Joe Mikitish, Dr. Carol Olson, Nancy Rodriguez, Dr. Michael Schafer, Judge Susan Shetter, Commissioner Barbara Spencer, Lisa Surhio, Paul Thomas, Juli Warzynski,

Telephonic: Dr. Tommy Begay

Absent/Excused: Susan Alameda, Detective Kelsey Commisso, Ms. India Davis, Dr. Dawn Noggle, Mary Ellen Sheppard, Detective Sabrina Taylor, Danna Whiting

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

I. Welcome, Opening Remarks, and Approval of Minutes

The October 24, 2017 meeting of the Fair Justice Subcommittee on Mental Health and the Criminal Justice System was called to order at 10:05 a.m. by Kent Batty, chairman. The chairman thanked the members for their attendance and asked each one to introduce themselves.

The draft minutes of the September 12, 2017 meeting were presented for approval. The members proposed a correction to a typographical error and also proposed to amend the minutes to note that at the September 12, 2017 meeting, the Subcommittee discussed whether it should consider changes to Arizona statutes to consider a person's mental disorder at the time the crime was committed. With consensus on the correction and amendment and no other proposed changes to the minutes, the chair declared their approval as amended.

Mr. Batty shared with the members that he, and others present including Ms. Jerich and Mr. Jacobson, attended the Court Leadership Conference held in Flagstaff earlier this month. He noted that the conference devoted a significant amount of time to what the justice system can do to address mental health issues in our society. He noted that the author of a soon-to-be-released Conference of State Court Administrators (COSCA) white paper, Milton Mack (a former probate judge, now Michigan State Court Administrator), spoke to the conferees that there is a public safety crisis because the justice system fails to timely identify and address mental health

treatment needs of persons who come into the court system. The result is that, without meaningful treatment, many mentally ill persons will cycle through the criminal justice system over and over again, turning more jails and prisons into the primary mental health treatment facilities for these individuals. Mr. Mack advocated for states to consider changing the standard for civil court-ordered mental health treatment to a "lack of capacity" standard that is similar to the standard for the appointment of a guardian. Other speakers, including Miami-Dade County Florida Judge Steven Leifman, National Center for State Courts Consultant Patti Tobias, and Flagstaff Police Sergeant Cory Runge provided valuable insight on the problems the mentally ill and their families face when meaningful community-based behavioral health treatment is not provided to individuals who need treatment.

II. Legislative Update

Amy Love, Deputy Director for Government Affairs for the Administrative Office of the Courts (AOC), provided the Subcommittee a review of legislation that was developed by the Fair Justice Task Force. Ms. Love noted that last year, the legislature passed SB1157 to give limited jurisdiction courts jurisdiction over criminal competency proceedings. However, other Fair Justice Task Force legislation was not enacted. Amy then provided an overview of those bills and stated the Supreme Court will again advocate for their passage at the upcoming legislative session.

III. Report from the Rule 11 Workgroup

Draft Administrative Order

Don Jacobson, AOC Senior Special Projects Consultant and chair of the Rule 11 Workgroup provided a report on the Workgroup's October 16, 2017 meeting. The Workgroup developed a draft Administrative Order (AO) that is to be a considered as a template for presiding judges to use if they authorize limited jurisdiction courts (LJCs) in their counties to conduct Rule 11 criminal competency proceedings. The AO provides direction to LJCs on what they should do to ensure the proceedings comply with court rule and state law. Additionally, the Workgroup developed a policies and procedures document that is designed to accompany the AO. This document also provides policies and procedures the courts need to consider when establishing a Rule 11 court.

The members discussed the need for Rule 11 courts to be able to access records from the other jurisdictions that conduct Rule 11 or Title 36 court-ordered mental health treatment proceedings. At present, there is no ability for courts to electronically access these records. As more LJCs begin to conduct Rule 11 proceedings, the need for a centralized repository for records will become more acute. Members were informed that Maricopa County Superior Court is in the process of developing a file-sharing system to address this issue. In addition to accessing records from other courts, the members also discussed that courts should strive for consistency in how each conducts Rule 11 proceedings. For example, if courts issued similarly-formatted minute entries, then it would be easier for prosecutors, defense counsel, and judges to review case

documents.

The committee members provided changes to the language of the AO and the policies and procedures document. Revised documents will be brought back to the Subcommittee for formal action at November's meeting.

Value of Holding Rule 11 proceedings at the local level

Members discussed how the Mesa and Glendale Rule 11 pilot programs illustrated the value of having LJCs conduct Rule 11 competency proceedings. It was suggested that holding Rule 11 matters locally yields several benefits for the defendant and for the municipality. Both Mesa and Glendale reported speedier resolutions of Rule 11 motions for the defendant and reduced costs for the municipality. The members noted that for many misdemeanor offenders, it may be less burdensome for them to appear at the local courthouse than to travel to the county's superior court. Information presented by the Mesa and Glendale pilot programs showed that failure to appear rates were dramatically lowered, in large part due to conducting medical evaluations at the local courthouse or near the courthouse. Discussion also pointed out that these benefits may be further amplified if a municipality conducts Rule 11 hearings and has a mental health court. If a defendant is found competent but has general mental health issues, a mental health court may be helpful in combining mental health care treatment with the adjudication of the underlying criminal offense.

The Subcommittee discussed the need for judges who conduct Rule 11 proceedings to have adequate training.

Clarification of Rule 11.5 of the Arizona Rules of Criminal Procedure

Members reviewed the changes to Rule 11 that were approved by Supreme Court Order No. R-7-002 and that go into effect January 1, 2018. Regarding Rule 11.5 "Hearing and Orders," members expressed concern that this provision may be unclear. Members discussed how Rule 11.5(b)(3) could be read to give an LJC jurisdiction to begin civil commitment proceedings under ARS §§ 36-501 et seq. or to order the appointment of a guardian under ARS §§ 14-5301 et seq. Members opined that it was probably the intent that only the superior court have the ability to initiate Title 36 civil commitment proceedings or to appoint a guardian. Therefore, the members suggested that Rule 11.5 be clarified.

In addition to clarifying changes, the members expressed a desire to consider an additional substantive changes to Rule 11.5. This change would permit an LJC to retain jurisdiction over a defendant who has been found competent but restorable so that the LJC may order competency restoration treatment. Members noted that municipalities have always been responsible to pay the costs for Rule 11 proceedings, even when LJCs transferred misdemeanor cases to the superior court. Therefore, since the local jurisdictions have been responsible for the costs for mental competency evaluations and any subsequent restoration to competency treatment, the members expressed support for the local court to be able to retain jurisdiction over restoration

proceedings.

IV. Review of the Sequential Intercept Model

Ms. Shelly Curran, Director of Crisis, Cultural, Prevention and Court Programs with Mercy Maricopa, talked to the Subcommittee on the elements of the Sequential Intercept Model (SIM). Ms. Curran reviewed two of the five interception points where mental health and criminal justice intersect.

Ms. Curran discussed the implementation of SIM in Maricopa County. SIM was developed by the Substance Abuse and Mental Health Services Administration's (SAMHSA) GAINS Center for Behavioral Health and Justice Transformation. Through use of the SIM, if at each of the intercepts there is an appropriate intervention that can take place, then a person will not have to penetrate further into the criminal justice system. Moreover, if there are specific interventions to meet the needs of a person with mental health issues who is going through the criminal justice system, then there is an opportunity to reduce the recidivism of that person as well.

Ms. Curran urged the Subcommittee to take the opportunity to identify all those areas where the courts may make a difference on a person's path through the criminal justice system.

Intercept 1: Law Enforcement. Intercept 1 is the first opportunity for the criminal justice system to encounter a person with mental illness. This usually occurs when a call comes into police dispatch or when law enforcement on patrol notices someone acting erratically.

Ms. Curran stressed the need for 9-1-1 operators and law enforcement to be trained to screen for mental health issues. Many law enforcement officers go through Crises Intervention Training (CIT). In fact, the Arizona Peace Officer Standards Training (AZ POST) requires new officers to take at least four (4) hours of CIT training in order to have a basic understanding of how to identify a mental health issue when they go out to a scene. Ms. Curran noted that with adequate training, a CIT-trained 9-1-1 operator could dispatch a CIT police officer to go out on calls where there is an identified mental health crisis.

Ms. Curran noted that with proper training and resources, police can divert persons for appropriate treatment instead of taking a person to jail. She noted that last year in Maricopa County, police conducted 16,000 drop offs to urgent psychiatric centers. Only about 6,000 these drop offs were for a court ordered evaluation. The remaining 10,000 drop offs were when police officers, on their own initiative, identified the person had a mental health issue. The officer than filed an application for emergency admission or the person agreed to voluntarily go with the officer to the urgent psychiatric care facility. Ms. Curran noted that this underscored the fact that even if all police are highly trained in CIT, the training is of little use if the community lacks sufficient resources to provide treatment. Without adequate resources, police have no other option but to take a person to jail.

Ms. Curran noted that Maricopa County is fortunate to have Crises Mobile Teams (CMTs). These CMTs go out to crime scenes and are called out about 300 times per month. CMTs allow the officer to leave the scene and have the CMT take over to stabilize the person or take them to

the urgent psychiatric care facility.

Ms. Curran emphasized that interception at Intercept 1 is a pre-booking diversion opportunity to get persons with mental health treatment instead of just being placed in jail. It, however, does not mean the person will not be charged, but it does give an option other than jail. Ms. Curran stressed that it is counterproductive for a person to be sent to jail simply because the officer or the judge may believe that a jail is a place where the person will get treatment and be safe.

Intercept 2: Initial Appearance/Booking. The second intercept is when a person is brought into the criminal justice system. This is typically when a person is booked into jail or the person has an initial appearance hearing. In Maricopa county jail, there were over 100,000 bookings into jail last year and on average 7% of the persons booked are SMI.

Ms. Curran reported to the Subcommittee that in Maricopa County and in other counties, there is a direct, bi-directional data link between the jail and the regional behavioral health authority (RBHA). Through this data link, the RBHA shares with the jail any medical and treatment information it has for the person who is being booked into the jail. Ms. Curran noted that providing the jail this information is critical to make sure people receive appropriate treatment while in jail. This helps to prevent further mental health deterioration during incarceration.

Ms. Curran noted that Subcommittee member, Dr. Schafer helped develop the data sharing link in Maricopa and Pima Counties.

At Intercept 2, the courts also get involved in the identification of persons with mental health needs. RBHAs share information with the courts if a person has a serious mental illness. At initial appearance, adult probation will have this information when a pretrial risk assessment is conducted. Ms. Curran mentioned after initial appearance but before the preliminary hearing, the Maricopa RHBA provides the court, defense counsel, and the prosecutor a report that details any defendant's mental health information it has to share. The report details what benefits a defendant has and how treatment may be connected with that defendant.

Ms. Curran stressed that it is important for judges in Maricopa County who conduct initial appearance hearings to be aware that the judge has an alternative other than jail to get treatment to a defendant who has mental health care needs. Criminal Justice Engagement teams (CJETs) are transport services from Southwest Behavioral Health. CJETs will pick up any person a judge will release in to their care. With the defendant's consent, the CJET will provide up to three months of treatment. Ms. Curran mentioned that Judge Finn, Presiding Judge of the Glendale City Court, has begun utilizing CJET services.

Ms. Curran discussed the concept of "mercy bonds." She said a "mercy bond" is a bond ordered by a court even if the pretrial risk assessment tool shows that defendant has a low risk of flight or is not considered to be dangerous. She said that while a judge may be well intentioned, "mercy bonds" are issued based on the incorrect assumption that the person will receive treatment in jail and will be safe. Ms. Curran said that through CMTs and CJETs, there are treatment options available that are a viable alternative to pre-adjudication jail.

Lastly, Ms. Curran also discussed release planning. The RHBA will develop a "release plan" for defendants who have been in custody for over 30 days and who have an identified release date.

The chairman thanked Ms. Curran for her presentation.

V. Recommendations relating to the Subcommittee's charges.

Dave Byers, Administrative Director of the AOC, addressed the Subcommittee. He thanked the members for their willingness to serve on the Subcommittee and to address the very important issues surrounding the mental health and the criminal justice system. Mr. Byers noted that at the recent Court Leadership Conference, speakers raised the question whether the state's standard for ordering mental health treatment should be changed. He said that several speakers mentioned that the court system should not have to wait for a criminal justice crisis before a judge can order treatment. He relayed that that often people with mental health care needs may find themselves in both the criminal and civil justice system.

Mr. Byers informed the Subcommittee that the Conference of State Court Administrators (COSCA) is preparing to issue a white paper that will include a call for a change in the standard for ordering civil treatment. Based on an interest in the legislature to tackle mental health issues in the upcoming legislative session, the Subcommittee's work is very timely to consider if the standard should change. He said he will be interested in learning of the Subcommittee's discussion about the possibility of change the standard for Title 36 court-ordered treatment in Arizona.

The chairman informed the Subcommittee that the Fair Justice Task Force will meet on November 27, 2017. The Subcommittee will provide a status report at that meeting. This report will inform the Task Force on the Subcommittee's work, to date, on its four (4) charges.

Charge #1: Identify rules and procedures to implement SB1157

Mr. Batty noted that the Administrative Order and the corresponding policies and procedures, as developed by the Rule 11 Workgroup, had already been covered earlier in the meeting.

The Subcommittee next discussed the evolution of Rule 11. After the passage of SB1157 which amended ARS § 13-4503 to give LJCs jurisdiction over competency proceedings, the Supreme Court amended Rule 11 of the Arizona Rules of Criminal Procedure to reflect the statutory changes. That change went into effect on August 9, 2017 on an emergency basis. Subsequently, the Criminal Rules Task Force restyled the entire criminal rules and incorporated the substantive changes to Rule 11. Those Rules are effective January 1, 2018. The Subcommittee noted that the emergency Rule 11.5 explicitly stated only the superior court had the authority to order Title 36 treatment or to appoint a guardian for persons found incompetent but not restorable. However, the Subcommittee members found that the language of the final Rule was not as clear as that of the emergency Rule. The members found merit in proposing the Rule be rewritten to clearly state that LJCs may not order Title 36 treatment or appoint a guardian for persons found incompetent and not restorable

Additionally, the members discussed whether the LJCs, as a matter of public policy, should be able to order restoration treatment for persons found to be incompetent but restorable. The members indicated a desire to redraft the Rule to propose a substantive change to allow LJCs to retain jurisdiction and order restoration. The Subcommittee members noted that nothing in the language of SB1157 required competency proceedings be transferred to the superior court. Members further opined that LJCs should be allowed to order restoration because the defendant may benefit from a continuity of care if restoration treatment options are available locally. They noted that the policy reasons that supported LJCs conducting Rule 11 proceedings arguably support LJCs to have jurisdiction over restoration treatment. Members said that since Glendale and Mesa judges were acting as superior court judges pro tempore during the Rule 11 pilot program, these municipal court judges had authority to decide whether to dismiss the charges or to order competency restoration treatment. Furthermore, as noted earlier, since the municipality pays for the restoration, then there is an argument that the LJC should have the option to make the decision whether to incur those costs. The Subcommittee discussed redrafting Rule 11.5 to make clarifying changes, but to also provide the presiding judge of a county the flexibility to allow the LJC to order restoration if the presiding judge so chooses.

The Subcommittee directed Jennifer Greene, AOC staff attorney, to draft a proposed revision to Rule 11.5 and bring it back to the Subcommittee at the November meeting.

Next, Mr. Batty asked the Subcommittee to consider the benefits of having Rule 11 medical evaluations conducted in the Rule 11 courthouse and whether the Subcommittee should recommend this be considered as a best practice. Members noted that defendants are challenged to travel to doctors that may be far from their residences. Members asserted that a defendant is far more likely to show up for an evaluation if it's convenient for them to do so. A missed evaluation is a cost to the municipality or county and could potentially end up in increased costs for incarceration. Members noted that it makes sense to provide the courthouse or a location that is easily accessible by public transit as the centralized location for medical evaluations. Members noted that by making the courthouse available for Rule 11 evaluations, it is an opportunity for the courts to bring services to the people instead of making the people find a way to get to the services. By scheduling medical evaluations at the courthouse, the justice system has the opportunity to make the services easier to access.

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

The chair asked the members for their input whether the statutory standards for Title 36 court ordered mental health treatment should be amended. He informed the members they had two separate handouts in front of them. The first handout is an excerpt from ARS § 36-501 that provides the current statutory definitions for "danger to self," "danger to others," "persistent and acute disability," "grave disability" and "mental disorder." A second handout is a legislative proposal that changes the standard for a court to order treatment in ARS § 36-540. It eliminates the definition of "grave disability" and "persistent and acute disability" and replaces these terms with a new defined term called "lacks capacity to make an informed decision." The proposal also makes changes to a guardianship statute. In summary, this proposal changes the standard

for court ordered treatment to mirror closely the standard for a court to appoint a guardian.

Mr. Batty shared that speakers at the Court Leadership Conference pointed out that Arizona's standard requires a court to look at a person's future conduct – that there is a "substantial probability of causing a person to suffer." Additionally, the chairman noted that at the conference, the proposal was made that mental and physical illnesses should be treated similarly.

Members reviewed the materials and commented. Members concurred that the persistent and acute disability standard is already a broad standard. Some noted that the current "persistent and acute disability" standard is essentially a lack of capacity to give informed consent standard after being told the advantages and disadvantages of treatment and of the alternatives to treatment that are available. Some members expressed concern about this proposal to change the standard for court-ordered treatment. Members stated there is controversy in the medical community over certain mental health diagnoses. Members noted that the civil commitment statutes require a person undergo treatment that they don't want or to be placed in a facility where they don't want to be.

The Subcommittee discussed that there are issues beyond the treatment standard that prevent assistance from getting to those who truly need it. Additionally, some members disputed the idea that the court should consider mental illness the same as physical illness. It was noted that a court cannot order a person to undergo unwanted medical treatment even if it's in the person's best interest. Other members noted that the decades long class action lawsuit (Arnold v. Sarn) has resulted in a good assisted outpatient treatment standard.

Members noted a lack of long term inpatient resources as a more pressing issue that the mental health care community faces. Members discussed the need for persons to spend more time in inpatient treatment before moving to outpatient treatment. Members also shared that the maximum census for Maricopa of 55 beds at the Arizona State Hospital has not changed since the 1980s. Finally, members expressed concern with the quality of outpatient treatment options available to persons after they are released from inpatient care.

Some members expressed a desire for the Subcommittee to take up at a future meeting the applicability of the definition of "mental disorder" in Title 36. Currently, a person who is psychotic due to a traumatic brain injury is not considered SMI and will not be eligible to receive court ordered treatment. At a future meeting, the members will address the definition of mental disorder and whether it should be amended to include people with brain injuries who also have behavioral symptoms.

The chairman found there was no consensus among the member to change the standard as proposed.

The Subcommittee ran out of time to discuss recommendations for Charges #3 and #4.

The meeting adjourned at approximately 2:10 p.m.

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 justice court to exercise jurisdiction over competency hearings in misdemeanor cases that arise out of the municipal court or justice 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 [*name of*] 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, and distribution of minute entries and orders, and for the handling of evaluations and medical reports as required by law and court rule.
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 for firearm background checks as required by state and federal law.
6. Pay any costs associated with holding Rule 11 competency proceedings as dictated by applicable statute, rule, or local practice at their court.

IT IS FURTHER ORDERED:

7. 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 Rule 11 evaluations and ensure that those records are to be treated as confidential records by all who have access to them, including attorneys. 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 proceedings held in their court.
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 proceeding, including past Rule 11 evaluations in the Superior Court.
9. [*Name of court(s)*] shall provide to a requesting court access to any records necessary to conduct Rule 11 proceedings in that court if the requesting court is authorized to conduct Rule 11 proceedings.

IT IS FURTHER ORDERED if [*insert name of court(s)*] wishes to refer competency hearings to another court authorized to conduct Rule 11 hearings pursuant to A.R.S. § 13-4503(F), [*insert name of court(s)*] shall submit to the Presiding Judge for approval 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 is 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 making 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.

Proposed Recommendation for Amendments to Rule 11.5
(amendments shown are to the re-styled rule in effect January 1, 2018)

Rule 11.5 Hearing and Orders

(a) Hearing. No later than 30 days after the experts appointed under Rule 11.3 submit their reports to the court, the court must hold a hearing to determine the defendant's competence. The court may grant additional time for good cause. The defendant and the State may introduce other evidence about the defendant's mental condition. If the defendant and the State stipulate in writing or on the record, the court may determine competence based solely on the experts' reports.

(b) Orders.

(1) ***If Competent.*** If the court finds that the defendant is competent, the court must direct that proceedings continue without delay.

(2) ***If Incompetent but Restorable***

(A) *Generally.* ~~If a limited jurisdiction court determines that a defendant is incompetent, it must either dismiss the charges on the State's motion, or transfer the case to the superior court for further proceedings. Upon transfer from a limited jurisdiction court, or if a superior court determines that the defendant is incompetent, it must order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within 15 months.~~

(i) if a superior court determines that the defendant is incompetent, it must order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within 15 months.

(ii) if a limited jurisdiction court determines that the defendant is incompetent, it must either dismiss the charges on the State's motion, transfer the case to the superior court for further proceedings, or, if authorized by the presiding judge of the superior court, order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within 15 months.

(B) *Extended Treatment.* The court may extend treatment for 6 months beyond the 15-month limit if it finds that the defendant is progressing toward competence.

(C) *Involuntary Treatment*. The court must determine whether the defendant will be subject to treatment without consent.

(D) *Treatment Order.* A treatment order must specify:

(i) the place where treatment will occur;

(ii) whether the treatment is inpatient or outpatient under A.R.S. § 13-4512(A);

(iii) the means of transportation to the treatment site;

(iv)the length of treatment;

(v) the means of transporting the defendant after treatment; and

(vi) that the court is to be notified if the defendant regains competence before the expiration of the treatment order.

(3) ***If Incompetent and Not Restorable.***

(A) If a limited jurisdiction court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent with 21 months, the limited jurisdiction court will refer the matter to the superior court.

(B) If the superior court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months, the court may on request of the examined defendant or the State do one or more of the following:

(i) Remand the defendant to an evaluating agency approved and licensed under Title 36 to begin civil commitment proceedings under A.R.S. §§ 36-501 et seq.;

(ii) Order appointment of a guardian under A.R.S. §§ 14-5301 et seq.; or

(iii) Release the defendant from custody and dismiss the charges without prejudice.

(4) ***Additional Actions.*** If the court enters an order under ~~(b)(3)(A) or (b)(3)(B)~~ (b)(3)(B)(i) or (b)(3)(B)(ii), it may retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518.

(c) Restoration to Competency: Reports About Treatment [no changes]

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.

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.

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

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

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

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

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.

MICHELE REAGAN
Secretary of State
State of Arizona

January 5, 2015

Greetings from Secretary of State Michele Reagan:

Thank you for sending your health care directive to the Arizona Health Care Directive Registry for safe and confidential storage. And congratulations on giving your family and loved ones a great gift by planning for your future health care in advance. There are a few items that are enclosed with this letter.

If this is a new registration, your advance directive has now been added to the registry.

- Review the cards and Verification form that is enclosed for accuracy.
- If your personal information is correct, mark the "no corrections required" box on the Verification form. If corrections* are needed mark the "information is not correct" and specify the correction. Sign and return this form.
- Review your enclosed copy of your health care directive. If corrections are needed, you must complete a new Registration Agreement form and attach a corrected copy of the directive.

If you are updating your registration, your information has been changed in the registry.

- Unless you requested a replacement card, you will continue to use the previous card mailed
- Review the Verification form that is enclosed for accuracy.
- If your personal information is correct, mark the "no corrections required" box on the Verification form. If corrections* are needed mark the "information is not correct" and specify the correction. Sign and return this form.
- If you were updating your directive, review your enclosed copy of your health care directive. If corrections are needed, you must complete a new Registration Agreement form and attach a corrected copy of the directive.

Please make sure that the verification form is returned to our office. Until the verification card is filed with us, your card will not work when you try to log-in online. If you have questions about this process, please contact us at (602) 542-6187.

*Please note that only changes to your Registration Agreement are to be indicated on the verification form. If you have changes to your health care directive you must submit an entirely new health care directive that includes the desired changes. Submitting only the page that contains the desired changes is not valid. If you are sending a new health care directive please remember to also send a new Registration Agreement and to check the box marked "Replace a health care directive(s) now in the Registry with a new one."

Best Wishes,

Michele Reagan

Michele Reagan
Secretary of State

1700 W. Washington Street, Fl. 7
Phoenix, Arizona 85007-2808
Telephone (602) 542-8683 Fax (602) 542-6172
www.azsos.gov

MICHELE REAGAN, SECRETARY OF STATE

Your Guide to filing
Advance Directives

Secretary of State

SERVICES

Our staff is available 8 a.m. to 5 p.m. Monday through Friday except state holidays to answer questions about filing your advance directive with our office. Call (602) 542-6187.

Instructions on how to file and forms are included with this information.

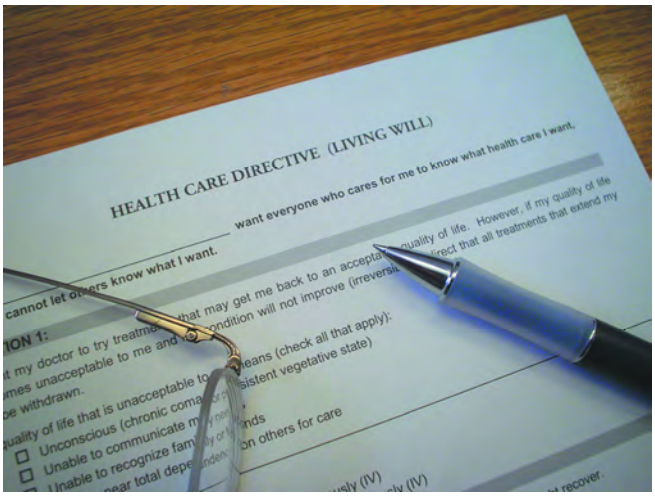
We cannot assist you in the preparation of an advance directive, this can be done on your own by:
- accessing the samples in Arizona law;
- by contacting organizations that specialize in advance directives; or
- by having an attorney prepare the document for you.

Arizonans Can File Advance Directives

Arizonans can file their health care directives in a secure and confidential Advance Directive Registry at the Arizona Secretary of State's Office.

In order to file an advance directive you first need to prepare a directive if you haven't already done so.

See page 2 on preparation and filing requirements.



Prepare an advance directive if you do not have one. Samples are provided in Arizona law, or contact an attorney to help you prepare one.

The Advance Directive Registry is Unique

Anytime, Anyplace, and Always Available

In order to honor an advance directive, your agent, physician, hospital or nursing home must be aware of it and what it says.

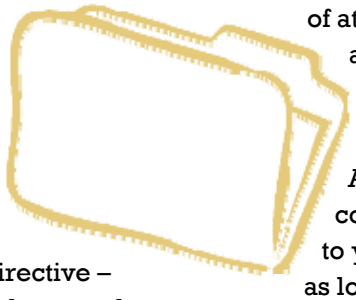
The Arizona Advance Directive Registry is a place to electronically store a copy of your advance directive so it will be available where and when it is needed 24/7. Access to our central database via computer helps expedite patient's health requests.

Your directive is available day or night — peace of mind for your family, friends and loved ones.

The Arizona Advance Directive Registry also empowers you and lets you decide who will be able to review your advance directive.

The Secretary of State's Registry is maintained and operated by the Secretary of State's Office under Arizona law.

About Our Service ★ File Your Directive, Access Your Directive



The Arizona Advance Directive Registry is more than just a place to store your advance directive – it is a virtual file cabinet that holds your advance directive – so that it is available when needed.

A Free Service at no Cost to You

There is no fee to store an advance directive in the Registry. Once registered you will receive a Registry card with an identification number and a password.

You are in Control

The best part about the Registry is that *you* decide who has access to your health care directive.

You can share the password with your health care (medical) power of attorney, designated agent, or a close family member or friend, your doctor or clinic.

Anyone in any state or country can have access to your advance directive as long as they have access to the Internet.

In the event of an emergency the Registry card can be kept in a wallet to let your wishes be known if you are unable to communicate to a doctor or health care provider.

Take Charge of Your Decisions

You can always change your mind and change your advance directive at any time.

You just need to tell your doctor or the medical team taking care of you.

As long as you can speak for yourself, you are in charge of your decisions.

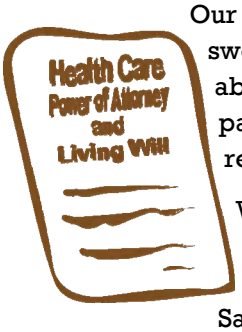
If you wish to change your advance directive simply complete a new one and make sure it is dated.

The advance directive with the most recent date is the one that will be followed.

Remember to send the new advance directive to update the Registry as soon as you can, so that it can replace the old one on file. See the instructions on page 3 on how to re-file with us.

Get Started ★ Prepare an Advance Directive

Choose and Prepare an Advance Directive to File



Our office cannot answer legal questions about how to prepare advance directives.

We are merely the filing office for the Registry. Samples of directives are provided in Arizona law (see gray box to the right).

If you do not feel comfortable in preparing an advance directive by yourself we encourage you to contact an attorney or one of the many organizations that provide this type of service.

Types of Directives that Can Be Submitted For Registry Inclusion

The advance directives defined in Arizona law are included in the Registry as they have legal status.

Only directives that concern your future health care and health care choices are included in the Registry.

Documents Ineligible for Inclusion in the Advance Directive Registry

Financial documents such as Last Will & Testaments, or Living Trusts are ineligible for submission into the Registry.

Arizona State Law Defines Advance Directives

Directives Include:

- Health Care (Medical) Power of Attorney A.R.S. § 36-3224
- Mental Health Care Power of Attorney A.R.S. § 36-3286
- Living Will A.R.S. § 36-3262

Sample of these directives are in the referenced statutes above and can be found online at www.azleg.gov.

Pre-Hospital Medical Care Directives, also known as the Orange form or Orange card, are also ineligible.

Get Started ★ File Your Advance Directive in the Registry

Instructions for the SOS Registration Agreement

Read the instructions on the Registration Agreement included with this guide and fill in all the blank spaces on both sides. Sign and date it.

If you have any questions about the registration of your advance directive, call Business Services at (602) 542-6187; or Toll Free at (800) 458-5842.

Submit the Form and Directive to the Office for Processing

Attach a *copy* of your advance directive to your completed Registration Agreement.

The copy of your advance directive must be legible and clear. **Do not send your original advance directive forms.**

Submit in person or by mail to:
Arizona Advance
Directive Registry
Arizona Secretary of State
1700 W. Washington Street, 7th Fl.
Phoenix, AZ 85007

The office does not accept electronic filings of these documents.

Our Checks and Balance System

Once your advance directive is processed, you will be sent the Registry wallet card and password. You will then be asked to verify your file for accuracy.

It only becomes activated upon notification from you that the information filed is accurate.

When the printed record of the registration is returned by mail, review it.

Check the appropriate box marking either "no corrections required" or "the information is not correct."

Sign the form and return it to the Secretary of State's Office.

Registration and Activation of Your Directive

The Secretary of State's Office will activate your registration when a verification form marked "no corrections required" is signed and returned.

Your Registry becomes active upon receipt of verification form indicating no corrections required.

Receipt of the Registry Wallet Card

Keep the wallet card with your file number and password handy.

As stated on page 2, trust your password only to close family members, friends and physicians.

If you designate someone as your agent in an advance directive on file at the Secretary of State make sure to give them a copy of the information provided on your Registry wallet card.

Also provide the information on how to access your directive included below.

Updating an Advance Directive

The process is the same if you are changing an advance directive already on file.

Simply fill out a new two-page Registration Agreement and send the new directive to us.

How to Access Your Directive in the Registry

Go to www.azsos.gov
Click on the
"Advance
Directives Link"

Click on
"View Your Advance Directive"

You will be re-directed to the log-in page. Use your User ID and Password on your Registry Wallet Card.

A "Welcome" screen appears. On this page you can view your directive and view your contact information. When done, log out.

How secure is secure?
This Web page is encrypted. Information exchanged with any address beginning with https is encrypted using SSL before transmission.

ARIZONA SECRETARY OF STATE'S OFFICE

ARIZONA ADVANCE DIRECTIVE REGISTRY
Office of the Secretary of State
1700 W. Washington Street, Fl. 7
Phoenix, AZ 85007
www.azsos.gov
(602) 542-4285

Rev. 1/5/2015

ARIZONA DEPARTMENT OF STATE

OFFICE OF THE SECRETARY OF STATE

MICHELE REAGAN
Secretary of State
State of Arizona

Preserving Arizona
PROVIDING ACCESS
Arizona State Library, Archives and Public Records

For more info contact ad@azsos.gov

Arizona Advance Directive Registry

Enclosed is the information you requested from the Arizona Secretary of State's Office about The Arizona Advance Directive Registry