

Committee on Mental Health and the Justice System

AGENDA

Monday, April 29, 2019

10:00 a.m. – 3:00 p.m.

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

REGULAR BUSINESS

10:00 a.m.	Welcoming Remarks	Mr. Kent Batty, <i>Chair</i>
10:10 a.m.	Approval of Minutes <input type="checkbox"/> Formal Action	Kent Batty
10:15 a.m.	Recent News & Updates	Kent Batty
10:30 a.m.	Workgroup Report: Competency Practices	Dianna Kalandros
11:15 a.m.	Workgroup Report: Key Issues	Jim McDougall
12:00 p.m.	LUNCH	
12:30	Committee Work Prioritization: 2019-2020	Kent Batty Don Jacobsen All
2:45 p.m.	Call to the Public	Kent Batty

Next Meeting:

May 20, 2019

Remaining Meetings:

June 24, 2019

July 22, 2019

All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Stacy Reinstein at (602) 452-3255 with any questions. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Angela Pennington at (602) 452-3547. Requests should be made as early as possible to allow time to arrange the accommodation.

Committee on Mental Health and the Justice System

Draft Minutes

Monday, March 25, 2019

10:00 a.m. – 3:00 p.m.

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

Present: Kent Batty (Chair), Amelia Cramer, Mary Lou Brncik, Brad Carlyon, Judge Elizabeth Finn, Judge Michael Hintze, Josephine Jones, Dianna Kalandros, James McDougall, Carol Olson, Chief Deputy David Rhodes, Commissioner Barbara Spencer, Dr. Michael Shafer, Judge Fanny Steinlage, Paul Thomas

Telephonic: Shelley Curran, Judge Cynthia Kuhn, Chief Chris Magnus, Kristin McManus, Michal Rudnick, Judge Christopher Staring

Absent/Excused: Jim Dunn, Ron Overholt

Guests/Presenters: Andy Flagg, Amy Love

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

Regular Business

Welcome and Opening Remarks

Mr. Kent Batty (Chair), introduced himself and asked Committee members and guests to briefly introduce themselves. Mr. Batty noted that three new Committee members have been named: Kristin McManus, Yuma County Legal Defender is able to join us today – the Chair welcomed Kristin and asked her to provide some background. Natalie Jones, Coconino County Public Defender and J.J. Rico, CEO of the Arizona Center for Disability Law will plan to join us for the next meeting in April.

Approval of Minutes

Members were asked to approve minutes from January 24, 2019, noting they were in the meeting packet and provided electronically in advance of the meeting. No changes to the minutes were noted. A motion to approve the minutes was made by Judge Finn and seconded by Paul Thomas. Motion was approved unanimously.

Recent News & Updates

Mr. Batty reminded the Committee of the Chief Justice's comments from the January meeting emphasizing the work being done in Arizona around mental health and the justice system is nationally recognized. Mr. Batty pointed the Committee to materials in the meeting packet from SJI awarding a major grant to the National Center for State Courts (NCSC), to work in partnership with the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) on a mental illness in the courts initiative that includes several critical resources including the development of best practices and recommendations on standards to address mental illness and the state courts response, and adapting Arizona's Presiding Judge

Guide on the Sequential Intercept Model, which will be the point of discussion and action at tomorrow's judicially led Mental Health Summit.

The Chair thanked everyone who has been participating on workgroups. Of note, the heavy lifting being done by the two workgroup chairs and to the responsiveness and engagement of Ms. Michal Rudnick and the staff at AHCCCS. The competency issues workgroup includes key stakeholders with a great deal of expertise who have been of great help to staff and the workgroup chair in accomplishing our objectives.

The Chair reminded members that the workgroups are doing work in accordance with the Committee charge in the Administrative Order and will make recommendations to the full Committee for review before anything moves forward beyond the Committee to the AJC Standing Committees and then AJC. The Committee has an interim report due in October 2019.

Workgroup Report: Education

Stacy Reinstein, Committee Staff, updated the Committee regarding the status of the action items outlined for the Education workgroup. When having folks review the civil commitment process website that is being developed by the Committee in partnership with the AZ Bar Foundation, it has been noted that we/the courts do not "own" a lot of the information being presented, and therefore do not have an immediate linkage if anything changes; for example, an AHCCCS policy or form, or screening agency contact info, or crisis agency phone number.

At this point, staff will be pursuing potential options with the Bar Foundation and internally at AOC that will allow us to provide the basic court process information as it relates to the law and court process, as well as direct people via the AZ Court Help website to the policies and forms on AHCCCS' site.

In addition, the Committee can still create a printed brochure if it wishes, as it can have a disclaimer with a date stamp. Staff will need some time to create this and send out to the Education workgroup and other interested Committee members for review.

The team will also continue to work on its objective to "educate the public on the use of advance health care directives" which includes incorporating information on the AOC website and AZ Court Help, as well as identifying stakeholders who can assist in further spreading the word. Mr. Jim McDougall noted that the Attorney General's Office does provide forms for advanced healthcare directives; however, the information in the forms does not always go far enough for a loved one's family member in the same way it would if they had an attorney. Thus, further refinement of those forms and/or education to the public may be necessary. Mr. McDougall also noted that the registry is problematic if the person who registered their advanced healthcare directive retains the pin number without sharing it with their family member/loved ones. There was legislation last year that would allow people on a "need to know basis," such as emergency personnel, to be able to access the person's directive. The Chair noted that the Committee will continue to work on this objective, including looking at what other states are doing in this area.

Workgroup Report: Competency Practices

Dianna Kalandros, Competency Practices workgroup chair, provided an update on the status of the workgroup's objectives. The group has primarily been focused on the objective to "Evaluate and recommend best practices for determining competency by psychological evaluators, to include techniques, methods, tests, etc." At this point, the workgroup is looking at best practices and templates for the competency reports and recommending necessary updates to both the guidelines and forms, as well as the current AOC training program.

Ms. Kalandros also noted that the workgroup has been looking at its objective to evaluate and recommend best practices for Restoration to Competency programs. Research has shown that there are not a lot of best practices in place nationwide other than on "how to" write reports, although ASU has staff who are working on data gathering in this area and will be presenting at the April 15th workgroup meeting, if other Committee members are interested in attending.

Further work is going to be taking place next month in the workgroup as it relates to reviewing statutory requirements for the "Clinical Liaison" and "Court Guidelines" as well as determining and recommending the minimum necessary documents to be placed in a statewide Rule 11 data depository.

Committee member Judge Steinlage asked if the workgroup would be looking at the challenges faced by rural counties who do not have anyone available to do out of custody restoration, and so individuals must be placed in custody to undergo the restoration. Ms. Kalandros noted she faced similar issues in Pinal County where they developed an outpatient program and has also worked with Graham County to help resolve some of these issues. Ms. Kalandros noted this is of interest, and something she would like the workgroup to look at as part of its recommendations. The Chair asked the Committee if they are aware if Santa Cruz and Cochise Counties are sending people to Tucson for out of custody restoration. Amelia Cramer noted that Pima County does have an out of custody restoration program but does not know at this time whether people from out of county are being transported to receive services through the program.

Key Issues Workgroup Report

Jim McDougall, Key Issues workgroup chair thanked all the members of the workgroup for all of their hard work and diligence.

Mental Disorder Definition

Mr. McDougall noted that the Committee received feedback on the Committee's proposed revisions to the Mental Disorder definition and had an opportunity to review and discuss the comments. The Committee was asked to decide if any further changes needed to be made to the definition, and if the Committee still recommends moving the definition forward through the Committee process (review by AJC standing committees and AJC).

Committee members noted that, while the feedback on costs is valid, it is important to recognize that money is being spent on this population today particularly in the criminal justice system, as well as with first responders and emergency personnel. Committee members recognized the fact that money will need to be spent to address the problem long term and there are positive cost shifts that will happen to help people and the community if the definition as developed is

changed. A member noted that constraints on rural counties need to be recognized before we shift the problem to the jails as the only secure facility that will take someone who is even minimally combative.

The Committee agreed to move forward with the definition, while clearly noting there are real costs to counties, particularly rural counties, and the Committee may need to build a financial case for where the cost shifts are that will have a positive impact. A Committee member gave an example from Pima County as a starting point: 61% of the jail population suffers from a MH disorder; approximately 1,800 inmates in the jail at any given time; it costs \$100/day/inmate = \$108,000/day to serve people who are mentally ill in that jail x 30 days = approximately \$3.3 million/month. Using those numbers, plus data from other jails, as well as possibly the mental health contracts that each county jail has with an outside provider in comparison to costs for hospital or community-based settings was suggested as a starting point for the Committee's financial case for moving these recommendations forward. A motion to approve moving the definition forward through the AOC/AJC process was made by Judge Hintze and seconded by David Rhodes. Motion was approved unanimously.

Enhanced Services Proposal

Mr. McDougall next reviewed the workgroup's "Enhanced Services Proposal" which the Committee received prior to the meeting. Mr. McDougall noted that this concept is designed to address the "revolving door" in both the criminal justice and civil mental health treatment systems by identifying people with specific needs that fall under this proposal, providing a mechanism for the court to order services that are needed, and to actively oversee compliance with the court order and provision of those services.

Mr. McDougall asked the Committee for feedback, and to determine if it recommends moving the proposal forward through the Committee process via AOC/AJC. Members expressed support, including noting that requests are made regularly by providers for the court to order various mechanisms to assist with gaining compliance by the patient. A member noted there is currently a real challenge with AHCCCS/RBHAs determining something is not medically necessary, even after the treatment team makes a recommendation to the Court, and this will need to be addressed if this proposal goes forward. Discussion ensued regarding the differences between urban courts, designated mental health courts, and the rural communities that do not have access to this level of treatment. Again, members noted that the Committee will need to collect the information and provide examples of cost and available funding to build a case for the public and the Legislature as to the population the Committee is seeking to help as well as the problems that it is working to solve.

A motion to approve the proposal of the workgroup and move it forward through the AOC/AJC process was made by Amelia Cramer and seconded by Judge Finn. Motion was approved unanimously.

Persistent or Acutely Disabled

Mr. McDougall next reviewed the workgroup's revised definition for Persistent or Acutely Disabled (PAD) which the Committee received prior to the meeting. The workgroup proposes that the definition of PAD in A.R.S. §36-502 should identify "a substantial probability of causing

harm to others” as a possible consequence of the condition not being treated. In addition, screeners and evaluators should be able to immediately hospitalize a person under A.R.S. §36-524 and §36-526 regardless of the category presented if the emergency standard is met, i.e. *“during the time necessary to complete the prepetition screening procedures set forth in sections 36-520 and 36-521 the person is likely without immediate hospitalization to suffer serious physical harm or serious illness or is likely to inflict serious physical harm upon another person.”*

Mr. McDougall asked the Committee for feedback, and to determine if the Committee recommends moving the proposal forward through the Committee process. A motion to approve the proposal of the workgroup and move it forward through the AOC/AJC process was made by Amelia Cramer and seconded by Judge Steinlage. Motion was approved unanimously.

The Chair, Mr. Batty noted that the Committee now has three recommendations that will move forward to the next level.

Presentation and Discussion: Incompetent Not Restorable

The Chair introduced the next agenda item, focused on incompetent not restorable, thanking the Key Issues workgroup for setting this presentation and discussion up, noting that when the workgroup began discussion, it realized that there was a need for education on the topic that would be beneficial for the whole Committee.

Mr. McDougall provided an overview of the presenting issue and challenges. Amelia Cramer presented examples of violent individuals who have come through the Pima County Attorney’s Office and are found incompetent to stand trial because they cannot assist in their own defense, and yet are released into the community.

Judge Mike Hintze shared specific example from Maricopa County and Phoenix Municipal Court, specifically one individual who has since died. This individual had approximately: 21 Mental Health cases (court ordered treatment), 3 Probate cases (guardianship), 14 Criminal (County), 34 Criminal (City) – these only include Maricopa and the City of Phoenix, and not any of the other jurisdictions and outside of Arizona. Judge Hintze raised the impact that these costs have across multiple individuals and entities, including: personal impact to the individual, judicial, prosecutorial, defense, jail, medical, psychiatrists, psychologists, case managers, social workers, behavioral health techs, hospital, housing, police, detention, other jurisdictions, and more.

Committee member Dr. Mike Shafer shared a presentation synthesizing the information from “A Report to the Arizona Legislative Study Committee of Incompetent Non-restorable, Dangerous Defendants” which was included in Committee packets. While there are inadequacies in county level reporting systems, highlights of the presentation include the following (data time period: SFY 2012–SFY 2016):

- 747 defendants referred for restoration to competency from 10 counties (Maricopa excluded), resulting in a statewide standardized rate of 37.2 referrals per 100,000.
- 728 defendants discharged from RTC programs
- 85% restored to competency
- 608 defendants found to be non-restorable

- Clinical basis for non-restorability determinations (10 counties, 108 defendants): 55% mental illness; 15% dementia, medical conditions; 13% intellectual disability; 11% substance abuse/alcoholism; 6% traumatic brain injury.
- Approximately 25% of defendants found to be non-restorable re-offend.

Mr. McDougall presented the legal constitutional issues for the Committee, including consideration of Ohio's Supreme Court case State v. Williams that was shared with the Committee in its materials. Ohio's incompetent not restorable statute is very similar to the next presentation that will be made by the Pima County Attorney's Office. Mr. McDougall outlined the constitutional challenges of Ohio's statute and presented the committee with this summary analysis (full analysis can be found in the Committee's meeting packet):

Criminal vs. Civil

- The argument was made that the statute is criminal in nature and as such denies defendants constitutional rights because procedural safeguards for criminal prosecution are not present were raised in this case.
- The Appellate court found that the overriding intent of the statute was to confine incompetent defendants who have been charged with serious felonies as if they had been convicted or until they can be tried and therefore was criminal in nature.
- Ohio court using the "intents/effects test" applied by U.S. Supreme Court in Kansas v. Hendricks (1997) 521 U.S. 346 [an SVP case] overruled the Appellate Court and held the statute to be remedial and therefore civil, rather than penal and therefore criminal.
- Facts used to attempt to prove the statute is criminal in nature:
 - The statute is in the criminal code not the probate code
 - The criminal indictment remains pending after commitment
 - That the D has to remain incompetent throughout commitment
 - That the length of detention is linked to a possible maximum prison sentence
- The Ohio Supreme Court overturned the Appellate Court ruling and held the statute is remedial or civil in nature and is designed primarily for the purpose of protecting the public.

Equal Protection Clause

- The Ohio Supreme Court held that the procedures used in the criminal statute which are more restrictive or more onerous are rationally related to a legitimate public interest and therefore do not violate equal protection.

Due Process Violation

- The court found the overriding purpose of the Ohio statute is to protect the public from a person who is dangerously mentally ill, has perpetrated felonious conduct, and cannot be tried because of his mental incompetency, and found that the process, standards and procedures in the statute bear a reasonable relation to this purpose. Even though there is a way to civilly commit a person who has committed a serious offense of violence, this does not prevent the legislature from creating an alternative procedure in the criminal court for persons who pose an especially high degree of risk to safety of the public.

The final presentation on this topic included the current legislative proposal from the Pima County Attorney's Office, presented by Andy Flagg, Chief Civil Deputy, Pima County Attorney's Office. The Committee posed questions and discussed various issues with the proposal, and suggested changes for consideration.

Following Mr. Flagg's presentation, Amy Love, Deputy Director of Government Affairs for the Arizona Supreme Court, shared additional current mental health related legislation being discussed at the Legislature, including the SMI Trust Fund. Ms. Love also shared the internal legislative timeline and process at the AOC as it relates to any legislative recommendations put forward by the Committee, particularly noting the importance of vetting the recommendations to stakeholder groups as much as possible prior to beginning the legislative process in January.

The Committee discussed next steps regarding the Incompetent Not Restorable topic and requested that Pima County consider the concerns and suggestions made by Committee members, do some internal redrafting and work with the Key Issues workgroup to review and bring any changes back to the Committee.

The Committee then agreed that without adopting or approving any specific proposal, it will recommend to AOC/AJC that it supports efforts to deal with this population of incompetent non-restorable defendants through the creation and adoption of a constitutional process, procedure and/or program to provide treatment to the individuals while protecting the public.

Committee members also asked the Chair, Mr. Batty to put the current recommendations for Mental Disorder definition, Enhanced Services, and PAD forward to the AJC Standing Committees in May vs waiting until the fall. Mr. Batty agreed to discuss with staff to bring those proposals to COSC and LJC in May, and report back to the Committee at the May meeting.

Future Committee Work

Mr. Batty provided the Committee with an overview of the priority setting exercise the Committee will be doing in May, looking at the existing parking lot items, and what the group prioritizes as its most important things to work on moving forward.

The Chairman also noted that a Doodle poll will be sent out by staff to determine the Committee's meetings for August through the remainder of the year, noting prior requests not to hold meetings on Wednesdays.

Good of the Order / Call to the Public

No members of the public asked to speak.

Adjournment

The meeting was adjourned at 3:02 p.m. by order of the Chair.

Committee on Mental Health and the Justice System
Competency Workgroup

The Committee on Mental Health and the Justice System, established by [Administrative Order 2018-71](#), has been tasked with studying, and if necessary, making recommendations to effectively address how the justice system responds to persons in need of behavioral health services, and review court rules and state statutes for changes that can result in improved court processes in competency proceedings and court-ordered treatment hearings and other hearings where a litigant may need mental health treatment.

A key component of the Committee's charge is to examine evidence-based and best practices for competency evaluations and restoration to competency programs and train accordingly. As such, the Committee tasked a Workgroup focused on competency issues and practice to evaluate and recommend best practices for determining competency by psychological evaluators, to include techniques, methods, tests, etc. and to determine whether subject matter in the current AOC training program matches well to those best practices.

Based on a review of current guidelines and best practices, the Competency workgroup submits to the Committee the following proposal for standardized templates for the forms to be used throughout the evaluation process by mental health experts in criminal Rule 11 competency evaluations.

The workgroup would like the Committee to note that in addition to the changes included in these forms that will need to be addressed in the AOC training program.

References:

- [Administrative Order](#) establishing the Committee on Mental Health and the Justice System (August 2018)
- [Arizona Revised Statutes, Title 13, Chapter 41](#): Incompetency to Stand Trial
- [Arizona Rules of Criminal Procedure](#): Rules 11.1 through 11.3

APPENDIX A: PRE-SCREEN RULE 11 COMPETENCY EVALUATION

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

Defendant:

Case number:

Court:

Date of report

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

1. Can the defendant adequately relate the following information:
yes/no - Identifying data (i.e. Name, Age, DOB, Marital Status, etc.)
yes/no - Family history, education, medical (including psychiatric and substance abuse) history
yes/no - Date and location of evaluation
2. Does the defendant understand the following:
yes/no - Reason for his/her arrest (the nature of the charges or allegations)
yes/no - Seriousness of the offense and potential penalties
yes/no - The adversarial nature of the legal process
yes/no - The roles of the pertinent parties (i.e. Judge, Defense Counsel, Prosecutor)
3. Does the defendant have the capacity to:
yes/no - Disclose relevant or pertinent facts to defense counsel?
(Assist counsel w/effective communication).
yes/no - Manifest appropriate courtroom behavior?
yes/no - Testify relevantly about the case?
4. Is the defendant currently prescribed any medications? yes/no/unknown
Is the defendant currently taking any medications? yes/no/unknown

If so, describe: *list the type and dose of medications (if dose is known)*
5. Examiner's Impressions:
 yes/no/unknown - The defendant is capable of understanding the nature of the proceedings against him/her.
 yes/no/unknown - The defendant is capable of assisting in his/her own defense.
 yes/no/unknown - Further evaluation of the defendant is warranted.
 yes/no/unknown - Further evaluation of the defendant is unwarranted
 yes/no/unknown - The defendant may be manifesting symptoms of mental illness.

Diagnostic Hypothesis:

Comments

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

Respectfully submitted,

[Evaluator signature/electronic signature]

[Evaluator Name]

[Evaluator Credentials]

[Evaluator Address]

[Date]

FOOTER

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

APPENDIX B: RULE 11 COMPETENCY EVALUATION

Honorable [name]
Court – [County/City]
[Address Line 1]
[Address Line 2]
[Address Line 3]

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

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

RULE 11 COMPETENCY EVALUATION

Dear Honorable [Name]

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

Opinion as to Competency of Defendant

Defendant is:

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

If Not Competent and Not Restorable, select which option(s) apply:

- Yes/no/unknown Defendant is/may be DTS, DTO, GD or PAD and Court Ordered Evaluation/Civil Commitment is recommended, pursuant to A.R.S. 36-501
- Yes/no/unknown Defendant needs/may need Guardianship, recommended pursuant to A.R.S. 14-5301
- Not enough information to make a recommendation

[Defendant Name]
[Date of birth of defendant]
[Case Number]
Page 2 of 3 Pages

§ 13-4509. Expert's report

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

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

Name of each Mental Health Expert who examined the defendant

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

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

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

Sources of Information:

Please list the sources of information used for this report here

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

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

Doctor to elaborate if necessary:

Additional text if necessary

3. The facts on which the findings are based.

Facts on which the findings are based

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

Opinion as to the defendant's competency

[Defendant Name]
[Date of birth of defendant]
[Case Number]
Page 3 of 3 Pages

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

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

Explanation or N/A

- 2. The defendant's prognosis.**

Explanation of prognosis or N/A.

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

Explanation of treatment form and place or N/A

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

If incompetent to refuse treatment or N/A

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

Medication dependent or N/A

If there is a recommendation for Title 36 or Title 14, please elaborate as to why this is the recommendation.

Respectfully submitted,

[Evaluator signature/electronic signature]

[Evaluator Name]

[Evaluator Credentials]

[Date]

FOOTER

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

APPENDIX C: STATUS COMPETENCY REPORT – RESTORATION TO COMPETENCY PROGRAM

[Judge/Commissioner's Name]

Court – [Name] [County]

[Address 1]

[Address 2]

[Address 3]

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

Re: [Defendant's Name]

Date of Birth: [Defendant's DOB = MM/DD/YYYY]

[Case Number]

[Defendant Location – i.e. In-Custody, MCSO Booking]

[Defendant's Booking #] (if applicable)

[Case Number]

COMPETENCY STATUS REPORT

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

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

1. The name of the treatment supervisor;

[name and credentials of the supervisor]

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

[Defendant Name]

[Date of Birth of Defendant]

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

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

Sources of Information:

Please list the sources of information used for this report here

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

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

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

Doctor to elaborate if necessary:

[Additional Text if Necessary]

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

[Facts on which the findings are based]

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

[Opinion on capacity to understand]

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

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

[Explanation or N/A]

[Defendant Name]
[Date of Birth of Defendant]
[Case Number]
Page 3 of 3 Pages

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

[Prognosis for restoration and estimated time]

7. Recommendations for treatment modifications.

[Recommendations for treatment modifications]

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

Thank you for your consideration in this matter.

Respectfully submitted,

[Evaluator signature/electronic signature]

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

FOOTER

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APPENDIX D: FINAL COMPETENCY REPORT – RESTORATION TO COMPETENCY PROGRAM

Honorable [Name]
Court – [Name] [County]
[Address 1]
[Address 2]
[Address 3]

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

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

FINAL COMPETENCY REPORT – RESTORATION TO COMPETENCY PROGRAM

Dear Honorable [Name]:

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

Opinion as to Competency of Defendant

Defendant is:

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

If Not Competent and Not Restorable, select which option(s) apply:

- Yes/no/unknown Defendant is/may be DTS, DTO, GD or PAD and Court Ordered
- Evaluation/Civil Commitment is recommended, pursuant to A.R.S. 36-501
- Yes/no/unknown Defendant needs/may need Guardianship, recommended pursuant to A.R.S. 14-5301
- Not enough information to make a recommendation

[Defendant Name]
[Date of Birth of Defendant]
[Case Number]
Page 2 of 3 Pages

§ 13-4509. Expert's report

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

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

Name of each Mental Health Expert who examined the defendant

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

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

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

Sources of Information:

Please list the sources of information used for this report here

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

Additional text if necessary

3. The facts on which the findings are based.

Facts on which the findings are based

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

Opinion as to the defendant's competency

[Defendant Name]
[Date of Birth of Defendant]
[Case Number]
Page 3 of 3 Pages

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

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

Explanation or N/A

2. The defendant's prognosis.

Explanation of prognosis or N/A

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

Explanation of treatment form and place or N/A

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

If incompetent to refuse treatment or N/A

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

Medication dependent or N/A

If there is a recommendation for Title 36 or Title 14, please elaborate as to why this is the recommendation.

Respectfully submitted,

[Evaluator signature/electronic signature]

[Evaluator Name]

[Evaluator Credentials]

[Evaluator Address]

[Date]

FOOTER

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

Rule 11 Data Repository

***Competency Workgroup
Requirements Document***

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A. Introduction

The Committee on Mental Health and the Justice System was established with the specific charge of:

- Identifying ways for the courts and other justice system stakeholders to effectively address how the justice system responds to persons in need of behavioral health services.
- Oversee the development of a model guide to help presiding judges develop protocols to work with the justice system involved individuals with mental and behavioral healthcare needs. Coordinate a statewide summit to share the guide with judges, court personnel, mental health professionals, and justice system stakeholders.
- Review Arizona's mental health court standards to determine whether current performance measures should be adjusted to capture additional data and to examine how that data should be analyzed. Examine how other courts and stakeholders collect data and whether improved communications between behavioral health and justice system stakeholders could result in a more effective delivery of services to those who are mentally ill.
- Review court rules and state statutes for changes that can result in improved court processes in competency proceedings and court-ordered treatment hearings and other hearings where a litigant may need mental health treatment.
- Identify ways the court can work collaboratively with other stakeholders to educate the public on the use of advance healthcare directives.
- Oversee, as necessary, the implementation of recommendations of the Fair Justice Task Force relating to the courts and mental health approved by the Arizona Judicial Council.
- Identify opportunities to educate the public on court processes involving individuals involved in the justice system who have behavioral health treatment needs.

The Committee will use these requirements as a guidance in developing a data repository that all Arizona courts can refer to regarding rule 11.

B. Objective

The Committee on Mental Health and the Justice System recommended that the Administrative Office of the Courts develop a data repository for the automated collection of data involving statewide Rule 11 Findings, ~~as required under A.R.S. §13-609 and NICS~~. Currently, there is no way for an Attorney or Judge to know which court contains records for an individual involved in a Rule 11 case. The data repository will include the basic information needed for the attorney, having received an order from a court, to properly secure the release of the records from the correct court. This document will provide what information the data repository will display but will not include the technical details of how the requirements will be implemented.

C. Resources

Mesa Municipal Court	Paul Thomas
Business Analyst	Angela McHale (City of Mesa – Information Technology Department)

D. Definitions

ID	Term	Description
1.		
2.		

E. Assumptions/Constraints

ID	DESCRIPTION
1.	All Arizona courts must be responsible for the supply of the following Rule 11 information for the data repository. <ul style="list-style-type: none"> a. The defendant’s first middle and last name. b. The defendant’s date of birth. c. Any Rule 11 Case Numbers associated to the defendant. d. Court name where the Rule 11 case(s) took place. e. Charge Description of all charges associated to the Rule 11 case (Optional). f. All Type of Rule 11 Reports associated to the case (Optional). g. All Rule 11 Findings for the defendant’s evaluation. h. Date of each Finding. i. Outcome for the Rule 11 Case (Optional).
2.	This data repository will not include medical reports or other case documents.
3.	The Attorney and/or court will still be responsible for requesting the release of the records.

F. General Requirements

ID	DESCRIPTION
1.	A defendant is the only party for whom the Rule 11 data repository information will pertain to.
2.	Users will be able to view and print a defendant’s information on 8.5 x 11 paper.

G. Searching

ID	DESCRIPTION
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Data Repository

1.	The system shall provide a way to search for an individual's Rule 11 proceedings.
2.	The user must be able to search on the following: <ol style="list-style-type: none"> a. Defendant's First Name b. Optional Defendant's Middle Name c. Defendant's Last Name d. Defendant's Date of Birth
3.	If multiple defendants are associated to the entered search criteria, the system shall provide a list of matches for the user to select.
4.	The user will select a defendant from the list of search results. Once a defendant is selected, the system will display the depository information associated to the selected defendant.
5.	If only one defendant matches the entered search criteria, the system will display the depository information for the defendant.

H. Defendant's Report

ID	DESCRIPTION
1.	When an individual defendant is selected, the report shall display the First, Middle, and Last Name of the selected defendant.
2.	The report shall display the defendant's Date of Birth (DOB).
3.	The report should list all cases in sequential order, all Rule 11 cases associated to the selected defendant.
4.	The report shall display to the user the following column titles within a table from left to right: <ol style="list-style-type: none"> a. Case Number b. Court c. Charge Description d. Type of Report e. Finding f. Date of Finding g. Outcome
5.	The Case Number column will display the case number associated to the defendant. <ol style="list-style-type: none"> j. Only Rule 11 type cases will display. k. A defendant can have multiple cases associated to them. Each case will display on its own row.
6.	The Court column will display the name of the court that the Rule 11 C=case took place. <ol style="list-style-type: none"> a. If a defendant has multiple Rule 11 cases that span multiple courts, each will be identified on its own row.
7.	The Charge Description column will display any optional charges associated to the Rule 11 Case for the defendant.
8.	The Finding(s) will be identified as one of the following:

Data Repository

	<ul style="list-style-type: none"> a. Competent b. Incompetent (Restorable) c. Incompetent (Non-restorable)
9.	The Outcome(s) will be identified as one of the following: <ul style="list-style-type: none"> a.
10.	the system shall provide a way to print the defendant's rule 11 information.
11.	The system shall provide a way to search on another defendant.

I. Wireframes

This diagram is for illustrative purposes only and should not be viewed as a design requirement

SEARCH SCREEN

FIRST NAME	MIDDLE NAME	LAST NAME	DATE OF BIRTH
<input style="width: 95%;" type="text"/>			
<input type="button" value="SEARCH"/>	<input type="button" value="CLEAR"/>		

FIRST	MIDDLE	LAST	DOB
JOHN		SMITH	10/20/1990
JOHN	B	SMITH	10/20/1990
JOHN	BRANDON	SMITH	10/20/1990
JOHN	DEAN	SMITH	10/20/1990

J. Change Summary

Date:	
Author:	
Description:	

Committee on Mental Health & the Justice System: Parking Lot

Purpose: Topics identified by the Committee on Mental Health & the Justice System or an associated Committee Workgroup as items for future consideration by the Committee.

#	Item/Topic	Additional Notes	Committee Questions/Priority
1	New Statute: Pre-Conviction Diversion for Felony and Misdemeanor defendants in need of MH treatment	<ul style="list-style-type: none"> • Create a pre-conviction diversion program, similar to what is used in the municipal Mental Health Courts to be available to all Superior Courts. • <i>See California, SB 215 – Chapter 1005: An act to amend Section 1001.36 of the Penal Code, relating to diversion.</i> https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB215 	
2	Additional Title 36 Changes	<ul style="list-style-type: none"> • Outpatient COT – only applicable for publicly insured <ul style="list-style-type: none"> ○ Only successfully ordered for those on AHCCCS or who are SMI ○ SMI (no AHCCCS) don't qualify for residential treatment • Government oversight of Title 36 <ul style="list-style-type: none"> ○ Maricopa vs outside of Maricopa; issues with AHCCCS vs DBHS/RBHA oversight • Cover treatment under laws related to mental health treatment for: substance use disorder (addiction), SMI, and other mental illness and conditions. <p>Additional Reference: Yavapai County Town Hall Report Recommendations:</p> <p>21. Standardize Title 36 proceedings across Arizona to provide clarity and consistency across county lines. AHCCCS is good choice for a statewide Title 36 system.</p> <p>22. Change A.R.S. § 36-503.01 to require county attorneys to represent the state, not the providers.</p> <p>23. Title 36 should not be an adversarial process. The focus should be on what is best for the patient, not on a court “win” for the party. Amend Title 36 statutes to address this concern.</p>	

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#	Item/Topic	Additional Notes	Committee Questions/Priority
3	Court Ordered Evaluation & Treatment for purely substance abuse issues (detox/short & long term residential)	Substance abuse only – TBD if falls under the purview of this Committee	
4	Lack of beds – Licensure Issue?	<ul style="list-style-type: none"> - Expanded capacity at ASH (Maricopa County only?) - More secure beds – any issues with licensing in order to create more secure beds (licensing statutes to attract more residential treatment settings) - Association for the chronically mentally ill – more long term, supportive living situations for individuals (light houses); and more secure settings 	-
5	Tracking Applications, Petitions and Orders for Evaluation and Treatment statewide – Creating a database of processes and outcomes that can be accessed by key players statewide	What happens to the information? What is the oversight? Need to be able to share with law enforcement, doctors	

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#	Item/Topic	Additional Notes	Committee Questions/Priority
6	Navigators for people with co-occurring disorders – need help to navigate system in order to be successful	Success in Miami-Dade County, other jurisdictions; Phoenix Municipal Court (Judge Hintze) has peer support; Arizona – Family Involvement Center provides peer support within Dependency system, interest in speaking about this population.	
7	SMI Determination Protocols: Clarification that substance use/abuse is not a disqualifier		
8	Bench card/education for Courts on what to do with individual based on x, y, z		

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#	Item/Topic	Additional Notes	Committee Questions/Priority
9	Improving and streamlining AHCCCS T19 Approval Process for COT	<p>Reference: Yavapai County Attorney Title 36 Town Hall Recommendations:</p> <p>5. Amend the statute to provide specific factors to guide determination of whether a patient is voluntary or involuntary.</p> <p>6. Change statutory definition of a voluntary patient to provide for one chance per episode to accept voluntary treatment and require specific factors to justify voluntary determination. Change the statute to give more guidance to screeners, require more input from law enforcement, consider evidence of violence and require screeners to document factors considered.</p> <p>7. Use the full 24 hours to create a comprehensive background report of patient before determining voluntariness.</p> <p>Yavapai County Title 36 Town Hall Report</p> <p>8. Create a central database of Title 36 individuals including active and former patients, including patients who previously accepted voluntary treatment. The database would include whether patients have guardians, history of contacts with patients for screenings and all screening requests and outcomes. Enter into an agreement for all stakeholders to populate and share the data.</p> <p>9. Foster collaboration at the screening stage that reaches across organizational boundaries. Ensure the decision includes full information about the patient’s history. Coordinate staffings prior to determination of voluntariness to ensure the determination allows for input from all persons involved, including law enforcement, screeners, medical and mental health professionals.</p> <p>10. Implement a system to provide for enhanced communication between the screeners and providers such as multi-disciplinary staff meetings on a weekly basis attended by law enforcement, screening agency, evaluators, community providers, hospitals, etc. Keep petitioner informed as to the status of the process.</p> <p>11. Implement a system where the mobile crisis teams accompany law enforcement to provide screening, thereby expediting the process.</p>	

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#	Item/Topic	Additional Notes	Committee Questions/Priority
10	Examine changes to statute to allow evidence of mental disorder to mitigate a criminal defendant's mens rea	<p><i>Committee member requested language change (12/3/18):</i> Arizona law allows criminal defendants to present mental disorder evidence only for the purpose of proving insanity; it prohibits other uses of such evidence by criminal defendants.</p> <p>Consider a recommendation to revise Arizona rules that prohibit criminal defendants from presenting evidence of a mental disorder, so as to allow evidence of a mental disorder to be used for the purpose of raising reasonable doubt about the mens rea (the intention or knowledge of wrongdoing) element of a charged offense.</p>	
11	Examine current limitations on services for Mentally Ill on COT to <u>only</u> those qualifying for AHCCCS and/or determined to be SMI.		

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#	Item/Topic	Additional Notes	Committee Questions/Priority
12	Examine the impediment to placement in residential imposed by the culture (rule or regulation?) of providers requiring the COT patient to “agree” or “consent” to the placement, and the enforcement of this term of the court order/outpatient treatment plan when the patient leaves placement without permission of the treatment team.		
13	Examine mandates for and improvement of oversight of the public mental health treatment system, both voluntary and involuntary.		
14	Recommend creation of a State Department of Mental Health Services		