

Committee on Mental Health and the Justice System

AGENDA

Monday, June 24, 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
10:45 a.m.	Developing Mental Health Protocols Update	Don Jacobson
11:05 a.m.	Preview July Discussion: AHCCCS Contracts Overview, Justice Liaisons, COE/COT Process	Michal Rudnick Shelley Curran All
11:20 a.m.	Legislation Review: HB 2754; A.R.S. 36-550.09	Jim McDougall Carol Olson
12:00 p.m.	LUNCH	
12:30 p.m.	Workgroup Report: Competency Practices	Dianna Kalandros
1:15 p.m.	Workgroup Report: Key Issues	Jim McDougall
1:45 p.m.	Priority Setting Exercise Review	Kent Batty
2:45 p.m.	Call to the Public	Kent Batty

Next Meeting:

July 22, 2019

Remaining Meetings:

August 26, 2019
October 28, 2019
November 18, 2019
December 16, 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, April 29, 2019

10:00 a.m. – 3:00 p.m.

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

Present: Kent Batty (Chair), Mary Lou Brncik, Amelia Cramer, Brad Carlyon, Judge Michael Hintze, Josephine Jones, Natalie Jones, Dianna Kalandros, James McDougall, Kristin McManus, Carol Olson, Ron Overholt, Chief Deputy David Rhodes, Leslie Schwalbe (Proxy for Jim Dunn), Commissioner Barbara Spencer, Judge Christopher Staring, Judge Fanny Steinlage, Paul Thomas

Telephonic: Judge Cynthia Kuhn, Chief Chris Magnus, J.J. Rico, Michal Rudnick

Absent/Excused: Judge Elizabeth Finn, Dr. Michael Shafer

Guests/Presenters: Alex Demyan, Megan Woods

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 welcomed the newest Committee members joining today in person: Natalie Jones, Coconino County Public Defender; Kristin McManus, Yuma County Legal Defender; and J.J. Rico, CEO of the Arizona Center for Disability Law joining telephonically.

Approval of Minutes

Members were asked to approve minutes from March 25, 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 Hintze and seconded by Paul Thomas. Motion was approved unanimously.

Recent News & Updates

Mr. Batty updated the Committee on the Developing Mental Health Protocols Summit, held after the March Committee meeting. The Chair noted the Summit was well attended and well received. Presentations in the morning were given by Judge Leifman, Patti Tobias and Nicole Watters from the National Center for State Courts, and local examples were shared by David Rhodes and Beya Thayer from Yavapai County, Judge Tafoya and Paul Thomas from Mesa, and Judge Bryson and Ron Overholt from Pima County. The afternoon was spent with local jurisdiction teams beginning work on the Sequential Intercept Model, where each team was given a series of action planning worksheets to begin to address the protocols, including identification of gaps in services and opportunities for improvement. The Chair noted that the full Summit packet is posted on our MHJS Committee website. Mr. Batty asked if anyone who attended had feedback to share, and Mr. Overholt shared a major takeaway was that Judge

Leifman has been doing this work for 18 years and feels he has just scratched the surface, so we (in Arizona) should be proud of our work and continue to stay the course.

The Chair reminded the Committee about the SharePoint site, where members can find Committee documents and news and updates including a recent article on the Yavapai County Sheriff's Reach Out program, featuring Committee member David Rhodes.

The Chair congratulated Paul Thomas, Judge Tafoya and the Mesa Community Court, for being recognized at this month's Problem Solving Courts Conference with an AADCP Award (Association of Drug Court Professionals).

The Chair then provided an overview of today's agenda, including a brief background for the afternoon's prioritization exercise.

Workgroup Report: Competency Practices

Dianna Kalandros, Competency Practices workgroup chair, provided an update on the status of the workgroup's objectives and shared the draft mental-health-expert report templates with the Committee, noting the Guidelines that are required by statute and rule are also in their final stages of development in the workgroup.

Discussion ensued with Committee members asking the workgroup to ensure that certain areas of the forms are locked and unable to be changed, to keep within the statutory requirements and intent of the forms. Judge Steinlage also noted, from her experience as a defense attorney, that issues can arise, particularly when speaking to the defendant about understanding their own defense and possible defenses. Ms. Kalandros noted that while this is covered under "testify relevantly about the case," there is a need to ensure the training includes additional information about a defendant's own testimony and understanding of defenses. Mr. McDougall referenced the desire to cross-match the information with Title 36 decisions and forms – there is a strong need for the evaluator to make the comments that the defendant does or does not meet the standard for DTS/DTO/GD, as the report will become the basis for screening for court-ordered evaluation and treatment. Mr. McDougall noted that if the evaluator's language is not specific, the defendant will often not meet the standard for incapacity under the law.

Ms. Kalandros updated the Committee on the status of recommendations for the Competency Evaluator training, including working with the planning committee at the AOC (Education Services) to recommend necessary changes to the training and curriculum provided, including teaching to the new templates (once finalized), helping determine how questions from the mental health expert should be phrased with defendants, and adding in new case law and statutory changes. Dr. Olson also suggested to showing a video in the training of an interview with a defendant and asking the attendees to work on a report and discuss.

Ms. Kalandros also presented the workgroup's draft document outlining the minimum necessary documents to be placed in a statewide Rule 11 data repository. Committee and workgroup member Mr. Thomas shared the outline, noting this is a basic document to be further developed and handed off to the AOC IT team. Mr. McDougall noted that the same repository is needed for Title 36-related cases.

Key Issues Workgroup Report

Jim McDougall, Key Issues workgroup chair, thanked all the members of the workgroup for all of their hard work and discussions as they continue to work on very important issues for the state.

Mr. McDougall updated the Committee on the Pima County Incompetent-Not-Restorable legislative proposal, including the changes that were submitted by the Pima County Attorney's Office following the March Committee meeting. Mr. McDougall confirmed with the Chair that the workgroup will develop a statement that will be submitted through the Committee's formal process with AJC that the Committee recommends work to be done on this topic. Mr. McDougall noted that the Committee/AOC is not able to submit this as its own legislation to be introduced because there will likely be challenges through the Court.

Mr. McDougall next shared the workgroup's current discussion points around the challenges and potential solutions at the lower court jurisdiction level for court-ordered evaluation and treatment. An outline of the issue was shared with Committee members. Mr. McDougall noted there is a desire to work within the existing statute and process, but there needs to be a process developed for the courts to know how it happens and how to do it.

Committee members noted the benefits, constraints and differences in this process between more populated and rural counties. For example:

- Navajo County has an IGA with City Courts to engage in this process before a Rule 11 hearing – the defendant is identified in jail and the jail staff can file the petition and work directly with providers.
- In Yavapai County, the screening agency is the same contractor/provider as the evaluation agency, and there are some challenges with the contract itself; thus, Yavapai is looking at other solutions such as building a co-located Title 36 agency/facility next to the jail for lower level offenders.
- Judge Steinlage noted there is a missed opportunity in the process right now because low level offenders are not likely going to enroll themselves in services after leaving the jail, and this has high impact to the community and the person in need of psychiatric care. There is an opportunity within the SIM to look at coordination of care – an intersection of the two systems or to develop a third system for community treatment.
- The Chair noted the opportunity to have someone available to help navigate and take the individual to the appropriate agency when they are released from jail.
- Further discussion ensued regarding the cost issues between transferring the individual between the LJ and GJ courts, including cases going from a City prosecutor to a County Attorney. These cost issues were noted by other members as well.
- Committee members from AHCCCS and Mercy Maricopa noted that without one single statewide process – it depends what is happening in one County and what their needs are, but providers and AHCCCS are always willing to work with the individual counties and courts through their liaisons.
- Mr. Thomas also noted Mesa Municipal Court – one of the two pilot sites for handling Rule 11 – has handled 400 cases since starting, and the trends are going downward,

presumably because the police department is now working within its crisis unit to handle some of these individuals who previously would have been in court.

Committee Prioritization

Mr. Batty provided the Committee with an overview of the priority-setting exercise, looking at items that were previously placed in a parking lot, and determining how the Committee would prioritize the items that need emphasis going forward. This will help assist the Committee in formulating its interim report to the Arizona Judicial Council in October 2019, leading up to the final report in October 2020.

Following a group exercise, led by Don Jacobson, with the Committee, four areas from the “parking lot” were voted by the Committee as items to further refine over the next several meetings, in addition to the existing work to be done:

1. Address the lack of bed space by increasing the number of: inpatient, secure beds; community-based, secure residential placements; and community-based supportive housing, including group homes.
2. For people with co-occurring disorders, define and mandate comprehensive case management services with face to face contact in the community to coordinate treatment for mental health and co-occurring substance use disorder; to include housing, transportation, and other needed services.
3. Examine changes to statute to allow evidence of mental disorder as an affirmative defense to defendant’s *mens rea*.
4. Examine mandates for and improvement of oversight of the public mental health treatment system, both voluntary and involuntary. Recommend creation of a State Department of Mental Health Services.
 - a. Suggested rewrite for committee consideration as part of this priority: *Suggest improvements to the current mental health system mandates for oversight of the mental health treatment system (voluntary and involuntary).*

Good of the Order / Call to the Public

No members of the public asked to speak. The Chair noted a Doodle poll is out and Committee members should respond for the remaining Committee meetings August-December 2019.

Adjournment

The meeting was adjourned at 2:55 p.m. by order of the Chair.

Support for Individuals Transitioning out of the Criminal Justice System

Source: www.azahcccs.gov/AHCCCS/Initiatives/CareCoordination/justiceinitiatives.html

AHCCCS has partnered with state and county governments to improve coordination within the criminal justice system. Our shared goals include creating a more cost effective and efficient way to provide access to critical healthcare for people released from incarceration. A significant number of men, women and children transitioning out of jail and prison into communities are in need of services for behavioral health and physical health conditions. Many of these individuals are eligible for Medicaid.

Help for Medicaid Members Who Become Incarcerated

Federal law prohibits states from using Title 19 Medicaid funding to pay for healthcare for individuals who are incarcerated. State and local funding is utilized during the period of incarceration. In order to reduce disruption of care for individuals exiting incarceration, AHCCCS provides an “enrollment suspense & reinstatement” process statewide for AHCCCS members who become incarcerated. This enrollment suspense & reinstatement process reduces the number of individuals who would otherwise have their AHCCCS care terminated. Through this enrollment suspension & reinstatement process, care can be coordinated by county jails or prisons upon discharge. Each AHCCCS health plan has a dedicated Justice Liaison to assist jail and prison representatives with this coordination of care.

To facilitate this transition, AHCCCS is engaged with the Arizona Department of Corrections (ADOC) and most Arizona counties covering the majority of the State’s population, including the two largest – Maricopa and Pima – in a data exchange process that allows AHCCCS to suspend eligibility upon incarceration, rather than terminate coverage. This exchange also allows ADOC and counties to electronically send release dates, which simplifies the process of transitioning directly into care. Through this enrollment suspension process, care can be coordinated by county jails or prisons upon discharge. To support this, all AHCCCS Managed Care Organizations (health plans) are contractually required to have a justice systems contact that can ensure a connection to needed physical and behavioral health services.

- [Enrollment Suspense IGA Template](#)
- [Inmate Enrollment Suspension Technical Document](#)

Hospital Inpatient IGA

AHCCCS has intergovernmental agreements in place with the majority of counties in AZ (including Maricopa and Pima) and ADOC to provide services to people in detention who are admitted temporarily into an inpatient hospital setting. This process includes a determination of eligibility for AHCCCS. When a detainee is released from custody temporarily to an inpatient hospital setting, designated staff assist the detainee with completing an application for AHCCCS Health Insurance. The application is submitted to a special unit that determines AHCCCS eligibility for the specific period of the hospital stay. When the detainee is determined eligible, the hospital will submit a bill to AHCCCS to pay for the brief hospital stay.

- [Hospital Inpatient IGA Template](#)

Pre-Release Applications

ADOC and most AZ counties (including Maricopa, Pima and Navajo) submit pre-release applications via [HEAplus](#) for AHCCCS Health Insurance approximately 30 days before detainees are released from incarceration. If additional information is required, these applications are submitted to special units at AHCCCS and the Department of Economic Security (DES) for review and processing. Staff in these special units review the applications for eligibility and approvals become effective when the applicant is released from custody. Submission of applications prior to release helps to ensure that people who need critical care are enrolled in AHCCCS immediately upon their release.

Individuals who are at risk of needing an institutional level of care upon their release, receive a pre-admission screening while incarcerated and have a Medicaid application completed. When eligible, the member is connected to the Arizona Long Term Care System (ALTCS) program and placed into a long-term care setting immediately upon their release.

This pre-release application process is available to all state and local correctional settings. Please contact us at 602-417-4065 if you are interested in beginning this process in your correctional setting.

Care Coordination

All AHCCCS Managed Care Organizations (MCOs) are contractually required to provide “reach-in” care coordination to identify members with complex health needs prior to their release from incarceration. MCOs (including Regional Behavioral Health Authorities (RBHAs)) connect case managers to members pre-release to provide information and schedule appointments with primary care physicians and behavioral health providers, as appropriate.

Information to Assist People Who Are Exiting Incarceration With Accessing Healthcare

When individuals releasing from incarceration seek assistance with accessing Medicaid (AHCCCS) services, the following documents should be used to capture important information to help navigate the system:

- [Pre-Release Medical Assistance Applications - Frequently Asked Questions for Pre-release Applicants](#)
- [Pre-Release Medical Assistance Applications - Frequently Asked Questions for Corrections Assistors](#)
- [AHCCCS Initiatives and processes to support reentry for individuals released from incarceration](#)
- [Resources to Assist with Health Plan Selection](#)

Quarterly Criminal Justice Systems Transitions Meetings

Each quarter, AHCCCS hosts a meeting to bring together partners from around Arizona to discuss challenges, barriers and best practices associated with assisting individuals with reentry following incarceration. Criminal justice stakeholders, providers, AHCCCS health plans and others who have a vested interest in assisting this population are welcome to attend.

Meetings and Materials

December 21, 2018

Agenda:

[Meeting Agenda](#)

Materials:

- [AHCCCS Suicide Prevention](#)
- [A Year of Accomplishments](#)
- [2018 Data](#)

September 7, 2018

Agenda:

[Meeting Agenda](#)

Materials:

- [Justice Meeting Deck](#)

Source: www.azahcccs.gov/AHCCCS/Initiatives/CareCoordination/justiceinitiatives.html

Results of the Strategic Plan to Increase Access to Care

[AHCCCS Strategic Plan](#)

More information about the Justice System Transitions can be found below:

- [Targeted Investments Program – Co-location of health clinics and probation/parole offices](#)
- [FOX 10: Program Aims To Help Give Arizona's Inmates A Second Chance, Outside Of Prison](#)
- [Information Sharing between Medicaid and Corrections Systems to Enroll the Justice-Involved Population: Arizona and Washington](#)
- [Critical Connections - Getting People Leaving Prison and Jail the Mental Health Care and Substance Use Treatment They Need *What Policymakers Need to Know about Health Care Coverage*](#)
- [Coconino County, Justice Council partner with White House on Data- Driven Justice Initiative](#)
- [White House Recognizes Pima County in its Data-Driven Justice Initiative](#)
- [Connecting the Justice-Involved Population to Medicaid Coverage and Care \(Kaiser Family Foundation Brief\)](#)
- [Yuma County Sherriff's Office Newsletter – Working Beyond Boundaries for Positive Health Outcomes](#)
- [Justice System Initiatives in AZ 2015](#)
- [County partners with state, nonprofits to help inmates get health care before released](#)
- [New program aims to help Maricopa County inmates get health coverage](#)
- [My Turn: How Maricopa County is helping those with serious mental illness](#)
- [24 Hours From Arrest To Release To Services For Seriously Mentally Ill In New Program](#)

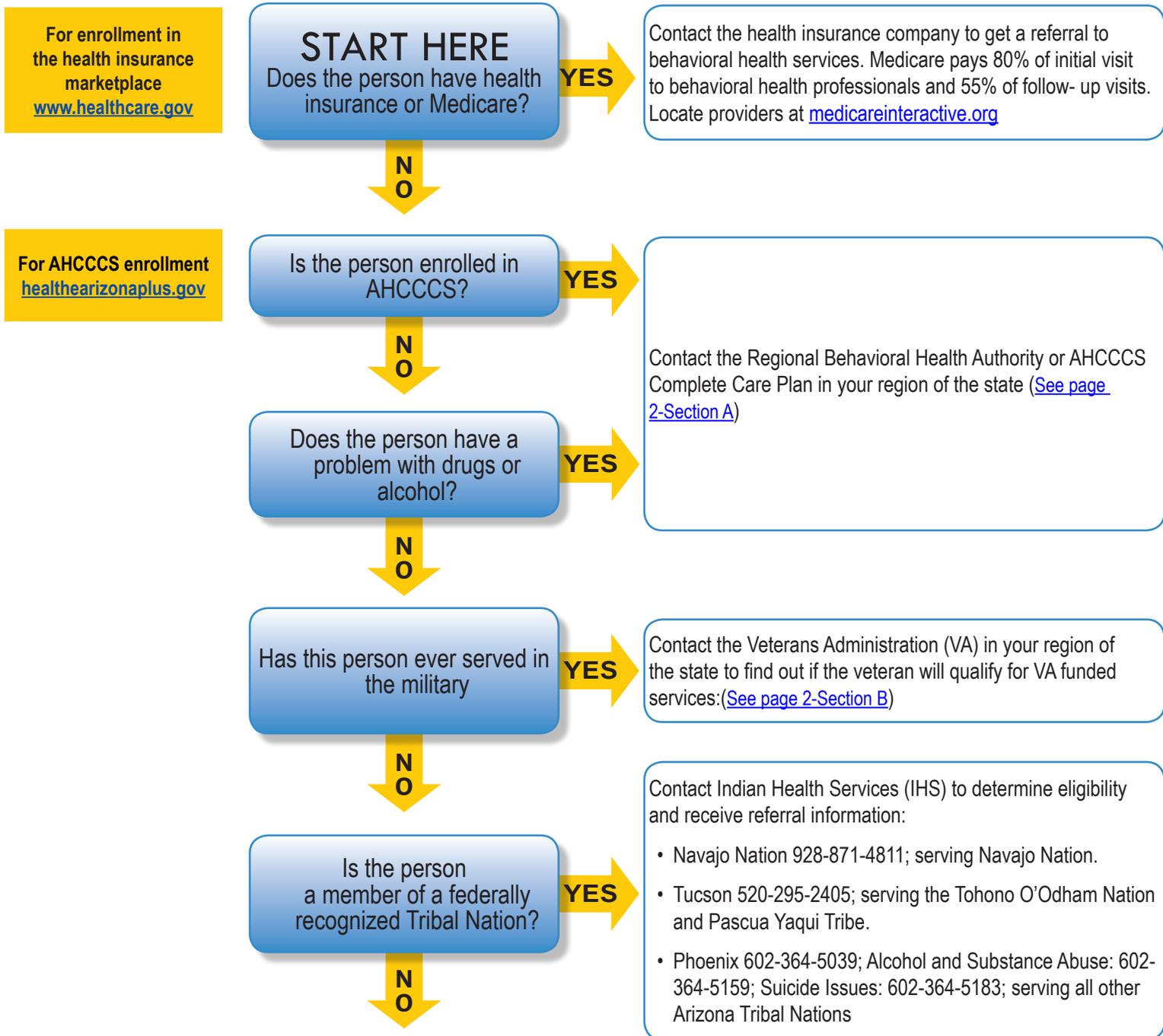
DOES THE INDIVIDUAL APPEAR TO BE AN IMMEDIATE DANGER TO HIS/HER OWN SAFETY OR TO THE SAFETY OF OTHERS?

CALL 911

DOES THE INDIVIDUAL APPEAR TO BE IN NEED OF MENTAL HEALTH ASSISTANCE RIGHT AWAY?

SEE [CRISIS SERVICES](#)

Accessing/Paying for Behavioral Health



([See page 2-Section C](#))

SECTION A

Tribal and Regional Behavioral Health Authorities and AHCCCS Complete Care Plans By Region

Note: latest website and 24-hr line information can be found at www.azahcccs.gov

Tribal and Regional Behavioral Health Authority (TRBHA / RBHA):	County or Tribal Nation Served
Arizona Complete Health-Complete Care Plan www.azcompletehealth.com/completecure and 1-888-788-4408	Gila, La Paz, Pima, Pinal, Yuma, Graham, Greenlee, Santa Cruz, and Cochise
Gila River TRBHA: www.gilariverrbha.org and 1-888-484-8526 ext. 7100	Gila River Indian Community
Mercy Care: www.mercycareaz.org and 1-800-624-3879	Maricopa
Navajo Nation TRBHA: www.nndoh.org/dbhs and 1-866-841-0277	Navajo Nation
Steward Health Choice Arizona: www.StewardHealthChoiceAZ.com and 1-800-322-8670	Apache, Coconino, Mohave, Navajo, Yavapai
Pascua-Yaqui TRBHA: www.pascuayaqui-nsn.gov and 520-879-6060	Pascua Yaqui Tribe
White Mountain Apache TRBHA: www.wmabhs.org and 928-338-4811	White Mountain Apache Nation
ACC Plan	Geographic Service Area (GSA) Served
Care1st Health Plan: www.care1staz.com and 1-866-560-4042	North, Central
Steward Health Choice Arizona: www.StewardHealthChoiceAZ.com and 1-800-322-8670	North, Central
Magellan Complete Care: www.mccofaz.com and 1-800-424-5891	Central
Mercy Care: www.mercycareaz.org and 1-800-624-3879	Central
Banner-University Family Care: www.bannerufc.com/acc and 1-800-582-8686	Central, South
UnitedHealthcare Community Plan: www.uhccommunityplan.com and 1-800-348-4058	Central, South
Arizona Complete Health-Complete Care Plan: www.azcompletehealth.com/completecure and 1-888-788-4408	Central, South

SECTION B

Veterans Administration (VA) by Region

VA Health Care System	Counties Served
Phoenix: 602-277-5551	Gila, Maricopa
Northern Arizona: 928-445-4860	Apache, Coconino, Mojave, Navajo, Yavapai
Southern Arizona: 520-792-1450	Cochise, Graham, Gila, Greenlee, La Paz, Pima, Pinal, Santa Cruz, Yuma

SECTION C

Additional Resources

Some free or low cost support services may be obtained from sliding fee scale clinics, community organizations, and/or places of worship. Some examples of free or low/cost no cost support services are listed below:

The Arizona Department of Financial Institutions: offer free counseling service to those behind on mortgage payments or facing foreclosure, 877-448-1211. SOS Non Title 19 Resource Hotline: (602) 759-8175.

Transitional Living Centers "TLC": Helping recovering substance abusers rebuild their lives since 1992 www.transitionalliving.org.

Family Involvement Center "FIC": Select "Services" then "Classes/Support Groups" <http://www.familyinvolvementcenter.org>. NAMI AZ: Select your local affiliate and select "Support Groups" www.namiaz.com.

MIKID AZ: Select "Programs and Services" and select "Family Support" www.mikid.org/.

Stand Together and Recover (STAR) Centers: Peer Support and Recovery Centers: www.thestarcenters.org.

Substance Use Support:

- National Drug and Alcohol Referral Routing Service: 1-800-662-HELP (4357), press "2" for Spanish or: <http://findtreatment.samhsa.gov>.
- Alcoholics Anonymous (AA) meeting locator: <http://www.area03.org/AA-Meetings>.
- Narcotics Anonymous (NA): 1-818-773-9999; online arizona-na.org.

Suicide Prevention Resources:

- National Suicide Prevention Lifeline: 1-800-273-TALK (8255), press "1" for veteran support; online www.suicidepreventionlifeline.org
- National Suicide Prevention Lifeline in Spanish: 1-888-628-9454.
- The Trevor Hotline (Suicide Prevention Hotline for gay and questioning youth): 1-866-488-7386; online www.thetrevorproject.org
- Teen Lifeline: 1-800-248-TEEN (8336); online teenlifeline.org.
- Low cost/no cost support groups: www.mentalhealthamerica.net/find-support-groups.

AHCCCS Complete Care: The Future of Integrated Healthcare

Source: <https://www.azahcccs.gov/AHCCCS/Initiatives/AHCCCSCompleteCare/>

AHCCCS Complete Care (ACC) begins on October 1, 2018. This new integrated system will join physical and behavioral health services together to treat all aspects of our members' health care needs under a chosen health plan. AHCCCS Complete Care encourages more coordination between providers within the same network which can mean better health outcomes for members.

Here's what members need to know

Who Does AHCCCS Complete Care Affect?

- Most adults on AHCCCS *
- Most children on AHCCCS *

**With a few exceptions for members who are also eligible for CRS services, AHCCCS Complete Care will not affect: Arizona Long Term Care System (ALTCS) members, members determined to have a Serious Mental Illness, or children in foster care enrolled in the Comprehensive Medical and Dental Program (CMDP).*

Link to Video: <https://youtu.be/NBP7OECtkC0>

What's Changing?

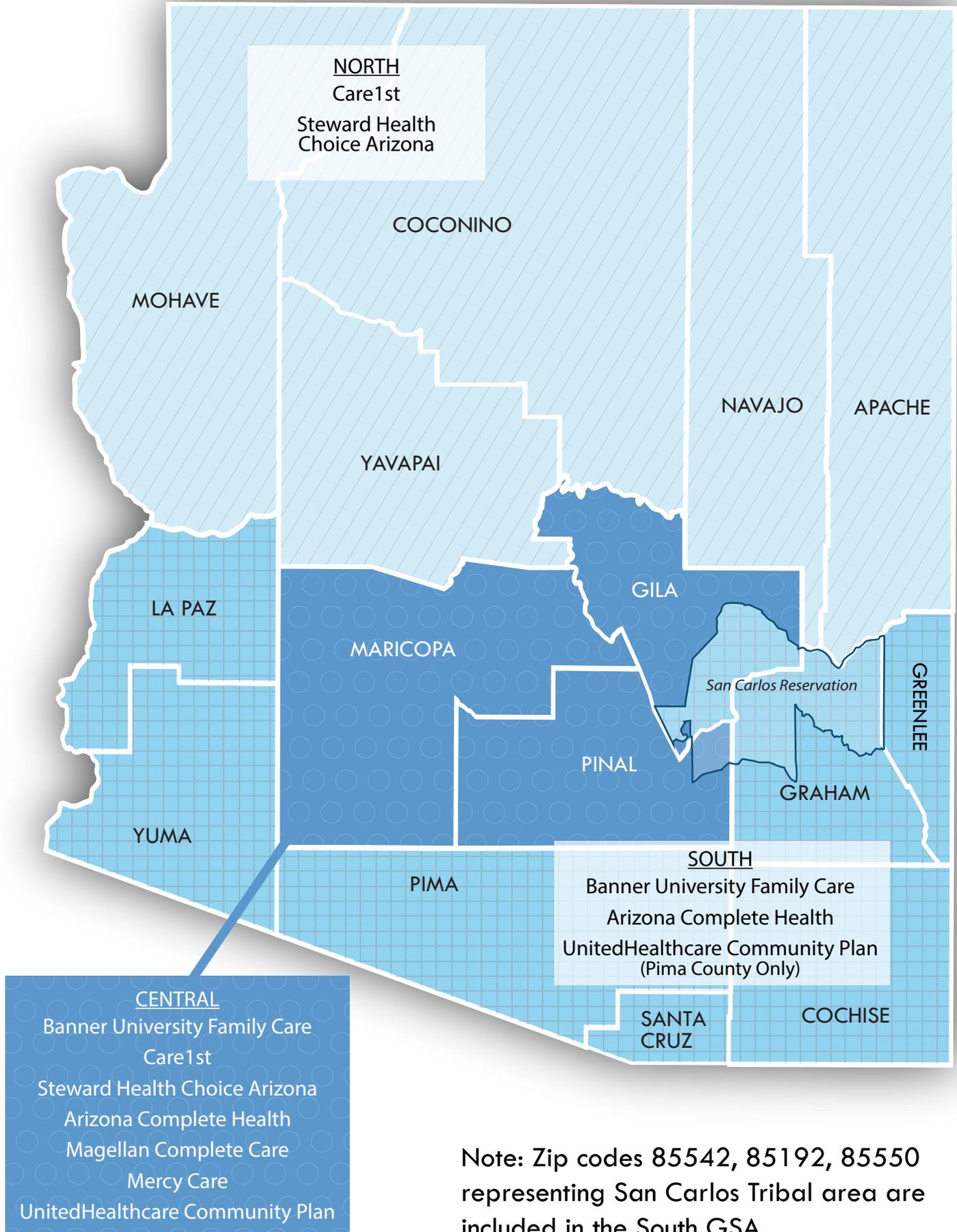
- Members will be able to access physical and behavioral healthcare services through a single ACC health plan.
- The health plan choices may change.

What's Not Changing?

- Members will still have a choice of health plans in their geographic service area.
- Members will have access to the same array of covered services.
- Members will still have access to a network of providers.
- Regional Behavioral Health Authorities (RBHAs) will continue to provide specific crisis services.
- RBHAs will continue to serve members determined to have a Serious Mental Illness, children in foster care, and members served by Department of Economic Services/DDD.
- American Indian members will have the choice of enrolling in an ACC managed care plan or the American Indian Health Program (AIHP) and a Tribal RBHA when available. American Indian members will have the same access to Indian Health Services providers, Tribal 638 providers, and Urban Indian Health providers.
- Arizona Long Term Care System (ALTCS) plans will remain the same.

AHCCCS Complete Care (ACC) Services Map

Effective October 1, 2018



Court Ordered Evaluation (COE)/ Court Ordered Treatment (COT) FAQs

- Q1: During the Court Ordered Evaluation (COE)/Court Ordered Treatment (COT) process, at what point does County responsibility end?**
- Q2: Who can assist with coordination of COE and COT?**
- Q3: What are the associated AHCCCS policies available related to COE and COT?**
- Q4: How will I know when upcoming COE/COT policies are posted for Tribal Consultation Notification/Public Comment?**
- Q5: When a member associated with an ACC plan is determined to have a Serious Mental Illness during COE/COT, what is the process to transfer the member to a RBHA?**
- Q6: When an ACC member is determined to have a Serious Mental Illness (SMI) during a COE/COT inpatient stay, which entity is responsible for payment upon their discharge?**
- Q7: Does the RBHA assume responsibility for a member determined to have a Serious Mental Illness (SMI) on the date of the SMI evaluation, or the date that AHCCCS shows the change?**
- Q8: Will the payment practices for type 02 hospitals change after October 1, 2018?**
- Q9: Are there any identifiers that distinguish inpatient claim submissions for COE (county responsibility) or COT (plan responsibility)?**
- Q10: Are inpatient providers able to bill and submit a separate physical acute event for reimbursement under the APR-DRG to the ACC plan or AIHP if such an event would occur during a patient's COE and/or COT treatment stay?**
- Q11: What are the Mental Health Agency Contacts for Pre-Petition Screening and Court Ordered Evaluation by County?**
- Q12: What happens if a Tribal Member residing on a reservation receives a Tribal Court Order?**

Q1: During the Court Ordered Evaluation (COE)/Court Ordered Treatment (COT) process, at what point does County responsibility end?

A1: Title XIX/XXI funds shall not be used to reimburse COE services.

The cost of screening and court ordered evaluation performed under Article 4 of Title 36, Chapter 5, is the financial responsibility of the county. The county's financial responsibility ends with the filing of a petition for court ordered treatment. Counties maintain financial responsibility of any services provided under COE until the date and time the petition for COT is actually filed.

Some counties contract with AHCCCS to have the health plan cover responsibility for screening, court order evaluation, or both. A listing of those counties is included in the response to FAQ 11. For more information regarding financial responsibility services provided after the completion of a court ordered evaluation, refer to Policy 437 of the AHCCCS Contractor Operations Manual.

Q2: Who can assist with coordination of COE and COT?

A2: Each AHCCCS Contractor and AIHP has a mailbox or Court Coordinator that is available for all Title 36 questions and care coordination needs. Contact information for each contractor is as follows:

Plan	Email
Care1st Health Plan	Care1stCOT@wellcare.com
Arizona Complete Health	AzCHTitle36@azcompletehealth.com
Banner University Family Care	BUHPCareMgmtBHMailbox@bannerhealth.com
Magellan Complete Care	MCCAZCOEJustice@magellanhealth.com

Mercy Care	adultcourtliaisons@mercycares.org
Steward Health Choice Arizona	HCH.HCICt36@steward.org
UnitedHealthcare Community Plan	COT_COE@uhc.com
American Indian Health Program	COT_AIHP@azahcccs.gov

Q3: What are the associated AHCCCS policies available related to COE and COT?

- A3:
- AMPM Policy 320-U, Pre-Petition Screening, Court Ordered Evaluation and Court Ordered Treatment: www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/320-U.pdf
 - ACOM Policy 437, Financial Responsibility for Services After the Completion of Court Ordered Evaluation: www.azahcccs.gov/shared/Downloads/ACOM/PolicyFiles/400/437.pdf

AMPM Policy 320-U is currently being reviewed for updates and shall be posted for Tribal Consultation Notification/Public Comment upon completion of the proposed revisions. Feedback, comments, and suggestions may be provided regarding the proposed revisions during the Tribal Consultation Notification/Public Comment 45 day period.

Q4: How will I know when upcoming COE/COT policies are posted for Tribal Consultation Notification/Public Comment?

A4: Any interested party may subscribe for email notifications of AMPM Policy Updates, including AMPM Policy 320-U at www.azahcccs.gov/shared/MedicalPolicyManual/

Any interested party may subscribe for email notifications of ACOM Policy Updates, at www.azahcccs.gov/shared/ACOM/

Q5: When a member associated with an ACC plan is determined to have a Serious Mental Illness during COE/COT, what is the process to transfer the member to a RBHA?

A5: AHCCCS Health Plans shall adhere to the processes outlined in ACOM Policy 402 relating to relinquishing contractor responsibilities (i.e. the ETI process). American Indian Health Program (AIHP) shall provide coordination assistance as outlined in AMPM policy 520 (<https://www.azahcccs.gov/shared/Downloads/MedicalPolicyManual/500/520.pdf>). Throughout the transition, it is the AHCCCS Health Plan or AIHP's responsibility to coordinate with the receiving RBHA/TRBHA in order to facilitate a warm handoff. Per ACOM Policy 402, the administrative transition of the member's care may take up to 10 days; however, the RBHA plan assumes responsibility upon the SMI determination.

Q6: When an ACC member is determined to have a Serious Mental Illness (SMI) during a COE/COT inpatient stay, which entity is responsible for payment upon their discharge?

- A6:
- County payment responsibility timeframes for COE remains the same regardless of SMI determination. Please refer to FAQ #1.
 - Payment responsibility is based on the primary diagnosis
 - If the stay has a primary diagnosis of behavioral health, and thus paid daily rates, the claim will be able to be split between the two AHCCCS payers – the ACC plan for the days the member is GMH/SU, and the RBHA for the days the member is SMI.
 - If the stay has a primary diagnosis of physical health, the DRG policy rules kick in and the payer for the claim is the plan of enrollment as of the discharge date.

Q7: Does the RBHA assume responsibility for a member determined to have a Serious Mental Illness (SMI) on the date of the SMI evaluation, or the date that AHCCCS shows the change?

A7: AHCCCS updates the member's BH category with the effective date (i.e. the date of SMI determination), indicated by Crisis Response Network (CRN), the SMI Determination vendor, on the date the update is received by AHCCCS (i.e. date of notification). Enrollment under the new BH category is effective from the date the update is received (date of notification) by AHCCCS. This has not changed with the 10/1/18 ACC changes. Providers will see an immediate impact to the BH category on the date of notification back to the effective date indicated by CRN but will only see an impact to the enrollment from the date of notification forward.

In typical scenarios, the SMI behavioral health category will take effect the day of, or the day after the SMI determination.

Example:

1. On 10/25/18, CRN sends a BH category update that the member is determined SMI 10/24/18
2. The member's BH category will be updated 10/25/18 (date of notification from CRN) with an effective date of 10/24/18 to SMI.
3. The member's enrollment will be updated to reflect the RBHA as the plan of enrollment (or if already in that plan but non-SMI, the SMI contract type) effective 10/25/18.

Q8: Will the payment practices for type 02 hospitals change after October 1, 2018?

A8: Background:

1. Prior to October 1, RBHAs paid 02 hospitals in the following manner:
 - a. Per diem rates for claims with a primary diagnosis of BH.
 - b. DRGs for claims with a primary diagnosis of physical health (PH).
2. Prior to October 1, ACC Plans paid 02 hospitals in the following manner:
 - a. DRGs for all claims.

Effective October 1, 2018, AHCCCS is amending the FFS reimbursement methodology for 02 hospital inpatient claims with a primary diagnosis of BH as follows:

Pay using a daily rate rather than a DRG

1. This daily rate shall be considered an administrative day rate.
2. The claim shall be submitted as an administrative day claim and follow the process outlined by AHCCCS for billing of administrative day claims.
3. AHCCCS will amend the definition of an administrative day in Rule, the DRG Policy Document, and the FFS Provider Manual.

Q9: Are there any identifiers that distinguish inpatient claim submissions for COE (county responsibility) or COT (plan responsibility)?

A9: AHCCCS is researching the appropriate modifiers to use for claims relating to COE.

Q10: Are inpatient providers able to bill and submit a separate physical acute event for reimbursement under the APR-DRG to the ACC plan or AIHP if such an event would occur during a patient’s COE and/or COT treatment stay?

A10: AHCCCS hospital reimbursement is based on the primary diagnosis on the claim, regardless of the method used to pay (DRG, per diem, etc.). You cannot submit a behavioral health claim and a physical health claim for the same stay. The county shall be billed (or the county’s TPA) for the COE, and bill the ACC Plan (or RBHA for a member with an SMI designation) or AIHP for the COT. Assuming the primary diagnosis on the COE stay is behavioral health, you cannot bill AHCCCS for the same COE dates of service even if there are physical health services provided during the stay. The same is true for the COT stay.

Q11: What are the Mental Health Agency Contacts for Pre-Petition Screening and Court Ordered Evaluation by County?

A11: * Counties highlighted in blue have an IGA for pre-petition screening and evaluation services
* Counties highlighted in green have an IGA for pre-petition screening services only

County	Mental Health Agency	Services Offered	Contact Information
Coconino	The Guidance Center, Inc.	Screening and assistance with evaluation	Guidance Center - Phone: (928) 527-1899 tgcaz.org
	Encompass Health Services (Northern Coconino County)	Screenings (Northern Coconino County)	Encompass - Phone: (928) 645-5113 www.encompass-az.org
Apache	Little Colorado Behavioral Health Centers	Screening and evaluation	Phone: (928) 333-2683 www.lcbhc.org
Mohave	Mohave Mental Health Clinic, Inc.	Screening and evaluation	Phone: (928) 757-8111 www.mmihc-inc.org
Navajo	Change Point Integrated Health	Screening and evaluation	Phone: (928) 537-5315 www.mychangepoint.org
Yavapai	Pronghorn Psychiatry	Screening and evaluation	Phone: (928) 583-7799 www.stoneridgecenters.com
La Paz	Crisis Response Center	Screening and evaluation	Phone: (520) 301-2284 www.connectionsarizona.com
Yuma	Crisis Horizon Acute Care Center	Screening and Evaluation	Phone: (520) 301-2284 www.connectionsarizona.com
Cochise	Involve PeopleCare (Formerly Nursewise)	Screening Only *Evaluation at nearest County Agency	Phone: (866) 495-6735 www.involvehealth.com
Graham	Involve PeopleCare (Formerly Nursewise)	Screening Only *Evaluation at nearest County Agency	Phone: (866) 495-6735 www.involvehealth.com
Greenlee	Involve PeopleCare (Formerly Nursewise)	Screening Only *Evaluation at nearest County Agency	Phone: (866) 495-6735 www.involvehealth.com

Santa Cruz	Involve PeopleCare (Formerly Nursewise)	Screening Only <i>*Evaluation at nearest County Agency</i>	Phone: (866) 495-6735 www.involvehealth.com
Gila	Community Bridges	Screening Only <i>*Evaluation at nearest County Agency</i>	Phone: (928) 425-2415 communitybridgesaz.org
Pinal	Horizon Health and Wellness	Screening and Evaluation	Phone: (480) 983-0065 www.hhwaz.org
Pima	Crisis Response Center (CRC)	Screening and Evaluation	Phone: (520) 301-2284 www.connectionsarizona.com
Maricopa	ConnectionsAZ Urgent Psychiatric Care Center (UPC); or	UPC: Screening Only	UPC - Phone: (602) 416-7600 www.connectionsarizona.com
	Community Bridges - Community Psychiatric Emergency Center (CPEC); or	CPEC: Screening Only	CPEC - Phone: (480) 507-5180 communitybridgesaz.org
	RI International - Recover Response Center (RRC)	RRC: Screening Only	RRC - Phone: (602) 636-4380 riinternational.com
	EMPACT PAD	EMPACT PAD: Community Screening only	EMPACT- Contact through CRN: (602) 222-9444
	CPR- Hospital Rapid Response Team	CPR-Community Screening Only	CPR – Hospital Rapid Response Team – Contact CPR directly: 480-804-0326
	Maricopa Integrated Health System - Desert Vista Behavioral Health Center; or	MIHS – Desert Vista: Evaluation Only	MIHS – Desert Vista Phone: (602) 222-9444 www.mihs.org
Maricopa Integrated Health System – Behavioral Health Annex	MIHS – Annex: Evaluation Only	MIHS – Annex Phone: (480) 334-2195 www.mihs.org	

Q12: What happens if a Tribal Member residing on a reservation receives a Tribal Court Order?

A12: Under A.R.S. §12-136, the process for establishing a Tribal court order for treatment under the jurisdiction of the state is a process of recognition. Once this process occurs, and if the recognition is approved by the Superior Court, the state recognized tribal court order is enforceable off the reservation. Care and clinical coordination must run concurrently with the recognition process to assure continuity of care and to avoid delays in admission to an appropriate facility for treatment upon state/county court recognition of the tribal court order.

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HOUSE BILL 2754

AN ACT

AMENDING SECTIONS 13-4512 AND 36-273, ARIZONA REVISED STATUTES; AMENDING SECTION 36-405.02, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2019, CHAPTER 215, SECTION 4; AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-425.06; AMENDING SECTIONS 36-540 AND 36-550.05, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 5, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-550.09; AMENDING SECTION 36-773, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 29, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 36-2903.12 AND 36-2903.13; AMENDING SECTIONS 36-2985 AND 41-3955.01, ARIZONA REVISED STATUTES; AMENDING TITLE 46, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; REPEALING TITLE 46, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES; APPROPRIATING MONIES; RELATING TO HEALTH BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-4512, Arizona Revised Statutes, is amended to
3 read:

4 13-4512. Competency restoration treatment; order; commitment;
5 costs

6 A. The court may order a defendant to undergo out of custody
7 competency restoration treatment. If the court determines that
8 confinement is necessary for treatment, the court shall commit the
9 defendant for competency restoration treatment to the competency
10 restoration treatment program designated by the county board of
11 supervisors.

12 B. If the county board of supervisors has not designated a program
13 to provide competency restoration treatment, the court may commit the
14 defendant for competency restoration treatment to the Arizona state
15 hospital, subject to funding appropriated by the legislature to the
16 Arizona state hospital for inpatient competency restoration treatment
17 services, or to any other facility that is approved by the court.

18 C. A county board of supervisors that has designated a county
19 restoration treatment program may enter into contracts with providers,
20 including the Arizona state hospital, for inpatient, ~~in-custody~~ IN-CUSTODY
21 competency restoration treatment. A county competency restoration
22 treatment program may do the following:

23 1. Provide competency restoration treatment to a defendant in the
24 county jail, including inpatient treatment.

25 2. Obtain court orders to transport the defendant to other
26 providers, including the Arizona state hospital, for inpatient, ~~in-custody~~
27 IN-CUSTODY competency restoration treatment.

28 D. In determining the type and location of the treatment, the court
29 shall select the least restrictive treatment alternative after considering
30 the following:

31 1. ~~if~~ WHETHER confinement is necessary for treatment.

32 2. The likelihood that the defendant is a threat to public safety.

33 3. The defendant's participation in and cooperation during an
34 outpatient examination of competency to stand trial conducted pursuant to
35 section 13-4507.

36 4. The defendant's willingness to submit to outpatient competency
37 restoration treatment as a condition of pretrial release, if the defendant
38 is eligible for pretrial release.

39 E. An order entered pursuant to this section shall state ~~if~~ WHETHER
40 the defendant is incompetent to refuse treatment, including medication,
41 pursuant to section 13-4511.

42 F. A defendant shall pay the cost of inpatient, ~~in-custody~~
43 IN-CUSTODY competency restoration treatment unless otherwise ordered by
44 the court. If the court finds the defendant is unable to pay all or a

1 portion of the costs of inpatient, ~~in custody~~ IN-CUSTODY treatment, the
2 ~~state~~ CITY, TOWN OR COUNTY shall pay the costs of inpatient, ~~in custody~~
3 IN-CUSTODY competency restoration treatment at the Arizona state hospital
4 that are incurred until:

5 1. Seven days, excluding Saturdays, Sundays or other legal
6 holidays, after the hospital submits a report to the court stating that
7 the defendant has regained competency or that there is no substantial
8 probability that the defendant will regain competency within twenty-one
9 months after the date of the original finding of incompetency.

10 2. The treatment order expires.

11 3. Seven days, excluding Saturdays, Sundays or other legal
12 holidays, after the charges are dismissed.

13 G. The county, or the city if the competency proceedings arise out
14 of a municipal court proceeding, shall pay the hospital costs that are
15 incurred after the period of time designated in subsection F of this
16 section and shall also pay for the costs of inpatient, ~~in custody~~
17 IN-CUSTODY competency restoration treatment in ~~court approved~~
18 COURT-APPROVED programs that are not programs at the Arizona state
19 hospital.

20 H. Payment for the cost of outpatient community treatment ~~shall be~~
21 IS the responsibility of the defendant unless:

22 1. The defendant is enrolled in a program ~~which~~ THAT covers the
23 treatment and ~~which~~ THAT has funding available for the provision of
24 treatment to the defendant, and the defendant is eligible to receive the
25 treatment. Defendants in these circumstances may be required to share in
26 the cost of the treatment if cost sharing is required by the program in
27 which the defendant is enrolled.

28 2. The court finds that the defendant is unable to pay all or a
29 portion of treatment costs or that outpatient treatment is not otherwise
30 available to the defendant. For defendants in these circumstances, all or
31 a portion of the costs of outpatient community treatment shall be borne by
32 the county or the city if the competency proceedings arise out of a
33 municipal court proceeding.

34 I. A treatment order issued pursuant to this section is valid for
35 one hundred eighty days or until one of the following occurs:

36 1. The treating facility submits a report that the defendant has
37 regained competency or that there is no substantial probability that the
38 defendant will regain competency within twenty-one months after the date
39 of the original finding of incompetency.

40 2. The charges are dismissed.

41 3. The maximum sentence for the offense charged has expired.

42 4. A qualified physician who represents the Arizona state hospital
43 determines that the defendant is not suffering from a mental illness and
44 is competent to stand trial.

1 J. The Arizona state hospital shall collect census data for adult
2 restoration to competency treatment programs to establish maximum capacity
3 and the allocation formula required pursuant to section 36-206,
4 subsection D. The Arizona state hospital or the department of health
5 services is not required to provide restoration to competency treatment
6 that exceeds the funded capacity. If the Arizona state hospital reaches
7 its funded capacity in either or both the adult male or adult female
8 restoration to competency treatment programs, the superintendent of the
9 state hospital shall establish a waiting list for admission based on the
10 date of the court order issued pursuant to this section.

11 K. NOTWITHSTANDING ANY OTHER LAW, A COUNTY MAY MEET ANY STATUTORY
12 FUNDING REQUIREMENTS OF THIS SECTION FROM ANY SOURCE OF COUNTY REVENUE
13 DESIGNATED BY THE COUNTY, INCLUDING FUNDS OF ANY COUNTYWIDE SPECIAL TAXING
14 DISTRICT OF WHICH THE BOARD OF SUPERVISORS SERVES AS THE BOARD OF
15 DIRECTORS.

16 Sec. 2. Section 36-273, Arizona Revised Statutes, is amended to
17 read:

18 36-273. Powers and duties

19 A. The department may:

20 1. Use monies in the disease control research fund established
21 ~~pursuant to~~ BY section 36-274 to contract with individuals, organizations,
22 corporations and institutions, public or private, in this state for any
23 projects or services that the department determines may advance research
24 into the causes, the epidemiology and diagnosis, the formulation of cures,
25 the medically accepted treatment or the prevention of diseases, including
26 new drug discovery and development, AND FOR ACQUIRED IMMUNE DEFICIENCY
27 SYNDROME REPORTING AND SURVEILLANCE. Public monies in the disease control
28 research fund shall not be used for capital construction projects.

29 2. Enter into research and development agreements, royalty
30 agreements, development agreements, licensing agreements and profit
31 sharing agreements concerning the research, development and production of
32 new products developed or to be developed through ~~department funded~~
33 DEPARTMENT-FUNDED research.

34 3. Accept or receive monies from any source, including restricted
35 or unrestricted gifts and contributions from individuals, foundations,
36 corporations and other organizations and institutions.

37 4. Obtain expert services to assist in ~~the evaluation of~~ EVALUATING
38 requests and proposals.

39 5. Request cooperation from any state agency for the purposes of
40 this article.

41 6. Provide information and technical assistance to other
42 jurisdictions and agencies.

43 7. Subject to title 41, chapter 4, article 4, employ personnel
44 needed to carry out the duties of this article.

- 1 B. The department shall:
- 2 1. Review and evaluate proposals or requests for projects or
- 3 services.
- 4 2. Establish a mechanism to review the contracts awarded to ensure
- 5 that the monies are used in accordance with the proposals approved by the
- 6 department.
- 7 3. Prepare and submit a report on or before January 15 of each year
- 8 to the governor, the president of the senate and the speaker of the house
- 9 of representatives that describes the projects or services proposed to the
- 10 department pursuant to this article, the projects or services for which
- 11 the department has awarded a contract and the amount of monies necessary
- 12 for each proposal, the cost of each proposal for which a contract was
- 13 awarded, the names and addresses of the recipients of each contract and
- 14 the purpose for which each contract was made. The department shall
- 15 provide a copy of this report to the secretary of state.

16 Sec. 3. Section 36-405.02, Arizona Revised Statutes, as added by

17 Laws 2019, chapter 215, section 4, is amended to read:

18 36-405.02. Outpatient behavioral health and other related

19 health care services; employees; rules

20 The department shall allow a person who is employed at a health care

21 institution that provides **OUTPATIENT** behavioral health services, who is

22 not a licensed behavioral health professional and who is at least eighteen

23 years of age to provide **OUTPATIENT** behavioral health or other related

24 health care services pursuant to all applicable department rules. The

25 director shall adopt rules consistent with this section.

26 Sec. 4. Title 36, chapter 4, article 2, Arizona Revised Statutes,

27 is amended by adding section 36-425.06, to read:

28 36-425.06. Secure behavioral health residential facilities;

29 license; definition

30 **A. THE DEPARTMENT SHALL LICENSE SECURE BEHAVIORAL HEALTH**

31 **RESIDENTIAL FACILITIES TO PROVIDE SECURE TWENTY-FOUR-HOUR ON-SITE**

32 **SUPPORTIVE TREATMENT AND SUPERVISION BY STAFF WITH BEHAVIORAL HEALTH**

33 **TRAINING FOR PERSONS WHO HAVE BEEN DETERMINED TO BE SERIOUSLY MENTALLY**

34 **ILL, WHO ARE CHRONICALLY RESISTANT TO TREATMENT FOR A MENTAL DISORDER AND**

35 **WHO ARE PLACED IN THE FACILITY PURSUANT TO A COURT ORDER ISSUED PURSUANT**

36 **TO SECTION 36-550.09. A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY MAY**

37 **PROVIDE SERVICES ONLY TO PERSONS PLACED IN THE FACILITY PURSUANT TO A**

38 **COURT ORDER ISSUED PURSUANT TO SECTION 36-550.09 AND MAY NOT PROVIDE**

39 **SERVICES TO ANY OTHER PERSONS ON THAT FACILITY'S PREMISES. A SECURE**

40 **BEHAVIORAL HEALTH RESIDENTIAL FACILITY MAY NOT HAVE MORE THAN SIXTEEN**

41 **BEDS.**

42 **B. FOR THE PURPOSES OF THIS SECTION, "SECURE" MEANS PREMISES THAT**

43 **LIMIT A PATIENT'S EGRESS IN THE LEAST RESTRICTIVE MANNER CONSISTENT WITH**

44 **THE PATIENT'S COURT-ORDERED TREATMENT PLAN.**

1 Sec. 5. Section 36-540, Arizona Revised Statutes, is amended to
2 read:

3 36-540. Court options

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

10 1. Treatment in a program of outpatient treatment.

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

13 3. Inpatient treatment in a mental health treatment agency, in a
14 hospital operated by or under contract with the United States department
15 of veterans affairs to provide treatment to eligible veterans pursuant to
16 article 9 of this chapter, in the state hospital or in a private hospital,
17 if the private hospital agrees, subject to the limitations of section
18 36-541.

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

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

25 1. Determines that all of the following apply:

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

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

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

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

35 2. Is presented with and approves a written treatment plan that
36 conforms with the requirements of section 36-540.01, subsection B. **IF THE
37 COURT DETERMINES THAT THE PATIENT MEETS THE REQUIREMENTS OF SECTION
38 36-550.09, THE COURT MAY ORDER THE PATIENT TO BE PLACED IN A SECURE
39 BEHAVIORAL HEALTH RESIDENTIAL FACILITY THAT IS LICENSED BY THE DEPARTMENT
40 PURSUANT TO SECTION 36-425.06.** If the treatment plan presented to the
41 court pursuant to this subsection provides for supervision of the patient
42 under court order by a mental health agency that is other than the mental
43 health agency that petitioned or requested the county attorney to petition
44 the court for treatment pursuant to section 36-531, the treatment plan

1 must be approved by the medical director of the mental health agency that
2 will supervise the treatment pursuant to subsection E of this section.

3 D. An order to receive treatment pursuant to subsection A,
4 paragraph 1 or 2 of this section shall not exceed three hundred sixty-five
5 days. The period of inpatient treatment under a combined treatment order
6 pursuant to subsection A, paragraph 2 of this section shall not exceed the
7 maximum period allowed for an order for inpatient treatment pursuant to
8 subsection F of this section.

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

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

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

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

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

29 5. During any period of outpatient treatment under subsection A,
30 paragraph 2 of this section, if the court, on its own motion or on motion
31 by the medical director of the patient's outpatient mental health
32 treatment facility, determines that the patient is not complying with the
33 terms of the order or that the outpatient treatment plan is no longer
34 appropriate and the patient needs inpatient treatment, the court, without
35 a hearing and based on the court record, the patient's medical record, the
36 affidavits and recommendations of the medical director, and the advice of
37 staff and physicians or the psychiatric and mental health nurse
38 practitioner familiar with the treatment of the patient, may enter an
39 order amending its original order. The amended order may alter the
40 outpatient treatment plan or order the patient to inpatient treatment
41 pursuant to subsection A, paragraph 3 of this section. The amended order
42 shall not increase the total period of commitment originally ordered by
43 the court or, when added to the period of inpatient treatment provided by
44 the original order and any other amended orders, exceed the maximum period

1 allowed for an order for inpatient treatment pursuant to subsection F of
2 this section. If the patient refuses to comply with an amended order for
3 inpatient treatment, the court, on its own motion or on the request of the
4 medical director, may authorize and direct a peace officer to take the
5 patient into protective custody and transport the patient to the agency
6 for inpatient treatment. Any authorization, directive or order issued to
7 a peace officer to take the patient into protective custody shall include
8 the patient's criminal history and the name and telephone numbers of the
9 patient's case manager, guardian, spouse, next of kin or significant
10 other, as applicable. When reporting to or being returned to a treatment
11 agency for inpatient treatment pursuant to an amended order, the patient
12 shall be informed of the patient's right to judicial review and the
13 patient's right to consult with counsel pursuant to section 36-546.

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

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

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

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

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

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

7 G. If, on finding that the patient meets the criteria for
8 court-ordered treatment pursuant to subsection A of this section, the
9 court also finds that there is reasonable cause to believe that the
10 patient is an incapacitated person as defined in section 14-5101 or is a
11 person in need of protection pursuant to section 14-5401 and that the
12 patient is or may be in need of guardianship or conservatorship, or both,
13 the court may order an investigation concerning the need for a guardian or
14 conservator, or both, and may appoint a suitable person or agency to
15 conduct the investigation. The appointee may include a ~~court appointed~~
16 **COURT-APPOINTED** guardian ad litem, an investigator appointed pursuant to
17 section 14-5308 or the public fiduciary if there is no person willing and
18 qualified to act in that capacity. The court shall give notice of the
19 appointment to the appointee within three days of the appointment. The
20 appointee shall submit the report of the investigation to the court within
21 twenty-one days. The report shall include recommendations as to who
22 should be guardian or who should be conservator, or both, and a report of
23 the findings and reasons for the recommendation. If the investigation and
24 report so indicate, the court shall order the appropriate person to submit
25 a petition to become the guardian or conservator, or both, of the patient.

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

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

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

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

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

43 I. The court may appoint as a temporary guardian or conservator
44 pursuant to subsection H of this section a suitable person or the public

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

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

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

30 J. If, on finding that a patient meets the criteria for
31 court-ordered treatment pursuant to subsection A of this section, the
32 court also learns that the patient has a guardian appointed under title
33 14, the court with notice may impose on the existing guardian additional
34 duties pursuant to section 14-5312.01. If the court imposes additional
35 duties on an existing guardian as prescribed in this subsection, the court
36 may determine that the patient needs to continue treatment under a court
37 order for treatment and may issue the order or determine that the
38 patient's needs can be adequately met by the guardian with the additional
39 duties pursuant to section 14-5312.01 and decline to issue the court order
40 for treatment. If at any time after the issuance of a court order for
41 treatment the court finds that the patient's needs can be adequately met
42 by the guardian with the additional duties pursuant to section 14-5312.01
43 and that a court order for treatment is no longer necessary to ~~assure~~
44 **ENSURE** compliance with necessary treatment, the court may terminate the

1 court order for treatment. If there is a court order for treatment and a
2 guardianship with additional mental health authority pursuant to section
3 14-5312.01 existing at the same time, the treatment and placement
4 decisions made by the treatment agency assigned by the court to supervise
5 and administer the patient's treatment program pursuant to the court order
6 for treatment are controlling unless the court orders otherwise.

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

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

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

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

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

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

39 Q. If the court does not find a person to be in need of treatment
40 and a prosecutor filed a petition pursuant to section 13-4517, the
41 evaluation agency, within twenty-four hours, shall notify the prosecuting
42 agency of its finding. The court shall order the medical director to
43 detain the person for an additional twenty-four hours to allow the
44 prosecuting agency to be notified. If the court has retained jurisdiction

1 pursuant to section 13-4517, subsection C, the court may remand the person
2 to the custody of the sheriff for further disposition pursuant to section
3 13-4517, subsection A, paragraph 2 or 3.

4 Sec. 6. Section 36-550.05, Arizona Revised Statutes, is amended to
5 read:

6 36-550.05. Community mental health residential treatment
7 services and facilities; prevention services

8 A. A residential or day treatment facility shall be designed to
9 provide a homelike environment without sacrificing safety or care.
10 Facilities shall be relatively small, WITH preferably fifteen or ~~less~~
11 FEWER beds.

12 B. Individual programs of a community residential treatment system
13 shall include the following:

14 1. A short-term crisis residential treatment program. This program
15 is an alternative to hospitalization for persons in an acute episode or
16 situational crisis requiring temporary removal from the home from one to
17 fourteen days. The program shall provide ADMISSION CAPABILITY twenty-four
18 ~~hour~~ HOURS A DAY, seven days a week ~~admission capability~~ in the least
19 restrictive setting possible to reduce the crisis and stabilize the
20 client. Services shall include direct work with the client's family,
21 linkage with prevocational and vocational programs, assistance in applying
22 for income, medical and other benefits and treatment referral.

23 2. A residential treatment program. This program shall provide a
24 ~~full-day~~ FULL-DAY treatment program for persons who may require intensive
25 support for a maximum of two years. The program shall provide
26 rehabilitation for chronic clients who need long-term support to develop
27 independence and for clients who live marginally in the community with
28 little or no support and periodically need rehospitalization. Services
29 shall include intensive diagnostic evaluation, a ~~full-day~~ FULL-DAY
30 treatment program with prevocational, vocational and special education
31 services, outreach to social services and counseling to assist the client
32 in developing skills to move toward a less structured setting.

33 3. A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY PROGRAM. THIS
34 PROGRAM SHALL PROVIDE SECURE TWENTY-FOUR-HOUR ON-SITE SUPPORTIVE TREATMENT
35 AND SUPERVISION BY STAFF WITH BEHAVIORAL HEALTH TRAINING ONLY TO PERSONS
36 WHO HAVE BEEN DETERMINED TO BE SERIOUSLY MENTALLY ILL AND CHRONICALLY
37 RESISTANT TO TREATMENT PURSUANT TO A COURT ORDER ISSUED PURSUANT TO
38 SECTION 36-550.09.

39 ~~3.~~ 4. A ~~semi-supervised~~ SEMISUPERVISED, structured group living
40 program. This program is a cooperative arrangement in which three to five
41 persons live together in apartments or houses as a transition to
42 independent living. The program shall provide an increase in the level of
43 the client's responsibility for the functioning of the household and an
44 increase in the client's involvement in daytime activities outside the

1 house or apartment ~~which~~ THAT are relevant to achieving personal goals and
2 greater self-sufficiency. Services provided by the program shall include
3 counseling and client self-assessment, the development of support systems
4 in the community, a day program to encourage participation in the larger
5 community, activities to encourage socialization and use of general
6 community resources, rent subsidy and direct linkages to staff support in
7 emergencies.

8 ~~4.~~ 5. A socialization or day care/partial care program. This
9 program shall provide regular daytime, evening and weekend activities for
10 persons who require long-term structured support but who do not receive
11 such services in their residential setting. The program shall provide
12 support for persons who only need regular socialization opportunities and
13 referral to social services or treatment services. The program shall
14 provide opportunities to develop skills to achieve more independent
15 functioning and means to reduce social isolation. Services shall include
16 outings, recreational activities, cultural events and contact with
17 community resources, such as prevocational counseling and life skills
18 training.

19 C. Individual and family support prevention services shall provide
20 assistance to the seriously mentally ill residing in their own home. Such
21 prevention services shall include transportation, recreation,
22 socialization, counseling, respite, companion services and in-home
23 training.

24 D. Each individual program shall use appropriate multidisciplinary
25 staff to meet the diagnostic and treatment needs of the seriously mentally
26 ill and shall encourage use of paraprofessionals.

27 E. Each program shall have an evaluation method to assess the
28 effectiveness of the programs and shall include the following criteria:

- 29 1. Prevalence and incidence of the target behavioral problem.
- 30 2. Cost effectiveness.
- 31 3. Potential for implementing the program using available ~~funds~~
32 MONIES and resources through cost-sharing.
- 33 4. Measurability of the benefits.
- 34 5. Effectiveness of intervention strategy.
- 35 6. Availability of resources and personnel.

36 F. Each community residential treatment system shall be designed to
37 provide:

- 38 1. Coordination between each program and other treatment systems in
39 the community.
- 40 2. A case management system to enhance cooperation of elements
41 within the system and provide each client with appropriate services.
- 42 3. Client movement to the most appropriate and least restrictive
43 service.

1 (e) RECURRENT ARRESTS DUE TO BEHAVIOR RESULTING FROM THE MENTAL
2 DISORDER.

3 3. ANY OTHER EVIDENCE RELEVANT TO THE PERSON'S WILLINGNESS OR
4 ABILITY TO PARTICIPATE IN AND ADHERE TO TREATMENT OR THE PERSON'S NEED FOR
5 TREATMENT IN A LICENSED SECURE RESIDENTIAL SETTING TO ENSURE THE PERSON'S
6 COMPLIANCE WITH COURT-ORDERED TREATMENT.

7 C. A PERSON'S PLACEMENT IN A LICENSED SECURE BEHAVIORAL HEALTH
8 RESIDENTIAL FACILITY FOR TREATMENT SHALL BE PART OF THE WRITTEN TREATMENT
9 PLAN PRESENTED TO AND APPROVED BY THE COURT AS REQUIRED BY SECTION 36-540,
10 SUBSECTION C, PARAGRAPH 2. THE COURT SHALL CONFIRM IN THE ORDER THAT THE
11 PERSON'S PLACEMENT IN A LICENSED SECURE BEHAVIORAL HEALTH RESIDENTIAL
12 FACILITY IS THE LEAST RESTRICTIVE ENVIRONMENT TO ENSURE THE PERSON'S
13 COMPLIANCE WITH THE TREATMENT PLAN.

14 Sec. 8. Section 36-773, Arizona Revised Statutes, is amended to
15 read:

16 36-773. Health research account

17 A. Five cents of each dollar in the tobacco tax and health care
18 fund shall be deposited in the health research account for research on
19 preventing and treating tobacco-related disease and addiction.

20 B. The department of health services shall administer the account.

21 C. Monies that are deposited in the health research account shall
22 ~~only~~ be used ONLY to supplement monies that are appropriated by the
23 legislature for ALZHEIMER'S DISEASE RESEARCH AND OTHER health research
24 purposes and shall not be used to supplant those appropriated monies.

25 Sec. 9. Title 36, chapter 29, article 1, Arizona Revised Statutes,
26 is amended by adding sections 36-2903.12 and 36-2903.13, to read:

27 36-2903.12. Hospital charge master transparency; joint annual
28 report

29 ON OR BEFORE JANUARY 2, 2020 AND EACH YEAR THEREAFTER, THE DIRECTOR
30 OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION AND THE
31 DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL SUBMIT A JOINT REPORT
32 ON HOSPITAL CHARGE MASTER TRANSPARENCY TO THE GOVERNOR, THE SPEAKER OF THE
33 HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE AND SHALL PROVIDE
34 A COPY TO THE SECRETARY OF STATE. THE REPORT SHALL DO ALL OF THE
35 FOLLOWING:

36 1. SUMMARIZE THE CURRENT CHARGE MASTER REPORTING PROCESS AND
37 HOSPITAL BILLED CHARGES COMPARED TO COSTS.

38 2. PROVIDE EXAMPLES OF HOW CHARGE MASTERS OR HOSPITAL PRICES ARE
39 REPORTED AND USED IN OTHER STATES.

40 3. INCLUDE RECOMMENDATIONS TO IMPROVE THIS STATE'S USE OF HOSPITAL
41 CHARGE MASTER INFORMATION, INCLUDING REPORTING AND OVERSIGHT CHANGES.

42 36-2903.13. Inpatient psychiatric treatment; annual report

43 A. ON OR BEFORE JANUARY 2, 2020 AND EACH YEAR THEREAFTER, THE
44 DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

1 SHALL SUBMIT A REPORT TO THE DIRECTOR OF THE JOINT LEGISLATIVE BUDGET
2 COMMITTEE ON THE AVAILABILITY OF INPATIENT PSYCHIATRIC TREATMENT BOTH FOR
3 ADULTS AND FOR CHILDREN AND ADOLESCENTS WHO RECEIVE SERVICES FROM THE
4 REGIONAL BEHAVIORAL HEALTH AUTHORITIES. THE REPORT SHALL INCLUDE ALL OF
5 THE FOLLOWING INFORMATION:

6 1. THE TOTAL NUMBER OF INPATIENT PSYCHIATRIC TREATMENT BEDS
7 AVAILABLE AND THE OCCUPANCY RATE FOR THOSE BEDS.

8 2. EXPENDITURES ON INPATIENT PSYCHIATRIC TREATMENT.

9 3. THE TOTAL NUMBER OF INDIVIDUALS IN THIS STATE WHO ARE SENT OUT
10 OF STATE FOR INPATIENT PSYCHIATRIC TREATMENT.

11 4. THE PREVALENCE OF PSYCHIATRIC BOARDING OR HOLDING PSYCHIATRIC
12 PATIENTS IN EMERGENCY ROOMS FOR AT LEAST TWENTY-FOUR HOURS BEFORE
13 TRANSFERRING THE PATIENTS TO A PSYCHIATRIC FACILITY.

14 B. THE REPORT SHALL PROVIDE THE INFORMATION SPECIFIED IN SUBSECTION
15 A OF THIS SECTION SEPARATELY FOR ADULTS WHO ARE AT LEAST TWENTY-ONE YEARS
16 OF AGE AND FOR CHILDREN AND ADOLESCENTS WHO ARE TWENTY YEARS OF AGE OR
17 YOUNGER.

18 Sec. 10. Section 36-2985, Arizona Revised Statutes, is amended to
19 read:

20 36-2985. Notice of program suspension; spending limit

21 A. If ~~this state's federal medical assistance percentage for the~~
22 ~~program is less than one hundred percent~~ THE DIRECTOR DETERMINES THAT
23 FEDERAL AND STATE MONIES APPROPRIATED FOR THE PROGRAM ARE INSUFFICIENT,
24 the administration shall immediately notify the governor, the president of
25 the senate and the speaker of the house of representatives and ~~shall~~
26 ~~immediately~~ MAY stop processing all new applications.

27 B. The total amount of state monies that THE ADMINISTRATION may ~~be~~
28 ~~spent~~ SPEND in any fiscal year ~~by the administration~~ for health care
29 provided under this article shall not exceed the amount appropriated or
30 authorized by section 35-173.

31 C. This article does not impose a duty on an officer, agent or
32 employee of this state to discharge a responsibility or create any right
33 in a person or group if the discharge or right would require an
34 expenditure of state monies in excess of the expenditure authorized by
35 legislative appropriation for that specific purpose.

36 Sec. 11. Section 41-3955.01, Arizona Revised Statutes, is amended
37 to read:

38 41-3955.01. Seriously mentally ill housing trust fund;
39 purpose; report

40 A. The seriously mentally ill housing trust fund is established.
41 The director of the Arizona health care cost containment system
42 administration shall administer the fund. The fund consists of monies
43 received pursuant to section 44-313 and investment earnings.

1 B. On notice from the director of the Arizona health care cost
2 containment system administration, the state treasurer shall invest and
3 divest monies in the fund as provided by section 35-313, and monies earned
4 from investment shall be credited to the fund.

5 C. Fund monies shall be spent on approval of the Arizona health
6 care cost containment system administration solely for housing projects
7 AND RENTAL ASSISTANCE for seriously mentally ill persons.

8 D. The director of the Arizona health care cost containment system
9 administration shall report annually to the legislature on the status of
10 the seriously mentally ill housing trust fund. The report shall include a
11 summary of facilities for which funding was provided during the preceding
12 fiscal year and shall show the cost and geographic location of each
13 facility and the number of individuals benefiting from the operation,
14 construction or renovation of the facility. THE REPORT SHALL ALSO INCLUDE
15 THE NUMBER OF INDIVIDUALS WHO BENEFITED FROM RENTAL ASSISTANCE. The
16 report shall be submitted to the president of the senate and the speaker
17 of the house of representatives ~~to~~ NOT later than September 1 of each
18 year.

19 E. Monies in the seriously mentally ill housing trust fund are
20 exempt from the provisions of section 35-190 relating to lapsing of
21 appropriations.

22 F. An amount not to exceed ten percent of the seriously mentally
23 ill housing trust fund monies may be appropriated annually by the
24 legislature to the Arizona health care cost containment system for
25 administrative costs in providing services relating to the seriously
26 mentally ill housing trust fund.

27 G. For any construction project financed by the Arizona health care
28 cost containment system administration pursuant to this section, the
29 administration shall notify a city, town, county or tribal government that
30 a project is planned for its jurisdiction and, before proceeding, shall
31 seek comment from the governing body of the city, town, county or tribal
32 government or an official authorized by the governing body of the city,
33 town, county or tribal government. The Arizona health care cost
34 containment system administration shall not interfere with or attempt to
35 override the local jurisdiction's planning, zoning or land use
36 regulations.

37 Sec. 12. Title 46, chapter 2, Arizona Revised Statutes, is amended
38 by adding article 9, to read:

39 ARTICLE 9. FAMILY CAREGIVER GRANT PROGRAM

40 46-341. Definitions

41 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- 42 1. "DEPARTMENT" MEANS THE DEPARTMENT OF ECONOMIC SECURITY.
43 2. "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

- 1 3. "QUALIFYING EXPENSES":
2 (a) MEANS THOSE EXPENSES THAT RELATE DIRECTLY TO CARING FOR OR
3 SUPPORTING A QUALIFYING FAMILY MEMBER.
4 (b) INCLUDES:
5 (i) IMPROVING OR ALTERING THE INDIVIDUAL'S PRIMARY RESIDENCE,
6 WHETHER OWNED OR RENTED BY THE INDIVIDUAL, TO ENABLE OR ASSIST THE
7 QUALIFYING FAMILY MEMBER TO BE MOBILE, SAFE OR INDEPENDENT.
8 (ii) PURCHASING OR LEASING EQUIPMENT OR ASSISTIVE CARE TECHNOLOGY
9 TO ENABLE OR ASSIST THE QUALIFYING FAMILY MEMBER TO CARRY OUT ONE OR MORE
10 DAILY LIVING ACTIVITIES.
11 (c) DOES NOT INCLUDE:
12 (i) REGULAR FOOD, CLOTHING OR TRANSPORTATION EXPENSES OR GIFTS
13 PROVIDED TO THE QUALIFYING FAMILY MEMBER.
14 (ii) ORDINARY HOUSEHOLD MAINTENANCE OR REPAIRS THAT ARE NOT
15 DIRECTLY RELATED TO AND NECESSARY FOR THE CARE OF THE QUALIFYING FAMILY
16 MEMBER.
17 (iii) ANY AMOUNT THAT IS PAID OR REIMBURSED BY INSURANCE OR BY THE
18 FEDERAL GOVERNMENT, THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.
19 4. "QUALIFYING FAMILY MEMBER" MEANS AN INDIVIDUAL WHO MEETS ALL OF
20 THE FOLLOWING REQUIREMENTS:
21 (a) IS AT LEAST EIGHTEEN YEARS OF AGE DURING THE CALENDAR YEAR.
22 (b) REQUIRES ASSISTANCE WITH ONE OR MORE ACTIVITIES OF DAILY LIVING
23 AS CERTIFIED BY A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER
24 13 OR 17, A REGISTERED NURSE PRACTITIONER WHO IS LICENSED PURSUANT TO
25 TITLE 32, CHAPTER 15 OR A PHYSICIAN ASSISTANT WHO IS LICENSED PURSUANT TO
26 TITLE 32, CHAPTER 25.
27 (c) IS THE INDIVIDUAL'S SPOUSE OR THE INDIVIDUAL'S OR SPOUSE'S
28 CHILD, GRANDCHILD, STEPCHILD, PARENT, STEPPARENT, GRANDPARENT, SIBLING,
29 UNCLE OR AUNT, WHETHER OF THE WHOLE OR HALF BLOOD OR BY ADOPTION.
30 46-342. Family caregiver grant program; requirements
31 A. BEGINNING JANUARY 1, 2020, THE FAMILY CAREGIVER GRANT PROGRAM IS
32 ESTABLISHED FOR INDIVIDUALS WHO HAVE QUALIFYING EXPENSES DURING A CALENDAR
33 YEAR DUE TO CARING FOR AND SUPPORTING A QUALIFYING FAMILY MEMBER IN THE
34 INDIVIDUAL'S HOME.
35 B. TO APPLY FOR A FAMILY CAREGIVER GRANT:
36 1. AN INDIVIDUAL MUST SUBMIT AN APPLICATION TO THE DEPARTMENT ON A
37 FORM PRESCRIBED BY THE DEPARTMENT.
38 2. BE A RESIDENT OF THIS STATE.
39 3. THE INDIVIDUAL'S ARIZONA GROSS INCOME, TOGETHER WITH ANY ARIZONA
40 GROSS INCOME OF EACH QUALIFYING FAMILY MEMBER, IN THE TAXABLE YEAR MAY NOT
41 EXCEED:
42 (a) \$75,000 IN THE CASE OF A SINGLE PERSON OR A MARRIED PERSON
43 FILING SEPARATELY.
44 (b) \$150,000 IN THE CASE OF A MARRIED COUPLE FILING A JOINT RETURN.

1 4. THE INDIVIDUAL MUST INCUR QUALIFYING EXPENSES DURING THE
2 CALENDAR YEAR IN WHICH THE INDIVIDUAL APPLIES FOR THE GRANT FOR THE CARE
3 OF ONE OR MORE QUALIFYING FAMILY MEMBERS.

4 5. THE INDIVIDUAL MUST SUBMIT WITH THE CLAIM FOR THE GRANT THE
5 QUALIFYING FAMILY MEMBER'S NAME AND RELATIONSHIP TO THE INDIVIDUAL.

6 C. THE AMOUNT OF THE GRANT IS EQUAL TO FIFTY PERCENT OF THE
7 QUALIFYING EXPENSES INCURRED DURING THE CALENDAR YEAR IN WHICH THE
8 INDIVIDUAL APPLIES FOR THE GRANT BUT NOT MORE THAN \$1,000 FOR EACH
9 QUALIFYING FAMILY MEMBER.

10 D. AN INDIVIDUAL WHO RECEIVES A GRANT UNDER THIS SECTION IS NOT
11 ELIGIBLE TO APPLY FOR A GRANT UNDER THIS SECTION AGAIN FOR THREE
12 CONSECUTIVE CALENDAR YEARS.

13 E. THE DEPARTMENT SHALL CERTIFY APPLICATIONS FOR THE GRANT ON A
14 FIRST-COME, FIRST-SERVED BASIS. THE DEPARTMENT MAY NOT AWARD GRANTS UNDER
15 THIS SECTION THAT EXCEED IN THE AGGREGATE \$500,000 FOR ANY CALENDAR YEAR.
16 THE DEPARTMENT SHALL INCLUDE QUESTIONS IN THE APPLICATION TO HELP THE
17 DEPARTMENT DETERMINE WHETHER THE GRANTS THAT WERE PROVIDED DELAYED OR
18 PREVENTED A QUALIFYING FAMILY MEMBER FROM ENTERING A LONG-TERM CARE
19 FACILITY OR ASSISTED LIVING FACILITY IN THE CALENDAR YEAR OF THE
20 APPLICATION OR FUTURE CALENDAR YEARS.

21 F. THE DEPARTMENT MAY USE THE ADVISORY COUNCIL ON AGING TO PROVIDE
22 INPUT ON APPROVAL OF APPLICATIONS FOR GRANTS AND WHETHER AN EXPENSE IS A
23 QUALIFYING EXPENSE OR OTHER ISSUES RELATING TO THE GRANT PROGRAM AS
24 DETERMINED BY THE DEPARTMENT.

25 46-343. Family caregiver grant program fund; report

26 A. THE FAMILY CAREGIVER GRANT PROGRAM FUND IS ESTABLISHED. THE
27 DIRECTOR SHALL ADMINISTER THE FUND. THE FUND SHALL CONSIST OF GRANTS,
28 GIFTS, DONATIONS AND LEGISLATIVE APPROPRIATIONS. MONIES IN THE FUND ARE
29 CONTINUOUSLY APPROPRIATED. MONIES IN THE FUND MAY BE SPENT ONLY FOR
30 GRANTS PROVIDED TO INDIVIDUALS WHO ARE CARING FOR AND SUPPORTING A
31 QUALIFYING FAMILY MEMBER IN THE INDIVIDUAL'S HOME AS SPECIFIED IN THIS
32 ARTICLE.

33 B. EXPENDITURES FROM THE FAMILY CAREGIVER GRANT PROGRAM FUND FROM
34 THE PREVIOUS CALENDAR YEAR SHALL BE REPORTED TO THE LEGISLATURE IN THE
35 COURSE OF THE DEPARTMENT'S ANNUAL REPORT. THE DEPARTMENT SHALL INCLUDE
36 AGGREGATED DATA SUMMARIZING THE QUALIFYING EXPENSES THAT WERE APPROVED FOR
37 GRANTS, THE TYPES OF INDIVIDUALS THAT QUALIFIED FOR THE GRANTS AND
38 INFORMATION ABOUT THE ABILITY FOR QUALIFIED FAMILY MEMBERS TO DELAY
39 ENTERING A LONG-TERM CARE FACILITY OR ASSISTED LIVING FACILITY.

40 C. THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND
41 AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE
42 CREDITED TO THE FUND.

1 D. INTEREST OR OTHER INCOME DERIVED FROM THE FAMILY CAREGIVER GRANT
2 PROGRAM FUND MAY BE USED ONLY FOR THE PURPOSES OF THIS ARTICLE. INTEREST
3 OR OTHER INCOME DERIVED FROM THE FAMILY CAREGIVER GRANT PROGRAM FUND MAY
4 NOT BE USED TO SUPPLANT OTHER APPROPRIATIONS.

5 Sec. 13. Delayed repeal

6 Title 46, chapter 2, article 9, Arizona Revised Statutes, as added
7 by this act, is repealed from and after June 30, 2023.

8 Sec. 14. ALTCs; county contributions; fiscal year 2019-2020

9 A. Notwithstanding section 11-292, Arizona Revised Statutes, county
10 contributions for the Arizona long-term care system for fiscal year
11 2019-2020 are as follows:

12	1. Apache	\$ 720,200
13	2. Cochise	\$ 5,176,200
14	3. Coconino	\$ 2,162,200
15	4. Gila	\$ 2,418,200
16	5. Graham	\$ 1,684,400
17	6. Greenlee	\$ 8,200
18	7. La Paz	\$ 822,000
19	8. Maricopa	\$185,791,300
20	9. Mohave	\$ 9,232,700
21	10. Navajo	\$ 2,981,000
22	11. Pima	\$ 45,157,400
23	12. Pinal	\$ 13,755,300
24	13. Santa Cruz	\$ 2,266,800
25	14. Yavapai	\$ 8,543,800
26	15. Yuma	\$ 9,556,400

27 B. If the overall cost for the Arizona long-term care system
28 exceeds the amount specified in the general appropriations act for fiscal
29 year 2019-2020, the state treasurer shall collect from the counties the
30 difference between the amount specified in subsection A of this section
31 and the counties' share of the state's actual contribution. The counties'
32 share of the state's contribution shall comply with any federal
33 maintenance of effort requirements. The director of the Arizona health
34 care cost containment system administration shall notify the state
35 treasurer of the counties' share of the state's contribution and report
36 the amount to the director of the joint legislative budget committee. The
37 state treasurer shall withhold from any other monies payable to a county
38 from whatever state funding source is available an amount necessary to
39 fulfill that county's requirement specified in this subsection. The state
40 treasurer may not withhold distributions from the Arizona highway user
41 revenue fund pursuant to title 28, chapter 18, article 2, Arizona Revised
42 Statutes. The state treasurer shall deposit the amounts withheld pursuant
43 to this subsection and amounts paid pursuant to subsection A of this

1 section in the long-term care system fund established by section 36-2913,
2 Arizona Revised Statutes.

3 Sec. 15. AHCCCS: disproportionate share payments: fiscal year
4 2019-2020

5 A. Disproportionate share payments for fiscal year 2019-2020 made
6 pursuant to section 36-2903.01, subsection 0, Arizona Revised Statutes,
7 include:

8 1. \$113,818,500 for a qualifying nonstate operated public hospital.
9 The Maricopa county special health care district shall provide a certified
10 public expense form for the amount of qualifying disproportionate share
11 hospital expenditures made on behalf of this state to the Arizona health
12 care cost containment system administration on or before May 1, 2020 for
13 all state plan years as required by the Arizona health care cost
14 containment system section 1115 waiver standard terms and conditions. The
15 administration shall assist the district in determining the amount of
16 qualifying disproportionate share hospital expenditures. Once the
17 administration files a claim with the federal government and receives
18 federal financial participation based on the amount certified by the
19 Maricopa county special health care district, if the certification is
20 equal to or less than \$113,818,500 and the administration determines that
21 the revised amount is correct pursuant to the methodology used by the
22 administration pursuant to section 36-2903.01, Arizona Revised Statutes,
23 as amended by this act, the administration shall notify the governor, the
24 president of the senate and the speaker of the house of representatives,
25 shall distribute \$4,202,300 to the Maricopa county special health care
26 district and shall deposit the balance of the federal financial
27 participation in the state general fund. If the certification provided is
28 for an amount less than \$113,818,500 and the administration determines
29 that the revised amount is not correct pursuant to the methodology used by
30 the administration pursuant to section 36-2903.01, Arizona Revised
31 Statutes, as amended by this act, the administration shall notify the
32 governor, the president of the senate and the speaker of the house of
33 representatives and shall deposit the total amount of the federal
34 financial participation in the state general fund. If the certification
35 provided is for an amount greater than \$113,818,500, the administration
36 shall distribute \$4,202,300 to the Maricopa county special health care
37 district and shall deposit \$75,493,400 of the federal financial
38 participation in the state general fund. The administration may make
39 additional disproportionate share hospital payments to the Maricopa county
40 special health care district pursuant to section 36-2903.01, subsection P,
41 Arizona Revised Statutes, and subsection B of this section.

1 Sec. 17. County acute care contribution; fiscal year
2 2019-2020

3 A. Notwithstanding section 11-292, Arizona Revised Statutes, for
4 fiscal year 2019-2020 for the provision of hospitalization and medical
5 care, the counties shall contribute the following amounts:

6	1. Apache	\$ 268,800
7	2. Cochise	\$ 2,214,800
8	3. Coconino	\$ 742,900
9	4. Gila	\$ 1,413,200
10	5. Graham	\$ 536,200
11	6. Greenlee	\$ 190,700
12	7. La Paz	\$ 212,100
13	8. Maricopa	\$18,131,400
14	9. Mohave	\$ 1,237,700
15	10. Navajo	\$ 310,800
16	11. Pima	\$14,951,800
17	12. Pinal	\$ 2,715,600
18	13. Santa Cruz	\$ 482,800
19	14. Yavapai	\$ 1,427,800
20	15. Yuma	\$ 1,325,100

21 B. If a county does not provide funding as specified in subsection
22 A of this section, the state treasurer shall subtract the amount owed by
23 the county to the Arizona health care cost containment system fund and the
24 long-term care system fund established by section 36-2913, Arizona Revised
25 Statutes, from any payments required to be made by the state treasurer to
26 that county pursuant to section 42-5029, subsection D, paragraph 2,
27 Arizona Revised Statutes, plus interest on that amount pursuant to section
28 44-1201, Arizona Revised Statutes, retroactive to the first day the
29 funding was due. If the monies the state treasurer withholds are
30 insufficient to meet that county's funding requirements as specified in
31 subsection A of this section, the state treasurer shall withhold from any
32 other monies payable to that county from whatever state funding source is
33 available an amount necessary to fulfill that county's requirement. The
34 state treasurer may not withhold distributions from the Arizona highway
35 user revenue fund pursuant to title 28, chapter 18, article 2, Arizona
36 Revised Statutes.

37 C. Payment of an amount equal to one-twelfth of the total amount
38 determined pursuant to subsection A of this section shall be made to the
39 state treasurer on or before the fifth day of each month. On request from
40 the director of the Arizona health care cost containment system
41 administration, the state treasurer shall require that up to three months'
42 payments be made in advance, if necessary.

43 D. The state treasurer shall deposit the amounts paid pursuant to
44 subsection C of this section and amounts withheld pursuant to subsection B

1 of this section in the Arizona health care cost containment system fund
2 and the long-term care system fund established by section 36-2913, Arizona
3 Revised Statutes.

4 E. If payments made pursuant to subsection C of this section exceed
5 the amount required to meet the costs incurred by the Arizona health care
6 cost containment system for the hospitalization and medical care of those
7 persons defined as an eligible person pursuant to section 36-2901,
8 paragraph 6, subdivisions (a), (b) and (c), Arizona Revised Statutes, the
9 director of the Arizona health care cost containment system administration
10 may instruct the state treasurer either to reduce remaining payments to be
11 paid pursuant to this section by a specified amount or to provide to the
12 counties specified amounts from the Arizona health care cost containment
13 system fund and the long-term care system fund established by section
14 36-2913, Arizona Revised Statutes.

15 F. The legislature intends that the Maricopa county contribution
16 pursuant to subsection A of this section be reduced in each subsequent
17 year according to the changes in the GDP price deflator. For the purposes
18 of this subsection, "GDP price deflator" has the same meaning prescribed
19 in section 41-563, Arizona Revised Statutes.

20 Sec. 18. Proposition 204 administration; exclusion; county
21 expenditure limitations

22 County contributions for the administrative costs of implementing
23 sections 36-2901.01 and 36-2901.04, Arizona Revised Statutes, that are
24 made pursuant to section 11-292, subsection 0, Arizona Revised Statutes,
25 are excluded from the county expenditure limitations.

26 Sec. 19. Competency restoration; exclusion; county
27 expenditure limitation

28 County contributions made pursuant to section 13-4512, Arizona
29 Revised Statutes, as amended by this act, are excluded from the county
30 expenditure limitations.

31 Sec. 20. AHCCCS; risk contingency rate setting

32 Notwithstanding any other law, for the contract year beginning
33 October 1, 2019 and ending September 30, 2020, the Arizona health care
34 cost containment system administration may continue the risk contingency
35 rate setting for all managed care organizations and the funding for all
36 managed care organizations administrative funding levels that were imposed
37 for the contract year beginning October 1, 2010 and ending September 30,
38 2011.

39 Sec. 21. Department of health services; fees; increase;
40 intent; rulemaking exemption

41 A. Notwithstanding any other law, the director of the department of
42 health services may increase fees in fiscal year 2019-2020 for services
43 provided by the bureau of radiation control in fiscal year 2019-2020.

1 B. The legislature intends that the revenue generated by the fees
2 collected pursuant to subsection A of this section not exceed \$1,900,000.

3 C. The department of health services shall deposit monies received
4 from any fees increased pursuant to subsection A of this section in the
5 health services licensing fund established by section 36-414, Arizona
6 Revised Statutes.

7 D. The department of health services is exempt from the rulemaking
8 requirements of title 41, chapter 6, Arizona Revised Statutes, until
9 July 1, 2020 for the purpose of increasing fees pursuant to this section.

10 Sec. 22. Health services lottery monies fund; use; fiscal
11 year 2019-2020

12 Notwithstanding sections 5-572 and 36-108.01, Arizona Revised
13 Statutes, monies in the health services lottery monies fund established by
14 section 36-108.01, Arizona Revised Statutes, may be used for the purposes
15 specified in the fiscal year 2019-2020 general appropriations act.

16 Sec. 23. AHCCCS; secure behavioral health residential
17 facilities; report

18 On or before January 31, 2022, the Arizona health care cost
19 containment system administration shall issue to the governor, the
20 president of the senate and the speaker of the house of representatives a
21 report that measures the outcomes over a twelve-month period of persons
22 who have been determined to be seriously mentally ill and who reside in
23 secure behavioral health residential facilities licensed pursuant to
24 section 36-425.06, Arizona Revised Statutes, as added by this act. The
25 report shall include an analysis of costs and effectiveness of the
26 services provided in secure behavioral health residential facilities that
27 takes into consideration the encounters of the seriously mentally ill
28 residents related to inpatient care, emergency department visits,
29 hospitalization, civil commitment proceedings, incarceration,
30 homelessness, employment, community engagement and encounters with police
31 and fire personnel, including petitioning and contact with crisis centers,
32 citation in lieu of detention, jail bookings and other contact with first
33 responders. The administration may contract with a third-party entity to
34 collect the data and compile the report. The administration shall provide
35 a copy of the report to the secretary of state.

36 Sec. 24. Intent; implementation of program

37 The legislature intends that for fiscal year 2019-2020 the Arizona
38 health care cost containment system administration implement a program
39 within the available appropriation.

Committee on Mental Health and the Justice System
Competency Workgroup Proposal: Standardized Guidelines and Templates for
Mental Health Evaluation in Rule 11 Proceedings

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, 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 the following proposal for standardized guidelines and templates for the forms to be used by the court throughout the evaluation process by mental health experts in criminal Rule 11 competency evaluations.

In addition to the changes included in these forms that will need to be addressed in the AOC training program, the workgroup also recommends the Committee explore development of a university-court partnership to provide continuous training and best practices evaluation and methodology, to include:

- Review of current statute and case law impacting mental health evaluation;
- Review and discussion of the content of the records that are included in the Status Report and Final Report to the Court;
- Specialized training on writing the mental health expert report, including the use of technical and professional terms that can be avoided or explained for non-clinical readers;
- Multi-disciplinary approach that includes forensic evaluators, judges and attorneys;
- Development of a quality control mechanism for the mental health evaluators through the training process such as inclusion of a written exam and required annual recertification training; and
- Creation of an academic to professional pipeline for forensic law and psychology/psychiatry students.

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

Proposed Guidelines

The following provide a template for Courts to adopt as required guidelines as listed in Rule 11.3 (a)(5), Ariz.R.Crim.P.

Superior Court of (Name) County Guidelines for Mental Health Experts

Overview

Court appointments of mental health experts for criminal competency evaluations in adult court proceedings are made pursuant to A.R.S. § 13-4501, et seq., and Rule 11, Ariz.R.Crim.P.

A.R.S. § 13-4501(3) defines a “mental health expert” as a physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is:

- (a) Familiar with this state's competency standards and statutes and criminal and involuntary commitment statutes.
- (b) Familiar with the treatment, training and restoration programs that are available in this state.
- (c) Certified by the court as meeting court developed guidelines using recognized programs or standards.

Similarly, Rule 11.3, Ariz.R.Crim.P. defines a “mental health expert” as a physician licensed under A.R.S. §§ 32-1421 to -1437 or 32-1721 to -1730; or a psychologist licensed under A.R.S. §§ 32-2071 to--2076. Further, Rule 11.3 states a mental health expert must be:

- (a) familiar with Arizona's standards and statutes for competence and criminal and involuntary commitment statutes;
- (b) familiar with the treatment, training, and restoration programs that are available in Arizona; and
- (c) approved by the court as meeting court-developed guidelines, including demonstrated experience in forensics matters, required attendance at a court-approved training program of not less than 16 hours and any court-required continuing forensic education programs, and annual review criteria.

A. Qualifications for Physicians:

A physician wishing to qualify as a “mental health expert” defined under A.R.S. § 13-4501 and appointed pursuant to A.R.S. § 13-4505(A) shall:

1. Be a Medical Doctor or Osteopathic Physician currently licensed by the State of Arizona under Title 32, Chapters 13 or 17; and
2. Be a graduate of a residency program in psychiatry accredited by the American College of Graduate Medical Education or foreign equivalent; and
3. Submit to the court evidence of forensic experience and/or training in forensic psychiatry, as evidenced by either a, b, c or d below:
 - a. Completion of one or more years of a Forensic Psychiatry fellowship and three references familiar with the work product, at least one of whom is a

superior court judge or commissioner, concerning the vendor’s practice of forensic psychiatry; or

b. Certification by the American Board of Forensic Psychiatry or added qualifications in forensic psychiatry by the American Board of Psychiatry and Neurology and three references familiar with the work product, at least one of whom is a superior court judge or commissioner, concerning the vendor’s practice of forensic psychiatry; or

c. Three years of post-residency experience, including 500 hours in forensic psychiatry, substantiated by submission of at least five written reports concerning competency to stand trial and three references familiar with the work product, at least one of whom is a superior court judge, commissioner or hearing officer concerning the vendor’s practice of forensic psychiatry; or

d. Two years of post-residency experience, with documentation of at least 1) 30 cumulative hours of forensic CME, or 2) residency training in forensic psychiatry within the previous three years and completion of the court-approved clinical preceptorship, and three references concerning the vendor’s practice of psychiatry who are familiar with the work product.

B. Qualifications for Psychologists: A psychologist wishing to qualify as a “mental health expert” defined under A.R.S. § 13-4501 and appointed pursuant to A.R.S. § 13-4505(A) shall:

1. Be licensed pursuant to Title 32, Chapter 19.1; and
2. Have completed training and/or gained experience in one of the following ways:
 - a. Diplomate status by the American Board of Forensic Psychology (American Board of Professional Psychology) and submission of three references familiar with the work product, at least one of whom is a superior court judge or commissioner, concerning the vendor’s practice of forensic psychology; or
 - b. Three years of post-doctoral (although not necessarily post-licensure) experience in the practice of psychology including either: 1) one year (500 hours) of pre-doctoral forensic training with appropriate supervision as defined in A.R.S. § 32-2071(D); or 2) one year (1500 hours) of post-doctoral forensic training, fellowship, or verifiable work experience in a forensic setting, and submission of three references familiar with the work product, at least one of whom is a superior court judge or commissioner, concerning the vendor’s practice of forensic psychology. If this training or experience is undertaken prior to licensure, it shall be appropriately supervised as defined in A.R.S. § 32-2071(E); or
 - c. Five years of post-licensure practice of psychology as defined in A.R.S. § 32-2061(7). In addition, 500 hours of documented experience in forensic psychology, plus 30 hours of continuing education in forensic psychology, and submission of three references familiar with the work product, at least one of whom is a superior court judge or commissioner, concerning the vendor’s practice of forensic psychology; or
 - d. Five years of post-licensure practice of psychology as defined in A.R.S. § 32-2601(7) plus willingness to attend court-approved clinical preceptorship and

submission of three references concerning the applicant's practice of psychology who are familiar with the work product.

C. Standing: In addition to the qualifications as stated in A and B, the Psychiatrist or Psychologist wishing to qualify as a “mental health expert” defined under A.R.S. § 13-4501 and appointed pursuant to A.R.S. § 13-4505(A) must:

1. Be currently licensed as a Psychiatrist or Psychologist with the State of Arizona and be in good standing with their respective licensing boards.
2. Within three business days, inform the Court of complaints or disciplinary actions for any matter related to mental health services by their respective oversight State Board. This notification must be in writing and copied to the (Name) County Health and Human Services Contract Specialist and the (Name) County Superior Court Director of Treatment Services.
3. Within 24 hours, notify the Court of any arrest, or of any pending criminal charge in any jurisdiction.

D. Training: In addition to the foregoing qualifications, mental health experts appointed by the Court must also participate in periodic forensic education training sessions pursuant to Rule 11.3, including the 16-hour court-approved training program, and any court-required continuing forensic education programs, and annual review criteria. The mental health expert must submit such requirements to the Court accordingly.

E. Mental Health Expert Report: As part of the completion of the required training, mental health experts will be provided with materials and information for using standard templates for the mental health expert report to be submitted to the Court.

1. See *Appendices*: A. Pre-Screen – Rule 11 Competency Evaluation; B. Rule 11 Competency Evaluation; C. Status Competency Report – RTC Program; and D. Final Competency Report – RTC Program.
2. When submitting the mental health expert report to the Court, unexplained jargon is to be avoided whenever possible. Professional or technical terms are often confusing or unfamiliar to the Court. Sometimes technical terms are necessary to anchor a statement in recognized clinical terms (e.g., providing a diagnosis). However, one should be aware that even words such as “agitated,” “somatic,” “hallucinations,” and “labile” may not necessarily be understood by others in the same way that they are consensually understood by mental health professionals.
3. When it seems necessary to use a technical term in a report, the term should be defined in common language in parentheses. For example: “The defendant currently is prescribed Haldol (an antipsychotic medication) and Cogentin (a medication to reduce side effects of the Haldol).” “Nurses described his emotions as labile (shifting rapidly, frequently, and/or to different extremes).” At other times, however, clinical terminology that may be meaningful in a clinical context is simply unhelpful when writing for non-clinical readers. For example, even if it takes more words, “Recognized who she was, where she was, and the date” is better than “Oriented x3.”

In light of the authorities and mental health expert qualifications set forth above, the Court adopts the following guidelines for the appointment of mental health experts within the meaning of A.R.S. § 13-4501(3)(c), and Rule 11.3(b) as follows:

1. That the mental health expert is qualified, approved and in good standing as an independent contract provider with their professional licensing boards and any terms and conditions established through contract or County court administrative order.
2. That the mental health expert is qualified and meets the terms and conditions of employment as a psychologist or psychiatrist for their respective County Competency Evaluation Program.
3. That the mental health expert agrees to be compliant with any and all additional court-approved forensic education training sessions or programs while employed or while providing services as a mental health expert, as required by the Arizona Supreme Court or the Presiding Judge of the Superior Court in conformance with Rule 11.3(b). Each County Superior Court will designate the appropriate entity within the Court to conduct an annual review to determine whether current mental health experts are in compliance with court-required forensic training and education sessions or programs, and whether any have been the subject of professional disciplinary proceedings.
4. In Counties where services are rendered to juveniles, the mental health expert must submit proof of attendance at the Arizona Administrative Office of the Courts (AOC) four (4) hour training course provided by the AOC. If the four (4) hours of specialized juvenile training is not provided by the AOC, the mental health expert shall provide a certificate of completion signed by the sponsoring agency. If services are to be rendered to juveniles, a fingerprint clearance card must be submitted to the County Superior Court.

_____ (Signature of authority enacting the Guidelines) _____ (Date)

TEMPLATES BEGIN ON FOLLOWING PAGE

- A. Pre-Screen – Rule 11 Competency Evaluation**
- B. Rule 11 Competency Evaluation**
- C. Status Competency Report – RTC Program**
- D. Final Competency Report – RTC Program**

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 malingerer 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 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 Defendant needs/may need Guardianship, recommended pursuant to A.R.S. 14-5301

[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**
- 2. 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*, 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 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:

3. The facts on which the findings are based.

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

[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.**

- 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

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]
[Case Number]
Page 2 of 3 Pages

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*, 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

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 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 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 Defendant needs/may need Guardianship, recommended pursuant to A.R.S. 14-5301

[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*, 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 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.

Doctor to elaborate if necessary:

3. The facts on which the findings are based.

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

[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.

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

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



Legal Competency and Restoration Conference for Mental Health Professionals

August 7-9, 2019
Sheraton Mesa Hotel at Wrigleyville West
Mesa Arizona

Legal Competency & Restoration

Arizona law restricts the performance of court-ordered competency evaluations in criminal and juvenile cases to mental health experts who are approved by the court under court-developed guidelines. This program is designed for licensed Arizona physicians and licensed Arizona psychologists with forensic experience who seek to become court-approved evaluators in criminal and juvenile cases. Faculty include judges and mental health experts from throughout Arizona.

This year's program will feature "basic" and "advanced" tracks to provide opportunities for attendees who have already completed the program to attend topics beyond the basics required of new providers. Advanced topics will include specifics for juvenile courts, and capital cases - trial, aggravation and mitigation.

The program provides 20.50 hours of continuing education. Evaluators currently on a court-approved list are encouraged to attend and may be required by a local court to attend as part of the requirements to remain on the approved list. *Attendance at this program does not guarantee placement on the court-approved list of evaluators.*

Daily sign-in is required for a certificate of completion. This program is accredited for COJET for Arizona court staff and CLE for Arizona attorneys. Accreditation is being sought for CEU for psychologist participants.

Registration preference will be given to psychiatrists and psychologists interested in conducting competency evaluations for the court. Judges and Commissioners are also encouraged to attend. Residents, graduate students and restoration specialists may register for limited seating - call for additional information.

Enrollment limited to 150 - don't delay!

Legal Competency & Restoration

Conference Site and Lodging

The Sheraton Mesa Hotel at Wrigleyville West, located at 860 N. Riverview in Mesa, Arizona is the site for the 2019 Legal Competency & Evaluation Conference. **A special lodging rate of \$94+tax/night is available August 6-9, 2019.**

Please make your reservations directly with the hotel by **July 9, 2019** to receive this special rate. To make your reservation, please call (480) 664-1221.

For more information about the conference site, go to: <https://www.marriott.com/hotels/travel/phxww-sheraton-mesa-hotel-at-wrigleyville-west/?scid=bb1a189a-fec3-4d19-a255-54ba596febe2>

Continuing Education/COJET



This event is accredited for 20.50 COJET hours for judicial officers and court staff, as well as 20.50 CLE hours for members of the State Bar who successfully complete the entire program.

Accreditation for this program is pending for Ph.D. and Psy.D. participants through the Arizona Psychological Association (AzPA). AzPA is approved by the American Psychological Association to sponsor continuing education for psychologists. AzPA maintains responsibility for this program and its content.

Participants should only claim credit commensurate with the extent of their participation in the activity.

Legal Competency & Restoration

Conference Registration & Payment

The registration fee is \$425 and includes a continental breakfast each morning, lunch daily, afternoon breaks, and a welcome reception on Wednesday evening; as well as conference materials.

REGISTRATION DEADLINE

Friday, July 19, 2019

To cancel, contact Julee Bruno at jbruno@courts.az.gov in writing. Cancellations in writing by July 19, 2019 are subject to a 25% administrative fee. There are no refunds for cancellations after July 19, 2019.

To register for the conference, go to
<https://2019-legal-competency.eventbrite.com>

Special Accommodations

If you require special accommodation for a disability, auxiliary aids or materials in an alternative format, contact Julee Bruno at 602.452.3002, 602.307.1283 (fax), or jbruno@courts.az.gov as soon as possible.

Legal Competency & Restoration

Agenda

Wednesdays, August 7, 2019

- | | |
|-------------------|---|
| 7:00 - 8:00am | Registration, Continental Breakfast |
| 8:00 - 8:30am | Welcome |
| 8:30 - 9:30am | Guilty Except Insane |
| 9:45 - 10:30am | Arizona State Hospital |
| 10:30am - 12:00pm | Breakouts <ul style="list-style-type: none">◇ Overview of AZ Court System, Rule 11 Competency Law, and Legal Criteria for Competency & Rule 11 Evaluation◇ Mental Health, Substance Abuse and Juvenile Mental Competency |
| 12:00 - 1:00pm | Hosted Lunch |
| 1:00 - 2:30pm | Breakouts <ul style="list-style-type: none">◇ Mental Health and Legal Resources◇ Juvenile Competency Evaluations - A Court's Perspective |
| 3:45 - 3:45pm | Breakouts <ul style="list-style-type: none">◇ Misdemeanor Cases◇ Juvenile Competency Restoration: Challenges, Complications and Processes |
| 3:45 - 5:00pm | Expert Testimony |
| 5:00 - 6:00pm | Welcome Reception |

Legal Competency & Restoration

Agenda

Thursday, August 8, 2019

7:00 - 8:00am	Continental Breakfast
8:00 - 9:30am	Ethics and Rules of Evidence
9:45 - 11:30am	Breakouts
	◇ Records, Collaterals & Third-Party Resources
	◇ Capital Cases - Trial, Aggravation and Mitigation
11:30am - 12:30pm	Hosted Lunch
12:30 - 1:15pm	Title 14
1:15 - 2:15pm	COE/COT/Title 36
2:30 - 3:30pm	Restoration to Competency
3:30 - 5:00	Feigning, Malingering and Dealing with Constitutionalists

Friday, August 9, 2019

7:00 - 8:00am	Continental Breakfast
8:00 - 9:30am	KEYNOTE ADDRESS: Evaluator Safety & Security
9:45am - 12:00pm	Conducting the Evaluation and Writing the Report
12:00 - 1:00pm	Hosted Lunch
1:00 - 2:00pm	Assessment Tools
2:15 - 3:30pm	Mock Competency Hearing
3:30 - 4:00pm	Wrap Up, Evaluation, Closing Remarks

Legal Competency & Restoration

Learning Objectives

At the conclusion of this program, participants may apply to their local court to serve as a mental health expert in competency and restoration cases. This program will address the following:

Guilty Except Insane (GEI)

- Provide overview of Arizona's statutes and case law on GEI and describe legal criteria for GEI determination.
- Describe role, responsibility, and functioning of Psychiatric Security Review Board with regard to GEI cases.
- Describe function and responsibilities of GEI Forensic Unit at the Arizona State Hospital.
- Conduct a standard GEI evaluation.
- Write a comprehensive GEI evaluation report

Overview of Arizona Court System: Rule 11

- Explain Arizona's competency standards and statutes.
- Describe treatment, training and restoration programs available in Arizona.
- Demonstrate forms to access to complete evaluations

Mental Health & Legal Resources

- Explain the RHBA system in Arizona
- Describe working relationship between RHBA, court, mental health experts, defendants
- Describe role of the Adult and Juvenile Probation departments and MH defendants
- Work successfully with court and probation department

Misdemeanor & Lower Court Cases

- Identify restoration options for defendants
- Identify options for municipalities in restoration cases

Expert Testimony & Testifying

- Describe the elements required to provide competent testimony
- Articulate the critical components needed to testify with confidence & competency

Records and Third Party Information

- Obtain correct information from defense counsel for evaluation.
- Determine what information is relevant to the evaluation.
- Request supplemental information of prior Rule 11s and/or restorations.

Competency, COE/COT, Title 14/Title 36

- Define Titles 13, 14 & 36.
- Describe the interplay among Titles 13, 14 & 36
- Explain how to provide continuity of care
- Explain how guardianship or conservatorship with mental health powers assist defendants

Feigning and Malingering in Mental Health Evaluations

- Define malingering, and how to rule out malingering.
- Discuss impact of malingering on competency.

Conducting & Writing a Competency Evaluation

- Describe content areas in competency evaluation.
- Conduct a standard competency evaluation
- Describe content areas required by statute in competency evaluation report.
- Write a comprehensive competency evaluation report with clear conclusions, and sufficient justification for all conclusions and recommendations.
- Provide information on what courts are seeking in competency reports

Legal Competency & Restoration

Faculty

- ◆ *Mr. Louis Caputo III, Esq.*, Arizona Office of the Attorney General
- ◆ *Dr. Nicole Cooper-Lopez, Psy.D.*, Cooper Lopez & Associates, PLLC (invited)
- ◆ *Ms. Shelly Curran*, Mercy Maricopa Health Services
- ◆ *Dr. Leslie Dana-Kirby, Ph.D.*, Kirby Psychological Services
- ◆ *Ms. Sarah DeJong, Esq.*, City of Phoenix Prosecutor's Office
- ◆ *Dr. Joel Dvoskin, Ph.D.*, ABPP
- ◆ *Ms. Stephanie Erbright, Esq.*, Law Office of Stephanie Lee Erbright, Esq.
- ◆ *Honorable Warren Granville*, Superior Court in Maricopa County (invited)
- ◆ *Dr. Camille Hernandez, J.D., Psy.D.*, Hernandez, Scherb & Dixon, Attorneys at Law (invited)
- ◆ *Honorable Michael Hintze*, Phoenix Municipal Court
- ◆ *Dr. James Huddleston, Ph.D.*
- ◆ *Dr. Bradley Johnson, M.D.* (invited)
- ◆ *Ms. Josephine Jones, Esq.*, Maricopa County Attorney's Office
- ◆ *Ms. Dianna Kalandros*, Superior Court in Pinal County
- ◆ *Dr. Linda Laird, Ph.D.*, Arizona Forensic Evaluations
- ◆ *Honorable James McDougall (Ret.)*, Frazer, Ryan, Goldberg & Arnold, LLP
- ◆ *Ms. Kristin McManus, Esq.*, Office of the Legal Defender
- ◆ *Dr. Joel Parker, M.D.*, Biltmore Psychiatric Group, PLLC
- ◆ *Honorable Kathleen Quigley*, Superior Court in Pima County
- ◆ *Ramona Ramirez*, Superior Court in Pima County
- ◆ *Ms. Geraldine Roll, Esq.*, Pinal County Public Fiduciary Office
- ◆ *Dr. Charles L. Scott, M.D.*, University of California - Davis
- ◆ *Honorable Christopher Staring*, Arizona Court of Appeals, Division Two
- ◆ *Honorable Fanny Steinlage*, Superior Court in Coconino County
- ◆ *Dr. Joseph Stewart, Ed.D.*, Yavapai County Restoration to Competency
- ◆ *Ms. Fredrica Strumpf, Esq.*, Maricopa County Public Defender's Office
- ◆ *Lisa Surbio* (invited)

Legal Competency & Restoration

Faculty (continued)

- ◆ *Honorable Samuel Thumma*, Arizona Court of Appeals, Division One
- ◆ *Vice Chief Justice Ann A. Scott Timmer*, Arizona Supreme Court
- ◆ *Dr. Mark Treegoob, Ph.D.* (invited)
- ◆ *Ms. Laura Udall, Esq.*, Cooper and Udall
- ◆ *Mr. Ryan Valley*, Maricopa County Adult Probation
- ◆ *Ms. Juli Warzynski, Esq.*, Maricopa County Attorney's Office
- ◆ *Mr. Fred Wilhame*, Maricopa County Adult Probation (invited)

Planning Committee

- ◆ *Honorable Michael Hintze*, Phoenix Municipal Court (Chair)
- ◆ *Ms. Julee Emy Bruno*, Arizona Supreme Court Administrative Office of the Courts
- ◆ *Holli Sanger-Alcor*, Arizona Supreme Court Administrative Office of the Courts
- ◆ *Dr. Tess Neal, Ph.D.*, Arizona State University
- ◆ *Dr. Joel Parker, M.D.*, Biltmore Psychiatric Group, PLLC
- ◆ *Ms. Stacy Reinstein*, Arizona Supreme Court Administrative Office of the Courts
- ◆ *Ms. Fredrica Strumpf, Esq.*, Maricopa County Public Defender's Office
- ◆ *Ms. Juli Warzynski, Esq.*, Maricopa County Attorney's Office

Committee on Mental Health and the Justice System
Commitment of Dangerous Mentally Ill Defendants
Found Incompetent and Not Restorable

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.

As such, the Committee engaged in discussion through its Key Issues workgroup as well as with the full Committee to address challenges faced throughout the state with the population of defendants who are found incompetent and not restorable who present a danger to themselves and others. Background information regarding the issues follows.

Based on its review and discussion, the Committee's Key Issues workgroup submits the following statement to the Committee for approval to be presented in its Interim Report, as required by Administrative Order 2018-71:

The Committee requests the Arizona Judicial Council and Administrative Office of the Courts support efforts to address the population of incompetent and not restorable defendants through the creation and adoption of a constitutional process, procedure and/or program to provide treatment to the individual and protect the public safety.

References:

- Administrative Order Establishing the Committee on Mental Health and the Justice System (August 2018): azcourts.gov/Portals/22/admorder/Orders18/2018-71.pdf
- Arizona Revised Statutes, Title 13: <https://www.azleg.gov/arsDetail/?title=13>
- Arizona Revised Statutes, Title 14: <https://www.azleg.gov/arsDetail/?title=14>
- Arizona Revised Statutes, Title 36: <https://www.azleg.gov/arsDetail/?title=36>

Background:

Members of the Committee on Mental Health and the Justice System agree that it is imperative to address the gap between the criminal justice system and the civil mental health treatment system that allows defendants who are mentally ill and who are repeatedly found incompetent and not restorable (INR) to fall through the crack between the two systems. When a defendant in Arizona is found incompetent and not restorable, A.R.S. §13-4517 allows for only two pathways to assure mental health treatment: 1) for the county attorney to initiate civil commitment proceedings under A.R.S. Title 36, Chapter 5; or 2) the appointment of a guardian under A.R.S. Title 14, Chapter 5. The criminal justice system contemplates that once a guardian is appointed for a defendant found incompetent and not restorable or a civil court order for involuntary treatment is issued, the charges can be dismissed because there is a reasonable expectation that the defendant will get appropriate treatment and criminal behavior will not reoccur.

However, neither of these pathways offer any real assurance that the person will get the services needed to provide them with appropriate treatment and intensive case management to ensure that they remain compliant with an effective treatment program. Likewise, neither of these options provide any assurance that a defendant will cease committing crimes and be found incompetent and not restorable or that the public will be protected while necessary treatment is provided. Because the criminal justice system has seen these defendants repeatedly cycle back and forth between the civil mental health treatment system and the criminal justice system, the criminal justice system is understandably reluctant to simply turn them over to the civil system and dismiss the charges, especially where the defendant has committed a violent act. A different pathway to ensure appropriate treatment and the protection of public safety is needed.

System Challenges:

Title 13

With the exception of defendants found to fit into statutorily defined categories of Sexually Violent Persons (A.R.S. §36-3701) and Guilty Except Insane (A.R.S. §13-502; 13-3994), the criminal justice system currently has no way to provide services to the mentally ill and must rely on the civil system to provide appropriate services. The criminal justice system can try to divert defendants who are mentally ill into treatment or can put them on specialized probationary caseloads; however, both options rely on services available to the defendant in the civil treatment system. If a defendant is found to be Incompetent and Not Restorable under A.R.S. §13-4517, the county attorney

can institute civil proceedings to have the defendant evaluated to determine if the defendant can be put under an order for involuntary treatment.

However, challenges arise if the defendant: does not meet the current definition of "Mental Disorder" required for the issuance of such an order under A.R.S. §36-501; or is determined not to be Seriously Mentally Ill (SMI) under A.R.S. §36-550; or does not meet eligibility for AHCCCS Title XIX services which disqualifies the defendant from receiving some or all involuntary outpatient services. If the county attorney is successful in getting the defendant placed on a Court Order for Treatment (COT), usually after a very short period of inpatient treatment, the defendant is released back into the community for outpatient treatment to providers. Currently, most outpatient treatment providers do not have appropriate programs and services to closely monitor and supervise the defendant to assure their compliance with the treatment plan and to keep them from destabilizing. Services include proper, stable and, where necessary, secure housing and intensive case management. As a consequence, the civil treatment system is not consistently able to stop the incompetent and not restorable defendant from cycling through both the civil and criminal systems.

Title 36

A defendant accused of a violent crime and for whom a proceeding for involuntary treatment is commenced, may be found not to qualify for a court order for involuntary treatment because his mental condition may not meet the current definition of "Mental Disorder" under A.R.S. §36-501 which is currently construed as excluding persons who have mental retardation, dementia, traumatic brain injury and personality disorders.

These defendants are typically in treatment for several months to attempt to restore their competency to stand trial. Upon initiation of civil treatment proceedings, the defendant may present as stable without any continuing dangerous behavior and consequently be found by the court not to need treatment at the time of hearing on the Petition for Court Ordered Treatment (A.R.S. §36-540).

If the defendant is ordered to undergo involuntary treatment under a court order, there is no assurance that the defendant will be placed in a secure setting for treatment for any significant period of time due to a lack of resources in the civil system and an insufficient number of secure inpatient beds or secure community treatment facilities. After a short period of secure treatment, the defendant will be released back into the community where again, because of a lack of funding, there are insufficient services to assure

that the defendant will remain compliant with treatment necessary to maintain control of his behavior.

Title 14

Upon a finding that a defendant is incompetent and not restorable, a county attorney can institute a civil proceeding to have a guardian appointed for the defendant. A defendant found to be an "Incapacitated Adult" as defined by A.R.S. §14-5101 (3) could have a person appointed as a guardian. A guardian has the authority to seek and consent to mental health treatment. In some cases, where the defendant is found to likely need inpatient treatment, the authority of the guardian may include the right to consent to the ward's inpatient treatment in a mental health facility pursuant to A.R.S. §14-5312.01. However, without sufficient mental health services available, the authority to consent to treatment does not assure that treatment will be provided, and the guardian's authority to consent to treatment does not assure that the ward actually participates in or complies with the treatment provided.

Proposed Solution:

The Committee believes that the solution to this problem in Arizona is the creation of a special program administered and overseen by the criminal court to specifically address this difficult population, similar to how Arizona deals with Sexually Violent Persons [A.R.S. §36-3701 et.seq.] and defendants found Guilty Except Insane [A.R.S. §13-3994].

Supporting Case Law

The U.S. Supreme Court in Kansas v. Hendricks upholding the constitutionality of the Kansas statute for the commitment of Sexually Violent Predators states:

Kansas argues that the Act's definition of "mental abnormality" satisfies "substantive" due process requirements. We agree. Although freedom from physical restraint "has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action," Foucha v. Louisiana, 504 U.S. 71, 80, 112 S.Ct. 1780, 1785, 118 L.Ed.2d 437 (1992), that liberty interest is not absolute. The Court has recognized that an individual's constitutionally protected interest in avoiding physical restraint may be overridden even in the civil context:

" [T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly free from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any

other basis organized society could not exist with safety to its members." *Jacobson v. Massachusetts*, 197 U.S. 11, 26, 25 S.Ct. 358, 361, 49 L.Ed. 643 (1905).

Accordingly, **States have in certain narrow circumstances provided for the forcible civil detainment of people who are unable to control their behavior and who thereby pose a danger to the public health and safety.** See, e.g., 1788 N.Y. Laws, ch. 31 (Feb. 9, 1788) (permitting confinement of the "furiously mad"); see also A. Deutsch, *The Mentally Ill in America* (1949) (tracing history of civil commitment in the 18th and 19th centuries); G. Grob, *Mental Institutions in America: Social Policy to 1875* (1973) (discussing colonial and early American civil commitment statutes). **We have consistently upheld such involuntary commitment statutes provided the confinement takes place pursuant to proper procedures and evidentiary standards.** See *Foucha*, supra, at 80, 112 S.Ct., at 1785-1786; *Addington v. Texas*, 441 U.S. 418, 426-427, 99 S.Ct. 1804, 1809-1810, 60 L.Ed.2d 323 (1979). It thus cannot be said that the involuntary civil confinement of a limited subclass of dangerous persons is contrary to our understanding of ordered liberty. Cf. *id.*, at 426, 99 S.Ct., at 1809-1810. [**emphasis added**]

Standards that must be met:

In trying to design a system to deal with this population, US Supreme Court cases upholding as constitutional statutory schemes to deal with Sexually Violent Predators are instructive. See *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct 2072, 138 L. Ed 2d 501, (1997) *Kansas v. Crane*, 534 U.S. 407, 122 S. Ct 867, 151 L.Ed. 2d 856 (2002) and, in Arizona, *In Re Leon G.*, 204 Ariz. 15, 59 P. 3d 779, (Ariz. 2002). Also instructive are the decisions of the Supreme Courts of states that have upheld the constitutionality of state statutes permitting the criminal commitment of defendants found incompetent and not restorable. See the Ohio Supreme Court case of *State v. Williams*, 126 Ohio St.3d 65, 930 N.E. 2d 770, 2010 Ohio 2453 (Ohio, 2010) and the New Mexico Supreme Court case of *State v. Rotherham*, 122 N.M.246, 923 P.2d 1131, (N.M, 1996).

The statute must be narrowly drafted to target a limited subclass of dangerous persons. There needs to be some reason that the civil commitment system and the criminal justice system are inadequate to deal with the risk posed by this subclass of individuals. A finding of "dangerousness" alone is not sufficient. It must be coupled with proof of an additional factor, such as mental illness or mental abnormality. It requires more than a predisposition to violence. It requires proof of volitional impairment rendering the person dangerous beyond their control which is generally recognized as proof of previous dangerous behavior resulting from some mental condition or disorder that makes it difficult, if not impossible for the person to control his dangerous behavior.

Commitment to the program can be through the criminal justice system and the criminal justice system can retain jurisdiction to oversee the agency administering the program. The court should be required to make an evidentiary finding that the defendant committed the dangerous acts charged, not for the purpose of finding the defendant guilty of a criminal offense, but solely for the purpose of demonstrating the presence of a mental condition or abnormality and to support a finding of future dangerousness. A finding of scienter is irrelevant and is not required.

The purpose for commitment to the program must be treatment and protection of the community, and not retribution or punishment. Therefore, the standard of least restrictive placement must be used. The duration of any confinement must be linked to the stated purpose of the confinement, i.e. to hold the person until his mental condition or abnormality no longer exists or no longer causes him to be a threat to others, or until he is deemed competent to stand trial. The program must provide for an opportunity for the defendant to prove that he or she can be released into a less restrictive treatment setting subject to continued treatment and close control and supervision if it is shown that without such restrictions the person is likely to again engage in dangerous behavior. The state should be required to re-examine the defendant at least yearly to determine whether continued commitment is necessary, and the defendant should have the right to petition for discharge or conditional release at reasonable intervals.

Both substantive and procedural due process standards must be met. The defendant should have the right to a trial, the right to have an attorney without charge if indigent, the right to have an independent evaluation by a qualified professional, the right to present evidence and cross examine witnesses and the right to appeal. The state should have the burden of proving that the criteria for commitment to the program has been met by a standard of clear and convincing evidence.

Past Arizona efforts:

Over the past 10 years many bills have been introduced in Arizona to deal with this relatively small population of defendants who are found incompetent to stand trial and who are dangerous. There have been times when the legislature seemed close to approving a program to deal with this issue, but each time the legislation failed because no department or agency could be identified to administer the program, and without good data on the scope of the program it was always seen as too expensive.

The issue of what to do with these individuals has been the subject of an Arizona Legislative Study Committee on Incompetent Non-Restorable Dangerous Defendants from 2016 to 2018. An official Report on the subject containing research conducted by Arizona State University Professor Dr. Michael Shafer, dated September 20, 2018 is attached which helps in estimating the small number of individuals believed to encompass this population.

Conclusion:

During the work of the current Committee on Mental Health and the Justice System, various stakeholders including judges, prosecutors, defense counsel, law enforcement and policy makers have spoken, and the Committee reviewed two legislative proposals. One of the proposals was drafted by the Yavapai County Attorney's office and filed as HB 2356. This proposal would have allowed the county attorney to request the appointment of a "public safety guardian" who could then place the incompetent not restorable defendant into a treatment program. This legislative proposal was held by the sponsor and did not receive consideration in this legislative session. (2019 – 54th Legislature, First Regular Session). The Committee also considered a draft proposal by the Pima County Attorney's Office which was not filed this legislative session. The Committee received testimony about the proposal and worked with the proponents of the proposal to revise provisions seen as problematic.

Although the Committee members are aware that the Pima County proposal will still be widely vetted to key stakeholders and may need further refinement, the Committee agreed that the Pima County proposal provides a program and procedure to provide treatment to this difficult population of mentally ill defendants while protecting the public and recommends that the Administrative Office of the Courts support efforts to move this proposal forward. A copy of this proposed legislation is attached.

The Committee understands that creating a law that identifies the narrow class of individuals who qualify for placement and the processes needed to get them into the program is the easy part. The hard part is creating a program which is properly funded and administered to meet the needs of those committed to it.

2018

BILL

AN ACT

AMENDING SECTIONS 13-4501, 13-4508, 13-4509, 13-4515 AND 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4519; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 40; RELATING TO INCOMPETENCE TO STAND TRIAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-4501, Arizona Revised Statutes, is amended to read:

13-4501. Definitions

In this chapter, unless the context otherwise requires:

1. "Clinical liaison" means a mental health expert or any other individual who has experience and training in mental health or developmental disabilities and who is qualified and appointed by the court to aid in coordinating the treatment or training of individuals who are found incompetent to stand trial. If intellectual disability is an issue, the clinical liaison shall be an expert in intellectual disabilities.

2. "DANGEROUS" MEANS LIKELY, AS A RESULT OF A MENTAL ILLNESS, DEFECT OR DISABILITY, TO COMMIT OR ATTEMPT TO COMMIT A HOMICIDE OR A SEXUALLY VIOLENT OFFENSE AS DEFINED IN SECTION 36-3701 OR TO CAUSE OR ATTEMPT TO CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

~~2~~ 3. "Incompetent to stand trial" means that as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object of the proceeding or to assist in the defendant's defense. In the case of a person under eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.

~~3~~ 4. "Mental health expert" means a physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is:

(a) Familiar with this state's competency standards and statutes and criminal and involuntary commitment statutes.

(b) Familiar with the treatment, training and restoration programs that are available in this state.

(c) Certified by the court as meeting court developed guidelines using recognized programs or standards.

~~4~~ 5. "Mental illness, defect or disability" means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in section 36-551.

6. "SECURE MENTAL HEALTH FACILITY" MEANS A LICENSED FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL.

~~5~~ 7. "Threat to public safety" means charged with the commission of any of the following:

(a) A crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the infliction of physical injury on another person.

(b) A dangerous crime against children pursuant to section 13-705.

(c) Two or more nondangerous felonies within a period of twenty-four months.

Sec. 2. Section 13-4505, Arizona Revised Statutes, is amended to read:

13-4508. Privilege against self-incrimination; sealed reports

A. The privilege against self-incrimination applies to any examination that is ordered by the court pursuant to this chapter.

B. Any evidence or statement that is obtained during an examination is not admissible at any proceeding to determine a defendant's guilt or innocence unless the defendant presents evidence that is intended to rebut the presumption of sanity.

C. Any statement made by the defendant during an examination or any evidence resulting from that statement concerning any other event or transaction is not admissible at any proceeding to

determine the defendant's guilt or innocence of any other criminal charges that are based on those events or transaction, except that a statement or evidence may be used by any party in a hearing to determine if the defendant is eligible for court-ordered treatment pursuant to Title 36, Chapter 5, or is a sexually violent person.

D. Any statement made by the defendant or any part of the evaluations that is obtained during an examination may not be used for any purpose without the written consent of the defendant or the defendant's guardian or a court order that is entered by the court that ordered the examination or that is conducting a dependency or severance proceeding.

E. After a plea of guilty or guilty except insane or the trial or after the defendant is found to be unable to be restored to competence, the court shall order all the reports submitted pursuant to this section sealed. The court may order that the reports be opened only as follows:

1. For use by the court or defendant, or by the prosecutor if otherwise permitted by law, for further competency or sanity evaluations, or in a hearing to determine whether the defendant is eligible for court-ordered treatment pursuant to Title 36, Chap. 5, ~~or~~ is a sexually violent person, **OR IN A HEARING TO DETERMINE WHETHER THE DEFENDANT IS DANGEROUS AND ELIGIBLE FOR COMMITMENT PURSUANT TO SECTION 13-4519.**

2. For statistical analysis.

3. When the records are deemed necessary to assist in mental health treatment pursuant to section 13-502 or 13-4517.

4. For use by the probation department or the state department of corrections if the defendant is in the custody of or is scheduled to be transferred into the custody of the state department of corrections for the purposes of assessment and supervision or monitoring of the defendant by that department.

5. For use by a mental health treatment provider that provides treatment to the defendant or that assesses the defendant for treatment.

6. For data gathering.

7. For scientific study.

F. Any statement made by the defendant during an examination that is conducted pursuant to this chapter or any evidence resulting from that statement is not subject to disclosure pursuant to section 36-509.

Sec. 3. Section 13-4509, Arizona Revised Statutes, is amended to read:

13-4509. Expert's report

A. An expert who is appointed pursuant to section 13-4505 shall submit a written report of the examination to the court within ten working days after the examination is completed. The report shall include at least the following information:

1. The name of each mental health expert who examines the defendant.

2. A description of the nature, content, extent and results of the examination and any test conducted **AND OF ANY INSTRUMENT OR TOOL USED TO ASSESS WHETHER THE DEFENDANT IS LIKELY TO BE DANGEROUS.**

3. The facts on which the findings are based.

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

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.

2. The defendant's prognosis.

3. THE NATURE OF THE MENTAL ILLNESS, DISEASE OR DEFECT THAT MAKES THE DEFENDANT LIKELY TO BE DANGEROUS.

~~3.~~ **4.** The most appropriate form and place of treatment in this state, based on the defendant's therapeutic needs and potential threat to public safety.

~~4.~~ **5.** Whether the defendant is incompetent to refuse treatment and should be subject to involuntary treatment.

6. IF THE PROGNOSIS INCLUDES A DETERMINATION THAT THERE IS NO SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL REGAIN COMPETENCY WITHIN TWENTY-ONE MONTHS AFTER THE DATE OF THE ORIGINAL FINDING OF INCOMPETENCY, WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

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 the necessity of continuing that treatment and shall include a description of any limitations that the medication may have on competency.

Sec. 4. Section 13-4515, Arizona Revised Statutes, is amended to read:

13-4515. Duration of order; excluded time calculation; notice of dismissed charge or voided order; petitions

A. An order or combination of orders that is issued pursuant to section 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to section 13-702, section 13-703, section 13-704, subsection A, B, C, D or E, section 13-705, section 13-706, subsection A, section 13-708, subsection D or section 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under section 13-703 or 13-704 for prior convictions.

B. The court shall only consider the time a defendant actually spends in a restoration to competency program when calculating the time requirements pursuant to subsection A of this section.

C. The court shall notify the prosecutor, the defense attorney, the medical supervisor and the treating facility if the charges against the defendant are dismissed or if an order is voided by the court. No charges shall be dismissed without a hearing ~~prior to~~ **BEFORE** the dismissal.

D. If a defendant is discharged or released on the expiration of an order or orders issued pursuant to section 13-4512 or 13-4514, the medical supervisor may file a petition stating that the defendant requires further treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian pursuant to title 14 **OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4519 BECAUSE THE DEFENDANT IS DANGEROUS.**

Sec. 5. Section 13-4517, Arizona Revised Statutes, is amended to read:

13-4517. Incompetent defendants; disposition

A. If the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, any party may request that the court:

1. Remand the defendant to an evaluation agency for the institution of civil commitment proceedings pursuant to title 36, chapter 5. If the defendant is remanded, the prosecutor shall file a petition for evaluation and provide any known criminal history for the defendant.

2. Appoint a guardian pursuant to title 14, chapter 5.

3. Release the defendant from custody and dismiss the charges against the defendant without prejudice.

4. IF THE DEFENDANT IS CHARGED WITH A SERIOUS OFFENSE, AS THAT TERM IS DEFINED IN SECTION 13-706, HOLD A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION 13-4519.

B. If the court enters an order pursuant to subsection A, paragraph 1, ~~or~~ **2 OR 4** of this section, the court may also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the expenses of the defendant's medically necessary maintenance and treatment, including services pursuant to title 36, chapter 29, state only behavioral health services, title XVIII services and medicare part D prescription drug benefits, supplemental social security income and supplemental security disability income.

C. The court may retain jurisdiction over the defendant is committed for treatment pursuant to 13-4519, title 36, chapter 5 or a guardian is appointed pursuant to tile 14, chapter 5.

D. If the court remands the defendant for institution of civil commitment proceedings pursuant to title 36, chapter 5 and the court is notified that the defendant has not had a civil commitment evaluation, OR IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 4 OF THIS SECTION, the court, if it has retained jurisdiction, may order the sheriff to take the defendant into custody so that the court may explore options pursuant to subsection A, paragraphs 2, ~~or 3~~ OR 4.

E. If the court is notified that the defendant has not been ordered into treatment pursuant to title 36, chapter 5 and the court has retained jurisdiction, the court may order the sheriff to take the defendant into custody so that the court may explore options pursuant to subsection A paragraphs 2, ~~or 3~~ OR 4.

Sec. 6. Title 13, chapter 41, Arizona Revised Statutes, is amended by adding section 13-4518, to read:

13-4519. Dangerous and incompetent defendants; commitment hearing; disposition; findings

A. IF A COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 4 OF SECTION 13-4517, A HEARING SHALL BE HELD PURSUANT TO THIS SECTION TO DETERMINE IF THE DEFENDANT IS DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED. IF THE DEFENDANT HAS NOT EMPLOYED COUNSEL, COUNSEL SHALL BE APPOINTED BY THE COURT, AS SOON AS POSSIBLE AND BEFORE SETTING THE HEARING, TO REPRESENT THE DEFENDANT IN CONNECTION WITH THE HEARING AND ANY FURTHER PROCEEDINGS UNDER TITLE 36, CHAPTER 40.

B. IF THERE HAS NOT BEEN A PREVIOUS EVALUATION TO DETERMINE WHETHER THE DEFENDANT IS DANGEROUS, THE DEFENDANT SHALL BE EXAMINED BY MENTAL HEALTH EXPERTS IN THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO DETERMINE IF THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

C. AT A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS THE STATE SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS DANGEROUS AND THAT THE DEFENDANT COMMITTED THE ACTS THAT CONSTITUTE THE CHARGED OFFENSE. IF THE COURT DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE COURT SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2 OR 3.

D. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT SHALL ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH FACILITY LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS. THE DEFENDANT SHALL RECEIVE EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE DEFENDANT EITHER COMPETENT OR NONDANGEROUS.

E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:

1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT AND THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.

2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO THE CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE FOLLOWING OCCURS:

(a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.

(b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.

(c) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO EITHER THE SENTENCE THE DEFENDANT WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN

SENTENCED PURSUANT TO SECTION 13-751 OR THE PRESUMPTIVE SENTENCE FOR ALL OTHER OFFENSES.

F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE DEFENDANT FROM TREATMENT. THE PROCEDURE APPLICABLE TO THE COURT'S EXERCISE OF ITS CONTINUING JURISDICTION SHALL BE AS PROVIDED IN TITLE 36, CHAPTER 40.

G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS SECTION, THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE EXTENT TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND REGIONAL BEHAVIORAL HEALTH CARE AUTHORITY MONIES. THE DEPARTMENT MAY ACCEPT THESE MONIES WITHOUT A COURT ORDER. THE DEPARTMENT IS RESPONSIBLE FOR ALL REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.

H. FINDINGS BY THE COURT MADE PURSUANT TO THIS SECTION ARE INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER TITLE 36, CHAPTER 40.

Sec. 7. Title 36, Arizona Revised Statutes, is amended by adding chapter 40, to read:

CHAPTER 40
DANGEROUS AND INCOMPETENT PERSONS
ARTICLE 1. GENERAL PROVISIONS

36-4001. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMPETENT PROFESSIONAL" MEANS A PERSON WHO IS:

(a) FAMILIAR WITH THIS STATE'S CRIMINAL AND INVOLUNTARY COMMITMENT STANDARDS AND STATUTES FOR PERSONS WITH A MENTAL ILLNESS, DEFECT OR DISABILITY THAT ARE AVAILABLE IN THIS STATE.

(b) APPROVED BY THE SUPERIOR COURT AS MEETING COURT APPROVED GUIDELINES.

2. "COMMITTED INCOMPETENT" MEANS A PERSON WHO HAS BEEN DETERMINED TO BE INCOMPETENT AND NONRESTORABLE AND DANGEROUS PURSUANT TO TITLE 13, CHAPTER 41.

3. "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT ORDERED TREATMENT IN A SETTING THAT IS LESS RESTRICTIVE THAN TOTAL CONFINEMENT AND THAT IS CONDUCTED IN A SETTING APPROVED BY THE SUPERINTENDENT OF THE STATE HOSPITAL.

4. "MENTAL ILLNESS, DEFECT OR DISABILITY" MEANS A PSYCHIATRIC OR NEUROLOGICAL DISORDER THAT IS EVIDENCED BY BEHAVIORAL OR EMOTIONAL SYMPTOMS, INCLUDING CONGENITAL MENTAL CONDITIONS, CONDITIONS RESULTING FROM INJURY OR DISEASE AND DEVELOPMENTAL DISABILITIES AS DEFINED IN SECTION 36-551.

36-4002. Annual examination of committed incompetents; report; representation by counsel

A. THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL OF THE STATE HOSPITAL OR A LICENSED FACILITY UNDER THE

SUPERVISION OF THE ARIZONA STATE HOSPITAL SHALL ANNUALLY EXAMINE EACH COMMITTED INCOMPETENT PURSUANT TO SECTION 13-4519. THE PERSON WHO CONDUCTS THE ANNUAL EXAMINATION SHALL SUBMIT THE EXAMINATION REPORT TO THE COURT, THE COMMITTED INCOMPETENT, AND TO ANY COUNSEL OF RECORD REPRESENTING THE COMMITTED INCOMPETENT IN CONNECTION WITH THE COMMITTED INCOMPETENT'S COMMITMENT. THE ANNUAL REPORT SHALL STATE THE TREATMENT AND EDUCATION THAT THE COMMITTED INCOMPETENT HAS RECEIVED, A PROGNOSIS FOR THE COMMITTED INCOMPETENT'S RESTORATION TO COMPETENCY AND WHETHER THE COMMITTED INCOMPETENT REMAINS DANGEROUS.

B. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL SUBMITS A REPORT INDICATING THAT THE COMMITTED INCOMPETENT IS COMPETENT TO STAND TRIAL OR IS NO LONGER DANGEROUS THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE COMMITTED INCOMPETENT IS COMPETENT OR IS NO LONGER DANGEROUS.

C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL SUBMITS A REPORT THAT THE COMMITTED INCOMPETENT IS NO LONGER DANGEROUS IN WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE COMMITTED INCOMPETENT IS TAKING, THE REPORT SHALL STATE WHETHER THE DEFENDANT WILL CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS RESTRICTIVE ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A LESS RESTRICTIVE ALTERNATIVE.

D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS OR THAT THE COMMITTED INCOMPETENT IS COMPETENT TO STAND TRIAL.

E. A RETAINED OR APPOINTED COMPETENT PROFESSIONAL SHALL HAVE ACCESS TO ALL RECORDS CONCERNING THE COMMITTED INCOMPETENT. ALL COMPETENT PROFESSIONALS SHALL HAVE EQUAL ACCESS TO THE COMMITTED INCOMPETENT AS WELL AS ALL RECORDS CONCERNING THE COMMITTED INCOMPETENT.

F. THIS SECTION DOES NOT PRECLUDE THE COMMITTED INCOMPETENT FROM PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONAL DISCHARGE FROM TREATMENT PURSUANT TO SECTION 36-4004.

G. IF A COMMITTED INCOMPETENT'S COUNSEL OF RECORD WITHDRAWS FROM REPRESENTING THE COMMITTED INCOMPETENT AT ANY TIME DURING THE DURATION OF THE COMMITTED INCOMPETENT'S COMMITMENT UNDER THIS ARTICLE, THE COURT SHALL NOTIFY THE ATTORNEY FOR THE STATE AND THE COMMITTED INCOMPETENT AND EITHER ALLOW THE COMMITTED INCOMPETENT SUFFICIENT TIME TO EMPLOY OTHER COUNSEL OR, IF THE COMMITTED INCOMPETENT IS INDIGENT, APPOINT COUNSEL TO REPRESENT THE COMMITTED INCOMPETENT IN CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.

36-4003. Disposition

AFTER A HEARING PURSUANT TO SECTION 36-4002 OR 36-4004, IF THE COURT FINDS THAT:

1. THE COMMITTED INCOMPETENT HAS BEEN RESTORED TO COMPETENCY, THE COURT SHALL ORDER THAT THE CRIMINAL PROCEEDINGS RESUME.

2. THE COMMITTED INCOMPETENT HAS NOT BEEN RESTORED TO COMPETENCY AND:

(a) THE COMMITTED INCOMPETENT IS NOT DANGEROUS, THE COURT SHALL RELEASE THE COMMITTED INCOMPETENT FROM TREATMENT AND PROCEED PURSUANT TO SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

(b) THE COMMITTED INCOMPETENT IS NOT DANGEROUS IN WHOLE OR IN PART BECAUSE OF THE HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING, INCLUDING THE TAKING OF MEDICATION, THE COURT MAY RELEASE THE COMMITTED INCOMPETENT TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTIONS 36-4005 AND 36-4006.

(c) THE COMMITTED INCOMPETENT IS DANGEROUS, THE COMMITTED INCOMPETENT SHALL REMAIN COMMITTED FOR EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE COMMITTED INCOMPETENT COMPETENT OR NONDANGEROUS.

36-4004. Petition for change of status; procedures

A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE COMMITTED INCOMPETENT IS NO LONGER DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED INCOMPETENT TO PETITION THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE. THE COMMITTED INCOMPETENT SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A HEARING ON THE PETITION FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY.

B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED.

C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED INCOMPETENT FROM ANNUALLY PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE COMMITTED INCOMPETENT OF THE COMMITTED INCOMPETENT'S RIGHT TO PETITION THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF

RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

D. THE COMMITTED INCOMPETENT MAY BE PRESENT AT THE HEARING. THE PROSECUTING AGENCY MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE COMMITTED INCOMPETENT MAY RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT COMMITTED INCOMPETENT, MAY APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE DOES NOT MEET ITS BURDEN OF PROOF, THE COMMITTED INCOMPETENT SHALL BE DISCHARGED FROM TREATMENT.

E. AT THE CONCLUSION OF A HEARING, IF THE COURT FINDS THAT THERE IS NO LEGALLY SUFFICIENT EVIDENTIARY BASIS TO CONCLUDE THAT THE CONDITIONS PRESCRIBED IN SECTION 36-4006 HAVE BEEN MET, THE COURT SHALL GRANT THE STATE'S MOTION FOR A JUDGMENT ON THE ISSUE OF CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

36-4005. Conditional release to a less restrictive alternative; conditions; reports; review

A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE COMMITTED INCOMPETENT AND WILL ADEQUATELY PROTECT THE COMMUNITY AND THE COURT DETERMINES THAT THE MINIMUM CONDITIONS UNDER SECTION 36-4006 ARE MET, THE COURT SHALL ENTER JUDGMENT AND ORDER THE COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE COMMITTED INCOMPETENT DOES NOT MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE EFFECT OF TREATMENT OR HABILITATION BEING RECEIVED, THE COURT MAY DENY THE REQUEST FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED INCOMPETENT WILL CONTINUE TO RECEIVE SUCH TREATMENT AND HABILITATION FOLLOWING RELEASE FOR AS LONG AS THE TREATMENT AND HABILITATION IS REQUIRED. IF THE COURT FINDS THAT THE COMMITTED INCOMPETENT WILL CONTINUE TO RECEIVE THE NEEDED TREATMENT OR HABILITATION, IT MAY ORDER THE COMMITTED INCOMPETENT TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE ON THE CONDITION THAT THE COMMITTED INCOMPETENT CONTINUE TO RECEIVE SUCH TREATMENT OR HABILITATION. IF THE COMMITTED INCOMPETENT FAILS TO RECEIVE THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY REVOKE THE CONDITIONAL RELEASE.

C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE COMMITTED INCOMPETENT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE COMMITTED INCOMPETENT 'S COMPLIANCE WITH TREATMENT AND TO PROTECT THE COMMUNITY. IF THE COURT FINDS THAT CONDITIONS DO NOT EXIST THAT WILL BOTH ENSURE THE COMMITTED INCOMPETENT 'S COMPLIANCE WITH TREATMENT AND PROTECT THE COMMUNITY, THE COURT SHALL REMAND THE COMMITTED INCOMPETENT TO THE CUSTODY OF THE SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION OR TREATMENT IN A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE SUPERINTENDENT.

D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND CONDITIONS OF A COMMITTED INCOMPETENT 'S PLACEMENT IN A LESS RESTRICTIVE ALTERNATIVE IS NOT THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING TO PROVIDE THE TREATMENT.

E. BEFORE THE COURT AUTHORIZES A COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL IMPOSE ANY CONDITIONS ON THE COMMITTED INCOMPETENT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE SAFETY OF THE COMMUNITY. THE CONDITIONS SHALL INCLUDE THAT BEFORE A RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, A COMMITTED INCOMPETENT SHALL BE REQUIRED TO SUBMIT TO NINETY DAYS OF INPATIENT EVALUATION AT THE ARIZONA STATE HOSPITAL. AT THE DISCRETION OF THE SUPERINTENDENT OF THE STATE HOSPITAL, THE DURATION OF THE EVALUATION PERIOD MAY BE LESS THAN NINETY DAYS. THE COURT SHALL ORDER THE SUPERINTENDENT OF THE STATE HOSPITAL TO INVESTIGATE THE LESS RESTRICTIVE ALTERNATIVE AND TO SUBMIT ADDITIONAL CONDITIONS TO THE COURT. THE COURT SHALL GIVE A COPY OF THE CONDITIONS OF RELEASE TO THE COMMITTED INCOMPETENT AND TO ANY DESIGNATED SERVICE PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY OF THE FOLLOWING:

- 1. SPECIFICATION OF A RESIDENCE.**
- 2. COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY TESTING OR MONITORING REQUIRED.**
- 3. PROHIBITION ON ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER PERSONS AND PROHIBITION ON ASSOCIATING WITH OTHER PERSONS OR TYPES OF PERSONS.**
- 4. PROHIBITION ON THE USE OF ALCOHOL AND OTHER DRUGS.**
- 5. SUPERVISION BY THE DEPARTMENT OF HEALTH SERVICES.**
- 6. A REQUIREMENT THAT THE COMMITTED INCOMPETENT REMAIN IN THIS STATE UNLESS THE COMMITTED INCOMPETENT RECEIVES PRIOR AUTHORIZATION FROM THE COURT.**
- 7. COMPLIANCE WITH ANY SUPERVISION OR MONITORING OR REPORTING REQUIRED.**
- 8. OTHER CONDITIONS THAT THE COURT OR THE SUPERINTENDENT OF THE STATE HOSPITAL DETERMINES ARE IN THE BEST INTEREST OF THE COMMITTED INCOMPETENT OR OTHERS.**

F. FOLLOWING A DETERMINATION THAT A COMMITTED INCOMPETENT 'S RELEASE TO A LESS RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE RECOMMENDATION REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE SUPERINTENDENT OF THE STATE HOSPITAL, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A LESS RESTRICTIVE ALTERNATIVE THAT THE COMMITTED INCOMPETENT PARTICIPATE IN OUTPATIENT TREATMENT. THE OUTPATIENT SUPERVISION AND TREATMENT MAY INCLUDE MONITORING A COMMITTED INCOMPETENT BY USE OF AN ELECTRONIC BRACELET. THE TREATMENT SHALL CONTINUE UNTIL THE COURT ORDERS A CHANGE IN THE COMMITTED INCOMPETENT 'S TREATMENT REQUIREMENTS OR THE COMMITTED INCOMPETENT IS DISCHARGED PURSUANT TO SECTION 36-4009.

G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH DESIGNATED SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE COMMITTED INCOMPETENT IS COMPLYING WITH THE TERMS AND CONDITIONS OF THE CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE TO:

- 1. THE COURT.**

2. THE FACILITY FROM WHICH THE COMMITTED INCOMPETENT WAS RELEASED.

3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE COMMITTED INCOMPETENT WAS FOUND TO BE A COMMITTED INCOMPETENT OR TO THE ATTORNEY GENERAL.

H. THE COURT SHALL REVIEW THE CASE OF EACH COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE YEAR AFTER THE COMMITTED INCOMPETENT 'S RELEASE AND THEREAFTER ON MOTION OF EITHER PARTY OR THE SUPERINTENDENT OF THE STATE HOSPITAL OR ON THE COURT'S OWN MOTION UNTIL THE COMMITTED INCOMPETENT IS DISCHARGED. AT A CASE REVIEW, THE COURT SHALL DETERMINE ONLY IF THE COMMITTED INCOMPETENT SHALL CONTINUE TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING ITS DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE OPINIONS OF THE SUPERINTENDENT OF THE STATE HOSPITAL AND ANY OTHER COMPETENT PROFESSIONAL.

I. IF A COMMITTED INCOMPETENT IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE COMMITTED INCOMPETENT 'S RELEASE SO THAT THE DEPARTMENT OF PUBLIC SAFETY CAN COMMENCE ANY APPLICABLE NOTIFICATION PROCESS AS PROVIDED IN SECTION 13-3825.

36-4006. Conditional release to a less restrictive alternative; findings

BEFORE THE COURT ORDERS THAT A COMMITTED INCOMPETENT BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL OF THE FOLLOWING APPLY:

1. THE COMMITTED INCOMPETENT WILL BE TREATED BY A PROVIDER WHO IS QUALIFIED TO PROVIDE THE NECESSARY TREATMENT IN THIS STATE.

2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE COMMITTED INCOMPETENT, AGREES TO ASSUME RESPONSIBILITY FOR THE COMMITTED INCOMPETENT 'S TREATMENT, WILL REPORT ON THE COMMITTED INCOMPETENT 'S PROGRESS TO THE COURT ON A REGULAR BASIS AND WILL REPORT ANY VIOLATIONS AS PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SUBSECTION IMMEDIATELY TO THE COURT, THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT OF THE STATE HOSPITAL.

3. THE COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE SUFFICIENTLY SECURE TO PROTECT THE COMMUNITY AND THE PERSON OR AGENCY THAT IS PROVIDING THE HOUSING TO THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT AGREES IN WRITING TO THE FOLLOWING CONDITIONS:

(a) TO ACCEPT THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT.

(b) TO PROVIDE THE LEVEL OF SECURITY THAT THE COURT REQUIRES.

(c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT FROM THE HOUSING ARRANGEMENT TO WHICH THE COMMITTED INCOMPETENT HAS BEEN ASSIGNED.

4. THE COMMITTED INCOMPETENT WILL COMPLY WITH THE PROVIDER AND ALL OF THE REQUIREMENTS THAT ARE IMPOSED BY THE PROVIDER AND THE COURT.

5. THE COMMITTED INCOMPETENT WILL COMPLY WITH THE SUPERVISION REQUIREMENTS THAT ARE IMPOSED BY THE DEPARTMENT OF HEALTH SERVICES.

36-4007. Detention and commitment requirements; definition

A. A COMMITTED INCOMPETENT DOES NOT FORFEIT ANY LEGAL RIGHT AND SHALL NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR ORDERS MADE PURSUANT TO THIS ARTICLE EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE.

B. A COMMITTED INCOMPETENT SHALL RECEIVE CARE, SUPERVISION OR TREATMENT. THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL KEEP RECORDS DETAILING ALL MEDICAL, EXPERT AND PROFESSIONAL CARE AND TREATMENT THAT A COMMITTED INCOMPETENT RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS THAT ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS AND REPORTS SHALL BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

1. THE COMMITTED INCOMPETENT.
2. THE COMMITTED INCOMPETENT'S ATTORNEY.
3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.
4. THE COURT.
5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL WHO DEMONSTRATES A NEED FOR ACCESS TO THE RECORDS OR REPORTS.
6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR ASSOCIATED WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE FOR THE CARE, CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED INCOMPETENT.

C. AT THE TIME A COMMITTED INCOMPETENT IS DETAINED OR TRANSFERRED INTO A LICENSED FACILITY PURSUANT TO THIS ARTICLE, THE PERSON IN CHARGE OF THE FACILITY OR THE PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED COMMITTED INCOMPETENT. THE STAFF MEMBER WHO MAKES AN INVENTORY OF THE COMMITTED INCOMPETENT 'S PERSONAL PROPERTY SHALL GIVE A SIGNED COPY OF THAT INVENTORY TO THE COMMITTED INCOMPETENT. THE FACILITY SHALL ALLOW A RESPONSIBLE RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITATIONS THAT THE COMMITTED INCOMPETENT SPECIFICALLY IMPOSES. THE FACILITY SHALL NOT DISCLOSE THE CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE COMMITTED INCOMPETENT OR A COURT ORDER.

D. THIS ARTICLE DOES NOT PROHIBIT A COMMITTED INCOMPETENT FROM EXERCISING ANY RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING RELEASE FROM CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS. THE COMMITTED INCOMPETENT MUST EXHAUST ALL DIRECT APPEAL AND POSTCOMMITMENT PROCEDURES BEFORE EXERCISING THE COMMITTED INCOMPETENT 'S RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.

E. A COMMITTED INCOMPETENT WHO IS INDIGENT MAY NOT BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE CLOTHING. WHEN A COMMITTED INCOMPETENT IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED, THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL FURNISH THE COMMITTED INCOMPETENT WITH AN AMOUNT OF MONEY PURSUANT TO SECTION 31-228.

F. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS THE SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE COMMITTED INCOMPETENT AND INCLUDES THE GUARDIAN, CONSERVATOR OR ATTORNEY OF THE COMMITTED INCOMPETENT.

36-4008. Revocation of conditional release to a less restrictive alternative; hearing

A. IF THE ATTORNEY FOR THE STATE OR THE COURT BELIEVES THAT THE COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE AND TREATMENT, THE DESIGNATED SERVICE PROVIDER OR THE ATTORNEY FOR THE STATE MAY PETITION THE COURT FOR, OR THE COURT ON ITS OWN MOTION MAY SCHEDULE, A HEARING FOR THE PURPOSE OF REVOKING OR MODIFYING THE TERMS AND CONDITIONS OF THE COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE. THE HEARING SHALL BE HELD WITHIN TEN DAYS AFTER THE PETITION IS FILED.

B. IF THE ATTORNEY FOR THE STATE OR THE COURT REASONABLY BELIEVES THAT A COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF THE COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE, IS IN NEED OF ADDITIONAL CARE OR TREATMENT OR IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE COMMUNITY IS NO LONGER SAFE, THE COURT OR THE DEPARTMENT OF HEALTH SERVICES MAY ORDER THAT THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT BE DETAINED AND TAKEN INTO CUSTODY UNTIL A HEARING CAN BE SCHEDULED TO DETERMINE IF THE COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE SHOULD BE REVOKED OR MODIFIED. THE COURT AND ANY COUNSEL OF RECORD REPRESENTING THE COMMITTED INCOMPETENT IN CONNECTION WITH THIS ARTICLE SHALL BE NOTIFIED BEFORE THE CLOSE OF THE NEXT JUDICIAL DAY OF THE COMMITTED INCOMPETENT 'S DETENTION. THE ATTORNEY FOR THE STATE AND THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT MAY REQUEST AN IMMEDIATE MENTAL EXAMINATION OF THE COMMITTED INCOMPETENT. IF THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT IS INDIGENT, THE COURT, ON REQUEST, SHALL ASSIST THE COMMITTED INCOMPETENT IN OBTAINING A COMPETENT PROFESSIONAL TO CONDUCT THE EXAMINATION.

C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE COMMITTED INCOMPETENT 'S DETENTION, THE COURT SHALL SCHEDULE A HEARING. AT THE HEARING, THE COURT SHALL DETERMINE IF THE STATE HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID NOT COMPLY WITH THE TERMS AND CONDITIONS OF RELEASE, IS IN NEED OF ADDITIONAL CARE OR TREATMENT OR IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE COMMUNITY IS NO LONGER SAFE AND IF THE COMMITTED INCOMPETENT SHOULD CONTINUE ON CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE CONDITIONAL RELEASE SHOULD BE REVOKED AND THE COMMITTED INCOMPETENT SHOULD BE COMMITTED TO TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE PROVISIONS OF THIS ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE COURT FINDS THAT THE HEARSAY EVIDENCE IS OTHERWISE RELIABLE.

36-4009. Petition for discharge; procedures

A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE COMMITTED INCOMPETENT IS NO LONGER DANGEROUS IF DISCHARGED, BUT REMAINS INCOMPETENT TO STAND TRIAL, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED INCOMPETENT TO PETITION THE COURT FOR DISCHARGE. THE COMMITTED INCOMPETENT SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A HEARING

ON THE PETITION PURSUANT TO SUBSECTION C OF THIS SECTION FOR DISCHARGE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION.

B. THIS SECTION DOES NOT PROHIBIT THE COMMITTED INCOMPETENT FROM ANNUALLY PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL GIVE ANNUAL WRITTEN NOTICE TO THE COMMITTED INCOMPETENT OF THE COMMITTED INCOMPETENT 'S RIGHT TO PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OR DIRECTOR AND PROVIDE A COPY OF THAT WRITTEN NOTICE TO ANY COUNSEL OF RECORD REPRESENTING THE COMMITTED INCOMPETENT IN CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE. THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

C. THE COMMITTED INCOMPETENT MAY BE PRESENT AT THE DISCHARGE HEARING. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL WHO IS SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS. IF THE STATE DOES NOT MEET ITS BURDEN OF PROOF, THE COMMITTED INCOMPETENT SHALL BE DISCHARGED FROM TREATMENT.

D. IF A COMMITTED INCOMPETENT IS DISCHARGED, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE COMMITTED INCOMPETENT 'S DISCHARGE SO THAT THE DEPARTMENT OF PUBLIC SAFETY CAN COMMENCE ANY NOTIFICATION PROCESS AS PROVIDED IN SECTION 13-3825.

36-4010. Place for proceedings; transportation; immunity

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A COMMITTED INCOMPETENT SHALL NOT BE TRANSPORTED FROM A LICENSED FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL, EXCEPT THAT A COMMITTED INCOMPETENT MAY BE TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING REASONS:

1. A HEARING ON AN ANNUAL EXAMINATION.
2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.
3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION 36-4009.
4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A COMMITTED INCOMPETENT IS NECESSARY.
5. ANY COURT PROCEEDING NOT OTHERWISE SPECIFIED IN THIS ARTICLE WHERE THE PRESENCE OF THE COMMITTED INCOMPETENT IS REQUIRED.

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY COMMITTED INCOMPETENT WHOM THE COURT HAS DETERMINED IS SUBJECT TO CONDITIONAL RELEASE PURSUANT TO SECTION 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING FROM BEING HELD ON THE GROUNDS OF THE ARIZONA STATE HOSPITAL OR FROM

USING A TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT SHALL ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS ARTICLE. THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY INCLUDE PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF THE ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE.

D. THE DEPARTMENT OF HEALTH SERVICES IS RESPONSIBLE FOR THE TRANSPORTATION TO AND FROM A MEDICAL FACILITY OF A COMMITTED INCOMPETENT. THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE COMMITTED INCOMPETENT. IN DETERMINING THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE DEPARTMENT SHALL CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING PERSONNEL AND THE DETAINED OR COMMITTED INCOMPETENT.

E. THE DEPARTMENT OF HEALTH SERVICES AND ANY COUNTY SHERIFF ARE IMMUNE FROM LIABILITY FOR ANY GOOD FAITH ACTS UNDER THIS SECTION.

36-4011. Findings

FINDINGS BY THE COURT MADE PURSUANT TO THIS CHAPTER ARE INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER THIS CHAPTER OR UNDER TITLE 13, CHAPTER 41.

Sec. 8. Effective date

This act is effective from and after December 31, 2019.

At its April 29, 2019 meeting, the Committee on Mental Health and the Justice System engaged in an exercise to review items from a “Parking Lot” of topics for Committee consideration. During this exercise, the following four items received the most votes as suggested priorities for the Committee to address. During future Committee meetings, the Committee will revisit these areas for discussion and recommendation purposes.

Address the lack of bed space statewide for persons with mental health needs by increasing the number of:

- Inpatient, secure beds;
- Community based, secure residential placements; and
- Community based supportive housing, including group homes.

For people with co-occurring disorders, define and mandate comprehensive case management services that include face to face contact in the community and additional supports to coordinate a person’s need for:

- Treatment for mental health & co-occurring substance use disorders;
- Housing;
- Transportation; and
- Other needed services.

Examine changes to statute to allow evidence of mental disorder as an affirmative defense to a defendant’s mens rea

Examine mandates for and improvement of oversight of the public mental health treatment system, both voluntary and involuntary. Recommend creation of a State Department of Mental Health Services.

- Suggested rewrite submitted by a member for committee consideration: *Suggest improvements to the current mental health system mandates for oversight of the mental health treatment system (voluntary and involuntary).*