

Committee on Mental Health and the Justice System

AGENDA

Monday, October 28, 2019

10:00 a.m. – 3:00 p.m.

State Courts Building • 1501 W. Washington St. • Phoenix, Arizona • Conference Room 345A/B

REGULAR BUSINESS

10:00 a.m.	Welcoming Remarks	Mr. Kent Batty, <i>Chair</i>
10:10 a.m.	Approval of August 26, 2019 Minutes <input type="checkbox"/> Formal Action: Vote to Approve	Kent Batty
10:15 a.m.	Presentation & Discussion: Arizona Department of Corrections	Dr. Nicole Taylor, <i>Mental Health Director</i> Karen Hellman, <i>Division Director</i> <i>Inmate Programs and Re-Entry</i>
11:15 a.m.	News & Updates <i>Interim Report and Recommendations – Next Steps</i>	Kent Batty
12:00 p.m.	LUNCH	
12:30 p.m.	Civil Commitment Website	Cathleen Cole All
1:00 p.m.	Mental Health Protocols Update	Don Jacobson, AOC Local Team Members
1:20 p.m.	Criminal Justice Reform: Update	Jerry Landau Amy Love
1:50 p.m.	Order of Transfer Protocol – Final Approval <input type="checkbox"/> Formal Action: Vote to Approve	Jim McDougall
2:05 p.m.	Competency Workgroup Report	Dianna Kalandros
2:25 p.m.	Committee Next Steps: 2020	Kent Batty All
2:55 p.m.	Call to the Public	Kent Batty

Committee on Mental Health and the Justice System

October 28, 2019

AGENDA

Next Meeting:

November 18, 2019

Remaining Meetings:

December 16, 2019

PROPOSED 2020:

January 27

February 24

March 23

April 20

May 18

June 22

July 27 (hold for possible WG day)

August 24

September 28

October (TBD - depends on AJC)

November 16

December 14

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, August 26, 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, Jim Dunn, Hon. Elizabeth Finn, Hon. Michael Hintze, Josephine Jones, Natalie Jones, Dianna Kalandros, James McDougall, Dr. Carol Olson, Hon. Barbara Spencer, Hon. Fanny Steinlage, Beya Thayer (Proxy for David Rhodes), Paul Thomas, Sergeant Jason Winsky (Proxy for Chris Magnus)

Telephonic: Shelley Curran, Hon. Cynthia Kuhn, Kristin McManus, Michal Rudnick, Dr. Michael Shafer, Hon. Christopher Staring

Absent/Excused: J.J. Rico

Guests/Presenters: Dr. Margie Balfour and Dr. Robert Williamson, Connections Health Solutions; Juan Delgado, Glendale Municipal Court; Cathleen Cole, Arizona Foundation for Legal Services

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

Regular Business

Welcome and Opening Remarks

Mr. Kent Batty (Chair) asked Committee members and guests to briefly introduce themselves.

Approval of Minutes

Members were asked to approve minutes from July 22, 2019, noting they were in the meeting packet and provided electronically in advance of the meeting. Jim Dunn asked to clarify that his reference to adding DHS as a participant was via Dr. Shafer. A motion to approve the minutes was made by Paul Thomas and seconded by Amelia Cramer. Motion was approved unanimously.

Presentation & Discussion: Connections Health Solutions

Dr. Margie Balfour, Chief of Quality and Clinical Innovation and Dr. Robert Williamson, CEO, Connections Health Solutions presented to the Committee. Dr. Balfour's presentation was made available in a Committee Supplemental Packet: Link [HERE](#).

Committee members engaged in discussion with Dr. Balfour and Dr. Williamson around the crisis response system, with a focus on the “no wrong door” for law enforcement model that Connections Health Solutions provides at its Maricopa County and Pima County facilities. Questions were raised regarding how other counties can or should be resourced in order to provide adequate crisis services and alternatives for law enforcement and others in the community.

Committee members discussed the opportunity for family support and engagement, and Dr. Balfour highlighted that peers with lived experience are an important part of their interdisciplinary team. Discussion ensued regarding the boundaries of HIPAA and what can be shared with family members and judges to improve service delivery for individuals.

The Committee and Drs. Balfour and Williamson also discussed how crisis data can be used to improve determination of services and appropriate orders within the court system as well as analyzing who is coming into crisis centers and what the community needs are that perhaps are not being met and could be developed. For example, significant improvements have been made within the law enforcement culture through implementation of the “no wrong door” approach. In order to achieve further success, the system needs to eliminate the siloes through increased collaboration across providers and establishing a common goal to determine what functions are needed, where are the resources, and how to properly resource the system.

News & Updates

Mr. Batty updated the Committee on the SIM Protocol training that took place in Flagstaff at the beginning of August. Don Jacobson noted that all 15 counties are working on development and implementation of mental health protocols around the SIM, under judicial leadership.

Paul Thomas shared news that Mesa Municipal Court received funding/TA to analyze their Community Court data and further develop and enhance the model.

Amelia Cramer shared that the County Attorneys have reviewed and support the Pima County incompetent/not restorable legislative proposal that has been discussed with the Committee and will keep the Committee apprised of any further discussions or movement once the legislative session begins.

Mr. Batty noted that the Committee will not meet in September, and the October meeting will include an update on the presentation/discussion with the Arizona Judicial Council at its October 24th meeting. Mr. Batty also informed the Committee that the October meeting will include a presentation and discussion with the Arizona Department of Corrections Mental Health Director, Dr. Nicole Taylor and Karen Hellman, Director of Inmate Programs and Re-Entry.

Workgroup Report: Competency Practice

Dianna Kalandros, Competency Practice Workgroup Chair, updated the Committee on the *Legal Competency & Restoration Conference* that took place at the beginning of August. Several Committee members participated, and the training was well attended by mental health experts/evaluators, as well as members of the judiciary, court staff and community. Opening remarks were given by Vice Chief Timmer and the Committee’s sample templates for MH Expert guidelines and forms were included and discussed, as well as the Committee’s work overall. There was a lot of enthusiasm for the work we are doing.

Ms. Kalandros shared the workgroup’s proposal to change language in A.R.S. 13-4503 to conform with Rule 11.2 (b) language changes made in 2018. If approved by the Committee, this will be included in the legislative proposal packet submitted to the Arizona Judicial Council in October 2019. The Committee approved moving the proposal forward to conform 13-4503 with Rule 11.2, moved by Jim McDougall and seconded by Judge Steinlage. Motion carried.

In addition, the Committee discussed the wait period (i.e. – is three days enough?), as well as the process for unsealing mental health records and what could be included in an order or what work can be done with AHCCCS and providers to have a standardized release of information to court. A comment was made to review A.R.S. 36-309 regarding Arizona’s HIPAA confidentiality statute and provide a future, more robust recommendation after workgroup review.

Ms. Kalandros shared the workgroup is developing a draft proposal to bring to the Committee in October for changing the requirement for two experts in A.R.S. 13-4505 to “one or more” experts if the most severe charge is a misdemeanor. Currently, the statute requires a stipulation, and if there is no stipulation, there is a Rule 32 issue. Commonly, in rural and smaller jurisdictions, the court almost always stipulates to one expert. Mr. Thomas noted that the workgroup is borrowing language in place in Utah, and in reviewing statutes from all 50 states, the workgroup has found this change is consistent with 50 other statutes.

Ms. Kalandros discussed the workgroup’s continued emphasis on the need for improving the quality of reports and enhancing the judge’s understanding of their role in mental health proceedings. The workgroup sees this as more than just a judicial training issue, and feel it ties into Fair Justice. Workgroup members are hopeful that the Committee’s recommendation to form a team to look at mental health rules and statutes will bring about some type of recommendation to certify judges in mental health, similar to “birth to three” judicial experts in the dependency court system who have advanced training to help support this vulnerable population, of which the mental health population is as well. Law enforcement is already taking on mental health certification through specialized crisis teams and training on Mental Health First Aid. This also ties in with the Committee’s recommendation to develop a university partnership for forensic evaluators and other professionals.

Another piece of the best practices around restoration to competency discussion that the workgroup will be reviewing and can be addressed with the Committee is telehealth evaluations, particularly for rural counties. Discussion will need to take place around – is this an option? What are the standards? How can it be properly resourced?

Finally, Ms. Kalandros shared that the workgroup will be revisiting its research and discussions on *Best Practices in Restoration to Competency Programs* over the next few meetings.

Order of Transfer Protocol Update

Mr. McDougall presented follow-up on the order of transfer protocol with the Committee, noting the process may differ in each county depending on who is responsible for each piece (in each County). The workgroup has included participation from Maricopa County Superior Court (Judge Starr), as well as Committee members. Next steps upon approval by the Committee: send to all Presiding Judges (GJ and LJC) for input, possibly include in Committee presentation to LJC. The Committee provided feedback, asking for clarification on what the JP courts are handling themselves, and if there is any other language that needs to be adjusted with respect to the transfer and county by county differences.

AOC Information Technology Division – Discussion

Karl Heckart, CIO for the AOC presented to the Committee with an overview of the ITD process and strategic vision, including how the Committee’s recommendation for a centralized

“repository” for judges and attorneys to have basic information for an individual involved in a Rule 11 proceeding could be achieved through the upcoming AOC portal/repository. Committee members noted that this discussion has also involved including Title 36 and Title 14 as well, due to the interconnectedness between the three matters for an individual and family.

The Committee recommended that the Competency workgroup team look at its recommendation and convene with AOC IT staff to determine the best next steps.

Mr. Heckart’s PowerPoint slides were made available in a Committee Supplemental Packet: Link [HERE](#).

Interim Report: Final Discussion

Mr. Batty requested final approval from the Committee of the report. The motion was made by Amelia Cramer and seconded by Jim Dunn. Motion carried.

Good of the Order / Call to the Public

No members of the public asked to speak.

Adjournment

The meeting was adjourned at 2:25 p.m. by order of the Chair.

Committee on Mental Health and the Justice System

Rule 11.5 Transfer Protocol Proposal

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 has reviewed recent changes to [Rule 11.5 Ariz.R.Crim.Proc.](#) allowing Limited Jurisdiction Courts (LJC) to handle competency proceedings for misdemeanor defendants in their jurisdictions. However, when the misdemeanor defendant is determined to be incompetent and not restorable, the LJC judge does not have authority to order the city prosecutor to file a Petition for Court Ordered Evaluation (COE) under Title 36. Because these misdemeanor defendants are not currently being linked to ongoing Title 36 services when charges are dismissed by the LJC, defendants are released back into the community without mental health screening or evaluation. This process is perpetuating the revolving door of individuals with mental illness in the justice system and is creating a safety issue for the public and the defendant and creating a risk that the person's mental illness will become worse without treatment.

Under current statute and rule, the LJC judge can: dismiss the charges **or** transfer the case to the superior court for proceedings under A.R.S. §13-4517 (Rule 11.5). If the case is transferred to the Superior Court for further options under A.R.S. §13-4517, the County Attorney can file a Title 36 Petition for COE and can detain the defendant and retain jurisdiction over the defendant's charges while the Petition for COE is processed. However, there is no current protocol in place to explain the transfer process. The following proposal is intended to provide a clear and workable mechanism to move a misdemeanor defendant between criminal and civil court in a timely fashion when the originating case is at the LJC level.

Of note, the Committee recognizes that this transfer protocol may only be currently relevant to Maricopa County Superior Court and LJC's handling competency proceedings. However, it is anticipated that more LJC courts will begin to handle their own competency proceedings under Rule 11.5 (B). When a Superior Court adopts this transfer protocol, they must adapt the protocol to incorporate the common terminology used in their jurisdiction(s) for prosecutor and defense counsel, as well as any other terms that are unique to their jurisdiction(s).

ORDER OF TRANSFER PROTOCOL AND TEMPLATES BEGIN ON FOLLOWING PAGE

Authority: [Rule 11.5 Ariz.R.Crim.Proc.](#)

(B) Limited Jurisdiction Court. If a limited jurisdiction court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within the timeframes as defined in A.R.S. §[13-4515](#), the court must do one of the following:

- (i) Dismiss the action on the State's motion; or
- (ii) Transfer the case to the superior court for further proceedings pursuant to A.R.S. §[13-4517](#).

PROTOCOL: TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT

1. The Mental Health Expert's Report is submitted to the limited jurisdiction court judge which states the opinion of a psychiatrist or psychologist that there is reasonable cause to believe the defendant is in need of involuntary mental health treatment or the appointment of a guardian or both.
2. The limited jurisdiction court makes a determination by separate Minute Entry Order that the defendant is incompetent and not restorable.
3. If the limited jurisdiction court judge, based upon all the evidence presented, finds that there is reasonable cause to believe that the defendant is in need of a Court Ordered Evaluation under Title 36 or in need of a Court Appointed Guardian under Title 14, or both, the limited jurisdiction court judge issues an ORDER OF TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT (see form attached) upon making the appropriate findings for transfer of the case to Superior Court under Rule 11.5 (b) (3) (B) (ii), Ariz. R. Crim.Proc. requesting consideration of further proceedings by the Superior Court in accordance with A.R.S. § 13-4517. [This determination and Order can be made upon Motion of either party or *sua sponte* by the court]
4. Following issuance of order of transfer, the City Attorney¹ assembles the following documents and transmits to the County Attorney within two working days:
 - i. Copies of all available Pre-Screen Rule 11 Competency Reports and all other available Mental Health Experts' reports used in the defendant's past and current Rule 11 evaluation, including any reports submitted during any effort to restore competency;
 - ii. A statement of any acts or statements of the defendant related to the current charges and any relevant history of acts or statements of the defendant that form a basis for reasonable cause to believe the defendant is in need of a Court Order for Evaluation under Title 36 or Guardianship under Title 14;
 - iii. A copy of the Law Enforcement Report of the index offense (i.e. police reports), a copy of any arrest and conviction record of the defendant; and
 - iv. The contact information of any identified witnesses that may be used at a hearing on a Petition for Court Ordered Treatment under Title 36 or Guardianship under Title 14.

¹ When a Superior Court adopts this transfer protocol, they must adapt the protocol to incorporate the common terminology used in their jurisdiction(s) for prosecutor and defense counsel, as well as any other terms that are unique to their jurisdiction(s).

5. The City Attorney files a Notice of Transmission of documents pursuant to the ORDER OF TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT with the City Court and with the Superior Court certifying compliance with the order.

**PROTOCOL: ACCEPTANCE OF TRANSFER FROM LIMITED JURISDICTION COURT
BY SUPERIOR COURT**

1. Upon receipt of an Order of Transfer from the limited jurisdiction court, the clerk of the Superior Court assigns the case to a division of the Superior Court, assigning an appropriate case number and routing the Order of Transfer to the assigned judge for further proceedings pursuant to A.R.S. §13-4517.² The Clerk of the Superior Court shall endorse the limited jurisdiction court judge, the City attorney and the City public defender or private defense attorney on all orders issued by the Superior Court in the matter after transfer.³ The City public defender or private defense counsel will continue to represent the defendant in all matters related to the criminal case after transfer.⁴
2. The Superior Court Judge to whom the case is assigned, shall issue an ORDER ACCEPTING TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT (see form attached) retaining jurisdiction over the case and the defendant and containing any other appropriate orders, and shall set a Status Conference within 7 working days for consideration of options under A.R.S. §13-4517. Where the defendant is in-custody at the time of transfer other appropriate orders may include an order to the agency holding the defendant to retain custody until further order of the Superior Court.
3. Upon receipt of a copy of the documents transmitted to the County Attorney by the City Attorney, the County Attorney considers the documents provided to determine whether a Petition for Court Ordered Evaluation can or should be filed pursuant to Title 36 or a Petition for Appointment of Guardian should be filed under Title 14, or both.
4. At the Status Conference set by the Superior Court, the parties may request further appropriate relief under A.R.S. §13-4517.

² Note: In Maricopa County, the Superior Court has already assigned a Superior Court case number to City of Phoenix LJC cases in the Rule 11 process which is used in the minute entries. Therefore, a new case number does not need to be assigned in City of Phoenix Rule 11 cases.

³ When a Superior Court adopts this transfer protocol, they must adapt the protocol to incorporate the common terminology used in their jurisdiction(s) for prosecutor and defense counsel, as well as any other terms that are unique to their jurisdiction(s).

⁴ If an evaluation is ordered on a Petition for Court Ordered Evaluation under Title 36 or upon filing a Petition for Appointment of Guardian under Title 14, the defendant will be appointed separate defense counsel who will represent the defendant in further proceedings under Title 36 or Title 14.

5. If the County Attorney determines that Appointment of Guardian should be sought, the County Attorney files a Petition for Appointment of Guardian or requests the court to appoint an appropriate person or agency to investigate the need for appointment of a guardian and to file the appropriate pleadings.⁵
6. If the County Attorney determines that a Petition for Court Ordered Evaluation should be filed, the County Attorney prepares and files a Petition for Court Ordered Evaluation and keeps the Superior Court advised of the status of that Petition in accordance with timeframes set by the Court.
7. If either Petition is filed, the Superior Court should consider whether to issue an order dismissing the criminal case immediately, or whether the Superior Court should issue an order retaining jurisdiction over the criminal case and the defendant until it is determined that an Order for Court Ordered Treatment under Title 36 or an Order Appointing Guardian under Title 14 has been granted.⁶

⁵ In Maricopa County, the court usually appoints a Guardian Ad Litem for this purpose. The court could also consider appointing the Public Fiduciary, or a family member who is willing and able to do so, to investigate the need for guardianship and to file the appropriate pleadings.

⁶ A.R.S. §14-4517 (C) states: “The court may retain jurisdiction over the defendant until the defendant is committed for treatment pursuant to title 36, chapter 5 or a guardian is appointed pursuant to title 14, chapter 5.” Title 36 provides a number of opportunities for the defendant to be remanded back to the Superior Court for determination of further disposition under A.R.S. §13-4517 during the evaluation period or if a Court Order for Treatment is not granted. A remand for this purpose would only be appropriate if the criminal court has retained jurisdiction and has not dismissed the case. Therefore, if a Petition for Court Ordered Evaluation is filed, the criminal case should not be dismissed until a Petition for Court Ordered Treatment is granted if one is filed. [See A.R.S. §§36 – 523(F), 529 (C), 531 (E), 534 (B) and 540 (Q)].

(INSERT NAME OF) COURT

INSERT ADDRESS

<p>STATE OF ARIZONA vs. DOB: Defendant</p>	<p>CASE NO.</p>	<p>RULE 11.5 (b) (3) (B) (ii) ORDER OF TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT</p>
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Having found that the Defendant is incompetent and that there is no substantial probability that the defendant will become competent within the timeframes as defined in A.R.S. § 13-4515, based upon a consideration of all of the evidence presented, including the written reports of the experts on the issue of competency,

THE COURT FINDS that there is reasonable cause to believe that the defendant is in need of either receiving involuntary treatment under Title 36 or the appointment of a guardian, or both.

IT IS ORDERED transferring the case to the (insert) County Superior Court for further proceedings pursuant to A.R.S. § 13-4517 and Rule 11.5 (b) (3) (B) (ii), Ariz.R.Crim.Proc.

IT IS FURTHER ORDERED requesting that upon receipt of this Order of Transfer, the (insert) County Superior Court issue an **ORDER OF ACCEPTANCE FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT** and issue other appropriate orders for further proceedings pursuant to A.R.S. § 13-4517 including an order retaining jurisdiction over this case and this defendant until the defendant is committed for treatment pursuant to Title 36, Chapter 5, or a guardian is appointed pursuant to Title 14, or the case is dismissed.

IT IS FURTHER ORDERED that no later than 2 working days following the issuance of this order, the (insert) City Attorney’s Office⁷ shall transmit the following documents and information to the (insert) County Attorney to be used to consider further appropriate proceedings pursuant to A.R.S. § 13-4517 and shall file a Notice of Transmission certifying compliance with this Order:

1. Copies of all available Pre-Screen Rule 11 Competency reports and all other available Mental Health Experts’ reports used in the defendant’s past and current Rule 11 evaluation, including any reports submitted during any effort to restore competency;
2. A statement of any acts or statements of the defendant related to the current charges and any relevant history of acts or statements of the defendant that form a basis for reasonable cause to believe the defendant is in need of a Court Order for Evaluation under Title 36 or Guardianship under Title 14;
3. A copy of the Law Enforcement Report of the index offense (i.e. police reports), a copy of any arrest and conviction record of the defendant; and
4. The contact information of any identified witnesses that may be used at a hearing on a

⁷ When a Superior Court adopts this transfer protocol, they must adapt the protocol to incorporate the common terminology used in their jurisdiction(s) for prosecutor and defense counsel, as well as any other terms that are unique to their jurisdiction(s).

Petition for Court Ordered Treatment under Title 36 or Guardianship under Title 14.

Date: _____

Hon. _____

DRAFT

(INSERT NAME OF) COURT

INSERT ADDRESS

STATE OF ARIZONA vs. DOB: Defendant	CASE NO.	RULE 11.5 (b) (3) (B) (ii) ORDER ACCEPTING TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT
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This court having received the Order of Transfer concerning the above named defendant from the (insert name of limited jurisdiction) Court dated (insert date) in which the defendant has been found incompetent to stand trial without substantial probability to become competent within the timeframes as defined in A.R.S. § 13-4515, and requesting that this court issue an Order Accepting Transfer of the case and retain jurisdiction of this case and this defendant for further appropriate proceedings pursuant to A.R.S. § 13-4517 and Rule 11.5 (b) (3) (B) (ii), Ariz.R.Crim.Proc., and this court finding good cause;

THEREFORE, IT IS ORDERED that (insert name) County Superior Court accepts the transfer of this case and this defendant from the (insert name of limited jurisdiction) Court for consideration of further appropriate proceedings pursuant to A.R.S. § 13-4517 and Rule 11.5 (b) (3) (B) (ii), Ariz.R.Crim.Proc.

IT IS FURTHER ORDERED that this court shall retain jurisdiction over this case and this defendant pursuant to A.R.S. § 13-4517, subsections C, D and E until further order of this court.

OPTIONAL:

[IT IS FURTHER ORDERED that the defendant shall remain detained until further order of this court.]

IT IS FURTHER ORDERED setting this matter for a status conference on (insert date) at (insert time) before Judge (insert name) to consider the appropriate disposition of this matter pursuant to A.R.S. § 13-4517.

Date: _____

Hon. _____

Insert Court Footer

Committee on Mental Health and the Justice System
Competency Workgroup

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

Based on a review of current guidelines and best practices, the Committee's Competency Practices Workgroup submits the following proposal to improve the process for mental health evaluations in misdemeanor proceedings through a change to A.R.S. §13-4505 (A).

Background:

Prior to the establishment of the Committee on Mental Health and the Justice System, [Administrative Order No. 2015-92](#) authorized two pilot programs in Glendale and Mesa Municipal Courts to conduct Rule 11 mental competency proceedings. The experience in the pilot courts demonstrated a significant reduction in case times from several months to an average of 45 days. The "localizing" of this process proved efficient in providing legal assistance, doctors' availability, convenience for family members, connection to local services, and was much less traumatic and challenging for defendants.

Cases at the limited jurisdiction level involving a competency question are low level misdemeanor offenses, typically involving trespassing, minor shoplifting, urban camping, and especially homelessness. Consequently, it is important to resolve the competency issue timely to not delay the possibility of engaging services and support that might better serve the defendant.

The Mesa pilot experimented with a modified procedure that immediately scheduled a full Rule 11 examination with one doctor followed by a hearing. The prosecution and defense would typically stipulate to the one doctor and the case would be resolved at the hearing. If the matter was not resolved, a second doctor, or third followed by a hearing would be scheduled. A three-

year experience shows about a 70% case resolution with a one doctor report. This suggests that the statutory requirement for two doctors is not critical for misdemeanor cases, and case resolution emphasizes support options for the defendant. This is the essential difference from felony cases, and the distinction necessary for consideration of the one doctor recommendation for misdemeanors.

Comment

In Mesa, a competent finding allows for a diversion, such as the Community Court Program. An incompetent finding commonly results in a dismissal. (Discussions are taking place reviewing the possibility of connecting services after a finding of incompetent)

The Statutory Challenge:

The problem with [A.R.S. §13-4505 \(A\)](#) is two-fold. One, the statute requires the appointment of two doctors unless the parties stipulate to one. This sets up a “due diligence” burden on both the prosecution and defense, and the prospect of a Rule 32 filing when they stipulate to one doctor or accept the conclusions of a single doctor. Even when all the parties agree, and it would be in the defendant’s best interest to expedite the matter with one doctor, the process is held hostage by the statute. Two, is a more fundamental issue in that the doctor is the court’s expert, engaged to inform the court directly about the competency status of the defendant. It is the court’s burden to ascertain competency, and the stipulation option shifts control of the number of doctors away from the court.

Comment

It is the workgroup’s understanding that the stipulation option was an accommodation to rural areas where there is a shortage of doctors. However, unless there is a stipulation, two doctors would still be required.

Some attorneys routinely request two doctors, creating delay and cost. Prior to the expedited process in Mesa, it “appeared” that some attorney used the Rule 11 procedure to continue the case.

Review of Other States:

A review of all (50) states finds no statute similar to A.R.S. §13-4505 (A) regarding the two-doctor requirement, and the stipulation option. Other states' statutes typically offer variations of the court's requirement to appoint a single mental health expert, such as a psychologist, or psychiatrist, or "one or more" in many states. Oddly, Florida statutes state "no more than three" doctors. In all states, it is a matter governed by the court's authority to decide ultimately the number and qualifications of the appointed experts. Except for a very few states, no distinction is made between a felony or misdemeanor cases.

Comment

A review of other state statutes suggest that Utah would be the best model for consideration of changes to A.R.S. §13-4505.

Related Discussion:

The Rule 11 process is often represented by a one doctor decision. There is debate surrounding the benefits of two doctors, however the use of Pre-screening results in a one doctor decision based on less than a full evaluation, and a split between two doctors makes the third doctor's evaluation the determining factor. Arguments for two doctors for qualitative reasons have been offered; however, this view of the multiple doctors does not necessarily assure better quality.

Comment

The workgroup places a strong emphasis on judicial education and training, and possible consideration of a judicial certification program in Rule 11 proceedings. The workgroup viewed the judge as having the responsibility to demand quality reports from the doctors.

Recommendation:

After extensive consideration, discussion, and review of other states' statutes, and the experiences of the Glendale and Mesa pilot courts, the workgroup respectfully recommends changes to A.R.S. §13-4505 permitting one doctor (or more) for misdemeanor Rule 11 cases within the discretion of the court.

PROPOSED AMENDMENTS BEGIN ON NEXT PAGE

13-4505. Appointment of experts; costs

A. If the court determines pursuant to section 13-4503 that reasonable grounds exist for a competency examination, the court shall:

(1) IF THE MOST SEVERE CHARGE AGAINST THE DEFENDANT IS A MISDEMEANOR, APPOINT ONE OR MORE MENTAL HEALTH EXPERTS TO EXAMINE THE DEFENDANT, ISSUE A REPORT AND, IF NECESSARY, TESTIFY REGARDING THE DEFENDANT'S COMPETENCY; OR

(2) IF THE DEFENDANT IS CHARGED WITH ANY FELONY, appoint two or more mental health experts to examine the defendant, issue a report and, if necessary, testify regarding the defendant's competency. The court, on its own motion or upon motion of any party, may order that one of the mental health experts appointed shall be a physician specializing in psychiatry and licensed pursuant to title 32, chapter 13 or 17. The state and the defendant, upon approval of the court, may stipulate to the appointment of only one expert.

B. The court may order the defendant to submit to physical, neurological or psychological examinations, if necessary, to adequately determine the defendant's mental condition.

C. The court shall order the defendant to pay the costs of the court ordered examination, except that if the court finds the defendant is indigent or otherwise unable to pay all or any part of the costs or if the prosecution requested the examination, the court shall order the county to pay the costs of the examination or, if the case is referred by a municipal court judge, the court shall order the city to pay the costs of the examination.

D. This section does not prohibit any party from retaining its own expert to conduct any additional examinations at its own expense.

E. A person who is appointed as a mental health expert or clinical liaison is entitled to immunity, except that the mental health expert or clinical liaison may be liable for intentional, wanton or grossly negligent acts that are done in the performance of the expert's or liaison's duties.