

**Committee on Mental Health and the Justice System
Minutes**

Monday, June 24, 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. Michael Hintze, Josephine Jones, Natalie Jones, Dianna Kalandros, James McDougall, Kristin McManus, Carol Olson, Ron Overholt, Chief Deputy David Rhodes, Hon. Barbara Spencer, Hon. Fanny Steinlage, Paul Thomas, Sergeant Jason Winsky (Proxy for Chris Magnus), Megan Woods (Proxy for Michal Rudnick)

Telephonic: Shelley Curran, Hon. Elizabeth Finn, Hon. Cynthia Kuhn

Absent/Excused: J.J. Rico, Dr. Michael Shafer, Hon. Christopher Staring

Guests/Presenters: Chief Justice Scott Bales; Alex Demyan, AHCCCS

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

Regular Business

Welcome and Opening Remarks

Mr. Kent Batty (Chair), introduced Chief Justice Scott Bales who thanked the Committee for its work in this area, and emphasized that the work we are doing has an impact. The Chief Justice shared that at this month's Presiding Judges meeting there were three presentations on what local jurisdictions are doing in the area, including from David Rhodes in Yavapai, and the Presiding Judges in Coconino and Maricopa Counties. Under incoming Chief Justice Brutinel, mental health issues in the justice system will a topic at all quarterly Presiding Judges and Arizona Judicial Council meetings and is reaffirmed in the new Strategic Agenda.

Mr. Batty and the Committee members expressed their gratitude to Chief Justice Bales for elevating the important of addressing mental health in the justice system.

Mr. Batty asked Committee members and guests to briefly introduce themselves.

Approval of Minutes

Members were asked to approve minutes from April 29, 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 Amelia Cramer and seconded by Judge Hintze. Motion was approved unanimously.

Recent News & Updates

Mr. Batty notified the Committee that its current recommendations were presented to the Committees on Superior Court and Limited Jurisdiction Courts in May, as highlighted in the May staff update to the Committee. Mr. Batty noted that both meetings went very well, and while more discussion will take place as we proceed with our interim reporting process, it is clear that the courts and other system stakeholders are supportive of the work the Committee is doing.

Mr. Batty also shared that staff and some Committee members held a stakeholder meeting with the Arizona Department of Juvenile Corrections to discuss concerns regarding the definition of mental disorder changes. While not previously raised in Committee, the proposed definition change could impact ADJC, as the ADJC commitment statute (A.R.S. 8-342) allows for a youth who has been adjudicated on a non-felony offense to be committed to ADJC if they are “seriously mentally ill.” The presenting issue is that the definition ties back to “mental disorder” as defined in A.R.S. 36-501 and “seriously mentally ill” in 36-550. At this point, there was no conclusion that the Committee would recommend any changes to the mental disorder proposal right now, as ADJC and the Committee on Juvenile Court Judges may want to look more closely at A.R.S. 8-342 and the impact of that statute. However, it is an important point to be aware of, as children’s behavioral health and juvenile justice issues surface within AOC/Supreme Court leadership’s strategic agenda.

Mr. Batty notified the Committee of the passing of the gavel from Chief Justice Bales to incoming Chief Justice Brutinel that took place recently at the Arizona Judicial Conference. Justice Brutinel shared the new Strategic Agenda with the judiciary, and it will be shared with the Committee as soon as it is published. Mr. Batty referenced a section in the strategic agenda which highlights continued focus on mental health issues in the justice system.

The Western Regional Conference of State Court Administrators (COSCA) meeting took place at the end of May in Idaho with a focus on mental health, with AOC and Supreme Court leadership and others in attendance including Mr. Batty, Michal Rudnick, Don Jacobson, Joe Kelroy from AOC Juvenile Justice Services, and Superior Court Judges Quigley and Moran. The learning sessions were organized along the sequential intercept model and included presentations from colleagues across the country on current efforts to address mental health issues in the justice system, including law enforcement interaction and crisis response, competency evaluation, and jail and corrections-based mental health programming. Mr. Batty noted that it was clear that Arizona’s judicial branch has made a great deal of progress in its focus on mental health, but we still have plenty to learn and consider.

Mr. Batty detailed additional areas that may be considered by the courts and the Committee in its second year, including: triage for youth with mental health concerns, juvenile justice, non-urban jurisdictions, expanding the Reach Out model, enhancing access to resources for veterans, looking into the population currently served through Mental Health Courts to determine if it could be expanded to serve other defendants, restoration to competency for misdemeanants, enhancing the follow-up with local jurisdictions that participated in the Mental Health Protocols Summit, AHCCCS justice liaisons, utilizing competency evaluations beyond a finding of competence or incompetence, telehealth concepts, and more.

Mental Health Protocols Update

Don Jacobson presented the Committee with an overview and update of the current work underway as a result of both the Mental Health Protocols Summit and the Arizona team’s discussion at the Conference of State Court Administrators (COSCA). The planned initiatives for Arizona include:

- Expand use of crisis drop-off centers
- Expand the ‘Arizona Model’ to juveniles
- Expand training for judges and staff
- Roll out protocols county by county

Mr. Jacobson highlighted the development of tools and training for judges using the resources from the Protocol Guide and the SIM, and specifically a train-the-trainer program that will take place in August that ultimately is geared to provide training for judges and court staff including probation.

Committee members asked Mr. Jacobson if a survey or analysis would be done of what is currently going on, to prevent duplication before new initiatives are created, noting that many jurisdictions have existing community mapping projects in place or underway that detail what it looks like for a person in the community to navigate mental health resources. Several Committee members shared with Mr. Jacobson where existing crisis stabilization units or “drop off” centers currently exist, including Maricopa County, Yavapai County, Pima County, Coconino and Pinal County. Committee member David Rhodes also noted the mobile crisis response funded in rural areas in Northern Arizona. Committee members also underscored the need for any mapping that is done through the protocol teams to include an identification of the gaps and how to fill them, as well as mapping what should be available to people in an optimal system. Examples of specific gaps that Committee members shared include vast differences in rural jurisdictions, varying resources for law enforcement which would like to implement a CIT approach but are thwarted by there are geographic and provider access considerations , or different rules for whether an individual can be dropped off and served. Judge Hintze noted that a recent census in Maricopa County jail showed that the number of female inmates has risen to an all-time high, and that the majority are there due to mental health and substance abuse issues.

Preview July Discussion: AHCCCS Contracts, Justice Liaisons, COE/COT Process

Mr. Batty provided the Committee with an overview of the agenda item, asking the Committee if it would be worthwhile to have a more complete picture of AHCCCS’ interaction with the judicial system, as there is a great deal of interest and discussion around the work AHCCCS is doing, in particular the justice liaisons, the Targeted Investment (“one stop centers”), the alternative centers for law enforcement (in Maricopa and Pima only right now), as well as the COE/COT process and how it works or is not working across the entire state. Mr. Batty also noted recent conversations with Dr. Margie Balfour from Tucson’s Crisis Recovery Center who presented at COSCA and can help contribute to the conversation as it relates to crisis services.

Committee members discussed the desire to have such a presentation, particularly addressing the differences across the state, the relationship between crisis response and COE/COT, and the County vs. Health Plan functions for justice-involved individuals with mental health concerns. A suggestion was made to hear from or about the Justice Liaisons and their work with the system. Clarification was requested as to the differences between the RBHAs and ACC Plans – and Shelly

Curran noted there is one justice liaison per health plan, for a total of seven. Because three of the seven ACC providers are also RBHA providers which continue to provide specific crisis services, and services for members determined to be SMI, children in foster care, and members served by DES/DDD, the role the justice liaisons play and involvement throughout the justice system varies as well.

Megan Woods, AHCCCS noted that the Arizona Association of Health Plans is currently developing recommendations for AHCCCS related to the justice liaisons, and there is work underway to develop collaborative protocols and focus on upcoming changes to the ACC Health Plans and RBHA Health Plans.

Mr. Batty concluded that the presentation and discussion next month will aim to educate the Committee on the way the system works and is interrelated with the justice system.

Legislation Review: HB 2754; A.R.S. 36-550.09

Committee members Jim McDougall and Dr. Carol Olson reviewed new legislation that was included in the legislative budget. Several stakeholder meetings were held during the session regarding how different funds, including the housing trust fund would be used for people with mental illness. Mr. McDougall and Dr. Olson were asked very late in the session to assist with establishing criteria for a new secure treatment facility. Suggested language was put forward that the Committee included in the enhanced services program criteria, however that did not go through and will continue to be worked on in the future.

Committee discussion regarding the legislation centered around what a judge will be expected to find as it relates to “chronically resistant to treatment” – how we will identify and treat the individuals who are in the revolving door of our system, including as it relates to individuals with a co-occurring substance abuse and mental health disorder. Dr. Olson noted that the legislators they worked with are very interested in the fact that a small number of individuals who are resistant to treatment are having a big impact on the systems. Mr. McDougall noted that while the legislation includes \$3.5 million in funding to create the pilot program, it will take time to be up and running due to facilities needing to be found or built, the licensing process, selecting providers, County Attorney criteria and evidence for selection of the individuals who will go into the secure setting for treatment, and the procedure for tracking how the individual is doing in treatment and when the individual has demonstrated that they no longer need this setting.

Committee members agreed that while the funding included is small for what is needed, this legislation is an important start, and provides an example of the discussions that the Committee has been having to continue to be addressed by others.

Workgroup Report: Competency Practice

Workgroup chair Dianna Kalandros requested final approval on the Guidelines for Mental Health Evaluators and the templates for the Rule 11 competency forms. The Committee agreed that the Guidelines have been approved. Mr. McDougall noted some suggested changes. Members with additional edits to the templates for the mental health evaluator competency forms were asked to send suggestions to staff by July 3rd.

Ms. Kalandros noted the upcoming training conference for mental health evaluators that will take place in August, and the desire to have judicial officers and staff attend, in addition to mental health evaluators. Discussion also took place to request including the sample templates in the packet so we can begin to integrate the Committee's work and recommendations for improvement. Judge Hintze also noted that there is more education and training needed on Title 14 and Title 36 for judges and other court officers hearing Rule 11 matters at both the limited jurisdiction and superior court levels.

Ms. Kalandros informed the Committee about the workgroup's ongoing priorities, including: work with the AOC IT department on a mechanism to share Rule 11, Title 36, and Title 14 data points across jurisdictions; continuing to improve the process for the Rule 11 for limited jurisdiction courts as allowed for in the 2018 statute and rule change process.

Finally, Ms. Kalandros noted ongoing discussion around a visionary idea for an education pipeline across forensic psychiatry and law, paired with a university to develop and track education and continuous improvement opportunities, as well as increase the pool of individuals who have expertise and work in this area. Committee members also commented on the need to address the price Arizona pays for evaluators, and how that likely contributes to the lack of available evaluators and experts.

Workgroup Report: Key Issues

Workgroup chair Mr. McDougall noted the workgroup's discussion on current Arizona Assisted Outpatient Treatment (AOT) statutes, and when considering what this statute allows for and the Committee's enhanced services treatment proposal, the workgroup is not recommending any changes to AOT statute at this time.

Mr. McDougall presented an update on the current work underway to address the linkage issues between for a person found incompetent and not restorable in the limited jurisdiction court and the transfer order to superior court (currently only in Maricopa County) as contemplated in Rule 11.5. A small team has put together some ideas, as well as met with the Maricopa County judicial leadership. When reviewing data from Glendale and Mesa, it is clear there are not a great number of cases that would move forward – less than 20 total in 2018. At present, the team will continue to draft a protocol and associated documents for the order of transfer, and come back to the Committee, Maricopa County Superior Court leadership and the County Attorney's Office for presentation and discussion.

Finally, Mr. McDougall presented for discussion the requested Committee statement in support for some type of programming or process to address the population of individuals who are dangerous and found incompetent and not restorable. Committee members were provided a document in their packets, as well as the latest version of the Pima County Attorney's Office draft proposed legislation. After review and discussion, the Committee agreed to the following language: *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 determined to be "dangerous," through the creation and adoption of a constitutional process, procedure or program to provide treatment to the individual and protect the public safety.*

Priority Setting Exercise Review

Mr. Batty stated that the purpose of this discussion is to review the final votes from the April Committee priority setting exercise and determine how the Committee sees the four areas that received the most “votes” fitting in with its work moving forward, in particular – what would the Committee’s recommendation be in each area? The four areas identified:

1. 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.*

6/24/19 Discussion: Recommend to the legislature that there be planning and financial support for these kinds of beds, and a report that Arizona can anticipate that there would be cost savings over time due to a reduction in costs to jails and emergency rooms, and these cost savings should be directed toward more supportive housing. There was a further recommendation to address the gaps and ask the Protocol teams to engage in resource mapping across the Sequential Intercept Model, including services available in each county and community, identifying the people in need of services, and their needs. Committee members noted its interim report must include the facts needed to influence public policy, and to underscore the housing scarcity for people with mental illness and how that directly ties in to the Committee’s work and recommendations to improve the system.

Committee member David Rhodes emphasized that housing is a key data point tracked in Yavapai County’s Reach Out program, and when working on coordinating release for individuals, approximately 30 percent have no place to go after release, making for a bleak outlook for reducing recidivism. He further noted that while the housing voucher program sounds good, if the housing authority does not allow someone who has been convicted of a felony, then success is even more unlikely. Committee member Paul Thomas noted at the six-month mark, for the 66 graduates in Mesa Community Court (mostly homeless and mentally ill), with cases going back to 2006 – cumulatively, the 66 graduates had 2,500 police contacts and 650 arrests – indicative of the issues we are dealing with and hoping to address.

2. 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.*

6/24/19 Discussion: Committee members noted that connecting people to treatment is more effective with support and engagement daily. Further discussion ensued around the immense amount of system resources that is put in when an individual is treated with co-occurring disorders, and then wasted when they are discharged “to homelessness” and without other coordinated

systems of care. Mr. Rhodes provided Reach Out as an example, as well as true diversion work in Harris County (Houston) and Davidson County (Nashville) Sheriff's offices for pre-trial defendants on conditions of release under a case management system run by the county – not under the authority of the court or probation.

Potential avenues discussed include changes to the AHCCCS contracts, possible legislation that mandates supportive case management for this population, and the recognition that this does not all fall under the court's purview, but the Committee is using the convening power of the court and the court's leadership to move these discussions and changes forward, while also recommending outcome-based measures for effective oversight.

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

6/24/19 Discussion: Create a new workgroup to research and recommend changes. Membership identified includes: Mary Lou Brncik, Brad Carlyon, Natalie Jones, Fanny Steinlage, Paul Thomas.

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.

6/24/19 Discussion: The Committee engaged in discussion regarding the desire to have a state body independent of the payor to improve oversight. Members noted the importance of developing and recommending comprehensive, cross-agency protocols to prevent further fragmentation and silos in the system, including across the Department of Health Services, ASH, the housing trust fund through the Department of Housing, AHCCCS and the health plans. Mr. Rhodes noted the collaboration taking place in Yavapai County, using highly integrated communication, and the economies of scale of existing infrastructures in place to form a joint criminal justice-behavioral health-county responsibility to route people where they need to go. Mr. Batty confirmed this beneficial approach in Pima County through the MacArthur grant that enhances collaboration and breaks down siloes. Mr. Dunn noted Rep. Barto's independent oversight committee with over 11 different groups across the state could be a good resource for this Committee, and to ensure we keep our finger on the pulse of what is happening.

Mr. Batty reminded the Committee that it will be presenting an interim report to the Arizona Judicial Council (AJC) Standing Committees and AJC in October 2019 with several recommendations related to discussions that have taken place over the last 10 months. The goal is to have a copy of the draft interim report to the Committee for review at the July meeting – or August at the latest.

Good of the Order / Call to the Public

No members of the public asked to speak.

Adjournment

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