

Fair Justice Task Force

Subcommittee on Mental Health and the Criminal Justice System

Monday, November 13, 2017
Conference Room 101, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Kent Batty, Chair, Susan Alameda, Dr. Tommy Begay, Mary Lou Brncik Jim Dunn, Vicki Hill, Josephine Jones, Kathleen Mayer, Judge Joe Mikitish, Dr. Dawn Noggle, Dr. Carol Olson, Nancy Rodriguez, Dr. Michael Schafer, Mary Ellen Sheppard, Judge Susan Shetter, Commissioner Barbara Spencer, Judge Christopher Staring, Lisa Surhio, Sabrina Taylor, Paul Thomas, Juli Warzynski

Absent/Excused: Detective Kelsey Commisso, India Davis, Danna Whiting

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Jennifer Greene, Don Jacobson, Jodi Jerich, Amy Love, Sabrina Nash, Marcus Reinkensmeyer

Guest Speakers: Ms. Patti Tobias, National Center for State Courts, Sergeant Cory Runge, Flagstaff Police Department

I. Welcome, opening remarks, and approval of minutes

The November 13, 2017 meeting of the Fair Justice Task Force Subcommittee on Mental Health and the Criminal Justice System was called to order at 10:06 a.m. by Kent Batty, chairman. The chairman thanked the members for their attendance and asked each one to introduce themselves.

The draft minutes of the October 24, 2017 meeting were presented for approval.

Motion: To approve the October 24, 2017, meeting minutes, as presented. **Action:** Approve. **Moved by:** Kathleen Mayer. **Seconded by:** Jim Dunn. Motion passed unanimously.

Mr. Batty welcomed the Honorable Christopher Staring, Court of Appeals Division 2, as the newest member of the Subcommittee. He also introduced guest speakers Ms. Patti Tobias and Sergeant Cory Runge. Ms. Tobias is a Principal Consultant with the National Center for State Courts and a former state court administrator. Sergeant Runge is a law enforcement officer with the Flagstaff Police Department and is its Crisis Intervention Team (CIT) Supervisor.

Ms. Tobias, Judge Staring, and Sergeant Runge each gave a presentation to the Subcommittee sharing their first-hand experiences of how the justice system interacts with mentally ill persons.

II. How the justice system can better serve persons with mental illness: Perspectives on court ordered treatment and the incarceration of persons with mental illness.

Guest Speaker Patti Tobias

Ms. Tobias shared her experience as the mother of a mentally ill adult son and detailed her son's cycling in and out of jails and hospitals in three different states. She relayed her opinion that incarceration of her son was the only option for the court because her son refused to participate in mental health court and the criminal court could not order involuntary civil treatment. Jail became the primary mental health care provider for her son.

Ms. Tobias also recounted her son's experience with inpatient treatment. She criticized the practice of short term inpatient stays. She said that the doctors heavily medicated her son in order to stabilize him. Once stabilized, he was released but there was no scheduled follow-up appointment for several weeks. Ms. Tobias stated that this practice of short term inpatient care followed by inadequate outpatient services results in a frustrating and dangerous cycle of precarious mental health. In such circumstances, many mentally ill persons will stop taking their medications and then decompensate to the point where emergency inpatient treatment is again needed to protect the person and the public.

Ms. Tobias expressed frustration that in Colorado a court may order treatment only if the person is a danger to himself or others or is gravely disabled. She urged the Subcommittee members to review Arizona's court-ordered treatment standards to allow for treatment if the person is incapacitated due to a mental illness. Subcommittee members commented that it appears that Colorado does not have a civil commitment standard that is similar to Arizona's "persistent and acutely disabled" (PAD) standard. While PAD is not an emergency-based standard, members opined that Ms. Tobias's son would be eligible for treatment under this standard.

Ultimately, based on her experiences in multiple states, Ms. Tobias believes the criminal justice system can do a better job of administering justice to those who suffer from mental illness. She stated that it was her experience that the civil and criminal justice systems often work in silos. Even as a career court administrator, she still found it extremely difficult to navigate through the justice system and to understand all the options available to her son.

Subcommittee Member Judge Chris Staring

Next, Judge Staring addressed the Subcommittee about the need to destigmatize mental illness. Judge Staring informed members that he is the father of an adult child with a serious mental illness and shared an incident where his adult child encountered police officers. He stated that it was very fortunate that the officers who responded to the call were veteran law enforcement officers who handled the situation with restraint. The officers called in a Mental Health Support Team who treated his child with respect. His child was not charged but was taken to Pima

County's Crisis Response Center, which is located next to the county's primary mental health treatment hospital. There, the petition process for a mental health evaluation and eventual court-ordered treatment began. During that time, his child had to sleep in a recliner and spent three days untreated while his mental state worsened. Judge Staring recounted that on a different occasion, his child waited 8 days for an inpatient bed to become available.

Judge Staring said that he has seen much suffering during his tenure on the bench. He said that this did little to prepare him for the frustration he experienced in finding help for his child as the family navigated through the criminal justice and mental health systems. Among his observations was that the actual history of events, interviews, evaluations and the like becomes lost over time, as individuals (docs, police officers and others), in their contemporary reports, summarize the previous history, leaving out some of the detail each time. The result is that important details and nuances about a person's condition and behaviors get lost over time.

Guest Speaker Sergeant Cory Runge

Flagstaff police officer, Sergeant Cory Runge, was the final speaker to address the Subcommittee. Sergeant Runge is the supervisor of the Flagstaff Crisis Intervention Team (CIT). CIT officers go out on calls involving a person who has been identified as possibly having mental health issues. Sgt. Runge shared that he also has a family member with a serious mental illness and is personally an advocate for mental health reform.

Sgt. Runge agreed with Ms. Tobias and Judge Staring that the systems are in silos and are often difficult to navigate. Furthermore, he questioned the current practice of using police officers to transport persons to court-ordered evaluations or treatment. Sgt. Runge asserted that having a uniformed officer transport a person to a medical appointment in the back of a squad car does little to destigmatize mental healthcare treatment. (I'm sorry that I can't get the comment feature to work, but I had a different understanding of this last sentence. I heard Cory say that using officers to transport *stigmatizes* the individual, which is a much stronger statement. I also understood him to be speaking of taking individuals to court appearances, not medical appointments.)

He stated that police officers generally are not trained in healthcare matters. They are trained in public safety matters. Sgt. Runge said, without more information, it is difficult for police to know if the person is acting strangely because of a mental health issue or a substance abuse issue. Sgt. Runge suggested that the criminal justice system could benefit if a form were developed that would follow the person from the first encounter with law enforcement all the way through the criminal justice system. At each "intercept" the appropriate person would note on the form their personal observations about their interaction with the person.

Sgt. Runge said even with all the training in mental health first aid and crisis intervention, a police officer only has three options when the officer has reasonable cause to believe a person has committed a crime: (1) release, (2) arrest, or (3) medical facility. Most times, this is the initial event that results in jails and prisons becoming the primary mental healthcare provider for many persons suffering from mental illness.

Sgt. Runge noted a lack of adequate resources to treat persons with mental illness, particularly in rural Arizona. Sgt. Runge stated that psychiatric centers can treat seriously mentally ill persons, but these facilities are not set up to provide treatment for general mental health issues or for substance abuse problems. He further noted that rural Arizona, due in large part to its geographical expansiveness, has higher treatment costs than in the densely populated metropolitan areas of Phoenix and Tucson.

Sgt. Runge advocated for training in the Sequential Intercept Model (SIM) and in mental health first aid.

Discussion

The members concurred with many of the points raised by the speakers. Members agreed that the criminal, civil, and mental health care systems seem to work in silos and that better communication between them is needed. One member pointed out that the Presiding Judge in Maricopa County issued an administrative order that details how the court may disclose information found in mental health records. Members discussed the benefit of having a clear understanding of what information may and may not be shared. Members also agreed that a mentally ill person often needs a continuum of care after they are stabilized with intensive inpatient treatment. Without meaningful stabilization and adequate outpatient treatment, a person will often stop taking medication, become unstable, and end up back in need of emergency mental health treatment or begin a journey through the criminal justice system.

Members reiterated comments made at the last meeting that there are insufficient inpatient and outpatient resources to adequately meet the needs of persons with mental illnesses. They agreed that additional training for court staff is needed to identify persons with mental health issues and to divert them from the criminal justice system when appropriate to do so. The members discussed that jail and prison are not the best facilities to offer effective mental healthcare. Members noted that limited jurisdiction mental health courts (MHCs) may have more flexibility to offer front-end diversion programs than general jurisdiction MHCs, due to the nature of the charges involved. They suggested that a pre-adjudication program may be an opportunity for the courts to take a leadership role to end the cycle of incarceration and hospitalization for many mentally ill persons. Members suggested that the courts explore diversion options for some felonies.

III. Items for status report to the Fair Justice Task Force

The Chairman noted that the next meeting of the Fair Justice Task Force is November 29, 2017. A representative of the Subcommittee will provide a report at that meeting on its work to date.

The Subcommittee discussed the following items to be included in the report:

1. Draft Administrative Order with policies and procedures.

The Subcommittee members reviewed the draft administrative order with policies and procedures documents that were provided in the Meeting Packet. With the correction of a

typographical error, the members unanimously approved these documents.

2. *Proposed changes to Rule 11.5 to give limited jurisdiction courts the jurisdiction to order competency restoration treatment if the defendant is found incompetent but restorable.*

The members reviewed the draft Rule 11.5 that was provided in the Meeting Packet and proposed two changes. First, members proposed a change to Rule 11.5(b)(3) to address a concern that, as proposed, Rule 11.5(b)(3) could unintentionally permit a superior court to disagree with an LJC's finding that a defendant was incompetent and not restorable. As written, the members agreed that the provision would allow the superior court to disregard the LJC's findings and decide anew whether the defendant is incompetent and not restorable. To eliminate this unintended consequence, the members added the phrase "for proceedings pursuant to A.R.S. §13-4517" at the end of Rule 11.5(b)(3)(A).

The second change to the Rule was to align the restoration timeframes with applicable criminal sentencing penalties. The members noted that restoration treatment cannot last longer than the maximum sentence for the crime charged. Members stated that the current specific timeframes of 15 months and 21 months are not applicable for many crimes. Members proposed to replace these timeframes with the phrase "within the timeframes allowed by law" in order to reflect current practice. As amended, the members unanimously approved the proposed change to Rule 11.5.

3. *Recommendation: "That the Sequential Intercept Model (SIM) be considered a best practice in local jurisdictions and that judges and staff be encouraged to receive training on the SIM and other tools to recognize mental illness in persons who come to court."*

The members urged that all judges and court staff, not just criminal court judges and staff, receive training to identify mentally ill persons and to divert them to appropriate treatment when possible. Members urged that this is an opportunity for the court to become a leader at the local level to introduce the SIM and related training tools to other stakeholders. The members struck the term "mental illness" and inserted "behavioral health needs" in its place. The Subcommittee passed this amended recommendation unanimously.

4. *Recommendation: "That the Fair Justice Task Force create a workgroup to develop options and alternatives for the development of a centralized repository for courts holding Rule 11 proceedings to be able to access prior Rule 11 and Title 36 records from other courts."*

The Subcommittee discussed the scope of this recommendation and whether it conflicts with the restrictions of Rule 123 of the Rules of the Supreme Court. To address this concern, the phrase "under appropriate circumstances and with appropriate safeguards" was added. With a divided voice vote, the recommendation, as amended, passed.

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

While the members were generally supportive of this proposition, there was no consensus on the precise language of the recommendation. The item was tabled.

- 6. Recommendation: “That the Fair Justice Task Force direct the AOC to take steps to develop a method for LJs to report the outcomes of competency hearings as required by A.R.S. §13-609.”**

A.R.S. §13-609 requires that if a defendant is found incompetent, the court must transmit this case information to the Supreme Court. The Supreme Court must then transmit the case information to the Department of Public Safety. DPS then transmits the information to the national instant criminal background check system. Superior courts already have procedures in place to share case information for competency proceedings. However, since LJs have not previously conducted competency hearings, they have no similar procedures in place. For the two LJs that currently conduct Rule 11 competency proceedings on a pilot basis, these municipal court judges are acting as superior court pro tem judges. As pro tem judges, they access case information from the superior court’s court information system and report their findings back through the superior court. Once LJs begin to hold Rule 11 proceedings pursuant to their own authority, each LJ must set up a procedure to comply with A.R.S. §13-609.

The Subcommittee members unanimously passed this recommendation.

IV. Roundtable discussion of issues raised in past meetings

The Subcommittee members discussed the statutory definition of “mental disorder.” Some members opined that this definition is too limited and should be changed. There was discussion whether to create a workgroup of the subcommittee to develop a proposal. There was another suggestion that the Subcommittee urge the Fair Justice Task Force to create a workgroup. Member discussed the need to include other stakeholders to participate in this discussion. The chairman directed member Kathleen Mayer to bring suggested language back to the Subcommittee for discussion at its next meeting.

V. Call to the public

Ms. Tamaria Gammage, speaking for herself, addressed the Subcommittee. Ms. Gammage shared her experience as someone who has been through the court system while suffering from behavioral health and substance abuse issues.

VI. Adjournment

The meeting adjourned at approximately 2:11 p.m.