

Fair Justice Task Force

Subcommittee on Mental Health and the Criminal Justice System

DRAFT

Wednesday, March 21, 2018
Conference Room 101
Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Kent Batty, Chair, John Belatti, Mary Lou Brncik, Vicki Hill, Nancy Rodriguez, Jim Dunn, Josephine Jones, Dr. Dawn Noggle, Dr. Carol Olson, Commissioner Barbara Spencer, Lisa Surhio, Paul Thomas, Juli Warzynski

Appearing Telephonically: Dr. Tommy Begay, Judge Joe Mikitish

Absent/Excused: Susan Alameda, Detective Kelsey Commisso, India Davis, Dr. Michael Shafer, Mary Ellen Sheppard, Judge Susan Shetter, Judge Chris Staring, Sabrina Taylor, Danna Whiting

Administrative Office of the Courts (AOC) Staff: Theresa Barrett, Don Jacobson, Jodi Jerich, Sabrina Nash, Angela Pennington

Guests: Charles Arnold, Attorney, *Frazer, Ryan, Goldberg & Arnold*
Judge James McDougall, Attorney, *Frazer, Ryan, Goldberg & Arnold*
Dr. Leslie Dana-Kirby, Psychologist, Maricopa County Correctional Health Services, RTC-CEP Program
Lisa Struble, Administrator, Maricopa County Correctional Health Services, RTC-CEO Program

Welcome, opening remarks, and approval of minutes

The Chairman, Kent Batty, called the March 21, 2018 meeting of the Fair Justice Task Force Subcommittee on Mental Health and the Criminal Justice System to order at 10:12 a.m. The Chairman asked the members to go around the room and introduce themselves.

The draft minutes of the February 12, 2018 meeting were presented for approval.

Motion: To approve the January 18, 2018 minutes. **Action:** Approve. **Moved by:** Dr. Dawn Noggle. **Seconded by:** Jim Dunn. Motion passed unanimously.

Overview of the *Arnold v. Sarn* lawsuit and settlement agreement

Mr. Charles (“Chick”) Arnold briefed the members on the *Arnold v. Sarn* lawsuit and its 2014 settlement agreement. The lawsuit was filed in 1981 and has become Arizona’s longest standing class action lawsuit. At the time, Mr. Arnold was the Maricopa County Public Fiduciary. He worked with the Center for Law and the Public Interest to bring the lawsuit on behalf of David Goss and four other persons who constituted the representative plaintiff class. Mr. Arnold sued the Arizona Department of Health and Maricopa County alleging they did not provide a comprehensive community mental health system as required by state law. The trial court entered judgment in favor of the plaintiffs, holding that the State and the County violated their statutory duties. The Arizona Supreme Court affirmed this ruling in 1989.

After the 1989 ruling, the trial court appointed a monitor to oversee efforts to bring the State into compliance. Mr. Arnold noted that he has worked with several governors to develop plans to resolve the lawsuit by bringing more state resources into the community mental health treatment system. In 2014, Governor Brewer worked with the litigants to develop a new settlement agreement that set Arizona’s standards to match the standards set by the federal Substance Abuse and Mental Health Standards Administration (SAMHSA). The Settlement Agreement centered around four (4) issues:

1. Crisis Services
2. Supportive Housing
3. Supportive Employment
4. Consumer Services (Family/Peer Support)

The Court approved the Settlement Agreement and dismissed the court monitor. However, the court retained jurisdiction in case there are future allegations that the State is not meeting the terms of the Settlement Agreement.

Mr. Arnold reported that the State has made significant efforts to comply with the 2014 Settlement Agreement. He cited increased access to the mental health care system through the expansion of Medicaid eligibility and the new navigation system implemented by Mercy Maricopa Integrated Care as examples of noteworthy effort. Nonetheless, Mr. Arnold noted that there is still a need for more housing.

Discussion ensued. A health care member noted that Arizona’s system is superior to those of other states. However, the provision in the Settlement Agreement that put the maximum number of inpatient beds at the Arizona State Hospital (ASH) at 55 has not been beneficial in the treatment the seriously mentally ill. Mr. Arnold noted that the bed limit at ASH was intended to force the healthcare system to respond by developing other inpatient facilities to supplement the 55 ASH beds. However, the system has not responded in the manner that was envisioned at the time of the Settlement Agreement. As a result, only Medicaid eligible persons have access to

inpatient treatment at ASH. Other members expressed concern that the State's decision to move behavioral health services to the Arizona Health Care Cost Containment System (AHCCCS) from the Department of Health (DHS) has resulted in less oversight of the mental health care delivery system.

The chairman thanked Mr. Arnold for his presentation.

Discussion of SB1195 application; emergency admission; nonevaluating hospitals

Judge James McDougall provided the members with a status report on legislation to amend several statutes relating to the evaluation and transport of persons who may need court-ordered evaluations or treatment. The bill, SB1195, has passed the Senate and is awaiting a hearing in the House Health Committee. Judge McDougall stated that in an effort to reach consensus with stakeholders, the bill was amended and is in a substantially different form than the draft the members reviewed back in January. He mentioned that there are some outstanding issues that still need to be resolved before the bill can move forward and that he is working hard to resolve them.

Discussion ensued. The members noted that it is a very difficult task to bring so many diverse stakeholders together over such a complex matter as involuntary mental health screenings, evaluations, and treatment. Again, members expressed concern over the State's level of oversight of Arizona's mental health care system. Additionally, concerns were raised that the 55-bed maximum at ASH makes it difficult to provide inpatient mental health treatment to those who need it. Members noted the irony of the court's efforts to keep mentally ill persons out of the criminal justice system when there are inadequate community resources to provide meaningful treatment. The untreated persons are likely to reoffend, putting them right back into the criminal justice system.

The Chairman thanked Judge McDougall for his update on SB1195.

Discussion that the Arizona Psychological Association be urged to create restoration to competency programs and evaluation tools using evidence-based best practices.

The Chairman introduced the next agenda item relating to a discussion of the court's restoration to competency (RTC) programs for defendants who have been found to be incompetent but restorable. An attorney member stressed the need for evidence-based practices in RTC programs. She proposed that the Subcommittee ask the Arizona Psychological Association (APA) to develop such programs.

Members discussed whether the APA was the appropriate entity to develop the RTC programs. Members expressed concern that it may take a long time for the APA to develop and approve guidelines and that such guidelines could be developed more quickly by the Administrative Office of the Courts. Members concurred that psychology is an inexact science and that tests can be subjective. They discussed the need to have a well-developed training program that ensures that the health care professionals who will conduct RTC programs are properly trained to do so. Members further noted that currently there is little oversight and no performance audits conducted of court-appointed psychiatrists and psychologists.

The Chairman introduced representatives from Maricopa County's Correctional Health Services RTC and competency evaluation programs (CEP): Ms. Lisa Strubel and Dr. Leslie Dana-Kirby.

Dr. Dana-Kirby is a forensic psychologist who conducts RTCs and CEPs. She noted that all defendants are different and have different diagnoses. Consequently, there is no single test that can be administered to every defendant who is ordered to be evaluated to determine competence. Additionally, there is no single program that can restore competence for every defendant. Dr. Dana-Kirby agreed that the courts could provide better training and should institute a measure of accountability for those psychologists and psychiatrists who perform RTCs and CEPs.

Lisa Strubel, Forensic Services Manager, RTC-CEP Manager, discussed the need for a standardized reporting methodology to be used by all health care professionals who must submit RTC and CEP reports to the court. She said that currently there is no standard reporting format which makes it difficult for the court and the parties to find information in an efficient manner. Ms. Strubel suggested that the courts devise a standard reporting format for psychiatrists and psychologists to use to ensure that all statutory requirements for an evaluation have been met and addressed in the report.

The Chairman noted that Pima County Superior Court had a mental health coordinator who developed standards for what the court needed to see in RTC and CEP reports. The coordinator would review reports filed by the evaluators to check whether the reports contained all necessary information for the court.

Discussion ensued. Members agreed with Dr. Dana-Kirby that there is no single test that can be used for all defendants. However, members expressed a desire to have the matter more thoroughly studied to ensure that the courts appoint qualified and well-trained psychiatrists and psychologists to conduct RTC and CEP, particularly in rural Arizona. They also noted the difficulty courts have in finding psychologists and psychiatrists who are willing to work with the court and participate in RTC and CEP programs.

A judge member noted that any changes in the training for court-certified psychologists and psychiatrists should be thoroughly vetted. A court administrator member suggested that there should be more evaluation and study of the Rule 11 process before there are any efforts to develop new guidelines. He noted that there have been no allegations that Rule 11 competency hearings were resulting in incompetent defendants being improperly found to be competent.

The following motion was put forward for debate and discussion:

“The Subcommittee recommends to the Fair Justice Task Force that it recommend that the AOC gather state experts to examine evidence-based and best practices for competency evaluations and restoration programs and to train accordingly.”

Don Jacobson proposed the motion be further amended to include at the end of the motion the following language:

“and that there should be a standard reporting format as established by the court.”

Motion made by Lisa Surhio; Amended by Don Jacobson; Motion seconded by Dr. Noggle. Motion passed unanimously.

The Chairman thanked Dr. Dana-Kirby and Ms. Struble for their perspectives they provided to the Subcommittee.

Discussion on the final report of the Subcommittee

The chairman informed the members that the Fair Justice Task Force will not be extended. It will hold its final meeting on May 21, 2018. As a subcommittee of the Task Force, this Subcommittee will end on that date as well.

The Subcommittee must submit a final report to the Task Force. This report will detail the work the Subcommittee has accomplished as well as any recommendations going forward. The Chairman acknowledged that there is a high level of interest in having the work of the Subcommittee continue and he anticipates the final report will contain a recommendation that a new committee be formed to continue this Subcommittee’s work. The final report should review the charges to the Subcommittee and its work to address these charges.

A court administrator member stated that even though the Subcommittee is coming to an end, there is more work to be done. He said that the charge of any future committee should include a review of rules, statutes and protocols. A mental health advocate member concurred that it would be important that a future committee be tasked with proposing changes to the criminal justice and mental health statutes to improve how the justice system interacts with persons who suffer from mental illness. A member urged that the final report be shared with the Director of the Arizona Health Care Cost Containment System (AHCCCS).

Staff proposed a rough outline of a final report for the members’ consideration. The final report would provide the following:

1. Inform the Task Force of the Subcommittee’s work to date and how that work matches the four charges of the Subcommittee.

2. Discuss the challenges and barriers the members have identified that hinder the courts in effectively addressing persons with mental illness who enter the criminal justice system.
3. Propose that a future committee be formed to continue to identify solutions for the courts to better administer justice. The report would make recommendations regarding the membership and charge of any future committee.

Staff provided the Subcommittee an update on efforts to create a website that provides the public information on the civil commitment process.

Staff informed the Subcommittee that the Arizona Bar Foundation for Legal Services and Education (the Foundation) is excited to partner with the AOC to develop this website. The Foundation believed this project will provide significant benefit to persons who need information on the legal process and the resources available to assist them with the screening, evaluation, and hearing process to provide a person with court ordered mental health care.

Members discussed whether, in light of the amount of time needed to develop the website, the court should supplement the website with a paper pamphlet that provides a high-level overview of the Title 36 civil commitment legal process.

The Chairman directed staff to put on the next meeting's agenda an action item that the Subcommittee discuss and possibly vote on a recommendation to the Task Force that it direct the AOC to create a pamphlet for statewide use that describes the civil commitment process.

Paul Thomas informed the Subcommittee that the City of Mesa will launch its Community Court on June 4, 2018. This court will be available for defendants who have any underlying social issues. Eligibility to participate in this docket is purposefully broad so the court may offer a diversion option to as many people as possible while connecting them with assistance and resources.

Call to the public

No members of the public addressed the Subcommittee in response to a call to the public.

Adjournment

The meeting adjourned at approximately 2:00 p.m.