

## ARIZONA JUDICIAL COUNCIL

### Request for Council Action

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<b>Date Action Requested:</b>	<b>Type of Action Requested:</b>	<b>Subject:</b>
June 18, 2018	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Report and Recommendations of the Fair Justice Task Force's Subcommittee on Mental Health & the Criminal Justice System

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#### **FROM:**

Kent Batty, Chairman of the Fair Justice Task Force's Subcommittee on Mental Health & the Criminal Justice System

#### **DISCUSSION:**

At the May 21, 2018 Fair Justice Task Force meeting, the recommendations of the Subcommittee on Mental Health and the Criminal Justice System were approved, as amended, as detailed in the Subcommittee's Report to the Task Force. The recommendations are listed below:

- The Task Force recommends that the Court establish a new *Committee on Mental Health and the Courts* to expand on the work started by the Subcommittee. The scope of the new committee and proposed membership is detailed in the Final Report. The Task Force amended the Subcommittee's recommendation to provide the new committee with an additional charge to explore changes to the statutory definition of "mental disorder" as defined in A.R.S. §36-501 for the purposes of court-ordered evaluation and court-ordered treatment.
- The Task Force recommends that the Sequential Intercept Model (SIM) be considered a best practice. It is further recommended that judges and staff receive training and implementation assistance on the SIM and other tools to help them recognize the behavioral health needs of persons who come to court. This training provides information about the options available to divert defendants who are mentally ill out of the criminal justice system and, when appropriate, into treatment.
- The Task Force recommends that the AOC develop options and alternatives for the development of a centralized repository for courts that conduct Rule 11 proceedings, under appropriate circumstances and with appropriate safeguards to be able to access relevant documents and information from past proceedings in

other jurisdictions.

- The Task Force recommends as a best practice that courts identify locations that make it easier for defendants to get to court-ordered mental evaluations and restoration to competency programs. Courts should consider making space available at the courthouse where doctors can conduct evaluations.
- The Task Force recommends that the AOC take steps to develop a process for limited jurisdiction courts to report the outcomes of Rule 11 competency proceedings as required by A.R.S. §13-609 to the National Instant Criminal Background Check System (NICS).
- The Task Force recommends that the AOC gather experts to examine evidence-based and best practices for competency evaluations and restoration to competency programs and to train accordingly.
- The Task Force recommends that the AOC develop an information guide in both electronic and paper formats explaining the civil commitment process and make this information available on its websites, on superior court self-service websites, and at courthouses.

**RECOMMENDED COUNCIL ACTION:**

The Task Force respectfully requests that the Arizona Judicial Council approve the recommendations of the Task Force as set forth above.



Report and Recommendations of  
the Fair Justice Task Force's  
Subcommittee on Mental Health  
and Criminal Justice System

May 2018

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## *Fair Justice Task Force's Subcommittee on Mental Health and Criminal Justice*

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# Report and Recommendations of the Fair Justice Task Force’s Subcommittee on Mental Health and Criminal Justice System

May 2018

## EXECUTIVE SUMMARY

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**T**he Subcommittee submits this report to the Fair Justice for All Task Force (Task Force). Over the course of eight months, the 24 members of the Subcommittee worked diligently to develop a series of recommendations designed to promote a more efficient and effective justice system for those individuals who come to court and are in need of behavioral health services.

Some of these recommendations were approved by the Task Force at its November 2017 meeting. Other recommendations are expected to be considered by the Task Force at its meeting on May 21, 2018. A complete list of all the Subcommittee’s recommendations is found in this report.

The justice system, and all the stakeholders who participate in it, must strive to break the cycle of persons with mental illness going in and out of the criminal justice system. To do so, the courts must continue to better address people with mental health care needs by identifying ways to connect people to treatment and to diverting them out of the criminal justice system when appropriate. A 2006 Bureau of Justice Statistics Report revealed that 56% of state prisoners, 45% of federal prisoners and 64% of jail inmates had mental health problems. And nearly a quarter of both state prisoners and inmates who had mental health problems had served

*“It has been stated that ‘[t]he moral test of government is how it treats those who are in the dawn of life, the children; those who are in the twilight of life, the aged; and those who are in the shadows of life, the sick, the needy and the handicapped.’”*

*Arnold v. Arizona  
Department of Health  
Services, 160 Ariz. 593, 609  
(1989)*

three or more prior incarcerations.<sup>1</sup> With a significant number of persons with mental illness in Arizona's jails and prisons, the Arizona criminal justice system has become a default provider of mental health care services. Jails and prisons are not designed to be mental health care institutions. The courts should play a prominent role in remedying this situation by identifying opportunities, when appropriate, to divert people out of the justice system and into treatment.

When the Task Force terminates in May 2018, so will its Subcommittee, but its work is not yet complete. Therefore, the Subcommittee strongly recommends that the Supreme Court follow the steps taken in other states by creating a longer-lasting committee on the courts and mental health. This new committee should oversee the implementation of the Subcommittee's recommendations. Additionally, the Subcommittee proposes that the Court entrust this new committee with additional charges as discussed later in this report.

### *CREATION AND CHARGE OF THE SUBCOMMITTEE*

The Chairman of the Task Force, Dave Byers, created this Subcommittee to bring together a cross-section of legal and mental health experts. He charged them to find ways to better administer justice for those individuals who suffer from mental illness and are in need of treatment.

*"Justice for all"* embraces the ideal that all people should be treated fairly in the justice system. To achieve this ideal, the Task Force formulated several principles on which the courts should act. One of these principles is that *"special needs offenders should be addressed appropriately."* The Task Force noted that the handling of cases involving individuals with mental health issues is a challenge for the criminal justice system.<sup>2</sup> Other notable organizations have also sounded a clarion call to action. The Conference of State Court Administrators (COSCA) recently issued a policy paper urging courts to take a leadership role to decriminalize mental illness. It stated that the judiciary's "unique vantage point" in the civil commitment process and the criminal justice arena make it the "ideal force" to call community stakeholders together to develop protocols and processes that better address how the courts administer justice for those with behavioral health treatment

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<sup>1</sup> See 2006 Bureau of Justice Statistics Special Report <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

<sup>2</sup> "Justice for All: Report and Recommendations of the Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies."

needs.<sup>3</sup> In furtherance of “fair justice for all” for those justice-involved individuals with mental illness, this Subcommittee was created.

The Task Force gave the Subcommittee four charges:

1. Identify rules and procedures to implement legislation that allows limited jurisdiction courts (LJCs) to conduct Rule 11 hearings.
2. Determine if the standard for ordering court ordered treatment should be altered to allow for earlier intervention.
3. Identify ways courts can more effectively address individuals in the justice system who have mental health issues.
4. Develop a model protocol guide for Presiding Judges to use to implement the Task Force’s recommendations.

## *OVERVIEW OF THIS REPORT*

This Report begins with an Executive Summary, followed by an account of the Subcommittee’s genesis, as well as the charges given to it. Next, the report details the Subcommittee’s membership and the processes by which it conducted its meetings. A listing of all its recommendations follows. The report then summarizes each meeting, explaining the underlying discussions which ultimately led to its recommendations. Additional detail of each meeting is available on the Subcommittee’s [webpage](#). The report then sets forth the Subcommittee’s proposal that the Court create a new committee on behavioral health and the justice system. Finally, the report includes appendices containing reference documents and recommended rule changes.

## *THE SUBCOMMITTEE MEMBERSHIP AND PROCESS*

Members of the Subcommittee were selected to bring together a variety of perspectives to address how the courts can better handle matters involving persons with mental illness. The Subcommittee comprises judicial officers from the appellate,

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<sup>3</sup> Conference of State Court Administrators, “Decriminalization of Mental Illness: Fixing a Broken System” 2016-2017 Policy Paper.

superior, and municipal courts; and representatives from court and county administration, the clerk of the court's office, prosecutors, criminal defense attorneys, law enforcement, academics, mental health professionals, and mental health advocates. The Subcommittee also solicited input from other stakeholders interested in this subject matter.

Beginning in September 2017, the Subcommittee met monthly and twice in April 2018 for a total of nine meetings. The members discussed a wide variety of issues. The Subcommittee heard from several speakers who shared both professional and personal accounts of the challenges individuals with mental illness and their families face when navigating the criminal and civil justice systems. The meetings were interactive, and the members were highly engaged. This facilitated input from different perspectives and provided a thoughtful environment for the members to find consensus on a number of issues. The Subcommittee established two workgroups: the Rule 11 Workgroup and the Title 36 Workgroup. Their work will be discussed in greater detail later in this report. Finally, the Subcommittee invited a number of people to address the Subcommittee on a number of topics:

- Recent changes to Rule 11.
- Mesa Municipal Court and Glendale City Court Rule 11 Pilot Programs.
- Superior Court in Pima County's Rule 11 process.
- The COSCA White Paper "Decriminalization of Mental Illness: Fixing a Broken System."
- The standards and processes for conducting Rule 11 competency evaluations and restoration to competency (RTC) programs.
- How Rule 11 cases are transferred from limited jurisdiction courts (LJCs) to superior court and how allowing LJCs to conduct Rule 11 hearings has positively impacted services to the defendants.
- Pre-Trial Release policies and the implementation of the Public Safety Assessment (PSA) tool as a substitute for bond schedules.
- The differences between general jurisdiction (GJ) and LJC mental health courts.
- Legislative updates from AOC staff.
- The Sequential Intercept Model (SIM).
- Crisis Intervention Training (CIT) Officers in Maricopa and Coconino Counties.
- Maricopa County's Crisis Mobile Teams (CMTs) and Criminal Justice Engagement Teams (CJETs).

- Information-sharing datalink between Mercy Maricopa and the Maricopa County jails to identify persons who have been designated as seriously mentally ill (SMI) and in need treatment.
- Personal accounts of persons whose family members suffer from mental illness and have encountered the criminal justice system.
- Review of a “diminished capacity” standard for persons who commit criminal acts but lack a requisite culpable mental state.
- Legislative proposal to amend civil commitment statutes relating to the evaluation and transport of persons who may be in need of mental health treatment but are unable or unwilling to seek such treatment.
- The history and settlement agreement of the *Arnold v. Sarn* class action lawsuit against Maricopa County and the Arizona Department of Health to adequately fund a comprehensive community mental health system.
- Efforts by the Yavapai County Sheriff to develop pre-arrest diversion options when law enforcement encounter mentally distressed persons, to reduce the recidivism rate of defendants with mental illness, to provide mental health treatment while in jail, and to connect these persons to services upon release.

## SUMMARY OF SUBCOMMITTEE RECOMMENDATIONS

Through the work of its members, including its workgroups, the Subcommittee developed the following recommendations.

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1. Approve a draft administrative order for presiding judges to use if they authorize LJsCs in their counties to conduct Rule 11 criminal competency proceedings. This AO provides direction to LJsCs on what they should do to ensure the proceedings comply with court rule and state law.
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**STATUS:** Approved by the Task Force. Distributed to all superior court presiding judges in a statewide memorandum on December 28, 2017. (See Appendix A)

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2. Approve a “policies and procedures” document that accompanies the administrative order. This document sets forth the issues LJsCs should consider when establishing a Rule 11 court.
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**STATUS:** Approved by the Task Force. Distributed to all superior court presiding judges in the same statewide memorandum. (See Appendix A)

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3. Recommend changes to Rule 11 of the Arizona Rules of Criminal Procedure to permit LJs to order competency restoration, to clarify that LJs may not initiate Title 36 civil commitment or guardianship actions, and to align restoration timeframes with applicable criminal sentencing penalties.
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**STATUS:** The Task Force discussed this recommendation at its November 2017 meeting. It asked the Subcommittee to clarify portions of its proposed changes. The Subcommittee adopted clarifying changes. A Rule Petition reflecting the Subcommittee's proposed changes to Rule 11.5 and 11.6 has been filed and will be considered by the Supreme Court in late summer. The Petition is open for public comment through May 21, 2018. (See Appendix B.)

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4. Recommend that the Sequential Intercept Model (SIM) be considered a best practice and that judges and staff receive training and implementation assistance on the SIM and other tools to help them recognize the behavioral health needs of persons who come to court and the options available to divert defendants who are mentally ill out of the criminal justice system and, when appropriate, into treatment.
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**STATUS:** Pending Task Force review.

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5. Recommend the Task Force create a workgroup to develop options and alternatives for the development of a centralized repository for courts that conduct Rule 11 proceedings, under appropriate circumstances and with appropriate safeguards, to be able to access relevant documents and information from past proceedings in other jurisdictions.
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**STATUS:** Pending Task Force review. (**Note:** Currently, two LJs have been authorized to conduct Rule 11 proceedings. These courts have established a procedure to access and share documents with each other and Maricopa County through an encrypted mailbox.)

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6. Recommend that it be a best practice that courts identify locations that make it easier for defendants to get to court-ordered mental competency evaluations and restoration programs. Access to public transportation is a

key consideration and the courts should consider making space available at the courthouse where doctors can conduct evaluations.

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**STATUS:** Pending Task Force review.

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7. Recommend the Task Force direct the AOC to take steps to develop a process for LJs to report the outcomes of Rule 11 competency proceedings as required by A.R.S. §13-609 to the National Instant Criminal Background Check System (NICS).
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**STATUS:** Pending Task Force review.

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8. Recommend that the statutory definition of “mental disorder” found in A.R.S. §36-501(25) be amended to include neurological and psychiatric disorders, substance use disorders which co-occur with mental illness, along with mental conditions resulting from injury, disease, and cognitive disabilities for the purpose of being eligible to receive mental health services pursuant to the Title 36 civil commitment statutes.
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**STATUS:** Pending Task Force review.

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9. Recommend the Task Force encourage the AOC to gather experts to examine evidence-based and best practices for competency evaluations and restoration to competency programs and to train accordingly.
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**STATUS:** Pending Task Force review. (**Note:** The AOC has recently provided additional training to mental health experts in legal competency evaluations and restoration programs as discussed later in this report.)

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10. Recommend the AOC develop an informational guide explaining the civil commitment process in both web-based and paper formats. Paper guides would be available at courthouse self-service centers and the webpage would be posted on AZCourtHelp.org and on the self-service webpages of the superior courts.
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**STATUS:** Pending Task Force review.

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- 11.** Recommend that the Supreme Court create a new standing committee that builds on and expands the work already done by the Subcommittee. The committee should look at the entire justice system to identify all possible solutions to break the cycle of persons with mental illness from coming in and out of the justice system. The Subcommittee notes that Supreme Courts in other states have formed similar committees.<sup>4</sup>

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**STATUS:** Pending Task Force review.

### *Other Work to Address Justice-Involved Persons with Mental Illness*

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- 1.** The AOC will provide an additional three-day training conference for mental health experts who perform competency evaluations and conduct competency restoration programs in order to expand the pool of qualified experts as required by court rule.

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**STATUS:** The AOC held a three-day training conference in April 2018 to train additional doctors and psychologists in legal competency and restoration programs.

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- 2.** The AOC will work with the National Center for State Courts (NCSC) to develop a model protocol guide for presiding judges to improve the justice system's response to those individuals with serious and persistent mental illness.

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**STATUS:** The AOC received a \$50,000 grant from the State Justice Institute and is working with the NCSC to develop this guide. NCSC consultants will visit three counties to learn what existing initiatives are underway and how the courts can bring local stakeholders together to develop effective leadership strategies.

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<sup>4</sup> Texas Judicial Commission on Mental Health; Supreme Court of Ohio Advisory Committee on Mentally Ill in the Courts.

## SUBCOMMITTEE MEETINGS

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### September 2017 Meeting

The September meeting kicked off the work of the Subcommittee. It began with introductions and a review of the charges to the Subcommittee. The members listened to an overview of the work of the Task Force and the use of the Public Safety Assessment (PSA) tool as a better means of setting appropriate bond amounts. Additionally, the Subcommittee received information on the pilot program authorized by Administrative Order No. 2015-92 that permitted judges from the Mesa Municipal Court and the Glendale City Court to sit as superior court judges pro tempore and conduct Rule 11 proceedings in their courtrooms instead of transferring cases to superior court. These pilot programs demonstrated a marked decrease in the case processing times for Rule 11 proceedings. Members also reviewed recent changes to Rule 11 of the Arizona Rules of Criminal Procedure. In response to these issues, the Subcommittee established the Rule 11 Workgroup.

### October 2017 Meeting

#### *Draft administrative order and policies and procedures document*

At the October meeting, the members reviewed the draft administrative order and corresponding policies and procedures document developed by the Rule 11 Workgroup. These documents are intended to be a template for presiding judges to use if they authorize LJs in their counties to conduct Rule 11 proceedings. Members discussed the need for LJs to access Rule 11 reports and Title 36 court-ordered mental health treatment case history records from other jurisdictions. At present, there is no ability for LJs to electronically access these records. As other LJs begin to conduct Rule 11 proceedings, the need for a secure, centralized repository will become more acute. Members discussed the value of holding Rule 11 proceedings at the local level identifying benefits for both the defendant and the municipality. Most notable was the result that more defendants showed up for their scheduled competency evaluations. The Subcommittee concluded this was due in large part to the court scheduling these evaluations at or near the courthouse. Significantly, the Mesa and Glendale courts reported reduced costs and speedier resolutions.

### *Changes to Rule 11*

Members initiated discussions on whether Rule 11 should be amended to allow LJs, when they find a defendant to be incompetent but whose competency can be restored, to retain jurisdiction and order competency restoration for defendants instead of transferring the case to superior court. Although this would be a substantive change from the version of the rule currently in effect, the members found it appropriate for the LJs to make this decision. First, the LJ is the court that conducted the Rule 11 hearing and has a full understanding of the case. Second, it is the municipality that pays the costs of restoration services, so it is appropriate for the local court to decide to order restoration and, if so, to monitor its progress.

### *Sequential Intercept Model*

The Subcommittee also heard a presentation of the Sequential Intercept Model (SIM). The SIM is intended to reduce the number of persons with mental illness who are incarcerated, increase the number of people in treatment, and break the cycle of people with mental illness coming in and out of the justice system. The SIM identifies five intercept points in the criminal justice system where a person with mental illness can be diverted out of the justice system and into treatment. Next, the members learned of the efforts of the Maricopa Regional Behavioral Health Authority to create Crisis Mobile Teams (CMTs) and Criminal Justice Engagement Teams (CJETs). These efforts try to divert persons with mental illness out of the criminal justice system at Intercept Points #1 and #2.

### *Standards for court-ordered treatment*

The second charge to the Subcommittee directs it to consider whether changes should be made to the statutory standards for court ordered treatment. Currently, Arizona law provides four standards: (1) danger to self; (2) danger to others; (3) gravely disabled; or (4) persistently or acutely disabled. The Subcommittee reviewed the Conference of State Court Administrators' (COSCA) Policy Paper that called for states to adopt an "incapacity" standard for court-ordered treatment which is the same standard used to appoint a guardian. Most members found the Arizona statutes to be sufficient and that Arizona's standard for court-ordered treatment was not preventing the courts from ordering treatment for those who needed it. Currently a court shall order a person to undergo treatment if it finds by clear and convincing evidence that the person as a result of a "mental disorder":

1. is a danger to self, a danger to others, is gravely disabled, or has a persistent or acute disability;

2. is in need of treatment; and
3. is unable or unwilling to seek treatment.<sup>5</sup>

Members noted that in several other states, a court can only order treatment upon a finding that the person is a danger to themselves or to others. These jurisdictions do not have the persistent or acute disability standard. The Subcommittee noted that Arizona's persistent or acute disability standard is similar, but not identical to, an incapacity standard. Ultimately, members did not find a need to amend the standard for court-ordered treatment at this time.

### *November 2017 Meeting*

The Subcommittee heard from a Crisis Intervention Training (CIT) police officer who described the mental health training police receive. This training teaches officers to identify people who appear to be in mental distress, assess their situation, and divert them, when possible, into treatment.

Members also heard from individuals who recounted their experiences with the justice and behavioral health systems when their family members with a mental illness were charged with a crime or when they sought court-ordered mental health treatment. They shared their frustrations with finding information about the available legal and medical options. Even though both presenters were long-time members of the judicial system, they said they had a very difficult time navigating through it as family members.

Regarding medical treatment, the presenters believed their family members were required to wait too long to receive treatment and that there was insufficient time allotted for inpatient treatment. Members noted that while a court may order treatment, there are not enough resources to meet demand. Members agreed that people need a continuum of care after they are stabilized with intensive inpatient treatment. Without meaningful inpatient 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 enter into the criminal justice system. Members noted the irony of the desire to have the courts break the cycle of persons with mental illness repeatedly

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<sup>5</sup> A.R.S. §36-540

coming into the criminal justice system by diverting them into treatment options that do not adequately meet their needs. Without adequate treatment options, individuals' mental health will deteriorate, and they will become unstable. This increases the likelihood that they will reoffend and enter the criminal justice system once again.

Members revisited their discussion to amend the statutory definition of "mental disorder." There was general agreement that the current interpretation of the statutory definition is unnecessarily narrow. They discussed the merits of making the statute explicitly state that persons with cognitive disabilities due to injuries should meet the definition of "mental disorder" and that people with cognitive disabilities are eligible for services.

### *Recommendations*

Members approved a number of recommendations at this meeting for consideration of the Task Force at its upcoming November meeting including recommendations regarding the SIM and the need for LJC's to report Rule 11 outcomes to NICS. Members also recommended that the AOC develop a central repository where Rule 11 courts can access, under appropriate safeguards, relevant documents from past proceedings in other jurisdictions. Additionally, the members finalized and approved the draft administrative order and the corresponding policies and procedures document for authorizing LJC's to conduct Rule 11 hearings.

Finally, the members approved a recommendation to change Rule 11 in three areas:

1. *Defendant incompetent but restorable* - Allow LJC's to retain jurisdiction and provide them with the authority to decide whether to dismiss the case or order competency restoration treatment.
2. *Defendant incompetent and not restorable* – Clear up some ambiguity in the rule to make clear that only the superior court, and not the LJC, has the authority to begin Title 36 civil commitment proceedings or appoint a guardian.
3. *Timeframes* - Amend timeframes to conform with time limits found in statute.

## December 2017 Meeting

The members learned that the Task Force, at its November 2017 meeting, approved the draft administrative order and the policies and procedures document, but asked the Subcommittee to further refine its position on what LJs may do if they find a defendant to be incompetent and not restorable. The members made final changes that clarified that the LJ could **not** initiate civil commitment proceedings or appoint a guardian.

The members once again reviewed the second charge of the Subcommittee and discussed whether the standard for court-ordered treatment is sufficient. It was noted that Arizona's persistent and acutely disabled standard is broad and allows for flexibility. Again, members were critical of current treatment practices which they considered to provide insufficient inpatient treatment and little regard for a person's capacity to sustain necessary treatment on an outpatient basis. Members noted the lack of funding for mental healthcare programs for persons who are not Title 19 (Medicaid) eligible.

Members reviewed a proposal to amend the statutory definition of "mental disorder." The definition of "mental disorder" is found in A.R.S. §36-501. The proposal amends the definition to include neurological and psychiatric disorders, as well as mental conditions resulting from injury, disease, cognitive disabilities or co-occurring substance use disorders in conjunction with a mental disorder. The Subcommittee recommended that the Task Force establish a workgroup to consider amending the definition of "mental disorder" as follows:

### A.R.S. §36-501 Definitions

25) "Mental disorder" means a substantial neurological or psychiatric disorder of the person's emotional processes, thought, cognition, ~~or~~ memory or behavior, including mental conditions resulting from injury or disease, and cognitive disabilities as defined in A.R.S. § 36-551, and substance use disorders which co-occur with a mental disorder. Mental disorder is distinguished from:

~~(a) — Conditions that are primarily those of drug abuse or alcoholism unless, in addition to one or more of these conditions, the person has a mental disorder.~~

~~(b)~~ (a) The declining mental abilities that directly accompany impending death.

(e) (b) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.

### *January 2018 Meeting*

The members received a presentation by the Health Systems Alliance of Arizona and other stakeholders of a legislative proposal to amend the screening and evaluation statutes in Title 36, as well as an update on other bills related to criminal justice and mental health care. Members also received information on the mechanics of transferring a Rule 11 case from an LJC to the superior court. Members noted that this practice resulted in delays, higher failure to appear rates, and inefficient use of the municipal prosecutor's time. They agreed that the Rule 11 pilot project yielded a more efficient and streamlined process.

The Subcommittee discussed that the public would benefit from the AOC developing a guide to the Title 36 civil commitment process. The Subcommittee determined there is a need for this information after hearing from individuals in past meetings about how difficult it is to navigate through the various court processes. The Subcommittee agreed to form a workgroup to work with staff to develop this document.

### *February 2018 Meeting*

The Subcommittee identified the need for additional training for judges to identify and, when appropriate, divert persons with mental illness out of the criminal justice system. Effective diversion can happen when the courts become more aware of what mental health care resources are available. This can be achieved by understanding efforts made by local mental health care coalitions like the Stepping Up Initiative adopted by all 15 Arizona counties, and by implementing the protocol guide that the AOC is developing. Members noted that the courts, particularly mental health courts, should collect and report more robust data in order to analyze the impact these problem-solving courts are having on reducing recidivism, increasing community safety, and driving down costs.

The members learned of the Yavapai County Sheriff's efforts to address the disproportionate number of people with mental illness in the county's jails. Working with other local criminal justice and behavioral health stakeholders, the Sheriff's Office developed pre-arrest and post-arrest diversion options. It also created the "Reach Out" program that provides services to people while in jail and links people to treatment services upon leaving the jail. The Subcommittee learned that these programs have resulted in a 40% reduction in recidivism and a 51% reduction in the average length of stay in jail for persons who were in the Reach Out Program.

### *March 2018 Meeting*

The Subcommittee received a presentation on the history of the *Arnold v. Sarn* lawsuit and its 2014 settlement agreement. This action was filed in 1981 and is Arizona's longest standing class action lawsuit. The Court found that Maricopa County and the Arizona Department of Health Services failed to adequately provide a comprehensive community mental health system as required by state law. Members highlighted the powerful impact this lawsuit played in elevating awareness of the need to improve Arizona's behavioral health service delivery system. The members discussed the present need for system oversight and noted the key role the court monitor played during the pendency of the lawsuit. They questioned the wisdom of the 55-bed limit for Maricopa County at the Arizona State Hospital (ASH). The presenter pointed out that this lawsuit was an instance where it took the judiciary to get the executive and legislative branches to work together and resolve this issue

The members received an update on efforts to find consensus on the legislation to amend Title 36 screening and evaluation statutes. Finally, the Subcommittee learned about the competency evaluation programs (CEP) and the restoration to competency (RTC) programs. They opined that although court-appointed psychiatrists and psychologists must attend AOC-sponsored training, there is a need to provide more rigorous and evidence-based training. The Subcommittee recommended that the AOC gather experts to examine evidence-based practices for CEP and RTC program and to train psychiatrists and psychologists on those best practices. The Subcommittee learned that the Task Force was ending in May which meant the work of the Subcommittee was coming to an end as well.

## April 2018 Meetings

The Subcommittee met twice in April to review, edit, and approve this report. The Subcommittee also approved a recommendation that AOC staff develop an informational guide on the Title 36 civil commitment process and that this guide be available in both web-based and paper formats. The Workgroup reported that the Arizona Foundation for Legal Services and Education had agreed to partner with the AOC to develop a website that would provide people with information of the Title 36 civil commitment process.

## Create a new committee on behavioral health and the justice system

The Subcommittee's work to date has shown to the members that they were just starting to "scratch the surface" of the broad range of issues surrounding the courts and justice-involved individuals with mental illness. As an offshoot of the Task Force, the Subcommittee will terminate when the Task Force convenes for its final meeting in May 2018. For this reason, the Subcommittee recommends that the Supreme Court create a new standing committee to continue and expand on the work. Through the Subcommittee's exploration of the several issues surrounding mental health and the justice system, the members recognized that there are no quick fixes or easy solutions to the challenges courts should address.

The Subcommittee notes that committees such as the one it proposes have been formed by the Texas and Ohio Supreme Courts. In Pennsylvania, court personnel participate in a multi-branch Mental Health and Justice Advisory Committee. In establishing the Judicial Commission on Mental Health, the Texas Supreme Court and the Texas Court of Criminal Appeals stated that, "improving the lives of Texans who are affected by mental health issues and are involved in the justice system requires judicial leadership at the highest level." The Supreme Court of Texas directed the Texas Judicial Council to establish a Mental Health Commission charged with examining best practices in the

***"Courts and the justice system have a profound impact on mental health services provided to children, adults, and families and the stakes are exceedingly high."***

*Supreme Court of Texas  
Docket No. 18-9025  
establishing the Texas  
Judicial Commission on  
Mental Health*

administration of civil and criminal justice for persons with mental illness.<sup>6</sup>

### *Proposed Committee Membership*

The members believe the Subcommittee benefitted from having a membership comprising a broad cross-section of justice system and mental health stakeholders. Members strongly urge the Supreme Court to create the new committee with an expanded membership to broaden its ability to impact the problems that need resolution. The Subcommittee suggests the Court invite representatives from other branches of state government to assist in developing solutions at a larger system level. The Subcommittee believes the Supreme Court should also include representatives from the Department of Health Services (DHS), the Arizona Health Care Cost Containment System (AHCCCS), AHCCCS Complete Care Health Plans (“ACC Plans”), and the behavioral health treatment providers that contract with these ACC Plans.<sup>7</sup> Representation from these health entities should include those providing service in rural Arizona and smaller counties. The expansion of membership also should account for the fact that the vast majority of cases involving persons with mental health problems occur in the limited jurisdiction courts.

### *Proposed Charge to the Committee*

The Subcommittee offers the following six areas be considered by the newly-formed committee:

- 1. Continue to identify ways for the courts and other justice system stakeholders to more effectively address how the justice system responds to persons in need of behavioral health services.*

The new committee should develop an outreach and educational plan that brings together justice, behavioral health, and substance abuse treatment

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<sup>6</sup> In the Supreme Court of Texas and the Texas Court of Criminal Appeals; Supreme Court Misc. Docket No. 18-9025, Court of Criminal Appeals Misc. Docket No. 18-004. (See Appendix C)

<sup>7</sup> AHCCCS’s redesign of the health delivery system for Medicaid recipients, effective October 1, 2018, requires that all designated health plans provide integrated health services. This change results in behavioral health service providers contracting with the ACC Plans.

stakeholders. Consistent with the six principles of the Stepping Up Initiative<sup>8</sup> and the Substance Abuse and Mental Health Services Administration (SAMHSA) Sequential Intercept Model<sup>9</sup>, the committee should develop and maintain collaborative relationships and processes that enhance behavioral health and justice system effectiveness. The committee should grow and facilitate these collaborative relationships and processes for the purpose of improving justice system effectiveness.

2. *Development of a Model Protocol Guide to help judges effectively identify and process cases with persons with behavioral health treatment needs.*

In support of the Subcommittee's original goal to develop a model protocol guide for presiding judges to use in implementing its recommendations for improving the processes for dealing with individuals with mental illness in their jurisdictions, the AOC, working with the National Center for State Courts with funding through a technical assistance grant from the State Justice Institute, will develop model protocols for presiding judges to work with local stakeholders to improve fair treatment of persons with mental health issues. The committee should receive regular progress reports and provide input. Additionally, the committee should develop an outreach effort to share the committee's work with other stakeholders and coalitions, such as the Stepping Up Initiative, who are working toward similar goals.

3. *Review Arizona's Mental Health Court Standards and national best practices.*

Arizona's Mental Health Court Standards were created by the Mental Health Court Advisory Committee and adopted by Administrative Order No. 2015-10. Since then, the operations of these courts have had time to develop and mature. On numerous occasions, the Subcommittee discussed the lack of well-defined data. The new committee should review the standards as well as MHC best practices adopted by other states. It should make recommendations on how the standards may be amended to further improve MHC court operations, reporting of performance measures, and how MHCs can best comply with the

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<sup>8</sup> For a review of the six guiding principles of the Stepping Up Initiative, please refer to <https://stepuptogether.org/toolkit>.

<sup>9</sup> For a review of the five intercept points of the Sequential Intercept Model, please refer to <https://www.samhsa.gov/criminal-juvenile-justice/samhsas-efforts>.

standards. The committee may wish to seek input from national experts, court administrators, and judges throughout the state.

4. *Oversee implementation of subcommittee recommendations.*

The Subcommittee has made several recommendations for the Fair Justice Task Force to consider. The Task Force will hold its final meeting on May 21, 2018. The committee would oversee these recommendations as they come to fruition.

5. *Identify opportunities to educate the public on court processes involving individuals involved in the justice system who have behavioral health treatment needs.*

The committee should review opportunities to provide the public with information on how to navigate through the justice system in proceedings where a person may have a mental illness. Topics should include at a minimum: guardianship, powers of attorney, advance directives, the civil commitment process, Assisted Outpatient Treatment (AOT), Rule 11 competency proceedings in criminal cases, and the opportunity for eligible defendants to participate in evidence-based problem-solving courts such as mental health courts.

6. *Review statutes and rules for changes that would result in improved court processes in competency, advance directives, and court-ordered treatment hearings.*

Although the Subcommittee did not find a need to amend the standards for court-ordered treatment, it is aware that other stakeholders may wish to revisit this issue. The new committee should maintain open lines of communication with other stakeholders to work collaboratively on any future legislative proposals. The Title 36 standards represent just one of several statutory constructs that impact the lives of persons with mental health challenges. The members believe that an ongoing review of court rules and state laws for potential changes is needed and would result in improved court processes and the better administration of justice.

## *Conclusion*

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The Subcommittee respectfully submits this report to the Task Force. Its members have worked diligently to develop recommendations that address the four charges given to it. While its work product is considerable, the members of the Subcommittee believe there is still much work left to do. The courts must take a leadership role in addressing these issues of statewide importance.

# Appendix A



Supreme Court of Arizona  
Administrative Office of the  
Courts Court Services Division  
1501 West Washington, Suite 410  
Phoenix, AZ. 85007

### MEMORANDUM

**To:** Superior Court Presiding  
Judges Superior Court  
Administrators Limited  
Jurisdiction Court Judges  
Limited Jurisdiction Court Administrators

**From:** Marcus W. Reinkensmeyer, Director, Court Services Division

**Date:** December 28, 2017

**Re:** Implementation of Mental Competency Proceedings in Criminal Matters in  
Limited Jurisdiction Courts

Effective August 9, 2017, legislation amending A.R.S. § 13-4503 grants the Presiding Judge in each county authority to permit a municipal court or justice court to exercise jurisdiction over competency hearings in misdemeanor cases that arise out of the municipal court or justice court. It further provides that the limited jurisdiction court may refer a competency hearing to another limited jurisdiction court in that county with the approval of the Presiding Judge. The Supreme Court amended Rule 11 of the Arizona Rules of Criminal Procedure to conform with the jurisdictional changes the legislature made to A.R.S. § 13-4503.

Attached you will find a model administrative order template, which may be issued by superior court presiding judges, authorizing limited jurisdiction courts to exercise jurisdiction over competency hearings in misdemeanor cases. There is also included an outline of policies and procedures that should be considered when establishing a Rule 11 process in a limited jurisdiction court. The model order was developed by Mental Health Subcommittee of the Fair Justice Task Forces and was supported by the Arizona Judicial Council on December 14, 2017. The model order and policy and procedure outline address assignment of judicial officers, appointment of counsel, calendaring, record keeping, procurement of expert witnesses and other administrative requirements.

If you have and questions or concerns regarding establishing competency proceedings in limited jurisdiction courts, please contact Don Jacobson at [djacobso@courts.az.gov](mailto:djacobso@courts.az.gov) or at 928-853-7351.

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SUPERIOR COURT OF ARIZONA  
[XXXXXXXXXX] COUNTY

IN THE MATTER OF	)	
IMPLEMENTATION OF MENTAL	)	
COMPETENCY PROCEEDINGS IN	)	ADMINISTRATIVE ORDER
CRIMINAL MATTERS IN LIMITED	)	No. [year] - _____
JURISDICTION COURTS	)	
_____	)	

On August 9, 2017, legislation amending A.R.S. § 13-4503 became effective granting the Presiding Judge in each county the authority to authorize a municipal court or justice court to exercise jurisdiction over competency hearings in misdemeanor cases that arise out of the municipal court or justice court. It further provides that the limited jurisdiction court may refer a competency hearing to another limited jurisdiction court in that county with the approval of the Presiding Judge. Thereafter, the Supreme Court amended Rule 11 of the Arizona Rules of Criminal Procedure (hereinafter (“Rule 11”) to conform to the jurisdictional changes the legislature made to A.R.S. § 13-4503.

Having considered A.R.S. § 13-4503 and Rule 11, this Order addresses how *[insert name of court(s)]* may conduct Rule 11 competency proceedings in *[name of]* County.

**IT IS ORDERED** *[insert name of court(s)]* shall exercise jurisdiction over competency hearings in misdemeanor cases that arise out of its court in compliance with the policies and procedures set forth below.

**IT IS FURTHER ORDERED** that beginning on *[insert date]*, *[insert name of court(s)]* shall:

1. Conduct Rule 11 proceedings in compliance with the policies and procedures approved by the Presiding Judge and attached to this Order.
2. Ensure an accurate and complete recording of all Rule 11 courtroom proceedings is taken and maintained in accordance with applicable retention schedules. This

includes completion of all automation tasks to ensure the local case management system is properly configured for docketing and retaining case records.

3. Establish a process approved by the Presiding Judge for the issuance, filing, and distribution of minute entries and orders, and for the handling of evaluations and medical reports as required by law and court rule.
4. Appoint mental health experts who meet the requirements set by statute and rule, and who are appointed pursuant to statutory and local procurement requirements.
5. Transmit necessary findings to the Administrative Office of the Courts for the Department of Public Safety for firearm background checks as required by state and federal law.
6. Pay any costs associated with holding Rule 11 competency proceedings as dictated by applicable statute, rule, or local practice at their court.

**IT IS FURTHER ORDERED:**

7. In accordance with A.R.S. § 13-4508, and Arizona Supreme Court Rule 123, judges shall take all necessary steps to ensure the confidentiality of Rule 11 evaluations and ensure that those records are to be treated as confidential records by all who have access to them, including attorneys. Judges who conduct Rule 11 proceedings shall have the authority to order the unsealing of past Rule 11 evaluations for the limited purposes of the Rule 11 proceedings held in their court.
8. The Superior Court and the Clerk of the Superior Court shall ensure that when *[insert name of court(s)]* conducts Rule 11 competency proceedings, *[insert name of court(s)]* has access to any records necessary to conduct the proceeding, including past Rule 11 evaluations in the Superior Court.
9. *[Name of court(s)]* shall provide to a requesting court access to any records necessary to conduct Rule 11 proceedings in that court if the requesting court is authorized to conduct Rule 11 proceedings.

**IT IS FURTHER ORDERED** if [*insert name of court(s)*] wishes to refer competency hearings to another court authorized to conduct Rule 11 hearings pursuant to A.R.S. § 13-4503(F), [*insert name of court(s)*] shall submit to the Presiding Judge for approval its policies and procedures regarding referral of these matters.

**IT IS FURTHER ORDERED** the Presiding Judge may revoke the [*insert name of court(s)*] authorization to conduct or refer Rule 11 competency proceedings if the Presiding Judge determines that the court fails to comply with the conditions of this Order or any subsequent related order.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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[NAME]  
Presiding Judge

Document Name: Rule 11 Proceedings  
Effective Date: Select effective date.  
Document Status:

## 1.0 Appointment of Counsel

*This section should contain language clarifying that counsel should be appointed for all defendants that enter into Rule 11 proceedings and should delineate how that appointment should take place.*

## 2.0 Assignment of Judicial Officer

*Courts should decide how they want to assign Rule 11 proceedings to judicial officers, they may wish to consolidate into a single division within the court, move through a rotation, or assign on whatever manner they currently assign criminal cases. Courts should consider expertise and training as part of the assignment matrix.*

## 3.0 Assignment of Judicial Staff

*Since limited jurisdiction courts have not managed Rule 11 proceedings in the same manner as this new jurisdiction permits, judicial staff likely will be unfamiliar with various requirements such as sealing or otherwise marking as confidential certain documents, new event codes, and other case management topics. Courts should assign appropriately trained or experienced staff to management of Rule 11 proceedings.*

## 4.0 Rule 11 Calendar and Proceedings

*Courts should consider the timing of events in relationship to availability of experts and information as well as judicial workload. Courts may consider discussing these topics with other limited jurisdiction courts that have already begun conducting Rule 11 proceedings for ideas and best practices.*

## 5.0 Access to Prior Rule 11 Mental Health Expert Reports

*Procedures for gaining access to previous Rule 11 reports will need to be negotiated with the Superior Court Clerk and other local courts who are authorized to conduct Rule 11 proceedings. A process to have access to reports from other counties should also be considered.*

## 6.0 Access to Rule 11 Reports

*The court should establish procedures by which other courts who may perform Rule 11 evaluations may access the expert reports that they have on record.*

## 7.0 Procurement Process of Mental Health Experts for Rule 11

*All contracts for services must be obtained through appropriate local, county or state procurement procedures. Should the court use a contract from other agencies it should be sure that procurement policies have been complied with in the process.*

## 8.0 Appointment of Mental Health Experts for Rule 11

*Depending on the availability of experts and the volume of Rule 11 cases, the court should establish a process by which Mental Health Experts are appointed to cases. Court should ensure they are familiar the requirements of Rule 11.3 as to who is qualified to be appointed as a mental health expert.*

## 9.0 Mental Health Experts Report Format and Filing

*For consistency, courts should provide a template or format for the filing of Rule 11 evaluations. The court should work with other courts within the county that are*

*performing Rule 11 evaluations and seek to use the same or similar formats to improve readability across jurisdictions.*

## 10.0 Record Keeping

*Policies will need to be established regarding the making of the record of Rule 11 events and of the maintenance of those records within appropriate retention schedules. This should include recordings, transcripts, dockets, register of actions, the case record and all other related court records.*

## 11.0 Training

*With Rule 11 events being unique within criminal case types, appropriate training and refreshers should be required of all assigned experts, judicial officers and court staff.*

## 12.0 Competing Rule 11 Matters

*Should the court become aware that a Rule 11 evaluation is being ordered in another court there is to be a process where a single evaluation or a consolidation or transfer of the case(s) may take place in accordance with A.R.S. § 13-4503(F).*

## 13.0 Restoration

*Procedures are to be developed that outline the process by which restoration to competency is to be accomplished. This should include the mechanism for funding of the restoration*

# Appendix B

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IN THE SUPREME COURT  
STATE OF ARIZONA

In the Matter of )  
 )  
PETITION TO AMEND RULES )  
11.5 and 11.6 OF THE ARIZONA ) Supreme Court No. R-18-\_\_\_\_  
RULES OF CRIMINAL )  
PROCEDURE )  
\_\_\_\_\_ )

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully petitions this Court to amend Rules 11.5 and 11.6 of the Rules of Criminal Procedure. The amendments to Rules 11.5 and 11.6 are set forth in Appendix A.

**I. Background of the Proposed Rule Amendments.** The members of the Task Force’s Subcommittee on Mental Health and the Criminal Justice System (“the Subcommittee”) recommended these proposed changes to Rules 11.5 and 11.6.

The Subcommittee’s membership is comprised of an extensive cross section of professionals from the criminal justice and mental health communities. They include judges, prosecutors, public defenders, court administrators, physicians, academics, and mental health advocates (see Appendix B). The Task Force charged the Subcommittee “to recommend rules and procedures needed to implement new provisions of SB 1157 relating to competency hearings.” The Task Force further directed the Subcommittee “to recommend if any current court rule or statutes should be modified to enable the courts to more effectively handle individuals in the justice system who have mental health issues.” (See Appendix C). The members of the Subcommittee unanimously support the proposed amendments. The Task Force has reviewed the Subcommittee’s proposal and has given it a favorable review.

**II. History of 2017 Changes to Rule 11.** In 2017, the Court amended Rule 11 on three occasions. First, in R-17-0041, the Court ordered amendments to Rules 11.2, 11.3, 11.5, and 11.7 on an emergency basis, effective August 9, 2017. That Order conformed Rule 11 to the statutory changes made in the 2017 legislative session. In part, the legislative changes allow limited jurisdiction courts, with the permission of the presiding judge, to exercise jurisdiction over competency hearings in misdemeanor cases arising out of that jurisdiction. Second, in R-17-0002, the Court approved the restyling of the Arizona Rules of Criminal Procedures, effective

January 1, 2018. Restyled Rule 11 incorporated the substantive changes from the earlier emergency petition, R-17-0041. Finally, on December 13, 2017, the Court entered an order in R-17-0041 further amending Rules 11.4, 11.5, and 11.7, as restyled in R-17-0002, effective April 2, 2018. This Petition proposes additional changes to Rule 11.5 and 11.6.<sup>1</sup>

**III. Purpose and Explanation of the Proposed Rule Amendments.** The proposed rule changes follow through on the Task Force’s directives and should enable the courts to more effectively handle individuals in the justice system who have mental health issues. The proposed amendments to Rules 11.5 and 11.6 are fall into one of three categories:

- (A) substantive changes to permit a limited jurisdiction court to order restoration treatment if the defendant is found incompetent but restorable [Rule 11.5(b)(2)];
- (B) clarifying language to delineate the differences between what a limited jurisdiction court and the superior court may do if a defendant is found incompetent but not restorable [Rule 11.5(b)(3)]; and
- (C) clarifications to timeframes for the restoration of competency treatment orders.

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<sup>1</sup> The proposed amendments are to Rules 11.5 and 11.6 effective April 2, 2018.

***A. Substantive changes to permit a limited jurisdiction court to order restoration treatment if the defendant is found incompetent but restorable.***

Amendments to Rule 11.5(b)(2) substantively expand the jurisdiction of a limited jurisdiction court to allow it the option to order competency restoration treatment if it finds the defendant incompetent but restorable. Currently under Rule 11.5(b)(2), the limited jurisdiction court has only two options: dismiss the charges on the State's motion or transfer the case to the superior court for further proceedings. The amendment adds a third option: if authorized by the presiding judge of the superior court, the limited jurisdiction court may choose to order competency restoration treatment.

There are several reasons to allow limited jurisdiction courts to order competency restoration treatment. First, allowing a limited jurisdiction court to order treatment and monitor progress is consistent with the policies that supported statutory changes to permit these same courts to conduct Rule 11 hearings. Holding Rule 11 hearings in limited jurisdiction courts provides a defendant easier access to the courts. In 2015, the Supreme Court established a pilot program that authorizes

two municipalities to conduct Rule 11 proceedings.<sup>2</sup> The Task Force's Subcommittee recognized many benefits to this pilot program including a speedier resolution of Rule 11 proceedings with an average time from initial motion to conclusion being 45-50 days (see Appendix D). Furthermore, Glendale and Mesa reported to the Subcommittee other benefits for holding Rule 11 proceedings in their courts. Defendants were more likely to keep their medical appointments because the doctors scheduled the examinations either at the courthouse or close by. Since the municipal courthouse was usually closer to the defendant's home than the superior courthouse, defendants were more likely to appear for their scheduled hearing dates.

The pilot program has shown measurable improvements in case management, improved service to defendants, particularly those suffering from mental illness, and a cost savings realized from fewer missed medical appointments and speedier resolution of cases. Building on the beneficial results of holding Rule 11 proceedings locally, the defendant may continue to benefit if the same court that conducted the defendant's Rule 11 proceeding retains control of the restoration to

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<sup>2</sup> Supreme Court Administrative Order No. 2015-092 authorized a limited jurisdiction mental competency proceedings pilot project in the superior court in Maricopa County to allow the Mesa Municipal Court and the Glendale City Court to conduct Rule 11 proceedings for misdemeanor cases originating in their courts. Judges from these municipalities preside over these proceedings as superior court judges pro tempore.

competency process.

Second, municipalities have always been responsible to pay the costs for Rule 11 proceedings and restoration, even when the misdemeanor case is transferred to the superior court (A.R.S. § 13-4512). Therefore, since the local jurisdictions have been responsible for the costs of mental competency evaluations and any subsequent competency restoration treatment, the local court should be the court to decide whether to order the treatment.

Third, the proposed amendment to allow a limited jurisdiction court to order competency restoration treatment is conditioned upon the approval of the presiding judge of that county. A presiding judge would grant authorization only to those courts that have established the proper protocols, procedures, and training. On a final note, the Subcommittee noted when making this proposal that nothing in the language of SB 1157 precludes a limited jurisdiction court from retaining jurisdiction under these circumstances (see Appendix E).

***B. Clarifying language delineating the difference between what the limited jurisdiction courts and what the superior court may do if a defendant is found incompetent but not restorable.***

The amendment to Rule 11.5(b)(3) clarifies that when a defendant is incompetent and not restorable, a limited jurisdiction court may only dismiss the charges on the State's motion or transfer the case to the superior court for further proceedings. The amendment is intended to resolve any ambiguity regarding the

limits of the limited jurisdiction court's authority. Unlike the superior court, the limited jurisdiction court may not remand the defendant to an evaluating agency approved and licensed under Title 36 to being civil commitment proceedings under A.R.S. § 36-501 et seq., order the appointment of a guardian under A.R.S. § 14-5301 et seq., or retain jurisdiction and enter further orders as specified in A.R.S. § 13-4517 and § 13-4518.

The amendment to Rule 11.5(b)(3) provides clarity. Additionally, it conforms Rule 11.5(b)(3) to the same drafting style of Rule 11.5(b)(2) by breaking out the jurisdiction of the superior court and the limited jurisdiction court into two separate subparts.

***C. Clarifying changes to timeframes for the restoration of a defendant to competency.***

The amendments make several changes to Rule 11.5 and 11.6 to strike language relating to specific timeframes for court ordered restoration treatment. A treatment order, or combination of orders, shall not be in effect for more than the maximum possible sentence the defendant could have received, excluding sentence enhancements (A.R.S. § 13-4515(A)). In misdemeanor cases, the maximum term of incarceration will be less than the 15-month or 21-month time periods currently cited in the rules. The amendments strike these time periods and clarify that these treatment orders are to be in effect within the timeframes allowed by law. For purposes of internal consistency, the reference to 21 months in 11.5(b)(3) has also

been changed to within the timeframes allowed by law.

**II. Preliminary Comments.** While the Task Force’s Subcommittee on Mental Health and the Criminal Justice System included a very comprehensive cross-section of the criminal justice and mental health communities and the proposed rule amendments were either specifically recommended or promote one or more Task Force’s directives to the Subcommittee, the specific language of this petition has not been circulated to other criminal justice system or mental health stakeholders for comment before filing. Therefore, an opportunity for comment as part of the Court’s review is recommended.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure as proposed in Appendix A.

RESPECTFULLY SUBMITTED this 10th day of January, 2018.

By /s/ \_\_\_\_\_  
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Administrative Office of the Courts  
1501 W. Washington Street, Suite 411  
Phoenix, AZ 85007  
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## APPENDIX A

(language to be removed is shown in ~~strikethrough~~, new language is underlined)  
(amendments are to the Rules in effect on April 2, 2018)

### Rule 11.5 Hearing and Orders

(a) [No change]

(b) Orders.

(1) [No change].

(2) *If Incompetent but Restorable.*

~~(A) *Generally.* If a limited jurisdiction court determines that a defendant is incompetent, it must either dismiss the charges on the State's motion, or transfer the case to the superior court for further proceedings. Upon transfer from a limited jurisdiction court, or if a superior court determines that the defendant is incompetent, it must order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within 15 months.~~

(A) *Superior Court.* If a superior court determines that the defendant is incompetent, it must either dismiss the charges on the State's motion or order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within the timeframes allowed by law.

(B) *Limited Jurisdiction Court.* If a limited jurisdiction court determines that the defendant is incompetent, it must dismiss the charges on the State's motion, transfer the case to the superior court for further proceedings pursuant to A.R.S. §13-4517, or, if authorized by the presiding judge of the superior court, order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within the timeframes allowed by law.

~~(C) *Extended Treatment.* The court may extend treatment for 6 months beyond the 15-month limit as permitted by law if it finds that the defendant is progressing toward competence.~~

(D) through (F) [No changes]

(3) *If Incompetent and Not Restorable.*

(A) *Superior Court.* If the superior court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent

within ~~24 months~~ the timeframes allowed by law, the court may on request of the examined defendant or the State do one or more of the following:

- (i) Remand the defendant to an evaluating agency approved and licensed under Title 36 to begin civil commitment proceedings under A.R.S. §§ 36-501 et seq.;
- (ii) Order appointment of a guardian under A.R.S. §§ 14-5301 et seq.; or
- (iii) Release the defendant from custody and dismiss the charges without prejudice.
- (iv) Retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518.

(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 allowed by law, 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.

**(4) [No change]**

**(c) and (d) [No changes]**

### **Rule 11.6. Later Hearings**

**(a) [No change]**

**(b) [No change]**

**(c) [No change]**

**(d) Finding of Continuing Incompetence.** If the court finds that the defendant is still incompetent, it must proceed in accordance with Rules 11.5(b)(2) or (3). If the court determines that there is a substantial probability that the defendant will regain competence in the foreseeable future, then the court may renew and may modify the treatment order ~~for no more than an additional 180 days~~ as permitted by law.

**(e) [No change]**

## **Appendix B**

# Fair Justice Task Force Subcommittee on Mental Health and the Criminal Justice System

---

### **CHAIR**

**Mr. Kent Batty**  
Court Administrator  
Superior Court in Pima County

### **MEMBERS**

**Ms. Susan Alameda**  
Treatment Specialist, Probation  
Administrative Office of the Courts

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U of A, College of Medicine

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David's Hope Services

**Ms. Kelsey Commisso**  
Detective  
Phoenix Police Department

**Ms. India Davis**  
Program Manager  
Pima County Behavioral Health

**Mr. Jim Dunn**  
Executive Director/CEO  
Natl. Alliance on Mental Illness

**Ms. Vicki Hill**  
City Prosecutor  
City of Phoenix

**Ms. Josephine Jones**  
Deputy Director  
Maricopa Office of the Public Advocate

**Ms. Kathleen Mayer**  
Deputy County Attorney  
Pima County Attorney's Office

**The Hon. Joseph Mikitish**  
Judge  
Superior Court in Maricopa County

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Mental Health Director  
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**Ms. Carol Olson**  
Director  
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**Ms. Nancy Rodriguez**  
Deputy Director  
Maricopa County Clerk of Superior Court

**Dr. Michael Schafer**  
Professor and Director  
ASU Center for Applied Behavioral Health

**Ms. Mary Ellen Sheppard**  
Assistant County Manager  
Maricopa County

**The Hon. Susan Shetter**  
Judge  
Tucson City Mental Health Court

**The Hon. Barbara Spencer**  
Commissioner  
Superior Court in Maricopa County

**The Hon. Christopher Staring**  
Judge  
Court of Appeals, Division II

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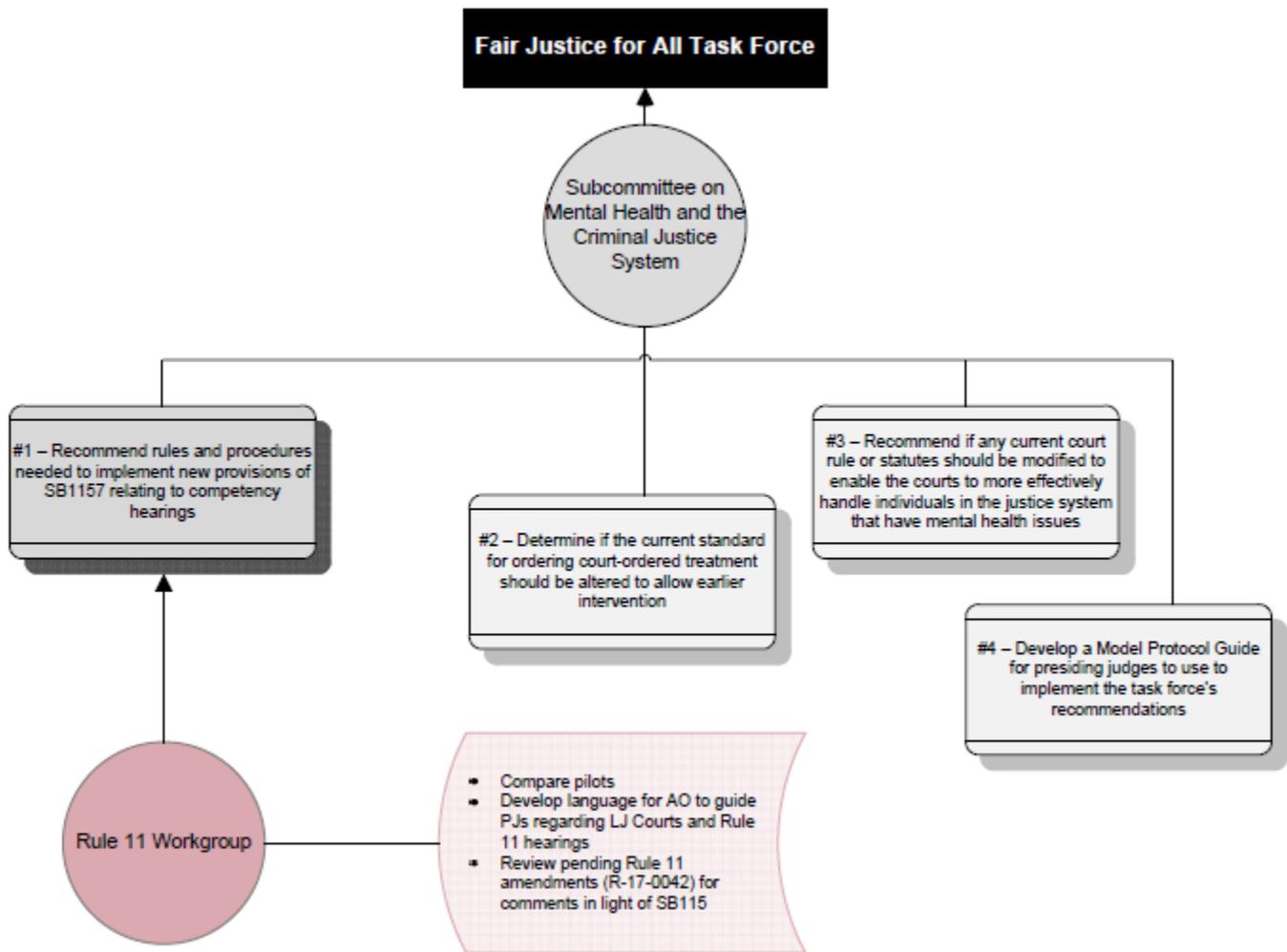
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AOC

# APPENDIX C



## APPENDIX D

### Mesa Municipal Court Rule 11 Proceedings Statistics through 9/2017

## PILOT STATISTICS TO DATE

Cases completed	168
Competent	100
Not Competent	68
Second evaluations conducted	27
Second evaluations consistent with the first	21
Third evaluations needed or granted	6
Average time from initial motion to conclusion	45-50 Days

\*Some cases exceeded 100 days due to in-treatment status or warrant

## Glendale City Court Rule 11 Proceedings Statistics through 9/2017

### PILOT STATISTICS TO DATE

Cases completed	44
Competent	4
Not Competent	39
Second evaluations conducted	41
Second evaluations consistent with the first	30
Third evaluations needed or granted	11
Average time from initial motion to conclusion	48 Days

- ▶ One case was withdrawn for Felony Prosecution
- ▶ One case had a stipulation for one doctor

# APPENDIX E

Senate Engrossed

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

## CHAPTER 14

# SENATE BILL 1157

AN ACT

AMENDING SECTION 13-4503, ARIZONA REVISED STATUTES; RELATING TO COMPETENCY HEARINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-4503, Arizona Revised Statutes, is amended to read:

**13-4503. Request for competency examination; jurisdiction over competency hearings; referral**

A. At any time after the prosecutor charges a criminal offense by complaint, information or indictment, any party or the court on its own motion may request in writing that the defendant be examined to determine the defendant's competency to stand trial, to enter a plea or to assist the defendant's attorney. The motion shall state the facts on which the mental examination is sought.

B. Within three working days after a motion is filed pursuant to this section, the parties shall provide all available medical and criminal history records to the court.

C. The court may request that a mental health expert assist the court in determining if reasonable grounds exist for examining a defendant.

D. **Once EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, AFTER** any court determines that reasonable grounds exist for further competency proceedings, the superior court shall have exclusive jurisdiction over all competency hearings.

**E. THE PRESIDING JUDGE OF THE SUPERIOR COURT IN EACH COUNTY, WITH THE AGREEMENT OF THE JUSTICE OF THE PEACE OR MUNICIPAL COURT JUDGE, MAY AUTHORIZE A JUSTICE COURT OR MUNICIPAL COURT TO EXERCISE JURISDICTION OVER A COMPETENCY HEARING IN A MISDEMEANOR CASE THAT ARISES OUT OF THE JUSTICE COURT OR MUNICIPAL COURT.**

**F. A JUSTICE OF THE PEACE OR MUNICIPAL COURT JUDGE, WITH THE APPROVAL OF THE PRESIDING JUDGE OF THE SUPERIOR COURT AND THE JUSTICE OR JUDGE OF THE RECEIVING COURT, MAY REFER A COMPETENCY HEARING TO ANOTHER JUSTICE COURT OR MUNICIPAL COURT THAT IS LOCATED IN THE COUNTY.**

APPROVED BY THE GOVERNOR MARCH 14, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 14, 2017.

# Appendix C

# **IN THE SUPREME COURT OF TEXAS AND THE TEXAS COURT OF CRIMINAL APPEALS**

**Supreme Court Misc. Docket No. 18-9025  
Court of Criminal Appeals Misc. Docket No. 18-004**

## **ORDER ESTABLISHING JUDICIAL COMMISSION ON MENTAL HEALTH**

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Recognizing that improving the lives of Texans who are affected by mental health issues and are involved in the justice system requires judicial leadership at the highest level, in June 2016 the Supreme Court of Texas directed the Texas Judicial Council to establish a Mental Health Committee. The Court charged the Mental Health Committee with examining best practices in the administration of civil and criminal justice for persons with mental illness.

The Mental Health Committee determined that Texas requires additional resources to ensure that: (1) mental health providers and professionals are able to provide timely and complete mental health assessments; (2) community-based mental health services are available to defendants; (3) outpatient treatment services and education services are available to those providing competency restoration services; (4) inpatient mental health facilities other than those operated by the Department of State Health Services are available for purposes of competency restoration; and (5) jail-based competency restoration programs, either state-funded or county-funded or both, are available.

The Texas Legislature invests heavily each year in behavioral and mental health systems to address mental illness and associated disorders. Yet the criminal justice system still serves as a default provider of mental health services for many Texans. This impact is most often felt at the local level where jail costs related to mental illness exceed \$50 million each year in some counties.

Courts and the justice system have a profound impact on mental health services provided to children, adults, and families in this state, and the stakes are exceedingly high. As gatekeepers for families and individuals in crisis, courts must make life-altering decisions that require knowledge of multiple and complex issues such as childhood and adult trauma, abuse, neglect, intellectual and developmental disabilities, substance use, family violence, poverty, racism, and military combat, and how each affects a person's mental health. Too often, courts lack the technology, training, and resources needed to make well-informed decisions.

The Mental Health Committee identified other problems that traditionally exist where complex human service systems intersect with the judicial system, including:

- overcrowded dockets, leaving courts inadequate time to thoughtfully consider the multiple issues that persons with mental illness present and confront;
- a lack of communication, coordination, and collaboration between and among the courts, the state and local mental health providers, attorneys, and mental health advocates;
- a need for specialized, multidisciplinary legal training, and the means to develop and share best practices;
- a lack of technology to efficiently manage dockets and to track and analyze cases and caseloads involving mental health challenges;
- a lack of adequate training and fair compensation for attorneys;
- a need for the children and adults involved in the justice system to have a voice in decisions that affect their lives; and
- a lack of community resources to provide adequate mental health services to children, youth, and families.

The Mental Health Committee also recommended the establishment of a permanent judicial commission on mental health, similar to the Supreme Court’s Children’s Commission, the Texas Access to Justice Commission, and the Texas Indigent Defense Commission.

Many organizations and individuals throughout the state share a commitment to improving mental health services to Texans, but no single entity is able to coordinate and implement a comprehensive effort aimed at the improvement of the administration of justice in this area.

On January 11, 2018, the Supreme Court and the Court of Criminal Appeals held a historic joint hearing to gather input on what should comprise the priorities of a statewide judicial commission. Mental health experts, state and tribal judges, law enforcement, veterans, juvenile services experts, psychologists, psychiatrists, and persons with lived experience with these systems, provided valuable insight at the hearing and voiced unqualified support for the creation of a statewide judicial commission.

Therefore, the Supreme Court of Texas and the Texas Court of Criminal Appeals (“the two Courts”), having reviewed the report of the Judicial Council’s Mental Health Committee, and

understanding the urgency expressed by various community stakeholders and participants in the Texas mental health system, HEREBY ORDER:

The Judicial Commission on Mental Health (“the Commission”) is created to develop, implement, and coordinate policy initiatives designed to improve the courts’ interaction with—and the administration of justice for—children, adults, and families with mental health needs.

The Judicial Council’s Mental Health Committee, chaired by the Honorable Bill Boyce of Houston, is commended for its examination of best practices and identification and review of innovative approaches to improve the administration of justice in cases involving mental health issues. The Judicial Council’s Mental Health Committee will remain intact until it is dissolved by the Judicial Council upon the Commission’s recommendation, at which time the Committee’s duties will transition to the Commission.

The Commission will:

- develop a strategic plan for strengthening courts and the administration of justice in relation to Texas’ mental health system;
- identify and assess current and future needs for the courts to be more effective in achieving positive outcomes for Texans with mental illness;
- promote best practices and programs that are data-driven, evidence-based, and outcome-focused;
- improve collaboration and communication among courts and the mental health system stakeholders;
- endeavor to increase resources and funding and maximize the effective and efficient use of available judicial system resources;
- promote appropriate judicial training regarding mental health needs, systems, and services;
- establish a collaborative model that will continue systemic improvement within the judiciary beyond the tenure of individual Commission members;
- oversee the administration of funds appropriated and granted to the Commission; and
- provide progress reports to the two Courts.

The Commission will consist of no fewer than fourteen (14) Commissioners. The Commission will be co-chaired by a justice of the Supreme Court of Texas and a judge of the Texas Court of Criminal Appeals appointed by their respective Courts. The two Courts shall appoint a justice from the Texas Courts of Appeals to serve as Vice Chair of the Commission. The first collection of Commissioners shall be appointed by a joint order of the two Courts. Thereafter, new Commissioners shall be appointed jointly by the Chief Justice of the Supreme Court and the Presiding Judge of the Court of Criminal Appeals (“the two chiefs”). Each Commissioner shall serve a two-year term and may be renewed by the two chiefs at their discretion. A vacancy on the Commission is created by a Commissioner’s three consecutive absences from scheduled Commission meetings, subject to reappointment or the resignation of the Commissioner.

The Commissioners shall include members of the judiciary, members of the juvenile, criminal, and child protection systems and community, representatives of the business and legal communities, representatives of foundations or organizations with a substantial interest in mental health matters, and other state and local leaders who have demonstrated a commitment to mental health matters affecting Texans.

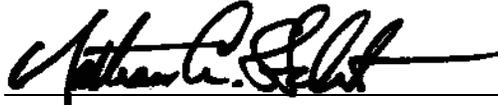
The Governor is invited to designate a person to serve as an ex-officio member of the Commission. The Lieutenant Governor and the Speaker of the House are invited to designate a member from the Texas Senate and the Texas House of Representatives, respectively, to serve as ex-officio members of the Commission. Ex-officio members appointed by the Governor, Lieutenant Governor, and Speaker serve at the pleasure of the appointing officer.

The two Courts recognize that participation by a broad spectrum of persons involved with the mental health, juvenile, criminal, and child welfare systems is critical to the Commission’s success. Accordingly, the Commission is empowered to appoint an advisory council as necessary to ensure the Commission is informed by experts in multiple disciplines. Members of the advisory council may attend Commission meetings and may serve on committees as determined by the Commission.

The Commission may adopt rules as necessary for the performance of the Commission’s duties and may form new committees or disband existing committees as it deems appropriate.

The Honorable Jeff Brown, Justice, Supreme Court of Texas, and the Honorable Barbara Hervey, Judge, Texas Court of Criminal Appeals, shall serve as the initial Co-Chairs of the Commission. The Honorable Bill Boyce, Justice, Fourteenth Court of Appeals, shall serve as the initial Vice Chair.

SIGNED BY THE SUPREME COURT OF TEXAS this 13th day of February, 2018.



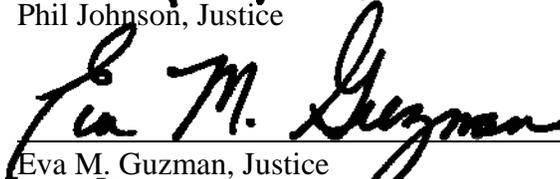
Nathan L. Hecht, Chief Justice



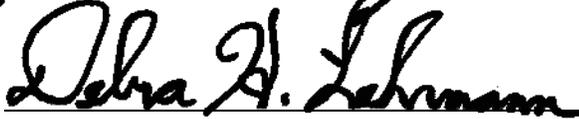
Paul W. Green, Justice



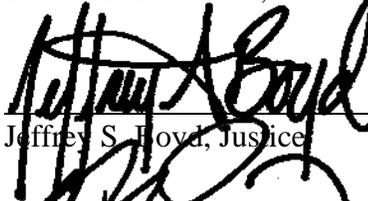
Phil Johnson, Justice



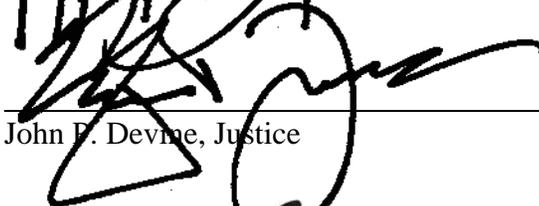
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John F. Devine, Justice



Jeffrey V. Brown, Justice



James D. Blacklock

SIGNED BY THE TEXAS COURT OF CRIMINAL APPEALS this 13th day of February, 2018.

Sharon Keller  
Sharon Keller, Presiding Judge

Michael Keasler  
Michael Keasler, Judge

Barbara Hervey  
Barbara Hervey, Judge

Elsa Alcala  
Elsa Alcala, Judge

Bert Richardson  
Bert Richardson, Judge

Kevin P. Yeary  
Kevin P. Yeary, Judge

David Newell  
David Newell, Judge

Mary Lou Keel  
Mary Lou Keel, Judge

Scott Walker  
Scott Walker, Judge