

# KEY TO PIMA COUNTY'S MENTAL HEALTH LEGISLATIVE PROPOSAL

## PROBLEMS IT ADDRESSES

There are gaps in the system which results in threats to public safety. These fall into a few categories but they encompass provisions in the criminal code and the mental health statutes in Title 36 which govern involuntary civil commitments.

Some of these gaps are represented by defendants who are found incompetent/nonrestorable but are not eligible for civil commitment and defendants who are referred for civil commitment but are not under any real supervision and fall out of the system. The civil commitment statutes treat all persons the same, depending on their diagnosis, without regard to their criminal background. This means that persons who may be dangerous to the community do not receive any greater treatment or supervision than those that do not.

The Guilty Except Insane defendants, except for those that cause/threaten death or spi, are eligible for release after 75 days if they can establish that they are no longer mentally ill. This means that most sex offenders, arsonists, and otherwise dangerous defendants are never given over to the supervision of the psychiatric security review board and thus get no treatment. They may get referred for Title 36 treatment but it is highly unlikely they will receive it given that the state hospital has just opined that the defendant has no mental illness.

For those criminal defendants who are found incompetent/nonrestorable but do not meet the requirements for involuntary commitment there are few options for treatment or supervision. Guardianships are not readily available. Therefore, only dismissal of the charges and release into the community, notwithstanding how dangerous these defendants might be, is the result.

The Sexually Violent Persons statutes provide for the detention and potential commitment of persons who commit sex crimes but are found incompetent but they provide no mechanism for how/when that can be done. The current statute provides that only the state hospital or the Dept of Corrections can refer a person for evaluation. ASH is not filing Petitions on persons in its custody when a defendant is found incompetent/nonrestorable. Instead they are sent back to their counties for disposition by Superior Court pursuant to 13-4517. Most incompetent/nonrestorables don't even make it to ASH.

## BACKGROUND

2014's Senate Bill 1249 passed the Senate unanimously last session but died under the weight of its fiscal note in the House. It would have provided for an involuntary commitment process for incompetent/nonrestorable defendants who were deemed dangerous by the court. It would have functioned similarly to the involuntary commitment process for SVP's. Given the significant cost associated with constructing a new facility at ASH and the annual cost of housing and treating this population, the cost to the General Fund makes it impractical to try to pass this bill this session in light of the State's fiscal situation.

Another avenue was needed to deal with these issues. Pima County's Mental Health Judge and behavioral health professionals who work in the criminal justice system met with the Pima County Attorney's Office to explore alternatives. They identified weaknesses in the current system and suggested ways to address them. This proposal is the result.

Police and Sheriff's have been requesting that they get more info on patients they are ordered to pick them up. Information on patient's criminal history and who they can call for assistance were specifically requested. So there are provisions for that as well.

There are three separate statutory sections at issue and, hence, three separate documents for your perusal: The GEI section – 13-3994; the Incompetency sections – 13-4501 et. seq.; and the civil commitment statutes – Title 36.

Explanations of each amendment to these statutes follows.

## **EXPLANATION OF THE AMENDMENTS**

Each explanation will be statute specific and will also include page numbers.

### **GUILTY EXCEPT INSANE**

#### **13-3994 - Commitment**

Removes "death or serious physical injury" language and substitutes offenses under 13-706, title 13, chapter 14 and 35.1. This removes these defendants from the 75 day release provisions. This should cut down malingering among these defendants as they will now be under the supervision of the PSRB for the presumptive time of their sentence. This would have an impact on the General Fund except I think there would be fewer defendants willing to plead GEI than there are now.

Also provides for referral to a County's Behavioral Health Advisory Board for a Continuum of Care program for defendants who do not qualify for Title 36 civil commitment

### **INCOMPETENCY PROVISIONS**

#### **13-4501 – page 1 - Definitions**

Provides a definition of Dangerous for purposes of evaluation and disposition – charged with a 13-706 and has a "propensity to reoffend". "Propensity to reoffend" is the same language as in the GEI statute.

#### **13-4505 – page 2 – Appointment of Expert**

Provides that a defendant, if found incompetent/non-restorable, must be evaluated for potential SVP status if charged with a sex offense

#### **13-4507 – page 3 – Examination of Competency**

The Court may hold a defendant in custody until the examination is complete if the defendant is charged with a 13-706 offense.

#### **13-4509 – page 3 – 4 – Expert's Report**

The expert's report must include a description of any assessment tool used to gauge the defendant's risk to reoffend and the description of any mental disorder, defect or personality disorder which may affect

the defendant's propensity to reoffend. This gives the court and the parties more information for disposition and treatment purposes. The report must also include, if applicable, whether the person may meet the requirement of an SVP.

### **13-4515 – page 4 -5 – Duration of Order**

On expiration or discharge from an evaluation order and if it is recommended that the defendant needs further treatment adds that the Court may refer a defendant to Behavioral Health Advisory Board.

### **13-4517 – page 5-6 – Incompetent Defendants; Disposition**

Upon request, the court must determine whether the defendant is dangerous.

Provides that the criminal court may “direct the institution of a Title 36 civil commitment proceedings” which may include remanding the defendant to the DHS but does not mandate it. Therefore, each Superior Court can develop procedures, if necessary, to determine which judges can hear Title 36 commitment proceedings for which defendants. The court handling the incompetency proceedings knows more about this defendant at this time than anyone else and handing the case off to another judge routinely does not seem to be the best procedure for dangerous defendants.

If the evaluation has included a preliminary finding that the defendant may be an SVP, the court shall ensure the County Atty receives this report for filing an SVP Petition if the County Atty so desires. The Court may order that an assessment of the defendant be done to determine eligibility for any private insurance or public benefits that can be applied to the defendant's care and treatment.

The court may retain jurisdiction throughout the proceedings, even if another court conducts a title 36 commitment, until all treatment orders expire or the court discharges the patient. The reason for this becomes apparent in the application of title 36 statutes and the BHAB process.

If the court has ordered a title 36 civil commitment evaluation but it doesn't happen due to the decision of a director of the mental health agency decides that the defendant has no mental illness, the court must be notified, the defendant taken back into custody and the matter remanded back to the criminal court. This fixes a problem in which criminal defendants don't get the treatment the court contemplated and the defendant is simply released into the community. The court would then have the option of seeking other treatment avenues under a BHAB or guardianship.

### **13-4518 – page 6-7 – Behavioral Health Advisory Board**

Permits a county to establish a BHAB or contract with another county's BHAB to provide flexible, community based continuum of care program. Describes a “continuum of care” program.

The court which entered the incompetency finding has oversight over the plan and maintains jurisdiction over the defendant, who remains in treatment, unless discharged earlier by the court, for the duration of the presumptive sentence of the offense. The county attorney receives notice of any hearing in which the defendant wants to be released from treatment or seeks an alteration in the treatment plan. The county attorney may participate in these hearings.

## **TITLE 36 – CIVIL COMMITMENT**

### **36-520 – PAGE 1 – APPLICATION FOR EVALUATION**

The Evaluation must include information about any criminal history of the person as well as whether the person has been found incompetent.

### **36-522 – VOLUNTARY EVALUATION – PAGE 2**

Exempts incompetent defendants from being able to opt for a voluntary evaluation. Otherwise, they just opt out of treatment and disappear.

### **36-523 – PETITION FOR EVALUATION – PAGE 3 – 4**

Requires that the Petition contain information regarding the person’s criminal history and whether the person has ever been found incompetent.

If the petition for evaluation is not filed the court which made the incompetency finding and the county attorney must receive notice and the criminal court may order any other disposition consistent with 13-4517.

### **36-529 – ORDER FOR EVALUATION; ORDER FOR DETENTION; HEARING –PAGE 4**

Even though the Petition for Evaluation has been filed, if the person does not turn up or is not taken into custody to get evaluated, the order expires after 14 days. Upon such an expiration, the court which entered the incompetency finding and the county attorney must receive notice if the person had been found incompetent. That court may then enter any other disposition order consistent with 13-4517.

### **36-531 – PAGE 5 – EVALUATION; POSSIBLE DISPOSITIONS**

This statute provides that a medical director may bypass the ordered evaluation of civil commitment or a person may opt for voluntary treatment even if the evaluation has been ordered by a criminal court. The amendment removes criminal defendants who have been found incompetent from these provisions. The amendment provides that if the medical director wishes to bypass the ordered evaluation the court which entered the incompetency finding and the county attorney must be notified immediately, the defendant must be remanded back to the court which entered the incompetency finding at which time the court may seek a guardianship, refer the defendant to the BHAB or dismiss the case and release the defendant.

Exempts a person from the 72 hour release provision if the person had been found incompetent and dangerous.

### **36-533- page 6 – PETITON FOR TREATMENT**

The amendment requires that the Petition for Commitment specify the person’s criminal history and whether the person has been found incompetent and whether the court had determined that the defendant was dangerous as defined in 13- 4501.

## **36-534 –PAGE 7 – CHANGE TO VOLUNTARY STATUS; DISCHARGE**

The amendment removes incompetent defendants from the provisions permitting a medical director from releasing a person or permitting the person to switch to voluntary treatment after a petition is filed.

## **36-540 – PAGE 7 - 12 – COURT OPTIONS**

Incompetent/Dangerous defendants not subject to least restrictive alternative placement

No outpatient treatment initially for Incompetent/Dangerous defendants

The court may enter a treatment order for Incompetent/Dangerous defendants up to 6 years with reviews every year

A court on its own motion may enter a pick up order for non-compliance rather than wait for a request from a medical director. Such orders shall include criminal history and names/telephone numbers of case manager, guardian, spouse, next of kin or other significant persons.

The court may order an assessment for the patient's eligibility for private insurance or public benefits for the patient's health and treatment

## **36-540.01 – PAGE 12 - 14 – CONDITIONAL OUTPATIENT TREATMENT**

Changes the requirement that the medical director provide notice to the prosecutor of the expiration or termination of a treatment order for a patient who has committed 13-706 offense and sex crimes or an Incompetent/Dangerous defendant from 5 days' notice to 7 days.

Copies of any amended outpatient treatment orders done by a medical director must be provided to the court who issued the commitment order, the court who entered the finding of incompetency and the county attorney. This includes an order rescinding out-patient treatment. The court on its own, without waiting for a request by the medical director, issue a pick up order for the patient.

A medical director may not permit an Incompetent/Dangerous defendant to leave the treatment agency without permission of the criminal court even if the person will be in the care/custody of spouse or relative. An individualized treatment plan which permits outings off the grounds of the state hospital must be approved by the criminal court if the person has been found Incompetent/Dangerous.

## **36-540.03 – PAGE 14-15 - NON-COMPLIANCE w/ OUTPATIENT TREATMENT**

This is a brand new provision which deals with non-compliance of persons in outpatient treatment. Requires that a medical director immediately notify the court of any non-compliance by the patient. If the patient was an incompetent defendant said notice shall also be given to the court which entered the incompetency finding and the county attorney. Either court may enter any order sufficient to maintain the health and treatment of the patient and which protects the public, including rescinding the order for outpatient treatment. The court may order the patient be taken into custody by a peace officer and the order must contain the person's criminal history and contact info for case manager, spouse, etc.

## **36-541.01 – PAGE 15 - 17 – RELELASE/DISCHARGE PRIOR TO EXPIRATION OF ORDER**

An Incompetent Defendant may not be released without notice to the court which entered the commitment order, the court which entered the finding of incompetency and if the person has committed sex crimes or 13-706 offenses notice must also be given to County Attys 7 days prior to the date of the anticipated release.

### **36-542 – PAGE 17 – DISCHARGE AT EXPIRATION OF ORDER**

A medical director may not discharge a person who has been Incompetent/Dangerous. That can only happen upon order of the court which entered the incompetency order. Notice of any pending discharge must also be given to the County Attorney.

### **36-543 – PAGE 17 - 20 – RELEASE OF PAD’S & GD’S FROM TREATMENT**

Patients may be released from inpatient to outpatient care by the medical director unless the patient is Incompetent/Dangerous in which case immediate notice must be given to the court which entered the finding of incompetency. The court may enter any orders sufficient to maintain the health/safety of the patient and which protects the public. Notice must also be given to the prosecutor 7 days before the anticipated date of release.

### **36-544 – PAGE 20- 21 – UNAUTHORIZED ABSENCES**

Under current statute no direction is provided to medical directors to try to find patients who have disappeared. Oftentimes, I am told, agencies don’t even try to look for them. The amendment provides that if a person has been missing for 7 days, the director must request a peace officer to pick up the patient and deliver that person to the agency.

If the person has been found to be Incompetent, the director shall notify the court which entered the finding of incompetency as soon as the agency knows or has reason to know of the person’s absence. The court may enter any orders necessary to take the patient into custody, return the patient to the agency and to protect the public. An order to pick up a patient must include the person’s criminal history and contact info for case managers, spouses, etc.

Treatments times are tolled for any person non-compliant with treatment as well as when absent.

Requires that a patient remain enrolled with the treatment agency, notwithstanding an unauthorized absence.

If a person has been on an unauthorized absence for more than 90 days and is returned to the agency the person may petition the court to be discharged from treatment. If a petition is made by an incompetent person, notice shall be given to the court which entered the incompetency finding and the county atty. The county atty may participate in such a hearing.

### **36-546 – PAGE 21 - 23 – JUDICIAL REVIEW**

Exempts Incompetent/Dangerous Defendants from these provisions. Their reviews are set forth in 36-540 (E)

### **36-3701 – page 23 – SEXUALLY VIOLENT PERSONS DEFINITIONS**

The Amendment expands the definition of “agency” to apply to any mental health treatment agency and the Superior Court having jurisdiction over a defendant who is being evaluated for incompetence to stand trial or has been found to be incompetent.

This allows for the court to order a SVP evaluation simultaneously with an Incompetency evaluation.