

Mental Health Issues in the Criminal System, part II

COMPETENCY & DIVERSION

Tammy Wray
Maricopa County Public Defender
September 10, 2013

- Defendant not to be tried, convicted, sentenced or punished (sometimes) while unable to *understand the proceedings or assist in his own defense, due to mental illness, defect, or disability*
- Rule 11.1/ A.R.S. 13-4501(2)

Competency and "Rule 11"

- What happened when I was arrested?
- Were there witnesses?
- What evidence will the prosecutor present?
- What's my best defense?
- Should I take a plea?
- What happens at trial?
- Should I testify?
- What will happen if I'm convicted?

**Important Information &
Decisions**

- Factual understanding

- Who are the players?
- What happens in the court room?
- What is the evidence

Rational understanding

- How are decisions made?
- What's going to happen to me?

Competency

- Does the defendant, *at this time*, understand the case against him and the procedures that will be used in court?
- Can he assist his lawyer?

Rule 11 competency

- At the time of the offense, the defendant was afflicted with a mental disease or defect,
- To the extent that he didn't know his actions were wrong.
- It's an *affirmative defense*. "I did it, but . . ."
- The consequences are different from a conviction after plea or trial.

Guilty Except Insane

- Someone is arrested and the police officer takes them to UPC or other hospital setting instead of booking and criminal charge.
 - ** At this stage, the police agency makes the decision re whether a case is “submitted for charging” to the prosecutor.
 - Arrested person doesn’t necessarily have to be competent.
 - There are some “at initial contact” diversion programs- shoplifting

Diversion at first police contact

- The police agency (city police, county sheriff, federal or tribal agent) submits a report to a prosecuting agency (city, county, state, federal prosecutor) to be evaluated for criminal charges.
- The prosecutor files a “charging document” with the appropriate court. Could be city, county, state, tribal, federal.

Diversion after charging

- First drug charge only
- TASC diversion treatment program
- At the first court appearance, with assistance of counsel, defendant “waives” preliminary hearing and agrees to participate in a treatment program.
- Prosecutor “defers” prosecution. If defendant successfully completes the TASC program, the charges are dismissed. If they don’t complete, prosecution resumes.

Diversion after charging- current

A.R.S. 11-361

- For the purposes of this article, unless the context otherwise requires, “program” means a special supervision program in which the **county attorney of a participating county may divert or defer, before a guilty plea or a trial, the prosecution of a person who is accused of committing a crime**, except that the county attorney may not divert or defer the prosecution of a person who:
 - 1. Has been previously convicted of a **serious offense** [index offenses, usually] as defined in [§ 13-706](#), an offense under title 13, chapter 14 , a **dangerous offense** as defined in [§ 13-105](#) or a dangerous crime against children as defined in [§ 13-705](#).
 - 2. Has been convicted **three or more times** of either:
 - (a) Personal possession of a controlled substance as defined in [§ 36-2501](#).
 - (b) Personal possession of drug paraphernalia as defined in [§ 13-3415](#).

Proposal for Mental Health Diversion Program

- Ongoing discussions with Public Defender, treatment providers, re-entry council, and others.
- Maricopa County Attorney's office asked for a "model."
- Different models operating in other jurisdictions in state and around the country.

Pre-trial Diversion is at the discretion of the prosecuting agency

- Based on the successful post-conviction Maricopa County SMI probation/ court.
- Flexible enough to meet the needs of each individual.
- Built in accountability to ensure defendant, treatment providers, and court, all meeting their obligation.
- Defendant must be competent to make the decision to participate.

Proposal made in January 2013

- Defendant must be SMI and have SMI services and supports available
- Eligible charges limited by statute.
 - No previous serious or dangerous offenses
 - No more than two prior drug convictions.

Eligibility

- Ideally, all eligible defendants would be on the COC (continuity of care) calendar and the prosecutor could offer diversion based on that.
- Unfortunately, not all SMI folks are identified there, so defense counsel could also make the proposal, with documentation of SMI status.

Identification of defendants

- Diversion document/ waiver of preliminary hearing could be signed at the preliminary hearing.
- Regular status conferences before mental health commissioners as recommended by the team.

Process

- Mental Health services, supports, and reports from case management and treatment team.
- Progress and community monitoring done by pretrial services division of adult probation.
- Public Defender's Office for representation at hearings.

Responsible Parties

- Motivation to stay active in treatment.
- Motivation to stay out of jail.
- Drug testing as needed.
- Community safety is protected.
- Dismissal of charges upon completion of the program.
- If they don't complete, prosecution can be resumed.

What is the benefit?

- If we had pretrial diversion, we would only use this when it had failed or the client wasn't eligible.
- Currently, this is our best option for mentally disabled person convicted of a crime.
- But only when their case is "probation eligible."

**Post-conviction mental health
probation court**

SMI PROBATION – MENTAL HEALTH COURT

Specialized probation supervision for clients with serious mental illness

May be SMI or GMH with Magellan

May have head injuries or cognitive deficits

Eligible for probation check up/ monitoring/ status conferences with the court

Interim deferred jail up to 120 days

Probation violations also heard in specialized court

Early terminations may be easier

PROBATION OPTIONS

What's next???

QUESTIONS???