



MEMORANDUM

Date: March 1, 2023

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshner 
County Administrator

Re: **Restoration to Competency and Behavioral Health Populations in the Pima County Adult Detention Center**

As part of the County's continued efforts to understand the nature of the population in the Pima County Adult Detention Center and the drivers and barriers that contribute to a detainee's average length of stay, I directed Pima County Behavioral Health to provide an overview and analysis of the Restoration to Competency (RTC) Program as well as the populations with Substance Use or Mental Health disorders. The RTC population comprises 3% of the total jail population while 19% of the jail population carry a mental health diagnosis and 35% of the population require substance use interventions.

Attached is the Behavioral Health Director's February 9, 2023 memorandum outlining the RTC program and discussing the number of detainees who have either a mental health or substance use disorder.

JKL/dym

Attachment

c: Carmine DeBonis, Jr., Deputy County Administrator
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer
Steve Holmes, Deputy County Administrator
Paula Perrera, Director, Behavioral Health

Date: February 9, 2023

To: Jan Leshner
County Administrator

From: Paula Perrera 
Behavioral Health Director

Re: Restoration to Competency and Behavioral Health Populations in the Pima County Adult Detention Center

There has been recent discussion and inquiry into the relationship between Pima County's in-custody Restoration to Competency (RTC) Program and the number of detainees in the Pima County Adult Detention Complex (PCADC) with a behavioral health diagnosis. This memo outlines the process involved in the criminal prosecution of a person who is determined to be incompetent to stand trial and subsequently ordered into the in-custody RTC program. A pictorial representation of the process is included as **Attachment A**. This memo also includes discussion of the number of detainees who have either a mental health or substance use disorder.

Detention Determination

The initial determination as to whether a person will be detained is made by a law enforcement officer in the community. With certain notable exceptions, such as domestic violence, it is the arresting officer who uses their discretion to determine the appropriate placement for an individual who is behaving in a socially unacceptable or unlawful manner. There are several community facilities and programs that can serve as alternatives to detention: The Crisis Response Center (CRC), which has a no wrong door policy, accepts people who are suspected of experiencing a mental health crisis or acute intoxication; Community Bridges Inc.'s Access Point (AP) where people who are in need of detoxification or who are experiencing a mental health crisis can be treated; and CODAC's medication assisted treatment (MAT) facility which is open 24/7 for those individuals experiencing symptoms of withdrawal or whose crime is related to a substance use disorder. Both the CRC and AP have limited capacity to keep people longer than 24 hours and the MAT facility is outpatient only. The Crisis Response Center has 34 recliners where people can stay for a 23-hour observation period and a 15-bed adult inpatient unit where people can stay a bit longer; on average 4 days. It is important to note that the CRC never diverts law enforcement drop offs – even when they are at or over capacity. On average the CRC receives 339 law enforcement drop offs per month with an average law enforcement wait time of 3 minutes. AP has 40 recliners where people can stay for up to 24 hours, a 16-bed inpatient unit with an average length of stay of 4 days and a transition point unit with 28 beds where people can stay up to 30 days.

If law enforcement determines that detention is the most appropriate placement for an individual that person is booked into jail and typically is arraigned within 12 hours of their booking. At the arraignment, a Superior Court judge assesses the individual's risk based on recommendations from Pre-trial Services and the severity of their charges and either releases that person from jail or orders that they remain in detention. At this stage Pima County Behavioral Health (PCBH), including the RTC program, has no role or influence in the court's decision-making process.

Competency to Stand Trial

Pursuant to Rule 11 of the Arizona Rules of Criminal Procedure, the defense attorney, the prosecutor, co-defendant or the court may request that a defendant receive an examination to determine whether they are competent to stand trial. Once a motion for an examination is filed, the court will set the matter for a hearing and if the court is convinced an examination is appropriate it will issue an order for that examination. A motion for examination of a defendant may occur at any time during the prosecution process and once a motion is made there are no time limitations for when a hearing on that motion must be held or when a judge must rule on that motion. Further, if the court determines that examination is appropriate and appoints experts, there are no time limitations as to when the examination must take place only that the experts must submit their evaluations to the court within 10 business days of the examination. However, a defendant who is otherwise eligible for pre-trial release cannot be detained solely because of the competence to stand trial issue.

Within 30 days of receiving the expert's reports, the court must hold a hearing to determine the defendant's competence but may extend that time period on a showing of "good cause". The hearing will result in one of 3 potential findings: competent; incompetent but restorable; or incompetent and not restorable. If a defendant is determined to be competent the criminal prosecution proceeds as usual. If a defendant is determined to be incompetent but restorable the court may either dismiss the case or order the defendant to restoration treatment. If the defendant is determined to be incompetent and there is no substantial probability that the defendant will be restorable within 21 months, the court may order that civil commitment proceedings be initiated; the appointment of a guardian; release the defendant from custody and dismiss the charges without prejudice (charges may be refiled at a later date); or retain jurisdiction until civil commitment is completed or until a guardian is appointed. Pima County Behavioral health, including the RTC program, have no role to play in this stage of the proceedings.

When the court determines a person is incompetent but restorable and orders that person into RTC treatment it must, at that time, decide whether that treatment will take place on an in-custody or out of custody basis. The court administers the out of custody restoration program in its sole discretion. Court orders for restoration treatment are for six-month periods of time with the ability for the court to extend those orders for up to a total of 21 months.

When a defendant is ordered into the in-custody RTC program PCBH staff gather collateral information from the initial evaluators and begin the process of working with the defendant to educate, test and evaluate them. If necessary, the defendant will be prescribed medication to assist in the restoration process. When appropriate, the medical vendor at the PCADC initiates civil commitment proceedings for those RTC participants who are either unable or unwilling to accept medications on a voluntary basis. An initial report is due to the court 120 days after the initial order to treatment and status reports are provided to the court every 60 days thereafter. The in-custody restoration process is typically completed within 120 days of admission which is substantially more efficient than is allowed by statute or historical lengths of stay at the Arizona State Hospital. In 2020 PCBH commissioned an audit and review of its RTC processes by a nationally recognized expert, Stephen Noffsinger, M.D., D.F.A.P.A. who found that ". . . Pima County Restoration to Competency Program is functioning very well and meets or exceeds national standards for hospital and/or jail-based restoration to competency programs." Dr. Noffsinger's final report and opinion is attached as **Exhibit B**.

Despite the efficiency with which the in-custody RTC program operates, it is at its operational capacity with a 40-patient census and a 15 person wait list. In an effort to reduce the wait list, PCBH RTC staff in collaboration with the court, have implemented a process whereby defendants who are unwilling to participate in the restoration process are temporarily removed from active restoration efforts and their slot is filled by someone on the waiting list. However, even though people are removed from active restoration, PCBH RTC staff continue to meet with them to determine their readiness for placement back into active restoration. A January 2023 snapshot of the RTC census and wait list including diagnosis and criminal charges is attached as **Exhibit C**.

At the conclusion of the restoration period, PCBH RTC staff submit to the court a final report and findings which is either that the defendant is incompetent and not restorable, incompetent but more time is needed for restoration or that the defendant is competent. After the final report is submitted to the court a hearing is scheduled where the parties can stipulate or agree on the findings or contest the findings of the final report. If the findings are contested it is possible that another expert is appointed who will have additional time to evaluate the defendant and submit their findings to the court. If a defendant is found competent the criminal process proceeds as usual. If the defendant is found to be incompetent and not restorable, the court may dismiss the case or order civil commitment/guardianship proceedings be initiated. Neither PCBH or its RTC staff have any control over when the hearing is held or when a decision is issued by the court.

Populations with Mental Illness or Substance Use Conditions

On any given day there are approximately 2,000 detainees in custody at the PCADC. A January 2023 snapshot review of the jail population revealed that out of a total census of 1837 detainees 35% or 645 people had a substance use disorder diagnosis or were otherwise flagged as requiring substance use intervention. Of those 645 people with substance use issues 278 or 43% were also receiving medication for a mental health condition.

During the January snapshot review 118 people were on MH1 or MH2 statuses which represent those patients who have serious mental healthcare needs that require regularly scheduled mental health intervention and treatment planning. This population is not able to be placed in general population due to their mental health conditions. Simply said MH1 and MH2 patients are the most acutely mentally ill. Of those 118 patients: 57 were identified as having a schizophrenia spectrum disorder; 17 were identified as having a schizoaffective disorder; 2 were identified as having a major depressive disorder; 1 was identified as having Post Traumatic Stress Disorder with psychotic features; 13 were identified as having a bi-polar disorder; 1 was identified as having borderline personality disorder and 11 were identified as having some other psychiatric disorder. 48 of these patients have a history of or are actively on a court order for treatment and 30 of the 118 were active in the RTC program.

The total number of detainees who may be experiencing symptoms of mental illness is unknowable as many detainees may have never been diagnosed with a mental illness or are adept at masking their symptoms. Detention, in and of itself, is a traumatic experience. When you combine detention with criminal prosecution, the loss of meaningful contact with family, friends and employment; it is not beyond the realm of possibility or even expectation that detainees who did not enter detention with a mental illness will become unstable, despondent and ill during their detention stay. We do know that approximately 620 detainees or 34% of the detention population have been prescribed mental health medications at any given time and that not all of these detainees require intensive care. Further, whether this population will be retained in custody or released from detention is beyond PCBH control or influence.

It is important to note that the County requires its medical service provider to identify detainees who are not currently on a civil commitment order for treatment but who are appropriate for such an order and to initiate the civil commitment process when those detainees are identified. The initiation of the civil commitment process can happen at any time during a detention stay and is not limited to detainees in RTC or to those who have been determined to be Seriously Mentally Ill. Moreover, PCBH required the medical services vendor to develop and implement a process whereby detainees who come to the jail under an Application for Evaluation completed by law enforcement will receive priority attention and consultation with medical staff prior to their release to determine whether they require transportation to either the CRC or another evaluation agency.

Conclusion

Although detainees who are undergoing the evaluation or restoration process may have the disposition of their criminal proceedings delayed, the total volume of detainees participating in the in-custody RTC program, whether in active restoration or on the wait list, represents only 3% of the total jail population. Therefore, the RTC population does not account for the total volume or even a substantial percentage of detainees in the PCADC with behavioral health conditions. The remainder of the jail population with a mental health (19% of total population) or substance use (35% of total population) disorder are provided treatment in accordance with their need while their cases move through the court system.

Cc: Dr. Francisco Garcia, Deputy County Administrator & Chief Medical Officer
Chris Nanos, Pima County Sheriff

ATTACHMENT A

Legal Process & RTC

Arrest

Law enforcement makes decision to transport to jail for custody



Initial Hearing

Judge makes decision on Custody/Bond based on Pretrial recommendations



Meets Attorney

At any time in any criminal case either party or the Judge can express CST concerns



R11 Motion

Judge hears, if granted 1-3 evaluations are ordered. This process can take several weeks, even months.



Competency Hearing

Evaluations completed. They result in either case proceeding or Restoration to Competency program both in custody or out of custody



RTC

In custody program averages 120 days. Bigger cases take longer, with 1st degree taking several months.



Contested Hearing

RTC opinions are often tested in court. This can lengthen the process by several weeks before a declaration of competency is made.



Competency Decision

Judge determines competency. If not restorable COT & release. If competent, case proceeds.



Plea or Trial

If competency is established the case proceeds as it normally would. More serious cases take longer to process



Case Disposition

Case is resolved in either conviction, probation or acquittal.



2023 •

ATTACHMENT B



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February 14, 2020

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RE: Pima County Adult Detention Center Restoration to Competency Program

Dear Ms. Perrera:

Thank you for asking me to review the Pima County Adult Detention Center Restoration to Competency Program (the "Program"). In conducting this review I considered the following sources of information:

1. On-site visit to the Pima County Restoration to Competency Program on January 16-17, 2020, including:
 - a. Tour of the Pima County Adult Detention Center;
 - b. Interviews of Restoration to Competency professional and para-professional staff;
 - c. Multiple discussions with Behavioral Health Director Paula Perrera, J.D., Restoration Services Manager Terri Rahner L.M.S.W, C.C.H.P., and program psychologists (including Serena Gorgueiro, Psy.D., Marla Domino, Ph.D., and Sergio Martinez, Ph.D.);
 - d. Restoration to Competency Program inmate charts; and
 - e. Restoration to Competency Program policies, procedures and practices.
2. Documents submitted in advance:
 - a. Sample Competency Reports authored by Dr. Gorgueiro, Dr. Martinez, and Dr. Domino;
 - b. Restoration to Competency Program outcome parameters;
 - c. October 2019 Committee on Mental Health and the Justice System Interim Report and Recommendations;
 - d. Psychologist Fact Sheet from Pima County Restoration to Competency in Custody Program;
 - e. National Commission on Correctional Health Care selected standards;
 - f. Committee on Mental Health and the Justice System Developing Best Practices in Restoration to Competency Practices; and
 - g. Report "Pima County Restoration to Competency Program Celebrates 12 years."

Opinions:

In my opinion, the Pima County Restoration to Competency Program is functioning very well and meets or exceeds national standards for hospital and/or jail-based restoration to competency programs. The Program has many strengths:

1. The Program has sufficient numbers of qualified professional and para-professional staff, including mental health professionals, educators, administrative staff, clerical staff and corrections officers.
2. The Program staff work well together and have effective communication.
3. The Program Goals are reasonable and appropriate.
4. The methods utilized to achieve the Program Goals are reasonable and appropriate, including the initial competency assessment, a detailed competency-restoration plan, multi-modal competency-related educational experiences, psychiatric evaluation/psychotropic medication management (see recommendations below), and frequent reassessment of trial competency.
5. The Program administrators and staff appropriately distinguish between treatment activities and forensic activities (education, investigation and evaluation).
6. The Program's physical environment is secure, and conducive to achieving the Program Goals.
7. The Inmate Charts are well-organized, comprehensive, and facilitate good communication between the program staff.
8. The Program provides dedicated staff to educate defendants lacking knowledge regarding the nature and objectives of the court proceedings.
9. The Program staff gather and evaluate a rich database in evaluating defendants' trial competency, including clinical and investigative data (inmate phone calls, behavioral observations of inmates, etc.).
10. The Program provides supportive psychotherapy for defendants, to enhance coping skills for dealing with the emotional stress of a criminal trial, and to reduce anxiety which may impact the defendant's ability to assist with their defense.
11. The Program's results in restoring trial competency meet or exceed results achieved in other similar programs.
12. The competency reports written by the Program's mental health professionals are comprehensive, well-reasoned and meet or exceed national standards for forensic reports.
13. The Program is cost effective.

Recommendations:

As described above, the Pima County Restoration to Competency Program is functioning at a high level. In order to enhance the Program's functioning, I have the following recommendations:

1. Optimize psychiatric evaluation and treatment services – For the majority of the Program's clients, their psychotic, depressive and/or manic symptoms are the primary deficits driving their trial incompetency. For that reason, accurate, timely and appropriate psychiatric evaluation and medication treatment should be a major intervention, and should be closely coordinated with the Program's professional staff. However, currently, psychiatric evaluation and psychotropic medication treatment

appears to be disconnected from the primary restoration to competency efforts. This is evidenced by:

- a. The psychiatric physicians who evaluate and treat the Program's defendants are not primarily assigned to the Restoration to Competency Program, but instead, are primarily assigned to provide medical and psychiatric services to the approximately 2000 inmates in the general population.
- b. The treating psychiatrists evaluate the Program's defendants too infrequently – at times at more than one-month intervals.
- c. The psychiatrists are not attentive to screen for and evaluate malingering of mental disorders.
- d. The psychotropic medication trials are not optimized, given that medication dosages are not evaluated and adjusted at regular intervals, and medications are not transitioned to trials of other medications, if ineffective.
- e. Psychotropic medications are not directed at the specific mood or psychotic symptoms leading to trial incompetency.
- f. There are long waiting periods for involuntary medication treatment (either at the clinical or judicial level).
- g. At times, the Adult Detention Center medical services deny or overrule Program requests for brain imaging or subspecialty consultation (neurology) that are directly relevant to evaluating and/or restoring trial competency.

Therefore, I recommend:

- a. Incorporate psychiatry services into Restoration to Competency Program by assigning psychiatrists specifically to work with the Program, which would enhance the frequency of psychiatric treatment encounters, allow for the more timely adjustment of psychotropic medications, enhance communication with the Program staff, and ultimately increase the Program's success rate of restoring defendants' trial competency.
- b. Treating psychiatrists should target the treatment of psychotic/depressive/manic symptoms, where appropriate, as the primary treatment intervention in restoring trial competency.
- c. Psychiatrists should evaluate each Program defendant at least once weekly, adjusting medication dosages and selection of medications when appropriate.
- d. The communication between the Program staff and the psychiatrists should occur at a regularly scheduled time, to identify and target psychotic and/or mood symptoms that can be addressed via psychotropic medication management. Ideally, the treating psychiatrist and Program staff should meet at least monthly and review the defendant's progress toward competency restoration and adjust/update the restoration plan, and more frequently when clinically appropriate.
- e. Involuntary medication treatment should be pursued, when appropriate, in a timely fashion. This should involve the early recognition of a defendant's lack of capacity to consent to treatment; a timely request to the court for involuntary treatment; and proper coordination between psychiatry and the Program staff.
- f. Brain imaging and subspecialty consultation should be readily available when requested by the Program staff.

2. Tracking of Symptoms leading to Incompetency through the entire the Competence to Stand Trial evaluation and Restoration to Competency process – In select cases the specific psychological symptoms leading to trial incompetency were not identified as the primary treatment intervention. For example, the psychological symptoms identified by the defense attorney or in the Rule 11 Evaluation were not identified by the Program staff as the primary treatment goal. I recommend that enhanced attention to given to the specific issues leading to trial incompetency, tracked throughout the restoration to competency efforts, and addressed in the final competency restoration report. There should be consistent tracking and evaluation of the same symptoms, in most cases, throughout:
 - Defense attorney concerns
 - Rule 11 Evaluation
 - Initial Evaluation in the Restoration to Competency Program
 - Restoration to Competency Program restoration plan
 - Final competency report to court
3. Restoration to Competency final reports – Overall, the competency restoration reports were thorough, well-reasoned and very effective. To further fine-tune the reports, I recommend that report authors:
 - a. Use numbered lists to martial evidence for each opinion, not narrative paragraphs.
 - b. Do not write conclusory opinions, but instead site supporting evidence for each opinion.
 - c. Cite contrary evidence in their report and deal with the contrary evidence effectively in their opinion.
4. Timely Competency Hearings – Frequently, once the competency restoration report is finalized and submitted to the court, the competency hearing is not held until weeks to months later. The defendant's clinical condition can change in the interim. I recommend:
 - a. Competency hearings should be conducted within ten days of the submission of the competency restoration report.
 - b. If a substantial period of time passes without the court holding a competency hearing, the Program mental health professional should update their competence to stand trial evaluation, to confirm or amend their findings.
5. Preparation for Competency Hearings – The Program mental health professional should seek out and engage in a pre-hearing conference with the direct examiner to prepare for and coordinate their direct examination – more specifically, to discuss the key points of the examiner's qualifications, methodology, findings, and opinions.
6. Finding of Non-Restored/Non-Competent – Currently, defendants adjudicated Non-Restored/Non-Competent are referred for civil commitment, but have the potential to not meet the legal criteria for civil commitment due to the lack of imminent dangerousness/grave disability, leading to release, no requirement for mandatory treatment, and the potential for re-offense/re-victimization. Therefore, I recommend:

- a. An initiative to investigate the possibility of an enhanced/broadened civil commitment legal standard that would allow for civil commitment based on historical factors and/or the totality of the circumstances - see *In re Burton*, 11 Ohio St. 3d 147, 464 N.E.2d 530 (Ohio 1984).
- b. Consideration of a new legal status that would permit the commitment of Non-Restored/Non-Competent defendants within the trial court, which would retain the trial court's authority to designate the least restrictive treatment alternative and conditions of release (see Ohio Revised Code section 2945.39(A)(2)).

Thank you for allowing me to review the Pima County Adult Detention Center Restoration to Competency Program. In summary, the Program is successful, functioning at a level which meets or exceeds national standards, and has many strengths.

Best wishes,



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