

Competency to Stand Trial & Criminal Responsibility

A guide to the Rule 11 and GEI process

Presentation Outline

- To review the rule of law in regards to competency/GEI
- To properly identify defendants of concern in regards to competency
- To effectively convey those concerns to the court
- Assessing criminal responsibility at the time of the offense
- MD versus PHD considerations in evaluations
- Providing useful collateral material
- The restoration process & available programs

The Rule

Rule 11.2, Arizona Rules of Criminal Procedure



- a. Motion for Rule 11 Examination.

At any time after an information or complaint is filed or indictment returned, any party may request in writing, or the court on its own motion may order, an examination to determine whether a defendant is competent to stand trial, or to investigate the defendant's mental condition at the time of the offense. The motion shall state the facts upon which the mental examination is sought. On the motion or with the consent of the defendant, the court may order a screening examination for a guilty except insane plea pursuant to A.R.S. § 13-502 to be conducted by the mental health expert. In a capital case, examinations as required under A.R.S. §§ 13-703.02 and 703.03

Rule 11.2

continues.....



- b. Medical and Criminal History Records. All available medical and criminal history records shall be provided to the court within three days of filing the motion for use by the examining mental health expert.
- c. Preliminary Examination. The court may order that a preliminary examination be conducted pursuant to A.R.S. § 13-4503C to assist the court in determining if reasonable grounds exist to order further examination of the defendant.

Rule 11.2

last aspects.....



- d. Should any court determine that reasonable grounds exist for further competency hearings, the matter shall immediately be transferred to the Superior Court for appointment of mental health experts; the Superior Court shall have exclusive jurisdiction over all competency hearings. If any court determines that competency is not an issue, the matter shall be immediately set for trial.

The Question:

Does the defendant have the sufficient present ability to consult with his/her lawyer with a reasonable degree of rational understanding; and does the defendant have a rational understanding of the proceedings against them?



The Basics

★ Competency to stand trial [CST] pertains to the defendant's **current** mental state. It is a “**here and now**” kind of assessment. In this kind of assessment historical information is useful in providing the *footprint* of an illness or condition but does not assure a current level of dysfunction or incompetence is present.

HERE AND **NOW...** 
THERE AND **THEN**

★ **Criminal responsibility** (for a GEI plea) addresses the mental status of the defendant at the time of the alleged offense. This is a “**there and then**” assessment. It is a static, historical and unchanging analysis of a state of mind at some specific point in the past.

An Important Distinction

- Competency to stand trial and criminal responsibility are separate issues; both for evaluation and legal consideration.
- These two requests should not routinely be requested together
- Take time to consider what it is you are really looking to evaluate and request accordingly

Case Law Review

Five Important Cases in Rule 11 History



- State v. Amaya Ruiz, 166 Ariz. 152 (S. Ct. *En Banc*, 1990)
Accused had the right to a mental examination & hearing where reasonable grounds for a competency examination exist (i.e. the defendant is not able to understand the nature of the proceedings against him and to assist in his defense), but the trial court has broad discretion in determining whether reasonable grounds exist to order a competency hearing.
- Note: a trial court's refusal to grant a mental status evaluation in light of disruptive behavior in court, refusal to discuss the case with counsel, willful noncooperation with interpreters and others, and multiple suicide attempts was not an abuse of discretion

Broad Discretion

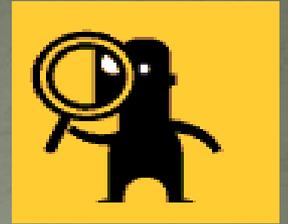


Case Law Review

- State v. Contreras, 112 Ariz. 358 (S. Ct. *En Banc*, 1975)
Although the Ninth Circuit held in *Sieling v. Eyman*, 478 F.2d 211 (9th Cir. 1973), that the standard of competency to plead guilty is higher than the standard of competency to stand trial, the Arizona Supreme Court has found that (once the issue of competency has been raised) a finding by the court that a defendant is able to understand the nature of the proceedings & assist in his defense, in addition to a finding that a plea has been entered voluntarily & knowingly is sufficient to comply with the mandate or *Boykin v. Alabama*, 395 U.S. 238 (1969).

(i.e. while it is the better practice for the trial court to find that the def is able to understand the nature of the proceedings, assist in his defense *AND ENTER INTO A PLEA AGREEMENT*, it is not fatal to the validity of the guilty plea if the court fails to do so)

Case Law Review



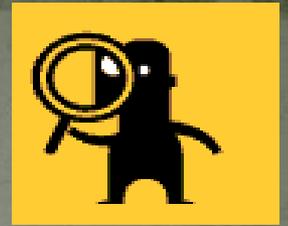
- Potter v. Vanderpool, 225 Ariz. 495 (Ariz. App. Div. 2, 2010)

Justice of the Peace granted motion pursuant to Rule 11 that a mental status evaluation take place. Case transferred to Superior Court. Superior Court found that there was no reasonable basis for evaluation and remanded the case back to Justice Court.

Division Two reversed the trial court, finding that “any court” has the authority to decide a Rule 11 motion and if one is granted by a lower court, the Superior Court can only appoint experts.

Superior Court has sole authority to decide the issue of competency but it cannot reverse the lower court’s decision that experts be appointed.

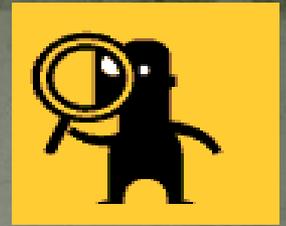
Case Law Review



- State v. Cervantes, Not Reported in P.3d, 2010 WL 4342250 (Ariz. App. Div. 2, 2010)

Trial court was reversed for refusing to appoint a second expert after being requested to do so by the State. Parties can stipulate to only one expert for purposes of a competency evaluation, but the stipulation must be clear from the record; either in writing, on the record or in the minutes from the court hearing.

Case Law Review



- State v. Moody, 208 Ariz. 424 (S. Ct. En Banc, 2003)

If a defendant has already been adjudicated competent, the court must be permitted to rely on the record supporting that previous adjudication when determining whether reasonable grounds exist for a second competency hearing. In this case, while a new evaluator found the defendant was “inconsistent” in his ability to assist counsel, the court relied on his own observations and the earlier opinions of the four other mental health professionals who found the defendant to be faking mental illness and likely malingering.

So Far....

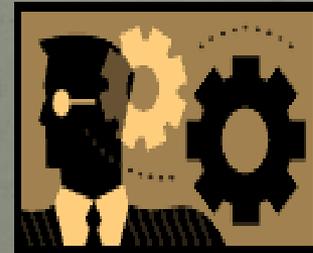
- We have looked at the RULE



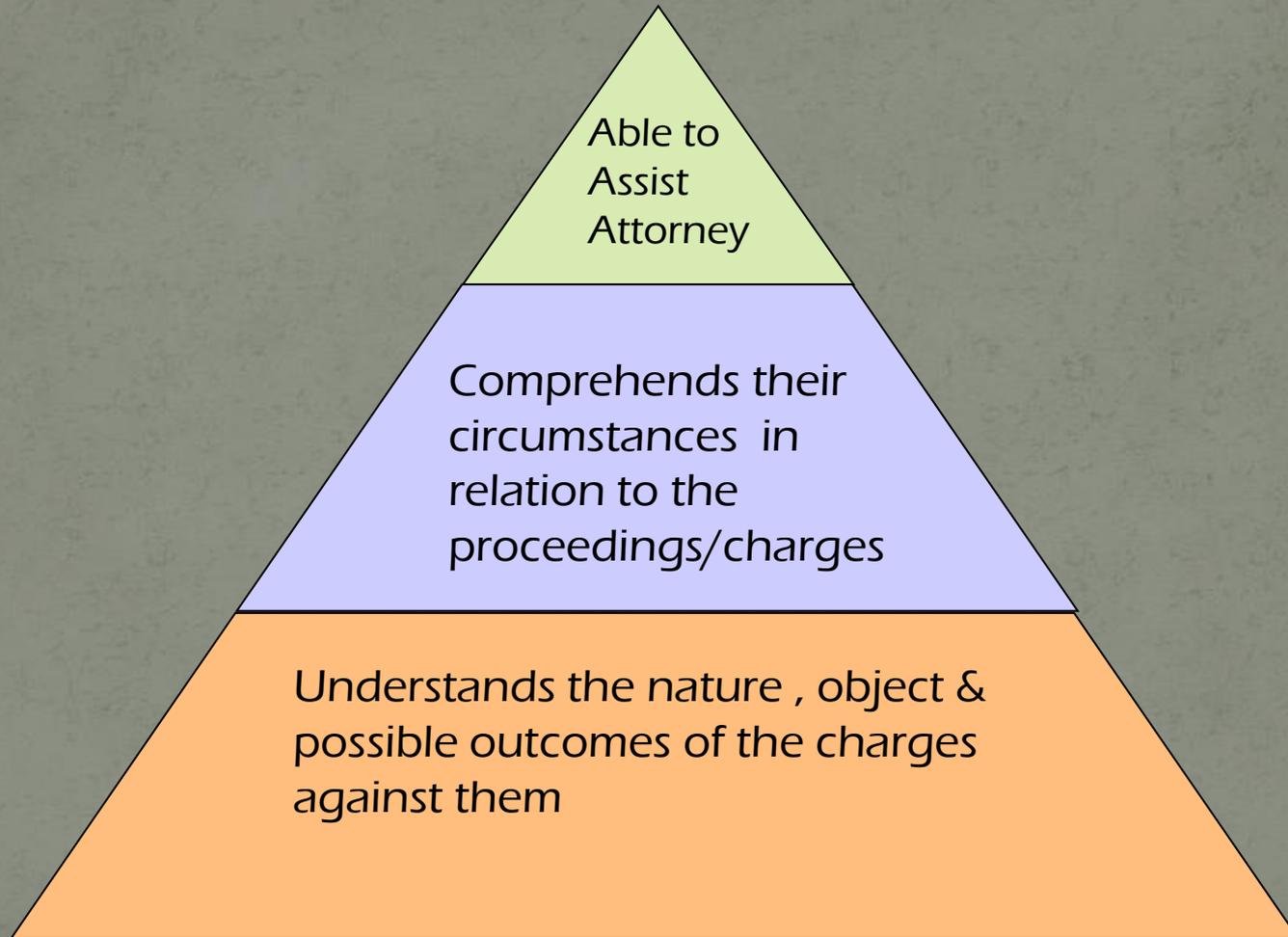
- We have looked at the LAW



- Now lets look at the DEFENDANT

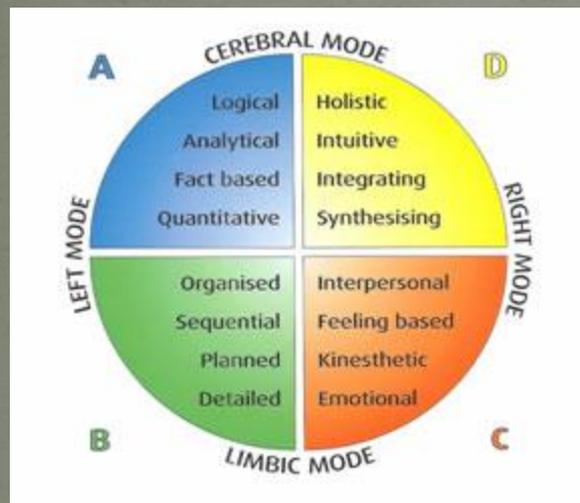


The Foundations of Competency

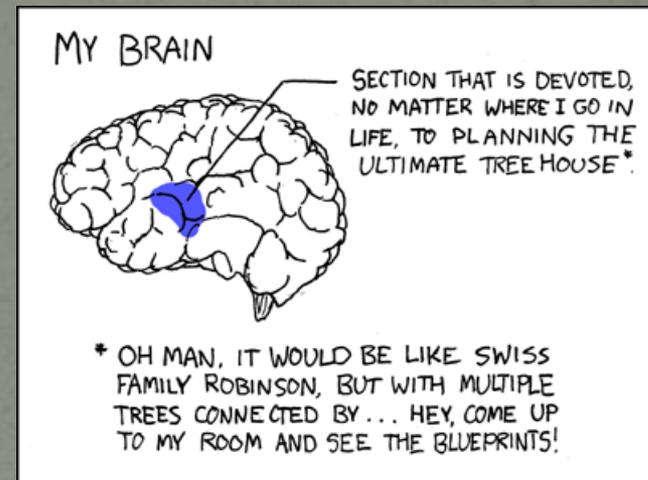


How the brain is designed to function can be very different from how it appears to function

What a doctor would say
our brain can do.....



What we often experience
in dealing with people



Just because we "experience" people in a crazy way... does not mean they in fact are "crazy"

How to Assess Behavior

.....apart from History

This →
is NOT a
Historical
Document



This Mama
person →
is not always a
reliable
historian



Consider.....

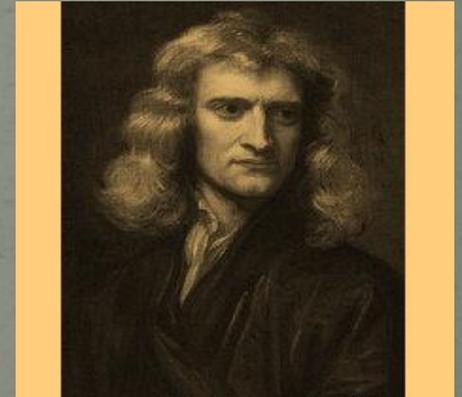
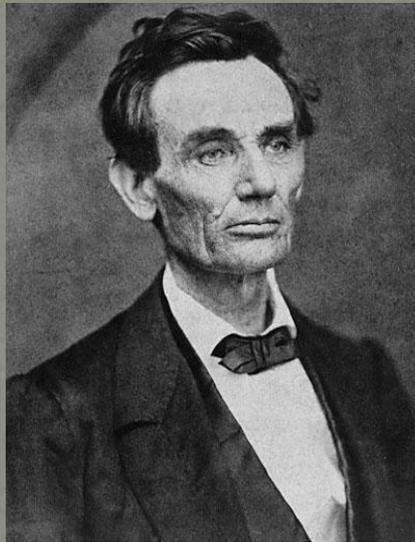
- Mr. B > History of abuse as a child, Father was an alcoholic, at times violent, B has mood swings, chronic illnesses, profound deafness, with ongoing periods of severe depression.
- Mr. L > Many losses, Mo and Aunt before age 9, lost two siblings, history of depression in both sides of family, nervous breakdown after death of 1st love, long periods chronic insomnia & episodes of suicidal thoughts & gestures
- Mr. N > Sharp, agitated mood swings, psychotic tendencies, bizarre statements, few friends, difficult with others, at times delusional, early childhood trauma & many separations from Mo between 2-11 years of age

Does a history of mental illness mean a person is incompetent?



Beethoven

Lincoln



Newton

Current Client Conditions

Insufficient alone for R1 1

- Has a mental health history or is SMI
- Is taking psychotropic me
- The charges are very serious
- Has a history of substance abuse
- Def. complains they cannot recall offense or own history
- Self-reports of a head injury with no medical record back up
- Has recently made a suicide attempt
- Disagrees with what appears to be a good plea
- Does not like you or want to work with you

Good Idea for R1 1 Motion

- Obvious, observable bizarre behaviors
- Signs (not just self report) of cognitive impairment that you can describe
- Significant difficulty in communication
- Def. not oriented to person, place, time or situation
- Is in custody and being housed on 1S for psychiatric reasons
- Has previously been involved in Rule 11's and been found incompetent in the past
- Medical history of head injury, coma, poor liver functioning, mental retardation

Sorting Through Client History

Helpful Facts for Motion

- Confirmed diagnostic history
- Axis I and 2 illnesses on record
- Medical history of head injury
- Jail is treating a mental illness
- DOC psych records
- Current med regime says a lot
- Record of heavy drug/etoh use over long time period
- Diagnosis of any disorders that affect thinking, cognition (schizophrenia, bi-polar, dementia)
- Liver issues, some forms of autism

Less Valuable

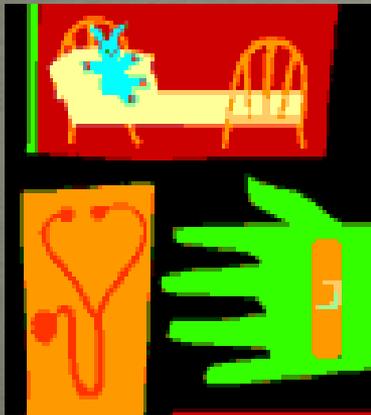
- Mom's recollection of a diagnosis
- GAF scores from anytime
- Def's report of a head injury
- Def complaint of no jail treatment
- DOC web record shows stability
- Previous sporadic med compliance
- Self reported psych symptoms like "voices", poor sleep, sadness.
- Diagnosis of disorders of mood or (PTSD, Depression, Anxiety, Phobia, Suicidal Ideation), childhood trauma
- ADHD, Personality disorders, Poly-Substance abuse

Medical Records

DO NOT
BELONG IN
YOUR
MOTIONS!



Every time you put
someone's medical
records in a motion is
will appear in Agave..
A PUBLIC RECORD !



This gives us a heart attack!

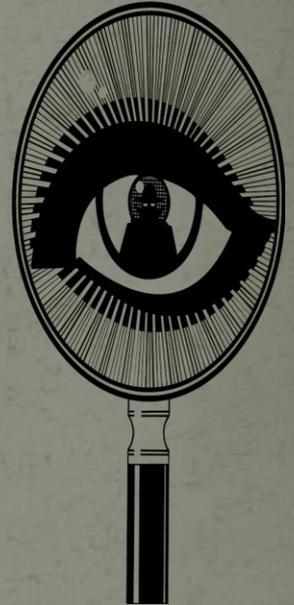


Understanding DSM Multi-Axial Assessment

- **Axis I Clinical Disorders** (conditions of clinical attention that is the major focus of treatment)
- **Axis II Personality Disorders/Mental Retardation**
- **Axis III General Medical Conditions**
Last 2 are used for treatment planning :
- **Axis IV Psychosocial & Environmental Problems**
- **Axis V Global Assessment of Functioning (GAF)**

The Informative R11 Motion Contains:

- Behaviors you can see of concern
- Communications you can describe
- A history of previous COT or R11
- A documented diagnosis
- A documented medical condition
- A current COT
- Objective, observable, measurable information
- A current medication regime



Rule 11 Costs in 2011

Aug 2011-Aug 2012



- 361 Evaluations → • 180,990 .00
- Testing → • 6,675.00
- No Shows → • 3,000.00
- Supplemental Reports → • 1650.00
- Testimony → • 2500.00
- Total → • 194,815.00
- In 2010 → • 204,180 (9,900 in no shows)
- In 2009 → • 240,490 (426 evals)

The Doctor Difference

MD's can

- Assess medical conditions that can affect cognition (liver failure, HIV, blood disorders)
- Assess medicine effectiveness (or results of lack of meds)
- Assess psychiatric diagnosis based on experience and observation

PhD's can

- Psychological testing
- Neurological testing
- Assess psychiatric diagnosis on the basis of test results
- Verify presence of disorders

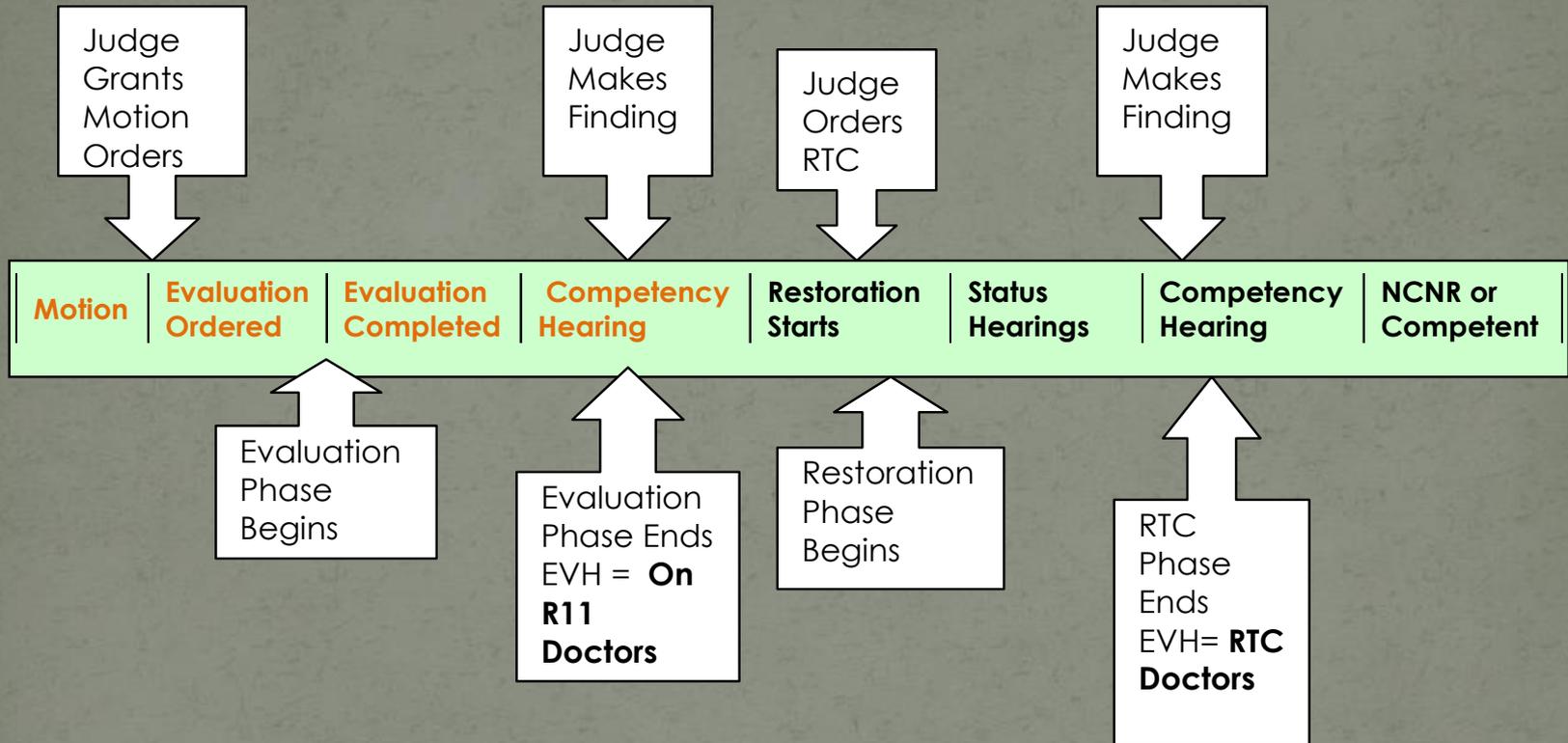
Sending Useful Collateral.....

| Things to Ask for on a Release | Things to Forward from Other Sources | DO NOT ask for or FORWARD |
|--|---|--|
| Summary Notes: Anything a treatment provider does that is labeled as a summary | A cover letter from the attorney documenting the behavioral or cognitive difficulties in working with the defendant | Anything more than 1 year old that is no different in content than what you already have |
| Any notes from MD's, PHD's or RN's | Letters from family documenting behaviors or concerns | Any progress note that is a routine note by a BHT level provider. Bachelor's level notes are only useful if they document a critical event |
| Medicines Ordered over the last 2 years | Defendant writing samples > recent or older | Records of routine blood pressure, urine output, food intake and other routine medical notations not related to states of mind |
| Emergency room reports | Any Title 36 history | Transportation notes |
| Incident reports from residential settings of the defendant | Previous DOC records that are in summary form or from an MD/PHD | Template treatment plans that are over 6 months old |
| | Educational or work history | Older rule 11's (we have those on file) |
| | Previous psych evaluations | |

Rule 11 Phases

Evaluations

Restoration



Restoration to Competency

- **August 2007** the Pima County In-Jail RTC established
- Jail RTC has a staff of 2 Phd's, 1 MD, 2SW's, 1 Clerical and 2 Corrections Officers
- Jail RTC reports far more comprehensive, detailed than previous ASH reports, higher NCNR % as well

- **August 2010** Superior Court redesigns the outpatient program to an "all PhD" model.
- Outpatient program increases level of doctor involvement while saving about 40 thousand dollars per year to run
- Outpatient has treated about 42 defendants, finding approx. 23 % NCNR

Program Elements in Restoration

Jail Program

- Access to an MD Psychiatrist & Master's level clinician for individualized treatment
- Weekly sessions with social workers in addition to MD, PHD sessions
- Group sessions for experiential learning opportunities

Outpatient Program

- Weekly group class available
- Two Spanish speaking doctors to instruct/opine
- Individual education available
- No medication management
- Workbooks on both low reading and high visual models of instruction

Restoration in a nutshell

- **Education** > classes, homework, workbook and experiential activities designed to increase learning about the legal process
- **Investigation** > obtaining records & collateral documentation about the defendant's medical, educational, behavioral and vocational history.
- **Evaluation** > Comprehensive assessment of current levels of cooperation, retention and comprehension of legal situation and possible consequences.

Criminal Responsibility

- STATUTE § 13-502. Insanity test; burden of proof; guilty except insane verdict
- A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was **afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong**. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect **does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders**. Conditions that do not constitute legal insanity include but are not limited to momentary, temporary **conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives** in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

When to consider a GEI evaluation

A review of police records, witness accounts, jail intake data reveal bizarre behavior or unusual statements made around the time of offense.

**If competency in question, establish that first*



These actions are not solely related to intoxication



The GEI Motion

Good Basis

- Level of intoxication was slight in comparison to behaviors noted
- History of thought disorder in psychiatric history
- Witnesses and police at time of crime document bizarre behavior
- A physical ailment is documented that can be tied to cognition, thought or awareness problems

Insufficient Basis

- Has a mental health history of some kind (general)
- Was not taking psychotropic meds or enough meds or missed meds
- The charges are quite serious
- The current mental state of mind is disturbed
- The charges are sexual or violent in nature

FORENSIC EVAULATIONS



The GEI Evaluation

MD or PhD can do

Report can be done by a Dr. who also did a Rule 11 on same defendant but **AFTER** competency is established.

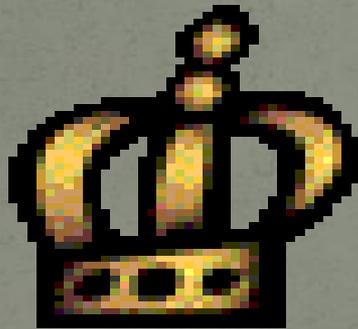
If a suspected medical issue is at play MD better choice

Reports are usually rather brief and DO NOT look at current mental status so no testing is usually involved.

Appreciations



2 Champions



And one KING

Questions?

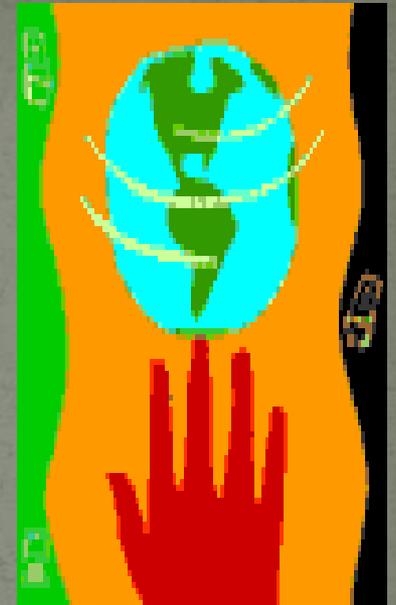


Comments?

Concerns?

Want a copy?

A copy of this artfully done, amazingly informative power point will appear on the Superior Court Website in a few days.



Head to www.sc.pima.gov CLICK > Judges
Then > Mental Health Court and LOOK for the
Rule 11 Road Show Button

THANKS FOR ATTENDING 😊

DO NOT FORGET THE SIGN IN SHEET FOR
CLASS CREDIT