



## **Restoration to Competency**

### **Summary**

The restoration to competency program is administered through the Arizona Department of Health Services at the Arizona State Hospital, and provides psychiatric treatment to individuals who have been accused of a crime but were found to be incompetent to stand trial.

### **Background**

The restoration to competency (RTC) program was created by the legislature in 1995 as a way to provide psychological treatment to individuals that were not mentally competent to stand trial for suspected criminal activity. Prior to its enactment, competency to stand trial was governed only by Rule 11 of Arizona's Rules of Criminal Procedure, which allowed incompetent individuals accused of a crime to be released back into society. The legislature's action set forth a statutory framework for competency restoration, and provided secure treatment for permanently incompetent, developmentally disabled and dangerous offenders.

The legislation establishing the RTC program required the state to pay all costs of the RTC program—this is still reflected in current statute (A.R.S. §13-4512). It was clearly created as a state program, with the original legislation requiring the Arizona Department of Economic Security, the Arizona Department of Health Services (ADHS) and the Arizona Department of Administration working together to establish a program that would “strike a balance between protecting the safety and security of the public and guarding the due process rights of the individual offender.”<sup>1</sup>

In FY02 the state began to “notwithstanding” statute that requires the state to pay for RTC costs, and began to shift RTC charges to the counties. The legislature has mandated that some counties pay as much as 100% of the program costs; in FY07, the legislature required Maricopa and Pima counties to pay 86% of the costs but assumed responsibility for the RTC costs of the 13 rural counties.

### **Process**

A.R.S. §13-4512 permits superior court judges to assign incompetent individuals to RTC treatment, and outlines the process by which they do so. In order to qualify for restoration to competency treatment, an individual must be unable to understand court proceedings and/or be unable to assist in their own defense. Two or more mental health experts must determine the individual is, in fact, incompetent, and must report their findings to the court. (A.R.S. §13-4505)

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<sup>1</sup> Legislative intent clause in S.B. 1273—Laws 1995, Chapter 250.

The ADHS sets the daily rate for RTC charges at the Arizona State Hospital (ASH), calculating total operating costs for medical care, housekeeping, meals and the maintenance of the facility. Those costs are divided by the estimated number of “patient days” (days an individual is treated for RTC). Currently, the daily rate per person is \$532.

The number of individuals sent to RTC varies widely from year to year, as it is impossible to predict the cases that will appear before the courts. In 2005, Maricopa County established its own RTC program in order to control costs, which they could not do when judges were sending RTC patients to the ASH.

### **Conclusions**

It has been argued that counties “dump” undesirable individuals into the RTC program, and that the population of RTC patients increases when the state takes on the funding of its program, but these are disconnected and erroneous assumptions. It is judges, not county authorities, who determine when an individual is sent to the ASH for RTC treatment. The judges’ decisions must be based on an evaluation from two mental health experts, who provide the court with a written report of their evaluation.

The RTC program is expensive and it is difficult to predict yearly costs and funding needs. All programmatic and budget decisions are made by the state, which is responsible for the ASH facility and the RTC treatment of patients, and the courts determined which individuals go into the program. County authorities, therefore, are disconnected from both the management of the program and the determination of program participants. Requiring counties to fund RTC separates funding from decision-making and does not promote either the efficient use of taxpayer dollars or the best treatment of RTC patients.