

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made by and between the Arapahoe County Board of County Commissioners, for the benefit of the Arapahoe County Judicial Services Division ("Division") and the 18th Judicial District ("Judicial"), the 18th Judicial District Attorney's Office ("DA"), and the Colorado Office of Public Defender by and through the Arapahoe County Office ("PD"). Each Signatory to this MOU is referred to as a "Party" and collectively as "Parties." The Parties agree as follows:

- 1) **RECITALS AND PURPOSE.** The Parties seek to establish an agreement regarding the operation of the Arapahoe County Pretrial Mental Health Program ("Mental Health Program"), wherein the Division serves defendants with behavioral health disorders charged in the Arapahoe District and County Courts.

- 2) **TERM AND TERMINATION.** This MOU will become effective on the date it is fully executed by the Parties and it shall continue for five years, unless terminated earlier as provided for herein. Any Party may terminate this MOU by providing written notice to the other Parties at least 30 days prior to such termination. Termination of this MOU does not terminate the Pretrial Mental Health Program.

- 3) **GOALS.** The Parties agree that the primary goals of the Mental Health Program are:
 - a. To assist defendants with mental illness to obtain services, achieve increased stability, and provide increased supervision on pretrial services with the goal of helping these defendants stay in the community without harming community safety.
 - b. To save money and resources and reduce recidivism by diverting mentally-ill defendants from pretrial detention to pretrial release supervision to save resources and provide for treatment and stability of mentally-ill defendants even before resolution of their cases.
 - c. To provide defendants who are successful while in the program an opportunity to avoid prison and jail sentences in favor of community- and treatment-based sentences if convicted.

- 4) **INELIGIBILITY.** Defendants shall be ineligible for participation in the Mental Health Program if:
 - a. Current charges
 - i. A sexual offense for which the defendant has to or would have to register as a sex offender
 - ii. A crime of violence as defined in C.R.S. 18-1.3-406
 - iii. Child abuse
 - iv. Domestic violence
 - v. Felony Driving Under the Influence
 - vi. Vehicular assault
 - vii. Any offense which resulted in serious bodily injury

- b. Prior convictions
 - i. A sexual offense for which the defendant has to or would have to register as a sex offender
 - ii. A crime of violence defined in C.R.S. 18-1.3-406
- c. Exceptions

If all Parties, including the victim in V.R.A. cases, agree a defendant can be screened for and enrolled in the program despite current charge or prior convictions.

5) CONFIDENTIALITY.

- a. The Division will only seek releases of information which allow for confirmation of attendance and participation in treatment services and will not seek releases to access diagnoses or confidential communications with treatment providers.
- b. Should the Division learn of diagnoses or confidential communications with treatment providers, the Division shall keep such information strictly confidential and share it only with the defendant and their counsel, unless the defendant executes a voluntary release, or unless disclosure is ordered by a Court, or if the Division believes the defendant's conduct violates any statute or any term or condition of release, including bond and protection order conditions.
- c. Reporting to the Court and Parties shall be limited to whether a defendant is eligible and appropriate for participation, ineligible or inappropriate for participation, and whether a defendant is compliant or non-compliant. The reporting may include dates of attendance and the identity of treating agencies, and in the case of bond revocations, adequate information to inform about non-compliance. The Division will only make other reporting of any confidential matters if ordered by a Court or if the Division believes the defendant's conduct violates any statute or any term or condition of release, including bond and protection order conditions.
- d. Should a defendant raise competency, insanity, or provide notice of an intent to introduce expert testimony regarding mental condition, the disclosure of information shall be governed by applicable law. The Division shall disclose information upon a Court order or finding by the Court about what information shall be disclosed.
- e. Should a defendant testify and through their testimony a Court find they have waived confidentiality, the Division will disclose or protect confidentiality consistent with the rulings of the Court.
- f. The Division shall not release any information to outside people or agencies without consent of the defendant, unless ordered to do so by any Court.

6) PARTIES' RESPONSIBILITIES.

- a. Division
 - i. The Division will conduct timely defendant screenings at the direction of judicial officers with the consent of the defendants and their counsel.

- ii. Defendant screenings will involve contact with defendants, interviews with defendants, and the signed authorization for release of information ("ROIs") consistent with the confidentiality rules.
 - iii. The Division will not interview or request signed ROIs from defendants until the defendants have conferred with defense counsel.
 - iv. The Division will notify the other Parties of defendants' appropriateness for the Mental Health Program after the screening is conducted.
 - v. The Division will provide regular updates on the defendants' program progress to the Parties during the defendants' pretrial period.
 - vi. The Division will provide resources necessary to ensure the stability and support of defendants while in the Mental Health Program.
- b. District Attorney
- i. The DA will refer prospective defendants for screening to the Division, where appropriate.
 - ii. The DA will consult with victims in V.R.A. cases and provide victim input to the Division regarding prospective defendants, prior to screening.
 - iii. The DA agrees to pretrial supervision in the Mental Health Program for defendants who are deemed appropriate by the Parties for the Program and to non-custodial sentences for those defendants who the Parties agree have been successful in the Mental Health Program and remain compliant until sentencing. Non-custodial sentences include: probation, alternative sentencing, deferred judgment and sentence stipulations, or direct sentences to Community Corrections.
 - iv. If the Court orders the Mental Health Program as a condition of bond on a defendant over the objection of the DA, the DA's office will not be bound to this MOU for that defendant in the present criminal matter.
- c. Public Defender
- i. The PD's Office agrees to in good faith advise defendants about the program when it may be applicable to them.
 - ii. The PD's Office agrees to advise defendants about the need to participate and comply with program rules in order to participate.
- d. Judicial
- i. The Court shall authorize a screen only with the consent of the defendant or his or her counsel if applicable.
 - ii. The Court agrees to not order supervision in the Mental Health Program as a condition of bond until the Mental Health Program has screened the defendant for appropriateness in the case and accepted the defendant.
 - iii. The Court agrees that the Parties are not bound by the Division's determination of a defendant's appropriateness for the program or a defendant's compliance with the program.

7) PROCEDURES.

- a. Any party or the Court may suggest or inquire whether a referral for a Mental Health Screening is appropriate. A screen will only be ordered with consent of the defendant or his or her counsel if applicable.

- b. The Division will report the results of the screenings to the Parties.
- c. In most instances, if deemed appropriate by the Court, a defendant will be given a personal recognizance bond once accepted.
- d. Once accepted, the Division will work in good faith to assist the defendant with referrals to services, provide resources to the defendant, and make reasonable efforts to help the defendant comply with bond conditions and be monitored in the community.
- e. The Division will give consideration to community safety and the safety of the defendant and will seek bond revocation, if the defendant violates any statute or term or condition of release, including conditions of bond or a protection order, or if otherwise appropriate to ensure the safety of the public or the defendant.
- f. The Division shall report to the Parties consistent with the confidentiality principles herein or by order of the Court.

8) **SEVERABILITY.** If any provisions of this MOU are held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9) **COMPLIANCE WITH THE LAW.** The Parties to this MOU shall comply with the letter and spirit of all applicable federal, state, and local laws and regulations related to performance under this MOU, including the Colorado Rules of Professional Conduct where applicable.

10) **NO WAIVER UNDER CGIA.** Nothing in this MOU shall be construed as a waiver by any Party of the protections afforded them pursuant to the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S. ("CGIA") as same may be amended from time to time. Specifically, no Party waives the monetary limitations or any other rights, immunities or protections afforded by the CGIA, or otherwise available at law. If any waiver by one Party results in a waiver of protections afforded to another Party, the waiving Party, to the extent allowed by law, shall indemnify and hold harmless the other Party for such actions.

11) **NO THIRD PARTY BENEFICIARIES.** It is expressly understood and agreed that nothing contained herein shall give or allow any claim or right of action by any other or third person not a party to this MOU. It is the express intent of the parties that any person other than the parties shall be deemed to be an incidental beneficiary only.

12) **NO AGENCY OR EMPLOYMENT RELATIONSHIP.** The Parties to this MOU are cooperating entities. Nothing contained in this MOU shall be construed to create a legal

agency or employment relationship between the parties. Neither Party, nor any employee of any Party, shall be deemed to be an agent or employee of another Party. Each entity will be responsible for its acts and those of its employees, agents and subcontractors, if any, during the course of this MOU.

13) **EFFECT.** This MOU sets forth the general intent and goals of the Parties. The MOU serves as a guiding document for the cooperative purposes and efforts described in this MOU. The MOU is not intended and shall not be construed to confer remedies on any Party in the event of a violation under the MOU or failure of any Party to perform as specified under the MOU.

14) **MODIFICATION.** This MOU constitutes the entire agreement between the Parties. No variation or modification of the MOU shall be valid unless in writing and signed by the duly authorized representatives of the Parties and attached as an amendment hereto.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, have executed this MOU on the dates written below.

18th JUDICIAL DISTRICT

Date: June 23, 2021
By: Michelle Amico
Typed: Michelle Amico
Title: Chief Judge, 18th Judicial District

18th JUDICIAL DISTRICT ATTORNEY

Date: July 15, 2021
By: John Kellner
Typed: John Kellner
Title: District Attorney, 18th Judicial District

ARAPAHOE COUNTY

Date: _____
By: _____
Typed: Nancy Jackson
Title: Chairman, BoCC of Arapahoe County

ARAPAHOE COUNTY PUBLIC DEFENDER

Date: July 9, 2021
By: James Karbach
Typed: James Karbach
Title: Office Head, Public Defender's Office