

Dangerous Defendant Process

Administrative Office of the Courts

Court Services Division

Automation Services Unit

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Legislative Background

- [SB1310 \(Chapter 352\) dangerous; incompetent person; evaluation; commitment](#) was signed into law during the 2022 Legislative Session.
- Jurisdiction: Superior Court
- Effective January 1, 2024, creates a new process by which a defendant charged with a serious offense as defined in [A.R.S. § 13-706](#) may be involuntarily committed to a secure state mental health facility if the defendant is found incompetent to stand trial, there is no substantial probability that the defendant will become competent within the allowable timeframe, the proof is evident or the presumption great that the defendant committed the act that constitutes a serious offense, and defendant is determined to be dangerous.
- If dangerous and involuntarily committed all further proceedings will then be conducted under Title 36, Chapter 40, which is a new chapter of Title 36. Outlines requirements for the treatment of a committed defendant and proceedings related to petitions for discharge and petitions for conditional release to a less restrictive alternative.

Serious Offenses Defined

- A.R.S. § 13-706 defines a "Serious offense" as any of the following offenses if committed in this state or any offense committed outside this state that if committed in this state would constitute one of the following offenses:
 - First degree murder
 - Second degree murder
 - Manslaughter
 - Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument
 - Sexual assault
 - Any dangerous crime against children
 - Arson of an occupied structure
 - Armed robbery
 - Burglary in the first degree
 - Kidnapping
 - Sexual conduct with a minor under fifteen years of age
 - Child sex trafficking

New Dangerous Process

A.R.S. § 13-4517(A) If the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency within twenty-one months after the date of the original finding of incompetency, any ***party may request that the court:**

NEW

1. Remand the defendant to an evaluating agency for the institution of civil commitment proceedings pursuant to title 36, chapter 5. If the defendant is remanded, the prosecutor shall file a petition for evaluation and provide any known criminal history for the defendant.

2. Appoint a guardian ad litem to investigate whether the defendant is or may be in need of a guardian, a conservator or any other protective order pursuant to title 14, chapter 5.

3. Release the defendant from custody and dismiss the charges against the defendant without prejudice.

4. If the defendant is charged with a serious offense as defined in section 13-706, order a trial to determine if the defendant is dangerous and should be involuntarily committed pursuant to section 13-4521. If the defendant is not represented by an attorney and is indigent, the court shall appoint an attorney to represent the defendant in all proceedings under section 13-4521 and any further proceedings under title 36, chapter 40.

*Note: Each subsection is a request that is a separate process. More than one request may be submitted and processed in parallel.

Rule Updates

- [R-23-0014](#)
 - Amends Rules 11.1 and 11.3 through 11.7 of the Rules of Criminal Procedure to implement a recent statute authorizing a defendant to be involuntarily committed to a secure state mental health facility in certain circumstances if the defendant is found incompetent to stand trial, effective January 1, 2024.
- [R-24-0026](#)
 - **Pending.** Will be on August 2024 Rules Agenda. Would amend Civil Rule 49(d)(1) and Criminal Rule 18.1 to provide guidance related to jury size and verdict requirements for A.R.S. § 13-4521 trials.
- [R-23-0043](#)
 - Adopted on emergency basis. The court will decide whether to permanently adopt at August 2024 Rules Agenda. Amends Rule 123(d)(7) of the Rules of the Supreme Court of Arizona to establish provisions for restricting public access in cases opened under A.R.S. Title 36, Chapter 40 involving defendants who have been involuntarily committed after a finding of incompetence and being dangerous under newly enacted A.R.S. § 13-4521. Court will decide whether to adopt on a permanent basis during August 2024 Rules Agenda.

New Administrative Order and Directive

- Administrative Order [2024-38.pdf \(azcourts.gov\)](#).
 - This administrative order establishes standardized case processing procedures and statistics reporting requirements for A.R.S. § 13-4521 and Title 36, Chapter 40 proceedings.
- Administrative Directive [2024-05 .pdf \(azcourts.gov\)](#)
 - Order Regarding Involuntary Commitment Under A.R.S. § 13-4521 form adopted for use by all Arizona courts for A.R.S. § 13-4521 proceedings.

New Form

- New “**Order Regarding Involuntary Commitment Under A.R.S. § 13-4521**” form per [2024-05 .pdf \(azcourts.gov\)](#).
 - Form provides the court a mechanism to order a Title 36, Chapter 40 case to be opened to process dangerous defendant’s involuntary commitment and treatment.
- Form will be located at: [Court Forms - Documents - Criminal \(sharepoint.com\)](#)
- GJ AJACS Courts should review and determine if e-bench template creation is needed.

New Reporting Requirements

- Pursuant to A.R.S. §13-4521(L), the court shall annually report the following information for the previous year to the Arizona criminal justice commission:
 - The number of court orders for a trial pursuant to section 13-4517, subsection A, paragraph 4, including the number of jury trials that were held.
 - The number of defendants who are committed after a trial pursuant to this section.
 - The number of committed defendants who are conditionally released to a less restrictive alternative.
 - The number of committed defendants who are restored to competency or determined to not be dangerous and who are discharged.
- **IMPORTANT:** Use the automation updates created for SB1310 to fulfil reporting requirements.

Automation Updates

- New Event Codes
- New Appearance Reasons
- New Case Sub Type

New Event Codes

Code	Event Category	Event Codes	A.R.S.	Reporting Requirements ARS 13-4521(L)	Display Public Access
4000005	ORDER	ORDER: Bench Trial to Determine if Defendant is Dangerous	13-4517(A)(4)	13-4521(L)(1) <u>The number of court orders for a trial pursuant to section 13-4517, subsection A, paragraph 4, including the number of jury trials that were held.</u>	Y
4000006	ORDER	ORDER: Jury Trial to Determine if Defendant is Dangerous	13-4517(A)(4)	13-4521(L)(1) The number of court orders for a trial pursuant to section 13-4517, subsection A, paragraph 4, <u>including the number of jury trials that were held.</u>	Y
4000007	ORDER	ORDER: Proof Evident Hearing	13-4521(A)		Y
4000008	MINUTE ENTRY	MINUTE ENTRY: Proof Evident Hearing	13-4521(B)		Y
4000009	MINUTE ENTRY	MINUTE ENTRY: Trial-Finding of Dangerous	13-4521(F) - 13-4521(I); 13-4521(L)(2) 36-425.06(A)	The number of defendants who are committed after a trial pursuant to this section.	Y
4000010	MINUTE ENTRY	MINUTE ENTRY: Trial-Finding of Not Dangerous	13-4521(E)		Y
4000011	ORDER	ORDER: Order Regarding Involuntary Commitment	13-4521		Y
4000012	MINUTE ENTRY	MINUTE ENTRY: Finding of Not Dangerous Restored	36-4003.1	13-4521(L)(4) reporting requires "The number of defendants who are restored to competency . . . and who are discharged." Note: Court will only use ORDER: Order Finding of Competency if Dangerous finding remains.	N
4000013	MINUTE ENTRY	MINUTE ENTRY: Finding of Not Dangerous Discharge	36-4003.2(a)	13-4521(L)(4) reporting requires "The number of defendants who are determined to not be dangerous . . . and who are discharged"	N
4000014	ORDER	ORDER: Conditional Release to a Less Restrictive Alternative	36-4003.2(b)	13-4521(L)(3)The number of committed defendants who are conditionally released to a less restrictive alternative.	N

IMPORTANT: NICS transactions are already completed through Rule 11 and Mental Health case process. No new transactions are sent.

New Appearance Reasons

New Calendar Appearance Reasons	Minute Entry
Proof Evident Hearing	MINUTE ENTRY: Proof Evident Hearing
Trial Finding of Dangerous/Not Dangerous	MINUTE ENTRY: Trial-Finding of Dangerous MINUTE ENTRY: Trial-Finding of Not Dangerous
Finding of Not Dangerous Restored/Discharge/Denied	MINUTE ENTRY: Finding of Not Dangerous Restored MINUTE ENTRY: Finding of Not Dangerous Discharge MINUTE ENTRY: Minute (Standard) Probate

New Case Sub Type

- The new **Dangerous Case Sub Type** should be used when creating a **Title 36, Chapter 40 case** after the defendant has been found dangerous and involuntarily committed when the criminal case has been dismissed.
- AJACS case creation example:
 - **Court Type:** Probate
 - **Case Category:** Mental Health-Probate
 - **Case Type:** Mental Health- Adult
 - **Case Sub Type:** Dangerous
 - **Filing Type:** *Agency Filing
 - **Commenced by:** Order

Dangerous Defendant Process

The following slides provide information on processing dangerous defendants in AJACS.

Dangerous Defendant Process

CRIMINAL CASE PROCESSING OVERVIEW

DANGEROUS EVALUATION REQUESTED AND ORDERED	PROOF OF EVIDENT HEARING	TRIAL TO DETERMINE DANGEROUS	FINDING OF DANGEROUS	MENTAL HEALTH CASE CREATION
<p>A.R.S. § 13-4521(A), If a court enters an order pursuant to section 13-4517, subsection A, paragraph 4, the court shall hold a hearing within ten days after the order is issued to determine if the proof is evident or the presumption great that the defendant committed the act that constitutes a serious offense as defined in section 13-706.</p>	<p>A.R.S. § 13-4521(B), If the court does find the proof is evident or the presumption great pursuant to subsection A of this section, the court shall hold a trial within one hundred twenty days after the court issued the order pursuant to section 13-4517, subsection A, paragraph 4 to determine if the defendant is dangerous and should be involuntarily committed.</p>	<p>A.R.S. § 13-4521(E), At a trial to determine if the defendant is dangerous, the state shall establish beyond a reasonable doubt that the defendant is dangerous and should be involuntarily committed. If the factfinder does not find that the defendant is dangerous or does not find that the defendant should be involuntarily committed, the court shall proceed pursuant to section 13-4517, subsection A, paragraph 1, 2 or 3.</p>	<p>A.R.S. § 13-4521(F), If the factfinder finds that the defendant is dangerous and should be involuntarily committed, the court shall dismiss the charges against the defendant without prejudice and order the defendant to be committed to a secure state mental health facility.</p>	<p>A.R.S. § 13-4521(F), The defendant shall receive education, care, supervision and treatment to render the defendant either competent or nondangerous.</p> <p>Note: All further proceedings will then be conducted under Title 36, Chapter 40.</p>

Dangerous Defendant Process

- **If a defendant has been found incompetent and non-restorable, a party may request a trial to determine if defendant is dangerous.**
- Pursuant to A.R.S. § 13-4517(A)(4), if the defendant is charged with a serious offense order a trial to determine if the defendant is dangerous and should be involuntarily committed.
- If the defendant is not represented by an attorney and is indigent, the court shall appoint an attorney to represent the defendant in all proceedings under the criminal case and any further proceedings under title 36, chapter 40 case.

Dangerous Defendant Process

- **Dangerous evaluation ordered.**
 - Docket evaluation ordered with event entry code **ORDER: Court Ordered Evaluation.**
 - Docket evaluation report received with **REPORT: Evaluation.**
- Pursuant to A.R.S. § 13-4521(D), if there has not been a previous evaluation to determine whether the defendant is dangerous, the defendant shall be examined by mental health experts in accordance with the requirements of section 13-4509, subsection D to determine if the defendant should be considered dangerous. The state and the defendant may each retain a mental health expert to examine the defendant and present the defendant's mental health evaluation at the trial.

Dangerous Defendant Process

- **Proof Evident Hearing Ordered.**
 - Docket with event entry code **ORDER: Proof Evident Hearing.**
- Pursuant to A.R.S. § 13-4521(A), if a court enters an order pursuant to section 13-4517, subsection A, paragraph 4, the court shall hold a hearing within ten days after the order is issued to determine if the proof is evident or the presumption great that the defendant committed the act that constitutes a serious offense as defined in section 13-706.

Dangerous Defendant Process

- **Proof Evident Hearing Held.**
 - Docket with event entry code **MINUTE ENTRY: Proof Evident Hearing** and result with calendar appearance reason **Proof Evident Hearing**.
- Pursuant to A.R.S. § 13-4521(B), if the court does find the proof is evident or the presumption great pursuant to subsection A of this section, the court shall hold a trial within one hundred twenty days after the court issued the order pursuant to section 13-4517, subsection A, paragraph 4 to determine if the defendant is dangerous and should be involuntarily committed.

Dangerous Defendant Process

- **Order bench or jury trial to determine if defendant is dangerous.**
 - Docket with event entry code **ORDER: Bench Trial to Determine if Defendant is Dangerous** or **ORDER: Jury Trial to Determine if Defendant is Dangerous**.
- Pursuant to A.R.S. § 13-4521(B), unless the state or defendant requests a jury trial, a trial held pursuant to this subsection shall be before the court.

Dangerous Defendant Process

- **Dangerous Trial Held.**
- Pursuant to A.R.S. § 13-4521(E), at a trial to determine if the defendant is dangerous, the state shall establish beyond a reasonable doubt that the defendant is dangerous and should be involuntarily committed.

Dangerous Defendant Process

- **After trial, complete the [Order Regarding Involuntary Commitment Under A.R.S. § 13-4521](#) form.**
 - Docket with event entry code **ORDER: Order Regarding Involuntary Commitment.**
- The order shall require that the defendant remain committed to a secure state mental health facility until any of the following occurs, but not longer than the presumptive sentence for highest charged offense:
 - The court finds that the defendant is competent to stand trial.
 - The court finds that the defendant is no longer dangerous.
- Pursuant to A.R.S. § 13-4521(G), if the court issues a commitment order pursuant to this section. All further proceedings for the defendant's continued treatment and the circumstances under which the defendant shall be conducted under the Title 36, Chapter 40 case.

Dangerous Defendant Process

- The [Order Regarding Involuntary Commitment Under A.R.S. § 13-4521](#) form provides the court with a court findings section. Select if the defendant is found Dangerous or Not Dangerous and proceed with the Court Orders section. **Important:** Docket the minute entry according to the findings to satisfy the reporting requirements.

SECTION 1. COURT FINDINGS

Based upon the information presented to the Court, **THE COURT FINDS THAT** the defendant has been found incompetent and not restorable within twenty-one months, has been charged with an act that constitutes a serious offense as defined in A.R.S. § 13-706, there is proof evident or presumption great that the defendant committed the act that constitutes that serious offense, **AND:**

(only those items marked)

1. The defendant **has** been found dangerous after a bench trial, jury trial

AND

- a. The defendant **should** be involuntarily committed.
b. The defendant **should not** be involuntarily committed.

OR

2. The defendant **has not** been found dangerous and shall not be involuntarily committed.

Dangerous Defendant Process

- **After trial, if defendant is found Not Dangerous.**
 - Docket with event entry code **MINUTE ENTRY: Trial-Finding of Not Dangerous** and result with calendar appearance reason **Trial Finding of Dangerous/Not Dangerous.**
- Pursuant to A.R.S. § 13-4521(E), if the factfinder does not find that the defendant is dangerous or does not find that the defendant should be involuntarily committed, the court shall proceed pursuant to section 13-4517, subsection A, paragraph 1, 2 or 3.
- Dangerous process complete. Criminal case processing resumes.

Dangerous Defendant Process


- **After trial, if defendant is found Dangerous.**
 - Docket with event entry code **MINUTE ENTRY: Trial-Finding of Dangerous** and result with calendar appearance reason **Trial Finding of Dangerous/Not Dangerous.**
- Pursuant to A.R.S. § 13-4521(F), if the factfinder finds that the defendant is dangerous and should be involuntarily committed, the court shall dismiss the charges against the defendant without prejudice and order the defendant to be committed to a secure state mental health facility. The defendant shall receive education, care, supervision and treatment to render the defendant either competent or nondangerous.
- Dismiss criminal charges without prejudice and criminal case is complete. Title 36, Chapter 40 case opened.

Dangerous Defendant Process

- **Title 36, Chapter 40 case is opened.**
 - AJACS Court will enter **Mental Health** case with a case sub type **Dangerous** is created to meet report requirements.
- Pursuant to A.R.S. § 13-4521(F), the defendant shall receive education, care, supervision and treatment to render the defendant either competent or non-dangerous.
- All further dangerous proceedings will then be conducted under Title 36, Chapter 40 case until the defendant is restored to competency or is found to be no longer dangerous.

Dangerous Defendant Process

- **Creating a Title 36, Chapter 40 case in AJACS.**
 - Select the following from the dropdown.
 - **Filing Date:** DATE OF ORDER
 - **Court Type:** PROBATE
 - **Case Category:** MENTAL HEALTH-PROBATE
 - **Case Type:** MENTAL HEALTH-ADULT
 - **Case Sub Type:** DANGEROUS
 - **Filing Type:** OTHER
 - **Commenced By:** ORDER
- Select the OK icon to save.
- Upon saving, the Manage Case screen will open.



Create a New Case

OK Cancel

Filing Date 01/01/2024

Case Type Information

Court Type	PROBATE
Case Category	MENTAL HEALTH - PROBATE
Case Type	MENTAL HEALTH - ADULT
Case Sub Type	DANGEROUS
Filing Type	OTHER
Commenced By	ORDER

Dangerous Defendant Process

MENTAL HEALTH CASE PROCESS OVERVIEW

BIANNUAL EXAMINATION & REPORTS

PETITION FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE

HEARING & DISPOSITION

A.R.S. § 36-4002(A) The psychiatrist, psychologist or other competent professional of the secure state mental health facility shall biannually examine each person who is committed pursuant to section 13-4521. The person who conducts the biannual examination shall submit the examination report to the court, the state and the committed defendant.

A.R.S. § 36-4004(A) If the medical director determines that the committed defendant's mental illness, defect or disability has so changed that the committed defendant is no longer dangerous if conditionally released to a less restrictive alternative, the medical director shall allow the committed defendant to petition the court for conditional release to a less restrictive alternative. The committed defendant shall serve the petition on the court and the attorney for the state. The court shall hold a hearing on the petition for conditional release to a less restrictive alternative within forty-five days after receiving the petition.

A.R.S. § 36-4004(C) This section does not prohibit the committed defendant from annually petitioning the court for conditional release to a less restrictive alternative without the approval of medical director.

A.R.S. § 36-4003, After a hearing pursuant to section 36-4002 or 36-4004, if the court finds that:

1. The committed defendant has been restored to competency; the court shall order the criminal proceedings to resume.
2. The committed defendant has not been restored to competency and:
 - (a) The committed defendant is not dangerous, the court shall release the committed defendant from treatment and proceed pursuant to section 13-4517, paragraph 1, 2 or 3.
 - (b) The committed defendant is not dangerous in whole or in part because of the habilitation or treatment that the patient is receiving, including taking medication, the court may release the committed defendant to a less restrictive alternative pursuant to sections 36-4005 and 36-4006.
 - (c) The committed defendant is dangerous, the committed defendant, subject to section 13-4521, subsection H, shall remain committed for education, care, supervision and treatment to render the committed defendant competent or nondangerous.

Dangerous Defendant Process

- **Biannual Examination and Reports.**
 - Docket the evaluation provided with event entry **Report: Report**
- Pursuant to A.R.S. § 36-4002(A), the psychiatrist, psychologist or other competent professional of the secure state mental health facility shall biannually examine each person who is committed pursuant to section 13-4521. The person who conducts the biannual examination shall submit the examination report to the court, the state and the committed defendant.

Dangerous Defendant Process

- **Petition for Conditional Release to a Less Restrictive Alternative.**
 - Docket the petition received with event entry **PETITION: Petition.**
- Pursuant to A.R.S. § 36-4004(A), if the medical director determines that the committed defendant's mental illness, defect or disability has so changed that the committed defendant is no longer dangerous if conditionally released to a less restrictive alternative, the medical director shall allow the committed defendant to petition the court for conditional release to a less restrictive alternative. The committed defendant shall serve the petition on the court and the attorney for the state. The court shall hold a hearing on the petition for conditional release to a less restrictive alternative within forty-five days after receiving the petition.
- Additionally, pursuant to A.R.S. § 36-4004(C) this section does not prohibit the committed defendant from annually petitioning the court for conditional release to a less restrictive alternative without the approval of medical director.

Dangerous Defendant Process

- **Hearing on petition for conditional release to a less restrictive alternative.**
- Pursuant to A.R.S. § 36-4004(D), the committed defendant may be present at the hearing. Either party may request that the committed defendant be examined by the party's own competent professional. The attorney for the state has the burden of proving by clear and convincing evidence that the committed defendant's mental illness, defect or disability has not changed and that the committed defendant remains dangerous if conditionally released to a less restrictive alternative. If the state does not meet its burden of proof, the committed defendant shall be discharged from treatment.

Dangerous Defendant Process

- **After hearing, if the petition is granted.** The court may release the defendant to a less restrictive alternative.
 - Docket with event entry code **ORDER: Conditional Release to a Less Restrictive Alternative.**
- Pursuant to A.R.S. § 36-4003.2(b), if the committed defendant is not dangerous in whole or in part because of the habilitation or treatment that the patient is receiving, including taking medication, the court may release the committed defendant to a less restrictive alternative pursuant to sections 36-4005 and 36-4006.

Dangerous Defendant Process

- **After hearing, if the petition is denied.**
 - Docket with event entry code **ORDER: Denying.**
- Pursuant to A.R.S. § 36-4004(E), at the conclusion of a hearing, if the court finds that there is no legally sufficient evidentiary basis to conclude that the conditions prescribed in section 36-4006 have been met, the court shall deny conditional release to a less restrictive alternative.

Dangerous Defendant Process

- **Hearing to determine if defendant is competent and/or is no longer dangerous.**
- Pursuant to A.R.S. § 36-4002(B), if the psychiatrist, psychologist or other competent professional submits a report indicating that the committed defendant is competent to stand trial or is no longer dangerous, the court shall hold a hearing to determine whether the committed defendant is competent or is no longer dangerous.

Dangerous Defendant Process

- **After hearing, if defendant has been restored to competency.**
 - Docket with event entry **ORDER: Order Finding of Competency.**
 - Docket with event entry **MINUTE ENTRY: Finding of Not Dangerous Restored** if defendant is also found not dangerous.
- Pursuant to A.R.S. § 36-4003.1, after a hearing pursuant to section 36-4002 or 36-4004, if the court finds that the committed defendant has been restored to competency, the court shall order the criminal proceedings to resume.
- Close Title 36, Chapter 40 case. A new criminal case may be re-filed.

Dangerous Defendant Process

- **After hearing, if defendant has not been restored to competency but the committed defendant is not dangerous.**
 - Docket with event entry **MINUTE ENTRY: Finding of Not Dangerous Discharge.**
- Pursuant to A.R.S. § 36-4003.2(a), if the committed defendant has not been restored to competency and the committed defendant is not dangerous, the court shall release the committed defendant from treatment and proceed pursuant to section 13-4517, paragraph 1, 2 or 3.
- Title 36, Chapter 40 case is now complete. A new criminal case, guardianship/conservatorship, or non-dangerous mental health case may be filed.

Dangerous Defendant Process

- **After hearing, if defendant is determined to still be dangerous**
 - Docket with event entry **MINUTE ENTRY: Minute (Standard) Probate.**
- Pursuant to A.R.S. § 36-4003.2(c), the committed defendant is dangerous, the committed defendant, subject to section 13-4521, subsection H, shall remain committed for education, care, supervision and treatment to render the committed defendant competent or nondangerous.
- Title 36, Chapter 40 case will continue.

Questions?

Please contact the AOC Support Center at (602)452-3900
or create a ticket with [**RemedyForce Self Service**](#)
or send an email to [**help@courts.az.gov**](mailto:help@courts.az.gov)