

TRANSFER

TRANSFER HEARING

Source: [A.R.S. §8-327](#); [Ariz. R.P. Juv. Ct. 34 & 35](#)

CALL THE CASE:

1. Identify the case number, case name and nature of the hearing.
2. Identify those present.
3. Read the Victim Notice if the victim is in court for the first time on this case.
4. Determine juvenile's competence (court shall not transfer a juvenile who is incompetent). [Ariz. R.P. Juv. Ct. 34\(E\)\(3\)](#).

PROBABLE CAUSE DETERMINATION:

Determine whether juvenile waives the probable cause hearing.

1. If juvenile wishes to waive probable cause hearing, waiver must be in writing signed by the juvenile, the juvenile's counsel and the prosecutor and, prior to acceptance of waiver, court shall inform the juvenile of the consequences of the waiver and the rights, pursuant to [Ariz. R. Crim. P. 5.3](#) and [Ariz. R. Crim. P. 5.4\(c\)](#), that the juvenile is waiving. See: [Ariz. R.P. Juv. Ct. 34\(F\)\(1\)\(a\)](#). Court shall make written findings as to the waiver.
2. If juvenile does not properly waive probable cause hearing, hear the State's case pursuant to [Ariz. R. Crim. P. 5.3](#) and [Ariz. R. Crim. P. 5.4](#) and [Ariz. R.P. Juv. Ct. 34 \(F\)\(2\)](#).
3. If State does not show probable cause for the offense(s) charged or lesser included offense(s) by the juvenile, dismiss the petition without prejudice. [Ariz. R.P. Juv. Ct. 34\(F\)\(2\)\(c\) - \(d\)](#).
4. If State shows probable cause to believe that the offense(s) charged has been committed and that the juvenile committed the offense(s) charged, hear any offer of proof offered by the juvenile.
5. Unless the offer of proof is insufficient to rebut probable cause showing, hear evidence offered by the juvenile.
6. If probable cause is not rebutted, make probable cause findings and proceed with public safety determination.

PUBLIC SAFETY DETERMINATION:

1. Hear the State's evidence/argument.
2. Hear the juvenile's evidence/argument.
3. Hear the State's rebuttal evidence/argument.
4. Consider the factors set forth in [A.R.S. §8-327\(D\)](#):
 - Seriousness of the offense involved,
 - Record and previous history of the juvenile, including previous contacts with courts and law enforcement, previous periods of probation and results of probation;
 - Any previous commitments to residential placements and secure institutions;
 - Whether the juvenile was previously committed to the Arizona Department of Juvenile Corrections for a felony offense;
 - Commission of another felony while a ward of the Arizona Department of Juvenile Corrections;
 - Commission of the alleged offense while participating in, assisting, promoting or furthering the interests of a criminal street gang, criminal syndicate or racketeering enterprise;
 - Views of victim of the offense;
 - Degree of juvenile's participation in the offense;
 - Juvenile's mental and emotional condition; and
 - Likelihood of juvenile's reasonable rehabilitation through the use of services and facilities currently available to juvenile court.
5. Considering these factors, determine in writing whether the State has shown by a preponderance of the evidence that transfer of the juvenile for adult criminal prosecution would best serve the public safety (minute entry should contain this determination). "The court shall not defer the decision as to the transfer." [A.R.S. § 8-327\(E\)](#).
6. Ensure you have stated reasons for transferring or not transferring on the record, whether State has shown by preponderance of the evidence that probable cause exists to believe the juvenile committed the offense, and if so, that public safety would best be served by the transfer of the juvenile for criminal prosecution. If cause for transfer established, order juvenile be transferred for criminal prosecution to the appropriate court. [A.R.S. § 8-327\(C\) and \(E\)](#).
7. If transfer is not ordered, dismiss the motion for transfer and set a contested adjudication within 30 days from the order of dismissal. Ariz. R.P. Juv. Ct. 34(F)(5); [A.R.S. § 8-327\(E\)](#). [Pima County: 15 days if detained]

8. If transfer is ordered, order holding the juvenile to answer the identified charges in adult criminal court as if the juvenile was an adult. Order that no further preliminary hearing or grand jury indictment shall occur, and order that the complaint shall not be amended to add additional or different charges unless the juvenile consents. [Ariz. R.P. Juv. Ct. 35\(A\)\(1\) and \(2\)](#).
9. Set the arraignment date, time and court.
10. Conduct the initial appearance pursuant to [Ariz. R. Crim. P. 4.2](#).

INITIAL APPEARANCE:

1. Appoint counsel to represent the juvenile in adult criminal court.
2. Advise the juvenile of the right to remain silent.
3. Determine whether the charges transferred are bondable. [A.R.S. § 13-3961](#); [Ariz. R. Crim. P. 7.2\(b\)](#).
4. If the charges transferred are not bondable, order juvenile to remain detained until the arraignment.
5. If the charges transferred are bondable, take evidence/argument and parties' and victim's views on bond and release conditions.
6. If detained, enter order transferring custody of the juvenile to the appropriate law enforcement officer.
7. If subject to release, set the amount of bond or order released on own recognizance and set other release conditions.
8. If released, advise juvenile of rights and release conditions:

- Right to be present at future hearings; that future hearings (including trial) may proceed in juvenile's absence; that juvenile's failure to appear at future hearings may result in new charges being filed and/or an arrest warrant being issued,
- Promise to appear for all scheduled hearings,
- Not leave the state without prior court approval,
- Commit no criminal offenses,

If charged with an offense listed in [A.R.S. § 13-610\(O\)\(3\)](#), order that the juvenile report within five days to the arresting law enforcement agency or its designee and submit a sample of buccal cells or other bodily substances for DNA testing and provide proof of compliance at the arraignment and advise the juvenile that willful failure to comply with this order may result in revocation of release, including arrest and confinement for violation of a condition of release, [A.R.S. §8-238](#). NOTE: [Mario W. v. Superior Court, 230 Ariz. 122, 281 P.3d 476 \(2012\)](#) held that pre-

adjudication buccal swab sample requirement was constitutional but placed limits on extracting DNA profile from the buccal swab before adjudication or absent a failure to appear, and

- Comply with all other release conditions.

9. Advise juvenile that failure to appear or to comply with release conditions may result in juvenile's arrest.
10. Provide juvenile with a copy of the conditions of release and the date, location and time of next court appearance and have juvenile sign a copy of the conditions of release containing the next hearing date in the presence of the court. Ariz. R.P. Juv. Ct. 35(A)(5)
11. Order preparation of the probable cause hearing transcript within 10 days after the completion of the hearing.
12. Advise juvenile of appeal rights.