

2018

# BILL

AN ACT

AMENDING SECTIONS 13-4501, 13-4508, 13-4509, 13-4515 AND 13-4517, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 41, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4519; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 40; RELATING TO INCOMPETENCE TO STAND TRIAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-4501, Arizona Revised Statutes, is amended to read:

**13-4501. Definitions**

In this chapter, unless the context otherwise requires:

1. "Clinical liaison" means a mental health expert or any other individual who has experience and training in mental health or developmental disabilities and who is qualified and appointed by the court to aid in coordinating the treatment or training of individuals who are found incompetent to stand trial. If intellectual disability is an issue, the clinical liaison shall be an expert in intellectual disabilities.

2. "DANGEROUS" MEANS LIKELY, AS A RESULT OF A MENTAL ILLNESS, DEFECT OR DISABILITY, TO COMMIT OR ATTEMPT TO COMMIT A HOMICIDE OR A SEXUALLY VIOLENT OFFENSE AS DEFINED IN SECTION 36-3701 OR TO CAUSE OR ATTEMPT TO CAUSE SERIOUS PHYSICAL INJURY TO ANOTHER PERSON.

~~2~~ 3. "Incompetent to stand trial" means that as a result of a mental illness, defect or disability a defendant is unable to understand the nature and object of the proceeding or to assist in the defendant's defense. In the case of a person under eighteen years of age when the issue of competency is raised, incompetent to stand trial also means a person who does not have sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding or who does not have a rational and factual understanding of the proceedings against the person. The presence of a mental illness, defect or disability alone is not grounds for finding a defendant incompetent to stand trial.

~~3~~ 4. "Mental health expert" means a physician who is licensed pursuant to title 32, chapter 13 or 17 or a psychologist who is licensed pursuant to title 32, chapter 19.1 and who is:

(a) Familiar with this state's competency standards and statutes and criminal and involuntary commitment statutes.

(b) Familiar with the treatment, training and restoration programs that are available in this state.

(c) Certified by the court as meeting court developed guidelines using recognized programs or standards.

~~4~~ 5. "Mental illness, defect or disability" means a psychiatric or neurological disorder that is evidenced by behavioral or emotional symptoms, including congenital mental conditions, conditions resulting from injury or disease and developmental disabilities as defined in section 36-551.

6. "SECURE MENTAL HEALTH FACILITY" MEANS A LICENSED FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL.

~~5~~ 7. "Threat to public safety" means charged with the commission of any of the following:

(a) A crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the infliction of physical injury on another person.

(b) A dangerous crime against children pursuant to section 13-705.

(c) Two or more nondangerous felonies within a period of twenty-four months.

Sec. 2. Section 13-4505, Arizona Revised Statutes, is amended to read:

**13-4508. Privilege against self-incrimination; sealed reports**

A. The privilege against self-incrimination applies to any examination that is ordered by the court pursuant to this chapter.

B. Any evidence or statement that is obtained during an examination is not admissible at any proceeding to determine a defendant's guilt or innocence unless the defendant presents evidence that is intended to rebut the presumption of sanity.

C. Any statement made by the defendant during an examination or any evidence resulting from that statement concerning any other event or transaction is not admissible at any proceeding to

determine the defendant's guilt or innocence of any other criminal charges that are based on those events or transaction, except that a statement or evidence may be used by any party in a hearing to determine if the defendant is eligible for court-ordered treatment pursuant to Title 36, Chapter 5, or is a sexually violent person.

D. Any statement made by the defendant or any part of the evaluations that is obtained during an examination may not be used for any purpose without the written consent of the defendant or the defendant's guardian or a court order that is entered by the court that ordered the examination or that is conducting a dependency or severance proceeding.

E. After a plea of guilty or guilty except insane or the trial or after the defendant is found to be unable to be restored to competence, the court shall order all the reports submitted pursuant to this section sealed. The court may order that the reports be opened only as follows:

1. For use by the court or defendant, or by the prosecutor if otherwise permitted by law, for further competency or sanity evaluations, or in a hearing to determine whether the defendant is eligible for court-ordered treatment pursuant to Title 36, Chap. 5, ~~or~~ is a sexually violent person, **OR IN A HEARING TO DETERMINE WHETHER THE DEFENDANT IS DANGEROUS AND ELIGIBLE FOR COMMITMENT PURSUANT TO SECTION 13-4519.**

2. For statistical analysis.

3. When the records are deemed necessary to assist in mental health treatment pursuant to section 13-502 or 13-4517.

4. For use by the probation department or the state department of corrections if the defendant is in the custody of or is scheduled to be transferred into the custody of the state department of corrections for the purposes of assessment and supervision or monitoring of the defendant by that department.

5. For use by a mental health treatment provider that provides treatment to the defendant or that assesses the defendant for treatment.

6. For data gathering.

7. For scientific study.

F. Any statement made by the defendant during an examination that is conducted pursuant to this chapter or any evidence resulting from that statement is not subject to disclosure pursuant to section 36-509.

Sec. 3. Section 13-4509, Arizona Revised Statutes, is amended to read:

**13-4509. Expert's report**

A. An expert who is appointed pursuant to section 13-4505 shall submit a written report of the examination to the court within ten working days after the examination is completed. The report shall include at least the following information:

1. The name of each mental health expert who examines the defendant.

2. A description of the nature, content, extent and results of the examination and any test conducted **AND OF ANY INSTRUMENT OR TOOL USED TO ASSESS WHETHER THE DEFENDANT IS LIKELY TO BE DANGEROUS.**

3. The facts on which the findings are based.

4. An opinion as to the competency of the defendant.

B. If the mental health expert determines that the defendant is incompetent to stand trial, the report shall also include the following information:

1. The nature of the mental disease, defect or disability that is the cause of the incompetency.

2. The defendant's prognosis.

**3. THE NATURE OF THE MENTAL ILLNESS, DISEASE OR DEFECT THAT MAKES THE DEFENDANT LIKELY TO BE DANGEROUS.**

~~3.~~ **4.** The most appropriate form and place of treatment in this state, based on the defendant's therapeutic needs and potential threat to public safety.

~~4.~~ **5.** Whether the defendant is incompetent to refuse treatment and should be subject to involuntary treatment.

**6. IF THE PROGNOSIS INCLUDES A DETERMINATION 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, WHETHER THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.**

C. If the mental health examiner determines that the defendant is currently competent by virtue of ongoing treatment with psychotropic medication, the report shall address the necessity of continuing that treatment and shall include a description of any limitations that the medication may have on competency.

Sec. 4. Section 13-4515, Arizona Revised Statutes, is amended to read:

**13-4515. Duration of order; excluded time calculation; notice of dismissed charge or voided order; petitions**

A. An order or combination of orders that is issued pursuant to section 13-4512 or 13-4514 shall not be in effect for more than twenty-one months or the maximum possible sentence the defendant could have received pursuant to section 13-702, section 13-703, section 13-704, subsection A, B, C, D or E, section 13-705, section 13-706, subsection A, section 13-708, subsection D or section 13-751 or any section for which a specific sentence is authorized, whichever is less. In making this determination the court shall not consider the sentence enhancements under section 13-703 or 13-704 for prior convictions.

B. The court shall only consider the time a defendant actually spends in a restoration to competency program when calculating the time requirements pursuant to subsection A of this section.

C. The court shall notify the prosecutor, the defense attorney, the medical supervisor and the treating facility if the charges against the defendant are dismissed or if an order is voided by the court. No charges shall be dismissed without a hearing ~~prior to~~ **BEFORE** the dismissal.

D. If a defendant is discharged or released on the expiration of an order or orders issued pursuant to section 13-4512 or 13-4514, the medical supervisor may file a petition stating that the defendant requires further treatment pursuant to title 36, chapter 5, ~~or~~ appointment of a guardian pursuant to title 14 **OR INVOLUNTARY COMMITMENT PURSUANT TO SECTION 13-4519 BECAUSE THE DEFENDANT IS DANGEROUS.**

Sec. 5. Section 13-4517, Arizona Revised Statutes, is amended to read:

**13-4517. Incompetent defendants; disposition**

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:

1. Remand the defendant to an evaluation 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 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 THAT TERM IS DEFINED IN SECTION 13-706, HOLD A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED PURSUANT TO SECTION 13-4519.**

B. If the court enters an order pursuant to subsection A, paragraph 1, ~~or~~ **2 OR 4** of this section, the court may also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the expenses of the defendant's medically necessary maintenance and treatment, including services pursuant to title 36, chapter 29, state only behavioral health services, title XVIII services and medicare part D prescription drug benefits, supplemental social security income and supplemental security disability income.

C. The court may retain jurisdiction over the defendant is committed for treatment pursuant to 13-4519, title 36, chapter 5 or a guardian is appointed pursuant to tile 14, chapter 5.

D. If the court remands the defendant for institution of civil commitment proceedings pursuant to title 36, chapter 5 and the court is notified that the defendant has not had a civil commitment evaluation, OR IF THE COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 4 OF THIS SECTION, the court, if it has retained jurisdiction, may order the sheriff to take the defendant into custody so that the court may explore options pursuant to subsection A, paragraphs 2, ~~or 3~~ OR 4.

E. If the court is notified that the defendant has not been ordered into treatment pursuant to title 36, chapter 5 and the court has retained jurisdiction, the court may order the sheriff to take the defendant into custody so that the court may explore options pursuant to subsection A paragraphs 2, ~~or 3~~ OR 4.

Sec. 6. Title 13, chapter 41, Arizona Revised Statutes, is amended by adding section 13-4518, to read:

**13-4519. Dangerous and incompetent defendants; commitment hearing; disposition; findings**

A. IF A COURT ENTERS AN ORDER PURSUANT TO SUBSECTION A, PARAGRAPH 4 OF SECTION 13-4517, A HEARING SHALL BE HELD PURSUANT TO THIS SECTION TO DETERMINE IF THE DEFENDANT IS DANGEROUS AND SHOULD BE INVOLUNTARILY COMMITTED. IF THE DEFENDANT HAS NOT EMPLOYED COUNSEL, COUNSEL SHALL BE APPOINTED BY THE COURT, AS SOON AS POSSIBLE AND BEFORE SETTING THE HEARING, TO REPRESENT THE DEFENDANT IN CONNECTION WITH THE HEARING AND ANY FURTHER PROCEEDINGS UNDER TITLE 36, CHAPTER 40.

B. 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 THE SAME MANNER PRESCRIBED IN SECTION 13-4505 TO DETERMINE IF THE DEFENDANT SHOULD BE CONSIDERED DANGEROUS.

C. AT A HEARING TO DETERMINE IF THE DEFENDANT IS DANGEROUS THE STATE SHALL ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS DANGEROUS AND THAT THE DEFENDANT COMMITTED THE ACTS THAT CONSTITUTE THE CHARGED OFFENSE. IF THE COURT DOES NOT FIND THE DEFENDANT IS DANGEROUS, THE COURT SHALL PROCEED PURSUANT TO SECTION 13-4517, SUBSECTION A, PARAGRAPH 1, 2 OR 3.

D. IF THE COURT FINDS THAT THE DEFENDANT IS DANGEROUS, THE COURT SHALL ORDER THE DEFENDANT TO BE COMMITTED TO A SECURE STATE MENTAL HEALTH FACILITY LICENSED BY THE DEPARTMENT OF HEALTH SERVICES OR THE JOINT COMMISSION ON ACCREDITATION OF HEALTH CARE ORGANIZATIONS. THE DEFENDANT SHALL RECEIVE EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE DEFENDANT EITHER COMPETENT OR NONDANGEROUS.

E. IF THE COURT ISSUES A COMMITMENT ORDER PURSUANT TO THIS SECTION:

1. ALL FURTHER PROCEEDINGS FOR THE DEFENDANT'S CONTINUED TREATMENT AND THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY BE RELEASED SHALL BE CONDUCTED PURSUANT TO TITLE 36, CHAPTER 40.

2. THE ORDER SHALL REQUIRE THAT THE DEFENDANT REMAIN COMMITTED TO THE CUSTODY OF THE SECURE STATE MENTAL HEALTH FACILITY UNTIL ANY OF THE FOLLOWING OCCURS:

(a) THE COURT FINDS THAT THE DEFENDANT IS COMPETENT TO STAND TRIAL.

(b) THE COURT FINDS THAT THE DEFENDANT IS NO LONGER DANGEROUS.

(c) THE EXPIRATION OF A PERIOD OF TIME EQUAL TO EITHER THE SENTENCE THE DEFENDANT WOULD HAVE RECEIVED IF THE DEFENDANT HAD BEEN

SENTENCED PURSUANT TO SECTION 13-751 OR THE PRESUMPTIVE SENTENCE FOR ALL OTHER OFFENSES.

F. THE COURT SHALL RETAIN JURISDICTION OVER A DEFENDANT WHO IS COMMITTED PURSUANT TO THIS SECTION UNTIL THE COURT DISCHARGES THE DEFENDANT FROM TREATMENT. THE PROCEDURE APPLICABLE TO THE COURT'S EXERCISE OF ITS CONTINUING JURISDICTION SHALL BE AS PROVIDED IN TITLE 36, CHAPTER 40.

G. IF A DEFENDANT IS INVOLUNTARILY COMMITTED PURSUANT TO THIS SECTION, THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE EXTENT TO WHICH THE DEFENDANT IS RECEIVING OR IS ELIGIBLE TO RECEIVE PRIVATE OR PUBLIC BENEFITS THAT MAY BE APPLIED TO THE EXPENSES OF THE DEFENDANT'S MAINTENANCE AND TREATMENT THAT ARE MEDICALLY NECESSARY, INCLUDING FEDERAL AND STATE MEDICAID, ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM MONIES AND REGIONAL BEHAVIORAL HEALTH CARE AUTHORITY MONIES. THE DEPARTMENT MAY ACCEPT THESE MONIES WITHOUT A COURT ORDER. THE DEPARTMENT IS RESPONSIBLE FOR ALL REMAINING COSTS ASSOCIATED WITH THE COMMITMENT.

H. FINDINGS BY THE COURT MADE PURSUANT TO THIS SECTION ARE INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER TITLE 36, CHAPTER 40.

Sec. 7. Title 36, Arizona Revised Statutes, is amended by adding chapter 40, to read:

CHAPTER 40  
DANGEROUS AND INCOMPETENT PERSONS  
ARTICLE 1. GENERAL PROVISIONS

**36-4001. Definitions**

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMPETENT PROFESSIONAL" MEANS A PERSON WHO IS:

(a) FAMILIAR WITH THIS STATE'S CRIMINAL AND INVOLUNTARY COMMITMENT STANDARDS AND STATUTES FOR PERSONS WITH A MENTAL ILLNESS, DEFECT OR DISABILITY THAT ARE AVAILABLE IN THIS STATE.

(b) APPROVED BY THE SUPERIOR COURT AS MEETING COURT APPROVED GUIDELINES.

2. "COMMITTED INCOMPETENT" MEANS A PERSON WHO HAS BEEN DETERMINED TO BE INCOMPETENT AND NONRESTORABLE AND DANGEROUS PURSUANT TO TITLE 13, CHAPTER 41.

3. "LESS RESTRICTIVE ALTERNATIVE" MEANS COURT ORDERED TREATMENT IN A SETTING THAT IS LESS RESTRICTIVE THAN TOTAL CONFINEMENT AND THAT IS CONDUCTED IN A SETTING APPROVED BY THE SUPERINTENDENT OF THE STATE HOSPITAL.

4. "MENTAL ILLNESS, DEFECT OR DISABILITY" MEANS A PSYCHIATRIC OR NEUROLOGICAL DISORDER THAT IS EVIDENCED BY BEHAVIORAL OR EMOTIONAL SYMPTOMS, INCLUDING CONGENITAL MENTAL CONDITIONS, CONDITIONS RESULTING FROM INJURY OR DISEASE AND DEVELOPMENTAL DISABILITIES AS DEFINED IN SECTION 36-551.

**36-4002. Annual examination of committed incompetents; report; representation by counsel**

A. THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL OF THE STATE HOSPITAL OR A LICENSED FACILITY UNDER THE

SUPERVISION OF THE ARIZONA STATE HOSPITAL SHALL ANNUALLY EXAMINE EACH COMMITTED INCOMPETENT PURSUANT TO SECTION 13-4519. THE PERSON WHO CONDUCTS THE ANNUAL EXAMINATION SHALL SUBMIT THE EXAMINATION REPORT TO THE COURT, THE COMMITTED INCOMPETENT, AND TO ANY COUNSEL OF RECORD REPRESENTING THE COMMITTED INCOMPETENT IN CONNECTION WITH THE COMMITTED INCOMPETENT'S COMMITMENT. THE ANNUAL REPORT SHALL STATE THE TREATMENT AND EDUCATION THAT THE COMMITTED INCOMPETENT HAS RECEIVED, A PROGNOSIS FOR THE COMMITTED INCOMPETENT'S RESTORATION TO COMPETENCY AND WHETHER THE COMMITTED INCOMPETENT REMAINS DANGEROUS.

B. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL SUBMITS A REPORT INDICATING THAT THE COMMITTED INCOMPETENT IS COMPETENT TO STAND TRIAL OR IS NO LONGER DANGEROUS THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER THE COMMITTED INCOMPETENT IS COMPETENT OR IS NO LONGER DANGEROUS.

C. IF THE PSYCHIATRIST, PSYCHOLOGIST OR OTHER COMPETENT PROFESSIONAL SUBMITS A REPORT THAT THE COMMITTED INCOMPETENT IS NO LONGER DANGEROUS IN WHOLE OR IN PART BECAUSE OF MEDICATION THAT THE COMMITTED INCOMPETENT IS TAKING, THE REPORT SHALL STATE WHETHER THE DEFENDANT WILL CONTINUE TO TAKE THAT MEDICATION IF RELEASED TO A LESS RESTRICTIVE ALTERNATIVE AND WOULD COMPLY WITH ALL OTHER CONDITIONS OF A LESS RESTRICTIVE ALTERNATIVE.

D. THE COURT SHALL HOLD THE HEARING WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE REPORT. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS OR THAT THE COMMITTED INCOMPETENT IS COMPETENT TO STAND TRIAL.

E. A RETAINED OR APPOINTED COMPETENT PROFESSIONAL SHALL HAVE ACCESS TO ALL RECORDS CONCERNING THE COMMITTED INCOMPETENT. ALL COMPETENT PROFESSIONALS SHALL HAVE EQUAL ACCESS TO THE COMMITTED INCOMPETENT AS WELL AS ALL RECORDS CONCERNING THE COMMITTED INCOMPETENT.

F. THIS SECTION DOES NOT PRECLUDE THE COMMITTED INCOMPETENT FROM PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONAL DISCHARGE FROM TREATMENT PURSUANT TO SECTION 36-4004.

G. IF A COMMITTED INCOMPETENT'S COUNSEL OF RECORD WITHDRAWS FROM REPRESENTING THE COMMITTED INCOMPETENT AT ANY TIME DURING THE DURATION OF THE COMMITTED INCOMPETENT'S COMMITMENT UNDER THIS ARTICLE, THE COURT SHALL NOTIFY THE ATTORNEY FOR THE STATE AND THE COMMITTED INCOMPETENT AND EITHER ALLOW THE COMMITTED INCOMPETENT SUFFICIENT TIME TO EMPLOY OTHER COUNSEL OR, IF THE COMMITTED INCOMPETENT IS INDIGENT, APPOINT COUNSEL TO REPRESENT THE COMMITTED INCOMPETENT IN CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE.

**36-4003. Disposition**

AFTER A HEARING PURSUANT TO SECTION 36-4002 OR 36-4004, IF THE COURT FINDS THAT:

1. THE COMMITTED INCOMPETENT HAS BEEN RESTORED TO COMPETENCY, THE COURT SHALL ORDER THAT THE CRIMINAL PROCEEDINGS RESUME.

2. THE COMMITTED INCOMPETENT HAS NOT BEEN RESTORED TO COMPETENCY AND:

(a) THE COMMITTED INCOMPETENT IS NOT DANGEROUS, THE COURT SHALL RELEASE THE COMMITTED INCOMPETENT FROM TREATMENT AND PROCEED PURSUANT TO SECTION 13-4517, PARAGRAPH 1, 2 OR 3.

(b) THE COMMITTED INCOMPETENT IS NOT DANGEROUS IN WHOLE OR IN PART BECAUSE OF THE HABILITATION OR TREATMENT THAT THE PATIENT IS RECEIVING, INCLUDING THE TAKING OF MEDICATION, THE COURT MAY RELEASE THE COMMITTED INCOMPETENT TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTIONS 36-4005 AND 36-4006.

(c) THE COMMITTED INCOMPETENT IS DANGEROUS, THE COMMITTED INCOMPETENT SHALL REMAIN COMMITTED FOR EDUCATION, CARE, SUPERVISION AND TREATMENT TO RENDER THE COMMITTED INCOMPETENT COMPETENT OR NONDANGEROUS.

**36-4004. Petition for change of status; procedures**

A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE COMMITTED INCOMPETENT IS NO LONGER DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED INCOMPETENT TO PETITION THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE. THE COMMITTED INCOMPETENT 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. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY.

B. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR UNCONDITIONALLY DISCHARGED.

C. THIS SECTION DOES NOT PROHIBIT THE COMMITTED INCOMPETENT FROM ANNUALLY PETITIONING THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL PROVIDE AN ANNUAL WRITTEN NOTICE TO THE COMMITTED INCOMPETENT OF THE COMMITTED INCOMPETENT'S RIGHT TO PETITION THE COURT FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OR DIRECTOR. THE NOTICE MUST CONTAIN A WAIVER OF

RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

D. THE COMMITTED INCOMPETENT MAY BE PRESENT AT THE HEARING. THE PROSECUTING AGENCY MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL SELECTED BY THE PROSECUTING AGENCY. THE COMMITTED INCOMPETENT MAY RETAIN AND THE COURT, ON REQUEST OF AN INDIGENT COMMITTED INCOMPETENT, MAY APPOINT A COMPETENT PROFESSIONAL. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS IF CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IF THE STATE DOES NOT MEET ITS BURDEN OF PROOF, THE COMMITTED INCOMPETENT SHALL BE DISCHARGED FROM TREATMENT.

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 GRANT THE STATE'S MOTION FOR A JUDGMENT ON THE ISSUE OF CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

**36-4005. Conditional release to a less restrictive alternative; conditions; reports; review**

A. IF THE COURT DETERMINES THAT CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE IS IN THE BEST INTEREST OF THE COMMITTED INCOMPETENT AND WILL ADEQUATELY PROTECT THE COMMUNITY AND THE COURT DETERMINES THAT THE MINIMUM CONDITIONS UNDER SECTION 36-4006 ARE MET, THE COURT SHALL ENTER JUDGMENT AND ORDER THE COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE.

B. IF THE COURT CONCLUDES THAT THE ONLY REASON THE COMMITTED INCOMPETENT DOES NOT MEET THE STANDARD FOR CONTINUED COMMITMENT IS THE EFFECT OF TREATMENT OR HABILITATION BEING RECEIVED, THE COURT MAY DENY THE REQUEST FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE UNLESS THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED INCOMPETENT WILL CONTINUE TO RECEIVE SUCH TREATMENT AND HABILITATION FOLLOWING RELEASE FOR AS LONG AS THE TREATMENT AND HABILITATION IS REQUIRED. IF THE COURT FINDS THAT THE COMMITTED INCOMPETENT WILL CONTINUE TO RECEIVE THE NEEDED TREATMENT OR HABILITATION, IT MAY ORDER THE COMMITTED INCOMPETENT TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE ON THE CONDITION THAT THE COMMITTED INCOMPETENT CONTINUE TO RECEIVE SUCH TREATMENT OR HABILITATION. IF THE COMMITTED INCOMPETENT FAILS TO RECEIVE THE TREATMENT OR HABILITATION ORDERED, THE COURT MAY REVOKE THE CONDITIONAL RELEASE.

C. THE COURT MAY IMPOSE ANY ADDITIONAL CONDITIONS ON THE COMMITTED INCOMPETENT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE COMMITTED INCOMPETENT 'S COMPLIANCE WITH TREATMENT AND TO PROTECT THE COMMUNITY. IF THE COURT FINDS THAT CONDITIONS DO NOT EXIST THAT WILL BOTH ENSURE THE COMMITTED INCOMPETENT 'S COMPLIANCE WITH TREATMENT AND PROTECT THE COMMUNITY, THE COURT SHALL REMAND THE COMMITTED INCOMPETENT TO THE CUSTODY OF THE SUPERINTENDENT OF THE STATE HOSPITAL FOR CARE, SUPERVISION OR TREATMENT IN A LICENSED FACILITY THAT IS UNDER THE SUPERVISION OF THE SUPERINTENDENT.

**D. IF THE PROVIDER THAT IS DESIGNATED TO PROVIDE INPATIENT OR OUTPATIENT TREATMENT OR TO MONITOR OR SUPERVISE ANY OTHER TERMS AND CONDITIONS OF A COMMITTED INCOMPETENT 'S PLACEMENT IN A LESS RESTRICTIVE ALTERNATIVE IS NOT THE STATE HOSPITAL, THE PROVIDER SHALL AGREE IN WRITING TO PROVIDE THE TREATMENT.**

**E. BEFORE THE COURT AUTHORIZES A COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL IMPOSE ANY CONDITIONS ON THE COMMITTED INCOMPETENT THAT THE COURT DETERMINES ARE NECESSARY TO ENSURE THE SAFETY OF THE COMMUNITY. THE CONDITIONS SHALL INCLUDE THAT BEFORE A RELEASE TO A LESS RESTRICTIVE ALTERNATIVE, A COMMITTED INCOMPETENT SHALL BE REQUIRED TO SUBMIT TO NINETY DAYS OF INPATIENT EVALUATION AT THE ARIZONA STATE HOSPITAL. AT THE DISCRETION OF THE SUPERINTENDENT OF THE STATE HOSPITAL, THE DURATION OF THE EVALUATION PERIOD MAY BE LESS THAN NINETY DAYS. THE COURT SHALL ORDER THE SUPERINTENDENT OF THE STATE HOSPITAL TO INVESTIGATE THE LESS RESTRICTIVE ALTERNATIVE AND TO SUBMIT ADDITIONAL CONDITIONS TO THE COURT. THE COURT SHALL GIVE A COPY OF THE CONDITIONS OF RELEASE TO THE COMMITTED INCOMPETENT AND TO ANY DESIGNATED SERVICE PROVIDER. OTHER CONDITIONS MAY INCLUDE ANY OF THE FOLLOWING:**

- 1. SPECIFICATION OF A RESIDENCE.**
- 2. COMPLIANCE WITH ANY MEDICATIONS PRESCRIBED AND ANY TESTING OR MONITORING REQUIRED.**
- 3. PROHIBITION ON ANY CONTACT WITH POTENTIAL OR PAST VICTIMS OR OTHER PERSONS AND PROHIBITION ON ASSOCIATING WITH OTHER PERSONS OR TYPES OF PERSONS.**
- 4. PROHIBITION ON THE USE OF ALCOHOL AND OTHER DRUGS.**
- 5. SUPERVISION BY THE DEPARTMENT OF HEALTH SERVICES.**
- 6. A REQUIREMENT THAT THE COMMITTED INCOMPETENT REMAIN IN THIS STATE UNLESS THE COMMITTED INCOMPETENT RECEIVES PRIOR AUTHORIZATION FROM THE COURT.**
- 7. COMPLIANCE WITH ANY SUPERVISION OR MONITORING OR REPORTING REQUIRED.**
- 8. OTHER CONDITIONS THAT THE COURT OR THE SUPERINTENDENT OF THE STATE HOSPITAL DETERMINES ARE IN THE BEST INTEREST OF THE COMMITTED INCOMPETENT OR OTHERS.**

**F. FOLLOWING A DETERMINATION THAT A COMMITTED INCOMPETENT 'S RELEASE TO A LESS RESTRICTIVE ALTERNATIVE IS WARRANTED AND AFTER CONSIDERING THE RECOMMENDATION REGARDING THE DURATION AND AMOUNT OF TREATMENT BY THE SUPERINTENDENT OF THE STATE HOSPITAL, THE COURT SHALL REQUIRE AS A CONDITION OF RELEASE TO A LESS RESTRICTIVE ALTERNATIVE THAT THE COMMITTED INCOMPETENT PARTICIPATE IN OUTPATIENT TREATMENT. THE OUTPATIENT SUPERVISION AND TREATMENT MAY INCLUDE MONITORING A COMMITTED INCOMPETENT BY USE OF AN ELECTRONIC BRACELET. THE TREATMENT SHALL CONTINUE UNTIL THE COURT ORDERS A CHANGE IN THE COMMITTED INCOMPETENT 'S TREATMENT REQUIREMENTS OR THE COMMITTED INCOMPETENT IS DISCHARGED PURSUANT TO SECTION 36-4009.**

**G. EACH MONTH OR AS OTHERWISE DIRECTED BY THE COURT, EACH DESIGNATED SERVICE PROVIDER SHALL SUBMIT A REPORT THAT STATES WHETHER THE COMMITTED INCOMPETENT IS COMPLYING WITH THE TERMS AND CONDITIONS OF THE CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE TO:**

- 1. THE COURT.**

2. THE FACILITY FROM WHICH THE COMMITTED INCOMPETENT WAS RELEASED.

3. THE COUNTY ATTORNEY IN THE COUNTY WHERE THE COMMITTED INCOMPETENT WAS FOUND TO BE A COMMITTED INCOMPETENT OR TO THE ATTORNEY GENERAL.

H. THE COURT SHALL REVIEW THE CASE OF EACH COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE WITHIN ONE YEAR AFTER THE COMMITTED INCOMPETENT 'S RELEASE AND THEREAFTER ON MOTION OF EITHER PARTY OR THE SUPERINTENDENT OF THE STATE HOSPITAL OR ON THE COURT'S OWN MOTION UNTIL THE COMMITTED INCOMPETENT IS DISCHARGED. AT A CASE REVIEW, THE COURT SHALL DETERMINE ONLY IF THE COMMITTED INCOMPETENT SHALL CONTINUE TO BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE. IN MAKING ITS DETERMINATION, THE COURT SHALL CONSIDER THE PERIODIC REPORTS THAT ARE SUBMITTED TO THE COURT PURSUANT TO SUBSECTION G OF THIS SECTION AND THE OPINIONS OF THE SUPERINTENDENT OF THE STATE HOSPITAL AND ANY OTHER COMPETENT PROFESSIONAL.

I. IF A COMMITTED INCOMPETENT IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE COMMITTED INCOMPETENT 'S RELEASE SO THAT THE DEPARTMENT OF PUBLIC SAFETY CAN COMMENCE ANY APPLICABLE NOTIFICATION PROCESS AS PROVIDED IN SECTION 13-3825.

**36-4006. Conditional release to a less restrictive alternative; findings**

BEFORE THE COURT ORDERS THAT A COMMITTED INCOMPETENT BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE, THE COURT SHALL FIND THAT ALL OF THE FOLLOWING APPLY:

1. THE COMMITTED INCOMPETENT WILL BE TREATED BY A PROVIDER WHO IS QUALIFIED TO PROVIDE THE NECESSARY TREATMENT IN THIS STATE.

2. THE PROVIDER PRESENTS A SPECIFIC COURSE OF TREATMENT FOR THE COMMITTED INCOMPETENT, AGREES TO ASSUME RESPONSIBILITY FOR THE COMMITTED INCOMPETENT 'S TREATMENT, WILL REPORT ON THE COMMITTED INCOMPETENT 'S PROGRESS TO THE COURT ON A REGULAR BASIS AND WILL REPORT ANY VIOLATIONS AS PRESCRIBED IN PARAGRAPHS 4 AND 5 OF THIS SUBSECTION IMMEDIATELY TO THE COURT, THE ATTORNEY FOR THE STATE AND THE SUPERINTENDENT OF THE STATE HOSPITAL.

3. THE COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE HAS HOUSING ARRANGEMENTS THAT ARE SUFFICIENTLY SECURE TO PROTECT THE COMMUNITY AND THE PERSON OR AGENCY THAT IS PROVIDING THE HOUSING TO THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT AGREES IN WRITING TO THE FOLLOWING CONDITIONS:

(a) TO ACCEPT THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT.

(b) TO PROVIDE THE LEVEL OF SECURITY THAT THE COURT REQUIRES.

(c) TO IMMEDIATELY REPORT THE UNAUTHORIZED ABSENCE OF THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT FROM THE HOUSING ARRANGEMENT TO WHICH THE COMMITTED INCOMPETENT HAS BEEN ASSIGNED.

4. THE COMMITTED INCOMPETENT WILL COMPLY WITH THE PROVIDER AND ALL OF THE REQUIREMENTS THAT ARE IMPOSED BY THE PROVIDER AND THE COURT.

5. THE COMMITTED INCOMPETENT WILL COMPLY WITH THE SUPERVISION REQUIREMENTS THAT ARE IMPOSED BY THE DEPARTMENT OF HEALTH SERVICES.

**36-4007. Detention and commitment requirements; definition**

A. A COMMITTED INCOMPETENT DOES NOT FORFEIT ANY LEGAL RIGHT AND SHALL NOT SUFFER ANY LEGAL DISABILITY AS A CONSEQUENCE OF ANY ACTIONS TAKEN OR ORDERS MADE PURSUANT TO THIS ARTICLE EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE.

B. A COMMITTED INCOMPETENT SHALL RECEIVE CARE, SUPERVISION OR TREATMENT. THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL KEEP RECORDS DETAILING ALL MEDICAL, EXPERT AND PROFESSIONAL CARE AND TREATMENT THAT A COMMITTED INCOMPETENT RECEIVES AND SHALL KEEP COPIES OF ALL REPORTS OF PERIODIC EXAMINATIONS THAT ARE MADE PURSUANT TO THIS ARTICLE. THESE RECORDS AND REPORTS SHALL BE MADE AVAILABLE ON REQUEST ONLY TO ANY OF THE FOLLOWING:

1. THE COMMITTED INCOMPETENT.
2. THE COMMITTED INCOMPETENT'S ATTORNEY.
3. THE COUNTY ATTORNEY OR THE ATTORNEY GENERAL.
4. THE COURT.
5. ON PROPER SHOWING, AN EXPERT OR PROFESSIONAL WHO DEMONSTRATES A NEED FOR ACCESS TO THE RECORDS OR REPORTS.
6. ANY MENTAL HEALTH PROFESSIONAL DIRECTLY RESPONSIBLE OR ASSOCIATED WITH THE MENTAL HEALTH PROFESSIONAL WHO IS DIRECTLY RESPONSIBLE FOR THE CARE, CONTROL, ASSESSMENT OR TREATMENT OF THE COMMITTED INCOMPETENT.

C. AT THE TIME A COMMITTED INCOMPETENT IS DETAINED OR TRANSFERRED INTO A LICENSED FACILITY PURSUANT TO THIS ARTICLE, THE PERSON IN CHARGE OF THE FACILITY OR THE PERSON'S DESIGNEE SHALL TAKE REASONABLE PRECAUTIONS TO INVENTORY AND SAFEGUARD THE PERSONAL PROPERTY OF THE DETAINED OR TRANSFERRED COMMITTED INCOMPETENT. THE STAFF MEMBER WHO MAKES AN INVENTORY OF THE COMMITTED INCOMPETENT 'S PERSONAL PROPERTY SHALL GIVE A SIGNED COPY OF THAT INVENTORY TO THE COMMITTED INCOMPETENT. THE FACILITY SHALL ALLOW A RESPONSIBLE RELATIVE TO INSPECT THE PROPERTY, SUBJECT TO ANY LIMITATIONS THAT THE COMMITTED INCOMPETENT SPECIFICALLY IMPOSES. THE FACILITY SHALL NOT DISCLOSE THE CONTENTS OF THE INVENTORY TO ANY OTHER PERSON WITHOUT THE CONSENT OF THE COMMITTED INCOMPETENT OR A COURT ORDER.

D. THIS ARTICLE DOES NOT PROHIBIT A COMMITTED INCOMPETENT FROM EXERCISING ANY RIGHT THAT IS AVAILABLE FOR THE PURPOSE OF OBTAINING RELEASE FROM CONFINEMENT, INCLUDING THE RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS. THE COMMITTED INCOMPETENT MUST EXHAUST ALL DIRECT APPEAL AND POSTCOMMITMENT PROCEDURES BEFORE EXERCISING THE COMMITTED INCOMPETENT 'S RIGHT TO PETITION FOR A WRIT OF HABEAS CORPUS.

E. A COMMITTED INCOMPETENT WHO IS INDIGENT MAY NOT BE CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED WITHOUT SUITABLE CLOTHING. WHEN A COMMITTED INCOMPETENT IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE OR DISCHARGED, THE SUPERINTENDENT OF THE STATE HOSPITAL SHALL FURNISH THE COMMITTED INCOMPETENT WITH AN AMOUNT OF MONEY PURSUANT TO SECTION 31-228.

F. FOR THE PURPOSES OF THIS SECTION, "RESPONSIBLE RELATIVE" MEANS THE SPOUSE, PARENT, ADULT CHILD OR ADULT SIBLING OF THE COMMITTED INCOMPETENT AND INCLUDES THE GUARDIAN, CONSERVATOR OR ATTORNEY OF THE COMMITTED INCOMPETENT.

**36-4008. Revocation of conditional release to a less restrictive alternative; hearing**

A. IF THE ATTORNEY FOR THE STATE OR THE COURT BELIEVES THAT THE COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF RELEASE OR IS IN NEED OF ADDITIONAL CARE AND TREATMENT, THE DESIGNATED SERVICE PROVIDER OR THE ATTORNEY FOR THE STATE MAY PETITION THE COURT FOR, OR THE COURT ON ITS OWN MOTION MAY SCHEDULE, A HEARING FOR THE PURPOSE OF REVOKING OR MODIFYING THE TERMS AND CONDITIONS OF THE COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE. THE HEARING SHALL BE HELD WITHIN TEN DAYS AFTER THE PETITION IS FILED.

B. IF THE ATTORNEY FOR THE STATE OR THE COURT REASONABLY BELIEVES THAT A COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE IS NOT COMPLYING WITH THE TERMS AND CONDITIONS OF THE COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE, IS IN NEED OF ADDITIONAL CARE OR TREATMENT OR IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE COMMUNITY IS NO LONGER SAFE, THE COURT OR THE DEPARTMENT OF HEALTH SERVICES MAY ORDER THAT THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT BE DETAINED AND TAKEN INTO CUSTODY UNTIL A HEARING CAN BE SCHEDULED TO DETERMINE IF THE COMMITTED INCOMPETENT 'S CONDITIONAL RELEASE SHOULD BE REVOKED OR MODIFIED. THE COURT AND ANY COUNSEL OF RECORD REPRESENTING THE COMMITTED INCOMPETENT IN CONNECTION WITH THIS ARTICLE SHALL BE NOTIFIED BEFORE THE CLOSE OF THE NEXT JUDICIAL DAY OF THE COMMITTED INCOMPETENT 'S DETENTION. THE ATTORNEY FOR THE STATE AND THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT MAY REQUEST AN IMMEDIATE MENTAL EXAMINATION OF THE COMMITTED INCOMPETENT. IF THE CONDITIONALLY RELEASED COMMITTED INCOMPETENT IS INDIGENT, THE COURT, ON REQUEST, SHALL ASSIST THE COMMITTED INCOMPETENT IN OBTAINING A COMPETENT PROFESSIONAL TO CONDUCT THE EXAMINATION.

C. WITHIN FIVE DAYS AFTER RECEIVING NOTICE OF THE COMMITTED INCOMPETENT 'S DETENTION, THE COURT SHALL SCHEDULE A HEARING. AT THE HEARING, THE COURT SHALL DETERMINE IF THE STATE HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE COMMITTED INCOMPETENT WHO IS CONDITIONALLY RELEASED TO A LESS RESTRICTIVE ALTERNATIVE DID NOT COMPLY WITH THE TERMS AND CONDITIONS OF RELEASE, IS IN NEED OF ADDITIONAL CARE OR TREATMENT OR IF THE CIRCUMSTANCES OF THE RELEASE HAVE CHANGED SO THAT THE COMMUNITY IS NO LONGER SAFE AND IF THE COMMITTED INCOMPETENT SHOULD CONTINUE ON CONDITIONAL RELEASE UNDER THE SAME OR MODIFIED CONDITIONS OR IF THE CONDITIONAL RELEASE SHOULD BE REVOKED AND THE COMMITTED INCOMPETENT SHOULD BE COMMITTED TO TOTAL CONFINEMENT, SUBJECT TO RELEASE ONLY UNDER THE PROVISIONS OF THIS ARTICLE. THE COURT MAY ADMIT HEARSAY EVIDENCE IF THE COURT FINDS THAT THE HEARSAY EVIDENCE IS OTHERWISE RELIABLE.

**36-4009. Petition for discharge; procedures**

A. IF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES DETERMINES THAT THE COMMITTED INCOMPETENT 'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS SO CHANGED THAT THE COMMITTED INCOMPETENT IS NO LONGER DANGEROUS IF DISCHARGED, BUT REMAINS INCOMPETENT TO STAND TRIAL, THE SUPERINTENDENT OR DIRECTOR SHALL ALLOW THE COMMITTED INCOMPETENT TO PETITION THE COURT FOR DISCHARGE. THE COMMITTED INCOMPETENT SHALL SERVE THE PETITION ON THE COURT AND THE ATTORNEY FOR THE STATE. THE COURT SHALL HOLD A HEARING

ON THE PETITION PURSUANT TO SUBSECTION C OF THIS SECTION FOR DISCHARGE WITHIN FORTY-FIVE DAYS AFTER RECEIVING THE PETITION.

B. THIS SECTION DOES NOT PROHIBIT THE COMMITTED INCOMPETENT FROM ANNUALLY PETITIONING THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OF THE STATE HOSPITAL OR THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES. THE DIRECTOR OF THE DEPARTMENT OF HEALTH SERVICES SHALL GIVE ANNUAL WRITTEN NOTICE TO THE COMMITTED INCOMPETENT OF THE COMMITTED INCOMPETENT 'S RIGHT TO PETITION THE COURT FOR DISCHARGE WITHOUT THE APPROVAL OF THE SUPERINTENDENT OR DIRECTOR AND PROVIDE A COPY OF THAT WRITTEN NOTICE TO ANY COUNSEL OF RECORD REPRESENTING THE COMMITTED INCOMPETENT IN CONNECTION WITH PROCEEDINGS UNDER THIS ARTICLE. THE NOTICE SHALL CONTAIN A WAIVER OF RIGHTS. THE DIRECTOR SHALL SUBMIT THE NOTICE AND WAIVER TO THE COURT WITH THE ANNUAL EXAMINATION REPORT.

C. THE COMMITTED INCOMPETENT MAY BE PRESENT AT THE DISCHARGE HEARING. THE COURT MAY CONTINUE THE HEARING ON THE REQUEST OF EITHER PARTY AND A SHOWING OF GOOD CAUSE OR ON ITS OWN MOTION IF THE COMMITTED INCOMPETENT WILL NOT BE SUBSTANTIALLY PREJUDICED. THE PROSECUTING AGENCY SHALL REPRESENT THE STATE AT THE HEARING AND MAY REQUEST THAT THE COMMITTED INCOMPETENT BE EXAMINED BY A COMPETENT PROFESSIONAL WHO IS SELECTED BY THE PROSECUTING AGENCY. THE ATTORNEY FOR THE STATE HAS THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT THE COMMITTED INCOMPETENT'S MENTAL ILLNESS, DEFECT OR DISABILITY HAS NOT CHANGED AND THAT THE COMMITTED INCOMPETENT REMAINS DANGEROUS. IF THE STATE DOES NOT MEET ITS BURDEN OF PROOF, THE COMMITTED INCOMPETENT SHALL BE DISCHARGED FROM TREATMENT.

D. IF A COMMITTED INCOMPETENT IS DISCHARGED, THE DEPARTMENT OF HEALTH SERVICES SHALL NOTIFY THE DEPARTMENT OF PUBLIC SAFETY OF THE COMMITTED INCOMPETENT 'S DISCHARGE SO THAT THE DEPARTMENT OF PUBLIC SAFETY CAN COMMENCE ANY NOTIFICATION PROCESS AS PROVIDED IN SECTION 13-3825.

**36-4010. Place for proceedings; transportation; immunity**

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A COMMITTED INCOMPETENT SHALL NOT BE TRANSPORTED FROM A LICENSED FACILITY UNDER THE SUPERVISION OF THE SUPERINTENDENT OF THE ARIZONA STATE HOSPITAL, EXCEPT THAT A COMMITTED INCOMPETENT MAY BE TRANSPORTED TO COURT FOR ANY OF THE FOLLOWING REASONS:

1. A HEARING ON AN ANNUAL EXAMINATION.
2. A HEARING ON A PETITION FOR CONDITIONAL RELEASE TO A LESS RESTRICTIVE ALTERNATIVE PURSUANT TO SECTION 36-4005.
3. A HEARING ON A PETITION FOR DISCHARGE PURSUANT TO SECTION 36-4009.
4. ANY EVIDENTIARY HEARING IN WHICH THE PRESENCE OF A COMMITTED INCOMPETENT IS NECESSARY.
5. ANY COURT PROCEEDING NOT OTHERWISE SPECIFIED IN THIS ARTICLE WHERE THE PRESENCE OF THE COMMITTED INCOMPETENT IS REQUIRED.

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY COMMITTED INCOMPETENT WHOM THE COURT HAS DETERMINED IS SUBJECT TO CONDITIONAL RELEASE PURSUANT TO SECTION 36-4009 OR TO ANY NECESSARY MEDICAL TRANSPORTS.

C. SUBSECTION A OF THIS SECTION DOES NOT PRECLUDE ANY PROCEEDING FROM BEING HELD ON THE GROUNDS OF THE ARIZONA STATE HOSPITAL OR FROM

USING A TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE. THE COURT SHALL ADOPT RULES CONCERNING THE CONDUCT OF PROCEEDINGS PURSUANT TO THIS ARTICLE. THE RULES SHALL ENSURE THE SAFETY OF ALL PERSONS. THE RULES MAY INCLUDE PROVISIONS THAT ALLOW FOR PROCEEDINGS TO BE HELD ON THE GROUNDS OF THE ARIZONA STATE HOSPITAL OR FOR THE USE OF A TELEPHONIC CONFERENCE OR AN INTERACTIVE AUDIOVISUAL DEVICE.

D. THE DEPARTMENT OF HEALTH SERVICES IS RESPONSIBLE FOR THE TRANSPORTATION TO AND FROM A MEDICAL FACILITY OF A COMMITTED INCOMPETENT. THE DEPARTMENT OF HEALTH SERVICES SHALL DETERMINE THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT FOR THE TRANSPORTATION NEEDS OF THE COMMITTED INCOMPETENT. IN DETERMINING THE APPROPRIATE MODE OF TRANSPORTATION AND LEVEL OF SECURITY AND RESTRAINT, THE DEPARTMENT SHALL CONSIDER THE SAFETY OF THE PUBLIC, THE TRANSPORTING PERSONNEL AND THE DETAINED OR COMMITTED INCOMPETENT.

E. THE DEPARTMENT OF HEALTH SERVICES AND ANY COUNTY SHERIFF ARE IMMUNE FROM LIABILITY FOR ANY GOOD FAITH ACTS UNDER THIS SECTION.

**36-4011. Findings**

FINDINGS BY THE COURT MADE PURSUANT TO THIS CHAPTER ARE INADMISSIBLE IN ANY PROCEEDING OTHER THAN A PROCEEDING UNDER THIS CHAPTER OR UNDER TITLE 13, CHAPTER 41.

**Sec. 8. Effective date**

**This act is effective from and after December 31, 2019.**



## MEMORANDUM

PIMA COUNTY ATTORNEY'S OFFICE | CIVIL DIVISION

32 N. Stone Ave., Suite 2100

Tucson, AZ 85701

(520) 724-5700 | Fax: (520) 620-6556

---

To: Amelia Cramer, Chief Deputy

From: Andy Flagg, Chief Civil Deputy

Date: April 9, 2019

Subject: Summary of Changes to Incompetent Non-Restorable Draft Legislation

---

### Background

At the March 25, 2019 meeting of the Arizona Supreme Court Committee on Mental Health and the Justice System, the Committee discussed the problem of incompetent, non-restorable defendants. As part of that discussion, I presented a summary of the draft legislation being advanced by the Pima County Attorney's Office, which would add Chapter 40 to A.R.S. Title 36, allowing for commitment of dangerous, incompetent, non-restorable defendants to a secure facility.

A very helpful discussion followed about the proposal, and several Committee Members provided helpful comments about how the draft could be improved. In advance of the legislation's further consideration by the Key Issues Working Group, I have revised the draft to address the Committee Members' comments, and have made other revisions to help improve the draft. The revised draft is attached. Changes are indicated in strike-and-underline format. I believe the revised version is substantially improved, based on the comments of Committee Members, and provides a good model for further consideration by the Key Issues Working Group.

### Summary of Changes

*Definition of "dangerous."* The definition of "dangerous" in § 13-4501(2) has been revised to eliminate the undefined phrase "act of violence" and to limit the term so that it applies only to homicide, sexually violent offenses (as defined in § 36-3701), and offenses causing serious physical injury. As noted in the Committee meeting, "serious physical injury" is already defined in § 13-105(39).

*Limitation to serious offenses.* Section 13-4517(A)(4) has been amended to provide that the charged offense must meet the definition of “serious offense” as defined in § 13-706 for the court to have the option of commitment under Title 36, Chapter 40. This limits the availability of the commitment option only to those who have been charged with a “serious offense.”

*Appointment of counsel.* Section 13-4519(A) has been amended to eliminate the “at least three days before the hearing” language and instead simply provide that counsel shall be appointed. Moreover, the statute has been amended to make clear that appointed counsel will represent the person with respect to the initial hearing and all further Title 36, Chapter 40 proceedings. Additionally, § 36-4002(G) has been added to clarify that, if at any time counsel for the person withdraws, the court must provide time for the person to obtain counsel or appoint counsel if the person is indigent.

*Provision of documents to counsel.* Several provisions have been amended to require notification of counsel. *See* § 36-4002(A) (report of annual examination must be provided to counsel of record); § 36-4008(B) (notification of counsel of detention); § 36-4009(B) (written notice to counsel of record of right to petition for discharge)

*Inadmissibility of findings.* Section 13-4519(H) and § 36-4011 have been added to make clear that court findings are inadmissible in any proceeding other than proceedings related to competency or to commitment under Title 36, Chapter 40.

*Other clarification amendments.* The draft has been amended to consistently refer to the committed person as a “committed incompetent.” (The original draft used the defined term “dangerous incompetent” but also inconsistently used other terms to refer to the person.) Also, § 36-4009 has been clarified to provide the same procedure for a discharge hearing whether the petitioner is the committed incompetent or the Superintendent of AHS or Director of ADHS.



## MEMORANDUM

PIMA COUNTY ATTORNEY'S OFFICE | CIVIL DIVISION

32 N. Stone Ave., Suite 2100

Tucson, AZ 85701

(520) 724-5700 | Fax: (520) 620-6556

---

To: Amelia Cramer, Chief Deputy

From: Andy Flagg, Chief Civil Deputy

Date: April 18, 2019

Subject: Summary of Changes to Incompetent Non-Restorable Draft Legislation

---

The Arizona Supreme Court Committee on Mental Health and the Justice System's Key Issues Working Group met April 16 to discuss the Pima County Attorney's Office's proposed legislation to deal with the problem of incompetent, non-restorable defendants. They requested two changes: (1) appointment of counsel in proposed A.R.S. § 13-4519 should be as soon as possible; and (2) the bill should be clarified so that committed incompetents cannot file too many petitions invoking the court's continuing jurisdiction under § 13-4519(F).

Attached is a revision addressing those issues. Section 13-4519(A) has been amended to specify that appointment of counsel must occur "as soon as possible and before setting the hearing [to determine whether the defendant is dangerous]." And § 13-4519(F) has been amended to clarify that the procedure in proposed Title 36, Chapter 40 applies to the exercise of the court's continuing jurisdiction under § 13-4519(F). I believe that solves the second concern because Chapter 40 specifies that the committed incompetent may petition *annually* for a change in status (§ 36-4004) or discharge (§ 36-4009).

## **Linkage between Limited Jurisdiction Courts and Title 36**

### **Presenting Issue**

There is currently no mechanism for a Limited Jurisdiction Court Judge to get a defendant screened or petitioned for Court Ordered Treatment.

Under title 36, a screening for Court Ordered Treatment is triggered by the filing of an **Application** filed by "any responsible individual" (36-520). A person may not be detained during a mental health screening unless it is in connection with an emergency hospitalization. If the screening agency determines that the person needs an evaluation, a **Petition** for Court Ordered Evaluation may be filed by the screening agency or by the County Attorney. If the Petition is granted, the defendant is evaluated at a screening/evaluation agency.

When a defendant accused of a felony is determined to be incompetent and not restorable in a Rule 11 Competency proceeding in Superior Court, the Superior Court Criminal Court judge can order the county attorney to file a Petition for Court Ordered Evaluation. (13-4517)

Some Limited Jurisdiction Courts are now permitted to make competency determinations for defendants accused of misdemeanor offenses in their jurisdictions. However, when a misdemeanor defendant in the Limited Jurisdiction Court is determined to be incompetent and not restorable the LJC judge is not permitted to order the city prosecutor to file a Petition for Court Ordered Evaluation under Title 36, leaving only two options – dismiss the charges or transfer the case to the superior court for proceedings under 13-4517. (Rule 11.5). If the case is transferred to the Superior Court for further options under 13-4517, the County Attorney can file a Title 36 Petition for Court Ordered Evaluation and can detain the defendant and retain jurisdiction over the defendant's charges while the Petition is processed.

The process for transfer to the Superior Court is apparently not well understood or is too cumbersome. The Maricopa County Attorney reports that their office receives only 3 to 4 "transfers" a year from Phoenix and some from Tempe. The Mesa and Glendale Mental Health Courts report that they are not using this "transfer" procedure. When a transfer is received in one of these cases, the Superior Court orders the LJC to send all medical or evaluation records concerning the mental illness and concerning the criminal charges and history. With this information, the County Attorney then prepares and files a Petition for Court Ordered Evaluation under Title 36.

Because these misdemeanor defendants are not currently being linked to ongoing Title 36 services and charges are being dismissed by the LJC, defendants are being released back into the community without any mental health screening or evaluation. This process is perpetuating the revolving door of individuals with mental illness in the justice system and is creating a safety issue for the public and the defendant and creating a risk that the person's mental illness will become worse without treatment.

## **Potential Solutions**

A clear workable mechanism is needed to move a misdemeanor defendant between criminal and civil court in a timely fashion when the originating case is at the LJC level. Some possible solutions are:

1. At a minimum, a defendant charged with a misdemeanor who is determined by the LJC to be incompetent and not restorable and for whom there is reasonable cause to believe that the person is in need of involuntary mental health treatment for a mental disorder should at least be able to receive a pre-petition screening under 36-520. Under current law, "any responsible person" identified by the LJC may file an Application for Court Ordered Evaluation with a screening agency. This person may be a family member of the defendant, a friend, the arresting police officer, a case manager or a member of the team in the Mental Health Court who is able to identify and articulate the behavior creating the need for evaluation. The Application could be filed while the defendant is detained on the pending charges but would have to be conditionally released to the screening agency for screening.
2. Many of these defendants will qualify for a Petition for Court Ordered Evaluation without a pre-petition screening. In order to get that accomplished we have two choices – work with the current statute and rule or change them. If it is determined that we should continue working under the current process established in Rule 11.5 we should establish a clear protocol setting forth the steps and requirements necessary to accomplish a transfer to the Superior Court from the LJC and a training curriculum for those who will use it. If it is determined that we should allow these Petitions to be filed directly out of the LJC by a city Prosecutor, we should determine how ARS 13-4517 and Criminal rule 11.5 need to be changed to accomplish it. Any such amendment would also need to include the authority of the LJC to hold the person in custody until the process is completed.

## **Challenges**

- a) A Psychologist/Psychiatrist report is required which clearly states that it is believed that the person is DTO, DTS, PAD or GD as the result of a mental disorder and is unable or unwilling to accept treatment voluntarily.
- b) Who will file the Applications for Court Ordered Evaluation? Identifying the person to do this when there is no family member available could be difficult.
- c) Who will file the Petitions for Court Ordered Evaluation? All Petitions are filed in the Superior Court. Will the city prosecutors take on this task? If transfers and new Petitions for Court Ordered Evaluation increase, will the county attorney willingly take on this increased workload?
- d) What are the confidentiality challenges for transferring files such as a doctor's report or medical records?
- e) Would the availability of funding for LJC's to do restoration lessen or alleviate the need for all of this?

## Linkage of LJs to T36

### **16A A.R.S. Rules Crim.Proc., Rule 11.5**

#### **Rule 11.5. Hearing and Orders**

##### Currentness

**(a) Hearing.** No later than 30 days after the experts appointed under Rule 11.3 submit their reports to the court, the court must hold a hearing to determine the defendant's competence. The court may grant additional time for good cause. The defendant and the State may introduce other evidence about the defendant's mental condition. If the defendant and the State stipulate in writing or on the record, the court may determine competence based solely on the experts' reports.

##### **(b) Orders.**

(1) *If Competent.* If the court finds that the defendant is competent, the court must direct that proceedings continue without delay.

(2) *If Incompetent but Restorable.*

(A) Superior Court. If a superior court determines that the defendant is incompetent, it must either dismiss the charges on the State's motion or order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within 15 months.

(B) Limited Jurisdiction Court. If a limited jurisdiction court determines that the defendant is incompetent, it must dismiss the charges on the State's motion, transfer the case to the superior court for further proceedings pursuant to A.R.S. § 13-4517, or, if authorized by the presiding judge of the superior court, order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within the time period provided for the maximum possible sentence as defined in A.R.S. § 13-4515.

(C) Extended Treatment. The court may extend treatment if it finds that the defendant is progressing toward competence. The extension may be 6 months beyond the 15-month limit so long as this period does not exceed the defendant's maximum possible sentence as defined in A.R.S. § 13-4515.

(D) Involuntary Treatment. The court must determine whether the defendant will be subject to treatment without consent.

(E) Treatment Order. A treatment order must specify:

(i) the place where treatment will occur;

(ii) whether the treatment is inpatient or outpatient under A.R.S. § 13-4512(A);

(iii) the means of transportation to the treatment site;

(iv) the length of treatment;

(v) the means of transporting the defendant after treatment; and

(vi) that the court is to be notified if the defendant regains competence before the expiration of the treatment order.

(F) Modification and Limitation. The court may modify a treatment order at any time. Treatment orders are effective for no longer than 6 months.

**(3) *If Incompetent and Not Restorable.***

(A) Superior Court. If the superior court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months or within the defendant's maximum possible sentence as defined by A.R.S. § 13-4515, whichever is less, the court may on request of the examined defendant or the State do one or more of the following:

- (i) Remand the defendant to an evaluating agency approved and licensed under Title 36 to begin civil commitment proceedings under A.R.S. §§ 36-501 et seq.;
- (ii) Order appointment of a guardian under A.R.S. §§ 14-5301 et seq.;
- (iii) Release the defendant from custody and dismiss the charges without prejudice; or
- (iv) Retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518.

**(B) Limited Jurisdiction Court.** If a limited jurisdiction court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within the timeframes as defined in A.R.S. § 13-4515, the court must do one of the following:

- (i) Dismiss the action on the State's motion; or
- (ii) Transfer the case to the superior court for further proceedings pursuant to A.R.S. § 13-4517.

(4) *Additional Actions.* If the court enters an order under (b)(3)(A)(i) or (ii), it may retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518.

**(c) Restoration to Competency: Reports About Treatment.**

(1) *Generally.* The court must order the treatment supervisor to submit a report to the court and to provide copies to defense counsel and the clinical liaison. Defense counsel may redact the report under Rule 11.4(a)(2) before returning it to the court to be provided to the State.

(2) *When to Report.* The treatment supervisor must submit a report:

- (A) for inpatient treatment, 120 days after the filing of the court's original treatment order and then every 180 days after the first report;
- (B) for outpatient treatment, every 60 days following the filing of the court's original treatment order;
- (C) when the treatment supervisor believes the defendant is competent to stand trial;
- (D) when the treatment supervisor concludes that the defendant will not be restored to competence within 21 months of the court's finding of incompetence; and
- (E) 14 days before the expiration of the court's last treatment order.

(3) *Content of Report.*

(A) Generally. The treatment supervisor's report must include at least the following:

- (i) the treatment supervisor's name;
- (ii) a description of the nature, content, extent, and results of the supervisor's examination of the defendant and any tests the supervisor conducted;
- (iii) the facts on which the treatment supervisor's findings are based; and
- (iv) the treatment supervisor's opinion regarding the defendant's competence to understand the nature of the court proceedings against the defendant and to assist in his or her defense.

(B) If Still Incompetent. If the treatment supervisor finds the defendant is still incompetent, the report also must include:

(i) the nature of the mental illness, defect, or disability that is the cause of the incompetence;

(ii) a prognosis regarding the defendant's restoration to competence and an estimate of how long it will take to restore the defendant's competence; and

(iii) any recommendations for treatment modifications.

(C) If Competent. If the treatment supervisor finds the defendant has regained competence, the report also must include any limitations on the defendant's competence caused by medications used in the defendant's treatment.

**(d) Time Calculation.** When calculating time limits under A.R.S. § 13-4515(A), the court must consider only the time a defendant actually spends in a program to restore competence.

## **Rule 11.6. Later Hearings**

### Currentness

**(a) Grounds.** The court must hold an additional hearing to determine the defendant's competence:

(1) upon receiving a report from an authorized official of the institution in which a defendant is treated under Rule 11.5(b)(2) or (b)(3)(A) stating that, in the official's opinion, the defendant has become competent to stand trial;

(2) upon a defendant's motion supported by the certificate of a mental health expert stating that, in the expert's opinion, the defendant is competent to stand trial;

(3) at the expiration of the maximum period set by the court under Rule 11.5(b)(2); or

(4) if the court determines that it is appropriate to do so.

**(b) Experts.** The court may appoint new mental health experts under Rule 11.3.

**(c) Finding of Competence.** If the court finds that the defendant is competent, regular proceedings must begin again without delay. The defendant is entitled to repeat any proceeding if there are reasonable grounds to believe the defendant was prejudiced by previous incompetence.

**(d) Finding of Continuing Incompetence.** If the court finds that the defendant is still incompetent, it must proceed in accordance with Rules 11.5(b)(2) or (3). If the court determines that there is a substantial probability that the defendant will regain competence in the foreseeable future, then the court may renew and may modify the treatment order for no more than an additional 180 days or the time period provided for the defendant's maximum possible sentence by A.R.S. § 13-4515, whichever is less.

**(e) Dismissal of Charges.** At any time after providing notice and a hearing under A.R.S. § 13-4515(C), the court may order the dismissal of the charges against a defendant adjudged incompetent. The defendant must be released from custody upon dismissal of the charges unless the court finds that the defendant's mental condition warrants a civil commitment hearing under A.R.S. §§ 36-501 et seq.

#### 13-4504. Dismissal of misdemeanor charges; notice

A. Notwithstanding any law to the contrary, if the court finds that a person has been previously adjudicated incompetent to stand trial pursuant to this chapter, the court may hold a hearing to dismiss any misdemeanor charge against the incompetent person. The court shall give ten days' notice to the prosecutor and the defendant of this hearing. On receipt of the notice, the prosecutor shall notify the victim of the hearing.

B. If a misdemeanor charge is dismissed pursuant to this section, the court may order the prosecutor to initiate civil commitment or guardianship proceedings.

#### 13-4517. Incompetent defendants; disposition

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:

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 pursuant to title 14, chapter 5.

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

B. If the court enters an order pursuant to subsection A, paragraph 1 or 2 of this section, the court may also order an assessment of the defendant's eligibility for private insurance or public benefits that may be applied to the expenses of the defendant's medically necessary maintenance and treatment, including services pursuant to title 36, chapter 29, state-only behavioral health services, title xviii services and medicare part D prescription drug benefits, supplemental security income and supplemental security disability income.

C. The court may retain jurisdiction over the defendant until the defendant is committed for treatment pursuant to title 36, chapter 5 or a guardian is appointed pursuant to title 14, chapter 5.

D. If the court remands the defendant for the institution of civil commitment proceedings pursuant to title 36, chapter 5 and the court is notified that the defendant has not had a civil commitment evaluation, the court, if it has retained jurisdiction, may order the sheriff to take the defendant into custody so that the court may explore options pursuant to subsection A, paragraph 2 or 3 of this section.

E. If the court is notified that the defendant has not been ordered into treatment pursuant to title 36, chapter 5 and the court has retained jurisdiction, the court may order the sheriff to take the defendant into custody so that the court may explore options pursuant to subsection A, paragraph 2 or 3 of this section.

36-520. Application for evaluation; definition

A. Any responsible individual may apply for a court-ordered evaluation of a person who is alleged to be, as a result of a mental disorder, a danger to self or to others or a person with a persistent or acute disability or a grave disability and who is unwilling or unable to undergo a voluntary evaluation. The application shall be made in the prescribed form and manner as adopted by the director.

B. The application for evaluation shall include the following data:

1. The name, and address if known, of the proposed patient for whom evaluation is applied.
2. The age, date of birth, sex, race, marital status, occupation, social security number, present location, dates and places of previous hospitalizations, names and addresses of the guardian, spouse, next of kin and significant other persons and other data that the director may require on the form to whatever extent that this data is known and is applicable to the proposed patient.
3. The name, address and relationship of the person who is applying for the evaluation.
4. A statement that the proposed patient is believed to be, as a result of a mental disorder, a danger to self or to others or a patient with a persistent or acute disability or a grave disability and the facts on which this statement is based.
5. A statement that the applicant believes the proposed patient is in need of supervision, care and treatment and the facts on which this statement is based.

C. The application shall be signed and notarized.

D. The screening agency shall offer assistance to the applicant in preparation of the application. On receipt of the application, the screening agency shall act as prescribed in section 36-521 within forty-eight hours of the filing of the application excluding weekends and holidays. If the application is not acted upon within forty-eight hours, the reasons for not acting promptly shall be reviewed by the director of the screening agency or the director's designee.

E. If the applicant for the court-ordered evaluation presents the person to be evaluated at the screening agency, the agency shall conduct a prepetition screening examination. Except in the case of an emergency evaluation, the person to be evaluated shall not be detained or forced to undergo prepetition screening against the person's will.

F. If the applicant for the court-ordered evaluation does not present the person to be evaluated at the screening agency, the agency shall conduct the prepetition screening at the home of the person to be evaluated or any other place the person to be evaluated is found. If prepetition screening is not possible, the screening agency shall proceed as in section 36-521, subsection B.

G. If a person is being treated by prayer or spiritual means alone in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner of that church or denomination, such person may not be ordered evaluated, detained or involuntarily treated unless the court has determined that the person is, as a result of mental disorder, a danger to others or to self.

H. Court-ordered evaluation or treatment pursuant to this chapter does not operate to change the legal residence of a patient.

I. If the application is not acted on because it has been determined that the proposed patient does not need an evaluation, the agency after a period of six months shall destroy the application and any other evidence of the application.

J. For the purposes of this section, "person" includes a person who:

1. Is under eighteen years of age.
2. Has been transferred to the criminal division of the superior court pursuant to section 8-327 or who has been charged with an offense pursuant to section 13-501.
3. Is under the supervision of an adult probation department.

36-521. Preparation of petition for court-ordered evaluation; procedures for prepetition screening

A. On receiving the application for evaluation, the screening agency, before filing a petition for court-ordered evaluation, shall provide prepetition screening within forty-eight hours excluding weekends and holidays when possible to determine whether there is reasonable cause to believe the allegations of the applicant for the court-ordered evaluation, whether the person will voluntarily receive evaluation at a scheduled time and place and whether the person has a persistent or acute disability or a grave disability or is likely to present a danger to self or others until the voluntary evaluation.

B. After prepetition screening has been completed, the screening agency shall prepare a report of opinions and conclusions. If prepetition screening is not possible, the screening agency shall prepare a report giving reasons why the screening was not possible and including opinions and conclusions of staff members who attempted to conduct prepetition screening or otherwise investigated the matter.

C. If the prepetition screening report indicates that there exists no reasonable cause to believe the allegations of the applicant for the court-ordered evaluation, it shall be reviewed by the medical director of the screening agency or the medical director's designee.

D. If, based on the allegations of the applicant for the court-ordered evaluation and the prepetition screening report or other information obtained while attempting to conduct a prepetition screening, the agency determines that there is reasonable cause to believe that the proposed patient is, as a result of mental disorder, a danger to self or to others or has a persistent or acute disability or a grave disability and that the proposed patient is unable or unwilling to voluntarily receive evaluation or is likely to present a danger to self or to others, has a grave disability or will further deteriorate before receiving a voluntary evaluation, the agency shall prepare a petition for court-ordered evaluation and shall file the petition, which shall be signed by the person who prepared the petition unless the county attorney performs these functions. If the agency determines that there is reasonable cause to believe that the person is in such a condition that without immediate hospitalization he is likely to harm himself or others, the agency shall take all reasonable steps to procure such hospitalization on an emergency basis.

E. The agency may contact the county attorney in order to obtain assistance in preparing the petition for court-ordered evaluation, and the agency may request the advice and judgment of the county attorney in reaching a decision as to whether the court-ordered evaluation is justified.

F. The county attorney may prepare or sign or file the petition if a court has ordered the county attorney to prepare the petition.

G. If a petition for court-ordered evaluation alleges danger to others as described in section 36-501, the screening agency, before filing such a petition, shall contact the county attorney for a review of the petition. The county attorney shall examine the petition and make one of the following written recommendations:

1. That a criminal investigation is warranted.
2. That the screening agency shall file the petition.
3. That no further proceedings are warranted. The screening agency shall consider the recommendation in determining whether a court-ordered evaluation is justified and shall include the recommendation with the petition if the agency decides to file the petition with the court.

H. The petition shall be made in the form and manner prescribed by the director.

I. If a petition for court-ordered evaluation is filed by a prosecutor pursuant to section 13-4517, a prior application for court-ordered evaluation or prescreening is not necessary.

**Phoenix Municipal Court Order 17-12** (7-11-17):

In recognition of the need to improve the administration of cases within the Phoenix Municipal Court involving individuals with serious mental illness (SMI), behavioral health, special needs, or co-occurring disorders;

IT IS ORDERED creating a Behavioral Health Court (BHC) that shall operate under the Administration of the Chief Presiding Judge. The BHC shall be assisted by the City of Phoenix Prosecutor, City of Phoenix Public Defender or Private Defense Counsel, City of Phoenix Public Defender Mental Health Specialist, Regional Behavioral Health Authority Court Liaison (RBHA), and Peer Support Providers.

IT IS FURTHER ORDERED Behavioral Health Court shall be configured to address:

1. Early identification of individuals with SMI, behavioral health, special needs, or co-occurring disorders within the court system;
2. Increased communication among the specialty and problem solving courts, RBHA, City of Phoenix Police Department, Correctional Health Services, Maricopa County Jail, and outside agencies that provide services to individuals with SMI, behavioral health, special needs, or co-occurring disorders thereby improving continuity of care and coordinated case management for those individuals within the criminal justice system;
3. Reducing recidivism among individuals deemed SMI, behavioral health, special needs, or co-occurring disorders in the criminal justice system;
4. Concerns regarding minimizing unnecessary duplicative expenses and maximizing court administration, judicial and shareholder resources; and
5. Where warranted, determining appropriate release conditions for individuals with SMI, behavioral health, special needs, or co-occurring disorders who are incarcerated within the Maricopa County Jail.