

Committee on Mental Health and the Justice System

Rule 11.5 Transfer Protocol

The Committee on Mental Health and the Justice System, established by [Administrative Order 2018-71](#), has been tasked with studying, and if necessary, making recommendations to effectively address how the justice system responds to persons in need of behavioral health services, and review court rules and state statutes for changes that can result in improved court processes in competency proceedings and court-ordered treatment hearings and other hearings where a litigant may need mental health treatment.

As such, the Committee has reviewed recent changes to [Rule 11.5 Ariz.R.Crim.Proc.](#) allowing Limited Jurisdiction Courts (LJC) to handle competency proceedings for misdemeanor defendants in their jurisdictions. However, when the misdemeanor defendant is determined to be incompetent and not restorable, the LJC judge does not have authority to order the city prosecutor to file a Petition for Court Ordered Evaluation (COE) under Title 36. Because these misdemeanor defendants are not currently being linked to ongoing Title 36 services when charges are dismissed by the LJC, defendants are released back into the community without 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.

Under current statute and rule, the LJC judge can: dismiss the charges **or** transfer the case to the superior court for proceedings under A.R.S. §13-4517 (Rule 11.5). If the case is transferred to the Superior Court for further options under A.R.S. §13-4517, the County Attorney can file a Title 36 Petition for COE and can detain the defendant and retain jurisdiction over the defendant's charges while the Petition for COE is processed. However, there is no current protocol in place to explain the transfer process. The following protocol language and templates for the *Order of Transfer* and *Order Accepting Transfer* are intended to provide a clear and workable mechanism to move a misdemeanor defendant between criminal and civil court in a timely fashion when the originating case is at the LJC level.

Of note, the Committee recognizes that this transfer protocol may only be currently relevant to Maricopa County Superior Court and LJC's handling competency proceedings. However, it is anticipated that more LJC courts will begin to handle their own competency proceedings under Rule 11.5 (B). When a Superior Court adopts this transfer protocol, they must adapt the protocol to incorporate the common terminology used in their jurisdiction(s) for prosecutor and defense counsel, as well as any other terms that are unique to their jurisdiction(s).

ORDER OF TRANSFER PROTOCOL AND TEMPLATES BEGIN ON FOLLOWING PAGE

Authority: [Rule 11.5 Ariz.R.Crim.Proc.](#)

(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](#).

PROTOCOL: TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT

1. The Mental Health Expert's Report is submitted to the limited jurisdiction court judge which states the opinion of a psychiatrist or psychologist that there is reasonable cause to believe the defendant is in need of involuntary mental health treatment or the appointment of a guardian or both.
2. The limited jurisdiction court makes a determination by separate Minute Entry Order that the defendant is incompetent and not restorable.
3. If the limited jurisdiction court judge, based upon all the evidence presented, finds that there is reasonable cause to believe that the defendant is in need of a Court Ordered Evaluation under Title 36 or in need of a Court Appointed Guardian under Title 14, or both, the limited jurisdiction court judge issues an ORDER OF TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT (see form attached) upon making the appropriate findings for transfer of the case to Superior Court under Rule 11.5 (b) (3) (B) (ii), Ariz. R. Crim.Proc. requesting consideration of further proceedings by the Superior Court in accordance with A.R.S. § 13-4517. [This determination and Order can be made upon Motion of either party or *sua sponte* by the court]
4. Following issuance of order of transfer, the City Attorney¹ assembles the following documents and transmits to the County Attorney within two working days:
 - i. Copies of all available Pre-Screen Rule 11 Competency Reports and all other available Mental Health Experts' reports used in the defendant's past and current Rule 11 evaluation, including any reports submitted during any effort to restore competency;
 - ii. A statement of any acts or statements of the defendant related to the current charges and any relevant history of acts or statements of the defendant that form a basis for reasonable cause to believe the defendant is in need of a Court Order for Evaluation under Title 36 or Guardianship under Title 14;
 - iii. A copy of the Law Enforcement Report of the index offense (i.e. police reports), a copy of any arrest and conviction record of the defendant; and
 - iv. The contact information of any identified witnesses that may be used at a hearing on a Petition for Court Ordered Treatment under Title 36 or Guardianship under Title 14.

¹ When a Superior Court adopts this transfer protocol, they must adapt the protocol to incorporate the common terminology used in their jurisdiction(s) for prosecutor and defense counsel, as well as any other terms that are unique to their jurisdiction(s).

5. The City Attorney files a Notice of Transmission of documents pursuant to the ORDER OF TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT with the City Court and with the Superior Court certifying compliance with the order.

**PROTOCOL: ACCEPTANCE OF TRANSFER FROM LIMITED JURISDICTION COURT
BY SUPERIOR COURT**

1. Upon receipt of an Order of Transfer from the limited jurisdiction court, the clerk of the Superior Court assigns the case to a division of the Superior Court, assigning an appropriate case number and routing the Order of Transfer to the assigned judge for further proceedings pursuant to A.R.S. §13-4517.² The Clerk of the Superior Court shall endorse the limited jurisdiction court judge, the City attorney and the City public defender or private defense attorney on all orders issued by the Superior Court in the matter after transfer.³ The City public defender or private defense counsel will continue to represent the defendant in all matters related to the criminal case after transfer.⁴
2. The Superior Court Judge to whom the case is assigned, shall issue an ORDER ACCEPTING TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT (see form attached) retaining jurisdiction over the case and the defendant and containing any other appropriate orders, and shall set a Status Conference within 7 working days for consideration of options under A.R.S. §13-4517. Where the defendant is in-custody at the time of transfer other appropriate orders may include an order to the agency holding the defendant to retain custody until further order of the Superior Court.
3. Upon receipt of a copy of the documents transmitted to the County Attorney by the City Attorney, the County Attorney considers the documents provided to determine whether a Petition for Court Ordered Evaluation can or should be filed pursuant to Title 36 or a Petition for Appointment of Guardian should be filed under Title 14, or both.
4. At the Status Conference set by the Superior Court, the parties may request further appropriate relief under A.R.S. §13-4517.

² Note: In Maricopa County, the Superior Court has already assigned a Superior Court case number to City of Phoenix LJC cases in the Rule 11 process which is used in the minute entries. Therefore, a new case number does not need to be assigned in City of Phoenix Rule 11 cases.

³ When a Superior Court adopts this transfer protocol, they must adapt the protocol to incorporate the common terminology used in their jurisdiction(s) for prosecutor and defense counsel, as well as any other terms that are unique to their jurisdiction(s).

⁴ If an evaluation is ordered on a Petition for Court Ordered Evaluation under Title 36 or upon filing a Petition for Appointment of Guardian under Title 14, the defendant will be appointed separate defense counsel who will represent the defendant in further proceedings under Title 36 or Title 14.

5. If the County Attorney determines that Appointment of Guardian should be sought, the County Attorney files a Petition for Appointment of Guardian or requests the court to appoint an appropriate person or agency to investigate the need for appointment of a guardian and to file the appropriate pleadings.⁵
6. If the County Attorney determines that a Petition for Court Ordered Evaluation should be filed, the County Attorney prepares and files a Petition for Court Ordered Evaluation and keeps the Superior Court advised of the status of that Petition in accordance with timeframes set by the Court.
7. If either Petition is filed, the Superior Court should consider whether to issue an order dismissing the criminal case immediately, or whether the Superior Court should issue an order retaining jurisdiction over the criminal case and the defendant until it is determined that an Order for Court Ordered Treatment under Title 36 or an Order Appointing Guardian under Title 14 has been granted.⁶

⁵ In Maricopa County, the court usually appoints a Guardian Ad Litem for this purpose. The court could also consider appointing the Public Fiduciary, or a family member who is willing and able to do so, to investigate the need for guardianship and to file the appropriate pleadings.

⁶ A.R.S. §14-4517 (C) states: “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.” Title 36 provides a number of opportunities for the defendant to be remanded back to the Superior Court for determination of further disposition under A.R.S. §13-4517 during the evaluation period or if a Court Order for Treatment is not granted. A remand for this purpose would only be appropriate if the criminal court has retained jurisdiction and has not dismissed the case. Therefore, if a Petition for Court Ordered Evaluation is filed, the criminal case should not be dismissed until a Petition for Court Ordered Treatment is granted if one is filed. [See A.R.S. §§36 – 523(F), 529 (C), 531 (E), 534 (B) and 540 (Q)].

(INSERT NAME OF) COURT

INSERT ADDRESS

STATE OF ARIZONA vs. DOB: Defendant	CASE NO.	RULE 11.5 (b) (3) (B) (ii) ORDER OF TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT
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Having found 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, based upon a consideration of all of the evidence presented, including the written reports of the experts on the issue of competency,

THE COURT FINDS that there is reasonable cause to believe that the defendant is in need of either receiving involuntary treatment under Title 36 or the appointment of a guardian, or both.

IT IS ORDERED transferring the case to the (insert) County Superior Court for further proceedings pursuant to A.R.S. § 13-4517 and Rule 11.5 (b) (3) (B) (ii), Ariz.R.Crim.Proc.

IT IS FURTHER ORDERED requesting that upon receipt of this Order of Transfer, the (insert) County Superior Court issue an ORDER OF ACCEPTANCE FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT and issue other appropriate orders for further proceedings pursuant to A.R.S. § 13-4517 including an order retaining jurisdiction over this case and this defendant until the defendant is committed for treatment pursuant to Title 36, Chapter 5, or a guardian is appointed pursuant to Title 14, or the case is dismissed.

IT IS FURTHER ORDERED that no later than 2 working days following the issuance of this order, the (insert) City Attorney’s Office shall transmit the following documents and information to the (insert) County Attorney to be used to consider further appropriate proceedings pursuant to A.R.S. § 13-4517 and shall file a Notice of Transmission certifying compliance with this Order:

1. Copies of all available Pre-Screen Rule 11 Competency reports and all other available Mental Health Experts’ reports used in the defendant’s past and current Rule 11 evaluation, including any reports submitted during any effort to restore competency;
2. A statement of any acts or statements of the defendant related to the current charges and any relevant history of acts or statements of the defendant that form a basis for reasonable cause to believe the defendant is in need of a Court Order for Evaluation under Title 36 or Guardianship under Title 14;
3. A copy of the Law Enforcement Report of the index offense (i.e. police reports), a copy of any arrest and conviction record of the defendant; and
4. The contact information of any identified witnesses that may be used at a hearing on a Petition for Court Ordered Treatment under Title 36 or Guardianship under Title 14.

Date: _____

Hon. _____

(INSERT NAME OF) COURT

INSERT ADDRESS

STATE OF ARIZONA vs. DOB: Defendant	CASE NO.	RULE 11.5 (b) (3) (B) (ii) ORDER ACCEPTING TRANSFER FROM LIMITED JURISDICTION COURT TO SUPERIOR COURT
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This court having received the Order of Transfer concerning the above named defendant from the (insert name of limited jurisdiction) Court dated (insert date) in which the defendant has been found incompetent to stand trial without substantial probability to become competent within the timeframes as defined in A.R.S. § 13-4515, and requesting that this court issue an Order Accepting Transfer of the case and retain jurisdiction of this case and this defendant for further appropriate proceedings pursuant to A.R.S. § 13-4517 and Rule 11.5 (b) (3) (B) (ii), Ariz.R.Crim.Proc., and this court finding good cause;

THEREFORE, IT IS ORDERED that (insert name) County Superior Court accepts the transfer of this case and this defendant from the (insert name of limited jurisdiction) Court for consideration of further appropriate proceedings pursuant to A.R.S. § 13-4517 and Rule 11.5 (b) (3) (B) (ii), Ariz.R.Crim.Proc.

IT IS FURTHER ORDERED that this court shall retain jurisdiction over this case and this defendant pursuant to A.R.S. § 13-4517, subsections C, D and E until further order of this court.

OPTIONAL:

[IT IS FURTHER ORDERED that the defendant shall remain detained until further order of this court.]

IT IS FURTHER ORDERED setting this matter for a status conference on (insert date) at (insert time) before Judge (insert name) to consider the appropriate disposition of this matter pursuant to A.R.S. § 13-4517.

Date: _____

Hon. _____