



Arizona Supreme Court No. R-23-0014  
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TO:

Rule 28 Distribution  
David K Byers

## ATTACHMENT<sup>1</sup>

### RULES OF CRIMINAL PROCEDURE

#### Rule 11.1. Definitions, Effect of Incompetence, and Right to Counsel

(a) [No change]

(b) **Effect of Incompetence.** A defendant may not be tried, convicted, or sentenced while that defendant is incompetent. A defendant is not incompetent to stand trial merely because the defendant has a mental illness, defect, or disability. This rule does not bar a court from proceeding under A.R.S. §§ 36-3707(D) or 13-4521.

(c) [No change]

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#### Rule 11.3. Appointment of Experts

(a) **Appointment of Experts.**

(1) *Definition of a “Mental Health Expert.”* “Mental health expert” means a physician licensed under A.R.S. §§ 32-1421 to -1437 or 32-~~1721~~ 1821 to ~~1730~~ -1830; or a psychologist licensed under A.R.S. §§ 32-2071 to -2076.

(2)-(6) [No change]

(b)-(d) [No change]

#### Rule 11.4. Disclosure of Experts' Reports

(a) **Reports of Appointed Experts Under Rule 11.3.**

(1) *Deadline.* An expert appointed under Rule 11.3, or under A.R.S. § 13-~~4517~~ 4505, must submit a report to the court no later than 10 business days after the expert's examination is completed. The expert must inform the court if the report cannot be made available at least 7 days before the scheduled hearing.

(2) [No change]

(b) [No change]

#### Rule 11.5. Hearing and Orders

(a) [No change]

(b) **Orders.**

(1)-(2) [No change]

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<sup>1</sup> Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strike-through~~.

*(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)-(iii) [No change]

(iv) ~~Retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518~~ If the defendant is charged with a serious offense as defined in A.R.S. § 13-706, order a trial to determine whether the defendant is dangerous and should be involuntarily committed under A.R.S. § 13-4521.

(B) [No change]

(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. If the court enters an order under (b)(3)(A)(iv), it may retain jurisdiction and enter further orders as provided in A.R.S. §§ 13-4517, 13-4518, and 13-4521.

(c)-(d) [No change]

**Rule 11.6. Later Hearings**

(a)-(c) [No change]

**(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 proceeds under Rule 11.5(b)(2) and 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. or involuntary commitment proceedings under A.R.S. § 13-4521.

**Rule 11.7. Privilege and Confidentiality**

(a) [No change]

**(b) Privileged Statements of the Defendant.**

(1)-(2) [No change]

(3) *In Title 36 Proceedings.* Notwithstanding (b)(1) and (b)(2), a statement of the defendant obtained in a Rule 11 matter, or evidence resulting from that statement, may be used by any party in a ~~hearing proceeding~~ to determine whether the defendant is eligible for court-ordered treatment under A.R.S. §§ 36-501 et seq. or 36-4001 et seq., or is a sexually violent person.

**(c) Confidentiality of Reports.**

(1) *Generally.* The court and counsel must treat reports of Rule 11 experts as confidential in all respects. They may, however, disclose other expert reports to mental health experts in proceedings related to A.R.S. §§ 13-4501 et seq., ~~§ 13-4518,~~ and §§ 36-501 et seq., or as otherwise excluded in A.R.S. §§ 13-4508 and 13-4516.

(2) *Sealing.* After the defendant is found competent or unable to regain competence, the court must order the mental health experts' reports sealed. By later order, the court may grant access to a report, but only for further competence or sanity evaluations, statistical study, the examined defendant's mitigation investigation, in a trial conducted pursuant to A.R.S. § 13-4521, or if necessary to assist in mental health treatment for restoration of competence or under A.R.S. § 13-502.