

SUPREME COURT OF ARIZONA

In the Matter of ) Arizona Supreme Court  
 ) No. R-18-0012  
RULES OF CRIMINAL PROCEDURE 11.5 )  
AND 11.6 )  
 ) **FILED 8/28/2018**  
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 )  
\_\_\_\_\_ )

**ORDER  
AMENDING RULES 11.5 AND 11.6, RULES OF CRIMINAL PROCEDURE**

A petition having been filed proposing to amend Rules 11.5 and 11.6, Rules of Criminal Procedure, and comments having been received, upon consideration,

**IT IS ORDERED** that Rules 11.5 and 11.6, Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective January 1, 2019.

DATED this 28th day of August, 2018.

\_\_\_\_\_/s/\_\_\_\_\_  
SCOTT BALES  
Chief Justice

Arizona Supreme Court No. R-18-0012  
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TO:  
Rule 28 Distribution  
David K Byers  
Lisa M Panahi  
Amy Michelle Kalman

**ATTACHMENT \***

**Rule 11.5 Hearing and Orders**

**(a) [No change]**

**(b) Orders.**

**(1) [No change].**

**(2) *If Incompetent but Restorable.***

~~(A) *Generally.* If a limited jurisdiction court determines that a defendant is incompetent, it must either dismiss the charges on the State's motion, or transfer the case to the superior court for further proceedings. Upon transfer from a limited jurisdiction court, or if a superior court determines that the defendant is incompetent, it must order competency restoration treatment, unless there is clear and convincing evidence that the defendant will not regain competence within 15 months.~~

(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.

~~(B C) *Extended Treatment.* The court may extend treatment for 6 months beyond the 15-month limit if it finds that the defendant is progressing toward competence. The~~

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\*Additions to text are indicated by underscoring; deletions by ~~strikeouts~~.

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.

**(C) through (E) [No change except re-lettering as (D), (E) and (F)]**

**(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) ~~or (b)(3)(B)~~, it may retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518.

**(c) and (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 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) [No change]**