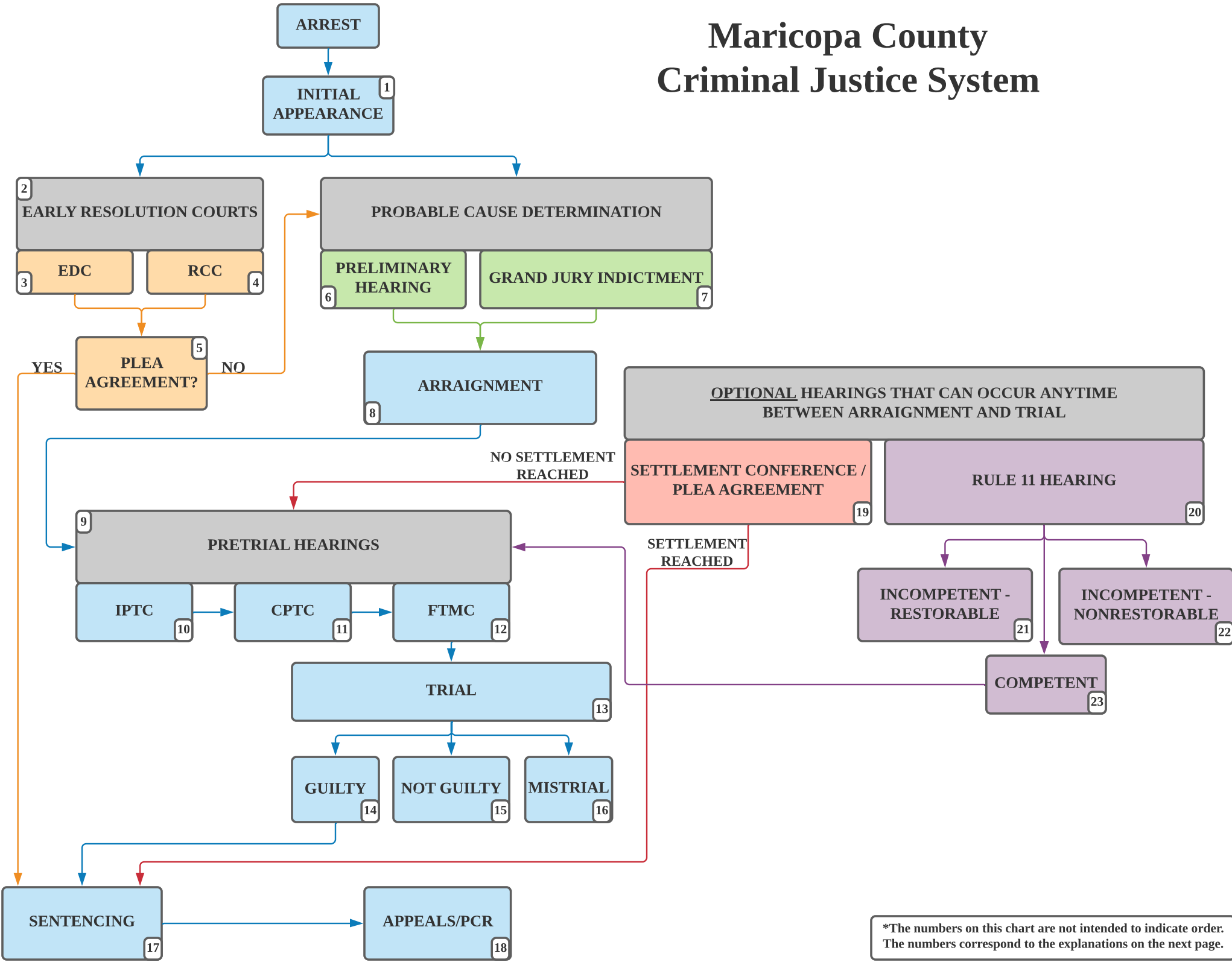


Maricopa County Criminal Justice System



*The numbers on this chart are not intended to indicate order. The numbers correspond to the explanations on the next page.

1. **Initial Appearance (IA):** Within 24 hours of arrest, Defendant is informed of charges, rights to counsel and to remain silent, court must determine whether probable cause exists to continue detaining defendant, must consider comments by victim, and determine release conditions for Defendant. *See Ariz. R. Crim. P. 4.2.*
2. **Early Resolution Courts:** The early resolution courts are unique to Maricopa County and give the parties a fast paced setting to potentially resolve the case prior to a probable cause determination. The prosecution provides the defense with limited discovery and a plea offer. The client typically has 30 days to negotiate and enter into a plea agreement or to reject the plea and affirm their right to a probable cause determination.

Felony drug cases are set in the **Early Disposition Court (EDC)** and all other types of cases are set in the **Regional Court Center (RCC)**. It is within the sole discretion of the prosecutor to decide whether a case will be set in the early resolution courts. Cases that are serious or complex in nature are not typically chosen by the prosecutors for the early resolution courts.

3. **Early Disposition Court (EDC):** Formerly called Expedited Drug Court, was developed in 1997 as an innovative approach in processing cases to alleviate the backlog of trials in the Criminal Division and to respond to the community's desire to offer treatment to drug offenders. Cases filed in EDC involve victimless charges of possession of illegal drugs for personal use and/or paraphernalia.

The three (3) EDC calendars (Two (2) in the downtown Phoenix complex and one (1) at the Southeast Regional Complex) are generally large. In FY2016, there were 11,083 cases filed in EDC, a decrease of 2.29% compared to the number of cases filed in FY2016. Most of the cases resolved in EDC are diverted into a drug treatment program administered by a private drug treatment company under contract with the Maricopa County Attorney's Office. If the defendant successfully completes the treatment, their case is dismissed.

4. **Regional Court Center (RCC):** The RCC, for early felony processing, was designed to speed resolution of lower level criminal cases. The direct complaint program handles all felony complaints (typically Class 4, 5 and 6 felonies) from inception, eliminating complaint paperwork being transferred between the Justice Court system and Superior Court, with judicial officers able to preside over the full range of case complexities. Preliminary hearings and arraignments are consolidated to the same day at the RCC, which saves ten days of potential jail time for in-custody defendants, eliminates duplication of efforts, and reduces Sheriff Office transport of in-custody defendants to the various Justice Courts. Status Conferences are scheduled a few days in advance of the Preliminary Hearing to encourage early communication between the parties and promote possible case resolution.

The four (4) calendars in the RCC (three (3) in Downtown Phoenix and one (1) at the Southeast Regional Complex), are larger in size to those found in EDC. In FY2016, there were 15,690 cases filed, which is 6% less than the number of cases filed in FY2015. However, many of the cases filed into RCC are diverted to a Grand Jury by the County Attorney's office before in the preliminary hearing in RCC. If those cases are not included in the determination of a RCC resolution rate, the percentage of cases that actually appear in RCC that are resolved in RCC increases significantly.

5. **Plea Agreement:** Plea Agreement: If defendant signs a plea agreement it must be entered with the court. The defendant must be present and the court must determine that the defendant is entering into this plea agreement voluntarily and intelligently. *See Ariz. R. Crim. P. 17.1., 17.3.*

The court must tell the defendant: (1) the nature of the charge to which he is pleading; (2) range of possible sentences for the offense he is pleading to, including any special conditions regarding sentence; (3) constitutional rights the defendant is giving up by pleading; (4) the right to not plead guilty; (5) that he will be waiving right to direct appeal and may only seek PCR; (6) that there might be immigration consequences if the defendant is not a citizen. *See Ariz. R. Crim. P. 17.2.*

Unless, the parties stipulated to the sentence, the Court may impose any sentence within the range of the plea or Court may reject the plea if it finds it is unfair, and at this point the defendant or state may withdraw from the plea, at which point the original charges will reinstated and the case will continue. *See Ariz. R. Crim. P. 17.4-5.*

6. **Preliminary Hearing (PH):** Must commence within 10 days following defendant's initial appearance if in custody, and 20 days after the initial appearance if out of custody, unless waived or complaint dismissed. *See Ariz. R. Crim. P. 5.1* At the end of the proceeding the magistrate will determine whether the State has established probable cause. Only evidence that is material to the question of probable cause will be admitted. Defendant has the right to cross examine witnesses against him. If probable cause is found, then DCA should file an information either at the end of the hearing or shortly afterwards. *See Ariz. R. Crim. P. 5.3.*

7. **Grand Jury Indictment:** A sealed proceeding where 9-16 jurors, advised by the prosecutor, decide whether there is probable cause that defendant committed the crime and issue an indictment if they find probable cause. GJ may subpoena almost anyone to come testify (besides the defendant.) *See Ariz. R. Crim. P. 12.21-28.*

Due process compels the prosecutor to make a fair and impartial presentation to the GJ. *Trebus v. Davis In & For Cty. of Pima*, 189 Ariz. 621, 623, 944 P.2d 1235, 1237 (1997); *Ariz. R. Crim. P. 12.9.*

Ways to challenge a GJ indictment:

- (1) On the ground that grand jurors were not drawn or selected according to law; that a specific juror was not qualified to sit on the GJ. *See Ariz. R. Crim. P. 12.28;*
- (2) An insufficient number of grand jurors concurred in the indictment; or
- (3) The defendant was denied a substantial procedural right. *Maretick v. Jarrett*, 204 Ariz. 194, 197, 62 P.4d 120, 123 (2003).

If the Grand Jury indicts, it may request the court to issue either a **warrant** or a **summons**. If a warrant is issued, the accused individual may get arrested pursuant to that warrant. A summons, on the other hand, is a notice sent directly to the accused individual, informing him/her of the indictment and upcoming court hearing. If a summons is issued and the accused individual does not show up to the court hearing, the court may issue a warrant.

8. **Arraignment:** For defendant in custody, must be within 10 days of filing of indictment, information, or complaint; for defendants not in custody, must be within 30 days of indictment, information or complaint. *See Ariz. R. Crim. P. 14.1.*

Defendant must enter plea (not guilty), Court may then consider defendant's release conditions (however, the general rule is that they will not consider release conditions at this stage), set date for pretrial conference, advise parties of important deadlines, advise defendant of certain rights and penalties if defendant does not appear. *See Ariz. R. Crim. P. 14.3.*

Time Limits: for a defendant in custody, case must be tried within 150 days after arraignment defendants out of custody, case must be tried within 180 days of arraignment. *See Ariz. R. Crim. P. 8(a)(1)-(2).*

9. **Pretrial Hearings:** All motions must be made no later than 20 days prior to trial. Opposing party shall have 10 days to file response. Jurisdiction may be raised at any time. *See Ariz. R. Crim. P. 16.1(b).*

10. **Initial Pre-Trial Conference (IPTC):** Generally, where the court inquires whether the State and Defense are complying with discovery under Rule 15 and may order either party to comply with additional discovery if needed. May also order that parties engage in settlement negotiations. Court will also inquire whether a plea offer has been extended. Will also set dates for other conferences, hearings, etc. Court will also set dates for FTMC and trial (of course these dates may be changed later). If a motion to modify has been filed, then this will heard at this hearing. Additionally, if a motion to designate a case complex has been filed, this will also be heard at this hearing.

11. **Comprehensive Pre-Trial Conference (CPTC):** Generally, the court will inquire about the status of plea negotiations, whether the state has offered a plea at all, if so, when it expires and whether a Donald advisement is needed. Court may also inquire whether all necessary discovery has been disclosed; whether hearings are needed for any motions; whether any additional motions will be filed; and may set more dates or continue certain dates.

12. **Final Trial Management Conference (FTMC):** Conference where court tries to resolve any ongoing discovery issues, make final rulings on any ongoing evidentiary issues, discuss whether parties are ready to go to trial, and generally resolve any problems and make sure both parties are ready to go to trial.

13. **Trial:** In a criminal trial, the state must prove beyond a reasonable doubt that the defendant committed the crime. Superior Court juries have either eight or twelve jurors. Once a jury is selected and sworn, the prosecution and the defense make opening statements to the jury to explain the case. The Deputy County Attorney (the State) then presents the case against the defendant. It is the responsibility of the State to prove "beyond a reasonable doubt" that a crime was committed and the defendant is guilty of committing that crime. To meet this burden of proof, the Deputy County Attorney presents evidence and calls witnesses to testify. Witnesses are required to testify under oath and may be cross-examined by the defense attorney. Witnesses are excluded from the courtroom until they are finished testifying. The reason for this rule is to ensure that a witness is not influenced by the testimony of another witness.

After the prosecutor presents the case against the defendant, the defense has an opportunity to present its evidence. On advice of counsel, the defendant may or may not testify on his/her behalf. As in the case with the prosecution witnesses, defense witnesses are subject to cross-examination by the prosecutor.

Following the defense's case, rebuttal witnesses may be called by the prosecutor to discredit statements and facts presented by the defense. At the end of the trial, attorneys for the prosecution and defense make their final arguments to the Judge or the jury. The Judge instructs the jury on how the law applies to the case and about the duty of the jury.

In every case the jury must render a verdict finding the defendant either guilty or not guilty. The jury must agree unanimously in order to find the defendant guilty or not guilty.

On rare occasions, instead of having a jury trial, the defendant and prosecutor may agree to a bench trial and ask a judge to determine the verdict.

There are three basic possible outcomes of a criminal trial: (1) guilty verdict, (2) not guilty verdict, or (3) mistrial.

For more information regarding trial: *see Ariz. R. Crim. P. 18-23; see also Ariz. R. Crim. P. 8* (discussing speedy trial rights).

14. Guilty Verdict: In a case where a guilty verdict is reached, the court will schedule a date for sentencing.

15. Not Guilty Verdict: If the jury returns a "not guilty" verdict, this means that, in the jury's opinion, the State failed to prove the case beyond a reasonable doubt. The charges must be dismissed, and the defendant will be released. The State cannot appeal the jury's verdict and the matter cannot be retried (attempting to retry a defendant in that situation is called "double jeopardy," and is not permissible).

16. Mistrial: There are two main situations in which a mistrial will be declared:

(1) **Hung Jury:** If the jury is unable to reach a unanimous verdict, it is declared "hung" by the Judge and the jury will be discharged. The State may then request that the case be retried within 60 days. *See Ariz. R. Crim. P. 8.2.*

(2) **Trial Misconduct:** If misconduct occurs on the part of the court, State, defense, or jury, the court may declare a mistrial. The jury will then be discharged and the State may request the case be retried within 60 days. *See Ariz. R. Crim. P. 8.2.*

17. Sentencing: Sentencing must take place after 15 days but before 30 days after the determination of guilt, unless the court grants defendant's request for sentence to be pronounced earlier. Trial court may also reset the date of sentencing to within 60 days after the determination of guilt if defendant requests a pre-sentence hearing under R. 26.7 and good cause is shown. *See Ariz. R. Crim. P. 26.3.*

A pre-sentence report is required in all cases where the court has discretion over the penalty to be imposed. *See Ariz. R. Crim. P. 26.4.*

Defendant is entitled to be at sentencing; no sentencing in absentia unless there is extraordinary circumstances. *See Ariz. R. Crim. P. 26.9; see also State v. Fettis*, 136 Ariz. 58, 664 P.2d 208 (1983). Defendant must also be given the chance to speak on his own behalf (right to allocution). *See Ariz. R. Crim. P. 26.10; see also State v. Nelson*, 122 Ariz. 1, 592 P.2d 1267 (1979).

18. Appeals/Post-Conviction Relief (PCR)

Appeals: Notice of appeal must be filed within 20 days after the judge pronounces sentence. Only available if the defendant did not enter a plea agreement. Defendant is entitled to one appeal by right. May file an *Anders* Brief, where the defense finds no appealable issues and asks the Court to search through the record to see if it finds any. *See Ariz. R. Crim. P. 31.3.*

Post-Conviction Relief (PCR): Relief available for specific types of violations. Grounds for relief are: (1) the conviction or sentence was in violation of the United States or Arizona Constitutions; (2) court was without jurisdiction to render judgment or impose sentence; (3) sentence exceeded maximum authorized by law, or not in accordance with law; (4) person held after sentence has expired; (5) newly discovered facts probably exist and such facts probably would have changed the verdict or sentence; (6) defendant's failure to file PCR or notice of appeal within prescribed time was not defendant's fault; (7) significant change of law that if determined to apply to defendant's case would probably overturn the defendant's conviction; (8) defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found defendant guilty or imposed the death penalty. *See Ariz. R. Crim. P. 32.1* Must be filed within 90 days of entry of judgment and sentence or 30 days after order and mandate in the direct appeal. *See Ariz. R. Crim. P. 32.4(a).*

19. Settlement Conference/Plea Agreement

Settlement Conference: At the request of either party, or sua sponte, the court may participate in settlement discussions by directing counsel to participate in a good faith discussion with the court regarding a resolution. The prosecutor must afford the victim an opportunity to confer with the prosecutor about about the resolution. *See Ariz. R. Crim. P. 17.4.* Generally, statements made during plea agreements are not admissible at trial, except to impeach the defendant if he makes a false statement or commits perjury. *See Ariz. R. Evid. 410.*

Plea Agreement: If defendant signs a plea agreement it must be entered with the court. The defendant must be present and the court must determine that the defendant is entering into this plea agreement voluntarily and intelligently. *See Ariz. R. Crim. P. 17.1., 17.3* The court must tell the defendant: (1) the nature of the charge to which he is pleading; (2) range of possible sentences for the offense he is pleading to, including any special conditions regarding sentence; (3) constitutional rights the defendant is giving up by pleading; (4) the right to not plead guilty; (5)

that he will be waiving right to direct appeal and may only seek PCR; (6) that there might be immigration consequences if the defendant is not a citizen. See Ariz. R. Crim. P. 17.2.

Unless, the parties stipulated to the sentence, the Court may impose any sentence within the range of the plea or Court may reject the plea if it finds it is unfair, and at this point the defendant or state may withdraw from the plea, at which point the original charges will reinstated and the case will continue. *See Ariz. R. Crim. P. 17.4-5.*

20. Rule 11 Hearing: Motion for Rule 11 competency evaluation may be filed at any time after the information or complaint is returned. Either party may file the motion or the Court may itself order an examination to determine whether the defendant is competent to stand trial. *See Ariz. R. Crim. P. 11.2.*

A defendant is competent if he or she can understand the nature of the proceedings against him and assist in his own defense. It's a pretty low standard. *See Ariz. R. Crim. P. 11.1.*

Evaluation consists of at least two mental health experts examining defendant, looking at his or her medical records and testifying regarding his or her mental health. *See Ariz. R. Crim. P. 11.4.*

Experts' reports must be submitted to the court within 10 working days of the completion of the examination, except any statements the defendant made regarding the charged offense must be redacted and may only be given to the defense. *See Ariz. Crim. P. 11.4.*

A hearing must be held within 30 days after the expert reports have been submitted to the court to determine the competency of the defendant. *See Ariz. Crim. P. 11.5.*

21. Incompetent but Restorable: If the court finds that the defendant is incompetent, it shall order restoration treatment unless there is clear and convincing evidence that defendant will not regain competency within 15 months. May subject the defendant to involuntary treatment, including administering him drugs. However, the court can extend the restoration period another 6 months after the original 15 months, for a total of 21 months. **See Ariz. R. Crim. P. 11.5(b)(2).**

22. Incompetent and Not Restorable: If the court finds that defendant is incompetent and there is no substantial probability that he will become competent within 21 months, it may: (1) remand the defendant to the DHS to begin civil commitment pursuant to Title 36; (2) order the appointment of a guardian pursuant to title 14, ch. 5; (3) release the defendant and dismiss charges without prejudice. *See Ariz. R. Crim. P. 11.5(b)(3).*

23. Competent: If the court finds that the defendant adequately understands the proceedings against him then the court will find him competent and the proceedings shall continue. *See Ariz. R. Crim. P. 11.5(b)(1).*