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GILA RIVER HEALTH CARE BEHAVIORAL HEALTH SERVICES

# Competency & Restoration

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## Incompetency

- ☐ Mental illness, defect, or disability
- Inability to understand proceeding against him/her
- Inability to assist in his/her defense

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## Effect of Incompetency Finding

- ☐ No trial
- ☐ No conviction
- ☐ No sentence

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**Appointment of Mental Health Experts**

- ▣ Examine defendant and testify regarding mental condition

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**Mental Health Expert Defined**

- ▣ Rule 11.3 (b); ARS 13-4501 (3)
- ▣ Any MD or DO licensed per Title 32
- ▣ Any psychologist licensed per Title 32
- ▣ Must have taken the Supreme Court course
- ▣ Must be on the court's approved list

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**Nature of Proceeding**

- ▣ Not adversarial
- ▣ Not an insanity defense

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### Competency decided by Court

- ❑ Rule 11.5
- ❑ Hearing within 30 days after expert reports submitted
- ❑ Court can disagree with doctors

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### Not Competent if

- ❑ He has a mental illness, defect or disability
- ❑ That prevents the defendant from having
- ❑ The capacity to understand the nature and object of the proceedings against him  
OR/AND
- ❑ The ability to consult with counsel and assist in his/her defense

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### Can be Competent Despite

- ❑ Failing to make wise choices
- ❑ Making choices that do not serve his/her best interests
- ❑ Failure or inability to master technical legal knowledge

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## Minimum Standards

- ☐ Understand nature of charge (s) and appreciate the seriousness
- ☐ Understand defenses available
- ☐ Understand consequences and differences between a guilty and not guilty pleas
- ☐ Aware of legal rights
- ☐ Aware of possible outcomes and consequences

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## Ability to Assist Counsel

- ☐ Ability to recall and relate facts regarding his/her actions
- ☐ Ability to assist in identifying and locating witnesses
- ☐ Ability to maintain consistent defenses
- ☐ Ability to listen to testimony and inform counsel of misstatements
- ☐ Ability to make decisions among alternatives

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## Ability to Assist Counsel

- ☐ Capacity to testify
- ☐ The extent to which his/her mental condition is apt to deteriorate under stress of trial/hearing
- ☐ Whether any hallucinations would interfere with testimony
- ☐ Ability to convey correct information to attorney

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### Conditions & Effects on Competency...

- ▣ Thought disorders, mood disorders, personality disorders
- ▣ Organic Brain Syndrome
- ▣ Mental Retardation
- ▣ Memory Loss
- ▣ Delusions

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### Restorability

- ▣ If after initial evaluations, the court finds the defendant not competent, the defendant will be sent for restoration unless it is determined competency cannot be restored within 15 months
- ▣ Not restorable if defendant cannot become competent within 15 months
- ▣ Total time a defendant may be in restoration is 21 months from the finding of incompetency

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### Restorability

- ▣ Look to
- ▣ Nature of illness or disorder;
- ▣ The responsiveness of the defendant's condition to medication and education; and prior restoration treatment and its results

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## Summation

- ❑ A defendant must be able to understand the proceedings against him and to assist in his defense
- ❑ Web site for additional information
- ❑ <http://www.sc.pima.gov/Portals/0/Files/1/Rule11%20Roadshow.pdf>

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