Capital Litigation for Arizona Prosecutors

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CAPITAL DEFENDANT'S PRESCREENING EVALUATION FOR COMPETENCY & SANITY: An Overview of Competency & GEI Standards in Arizona

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Guilty Except Insane

“If you commit a big crime then you are crazy, and the more heinous the crime, the crazier you must be. Therefore you are not responsible, and nothing is your fault.”

Peggy Noonan, U.S. writer, newscaster

“I’ve fully concluded that I was ill…”

Multi-millionaire John du Pont as he apologized for killing Olympic wrestler Dave Schultz on January 26,1996.

WHAT

is

INSANITY?

Historical Overview

1400's Wild Beast Standard:

- Defense had to prove that defendant lacked the minimum understanding of a wild animal or infant.

Daniel M’Naghten

- While attempting to assassinate British Prime Minister, killed his secretary instead.
- Was found not guilty on the grounds that he was insane at the time
- Public outrage followed
- M’Naghten Rule Developed

M'Naghten Rule 1843

In order to establish a defense of insanity:

- Must clearly prove that at the time of committing the act, the accused
  - Was laboring under such a defect of reason, from disease of mind, as not to know the nature and quality of the act he was doing
  - Or, if he did know what he was doing, that he did not know it was wrong.

Irresistible Impulse Test

- Created in response to M'Naghten
- 1st used by Alabama Supreme Court 1887
- Lorena Bobbitt found not guilty under this defense (released after 3 months treatment)

  Defendant must establish that he/she was incapable of resisting the urge to commit the crime.

  Policeman at your elbow test

Durham Rule 1954

Durham V. United States (case since overruled)

An accused is not criminally responsible if his unlawful act was the product of mental disease or defect.

(because of difficulties with implementation, was rejected by the same court in 1972, adopting Model Penal Code Standard)

Model Penal Code Standard 1962

A person is not responsible for criminal conduct where (s)he, as a result of mental disease or defect, did not posess “substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law”.

- Broader than M’Naghten and Irresistible Impulse

Eric Clark

- 17 years old and all agree mentally ill
- Took keys to brothers truck, drove around a neighborhood for 40 minutes blaring rap music; shot responding officer, fled and hid out for hours, denied crime
- 3 witnesses
  - Friend – testified re: statements about killing a cop
  - 1 expert each side

State by State
plus District of Columbia

4 states abolished insanity defense:

Idaho, Kansas, Montana, Utah

1 state uses Durham Test:

New Hampshire

15 states use Model Penal Code

6 states use Modified Version of Model Penal Code

20 states use M'Naghten Rule

5 states use Modified M'Naghten Rule

36 states place burden of proof on Defendant

11 states place burden of proof on State

CO, FL, MA, MI, MS, NJ, ND, NM, OK, TN, WV

ARIZONA 1994

Guilty Except Insane

A.R.S. 13-502

A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a **mental disease or defect** of such severity that the person **did not know the criminal act was wrong.**

13-502 (continued)

A mental disease or defect does not include disorders that result from:

acute voluntary intoxication
withdrawal from alcohol or drugs,
character defects,
psychosexual disorders
impulse control disorders.

13-502 con’t

Conditions that do not constitute legal insanity include but are not limited to:

momentary, temporary conditions arising from the pressure of the circumstances

moral decadence

depravity or passion growing out of anger

jealousy

revenge

hatred

other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

13-503 Effect of Drugs or Alcohol

Temporary intoxication resulting from the **voluntary** ingestion, consumption, inhalation or injection of **alcohol**, an **illegal substance** under chapter 34 of this title or other **psychoactive substances** or the **abuse of prescribed medications** does not constitute insanity and is not a defense for any criminal act or requisite state of mind.

13-3991 Detention of defendant during insanity; restoration to sanity

If a defendant is committed to the state hospital for the reason that he is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense, if charged with a crime, or for the reason that he is found insane after conviction and prior to pronouncing sentence, he shall be detained in the state hospital until he becomes sane. When the defendant becomes sane, the superintendent of the state hospital shall give notice of the fact to the sheriff and county attorney of the county. The sheriff shall thereupon, without delay, bring the defendant from the state hospital and place him in proper custody, until he is brought to trial or sentenced, or is legally discharged.

This deals with defendants prior to sentencing, not after they have been sentenced.

13-3993. Examination of defendant pleading not guilty by reason of insanity; privilege inapplicability; reports

A. In any criminal prosecution in which the defendant has declared the defendant's intent to invoke an insanity defense, on a showing of unequal resources the state shall have the right to nominate and have appointed for examination of the defendant to determine the defendant's mental state the **same number** of medical doctors and licensed psychologists that will testify on behalf of the defense.

B. If a defendant in a criminal prosecution refuses to be examined by the state's mental health experts, the court shall preclude the defendant from offering expert evidence of the defendant's mental state at the time of the alleged crime.

13-3993 con’t

C. The **privilege** of confidential communication between a medical doctor or licensed psychologist and the defendant as it relates to the defendant’s mental state at the time of the alleged crime **does not apply** if any mental disability defense is raised.

D. If any mental disability defense is raised, both the state and the defendant shall receive prior to the trial complete copies of **any report by a medical doctor or licensed psychologist who examines the defendant** to determine the defendant’s mental state at the time of the alleged crime or the defendant’s competency.

13-4506 Examination for purposes of insanity defense

A. On request of the court or any party, with the **consent of the defendant** and **after a determination that a reasonable basis exists** to support the plea of insanity, the mental health expert who is appointed pursuant to 13-4505 shall provide a screening report that includes:

1. The mental status of the defendant at the time of the offense.

2. If the expert determines that the defendant suffered from a mental disease, defect or disability at the time of the offense, the relationship of the disease, defect or disability to the alleged offense.

B. If the defendant's state of mind at the time of the offense will be included in the examination, the court shall not appoint the expert to address the issue until the court receives the medical and criminal history records of the defendant.

C. Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

13-4508. Privilege

- B. Any evidence or statement that is obtained during an examination is not admissible at any proceeding to determine a defendant's guilt or innocence unless the defendant presents evidence that is intended to rebut the presumption of sanity.

(reports are sealed after trial)

Rule 11.8. Examination of a Defendant's Mental Status at the Time of the Offense.

(a)Applicability. At any time after an information is filed or an indictment is returned in superior court or a misdemeanor complaint is filed, an examination under this rule may be requested separately from, or in addition to, an examination under Rule 11.2.

(b) Screening Report. On its own motion or on motion of the defendant or the State, **with the defendant's consent**, the court may order an initial screening report to preliminarily investigate the defendant's mental status at the time of the offense

11.8 continued

(c) If the Guilty Except Insane Defense is Raised. . If the defendant raises a defense under A.R.S. 13-502, and a reasonable basis exists to support the defense, the court may, on its own or on motion of the defendant or the State, order than an appointed mental health expert provide a screening report. Either the screening report under (b) or the examination under (c) must include the following:

(1) the defendant's mental status at the time of the offense; and

(2) if the expert determines that the defendant suffered from a mental disease, defect, or disability at the time of the offense, the relationship of the disease, defect, or disability to the alleged offense.

11.8 continued

(d) Required Records. No later than 3 days after the appointment of experts, the parties must provide the examining mental health expert with all of the defendant's available medical and criminal history records. No later than 10 business days after the expert's appointments, the parties must provide the appointed expert with any additional medical or criminal history records requested by the court or the appointed expert.

11.7. Privilege and Confidentiality

(a) Generally. Evidence obtained under Rule 11 is not admissible in a proceeding to determine guilt, unless the defendant presents evidence, either directly or through cross-examination, intended to rebut the presumption of sanity.

11.7 continued

(b) Privileged Statements of the Defendant.

(1) Concerning the Charged Offense. Unless the defendant consents or the exception in (a) applies, no statement of a defendant obtained under Rule 11, or evidence resulting from such a statement, concerning the factual basis for the charged offense is admissible at the defendant's trial, or at any later proceeding to determine guilt.

(2) Concerning Other Events or Transactions. Unless the defendant consents or the exception in (a) applies, no statement of a defendant obtained under Rule 11, or evidence resulting from such a statement, concerning any other event or transaction is admissible at any later proceeding to determine the defendant's guilt.

11.7 continued

(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. or as 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 competency or sanity evaluations, statistical study, the examined defendant's mitigation investigation, or if necessary to assist in mental health treatment for restoration of competence or under A.R.S. § 13-502.

caselaw

State v. Christensen, 129 Ariz. 32, 628 P.2d 580 (1981)

Trial court committed error in excluding testimony of psychiatrist that, in his expert opinion, defendant had difficulty dealing with stress and in stressful situations his actions were more reflexive than reflective, in that establishment of character trait of acting without reflection would have tended to establish that defendant acted impulsively, and from such fact jury could have concluded defendant did not premeditate the homicide.

caselaw

State v. Mott, 187 Ariz. 536, 931 P.2d 1046 (1997)

Evidence of defendant's mental disorder short of insanity is inadmissible either as an affirmative defense or to negate *mens rea* element of a crime.

Precluding defendant from introducing psychological testimony to challenge *mens rea* of a crime does not violate due process.

caselaw

Clark v. Arizona, 548 U.S. 735, 126 S.Ct. 2709 (2006)

Arizona's narrowing of its insanity test did not violate due process

Exclusion of evidence of mental illness and incapacity due to mental illness on issue of *mens rea* did not violate due process. (Upholds *Mott* Ruling.)

Clark con't

Clark had 2 defense tactics:

1. insanity defense;
2. rebut prosecution's evidence regarding intentionally and knowingly.

Reviewed *Mott* holding: testimony of a professional psychologist or psychiatrist about a defendant's mental incapacity owing to mental disease or defect was admissible only for it's bearing on insanity not on *mens rea*.

Clark con’t

3 types of evidence:

- Observation evidence: either by lay or expert witness of what defendant did or said at time of the offense;
- Mental-disease evidence: typically from professional psychologists or psychiatrists based on factual reports, professional observations and tests about defendant’s mental disease with features described by the witness;
- Capacity evidence: typically from same experts about defendant’s capacity for cognition and moral judgment.

caselaw

State v. Wright, 214 Ariz. 540, 155 P.3d 1064 (App. 2007)

Proffered testimony of defendant's expert witness that defendant did not have mental state necessary to commit offense was inadmissible. (because it wasn't "observation evidence")

"Observation Evidence" to show defendant didn't have the requisite mental state to commit the charged offense, includes evidence of defendant's behavior, statements, and expressions of belief around time of offense.

caselaw

State v. Turrentine, 152 Ariz. 61, 730 P.2d 238 (App. 1986)

State v. Fletcher, 149 Ariz. 187, 717 P.2d 866 (1986)

Placing clear and convincing evidence burden of proof on defendant is not unconstitutional.

caselaw

State V. Fayle, 134 Ariz. 565, 658 P.2d 218 (App. 1982)

Trial court must defer to wishes of Defendant with respect to presentation of insanity defense.

caselaw

State v. Tamplin, 195 Ariz. 246, 986 P.2d 914 (App. 1999)

"Wrong" for purposes of insanity defense should be defined by community standards of morality and not by defendant's subjective belief that he acted "rightly" in committing robbery by obeying "voices" even though he knew his conduct was wrong.

caselaw

State v. Skaggs, 120 Ariz. 467, 586 P.2d 1279 (1978)

Generally, evidence of crimes other than those for which defendant is on trial is not admissible; however, such rule does not apply when defendant raises issue of insanity, and thus previous conduct involving bad acts of defendant is admissible.

caselaw

Austin v. Alfred, 163 Ariz. 397, 788 P.2d 130 (App. 1990)

Expert disclosure rule did not limit required disclosure of name and reports of mental health experts retained by defendant in anticipation of insanity defense to those experts who would testify at trial and who prepared reports in anticipation of testimony. (this case also allowed defense to redact defendant's statements regarding the offense)

caselaw

State v. Hegyi, 240 Ariz. 251, 378 P.3d 428 (App. 2016)

Defendant is required to provide complete unredacted reports, but evidence of defendant's inculpatory statements, if any, could not be admitted to prove guilt.

(statements made to non-court appointed experts are voluntary and thus not subject to redactions; statements made to court-appointed experts can be used to show defendant knew what he was doing was wrong)

caselaw

State v. Hurles, 185 Ariz. 199, 914 P.2d 1291 (1996)

GEI is an affirmative defense.

Insanity defense does not vitiate presumption of innocence or negate state's burden of proof against murder defendant; state is still required to prove every element beyond a reasonable doubt and insanity defense does not require defendant to prove or disprove any element of offenses charged.

caselaw

Hurles con't

First and fundamental rule with respect to insanity defense is that **any and all conduct of defendant is admissible in evidence; there can be no restrictions**, for if specific act does not indicate insanity it may indicate sanity, and it will certainly throw light one way or the other upon the issue.

No single act can be decisive in determining Defendant's sanity or insanity, while on the other hand, any act whatsoever may be significant to some extent.

caselaw

State v. Saiers, 196 Ariz. 20, 992 P.2d 612 (1999)

Cannot tell jury about consequences of GEI

caselaw

- State v. Bunting, 226 Ariz. 572, 250 P.3d 1201 (App.2011)
- U.S. v. Shorty, 741 F.3d 961 (9th Cir. 2013)
  - Defendant must waive a jury trial for submission to court on the record

- WHAT
  - TO
  - DO

All that matters is whether defendant knew behavior was wrong and actions at time doesn’t preclude defense!

Look at the police report!

Reasonable Basis

- In cases involving death, threat of death or serious physical injury or threat of such

- Court must find a reasonable basis for the defense
- Once done, court must order an evaluation of Defendant – AFTER records obtained
  - List of doctors included in material
- Either party may also hire their own doctor
- Burden of Proof on Defendant

- Cases not involving death, threat of death, serious physical injury or threat of such

- reasonable basis is necessary by rule
- Court appoints expert
- Either party may hire their own doctor
- Burden still on defendant

In the Beginning

Once you know defense is using insanity, start collecting all evidence you can and provide to Doctor once appointed.

past police reports

past pre-sentence reports

school records

DOC records

jail tapes

(defense is only going to provide what is good for them)

Mental Illness ≠ Insanity

- Is an affirmative defense
- Defendant must approve defense
- Defendant must cooperate with state's doctor
- Burden on defendant
- State must still prove all elements of underlying offense

DISCLOSURE

- Defendant MUST disclose all records
  - All privacy rights are waived
    - *Styers v. Superior Court*, 161 Ariz. 477, 779 P.2d 352 (1989)

Records

- Correctional Health Services (CHS)
  - Including tank orders
- Restoration to Competency (RTC)
- DOC
- Magellan, Value Option, any mental health
- Prior convictions
- Prior PSR
- Jail Calls
- Jail Reports/observations of detention officers

Best Records

- Police Report
  - Defendant's statements
    - Admit it was wrong
    - Apologize
    - Invoke his rights
  - Defendant's behavior
    - Planning
    - Escape
  - Video/Audio Interview of Defendant

Best Records

- Witness Statements
- Drugs or alcohol involved?
- Anger or jealousy involved?

Defense Expert

- You are entitled to
  - All reports from any doctor that examined him
    - Not just the ones testifying
    - Use jail visitation to know who went
  - Doctor's Report, Notes, Testing Material, Test Protocol, Raw Data
  - Can get a protective order if necessary from the court, but they must disclose everything

TRIAL

Remember: the worst you can do is what they want you to agree to in the first place!

- Must prove all elements
- Defendant’s burden (clear and convincing)
- May use all prior bad acts
- Get all evaluations and use any evidence

Submission to the Court

- <u>Not a plea bargain!!!</u>
- Must provide
  - Police reports
  - Mental health record
- Court must make specific findings
    - Sample minute entries in material

WHAT
HAPPENS
NEXT?

A.R.S. 13-3994

A. A person who is found guilty except insane pursuant to 13-502 shall be committed to a secure state mental health facility under the department of health services for a period of treatment.

A.R.S. 13-3994

B. If the criminal act did not cause the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall set a hearing date within **75 days** after commitment to determine if the person is entitled to release from confinement or if person meets civil commitment criteria.

A.R.S. 13-3994

At the hearing:

- If person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the court shall order release and commitment shall terminate.
- *** Court shall consider the entire criminal history of the person and shall not order release if determines a propensity to reoffend.

A.R.S. 13-3994

At the hearing

- If court finds that defendant is civilly committable, orders county attorney to file for the civil commitment and the person's commitment pursuant to 13-502 terminates.

A.R.S. 13-3994

If the court finds that the criminal act of the person committed caused the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall place the person under the jurisdiction of the psychiatric security review board for the presumptive term. (this board is responsible for supervising defendant during this time)

A.R.S. 13-3994

- The court shall state the beginning date, length and ending date of the board's jurisdiction over the person.
- Jurisdiction is equal to presumptive sentence.

A.R.S. 13-3994

- Person under the PSRB's jurisdiction is not entitled to a hearing before the board earlier than **120 days** after the person's initial commitment.

caselaw

State v. Bomar, 1999 Ariz. 472, 19 P.3d 613 (App. 2001)

Finding of GEI is not a criminal conviction.

Defendant receives no pre-incarceration credit for GEI sentence.

caselaw

State v. Heartfield, 196 Ariz. 407, 998 P.2d 1080 (App. 2000)

Court lacks authority to order GEI defendant to pay restitution.

caselaw

State v. Flynt, 199 Ariz. 92, 13 P.3d 1209 (App. 2000)

Phrase “substantial threat of death or physical injury” was not limited to conduct that involved substantial “actual” but also “apparent” threat of death or physical injury.

caselaw

Blake v. Schwartz, 202 Ariz. 120, 42 P.3d 6 (App. 2002)

Upheld constitutionality of 120 day waiting period before release hearing could be requested by defendant because the medical director could request an earlier hearing.

AT PSRB HEARING

Mentally Ill/ Dangerous Stays at ASH	Mentally Ill/ Not Dangerous (stable remission) Released, retain jurisdiction
Not Mentally Ill/ Not Dangerous Released, retain jurisdiction (consider entire criminal history and propensity to reoffend)	Not Mentally Ill/ Dangerous ?????? Is a provision for sending to DOC, not used yet and unclear how it would work

Statutes and Rules:

§ 13-502. Insanity test; burden of proof; guilty except insane verdict

A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

B. In a case involving the death or serious physical injury of or the threat of death or serious physical injury to another person, if a plea of insanity is made and the court determines that a reasonable basis exists to support the plea, the court may commit the defendant to a secure state mental health facility under the department of health services, a secure county mental health evaluation and treatment facility or another secure licensed mental health facility for up to thirty days for mental health evaluation and treatment. Experts at the mental health facility who are licensed pursuant to title 32, who are familiar with this state's insanity statutes, who are specialists in mental diseases and defects and who are knowledgeable concerning insanity shall observe and evaluate the defendant. The expert or experts who examine the defendant shall submit a written report of the evaluation to the court, the defendant's attorney and the prosecutor. The court shall order the defendant to pay the costs of the mental health facility to the clerk of the court. The clerk of the court shall transmit the reimbursements to the mental health facility for all of its costs. If the court finds the defendant is indigent or otherwise is unable to pay all or any of the costs, the court shall order the county to reimburse the mental health facility for the remainder of the costs. Notwithstanding § 36-545.02, the mental health facility may maintain the reimbursements. If the court does not commit the defendant to a secure state mental health facility, a secure county mental health evaluation and treatment facility or another secure licensed

mental health facility, the court shall appoint an independent expert who is licensed pursuant to title 32, who is familiar with this state's insanity statutes, who is a specialist in mental diseases and defects and who is knowledgeable concerning insanity to observe and evaluate the defendant. The expert who examines the defendant shall submit a written report of the evaluation to the court, the defendant's attorney and the prosecutor. The court shall order the defendant to pay the costs of the services of the independent expert to the clerk of the court. The clerk of the court shall transmit the reimbursements to the expert. If the court finds the defendant is indigent or otherwise unable to pay all or any of the costs, the court shall order the county to reimburse the expert for the remainder of the costs. This subsection does not prohibit the defendant or this state from obtaining additional psychiatric examinations by other mental health experts who are licensed pursuant to title 32, who are familiar with this state's insanity statutes, who are specialists in mental diseases and defects and who are knowledgeable concerning insanity.

C. The defendant shall prove the defendant's legal insanity by clear and convincing evidence.

D. If the finder of fact finds the defendant guilty except insane, the court shall determine the sentence the defendant could have received pursuant to § 13-707 or § 13-751, subsection A or the presumptive sentence the defendant could have received pursuant to section 13-702, § 13-703, § 13-704, § 13-705, § 13-706, subsection A, § 13-710 or § 13-1406 if the defendant had not been found insane, and the judge shall sentence the defendant to a term of incarceration in the state department of corrections and shall order the defendant to be placed under the jurisdiction of the psychiatric security review board and committed to a state mental health facility under the department of health services pursuant to § 13-3994 for that term. In making this determination the court shall not consider the sentence enhancements for prior convictions under section 13-703 or 13-704. The court shall expressly identify each act that the defendant committed and separately find whether each act involved the death or physical injury of or a substantial threat of death or physical injury to another person.

E. A guilty except insane verdict is not a criminal conviction for sentencing enhancement purposes under section 13-703 or 13-704.

§13-503. Effect of alcohol or drug use

Temporary intoxication resulting from the voluntary ingestion, consumption, inhalation or injection of alcohol, an illegal substance under chapter 34 of this title or other psychoactive substances or the abuse of prescribed medications does not constitute insanity and is not a defense for any criminal act or requisite state of mind.

§ 13-3991. Detention of defendant during insanity; restoration to sanity

If a defendant is committed to the state hospital for the reason that he is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense, if charged with a crime, or for the reason that he is found insane after conviction and prior to pronouncing sentence, he shall be detained in the state hospital until he becomes sane. When the defendant becomes sane, the superintendent of the state hospital shall give notice of that fact to the sheriff and county attorney of the county. The sheriff shall thereupon, without delay, bring the defendant from the state hospital and place him in proper custody, until he is brought to trial or sentenced, or is legally discharged.

13-3993. Examination of defendant pleading not guilty by reason of insanity; privilege inapplicability; reports

A. In any criminal prosecution in which the defendant has declared the defendant's intent to invoke an insanity defense, on a showing of unequal resources the state shall have the right to nominate and have appointed for examination of the defendant to determine the defendant's mental state the same number of medical doctors and licensed psychologists that will testify on behalf of the defense.

B. If a defendant in a criminal prosecution refuses to be examined by the state's mental health experts, the court shall preclude the defendant from offering expert evidence of the defendant's mental state at the time of the alleged crime.

C. The privilege of confidential communications between a medical doctor or licensed psychologist and the defendant as it relates to the defendant's

mental state at the time of the alleged crime does not apply if any mental disability defense is raised.

D. If any mental disability defense is raised, both the state and the defendant shall receive prior to the trial complete copies of any report by a medical doctor or licensed psychologist who examines the defendant to determine the defendant's mental state at the time of the alleged crime or the defendant's competency.

§ 13-3994. Commitment; hearing; jurisdiction; definition

A. A person who is found guilty except insane pursuant to § 13-502 shall be committed to a secure state mental health facility under the department of health services for a period of treatment.

B. If the criminal act of the person committed pursuant to subsection A of this section did not cause the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall set a hearing date within seventy-five days after the person's commitment to determine if the person is entitled to release from confinement or if the person meets the standards for civil commitment pursuant to title 36, chapter 5. The court shall notify the medical director of the mental health facility, the attorney general, the county attorney, the victim and the attorney representing the person, if any, of the date of the hearing. Fourteen days before the hearing the director of the mental health facility shall submit to the court a report addressing the person's mental health and dangerousness.

C. At a hearing held pursuant to subsection B of this section:

1. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the court shall order the person's release and the person's commitment ordered pursuant to § 13-502, subsection D shall terminate. Before determining to release a person pursuant to this paragraph, the court shall consider the entire criminal history of the person and shall not order the person's release if the court determines that the person has a propensity to reoffend.

2. If the court finds that the person still suffers from a mental disease or defect, may present a threat of danger to self or others, is gravely disabled, is

persistently or acutely disabled or has a propensity to reoffend, it shall order the county attorney to institute civil commitment proceedings pursuant to title 36 and the person's commitment ordered pursuant to § 13-502, subsection D shall terminate.

D. If the court finds that the criminal act of the person committed pursuant to subsection A of this section caused the death or serious physical injury of or the threat of death or serious physical injury to another person, the court shall place the person under the jurisdiction of the psychiatric security review board. The court shall state the beginning date, length and ending date of the board's jurisdiction over the person. The length of the board's jurisdiction over the person is equal to the sentence the person could have received pursuant to § 13-707 or § 13-751, subsection A or the presumptive sentence the defendant could have received pursuant to § 13-702, subsection D, § 13-703, § 13-704, § 13-705, § 13-706, subsection A, § 13-710 or § 13-1406. In making this determination the court shall not consider the sentence enhancements for prior convictions under § 13-703 or 13-704. The court shall retain jurisdiction of all matters that are not specifically delegated to the psychiatric security review board for the duration of the presumptive sentence.

E. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not eligible for discharge from the board's jurisdiction until the board's jurisdiction over the person expires.

F. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section is not entitled to a hearing before the board earlier than one hundred twenty days after the person's initial commitment. A request for a subsequent release hearing may be made pursuant to subsection H of this section. After the hearing, the board may take one of the following actions:

1. If the psychiatric security review board finds that the person still suffers from a mental disease or defect and is dangerous, the board shall order that the person remain committed at the secure state mental health facility.

2. If the person proves by clear and convincing evidence that the person no longer suffers from a mental disease or defect and is not dangerous, the psychiatric security review board shall order the person's release. The person shall remain under the jurisdiction of the board. Before determining to

release a person pursuant to this paragraph, the board shall consider the entire criminal history of the person and shall not order the person's release if the board determines that the person has a propensity to reoffend.

3. If the psychiatric security review board finds that the person still suffers from a mental disease or defect or that the mental disease or defect is in stable remission but the person is no longer dangerous, the board shall order the person's conditional release. The person shall remain under the board's jurisdiction. The board in conjunction with the state mental health facility and behavioral health community providers shall specify the conditions of the person's release. The board shall continue to monitor and supervise a person who is released conditionally. Before the conditional release of a person, a supervised treatment plan shall be in place, including the necessary funding to implement the plan.

4. If the person is sentenced pursuant to § 13-704, § 13-710 or § 13-751, subsection A and the psychiatric security review board finds that the person no longer needs ongoing treatment for a mental disease and the person is dangerous or has a propensity to reoffend, the board shall order the person to be transferred to the state department of corrections for the remainder of the sentence imposed pursuant to § 13-502, subsection D. The board shall consider the safety and protection of the public.

G. Within twenty days after the psychiatric security review board orders a person to be transferred to the state department of corrections, the person may file a petition for a judicial determination. The person shall serve a copy of the request on the attorney general. If the person files a petition for a judicial determination, the person shall remain in a state mental health facility pending the result of the judicial determination. The person requesting the judicial determination has the burden of proving the issues by clear and convincing evidence. The judicial determination is limited to the following issues:

1. Whether the person no longer needs ongoing treatment for a mental disease.

2. Whether the person is dangerous or has a propensity to reoffend.

H. A person who is placed under the jurisdiction of the psychiatric security review board pursuant to subsection D of this section may not seek a new release hearing earlier than twenty months after a prior release hearing,

except that the medical director of the state mental health facility may request a new release hearing for a person under the jurisdiction of the psychiatric security review board at any time. The person shall not be held in confinement for more than two years without a hearing before the board to determine if the person should be released or conditionally released.

I. At any hearing for release or conditional release pursuant to this section:

1. Public safety and protection are primary.

2. The applicant has the burden of proof by clear and convincing evidence.

J. At least fifteen days before a hearing is scheduled to consider a person's release, or before the expiration of the board's jurisdiction over the person, the state mental health facility or supervising agency shall submit to the psychiatric security review board a report on the person's mental health. The psychiatric security review board shall determine whether to release the person or to order the county attorney to institute civil commitment proceedings pursuant to title 36.

K. The procedures for civil commitment govern the continued commitment of the person after the expiration of the jurisdiction of the psychiatric security review board.

L. Before a person is released or conditionally released, at least three of the five psychiatric security review board members shall vote for the release or conditional release.

M. If at any time while the person remains under the jurisdiction of the psychiatric security review board it appears to the board, the chairman or vice-chairman of the board or the medical director of the state mental health facility that the person has failed to comply with the terms of the person's conditional release or that the mental health of the person has deteriorated, the board or the chairman or vice-chairman of the board for good cause or the medical director of the state mental health facility may order that the person be returned to a secure state mental health facility for evaluation or treatment. A written order of the board, the chairman or vice-chairman of the board or the medical director is sufficient warrant for any law enforcement officer to take the person into custody and to transport the person accordingly. Any sheriff or other peace officer shall execute the order and shall immediately notify the board of the person's return to the facility.

Within twenty days after the person's return to a secure state mental health facility the board shall conduct a hearing and shall give notice within five days before the hearing of the time and place of the hearing to the person, the victim, the attorney representing the person, the county attorney and the attorney general.

N. The director of a facility that is providing treatment to a person on conditional release or any other person who is responsible for the supervision of the person may take the person or request that the person be taken into custody if there is reasonable cause to believe that the person's mental health has deteriorated to the point that the person's conditional release should be revoked and that the person is in need of immediate care, custody or treatment or that deterioration is likely because of noncompliance with a treatment program. A person who is taken into custody pursuant to this subsection shall be transported immediately to a secure state mental health facility and shall have the same rights as any person appearing before the psychiatric security review board.

O. Before the initial hearing or any other hearing before the psychiatric security review board on the release or conditional release of the person, the person, the attorney who is representing the person and the attorney general or county attorney who is representing the state may choose a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1 to examine the person. All costs in connection with the examination shall be approved and paid by the county of the sentencing court. The written examination results shall be filed with the board and shall include an opinion as to:

1. The mental condition of the person.

2. Whether the person is dangerous.

P. Notwithstanding subsection O of this section, the board or the chairman of the board for good cause may order an independent mental health evaluation by a psychiatrist licensed pursuant to title 32, chapter 13 or 17 or a psychologist licensed pursuant to title 32, chapter 19.1. The written examination results shall be filed with the board pursuant to subsection O of this section.

Q. If a person is found guilty except insane pursuant to § 13-502, the department of health services shall assume custody of the person within ten

days after receiving the order committing the person pursuant to subsection A of this section. The Arizona state hospital shall collect census data for guilty except insane treatment programs to establish maximum capacity and the allocation formula required pursuant to § 36-206, subsection D. If the Arizona state hospital reaches its funded capacity for forensic programs, the department of health services may defer the admission of the person found guilty except insane for up to an additional twenty days. The department of health services shall reimburse the county for the actual costs of each day the admission is deferred. If the department of health services is not able to admit the person found guilty except insane at the conclusion of the twenty day deferral period, the department of health services shall notify the sentencing court, the prosecutor and the defense counsel of this fact. On receipt of this notification, the prosecutor or the person's defense counsel may request a hearing to determine the likely length of time admission will continue to be deferred and whether any other action should be taken. On receipt of the request for hearing, the court shall set a hearing within ten days.

R. For the purposes of this section, “state mental health facility” means a secure state mental health facility under the department of health services.

§ 13-4506. Examination for purposes of insanity defense

A. On request of the court or any party, with the consent of the defendant and after a determination that a reasonable basis exists to support the plea of insanity, the mental health expert who is appointed pursuant to § 13-4505 shall provide a screening report that includes:

1. The mental status of the defendant at the time of the offense.

2. If the expert determines that the defendant suffered from a mental disease, defect or disability at the time of the offense, the relationship of the disease, defect or disability to the alleged offense.

B. If the defendant's state of mind at the time of the offense will be included in the examination, the court shall not appoint the expert to address this issue until the court receives the medical and criminal history records of the defendant.

C. Within ten working days after the expert is appointed, the parties shall provide any additional medical or criminal history records that are requested by the court or the expert.

§ 13-4508. Privilege against self-incrimination; sealed reports

A. The privilege against self-incrimination applies to any examination that is ordered by the court pursuant to this chapter.

B. Any evidence or statement that is obtained during an examination is not admissible at any proceeding to determine a defendant's guilt or innocence unless the defendant presents evidence that is intended to rebut the presumption of sanity.

C. Any statement made by the defendant during an examination or any evidence resulting from that statement concerning any other event or transaction is not admissible at any proceeding to determine the defendant's guilt or innocence of any other criminal charges that are based on those events or transactions.

D. Any statement made by the defendant or any part of the evaluations that is obtained during an examination may not be used for any purpose without the written consent of the defendant or the defendant's guardian or a court order that is entered by the court that ordered the examination or that is conducting a dependency or severance proceeding.

E. After a plea of guilty or guilty except insane or the trial or after the defendant is found to be unable to be restored to competence, the court shall order all the reports submitted pursuant to this section sealed. The court may order that the reports be opened only as follows:

1. For use by the court or defendant, or by the prosecutor if otherwise permitted by law, for further competency or sanity evaluations.

2. For statistical analysis.

3. When the records are deemed necessary to assist in mental health treatment pursuant to § 13-502 or 13-4517.

4. For use by the probation department or the state department of corrections if the defendant is in the custody of or is scheduled to be transferred into the custody of the state department of corrections for the purposes of assessment and supervision or monitoring of the defendant by that department.

5. For use by a mental health treatment provider that provides treatment to the defendant or that assesses the defendant for treatment.

6. For data gathering.

7. For scientific study.

F. Any statement made by the defendant during an examination that is conducted pursuant to this chapter or any evidence resulting from that statement is not subject to disclosure pursuant to § 36-509.

RULES:

11.8 Examination of a Defendant's Mental Status at the Time of the Offense.

(a) Applicability. At any time after an information is filed or an indictment is returned in superior court or a misdemeanor complaint is filed, an examination under this rule may be requested separately from, or in addition to, an examination under Rule 11.2.
(b) Screening Report. On its own or on motion of the defendant or the State with the defendant's consent, the court may order an initial screening report to preliminarily investigate the defendant's mental status at the time of the offense.
(c) If the Guilty Except Insane Defense Is Raised. If the defendant raises a defense under A.R.S. § 13-502 and a reasonable basis exists to support the defense, the court may, on its own or on motion of the defendant or the State, order that an appointed mental health expert provide a screening report. Either the screening report under (b) or the examination under (c) must include the following:
(1) the defendant's mental status at the time of the offense; and
(2) if the expert determines that the defendant suffered from a mental disease, defect, or disability at the time of the offense, the relationship of the disease, defect, or disability to the alleged offense.

(d) Required Records. No later than 3 days after the appointment of experts, the parties must provide the examining mental health expert with all of the defendant's available medical and criminal history records. No later than 10 business days after the expert's appointment, the parties must provide the appointed expert with any additional medical or criminal history records requested by the court or the appointed expert.

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 to -1730; or a psychologist licensed under A.R.S. §§ 32-2071 to--2076.

(2) *Generally.* If the court finds that reasonable grounds exist for a competence examination, it must appoint two or more qualified mental health experts to:

(A) examine the defendant;

(B) report to the court in writing no later than 10 business days after examining the defendant; and

(C) testify, if necessary, about the defendant's competence.

(3) *Psychiatry Background.* A party may request or the court may order that at least one of the mental health experts be a physician specializing in psychiatry.

(4) *Stipulation for Only One Examiner.* With the court's approval, the State and the defendant may stipulate to the appointment of only one expert.

(5) *Examiner Qualifications.* A mental health expert must be:

(A) familiar with Arizona's standards and statutes for competence and criminal and involuntary commitment statutes;

(B) familiar with the treatment, training, and restoration programs that are available in Arizona; and

(C) approved by the court as meeting court-developed guidelines, including demonstrated experience in forensics matters, required attendance at a court-approved training program of not less than 16 hours and any court-required continuing forensic education programs, and annual review criteria.

(6) *Replacement.* If the appointed expert is unable to examine the defendant within the time allotted, the expert must immediately inform the

court, and the court may appoint a different expert to perform the examination.

(b) Custody Status of the Defendant During Competence Proceedings. Pending the court's determination of competence, the court must determine the defendant's custody status under A.R.S. § 13-4507.

(c) Expert Report. An expert's report must conform to A.R.S. § 13-4509.

(d) Additional Expert Assistance. If necessary for an adequate determination of the defendant's mental competence, the court may appoint additional experts and order the defendant to submit to additional physical, neurological, or psychological examinations.

11.7. Privilege and Confidentiality

(a) Generally. Evidence obtained under Rule 11 is not admissible in a proceeding to determine guilt, unless the defendant presents evidence, either directly or through cross-examination, intended to rebut the presumption of sanity.

(b) Privileged Statements of the Defendant.

(1) *Concerning the Charged Offense.* Unless the defendant consents or the exception in (a) applies, no statement of a defendant obtained under Rule 11, or evidence resulting from such a statement, concerning the factual basis for the charged offense is admissible at the defendant's trial, or at any later proceeding to determine guilt.

(2) *Concerning Other Events or Transactions.* Unless the defendant consents or the exception in (a) applies, no statement of a defendant obtained under Rule 11, or evidence resulting from such a statement, concerning any other event or transaction is admissible at any later proceeding to determine the defendant's guilt.

(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 to determine whether the defendant is eligible for court-ordered treatment under Title 36, Chapter 5, 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. or as 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, or if necessary to assist in mental health treatment for restoration of competence or under A.R.S. § 13-502.

11.9. Capital Cases

Unless the defendant objects, the court in a capital case must order the defendant to undergo one or more mental health examinations required under A.R.S. §§ 13-753 and 13-754.

INSANITY DEFENSE BY STATE:

ALABAMA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
ALASKA	The state uses a modified version of the M'Naghten Rule. The burden of proof is on the defendant. A guilty but mentally ill verdict is allowed.
ARIZONA	The state uses a modified version of the M'Naghten Rule. The burden of proof is on the defendant. A guilty but insane verdict is allowed.
ARKANSAS	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
CALIFORNIA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
COLORADO	The state uses a modified version of the M'Naghten Rule with the Irresistible Impulse Test. The burden of proof is on the state.
CONNECTICUT	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
DELAWARE	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
DISTRICT OF COLUMBIA	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
FLORIDA	The state uses the M'Naghten Rule. The burden of proof is on the state.
GEORGIA	The state uses a modified version of the M'Naghten Rule. The burden of proof is on the defendant. A guilty but mentally ill verdict is allowed.

HAWAII	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
IDAHO	The state has abolished the insanity defense. The state allows a guilty but insane verdict.
ILLINOIS	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
INDIANA	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
IOWA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
KANSAS	The state has abolished the insanity defense. (mental health looked at by court at sentencing)
KENTUCKY	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
LOUISIANA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
MAINE	The state uses a modified version of the Model Penal Code rule. The burden of proof is on the defendant.
MARYLAND	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
MASSACHUSETTS	The state uses the Model Penal Code rule. The burden of proof is on the state.
MICHIGAN	The state uses the Model Penal Code rule. The burden of proof is on the state.
MINNESOTA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.

MISSISSIPPI	The state uses the M'Naghten Rule. The burden of proof is on the state. An acquitted by reason of insanity verdict is allowed.
MISSOURI	The state uses a modified version of the M'Naghten Rule. The burden of proof is on the defendant.
MONTANA	The state has abolished the insanity defense, although a guilty but insane verdict is allowed.
NEBRASKA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
NEVADA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
NEW HAMPSHIRE	The state uses the Durham standard. The burden of proof is on the defendant.
NEW JERSEY	The state uses the M'Naghten Rule. The burden of proof is on the state.
NEW MEXICO	The state uses the M'Naghten Rule with the Irresistible Impulse Test. The burden of proof is on the state.
NEW YORK	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
NORTH CAROLINA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
NORTH DAKOTA	The state uses the Model Penal Code rule. The burden of proof is on the state.
OHIO	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
OKLAHOMA	The state uses the M'Naghten Rule. The burden of proof is on the state.

OREGON	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
PENNSYLVANIA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
RHODE ISLAND	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
SOUTH CAROLINA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
SOUTH DAKOTA	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
TENNESSEE	The state uses the Model Penal Code rule. The burden of proof is on the state.
TEXAS	The state uses the M'Naghten Rule with the Irresistible Impulse Test. The burden of proof is on the defendant.
UTAH	The state has abolished the insanity defense, but guilty but mentally ill verdicts are allowed.
VERMONT	The state uses the Model Penal Code rule. The burden of proof is on the defendant.
VIRGINIA	The state uses the M'Naghten Rule with the Irresistible Impulse Test. The burden of proof is on the defendant.
WASHINGTON	The state uses the M'Naghten Rule. The burden of proof is on the defendant.
WEST VIRGINIA	The state uses the Model Penal Code rule. The burden of proof is on the state.
WISCONSIN	The state uses the Model Penal Code rule. The burden of proof is on the defendant.

WYOMING	The state uses the Model Penal Code rule. The burden of proof is on the defendant.

I. Caselaw:

State v. Hegyi, 240 Ariz. 251, 378 P.3d 428 (App. 2016)

A defendant who undergoes a court-ordered mental-health examination has a Fifth Amendment privilege against self-incrimination, and any statement to the examiner about the facts in the case shall be redacted; if, however, a defendant gives notice that he will raise the guilty-except-insane defense, the defendant must provide the complete and unredacted report from any non-court-appointed expert.

Additionally, for court appointed experts, the waiver of privilege is assumed and any statements made can be used to relate to the guilty except insane defense (they cannot be used to prove guilt)

State v. Schantz, 98 Ariz. 200, 403 P.2d 521 (1965)

State rejects defense of diminished capacity

There is an inference arising out of failure to call expert medical witnesses in rebuttal that defendant's evidence as to his insanity is true because it is uncontradicted.

Todd v. Melcher, 11 Ariz.App. 157, 462 P.2d 850 (1969)

Even one who has been judicially declared insane is criminally responsible for acts committed during a lucid interval.

State v. Daniels, 106 Ariz. 497, 478 P.2d 522 (1970)

Fact that defendant offered psychiatric testimony that defendant was not sane did not absolve defendant of criminal responsibility or require that verdict be directed for defendant because of failure of state to put on expert testimony to show defendant knew nature and quality of his act that he knew his act was wrong.

State v. Cufio, 12 Ariz.App. 461, 471 P.2d 763 (App. 1970)

Mere fact that defendant was found by trial court to be insane at time of trial and at time of sentencing did not ipso facto demonstrate insanity at time of offense.

State v. Johnson, 116 Ariz. 561, 570 P.2d 503 (App. 1977)

Court is not obligated to raise and adjudicate sua sponte an insanity defense of a competent defendant.

Valid guilty plea generally waives all nonjurisdictional defenses including defense of guilty by reason of insanity.

State v. Valenzuela, 114 Ariz. 81, 559 P.2d 201 (App. 1977)

Voluntary intoxication will not support defense of insanity even if evidence discloses that defendant did not know nature and quality of his acts at time of crime.

State v. Druke, 143 Ariz. 314, 693 P.2d 969 (App. 1985)

State is allowed to evaluate defendant when defendant plans on introducing mental health evidence.

State v. Bay, 150 Ariz. 112, 722 P.2d 280 (1986)

No inference, as matter of law, that defendant's sanity is established because he failed to call experts to rebut state's experts, defendant does have the burden of proof by clear and convincing

Lay witnesses testifying on issue of insanity must have had opportunity to observe past conduct and history of defendant.

Jury may accept lay witnesses testimony as basis of verdict even if conflicting medical testimony.

State v. Hudson, 152 Ariz. 121, 730 P.2d 830 (1986)

Insanity defense based on temporary insanity at time defendant committed criminal acts is not available to defendant whose voluntary use of intoxicating alcohol and/or drugs aggravates pre-existing mental disorder or creates temporary episode of mental incapacity.

State v. Williams, 154 Ariz. 366, 742 P.2d 1352 (1987)

Because state's doctor was able to conclude that defendant was not insane, defendant's expert not precluded on basis that defendant failed to cooperate.

State v. Tallabas, 155 Ariz. 321, 746 P.2d 491 (1987)

Petitioner, who called court-appointed psychiatrist as witness in support of insanity defense, impliedly consented to thorough cross-examination of psychiatrist and consented to disclosure of statements to psychiatrist at time of compulsory examination to extent that statements related to issue of insanity and supported psychiatrist's opinion, and, thus, petitioner's privilege against self-incrimination was not violated.

State v. Mauro, 159 Ariz. 186, 766 P.2d 59 (1988)

Admitting state's psychiatrist's testimony that defendant had requested his counsel's presence during court-ordered psychiatric examination, as evidence of defendant's sanity in murder prosecution, did not violate defendant's Fifth and Fourteenth Amendment due process rights.

State v. Ovind, 186 Ariz. 475, 924 P.2d 479 (App. 1996)

Being GEI doesn't negate "knowingly" and "premeditation" elements of 1st degree murder

State v. Bunting, 226 Ariz. 572, 250 P.3d 1201(App. 2011)
U.S. v. Shorty, 741 F.3d 961 (9th Cir. 2013)

Defendant has to waive a jury trial in order to do a submission to the court. Has to be on the record.

II. Books:

A. Insanity, Murder Madness, and the Law
   Charles Patrick Ewing
B. Minds on Trial
   Charles Patrick Ewing and Joseph McCann