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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULES 11.5)
AND 11.6, ARIZONA RULES OF) Supreme Court No. R-09-____
CRIMINAL PROCEDURE)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendment to Rule 11.5 of the Arizona Rules of Criminal Procedure. This proposed amendment is designed to implement a new statutory standard for calculating time limits applicable to restoration to competency orders adopted by Laws 2009, Chapter 153, SB 1152.

Technical amendments to Rule 11.6 of the Rules of Criminal Procedure necessitated by the enactment of SB 1152 are also requested in this petition.

I. Background and Purpose of the Proposed New Rule. Senate Bill 1152 was passed in the First Regular Session of the Forty-Ninth Legislature (2009). The bill amends A.R.S. §§12-1221, -2232, 13-4515, 36-535, -536, -537,

and -539. The rule change proposed in this petition concerns the amendment to A.R.S. § 13-4515.

A.R.S. § 13-4515(A) provides that “an order or combination of orders” issued pursuant to A.R.S. §§ 13-4512 and -4514 that direct a defendant who has been found incompetent to a restoration to competency program, shall not be in effect for more than twenty-one months or the maximum possible sentence a defendant could have received, whichever is less. SB 1152 codifies the prosecutor’s unsuccessful argument advanced in *Nowell v. Rees*, 199 P.3d 654 (Ariz. Ct.App., Div 1, July 31, 2008), in which Division One of the Court of Appeals held that “the plain language of the statutes and rules [relating to restoring a criminal defendant to competency] limits the trial court’s authority to order restoration [of competency] to the twenty-one months after the original finding of incompetency.” The ruling resulted in dismissal of criminal charges against a defendant whose restoration to competency outpatient program did not successfully restore his competency in the 21 months that followed from the original finding of incompetency. The prosecution argued that the court should exclude any time not actually spent in treatment in calculating whether the 21-month maximum had been exceeded.

SB 1152 adds a new subsection (B) to A.R.S. § 13-4515. This new subsection states:

The Court shall only consider the time a defendant actually spends in a restoration to competency program when calculating the time requirements pursuant to subsection A of this section.

II. Contents of the Proposed New Rule. Rule 11 of the Rules of Criminal Procedure governs incompetency determinations. Rule 11.5(b) governs orders that the court may issue after a competency hearing. Under the rule, an order for competency restoration treatment is limited to fifteen months, but may be extended for six months, or a total of twenty-one months.

The rule amendment proposed by this petition incorporates the operative language of A.R.S. §13-4515(B) into a new subsection (e) of Rule 11.5, requiring the calculation of the time periods under Rule 11.5(b) in a manner consistent with the statutory amendment. The proposed rule change is set out in Appendix 1 to this petition.

III. Preliminary Comments. This petition has not been sent to the court communities for pre-filing comments because of the short period of time since enactment of the legislation, and because the proposed rule simply implements the express change in calculating time required by the amendment of §13-4515 by SB 1152.

IV. Request for a Conforming Amendment to Rule 11.6. SB 1152 added a new subsection (B) to A.R.S. §13-4515 and renumbered the remaining

paragraphs of the statute. Accordingly, the current reference in Rule 11.6(e) to A.R.S. §13-4515B should be revised to A.R.S. §13-4515(C).

Rule 11.6(e) also refers to “a civil commitment hearing pursuant to A.R.S. § 36-501.” A.R.S. § 36-501 contains definitions only and may have been intended to refer to 36-501 et seq. Petitioner recommends the reference be stricken and replaced with “Title 36, Chapter 5” following the convention used in Rule 11.5(b).

The two proposed technical amendments to Rule 11.6(e) are shown in Appendix 2.

V. Request for Emergency Adoption. SB 1152 has an effective date of September 30, 2009. Accordingly, petitioner requests expedited adoption of the proposed new rule with a formal comment period to follow, as permitted by Supreme Court Rule 28(G).

RESPECTFULLY SUBMITTED this 14th day of August, 2009.

By _____
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Appendix 1

Proposed amendment to Rule 11.5, Ariz. R. Crim. P.

Rule 11.5. Hearing and orders

(a) through (d). [No changes]

e. Calculation of time. When calculating the time requirements contained within Rule 11.5(b), the court shall only consider the time a defendant actually spends in a restoration to competency program.

Appendix 2

Proposed amendments to Rule 11.6, Ariz. R. Crim. P.

Rule 11.6. Subsequent hearings

(a) through (d). [No changes]

e. Dismissal of Charges. The court may in its discretion order the dismissal of the charges against any defendant adjudged incompetent at any time, after providing notice and a hearing pursuant to A.R.S. § 13-4515~~B~~(C). Upon dismissal of the charges the defendant shall be released from custody unless the court finds that the defendant's condition warrants a civil commitment hearing pursuant to ~~A.R.S. § 36-501~~ Title 36, Chapter 5.

