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ARIZONA SUPREME COURT

In the matter of:)	
)	
PETITION TO AMEND CRIMINAL)	Supreme Court No. 22-_____
RULE 1.5 AND JUVENILE RULE 227)	(expedited consideration
AND ADOPT CRIMINAL RULE 7.7)	and emergency adoption
AND JUVENILE RULE 228)	requested)
)	
_____)	

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 amend the Arizona Rules of Criminal Procedure and the Rules of Procedure for the Juvenile Court as proposed in Appendix A. Petitioner’s proposed rules would amend Criminal Rule 1.5 and Juvenile Rule 227, and create a new Criminal Rule 7.7 and a new Juvenile Rule 228 to address the detainment of juveniles transferred for criminal prosecution or charged pursuant to A.R.S. §13-501.

Proposed amendments are prompted by changes made to A.R.S. §8-305 through the enactment of Senate Bill (SB) 1073 during the 2022 Second Regular

Session of the 55th Legislature and becomes effective on September 24, 2022. The proposed amendments also incorporate federal requirements under the Juvenile Justice and Delinquency Prevention Act for grant funding intended to improve juvenile justice system programs and juvenile delinquency education, research, prevention, treatment, and rehabilitation programs. Accordingly, Petitioner seeks expedited consideration of this petition and emergency adoption of the proposed rule amendments with a comment period to follow.

I. Summary of Statutory Changes Made by SB 1073

A. Dangerous Offenses Charged Under A.R.S. §13-501

Currently, under A.R.S. §8-305(A) and (C)(3), a juvenile charged with an offense in A.R.S. §13-501 can be detained in a juvenile detention facility but only if the court determines that the offense is not a dangerous offense. SB 1073 strikes from A.R.S. §8-305(A) and (C)(3) the prohibition against detaining a juvenile charged under A.R.S. §13-501 in a juvenile detention facility if the offense is a dangerous offense. Accordingly, beginning September 24, 2022, a juvenile charged with an offense in A.R.S. §13-501 that is also a dangerous offense may be detained in a juvenile detention facility.

B. Determining the Detention Location

Until formally charged as an adult, a juvenile who is arrested for an offense listed in A.R.S. §13-501, if not released, may be detained in a juvenile detention

facility. Once the juvenile is formally charged as an adult, the court may order the juvenile to be detained in either a juvenile detention facility or an adult detention facility. In considering whether a juvenile should be detained in an adult detention facility, the court must consider several factors, which are listed in A.R.S. §8-305(D). SB 1073 adds the following six factors to A.R.S. §8-305(D):

- The juvenile's age;
- The juvenile's physical and mental maturity;
- The juvenile's present mental state, including whether the juvenile presents an imminent risk of self-harm;
- The nature and circumstances of the alleged offense;
- The juvenile's history of prior delinquent acts; and
- The relative ability of the available adult and juvenile detention facilities to meet the specific needs of the juvenile and to protect the safety of the public as well as other detained juveniles.

C. Motion by Juvenile Director Regarding Detention Location

Lastly, SB 1073 creates a mechanism by which the Juvenile Court Director in the county detaining a juvenile charged under A.R.S. §13-501 may request that the juvenile be relocated to an adult detention facility based on the juvenile's behavior in the juvenile detention facility. Specifically, SB 1073 creates a new A.R.S. §8-305(E) that allows the Juvenile Court Director to file a motion requesting that the

juvenile instead be held in an adult detention facility. Upon receiving the motion, the court must schedule a hearing to consider the request and consider all factors listed in A.R.S. §8-305(D) to determine whether the juvenile should remain in the juvenile detention facility or instead be held in an adult detention facility.

II. Purpose of the Proposed Rule Amendments

A. New Criminal Rule 7.7 and Amendment to Criminal Rule 1.5

Petitioner's proposed Criminal Rule 7.7 establishes the requirements for determining the detainment location of a juvenile when the juvenile has been charged pursuant to A.R.S. §13-501 or transferred from the juvenile division to the criminal division of the superior court. Proposed Rule 7.7 also creates a requirement for the court to hold regular review hearings when a juvenile is detained in an adult detention facility and sets a limit regarding the length of time that a juvenile may be detained in an adult detention facility absent good cause or consent. The details of proposed Rule 7.7 are more particularly described below.

Section (a) of proposed Rule 7.7 tracks A.R.S. §8-305(B) and federal requirements under the Juvenile Justice and Delinquency Prevention Act, and provides that a juvenile may not be detained in an adult detention facility unless the juvenile can be detained separately from, and with no sight or sound contact between, any adult charged with or convicted of a crime.

Section (b) of proposed Rule 7.7 sets forth the list of factors the court must consider when determining whether a juvenile charged under A.R.S. §13-501 or transferred for criminal prosecution should be detained in a juvenile detention facility or an adult detention facility. Proposed 7.7(b) tracks A.R.S. §8-305(D), including the changes made by SB 1073, and also tracks federal requirements under the Juvenile Justice and Delinquency Prevention Act. The factors that must be considered are as follows:

- (1) The best interests of the juvenile who is detained in the adult detention facility and other juveniles in the juvenile detention facility;
- (2) The juvenile's age;
- (3) The juvenile's physical and mental maturity;
- (4) The juvenile's present mental state, including whether the juvenile presents an imminent risk of self-harm;
- (5) The nature and circumstances of the alleged offense;
- (6) The juvenile's history of prior delinquent acts;
- (7) The ability of the juvenile and adult detention facilities to meet the specific needs of the juvenile while also protecting the safety of the public and the safety of other detained juveniles;
- (8) The existing programs and facilities for juveniles at the juvenile and adult detention facilities; and

(9) Any other factors the court deems relevant.

Section (c) of proposed Rule 7.7 creates a requirement that the court hold regular review hearings for juveniles held in an adult detention facility. Specifically, if a juvenile is detained in an adult detention facility, the court must hold a hearing at least once every 30 days to determine whether the juvenile should remain in the adult detention facility or be transferred to a juvenile detention facility. The 30-day requirement in section (c) tracks the requirements of the Juvenile Justice and Delinquency Prevention Act and requires the court to regularly evaluate whether the juvenile's detainment in an adult detention facility remains appropriate. For that purpose, Petitioner proposes adding to Criminal Rule 1.5(c)(1) a new subsection (I) that would allow these hearings to be held remotely.

Section (d) of proposed Rule 7.7 creates a 180-day time limit for detaining a juvenile in an adult detention facility. This tracks the requirements of the Juvenile Justice and Delinquency Prevention Act to set a limit on the amount of time that a juvenile can be detained in an adult detention facility while the juvenile's case is pending. However, should the court determine that it is necessary to detain the juvenile in an adult detention facility for more than 180 days, the court may do so for good cause. The juvenile may also consent to remaining in the adult detention facility for more than 180 days if the court finds that the consent is knowing, voluntary, and intelligent.

B. Amendment to Juvenile Rule 227

Petitioner's proposed amendments include an amendment to Juvenile Rule 227(a)(3)(F). Juvenile Rule 227 establishes the required actions the court must take upon finding that a juvenile should be transferred to the criminal division of the superior court. One such requirement under Rule 227(a)(3) is that the court conduct an initial appearance and determine, if the juvenile is not released, whether the juvenile should be detained in a juvenile detention facility or an adult detention facility. Petitioner proposes adding verbiage to Juvenile Rule 227 to reference Criminal Rule 7.7 so that the factors in Rule 7.7(a) and (b) are considered when the court is making its determination, and to make clear that the requirements of Rule 7.7(c) and (d) apply to a determination made under Rule 227 that a juvenile should be detained in an adult detention facility.

C. New Juvenile Rule 228

Petitioner proposes creating a new Juvenile Rule 228 to implement the creation of new A.R.S. §8-305(E) which allows the Juvenile Court Director in the county detaining a juvenile charged under A.R.S. §13-501 to file a motion with the court to request that the juvenile detained in a juvenile detention facility instead be held in an adult detention facility based on the juvenile's behavior in the juvenile detention facility. Petitioner believes that this rule would be best placed in the Rules of Procedure for the Juvenile Court rather than the Rules of Criminal Procedure

because when the motion is filed, the juvenile will be detained in the juvenile detention facility. Therefore, a Juvenile Court Director is likely to reference the Juvenile Rules rather than the Criminal Rules to determine the procedure for filing such a motion.

The proposed Rule 228 also creates the requirement that the court set a hearing upon the filing of the motion and consider the factors in A.R.S. §8-305(D) to determine whether the juvenile should instead be held in an adult detention facility. This proposed rule tracks the requirements of A.R.S. §8-305(E).

III. Conclusion

Petitioner's proposed amendments create several requirements that protect a juvenile's interests by requiring that juveniles charged under A.R.S. §13-501 or transferred for criminal prosecution not be confined with other adults pending case resolution; requiring that the juvenile's detention status is reviewed at least every 30 days if the juvenile is detained in an adult detention facility; providing a list of factors the court must consider when making its determination regarding detention; and providing a mechanism for a juvenile detained in a juvenile detention facility who has been charged under A.R.S. §13-501 to instead be held in an adult detention facility on the request of the Juvenile Court Director.

IV. Request for Expedited Consideration and Emergency Adoption

Petitioner is requesting expedited consideration and emergency temporary adoption of the proposed rule amendments with a comment period to follow, for the reasons more particularly described below.

The legislation identified in this petition becomes effective on September 24, 2022. Although many of the proposed changes are currently in statute, many of the statutory provisions apply only to juveniles charged under A.R.S. §13-501, such as the factors the court must consider when determining whether to detain a juvenile in a juvenile or adult detention facility. The proposed Criminal Rule 7.7, however, applies the requirements to juveniles charged under A.R.S. §13-501 *and* to juveniles transferred for criminal prosecution.

Currently, the Arizona Rules of Court do not contain any provisions related to the procedures that courts must utilize to review the detainment of a juvenile in an adult detention facility. The proposed amendments address this by requiring that courts hold regular review hearings and require that a juvenile not be held in an adult detention facility for more than 180 days absent good cause or consent by the juvenile, which track the provisions of the Juvenile Justice and Delinquency Prevention Act.

Therefore, as permitted by Supreme Court Rule 28(h), Petitioner requests expedited consideration and emergency temporary adoption of the proposed rule amendments at the court's December 2022 Rules Agenda with a comment period to

follow. If the court is inclined to grant Petitioner's request for expedited consideration, Petitioner respectfully requests that this petition be open for preliminary comments until October 31, 2022, with a reply due by November 4, 2022, to provide an opportunity for the public to comment before this petition is considered at the Court's December 2022.

Respectfully submitted this 19th day of September, 2022.

By /s/
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APPENDIX A

Arizona Rules of Criminal Procedure

(deletions shown with ~~striketrough~~, new language is underlined)

RULE 1. GENERAL PROVISIONS

Rule 1.5. Interactive Audiovisual Systems

(a) [No Changes]

(b) [No Changes]

(c) **When a Defendant May Appear by Videoconference.**

(1) *In the Court's Discretion.* A court may require a defendant's appearance by use of an interactive audiovisual system without the parties' consent at any of the following:

(A) through (F) [No changes]

(G) a change of plea in a misdemeanor case; ~~or~~

(H) an informal conference held under Rule 32.7; or

(I) a hearing under Rule 7.7(c).

(2) through (4) [No Changes]

RULE 7. RELEASE

Rule 7.7. Detaining a Juvenile Transferred for Criminal Prosecution or Charged Pursuant to A.R.S. § 13-501.

(a) Generally. A juvenile may not be detained in an adult detention facility unless the juvenile can be detained separately from, and with no sight or sound contact between, any adult charged with or convicted of a crime, except to the extent authorized by federal law or regulation.

(b) Determining Where the Juvenile Will Be Detained. In determining whether a juvenile should be detained in a juvenile detention facility or an adult detention facility, the court must consider the following factors:

(1) The best interests of the juvenile who is detained in the adult detention facility and other juveniles in the juvenile detention facility;

(2) The juvenile's age;

(3) The juvenile's physical and mental maturity;

- (4) The juvenile's present mental state, including whether the juvenile presents an imminent risk of self-harm;
- (5) The nature and circumstances of the alleged offense;
- (6) The juvenile's history of prior delinquent acts;
- (7) The ability of the juvenile and adult detention facilities to meet the specific needs of the juvenile while also protecting the safety of the public and the safety of other detained juveniles;
- (8) The existing programs and facilities for juveniles at the juvenile and adult detention facilities; and
- (9) Any other factors the court deems relevant.

(c) Review of Detention Placement. If a juvenile is detained in an adult detention facility, the court must hold a hearing at least every 30 days to determine whether the juvenile should remain in the adult detention facility. The court's determination must be in writing and must consider the factors in (b)(1) through (9).

(d) Time Limit. A juvenile cannot be detained in an adult detention facility for more than 180 days unless the court makes a written finding that good cause exists to keep the juvenile in the adult detention facility, or the juvenile consents to remaining in the adult detention facility and the court determines that the consent is knowing, intelligent, and voluntary.

Arizona Rules of Procedure for Juvenile Court

(deletions shown with ~~strikethrough~~, new language is underlined)

Rule 227. Post Transfer

(a) **Court Actions.** Once the judicial officer finds that the juvenile should be transferred to the criminal division of the superior court, the juvenile court must:

* * *

(3) *Initial Appearance.* Conduct an initial appearance as required by Criminal Rule 4.2. At the initial appearance the court must:

* * *

(F) determine, if the juvenile is not released, the facility that will have custody of the juvenile pursuant to A.R.S. § 8-305(C) and (D) and remand the juvenile to the custody of an appropriate officer. The court's determination and detention of the juvenile must comply with Criminal Rule 7.7.

(b) [No Changes]

Rule 228. Request to Hold a Juvenile Charged Under A.R.S. § 13-501 in an Adult Detention Facility

If a juvenile who is charged pursuant to A.R.S. § 13-501 is detained in a juvenile detention facility, the Director of Juvenile Court Services in the county in which the juvenile is detained may file a motion requesting that the juvenile instead be held in an adult detention facility based on the juvenile's behavior while in detention. Upon receipt of the motion, the court must schedule a hearing at which the court must consider the following factors:

- (1) The best interests of the juvenile who is charged and the other juveniles in the juvenile detention facility;
- (2) The juvenile's age;
- (3) The juvenile's physical and mental maturity;
- (4) The juvenile's present mental state, including whether the juvenile presents an imminent risk of self-harm;
- (5) The nature and circumstances of the alleged offense;
- (6) The juvenile's history of prior delinquent acts;

(7) The ability of the juvenile and adult detention facilities to meet the specific needs of the juvenile while also protecting the safety of the public and the safety of other detained juveniles;

(8) The existing programs and facilities for juveniles at the juvenile and adult detention facilities; and

(9) Any other factors the court deems relevant.