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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

} Supreme Court No. R-22-0038

PETITION TO AMEND CRIMINAL  
RULE 1.5 AND JUVENILE RULE  
227 AND ADOPT CRIMINAL RULE  
7.7 AND JUVENILE RULE 228

} COMMENT TO PROPOSED RULE  
ADOPTIONS AND AMENDMENTS

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Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Chief Juvenile Probation Officer of the Maricopa County Juvenile Probation Department submits the following comment regarding amendments and adoption of new rules to the Arizona Rules of Criminal Procedure and the Rules of Procedure for the Juvenile Court. These formal comments have previously been informally raised in implementation discussions with the Administrative Office of the Courts’ Committee on Juvenile Courts.

These amendments to the Criminal and Juvenile Rules are a result of the implementation of changes made to A.R.S. § 8-305 regarding the housing of juveniles charged as adults, as well as to changes in federal grant funding requirements under the Juvenile Justice and Delinquency Prevention Act (“JJJPA”). The proposed new Criminal Rule 7.7(b) sets forth the factors used by the court in determining whether a juvenile charged as an adult should be detained in a juvenile detention facility or an adult detention facility. These factors (which incorporate the newly amended A.R.S. §8-305(B) as well as

1 JJDPA requirements) include the ability of the juvenile and adult detention  
2 facilities to meet the specific needs of the juvenile while protecting the safety of  
3 the public and other detained juveniles (proposed Rule 7.7(b)(7)); the existing  
4 programs and facilities for juveniles at the juvenile and adult detention facilities  
5 (7.7(b)(8)); and “and other factors the court deems relevant” (7.7(b)(9).

6 The rule, as currently proposed, does not specifically require that the court  
7 consider relevant information from the juvenile detention facility itself. The  
8 juvenile detention facility is in the best position to provide information regarding  
9 factors (b)(7) through (9) and should be heard regarding these factors in order  
10 for the court to make the best housing decision for the juvenile. I propose adding  
11 an additional paragraph (e) to Rule 7.7 that requires courts to consider relevant  
12 information from the juvenile detention facility in considering factors (b)(7)  
13 through (9).

14 The proposed amendment to Juvenile Rule 227(3)(F) adds language  
15 regarding the court’s requirement to determine which facility will have custody  
16 of the juvenile pursuant to A.R.S. § 8-305(C) and (D). Currently, the Juvenile  
17 Rules do not address the subset of the detained juvenile population charged as  
18 adults where those juveniles have an existing juvenile court order to be detained  
19 at the Arizona Department of Juvenile Corrections (ADJC). When these  
20 juveniles are transferred to Maricopa County for criminal prosecution as adults  
21 (often the result of criminal prosecution for an alleged offense occurring at  
22 ADJC’s Adobe Mountain facility located in Maricopa County), ADJC asserts  
23 that under various state statutes (Title 11 and 13), they are prohibited from  
24 having a juvenile return to its custody if bail has been set in the criminal case  
25 and the juvenile has not posted bond. The situation this presents is a missed  
26 opportunity for juveniles to continue their services and rehabilitation under their  
27 existing juvenile court order. Furthermore, the practical reality is that the  
28 Maricopa County juvenile detention facility becomes the default juvenile

1 holding facility despite a current juvenile court order of detention at ADJC. This  
2 includes juveniles that were committed to ADJC from other counties who are  
3 charged with a new criminal offense in Maricopa County based on conduct  
4 occurring at the ADJC facility.

5 This issue could be addressed in Juvenile Rule 227(3)(F) by adding  
6 additional language that recognizes the concurrent jurisdiction of the juvenile  
7 and criminal courts and further recognizes, pursuant to A.R.S. § 8-202(F), that  
8 the orders of the juvenile court “take precedence over any order of any other  
9 court” with the exception of no-contact orders between a criminal defendant and  
10 a victim. I would propose the following language be added to Juvenile Rule  
11 227(3)(F): “If the court determines that a juvenile facility is appropriate and the  
12 juvenile is currently in the custody of the Department of Juvenile Corrections  
13 under A.R.S § 8-341(A)(1)(e), the court shall remand the juvenile to the  
14 Department of Juvenile Corrections under the concurrent jurisdiction of the  
15 existing juvenile court order pursuant to A.R.S. § 8-202(F).

16 Finally, the proposed Juvenile Rule 228 appears to limit the circumstances  
17 in which the Director of Juvenile Court Services may file a motion to have the  
18 court reconsider placement in the juvenile facility. The current language is that a  
19 director may file a motion requesting the juvenile be transferred to an adult  
20 detention facility “based on the juvenile’s behavior while in detention.” This  
21 language is limiting and does not include requests by a director for  
22 reconsideration of the juvenile’s placement based on Rule 228(9): “any other  
23 factors that the court deems relevant.” I would suggest adding language allowing  
24 a director to motion the court based on other relevant factors to the juvenile’s  
25 placement.

26  
27 Respectfully submitted this 31<sup>st</sup> day of October, 2022.  
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*Eric Meaux*

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Eric Meaux  
Chief Juvenile Probation Officer  
Maricopa County Juvenile Probation  
Department

Electronic copy filed with  
the Clerk of the Arizona Supreme Court  
this 31st day of October, 2022.

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3 **APPENDIX A**

4 **Arizona Rules of Criminal Procedure**  
5 (deletions shown with ~~striketrough~~, new language is underlined)  
6 **[suggested changes to proposed rules in red]**

7 **RULE 1. GENERAL PROVISIONS**

8  
9 **Rule 1.5. Interactive Audiovisual Systems**

10 **(a) [No Changes]**

11 **(b) [No Changes]**

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

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

16 (A) through (F) [No changes]

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

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

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

20 (2) through (4) [No Changes]

21 **RULE 7. RELEASE**

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

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

28 **(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;

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

13 **(c) Review of Detention Placement.** If a juvenile is detained in an adult detention  
14 facility, the court must hold a hearing at least every 30 days to determine whether  
15 the juvenile should remain in the adult detention facility. The court's  
16 determination must be in writing and must consider the factors in (b)(1) through  
17 (9).

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

23 **(e) Juvenile Facility Recommendation.** In considering factors (b)(7) through (9),  
24 the court must consider relevant information and recommendations from the  
25 juvenile facility.

## Arizona Rules of Procedure for Juvenile Court

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

### Rule 227. Post Transfer

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

\* \* \*

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

3 \* \* \*

4 (F) determine, if the juvenile is not released, the facility that will  
5 have custody of the juvenile pursuant to A.R.S. § 8-305(C) and  
6 (D) and remand the juvenile to the custody of an appropriate officer.

7 If the court determines that a juvenile facility is appropriate and the  
8 juvenile is currently in the custody of the Department of Juvenile  
9 Corrections under A.R.S. § 8-341(A)(1)(e), the court shall remand  
10 the juvenile to the Department of Juvenile Corrections under the  
11 concurrent jurisdiction of the juvenile court order pursuant to A.R.S.  
12 § 8-202(F). The court's determination and detention of the juvenile  
13 must comply with Criminal Rule 7.7.

14 (b) [No Changes]

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

17 If a juvenile who is charged pursuant to A.R.S. § 13-501 is detained in a juvenile  
18 detention facility, the Director of Juvenile Court Services in the county in which  
19 the juvenile is detained may file a motion requesting that the juvenile instead be  
20 held in an adult detention facility based on the juvenile's behavior while in  
21 detention or new circumstances relevant to factors (1) through (9) below that were  
22 not previously considered by the court. Upon receipt of the motion, the court must  
23 schedule a hearing at which the court must consider the following factors:

24 (1) The best interests of the juvenile who is charged and the other juveniles  
25 in the juvenile detention facility;

26 (2) The juvenile's age;

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

28 (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;

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

3 (9) Any other factors the court deems relevant.  
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