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**ARIZONA SUPREME COURT**

In the matter of: )  
)  
PETITION TO AMEND CRIMINAL ) Supreme Court No. 22-0038  
RULE 1.5 AND JUVENILE RULE 227 )  
AND ADOPT CRIMINAL RULE 7.7 ) REPLY  
AND JUVENILE RULE 228 )  
)  
\_\_\_\_\_ )

David K. Byers, Administrative Director, Administrative Office of the Courts, and Petitioner in this matter, hereby replies pursuant to Rule 28(e)(5), Rules of the Supreme Court of Arizona and this Court’s Order dated September 21, 2022.

**I. Procedural History**

On September 19, 2022, Petitioner filed a petition to 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 were 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 55<sup>th</sup> Legislature. 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.

Because SB 1073 became effective on September 24, 2022, Petitioner requested expedited consideration of the petition and emergency adoption of the proposed rule amendments at the Court's December 2022 Rules Agenda with a comment period to follow. Petitioner also requested that this petition be open for public comment until October 31, 2022, so that the Court could additionally consider any comments at its December Rules Agenda.

On September 21, 2022, this Court granted Petitioner's request to consider this petition on an expedited basis. The Court further ordered the petition be opened for public comment until October 31, 2022, with any reply due by November 4, 2022. The Court will consider whether to adopt these amendments on an emergency basis at its December 2022 Rules Agenda. After the Court's consideration of this petition at its December 2022 Rules Agenda, it will reopen the public comment period until May 1, 2023, with any reply due by June 1, 2023.

Petitioner files this reply to address the comments received during the first comment period and incorporate changes to the proposed rule amendments as set forth in the Appendix.

## **II. Discussion**

This petition received two comments. The first comment was a joint comment from the Directors of the Maricopa County Indigent Defense Agencies. The second comment was from Mr. Eric Meaux, Chief of Juvenile Probation for the Maricopa County Juvenile Probation Department. Petitioner will reply to each comment in turn.

### **A. Directors of the Maricopa County Indigent Defense Agencies**

The comment from the Directors of the Maricopa County Indigent Defense Agencies fundamentally disagrees with the juvenile placement re-determination provisions provided by A.R.S. §8-305(E) through the enactment of SB 1073. 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.

The comment suggests that instead of filing a motion with the criminal court to determine whether the minor is best suited to remain in the juvenile detention center, the juvenile detention centers should instead use evidence-based practices designed to de-escalate disruptive behavior. Regardless, the Arizona legislature has

enacted a law that courts are to follow regarding juveniles who may need to be moved from a juvenile detention facility to an adult detention facility. The purpose of this petition is to create procedural rules for courts to follow when a lawful motion is filed requesting the same.

The comment also suggests that the re-determination proceedings should be sealed, citing A.R.S. §8-208 and indicating that otherwise confidential juvenile records may be used against the juvenile in their criminal matter. Petitioner takes no position on whether these proceedings should be sealed. However, if this Court is inclined to adopt such a provision, Petitioner suggests leaving it to the assigned judicial officer to make the determination, akin to the provisions of Juvenile Rule 215(b) regarding delinquency hearings.

Lastly, the comment suggests that the re-determination hearings should be handled by a judicial officer other than the case management and trial judges, and the county attorney should be excluded from these proceedings, as the State of Arizona is represented by the Attorney General. Petitioner believes that the case management and trial judges assigned to the case are in the best position to determine where the juvenile should be placed. To require a different judicial officer to conduct the re-determination hearing is to suggest that the case management and trial judges would not render a fair and impartial decision on other matters regarding the juvenile. As to the presence of the county attorney, Petitioner takes no position.

**B. Mr. Eric Meaux, Chief of Juvenile Probation for the Maricopa County  
Juvenile Probation Department**

The comment from Mr. Eric Meaux makes three substantive recommendations (1) adding a provision to proposed Criminal Rule 7.7 that would allow the court to consider relevant information and recommendations from the juvenile detention facility in determining where the juvenile should be detained; (2) adding a provision to proposed Juvenile Rule 228 that would allow the Director of Juvenile Court Services to file a re-determination motion if new circumstances not previously considered by the court arose related to the required factors that must be considered under proposed Rule 228(1) through (9); and (3) adding a provision to Juvenile Rule 227(a)(3)(F) that would require that a juvenile who the court determines should remain in a juvenile facility and is in the custody of the Department of Juvenile Corrections be remanded to the Department of Juvenile Corrections.

Petitioner has no objection to items (1) and (2), and the proposed changes are reflected in the Appendix. However, if the Court is inclined to adopt these changes, Petitioner believes that a corresponding amendment to Juvenile Rule 218(h) as adopted on an emergency basis through the Court's Order on petition R-22-0034 is necessary. The proposed amendment to Juvenile Rule 218(h) is set forth in the Appendix.

Petitioner believes that item (3) is beyond the scope of this petition's purpose of implementing SB 1073 and seeks to further vet this issue with stakeholders.

### **III. Conclusion**

Petitioner appreciates the comments stakeholders submitted during the comment period and deems it important to file this Reply to address the concerns reflected in the comments. Based on the foregoing responses, Petitioner respectfully requests that the Court adopt on an emergency basis at its December 2022 Rules Agenda the proposed rule amendments as set forth in the Appendix.

Respectfully submitted this 4<sup>th</sup> day of November, 2022.

By /s/David K. Byers  
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## APPENDIX

### Arizona Rules of Criminal Procedure

(deletions shown with ~~strikethrough~~, 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, including information and recommendations from the juvenile detention facility.

**(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 218. Detention and Probable Cause Hearing

**(h) Release to County Jail.** In accordance with and ~~After~~ considering the factors listed in ~~A.R.S. § 8-305(D)~~ Criminal Rule 7.7, the court may release a juvenile from a juvenile detention facility to a county jail upon the filing of a criminal complaint charging a juvenile with an offense listed in A.R.S. § 13-501 or upon hearing a motion filed by the director of juvenile court services requesting that the transfer juvenile instead be held in an adult detention facility under ~~A.R.S. § 8-305(E)~~ Rule 228. The filing of a criminal complaint is the date of arrest for purposes of Criminal Rule 4.1.

### 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

**(a) Motion.** 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 or new circumstances relevant to factors (1) through (9) below of which

the director was not previously aware and that were not previously considered by the court when determining where the juvenile should be detained. 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.