

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-22-0038
AMEND CRIMINAL RULE 1.5 AND)
JUVENILE RULE 227 AND ADOPT)
CRIMINAL RULE 7.7 AND JUVENILE) **FILED: 12/08/2022**
RULE 228)
)
)
)
)

**ORDER AMENDING ON AN EMERGENCY BASIS VARIOUS RULES OF
CRIMINAL PROCEDURE AND RULES OF PROCEDURE
FOR THE JUVENILE COURT**

On September 19, 2022, David K. Byers, Administrative Director of the Administrative Office of the Courts ("AOC"), filed a rule petition requesting expedited consideration and emergency adoption of a new Rule 7.7 of the Rules of Criminal Procedure, amendments to Rule 1.5 of the same rules, a new Rule 228 of the Rules of Procedure for the Juvenile Court, and amendments to Rule 227 of those same rules.

On September 21, 2022, the Court granted AOC's request to consider the petition on an expedited basis at the December 2022 Rules Agenda and ordered that a comment period be opened on the petition through October 31, 2022. Having considered the petition, two comments, and the reply,

IT IS ORDERED, pursuant to Rule 28(h)(2) of the Rules of the Supreme Court of Arizona, that Rule 1.5 of the Rules of Criminal Procedure and Rule 227 of the Rules of Procedure for the Juvenile Court are amended on an emergency basis in

accordance with Attachment A to this order, effective immediately.

IT IS FURTHER ORDERED, pursuant to Rule 28(h)(2) of the Rules of the Supreme Court of Arizona, that a new Rule 7.7 of the Rules of Criminal Procedure is adopted on an emergency basis in accordance with Attachment B to this order, effective immediately.

IT IS FURTHER ORDERED, consistent with this Court's September 21, 2022 order, that the public comment period is reopened through May 1, 2023, any reply is due no later than June 1, 2023, and the Court will consider whether to adopt the rule amendments and new rule on a permanent basis during the August 2023 Rules Agenda.

The petition, comments, reply, and emergency amendments in this matter may be viewed by going to: <http://www.azcourts.gov/Rules-Forum>. This opens the "Welcome" page. Petitions and filings are posted under the appropriate body of rules, for example, Rules of Criminal Procedure, which is found by scrolling down the page.

For instructions on how to post comments electronically, click on <https://www.azcourts.gov/rules/Forum-FAQ> at the top of the "Forum FAQ" page and then "How do I file a comment on a Rule 28 petition?"

Alternatively, commenters may submit comments by filing an

TO:

Rule 28 Distribution
David K Byers
Rosemarie Pena-Lynch
Steve B Koestner
Sherri McGuire Lawson
Gary M Kula
Shannon L Burns
Eric Meaux

ATTACHMENT A¹

RULES OF CRIMINAL PROCEDURE

Rule 1.5. Interactive Audiovisual Systems

(a)-(b) [No change]

(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)-(F) [No change]

(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)-(4) [No change]

RULES OF PROCEDURE FOR THE JUVENILE COURT

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:

(1)-(2) [No change]

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

(A)-(E) [No change]

(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 Rule 7.7 of the Rules of Criminal Procedure.

(b) [No change]

¹ Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strike through~~.

ATTACHMENT B

NEW RULE 7.7

RULES OF CRIMINAL PROCEDURE

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.