

1 Honorable Jennifer E. Green  
2 Superior Court of Arizona, Maricopa County  
3 175 West Madison Street  
4 Phoenix, AZ 85003  
5 (602) 506-0438

6 IN THE SUPREME COURT  
7 STATE OF ARIZONA

8  
9 PETITION TO AMEND RULE 38.2  
10 OF THE RULES OF CRIMINAL  
11 PROCEDURE

12 } Supreme Court No. R- \_\_\_\_\_

13 Pursuant to Rule 28(a), Arizona Rules of the Supreme Court, the  
14 undersigned petitions to amend Arizona Rule of Criminal Procedure 38.2 to allow  
15 for the State to request additional opportunities to suspend a defendant's  
16 prosecution and allow the defendant to fulfill the conditions of a deferred  
17 prosecution program. I propose the following underlined language be added to  
18 Rule 38.2(b):  
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21 (b) Order to Resume Prosecution. After receiving a  
22 notice of the defendant's failure to fulfill the deferred  
23 prosecution conditions, the court must vacate the  
24 suspension order and order that the prosecution resume.  
25 The court must mail a copy of the order to the defendant  
26 and defense counsel, if any. After the court orders that  
the prosecution resume, the State may allow a defendant  
additional opportunities to participate in a deferred  
prosecution program as provided by Rule 38.1(a).

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28 See Attachment "A," Proposed Amended Rule.

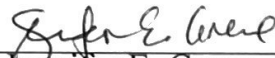
1 Arizona Rule of Criminal Procedure 38 allows the suspension of  
2 prosecution of a defendant so that the defendant can participate in a deferred  
3 prosecution program. A defendant that successfully completes a deferred  
4 prosecution program can then have their charges dismissed by the court. The State  
5 and the defendant both benefit from deferred prosecution when the program is  
6 successfully completed. Deferred prosecution enables the State to resolve cases  
7 quicker, reduce court caseloads and save on costs associated with trial. Defendants  
8 avoid a criminal conviction and benefit from participating in rehabilitative  
9 programs that reduce recidivism.  
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13 Under Rule 38.1, after filing a complaint, indictment, or information, but  
14 before adjudication, the State may file a motion requesting the court suspend  
15 criminal proceedings for a specified period of up to two years in order for the  
16 defendant to participate in a deferred prosecution program. Rule 38.1(c) requires  
17 the court to suspend proceedings for the time period specified in the State's  
18 motion.  
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22 If, however, the defendant subsequently fails to fulfill the requirements of  
23 the deferred prosecution program, under Rule 38.2 the State may file a request for  
24 the court to vacate its order suspending proceedings. The court must then order  
25 that the prosecution resume. The amendment to Rule 38.2(b) proposed in this  
26 petition would provide the State discretion—after the court orders the prosecution  
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1 to resume—to again motion the court to suspend proceedings and provide the  
2 defendant with additional opportunities to participate in the deferred prosecution  
3 program. This amendment would give flexibility in certain cases where it is in the  
4 best interest of the State and the defendant to continue with the deferred  
5 prosecution. The undersigned petitioner has met with representatives of the  
6 Maricopa County Attorney’s Office and they have indicated support for this  
7 amendment, as has the Office of Public Defense Services.  
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10 RESPECTFULLY SUBMITTED this 10th day of January, 2023.  
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14 Hon. Jennifer E. Green  
15 Criminal Presiding Judge  
16 Superior Court of Arizona, Maricopa County  
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18 Electronic copy filed with  
19 the Clerk of the Arizona Supreme Court  
20 this 10th day of January, 2023.  
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**ATTACHMENT "A"**  
**(new language is underlined)**

**Rules of Criminal Procedure**

**Rule 38.2. Resuming Prosecution**

(a) Notice of Failure to Fulfill Deferred Prosecution Conditions. If the State is not satisfied that the defendant has fulfilled the conditions of the deferred prosecution program, it may file a written notice to that effect and request that the court vacate its order suspending prosecution. The State must serve a copy of the notice on the defendant.

(b) Order to Resume Prosecution. After receiving a notice of the defendant's failure to fulfill the deferred prosecution conditions, the court must vacate the suspension order and order that the prosecution resume. The court must mail a copy of the order to the defendant and defense counsel, if any. After the court orders that the prosecution resume, the State may allow a defendant additional opportunities to participate in a deferred prosecution program as provided by Rule 38.1(a).

(c) Time for Trial. Subject to Rule 8.4 and irrespective of the phase of the case when the prosecution was suspended, the defendant must be tried no later than 90 days after the filing of the order to resume prosecution.