

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE
David J. Euchner, SB#021768
33 N. Stone Ave., 21st Floor, Tucson, AZ 85701
(520) 724-6800
david.euchner@pima.gov

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) No. R-24-0026
)
Petition to Amend Ariz. R. Civ. P.) Comment of Arizona Attorneys for
49(d)(1) and Ariz. R. Crim. P. 18.1.) Criminal Justice regarding Petition to
) Amend Arizona Rule of Civil
) Procedure 49 and Arizona Rule of
) Criminal Procedure 18.1
_____)

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment on the petition to amend Arizona Rule of Civil Procedure 49 and Arizona Rule of Criminal Procedure 18.1.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public

awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ agrees with the Petition's language reasoning and the proposed rule changes it suggests. A trial on the defendant's dangerousness occurs within the criminal case; the charge is not dismissed, nor is the dangerousness finding related to a civil commitment. See A.R.S. § 13-4521(A)(1), (3), (4). In fact, the criminal case does not even get dismissed unless the jury finds the dangerousness allegation proven. § 13-4521(F). Sexually violent person (SVP) trials bear some similarity to a dangerousness trial in that both involve a defendant suffering from a mental disorder, but SVP trials are brought pursuant to Title 36 whereas a dangerousness trial is authorized only by Title 13. It is axiomatic that all Title 13 proceedings are criminal in nature; for that reason, its title is "Criminal Code." See *State ex rel. Montgomery v. Harris*, 237 Ariz. 98, 102 ¶ 13 (2014) ("[A]lthough statutory title headings are not part of the law, they can aid in its interpretation."). In all criminal proceedings, the defendant is constitutionally entitled to a unanimous jury verdict.¹

¹ The petition relies on article 2, section 23 of the Arizona Constitution for this proposition, but it is also true under the Sixth Amendment. *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020). And, although the Supreme Court has not overruled *Williams v. Florida*, 399 U.S. 78 (1970), it appears that the Court is heading in that direction. See *Ramos*, 140 S. Ct. at 1436 (Alito, J., dissenting) ("While the majority worries that *Apodaca* is inconsistent with our cases on incorporation, the majority ignores something far more important: the way in which *Apodaca* is intertwined with the body of our Sixth Amendment case law" in that "the *Apodaca* plurality's reasoning

It is questionable whether an SVP proceeding is appropriately tried to an 8-person, the assent of only 6 jurors being sufficient to confine a person for life. Although Arizona labels SVP trials as civil in nature, *In re Commitment of Conn*, 207 Ariz. 257, 259 ¶ 7 (App. 2004), the use of the “beyond a reasonable doubt” standard of proof and the appointment of counsel show that they are sufficiently criminal to require a unanimous verdict. *See In re Young*, 857 P.2d 989, 1012 (Wash. 1993) (“The Legislature’s use of the ‘beyond a reasonable doubt’ standard suggests an acute awareness of the need for heightened procedural protections in these proceedings. Moreover, in Washington, the beyond a reasonable doubt standard generally requires a unanimous verdict. Considering the context normally associated with this high burden of proof, we find that the Legislature included the need for a unanimous verdict when it required proof beyond a reasonable doubt in the statutory scheme.”) (citations omitted). That question is not before the Court in this petition, however; this Court may simply rely on the plain text of the different statutes to find a unanimous jury is required in dangerousness trials.

was based on the same fundamental mode of analysis as that in *Williams* . . .”); *Guzman v. State*, 350 So.3d 72, 75 (Fla. App. 2022) (Gross, J., concurring) (“Thus, *Ramos* repudiated both the historical analysis and the functional analysis in *Apodaca*, which relied heavily on the Court’s analysis in *Williams*. So, like Wile E. Coyote momentarily suspended in midair after running off a cliff, *Williams* hovers in the legal ether, waiting for further examination by the Supreme Court.”).

For these reasons, AACJ asks this Court to adopt the proposal.

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By: /s/ David J. Euchner
David J. Euchner

Copy delivered to:

David Byers
Administrative Office of the Courts
Projects2@courts.az.gov