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ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend R. Pro. Jv. Ct. 201

Supreme Court No. R-26-_____

Joint Petition by the Directors of the
Maricopa County Indigent Defense
Agencies

The Maricopa County indigent representation offices (IR) collectively handle most cases filed in Maricopa County in which there has been a finding of indigency. The Office of Public Defense Services (OPDS) provides administrative and financial oversight to the staffed offices and the Office of Contract Counsel (OCC). The staffed offices are

comprised of the Office of the Public Defender (OPD), the Office of the Legal Advocate (OLA), the Office of the Legal Defender (OLD), and the Office of the Public Advocate (OPA).

I. Background.

We propose amending Arizona Rule of Procedure for the Juvenile Court (R. Pro. Jv. Ct.) 201 to specifically incorporate Rules of Criminal Procedure (R. Crim. P.) 17.5 and 20. Since July 2022, R. Pro. Jv. Ct. 103 (d) limits the applicability of other rules of procedure to those specifically set forth or incorporated by the Rules of Procedure for Juvenile Court. Prior to the implementation of these current Rules in July 2022, children’s attorneys could request that Juvenile Courts apply specific Rules of Criminal Procedure to protect constitutional rights in delinquency proceedings.

“[T]he Supreme Court has recognized that such proceedings are quasi-criminal because the juvenile faces the possibility of confinement, and they are, therefore, entitled to the same due process guarantees afforded criminal defendants. *Application of Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)).” *Matter of Appeal in Cochise Cnty. Juv. Delinq. Action No. JV95000239*, 186 Ariz. 234, 236, 921 P.2d 34, 36 (Ct. App. 1996). “As a general rule, our Rules of Criminal Procedure are inapplicable to juvenile proceedings, which are not strictly criminal in nature.” *Matter of Maricopa County, Juvenile Action No. JV-508488*, 185 Ariz. 295 (Div.1, 1996) at 299. However, in order to protect a child’s constitutional rights “courts have not hesitated to apply the criminal rules to juvenile proceedings when appropriate[.]” *Id.* The current Juvenile Rules omit due process guarantees afforded to criminal defendants, and R. Pro. Jv. Ct. 103 (d) currently constrains

a Juvenile Court's ability to apply Criminal Rules of Procedure to rectify the omission.

II. Discussion of Rules Changes.

“Same Due Process Guarantees” Do Not Necessarily Mean the Same Processes

Procedure in delinquency hearings does not need to mirror procedure in criminal matters as long as there is a constitutionally acceptable method in place. For example, due process requires findings of probable cause before a court may order pretrial detention in delinquency and criminal matters. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) (holding that “the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint on liberty following arrest”); *Bell v. Superior Court In and For Pima County*, 117 Ariz. 551, 553-4, 574 P.2d 39, 41-2 (App. 1977) (applying *Gerstein* to juveniles in Arizona). The processes to find probable cause in delinquency and criminal courts, however, are different. In Juvenile Court, judicial officers may find probable cause *on the papers* by reviewing “allegations in a police report or a citation narrative prepared by a law enforcement office, along with a properly executed affidavit or sworn testimony.” R. Pro. Jv. Ct. 218. By contrast, in felony matters before Criminal Court, probable cause may be found at a preliminary hearing or by a grand jury. *See* R. Crim. P. 5.3(a)(3) and 12.1(d)(4). Both preliminary hearing and grand jury probable cause determinations require witness testimony.

The current R. Pro. Jv. Ct. 218 ensures *Gault's* due process guarantee for probable cause determinations even though the process does not require witness testimony as in Criminal Court. The State does not need to pursue a preliminary hearing or grand jury indictment to establish probable cause on delinquency charges because the Arizona

Supreme Court created an alternative, but constitutionally acceptable, method to guarantee due process through R. Pro. Jv. Ct. 218.

The question, therefore, is not whether processes are identical, but whether there are rules in both Criminal and Juvenile Courts that ensure the same due process guarantees. And we have identified two areas where the current Juvenile Rules fail to afford a child the same due process guarantees as a criminal defendant.

Current Juvenile Rules Omit Required Due Process Guarantees

The Juvenile Rules enacted in July 2022 created some unintended consequences. The new rules failed to anticipate every instance where a child needs a due process mechanism to protect a constitutional right. The Rules of Criminal Procedure are about three times as long as the delinquency section in the Juvenile Rules. Prior to July 2022, low frequency due process issues without a Juvenile Rule on point could be handled by citing an appropriate Criminal Rule of Procedure. *Matter of Maricopa County, Juvenile Action No. JV-508488*, 185 Ariz. 295 (Div.1, 1996). But R. Pro. Jv. Ct. 103 now handcuffs the Courts and leaves children charged with delinquent offenses without the “same due process guarantees afforded criminal defendants.” We have identified two particular omissions.

Omission #1: Withdrawal of a Plea

R. Crim. P. 17.5 provides criminal defendants a mechanism to withdraw from a plea of guilty or no contest. This rule reads as follows:

Withdrawal of a Plea

The court may allow a defendant to withdraw a plea of guilty or no contest if it is necessary to correct a manifest injustice. Upon withdrawal of a plea, the charges against the defendant will be reinstated automatically as they existed before the plea agreement.

There is no similar rule for children charged with delinquent offenses in Juvenile Court. Again, prior to July 2022, a child could cite to R. Crim. P. 17.5 when necessary to ensure being afforded the same due process guarantees as a criminal defendant. R. Crim. P. 17.5 exists to ensure the process is fair. Children deserve the same right to rectify a “manifest injustice”.

Omission #2: Judgement of Acquittal

Criminal defendants are not required to put on a case if the State has not demonstrated “substantial evidence to support a conviction” during the State’s case in chief. R. Crim. P. 20. Similarly, any party other than the petitioner may make a motion for judgment as a matter of law in a dependency action at the conclusion of the petitioner’s presentation of evidence. R. Pro. Jv. Ct. 319.

Children are owed the same due process guarantees. If the State does not present substantial evidence to support a juvenile adjudication, the child must be able to move for a judgement of acquittal. The current R. Pro. Jv. Ct. 103 precludes this.

Recommended Changes

Constitutional due process guarantees may be satisfied by different methods in Juvenile and Criminal Court as in the case of establishing probable cause as a prerequisite to pre-trial incarceration following an arrest. However, we believe here that Rules for

Criminal Procedure concerning withdrawal of a plea and judgment of acquittal can be mirrored in the Juvenile Rules. It is unnecessary to create divergent procedures. We suggest simply incorporating R. Crim. P. 17.5 and R. Crim. P. 20 by reference within R. Pro. Jv. Ct. 201.

It is respectfully requested that this Court open this petition for public comment, consider the petition and comments in the regular course provided by Supreme Court Rule 28, and adopt the proposed amendments as set forth in the Appendix.

Respectfully submitted this day of December **XX**, 2025.

By /s/ Rosemarie Peña-Lynch
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By /s/ Steve Koestner
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By /s/ Shannon L. Burns
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By /s/ Michael C. Jones
Michael C. Jones, Director
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APPENDIX

(new language is underlined)

Rules of Procedure for the Juvenile Court

Rule 201. Scope of the Delinquency Rules

(a) **Application.** These rules apply to delinquency proceedings in juvenile court.

(b) **Incorrigibility.** The delinquency rules apply to incorrigibility proceedings.

(c) **Application of Rules of Criminal Procedure.**

(1) Rules of Criminal Procedure 17.5 (Withdrawal of a Plea) and 20 (Judgement of Acquittal or Unproven Aggravator) apply to delinquency and incorrigibility proceedings.