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ARIZONA SUPREME COURT

In the Matter of:

Petition to Amend Arizona Rules of
Criminal Procedure 13.5

Supreme Court No. R-26-0028

Joint Comment by the Directors of the
Maricopa County Indigent Defense Agencies
in Opposition to the Petition to Amend Rule
13.5

The Maricopa County indigent representation (IR) offices 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). We jointly submit this comment in opposition to the Petition to Amend Rule 13.5.

The proposed amendment would eliminate a longstanding procedural safeguard that permits judicial review of sentencing allegations that increase a defendant's punishment exposure. Although the Petition characterizes the amendment as a clarification of ambiguity, the proposed rule change would materially narrow existing procedural protections recognized by Arizona courts and relied upon by litigants and trial courts statewide.

Arizona has long recognized that when the State seeks increased punishment based on additional factual allegations, courts retain an important supervisory role in ensuring those allegations are legally sufficient. The current version of Rule 13.5 reflects that principle. The proposed amendment would remove that safeguard and instead permit sentence-enhancing allegations to be imposed solely through unilateral prosecutorial notice without meaningful judicial review before trial.

1. Rule 13.5 reflects Arizona's deliberate choice to provide judicial oversight of punishment-enhancing allegations.

The Petition repeatedly characterizes the protections recognized in *Chronis v. Steinle*, 220 Ariz. 559 (2009), as unique to capital cases and merely incidental to the 2002 amendments adopted in response to *Apprendi v. New Jersey* and *Ring v. Arizona*. But the history of Rule 13.5 demonstrates that Arizona deliberately created procedural mechanisms

permitting judicial review of aggravating allegations after those decisions fundamentally altered sentencing procedures.

The 2002 rule petition acknowledged that “the changes mandated by *Apprendi* will apply in non-capital sentencing cases as well” and recognized that there were “sentencing allegations that now must be presented to the jury.” (Petition’s Attachment B at 3). The Petition further explained that “the prosecutor must add such allegations within the time limits of Rule 16.” (*Id.* at 4).

Importantly, the petition expressly contemplated judicial review of aggravating allegations before trial, explaining the proposed rule “will allow the defendant to request a determination of probable cause before trial if the defense deems it appropriate.” (*Id.* at 8). Although the Petition now attempts to characterize this protection as uniquely capital in nature, the Arizona Supreme Court ultimately adopted materially identical challenge language in both Rule 13.5(a) and Rule 13.5(c).

The Court of Appeals’ interpretation in *Navarro-Figueroa* therefore did not arise from an unreasonable reading of the rule. Rather, it arose from the text this Court adopted. The current Petition asks this Court not merely to clarify the rule, but to materially narrow the procedural protections afforded under its existing language.

Arizona courts have repeatedly recognized that Arizona procedural rules may provide protections beyond federal constitutional minimums. The fact that a procedural safeguard is not constitutionally compelled does not diminish its importance to the fair administration of criminal proceedings. Indeed, *Chronis* itself reflects this Court’s exercise of its supervisory and procedural rulemaking authority to ensure meaningful judicial

review of allegations that substantially alter punishment exposure. In doing so, the court specifically observed that “[a]ffording a right to a probable cause determination on aggravators does not infringe on any substantive power of prosecutors.” *Chronis*, 220 Ariz. at ¶ 15. The current version of Rule 13.5 therefore reflects a deliberate procedural choice to preserve limited judicial oversight of punishment-enhancing allegations, not an accidental or isolated carryover applicable only in capital litigation.

2. The proposed amendment would eliminate meaningful review of allegations that increase punishment exposure.

The proposed amendment would permit the State to allege noncapital aggravating circumstances without any meaningful opportunity for pretrial judicial review of their legal sufficiency. As a practical matter, those allegations frequently and substantially affect sentencing exposure, plea negotiations, detention decisions, trial strategy, and the overall trajectory of a criminal case.

Although noncapital aggravators do not expose defendants to the death penalty, they nevertheless dramatically increase sentencing ranges and substantially alter the risks attendant to proceeding to trial. The State’s proposal would allow such allegations to be asserted solely through prosecutorial notice, without any neutral determination that sufficient evidence exists to support them.

The judicial review contemplated by the existing rule serves an important gatekeeping function. It promotes fairness, discourages unsupported allegations, narrows issues for trial, and reinforces confidence in sentencing proceedings. Eliminating that

review would concentrate sole authority over punishment-enhancing allegations in the prosecuting agency itself.

The issue is not whether aggravators are formally labeled “elements.” Rather, the issue is whether allegations that increase punishment exposure should be subject to meaningful judicial oversight before they are presented to a jury or used to increase sentencing exposure. Modern sentencing jurisprudence increasingly requires juries to determine facts that expose defendants to greater punishment. Arizona law generally does not permit felony allegations to proceed absent some neutral determination of probable cause before trial. The proposed amendment would create an unusual procedural gap in which allegations capable of substantially increasing punishment may be submitted to juries and used to alter sentencing exposure without any prior judicial screening for evidentiary sufficiency.

3. The Petition overstates the administrative burden of probable cause review.

The Petition repeatedly suggests that permitting challenges to aggravating allegations will result in burdensome statewide “mini-trials.” That concern is overstated. Trial courts in Maricopa County have been conducting pretrial probable cause hearings on non-capital aggravators since the *Chronis* decision issued in 2009.

Arizona trial courts routinely conduct limited evidentiary hearings addressing suppression issues, competency, voluntariness, Rule 20 motions, and other matters requiring preliminary judicial determinations. A probable-cause review of aggravating allegations is a familiar and manageable judicial function.

Moreover, where aggravating allegations are supported by competent evidence, probable-cause review should be straightforward. And, in those circumstances, as is existing practice, defense counsel is unlikely to even request such a review. The existence of judicial review does not create unnecessary delay; rather, it promotes efficient litigation by identifying unsupported allegations before trial and clarifying the issues genuinely in dispute.

The Petition also overlooks the practical reality that aggravating allegations often exert significant pressure on plea negotiations and sentencing exposure long before trial occurs. Judicial review therefore serves an important reliability function at a critical stage of the proceedings.

4. If the Court elects to amend Rule 13.5, it should recognize the amendment narrows existing procedural protections rather than merely clarifying ambiguity.

The Petition repeatedly characterizes the proposed amendment as a clarification of the rule's intended meaning. Respectfully, the current text of Rule 13.5 reasonably supports the interpretation adopted in *Navarro-Figueroa*.

The relevant provisions were adopted simultaneously, in response to the same constitutional developments, and contain materially identical challenge language. Trial courts and litigants have relied on those provisions for years. The proposed amendment therefore represents a substantive narrowing of procedural protections rather than a mere clarification of previously settled meaning.

Recognizing that reality is important to preserving confidence in the rulemaking process and acknowledging the practical significance of the rights currently afforded under Rule 13.5.

CONCLUSION

For the foregoing reasons, the Maricopa County indigent defense agencies respectfully oppose the Petition to Amend Rule 13.5. The existing rule preserves an important mechanism for judicial oversight of punishment-enhancing allegations, promotes fairness and reliability in criminal proceedings, and reflects Arizona's longstanding commitment to meaningful procedural safeguards in sentencing litigation.

Respectfully submitted this 13th day of June, 2026.

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