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8 IN THE SUPREME COURT
9 STATE OF ARIZONA

10 PETITION TO MODIFY RULE 12.5,
11 ARIZONA RULES OF CRIMINAL
12 PROCEDURE

SUPREME COURT No. R-14-_____

Petition to Modify Rule 12.5, Ariz. R. Crim. P.

13 The Maricopa County Attorney, pursuant to Arizona Supreme Court Rule 28, hereby
14 petitions this Court to modify Rule 12.5 of the Arizona Rules of Criminal Procedure to allow the
15 presence of a law enforcement officer or detention officer during sessions of the grand jury for the
16 sole purpose of providing security when a witness before the grand jury is in custody.
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18 Respectfully submitted this 10th day of January, 2014.

19 WILLIAM G. MONTGOMERY
20 MARICOPA COUNTY ATTORNEY

21 By 
22 MARK FAULL
23 CHIEF DEPUTY
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1 **INTRODUCTION**

2 Rule 12.5, Arizona Rules of Criminal Procedure, specifies who may be present during
3 sessions of the grand jury. Currently this includes witnesses under examination, counsel for the
4 witness if the witness is a person under investigation by the grand jury, prosecutors authorized to
5 present evidence to the grand jury, the certified court reporter, and the interpreter, if any. Rule 12.6,
6 Arizona Rules of Criminal Procedure, provides that a person under investigation by the grand jury
7 may be compelled to appear or may be permitted to appear before the grand jury upon the person's
8 written request. If the witness under examination by the grand jury is in the custody of a law
9 enforcement agency or correctional facility, the agency or an authorized officer, is required to
10 maintain secure custody of the incarcerated person at all times, including their testimony before the
11 grand jury. Currently, when a witness under examination is in the custody of a law enforcement
12 agency or a correctional facility, a motion must be filed with the Presiding Criminal Judge
13 requesting that a law enforcement officer or a detention officer be permitted to accompany the in-
14 custody witness during the grand jury session for the purpose of maintaining secure custody of the
15 witness at all times. This proposed modification to Rule 12.5 would allow the attendance of an
16 officer in these situations without the need for additional motions and court orders.
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19 **DISCUSSION**

20 In Arizona, the most serious criminal cases are almost exclusively presented to the grand
21 jury for determination of probable cause. In a significant number of these cases, the suspect's
22 counsel submits a written request pursuant to Rule 12.6, Arizona Rules of Criminal Procedure, to
23 have the suspect appear and testify before the grand jury. In a large number of these serious
24 criminal cases, the suspects are in custody. The potential of eventual conviction and accompanying
25 severe punishment, including the possibility of the death penalty in some cases, makes these
26 suspects high escape risks in addition to the danger they pose to other members of society.
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1 Understandably, under these circumstances, law enforcement agencies and correctional facilities
2 demand maintenance of actual physical custody by their personnel anytime an in-custody person is
3 outside a locked cell.

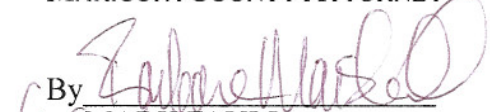
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5 When a grand jury grants the Rule 12.6 request of a suspect who is in custody, the suspect
6 must be transported to the grand jury's geographic location in secure custody and that secure
7 custody must be maintained during the time that the suspect is present inside the grand jury room
8 under examination. This security is important to prevent escape and to ensure the safety of those in
9 the grand jury room, including the grand jury members themselves. Without assurances that law
10 enforcement or detention personnel will be present at all times, a grand jury may be less inclined to
11 grant Rule 12.6 requests on the chance that the defendant might be a flight risk or a danger to their
12 security. The proposed modification to Rule 12.5 would address these issues in the least intrusive
13 manner possible and it would maintain the secrecy of the proceedings because the officer who
14 attends the session under these circumstances must be admonished consistent with A.R.S. §§13-
15 2812 and -2813.
16

17 **CONCLUSION**

18 The proposed modifications to Rule 12.5 will provide a reasonable way to maintain security
19 over suspects or other witnesses who are in-custody and are called to present evidence to the grand
20 jury. The proposed modification will assure that grand jurors will be able to grant a suspect's
21 request to testify pursuant to Rule 12.6 without concern for their physical safety.
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23 Respectfully submitted this 10th day of January, 2014.

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for MARK FAULL
CHIEF DEPUTY
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1 MODIFIED RULE 12.5, ARIZONA RULES OF CRIMINAL PROCEDURE

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3 **Rule 12.5. Persons authorized to be present during sessions of the grand jury**

4 No person other than the witness under examination, counsel for the witness if the witness is a
5 person under investigation by the grand jury, prosecutors authorized to present evidence to the
6 grand jury, the certified court reporter, and the interpreter, if any, shall be present during sessions of
7 the grand jury. IF A WITNESS UNDER EXAMINATION BY THE GRAND JURY IS IN THE
8 CUSTODY OF A LAW ENFORCEMENT AGENCY OR CORRECTIONAL FACILITY, A LAW
9 ENFORCEMENT OFFICER OR DETENTION OFFICER MAY BE PRESENT DURING THE
10 GRAND JURY SESSION FOR THE PURPOSE OF MAINTAINING SECURE CUSTODY
11 WHILE THE WITNESS TESTIFIES. A LAW ENFORCEMENT OFFICER OR DETENTION
12 OFFICER MAINTAINING SECURE CUSTODY OF A WITNESS UNDER EXAMINATION
13 SHALL BE ADMONISHED CONSISTENT WITH A.R.S. §§ 13-2812, 13-2813. No person other
14 than the grand jurors shall be present during their deliberation and voting.
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