David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington St., Ste. 411
Phoenix, AZ 85007
(602) 452-3301
Projects2@courts.az.gov

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:

	)	
PETITION TO AMEND	)	
RULE 7.6 OF THE	)	Supreme Court No. R-16-_____
ARIZONA RULES OF	)	
CRIMINAL PROCEDURE	)	
_____	)	

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendment to Rule 7.6 of the Rules of Criminal Procedure. The amendment is set forth in the accompanying Appendix A.

I. Background and Purpose of the Proposed Rule Amendment.

Laws 2013, Chapter 133 § 1 ("HB2231"), which became effective on September 13, 2013, amending A.R.S. § 13-3974. requires the judge to exonerate a bond under two scenarios in which the defendant is incarcerated with the county sheriff on or before the appearance date, and under a third scenario involving proof that the surety could not have produced the defendant on the appearance date due

to the defendant's unanticipated incarceration by a government agency other than the county sheriff.   Under prior law, exoneration of an appearance bond in all circumstances was within the discretion of the judge. Rule 7.6(d)(2), ARCrimPro, has not been updated to provide the mandatory exoneration of an appearance bond provided in the statute.

The proposed amendments set forth in Appendix A reflect the changes required by HB2231.

II. Pre-Petition Comments. Petitioner has not circulated this proposal for pre-petition comments because the changes proposed do no more than conform the rule to the statute.

Wherefore petitioner respectfully requests that the Supreme Court amend Rule 7.6 as set forth in Appendix A.

RESPECTFULLY SUBMITTED this ___ day of _____, 2016.

By /s/_____
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington St., Ste. 411
Phoenix, AZ 85007
(602) 452-3301
Projects2@courts.az.gov

APPENDIX A

Proposed Rule Change

Arizona Rules of Criminal Procedure

Rule 7.6. Transfer and disposition of bond

a. through c. [no changes]

d. Exoneration.

(1) At any time before violation that the court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of any security deposited.

(2) The court shall exonerate the bond if ~~the surety, in compliance with the requirements of A.R.S. § 13-3974,~~:

(i) The surety surrenders the defendant to the sheriff of the county in which the prosecution is pending <u>on or before the day and time the defendant is ordered to appear in court</u>, ~~or delivers an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction,~~ and the sheriff reports the surrender ~~or status~~ to the court~~, the court may exonerate the bond~~.

(ii) <u>The defendant is in the custody of the sheriff of the county in which the prosecution is pending on or before the day and time the defendant is ordered to appear in court, the surety provides an affidavit of surrender of the appearance bond to the sheriff, and the sheriff reports the affidavit of surrender of the appearance bond and the defendant's custody to the court.</u>

(iii) <u>Before the defendant was released to the custody of the surety, the defendant was released or transferred to the custody of another government agency, preventing the defendant from appearing in court on the day and time the defendant was ordered to appear in court, and the surety establishes both of the following:</u>

(a) <u>The surety did not know and could not have reasonably known of the release or transfer or that a release or transfer was likely to occur; and</u>

(b) <u>The defendant's failure to appear was a direct result of the release or transfer.</u>

<u>The court is not required to exonerate the bond under this subsection if a detainer was placed on the defendant before the bond was posted or the release or transfer to another government agency was for a period of twenty-four hours or less.</u>

(3) In all other instances, the decision whether or not to exonerate a bond shall be within the sound discretion of the court.

e. [no changes]