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**APPENDIX I**

1 **The Criminal Prosecution Practice and Procedure Committee Proposal:**

2 **I. BACKGROUND OF PETITION**

3 The Honorable Sam Myers, Presiding Judge of the Criminal Court of the  
4 Maricopa County Superior Court, has proposed an amendment to Rule 8.4, *Arizona*  
5 *Rules of Criminal Procedure*, which would exclude a period of 30 days from the  
6 speedy trial computation if, within 30 days of the expiration of the speedy trial time  
7 period, a court makes a finding that a defendant is competent to stand trial or has  
8 been restored to competency. This would have the effect of providing the court  
9 and parties the necessary time to bring a case to trial following such a finding.  
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12 **II. DISCUSSION/ANALYSIS**

13 The Arizona Rules of Criminal Procedure provide generally that a person in  
14 custody shall be tried within 150 days from arraignment, or if not in custody within  
15 180 days from arraignment. *Ariz. R. Crim. Pro.*, Rule 8.2(a). It is 270 days for  
16 complex cases, as defined by the rule. Other speedy trial time limits apply when a  
17 person is in prison or is located outside the state. Rule 8.3. However, certain time  
18 periods are excluded from these time computations, including delays occasioned  
19 by an examination and hearing to determine the competency to stand trial or  
20 intellectual disability of a defendant. Rule 8.4(a).  
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24 A motion to determine whether a defendant is competent to stand trial may  
25 be filed “at any time” after criminal charges are filed. Rule 11.2(a); A.R.S. § 13-

1 4503.A. This could occur at any stage of the proceedings, even after the matter is  
2 set to trial. Once a motion is filed, all available medical and criminal history  
3 records must be provided to the court within three days. Rule 11.2(b); A.R.S. § 13-  
4 4503.B. The court then determines whether “reasonable grounds” exist to order  
5 further examination of the defendant. Rule 11.2(c), (d); A.R.S. § 13-4503.C, D. If  
6 reasonable grounds are found to exist, mental health experts are appointed, and a  
7 hearing is conducted by the court. Rule 11.3, 11.4; A.R.S. § 13-4505, -4510.  
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10 There are time frames for when experts’ reports should be submitted and  
11 when a court hearing should be held, which can take a minimum of 60 days from  
12 the filing of the motion. Once the court finally determines that a defendant is  
13 competent, “proceedings shall continue without delay.” Rule 11.5(b)(1); A.R.S. §  
14 13-4510.B. Likewise, if a defendant is determined not competent but is later found  
15 to be restored to competency, “the proceedings against the defendant shall continue  
16 without delay.” A.R.S. § 13-4514.D; Rule 11.6(c). Similar rules exist for juvenile  
17 competency adjudications. See A.R.S. § 8-291, et seq.  
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20 The problem with this time scheme for cases proceeding after a competency  
21 finding is demonstrated by a motion to determine competency filed near the end of  
22 the speedy trial computation (even on the last day) when the matter is set to trial.  
23 If reasonable grounds are found to further exam a defendant for competency, the  
24 trial date is vacated and experts are appointed to examine the defendant. Once the  
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1 examinations have occurred and reports have been submitted to the court, it could  
2 be another 30 days or more before a competency hearing is held. Rule 11.5(a).  
3 While these time periods are excluded from the speedy trial computation (Rule  
4 8.4), once competency is found, the exclusionary period ceases. The case must  
5 then proceed “without delay”, forcing a trial to be held without any of the parties  
6 or the court having adequate time to prepare (e.g. victims and lay witnesses have  
7 to contacted (and oftentimes located), experts have to available, subpoenas – both  
8 State and defense – have to be issued and served, and court calendars have to be  
9 open).

12 The scenario is even worse for misdemeanor cases. Once reasonable  
13 grounds are found to exist for further competency hearings, the matter is transferred  
14 to the Superior Court, which has “exclusive jurisdiction over all competency  
15 hearings.” Rule.11.2(d); A.R.S. § 13-4503.D. When a court later finds that a  
16 defendant is competent or has been restored to competency, the case has to transfer  
17 back to the municipal court from which it originated. This causes further delay in  
18 the process and complicates the requirement that the proceedings continue “without  
19 delay” after that finding is made.

22 The intent of R-16-0007 is to give the court, the prosecution, and the defense  
23 sufficient time to bring the case to trial following a finding of competency or  
24 competency restoration, if that finding is made within 30 days of the speedy trial  
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1 expiration. In that event, an additional 30 days would be excluded from the speedy  
2 trial calculation. This promotes justice and due process for all parties. The law is  
3 clear that a person cannot be tried, convicted, sentenced or punished if they are  
4 incompetent. Rule 11.2; A.R.S. § 13-4502.A. “The defendant, the prosecution,  
5 and the court all have a duty to see that this does not occur.” *State v. Starcevich*,  
6 139 Ariz. 378, 389, 678 P.2d 959, 970 (App. 1984). However, this duty should not  
7 operate to deprive the court, the prosecution and the defense of the necessary time  
8 to adequately prepare for trial following a determination of competency.  
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11 Excluding time from the speedy trial computation as proposed in the petition  
12 benefits all parties and, as the petitioner points out, is not without precedent. Other  
13 states, such as Kansas, provide for an expanded time period for scheduling a trial  
14 following a finding of competency:  
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16 If the defendant is subsequently found to be competent to stand trial,  
17 the trial shall be scheduled as soon as practicable and in any event  
18 within 90 days of such finding.

19 Sec. 22-3402(e)(2), “Kansas Code of Criminal Procedure” (2015). The Criminal  
20 Prosecution Practice and Procedure Committee recommends that the Rules Review  
21 Committee support adoption of Supreme Court No. R-16-0007, Petition to Amend  
22 Rule 8.4 of the Rules of Criminal Procedure. It further recommends that this  
23 support go one step further to propose one addition: supporting a modified time  
24 period of 90 days for complex cases as defined in Rule 8.2(a)(3). For complex  
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1 cases, this would give all parties an adequate opportunity to ensure that a full and  
2 fair trial is held with each party adequately prepared.

### 3 **III. CONCLUSION**

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5 The The Criminal Prosecution Practice and Procedure Committee  
6 respectfully requests that the Arizona Supreme Court adopt the amendment to Rule  
7 8.4 as requested in Petition R-16-0007, with the suggestion that it be modified to  
8 include an exclusion period of 90 days for complex cases. The proposed  
9 amendment will ensure that when a finding of competency or competency  
10 restoration is made within 30 days of the speedy trial expiration, the parties and  
11 court will be adequately prepared to proceed with the trial of the underlying matter.  
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13 It will also ensure that the rights to a fair trial and due process will be fulfilled.  
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