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APPENDIX 2

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

2 **I. BACKGROUND OF PETITION**

3 Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding
4 Judge of the Criminal Court of the Superior Court of Arizona in Maricopa County
5 filed a petition to amend Rule 8.4(a) (governing speedy trials).
6

7 The substance of the petition requests an additional 30 days of excluded time
8 be added where an excluded time period has ended within 30 days of the time
9 limitations for which a defendant must be brought to trial.
10

11 **II. DISCUSSION AND ANALYSIS:**

12 The petition refers specifically to instances under the rule at 8.4(a) of
13 “delays resulting from the examination and hearing to determine the competency
14 or intellectual disability of the defendant, or the time periods when a defendant is
15 incompetent to stand trials or is absent and cannot be arrested or taken into
16 custody.”
17

18 Rule 8.4(a) reads in full: “The following periods shall be excluded from the
19 computation of the time limits set forth in Rules 8.2 and 8.3:
20

- 21 a. Delays occasioned by or on behalf of the defendant,
22 including, but not limited to, delays caused by an examination and
23 hearing to determine competency or intellectual disability, the
24 defendant’s absence or incompetence, or his or her inability to be
25

1 arrested or taken into custody in Arizona.”

2 The speedy trial rules as promulgated by the Arizona Supreme Court are
3 designed to support the Constitution of the State Arizona, Article 2, Section 24,
4 and the Constitution of the United States, Sixth Amendment. While not often
5 objectively in the interest of criminal defendants, the right to speedy trial is critical
6 in giving force and effect to the rights of those charged with crimes in Arizona. If
7 the state is going to bring charges, it is the state’s responsibility to be prepared to
8 afford the defendant their right to a jury trial in a speedy manner as set forth in the
9 rules.
10

11 The rules balance the practical realities of the criminal process with the
12 constitutional liberty principles cited.
13

14 Much has been done to balance the various interests in play with due
15 deference to the realities of case preparation. For example, the defendant must
16 make known their intention to invoke the speedy trial requirements. It is not
17 acceptable to lay in wait for the time limits to expire, and then invoke them at the
18 last minute.
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21
22 It is acceptable for any party, including the court, to move to continue a trial,
23 even where Rule 8 has been invoked, if such delay is necessary.
24

25 Rule 8 already has time limit standards for out-of-state incarcerated

1 individuals at Rule 8.3. With appropriate communication the defendant will make
2 an interest based decision on whether to assert the speedy trial right. Adding 30
3 days to all such cases would cause un-necessary delay, and deprive all defendants
4 in this position of this critical right.
5

6 The proposed rule change un-necessarily singles out those defendants with
7 mental health aspects to their case for an arbitrary additional case delay.
8

9 It is the responsibility of defense counsel to assert the time limit at the outset
10 of the proceedings, and if this is not done, it is not acceptable, when the defendant
11 is restored to suddenly assert the time limit. Counsel is obligated to take measures
12 to take account of client mental health issues. This already creates difficulty in
13 weighing this obligation with speedy trial rights. Adding another 30 day time span
14 (often, regrettably, with in-custody defendants) increases this burden, raising the
15 likelihood that mentally ill defendants will not have full access to the treatment
16 they may need on the horns of this dilemma.
17

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19 In addition, as a practical matter related to the Victim's Bill of Rights, this
20 alteration of the rules would potentially further delay crime victims' interest in
21 speedy resolution of matters in which they are involved, often through no choice of
22 their own.
23

24 **III. CONCLUSION**

25 The petition is expressing a need in terms of case administration, in essence,

1 for more time. In those instances where more time is required, there are rational
2 mechanisms in place to gain such time. To import this 30 day delay into all situations
3 will not solve the issues with which the petition is concerned without needlessly
4 placing all such cases on an extended time frame to the needless detriment of these
5 defendant's basic liberty rights.
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7 For the above reasons, the Criminal Defense Practice and Procedure
8 Committee opposes the Petition.
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