Rule 1.2. Purpose and Construction

These rules are intended to provide for the just and speedy determination of every criminal proceeding. Courts ~~and~~ parties**, and crime victims** should construe these rules to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the ~~individual~~ **accused and the victim** while preserving the public welfare.

Rule 1.3. Computation of Time

(a) General Time Computation. When computing any time period more than 24 hours prescribed by these rules, by court order, or by an applicable statute, the following rules apply:

(1) ***Day of the Event.*** Exclude the day of the act or event from which the designated time period begins to run.

(2) ***Last Day.*** Include the last day of the period, unless it is a Saturday, Sunday or legal holiday, in which case the period ends on the next day that is not a Saturday, Sunday, or legal holiday.

(3) ***Time Period Less Than 7 Days***. If the time period is less than 7 days, exclude intermediate Saturdays, Sundays and legal holidays from the computation.

(4) ***Next Day.*** The "next day" is determined by counting forward when the period is measured after an event, and backward when measured before an event.

(5) ***Additional Time After Service.*** If a party **or crime victim** may or must act within a specified time after service and service is made under a method authorized by Rule 1.7(c)(2)(C), (D), or (E), 5 calendar days are added after the specified time period would otherwise expire under (a)(1)-(4). This provision does not apply to the clerk's distribution of notices, minute entries, or other court-generated documents.

(b) If an Arraignment Is Not Held. If an arraignment is not held under Rule 14.5, the date of arraignment for the purpose of computing time is the date the defendant receives notice of the next court date under Rule 5.8.

(c) Entry. A court order is entered when the clerk files it.

Rule 1.4. Definitions

(a) The Defendant. "The defendant" is a person named as such in a complaint,

indictment, or information. "The defendant" as used in these rules includes an arrested person who at the time of arrest is not named in a charging document. "The defendant" in the context of certain rules includes the attorney who represents the defendant.

(b) Limited Jurisdiction Court. A "limited jurisdiction court" is a justice court under A.R.S. §§ 22-101 et seq., or a municipal court under A.R.S. §§ 22-401 et seq.

(c) Magistrate. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the Chief Justice and justices of the Supreme Court, judges of the superior court, judges of the court of appeals, justices of the peace, and judges of a municipal court.

(d) Parties. "Parties" means the State of Arizona and the defendants in a case. Use of the word "party" in these rules means either, or any, party.

(e) Person. "Person" includes an entity.

(f) Presiding Judge.

(1) ***For the Superior Court.*** The superior court presiding judge is the county's presiding judge. In a county that has only one superior court judge, that judge is the presiding judge. In other counties, the Chief Justice of the Supreme Court designates the presiding judge, who may appoint other judges to carry out one or more of the presiding judge's duties.

(2) ***For a Limited Jurisdiction Court.*** If a court consists only of one judge, that judge is the presiding judge. In courts having more than one judge, the presiding judge is designated by the appropriate authority.

(g) The State. "The State" means the State of Arizona, or any other Arizona state or local governmental entity that files a criminal charge in an Arizona court. "The State" in the context of certain rules includes the prosecutor representing the State.

(h) Victim. "Victim" means a person as defined in A.R.S. § 13-4401.

Rule 1.5. Interactive Audiovisual Systems

(a) Generally. If the appearance of a defendant or counsel is required in any court, the appearance may be made by using an interactive audiovisual system that complies with the provisions of this rule. Any interactive audiovisual system must meet or exceed minimum operational guidelines adopted by the Administrative Office of the Courts.

(b) Requirements. If an interactive audiovisual system is used:

(1) the system must operate so the court and all parties can view and converse with each other simultaneously;

(2) a full record of the proceedings must be made consistent with the requirements of applicable statutes and rules; and

(3) provisions must be made to:

(A) allow for confidential communications between the defendant and defendant's counsel before, during, and immediately after the proceeding;

(B) allow a victim a means to view and participate in the proceedings and ensure compliance with all victims' rights laws;

(C) allow the public a means to view the proceedings consistent with applicable law; and

(D) allow for use of interpreter services when necessary and, if an interpreter is required, the interpreter must be present with the defendant absent compelling circumstances.

(c) When a Defendant May Appear by Videoconference.

(1) ***In the Court's Discretion.*** A court may require a defendant's appearance by use of an interactive audiovisual system without the parties' consent at any of the following:

(A) an initial appearance;

(B) a misdemeanor arraignment;

(C) a not-guilty felony arraignment;

(D) a hearing on a motion to continue that does not include a waiver of time under Rule 8;

(E) a hearing on an uncontested motion;

(F) a pretrial or status conference;

(G) a change of plea in a misdemeanor case; or

(H) an informal conference held under Rule 32.7.

(2) ***Generally Not Permitted.*** A court may not require a defendant's appearance by use of an interactive audiovisual system at any trial, contested probation violation hearing, felony sentencing, or felony probation disposition hearing, unless the

court finds extraordinary circumstances and the parties consent by written stipulation or on the record.

(3) ***By Stipulation.*** For any proceeding not included in (c)(1) and (c)(2), the parties may stipulate that the defendant may appear at the proceeding by use of an interactive audiovisual system. The parties must file a stipulation before the proceeding begins or state the stipulation on the record at the start of the proceeding. Before accepting the stipulation, the court must find that the defendant knowingly, intelligently and voluntarily agrees to appear at the proceeding by use of an interactive audiovisual system **and that the system will allow a victim a means to view and participate in the proceedings and ensure compliance with all victims' rights laws**.

(4) ***Change in Hearing's Scope.*** If the scope of a hearing expands beyond that specified in (c)(1) and (c)(3), the court must reschedule a videoconference, **give notice to counsel including any counsel for the victim,** and require the defendant's personal appearance.

Rule 1.6. Form of Documents

(a) Caption. Documents filed with the court must contain the following information as single-spaced text, typed or printed, on the first page of the document:

(1) to the left of the center and at the top of the page:

(A) the filing attorney's or self-represented litigant's name, address, telephone number, and email address; and

(B) if an attorney, the attorney's State Bar of Arizona attorney identification number, any State Bar of Arizona law firm identification number, and the name of the party the attorney represents;

(2) centered on the page and immediately below the filer information, the title of the court;

(3) below the title of the court and to the left of the center of the page, the title of the action or proceeding;

(4) opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding; and

(5) immediately below the case number, a brief description of the document.

(b) Document Format.

(1) ***Generally.*** Unless the court orders otherwise, all filed documents, other than a

document submitted as an exhibit or attachment to a filing, must be prepared as follows:

(A) *Text and Background.* The text must be black on a plain white background. All documents filed must be single-sided.

(B) *Type Size and Font.* Every typed document must use at least a 13-point type size. The court prefers proportionally spaced serif fonts. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.

(C) *Page Size.* Each page of a document must be 8½ by 11 inches.

(i) Exhibits, attachments to documents, or documents from jurisdictions outside Arizona that are larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.

(ii) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.

(iii) A document that is not in compliance with these provisions may be filed only if compliance is not reasonably practicable.

(D) *Margins and Page Numbers.* Page margins must be at least one inch on the top and bottom of the page and between one inch and 1½ inches on each side. Except for the first page, the bottom margin must include a page number.

(E) *Handwritten Documents.* Handwritten documents are discouraged, but if a document is handwritten, the text must be legibly printed and not include cursive writing or script.

(F) *Line Spacing.* Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.

(G) *Headings and Emphasis.* Headings must be underlined, in italics, or in bold type, or in any combination of the three. Underlining, italics, or bold type also may be used for emphasis.

(H) *Citations.* Case names and citation signals must be in italics or underlined.

(I) *Originals.* Unless filing electronically, only originals may be filed. If it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer-generated duplicates.

(J) *Court Forms.* Printed court forms may deviate from the requirements of this rule. Printed court forms must be single-sided. They may be single-spaced, but

any signature lines must be at least two lines below the last line of text. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming, or imaging.

(2) ***Signatures.*** Every document a party **or victim's counsel** files with the court must include the attorney of record's signature. If there is no attorney of record, the document must include the signature of a self-represented person.

(c) Electronically Filed Documents. If a court has an electronic filing portal, a party **or the victim's counsel** may file a document electronically.

(1) ***Format.***

(A) *File Type.* A document filed electronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text-searchable .pdf, .odt, or .docx format or other format permitted by Administrative Order. *A text-searchable .pdf format is preferred.* A proposed order must be in a form that permits it to be modified, such as .odt or .docx format or other format permitted by Administrative Order, and must not be password protected.

(B) *File Size.* A document exceeding the file size limits allowed by the court's electronic filing portal may be broken up into multiple files to accommodate such a limit.

(2) ***Formats of Attachments.***

(A) *Generally.* An exhibit and other attachment to an electronically filed document may be filed electronically if it is attached to the same submission as either a scanned image or an electronic copy using an approved file type and format.

(B) *Official Records.* A scanned copy of an official record may be filed electronically if it contains an official seal of authority or its equivalent.

(C) *Notarized Documents.* A scanned copy of a notarized document may be filed electronically if it contains the notary's signature and stamp or seal.

(D) *Certified Mail, Return Receipt Card.* When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card are scanned and filed.

(E) *National Courier Service.* When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by

scanning and filing the receipt.

(3) ***Bookmarks and Hyperlinks.***

(A) *Bookmarks.* A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. Bookmarks are encouraged.

(B) *Hyperlinks.* A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Material that is not in the official court record does not become part of the official record merely because it is made accessible by a hyperlink. Hyperlinks are encouraged.

(4) ***Originals.*** An electronically filed document (or a scanned copy of a document filed in hard copy) constitutes an "original" under Arizona Rule of Evidence 1002.

(5) ***Signature.*** All electronic filings must be signed. A person may sign an electronic document by placing the symbol "/s/" on the signature line above the person's name. An electronic signature is equivalent to an ink signature on paper.

Rule 1.7. Filing and Service of Documents

(a) "Filing with the Court" Defined. The filing of a document with the court is accomplished only by filing it with the clerk. If a judge permits, a **party or victim's attorney** may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

(b) Effective Date of Filing.

(1) ***Paper Documents.*** A document is deemed filed on the date the clerk receives and accepts it. If a document is submitted to a judge and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(2) ***Electronically Filed Documents.*** An electronically filed document is filed on the date and time the clerk receives it. Unless the clerk later rejects the document based on a deficiency, the date and time shown on the email notification from the court's electronic filing portal or as displayed within the portal is the effective date of filing. If a filing is rejected, the clerk must promptly provide the filing party with an explanation for the rejection.

(3) ***Late Filing Because of an Interruption in Service.*** If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document.

(4) ***Incarcerated Parties.*** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must deem the filing date to be the date when the document was delivered to jail or prison authorities to deposit in the mail.

(c) Service of All Documents Required; Manner of Service. Every person filing a document with any court must serve a copy of the document on all other parties **and victim's attorney** as follows:

(1) ***Serving an Attorney.*** If a party **or victim** is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) ***Service Generally.*** A document is served under this rule by any of the following:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it by U.S. mail to the person's last-known address—in which event service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in (c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner—in which event service is complete upon transmission; or

(E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action—in which event service is complete upon transmission.

(3) ***Certificate of Service.*** The date and manner of service must be noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

> *A copy has been or will be mailed/emailed/hand-delivered [select one]*
>
> *on [insert date] to:*
>
> *[Name of opposing party or attorney]*
>
> *[Address of opposing party or attorney]*
>
> **[Name of victim's attorney]**
>
> **[Address of victim's attorney]**

If the precise manner in which service has actually been made is not noted, it will be presumed that the document was served by mail. This presumption will only apply if service in some form has actually been made.

Rule 1.8. Clerk's Distribution of Minute Entries and Other Documents

(a) Generally. The clerk must distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of every minute entry to all **parties and to victim's attorney**.

(b) Electronic Distribution. The clerk may distribute minute entries, notices and other court-generated documents to a party or a party's attorney **and to victim's attorney** by electronic means. Electronic distribution of a document is complete when the clerk transmits it to the email address that the party or attorney **or victim's attorney** has provided to the clerk.

Rule 1.9. Motions, Oral Argument, and Proposed Orders

(a) Content. A motion must include a memorandum that states facts, arguments, and authorities pertinent to the motion.

(b) Service of Motion; Response; Reply. The moving party **or the victim's attorney** must serve the motion on all other parties. No later than 10 days after service, another party **or the victim's attorney** may file and serve a response, and, no later than 3 days after service of a response, the moving party **or the victim's attorney** may file and serve a reply. A reply must be directed only to matters raised in a response. If no response is filed, the court may deem the motion submitted on the record.

(c) Length. Unless the court orders otherwise, a motion or response, including a supporting memorandum, may not exceed 11 pages, exclusive of attachments, and a reply may not exceed 6 pages, exclusive of attachments.

(d) Waiver of Requirements. On a party's **or victim's attorney's** request or on its own,

the court may waive a requirement specified in this rule, or it may overlook a formal defect in a motion.

(e) Oral Argument. On a party's **or victim's attorney's** request or on its own, the court may set a motion for argument or hearing.

(f) Proposed Orders. A proposed order must be prepared as a separate document and may not be included as part of a motion, stipulation, or other document. There must be at least two lines of text on the signature page of a proposed order. A party **or victim's attorney** must serve the proposed order on the court and all other parties **and victim's attorney**. A party **or victim's attorney** must not file a proposed order, and the court will not docket it, until a judge has reviewed and signed it. Absent a notice of filing, proposed orders will not be part of the record.

Rule 4.1. Procedure upon Arrest

(a) Prompt Initial Appearance. An arrested person must be promptly taken before a magistrate. **Upon request, the victim must be informed of the date, time, and place for the initial appearance.** At the initial appearance, the magistrate will advise the arrested person of those matters set forth in Rule 4.2. If the initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody.

(b) On Arrest Without a Warrant. A person arrested without a warrant must be taken before the nearest or most accessible magistrate in the county of arrest. A complaint, if not already filed, must be promptly prepared and filed. If a complaint is not filed within 48 hours after the initial appearance before the magistrate, the arrested person must be immediately released from custody and any pending preliminary hearing dates must be vacated. **The victim must be notified of any release.**

(c) On Arrest with a Warrant.

(1) ***Arrest in the County of Issuance.*** A person arrested in the county where the warrant was issued must be taken before the magistrate who issued the warrant for an initial appearance. If the magistrate is absent or unable to act, the arrested person must be taken to the nearest or most accessible magistrate in the same county. **Upon request, the victim must be informed of the date, time, and place for the initial appearance.**

(2) ***Arrest in Another County.*** If a person is arrested in a county other than the one where the warrant was issued, the person must be taken before the nearest or most accessible magistrate in the county of arrest. If eligible for release as a matter of right, the person must then be released under Rule 7.2. If not released

immediately, the arrested person must be taken to the issuing magistrate in the county where the warrant originated, or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the county where the warrant originated**. The victim must be notified of any release.**

(d) Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance. Each presiding judge must make a magistrate available every day of the week to hold the initial appearances required under Rule 4.1(a). The presiding judge also must set at least one fixed time each day for conducting initial appearances, and notify local law enforcement agencies of the fixed time(s).

(e) Sample for DNA Testing; Proof of Compliance. If the arresting authority is required to secure a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-610(K), it must provide proof of compliance to the court before the initial appearance.

Rule 4.2. Initial Appearance

(a) Generally. At an initial appearance, the magistrate must:

(1) determine the defendant's true name and address and, if necessary, amend the formal charges to correct the name and instruct the person to promptly notify the court of any change of address;

(2) inform the defendant of the charges and, if available, provide the person with a copy of the complaint, information, or indictment;

(3) inform the defendant of the right to counsel and the right to remain silent;

(4) determine whether there is probable cause for purposes of release from custody, and, if no probable cause is found, immediately release the person from custody;

(5) appoint counsel if the defendant requests and is eligible for appointed counsel under Rule 6;

(6) permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release;

(7) determine the conditions of release under Rule 7.2, including **considering that the victim has a constitutional right to be free from intimidation, harassment, and abuse, and** whether the defendant is non-bailable under article 2, section 22 of the Arizona Constitution and A.R.S. § 13-3961;

(8) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(A) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., or a domestic violence offense as defined in A.R.S. § 13-3601; and

(B) the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number; and

(9) order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing if:

(A) the defendant is in-custody and was arrested for an offense listed in A.R.S. § 13-610(O)(3); and

(B) the court has not received proof of compliance with A.R.S. § 13-610(K).

(b) Felonies Charged by Complaint. If a defendant is charged in a complaint with a felony, in addition to following the procedures in (a), the magistrate must:

(1) inform the defendant of the right to a preliminary hearing and the procedures by which that right may be waived; and

(2) unless waived, set the time for a preliminary hearing under Rule 5.1.

(c) Combining an Initial Appearance with an Arraignment. If the defendant is charged with a misdemeanor or indicted for a felony and defense counsel is present or the defendant waives the presence of counsel, **and, if requested, the victim has been given notice and an opportunity to be present and heard,** the magistrate may arraign a defendant under Rule 14 during an initial appearance under (a). If, however, the magistrate lacks jurisdiction to try the offense, the magistrate may not arraign the defendant and must instead transfer the case to the proper court for arraignment. If the court finds that delaying the defendant's arraignment is indispensable to the interests of justice, the court when setting a date for the continued arraignment must provide sufficient notice to victims under Rule 39(b)(2).

Rule 5.1. Right to a Preliminary Hearing; Waiver; Continuance

(a) Right to a Preliminary Hearing. A defendant has a right to a preliminary hearing if charged in a complaint with a felony. A preliminary hearing must commence before a magistrate no later than 10 days after the defendant's initial appearance if the defendant is in custody, or no later than 20 days after the defendant's initial appearance if the defendant is not in custody, unless:

(1) the complaint is dismissed;

(2) the hearing is waived;

(3) the defendant has been transferred from the juvenile court for criminal prosecution on specified charges; or

(4) the magistrate orders the hearing continued under (c).

The victim, if requested, must be given notice of the preliminary hearing.

(b) Waiver. The parties may waive a preliminary hearing but the waiver must be in writing and the defendant, defense counsel, and the State must sign it. **The victim, if requested, must be given notice of the waiver.**

(c) Continuance.

(1) ***Release Absent Continuance.*** If a preliminary hearing for an in-custody defendant did not commence within 10 days as required under (a) and was not continued, the defendant must be released from custody, unless the defendant is charged with a non-bailable offense, in which case the magistrate must immediately notify that county's presiding judge of the reasons for the delay.

(2) ***Continuance.*** On motion or on its own, a magistrate may continue a preliminary hearing beyond the 20-day deadline specified in (a). A magistrate may continue the hearing only if it finds that extraordinary circumstances exist ~~**and,**~~ that delay is indispensable to the interests of justice**, and that it does not infringe the victim's right to a speedy trial.** The magistrate also must file a written order detailing the reasons for these findings. The court must promptly notify the parties **and, if requested, the victim** of the order.

(3) ***Resetting Hearing Date.*** If the magistrate orders a continuance, the order must reset the preliminary hearing for a specific date to avoid uncertainty and additional delay.

(d) Hearing Demand. A defendant who is in custody may demand that the court hold a preliminary hearing as soon as practicable. In that event, the magistrate must set a hearing date and must not delay its commencement more than necessary to secure the attendance of counsel, a court reporter, **the victim,** and necessary witnesses.

Rule 5.4. Determining Probable Cause

(a) Holding a Defendant to Answer. If a magistrate finds that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate must file a written order holding the defendant to answer for the offense before the superior court. Upon request, the magistrate may reconsider the conditions of release**, after giving the victim the right to be heard.**

(b) Amending the Complaint. A magistrate may grant a motion to amend a complaint so that its factual allegations conform to the evidence, but the magistrate must not hold the defendant to answer for crimes different than those charged in the original complaint.

(c) Evidence. A magistrate must base a probable cause finding on substantial evidence, which may include hearsay in the following forms:

(1) a written report of an expert witness;

(2) documentary evidence, even without foundation, if there is a substantial basis for believing that foundation will be available at trial and the document is otherwise admissible; or

(3) a witness's testimony about another person's declarations if such evidence is cumulative or if there are reasonable grounds to believe that the declarant will be personally available for trial.

(d) Lack of Probable Cause. The magistrate must dismiss the complaint and discharge the defendant if a magistrate finds that there is not probable cause to believe that an offense has been committed or that the defendant committed it.

Rule 5.8. Notice if an Arraignment Is Not Held

(a) Notice. If a defendant is held to answer in a county where an arraignment is not held as provided in Rule 14.1(d), the magistrate must:

(1) enter a plea of not guilty for the defendant and provide the defendant and defense counsel with a notice specifying that a plea of not guilty has been entered;

(2) set dates for a trial or pretrial conference;

(3) advise the parties **and, if requested, the victim,** in writing of the dates set for further proceedings and other important deadlines;

(4) advise the defendant of the defendant's right to be present at all future proceedings, that any proceeding may be held in the defendant's absence, and that if the defendant fails to appear, the defendant may be charged with an offense and a warrant may be issued for the defendant's arrest; and

(5) advise the defendant of the right to a jury trial, if applicable.

(b) Notice Form. The magistrate must provide written notice to the defendant of the matters in (a). The defendant and defense counsel must sign the notice and return it to the court.

Rule 6.7. Appointment of Investigators and Expert Witnesses for Indigent Defendants

(a) Appointment. On application, if the court finds that such assistance is reasonably necessary to adequately present a defense at trial or at sentencing, the court may appoint an investigator, expert witnesses, and/or mitigation specialist for an indigent defendant at county or city expense. **Any person so appointed must be advised that the victim has a right to a speedy trial.**

(b) Ex Parte Proceeding. A defendant may not make an ex parte request under this rule without showing a need for confidentiality. The court must make a verbatim record of any ex parte proceeding, communication, or request, which must be available for appellate review.

(c) Definition of a "Mitigation Specialist." As used in this rule, a "mitigation specialist" is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate, and present psycho- social and other mitigation evidence.

(d) Capital Case. In a capital case, a defendant should make any motion for an expert or mitigation specialist no later than ~~**60**~~ **30** days after the State makes its disclosure under Rule 15.1(i)(3).

Rule 7.2. Right to Release

(a) Before Conviction: Bailable Offenses. Any person charged with an offense bailable as a matter of right must be released pending trial on the person's own recognizance or on the execution of bail. In determining the method of release or the amount of bail, the court must consider the factors set forth in A.R.S. § 13-3967(B) and must impose the least onerous conditions of release set forth in Rule 7.3(b) that will reasonably assure the person's appearance**, protect against the intimidation of witnesses, and protect the safety of the victim, any other person or the community.**

(b) Before Conviction: Non-Bailable Offenses. The court must not release a defendant on bail if it finds the person is not bailable under applicable law.

(c) After Conviction.

(1) ***Superior Court.***

(A) *Generally.* After a person is convicted of an offense for which the person will, in all reasonable probability, receive a sentence of imprisonment, the court may not release the person on bail or on the person's own recognizance unless:

(i) the court finds that reasonable grounds exist to believe that the conviction may be set aside on a motion for new trial, reversed on appeal, or vacated in a post-conviction proceeding; or

(ii) the parties stipulate otherwise and the court approves the stipulation.

If the person is released the court shall require conditions of release that protect the safety of the victim, any other person, or the community.

(B) *Lack of Diligence on Appeal.* If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

(C) *Release upon Sentence Completion.* A defendant held in custody pending appeal must be released if the person's term of incarceration is completed before the appeal is decided.

(2) ***Limited Jurisdiction Courts.***

(A) *Conditions of Release on Appeal.* If a defendant files a timely notice of appeal of a conviction for an offense for which the court has imposed a sentence of incarceration, the defendant may remain out of custody under the same conditions of release imposed at or after the defendant's initial appearance or arraignment.

(B) *Lack of Diligence on Appeal.* If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

(C) *Motion to Amend Conditions of Release.*

(i) Upon the filing of a timely notice of appeal, the court—on motion or on its own—may amend the conditions of release if it finds a substantial risk exists that the defendant presents a danger to **the victim,** another person**,** or the community, or the defendant is unlikely to return to court if required to do so after the appeal concludes.

(ii) The court must hear a motion under this rule no later than 3 days after filing, although it may continue the hearing for good cause. The defendant may be detained pending the hearing. The hearing must be on the record, and the defendant is entitled to representation by counsel. Any testimony by the defendant is not admissible in another proceeding except as it relates to compliance with prior conditions of release, perjury, or impeachment. The court must state its findings on the record.

(iii) The court may amend the conditions of release in accordance with the standards set forth in Rule 7.3 and Rule 7.4(b). In determining the method of release or the amount of bail, the court must consider the nature and

circumstances of the offense, family or local ties, employment, financial resources, the defendant's character and mental condition, the length of residence in the community, the record of arrests or convictions, **safety of the victim,** and appearances at prior court proceedings.

(D) *Release upon Sentence Completion.* A defendant held in custody pending appeal must be released if the defendant's term of incarceration is completed before the appeal is decided.

(E) *Superior Court Review.* If the trial court enters an order setting a bond or requiring incarceration during the appeal, the defendant may petition the superior court to stay the execution of sentence and to allow the defendant's release either without bond or on a reduced bond.

(d) Burden of Proof. A court must determine issues under (a) and (c) by a preponderance of the evidence. The State bears the burden of establishing factual issues under (a), (b) and (c)(2). The defendant bears the burden of establishing factual issues under (c)(1).

Rule 7.3. Conditions of Release

(a) Mandatory Conditions. Every order of release must contain the following conditions:

(1) the defendant must appear at all court proceedings;

(2) the defendant must not commit any criminal offense;

(3) the defendant must not leave Arizona without the court's permission;

~~**And**~~

(4) the person not contact the victim, unless the court clearly finds good cause to conclude that the victim's safety would be protected without a no-contact order.

(b) Mandatory Condition if Charged with an Offense Listed in A.R.S. § 13-610(O)(3).

(1) ***Generally.*** If a defendant is charged with an offense listed in A.R.S. § 13-610(O)(3) and has been summoned to appear in court, the magistrate must order the defendant to report to the arresting law enforcement agency or its designee no later than 5 days after release, and submit a sample of buccal cells or other bodily substances for DNA testing as directed. The defendant must provide proof of compliance at the next scheduled court proceeding.

(2) ***Required Notice.*** The court must inform a defendant that a willful failure to comply with an order under (b)(1) will result in revocation of release.

(c) Additional Conditions. The court may impose as a condition of release one or more of the following conditions if the court finds the condition is reasonably necessary to secure a person's appearance:

(1) an unsecured appearance bond;

(2) placing the person in the custody of a designated person or organization that agrees to supervise the person;

(3) a secured appearance bond;

(4) restrictions on the person's travel, associations, or residence; or

(5) any other condition the court deems reasonably necessary.

Rule 7.4. Procedure

(a) Initial Appearance. At an initial appearance, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

(b) Later Review of Conditions.

(1) ***Generally.*** On motion or on its own, a court may reexamine the conditions of release if the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

(2) ***Motion Requirements and Hearing.*** The court may modify the conditions of release only after giving the parties **and the victim** an opportunity to respond to the proposed modification. A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.

(3) ***Non-Bailable Offenses.*** If the motion involves whether the person should be held without bail, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

(c) Evidence. A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

(d) Review of Conditions of Release for Misdemeanors. No later than 10 days after arraignment, the court must determine whether to amend the conditions of release for any defendant held in custody on bond for a misdemeanor.

Rule 7.5. Review of Conditions; Revocation of Release

(a) On State's Petition. If the State files a verified petition stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the petition. A copy of the petition must be provided with the summons, warrant, or notice.

(b) On Pretrial Services' Report. If pretrial services submits a written report to the court stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the report. A copy of the report must be provided to the State and provided with the summons, warrant, or notice.

(c) On Victim's Petition. If the prosecutor decides not to file a petition under (a), the victim may petition the court to revoke the bond or own recognizance release of the defendant, or otherwise modify the conditions of the defendant's release. Before filing a petition, the victim must consult with the prosecutor about the requested relief. The petition must include a statement under oath by the victim asserting any harassment, threats, physical violence, **abuse,** or intimidation by the defendant, or on the defendant's behalf, against the victim or the victim's immediate family.

(d) Hearing; Modification of Conditions; Revocation.

(1) ***Modification of Conditions of Release.*** After a hearing on the matters set forth in the petition or report, the court may impose different or additional conditions of release if it finds that the defendant has willfully violated the conditions of release.

(2) ***Revocation of Release on a Felony Offense.*** The court may revoke release of a person charged with a felony if, after a hearing, the court finds that the proof is evident or presumption great as to the present charge and:

(A) probable cause exists to believe that the person committed another felony during the period of release; or

(B) the person poses a substantial danger to **the victim,** another person**,** or the community, and no other conditions of release will reasonably assure the safety of the other person or the community.

(e) Revocation of Release: DNA Testing. The State may file a motion asking the court to revoke a defendant's release for failing to comply with the court's order to provide a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-3967(F)(4) and to provide proof of compliance. The motion must state facts

establishing probable cause to believe that the defendant has not complied with the order. At the defendant's next court appearance, the court must proceed in accordance with this rule's requirements and A.R.S. § 13-3967(F)(4).

(f) Revocation of Release: 10-print Fingerprinting. If a defendant fails to timely present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court may remand the defendant into custody for 10-print fingerprinting. If otherwise eligible for release, the defendant must be released from custody after being 10-print fingerprinted.

Rule 7.6. Transfer and Disposition of Bond

(a) Transfer upon Supervening Indictment. An appearance bond or release order issued following the filing of a felony complaint in justice court will automatically be transferred to a criminal case in superior court after an indictment is filed that alleges the same charges.

(b) Filing and Custody of Appearance Bonds and Security. A defendant must file an appearance bond and security with the clerk of the court in which a case is pending or the court in which the initial appearance is held. If the case is transferred to another court, the transferring court also must transfer any appearance bond and security.

(c) Forfeiture Procedure.

(1) ***Arrest Warrant and Notice to Surety.*** If the court is informed that the defendant has violated a condition of an appearance bond, it may issue a warrant for the person's arrest. No later than 10 days after the warrant's issuance, the court must notify the surety, in writing or electronically, that the warrant was issued.

(2) ***Hearing and Notice.*** After issuing the arrest warrant, the court must set a hearing within a reasonable time, no later than 120 days after it issued the warrant, requiring the parties and any surety to show cause why the bond should not be forfeited. The court must notify the parties **and, if requested, the victim** and any surety of the hearing in writing or electronically. The forfeiture hearing may be combined with a Rule 7.5(d) hearing.

(3) ***Forfeiture.*** If the court finds that the violation is not excused, it may enter an order forfeiting all or part of the bond amount, and the State may enforce that order as a civil judgment. The order must comply with Arizona Rule of Civil Procedure 58(a).

(d) Exoneration.

(1) ***Generally.*** If the court finds before a violation that there is no further need for

an appearance bond, it must exonerate the bond and order the return of any security.

(2) ***If the Defendant Is Surrendered, In-Custody, or Transferred.*** The court must exonerate the bond if:

(A) the surety surrenders the defendant to the sheriff of the county in which the prosecution is pending, and:

(i) the surrender is on or before the day and time the defendant is ordered to appear in court; and

(ii) the sheriff informs the court of the defendant's surrender;

(B) 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 under the following conditions:

(i) the surety provides the sheriff with an affidavit of surrender of the appearance bond; and

(ii) the sheriff reports the defendant is in custody and that the surety has provided an affidavit of surrender of the appearance bond; or

(C) 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 scheduled court date and the surety establishes:

(i) 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

(ii) the defendant's failure to appear was a direct result of the release or transfer.

(3) ***Conditions When Not Required to Exonerate Bond.*** The court is not required to exonerate the bond under subsection (d)(2)(C) if a detainer was placed on the defendant before the bond was posted or the release or transfer to another government agency was for 24 hours or less.

(4) ***Other Circumstances.*** In all other instances, the court may exonerate a bond if appropriate.

(5) ***Post-Forfeiture Notice.*** After filing an order of forfeiture, the court must provide:

(A) a copy of the order to the State, the defendant, the defendant's attorney, and the surety; and

(B) a copy of a signed order to the county attorney for collection.

Rule 8.1. Priorities in Scheduling Criminal Cases

(a) Priority of Criminal Trials. A trial of a criminal case has priority over a trial of a civil case.

(b) Preferences. The trial of a defendant in custody, and the trial of a defendant whose pretrial liberty may present unusual risks, have preference over other criminal cases.

(c) Duty of the Prosecutor. The prosecutor must advise the court of facts relevant to the priority of cases for trial.

(d) Duty of Defense Counsel. Defense counsel must advise the court of an impending expiration of time limits. A court may sanction counsel for failing to do so, and should consider a failure to timely notify the court of an expiring time limit in determining whether to dismiss an action with prejudice under Rule 8.6.

(e) Suspension of Rule 8. No later than 25 days after a superior court arraignment, either party may move for a hearing to establish extraordinary circumstances requiring a suspension of Rule 8. No later than 5 days after the motion is filed, the court must hold a hearing on the motion**, permit the victim to be heard,** and**, after considering the victim's right to a speedy trial,** make findings of fact about whether extraordinary circumstances exist that justify the suspension of Rule 8. If the trial court finds that Rule 8 should be suspended, the court must immediately transmit its findings to the Supreme Court Chief Justice. If the Chief Justice approves the findings, the trial court may suspend Rule 8's provisions and reset the trial for a later specified date.

Rule 8.2. Time Limits

(a) Generally. Subject to Rule 8.4, the court must try every defendant against whom an indictment, information, or complaint is filed within the following times:

(1) ***Defendants in Custody.*** No later than 150 days after arraignment if the defendant is in custody, except as provided in (a)(3).

(2) ***Defendants out of Custody.*** No later than 180 days after arraignment if the defendant is released under Rule 7, except as provided in (a)(3).

(3) ***Defendants in Complex Cases.*** No later than 270 days after arraignment if the defendant is charged with any of the following:

(A) first degree murder, except as provided in (a)(4);

(B) offenses that will require the court to consider evidence obtained as the result

of an order permitting the interception of wire, electronic, or oral communication; or

(C) any case the court determines by written factual findings to be complex.

(4) ***Capital Cases.*** No later than 24 months after the date the State files a notice of intent to seek the death penalty under Rule 15.1(i).

(b) Waiver of Appearance at Arraignment. If a defendant waives an appearance at arraignment under Rule 14.3, the date of an arraignment held in the defendant's absence is deemed to be the arraignment date.

(c) New Trial. A trial ordered after a mistrial or the granting of a new trial must begin no later than 60 days after entry of the court's order. A trial ordered upon an appellate court's reversal of a judgment must begin no later than 90 days after the appellate court issues its mandate. A new trial ordered by a state court under Rule 32 or a federal court under collateral review must begin no later than 90 days after entry of the court's order.

(d) Extension of Time Limits. The court may extend the time limits in (a) and (c) under Rule 8.5.

(e) Specific Date for Trial. The superior court must set a specific trial date either at the arraignment or a pretrial conference, unless the court has suspended Rule 8**. In setting the date, the court shall consider the views of the victim.**

Rule 8.4. Excluded Periods

(a) Generally. Delays caused or resulting from the following time periods ~~**are**~~ **may be** excluded from the time computations set forth in Rules 8.2 and 8.3 **after considering the victim's right to a speedy trial:**

(1) those caused by or on behalf of the defendant, whether or not intentional or willful, including, but not limited to, delays caused by an examination and hearing to determine competency or intellectual disability, the defendant's absence or incompetence, or the defendant's inability to be arrested or taken into custody in Arizona;

(2) a remand for a new probable cause determination under Rules 5.5 or 12.9;

(3) a time extension for disclosure under Rule 15.6;

(4) trial calendar congestion, but only if the congestion is due to extraordinary circumstances, in which case the presiding judge must promptly apply to the Supreme Court Chief Justice to suspend Rule 8 or any other Rule of Criminal Procedure;

(5) continuances granted under Rule 8.5;

(6) joinder for trial with another defendant for whom the time limits have not run, if good cause exists for denying severance, but in all other cases, severance should be granted to preserve the applicable time limits; and

(7) the setting of a transfer hearing under Rule 40.

(b) Excluding Time After a Finding of Competency or Restoration. If a court finds that a defendant is competent, has been restored to competency, or is no longer absent, and if the finding is made within 30 days of when the time limits in Rules 8.2 and 8.3 will otherwise expire, the court must exclude an additional 30 days in computing the time limits under those rules.

Rule 8.5. Continuing a Trial Date

(a) Motion. A party may ask to continue trial by filing a motion stating the specific reasons for the request.

(b) Grounds. A court may continue trial only on a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice, **is not a denial of the victim's right to a speedy trial,** and only for so long as is necessary to serve the interests of justice. The court must consider the rights of the defendant and any victim to a speedy disposition of the case. The court must state specific reasons for continuing trial.

Rule 9.3. Exclusion of Witnesses and Spectators

(a) Witnesses.

(1) ***Generally.*** The court may, and at the request of either party must, exclude prospective witnesses from the courtroom during opening statements and other witnesses' testimony. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may not exclude the person.

(2) ***Exceptions.***

(A) *Victim.* A victim ~~**as defined in Rule 39(a)**~~ has a right to be present at all proceedings at which the defendant has that right.

(B) *Investigator.* If the court enters an exclusion order, both the defendant and the State are nevertheless entitled to the presence of one investigator at counsel table.

(3) ***Instruction.*** As part of its exclusion order, the court must instruct the witnesses

not to communicate with each other about the case until all of them have testified.

(4) ***After Testifying.*** Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the court must allow the witness to remain in the courtroom, unless a party requests continued exclusion because the witness may be recalled or the court finds that the witness's presence would be prejudicial to a fair trial.

(b) Spectators.

(1) ***Generally.*** All proceedings must be open to the public, including news media representatives, unless the court finds, on motion or on its own, that an open proceeding presents a clear and present danger to the defendant's right to a fair trial by an impartial **jury or to the victim's rights to be treated with fairness, respect, and dignity and to be free from intimidation, harassment, and abuse**.

(2) ***Record.*** The court must keep a complete record of any closed proceedings and make it available to the public following the trial's completion or, if no trial occurs, the final disposition of the case.

(c) Protection of a Witness. The court may exclude all spectators, except news media representatives, during a witness's testimony if the court finds it is reasonably necessary to protect the witness's safety or to protect the witness from embarrassment or emotional disturbance.

Rule 10.2. Change of Judge as a Matter of Right

(a) Entitlement.

(1) ***Generally.*** Each side in a criminal case is entitled to one change of judge as a matter of right. If two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right.

(2) ***Meaning of "Side."*** Each case, including one that is consolidated, is treated as having only two sides.

(3) ***Per Party Limit.*** A party exercising a change of judge as a matter of right is not entitled to another change of judge as a matter of right.

(4) ***Inapplicability to Certain Proceedings.*** A party is not entitled to a change of judge as a matter of right in a proceeding under Rule 32 or a remand for resentencing.

(b) Procedure.

(1) ***Generally.*** A party may exercise a right to change of judge by filing a "Notice of Change of Judge" signed by counsel or a self-represented defendant, and stating the name of the judge to be changed. The notice also must include an avowal that the party is making the request in good faith and not for an improper purpose. An attorney's avowal is in the attorney's capacity as an officer of the court.

(2) ***"Improper Purpose.***" "Improper purpose" means:

(A) for the purpose of delay;

(B) to obtain a severance;

(C) to interfere with the judge's reasonable case management practices;

(D) to remove a judge for reasons of race, gender or religious affiliation;

(E) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group, or law firm;

(F) to obtain a more convenient geographical location; or

(G) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).

(3) ***Further Action by the Judge.*** If a notice of change of judge is timely filed, the judge should proceed no further in the action, except to enter any necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge's designee. If the named judge is the presiding judge, that judge may continue to perform the functions of the presiding judge.

(c) Timing.

(1) ***Generally.*** Except as provided in (c)(2), a party must file a notice of change of judge no later than 10 days after any of the following:

(A) the arraignment, if the case is assigned to a judge and the parties are given actual notice of the assignment at or before the arraignment;

(B) the superior court clerk's filing of a mandate issued by an appellate court; or

(C) in all other cases, actual notice to the requesting party of the assignment of the case to a judge.

(2) ***Exception.*** Despite (c)(1), if a new judge is assigned to a case less than 10 days before trial (inclusive of the date of assignment), a notice of change of judge must be filed, with appropriate actual notice to the other party or parties **and the victim**, no later than by 5:00 p.m. on the next business day following actual receipt of a notice of the assignment or by the start of trial, whichever occurs

earlier.

(d) Assignment to a New Judge and Effect on Other Defendants.

(1) ***On Stipulation.*** If a notice of change of judge is timely filed, the notice may inform the court that all the parties have agreed on a judge who is available and willing to accept the assignment. Such an agreement may be honored and, if so, it bars further changes of judge as a matter of right, unless the agreed-on judge later becomes unavailable. If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties may assert any rights under this rule that existed immediately before the assignment of the action to that judge.

(2) ***Absent Stipulation.*** If a timely notice of judge has been filed and no judge has been agreed on, the presiding judge must immediately reassign the action to another judge.

(3) ***Effect on Other Defendants.*** If there are multiple defendants, a notice of change of judge filed by one or more defendants does not require a change of judge as to the other defendants, even though the notice of change of judge may result in severance for trial purposes.

(e) Waiver. A party loses the right to a change of judge under this rule if the party participates before that judge in any contested matter in the case, a proceeding under Rule 17, or the beginning of trial.

(f) Following Remand. Unless previously exercised, a party may exercise a change of judge as a matter of right following an appellate court's remand for new trial, and no event connected with the first trial constitutes a waiver. A party may not exercise a change of judge as a matter of right following a remand for resentencing.

Rule 10.3. Changing the Place of Trial

(a) Grounds. A party is entitled to change the place of trial to another county if the party shows that the party cannot have a fair and impartial trial in that place for any reason other than the trial judge's interest or prejudice.

(b) Prejudicial Pretrial Publicity. If the grounds to change the place of trial are based on pretrial publicity, the moving party must prove that the dissemination of the prejudicial material probably will result in the party being deprived of a fair trial.

(c) Procedure. A party seeking to change the place of trial must file a motion seeking that relief. The motion must be filed before trial, and, in superior court, at or before a pretrial conference**. The victim must be given the right to be heard on the matter. Prior to deciding the motion, the court must consider the victim's right to be**

present.

(d) Waiver. A party loses the right to change the place of trial if the party allows a proceeding to begin or continue without raising a timely objection after learning of the cause for challenge.

(e) Renewal on Remand. If an appellate court remands an action for a new trial on one or more offenses charged in an indictment or information, all parties' rights to change the place of trial are renewed, and no event connected with the first trial constitutes a waiver.

Rule 15.1. The State's Disclosures

(a) Initial Disclosures in a Felony Case. Unless a local rule provides or the court orders otherwise:

(1) the State must make available to the defendant all reports containing information identified in (b)(3) and (b)(4) that the charging attorney possessed when the charge was filed; and

(2) the State must make these reports available by the preliminary hearing or, if no preliminary hearing is held, the arraignment.

(b) Supplemental Disclosure. Except as provided in Rule 39(b), the State must make available to the defendant the following material and information within the State's possession or control:

(1) the name and address of each person the State intends to call as a witness in the State's case-in-chief and any relevant written or recorded statement of the witness;

(2) any statement of the defendant and any co-defendant;

(3) all existing original and supplemental reports prepared by a law enforcement agency in connection with the charged offense;

(4) for each expert who has examined a defendant or any evidence in the case, or who the State intends to call at trial:

(A) the expert's name and address;

(B) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(C) if the expert will testify at trial without preparing a written report, a summary of the general subject matter on which the expert is expected to testify;

(5) a list of all documents, photographs, and other tangible objects the State intends to use at trial or that were obtained from or purportedly belong to the defendant;

(6) a list of the defendant's prior felony convictions the State intends to use at trial;

(7) a list of the defendant's other acts the State intends to use at trial;

(8) all existing material or information that tends to mitigate or negate the defendant's guilt or would tend to reduce the defendant's punishment;

(9) whether there has been any electronic surveillance of any conversations to which the defendant was a party, or of the defendant's business or residence;

(10) whether a search warrant has been executed in connection with the case; and

(11) whether the case involved an informant, and, if so, the informant's identity, subject to the restrictions under Rule 15.4(b)(2).

(c) Time for Supplemental Disclosures. Unless the court orders otherwise, the State must disclose the material and information listed in (b) no later than:

(1) in the superior court, 30 days after arraignment.

(2) in a limited jurisdiction court, at the first pretrial conference.

(d) Prior Felony Convictions. The State must make available to a defendant a list of prior felony convictions of each witness the State intends to call at trial and a list of the prior felony convictions the State intends to use to impeach a disclosed defense witness at trial:

(1) in a felony case, no later than 30 days before trial or 30 days after the defendant's request, whichever occurs first; and

(2) in a misdemeanor case, no later than 10 days before trial.

(e) Disclosures upon Request.

(1) ***Generally.*** Unless the court orders otherwise, the State must make the following items available to the defendant for examination, testing, and reproduction no later than 30 days after receiving a defendant's written request:

(A) any of the items specified in the list submitted under (b)(5);

(B) any 911 calls existing at the time of the request that the record's custodian can reasonably ascertain are related to the case; and

(C) any completed written report, statement, and examination notes made by an expert listed in (b)(1) and (b)(4) related to the case.

(2) ***Conditions.*** The State may impose reasonable conditions, including an appropriate stipulation concerning chain of custody to protect physical evidence or to allow time for the examination or testing of any items. **In the case of 911 calls from a victim, before permitting access or testing of such tapes, the court must consider the victim's rights to be treated with fairness, respect, and dignity and to be free from intimidation, harassment, and abuse.**

(f) Scope of the State's Disclosure Obligation. The State's disclosure obligation extends to material and information in the possession or control of any of the following:

(1) the prosecutor, other attorneys in the prosecutor's office, and members of the prosecutor's staff;

(2) any state, county, or municipal law enforcement agency that has participated in the investigation of the case; and

(3) any other person who is under the prosecutor's direction or control and who participated in the investigation or evaluation of the case.

(g) Disclosure by Court Order.

(1) ***Disclosure Order.*** On the defendant's motion, a court may order any person **other than the victim** to make available to the defendant material or information not included in this rule if the court finds:

(A) the defendant has a substantial need for the material or information to prepare the defendant's case; and

(B) the defendant cannot obtain the substantial equivalent by other means without undue hardship.

(2) ***Modifying or Vacating Order.*** On the request of any person affected by an order, the court may modify or vacate the order if the court determines that compliance would be unreasonable or oppressive.

(h) Disclosure of Rebuttal Evidence. Upon receiving the defendant's notice of defenses under Rule 15.2(b), the State must disclose the name and address of each person the State intends to call as a rebuttal witness, and any relevant written or recorded statement of the witness.

(i) Additional Disclosures in a Capital Case.

(1) ***Notice of Intent to Seek the Death Penalty.***

(A) *Generally.* No later than 60 days after a defendant's arraignment in superior court on a charge of first-degree murder, the State must provide notice to the

defendant of whether the State intends to seek the death penalty.

(B) *Time Extensions.* The court may extend the State's deadline for providing notice by an additional 60 days if the parties file a written stipulation agreeing to the extension. If the court approves the extension, the case is considered a capital case for all administrative purposes, including, but not limited to, scheduling, appointment of counsel under Rule 6.8, and the assignment of a mitigation specialist. The court may grant additional extensions if the parties file written stipulations agreeing to them.

(C) *Victim Notification.* If the victim has requested notice under A.R.S. § 13-4405, the prosecutor must confer with the victim before agreeing to extend the deadline under (i)(1)(B).

(2) ***Aggravating Circumstances.*** If the State files a notice of intent to seek the death penalty, the State must, at the same time, provide the defendant with a list of aggravating circumstances that the State intends to prove in the aggravation phase of the trial.

(3) ***Initial Disclosures.***

(A) *Generally.* No later than 30 days after filing a notice of intent to seek the death penalty, the State must disclose the following to the defendant:

(i) the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness**, except that a victim's address or other locating information need not be disclosed**;

(ii) the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

(iii) a list of all documents, photographs or other tangible objects the State intends to use to support each identified aggravating circumstance at the aggravation hearing; and

(iv) all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(B) *Time Extensions.* The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures only if the State shows good cause or the parties stipulate to the deadline extension.

(4) ***Rebuttal and Penalty Phase Disclosures.*** No later than 60 days after receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following

to the defendant:

(A) the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness**, except that a victim's address or other locating information need not be disclosed**;

(B) the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness**, except that a victim's address or other locating information need not be disclosed**;

(C) the name and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and

(D) a list of all documents, photographs or other tangible objects the State intends to use during the aggravation and penalty hearings.

(j) Item Prohibited by A.R.S. §§ 13-3551 et seq., or Is the Subject of a Prosecution Under A.R.S. § 13-1425.

(1) ***Scope.*** This rule applies to an item that cannot be produced or possessed under A.R.S. §§ 13-3551 et seq. or is an image that is the subject of a prosecution under A.R.S. § 13-1425, but is included in the list disclosed under (b)(5).

(2) ***Disclosure Obligation.*** The State is not required to reproduce the item or release it to the defendant for testing or examination except as provided in (j)(3) and (j)(4). The State must make the item reasonably available for inspection by the defendant, but only under such terms and conditions necessary to protect a victim's rights.

(3) ***Court-Ordered Disclosure for Examination or Testing.***

(A) *Generally.* The court may order the item's reproduction or its release to the defendant for examination or testing if the defendant makes a substantial showing that it is necessary for the effective investigation or presentation of a defense, including an expert's analysis.

(B) *Conditions.* A court must issue any order necessary to protect a victim's rights, document the chain of custody, or protect physical evidence.

(4) ***General Restrictions.*** In addition to any court order issued, the following restrictions apply to the reproduction or release of any item to the defendant for examination or testing:

(A) the item must not be further reproduced or distributed except as the court order allows;

(B) the item may be viewed or possessed only by the persons authorized by the court order;

(C) the item must not be possessed or viewed by the defendant outside the direct supervision of defense counsel, advisory counsel, or a defense expert;

(D) the item must be delivered to defense counsel or advisory counsel, or if expressly permitted by court order, to a specified defense expert; and

(E) the item must be returned to the State by a deadline set by the court.

Rule 15.2. The Defendant's Disclosures

(a) Physical Evidence.

(1) ***Generally.*** At any time after the filing of an indictment, information or complaint, and upon the State's written request, the defendant must, in connection with the particular offense with which the defendant is charged:

(A) appear in a line-up;

(B) speak for identification by one or more witnesses;

(C) be fingerprinted, palm-printed, foot-printed, or voice printed;

(D) pose for photographs not involving a re-enactment of an event;

(E) try on clothing;

(F) permit the taking of samples of hair, blood, saliva, urine, or other specified materials if doing so does not involve an unreasonable intrusion of the defendant's body;

(G) provide handwriting specimens; and

(H) submit to a reasonable physical or medical inspection of the defendant's body, but such an inspection may not include a psychiatric or psychological examination.

(2) ***Presence of Counsel.*** The defendant is entitled to have counsel present when the State takes evidence under this rule.

(3) ***Other Procedures.*** This rule supplements and does not limit any other procedures established by law.

(b) Notice of Defenses.

(1) ***Generally.*** By the deadline specified in (d), the defendant must provide written notice to the State specifying all defenses the defendant intends to assert at trial, including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character.

(2) ***Witnesses.*** For each listed defense, the notice must specify each person, other than the defendant, that the defendant intends to call as a witness at trial in support of the defense.

(3) ***Signature and Filing.*** Defense counsel–or if the defendant is self-represented, the defendant–must sign the notice and file it with the court.

(c) Content of Disclosure. At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

(1) the name and address of each person, other than the defendant, the defendant intends to call as a witness at trial, and any written or recorded statement of the witness;

(2) for each expert the defendant intends to call at trial:

(A) the expert's name and address;

(B) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(C) if the expert will testify at trial without preparing a written report, a summary of the general subject matter on which the expert is expected to testify; and

(3) a list of all documents, photographs, and other tangible objects the defendant intends to use at trial.

(d) Time for Disclosures. Unless the court orders otherwise, the defendant must disclose the material and information listed in (b) and (c) no later than:

(1) in superior court, 40 days after arraignment, or 10 days after the State's disclosure under Rule 15.1(b), whichever occurs first;

(2) in a limited jurisdiction court, 20 days after the State's disclosure under Rule 15.1(b).

(e) Additional Disclosures upon Request.

(1) ***Generally.*** Unless the court orders otherwise, the defendant must make the following items available to the State for examination, testing, and reproduction no later than 30 days after receiving the State's written request:

(A) any of the items specified in the list submitted under (c)(3); and

(B) any completed written report, statement, and examination notes made by an expert listed in (c)(2) in connection with the particular case.

(2) ***Conditions.*** The defendant may impose reasonable conditions, including an appropriate stipulation concerning chain of custody for physical evidence or to allow time for the examination or testing of any items.

(f) Scope of Disclosure. A defendant's disclosure obligation extends to material and information within the possession or control of the defendant, defense counsel, staff, agents, investigators, or any other persons who have participated in the investigation or evaluation of the case and who are under the defendant's direction or control.

(g) Disclosure by Court Order.

(1) ***Disclosure Order.*** On the State's motion, a court may order any person to make available to the State material or information not included in this rule if the court finds:

(A) the State has a substantial need for the material or information for the preparation of the State's case;

(B) the State cannot obtain the substantial equivalent by other means without undue hardship; and

(C) the disclosure of the material or information would not violate the defendant's constitutional rights.

(2) ***Modifying or Vacating Order.*** The court may modify or vacate an order if the court determines that compliance would be unreasonable or oppressive.

(h) Additional Disclosures in a Capital Case.

(1) ***Initial Disclosures.***

(A) *Generally*. No later than 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

(i) a list of all mitigating circumstances the defendant intends to prove;

(ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;

(iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded

statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and

(iv) a list of all documents, photographs, or other tangible objects the defendant intends to use during the aggravation and penalty hearings.

(B) *Time Extensions.* The court may extend the deadline for the defendant's initial disclosures under (h)(1) or allow the defendant to amend those disclosures only if the defendant shows good cause or if the parties stipulate to the deadline extension **and only after considering the victim's right to a speedy trial**.

(2) ***Later Disclosures.*** No later than 60 days after receiving the State's supplemental disclosure under Rule 15.1(i)(4), the defendant must disclose the following to the State:

(A) the name and address of each person the defendant intends to call as a rebuttal witness, and any written or recorded statement of the witness; and

(B) the name and address of each expert the defendant intends to call as a witness at the penalty hearing, and any report the expert has prepared.

Rule 15.3. Depositions

(a) Availability. A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant and ~~**those excluded by Rule 39(b)**~~ **victims**, by oral deposition under the following circumstances:

(1) a party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at trial; or

(2) a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or

(3) a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify at a trial or hearing.

(b) Follow-up Examination. If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:

(1) the magistrate limited the person's previous testimony under Rule 5.3; and

(2) the person will not cooperate in granting a personal interview.

(c) Motion for Taking Deposition; Notice; Service.

(1) ***Requirements.*** A motion to take a deposition must:

(A) state the name and address of the person to be deposed;

(B) show that a deposition may be ordered under (a) or (b);

(C) specify the time and place for taking the deposition; and

(D) designate any nonprivileged documents, photographs, or other tangible objects that the person must produce at the deposition.

(2) ***Order.*** If the court grants the motion, it may modify any of the moving party's proposed terms and specify additional conditions governing how the deposition will be conducted.

(3) ***Notice and Subpoena.*** If the court grants the motion, the moving party must notice the deposition in the manner provided in Arizona Rule of Civil Procedure 30(b). The notice must specify the terms and conditions in the court's order granting the deposition. The moving party also must serve a subpoena on the deponent in the manner provided in A.R.S. § 13-4072.

(d) Manner of Taking.

(1) ***Generally.*** Unless this rule provides or the court orders otherwise, the parties must conduct depositions in the manner provided in Rules 28(a) and 30 of the Arizona Rules of Civil Procedure.

(2) ***Deposition by Written Questions.*** If the parties consent, the court may order that a deposition be taken on written questions in the manner provided in Rule 31 of the Arizona Rules of Civil Procedure.

(3) ***Deponent Statement.*** Before the deposition, a party who possesses a statement of a deponent must make it available to any other party who would be entitled to the statement at trial.

(4) ***Recording.*** A deposition may be recorded by someone other than a certified court reporter. If someone other than a certified court reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording no later than 14 days after the deposition, or no later than 10 days before trial, whichever is earlier.

(5) ***Remote Means.*** The parties may agree or the court may order that the parties conduct the deposition by telephone or other remote means.

(e) The Defendant's Right to Be Present. A defendant has the right to be present at any

deposition ordered under (a)(1) or (a)(3). If a defendant is in custody, the moving party must notify the custodial officer of the deposition's time and place. Unless the defendant waives the right to be present, the officer must produce the defendant for the deposition and remain with the defendant until it is completed.

(f) Use. A party may use a deposition in the same manner as former testimony.

Rule 15.6. Continuing Duty to Disclose; Final Disclosure Deadline; Extension

(a) Continuing Duties. The parties' duties under Rule 15 are continuing duties without awaiting a specific request from any other party.

(b) Additional Disclosures. Any party who anticipates a need to provide additional disclosure no later than 30 days before trial must immediately notify both the court and all other parties of the circumstances and when the party will make the additional disclosure.

(c) Final Deadline for Disclosure. Unless otherwise permitted, all disclosure required by Rule 15 must be completed at least 7 days before trial.

(d) Disclosure After the Final Deadline.

(1) ***Motion to Extend Disclosure.*** If a party seeks to use material or information that was disclosed less than 7 days before trial, the party must file a motion to extend the disclosure deadline and to use the material or information. The moving party also must file a supporting affidavit setting forth facts justifying an extension.

(2) ***Order Granting Motion.*** The court must extend the disclosure deadline and allow the use of the material or information if it finds the material or information:

(A) could not have been discovered or disclosed earlier with due diligence; and

(B) was disclosed immediately upon its discovery.

(3) ***Order Denying Motion or Granting Continuance; Sanctions.*** If the court finds that the moving party has failed to establish facts sufficient to justify an extension under (d)(2), it may:

(A) deny the motion to extend the disclosure deadline and deny the use of the material or information; or

(B) extend the disclosure deadline and allow the use of the material or information and, if it extends the deadline, the court may impose any sanction listed in Rule 15.7 except preclusion or dismissal.

(e) Extension of Time for Completion of Testing.

(1) ***Motion.*** Before the final disclosure deadline in (c), a party may move to extend the deadline to permit the completion of scientific or other testing. The motion must be supported by an affidavit from a crime laboratory representative or other scientific expert stating that additional time is needed to complete the testing or a report based on the testing. The affidavit must specify how much additional time is needed.

(2) ***Order.*** If a motion is filed under (e)(1), the court must grant reasonable time to complete disclosure unless the court finds that the need for the extension resulted from dilatory conduct or neglect, **would infringe on the victim's right to a speedy trial,** or that the request is being made for an improper reason by the moving party or a person listed in Rule 15.1(f) or 15.2(f).

(3) ***Extending Time.*** If the court grants a motion under (e)(2), the court may extend other disclosure deadlines as necessary.

Rule 16.3. Pretrial Conference

(a) Generally. A court may conduct one or more pretrial conferences. The court may establish procedures and requirements that are necessary to accomplish a conference's objectives, including identifying appropriate cases for pretrial conferences, identifying who must attend, and determining sanctions for failing to attend. A superior court must conduct at least one pretrial conference.

(b) Objectives. The objectives of a pretrial conference may include:

(1) providing a forum and a process for the fair, orderly, and just disposition of cases without trial;

(2) permitting the parties, without prejudice to their rights to trial, to engage in disclosure and to conduct negotiations for dispositions without trial;

(3) discussing compliance with discovery requirements set forth in these rules and constitutional law; and

(4) enabling the court to set a trial date.

(c) Duty to Confer. The court may require the parties to confer and submit memoranda before the conference.

(d) Scope of Proceeding. At the conference, the court**, after considering the views of**

the victim, may:

(1) hear motions made at or filed before the conference;

(2) set additional pretrial conferences and evidentiary hearings as appropriate;

(3) obtain stipulations to relevant facts; and

(4) discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving brief pre-voir dire opening statements and preliminary instructions, and managing documents and exhibits effectively during trial.

(e) Stipulated Evidence. At a pretrial conference or any time before the start of an evidentiary hearing, the parties may submit any issue to the court for decision based on stipulated evidence.

(f) Record of Proceedings. Proceedings at a pretrial conference must be on the record.

Rule 16.4. Dismissal of Prosecution

(a) On the State's Motion. On the State's motion and for good cause, the **court, after considering the views of the victim,** may order a prosecution dismissed without prejudice if it finds that the dismissal is not to avoid Rule 8 time limits.

(b) On a Defendant's Motion. On a defendant's motion, the court must order a prosecution's dismissal if it finds that the indictment, information, or complaint is insufficient as a matter of law.

(c) Record. If the court grants a motion to dismiss a prosecution, it must state on the record its reasons for ordering dismissal.

(d) Effect of Dismissal. Dismissal of a prosecution is without prejudice to commencing another prosecution, unless the court finds**, only after considering the rights of the victim to justice and due process,** that the interests of justice require that the dismissal to be with prejudice.

(e) Release of Defendant; Exoneration of Bond. If a court dismisses a prosecution, the court must order the release of the defendant from custody, unless the defendant also is being held on another charge. It also must exonerate any appearance bond.

Rule 17.1. The Defendant's Plea

(a) Jurisdiction; Personal Appearance.

(1) ***Jurisdiction*.** Only a court having jurisdiction to try the offense may accept a plea of guilty or no contest.

(2) ***Personal Appearance*.** Except as provided in these rules, a court may accept a plea only if the defendant makes it personally in open court. If the defendant is a corporation, defense counsel or a corporate officer may enter a plea for the corporation. For purposes of this rule, a defendant who makes an appearance under Rule 1.5 is deemed to personally appear.

(b) Voluntary and Intelligent Plea. A court may accept a plea of guilty or no contest only if the defendant enters the plea voluntarily and intelligently. Courts must use the procedures in Rules 17.2, 17.3, and 17.4 to assure compliance with this rule.

(c) No Contest Plea. A plea of no contest may be accepted only after the court gives due consideration to the parties' views and to the interest of the public in the effective administration of justice.

(d) Record of a Plea. The court must make a complete record of all plea proceedings.

(e) Waiver of Appeal. By pleading guilty or no contest in a noncapital case, a defendant waives the right to have the appellate courts review the proceedings on a direct
appeal. A defendant who pleads guilty or no contest may seek review only by filing a
petition for post-conviction relief under Rule 32 and, if it is denied, a petition for review.

(f) Limited Jurisdiction Court Alternatives for Entering a

Plea. (1) ***Telephonic Pleas*.**

(A) *Eligibility.* A limited jurisdiction court has discretion to accept a telephonic
plea of guilty or no contest to an offense if the defendant provides written certification and the court finds the defendant:

(i) resides out-of-state or more than 100 miles from the court in which the plea is taken; or

(ii) has a serious medical condition so that appearing in person would be an undue hardship, regardless of distance to the court.

(B) *Procedure.* The defendant must submit the plea in writing substantially in the

form set forth in Rule 41, Form 28. It must include the following:

(i) a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of offenses in the complaint; and

(ii) a certification from a peace officer in the state in which the defendant resides—or, if the defendant is an Arizona resident, a peace officer in the county in which the defendant resides—that the defendant personally appeared before the officer and signed the certification described in (f)(1)(B)(i), and the officer affixes the defendant's fingerprint to the form.

(C) *Judicial Findings.* Before accepting a plea, the court must hold a telephonic hearing with the parties, **and the victim if any,** inform the defendant that the offense may be used as a prior conviction, and find:

(i) it has personally advised the defendant of the items set forth in the form;

(ii) a factual basis exists for believing the defendant is guilty of the charged offenses; and

(iii) the defendant's plea is knowingly, voluntarily, and intelligently entered.

(2) ***Plea by Mail.***

(A) *Eligibility.* A limited jurisdiction court has discretion to accept by mail a written plea of guilty or no contest to a misdemeanor or petty offense if the court finds that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial travel distance, or incarceration. The presiding judge of each court must establish a policy for the State's participation in pleas submitted by mail.

(B) *When a Plea May Not Be Accepted by Mail.* A court may not accept a plea by mail in a case:

(i) involving a victim;

(ii) in which the court may impose a jail term, unless the defendant is sentenced to time served or the defendant is currently incarcerated and the proposed term of incarceration would be served concurrently and not extend the period of incarceration;

(iii) in which the court may sentence the defendant to a term of probation;

(iv) involving an offense for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; or

(v) in which this method of entering a plea would not be in the interests of justice.

(C) *Procedure.* The defendant must submit the plea in writing substantially in the form set forth in Rule 28, Form 28(a). The defendant must sign the plea form before a notary public acknowledging the defendant's signature. The form must include the following;

(i) a statement that the defendant has read and understands the information on the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offenses in the complaint and consents to the entry of judgment; and

(ii) a statement for the court to consider when determining the sentence.

(D) *Mailing.* The court must mail a copy of the judgment to the defendant.

Rule 26.7. Presentencing Hearing; Prehearing Conference

(a) Request for a Presentencing Hearing. If the court has discretion concerning the imposition of a penalty, it may—and, on any party's request, must—hold a presentencing hearing before sentencing.

(b) Timing and Conduct of a Presentencing Hearing.

(1) ***Timing.*** The court may not hold a presentencing hearing until the parties have had an opportunity to review all reports concerning the defendant prepared under Rules 26.4 and 26.5.

(2) ***Presenting Evidence.*** At the hearing, **the victim must be afforded the right to be heard and** any party may introduce any reliable, relevant evidence, including hearsay, to show aggravating or mitigating circumstances, to show why the court should not impose a particular sentence, or to correct or amplify the presentence, diagnostic, or mental health reports.

(3) ***Record.*** A presentencing hearing must be held in open court, and the court must make a complete record of the proceedings.

(c) Prehearing Conference.

(1) ***Generally.*** On motion or on its own, the court may hold a prehearing conference to determine what matters are in dispute, and to limit or otherwise expedite a presentencing hearing.

(2) ***Attendance of Probation Officer.*** The court may order the probation officer who prepared the presentence report to attend a prehearing conference.

(2) ***Postponing Sentencing and Presentencing Hearing.*** At the conference, the court may postpone the date of sentencing for no more than 10 days beyond the maximum extension permitted by Rule 26.3(b), and may delay the presentencing hearing accordingly, to allow the probation officer to investigate any matter the court specifies, or to refer the defendant for mental health examinations or diagnostic tests.

Rule 26.10. Pronouncing Judgment and Sentence

(a) Judgment. In pronouncing judgment on any noncapital count, the court must indicate whether the defendant's conviction is pursuant to a plea or trial, the offense for which the defendant was convicted, and whether the offense falls in the categories of dangerous, non-dangerous, repetitive, or non-repetitive offenses.

(b) Sentence. When the court pronounces sentence, it must:

(1) give the defendant **and the victim** an opportunity to address the court;

(2) state that it has considered the time the defendant has spent in custody on the present charge;

(3) explain to the defendant the terms of the sentence or probation;

(4) specify the beginning date for the term of imprisonment and the amount of time to be credited against the sentence as required by law;

(5) for any felony offense or a violation of A.R.S. §§ 13-1802, 12-1805, 28-1381, or 28-1382, permanently affix the defendant's right index fingerprint to the sentencing document or order; and

(6) if the court sentences the defendant to a prison term, the court must send, or direct the clerk to send, to the Department of Corrections the sentencing order and copies of all presentence reports, probation violation reports, and medical and mental health reports prepared for, or relating to, the defendant.

Rule 27.1. Conditions and Regulations of Probation

The sentencing court may impose conditions on a probationer that promote rehabilitation **and that will protect any victim.** The probation officer or any other person the court designates also may impose regulations that are necessary to implement the court's conditions and that are consistent with them. The court and probation officer must give the

probationer a written copy of the conditions and regulations. Unless there is an intergovernmental agreement to the contrary, references to and notice requirements for probation officers do not apply in limited jurisdiction courts.

Rule 27.3. Modification of Conditions or Regulations

(a) Definitions.

(1) ***Condition.*** "Condition" means any court-ordered term of probation.

(2) ***Regulation.*** "Regulation" means any term imposed by the probation department, or by any other person the court designates to implement a court-imposed condition of probation.

(b) By a Probation Officer. A probation officer or any other person the court designates may modify or clarify any regulation imposed.

(c) By the Court.

(1) ***Generally.*** After giving notice to the State, the probationer, and a victim who has the right to notice under Rule 27.10, the court may modify or clarify any term, condition, or regulation of probation. The court's authority to modify probation must comply with due process, **the rights of the victim,** statutory limitations, and party agreement.

(2) ***Who May Request Modification or Clarification.*** At any time before the probationer's absolute discharge, a probationer, probation officer, the State, or any other person the court designates, may ask the court to modify or clarify any condition or regulation.

(3) ***Restitution.*** At any time before the probationer's absolute discharge, persons entitled to restitution under a court order may ask the court, based on changed circumstances, to modify or clarify the manner in which restitution is paid.

(4) ***Hearing.*** The court may hold a hearing on any request for modification or clarification under (c)(2) or (c)(3).

(d) Written Copy and Effect. The probationer must be given a written copy of any modification or clarification of a condition or regulation of probation. A modification of a regulation may go into effect immediately. An oral modification may not be the sole basis for revoking probation unless the condition or regulation is in writing and the probationer received a copy before the violation.

Rule 27.4. Early Termination of Probation

(a) Discretionary Probation Termination. At any time during the term of probation,

the court may terminate probation and discharge the probationer as provided by law. The court may take such action on the probation officer's motion or on its own, but only after any required notice **and opportunity to be heard** to the victim and the State.

(b) Earned Time Credit Probation Termination. The court may reduce the term of supervised probation for earned time credit as provided by law.

Rule 27.7. Initial Appearance After Arrest

(a) Probationer Arrested. If a probationer is arrested on a warrant issued under Rule 27.6 or is arrested by the probationer's probation officer under A.R.S. § 13-901(D), the probationer must be taken without unreasonable delay to the court with jurisdiction over the probationer.

(b) Notice. If a probationer is arrested on a warrant issued under Rule 27.6, the court must immediately notify the probationer's probation officer of the initial appearance.

(c) Procedure. At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and make a release determination**, after considering the views of the victim.**

Rule 27.8. Probation Revocation

(a) Revocation Arraignment.

(1) ***Timing.*** The court must hold a revocation arraignment no later than 7 days after the summons is served or after the probationer's initial appearance under Rule 27.7.

(2) ***Conduct of the Proceeding.*** The court must inform the probationer of each alleged probation violation, and the probationer must admit or deny each allegation.

(3) ***Setting a Violation Hearing***. If the probationer does not admit to a violation or if the court does not accept an admission, the court must set a violation hearing, unless both parties agree that a violation hearing may proceed immediately after the arraignment.

(b) Violation Hearing.

(1) ***Timing.*** The court must hold a hearing to determine whether a probationer has violated a written condition or regulation of probation no less than 7 and no more

than 20 days after the revocation arraignment, unless the probationer in writing or on the record requests, and the court agrees, to set the hearing for another date.

(2) ~~***Probationer's***~~ ***Right to Be Present.*** The probationer **and the victim** ~~**has**~~ **have** a right to be present at the violation hearing. If the probationer was previously arraigned under Rule 27.8, the hearing may proceed in the probationer's absence under Rule 9.1.

(3) ***Conduct of the Hearing.*** A violation must be established by a preponderance of the evidence. Each party may present evidence and has the right to cross-examine any witness who testifies. The court may receive any reliable evidence, including hearsay, that is not legally privileged.

(4) ***Findings and Setting a Disposition Hearing.*** If the court finds that the probationer committed a violation of a condition or regulation of probation, it must make specific findings of the facts that establish the violation and then set a disposition hearing.

(c) Disposition Hearing.

(1) ***Timing.*** The court must hold a disposition hearing no less than 7 nor more than 20 days after making a determination that the probationer has violated a condition or regulation of probation.

(2) ***Disposition.*** Upon finding that the probationer violated a condition or regulation of probation, the court may revoke, modify, or continue probation. If the court revokes probation, the court must pronounce sentence in accordance with Rule 26. The court may not find a violation of a condition or regulation that the probationer did not receive in writing.

(d) Waiver of Disposition Hearing. If a probationer admits, or the court finds, a violation of a condition or regulation of probation, the probationer may waive a disposition hearing. If the court accepts the waiver, it may proceed immediately to a disposition under (c)(2).

(e) Disposition upon Determination of Guilt for a Later Offense. If a court makes a determination of guilt under Rule 26.1(a) that the probationer committed a later criminal offense, the court need not hold a violation hearing and may set the matter for a disposition hearing at the time set for entry of judgment on the criminal offense.

(f) Record. The court must make a record of the revocation arraignment, violation hearing, and disposition hearing.

Rule 31.3. Suspension of These Rules; Suspension of an Appeal; Computation of Time; Modifying a Deadline

(a) Suspension of Rule 31. For good cause, an appellate court, on motion or on its own, may suspend any provision of this rule in a particular case, and may order such proceedings as the court directs.

(b) Suspension of an Appeal.

(1) ***Generally.*** An appellate court on motion or on its own**, after considering the rights of the victim,** may suspend an appeal if a motion under Rule 24 or a petition under Rule 32 is pending to permit the superior court to decide those matters.

(2) ***Notice.*** If an appeal is suspended, the appellate clerk must notify the parties, the superior court clerk, and, if certified transcripts have not yet been filed, the certified reporters or transcribers.

(3) ***Later Notification.*** No later than 20 days after the superior court's decision on the Rule 24 motion or Rule 32 petition, the appellant must file with the appellate clerk either a notice of reinstatement of the appeal or a motion to dismiss the appeal under Rule 31.24(b), and must serve a copy of such documents on all persons entitled to notice under (b)(2).

(c) New Matters. Other than a petition for post-conviction relief that is not otherwise precluded under Rule 32.2, a party to an appeal may not, without the appellate court's consent, file any new matter in the superior court later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed.

(d) Computation of Time. Rule 1.3(a) governs the computation of any time period in Rule 31, an appellate court order, or a statute regarding a criminal appeal, except that 5 calendar days are not added to the time for responding to an electronically served document.

(e) Modifying a Deadline. A party seeking to modify a deadline in the appellate court must obtain an appellate court order authorizing the modified deadline. An appellate court for good cause may shorten or extend the time for doing any act required by Rule 31, a court order, or an applicable statute **only after considering the rights of the victim.**

Rule 31.9. Transmission of the Record to the Appellate Court

(a) Transcripts. The authorized transcriber provides transcripts of superior court proceedings to the appellate court as provided in Rule 31.8(d).

(b) Official Documents; Index. After a party files a notice of appeal, the superior court clerk must prepare a numerical index of the documents in the superior court's file (the *"index"*). The superior court clerk must promptly distribute a copy of the index to every party to the superior court judgment that is the subject of the appeal.

(c) Electronic Transmission by the Superior Court Clerk.

(1) ***Generally.*** No later than 45 days after a notice of appeal is filed, the superior court clerk must electronically transmit to the appellate clerk, and make available electronically to all parties:

(A) all documents filed in the superior court before the effective date of the filing of the notice of appeal, a notice of cross-appeal, or an amended notice of appeal, including minute entries, notices of appeal and cross-appeal, and the index;

(B) every exhibit listed or designated under Rule 31.8(a) in paper, electronic, or photographic form, unless relieved by the appellate court of an obligation to do so; and

(C) any other items requested by the appellate clerk.

(2) ***Extension and Reduction of Time.*** For good cause, the appellate court**, only after considering the rights of the victim,** may grant one 20-day extension for transmitting the record on appeal. The appellate court also may order the superior court clerk to transmit the electronic record, or a portion of the record, at an earlier time or it may order physical transmission of the entire record or portions of the record under (d). The appellate clerk must distribute a copy of any order entered under this rule to the parties, the superior court clerk, and to the requesting authorized transcriber.

(3) ***Supplementation.*** At any time during the appeal, the appellate court may direct the superior court clerk by an order or written request to transmit portions of the record that were not included in previous transmissions.

(d) Physical Transmission by the Superior Court Clerk. The superior court clerk must notify the appellate clerk and the parties to the appeal of any items in the superior court's record of a size, bulk, or condition that makes their electronic transmission impractical. If any of those items are necessary for a determination of issues raised on appeal, the appellate court, on motion or on its own, may order that the superior court

clerk transmit to the appellate court any or all of these items in physical form. Alternatively, the parties may stipulate to the method of transmitting the item.

(e) Notice that the Record Was Received. When the appellate clerk receives all of the record on appeal, the appellate clerk must promptly give all parties notice of that fact and the date on which the clerk received the complete record.

Rule 32.4. Filing of Notice and Petition, and Other Initial Proceedings

(a) Notice of Post-Conviction Relief.

(1) ***Filing.*** A defendant starts a post-conviction proceeding by filing a notice of post-conviction relief in the court where the defendant was convicted. The court must make "notice" forms available for defendants' use.

(2) ***Time for Filing.***

(A) *Generally.* In filing a notice, a defendant must follow the deadlines set forth in this rule. These deadlines do not apply to claims under Rule 32.1(d) through (h).

(B) *Time for Filing a Notice in a Capital Case.* In a capital case, the Supreme Court clerk must expeditiously file a notice of post-conviction relief with the trial court upon the issuance of the mandate affirming the defendant's conviction and sentence on direct appeal.

(C) *Time for Filing a Notice in an Of-Right Proceeding.* In a Rule 32 of-right proceeding, a defendant must file the notice no later than 90 days after the entry of judgment and sentence. A defendant may raise an of-right claim of ineffective assistance of Rule 32 counsel in a successive Rule 32 notice if it is filed no later than 30 days after the final order or mandate in the defendant's of-right petition for post-conviction relief.

(D) *Time for Filing a Notice in Other Noncapital Cases.* In all other noncapital cases, a defendant must file a notice no later than 90 days after the entry of judgment and sentence or no later than 30 days after the issuance of the order and mandate in the direct appeal, whichever is later.

(3) ***Content of the Notice.*** The notice must contain the caption of the original criminal case or cases to which it pertains and the other information shown in Rule 41, Form 24(b).

(4) ***Duty of the Clerk upon Receiving a Notice.***

(A) *Generally.* Upon receiving a notice from a defendant, the superior court clerk must file it in the record of each original case to which it pertains and promptly send copies to the defendant, defense counsel, the prosecuting attorney's office, and the Attorney General. If the conviction occurred in a limited jurisdiction court, the clerk for the limited jurisdiction court must send a copy of the notice to the prosecuting attorney who represented the State at trial, and to a defense counsel or a defendant, if self-represented. In either court, the clerk must note in the record the date and manner of sending copies of the notice.

(B) *Notice to an Appellate Court.* If an appeal of the defendant's conviction or sentence is pending, the clerk must send a copy of the notice of post-conviction relief to the appropriate appellate court no later than 5 days of its filing, and must note in the record the date and manner of sending the copy.

(5) ***Duty of the State upon Receiving a Notice.*** Upon receiving a copy of a notice, the State must notify any victim who has requested notification of post-conviction proceedings.

(b) Appointment of Counsel.

(1) ***Capital Cases.*** After the Supreme Court has affirmed a capital defendant's conviction and sentence, it must appoint counsel who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041. Alternatively, the Supreme Court may authorize the presiding judge of the county where the case originated to appoint counsel. If the presiding judge makes an appointment, the court must file a copy of the appointment order with the Supreme Court. If a capital defendant files a successive notice, the presiding judge must appoint the defendant's previous post-conviction counsel, unless the defendant waives counsel or there is good cause to appoint another qualified attorney who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041.

(2) ***Noncapital Cases.*** No later than 15 days after the timely filing of a notice of a defendant's first Rule 32 proceeding or in any of-right proceeding, the presiding judge must appoint counsel for the defendant if the defendant requests it and the judge determines that the defendant is indigent. Upon the filing of all other

notices in a noncapital case, the presiding judge may appoint counsel for an indigent defendant if requested.

(c) Time for Filing a Petition for Post-Conviction Relief

(1) ***Capital Cases.***

(A) *Filing Deadline for First Petition.* In a capital case, the defendant must file a petition no later than 12 months after the first notice is filed.

(B) *Filing Deadline for Any Successive Petition.* On a successive notice in a capital case, the defendant must file the petition no later than 30 days after the notice is filed.

(C) *Time Extensions.* For good cause, the court may grant a capital defendant one 60-day extension in which to file a petition. The court may grant additional 30-day extensions for good **cause only after considering the rights of the victim.**

(D) *Notice of Status.* The defendant must file a notice in the Supreme Court advising the Court of the status of the proceeding if a petition is not filed:

(i) no later than 12 months after counsel is appointed; or

(ii) if the defendant is proceeding without counsel, no later than 12 months after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

The defendant must file a status report in the Supreme Court every 60 days until a petition is filed

(2) ***Noncapital Cases.***

(A) *Filing Deadline.* In a noncapital case, appointed counsel must file a petition no later than 60 days after the date of appointment. A defendant without counsel must file a petition no later than 60 days after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

(B) *Time Extensions.* For good cause, the court may grant a defendant in a noncapital case a 30-day extension to file the petition. The court may grant additional 30-day extensions only on a showing of extraordinary circumstances **and only after considering the rights of the victim.**

(d) Duty of Counsel; Extension of Time for the Defendant.

(1) ***Duty.*** In a Rule 32 proceeding, counsel must investigate the defendant's case for any and all colorable claims.

(2) ***If Counsel Finds No Colorable Claims.***

(A) *Counsel's Notice.* In an of-right proceeding, if counsel determines there are no colorable claims, counsel must file a notice advising the court of this determination. The notice should include a summary of the facts and procedural history of the case. After counsel files a notice, counsel's role is limited to acting as advisory counsel until the trial court's final determination.

(B) *Defendant's Pro Se Petition.* Upon receipt of counsel's notice, the court must allow the defendant to file a petition on his or her own behalf, and extend the time for filing a petition by 45 days from the date counsel filed the notice. The court may grant additional extensions only on a showing of extraordinary circumstances.

(e) Transcript Preparation.

(1) ***Requests for Transcripts.*** If the trial court proceedings were not transcribed, the defendant may request that certified transcripts be prepared. The court or clerk must provide a form for the defendant to make this request.

(2) ***Order.*** The court must promptly review the defendant's request and order the preparation of only those transcripts it deems necessary for resolving issues the defendant will raise in the petition.

(3) ***Deadline.*** Certified transcripts must be prepared and filed no later than 60 days after the entry of the order granting the request.

(4) ***Cost.*** If the defendant is indigent, the transcripts must be prepared at county expense.

(5) ***Extending the Deadline for Filing a Petition.*** If a defendant requests the preparation of certified transcripts, the defendant's deadline for filing a petition under (c) is extended by the time between the request and either the transcripts' final preparation or the court's denial of the request.

(f) Assignment of a Judge. The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. If the sentencing judge's testimony will be relevant, the case must be reassigned to another judge.

(g) Stay of Execution of a Death Sentence on a Successive Petition. Once the defendant has received a sentence of death and the Supreme Court has fixed the time for executing the sentence, the trial court may not grant a stay of execution if the defendant files a successive petition. In those circumstances, the defendant must file an application for a stay with the Supreme Court, and the application must show with

particularity any claims that are not precluded under Rule 32.2. If the Supreme Court grants a stay, the Supreme Court clerk must notify the defendant, the Attorney General, and the Director of the State Department of Corrections.

Rule 32.6. Response and Reply; Amendments; Review

(a) State's Response. The State must file its response no later than 45 days after the defendant files the petition. The court may grant the State a 30-day extension to file its response for good cause **only after considering the rights of the victim**, and may grant the State additional extensions only on a showing of extraordinary circumstances. The State's response must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities, and must attach any affidavits, records, or other evidence that contradicts the petition's allegations.

(b) Defendant's Reply. No later than 15 days after a response is served, the defendant may file a reply. The court may for good cause grant an extension of time.

(c) Amending the Petition. After the filing of a post-conviction relief petition, the court may permit amendments only for good cause.

(d) Review and Further Proceedings.

(1) ***Summary Disposition.*** If, after identifying all precluded and untimely claims, the court determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule, the court must summarily dismiss the petition. Absent good cause, the court must make this determination in a noncapital proceeding no later than 20 days after the defendant's reply is due and in a capital proceeding no later than 60 days after the defendant's reply is due.

(2) ***Setting a Hearing.*** If the court does not summarily dismiss the petition, it must set a status conference or hearing within 30 days on those claims that present a material issue of fact or law.

(3) ***Notice to Victim.*** If a hearing is ordered, the State must notify any victim of the time and place of the hearing if the victim has requested such notice under a statute or court rule relating to victims' rights.