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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

Supreme Court No. R-18-0012

10 **PETITION TO AMEND RULES**
11 **11.5 AND 11.6 OF THE ARIZONA**
12 **RULES OF CRIMINAL**
13 **PROCEDURE**

COMMENT OF THE
STATE BAR OF ARIZONA

14 **I. Background:**

15 The Arizona Rules of Criminal Procedure were recently reviewed and
16 revised, based upon recommendations of the Supreme Court Task Force on Fair
17 Justice for All. Petition R-18-0012 addresses additional proposed amendments to
18 Rules 11.5 and 11.6, which concern competency issues in criminal proceedings.

19 The proposed changes by the Supreme Court Task Force Sub-committee are
20 positive modifications appropriately aimed at improving access to the
21 courts. Particularly, the goal of expanding the courts that may hear matters
22 involving defendants who are undergoing restoration to competency proceedings
23 improves the ability of defendants to travel to the court, and that goal should be
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1 encouraged. There is, however, a concern from the Criminal Practice and Procedure
2 Committee (prosecution and defense) regarding the elimination of the specific time
3 periods.
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5 With that in mind, the State Bar of Arizona offers the following comment,
6 suggesting minor changes that seek to clarify some of the proposed changes.

7 **II. Discussion and Analysis:**
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9 This comment solely addresses the changes defined in Section III(C) of the
10 Petition. (*See*, Petition at p. 7). The Petition is correct in noting that the 15-month
11 and 21-month deadlines will in certain circumstances exceed the maximum term of
12 incarceration, and thus cannot apply to misdemeanor cases. However, noting the
13 distinctions in deadlines, this Court should not make the rules more generic by
14 eliminating clear deadlines in favor of a less specific reference to what is “allowed
15 by law” or “permitted by law.” (*Id.* and *Appendix A* of the Petition.).
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17 In redrafting the Rules of Criminal Procedure, the Supreme Court’s task force
18 took care to ensure that the rules provide help and assistance to judicial officers,
19 attorneys, and self-represented litigants in giving clear information on the court’s
20 procedures and the timelines prescribed by the court and legislature.
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22 The State Bar of Arizona submits that proposed changes to Rules
23 11.5(b)(2)(A), 11.5(b)(2)(B), 11.5(b)(2)(C), 11.5(b)(3)(A), 11.5(b)(3)(B), and
24 11.6(d) would be more efficacious if the deadlines in the original rule remained and
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1 a clarification was added stating that orders cannot be in effect longer than the
2 maximum possible sentence to imprisonment the defendant could receive. This way
3 all parties know what the deadlines are and where to find the exceptions under A.R.S.
4 § 13-4515.
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6 The State Bar of Arizona suggests the following language would better serve
7 to inform and clarify:
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9 **Rule 11.5(b)(2)(A):**

10 (A) *Superior Court.* If a superior court determines that the defendant
11 is incompetent, it must either dismiss the charges on the State's motion
12 or order competency restoration treatment, unless there is clear and
13 convincing evidence that the defendant will not regain competence
within 15 months.

14 **Rule 11.5(b)(2)(B):**

15 (B) *Limited Jurisdiction Court.* If a limited jurisdiction court
16 determines that the defendant is incompetent, it must dismiss the
17 charges on the State's motion, transfer the case to the superior court
18 for further proceedings pursuant to A.R.S. §13-4517, or, if authorized
19 by the presiding judge of the superior court, order competency
20 restoration treatment, unless there is clear and convincing evidence
that the defendant will not regain competence within the same time
period of the maximum possible sentence as defined in ARS § 13-
4515.

21 **Rule 11.5(b)(2)(C):**

22 (C) *Extended Treatment.* The court may extend treatment if it finds the
23 defendant is progressing toward competence. The extension may be 6
24 months beyond the 15-month limit so long as this period does not
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1 exceed the defendant's maximum possible sentence as defined in ARS
2 § 13-4515.

3 **Rule 11.5(b)(3)(A):**

4 (A) *Superior Court.* If the superior court determines that the defendant
5 is incompetent and that there is no substantial probability that the
6 defendant will become competent within 21 months, or within the
7 defendant's maximum possible sentence as defined by ARS § 13-
8 4515, whichever is less, the court may on request of the examined
9 defendant or the State do one or more of the following.

10 **Rule 11.5 (b)(3)(B):**

11 (B) *Limited Jurisdiction Court.* If a limited jurisdiction court
12 determines that the defendant is incompetent and that there is no
13 substantial probability that the defendant will become competent
14 within the timeframes as defined in ARS § 13-4515, the court must do
15 one of the following.

16 **Rule 11.6(d):**

17 (d) **Finding of Continuing Incompetence.** If the court finds the
18 defendant is still incompetent, it must proceed in accordance with
19 Rules 11.5(b)(2) or (3). If the court determines that there is a
20 substantial probability that the defendant will regain competence in the
21 foreseeable future, then the court may renew and may modify the
22 treatment order for no more than an additional 180 days, noting the
23 limitations of the defendant's maximum possible sentence as defined
24 in ARS § 13-4515.
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