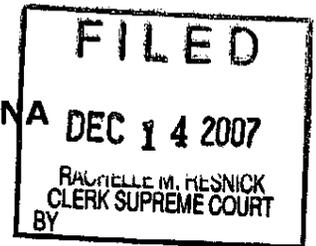


IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-07-0006



ORDER AMENDING
RULES 27.12 and 40, RULES OF CRIMINAL PROCEDURE,
AND RULE 28, RULES OF PROCEDURE FOR THE JUVENILE COURT,
IN FINAL FORM

The Court having previously adopted amendments to Rules 27.12 and 40, Rules of Criminal Procedure, and Rule 28, Rules of Procedure for the Juvenile Court, on an emergency basis with a public comment period to follow;

IT IS ORDERED that said rules be further amended in accordance with the attachment hereto,* and that said rules, as so amended, be adopted in final form effective as of the date hereof.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 14th day of December, 2007.

For the Court:


RUTH V. MCGREGOR
Chief Justice

* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

Rules of Criminal Procedure

Rule 27.12. **Probation Review Hearing.**

(a) – (b)

[No change]

c. Time Limits.

1. A request for a hearing must be filed not later than thirty days prior to the probationer reaching twenty-two years of age.

2. The hearing shall be held within thirty days of the filing of the request.

d. Scope of Hearing. The court, at the hearing, shall consider the following:

(1) whether to continue, modify or terminate probation;

(2) whether to continue to require, suspend or terminate the probationer's registration pursuant to A.R.S. §13-3821;

(3) whether to continue, defer or terminate community notification pursuant to A.R.S. §13-3825.

e. Notification of hearing date. The court shall notify the following people of the hearing:

(1) the prosecutor, who in turn shall notify any victim or victim's attorney entitled to be present and heard pursuant to the constitution of this state, statute or court rule;

(2) the attorney for the probationer.

(3) the probation officer supervising the probationer

f. Setting of hearing date. In any case involving a victim, the court shall provide at least seven (7) calendar days notice of the hearing date to the prosecutor.

e g. **Probation review report.** The court shall require a probation review report prior to the probation review hearing. The report shall be delivered to the judge conducting the hearing at least ~~two~~ seven (7) calendar days prior to the date set for the hearing.

f h. **Pre-hearing.** Prior to the probation review hearing the court may hold a pre-hearing. The persons present and the scope of the pre-hearing shall be as provided by statute.

Rule 40. **Transfer for juvenile prosecution**

(a) – (e)

[No change]

f. **Transfer Investigation.** Upon receipt of an order setting a transfer hearing the court ~~shall~~ may order the adult or juvenile probation department to conduct a transfer investigation and make a written report specifically addressing those issues that the court considers in determining whether to transfer the defendant. The adult and juvenile probation departments may confer as necessary to complete the investigation. A copy of the report shall be given to all parties not less than five days prior to the transfer hearing unless the time is waived by the parties.

g. **Prior Transfer.** If the defendant has previously been transferred for juvenile prosecution by any court of this state, the court, in its discretion, may waive the provisions of ~~sections~~ paragraph (f) of this rule. Any prior orders of transfer, probation reports or reports pertaining to physical, psychological or psychiatric evaluations introduced into evidence in a prior transfer proceeding shall be provided to the parties and counsel and may be considered by the court.

h. Transfer Hearing.

(h)

[No change]

i. Privilege.

1. No statement of the defendant obtained under paragraph (f) of this rule, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall be admissible at any proceeding to determine guilt or innocence, without the defendant's consent.

2. No statement of the defendant or evidence resulting therefrom obtained under paragraph (f) of this rule concerning any other events or transactions, shall be admissible at any proceeding to determine the defendant's guilt or innocence based on such events or transactions without the defendant's consent.

3. If the defendant testifies at the transfer hearing, the defendant does not by so testifying waive the right to remain silent during the trial or adjudication hearing. If the defendant testifies at the transfer hearing, neither this fact nor the defendant's testimony at the hearing shall be mentioned to the jury trier of fact unless the defendant testifies at trial concerning the same matters.

(j)-(k)

[No change]

1. **Release.** If the court orders the defendant to be transferred for juvenile prosecution the court shall determine if the defendant shall be released or detained in a juvenile detention facility pending further proceedings in juvenile court. In making the determination as to release the court shall

consider the factors listed in Rule 23(D), Rules of Procedure for the Juvenile Court.

Rules of Juvenile Court

Rule 28. Advisory Hearing.

A. **Purpose.** After the filing of a petition alleging delinquent or incorrigible acts, including a petition filed pursuant to Rule 40, Ariz. R.Cr.Pr., the court shall set an advisory hearing for the purpose of advising the juvenile, parent, guardian or custodian of the allegations against the juvenile as set forth in the petition and determining whether the juvenile admits or denies the allegations. Copies of the petition shall be given to the juvenile, parent, guardian or custodian and counsel representing any party unless the parties were served notice pursuant to Rule 26.

(B) – (E)

[No change]