



Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007-3231
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RACHELLE M. RESNICK
CLERK OF THE COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

September 6, 2007

RE: RULE 8.4, ARIZONA RULES OF CRIMINAL PROC et al
Arizona Supreme Court No. R-07-0006

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 27, 2007, in regard to the above-referenced cause:

ORDERED: [Petition to Amend Rule 8.4, Arizona Rules of Criminal Procedure, and Add Rule 27.12 and 40, Arizona Rules of Criminal Procedure] = ADOPTED on an emergency basis, effective as of the date of signing, with a comment period to follow. Comments due November 1, 2007.

THE PETITION MAY BE VIEWED BY GOING TO:
<http://www.supreme.state.az.us/> AND CLICKING ON "COURT RULES FORUM".

COMMENTS MAY BE POSTED ELECTRONICALLY BY GOING TO:
<http://www.supreme.state.az.us/>, CLICKING ON "COURT RULES FORUM" UNDER THE HEADING "QUICK LINKS," AND FOLLOWING THE INSTRUCTIONS FOR SUBMITTING A COMMENT.

ALTERNATIVELY, COMMENTS MAY BE SUBMITTED BY FILING AN ORIGINAL AND SIX (6) PAPER COPIES AND ONE COPY OF THE WRITTEN COMMENTS AND SUPPORTING DOCUMENTS IN MICROSOFT WORD FORMAT ON A CD, DISK OR OTHER COMPATIBLE ELECTRONIC MEDIUM WITH THE CLERK OF THE SUPREME COURT, 1501 WEST WASHINGTON ST., ROOM 402, PHOENIX, AZ 85007 IN AN ENVELOPE MARKED "RULE COMMENT".

ANY PERSON FILING A COMMENT SHALL SEND A COPY THEREOF TO PETITIONER.

Rachelle M Resnick, Clerk

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TO:

David K Byers, Administrative Director, Administrative Office of the
Courts

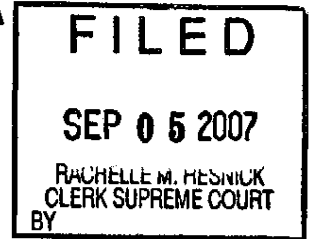
Rules Comment Distribution List

Final Rule Distribution List

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-07-0006




ORDER AMENDING RULE 8.4
and
PROMULGATING RULES 27.12 and 40,
ARIZONA RULES OF CRIMINAL PROCEDURE,

IT IS ORDERED that Rule 8.4, Arizona Rules of Criminal Procedure, be amended, and that Rules 27.12 and 40, Arizona Rules of Criminal Procedure be promulgated, in accordance with the attachment hereto,* on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court, to be effective as of the date of signing, with a comment period to follow. Comments are due November 1, 2007.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 5th day of September, 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~~.

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 8.4. Excluded periods

The following periods shall be excluded from the computation of the time limits set forth in Rules 8.2 and 8.3:

a.-f. [No change in text.]

g. Delays resulting from the setting of a transfer hearing pursuant to Rule 40 of these rules.

* * *

Rule 27.12. Probation review hearing

a. Right to Hearing. On request of a probationer who is under twenty-two years of age and who is serving a term of probation for an offense that requires registration pursuant to A.R.S. § 13-3821 and that was committed when the probationer was under eighteen years of age, the court shall conduct a probation review hearing at least once a year. The probationer shall be informed of the right to a hearing at the time a term of probation is imposed.

b. Request for Hearing. A request for a hearing shall be filed by the probationer and a copy shall be provided to the county attorney.

c. 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.

d. 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.

e. 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 days prior to the date set for the hearing.

f. 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. Scope. This rule shall apply to defendants who are eligible for transfer to juvenile court pursuant to A.R.S. 13-501.01.

b. Initiation. A hearing to determine whether prosecution of a defendant shall be transferred to juvenile court shall be initiated as follows:

1. upon motion of the defendant, or

2. upon an order of the court stating that a transfer hearing is either being set in the court's discretion or is required by law.

c. Contents of Motion and Court Order. The motion for transfer or the court order shall designate the offense or offenses that are the subject of the transfer hearing.

d. Time Limits.

1. Request for Transfer. The motion for transfer or the court order setting a transfer hearing shall be filed within forty-five days of the date of the arraignment.

2. Hearing Date. The transfer hearing shall be held within forty-five days of the filing of the motion for transfer or of the court order. The court may continue the hearing for good cause.

e. Disclosure. The filing of a motion to transfer or the setting of a transfer hearing shall not serve to suspend any requirement pursuant to Rule 15 of these rules.

f. Transfer Investigation. Upon receipt of an order setting a transfer hearing the court shall 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 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. The transfer hearing shall include a determination whether the defendant has shown by clear and convincing evidence that public safety and the rehabilitation of the defendant, if adjudicated delinquent in juvenile court, would be best served by transferring the prosecution to juvenile court. The court shall consider those factors provided by statute.

i. If the defendant testifies at the transfer hearing, the defendant does not by so testifying waive the right to remain silent during the trial. 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 unless the defendant testifies at trial concerning the same matters.

j. Order of Transfer. At the conclusion of the hearing the court shall determine whether the defendant shall be transferred to juvenile court. The court shall state its reasons in writing in the form of a minute entry or order and shall not defer the decision.

k. Commencement of Juvenile Proceedings. If the court orders the defendant to be transferred for juvenile prosecution the indictment or information shall serve as the juvenile petition for those charges subject to transfer by order of the court. The Clerk of the Court shall, within forty-eight hours of the order transferring prosecution, file a copy of the indictment or information in the juvenile court.