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9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

11 In the Matter of:

Supreme Court No. R-16-0007

12 **PETITION TO AMEND RULE 8.4**
13 **OF THE ARIZONA RULES OF**
14 **CRIMINAL PROCEDURE**

DRAFT COMMENT OF
15 **THE ARIZONA PROSECUTING**
16 **ATTORNEYS' ADVISORY**
17 **COUNCIL**

18 **I. BACKGROUND OF PETITION**

19 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the Arizona
20 Prosecuting Attorneys Advisory Council ("APAAC") hereby submits the
21 following Comment to the above-captioned petition. APAAC generally supports
22 Petitioner's proposed amendment to Rule 8.4, *Arizona Rules of Criminal*
23 *Procedure*, but respectfully requests a proposed modification, as forth herein. The
24 amendment, proposed by the Honorable Sam Myers, Presiding Judge of the
25 Criminal Court of the Maricopa County Superior Court, would exclude a period of
30 days from the speedy trial computation if, within 30 days of the expiration of
the speedy trial time period, a court makes a finding that a defendant is competent

1 to stand trial or has been restored to competency. The intent of this amendment is
2 to allow the court and parties the necessary time to bring a case to trial when such a
3 finding is made within 30 days of the speedy trial expiration.
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5 **II. DISCUSSION/ANALYSIS**

6 The Arizona Rules of Criminal Procedure provide generally that a person
7 in custody shall be tried within 150 days from arraignment, or if not in custody
8 within 180 days from arraignment. *Ariz. R. Crim. Pro.*, Rule 8.2(a)(1), (2). For
9 complex cases, a person shall be tried within 270 days from arraignment. Rule
10 8.2(a)(3). Other speedy trial time limits apply when a person is in prison or is
11 located outside the state. Rule 8.3. However, some time periods are excluded
12 from these time computations, including delays “caused by an examination and
13 hearing to determine competency or intellectual disability” of a defendant. Rule
14 8.4(a).
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17 A motion to determine whether a defendant is competent to stand trial may
18 be filed “at any time” after criminal charges are filed. Rule 11.2(a); A.R.S. § 13-
19 4503.A. This could occur at any stage of the proceedings, even after the matter is
20 set to trial. Once a motion to determine competency is filed, the court must
21 determine whether “reasonable grounds” exist to order further examination of the
22 defendant. Rule 11.2(c), (d); A.R.S. § 13-4503.C, D. If reasonable grounds are
23 found to exist, current proceedings cease, mental health experts are appointed,
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1 and a hearing is conducted by the court. Rule 11.3, 11.4; A.R.S. § 13-4505, -
2 4510.

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4 Because there are time frames for when experts' reports should be
5 submitted and for when a court hearing should be held, it could be months before
6 a competency determination is mad. Once the court finally determines that a
7 defendant is competent, "proceedings shall continue without delay." Rule
8 11.5(b)(1); A.R.S. § 13-4510.B. Likewise, if a defendant is determined not
9 competent but is later found to be restored to competency, "the proceedings
10 against the defendant shall continue without delay." A.R.S. § 13-4514.D; Rule
11 11.6(c). Similar rules exist for juvenile competency adjudications. See A.R.S. §
12 8-291, et seq.
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15 The problem with this time scheme is demonstrated by a motion to
16 determine competency filed near the end of the speedy trial computation (even on
17 the last day) after the matter is set to trial. If reasonable grounds are found to
18 further examine a defendant for competency, the trial date is vacated and experts
19 are appointed to examine the defendant. The competency hearing itself is
20 scheduled even later. Rule 11.5(a). While these time periods are excluded from
21 the speedy trial computation (Rule 8.4), once competency is found, the
22 exclusionary period ceases. The case must then proceed "without delay", forcing
23 a trial to be held without any of the parties or the court having adequate time to
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1 prepare (e.g. victims and lay witnesses have to be contacted (and oftentimes
2 located), experts have to be available, subpoenas – both State and defense – have to
3 be issued and served, and court calendars have to be open).
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5 The scenario is even worse for misdemeanor cases. Once reasonable
6 grounds are found to exist for further competency hearings, the matter is
7 transferred to the Superior Court, which has “exclusive jurisdiction over all
8 competency hearings.” Rule 11.2(d); A.R.S. § 13-4503.D. When a court later
9 finds that a defendant is competent or has been restored to competency, the case
10 has to transfer back to the municipal court from which it originated. This causes
11 further delay in the process and complicates the requirement that the proceedings
12 continue “without delay” after that finding is made.
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15 The intent of R-16-0007 is to give the court, the prosecution, and the
16 defense sufficient time to bring the case to trial following a finding of
17 competency or competency restoration, if that finding is made within 30 days of
18 the speedy trial expiration. In that event, an additional 30 days would be
19 excluded from the speedy trial calculation. This promotes justice and due process
20 for all parties. The law is clear that a person cannot be tried, convicted, sentenced
21 or punished if they are incompetent. Rule 11.2; A.R.S. § 13-4502.A. “The
22 defendant, the prosecution, and the court all have a duty to see that this does not
23 occur.” *State v. Starceovich*, 139 Ariz. 378, 389, 678 P.2d 959, 970 (App. 1984).
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1 However, this duty should not operate to deprive the court, the prosecution and
2 the defense of the necessary time to adequately prepare for trial following a
3 determination of competency.
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5 Excluding time from the speedy trial computation as proposed in the
6 petition benefits all parties and, as the petitioner points out, is not without
7 precedent. Other states, such as Kansas, provide for an expanded time period for
8 scheduling a trial following a finding of competency:
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10 If the defendant is subsequently found to be competent to stand trial,
11 the trial shall be scheduled as soon as practicable and in any event
12 within 90 days of such finding.

13 Sec. 22-3402(e)(2), “Kansas Code of Criminal Procedure” (2015). The
14 Criminal Prosecution Practice and Procedures Committee recommends that the
15 Rules Review Committee support adoption of Supreme Court No. R-16-0007,
16 Petition to Amend Rule 8.4 of the Rules of Criminal Procedure. It further
17 recommends that this support go one step further to propose one addition:
18 supporting a modified time period of 90 days for complex cases as defined in
19 Rule 8.2(a)(3). For complex cases, this would give all parties an adequate
20 opportunity to ensure that a full and fair trial is held with each party adequately
21 prepared.
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23 **III. CONCLUSION**

24 The Arizona Prosecuting Attorneys’ Advisory Council respectfully
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1 requests that the Arizona Supreme Court adopt the amendment to Rule 8.4 as
2 requested in petition R-16-0007, with the suggestion that it be modified to include
3 an exclusion period of 90 days for complex cases. The proposed amendment will
4 ensure that when a finding of competency or competency restoration is made
5 within 30 days of the speedy trial expiration, the parties and court will be
6 adequately prepared to proceed with the trial of the underlying matter. It will also
7 ensure that the rights to a fair trial and due process will be fulfilled.
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10 RESPECTFULLY SUBMITTED this ____ day of _____, 2015.

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12 _____
13 Elizabeth Ortiz, #012838
14 Executive Director
15 Arizona Prosecuting Attorneys'
16 Advisory Council

17 Electronic copy filed with the
18 Clerk of the Arizona Supreme Court
19 this ____ day of _____, 2015.

20 by: _____
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