

1 Honorable Barbara Rodriguez Mundell
2 Presiding Judge
3 Superior Court of Arizona, Maricopa County
4 125 W. Washington St.
5 Phoenix, AZ 85003
6 (602) 506-6130

7 IN THE SUPREME COURT OF THE STATE OF ARIZONA

8 In the Matter of:

} Supreme Court No. R-08-0019

9 PETITION TO AMEND RULES 23
10 AND 28, RULES OF PROCEDURE
11 FOR THE JUVENILE COURT; AND
12 TO AMEND RULES 7.3 AND 7.5,
13 ARIZONA RULES OF CRIMINAL
14 PROCEDURE

} COMMENT OF THE SUPERIOR
15 COURT OF ARIZONA, MARICOPA
16 COUNTY TO PETITION TO
17 AMEND RULE 23, RULES OF
18 PROCEDURE FOR THE JUVENILE
19 COURT

20 The Presiding Judge of the Superior Court in Maricopa County files the
21 following comment pursuant to Rule 28, Arizona Rules of the Supreme Court,
22 regarding the petition to amend Rule 23 of the Rules of Procedure for Juvenile
23 Court. Although the Superior Court in Maricopa County acknowledges the need
24 to amend Rule 23, the Superior Court requests the committee consider another
25 version.

26 The Superior Court in Maricopa County requests an alternative
27 amendment to Rule 23(G):

28 **G. Revocation of Release; DNA Testing.** Upon a
verified petition ~~by a juvenile probation officer~~
~~supervising the juvenile, or by the prosecutor,~~ stating
facts or circumstances constituting probable cause to
believe that a juvenile who has been ordered as a
condition of release to provide a DNA sample pursuant
to A.R.S. § 8-238 has not complied that order, the court
having jurisdiction over the juvenile shall issue a

1 warrant or summons to secure the juvenile’s presence in
2 court. The court shall proceed in accordance with the
3 requirements of this rule and A.R.S. section 8-238.

4 The phrase “by a juvenile probation officer supervising the juvenile” should be
5 removed from the amendment.

6 The Juvenile Probation Department is not mandated to perform this task.
7 Section 8-238(A) provides in part that “the judicial officer shall order the
8 juvenile to report within five days to the law enforcement agency that arrested
9 the person or to the agency’s designee and submit a sufficient sample of buccal
10 cells or other bodily substances for deoxyribonucleic acid testing and
11 extraction.” This statute does not require the law enforcement agency to contact
12 the Juvenile Probation Department when a juvenile provides a sample or fails to
13 provide a sample. Likewise, no rule provides such notification. The Juvenile
14 Probation Department has little to no need to contact the arresting law
15 enforcement agency, unless the Juvenile Probation Department is required, by
16 the adoption of this proposed amendment to Rule 23, to file a petition to revoke
17 release based on the failure to provide a DNA sample. This would create a
18 significant amount of work for a Juvenile Probation Department the size of the
19 Maricopa County Juvenile Probation Department.

20 In addition, requiring the Juvenile Probation Department to determine
21 whether a juvenile has provided a DNA sample is contrary to the Juvenile
22 Probation Department’s mission. The Juvenile Probation Department’s mission
23 is “provide access to evidence-based early intervention, supervision, treatment
24 and secure care for youth so they can learn accountability and responsibility,
25 families are strengthened and community safety is enhanced.” The Juvenile
26 Probation Department does not investigate juveniles. Rather, the Juvenile
27 Probation Department provides “intervention, supervision, treatment and secure
28 care.” Investigation is the mandate of law enforcement under the direction of the
County Attorney’s Office. *See* A.R.S. § 8-326(A)(1) (“The County Attorney

1 shall . . . [d]irect the investigation the county attorney deems necessary of acts of
2 alleged delinquent behavior.”) Directing the investigation necessarily includes
3 contact with the arresting agency. Accordingly, the County Attorney’s Office is
4 in a better position to determine when a juvenile has failed to submit a DNA
5 sample and file a verified petition of such non-compliance.

6 For the foregoing reasons, the Superior Court in Maricopa County
7 requests an alternative amendment to Rule 23(G), deleting the phrase “by a
8 juvenile probation officer supervising the juvenile” from the proposed
9 amendment.

10 Respectfully submitted this 20th day of May, 2009.

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Honorable Barbara Rodriguez Mundell
14 Presiding Judge
Superior Court of Arizona, Maricopa County

15 Original and six (6) copies delivered this
16 20th day of May, 2009 to:

17 Clerk of the Arizona Supreme Court
18 1501 W. Washington, Suite 402
19 Phoenix, AZ 85007

20 Copy mailed this
21 20th day of May, 2009 to:

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