

1 ELIZABETH BURTON ORTIZ, BAR NO. 012838
2 EXECUTIVE DIRECTOR
3 ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
4 3838 N. CENTRAL AVENUE, SUITE 850
5 PHOENIX, ARIZONA 85012
6 (602) 542-7222
7 ELIZABETH.ORTIZ@APAACAZ.COM

8 KENNETH N. VICK, BAR NO. 017540
9 CHIEF DEPUTY
10 MARICOPA COUNTY ATTORNEY'S OFFICE
11 225 W. MADISON STREET
12 PHOENIX, ARIZONA 85003
13 (602) 506-3800
14 VICK@MCAO.MARICOPA.GOV
15 FIRM STATE BAR NO. 00032000

ARIZONA SUPREME COURT

16 **PETITION TO AMEND RULES 5.3,**
17 **6.1, 7.3 AND 7.4, ARIZONA RULES**
18 **OF CRIMINAL PROCEDURE**

R-21-0051

COMMENT OF THE ARIZONA
PROSECUTING ATTORNEYS' ADVISORY
COUNCIL AND THE MARICOPA COUNTY
ATTORNEY'S OFFICE

19 The Arizona Prosecuting Attorneys' Advisory Council (APAAC) and the
20 Maricopa County Attorney's Office (MCAO) submit this comment in opposition to the
21 proposed rule changes. APAAC and MCAO ask this Court to deny the Petition
22 because, just as its predecessor R-21-0022, it appears to be requesting change just for
23 sake of change.
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26 Although this Petition does not include some of the more strident suggestions
27 included in R-21-0022, the Petition continues to pose a solution to a problem that may
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1 or may not exist. Just as with last year’s proposal, this proposal still lacks supportive
2 data illustrating what the systemic issues are and how these rule changes would resolve
3 those issues.
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5 The 2016 Task Force on Fair Justice For All: Court-Ordered Fines, Penalties,
6 Fees, and Pretrial Release Policies resulted in significant changes to the procedures
7 courts follow in setting and reviewing release conditions. Among other things, judges
8 must now use the results of an approved risk assessment tool in determining release
9 conditions. Ariz.R.Crim.P. 7.3(c). According to the Task Force’s report, this validated
10 tool helps a court predict two important facts: 1) the likelihood that the person will
11 commit a new offense and 2) the likelihood that the person will appear for court
12 proceedings. *Report and Recommendations of the Task Force on Fair Justice for All:
13 Court-Ordered Fines, Penalties, Fees and Pretrial Release Policies* 34 (August 12,
14 2016).
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19 The Petition seeks to offer greater assurance that individuals are not held in
20 custody simply because they are unable to post cash or secured bonds. Yet just like last
21 year, the Petition does not provide information about whether such a population exists
22 or any details as to who, what, where or why and we still lack any meaningful data
23 describing the pretrial detention population in Arizona’s jails. Nor do we have
24 information regarding what impact the changes made in 2016 had on that population.
25 Without supporting data, it would be irresponsible to burden the court system with new
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1 hearings, assign responsibility for a new burden of proof, and create an entirely new
2 right to representation.
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4 While APAAC and MCAO appreciate that the Petition does not include some of
5 the concerning provisions included in the previous iteration, there remains much to be
6 concerned with.
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8 The Petition would allow for discretionary review of felony release conditions at
9 the arraignment or preliminary hearing. Ariz.R.Crim.P. 7.4(c) already allows the court
10 to reexamine bail eligibility at any time on its own motion, so this proposal seems
11 unnecessary. The Petition assigns the burden of proof, stating, “the state must carry *its*
12 *burden* of proving that conditions imposed, especially money bond, are reasonably
13 necessary to serve the primary purposes of preventing flight and protecting the
14 community.” (*Emphasis added.*) Petitioner is conflating the State’s burden of proof
15 regarding factual issues with a court’s release determination. The Petition would
16 require the State to prove why bond is reasonable, including any information in a risk
17 assessment—a tool that the State is not currently privy to. Release and reasonableness
18 of a bond are decisions for the court after reviewing all available information,
19 regardless of who presents that information to them. In the wake of the changes
20 effectuated by the Task Force recommendations, Arizona courts now have a validated
21 tool with information unknown to the parties. While the parties are privy to the final
22 risk score, they are not given all of the information or thought processes that lead to the
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1 score. With the burden going to the State, will the State now have full access to all of
2 that information? Will the State now be free to disregard the current tool and institute
3 a tool it believes is more accurate? Shouldn't the Pretrial Services process be under
4 the State's umbrella if the State is going to have the burden of proof for all factors that
5 go into a release determination?
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8 This Petition, like its predecessor, appears to be a "feel good" measure for public
9 consumption that Arizona is doing its part regarding "bail reform." The Petition
10 ignores that Arizona was already doing its part. It ignores any data that might illustrate
11 whether previous reforms are working. It ignores any data regarding whether any
12 issues still exist, what those issues are, where they occur and what causes them.
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14 Respectfully submitted this 21st of April, 2022.
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17 BY /s/ Elizabeth Burton Ortiz
18 ELIZABETH BURTON ORTIZ
19 EXECUTIVE DIRECTOR
20 ARIZONA PROSECUTING ATTORNEYS'
21 ADVISORY COUNCIL

22 BY /s/ Kenneth N. Vick
23 KENNETH N. VICK
24 CHIEF DEPUTY
25 MARICOPA COUNTY ATTORNEY'S OFFICE
26
27
28