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ARIZONA SUPREME COURT

In the matter of:)
)
PETITION TO AMEND RULES 3.2, 4.2,) Supreme Court No. 22-_____
7.3, 11.5, 14.4, 39 AND 41 OF THE) (expedited consideration
RULES OF CRIMINAL PROCEDURE) and emergency adoption
) requested)
)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend the rules specified above as proposed in Appendix A. The proposed amendments implement legislative enactments affecting the criminal rules from the 2022 legislative session as more particularly described below. The legislation identified in this petition becomes effective on September 24, 2022, except SB 1602 which takes effect on January 1, 2023. Accordingly, Petitioner seeks expedited consideration of this petition and emergency adoption of the proposed rule amendments.

I. Purpose of the Proposed Rule Amendments.

A. SB 1075, Incompetent Defendant; Guardian Appointment; Costs (Laws 2022, Ch. 158)

This bill clarifies that, where the court finds that a defendant is incompetent to stand trial and that there is no substantial probability that the defendant will regain competency, the court may appoint a guardian ad litem pursuant to A.R.S. § 13-4517(A)(2) “to investigate whether the defendant is or may be in need of a guardian, a conservator or any other protective order” pursuant to A.R.S. §§ 14-5301 et seq. Appointment of a guardian in this circumstance currently appears in Rule 11.5(b)(3)(ii), which petitioner is proposing to revise to comport with the statutory amendment. Rule 11.5(b)(4) already provides for a court to retain jurisdiction and enter further orders as specified in A.R.S. §§ 13-4517 and 13-4518, so no additional revisions of the rule are necessary to implement the other amendments included in SB 1075.

B. SB 1602, Central State Repository; Offenses (Laws 2022, Ch. 163)

SB 1602 has a delayed effective date of January 1, 2023 and expands the list of offenses for which criminal history records must be maintained in the Central State Repository. This expands the offenses for which a court must order a defendant to be ten-print fingerprinted when a summons is issued or when a defendant does not provide a mandatory fingerprint compliance form at the initial appearance or arraignment, or the court has not received the process control number. The proposed

rule amendments would add the additional offenses to Criminal Rules 3.2(b)(3), 4.2(a)(10)(A), 14.4(g)(1), and 41, Form 3(a).

C. HB 2709, Victim’s Rights to Privacy (Laws 2022, Ch. 100)

A.R.S. § 13-4434 creates a requirement that a victim’s identifying and locating information be redacted from law enforcement and prosecutorial records before disclosure to the defense, subject to certain exceptions. HB 2709 amends A.R.S. § 13-4434 to add the victim’s address, under certain circumstances, to the list of information that is not required to be redacted. It also adds a provision that allows the court to order the victim's identifying and locating information to be disclosed if it is necessary to protect the defendant's constitutional rights or when information is not reasonably able to be redacted because of an undue burden or expense. Before such an order is issued, the victim must be notified and given an opportunity to be heard.

The proposed rule amendments would add a reference to A.R.S. § 13-4434 in Criminal Rule 39(b)(11) to specify that the victim has a right to require the prosecutor to withhold, during discovery and other proceedings, the victim's identifying and locating information “as provided by A.R.S. § 13-4434.” The reference to A.R.S. § 13-4434 is necessary to account for the exemptions set forth in A.R.S. § 13-4434.

An additional proposed amendment to this rule would add verbiage to Rule 39(b)(11)(A): “Exception.” The rule currently provides that an exception to Rule 39(b)(11) may be made when it is necessary to protect the defendant’s constitutional rights. Petitioner proposes adding verbiage to the end of this rule to indicate “or as otherwise permitted by law” to account for exceptions that may be made due to a finding that redaction would cause an undue burden or expense, pursuant to A.R.S. § 13-4434(D).

Lastly, proposed amendments would add a subsection to Rule 39(c) regarding a victim’s right to be notified and heard before the court orders disclosure of identifying or locating information under Rule 39(b)(11)(A).

No other rule amendments are necessary to implement this bill.

D. HB 2372, Animal Cruelty; Release Conditions (Laws 2022, Ch. 107)

HB 2372 creates a requirement that if a person is serving a term of probation for committing animal cruelty under A.R.S. § 13-2910 and is charged with a new violation of A.R.S. § 13-2910, if the person is released on their own recognizance or on bail, the judicial officer must impose a condition of release that prohibits the person from possessing or having contact with any animal. The proposed rule amendments would amend Rule 7.3(b) to require this as a mandatory release condition under these circumstances and would amend Rule 41, Form 6 to add this

condition to the Release Order. No other rule changes are necessary to implement this bill.

II. Preliminary Comments.

This petition has not been sent to the court community for pre-filing comments because of its technical nature and due to the short period of time since the enactment of the new statutory provisions.

III. Request for Emergency Adoption.

The legislation identified in this petition becomes effective on September 24, 2022, except SB 1602 which takes effect on January 1, 2023. Therefore, as permitted by Supreme Court Rule 28(h), Petitioner requests expedited consideration of all proposed rule and form amendments at the court's next Rules Agenda with a comment period to follow, and emergency adoption of all proposed rule and form amendments.

Respectfully submitted this 27th day of June, 2022.

By /s/
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APPENDIX A

Arizona Rules of Criminal Procedure

(deletions shown with ~~strikethrough~~, new language is underlined)

RULE 3. ARREST WARRANT OR SUMMONS UPON COMMENCEMENT OF CRIMINAL PROCEEDINGS

Rule 3.2. Content of a Warrant or Summons

(a) No Change

(b) Summons.

(1) and (2) No Change

(3) *10-Print Fingerprints Required.* If a summons is issued for a defendant who is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq., a violation of A.R.S. §§ 28-1301 et seq., ~~or~~ a domestic violence offense as defined in A.R.S. § 13-3601, or an offense listed in A.R.S. §§ 32-2422(A)(4), 32-2441(A)(4), 32-2612(A)(4), 32-2622(A)(4), 41-1758.03(B) or (C), or 41-1758.07(B) or (C), the summons must direct the defendant to provide 10-print fingerprints to the applicable law enforcement agency.

RULE 4. INITIAL APPEARANCE

Rule 4.2. Initial Appearance

(a) **Generally.** At an initial appearance, the magistrate must:

(1) through (9) No Change

(10) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(A) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., ~~or~~ a domestic violence offense as defined in A.R.S. § 13-3601, or an offense listed in A.R.S. §§ 32-2422(A)(4), 32-2441(A)(4), 32-2612(A)(4), 32-2622(A)(4), 41-1758.03(B) or (C), or 41-1758.07(B) or (C); and

(B) No Change

(11) No Change

RULE 7. RELEASE

Rule 7.3. Conditions of Release

(a) No Change

(b) Mandatory Condition if Charged with an Offense Listed in A.R.S. § 13-610(O)(3) or a New Violation of A.R.S. § 13-2910.

(1) and (2) No Change

(3) New Violation of A.R.S. § 13-2910. If a defendant is serving a term of probation for committing animal cruelty under A.R.S. § 13-2910 and is charged with a new violation of A.R.S. § 13-2910, if the defendant is released on their own recognizance or on bail, the court must impose a condition of release that prohibits the defendant from possessing or having contact with any animal.

(c) No Change

Rule 11. INCOMPETENCE AND MENTAL EXAMINATIONS

Rule 11.5. Hearing and Orders

(a) No Change

(b) Orders.

(1) and (2) No Change

(3) *If Incompetent and Not Restorable.*

(A) Superior Court. If the superior court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within 21 months or within the defendant's maximum possible sentence as defined by A.R.S. § 13-4515, whichever is less, the court may on request of the examined defendant or the State do one or more of the following:

(i) No Change

(ii) Order appointment of a guardian ad litem to investigate whether the defendant is or may be in need of a guardian, a conservator or any other protective order under A.R.S. §§ 14-5301 et seq.;

(iii) and (iv) No Change

(B) No Change

(4) No Change

(c) No Change

RULE 14. ARRAIGNMENT

Rule 14.4. Proceedings at Arraignment

At an arraignment, the court must:

(a) through (f) No Change

(g) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(1) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., ~~or~~ a domestic violence offense as defined in A.R.S. § 13-3601, or an offense listed in A.R.S. §§ 32-2422(A)(4), 32-2441(A)(4), 32-2612(A)(4), 32-2622(A)(4), 41-1758.03(B) or (C), or 41-1758.07(B) or (C); and

(2) No Change

Rule 39. VICTIMS' RIGHTS

(a) No change

(b) Victims' Rights.

(1) through (10) No change

(11) the right to require the prosecutor to withhold, during discovery and other proceedings, the victim's identifying and locating information as provided by A.R.S. § 13-4434.

(A) Exception. A court may order disclosure of the victim's identifying and locating information as necessary to protect the defendant's constitutional rights or as otherwise provided by law. If disclosure is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not convey the information to the defendant without prior court authorization.

(B) No change

(12) through (18) No Change

(c) Exercising the Right to be Heard.

(1) through (3) No change

(4) *Before Disclosure of Identifying or Locating Information.* Before a court orders disclosure of identifying or locating information under (b)(11)(A), the victim must be notified and given an opportunity to be heard.

(4-5) The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.

Rule 41. FORMS

Form 3(a). Summons: Ten-Print Fingerprint Required

_____ Court _____ County, Arizona

STATE OF ARIZONA, Plaintiff CASE/COMPLAINT NO. SUMMONS

-vs-

_____ (Ten-print Fingerprint Required)
Defendant (FIRST, MI, LAST)

TO: _____

YOU ARE ORDERED to appear at [name of entity and address] _____
(Required for all felonies, domestic violence, sexual or DUI offenses, and offenses listed in in A.R.S. §§ 32-2422(A)(4), 32-2441(A)(4), 32-2612(A)(4), 32-2622(A)(4), 41-1758.03(B) or (C), and 41-1758.07(B) or (C)) between the hours of ___ a.m./p.m. at any time prior to your court appearance date to be photographed and ten-print fingerprinted.

YOU ARE SUMMONED to appear before this court for the following reason:

[(List reason for summons; e.g., filing of indictment, information or complaint (list charges or other reasons)].

YOU ARE ORDERED TO REPORT on _____, 20__ at _____ a.m./p.m.

LOCATED AT: _____

IF YOU FAIL TO APPEAR AS ORDERED, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

Date: _____
_____ Judicial Officer

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

CERTIFICATE OF PERSONAL SERVICE

I swear that I personally served this summons as follows:

Date Received: _____ Date Served: _____ Time Served: _____

Person Served: _____

Location Where Served: _____ County.

Officer Serving Summons

CERTIFICATE OF SERVICE BY MAILING

I certify that a copy of this document was sent by Registered or Certified mail, return receipt requested, to the defendant at the above-listed address.

Dated: _____
_____ CLERK

Form 3(a)

Form 6. Release Order

COURT _____

County, Arizona

STATE OF ARIZONA Plaintiff -vs- _____										RELEASE ORDER			
Defendant (FIRST, MI, LAST)					Booking Number Date of Birth								
LINE #	COMPLAINT NO.	VIOLATION CODE	NF	ORR	PSR	3P	BOND	BA	UB	DB	SB	CB	NB
1							\$						
2							\$						
3							\$						
4							\$						
5							\$						

(NF=Charge not filed; ORR=Own recognizance release; PSR=Pretrial supervision release; 3P=Third party custody; Bond=Amount of bond; BA=Bond applies; UB=Unsecured bond; DB=Deposit bond; SB=Secured bond; CB=Cash bond; NB=Non-bailable)

If you are released from jail, you must follow all release conditions and appear at court as indicated below:

MANDATORY AND STANDARD CONDITIONS OF YOUR RELEASE:

- 1. Appear at _____ court on: _____ at _____ a.m. / p.m., Courtroom: _____
(Court name and address) (Date) (Time)
for _____ and attend all future court hearings.
- 2. Violate no federal, state or local criminal laws.
- 3. Not leave the state of Arizona without written permission from the court.
[] Defendant may leave the state of Arizona provided defendant returns for court dates.
- 4. Diligently pursue any appeal if released from custody after judgment and sentence have been imposed.
- [] 5. Maintain contact with your attorney.
- [] 6. Provide a current address and phone number to the court and to your attorney and immediately notify both of any changes.
- [] 7. Not threaten or initiate any type of contact with the alleged victim(s).
- [] 8. Not drive a motor vehicle without a valid driver’s license in your possession.
- [] 9. Not threaten or initiate any type of contact with any person as specified here: _____.
- [] 10. Not possess weapons as specified here: _____.
- [] 11. Not possess or have contact with any animal.
- [] ~~11-12~~. Not consume any alcoholic beverages.
- [] ~~12-13~~. Not go to scene of the alleged crime.
- [] ~~13-14~~. Not go to locations as specified here: _____.
- [] ~~14-15~~. Comply with 3rd party custody release conditions as specified here: _____.
- [] ~~15-16~~. Contact probation or parole officer. (See 3rd party obligations in this document.)
- [] ~~16-17~~. Electronic monitoring, if available, (mandatory if charged with a felony offense under Chapters 14 or 35.1 of Title 13)
- [] ~~17-18~~. Other: _____.

ADDITIONAL CONDITIONS FOR YOUR PRETRIAL SUPERVISION RELEASE (PSR):

