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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO AMEND RULES 3.2, 4.2,)
7.5, 14.3, 26.10, AND Form 3(a),) Supreme Court No. R-09-____
ARIZONA RULES OF CRIMINAL)
PROCEDURE, AND FOR AN)
AMENDMENT TO THE ARIZONA)
TRAFFIC TICKET AND COMPLAINT)
FORM, EXHIBIT A TO THE RULES)
OF PROCEDURE IN TRAFFIC)
CASES AND BOATING CASES)
_____)

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 adopt the attached proposed amendments to Rules 3.2, 4.2, 7.5, 14.3, 26.10, and Form 3(a) of the Arizona Rules of Criminal Procedure. These proposed amendments are designed to implement procedural rules for new fingerprinting requirements in criminal cases resulting from the passage of Laws 2009, Chapter 120, HB 2449. As a result of the enactment of HB 2449, this petition also

requests an amendment to the Arizona Traffic Ticket and Complaint form, Appendix A to the Rules of Procedure for Traffic Cases and Boating Cases.

I. Background and Purpose of the Proposed New Rules. House Bill 2449 was passed in the First Regular Session of the Forty-Ninth Legislature (2009). The bill amends A.R.S. §§ 13-607, -3903, and 41-1750. The statutory amendments modify the process by which fingerprint information is obtained from individuals at various post-arrest and post-charging stages of the criminal justice process.

A.R.S. § 41-1750 requires the chief officers of criminal justice agencies of Arizona or its political subdivisions to provide fingerprints and specified personal information of persons arrested for a felony, domestic violence, sexual, or DUI offense. This information is to be promptly transferred from the arresting law enforcement agency to the Department of Public Safety.

II. Contents of the Proposed Amendments. The proposed amendments incorporate the changes to pertinent statutes adopted by HB 2449 as follows.

a) When a summons is issued. As amended by HB 2449, A.R.S. §41-1750(U)(4) requires that the summons direct the defendant to provide “ten-print” fingerprints . Rule 3.2(c) of the Arizona Rules of Criminal Procedure deals with summonses. Petitioner proposes an amendment to Rule 3.2(c) and to the

Summons Form 3(a) contained in the Appendix to the Rules of Criminal Procedure to specify “ten-print” fingerprints on the summons¹ (Appendix 1).

b) At the initial appearance. The amendments to A.R.S. §41-1750(U)(5) specify that if the defendant fails to present the new mandatory fingerprint compliance form to the court at the initial appearance, or if the court has not received the process control number², the court shall order the defendant to be ten-print fingerprinted within 20 days at a designated time and place by the appropriate law enforcement agency. Rule 4.2 governs the initial appearance. This petition proposes an amendment to Rule 4.2(a) to make it consistent with this statutory change (Appendix 2).

c) At the arraignment. The amendments to A.R.S. §41-1750 (U)(5) that are set out in the preceding paragraph also apply to arraignments. Accordingly, petitioner proposes a new conforming paragraph (h) for Rule 14.3, which concerns proceedings at arraignment (Appendix 3).

d) Court authority to remand a defendant into custody for fingerprinting.

The amendments to A.R.S. §41-1750(U)(6) allow the court, on its own motion, to

¹ A revision to Ariz. R. Crim. P., Rule 41, Form 3(a), titled “Summons: Fingerprint Required” was filed on June 25, 2009 in conjunction with a reply in R-08-0019. The change requested in the present petition would need to be merged with the earlier proposed change if both are approved.

² Presentation to the court of either a completed fingerprint compliance form or a process control number would verify that the defendant has complied with the fingerprinting requirement prior to the court appearance.

remand a defendant into custody for fingerprinting when the defendant fails to provide the fingerprint compliance form or if the court has not received a process control number. If eligible, the defendant must be released after being fingerprinted. Rule 7.5 deals with a variety of issues surrounding revocation of a pre-trial release, including revocation to ensure collection of a DNA sample. To implement this provision of HB 2449, petitioner proposes a new Rule 7.5(e), titled “Revocation of release; ten-print fingerprinting” (Appendix 4).

e) *At sentencing.* HB2449 amended A.R.S. §13-607(B) to require that the court affix the defendant’s “right index” fingerprint to a judgment of guilt and sentence document for specified offenses. Previously the statute did not specify which of the defendant’s fingers should be imprinted on the document, and this amendment conforms to the disposition report form adopted by Administrative Order No. 2002-33. Rule 26.10(b) provides procedures during the pronouncement of sentence. Petitioner proposes that a paragraph be added to implement the requirement for obtaining a right index fingerprint on the sentencing document (Appendix 5).

f) *Amendment to the Arizona Traffic Ticket and Complaint Form (“ATTC”).*
HB 2449 has added a new subsection (C) to A.R.S. § 13-3903 that provides in

cases involving specified offenses,³ the person arrested shall not be released until the person has provided a right index fingerprint to the arresting agency. The agency is also required to furnish the person with a mandatory fingerprint compliance form that includes instructions for reporting thereafter for ten-print fingerprinting. This procedure will enable law enforcement agencies to capture a single fingerprint in the field, and then release the arrested person without transporting them to a police facility for a full, ten-print fingerprinting procedure. Petitioner anticipates that this procedure will be commonly used for DUI cite-and-release violations.

Rule 3 of the Rules of Procedure in Traffic Cases and Boating Cases requires law enforcement to use a Supreme-Court-approved Arizona Traffic Ticket and Complaint form (“ATTC”) when issuing traffic tickets and complaints. The form is provided in Appendix A to those rules. An informal workgroup of law enforcement, prosecutors, judicial, and Arizona Criminal Justice Commission personnel have recommended to the AOC that the statewide ATTC form be amended to facilitate the new fingerprint protocols in HB 2449. Based on this recommendation, petitioner proposes an addition to the front side of the law enforcement copy of the ATTC as shown in Appendix 6. The requested change

³ This provision applies to misdemeanor offenses or petty offenses listed in A.R.S. § 41-1750(C), i.e., offenses involving domestic violence defined in § 13-3601, violations of Title 13, Chapter 14 (sexual offenses), and violations of Title 28, Chapter 4 (driving under the influence).

would provide a space on the form for the arresting officer to indicate with a “yes” or “no” check box whether ten-print fingerprinting is required. The addition appears in the lower right quadrant of the form and is highlighted for easy reference in Appendix 6.

Request is made that the Administrative Director be given authority to grant extensions of up to one year to facilitate an orderly transition to the proposed amendment to the form. Similar authority was granted in a July 10, 1992 order in R-92-0008 that previously modified the ATTC form.

III. Preliminary Comments. This petition has not been circulated for pre-filing comments because of the short period of time since enactment of the legislation, and because the requested amendments to the criminal rules and to the ATTC form solely and directly implement statutory changes.

IV. Request for Emergency Adoption. Section 4 of HB 2449 provides an effective date of “from and after December 31, 2009.” Accordingly, petitioner requests expedited adoption of the proposed amendments with a comment period to follow, as permitted by Supreme Court Rule 28(G).

RESPECTFULLY SUBMITTED this 14th day of August, 2009.

By _____
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Appendix 1

Proposed amendment to Rule 3.2, Ariz. R. Crim. P.

Rule 3.2. Content of warrant or summons.

a. Warrant. [No change.]

b. Summons. [No change.]

c. Summons for Felony Offense. On the issuance ~~and service~~ of a summons for a defendant who is charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4, or a domestic violence offense as defined in § 13-3601, ~~the court shall order~~ the summons shall direct the defendant ~~be fingerprinted by~~ to provide ten-print fingerprints to the appropriate law enforcement agency. ~~and that the defendant appear at a designated time and place for fingerprinting.~~

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) _____ 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

Appendix 2

Proposed amendment to Rule 4.2, Ariz. R. Crim. P.

Rule 4.2. Initial appearance

a. In General. At the suspect's initial appearance, the magistrate shall:

1 through 7. [No change.]

8. For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4, or a domestic violence offense as defined in § 13-3601, if the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number, the court shall order that within twenty calendar days, the defendant be ten-print fingerprinted at a designated time and place ~~if it appears that the defendant was not previously fingerprinted~~ by the appropriate law enforcement agency.

b. Misdemeanors: Felonies Charged by Indictment. [No change.]

c. Felonies Charged by Complaint. [No change.]

Appendix 3

Proposed amendment to Rule 14.3, Ariz. R. Crim. P.

Rule 14.3. Proceedings at arraignment

The court shall:

(a) through (g). [No change.]

h. For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4, or a domestic violence offense as defined in § 13-3601, if the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number, the court shall order that within twenty calendar days, the defendant be ten-print fingerprinted at a designated time and place by the appropriate law enforcement agency.

Appendix 4

Proposed amendment to Rule 7.5, Ariz. R. Crim. P.

Rule 7.5. Review of conditions; revocation of release

a. through d. [No change.]

e. Revocation of release; Ten-print fingerprinting. If a defendant fails to timely present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court on its own motion may remand the defendant into custody for ten-print fingerprinting. If otherwise eligible for release, the defendant shall be released from custody after being ten-print fingerprinted.

Appendix 5

Proposed amendment to Rule 26.10, Ariz. R. Crim. P.

Rule 26.10. Pronouncement of judgment and sentence

a. Pronouncement of Judgment. [No change.]

b. Pronouncement of Sentence. The Court shall:

(1) through (4). [No change.]

(5.) For any felony offense or a violation of §§ 13-1802, 12-1805, 28-1381, or 28-1382, permanently affix the defendant's right index fingerprint to the sentencing document or order.

~~(5.)~~(6.) [No change.]

Appendix 6 Arizona Traffic Ticket and Complaint

Complaint No.		SSN		Military		<input type="checkbox"/> Accident		<input type="checkbox"/> Fatality		<input type="checkbox"/> Commercial		Agency Use or Report Number			
Driver's License Number		State		Class		Endorsements						Agency Use			
						M		H		N		P			
						T		X		D					
DEFENDANT		First		Middle						Last					
Residential / Commercial Address				City				State				ZIP		Telephone	
MAILING ADDRESS <input type="checkbox"/> SAME AS ABOVE															
Sex		Height		Weight		Eyes		Hair		Origin		Date of Birth		Restrictions:.	
VEHICLE		Color		Year		Make		Model		Style		License Plate		State	Expiration
Registered Owner						Address						Vehicle Identification Number			
The undersigned certifies that:															
ON	Month	Day	Year	Time	AM PM	SPEED	Approx.	Posted	R&P	Speed Measurement Device		Direction of Travel			
AT	Location								County		State of Arizona	Beat			
The defendant committed the following:															
A	Section		ARS CC	Violation						Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal	<input type="checkbox"/> Criminal Traffic		
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Municipal Code	<input type="checkbox"/> Civil Traffic	<input type="checkbox"/> Petty Offense				
B	Section		ARS CC	Violation						Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal	<input type="checkbox"/> Criminal Traffic		
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Municipal Code	<input type="checkbox"/> Civil Traffic	<input type="checkbox"/> Petty Offense				
C	Section		ARS CC	Violation						Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal	<input type="checkbox"/> Criminal Traffic		
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Municipal Code	<input type="checkbox"/> Civil Traffic	<input type="checkbox"/> Petty Offense				
D	Section		ARS CC	Violation						Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal	<input type="checkbox"/> Criminal Traffic		
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Municipal Code	<input type="checkbox"/> Civil Traffic	<input type="checkbox"/> Petty Offense				
E	Section		ARS CC	Violation						Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal	<input type="checkbox"/> Criminal Traffic		
	Docket Number		Disp. Codes		Date of Disposition		Sanction		<input type="checkbox"/> Municipal Code	<input type="checkbox"/> Civil Traffic	<input type="checkbox"/> Petty Offense				
You must appear at ►		Insert here the place of appearance ; title and name of court, Judge, or juvenile referee or officer, street address, city or town, Arizona, and court or room number, if applicable; and time of appearance; hour, day, month, and year.)										Court Number: :			
At the date and time indicated ►		Month			Day			Year			Time		AM PM		
CRIMINAL <input type="checkbox"/> Without admitting guilt, I promise to appear as directed hereon.						VICTIM? <input type="checkbox"/> VICTIM NOTIFIED? <input type="checkbox"/>									
CIVIL <input type="checkbox"/> Without admitting responsibility, I acknowledge receipt of this complaint						TEN-PRINT FINGERPRINT <input type="checkbox"/> Yes <input type="checkbox"/> No									
X _____						I certify that upon reasonable grounds I believe the defendant committed the above violation (s) and I have served a copy of the complaint upon the defendant.									
						Officer _____						Number _____			
Agency Use															

Front Side of Law Enforcement Copy