

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007-3327
Phone: (602) 452-3301
Projects2@courts.az.gov

ARIZONA SUPREME COURT

In the matter of:)
)
PETITION TO AMEND RULES 3.2, 4.2,) Supreme Court No. 22-0029
7.3, 11.5, 14.4, 39 AND 41 OF THE)
RULES OF CRIMINAL PROCEDURE) Request to Amend Petition
) and Amended Petition
)
_____)

David K. Byers, Administrative Director, Administrative Office of the Courts, and Petitioner in this matter, hereby files this Request to Amend Petition and Amended Petition in the above-entitled matter to provide a more precise list of offenses in Criminal Rules 3.2, 4.2, and 14.4 for which a defendant must be ordered to be ten-print fingerprinted when a summons is issued, or the defendant does not provide a mandatory fingerprint compliance form at the initial appearance or arraignment and the court has not received the process control number.

The proposed amendments in the Appendix are intended to replace the proposed amendments in Petitioner’s June 27, 2022 petition as they relate to Criminal Rules 3.2, 4.2, 14.4, and 41, Form 3(a).

I. Background

On June 27, 2022, Petitioner filed a petition requesting expedited consideration and emergency adoption of amendments to Rules 3.2, 4.2, 7.3, 11.5, 14.4, 39, and 41 of the Rules of Criminal Procedure. On June 29, 2022, this Court granted Petitioner's request for expedited consideration and on August 29, 2022, adopted on an emergency basis Petitioner's proposed amendments. This Court will consider whether these amendments should be adopted on a permanent basis at its December 2022 Rules Agenda.

II. Grounds for Petition Approval

Petitioner's proposed amendments are prompted by the enactment of Senate Bill (SB) 1602 during the 2022 Second Regular Session of the 55th Legislature. Specifically, SB 1602 expands the list of misdemeanor offenses for which criminal history records must be maintained in the Central State Repository and as a result, expands the list of offenses for which a court must order a defendant to be ten-print fingerprinted when a summons is issued, or the defendant does not provide a mandatory fingerprint compliance form at the initial appearance or arraignment and the court has not received the process control number.

The proposed rule amendments are necessary to comport with this legislation and create consistency across the state as it relates to the misdemeanor offenses for which a defendant must be ordered to be ten-print fingerprinted.

III. Purpose of Proposed Amendments

Petitioner’s June 27, 2022 petition proposed amendments to Rules 3.2(b)(3), 4.2(a)(10)(A), 14.4(g)(1), and 41, Form 3(a) and tracked SB 1602 to require ten-print fingerprinting for “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).” However, not only are many of the offenses listed in these statutes duplicative between the statutes, but these statutes do not consistently provide a statutory citation for the listed offenses—they list only the name of the offense or a description of what the offense involves. For example, SB 1602, by reference to A.R.S. §32-2422(A)(4), requires a defendant be ten-print fingerprinted for any offense involving “[p]ersonal violence or force against another person or threatening to commit any act of personal violence or force against another person.” This description implicates several offenses, making it necessary to provide the specific statutory citations in the Rules of Court for the included offenses so that courts know whether a defendant charged with a misdemeanor must be ordered to be ten-print fingerprinted.

IV. Contents of Proposed Rule Amendments

Petitioner has conferred with the Department of Public Safety (DPS) as it relates to the misdemeanor offenses for which DPS is required to maintain criminal history records in the Central State Repository under A.R.S. §41-1750. In addition to felony offenses and domestic violence offenses under A.R.S. §13-3601, DPS is

required to maintain criminal history records in the Central State Repository for a misdemeanor violation of the following offenses and as a result, defendants charged with a violation of any of the following offenses must be ten-print fingerprinted:

- an offense listed in Title 13, Chapters 12, 14, 15 except A.R.S. §13-1509, Chapters 18, 20 through 23, 32, 34, or 34.1;
- A.R.S. §13-1604;
- A.R.S. §13-2406;
- A.R.S. §13-2904;
- A.R.S. §§13-2907 to 13-2907.05;
- A.R.S. §13-2910;
- A.R.S. §13-2916;
- A.R.S. §§13-3102 to 13-3104;
- A.R.S. §13-3513;
- A.R.S. §13-3555;
- A.R.S. §13-3558;
- A.R.S. §13-3613;
- A.R.S. §13-3619;
- A.R.S. §13-3623;
- A.R.S. §13-3704; or
- A.R.S. §46-215.

Petitioner proposes incorporating these offenses into Criminal Rules 3.2, 4.2, and 14.4 to create consistency throughout the state once SB 1602 becomes effective as it relates to the offenses that require ten-print fingerprinting and to relieve judicial officers from otherwise having to comb through the hundreds of offenses 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) and (C), and 41-1758.07(B) and (C) to determine whether a defendant charged with a misdemeanor offense must be ordered to be ten-print fingerprinted.

Petitioner recognizes that this list is too lengthy to place on Form 3(a), and instead proposes amending Form 3(a) to reference the list of offenses in Rule 3.2(b)(3).

V. Request

If the Court is inclined to grant Petitioner's request to amend the petition in this matter, Petitioner requests that this Court extend the public comment period to October 17, 2022, with any reply due by October 21, 2022 and requests, pursuant to Rule 28 of the Rules of the Supreme Court, that this Court adopt the proposed amendments to Criminal Rules 3.2, 4.2, 14.4, and 41, Form 3(a) as set forth in the Appendix.

Respectfully submitted this 26th day of September, 2022.

By /s/ David K. Byers
David K. Byers, Administrative Director

Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, Arizona 85007
(602) 452-3301
Projects2@courts.az.gov

APPENDIX

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 one of the following offenses, the summons must direct the defendant to provide 10-print fingerprints to the applicable law enforcement agency: a felony offense, a violation of an offense listed in Title 13, Chapters 12, 14, 15 except A.R.S. § 13-1509, Chapters 18, 20 through 23, 32, 34, or 34.1, 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, a violation of A.R.S. §§ 13-1604, 13-2406, 13-2904, 13-2907 to 13-2907.05, 13-2910, 13-2916, 13-3102 to 13-3104, 13-3513, 13-3555, 13-3558, 13-3613, 13-3619, 13-3623, 13-3704, or 46-215, or a violation of an offense listed in Title 28, Chapter 4 ~~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 an offense listed in Title 13, Chapters 12, 14, 15 except A.R.S. § 13-1509, Chapters 18, 20 through 23, 32, 34, or 34.1, 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, a violation of A.R.S. §§ 13-1604, 13-2406, 13-2904, 13-2907 to 13-2907.05, 13-2910, 13-2916, 13-3102 to

13-3104, 13-3513, 13-3555, 13-3558, 13-3613, 13-3619, 13-3623, 13-3704, or 46-215, or a violation of an offense listed in Title 28, Chapter 4; and

(B) [No Change]

(11) [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 an offense listed in Title 13, Chapters 12, 14, 15 except A.R.S. § 13-1509, Chapters 18, 20 through 23, 32, 34, or 34.1, 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, a violation of A.R.S. §§ 13-1604, 13-2406, 13-2904, 13-2907 to 13-2907.05, 13-2910, 13-2916, 13-3102 to 13-3104, 13-3513, 13-3555, 13-3558, 13-3613, 13-3619, 13-3623, 13-3704, or 46-215, or a violation of an offense listed in Title 28, Chapter 4; and

(2) [No Change]

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~~) between the hours
of ___ a.m./p.m. at any time prior to your court appearance date to be photographed and ten-print
fingerprinted. (Required for all offenses listed in Rule 3.2(b)(3).)

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)