

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

**ARIZONA SUPREME COURT**

In the matter of : )  
)  
PETITION TO AMEND RULE 7.5, ) Supreme Court No. R-15\_\_\_\_\_  
RULES OF CRIMINAL ) (Emergency or Expedited  
PROCEDURE ) Adoption Requested)  
\_\_\_\_\_)

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, Arizona Supreme Court, respectfully petitions this court to adopt the attached proposed rule amendment to the Rules of Criminal Procedure.

**I. Background and Purpose of the Proposed Rule Amendment**

In support of the Court’s new strategic agenda which includes improving and expanding the use of evidence-based practices to determine pretrial release conditions for low-risk offenders, the Administrative Office of the Courts reviewed existing Rules of Criminal Procedure related to release conditions for defendants while their case is pending.

Relevant to this petition, Rule 7.5 of the Rules of Criminal Procedure, as currently written, only allows for the issuance of a warrant or summons for

breaches of the conditions of release to be submitted upon verified petition by the prosecutor. With the implementation of evidence-based practices, eligible defendants will be released while pending trial under conditions that include supervision or monitoring by pretrial services. When breaches of these conditions are discovered, the pretrial service officers need the ability to provide the court with a report of the violations and, if necessary, request that the court issue a warrant or summons to bring the defendant before the court for a hearing to determine if the conditions should be revoked or modified. This is particularly important when the nature of the breach may pose a substantial danger to any person or the community.

The proposed amendment will allow a judge to timely issue a summons or a warrant when a pre-trial officer reports violation of conditions of release. This is particularly important when a case presents an immediate risk of flight or danger to any person or the community. Allowing the court to act upon a written report submitted by pre-trial services will provide improved efficiency in processing these cases, minimize the risk of flight, and improve public safety.

## **II. Contents of the Proposed Rule Amendment**

The proposed amendments to this rule seek to add the option of the judge issuing a warrant or summons on the written report from pretrial services staff to the existing option of issuing a warrant or summons on the petition of a prosecutor.

The proposed amendment will require that a copy of the report is provided to the prosecutor and served with the warrant or summons.

**III. Pre-Petition Distribution and Comment**

The proposed amendment was presented to the Presiding Judges and the Arizona Judicial Council at their December 2014 meetings and received unanimous support.

**IV. Effective Date of the Proposed New Rule**

We respectfully request emergency adoption of this rule.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

By \_\_\_\_\_  
David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington, Suite 411  
Phoenix, Arizona 85007

# Appendix A

## **Rule 7.5. Review of conditions; revocation of release**

**a. Issuance of warrant or summons on prosecutor petition.** Upon verified petition by the prosecutor stating facts or circumstances constituting a breach of the conditions of release, the court having jurisdiction over the defendant released may issue a warrant or summons under Rule 3.2, to secure the defendant's presence in court. A copy of the petition shall be served with the warrant or summons.

**b. Issuance of warrant or summons on written report.** Upon receiving a written report from pretrial services stating facts or circumstances constituting a breach of the conditions of release, the court having jurisdiction over the defendant may issue a warrant or summons under Rule 3.2, to secure the defendant's presence in court. A copy of the report shall be provided to the prosecutor and served with the warrant or summons.

**bc.Victim's right to petition for revocation of bond or modification of conditions of release.** After consultation with the prosecutor, and if the prosecutor decides not to file a petition pursuant to section (a) of this Rule, the victim may petition the court to revoke the bond or release on personal recognizance of the defendant, or otherwise modify the conditions of the defendant's release, based on the victim's notarized statement asserting that harassment, threats, physical violence or intimidation against the victim or the victim's immediate family by the defendant or on behalf of the defendant has occurred.

### **ed. Hearing; review of conditions; revocation.**

(1)*Modification of conditions of release.* If, after a hearing on the matters set forth in the petition or report, the court finds that the person released has wilfully violated the conditions of release, the court may impose different or additional conditions upon his or her release. However, if the defendant has violated the conditions of an appearance bond executed as a condition of release, the court shall determine conditions reasonably necessary to secure that person's appearance in the future. If the violation is not excused, the court shall not impose less restrictive conditions of release. If the court determines that an increase in the amount of a secured appearance bond is necessary, that security shall be in addition to any previously existing security.

(2)*Revocation of release.* The court may revoke release of a person charged with a felony if, after hearing, the court finds (A) that there is probable cause to believe that the person committed a felony during the period of release and that the proof is evident or the presumption great as to the present charge; or (B) that the person poses a substantial danger to any person or the community, that no

other conditions of release will reasonably assure the safety of the other person or the community, and that the proof is evident or the presumption great as to the present charge.

**de.Revocation of Release; DNA Testing.** The prosecutor may file a motion stating facts or circumstances constituting probable cause to believe that a defendant who has been ordered as a condition of release to provide a sample of buccal cells or other bodily substances for DNA testing pursuant to A.R.S. section 13-3967(F)(4) and provide proof of compliance has not complied with that order. At the defendant's next court appearance, the court shall proceed in accordance with the requirements of this rule and A.R.S. section 13-3967(F)(4).

**ef. 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.