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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

	)	
PETITION TO AMEND	)	
RULE 41 OF THE	)	Supreme Court No. R-15-_____
ARIZONA RULES OF	)	PETITION
CRIMINAL PROCEDURE	)	(Modified Comment Period
_____	)	Requested)

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts (AOC), respectfully petitions this Court to adopt the attached proposed amendment to Rule 41, Forms (Appendix), Forms 4(a) and 4(b) of the Rules of Criminal Procedure. The change is in response to recent amendments to A.R.S. §§ 22-601 and -602, made by HB 2457 (Laws 2014, Chapter 37).

Additionally, the Commission on Victims in the Courts voted in favor of a proposal adding a question to Form 4(b) to determine whether the Department of Child Safety is involved. AOC staff is also recommending two amendments, the first is to Form 4(a) to determine if the defendant was fingerprinted or provided DNA for

a qualifying offense. The second amendment is to Form 4(b), the defendant's release questionnaire, to determine if the defendant needs an interpreter. The text of the proposed amendments are set out in the accompanying Appendix A.

I. Background and Purpose of the Proposed Rule Amendments. House Bill 2457 was passed and signed into law in the Second Regular Session of the Fifty-first Legislature (Ch. 37)(2014). The bill's effective date was July 24, 2014.

HB 2457 expanded the types of county-wide specialty courts the superior court presiding judge could establish in the limited jurisdiction courts to include veterans and mental health courts in addition to the then current provision for homeless courts. The current Form 4(a) does not include an inquiry about the defendant's military service or homeless status. The inclusion of this information would better inform the court when determining eligibility for specialty courts or referral to social services in the community.

The inclusion of questions concerning the defendant's need for an interpreter furthers Goal One of the Supreme Court's Strategic Agenda to better serve the growing number of non-English speakers in the court system. The current Form 4(b) does not include an inquiry about the defendant's English proficiency or desire for an interpreter. This information will assist courts in scheduling interpreter services resulting in increased efficiency in calendaring court hearings while safeguarding the individual's constitution rights.

The inclusion of questions added to Form 4(a) concerning fingerprints and DNA samples enhances the court's ability to order the defendant, especially on initial appearance, to provide fingerprints in order to initiate criminal history or DNA samples as provided by law.

Finally, the question concerning involvement of the Department of Child Safety, suggested by the Commission on Victims in the Courts, is meant to inform the court of the Department's involvement in a case, and to allow the judge to investigate further, if it is deemed relevant to the charges.

II. Pre-Petition Comments. Petitioner circulated the proposal for pre-petition comments to law enforcement, the Arizona Prosecuting Attorneys Association, the Attorney General's Office and the Commission on Victims in the Courts.

III. Request for Modified Comment Period. Although petitioner has already received comments from some stakeholders, additional public comments may address items that this petition overlooks or otherwise improve the proposed amendments. Petitioner therefore requests that the Court allow a modified comment period to accommodate filing of an amended petition after an initial round of public comments. Petitioner suggests the following dates:

March 1, 2015: First round of comments due

April 1, 2015: Amended petition due

May 20, 2015: Second round of comments due

June 30, 2015: Reply due

Wherefore petitioner respectfully requests that the Supreme Court amend Forms 4(a) and 4(b) of Rule 41 as set forth in Appendix A.

RESPECTFULLY SUBMITTED this 12th day of January, 2015.

By/s/_____

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APPENDIX A

See next page

State of Arizona Plaintiff

-VS-

Defendant (FIRST, MI, LAST)

[CASE/COMPLAINT NO.]

Booking No. _____

**RELEASE
QUESTIONNAIRE**
(To be completed by
Law Enforcement)

Alias (es) _____

A. GENERAL INFORMATION

Charges: _____

Offense Date: _____ Offense Time: _____

Location: _____

Arrest Date: _____ Arrest Time: _____

Arrest Location: _____

Pursuant to A.R.S. §41-1750, were ten-print fingerprints taken of the arrested Person? ☐ Yes ☐ NoPursuant to §13-610 does one or more of the above charges require the arresting agency to secure a DNA sample from the arrested person? ☐ Yes ☐ NoIf yes, does the defendant have a valid DNA sample on file with AZDPS? ☐ Yes ☐ No ☐ [Unknown]If no, has the arresting agency taken the required sample? ☐ Yes ☐ No**B. PROBABLE CAUSE STATEMENT**

- Summarize and include the facts which establish **probable cause for the crime(s) charged**. Certain felonies may be non-bondable and require facts which establish **proof evident or presumption great** for the crime(s) charged. These include (1) felonies involving a capital offense, sexual assault, sexual conduct with a minor who was under fifteen years of age, or molestation of a child who is under fifteen years of age, (2) any class 1, 2, 3, or 4 felony or any violation of § 28-1383 if the person has entered or remained in the United States illegally, and (3) felony offenses committed when the person charged is already admitted to bail on a separate felony charge.

Explain the crime(s) in detail (e.g., arresting officer or other law enforcement officers witnessed offense, physical evidence directly connects defendant to offense, multiple eyewitnesses, defendant admissions, victim statements, nature of injuries, incriminating photographic, audio, visual, or computer evidence, defendant attempted to flee or resist arrest):

- The person entered or remained in the United States illegally. Explain in detail (e.g., admission of by the person, statements of co-defendants at the time of arrest, verification of illegal presence or proceeding establishes illegal presence): _____

- The crime(s) occurred while the person was admitted to bail on any separate felony. Provide information on the separate felony: _____

Defendant's Name _____ DOB _____ Booking No. _____ Case No. _____

C. OTHER INFORMATION (Check if applicable)

1. ☐ Defendant is presently on probation, parole or any other form of release involving other charges or convictions.

Explain: _____

2. List any prior:

Arrests: _____

Convictions: _____

Failures to Appear (FTA): _____

Protective Orders: _____

3. There is an indication of:

☐ Alcohol Abuse ☐ Other Substance Abuse

☐ Mental Health Issues ☐ Physical Illness

☐ Developmental Disability

Explain: _____

4. Defendant is employed by: _____

Address: _____

Phone: _____

How long: _____

5. Defendant resides at: _____

With Whom: _____

How Long: _____

Alternate address for court notification: _____

6. Facts to indicate defendant will flee if released: _____

7. Reasons to oppose an unsecured release: _____

8. ☐ Defendant speaks a language other than English
Language spoken: _____

☐ American Sign Language

☐ Defendant requested an interpreter

D. CIRCUMSTANCES OF THE OFFENSE

1. ☐ Defendant used firearm or other weapon

Type: _____

2. ☐ Defendant injured someone.

Explain: _____

3. ☐ Medical attention was necessary

Nature of injuries: _____

4. ☐ Defendant threatened someone

Nature of threats: _____

5. If property offense

a. Value of property taken/damaged: _____

b. ☐ Property was recovered

6. Names of co-defendant(s), if any: _____

E. CRIME(S) AGAINST PERSONS

1. Relationship of defendant to victim: _____

2. ☐ Victim(s) and defendant reside together.

3. Law enforcement learned of the situation by ☐ Victim

☐ Third Party ☐ Officer observation

4. ☐ Previous incidents involving these same parties

Explain: _____

5. Defendant is currently the subject of:

☐ Order of Protection

☐ Injunction against Harassment

☐ Other court order: _____

6. ☐ Likelihood of inappropriate contact with victim(s)

Explain: _____

7. ☐ Victim(s) expressed an opinion on defendant's release.

Explain: _____

Defendant's Name _____ DOB _____ Booking No. _____ Case No. _____

F. DOMESTIC VIOLENCE DEFENDANT ISSUES

- ☐ Access to or use of weapons
- ☐ Children/Vulnerable adults present
- ☐ Crime occurred in public
- ☐ Control/ownership/jealousy issues
- ☐ Depression
- ☐ Frequency/intensity of Domestic Violence increasing
- ☐ Kidnapping
- ☐ Potential for multiple violations of court orders
- ☐ Prior history of Domestic Violence
- ☐ Prior Protective Order
- ☐ Recent separations
- ☐ Stalking behavior
- ☐ Threats of homicide/suicide/bodily harm
- ☐ Violence against children, vulnerable adults or animals

Explain: _____

G. CIRCUMSTANCES OF ARREST

1. Did defendant attempt to:
☐ Avoid arrest ☐ Resist arrest ☐ Self Surrender
Explain: _____

2. ☐ Defendant was armed when arrested
Type of weapon: _____

3. ☐ Evidence of the offense was found in defendant's possession
Explain: _____

4. State whether defendant was under the influence of alcohol or drugs at the time of the offense
☐ Yes ☐ No ☐ Unknown
Type of substance: _____

H. DRUG OFFENSES

1. If the defendant is considered to be a drug dealer, state the supporting facts: _____

2. State quantities and types of illegal drugs directly involved with offense _____

- ☐ Methamphetamine was involved:
☐ Drug field test was positive
☐ Defendant admission of drug type: _____
☐ Approximate monetary value of drugs: _____
3. State whether money was seized
☐ Yes ☐ No
Amount: _____

I. ADDITIONAL INFORMATION

1. Military Service:

Has the defendant served in the military services of the United States?

☐ Yes ☐ No ☐ Unknown

2. Is the defendant homeless?

☐ Yes ☐ No ☐ Unknown

3. Is the Department of Child Safety involved in any matter relating to the defendant?

☐ Yes ☐ No ☐ Unknown

If this is a fugitive arrest, complete the affidavit as required by the Uniform Criminal Extradition Act (ARS 13-3841 et seq.)

I certify that the information presented is true to the best of my knowledge:

Date

Departmental Report #

Arresting Officer/Agency/ Serial No.
Duty Phone No. _____

COURT

County, Arizona

State of Arizona Plaintiff

-VS-

Defendant (FIRST, MI, LAST)

[CASE/COMPLAINT NO.]

Booking No. _____

**RELEASE
QUESTIONNAIRE**
(To be completed by
Defendant)

Alias(es) _____

The following information is for the purpose of determining the conditions under which you may be released at this time. You are not required to answer any question if you feel the answer might be harmful to you. The answers you give to the following questions will be used by the court for the purpose of determining the conditions of your release. However, your answers will be checked against the information supplied by the police, and with the references you yourself give on the form. Any discrepancies may result in higher bail or harsher conditions of release. **Any information you give may be used against you in this or any other matter.**

General Background**1. Background and Residence**

Full Name: _____

Sex _____ Race _____ Date of Birth _____

Place of Birth [city, state, country] _____

Present Citizenship _____

If you are not a United States of America citizen, how long have you been in this country? _____

Do you need the court to provide an interpreter to help you communicate and to understand what is being said? ☐ Yes ☐ No

If so, what language are you most comfortable speaking?

☐ Spanish ☐ American Sign Language ☐ Other language : _____

Present Address _____

How long have you lived at the above address? _____

Telephone No. () _____ Cell No. () _____

Where else have you lived in the past year and for how long?

Where will you go if released today? _____

2. Family

Are you married/partnered If so, are you living with your spouse/partner? ☐ Yes ☐ No

Are you living with someone? Relationship: _____

How many other persons (including your children) are living with you? _____

How much do you contribute to their support? _____

Do you have regular contact with any other relatives? ☐ Yes ☐ No

Explain _____

3. Employment

Are you presently employed? ☐ Yes ☐ No If not, what is your principal means of support?

Explain: _____

Employer's Name _____

Address: _____

Telephone No. (____) _____

What is the nature of your job? _____

How long have you worked there? _____

4. Criminal Record

Do you have any previous criminal record? ☐ Yes ☐ No

Explain _____

5. Record of Appearance

Have you ever been released on bail or other conditions pending trial? ☐ Yes ☐ No

Did you ever fail to appear as required? ☐ Yes ☐ No

Explain _____

6. Supervision

Is there any organization or any person who might agree to supervise you and be responsible for your return to court as required? [] Yes [] No

Organization or person to contact _____

()
Address City State Zip Telephone

7. Other Circumstances

Are there any other matters (such as your health or illness in your family) which you feel the court should consider in making its decision? _____

8. Verification

Is there any other friend, relative, neighbor or other person who can be called as a reference to this information?

()
Name Address City State Zip Telephone

()
Name Address City State Zip Telephone

()
Name Address City State Zip Telephone

I certify, under penalty of perjury, that the information presented is true and correct to the best of my knowledge.

Date

Defendant Signature
Contact Telephone No. _____