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7 **IN THE SUPREME COURT**
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULE 7.5,**
11 **RULES OF CRIMINAL**
12 **PROCEDURE**

Supreme Court No. R-15-0026

COMMENT OF THE
ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL IN SUPPORT

13 The Administrative Office of the Courts ("A.O.C.") has filed a petition to
14 amend Rule 41, Forms (Appendix), Forms 4(a) and 4(b) of the Rules of Criminal
15 Procedure. Because the proposed amendments would streamline and enhance the
16 information available to all courts in determining appropriate release conditions for
17 criminal defendants, the Arizona Prosecuting Attorneys' Advisory Council
18 ("APAAC") supports the petition with a proposed modification.

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21 **I. BACKGROUND OF PETITION**

22 The A.O.C. has proposed amendments to Rule 41, Rules of Criminal
23 Procedure, Form 4(a) (Release Questionnaire/Law Enforcement) and Form 4(b)
24 (Release Questionnaire/Defendant). These amendments respond to recent changes
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1 in A.R.S. §§ 22-601 and -602, which authorize the establishment of homeless,
2 veterans and mental health courts in the limited jurisdiction courts of Arizona.
3 Under the proposal, Form 4(a) would be amended to include questions about the
4 criminal defendant's homeless status and military service. In addition, the A.O.C.
5 has proposed that Form 4(a) provide three other things: an inquiry about the
6 defendant's involvement in any Department of Child Safety ("DCS") matter,
7 information on whether the defendant's fingerprints have been taken, and
8 information, where applicable, on whether a valid DNA sample has been taken
9 from the defendant. Under the A.O.C. proposal, Form 4(b) would be amended to
10 include an inquiry about a defendant's court interpreter needs. APAAC supports
11 the petition to amend Forms 4(a) and 4(b) but suggests that the inclusion of the
12 additional questions concerning homeless, veterans and DCS status be moved from
13 Form 4(a) to Form 4(b), thereby shifting the burden of providing such information
14 from the law enforcement officer to the defendant.
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19 **II. DISCUSSION/ANALYSIS**

20 Form 4 is a release questionnaire that provides the court and parties with
21 crucial information related to the crime(s) charged, the circumstances of the
22 incident and the defendant. It is used to provide probable cause to the court and to
23 assist in determining appropriate release conditions for a defendant. Over the
24 years, the Form 4 has undergone several iterations and is currently the subject of
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1 another petition pending before the Supreme Court (No. R-14-0030).

2 In 2014, House Bill 2457 became law. That law provides for the
3 establishment of homeless, veterans and mental health courts in any county justice
4 court or municipal court. It also allows a justice of the peace or municipal court
5 judge to refer a criminal case to one of those established courts with notice to the
6 prosecutor. A.R.S. §§ 22-601, -602. Providing information to a court concerning a
7 defendant's military service or homeless status through the Form 4 is consistent
8 with the new law and furthers its purpose. APAAC generally supports the
9 inclusion of this information in the Form 4 but suggests it be included not in the
10 Form 4(a), as proposed by the A.O.C., but rather in the Form 4(b), because that
11 information would not be in the purview of law enforcement to know and would
12 more accurately be provided directly to the court by the defendant himself.
13 APAAC also suggests that any questions about the defendant's involvement with
14 DCS would be better left to the defendant to answer in the Form 4(b).

15 The Arizona Supreme Court's new strategic agenda has as one of its goals to
16 "[d]evelop strategies for increasing the availability and quality of court interpreters
17 and interpreter services[.]" *Advancing Justice Together: Courts and Communities,*
18 *2014 – 2019, Goal 1: Promoting Access to Justice.* With that goal in mind the
19 A.O.C. has proposed adding a question to Form 4(b) allowing a defendant to state
20 whether they "need the court to provide an interpreter to help you communicate
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1 and to understand what is being said”. APAAC supports the inclusion of this
2 question in the Form 4(b). That is consistent with and furthers the Supreme
3 Court’s strategic agenda and promotes increased court efficiency by preventing
4 delays caused by later discovery of a defendant’s interpretation needs.
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6 Finally, A.R.S. § 41-1750(C) requires courts, as criminal justice agencies of
7 the state or its political subdivisions, to provide to the Department of Public Safety
8 “central state repository” fingerprint information for all persons charged with,
9 arrested for, convicted of, or summoned to the court as criminal defendants for any
10 felony, domestic violence, sexual, or driving under the influence offenses. In turn,
11 A.R.S. § 13-610 requires on certain offenses the securing of a blood or bodily
12 substance sample for deoxyribonucleic acid (DNA) testing. Asking law
13 enforcement in the Form 4(a) to provide information on whether fingerprints or a
14 DNA sample was taken of the arrested person is consistent with these statutes and
15 promotes efficiency in both the law enforcement and court processes. APAAC
16 supports the inclusion of these questions in the Form 4(a).
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20 **III. CONCLUSION**

21 APAAC respectfully requests that the Arizona Supreme Court adopt the
22 amendments to Form 4(a) and 4(b) recommended by the A.O.C. in petition R-15-
23 0026 with the suggested modification of moving those inquiries concerning
24 homeless, veterans and DCS status from Form 4(a) to Form 4(b). The inquires
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1 suggested by the A.O.C. in its petition will enhance the information available to a
2 court, assist the court in making appropriate release decisions, improve court and
3 law enforcement efficiencies, and promote the goals of the Supreme Court's
4 strategic agenda.
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6 RESPECTFULLY SUBMITTED this 27th day of April, 2015.
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9 Executive Director, Arizona Prosecuting
10 Attorneys' Advisory Council

11 By: 
12 ELIZABETH ORTIZ

13 Electronic copy filed with the
14 Clerk of the Arizona Supreme Court
15 this 27th day of April, 2015:

16 By: 
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