

- (C) the history and characteristics of the defendant, including the defendant's character, physical and mental condition, past conduct including membership in a criminal street gang, history relating to drug or alcohol abuse, and criminal history;
- (D) the nature and seriousness of the danger to the victim, any other person, or the community that would be posed by releasing the defendant on bail, including any threat to a victim or other participants in the judicial process;
- (E) the recommendation of the pretrial services program based on an appropriate risk assessment instrument;
- (F) any victim statement about the offense and release on bail; and
- (G) any other factor relevant to the determination required under (b)(2)(B) and (b)(2)(C).

**(4) *Bail Eligibility Hearing.***

- (A) **Generally.** The superior court must hold a hearing to determine whether a defendant held in custody under Rule 4.2(a)(8) is not eligible for bail as required under (b)(1) or (b)(2), unless the defendant waives this hearing. **A victim has the right to notice of the hearing and the right to be heard regarding any conditions of release.**
- (B) **Timing.** If the State makes an oral motion under A.R.S. § 13-3961(E), the court must hold this hearing within 24 hours of the initial appearance, subject to continuances as provided in A.R.S. § 13-3961. If this motion is not made, the hearing must be held as soon as practicable, but no later than 7 days after the initial appearance unless the detained defendant moves for a continuance.
- (C) **Determination of Probable Cause and Release Conditions.** If the court does not find the proof evident or the presumption great under (b)(1) or (b)(2)(A), the court must determine whether there is probable cause to believe that an offense was committed and that the defendant committed it. If the court finds probable cause, the court must determine release conditions under (a). If the court does not find probable cause, the defendant must be released from custody. The parties may stipulate before the bail eligibility hearing that the probable cause determination at the hearing satisfies the requirements of Rule 5. If the parties so stipulate and the court does not find probable cause, the court must dismiss the complaint and discharge the defendant. If the parties have not so stipulated, the court must schedule a preliminary hearing as provided in Rule 5.1(a).
- (D) **Findings on the Record.** The court's findings must be on the record.

**(c) After Conviction.**

**(1) Superior Court.**

**(A) Before Sentencing.** After a defendant is convicted of an offense for which the person will, in all reasonable probability, receive a sentence of imprisonment, the court may not release the person on bail or on the person's own recognizance unless:

(i) the court finds that reasonable grounds exist to believe that the conviction may be set aside on a motion for new trial, judgment of acquittal, or other post-trial motion; or

(ii) the parties stipulate otherwise and the court approves the stipulation.

**(B) After a Sentencing Involving Imprisonment.** If a defendant is convicted of a felony offense and is sentenced to prison, the court may not release the defendant on bail or on the defendant's own recognizance pending appeal unless the court, **after considering the views of the victim**, finds the defendant is in such physical condition that continued confinement would endanger the defendant's life.

**(C) Protecting Safety.** In determining release conditions if the defendant is released under (c)(1)(A) or (B), the court must impose conditions that will protect the victim, any other person, and the community from risk of harm by the defendant.

**(D) After Sentence, Pending Appeal.** If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

**(E) Release upon Sentence Completion.** A defendant held in custody pending appeal must be released if the term of incarceration is completed before the appeal is decided.

**(2) Limited Jurisdiction Courts.**

**(A) Conditions of Release on Appeal.** If a defendant files a timely notice of appeal of a conviction for an offense for which the court has imposed a sentence of incarceration, the defendant may remain out of custody under the same conditions of release imposed at or after the defendant's initial appearance or arraignment.

**(B) Lack of Diligence on Appeal.** If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

**(C) Motion to Amend Conditions of Release.**

(i) Upon the filing of a timely notice of appeal, the court—on motion or on its own may amend the conditions of release if it finds a substantial risk exists that the

defendant presents a danger to the victim, another person or the community, or the defendant is unlikely to return to court if required to do so after the appeal concludes.

(ii) The court must hear a motion under this rule no later than 3 days after filing, although it may continue the hearing for good cause. The defendant may be detained pending the hearing. The hearing must be on the record, and the defendant is entitled to representation by counsel. Any testimony by the defendant is not admissible in another proceeding except as it relates to compliance with prior conditions of release, perjury, or impeachment. The court must state its findings on the record.

(iii) The court may amend the conditions of release in accordance with the standards set forth in Rule 7.3 and Rule 7.4(b). In determining the method of release or the amount of bail, the court must consider the nature and circumstances of the offense, family or local ties, employment, financial resources, the defendant's character and mental condition, the length of residence in the community, the record of arrests or convictions, the risk of harm to the victim, other persons, or the community, and appearances at prior court proceedings.

(D) *Release upon Sentence Completion.* A defendant held in custody pending appeal must be released if the defendant's term of incarceration is completed before the appeal is decided.

(E) *Superior Court Review.* If the trial court enters an order setting a bond or requiring incarceration during the appeal, the defendant may petition the superior court to stay the execution of sentence and to allow the defendant's release either without bond or on a reduced bond.

(d) **Burden of Proof.** A court must determine issues under (a) and (c) by a preponderance of the evidence. The State bears the burden of establishing factual issues under (a), (b) and (c)(2). The defendant bears the burden of establishing factual issues under (c)(1).

### **Rule 7.3. Conditions of Release**

(a) **Mandatory Conditions.** Every order of release must contain the following conditions:

(1) the defendant must appear at all court proceedings;

(2) the defendant must not commit any criminal offense;

(3) the defendant must not leave Arizona without the court's permission; **and**

**(4) the defendant must not contact the victim, unless the court clearly finds good cause to conclude the victim's safety would be protected without a no- contact**

**order; and**

**(4)-(5)** if a defendant is released during an appeal after judgment and sentence, the defendant will diligently pursue the appeal.

**(b) Mandatory Condition if Charged with an Offense Listed in A.R.S. § 13- 610(O)(3).**

**(1) Generally.** If a defendant is charged with an offense listed in A.R.S. § 13- 610(O)(3) and has been summoned to appear in court, the magistrate must order the defendant to report to the arresting law enforcement agency or its designee no later than 5 days after release, and submit a sample of buccal cells or other bodily substances for DNA testing as directed. The defendant must provide proof of compliance at the next scheduled court proceeding.

**(2) Required Notice.** The court must inform a defendant that a willful failure to comply with an order under (b)(1) will result in revocation of release.

**(c) Additional Conditions.** ~~The court must order the defendant not to contact a victim if such an order is reasonable and necessary to protect a victim from physical harm, harassment, intimidation, or abuse.~~ The court **also** may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to secure the defendant's appearance or to protect another person or the community from risk of harm by the defendant. In making determinations under this rule, the court must consider, if provided, the results of a risk assessment approved by the Supreme Court and a law enforcement's lethality assessment.

**(1) Non-Monetary Conditions.** A court may impose the following non-monetary conditions:

**(A)** placing the defendant in the custody of a designated person or organization that agrees to provide supervision;

**(B)** restricting the defendant's travel, associations, or residence;

**(C)** prohibiting the defendant from possessing any dangerous weapon;

**(D)** engaging in certain described activities, or consuming intoxicating liquors or any controlled substance that is not properly prescribed;

**(E)** requiring the defendant to report regularly to and remain under the supervision of an officer of the court;

**(F)** returning the defendant to custody after specified hours; or

(G) imposing any other non-monetary condition that is reasonably related to securing the defendant's appearance or protecting others or the community from risk of harm by the defendant.

**(2) Monetary Conditions.**

(A) **Generally.** A court's imposition of a monetary condition of release must be based on an individualized determination of the defendant's risk of non-appearance, risk of harm to **the victim, or to** others or the community, and the defendant's financial circumstances. The court may not rely on a schedule or charge-based bond amounts, and it must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the defendant is unable to pay the imposed monetary condition.

(B) **Least Onerous Alternative.** If the court determines a monetary condition is necessary, it must impose the least onerous type of condition in the lowest amount necessary to secure the defendant's appearance or protect **the victim, or other** persons or the community from risk of harm by the defendant.

(C) **Types of Conditions.** The types of monetary conditions a court may impose include the following:

- (i) an unsecured appearance bond;
- (ii) a deposit bond;
- (iii) another type of secured bond; and
- (iv) a cash bond.

**Rule 7.4. Procedure**

(a) **Initial Appearance.** At an initial appearance, the court must determine bail eligibility and the conditions for release. If the court decides that the defendant is eligible for release, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

**(b) Bail Eligibility Hearing.**

(1) **Right to Secure Witnesses, Cross-Examine, and Review Witness Statements.** At a bail eligibility hearing, each party has the right to secure the attendance of witnesses, cross-examine any witness who testifies, and to review any previous written statement

by the witness before cross-examination.

**(2) *Victims.*** ~~Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g).~~ A victim must be given notice of a bail eligibility hearing and the victim has the right to be present and be heard by the court before the court modifies release conditions. If a victim objects to being called as a witness in a bail eligibility hearing, the court must require the party wishing to present the victim's testimony to make an offer of proof and the court may require a victim to testify only if the court finds that the evidence in the offer of proof would likely impact the court's decision on the matters under consideration at the hearing. If the opposing party stipulates to the information in the offer of proof, the victim will not be required to testify.

**(3) *Admissibility.*** Evidence is admissible at the hearing only if it is material to whether, and under what conditions, to release the defendant on bail and, subject to the parties' stipulation under Rule 7.2(b)(4)(C), whether probable cause exists to hold the defendant for trial on each charge. Rules or objections calling for the exclusion of evidence are inapplicable at a bail eligibility hearing.

**(c) Later Review of Conditions.**

**(1) *Generally.*** On motion or on its own, a court may reexamine bail eligibility or the conditions of release if the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

**(2) *Motion Requirements and Hearing.*** The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. ~~A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.~~ A victim has the right to notice of and the right to be heard at any hearing regarding any motion to modify release conditions.

**(3) *Eligibility for Bail.*** If the motion is by the State and involves a defendant previously held eligible for bail at the initial appearance, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

**(d) *Evidence.*** A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

**(e) *Defendant's Bail Status.*** If the court makes the findings required under Rule 7.2(b)(1) or (b)(2) to deny bail, the court must order the defendant held without bail until further order. If not, the court must order the defendant released on bail under Rule 7.2(a).

**(f) Review of Conditions of Release for Misdemeanors.** No later than 10 days after arraignment, the court must determine whether to amend the conditions of release for any defendant held in custody on bond for a misdemeanor.

**(g) Appointment of Counsel.** The court must appoint counsel in any case in which the defendant is eligible for the appointment of counsel under Rule 6.1(b).

#### **Rule 7.5. Review of Conditions; Revocation of Release**

**(a) On State's Petition.** If the State files a verified petition stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the petition. A copy of the petition must be provided with the summons, warrant, or notice.

**(b) On Pretrial Services' Report.** If pretrial services submits a written report to the court stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the report. A copy of the report must be provided to the State and provided with the summons, warrant, or notice.

**(c) On Victim's Petition.** If the prosecutor decides not to file a petition under (a), the victim may petition the court to revoke the defendant's bond or own recognizance release, or otherwise modify the conditions of the defendant's release. Before filing a petition, the victim must consult with the prosecutor about the requested relief. The petition must include a statement under oath by the victim asserting any harassment, threats, physical violence, **abuse**, or intimidation by the defendant, or on the defendant's behalf, against the victim or the victim's immediate family.

#### **(d) Hearing; Modification of Conditions; Revocation.**

**(1) Modification of Conditions of Release.** After a hearing on the matters set forth in the petition or report, the court may impose different or additional conditions of release if it finds that the defendant has willfully violated the conditions of release.

**(2) Revocation of Release on a Felony Offense.** The court may revoke release of a person charged with a felony if, after a hearing, the court finds that the proof is evident or presumption great as to the present charge and:

**(A)** probable cause exists to believe that the person committed another felony during the period of release; or

**(B)** the person poses a substantial danger to **the victim**, another person or the

community, and no other conditions of release will reasonably assure the safety of the **victim**, other person or the community.

**(e) Revocation of Release: DNA Testing.** The State may file a motion asking the court to revoke a defendant's release for failing to comply with the court's order to provide a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-3967(F)(4) and to provide proof of compliance. The motion must state facts establishing probable cause to believe that the defendant has not complied with the order. At the defendant's next court appearance, the court must proceed in accordance with this rule's requirements and A.R.S. § 13-3967(F)(4).

**(f) Revocation of Release: 10-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 may remand the defendant into custody for 10-print fingerprinting. If otherwise eligible for release, the defendant must be released from custody after being 10-print fingerprinted.

#### **Rule 7.6. Transfer and Disposition of Bond**

**(a) Transfer upon Supervening Indictment.** An appearance bond or release order issued following the filing of a felony complaint in justice court will automatically be transferred to a criminal case in superior court after an indictment is filed that alleges the same charges.

**(b) Filing and Custody of Appearance Bonds and Security.** A defendant must file an appearance bond and security, if ordered, with the clerk of the court in which a case is pending or the court in which the initial appearance is held. If the case is transferred to another court, the transferring court also must transfer any appearance bond and security.

#### **(c) Forfeiture Procedure.**

**(1) Arrest Warrant and Notice to Surety.** If the court is informed that the defendant has violated a condition of an appearance bond, it may issue a warrant for the defendant's arrest. No later than 10 days after the warrant's issuance, the court must notify the surety, in writing or electronically, that the warrant was issued.

**(2) Hearing and Notice.** After issuing the arrest warrant, the court must set a hearing within a reasonable time, no later than 120 days after it issued the warrant, requiring the parties and any surety to show cause why the bond should not be forfeited. The court must notify the parties **and, if requested, the victim**, and any surety of the hearing in writing or electronically. The forfeiture hearing may be combined with a Rule 7.5(d) hearing.

**(3) Forfeiture.** If the court finds that the violation is not excused, it may enter an order forfeiting all or part of the bond amount, and the State may enforce that order as a civil judgment. The order must comply with Arizona Rule of Civil Procedure 58(a).

**(d) Exoneration.**

**(1) Generally.** If the court finds before a violation that there is no further need for an appearance bond, it must exonerate the bond and order the return of any security.

**(2) Amount Returned.** When a deposit bond or cash bond is exonerated, the court must order the return of the entire amount deposited unless forfeited under Rule 7.6(c)(3) or the bond depositor authorizes it be applied to a financial obligation.

**(3) If the Defendant Is Surrendered, In-Custody, or Transferred.** The court must exonerate the bond if:

**(A)** the surety surrenders the defendant to the sheriff of the county in which the prosecution is pending, and:

**(i)** the surrender is on or before the day and time the defendant is ordered to appear in court; and

**(ii)** the sheriff informs the court of the defendant's surrender;

**(B)** the defendant is in the custody of the sheriff of the county in which the prosecution is pending on or before the day and time the defendant is ordered to appear in court under the following conditions:

**(i)** the surety provides the sheriff with an affidavit of surrender of the appearance bond; and

**(ii)** the sheriff reports the defendant is in custody and that the surety has provided an affidavit of surrender of the appearance bond; or

**(C)** before the defendant was released to the custody of the surety, the defendant was released or transferred to the custody of another government agency, preventing the defendant from appearing in court on the scheduled court date and the surety establishes:

**(i)** the surety did not know and could not have reasonably known of the release or transfer or that a release or transfer was likely to occur; and

**(ii)** the defendant's failure to appear was a direct result of the release or transfer.

**(4) Conditions When Not Required to Exonerate Bond.** The court is not required to

exonerate the bond under (d)(2)(C) if a detainer was placed on the defendant before the bond was posted or the release or transfer to another government agency was for 24 hours or less.

(5) *Other Circumstances.* In all other instances, the decision whether or not to exonerate a bond is within the discretion of the court.

(6) *Post-Forfeiture Notice.* After filing an order of forfeiture, the court must provide:

(A) a copy of the order to the State, the defendant, the defendant's attorney, and the surety; and

(B) a copy of a signed order to the county attorney for collection.

### **Rule 8.1. Priorities in Scheduling Criminal Cases**

(a) **Priority of Criminal Trials.** A trial of a criminal case has priority over a trial of a civil case.

(b) **Preferences.** The trial of a defendant in custody, and the trial of a defendant whose pretrial liberty may present unusual risks, have preference over other criminal cases.

(c) **Duty of the Prosecutor.** The prosecutor must advise the court of facts relevant to the priority of cases for trial.

(d) **Duty of Defense Counsel.** Defense counsel must advise the court of an impending expiration of time limits. A court may sanction counsel for failing to do so, and should consider a failure to timely notify the court of an expiring time limit in determining whether to dismiss an action with prejudice under Rule 8.6.

(e) **Suspension of Rule 8.** No later than 25 days after a superior court arraignment, either party may move for a hearing to establish extraordinary circumstances requiring a suspension of Rule 8. No later than 5 days after the motion is filed, the court must hold a hearing on the motion, **permit the victim to be heard, and, after considering the victim's right to a speedy trial,** make findings of fact about whether extraordinary circumstances exist that justify the suspension of Rule 8. If the trial court finds that Rule 8 should be suspended, the court must immediately transmit its findings to the Supreme Court Chief Justice. If the Chief Justice approves the findings, the trial court may suspend Rule 8's provisions and reset the trial for a later specified date.

### **Rule 8.2. Time Limits**

(a) **Generally.** Subject to Rule 8.4, the court must try every defendant against whom an indictment, information, or complaint is filed within the following times: