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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 28,)
RULES OF PROCEDURE FOR) Supreme Court No. R-08_____
THE JUVENILE COURT; AND)
TO AMEND RULE 7.3, ARIZONA)
RULES OF CRIMINAL PROCEDURE)
_____)

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendment to Rule 28, Rules of Procedure for the Juvenile Court; as well as the attached proposed amendment to Rule 7.3, Arizona Rules of Criminal Procedure. These rules allow for court orders that juveniles or adults summoned to court, and who are charged with specified offenses, report to the arresting agency and submit biological samples for DNA testing.

I. Background and Purpose of the Proposed New Rule. Senate Bill 1332 was passed in the Second Regular Session of the Forty-eighth Legislature (2008). The bill's effective date is September 26, 2008.

SB 1332 added ARS section 8-238, and amended ARS sections 13-610 and 13-3967. These new laws have similar subject matters.

ARS section 8-238 concerns a juvenile who is arrested for specified offenses, and who thereafter is summoned to an advisory hearing. The judicial officer at the advisory hearing is required to enter an order that the juvenile report to the arresting agency and provide to the arresting agency a sample of bodily substances for DNA testing.

ARS sections 13-610 and 13-3967 are the correlative sections for adults. These sections require that the court enter an order that persons who are charged with specified offenses, and who are summoned into court, report to the arresting agency and provide bodily substances for DNA testing.

This legislation also requires the court to revoke the person's release should the court determine that there has been non-compliance with the court's order.

II. Contents of the Proposed New Rules. The proposed new rules amend existing rules in the Rules of Procedure for the Juvenile Court and in the Arizona Rules of Criminal Procedure.

Rule 28 of the Rules of Juvenile Procedure concerns the advisory hearing. The proposed additional language in paragraph 8 would require the judicial officer at the advisory hearing to order as a condition of release that the juvenile charged with specified offenses report to the arresting agency and submit bodily substances for DNA testing, and would require the judicial officer to advise the juvenile of the consequence of non-compliance with the order. The court is required to provide a copy of the order to the juvenile. The court is also required to provide copies of the order to the law enforcement agency and to the prosecuting agency, to enable them to proceed under Rule 23 (F) to enforce this condition of release.

Rule 7.3 of the Arizona Rules of Criminal Procedure concerns conditions of release. The proposed new rule would add a subsection C to the existing Rule 7.3. The proposed amendment to Rule 7.3 would require that a defendant who is charged with specified offenses and who is summoned to appear in court, be ordered, as a condition of release, to report to the arresting agency and to submit biological samples for DNA testing. The proposed amendment would require the judicial officer to advise the defendant of the consequence of non-compliance with the order. The court is required to provide a copy of the order to the defendant. The court is also required to provide copies of the order to the law enforcement agency and to the prosecuting agency, to enable them to proceed under Rule 7.5 to enforce this condition of release.

III. Pre-petition Comments. Petitioner transmitted a draft of this petition and proposed rule electronically on July 21, 2008, to the following individuals and entities: Committee on the Superior Court, Committee on Limited Jurisdiction Courts, Superior Court Administrators, Superior Court Clerks, Limited Jurisdiction Court Administrators Association, Arizona Prosecuting Attorneys' Advisory Council (Ed Cook and Denise Helm), Arizona Public Defenders Association (Dana Hlavac and James Haas), and the State Bar of Arizona (Robert Van Wyk).

A comment was received on July 29, 2008, from Phil J. MacDonnell, Chief Deputy, Maricopa County Attorney's Office. This comment proposed that juvenile and adult defendants submit to the court written proof of their compliance with the court's order; that if the proof of compliance was not submitted, the judicial officer set an expedited hearing to determine if that person was in violation of the court's order; and that if the person did not appear for the expedited hearing, a warrant be issued for the person's arrest. This comment's recommendations were not incorporated as requested, inasmuch as the sanction provided by the subject legislation is revocation of release, and existing rules for juveniles and adults already provide procedures for revocation of release, including the filing of a petition to revoke the person's release, and a hearing on that petition.

IV. Proposed Post-petition Public Comment Period. Petitioner respectfully recommends a public comment period for the proposed rules ending May 20, 2009.

IV. Effective Date of the Proposed New Rules. Petitioner requests expedited adoption of the proposed new rules under Rule 28(g) of the Rules of the Supreme Court. The underlying statutes become effective on September 26, 2008, and the proposed rules should be implemented without awaiting the one year rule processing cycle. Petitioner respectfully requests that the proposed new rules be made effective on and after September 26, 2008.

RESPECTFULLY SUBMITTED this 1st day of August 2008:

By _____
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Phoenix, Arizona

PROPOSED AMENDMENT TO RULE 28, RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 28, Advisory Hearing.

A. Purpose. [No change.]

B. Time limits. [No change.]

C. Procedure. At the advisory hearing the court shall:

1 through 7. [No change.]

8. Set conditions of release, if any, and advise the juvenile that any violation of the terms and conditions of release may result in the issuance of a warrant for the arrest and detention of the juvenile. **If the juvenile has been arrested for an offense described in ARS section 8-238 (including any homicide, designated sexual offenses, burglary in the first or second degree, or a violation of any serious offense identified in ARS section 13-604 involving a deadly weapon, dangerous instrument, or intentional or knowing infliction of bodily injury) and the juvenile was not detained, the judicial officer shall order as a condition of release that the juvenile report within five days to the law enforcement agency which arrested the juvenile, or to the agency's designee, and submit a sufficient sample of buccal cells or other bodily substances for DNA testing and extraction. The Court shall provide a copy of this order to the juvenile, to the law enforcement agency, and to the prosecuting agency. The judicial officer shall advise the juvenile that failure to comply with this order may result in arrest and detention for violation of a condition of release, as provided in Rule 23F.**

9. [No change.]

D. Findings and orders. [No change.]

E. Disposition. [No change.]

PROPOSED AMENDMENT TO RULE 7.3, ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 7.3, Conditions of Release.

a. Mandatory Conditions. [No change.]

b. Additional conditions. [No change.]

c. Conditions regarding bodily substance samples. Any person charged with an offense described in ARS section 13-610(O)(3), and who is summoned to appear in court, shall be ordered as a condition of release to report within five days after release to the arresting law enforcement agency or its designee and to submit biological substances for DNA testing as directed. The Court shall provide a copy of this order to the defendant, to the law enforcement agency, and to the prosecuting agency. The judicial officer shall advise the person that failure to comply with this order may result in arrest and confinement for violation of a condition of release, as provided in Rule 7.5.