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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND)	Supreme Court No. R-08-0019
RULES 23 AND 28, RULES OF)	
PROCEDURE FOR THE JUVENILE)	Amended Petition
COURT; AND TO AMEND RULES 7.3)	
AND 7.5, ARIZONA RULES OF)	
CRIMINAL PROCEDURE)	
_____)	

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, respectfully files this amended petition to adopt the attached proposed amendments to Rules 23 and 28, Rules of Procedure for the Juvenile Court; as well as the attached proposed amendments to Rules 7.3 and 7.5, Arizona Rules of Criminal Procedure. These rules provide 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. These proposed amendments replace the rule amendments previously submitted in this matter.

I. Background and Purpose of the Proposed Amended Petition. One of the issues that was considered prior to filing the original petition, and which has been reconsidered since filing that original petition, was establishing a mechanism for monitoring non-compliance with the court's order. Another change was to mandate that a summons or warrant be issued where probable cause is shown that the defendant did not comply with the order.

II. Contents of the Amended, Proposed New Rules. A pre-petition comment received from the Maricopa County Attorney proposed, among other things, that juvenile and adult defendants submit to the court written proof of their compliance with the court's order; and 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.

The petition that was filed with this Court on July 31, 2008, provided that the court send copies of the order to the law enforcement agency and to the prosecuting agency, to enable them to proceed under Rule 23F of the Juvenile Rules, and under 7.5 of the Criminal Rules, to enforce this condition of release. The expectation was that sending a copy of the order would enable the police and

prosecuting agencies to establish a process to monitor and enforce compliance with the court's order.

Because the time between the enactment of this legislation and the filing of the rule petition was only a period of weeks, the pre-petition opportunity to receive feedback was brief. Since filing the petition, additional comments have been received which warrant the filing of this amended petition with proposed amended rules. Specifically:

1. The proposed amended rules eliminate the unnecessary requirement that the court send a copy of its orders to the arresting law enforcement agency and the prosecuting agency. The prosecutor, when filing the complaint, makes the request that the defendant be summoned into court. The prosecutor will know at that time, from the nature of the charge, when the defendant will be ordered to submit to DNA testing. Consequently, prosecutors and law enforcement will be able to establish a system to enforce compliance with DNA testing without receiving a copy of the court order from the court.

2. The proposed amended rules more effectively implement the statute by requiring the court to issue an arrest warrant or summons, rather than leaving it optional, where there is probable cause that the defendant failed to comply with the DNA testing order.

III. Pre-petition Comments. Petitioner transmitted a draft of this amended petition and proposed amended rules electronically on August 15, 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), Maricopa County Attorney (through Phil MacDonnell), Arizona Public Defenders Association (Dana Hlavac and James Haas), the Arizona Attorneys for Criminal Justice (James Belanger), the Arizona Association of Chiefs of Police (John Thomas), and the State Bar of Arizona (Robert Van Wyk).

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. Accordingly, Petitioner respectfully requests that the proposed new rules be made effective on and after September 26, 2008, with a comment period to follow.

RESPECTFULLY SUBMITTED this 15th day of August 2008:

By /S/ _____
David K. Byers, Director
Administrative Office of the Courts
1501 W. Washington
Phoenix, Arizona

**PROPOSED AMENDMENTS TO RULES 23 AND 28, RULES OF
PROCEDURE FOR THE JUVENILE COURT**

Rule 23. Detention and Probable Cause Hearing.

A. Report to Court. [No change.]

B. Admission to Detention. [No change.]

C. Length of Detention. [No change.]

D. Detention Hearing. [No change.]

E. Release from Detention. [No change.]

F. Violation of Conditions of Release. [No change.]

G. Revocation of Release; DNA Testing. Upon a verified petition by a juvenile probation officer supervising the juvenile, or by the prosecutor, stating facts or circumstances constituting probable cause to believe that a juvenile who has been ordered as a condition of release to provide a DNA sample pursuant to A.R.S. section 8-238 has not complied with that order, the court having jurisdiction over the juvenile shall issue a warrant or summons to secure the juvenile's presence in court. The court shall proceed in accordance with the requirements of this rule and A.R.S. section 8-238.

G. H. Release to County Jail. [No change.]

H. I. Review of Detention. [No change.]

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 listed in A.R.S. section 8-238 and the juvenile has been summoned to appear at an advisory hearing, the judicial officer shall order as a condition of release that the juvenile report within five days to the law enforcement agency that arrested the juvenile, or to the agency's designee, and submit to DNA testing. 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 AMENDMENTS TO RULES 7.3 AND 7.5, ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 7.3. Conditions of release.

a. Mandatory Conditions. Every order of release under this rule shall contain the following conditions:

- (1) That the person appear to answer and submit to the orders and process of the court having jurisdiction of the case;
- (2) That the person refrain from committing any criminal offense;
- (3) That the person not depart the state without leave of court;
- (4) If released after judgment and sentence, that the person diligently prosecute his or her appeal.
- (5) If a person charged with an offense listed in A.R.S. section 13-610(O)(3) has been summoned to appear in court, that the person report within five days after release to the arresting law enforcement agency or its designee and submit biological substances for DNA testing as directed. 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 and A.R.S. 13-3967.

b. Additional conditions. [No change.]

Rule 7.5. Review of conditions; revocation of release.

a. Issuance of Warrant or Summons. Upon verified petition by the prosecutor stating facts or circumstances constituting a breach of the condition 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. Victim's Right to Petition for Revocation of Bond or Modification of Conditions of Release. [No change.]

c. Hearing; Review of Conditions; Revocation. [No change.]

d. Revocation of Release; DNA Testing. Upon a verified petition by the prosecutor stating facts or circumstances constituting probable cause to believe that a defendant who has been ordered as a condition of release to provide a DNA sample pursuant to A.R.S. section 13-3967(F)(4) has not complied with that order, the court having jurisdiction over the defendant shall 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. The court shall proceed in accordance with the requirements of this rule and A.R.S. section 13-3967(F)(4).