

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) No. R-20-0004
)
) **COMMENT OF ARIZONA**
Petition to Amend Rule 3.2, Rule 4.1,) **ATTORNEYS FOR CRIMINAL**
and Rule 41, Forms 2(a) and 2(b),) **JUSTICE**
Arizona Rules of Criminal Procedure)

Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment to the above-referenced petition.

AACJ, the Arizona state affiliate of the National Association of Criminal Defense Lawyers, was founded in 1986 in order to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public

awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

AACJ opposes the petition to amend Rule 3.2, Rule 4.1, and Rule 41, Forms 2(a) and 2(b), Arizona Rules of Criminal Procedure because the result would require individuals to needlessly remain in custody to their detriment.

1. Research has shown that even short periods of incarceration can be devastating to people's lives.

On any given day, more than 60 percent of the people detained in local jails have not been convicted of any crime and are being held before their trial.¹ Even short periods of incarceration can make it impossible for people to maintain employment, make rent or mortgage payments, or fulfill family obligations such as child support.² This punishes not just the individual, but any family members who rely on their income for financial security. The Pretrial Justice Institute estimates that pretrial detention costs taxpayers as much as \$14 billion annually, but there are no national estimates on what bail costs families.³ It is becoming increasingly

¹ Pretrial Justice: How much does it cost?
<https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=c2f50513-2f9d-2719-c990-a1e991a57303&forceDialog=0> (last visited May 1, 2020).

² Every Second: The Impact of the Incarceration Crisis on America's Families
https://www.publicwelfare.org/wp-content/uploads/2019/04/CJ-EverySecond.FWD_us_-December-Report-on-family-incarceration.pdf (last visited May 1, 2020).

³ Pretrial Justice: How much does it cost?, *supra*.

apparent that pretrial detention, even for a relatively small number of days, may have negative implications for court appearance, conviction, sentencing, and future involvement with the justice system.⁴

Despite these consequences, the proposed amendment asks that individuals that are presumed to be innocent remain in custody for purely procedural purposes. These individuals have both a constitutional and statutory right to bail.⁵ A magistrate has already reviewed the case and presumably heard arguments from the prosecution before assessing bond in accordance with Rule 7.2, Arizona Rules of Criminal Procedure. There is no reason to hold a person in custody if the bond can be paid before the initial appearance is held.

2. In many cases, the person is unaware of the arrest warrant.

The Petition acknowledges a concern that the length of time between issuance of the warrant and the arrest could be substantial, and circumstances supporting the original amount might no longer apply. It fails to acknowledge that such delays are often due to the delayed charging of offenses on the State's part. Specifically, the State will file charges months after a crime has allegedly occurred and mail the summons and complaint to an incorrect or old address. The courts then issue a

⁴ Justice Denied: The Harmful and Lasting Effects of Pretrial Detention <http://www.safetyandjusticechallenge.org/wp-content/uploads/2019/04/Justice-Denied-Evidence-Brief.pdf> (last visited May 1, 2020).

⁵ Ariz. Const. art. II, § 22; A.R.S. § 13-3967(A).

warrant when the person fails to appear for the initial appearance. In such a situation, the person will have no idea there is a warrant until they are arrested. Someone facing this situation is presumed to be innocent and should not have to languish in jail awaiting an initial appearance if bond can be posted. Indeed, the only reason they find themselves in this position is due to the delayed charging by of the State.

3. Allowing individuals that post bond to be released prior to an initial appearance serves the means of Judicial Economy.

Initial appearance calendars are long affairs that expend time and resources. Requiring individuals that post bond to remain on these calendars only bogs down a system already overburdened. Any steps that can ease the strain on judicial officers should be taken.

For these reasons, AACJ requests this Court deny the petition.

DATED: May 1, 2020.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

By /s/ Armando Nava
Armando Nava

This comment e-filed this date with:

Supreme Court of Arizona