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IN THE SUPREME COURT OF THE STATE OF ARIZONA

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IN THE MATTER OF:

R-08-0019

PETITION TO AMEND RULES 23  
AND 28, RULES OF PROCEDURE  
FOR THE JUVENILE COURT; AND  
TO AMEND RULES 7.3 AND 7.5,  
ARIZONA RULES OF CRIMINAL  
PROCEDURE.

MARICOPA COUNTY ATTORNEY'S  
COMMENTS TO PETITION TO  
AMEND RULE 23 AND 28, RULES OF  
PROCEDURE FOR THE JUVENILE  
COURT; AND TO AMEND RULES 7.3  
AND 7.5, ARIZONA RULES OF  
CRIMINAL PROCEDURE

The Maricopa County Attorney hereby comments to, and recommends revisions to,  
the Amended Petition to Amend Rules 23 and 28, Rules of Procedure for the Juvenile  
Court, and Rules 7.3 and 7.5, Arizona Rules of Criminal Procedure.

Respectfully submitted this 19<sup>th</sup> day of May, 2009.

ANDREW P. THOMAS  
MARICOPA COUNTY ATTORNEY

BY: Philip J. MacDonnell  
PHILIP J. MACDONNELL  
CHIEF DEPUTY

COMMENT

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2       The majority of the proposed rule changes tracks the language of the statute and do  
3 not cause concern. However, the newly enacted statute did not address a mechanism for  
4 monitoring non-compliance with the court's orders to provide biological samples and DNA  
5 samples. The Petition recognized the need for accountability, but its proposed changes  
6 simply shifted the procedural burden to prosecutors and law enforcement without any  
7 realistic vision for implementation. The Amended Petition failed to consider the practical  
8 consequences of issuing orders without also setting guidelines for a reasonable method of  
9 enforcement. The enforcement part of the rule is particularly important because legislation  
10 is currently pending to require persons to provide fingerprints upon being arrested or  
11 charged with certain crimes. The same type of rule and enforcement guidelines will be  
12 needed if that legislation is passed.

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14       In Maricopa County, for example, neither prosecutors nor law enforcement agencies  
15 are present at Initial Appearance hearings involving summonses. Nor are they made aware  
16 of the issuance of release orders for DNA testing or any other release orders. The proposed  
17 solution does not unduly burden the court, yet it allows the state to enforce the court's  
18 orders with minimal expenditure of resources. Rather than create a system of party notices  
19 or require time-consuming investigations to determine compliance, the proposed  
20 modification simply requires proof of compliance at the next scheduled court hearing. That  
21 requirement is similar to other pretrial release requirements already in use, such as drug  
22 testing.

1 Another problem with the current proposal is that the prosecutor would be in the  
2 difficult position of trying to verify that an arrestee failed to do something that is not clearly  
3 specified in the court's order. Because the court order does not name a specific location for  
4 testing and only orders the subject to go to "the law enforcement agency that arrested the  
5 juvenile [person], or to the agency's designee," prosecutors may be uncertain about whether  
6 a violation occurred. Sometimes, multiple law enforcement agencies are involved in an  
7 investigation or arrest. Other times the arresting agency will simply be part of a warrant  
8 task force and not the investigating agency. The possibility for confusion about where the  
9 test should be done makes it difficult for a prosecutor to verify non-compliance. Requiring  
10 the arrestee to provide proof of compliance would solve this problem.

11 Although A.R.S. § 13-610(K) requires the collection of DNA from certain persons  
12 who are detained, the Rules of Criminal Procedure do not address this requirement. In  
13 Maricopa County, some arrestees refuse to cooperate with DNA testing before release. The  
14 court, without the authority of a rule of procedure, has been reluctant to issue orders to  
15 remedy this problem. Therefore, some arrestees are released without the testing that the  
16 statute requires. A simple solution would be to include cooperation with testing, where it is  
17 offered, as a condition of release.

18 Where the proposed rule changes seek to conform to the statute, it is important that  
19 the language be as close as possible to the statutory language. A.R.S. § 13-610(O) states  
20 that if "a person does not comply with an order issued pursuant to this subsection, the court  
21 shall revoke the person's release." Therefore, the word "shall" rather than the word "may"  
22 shall revoke the person's release." Therefore, the word "shall" rather than the word "may"  
23 shall revoke the person's release." Therefore, the word "shall" rather than the word "may"  
24 shall revoke the person's release." Therefore, the word "shall" rather than the word "may"  
25 shall revoke the person's release." Therefore, the word "shall" rather than the word "may"  
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27 shall revoke the person's release." Therefore, the word "shall" rather than the word "may"  
28 shall revoke the person's release." Therefore, the word "shall" rather than the word "may"

1 should be used in the rule. Also, the statutory language describing what a subject is  
2 required to do should track the statutory language.  
3

4 Finally, some courts rely upon a pretrial services agency to monitor a person's  
5 release conditions. When pretrial service agency officers are agents of the court, there is no  
6 need for a prosecutor to verify pretrial service agency information or petitions.  
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8 Therefore, the Maricopa County Attorney recommends that the proposed rules be  
9 modified in three ways:

- 10 1. Before juveniles or adults are released from custody, they should be  
11 ordered to cooperate with any pre-release DNA testing procedures before  
12 release and as a condition of release.  
13
- 14 2. When juveniles or adults who are out-of-custody are ordered to comply  
15 with DNA testing within 5 days, they should also be ordered to provide proof  
16 of compliance at the time of the next scheduled court proceeding.  
17
- 18 3. The proposed changes that express the intent of the statute should be as  
19 close to the statutory language as possible without being too specific with  
20 respect to statutory subsections and paragraphs.  
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- 22 4. Verified petitions should not be required.  
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1 For each of the reasons set forth above, this Court should revise the Amended  
2 Petition.  
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4 Respectfully submitted this 19<sup>th</sup> of May, 2009.  
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7 ANDREW P. THOMAS  
8 MARICOPA COUNTY ATTORNEY

9 BY: Philip J. MacDonnell  
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1 **PROPOSED AMENDMENTS TO RULES 23 AND 28, RULES OF**  
2 **PROCEDURE FOR THE JUVENILE COURT**

3 **Rule 23. Detention and Probable Cause Hearing.**

4 **A. Report to Court.** [No change.]

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6 **B. Admission to Detention.** [No change.]

7 **C. Length of Detention.** [No change.]

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9 **D. Detention Hearing.** [No change.]

10 **E. Release from Detention.** [~~No change.~~] The court may release the juvenile and set  
11 such terms and conditions of release as deemed appropriate. If a juvenile was arrested  
12 for any offense listed in A.R.S. section 8-238 and is in custody at the time of his or her  
13 advisory hearing, the court shall order the juvenile to cooperate with the collection of  
14 biological substances for DNA testing as a condition of being released. Upon release  
15 from any detention facility, the court shall advise the juvenile that any violation of  
16 release conditions or the failure to appear at future proceedings could result in the  
17 issuance of a warrant for the arrest and detention of the juvenile and that the court may  
18 proceed with future hearings in the juvenile's absence. Upon request of the victim,  
19 the court shall provide the victim with a copy of the terms and conditions of the  
20 juvenile's release, as provided by law.

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

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27 **G. Revocation of Release; DNA Testing.** Upon the court's own motion, or the  
28 motion of a juvenile probation officer supervising the juvenile, or by the prosecutor, if

1 the court has cause to believe that a juvenile who has been ordered as a condition of  
2 release to provide a DNA sample pursuant to A.R.S. section 8-238 and provide proof  
3 of compliance has not complied with that order, the court having jurisdiction over the  
4 juvenile shall revoke the juvenile's release until the juvenile has complied with the  
5 court's order. A copy of the court's order shall be served with any warrant or  
6 summons issued. At the juvenile's next court appearance, the court shall proceed in  
7 accordance with the requirements of this rule and A.R.S. section 8-238.  
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11 **G. H. Release to County Jail.** [No change.]

12 **H. I. Review of Detention.** [No change.]  
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1 **Rule 28. Advisory Hearing.**

2 **A. Purpose.** [No change.]

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4 **B. Time limits.** [No change.]

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

6 1 through 7. [No change.]

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8 8. Set conditions of release, if any, and advise the juvenile that any violation of  
9 the terms and conditions of release may result in the issuance of a warrant for  
10 the arrest and detention of the juvenile. If the juvenile has been arrested for an  
11 offense listed in A.R.S. section 8-238 and the juvenile has been summoned to  
12 appear at an advisory hearing, the judicial officer shall order as a condition of  
13 release that the juvenile report within five days to the law enforcement agency  
14 that arrested the juvenile, or to the agency's designee, and submit to DNA  
15 testing, and provide proof of compliance at the next scheduled court  
16 proceeding. The judicial officer shall advise the juvenile that failure to comply  
17 with this order may shall result in revocation of the juvenile's release, including  
18 in arrest and detention for violation of a condition of release, as provided in  
19 Rule 23F.

20 9. [No change.]

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22 **D. Findings and Orders.** [No change.]

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24 **E. Disposition.** [No change.]  
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1 PROPOSED AMENDMENTS TO RULES 7.3 AND 7.5, ARIZONA RULES OF  
2 CRIMINAL PROCEDURE

3 Rule 7.3. Conditions of release.

4 a. **Mandatory Conditions.** Every order of release under this rule shall contain  
5 the following conditions:  
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7 (1) That the person appear to answer and submit to the orders and process of the  
8 court having jurisdiction of the case;

9 (2) That the person refrain from committing any criminal offense;

10 (3) That the person not depart the state without leave of court;

11 (4) If released after judgment and sentence, that the person diligently prosecute  
12 his or her appeal.

13 (5) If a person was arrested for any offense listed in A.R.S. section 13-610 and  
14 is in custody at the time of his or her Initial Appearance hearing, the court shall  
15 order the person to cooperate with the collection of biological substances for  
16 DNA testing as a condition of being released.

17 (6) If a person charged with an offense listed in A.R.S. section 13-610(O)(3)  
18 has been summoned to appear in court, that the person report within five days  
19 after release to the arresting law enforcement agency or its designee, and submit  
20 biological substances for DNA testing as directed and provide proof of  
21 compliance at the next scheduled court proceeding. The judicial officer shall  
22 advise the person that failure to comply with this order ~~may~~ shall result in  
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1 revocation of the person's release, including arrest and confinement for  
2 violation of a condition of release, as provided in Rule 7.5 and A.R.S. 13-3967.  
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5 **b. Additional conditions.** [No change.]  
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1 **Rule 7.5. Review of conditions. Revocation of release.**

2 a. **Issuance of Warrant or Summons.** Upon verified petition by the  
3 prosecutor stating facts or circumstances constituting a breach of the condition  
4 of release, the court having jurisdiction over the defendant released may issue a  
5 warrant or summons under Rule 3.2, to secure the defendant's presence in  
6 court. A copy of the petition shall be served with the warrant or summons.  
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8 **b. Victim's Right to Petition for Revocation of Bond or Modification of**  
9 **Conditions of Release.** [No change.]  
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11 **c. Hearing; Review of Conditions; Revocation.** [No change.]  
12

13 **d. Revocation of Release; DNA Testing.** Upon the court's own motion or a  
14 motion by the prosecutor or supervising pretrial services officer if the court has  
15 cause to believe that a defendant who has been ordered as a condition of release  
16 to provide a DNA sample pursuant to A.R.S. section 13-3967(F)(4) and provide  
17 proof of compliance has not complied with that order, the court having  
18 jurisdiction over the defendant shall revoke the defendant's release until the  
19 defendant has complied with the court's order. A copy of the court's order shall  
20 be served with any warrant or summons issued. At the defendant's next court  
21 appearance, the court shall proceed in accordance with the requirements of this  
22 rule and A.R.S. section 13-3967(F)(4).  
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