

1 ALLISTER ADEL
2 MARICOPA COUNTY ATTORNEY

3 Kenneth N. Vick
4 Chief Deputy
5 225 West Madison Street
6 Phoenix, Arizona 85003
7 Telephone: (602) 506-3800
8 vick@mcao.maricopa.gov
(State Bar No. 017540)
(Firm State Bar No. 00032000)

9 **ARIZONA SUPREME COURT**

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11 **PETITION TO AMEND RULES 4.2,**
12 **6.1, 6.5, 6.6, 7.2 AND 7.4, ARIZONA**
13 **RULES OF CRIMINAL**
PROCEDURE

R-21-0022

MARICOPA COUNTY ATTORNEY'S
COMMENT IN OPPOSITION

14 The Maricopa County Attorney's Office (MCAO) submits this comment in
15 opposition to the proposed rule changes. MCAO joins the comment in opposition filed
16 by the Arizona Prosecuting Attorney's Advisory Council (APAAC) and will not repeat
17 those reasons here. In addition to the reasons stated in APAAC's Comment, MCAO
18 asks this Court to deny the Petition because it is requesting change just for sake of
19 change.
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22 In 2016 this Court created a Task Force to study a variety of issues "to explore
23 opportunities for systemic improvements in achieving fair justice for all." *In the Matter*
24 *of Establishing the Task Force on Fair Justice For All: Court-Ordered Fines, Penalties,*
25 *Fees, and Pretrial Release Policies*, Admin. Order 2016-16 (March 3, 2016). As a
26 result of that Task Force's work, this Court made significant changes to the procedures
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1 courts follow in setting and reviewing release conditions. For example, as noted in the
2 Petition, a rule change based on the Task Force’s work now mandates, among many
3 other things, that judges use the results of an approved risk assessment tool in
4 determining release conditions. Ariz. R. Crim. P. 7.3(c). According to the Task Force’s
5 report, this validated tool helps a court predict two important facts: 1) the likelihood
6 that the person will commit a new offense and 2) the likelihood that the person will
7 appear for court proceedings. *Report and Recommendations of the Task Force on Fair*
8 *Justice for All: Court-Ordered Fines, Penalties, Fees and Pretrial Release Policies* 34
9 (August 12, 2016) [hereinafter *Task Force Report*]. The Petition notes that the changes
10 adopted based on the Task Force’s work “moved Arizona’s criminal justice system
11 away from reliance upon money bail and toward conditional release based on an
12 individualized assessment of a defendant’s risk profile.” [Petition at 2].

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17 The extent to which that “movement away from reliance upon money bail” has
18 had any impact on who is currently held in jail awaiting trial is unknown. The Task
19 Force’s report issued in 2016 was devoid of any meaningful data describing the pretrial
20 detention population in Arizona’s jails at that time. The only data point provided in the
21 report’s section on pretrial release was based on “national data” and even that data point
22 shed no light on the numbers of people being held in jails anywhere solely due to an
23 inability to afford bail. *See Task Force Report, supra, at 29*. The Petition provides no
24 additional information.
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1 Consequently, the Petition leaves two important questions unanswered: 1) who is
2 held in pretrial detention in Arizona's jails in 2021 and 2) what impact have the changes
3 made since 2016 had on the pretrial jail population in Arizona. The first question would
4 assist this Court in defining and understanding the problem it is being asked to fix,
5 assuming one exists at all. The second question would tell this Court if all the changes
6 it already made were productive or made in vain.
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9 Before making more changes to solve an undefined problem with no idea what
10 success will look like, this Court should take some time to understand what problem it
11 is trying to fix and to review the changes it has already made. If we do not define a
12 problem and the reasons for it, it is virtually impossible to fix anything. The Task
13 Force's work in 2016 is a perfect example. The report offered conclusory statements
14 about who was held in pretrial detention but provided no meaningful metrics to assess
15 the pretrial jail population. Without defining the actual problem, changes were made
16 that we presumed would move us in the right direction, but now, nearly five years later,
17 we apparently know nothing about what we accomplished. Did our changes improve
18 anything, or did they make matters worse? Do we have large numbers of low or
19 medium risk offenders being held in pretrial custody in Arizona? If so, are they there
20 *solely* due to an inability to pay a cash bail? Is the mandated risk assessment tool
21 accurately predicting who will appear for their case and who is likely to reoffend? Has
22 the use of this tool resulted in a change in failures to appear compared to the failure to
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1 appear rate before its use was required? Has there been an increase or decrease in
2 crimes committed while people are on pretrial release? Do we know if the risk
3 assessment's classifications as low, moderate, or high risk are accurate based on real
4 data from Arizona?
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6 Much like the changes that were previously made as a result of the Task Force's
7 work, if the changes in the Petition are adopted, in five years we will have no idea
8 whether the changes actually accomplished anything meaningful because we do not
9 know where we are today or where we are trying to go. Burdening the court system
10 with new, expedited hearings, as the Petition requests, might be a "feel good" solution
11 to something, but if this Court actually wants to fix a problem it would be more
12 productive to define what the problem is, assess the changes already made, and then
13 make an informed decision on future changes. We can continue to stumble around in
14 the dark and choose not to assess or study where we are or what we have accomplished
15 along the way, but we cannot do so and honestly expect to improve the criminal justice
16 system.
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21 Respectfully submitted this 27th day of May 2021.

22 ALLISTER ADEL
23 MARICOPA COUNTY ATTORNEY

24 By 
25 KENNETH N. VICK
26 CHIEF DEPUTY
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