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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 In the Matter of:

11 **PETITION TO AMEND RULE 7.5,**
12 **RULES OF CRIMINAL**
13 **PROCEDURE**

Supreme Court No. R-15-0005

DRAFT COMMENT OF
THE ARIZONA PROSECUTING
ATTORNEYS' ADVISORY
COUNCIL IN SUPPORT

14 The Administrative Office of the Courts ("A.O.C.") has filed a rule change
15 petition that would add a provision to Rule 7.5, Rules of Criminal Procedure,
16 allowing court pretrial release officers to report violations of release conditions
17 directly to the court, without the need of a verified petition from a prosecutor. The
18 Arizona Prosecuting Attorneys' Advisory Council ("APAAC") supports this
19 petition, with suggested additions outlined herein.

20 **I. BACKGROUND OF PETITION**

21 In light of the Arizona Supreme Court's new strategic agenda, the A.O.C.
22 reviewed existing Rules of Criminal Procedure to see where improvements could
23 be implemented consistent with that agenda. One of the Supreme Court's strategic
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1 agenda goals is to “[i]mprove and expand the use of evidence-based practices to
2 determine pre-trial release conditions for low-risk offenders.” *Advancing Justice*
3 *Together: Courts and Communities, 2014 – 2019, Goal 2: Protecting Children,*
4 *Families, and Communities.* In advancing this goal, the A.O.C. believed that
5 implementation of evidence-based practices for low-risk offenders was expected to
6 result in eligible defendants being released under the supervision or monitoring of
7 county probation felony pretrial services programs. The A.O.C’s proposed
8 amendment to Rule 7.5, Rules of Criminal Procedure, would allow the court to
9 issue a warrant or summons to modify or revoke conditions of release based on a
10 written report from pretrial services, without the necessity of a verified petition
11 signed by a prosecutor.
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15 **II. DISCUSSION/ANALYSIS**

16 Rule 7 of the Arizona Rules of Criminal Procedure contains provisions for
17 the release of persons charged with criminal offenses. Among those provisions are
18 the right to release (Rule 7.2), the imposition of conditions of release (Rule 7.3),
19 and the procedure for determining and reviewing conditions of release (Rule 7.4).
20 Only one rule, Rule 7.5, provides for the revocation of conditions of release.
21 Currently, before a court may issue a warrant or summons for the reported
22 violation of a condition of release, the prosecutor must first issue a “verified
23 petition” containing facts or circumstances that constitute a violation of the
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1 conditions of release:

2 **Rule 7.5. Review of conditions; revocation of release.**

3 a. **Issuance of warrant or summons.** Upon verified petition by the
4 prosecutor stating facts or circumstances constituting a breach of the
5 conditions of release, the court having jurisdiction over the defendant
6 released may issue a warrant or summons under Rule 3.2, to secure
7 the defendant's presence in court. A copy of the petition shall be
8 served with the warrant or summons.

9 In many instances under the current Rule 7.5, if a violation of conditions of
10 release was suspected, it could be days or longer before a prosecutor was able to
11 file a verified petition requesting a warrant or summons due to the delay in getting
12 that information to a prosecutor, or due to a prosecutor's own scheduling conflicts.
13 Due to this delay, a very real risk to public safety could occur and incidents of
14 flight risk could greatly increase. In addition, in some jurisdictions courts require a
15 hearing after an opportunity for a defendant to respond, further delaying the
16 issuance of a warrant or summons.

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18 Because one goal of the Arizona Supreme Court's new strategic agenda will
19 result in some eligible defendants being released to a pretrial services program for
20 supervision or monitoring, an amendment to Rule 7.5 is proposed to add a new
21 subsection b., augmenting subsection a. and providing a mechanism for pretrial
22 services officers to prepare a written report directly notifying the court of a
23 suspected violation of conditions of release and requesting a warrant or summons.
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1 APAAC supports this proposed rule amendment but believes that some additional
2 safeguards should be included.

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4 Because the prosecutor would not be involved in verifying the written report
5 under the proposed new subsection, APAAC recommends that the written report
6 establish probable cause to believe that a violation has occurred so that the court
7 may summarily issue a warrant or summons without a hearing. Adding this legal
8 standard balances the personal liberty and due process concerns of a defendant
9 with protection of the public. APAAC recommends that the following language be
10 added to the proposed new subsection b. (changes are in bold and underlined):
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12 “b. Issuance of warrant or summons on written report. Upon
13 receiving a written report from pretrial services stating facts or
14 circumstances **establishing probable cause to believe that** a breach
15 of the conditions of release **has occurred**, the court having
16 jurisdiction over the defendant may **summarily** issue a warrant or
17 summons under Rule 3.2 **without a hearing**, to secure the defendant’s
18 presence in court. A copy of the report shall be provided to the
19 prosecutor and served with the warrant or summons.”

20 The proposed amendment to Rule 7.5, with the added safeguards proposed
21 by APAAC, would greatly reduce delays and provide a new mechanism by which
22 a court can act on information provided directly in a written report from pretrial
23 services. Without the delay necessitated by a verified petition from a prosecutor, a
24 reported violation of release conditions could be immediately addressed by the
25 Court, thereby more efficiently and timely responding to the alleged violation

1 while protecting the public and preventing the risk of flight.

2 **III. CONCLUSION**

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4 In keeping with the goals of the Arizona Supreme Court's new strategic
5 agenda, a mechanism is proposed to allow a pretrial services program to directly
6 notify the court of any purported breach of the conditions of release before safety
7 and flight risks increase. This would occur by way of a written report to the court
8 from pretrial services, with a copy of the report given to the prosecutor. The
9 A.O.C.'s proposal in R-15-0005 to amend rule 7.5, Rules of Criminal Procedure,
10 should be supported, with the additional language suggested in this comment. The
11 A.O.C.'s proposal is designed to timely and efficiently address reported violations
12 of conditions of release while increasing the safety to the community and reducing
13 flight risk. APAAC respectfully requests that the Arizona Supreme Court grant the
14 petition with the suggested additions.
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18 RESPECTFULLY SUBMITTED this ____day of May, 2015.

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20 SHEILA SULLIVAN POLK
21 YAVAPAI COUNTY ATTORNEY
22 Chair, Arizona Prosecuting Attorneys'
23 Advisory Council

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25 ELIZABETH ORTIZ
Executive Director, Arizona Prosecuting
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By: _____
ELIZABETH ORTIZ

Electronic copy filed with the
Clerk of the Arizona Supreme Court
this _____ day of _____, 2015.

by: _____