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IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:

	)	
PETITION TO AMEND	)	
RULE 41 OF THE	)	Supreme Court No. R-15-_____
ARIZONA RULES OF	)	PETITION
CRIMINAL PROCEDURE	)	(Modified Comment Period
_____	)	Requested)

Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts (AOC), respectfully petitions this Court to adopt the attached proposed amendment to Rule 41, Forms (Appendix), Forms 4(a) and 4(b) of the Rules of Criminal Procedure. The change is in response to recent amendments to A.R.S. §§ 22-601 and -602, made by HB 2457 (Laws 2014, Chapter 37).

Additionally, the Commission on Victims in the Courts voted in favor of a proposal adding a question to Form 4(b) to determine whether the Department of Child Safety is involved. AOC staff is also recommending two amendments, the first is to Form 4(a) to determine if the defendant was fingerprinted or provided DNA for

a qualifying offense. The second amendment is to Form 4(b), the defendant's release questionnaire, to determine if the defendant needs an interpreter. The text of the proposed amendments are set out in the accompanying Appendix A.

**I. Background and Purpose of the Proposed Rule Amendments.** House Bill 2457 was passed and signed into law in the Second Regular Session of the Fifty-first Legislature (Ch. 37)(2014). The bill's effective date was July 24, 2014.

HB 2457 expanded the types of county-wide specialty courts the superior court presiding judge could establish in the limited jurisdiction courts to include veterans and mental health courts in addition to the then current provision for homeless courts. The current Form 4(a) does not include an inquiry about the defendant's military service or homeless status. The inclusion of this information would better inform the court when determining eligibility for specialty courts or referral to social services in the community.

The inclusion of questions concerning the defendant's need for an interpreter furthers Goal One of the Supreme Court's Strategic Agenda to better serve the growing number of non-English speakers in the court system. The current Form 4(b) does not include an inquiry about the defendant's English proficiency or desire for an interpreter. This information will assist courts in scheduling interpreter services resulting in increased efficiency in calendaring court hearings while safeguarding the individual's constitution rights.

The inclusion of questions added to Form 4(a) concerning fingerprints and DNA samples enhances the court's ability to order the defendant, especially on initial appearance, to provide fingerprints in order to initiate criminal history or DNA samples as provided by law.

Finally, the question concerning involvement of the Department of Child Safety, suggested by the Commission on Victims in the Courts, is meant to inform the court of the Department's involvement in a case, and to allow the judge to investigate further, if it is deemed relevant to the charges.

**II. Pre-Petition Comments.** Petitioner circulated the proposal for pre-petition comments to law enforcement, the Arizona Prosecuting Attorneys Association, the Attorney General's Office and the Commission on Victims in the Courts.

**III. Request for Modified Comment Period.** Although petitioner has already received comments from some stakeholders, additional public comments may address items that this petition overlooks or otherwise improve the proposed amendments. Petitioner therefore requests that the Court allow a modified comment period to accommodate filing of an amended petition after an initial round of public comments. Petitioner suggests the following dates:

March 1, 2015: First round of comments due

April 1, 2015: Amended petition due

May 20, 2015: Second round of comments due

June 30, 2015: Reply due

Wherefore petitioner respectfully requests that the Supreme Court amend Forms 4(a) and 4(b) of Rule 41 as set forth in Appendix A.

RESPECTFULLY SUBMITTED this 12th day of January, 2015.

By/s/\_\_\_\_\_  
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## **APPENDIX A**

**See next page**

State of Arizona Plaintiff

-vs-

Defendant (FIRST, MI, LAST)

[CASE/COMPLAINT NO.]

Booking No. \_\_\_\_\_

RELEASE QUESTIONNAIRE (To be completed by Law Enforcement)

Alias (es) \_\_\_\_\_

A. GENERAL INFORMATION

Charges: \_\_\_\_\_

Offense Date: \_\_\_\_\_ Offense Time: \_\_\_\_\_

Location: \_\_\_\_\_

Arrest Date: \_\_\_\_\_ Arrest Time: \_\_\_\_\_

Arrest Location: \_\_\_\_\_

Pursuant to A.R.S. §41-1750, were ten-print fingerprints taken of the arrested Person? [ ] Yes [ ] No

Pursuant to §13-610 does one or more of the above charges require the arresting agency to secure a DNA sample from the arrested person? [ ] Yes [ ] No

If yes, does the defendant have a valid DNA sample on file with AZDPS? [ ] Yes [ ] No [ ] [Unknown]

If no, has the arresting agency taken the required sample? [ ] Yes [ ] No

Horizontal lines for notes or details.

2. The person entered or remained in the United States illegally. Explain in detail (e.g., admission of by the person, statements of co-defendants at the time of arrest, verification of illegal presence or proceeding establishes illegal presence): \_\_\_\_\_

Horizontal lines for notes or details.

B. PROBABLE CAUSE STATEMENT

1. Summarize and include the facts which establish probable cause for the crime(s) charged. Certain felonies may be non-bondable and require facts which establish proof evident or presumption great for the crime(s) charged. These include (1) felonies involving a capital offense, sexual assault, sexual conduct with a minor who was under fifteen years of age, or molestation of a child who is under fifteen years of age, (2) any class 1, 2, 3, or 4 felony or any violation of § 28-1383 if the person has entered or remained in the United States illegally, and (3) felony offenses committed when the person charged is already admitted to bail on a separate felony charge.

Explain the crime(s) in detail (e.g., arresting officer or other law enforcement officers witnessed offense, physical evidence directly connects defendant to offense, multiple eyewitnesses, defendant admissions, victim statements, nature of injuries, incriminating photographic, audio, visual, or computer evidence, defendant attempted to flee or resist arrest):

Horizontal lines for notes or details.

3. The crime(s) occurred while the person was admitted to bail on any separate felony. Provide information on the separate felony:

Horizontal lines for notes or details.

Defendant's Name \_\_\_\_\_ DOB \_\_\_\_\_ Booking No. \_\_\_\_\_ Case No. \_\_\_\_\_

**C. OTHER INFORMATION (Check if applicable)**

1.  Defendant is presently on probation, parole or any other form of release involving other charges or convictions.

Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. List any prior:  
Arrests: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Convictions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Failures to Appear (FTA): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Protective Orders: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. There is an indication of:  
 Alcohol Abuse                       Other Substance Abuse  
 Mental Health Issues               Physical Illness  
 Developmental Disability  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Defendant is employed by: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
How long: \_\_\_\_\_

5. Defendant resides at: \_\_\_\_\_  
\_\_\_\_\_  
With Whom: \_\_\_\_\_  
How Long: \_\_\_\_\_  
Alternate address for court notification: \_\_\_\_\_  
\_\_\_\_\_

6. Facts to indicate defendant will flee if released: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Reasons to oppose an unsecured release: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.  Defendant speaks a language other than English  
Language spoken: \_\_\_\_\_  
 American Sign Language  
 Defendant requested an interpreter

**D. CIRCUMSTANCES OF THE OFFENSE**

1.  Defendant used firearm or other weapon  
Type: \_\_\_\_\_

2.  Defendant injured someone.  
Explain: \_\_\_\_\_

3.  Medical attention was necessary  
Nature of injuries: \_\_\_\_\_

4.  Defendant threatened someone  
Nature of threats: \_\_\_\_\_

5. If property offense  
a. Value of property taken/damaged: \_\_\_\_\_  
b.  Property was recovered

6. Names of co-defendant(s), if any: \_\_\_\_\_  
\_\_\_\_\_

**E. CRIME(S) AGAINST PERSONS**

1. Relationship of defendant to victim: \_\_\_\_\_

2.  Victim(s) and defendant reside together.

3. Law enforcement learned of the situation by  Victim  
 Third Party  Officer observation

4.  Previous incidents involving these same parties  
Explain: \_\_\_\_\_  
\_\_\_\_\_

5. Defendant is currently the subject of:  
 Order of Protection  
 Injunction against Harassment  
 Other court order: \_\_\_\_\_

6.  Likelihood of inappropriate contact with victim(s)  
Explain: \_\_\_\_\_  
\_\_\_\_\_

7.  Victim(s) expressed an opinion on defendant's release.  
Explain: \_\_\_\_\_  
\_\_\_\_\_

Defendant's Name \_\_\_\_\_ DOB \_\_\_\_\_ Booking No. \_\_\_\_\_ Case No. \_\_\_\_\_

**F. DOMESTIC VIOLENCE DEFENDANT ISSUES**

- Access to or use of weapons
- Children/Vulnerable adults present
- Crime occurred in public
- Control/ownership/jealousy issues
- Depression
- Frequency/intensity of Domestic Violence increasing
- Kidnapping
- Potential for multiple violations of court orders
- Prior history of Domestic Violence
- Prior Protective Order
- Recent separations
- Stalking behavior
- Threats of homicide/suicide/bodily harm
- Violence against children, vulnerable adults or animals

Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**G. CIRCUMSTANCES OF ARREST**

1. Did defendant attempt to:  
 Avoid arrest  Resist arrest  Self Surrender  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.  Defendant was armed when arrested  
Type of weapon: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.  Evidence of the offense was found in defendant's possession  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. State whether defendant was under the influence of alcohol or drugs at the time of the offense  
 Yes  No  Unknown  
Type of substance: \_\_\_\_\_  
\_\_\_\_\_

**H. DRUG OFFENSES**

1. If the defendant is considered to be a drug dealer, state the supporting facts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. State quantities and types of illegal drugs directly involved with offense \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Methamphetamine was involved:
- Drug field test was positive
- Defendant admission of drug type: \_\_\_\_\_
- Approximate monetary value of drugs: \_\_\_\_\_

3. State whether money was seized  
 Yes  No  
Amount: \_\_\_\_\_

**I. ADDITIONAL INFORMATION**

1. Military Service:

Has the defendant served in the military services of the United States?  
 Yes  No  Unknown

2. Is the defendant homeless?  
 Yes  No  Unknown

3. Is the Department of Child Safety involved in any matter relating to the defendant?  
 Yes  No  Unknown

**If this is a fugitive arrest, complete the affidavit as required by the Uniform Criminal Extradition Act (ARS 13-3841 et seq.)**

I certify that the information presented is true to the best of my knowledge:

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Departmental Report #

\_\_\_\_\_  
Arresting Officer/Agency/ Serial No.  
\_\_\_\_\_  
Duty Phone No.

COURT

County, Arizona

State of Arizona Plaintiff

-vs-

Defendant (FIRST, MI, LAST)

[CASE/COMPLAINT NO.]

Booking No. \_\_\_\_\_

RELEASE QUESTIONNAIRE (To be completed by Defendant)

Alias(es) \_\_\_\_\_

The following information is for the purpose of determining the conditions under which you may be released at this time. You are not required to answer any question if you feel the answer might be harmful to you. The answers you give to the following questions will be used by the court for the purpose of determining the conditions of your release. However, your answers will be checked against the information supplied by the police, and with the references you yourself give on the form. Any discrepancies may result in higher bail or harsher conditions of release. Any information you give may be used against you in this or any other matter.

General Background

1. Background and Residence

Full Name: \_\_\_\_\_

Sex \_\_\_\_\_ Race \_\_\_\_\_ Date of Birth \_\_\_\_\_

Place of Birth [city, state, country] \_\_\_\_\_

Present Citizenship \_\_\_\_\_

If you are not a United States of America citizen, how long have you been in this country? \_\_\_\_\_

Do you need the court to provide an interpreter to help you communicate and to understand what is being said? [ ] Yes [ ] No

If so, what language are you most comfortable speaking?

[ ] Spanish [ ] American Sign Language [ ] Other language : \_\_\_\_\_

Present Address \_\_\_\_\_

How long have you lived at the above address? \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_ Cell No. ( ) \_\_\_\_\_

Where else have you lived in the past year and for how long?

\_\_\_\_\_  
\_\_\_\_\_

Where will you go if released today? \_\_\_\_\_

**2. Family**

Are you married/partnered If so, are you living with your spouse/partner? [ ] Yes [ ] No

Are you living with someone? Relationship: \_\_\_\_\_

How many other persons (including your children) are living with you? \_\_\_\_\_

How much do you contribute to their support? \_\_\_\_\_

Do you have regular contact with any other relatives? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**3. Employment**

Are you presently employed? [ ] Yes [ ] No If not, what is your principal means of support?

Explain: \_\_\_\_\_

Employer's Name \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_

What is the nature of your job? \_\_\_\_\_

How long have you worked there? \_\_\_\_\_

**4. Criminal Record**

Do you have any previous criminal record? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**5. Record of Appearance**

Have you ever been released on bail or other conditions pending trial? [ ] Yes [ ] No

Did you ever fail to appear as required? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**6. Supervision**

Is there any organization or any person who might agree to supervise you and be responsible for your return to court as required? [ ] Yes [ ] No

Organization or person to contact \_\_\_\_\_

\_\_\_\_\_ ( ) \_\_\_\_\_  
Address City State Zip Telephone

**7. Other Circumstances**

Are there any other matters (such as your health or illness in your family) which you feel the court should consider in making its decision? \_\_\_\_\_

**8. Verification**

Is there any other friend, relative, neighbor or other person who can be called as a reference to this information?

\_\_\_\_\_ ( ) \_\_\_\_\_  
Name Address City State Zip Telephone

\_\_\_\_\_ ( ) \_\_\_\_\_  
Name Address City State Zip Telephone

\_\_\_\_\_ ( ) \_\_\_\_\_  
Name Address City State Zip Telephone

I certify, under penalty of perjury, that the information presented is true and correct to the best of my knowledge.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant Signature  
Contact Telephone No. \_\_\_\_\_