

# Commission on Victims in the Courts

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Friday, June 14, 2019; 10:00 a.m.

Conference Room 345 A/B

State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

[Commission on Victims in the Courts Home Page](#)

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome and Opening Remarks	Judge Ron Reinstein, Chair
10:05	Approval of Minutes—March 22, 2019 <input type="checkbox"/> <i>Formal Action/Request</i> (Page 3)	Judge Reinstein
10:10	R-18-0035 – Petition to Amend Rule 15.3(a) of the Rules of Criminal Procedure <input type="checkbox"/> <i>Formal Action/Request</i> (Page 7)	Judge Reinstein
10:25	R-19-0016 – Petition to Modify the Rules of Criminal Procedure by Integrating Victims’ Rights, Repeal Rule 39 (Page 18)	Colleen Clase
10:30	Victim Right to Privacy & Safety – Body Cam Video Redacted/Unredacted to Defense (Page 139)	Dan Levey
10:45	Restitution Workgroup Update	Kirstin Flores
10:55	Legislative Update	Amy Love AOC Government Affairs
11:10	Mexico’s Treatment of Victims as Parties	Judge Maria Elena Cruz
11:25	Sexual Assault Kit Initiative (SAKI) Update on Local and National Efforts (Page 163)	Rachel Mitchell Division Chief, Maricopa County Attorney’s Office Sergeant Jim Markey
11:45	Case Law Update	Judge Reinstein
11:55	Good of the Order/Call to the Public	
12:00	Adjournment	

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## Next Meeting

Friday, October 18, 2019; 10 a.m.

Conference Room 345 A/B

Arizona State Courts Building

## 2019 Meeting Dates

March 22

June 14

October 18

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\*All times are approximate and subject to change. The committee chair reserves the right to set the order of the agenda. For any item on the agenda, the committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration § 1-202. Please contact *Susan Pickard*, COVIC staff, at (602) 452-3252 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.



## Commission on Victims in the Courts

**Friday, March 22, 2019**

10:00 a.m. to 12:00 p.m.

Conference Room 329/330

1501 West Washington Street

Phoenix, Arizona 85007

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**Present:** Judge Ron Reinstein (chair), Timothy Agan, Michael Breeze, Colleen Clase, Judge Maria Elena Cruz, Sydney Davis, Jon Eliason, Amy Bock (proxy for Kristin Flores), Vanessa Helms, Leslie James, Judge Kellie Johnson Christine Kelly, Captain John Leavitt, Dan Levey, Sergeant James Markey (Ret.), Chief Rod McKone, Judge Sam Myers, Jane Nicoletti-Jones, Elizabeth Ortiz, William Owsley, Laura Penny, Judge Richard Weiss

**Telephonic:** Judge Antonio Riojas, Kimberly Chichester

**Absent:** Judge Evelyn Marez, Karyn Rasile

**Presenters/Guests:** Beckie Miller, R. Keith Perkins, Chris Groninger, Jerry Landau

**Staff:** Sabrina Nash, Susan Pickard, Administrative Office of the Courts (AOC)

### I. REGULAR BUSINESS

- A. **Welcome and Opening Remarks** - With a quorum present, the March 22, 2019, meeting of the Commission on Victims in the Courts (COVIC) was called to order at 10:03 a.m. by Judge Ronald Reinstein, Chair.

Judge Reinstein made the following announcements:

- Acknowledged Judge Maria Elena Cruz's candidacy for the Supreme Court and wished her well.
- Reminded members of the Victim Right's Week Awards Luncheon, April 10, 2019 at the Shriners Auditorium.
- Noted the "What's Next for the Death Penalty" Symposium at ASU on March 20, 2019.
- Welcomed Susan Pickard and Sabrina Nash as current staff to COVIC.

- B. **Approval of Minutes** - The draft minutes from the October 19, 2018 meeting of the COVIC were presented for approval.

**Motion:** To approve the October 19, 2018 minutes as amended. **Moved:** Sydney Davis **Second:** Judge Sam Myers. **Vote:** Passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Legislative Update (taken out of order)

Jerry Landau, AOC Government Affairs Director, speaking telephonically, noted that the criminal justice reform bills that resulted from the Fair Justice Task Force will not be moving, however, there will be further discussion of these bills during the summer. Mr. Landau also noted that HB 2466 – the Attorney General’s cleanup bill on victims’ rights is now a strike everything bill.

### B. Parents of Murdered Children (POMC)

Becky Miller, PMOC, Valley of the Sun Chapter, provided a brief history of POMC and shared their mission to provide support and assistance to all survivors of homicide victims through on-going emotional support, education, prevention, advocacy, and awareness. POMC provides monthly grief support meetings, accompanies survivors to court, and has programs that help survivors with their need for action and in some instances closure. She outlined some of the issues that families of murdered children encounter:

- Long wait times - average 3-4 years before going to trial.
- The expense of travel and housing to attend out-of-county or state court hearings.
- Delayed justice and restitution.
- Death penalty appeal process is too long.
- Restitution not paid in full before perpetrator is released.

### C. Never Again Foundation

R. Keith Perkins, Never Again Foundation (NAF), discussed the now 20-year-old foundation and the provision of legal services to victims of domestic violence. Mr. Perkins presented the numerous changes in laws impacting the abuse of women as property (civil tort) to the abuse of women as persons (domestic tort). He explained domestic torts as the legal means to claim damages for financial losses and emotional suffering inflicted on victims of domestic violence. These judgments can establish garnishment of the abuser’s wages and affect the distribution of life insurance (when there is a homicide) and marital property in divorces, child custody, and termination of parental rights. The awarded judgment helps provide victims with a sense of hope and justice.

### D. Arizona Coalition for Victims Services (ACVS)

Amy Bock, AZ Coalition for Victims Services Chair, stated that ACVS is non-profit network of individual victim services providers and community stakeholders focused on networking, improving services to crime victims through education and advocacy, and offering nationally accredited training to service providers at all governmental and non-profit levels who work with crime victims. One of their biggest components to assist victims is the accredited Arizona Victims Assistance Academy which provides training for victim advocates both experienced and new to the field. Training topics includes:

- How to communicate with victims and their families,
- How to deal with restitution issues,
- How to deal with trauma,
- Self-care for advocates and
- Sex trafficking.

Ms. Bock also stated that ACVS has a small relocation project in Maricopa County for victims who need to relocate to a place of safety. The project is not limited to domestic or sexual assault survivors.

#### **E. Advancing Technology to Assist Arizona Crime Victims**

Chris Groninger, Arizona Bar Foundation for Legal Services and Education (Foundation), noted that the Foundation's mission is to increase access to legal information, referral assistance, and justice to all Arizonans with civil law issues. Ms. Groninger informed the COVIC members of a technology grant that the Foundation received in October 2018. The two-year grant is the first step in determining litigant need and identifying the technology that would be most helpful to them. Ms. Groninger invited COVIC members to participate and provide input on family law and housing issues.

#### **F. Restitution Workgroup Update**

Amy Bock, Arizona Coalition for Victims Services Chair (proxy for Kirstin Flores) noted that the *Judges Restitution Reference Manual* has been finalized and submitted. The manual will include quick links in Wendell to Rule 39, the Victims Bill of Rights, victims' rights statutes, case law, the AOC restitution resource page, and the Order to Show Cause Bench Card. The workgroup's next steps are to better understand the garnishment process, create a bench card for judges, and incorporate information about how the process works along with forms for victims on the AOC Restitution webpage.

#### **G. Case Law Update** (Judge Cruz left the room during the discussion of Item b.)

Judge Reinstein, discussed:

- a death penalty case in which the victim was trying to get the more expansive Arizona Victims' Bill of Rights to apply in the federal system.
- a trial court decision in Pima County from December 2018, that dealt with future economic loss that may head to the Court of Appeals.
- the Mohave County Attorney's Office petition seeking a local rule that would allow the deposition of crime victims when the victim is not cooperative. The question, "what if the victim didn't want to testify or be deposed and wanted to maintain their privacy?" arose.

### **III. Good of the Order/Call to Public**

A. Judge Reinstein noted:

1. that those COVIC members whose terms were expiring in June inform Susan Pickard or himself about the member's wishes regarding reappointment by April 15<sup>th</sup>.

2. that the meeting packet contained a list of rule change petitions developed by Mark Meltzer, AOC, that may be of interest to COVIC and encouraged them to review the list.
- B. Colleen Clase asked that R-19-0016 be placed on the June 14 agenda.
  - C. Judge Cruz asked to present Mexico's laws regarding victims as parties.

**Call to the Public:** None present.

**Adjournment:** Meeting adjourned at 12:00 p.m.

Next Meeting:

**Friday, June 14, 2019**

10:00 a.m. to 3:00 p.m.

State Courts Building, Room 119

1501 West Washington Street

Phoenix, Arizona 85007

1 Elizabeth Ortiz, Bar No. 012838  
2 Executive Director  
3 Arizona Prosecuting Attorneys'  
4 Advisory Council  
5 1951 West Camelback Road, Suite 202  
6 Phoenix, AZ 85015-3407  
7 (602) 542-7222 / FAX (602) 274-4215  
8 [Elizabeth.Ortiz@apaac.az.gov](mailto:Elizabeth.Ortiz@apaac.az.gov)

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

11 In the Matter of:

Supreme Court No. R-18-\_\_\_\_\_

12 **PETITION TO AMEND RULE**  
13 **15.3(a) OF THE RULES OF**  
14 **CRIMINAL PROCEDURE**

**PETITION OF**  
**THE ARIZONA PROSECUTING**  
**ATTORNEYS' ADVISORY**  
**COUNCIL**

(expedited consideration requested)

15 Pursuant to Rule 28 of the Arizona Supreme Court, the Arizona Prosecuting  
16 Attorneys' Advisory Council ("APAAC") respectfully submits this Petition to  
17 Amend Rule 15.3(a) of the Rules of Criminal Procedure to correct an unforeseen  
18 and unintended consequence of the restyling efforts in Petition R-17-0002 (proposed  
19 amendments to Arizona Rules of Criminal Procedure), adopted effective January 1,  
20 2018. The amended proposed rule change is set forth in Appendix A.

21 **I. INTRODUCTION AND BACKGROUND**

22 Supreme Court Administrative Order No. 2015-123 created a Task Force on  
23 the Arizona Rules of Criminal Procedure to review the Arizona Rules of Criminal  
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1 Procedure and “identify possible changes to conform to modern usage and to clarify  
2 and simplify language.” After working for nearly a year on that mission, the Task  
3 Force proposed amendments to the Rules of Criminal Procedure (Petition R-17-  
4 0002) which revised existing language, added new definitions, restyled and  
5 reorganized the rules, and made substantive changes to promote clarity.  
6

7 In its original Petition (filed January 8, 2017), the Task Force did not propose  
8 amendments to Rule 15.3(a). However, in its Supplemental Petition (filed April 25,  
9 2017), in response to an apparent comment suggestion from the Arizona Voice for  
10 Crime Victims (“AVCV”), the Task Force proposed amending Rule 15.3(a) by  
11 replacing the phrase “those excluded by Rule 39(b)” with “victim.” Supplemental  
12 Petition, p. 19. In its final reply pleading (filed July 7, 2017), the Task Force was  
13 clear that this change was stylistic only and *not* intended to be substantive:  
14  
15

16 **Rule 15.3. Depositions**

17 The Task Force proposes various stylistic changes to this rule, but no  
18 substantive changes are intended. One of the stylistic changes is to  
19 replace “those excluded by Rule 39(b)” with “victim.”

20 Petitioner’s Reply, Reply Appendix B (filed 7/7/2017). The amendments were  
21 adopted by the Supreme Court on 08/31/2017, effective January 1, 2018.  
22

23 **II. DISCUSSION OF PROPOSED AMENDMENT**

24 This petition proposes to revert the restyled language in Rule 15.3(a) back to  
25 its original phrase of “those excluded by Rule 39(b).” While the change was

1 intended to be merely stylistic and may have been proposed to eliminate verbiage, it  
2 has had an unforeseen negative substantive effect on prosecution. Because of the  
3 change in wording, prosecutors across the state are being deprived of their ability to  
4 seek the deposition of crime victims, who are otherwise unavailable to testify at trial,  
5 to be used as evidence in trial. As a result, prosecutors have been forced to dismiss  
6 cases. This creates an unjust windfall to defendants while penalizing the State in its  
7 responsibility to prosecute criminal offenses and seek justice.  
8  
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10 Rule 39(b)(12)<sup>1</sup> gives a crime victim the right “to refuse an interview,  
11 deposition, or other discovery request by the defendant, the defendant’s attorney, or  
12 other person acting on the defendant’s behalf[.]” Prosecutors, in contrast to  
13 defendants or their agents, are not prohibited by this rule from deposing a victim  
14 when, due to illness, planned travel, being a foreign national, or lack of cooperation,  
15 there is a showing of substantial likelihood the victim would be unavailable for trial.  
16 Prosecutors in Mohave County and Pima County have reported to APAAC that after  
17 the wording of Rule 15.3(a) was changed by the recent amendments, trial courts  
18 have read the new rule as prohibiting both the defense *and* prosecutors from  
19 deposing the victim and have denied the State’s request for depositions in situations  
20 where it was previously available.  
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<sup>1</sup> Formerly Rule 39(b)(11) before the recent amendments.

1 In a case currently pending in Mohave County, the State sought a deposition  
2 of a non-cooperating victim in a domestic violence matter where a gun was  
3 discharged inside a residence, threatening its occupants. The State's request to  
4 depose the victim, who had refused to appear at a scheduled court hearing, was  
5 denied by the trial court because of the new rule. Mohave County prosecutors report  
6 other instances where the deposition of a victim was necessary. In one, a homebound  
7 person with severe health issues was the victim of, and only witness to, a home  
8 invasion but was physically unable to come to court. In another, the victim was so  
9 severely burned during the crime that even a year after the incident the victim was  
10 not physically capable of attending trial. It is reported that Mohave County trial  
11 courts have relayed to prosecutors that no depositions of a victim will be allowed on  
12 the State's motions due to the Rule 15.3(a) changes.  
13  
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16 Likewise, Pima County reports that they no longer obtain deposition orders  
17 for crime victims due to the rule change. In one reported case, a victim had cancer  
18 and the prognosis was that the victim would pass before the trial date. In another,  
19 the victim was a citizen of Mexico and would not be in the U.S. at the time of trial.  
20 Without the ability to depose these victims, prosecutors have been forced to dismiss  
21 criminal cases.  
22  
23

24 These examples illustrate that the stylistic revision to Rule 15.3(a) has a very  
25 real and substantive impact on prosecution, which APAAC believes was unforeseen

1 and unintended by the Task Force. The AVCV Comment to R-17-0002, which  
2 prompted the revision, contained no discussion on Rule 15.3(a) before it submitted  
3 the proposed revision. In its Petition, the Task Force did not identify Rule 15.3(a)  
4 as one of the rules intended as a substantive change. In fact, as shown above, it was  
5 specifically noted to *not* be a substantive change. Reply Appendix B, Petitioner's  
6 Reply (7/7/2017). The unforeseen and unintended consequence of the change in  
7 wording to Rule 15.3(a) has had a negative impact on criminal prosecution across  
8 the state and directly impacts the interests of justice.

### 11 **III. PRELIMINARY COMMENTS**

12 This petition has not been circulated for comments.

### 14 **IV. REQUEST FOR EXPEDITED CONSIDERATION**

15 Supreme Court Rule 28(G) provides for expedited consideration of a rule  
16 change petition when an urgent matter is presented and there are compelling reasons  
17 why the annual rule processing cycle is inadequate. In this matter, criminal  
18 prosecutions are currently being dismissed due to the State's inability to memorialize  
19 the testimony of crime victims when those victims are unavailable for trial. To wait  
20 for another year or more for the next rule processing cycle to consider this petition  
21 could result in potentially hundreds of criminal cases being dismissed across the  
22 state. APAAC accordingly requests expedited consideration and adoption of the  
23 proposed rule change with a formal comment period to follow as permitted by the  
24  
25

1 rule.

2 Wherefore, petitioner respectfully requests that the Court amend Rule 15.3(a),  
3 Arizona Rules of Criminal Procedures, as proposed in Appendix A.  
4

5  
6 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of October, 2018.

7 By: Elizabeth Ortiz  
8 Elizabeth Ortiz, #012838  
9 Executive Director  
10 Arizona Prosecuting Attorneys'  
Advisory Council

11 Electronic copy filed with the  
12 Clerk of the Arizona Supreme Court  
13 this 18<sup>th</sup> day of October, 2018.

14 by: Kiana Cooney

1  
2  
3 **APPENDIX A**  
4

5 (language to be removed is shown in ~~strikethrough~~, new language is underlined)  
6

7 **Arizona Rules of Criminal Procedure**

8 **Rule 15.3. Depositions**

9 **(a) Availability.** A party or a witness may file a motion requesting the court to  
10 order the examination of any person, except the defendant and ~~a victim~~ those  
11 excluded by Rule 39(b), by oral deposition under the following circumstances:

12 (1) a party shows that the person's testimony is material to the case and that  
13 there is substantial likelihood that the person will not be available at trial; or

14 (2) a party shows that the person's testimony is material to the case or  
15 necessary to adequately prepare a defense or investigate the offense, that the  
16 person was not a witness at the preliminary hearing or at the probable cause  
17 phase of the juvenile transfer hearing, and that the person will not cooperate  
18 in granting a personal interview; or

19 (3) a witness is incarcerated for failing to give satisfactory security that the  
20 witness will appear and testify as a trial or hearing.  
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1 WILLIAM G. MONTGOMERY  
2 MARICOPA COUNTY ATTORNEY  
3 (FIRM STATE BAR NO. 00032000)

4 MICHAEL R. MCVEY  
5 CHIEF DEPUTY (ACTING)  
6 301 WEST JEFFERSON STREET, SUITE 800  
7 PHOENIX, ARIZONA 85003  
8 TELEPHONE: (602) 506-3800  
9 (STATE BAR NUMBER 006926)

10 **ARIZONA SUPREME COURT**

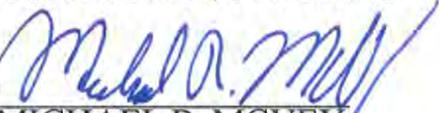
11 <b>IN RE:</b>	R-18-0035
12 <b>PETITION TO AMEND RULE</b>	MARICOPA COUNTY ATTORNEY'S
13 <b>15.3(a), ARIZONA RULES OF THE</b>	RESPONSE TO PETITION TO AMEND RULE
14 <b>OF CRIMINAL PROCEDURE</b>	15.3(A), ARIZONA RULES OF CRIMINAL PROCEDURE

15 The Maricopa County Attorney hereby responds to the Petition to Amend Rule  
16 15.3(a) of the Rules of Criminal Procedure and asks this Court to grant the Petition.  
17 As fully explained in the Petition, the modification to Rule 15.3(a) during the recent  
18 restyling efforts has created a completely unintended consequence. As the Petition  
19 clearly explains, there are times when prosecutors must be able to depose a crime  
20 victim to properly preserve that person's testimony for trial. The restyling task force  
21 discussed all intended substantive changes in its multiple Petitions to give all  
22 stakeholders the opportunity to submit comments to those changes to the task force and  
23 ultimately to this Court. The changes to Rule 15.3(a) were highlighted as stylistic but  
24 they inadvertently made a significant substantive change that was not discussed by the  
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1 task force or any stakeholders. That change is now being used by courts to prohibit the  
2 State from preserving a victim's testimony for trial when necessary. As discussed in  
3 the Petition, this was not the case before Rule 15.3 was restyled. For all the reasons  
4 discussed in the Petition, the Maricopa County Attorney asks this Court to grant the  
5 Petition to make clear that the State may depose a crime victim in an appropriate case.  
6  
7

8 Respectfully submitted this 1<sup>st</sup> day of May 2019.  
9

10 WILLIAM G. MONTGOMERY  
11 MARICOPA COUNTY ATTORNEY

12 By   
13 MICHAEL R. MCVEY  
14 CHIEF DEPUTY (ACTING)  
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1 ARIZONA VOICE FOR CRIME VICTIMS  
2 Steven J. Twist (State Bar # 004081)  
3 Colleen Clase (State Bar # 029360)  
4 111 E. Taylor Street  
5 Phoenix, AZ. 85004  
6 602-600-2661  
7 cclase@voiceforvictims.org  
8 colleen.avcv@gmail.com  
9

10 **IN THE ARIZONA SUPREME COURT**

11 IN THE MATTER OF:  
12 PETITION TO AMEND THE  
13 ARIZONA RULES OF CRIMINAL  
14 PROCEDURE

15 R-  
16 PETITION TO AMEND THE  
17 ARIZONA RULES OF CRIMINAL  
18 PROCEDURE

19 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona  
20 Voice for Crime Victims (AVCV) respectfully submits this petition to amend the  
21 Arizona Rules of Criminal Procedure by integrating the rights guaranteed to  
22 victims by our constitution, Ariz. Const. art. II, § 2.1, and its implementing  
23 legislation, Ariz. Const. art. II, §§ 2.1(D) and A.R.S. §§ 13-4401-42, throughout  
24 each applicable rule provision and repealing Rule 39. AVCV's proposed  
25 amendments are attached to this petition.

1 Arizona Voice for Crime Victims (AVCV), founded in 1996, is a non-profit  
2 organization located in Phoenix, Arizona that provides pro bono legal  
3 representation and social services to victims of crime in state and federal criminal  
4 proceedings. AVCV seeks to foster a fair and compassionate justice system in  
5 which all crime victims are informed of their rights under the Arizona Victims'  
6 Bill of Rights (VBR), fully understand their rights, and have a meaningful way to  
7 participate and assert these constitutional guarantees throughout the criminal  
8 justice process. To achieve these goals, AVCV empowers victims of crime  
9 through legal advocacy and social services. A key part of AVCV's mission is  
10 working to give the judiciary information and policy insights that may be helpful in  
11 ensuring that victims' rights are upheld by educating the judiciary of the practical  
12 day-to-day application of victims' rights in their courtrooms. When criminal court  
13 judges and the attorneys involved in each criminal case fully understand when and  
14 how victims' rights apply in each situation, victims can truly have the meaningful  
15 participation that the VBR intended.

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20 Currently, Rule 39 of the Arizona Rules of Criminal Procedure generally  
21 addresses victims' rights. Rule 39 was adopted "in response to the growing  
22 perception that victims of crime [were] encountering serious problems with the  
23 criminal justice system." Ariz. R. Crim. P. 39 cmt. (1989). Attempting to  
24 "ameliorate, if possible, the problems encountered by victims," the Court adopted  
25

1 Rule 39 in the hope it would “comprehensively” address the concerns of victims.  
2 *Id.* After voters adopted the VBR in November 1990, Rule 39 had to be amended  
3 to conform to the mandates of the state constitution. Rule 39, however, still only  
4 provides an overview of what rights crime victims are entitled to. Unlike the rights  
5 of the accused or the rights of the state, which are appropriately and carefully  
6 presented in the criminal rules, Rule 39 does not provide proper guidance to trial  
7 courts and attorneys on when victims’ rights apply in relation to the remainder of  
8 the Rules. A comprehensive approach to victims’ rights will require full  
9 integration into the Rules so that trial courts and attorneys are properly instructed  
10 on what the VBR mandates in each situation.  
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13  
14 Proposition 104 aimed to change the criminal justice culture for victims in  
15 Arizona by providing constitutional rights that would take victims from the  
16 sidelines of the criminal justice system to becoming active participants. Steven J.  
17 Twist & Keelah E.G. Williams, *Twenty-Five Years of Victims’ Rights in Arizona*,  
18 47 Ariz. St. L.J. 421 (2015). Notably, Proposition 104 received overwhelming  
19 support of Arizona’s voters and the Arizona Victims’ Bill of Rights (VBR) became  
20 effective on November 27, 1990. Gessner H. Harrison, *The Good, the Bad, and*  
21 *the Ugly: Arizona’s Courts and the Crime Victims’ Bill of Rights*, 34 Ariz. St. L.J.  
22 531, 532 (2002). The VBR enumerated specific rights to justice and due process,  
23 which include rights:  
24  
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- 1 1. To be treated with fairness, respect, and dignity, and to be free from  
2 intimidation, harassment, or abuse, throughout the criminal justice  
3 process.
- 4 2. To be informed, upon request, when the accused or convicted  
5 person is released from custody or has escaped.
- 6 3. To be present at and, upon request, to be informed of all criminal  
7 proceedings where the defendant has the right to be present.
- 8 4. To be heard at any proceeding involving a post-arrest release  
9 decision, a negotiated plea, and sentencing.
- 10 5. To refuse an interview, deposition, or other discovery request by  
11 the defendant, the defendant's attorney, or other person acting on  
12 behalf of the defendant.
- 13 6. To confer with the prosecution, after the crime against the victim  
14 has been charged, before trial or before any disposition of the case and  
15 to be informed of the disposition.
- 16 7. To read pre-sentence reports relating to the crime against the victim  
17 when they are available to the defendant.
- 18 8. To receive prompt restitution from the person or persons convicted  
19 of the criminal conduct that caused the victim's loss or injury.
- 20 9. To be heard at any proceeding when any post-conviction release  
21 from confinement is being considered.
- 22 10. To a speedy trial or disposition and prompt and final conclusion of  
23 the case after the conviction and sentence.
- 24 11. To have all rules governing criminal procedure and the  
25 admissibility of evidence in all criminal proceedings protect victims'  
rights and to have these rules be subject to amendment or repeal by  
the legislature to ensure the protection of these rights.
12. To be informed of victims' constitutional rights.

Ariz. Const. art. II, §§ 2.1(A)(1)-(12)

1 Integrating victims’ rights into each applicable rule would be consistent with  
2 the rights established in paragraph 11 of the VBR, namely that “*all rules governing*  
3 *criminal procedure and the admissibility of evidence in all criminal proceedings*  
4 *protect victims' rights.*” (emphasis added.) Ariz. Const. art. II., § 2.1(A)(11). Full  
5 integration of victims’ rights into each applicable Rule is further justified by the  
6 very language of the VBR, which guarantees, among other things, that victims  
7 have a right to be treated with fairness, respect, and dignity throughout the criminal  
8 justice process and to have “all rules governing criminal procedure and the  
9 admissibility of evidence in all criminal proceedings protect victims' rights.” Ariz.  
10 Const. art. II, § 2.1(A)(1). This Court has acknowledged that the VBR broadly  
11 recognizes these rights to fairness, respect, and dignity. *J.D.;M.M. v. Hegyi*, 236  
12 Ariz. 39, 42 (Ariz. 2014). The purpose of the VBR and its implementing  
13 legislation is to provide crime victims with the “basic rights of respect, protection,  
14 participation and healing of their ordeals.” *Champlain v. Sargeant*, 192 Ariz. 371,  
15 375 (Ariz. 1998) (citing 1991 Ariz. Sess. Laws ch. 229, § 2). The constitutional  
16 mandate requiring that victims be treated with “fairness” throughout the criminal  
17 justice process can be best achieved by fully integrating victims’ right into the  
18 Arizona Rules of Criminal Procedure, which, in turn, will “integrate victims into  
19 the day to day workings of the process.” Paul Cassell, *Treating Crime Victims*  
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1 *Fairly: Integrating Victims into the Federal Rules of Criminal Procedure*, 2007  
2 Utah L. Rev. 861, 863 (2007).

3  
4 It is important to point out that in seeking integration, AVCV is not asserting  
5 that victims are parties to a criminal case nor is AVCV seeking to elevate victims  
6 to party status. Arizona case authority is clear that victims of crime are not parties  
7 to a criminal prosecution. *State v. Lamberton*, 183 Ariz. 47 (1995) (victim not an  
8 aggrieved party with standing to file her own petition for review in a Rule 32  
9 proceeding); *Lindsay R. v. Cohen*, 236 Ariz. 565 (App. 2015) (noting VBR did not  
10 make victims parties). Although victims are not parties, they are participants with  
11 enforceable rights. AVCV merely seeks to ensure that trial courts and attorneys  
12 are aware of each applicable situation where a victim may assert a right guaranteed  
13 under the VBR or the VRJA.  
14

15  
16 Our legislature recognizes that victims have a right to meaning full  
17 participation during a criminal prosecution. A “victim has standing to seek an  
18 order, to bring a special action or to file a notice of appearance in an appellate  
19 proceeding, seeking to enforce any right to challenge an order denying any  
20 right...” A.R.S. § 13-4437(A); *State ex rel. Montgomery v. Padilla*, 238 Ariz. 560,  
21 566 (App. 2015) (A request for an order in a criminal case must be timely, in  
22 writing, served and filed with the court. For victims, the subject matter of such a  
23 request is limited and must be directed to enforcing any right or to challenging an  
24  
25

1 order denying any right guaranteed to victims). Additionally, “on the filing of a  
2 notice of appearance, counsel for the victim shall be endorsed on all pleadings and,  
3 if present, be included in all bench conferences and in chambers meetings and  
4 sessions with the trial court that directly involve a victim's right...” A.R.S. § 13-  
5 4437(D). Because victims have participatory rights, it is essential that Arizona’s  
6 trial courts and attorneys are provided proper guidance through this Court’s rule  
7 making authority regarding when victims’ rights apply in relation to the remainder  
8 of the Rules. This guidance is generally lacking in Rule 39 which plainly states  
9 what rights victims have, but it gives little direction of how each individual right  
10 should be applied in various situations. Integration, on the other hand, will  
11 specifically lay out when victims’ rights are implicated and must be considered  
12 throughout the criminal justice process.  
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15

16 Maintaining Rule 39 would only continue to provide a general overview of  
17 victims’ rights and welcome misunderstanding of their applicability by trial courts  
18 and attorneys. Full integration of the VBR into the applicable Rules would not  
19 create new victims’ rights or violate the rights of the accused. Rather, it would  
20 give effect to the VBR by allowing victims meaningful participation into the day-  
21 to-day workings of the process. Additionally, full integration would provide  
22 comprehensive guidance to criminal justice professionals using the constitutional  
23 and statutory mandates that already exist. Ensuring each applicable rule fully  
24  
25



# **Appendix**

## **Proposed Amendments to Arizona Rules of Criminal Procedure**

**Submitted January 10, 2019**

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## **Rule 1.2. Purpose and Construction**

These rules are intended to provide for the just and speedy determination of every criminal proceeding. Courts, parties, and crime victims should construe these rules to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the ~~individual~~ accused and the victim while preserving the public welfare. These rules must be construed to protect the constitutional rights of victims enumerated in Article II, Section 2.1(A) of the Arizona Constitution, including the rights to justice and due process and to be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse throughout the criminal justice process.

### (a) Limitations on Victims' Rights.

(1) Cessation of Victim Status. A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.

(2) Legal Entities. The victim's rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

## **Rule 1.3. Computation of Time**

**(a) General Time Computation.** When computing any time period more than 24 hours prescribed by these rules, by court order, or by an applicable statute, the following rules apply:

**(1) Day of the Event.** Exclude the day of the act or event from which the designated time period begins to run.

**(2) Last Day.** Include the last day of the period, unless it is a Saturday, Sunday or legal holiday, in which case the period ends on the next day that is not a Saturday, Sunday, or legal holiday.

**(3) Time Period Less Than 7 Days.** If the time period is less than 7 days, exclude intermediate Saturdays, Sundays and legal holidays from the computation.

**(4) Next Day.** The “next day” is determined by counting forward when the period is measured after an event, and backward when measured before an event.

**(5) Additional Time After Service.** If a party or crime victim may or must act within a specified time after service and service is made under a method authorized by Rule 1.7(c)(2)(C), (D), or (E), 5 calendar days are added after the specified time period

would otherwise expire under (a)(1)-(4), except as provided in Rule 31.3(d). This provision does not apply to the clerks' distribution of notices, minute entries, or other court-generated documents.

**(b) If an Arraignment Is Not Held.** If an arraignment is not held under Rule 14.5, the date of arraignment for the purpose of computing time is the date the defendant receives notice of the next court date under Rule 5.8.

**(c) Entry.** A court order is entered when the clerk files it.

#### **Rule 1.4. Definitions**

**(a) The Defendant.** "The defendant" is a person named as such in a complaint, indictment, or information. "The defendant" as used in these rules includes an arrested person who at the time of arrest is not named in a charging document. "The defendant" in the context of certain rules includes the attorney who represents the defendant.

**(b) Criminal Proceeding.** A "criminal proceeding" is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.

**(c) Identifying and Locating Information.** As used in this rule, "identifying and locating information" includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.

**(d) ~~(b)~~ Limited Jurisdiction Court.** A "limited jurisdiction court" is a justice court under A.R.S. §§ 22-101 et seq., or a municipal court under A.R.S. §§ 22-401 et seq.

**(e) ~~(c)~~ Magistrate.** "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the Chief Justice and justices of the Supreme Court, judges of the superior court, judges of the court of appeals, justices of the peace, and judges of a municipal court.

**(f) ~~(d)~~ Parties.** "Parties" means the State of Arizona and the defendants in a case. Use of the word "party" in these rules means either, or any, party.

**(g) ~~(e)~~ Person.** "Person" includes an entity.

**(h) ~~(f)~~ Presiding Judge.**

**(1) For the Superior Court.** The superior court presiding judge is the county's presiding judge. In a county that has only one superior court judge, that judge is the presiding judge. In other counties, the Chief Justice of the Supreme Court designates the presiding judge, who may appoint other judges to carry out one or more of the presiding judge's duties.

**(2) For a Limited Jurisdiction Court.** If a court consists only of one judge, that judge is the presiding judge. In courts having more than one judge, the presiding judge is designated by the appropriate authority.

**(i) (g) The State.** “The State” means the State of Arizona, or any other Arizona state or local governmental entity that files a criminal charge in an Arizona court. “The State” in the context of certain rules includes the prosecutor representing the State.

**(j) (h) Victim.** “Victim” means a person or persons as defined in A.R.S. § 13-4401.

**(1) Cessation of Victim Status.** A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.

**(2) Legal Entities.** The victims’ rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

### **Rule 1.5. Interactive Audiovisual Systems**

**(a) Generally.** If the appearance of a defendant or counsel is required in any court, the appearance may be made by using an interactive audiovisual system that complies with the provisions of this rule. Any interactive audiovisual system must meet or exceed minimum operational guidelines adopted by the Administrative Office of the Courts.

**(b) Requirements.** If an interactive audiovisual system is used:

**(1)** the system must operate so the court and all parties can view and converse with each other simultaneously;

**(2)** a full record of the proceedings must be made consistent with the requirements of applicable statutes and rules; and

**(3)** provisions must be made to:

**(A)** allow for confidential communications between the defendant and defendant’s counsel before, during, and immediately after the proceeding;

**(B)** allow a victim a means to view and participate in the proceedings and ensure compliance with all victims’ rights laws;

(C) allow the public a means to view the proceedings consistent with applicable law; and

(D) allow for use of interpreter services when necessary and, if an interpreter is required, the interpreter must be present with the defendant absent compelling circumstances.

**(c) When a Defendant May Appear by Videoconference.**

**(1) *In the Court's Discretion.*** A court may require a defendant's appearance by use of an interactive audiovisual system without the parties' consent at any of the following:

(A) an initial appearance;

(B) a misdemeanor arraignment;

(C) a not-guilty felony arraignment;

(D) a hearing on a motion to continue that does not include a waiver of time under Rule 8;

(E) a hearing on an uncontested motion;

(F) a pretrial or status conference;

(G) a change of plea in a misdemeanor case; or

(H) an informal conference held under Rule 32.7.

**(2) *Generally Not Permitted.*** A court may not require a defendant's appearance by use of an interactive audiovisual system at any trial, contested probation violation hearing, felony sentencing, or felony probation disposition hearing, unless the court finds extraordinary circumstances and the parties consent by written stipulation or on the record.

**(3) *By Stipulation.*** For any proceeding not included in (c)(1) and (c)(2), the parties may stipulate that the defendant may appear at the proceeding by use of an interactive audiovisual system. The parties must file a stipulation before the proceeding begins or state the stipulation on the record at the start of the proceeding. Before accepting the stipulation, the court must find that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by use of an interactive audiovisual system- and that the system will allow a victim means to view and participate in the proceedings and ensure compliance with all victims' rights laws.

**(4) *Change in Hearing's Scope.*** If the scope of a hearing expands beyond that specified in (c)(1) and (c)(3), the court must reschedule a videoconference, give notice to

counsel and the victim, and require the defendant's personal appearance.

### **Rule 1.7. Filing and Service of Documents**

**(a) "Filing with the Court" Defined.** The filing of a document with the court is accomplished only by filing it with the clerk. If a judge permits, a document may be submitted directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

#### **(b) Effective Date of Filing.**

**(1) Paper Documents.** A document is deemed filed on the date the clerk receives and accepts it. If a document is submitted to a judge and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

**(2) Electronically Filed Documents.** An electronically filed document is filed on the date and time the clerk receives it. Unless the clerk later rejects the document based on a deficiency, the date and time shown on the email notification from the court's electronic filing portal or as displayed within the portal is the effective date of filing. If a filing is rejected, the clerk must promptly provide the filing party with an explanation for the rejection.

**(3) Late Filing Because of an Interruption in Service.** If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document.

**(4) Incarcerated Parties.** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must deem the filing date to be the date when the document was delivered to jail or prison authorities to deposit in the mail.

**(c) Service of All Documents Required; Manner of Service.** Every person filing a document with any court must serve a copy of the document on all other parties and victim's attorney as follows:

**(1) Serving an Attorney.** If a party or victim is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

**(2) Service Generally.** A document is served under this rule by any of the following:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it by U.S. mail to the person's last-known address—in which event service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in (c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner—in which event service is complete upon transmission; or

(E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action—in which event service is complete upon transmission.

**(3) Certificate of Service.** The date and manner of service must be noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

*A copy has been or will be mailed/emailed/hand-delivered [select one] on [insert date] to:*

*[Name of opposing party or attorney] [Address of opposing party or attorney] [Name of victim's attorney]  
[Address of victim's attorney]*

If the precise manner in which service has actually been made is not noted, it will be presumed that the document was served by mail. This presumption will only apply if service in some form has actually been made.

### **Rule 1.8. Clerk's Distribution of Minute Entries and Other Documents**

**(a) Generally.** The clerk must distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of every minute entry to all parties and to any victim's attorney.

**(b) Electronic Distribution.** The clerk may distribute minute entries, notices and other court-generated documents to a party or a party's or victim's attorney by electronic means. Electronic distribution of a document is complete when the clerk transmits it to

the email address that the party or attorney has provided to the clerk.

### **Rule 1.9. Motions, Oral Argument, and Proposed Orders**

**(a) Content.** A motion must include a memorandum that states facts, arguments, and authorities pertinent to the motion.

**(b) Service of Motion; Response; Reply.** The moving party must serve the motion on all other parties. No later than 10 days after service, another party may file and serve a response, and, no later than 3 days after service of a response, the moving party may file and serve a reply. A reply must be directed only to matters raised in a response. If no response is filed, the court may deem the motion submitted on the record. When addressing matters that impact any victim's rights, a victim may file motions, responses, and replies that comply with these rules.

**(c) Length.** Unless the court orders otherwise, a motion or response, including a supporting memorandum, may not exceed 11 pages, exclusive of attachments, and a reply may not exceed 6 pages, exclusive of attachments.

**(d) Waiver of Requirements.** ~~On a party's request or on its own,~~ The court may waive a requirement specified in this rule, or it may overlook a formal defect in a motion.

**(e) Oral Argument.** ~~On a party's request or on its own,~~ The court may set a motion for argument or hearing.

**(f) Proposed Orders.** A proposed order must be prepared as a separate document and may not be included as part of a motion, stipulation, or other document. There must be at least two lines of text on the signature page of a proposed order. A party or victim's attorney must serve the proposed order on the court and all other parties and victim's attorney. A party or victim's attorney must not file a proposed order, and the court will not docket it, until a judge has reviewed and signed it. Absent a notice of filing, proposed orders will not be part of the record.

### **Rule 1.10. Victims' Rights: Exercising the Right to be Heard, The Right to Representation; Victim and Court Obligations.**

#### **(a) Exercising the Right to Be Heard**

**(1) *Nature of the Right.*** If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain,

support, or refute the victim's statement. This rule does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).

(2) *Victims in Custody.* If a victim is in custody for an offense, the victim's right to be heard under these rules is satisfied by affording the victim the opportunity to submit a written statement.

(3) *Victims Not in Custody.* A victim who is not in custody may exercise the right to be heard under these rules through an oral statement or by submitting a written or recorded statement.

(4) *At Sentencing.* The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.

**(b) Assistance and Representation.**

(1) *Right to Prosecutor's Assistance.* A victim has the right to the prosecutor's assistance in asserting rights enumerated in these rules or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.

(2) *Standing.* The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by these rules or by any other provision of law.

(3) *Conflicts.* If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information to the appropriate state or local bar association for referral to a lawyer.

(4) *Representation by Counsel.* In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. After a victim's counsel files a notice of appearance, all parties must endorse the victim's counsel on all pleadings. When present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.

(5) *Appointment of Victim's Representative.* Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. §

13-4403. The court must notify the parties if it appoints a representative.

**(c) Victim's Duties.**

(1) Generally. Any victim desiring to claim the notification rights and privileges provided in these rules must provide his or her full name, address, and telephone number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.

(2) Legal Entities.

(A) Designation of a Representative. If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.

(B) Notice. The prosecutor must notify the defendant and the court if the prosecutor receives notice under (c)(2)(A).

(C) Effect. After notice is provided under (c)(2)(B), only the representative designated under (c)(2)(A) may assert the victim's rights on behalf of the legal entity.

(D) Changes in Designation. The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.

(d) Waiver. A victim may waive the rights and privileges enumerated in these rules. A prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under these rules.

**(e) Court Enforcement of Victim Notice Requirements.**

(1) Court's Duty to Inquire. At the beginning of any proceeding that takes place more than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.

(2) If the Victim Has Been Notified. If the victim has been notified as requested, the court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must immediately comply with (b)(1).

(3) If the Victim Has Not Been Notified. If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.

(f) Appointment of Victim's Representative. Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.

#### **Rule 4.1. Procedure upon Arrest**

**(a) Prompt Initial Appearance.** An arrested person must be promptly taken before a magistrate. At the initial appearance, the magistrate will advise the arrested person of those matters set forth in Rule 4.2. If the initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody. Upon request, the victim must be informed of the date, time, and place for the initial appearance.

**(b) On Arrest Without a Warrant.** A person arrested without a warrant must be taken before the nearest or most accessible magistrate in the county of arrest. A complaint, if not already filed, must be promptly prepared and filed. If a complaint is not filed within 48 hours after the initial appearance before the magistrate, the arrested person must be immediately released from custody and any pending preliminary hearing dates must be vacated. The victim must be notified of any release.

#### **(c) On Arrest with a Warrant.**

**(1)(1) Arrest in the County of Issuance.** A person arrested in the county where the warrant was issued must be taken before the magistrate who issued the warrant for an initial appearance. If the magistrate is absent or unable to act, the arrested person must be taken to the nearest or most accessible magistrate in the same county. Upon request, the victim must be informed of the date, time, and place for the initial appearance.

**(2) Arrest in Another County.** If a person is arrested in a county other than the one where the warrant was issued, the person must be taken before the nearest or most accessible magistrate in the county of arrest. If eligible for release as a matter of right, the person must then be released under Rule 7.2. If not released immediately, the arrested person must be taken to the issuing magistrate in the county where the

warrant originated, or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in the county where the warrant originated. The victim must be notified of any release.

**(d) Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance.** Each presiding judge must make a magistrate available every day of the week to hold the initial appearances required under Rule 4.1(a). The presiding judge also must set at least one fixed time each day for conducting initial appearances, and notify local law enforcement agencies of the fixed time(s).

**(e) Sample for DNA Testing; Proof of Compliance.** If the arresting authority is required to secure a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-610(K), it must provide proof of compliance to the court before the initial appearance.

#### **Rule 4.2. Initial Appearance**

**(a) Generally.** At an initial appearance, the magistrate must:

**(1)** determine the defendant's true name and address and, if necessary, amend the formal charges to correct the name and instruct the person to promptly notify the court of any change of address;

**(2)** inform the defendant of the charges and, if available, provide the person with a copy of the complaint, information, or indictment;

**(3)** inform the defendant of the right to counsel and the right to remain silent;

**(4)** determine whether there is probable cause for purposes of release from custody, and, if no probable cause is found, immediately release the person from custody;

**(5)** appoint counsel if the defendant requests and is eligible for appointed counsel under Rule 6;

**(6)** permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release;

**(7)** unless the magistrate determines under (a)(8) that release on bail is prohibited, determine the conditions of release under Rule 7.2(a);

**(8)** determine whether probable cause exists to believe:

(A) the defendant committed a capital offense, or any felony offense committed while the person was on pretrial release for a separate felony charge; or

(B) the defendant committed a felony for which release on bail is prohibited because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of the victim, any other person, or the community based on the considerations provided in Rule 7.2(b)(3);

(9) if the court determines that the defendant is not eligible for bail based on a determination under (a)(8)(A) or (B), schedule a bail eligibility hearing in superior court as required under Rule 7.2(b)(4);

(10) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(A) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., or a domestic violence offense as defined in A.R.S. § 13-3601; and

(B) the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number; and

(11) order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing if:

(A) the defendant is in-custody and was arrested for an offense listed in A.R.S. § 13-610(O)(3); and

(B) the court has not received proof of compliance with A.R.S. § 13-610(K).

**(b) Felonies Charged by Complaint.** If a defendant is charged in a complaint with a felony, in addition to following the procedures in (a), the magistrate must:

(1) inform the defendant of the right to a preliminary hearing and the procedures by which that right may be waived; and

(2) unless waived, set the time for a preliminary hearing under Rule 5.1.

**(c) Combining an Initial Appearance with an Arraignment. Combining an Initial Appearance with an Arraignment.** If the defendant is charged with a misdemeanor or indicted for a felony and defense counsel is present or the defendant waives the presence of counsel, and, if requested, the victim has been given notice and an opportunity to be

present and heard, the magistrate may arraign a defendant under Rule 14 during an initial appearance under (a). If, however, the magistrate lacks jurisdiction to try the offense, the magistrate may not arraign the defendant and must instead transfer the case to the proper court for arraignment. If the court finds that delaying the defendant's arraignment is indispensable to the interests of justice, the court when setting a date for the continued arraignment must provide sufficient notice to victims, ~~under Rule 39(b)(2)~~.

### **Rule 5.1. Right to a Preliminary Hearing; Waiver; Continuance**

**(a) Right to a Preliminary Hearing.** A defendant has a right to a preliminary hearing if charged in a complaint with a felony. The victim, if requested, must be given notice of the preliminary hearing. A preliminary hearing must commence before a magistrate no later than 10 days after the defendant's initial appearance if the defendant is in custody, or no later than 20 days after the defendant's initial appearance if the defendant is not in custody, unless:

- (1) the complaint is dismissed;
- (2) the hearing is waived;
- (3) the defendant has been transferred from the juvenile court for criminal prosecution on specified charges; or
- (4) the magistrate orders the hearing continued under (c).

**(b) Waiver.** The parties may waive a preliminary hearing but the waiver must be in writing and the defendant, defense counsel, and the State must sign it.

#### **(c) Continuance.**

**(1) Release Absent Continuance.** If a preliminary hearing for an in-custody defendant did not commence within 10 days as required under (a) and was not continued, the defendant must be released from custody, unless the defendant is charged with a non-bailable offense, in which case the magistrate must immediately notify that county's presiding judge of the reasons for the delay.

**(2) Continuance.** On motion or on its own, a magistrate may continue a preliminary hearing beyond the 20-day deadline specified in (a). A magistrate may continue the hearing only ~~if it~~, if after consideration of the victim's right to a speedy trial, the court finds that extraordinary circumstances exist and that delay is indispensable to the interests of justice. The magistrate also must file a written order detailing the reasons for these findings. The court must promptly notify the parties and, if requested, the victim of the order.

**(3) Resetting Hearing Date.** If the magistrate orders a continuance, the order must

reset the preliminary hearing for a specific date to avoid uncertainty and additional delay.

**(d) Hearing Demand.** A defendant who is in custody may demand that the court hold a preliminary hearing as soon as practicable. In that event, the magistrate must set a hearing date and must not delay its commencement more than necessary to secure the attendance of counsel, a court reporter, and necessary witnesses., and to provide notice to any victims.

#### **Rule 5.4. Determining Probable Cause**

**(a) Holding a Defendant to Answer.** If a magistrate finds that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate must file a written order holding the defendant to answer for the offense before the superior court. Upon request, the magistrate may reconsider the conditions of release., after giving the victim the right to be heard. This rule's requirements are satisfied if a probable cause finding was made at a bail eligibility hearing under Rule 7.2(b)(4).

**(b) Amending the Complaint.** A magistrate may grant a motion to amend a complaint so that its factual allegations conform to the evidence, but the magistrate must not hold the defendant to answer for crimes different than those charged in the original complaint.

**(c) Evidence.** A magistrate must base a probable cause finding on substantial evidence, which may include hearsay in the following forms:

- (1) a written report of an expert witness;
- (2) documentary evidence, even without foundation, if there is a substantial basis for believing that foundation will be available at trial and the document is otherwise admissible; or
- (3) a witness's testimony about another person's declarations if such evidence is cumulative or if there are reasonable grounds to believe that the declarant will be personally available for trial.

**(d) Lack of Probable Cause.** The magistrate must dismiss the complaint and discharge the defendant if a magistrate finds that there is not probable cause to believe that an offense has been committed or that the defendant committed it.

#### **Rule 5.8. Notice if an Arraignment Is Not Held**

**(a) Notice.** If a defendant is held to answer in a county where an arraignment is not held as provided in Rule 14.2(d), the magistrate must:

- (1) enter a plea of not guilty for the defendant and provide the defendant and defense counsel with a notice specifying that a plea of not guilty has been entered;
- (2) set dates for a trial or pretrial conference;
- (3) advise the parties and, if requested, the victim, in writing of the dates set for further proceedings and other important deadlines;
- (4) advise the defendant of the defendant's right to be present at all future proceedings, that any proceeding may be held in the defendant's absence, and that if the defendant fails to appear, the defendant may be charged with an offense and a warrant may be issued for the defendant's arrest; and
- (5) advise the defendant of the right to a jury trial, if applicable.

**(b) Notice Form.** The magistrate must provide written notice to the defendant of the matters in (a). The defendant and defense counsel must sign the notice and return it to the court.

### **Rule 6.3. Duties of Counsel; Withdrawal**

#### **(a) Notice of Appearance.**

(1) **Generally.** Before representing the defendant in court, counsel--whether privately retained or appointed by the court--must file a notice of appearance.

(2) **Earlier Appearance in a Limited Jurisdiction Court.** Counsel who has filed a notice of appearance in a felony case in a limited jurisdiction court does not need to file a new notice of appearance if the defendant is bound over to superior court.

**(b) Duty of Continuing Representation.** Unless the court permits counsel to withdraw, counsel who represents a defendant at any stage of a case has a continuing duty to represent the defendant in all further proceedings in the trial court, including the filing of a notice of appeal.

#### **(c) Withdrawal.**

(1) **Before Granting a Motion to Withdraw.** Before granting a motion to permit counsel to withdraw, the court must consider the victim's right to a speedy trial.

~~(1)~~ (2) **If the Defendant Is Ineligible for Appointed Counsel.** Appointed counsel may not withdraw after arraignment on the ground that the defendant is ineligible for appointed counsel unless counsel shows that withdrawal will not disrupt the orderly processing of the case.

~~(2)~~ **(3) *If the Case Is Set for Trial.*** After a case is set for trial, the court may not permit counsel to withdraw unless counsel files a motion that provides:

**(A)** the name and address of new counsel and a signed statement from the new counsel that acknowledges the trial date and avows that the new counsel will be prepared for trial; or

**(B)** ethical grounds for withdrawing.

**(d) Duty of Defense Counsel to Preserve the File.** Defense counsel must:

**(1)** maintain records of the case in a manner that will inform successor counsel of all significant developments relevant to the case; and

**(2)** make available to successor counsel the client's complete records and files, as well as all information regarding every aspect of the representation.

**(e) Duty of Successor Counsel to Collect the File in a Capital Case.** Immediately upon undertaking representation of a defendant in a capital case in which the defendant was previously represented by counsel, defense counsel must collect the complete file from prior counsel and maintain the records and files in a manner that complies with (d).

#### **Rule 6.7. Appointment of Investigators and Expert Witnesses for Indigent Defendants**

**(a) Appointment.** On application, if the court finds that such assistance is reasonably necessary to adequately present a defense at trial or at sentencing, the court may appoint an investigator, expert witnesses, and/or mitigation specialist for an indigent defendant at county or city expense. After considering the victim's right to a speedy trial, the court should impose reasonable deadlines on anyone appointed under this rule.

**(b) Ex Parte Proceeding.** A defendant may not make an ex parte request under this rule without showing a need for confidentiality. The court must make a verbatim record of any ex parte proceeding, communication, or request, which must be available for appellate review.

**(c) Definition of a "Mitigation Specialist."** As used in this rule, a "mitigation specialist" is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate, and present psycho-social and other mitigation evidence.

**(d) Capital Case.** In a capital case, a defendant should make any motion for an expert or mitigation specialist no later than 60 days after the State makes its disclosure under Rule 15.1(i)(3).

## **Rule 7.2. Right to Release**

### **(a) Before Conviction; Bailable Offenses.**

**(1) *Presumption of Innocence.*** A defendant charged with a crime but not yet convicted is presumed to be innocent.

**(2) *Right to Release.*** Except as these rules otherwise provide, any defendant charged with an offense bailable as a matter of right must be released pending and during trial on the defendant's own recognizance with only the mandatory conditions of release required under Rule 7.3(a). This rule does not apply if the court determines that such a release will not reasonably assure the defendant's appearance or protect the victim, any other person, or the community from risk of harm by the defendant. If the court makes such a determination, it must impose the least onerous conditions of release set forth in Rule 7.3(c).

**(3) *Determining Method of Release or Bail Amount.*** In determining the method of release or the amount of bail, the court must consider the factors set forth in A.R.S. § 13-3967(B).

### **(b) Before Conviction: Defendants Charged with an Offense Not Eligible for Bail.**

**(1) *Not Eligible Based on Commission of a Specified Felony or Any Felony While on Pretrial Release.*** A defendant must not be released if the court finds the proof is evident or the presumption great that the defendant committed:

**(A)** a capital offense;

**(B)** any felony offense while the defendant was on pretrial release for a separate felony charge.

**(2) *Not Eligible Based on Commission of any Felony and Other Factors.*** Under article 2, section 22(A)(3) of the Arizona Constitution, the court may not release any defendant charged with a felony if the court finds all of the following:

**(A)** the proof is evident or the presumption great that the defendant committed one or more of the charged felony offenses;

**(B)** clear and convincing evidence that the defendant poses a substantial danger to the victim, any other person, or the community or, on certification by motion of the state,

the defendant engaged in conduct constituting a dangerous crime against children or terrorism; and

(C) no condition or combination of conditions of release will reasonably assure the safety of the victim, any other person, or the community.

**(3) *Bail Eligibility Considerations.*** In making the determinations required by (b)(2)(B) and (b)(2)(C), the court must consider:

(A) the nature and circumstances of the offense charged, including whether the offense is a “dangerous offense” as defined in A.R.S. § 13-105;

(B) the weight of the evidence against the defendant;

(C) the history and characteristics of the defendant, including the defendant's character, physical and mental condition, past conduct including membership in a criminal street gang, history relating to drug or alcohol abuse, and criminal history;

(D) the nature and seriousness of the danger to the victim, any other person, or the community that would be posed by releasing the defendant on bail, including any threat to a victim or other participants in the judicial process;

(E) the recommendation of the pretrial services program based on an appropriate risk assessment instrument;

(F) any victim statement about the offense and release on bail; and

(G) any other factor relevant to the determination required under (b)(2)(B) and (b)(2)(C).

**(4) *Bail Eligibility Hearing.***

(A) **Generally.** The superior court must hold a hearing to determine whether a defendant held in custody under Rule 4.2(a)(8) is not eligible for bail as required under (b)(1) or (b)(2), unless the defendant waives this hearing. A victim has the right to notice of the hearing and the right to be heard regarding any conditions of release.

(B) **Timing.** If the State makes an oral motion under A.R.S. § 13-3961(E), the court must hold this hearing within 24 hours of the initial appearance, subject to continuances as provided in A.R.S. § 13-3961. If this motion is not made, the hearing must be held as soon as practicable, but no later than 7 days after the initial appearance unless the detained defendant moves for a continuance.

(C) **Determination of Probable Cause and Release Conditions.** If the court does

not find the proof evident or the presumption great under (b)(1) or (b)(2)(A), the court must determine whether there is probable cause to believe that an offense was committed and that the defendant committed it. If the court finds probable cause, the court must determine release conditions under (a). If the court does not find probable cause, the defendant must be released from custody. The parties may stipulate before the bail eligibility hearing that the probable cause determination at the hearing satisfies the requirements of Rule 5. If the parties so stipulate and the court does not find probable cause, the court must dismiss the complaint and discharge the defendant. If the parties have not so stipulated, the court must schedule a preliminary hearing as provided in Rule 5.1(a).

**(D) Findings on the Record.** The court's findings must be on the record.

**(c) After Conviction.**

**(1) Superior Court.**

**(A) Before Sentencing.** After a defendant is convicted of an offense for which the person will, in all reasonable probability, receive a sentence of imprisonment, the court may not release the person on bail or on the person's own recognizance unless:

**(i)** the court finds that reasonable grounds exist to believe that the conviction may be set aside on a motion for new trial, judgment of acquittal, or other post-trial motion; or

**(ii)** the parties stipulate otherwise and the court approves the stipulation.

**(B) After a Sentencing Involving Imprisonment.** If a defendant is convicted of a felony offense and is sentenced to prison, the court may not release the defendant on bail or on the defendant's own recognizance pending appeal unless the court, after considering the views of the victim, finds the defendant is in such physical condition that continued confinement would endanger the defendant's life.

**(C) Protecting Safety.** In determining release conditions if the defendant is released under (c)(1)(A) or (B), the court must impose conditions that will protect the victim, any other person, and the community from risk of harm by the defendant.

**(D) After Sentence, Pending Appeal.** If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

**(E) Release upon Sentence Completion.** A defendant held in custody pending appeal must be released if the term of incarceration is completed before the appeal is decided.

**(2) Limited Jurisdiction Courts.**

**(A) *Conditions of Release on Appeal.*** If a defendant files a timely notice of appeal of a conviction for an offense for which the court has imposed a sentence of incarceration, the defendant may remain out of custody under the same conditions of release imposed at or after the defendant's initial appearance or arraignment.

**(B) *Lack of Diligence on Appeal.*** If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

**(C) *Motion to Amend Conditions of Release.***

**(i)** Upon the filing of a timely notice of appeal, the court—on motion or on its own—may amend the conditions of release if it finds a substantial risk exists that the defendant presents a danger to the victim, another person or the community, or the defendant is unlikely to return to court if required to do so after the appeal concludes.

**(ii)** The court must hear a motion under this rule no later than 3 days after filing, although it may continue the hearing for good cause. The defendant may be detained pending the hearing. The hearing must be on the record, and the defendant is entitled to representation by counsel. Any testimony by the defendant is not admissible in another proceeding except as it relates to compliance with prior conditions of release, perjury, or impeachment. The court must state its findings on the record.

**(iii)** The court may amend the conditions of release in accordance with the standards set forth in Rule 7.3 and Rule 7.4(b). In determining the method of release or the amount of bail, the court must consider the nature and circumstances of the offense, family or local ties, employment, financial resources, the defendant's character and mental condition, the length of residence in the community, the record of arrests or convictions, the risk of harm to the victim, other persons, or the community, and appearances at prior court proceedings.

**(D) *Release upon Sentence Completion.*** A defendant held in custody pending appeal must be released if the defendant's term of incarceration is completed before the appeal is decided.

**(E) *Superior Court Review.*** If the trial court enters an order setting a bond or requiring incarceration during the appeal, the defendant may petition the superior court to stay the execution of sentence and to allow the defendant's release either without bond or on a reduced bond.

**(d) *Burden of Proof.*** A court must determine issues under (a) and (c) by a preponderance of the evidence. The State bears the burden of establishing factual issues under (a), (b) and (c)(2). The defendant bears the burden of establishing factual issues under (c)(1).

### **Rule 7.3. Conditions of Release**

**(a) Mandatory Conditions.** Every order of release must contain the following conditions:

- (1) the defendant must appear at all court proceedings;
- (2) the defendant must not commit any criminal offense;
- (3) the defendant must not leave Arizona without the court's permission; ~~and~~
- (4) the defendant must not contact the victim, unless the court clearly finds good cause to conclude the victim's safety would be protected without a no-contact order; and
- ~~(4)~~(5) if a defendant is released during an appeal after judgment and sentence, the defendant will diligently pursue the appeal.

**(b) Mandatory Condition if Charged with an Offense Listed in A.R.S. § 13- 610(O)(3).**

(1) **Generally.** If a defendant is charged with an offense listed in A.R.S. § 13- 610(O)(3) and has been summoned to appear in court, the magistrate must order the defendant to report to the arresting law enforcement agency or its designee no later than 5 days after release, and submit a sample of buccal cells or other bodily substances for DNA testing as directed. The defendant must provide proof of compliance at the next scheduled court proceeding.

(2) **Required Notice.** The court must inform a defendant that a willful failure to comply with an order under (b)(1) will result in revocation of release.

~~(c) Additional Conditions. The court must order the defendant not to contact a victim if such an order is reasonable and necessary to protect a victim from physical harm, harassment, intimidation, or abuse. The court also may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to secure the defendant's appearance or to protect another person or the community from risk of harm by the defendant. In making determinations under this rule, the court must consider, if provided, the results of a risk assessment approved by the Supreme Court and a law enforcement's lethality assessment.~~

(1) **Non-Monetary Conditions.** A court may impose the following non-monetary conditions:

(A) placing the defendant in the custody of a designated person or organization that agrees to provide supervision;

- (B) restricting the defendant's travel, associations, or residence;
- (C) prohibiting the defendant from possessing any dangerous weapon;
- (D) engaging in certain described activities, or consuming intoxicating liquors or any controlled substance that is not properly prescribed;
- (E) requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (F) returning the defendant to custody after specified hours; or
- (G) imposing any other non-monetary condition that is reasonably related to securing the defendant's appearance or protecting others or the community from risk of harm by the defendant.

**(2) Monetary Conditions.**

(A) **Generally.** A court's imposition of a monetary condition of release must be based on an individualized determination of the defendant's risk of non-appearance, risk of harm to the victim, or to others or the community, and the defendant's financial circumstances. The court may not rely on a schedule or charge-based bond amounts, and it must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the defendant is unable to pay the imposed monetary condition.

(B) **Least Onerous Alternative.** If the court determines a monetary condition is necessary, it must impose the least onerous type of condition in the lowest amount necessary to secure the defendant's appearance or protect the victim, or other persons or the community from risk of harm by the defendant.

(C) **Types of Conditions.** The types of monetary conditions a court may impose include the following:

- (i) an unsecured appearance bond;
- (ii) a deposit bond;
- (iii) another type of secured bond; and
- (iv) a cash bond.

**Rule 7.4. Procedure**

(a) **Initial Appearance.** At an initial appearance, the court must determine bail eligibility and the conditions for release. If the court decides that the defendant is

eligible for release, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

**(b) Bail Eligibility Hearing.**

**(1) *Right to Secure Witnesses, Cross-Examine, and Review Witness Statements.*** At a bail eligibility hearing, each party has the right to secure the attendance of witnesses, cross-examine any witness who testifies, and to review any previous written statement by the witness before cross-examination.

**(2) *Victims.*** ~~Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g).~~ A victim has the right to confer with the State about any decision regarding the preconviction release of the defendant. A victim must be given notice of a bail eligibility hearing and the victim has the right to be present and be heard by the court before the court modifies release conditions. If a victim objects to being called as a witness in a bail eligibility hearing, the court must require the party wishing to present the victim's testimony to make an offer of proof and the court may require a victim to testify only if the court finds that the evidence in the offer of proof would likely impact the court's decision on the matters under consideration at the hearing. If the opposing party stipulates to the information in the offer of proof, the victim will not be required to testify.

**(3) *Admissibility.*** Evidence is admissible at the hearing only if it is material to whether, and under what conditions, to release the defendant on bail and, subject to the parties' stipulation under Rule 7.2(b)(4)(C), whether probable cause exists to hold the defendant for trial on each charge. Rules or objections calling for the exclusion of evidence are inapplicable at a bail eligibility hearing.

**(c) Later Review of Conditions.**

**(1) *Generally.*** On motion or on its own, a court may reexamine bail eligibility or the conditions of release if the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

**(2) *Motion Requirements and Hearing.*** The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. ~~A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.~~ A victim has the right to notice of and the right to be heard at any hearing regarding any motion to modify release conditions.

(3) *Eligibility for Bail.* If the motion is by the State and involves a defendant previously held eligible for bail at the initial appearance, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

**(d) Evidence.** A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

**(e) Defendant's Bail Status.** If the court makes the findings required under Rule 7.2(b)(1) or (b)(2) to deny bail, the court must order the defendant held without bail until further order. If not, the court must order the defendant released on bail under Rule 7.2(a).

**(f) Review of Conditions of Release for Misdemeanors.** No later than 10 days after arraignment, the court must determine whether to amend the conditions of release for any defendant held in custody on bond for a misdemeanor.

**(g) Appointment of Counsel.** The court must appoint counsel in any case in which the defendant is eligible for the appointment of counsel under Rule 6.1(b).

#### **Rule 7.5. Review of Conditions; Revocation of Release**

**(a) On State's Petition.** If the State files a verified petition stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the petition. A copy of the petition must be provided with the summons, warrant, or notice.

**(b) On Pretrial Services' Report.** If pretrial services submits a written report to the court stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the report. A copy of the report must be provided to the State and provided with the summons, warrant, or notice.

**(c) On Victim's Petition.** If the prosecutor decides not to file a petition under (a), the victim may petition the court to revoke the defendant's bond or own recognizance release, or otherwise modify the conditions of the defendant's release. Before filing a petition, the victim must consult with the prosecutor about the requested relief. The petition must include a statement under oath by the victim asserting any harassment, threats, physical violence, abuse, or intimidation by the defendant, or on the defendant's behalf, against the victim or the victim's immediate family.

**(d) Hearing; Modification of Conditions; Revocation.**

**(1) *Modification of Conditions of Release.*** After a hearing on the matters set forth in the petition or report, the court may impose different or additional conditions of release if it finds that the defendant has willfully violated the conditions of release.

**(2) *Revocation of Release on a Felony Offense.*** The court may revoke release of a person charged with a felony if, after a hearing, the court finds that the proof is evident or presumption great as to the present charge and:

**(A)** probable cause exists to believe that the person committed another felony during the period of release; or

**(B)** the person poses a substantial danger to the victim, another person or the community, and no other conditions of release will reasonably assure the safety of the victim, other person or the community.

**(e) *Revocation of Release: DNA Testing.*** The State may file a motion asking the court to revoke a defendant's release for failing to comply with the court's order to provide a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-3967(F)(4) and to provide proof of compliance. The motion must state facts establishing probable cause to believe that the defendant has not complied with the order. At the defendant's next court appearance, the court must proceed in accordance with this rule's requirements and A.R.S. § 13-3967(F)(4).

**(f) *Revocation of Release: 10-print Fingerprinting.*** If a defendant fails to timely present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court may remand the defendant into custody for 10-print fingerprinting. If otherwise eligible for release, the defendant must be released from custody after being 10-print fingerprinted.

**Rule 7.6. Transfer and Disposition of Bond**

**(a) *Transfer upon Supervening Indictment.*** An appearance bond or release order issued following the filing of a felony complaint in justice court will automatically be transferred to a criminal case in superior court after an indictment is filed that alleges the same charges.

**(b) *Filing and Custody of Appearance Bonds and Security.*** A defendant must file an appearance bond and security, if ordered, with the clerk of the court in which a case is pending or the court in which the initial appearance is held. If the case is transferred to another court, the transferring court also must transfer any appearance bond and security.

**(c) *Forfeiture Procedure.***

**(1) Arrest Warrant and Notice to Surety.** If the court is informed that the defendant has violated a condition of an appearance bond, it may issue a warrant for the defendant's arrest. No later than 10 days after the warrant's issuance, the court must notify the surety, in writing or electronically, that the warrant was issued.

**(2) Hearing and Notice.** After issuing the arrest warrant, the court must set a hearing within a reasonable time, no later than 120 days after it issued the warrant, requiring the parties and any surety to show cause why the bond should not be forfeited. The court must notify the parties and, if requested, the victim, and any surety of the hearing in writing or electronically. The forfeiture hearing may be combined with a Rule 7.5(d) hearing.

**(3) Forfeiture.** If the court finds that the violation is not excused, it may enter an order forfeiting all or part of the bond amount, and the State may enforce that order as a civil judgment. The order must comply with Arizona Rule of Civil Procedure 58(a).

**(d) Exoneration.**

**(1) Generally.** If the court finds before a violation that there is no further need for an appearance bond, it must exonerate the bond and order the return of any security.

**(2) Amount Returned.** When a deposit bond or cash bond is exonerated, the court must order the return of the entire amount deposited unless forfeited under Rule 7.6(c)(3) or the bond depositor authorizes it be applied to a financial obligation.

**(3) If the Defendant Is Surrendered, In-Custody, or Transferred.** The court must exonerate the bond if:

**(A)** the surety surrenders the defendant to the sheriff of the county in which the prosecution is pending, and:

**(i)** the surrender is on or before the day and time the defendant is ordered to appear in court; and

**(ii)** the sheriff informs the court of the defendant's surrender;

**(B)** the defendant is in the custody of the sheriff of the county in which the prosecution is pending on or before the day and time the defendant is ordered to appear in court under the following conditions:

**(i)** the surety provides the sheriff with an affidavit of surrender of the appearance bond; and

**(ii)** the sheriff reports the defendant is in custody and that the surety has provided an affidavit of surrender of the appearance bond; or

(C) before the defendant was released to the custody of the surety, the defendant was released or transferred to the custody of another government agency, preventing the defendant from appearing in court on the scheduled court date and the surety establishes:

(i) the surety did not know and could not have reasonably known of the release or transfer or that a release or transfer was likely to occur; and

(ii) the defendant's failure to appear was a direct result of the release or transfer.

(4) **Conditions When Not Required to Exonerate Bond.** The court is not required to exonerate the bond under (d)(2)(C) if a detainer was placed on the defendant before the bond was posted or the release or transfer to another government agency was for 24 hours or less.

(5) **Other Circumstances.** In all other instances, the decision whether or not to exonerate a bond is within the discretion of the court.

(6) **Post-Forfeiture Notice.** After filing an order of forfeiture, the court must provide:

(A) a copy of the order to the State, the defendant, the defendant's attorney, and the surety; and

(B) a copy of a signed order to the county attorney for collection.

### **Rule 8.1. Priorities in Scheduling Criminal Cases**

(a) **Priority of Criminal Trials.** A trial of a criminal case has priority over a trial of a civil case.

(b) **Preferences.** The trial of a defendant in custody, and the trial of a defendant whose pretrial liberty may present unusual risks, have preference over other criminal cases.

(c) **Duty of the Prosecutor.** The prosecutor must advise the court of facts relevant to the priority of cases for trial.

(d) **Duty of Defense Counsel.** Defense counsel must advise the court of an impending expiration of time limits. A court may sanction counsel for failing to do so, and should consider a failure to timely notify the court of an expiring time limit in determining whether to dismiss an action with prejudice under Rule 8.6.

(e) **Suspension of Rule 8.** No later than 25 days after a superior court arraignment, either party may move for a hearing to establish extraordinary circumstances requiring a suspension of Rule 8. No later than 5 days after the motion is filed, the court must

hold a hearing on the motion, permit the victim to be heard, and, after considering the victim's right to a speedy trial, make findings of fact about whether extraordinary circumstances exist that justify the suspension of Rule 8. If the trial court finds that Rule 8 should be suspended, the court must immediately transmit its findings to the Supreme Court Chief Justice. If the Chief Justice approves the findings, the trial court may suspend Rule 8's provisions and reset the trial for a later specified date.

## **Rule 8.2. Time Limits**

**(a) Generally.** Subject to Rule 8.4, the court must try every defendant against whom an indictment, information, or complaint is filed within the following times:

**(1) *Defendants in Custody.*** No later than 150 days after arraignment if the defendant is in custody, except as provided in (a)(3).

**(2) *Defendants out of Custody.*** No later than 180 days after arraignment if the defendant is released under Rule 7, except as provided in (a)(3).

**(3) *Defendants in Complex Cases.*** No later than 270 days after arraignment if the defendant is charged with any of the following:

**(A)** first degree murder, except as provided in (a)(4);

**(B)** offenses that will require the court to consider evidence obtained as the result of an order permitting the interception of wire, electronic, or oral communication; or

**(C)** any case the court determines by written factual findings to be complex.

**(4) *Capital Cases.*** No later than 24 months after the date the State files a notice of intent to seek the death penalty under Rule 15.1(i).

**(b) Waiver of Appearance at Arraignment.** If a defendant waives an appearance at arraignment under Rule 14.3, the date of an arraignment held in the defendant's absence is deemed to be the arraignment date.

**(c) New Trial.** A trial ordered after a mistrial or the granting of a new trial must begin no later than 60 days after entry of the court's order. A trial ordered upon an appellate court's reversal of a judgment must begin no later than 90 days after the appellate court issues its mandate. A new trial ordered by a state court under Rule 32 or a federal court under collateral review must begin no later than 90 days after entry of the court's order.

**(d) Extension of Time Limits.** The court may extend the time limits in (a) and (c) under Rule 8.5.

**(e) Specific Date for Trial.** The superior court must set a specific trial date either at the arraignment or a pretrial conference, unless the court has suspended Rule 8. In

setting the date, the court must consider the views of the victim, as well as the rights of both the defendant and the victim to a speedy trial.

### **Rule 8.5. Continuing a Trial Date**

**(a) Motion.** A party may ask to continue trial by filing a motion stating the specific reasons for the request.

**(b) Grounds.** A court may continue trial only after considering a victim's and the defendant's right to a speedy trial and on a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice, and only for so long as is necessary to serve the interests of justice. The court must state specific reasons for continuing trial.

### **Rule 10.2. Change of Judge as a Matter of Right**

#### **(a) Entitlement.**

**(1) Generally.** Each side in a criminal case is entitled to one change of judge as a matter of right. If two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right.

**(2) Meaning of "Side."** Each case, including one that is consolidated, is treated as having only two sides.

**(3) Per Party Limit.** A party exercising a change of judge as a matter of right is not entitled to another change of judge as a matter of right.

**(4) Inapplicability to Certain Proceedings.** A party is not entitled to a change of judge as a matter of right in a proceeding under Rule 32 or a remand for resentencing.

#### **(b) Procedure.**

**(1) Generally.** A party may exercise a right to change of judge by filing a "Notice of Change of Judge" signed by counsel or a self-represented defendant, and stating the name of the judge to be changed. The notice also must include an avowal that the party is making the request in good faith and not for an improper purpose. An attorney's avowal is in the attorney's capacity as an officer of the court.

**(2) "Improper Purpose."** "Improper purpose" means:

**(A)** for the purpose of delay;

**(B)** to obtain a severance;

- (C) to interfere with the judge’s reasonable case management practices;
- (D) to remove a judge for reasons of race, gender or religious affiliation;
- (E) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group, or law firm;
- (F) to obtain a more convenient geographical location; or
- (G) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).

**(3) Further Action by the Judge.** If a notice of change of judge is timely filed, the judge should proceed no further in the action, except to enter any necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge’s designee. If the named judge is the presiding judge, that judge may continue to perform the functions of the presiding judge.

**(c) Timing.**

**(1) Generally.** Except as provided in (c)(2), a party must file a notice of change of judge no later than 10 days after any of the following:

- (A) the arraignment, if the case is assigned to a judge and the parties are given actual notice of the assignment at or before the arraignment;
- (B) the superior court clerk’s filing of a mandate issued by an appellate court; or
- (C) in all other cases, actual notice to the requesting party of the assignment of the case to a judge.

**(2) Exception.** Despite (c)(1), if a new judge is assigned to a case less than 10 days before trial (inclusive of the date of assignment), a notice of change of judge must be filed, with appropriate actual notice to the other party or parties and any counsel for the victim, no later than by 5:00 p.m. on the next business day following actual receipt of a notice of the assignment or by the start of trial, whichever occurs earlier.

**(d) Assignment to a New Judge and Effect on Other Defendants.**

**(1) On Stipulation.** If a notice of change of judge is timely filed, the notice may inform the court that all the parties have agreed on a judge who is available and willing to accept the assignment. Such an agreement may be honored and, if so, it bars further changes of judge as a matter of right, unless the agreed-on judge later becomes unavailable. If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties may assert any rights under this rule that existed

immediately before the assignment of the action to that judge.

**(2) *Absent Stipulation.*** If a timely notice of judge has been filed and no judge has been agreed on, the presiding judge must immediately reassign the action to another judge.

**(3) *Effect on Other Defendants.*** If there are multiple defendants, a notice of change of judge filed by one or more defendants does not require a change of judge as to the other defendants, even though the notice of change of judge may result in severance for trial purposes.

**(e) *Waiver.*** A party loses the right to a change of judge under this rule if the party participates before that judge in any contested matter in the case, a proceeding under Rule 17, or the beginning of trial.

**(f) *Following Remand.*** Unless previously exercised, a party may exercise a change of judge as a matter of right following an appellate court's remand for new trial, and no event connected with the first trial constitutes a waiver. A party may not exercise a change of judge as a matter of right following a remand for resentencing.

### **Rule 10.3. Changing the Place of Trial**

**(a) *Grounds.*** A party is entitled to change the place of trial to another county if the party shows that the party cannot have a fair and impartial trial in that place for any reason other than the trial judge's interest or prejudice.

**(b) *Prejudicial Pretrial Publicity.*** If the grounds to change the place of trial are based on pretrial publicity, the moving party must prove that the dissemination of the prejudicial material probably will result in the party being deprived of a fair trial.

**(c) *Procedure.*** A party seeking to change the place of trial must file a motion seeking that relief. The motion must be filed before trial, and, in superior court, at or before a pretrial conference. The victim has the right to be heard on the matter. The court must consider the victim's right to be present and consider alternatives to moving the trial that will protect the defendant's right to a fair trial while reasonably allowing the victim to exercise the right to be present.

**(d) *Waiver.*** A party loses the right to change the place of trial if the party allows a proceeding to begin or continue without raising a timely objection after learning of the cause for challenge.

**(e) *Renewal on Remand.*** If an appellate court remands an action for a new trial on one or more offenses charged in an indictment or information, all parties' rights to change the place of trial are renewed, and no event connected with the first trial

constitutes a waiver.

### **Rule 15.1. The State's Disclosures**

**(a) Initial Disclosures in a Felony Case.** Unless a local rule provides or the court orders otherwise:

(1) the State must make available to the defendant all reports containing information identified in (b)(3) and (b)(4) that the charging attorney possessed when the charge was filed; and

(2) the State must make these reports available by the preliminary hearing or, if no preliminary hearing is held, the arraignment.

**(b) Supplemental Disclosure.** Except as provided in ~~Rule 39(b)~~ (f)(2), the State must make available to the defendant the following material and information within the State's possession or control:

(1) the name and address of each person the State intends to call as a witness in the State's case-in-chief and any relevant written or recorded statement of the witness;

(2) any statement of the defendant and any co-defendant;

(3) all existing original and supplemental reports prepared by a law enforcement agency in connection with the charged offense;

(4) for each expert who has examined a defendant or any evidence in the case, or who the State intends to call at trial:

(A) the expert's name, address, and qualifications;

(B) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(C) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify;

(5) a list of all documents, photographs, and other tangible objects the State intends to use at trial or that were obtained from or purportedly belong to the defendant;

(6) a list of the defendant's prior felony convictions the State intends to use at trial;

(7) a list of the defendant's other acts the State intends to use at trial;

(8) all existing material or information that tends to mitigate or negate the defendant's guilt or would tend to reduce the defendant's punishment;

(9) whether there has been any electronic surveillance of any conversations to which

the defendant was a party, or of the defendant's business or residence;

(10) whether a search warrant has been executed in connection with the case; and

(11) whether the case involved an informant, and, if so, the informant's identity, subject to the restrictions under Rule 15.4(b)(2).

**(c) Time for Supplemental Disclosures.** Unless the court orders otherwise, the State must disclose the material and information listed in (b) no later than:

(1) in the superior court, 30 days after arraignment.

(2) in a limited jurisdiction court, at the first pretrial conference.

**(d) Prior Felony Convictions.** The State must make available to a defendant a list of prior felony convictions of each witness the State intends to call at trial and a list of the prior felony convictions the State intends to use to impeach a disclosed defense witness at trial:

(1) in a felony case, no later than 30 days before trial or 30 days after the defendant's request, whichever occurs first; and

(2) in a misdemeanor case, no later than 10 days before trial.

**(e) Disclosures upon Request.**

(1) **Generally.** Unless the court orders otherwise, the State must make the following items available to the defendant for examination, testing, and reproduction no later than 30 days after receiving a defendant's written request:

(A) any of the items specified in the list submitted under (b)(5);

(B) any 911 calls existing at the time of the request that the record's custodian can reasonably ascertain are related to the case; and

(C) any completed written report, statement, and examination notes made by an expert listed in (b)(1) and (b)(4) related to the case.

(2) **Conditions.** The State may impose reasonable conditions, including an appropriate stipulation concerning chain of custody to protect physical evidence or to allow time for the examination or testing of any items.

**(f) Scope of the State's Disclosure Obligation.**

**(1) Obligation.** The State's disclosure obligation extends to material and information in the possession or control of any of the following:

(H) (A) the prosecutor, other attorneys in the prosecutor's office, and members of the prosecutor's staff;

~~(2)~~ **(B)** any law enforcement agency that has participated in the investigation of the case and is under the prosecutor's direction and control; and

~~(3)~~ **(C)** any other person who is under the prosecutor's direction or control and who participated in the investigation or evaluation of the case.

**(i) Limitations.** The State is not required to disclose a victim's identifying or locating information unless the court finds that disclosure is required to protect the defendant's constitutional rights. If disclosure of personal identifying or locating information is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not provide the information to the defendant without prior court authorization and after considering the rights and views of the victim.

**(ii) Redactions.** Rule 15.5(e) applies to information withheld under this rule.

**(g) Disclosure by Court Order.**

**(1) Disclosure Order.** On the defendant's motion, a court may order any person other than the victim to make available to the defendant material or information not included in this rule if the court finds:

**(A)** the defendant has a substantial need for the material or information to prepare the defendant's case; and

**(B)** the defendant cannot obtain the substantial equivalent by other means without undue hardship.

**(2) Modifying or Vacating Order.** On the request of any person affected by an order, the court may modify or vacate the order if the court determines that compliance would be unreasonable or oppressive.

**(h) Disclosure of Rebuttal Evidence.** Upon receiving the defendant's notice of defenses under Rule 15.2(b), the State must disclose the name and address of each person the State intends to call as a rebuttal witness, and any relevant written or recorded statement of the witness.

**(i) Additional Disclosures in a Capital Case.**

**(1) Notice of Intent to Seek the Death Penalty.**

**(A) Generally.** No later than 60 days after a defendant's arraignment in superior court on a charge of first-degree murder, the State must provide notice to the defendant of whether the State intends to seek the death penalty.

**(B) Time Extensions.** The court may extend the State's deadline for providing notice by an additional 60 days if the parties file a written stipulation agreeing to the

extension. If the court approves the extension, the case is considered a capital case for all administrative purposes, including, but not limited to, scheduling, appointment of counsel under Rule 6.8, and the assignment of a mitigation specialist. The court may grant additional extensions if the parties file written stipulations agreeing to them.

**(C) *Victim Notification.*** If the victim has requested notice under A.R.S. § 13- 4405, the prosecutor must confer with the victim before agreeing to extend the deadline under (i)(1)(B).

**(2) *Aggravating Circumstances.*** If the State files a notice of intent to seek the death penalty, the State must, at the same time, provide the defendant with a list of aggravating circumstances that the State intends to prove in the aggravation phase of the trial.

**(3) *Initial Disclosures.***

**(A) *Generally.*** No later than 30 days after filing a notice of intent to seek the death penalty, the State must disclose the following to the defendant:

**(i)** the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness;

**(ii)** the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

**(iii)** a list of all documents, photographs, or other tangible objects, or electronically stored information the State intends to use to support each identified aggravating circumstance at the aggravation hearing; and

**(iv)** all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

**(B) *Time Extensions.*** The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures only if the State shows good cause or the parties stipulate to the deadline extension.

**(4) *Rebuttal and Penalty Phase Disclosures.*** No later than 60 days after receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following to the defendant:

**(A)** the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness

(B) the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness,

(C) the name and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and

(D) a list of all documents, photographs or other tangible objects the State intends to use during the aggravation and penalty hearings.

**(j) Item Prohibited by A.R.S. §§ 13-3551 et seq., or Is the Subject of a Prosecution Under A.R.S. § 13-1425.**

(1) **Scope.** This rule applies to an item that cannot be produced or possessed under A.R.S. §§ 13-3551 et seq. or is an image that is the subject of a prosecution under A.R.S. § 13-1425, but is included in the list disclosed under (b)(5).

(2) **Disclosure Obligation.** The State is not required to reproduce the item or release it to the defendant for testing or examination except as provided in (j)(3) and (j)(4). The State must make the item reasonably available for inspection by the defendant, but only under such terms and conditions necessary to protect a victim's rights.

**(3) Court-Ordered Disclosure for Examination or Testing.**

(A) **Generally.** The court may order the item's reproduction or its release to the defendant for examination or testing if the defendant makes a substantial showing that it is necessary for the effective investigation or presentation of a defense, including an expert's analysis.

(B) **Conditions.** A court must issue any order necessary to protect a victim's rights, document the chain of custody, or protect physical evidence.

(4) **General Restrictions.** In addition to any court order issued, the following restrictions apply to the reproduction or release of any item to the defendant for examination or testing:

(A) the item must not be further reproduced or distributed except as the court order allows;

(B) the item may be viewed or possessed only by the persons authorized by the court order;

(C) the item must not be possessed or viewed by the defendant outside the direct supervision of defense counsel, advisory counsel, or a defense expert;

(D) the item must be delivered to defense counsel or advisory counsel, or if

expressly permitted by court order, to a specified defense expert; and

(E) the item must be returned to the State by a deadline set by the court.

## **Rule 15.2. The Defendant's Disclosures**

### **(a) Physical Evidence.**

(1) **Generally.** At any time after the filing of an indictment, information or complaint, and upon the State's written request, the defendant must, in connection with the particular offense with which the defendant is charged:

(A) appear in a line-up;

(B) speak for identification by one or more witnesses;

(C) be fingerprinted, palm-printed, foot-printed, or voice printed;

(D) pose for photographs not involving a re-enactment of an event;

(E) try on clothing;

(F) permit the taking of samples of hair, blood, saliva, urine, or other specified materials if doing so does not involve an unreasonable intrusion of the defendant's body;

(G) provide handwriting specimens; and

(H) submit to a reasonable physical or medical inspection of the defendant's body, but such an inspection may not include a psychiatric or psychological examination.

(2) **Presence of Counsel.** The defendant is entitled to have counsel present when the State takes evidence under this rule.

(3) **Other Procedures.** This rule supplements and does not limit any other procedures established by law.

### **(b) Notice of Defenses.**

(1) **Generally.** By the deadline specified in (d), the defendant must provide written notice to the State specifying all defenses the defendant intends to assert at trial, including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character.

(2) **Witnesses.** For each listed defense, the notice must specify each person, other than the defendant, that the defendant intends to call as a witness at trial in support of the defense.

**(3) Signature and Filing.** Defense counsel—or if the defendant is self-represented, the defendant—must sign the notice and file it with the court.

**(c) Content of Disclosure.** At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

**(1)** the name and address of each person, other than the defendant, the defendant intends to call as a witness at trial, and any written or recorded statement of the witness;

**(2)** for each expert the defendant intends to call at trial:

**(A)** the expert’s name, address, and qualifications;

**(B)** any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

**(C)** if the expert will testify at trial without preparing a written report, a summary of the general subject matter on which the expert is expected to testify; and

**(3)** a list of all documents, photographs, other tangible objects, and electronically stored information the defendant intends to use at trial.

**(d) Time for Disclosures.** Unless the court orders otherwise, the defendant must disclose the material and information listed in (b) and (c) no later than:

**(1)** in superior court, 40 days after arraignment, or 10 days after the State’s disclosure under Rule 15.1(b), whichever occurs first;

**(2)** in a limited jurisdiction court, 20 days after the State’s disclosure under Rule 15.1(b).

**(e) Additional Disclosures upon Request.**

**(1) Generally.** Unless the court orders otherwise, the defendant must make the following items available to the State for examination, testing, and reproduction no later than 30 days after receiving the State’s written request:

**(A)** any of the items specified in the list submitted under (c)(3); and

**(B)** any completed written report, statement, and examination notes made by an expert listed in (c)(2) in connection with the particular case.

**(2) Conditions.** The defendant may impose reasonable conditions, including an appropriate stipulation concerning chain of custody for physical evidence or to allow time for the examination or testing of any items.

**(f) Scope of Disclosure.** A defendant's disclosure obligation extends to material and information within the possession or control of the defendant, defense counsel, staff, agents, investigators, or any other persons who have participated in the investigation or evaluation of the case and who are under the defendant's direction or control.

**(g) Disclosure by Court Order.**

**(1) Disclosure Order.** On the State's motion, a court may order any person to make available to the State material or information not included in this rule if the court finds:

**(A)** the State has a substantial need for the material or information for the preparation of the State's case;

**(B)** the State cannot obtain the substantial equivalent by other means without undue hardship; and

**(C)** the disclosure of the material or information would not violate the defendant's constitutional rights.

**(2) Modifying or Vacating Order.** The court may modify or vacate an order if the court determines that compliance would be unreasonable or oppressive.

**(h) Additional Disclosures in a Capital Case.**

**(1) Initial Disclosures.**

**(A) Generally.** No later than 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

**(i)** a list of all mitigating circumstances the defendant intends to prove;

**(ii)** the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;

**(iii)** the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and

**(iv)** a list of all documents, photographs, other tangible objects, or electronically stored information the defendant intends to use during the aggravation and penalty hearings.

**(B) Time Extensions.** The court may extend the deadline for the defendant's initial disclosures under (h)(1) or allow the defendant to amend those

disclosures only if the defendant shows good cause or if the parties stipulate to the deadline extension and only after considering the victim's right to a speedy trial.

**(2) Later Disclosures.** No later than 60 days after receiving the State's supplemental disclosure under Rule 15.1(i)(4), the defendant must disclose the following to the State:

**(A)** the name and address of each person the defendant intends to call as a rebuttal witness, and any written or recorded statement of the witness; and

**(B)** the name and address of each expert the defendant intends to call as a witness at the penalty hearing, and any report the expert has prepared.

### **Rule 15.3. Depositions; Victims' Right to Refuse**

**(a) Availability.** A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant and a victim, by oral deposition under the following circumstances:

**(1)** a party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at trial; or

**(2)** a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or

**(3)** a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify at a trial or hearing.

**(b) Follow-up Examination.** If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:

**(1)** the magistrate limited the person's previous testimony under Rule 5.3; and

**(2)** the person will not cooperate in granting a personal interview.

**(c) Motion for Taking Deposition; Notice; Service.**

**(1) Requirements.** A motion to take a deposition must:

**(A)** state the name and address of the person to be deposed;

**(B)** show that a deposition may be ordered under (a) or (b);

(C) specify the time and place for taking the deposition; and

(D) designate any nonprivileged documents, photographs, other tangible objects, or electronically stored information that the person must produce at the deposition.

**(2) Order.** If the court grants the motion, it may modify any of the moving party's proposed terms and specify additional conditions governing how the deposition will be conducted.

**(3) Notice and Subpoena.** If the court grants the motion, the moving party must notice the deposition in the manner provided in Arizona Rule of Civil Procedure 30(b). The notice must specify the terms and conditions in the court's order granting the deposition. The moving party also must serve a subpoena on the deponent in the manner provided in A.R.S. § 13-4072(A)-(E) or as otherwise ordered by the court.

**(d) Manner of Taking.**

**(1) Generally.** Unless this rule provides or the court orders otherwise, the parties must conduct depositions in the manner provided in Rules 28(a) and 30 of the Arizona Rules of Civil Procedure.

**(2) Deposition by Written Questions.** If the parties consent, the court may order that a deposition be taken on written questions in the manner provided in Rule 31 of the Arizona Rules of Civil Procedure.

**(3) Deponent Statement.** Before the deposition, a party who possesses a statement of a deponent must make it available to any other party who would be entitled to the statement at trial.

**(4) Recording.** A deposition may be recorded by someone other than a certified court reporter. If someone other than a certified court reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording no later than 14 days after the deposition, or no later than 10 days before trial, whichever is earlier.

**(5) Remote Means.** The parties may agree or the court may order that the parties conduct the deposition by telephone or other remote means.

**(e) The Defendant's Right to Be Present.** A defendant has the right to be present at any deposition ordered under (a)(1) or (a)(3). If a defendant is in custody, the moving party must notify the custodial officer of the deposition's time and place. Unless the

defendant waives the right to be present, the officer must produce the defendant for the deposition and remain with the defendant until it is completed.

**(f) Use.** A party may use a deposition in the same manner as former testimony.

**(g) Interviews, Depositions, and Other Discovery Requests of a Victim.**

**(1) Communication.** The defense must communicate the request to interview the victim to the prosecutor or to the victim's attorney if the victim is represented. A victim's response to any request must be communicated through the prosecutor or the victim's attorney, if the victim is represented. A defendant, a defendant's attorney, or any person acting on the defendant's behalf may not contact the victim.

**(2) Right to Refuse.** A victim has the right to refuse a defense request for interview, deposition, or any other discovery. If a victim consents to an interview, the victim has the right to refuse to answer any question and to terminate the interview at any time.

**(3) Right to assistance and to set conditions.** If a victim consents to a defense interview, the victim has the right to be accompanied by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate unless the testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt. A victim also has the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition including a requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse.

**(4) Jury Instruction if a victim's refusal is commented on at trial.** If there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview.

**Rule 15.6. Continuing Duty to Disclose; Final Disclosure Deadline; Extension**

**(a) Continuing Duties.** The parties' duties under Rule 15 are continuing duties without awaiting a specific request from any other party.

**(b) Additional Disclosures.** Any party who anticipates a need to provide additional disclosure no later than 30 days before trial must immediately notify both the court and all other parties of the circumstances and when the party will make the additional disclosure.

**(c) Final Deadline for Disclosure.** Unless otherwise permitted, all disclosure

required by Rule 15 must be completed at least 7 days before trial.

**(d) Disclosure After the Final Deadline.**

**(1) *Motion to Extend Disclosure.*** If a party seeks to use material or information that was disclosed less than 7 days before trial, the party must file a motion to extend the disclosure deadline and to use the material or information. The moving party also must file a supporting affidavit setting forth facts justifying an extension.

**(2) *Order Granting Motion.*** The court must extend the disclosure deadline and allow the use of the material or information if it finds the material or information:

**(A)** could not have been discovered or disclosed earlier with due diligence; and

**(B)** was disclosed immediately upon its discovery.

**(3) *Order Denying Motion or Granting Continuance; Sanctions.*** If the court finds that the moving party has failed to establish facts sufficient to justify an extension under (d)(2), it may:

**(A)** deny the motion to extend the disclosure deadline and deny the use of the material or information; or

**(B)** extend the disclosure deadline and allow the use of the material or information and, if it extends the deadline, the court may impose any sanction listed in Rule 15.7 except preclusion or dismissal.

**(e) Extension of Time for Completion of Testing.**

**(1) *Motion.*** Before the final disclosure deadline in (c), a party may move to extend the deadline to permit the completion of scientific or other testing. The motion must be supported by an affidavit from a crime laboratory representative or other scientific expert stating that additional time is needed to complete the testing or a report based on the testing. The affidavit must specify how much additional time is needed.

**(2) *Order.*** If a motion is filed under (e)(1), the court must grant reasonable time to complete disclosure unless the court finds that the need for the extension resulted from dilatory conduct or neglect, or that the request is being made for an improper reason by the moving party or a person listed in Rule 15.1(f) or 15.2(f).

**(3) *Extending Time.*** If the court grants a motion under (e)(2), the court may extend other disclosure deadlines as necessary. In determining new deadlines under this rule, the court must consider the victim's and defendant's right to a speedy trial.

### **Rule 16.3. Pretrial Conference**

**(a) Generally.** A court may conduct one or more pretrial conferences. The court may establish procedures and requirements that are necessary to accomplish a conference's objectives, including identifying appropriate cases for pretrial conferences, identifying who must attend, and determining sanctions for failing to attend. A superior court must conduct at least one pretrial conference.

**(b) Objectives.** The objectives of a pretrial conference may include:

- (1)** providing a forum and a process for the fair, orderly, and just disposition of cases without trial;
- (2)** permitting the parties, without prejudice to their rights to trial, to engage in disclosure and to conduct negotiations for dispositions without trial;
- (3)** discussing compliance with discovery requirements set forth in these rules and constitutional law; and
- (4)** enabling the court to set a trial date.

**(c) Duty to Confer.** The court may require the parties to confer and submit memoranda before the conference.

**(d) Scope of Proceeding.** At the conference, the court may:

- (1)** hear motions made at or filed before the conference;
- (2)** set additional pretrial conferences and evidentiary hearings as appropriate after considering the rights and views of the victim, the victim's right to a speedy trial, and the victim's right to be present at all proceedings;
- (3)** obtain stipulations to relevant facts; and
- (4)** discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving brief pre-voir dire opening statements and preliminary instructions, and managing documents and exhibits effectively during trial.

**(e) Stipulated Evidence.** At a pretrial conference or any time before the start of an evidentiary hearing, the parties may submit any issue to the court for decision based on stipulated evidence.

**(f) Record of Proceedings.** Proceedings at a pretrial conference must be on the record.

#### **Rule 16.4. Dismissal of Prosecution**

**(a) On the State's Motion.** On the State's motion and for good cause, the court, after considering the views of the victim, may order a prosecution dismissed without prejudice if it finds that the dismissal is not to avoid Rule 8 time limits.

**(b) On a Defendant's Motion.** On a defendant's motion, the court must order a prosecution's dismissal if it finds that the indictment, information, or complaint is insufficient as a matter of law.

**(c) Record.** If the court grants a motion to dismiss a prosecution, it must state on the record its reasons for ordering dismissal.

**(d) Effect of Dismissal.** Dismissal of a prosecution is without prejudice to commencing another prosecution, unless the court finds that the interests of justice require that the dismissal to be with prejudice. Before dismissing any case with prejudice, the court must consider a victim's right to justice and due process.

**(e) Release of Defendant; Exoneration of Bond.** If a court dismisses a prosecution, the court must order the release of the defendant from custody, unless the defendant also is being held on another charge. It also must exonerate any appearance bond.

#### **Rule 17.1. The Defendant's Plea**

##### **(a) Jurisdiction; Personal Appearance.**

**(1) Jurisdiction.** Only a court having jurisdiction to try the offense may accept a plea of guilty or no contest.

**(2) Personal Appearance.** Except as provided in these rules, a court may accept a plea only if the defendant makes it personally in open court. If the defendant is a corporation, defense counsel or a corporate officer may enter a plea for the corporation. For purposes of this rule, a defendant who makes an appearance under Rule 1.5 is deemed to personally appear.

**(b) Voluntary and Intelligent Plea.** A court may accept a plea of guilty or no contest only if the defendant enters the plea voluntarily and intelligently. Courts must use the procedures in Rules 17.2, 17.3, and 17.4 to assure compliance with this rule.

**(c) No Contest Plea.** A plea of no contest may be accepted only after the court gives due consideration to the parties' views and to the interest of the public in the effective administration of justice.

**(d) Record of a Plea.** The court must make a complete record of all plea proceedings.

**(e) Waiver of Appeal.** By pleading guilty or no contest in a noncapital case, a defendant waives the right to have the appellate courts review the proceedings on a direct appeal. A defendant who pleads guilty or no contest may seek review only by filing a petition for post-conviction relief under Rule 32 and, if it is denied, a petition for review.

**(f) Limited Jurisdiction Court Alternatives for Entering a Plea.**

**(1) Telephonic Pleas.**

**(A) Eligibility.** A limited jurisdiction court has discretion to accept a telephonic plea of guilty or no contest to an offense if the defendant provides written certification and the court finds the defendant:

**(i)** resides out-of-state or more than 100 miles from the court in which the plea is taken; or

**(ii)** has a serious medical condition so that appearing in person would be an undue hardship, regardless of distance to the court.

**(B) Procedure.** The defendant must submit the plea in writing substantially in the form set forth in Rule 41, Form 28. It must include the following:

**(i)** a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of offenses in the complaint; and

**(ii)** a certification from a peace officer in the state in which the defendant resides—or, if the defendant is an Arizona resident, a peace officer in the county in which the defendant resides—that the defendant personally appeared before the officer and signed the certification described in (f)(1)(B)(i), and the officer affixes the defendant's fingerprint to the form.

**(C) Judicial Findings.** Before accepting a plea, the court must hold a telephonic hearing with the parties, the victim if any, inform the defendant that the offense may be used as a prior conviction, and find:

**(i)** it has personally advised the defendant of the items set forth in the form;

**(ii)** a factual basis exists for believing the defendant is guilty of the charged offenses; and

**(iii)** the defendant's plea is knowingly, voluntarily, and intelligently entered.

**(2) Plea by Mail.**

**(A) Eligibility.** A limited jurisdiction court has discretion to accept by mail a written plea of guilty or no contest to a misdemeanor or petty offense if the court finds that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial travel distance, or incarceration. The presiding judge of each court must establish a policy for the State's participation in pleas submitted by mail.

**(B) When a Plea May Not Be Accepted by Mail.** A court may not accept a plea by mail in a case:

**(i)** involving a victim;

**(ii)** in which the court may impose a jail term, unless the defendant is sentenced to time served or the defendant is currently incarcerated and the proposed term of incarceration would be served concurrently and not extend the period of incarceration;

**(iii)** in which the court may sentence the defendant to a term of probation;

**(iv)** involving an offense for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; or

**(v)** in which this method of entering a plea would not be in the interests of justice.

**(C) Procedure.** The defendant must submit the plea in writing substantially in the form set forth in Rule 41, Form 28(a). The defendant must sign the plea form, which must include the following:

**(i)** a statement that the defendant has read and understands the information on the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offenses in the complaint and consents to the entry of judgment; and

**(ii)** a statement for the court to consider when determining the sentence.

**(D) Mailing.** The court must mail a copy of the judgment to the defendant.

### **Rule 18.1 Trial by Jury.**

**(a) By Jury.** The number of jurors required to try a case and render a verdict is provided by law.

**(b) Waiver.**

(1) *Generally*. The defendant may waive the right to a trial by jury if the State and the court consent. If the State and the court agree, a defendant also may waive the right to have a jury determine aggravation or the penalty in a capital case.

(2) *Voluntariness*. Before accepting a defendant's waiver of a jury trial, the court must address the defendant personally, inform the defendant of the defendant's right to a jury trial, and determine that the defendant's waiver is knowing, voluntary, and intelligent.

(3) *Form of Waiver*. A defendant's waiver of a jury trial must be in writing or on the record in open court.

(4) *Withdrawal of Waiver*. With the court's permission, a defendant may withdraw a waiver of jury trial, but a defendant may not withdraw a waiver after the court begins taking evidence.

**(c) Victim Participation.** Upon request of the victim, the victim must have an opportunity to confer with the prosecutor about trial before the trial begins.

### **Rule 19.7. Victim's Right to Use of Facility Dog.**

**(a) Definition.** For the purposes of this rule, a "facility dog" means a dog that is a graduate of an assistance dog organization that is a member of an organization or entity whose main purpose is to improve the areas of training, placement and utilization of assistance dogs, staff and volunteer education and to establish and promote standards of excellence in all areas of assistance dog acquisition, training, and partnership.

**(b) Mandatory.** A court must allow a victim who is under eighteen at the time of testifying to have a facility dog accompany the victim while testifying if a facility dog is available.

**(c) Discretionary.** A court may permit any victim or witness to use a facility dog.

**(d) Notice.** A party seeking to use a facility dog must file a notice that includes the certification of the dog, the name of the certifying person or entity, and proof that the dog is insured.

**(e) Jury Instruction.** The court must take reasonable measures to ensure that the presence of a facility dog does not influence the jury or reflect on the truthfulness of any testimony that is offered during the use of a facility dog including instructing the jury on the role of the facility dog and that the facility dog is a trained animal.

### **Rule 19.8. Victim Testimony.**

(a) A victim has the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera.

### **Rule 26.4. Presentence Report.**

**(a) When Required.** The court must order a presentence report in every case in which it has discretion over the penalty. However, a presentence report is optional if:

- (1) the defendant may only be sentenced to imprisonment for less than one year;
- (2) the court granted a request under Rule 26.3(a)(1)(B); or
- (3) a presentence report concerning the defendant is already available.

**(b) When Prepared.** A presentence report may not be prepared until after the court makes a determination of guilt or the defendant enters a plea of guilty or no contest.

**(c) When Due.** Unless the court grants a request under Rule 26.3(a)(1)(B) for an earlier sentencing, the presentence report must be delivered to the sentencing judge and to all counsel at least two days before the date set for sentencing. A victim or victim's attorney has the right to a copy of the presentence report provided to the defendant except those parts that are excised by the court or are confidential by law.

**(d) Inadmissibility.** Neither a presentence report nor any statement made in connection with its preparation is admissible as evidence in any proceeding bearing on the issue of guilt.

### **Rule 26.7. Presentencing Hearing; Prehearing Conference**

**(a) Request for a Presentencing Hearing.** If the court has discretion concerning the imposition of a penalty, it may—and, on any party's request, must—hold a presentencing hearing before sentencing.

#### **(b) Timing and Conduct of a Presentencing Hearing.**

**(1) Timing.** The court may not hold a presentencing hearing until the parties have had an opportunity to review all reports concerning the defendant prepared under Rules 26.4 and 26.5.

**(2) Presenting Evidence.** At the hearing, the victim must be afforded the right to be heard and any party may introduce any reliable, relevant evidence, including hearsay, to show aggravating or mitigating circumstances, to show why the court should not impose a particular sentence, or to correct or amplify the presentence, diagnostic, or mental health reports.

**(3) Record.** A presentencing hearing must be held in open court, and the court must make a complete record of the proceedings.

**(c) Prehearing Conference.**

**(1) Generally.** On motion or on its own, the court may hold a prehearing conference to determine what matters are in dispute, and to limit or otherwise expedite a presentencing hearing.

**(2) Attendance of Probation Officer.** The court may order the probation officer who prepared the presentence report to attend a prehearing conference.

**(3) Postponing Sentencing and Presentencing Hearing.** At the conference, the court may postpone the date of sentencing for no more than 10 days beyond the maximum extension permitted by Rule 26.3(b), and may delay the presentencing hearing accordingly, to allow the probation officer to investigate any matter the court specifies, or to refer the defendant for mental health examinations or diagnostic tests.

**Rule 26.10. Pronouncing Judgment and Sentence**

**(a) Judgment.** In pronouncing judgment on any noncapital count, the court must indicate whether the defendant's conviction is pursuant to a plea or trial, the offense for which the defendant was convicted, and whether the offense falls in the categories of dangerous, non-dangerous, repetitive, or non-repetitive offenses.

**(b) Sentence.** When the court pronounces sentence, it must:

**(1)** give the defendant and the victim an opportunity to address the court;

**(2)** state that it has considered the time the defendant has spent in custody on the present charge;

**(3)** explain to the defendant the terms of the sentence or probation;

**(4)** specify the beginning date for the term of imprisonment and the amount of time to be credited against the sentence as required by law;

**(5)** permanently affix the defendant's right index fingerprint to the sentencing document or order in accordance with A.R.S. § 13-607(A); and

**(6)** if the court sentences the defendant to a prison term, the court must send, or

direct the clerk to send, to the Department of Corrections the sentencing order and copies of all presentence reports, probation violation reports, and medical and mental health reports prepared for, or relating to, the defendant.

### **Rule 26.17. Victim’s Right to Information**

**(a) Sentencing.** After sentencing, the victim has a right to be informed of the disposition of the case.

**(b) Restitution.** A victim has a right to be informed of the right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking that right.

**(c) Post-Conviction Notification.** A victim has a right to be informed of the procedures to opt into post-conviction notification.

### **Rule 27.3. Modification of Conditions or Regulations**

**(a) Definitions.**

**(1) Condition.** “Condition” means any court-ordered term of probation.

**(2) Regulation.** “Regulation” means any term imposed by the probation department, or by any other person the court designates to implement a court-imposed condition of probation.

**(b) By a Probation Officer.** A probation officer or any other person the court designates may modify or clarify any regulation imposed.

**(c) By the Court.**

**(1) Generally.** After giving notice to the State, the probationer, and a victim who has the right to notice under Rule 27.10, the court may modify or clarify any term, condition, or regulation of probation. The court’s authority to modify probation must comply with due process, the rights of the victim, statutory limitations, and party agreement.

**(A) The Due Process Rights of the Victim.** The Due Process Rights of the victim include giving the victim notice of any proceedings involving a probation modification and an opportunity to be heard by the court regarding the modification and of any term of probation that will substantially affect the victim’s safety, the defendant’s contact with the victim, or restitution.

**(2) Who May Request Modification or Clarification.** At any time before the probationer’s absolute discharge, a probationer, probation officer, the State, or any

other person the court designates, may ask the court to modify or clarify any condition or regulation.

**(3) Restitution.** At any time before the probationer's absolute discharge, persons entitled to restitution under a court order may ask the court, based on changed circumstances, to modify or clarify the manner in which restitution is paid.

**(4) Hearing.** The court may hold a hearing on any request for modification or clarification under (c)(2) or (c)(3).

**(d) Written Copy and Effect.** The probationer must be given a written copy of any modification or clarification of a condition or regulation of probation. A modification of a regulation may go into effect immediately. An oral modification may not be the sole basis for revoking probation unless the condition or regulation is in writing and the probationer received a copy before the violation.

#### **Rule 27.4. Early Termination of Probation**

**(a) Discretionary Probation Termination.** At any time during the term of probation, the court may terminate probation and discharge the probationer as provided by law. The court may take such action on the probationer's motion, the probation officer's motion, or on its own, but only after any required notice to the victim and the State, and after considering the rights and views of the victim.

**(b) Earned Time Credit Probation Termination.** The court may reduce the term of supervised probation for earned time credit as provided by law

#### **Rule 27.7. Initial Appearance After Arrest**

**(a) Probationer Arrested.** If a probationer is arrested on a warrant issued under Rule 27.6 or is arrested by the probationer's probation officer under A.R.S. § 13-901(D), the probationer must be taken without unreasonable delay to the court with jurisdiction over the probationer.

**(b) Notice.** If a probationer is arrested on a warrant issued under Rule 27.6, the court must immediately notify the probationer's probation officer of the initial appearance.

**(c) Procedure.** At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and make a release determination, after considering the rights and views of the victim.

## **Rule 27.8. Probation Revocation**

### **(a) Revocation Arraignment.**

(1) **Timing.** The court must hold a revocation arraignment no later than 7 days after the summons is served or after the probationer's initial appearance under Rule 27.7.

(2) **Conduct of the Proceeding.** The court must inform the probationer of each alleged probation violation, and the probationer must admit or deny each allegation.

(3) **Setting a Violation Hearing.** If the probationer does not admit to a violation or if the court does not accept an admission, the court must set a violation hearing, unless both parties agree that a violation hearing may proceed immediately after the arraignment.

### **(b) Violation Hearing.**

(1) **Timing.** The court must hold a hearing to determine whether a probationer has violated a written condition or regulation of probation no less than 7 and no more than 20 days after the revocation arraignment, unless the probationer in writing or on the record requests, and the court agrees, to set the hearing for another date.

(2) **Probationer's Right to Be Present.** The probationer and the victim ~~has~~ have a right to be present at the violation hearing. If the probationer was previously arraigned under Rule 27.8, the hearing may proceed in the probationer's absence under Rule 9.1.

(3) **Conduct of the Hearing.** A violation must be established by a preponderance of the evidence. Each party may present evidence and has the right to cross-examine any witness who testifies. The court may receive any reliable evidence, including hearsay, that is not legally privileged.

(4) **Admissions.** An admission by the probationer at any hearing in the same case relating to the probationer's failure to pay a monetary obligation imposed in the case is inadmissible in the probation violation hearing, unless the probationer was represented by counsel at the hearing in which the admission was made.

(5) **Findings and Setting a Disposition Hearing.** If the court finds that the probationer committed a violation of a condition or regulation of probation, it must make specific findings of the facts that establish the violation and then set a disposition hearing.

### **(c) Disposition Hearing.**

(1) **Timing.** The court must hold a disposition hearing no less than 7 nor more than 20

days after making a determination that the probationer has violated a condition or regulation of probation.

**(2) Disposition.** Upon finding that the probationer violated a condition or regulation of probation, the court may revoke, modify, or continue probation. If the court revokes probation, the court must pronounce sentence in accordance with Rule 26. The court may not find a violation of a condition or regulation that the probationer did not receive in writing.

**(d) Waiver of Disposition Hearing.** If a probationer admits, or the court finds, a violation of a condition or regulation of probation, the probationer may waive a disposition hearing. If the court accepts the waiver, it may proceed immediately to a disposition under (c)(2).

**(e) Disposition upon Determination of Guilt for a Later Offense.** If a court makes a determination of guilt under Rule 26.1(a) that the probationer committed a later criminal offense, the court need not hold a violation hearing and may set the matter for a disposition hearing at the time set for entry of judgment on the criminal offense.

**(f) Record.** The court must make a record of the revocation arraignment, violation hearing, and disposition hearing.

#### **Rule 27.10. Victims' Rights in Probation Proceedings.**

The court must afford a victim who has requested notice ~~under Rule 39~~ the opportunity to be present and to be heard at any proceeding involving:

- (a)** the termination of any type of probation;
- (b)** probation revocation dispositions;
- (c)** a modification of probation or intensive probation conditions or regulations that would substantially affect the probationer's contact with, or safety of, the victim or that would affect restitution or incarceration status; or
- (d)** transfers of probation jurisdiction.

#### **Rule 31.3. Suspension of These Rules; Suspension of an Appeal; Computation of Time; Modifying a Deadline**

**(a) Suspension of Rule 31.** For good cause, an appellate court, on motion or on its own, may suspend any provision of this rule in a particular case, and may order such proceedings as the court directs.

**(b) Suspension of an Appeal.**

**(1) *Generally.*** An appellate court on motion or on its own, after considering the rights of the victim including the right to prompt and final conclusion of the case after conviction and sentence, may suspend an appeal if a motion under Rule 24 or a petition under Rule 32 is pending to permit the superior court to decide those matters.

**(2) *Notice.*** If an appeal is suspended, the appellate clerk must notify the parties, the superior court clerk, and, if certified transcripts have not yet been filed, the certified reporters or transcribers.

**(3) *Later Notification.*** No later than 20 days after the superior court’s decision on the Rule 24 motion or Rule 32 petition, the appellant must file with the appellate clerk either a notice of reinstatement of the appeal or a motion to dismiss the

appeal under Rule 31.24(b), and must serve a copy of such documents on all persons entitled to notice under (b)(2).

**(c) *New Matters.*** Other than a petition for post-conviction relief that is not otherwise precluded under Rule 32.2, a party to an appeal may not, without the appellate court’s consent, file any new matter in the superior court later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed.

**(d) *Computation of Time.*** Rule 1.3(a) governs the computation of any time period in Rule 31, an appellate court order, or a statute regarding a criminal appeal, except that 5 calendar days are not added to the time for responding to an electronically served document.

**(e) *Modifying a Deadline.*** A party seeking to modify a deadline in the appellate court must obtain an appellate court order authorizing the modified deadline. For good cause and after considering the rights of the victim, an appellate court may shorten or extend the time for doing any act required by Rule 31, a court order, or an applicable statute.

**Rule 32.4. Filing of Notice and Petition, and Other Initial Proceeding.**

**(a) Notice of Post-Conviction Relief.**

**(1) *Filing.*** A defendant starts a post-conviction proceeding by filing a notice of post-conviction relief in the court where the defendant was convicted. The court must make “notice” forms available for defendants' use.

(2) *Time for Filing.*

(A) Generally. In filing a notice, a defendant must follow the deadlines set forth in this rule. These deadlines do not apply to claims under Rule 32.1(d) through (h).

(B) Time for Filing a Notice in a Capital Case. In a capital case, the Supreme Court clerk must expeditiously file a notice of post-conviction relief with the trial court upon the issuance of the mandate affirming the defendant's conviction and sentence on direct appeal.

(C) Time for Filing a Notice in an Of-Right Proceeding. In a Rule 32 of-right proceeding, a defendant must file the notice no later than 90 days after the entry of judgment and sentence. A defendant may raise an of-right claim of ineffective assistance of Rule 32 counsel in a successive Rule 32 notice if it is filed no later than 30 days after the final order or mandate in the defendant's of-right petition for post-conviction relief.

(D) Time for Filing a Notice in Other Noncapital Cases. In all other noncapital cases, a defendant must file a notice no later than 90 days after the entry of judgment and sentence or no later than 30 days after the issuance of the order and mandate in the direct appeal, whichever is later.

(3) *Content of the Notice.* The notice must contain the caption of the original criminal case or cases to which it pertains and the other information shown in Rule 41, Form 24(b).

(4) *Duty of the Clerk upon Receiving a Notice.*

(A) Generally. Upon receiving a notice from a defendant or the Supreme Court, the superior court clerk must file it in the record of each original case to which it pertains. Unless the court summarily dismisses the notice, the clerk must promptly send copies of the notice to the defendant, defense counsel, the prosecuting attorney's office, and the Attorney General. If the conviction occurred in a limited jurisdiction court, the clerk for the limited jurisdiction court must send a copy of the notice to the prosecuting attorney who represented the State at trial, and to a defense counsel or a defendant, if self-represented. In either court, the clerk must note in the record the date and manner of sending copies of the notice.

(B) Notice to an Appellate Court. If an appeal of the defendant's conviction or sentence is pending, the clerk must send a copy of the notice of post-conviction relief to the appropriate appellate court no later than 5 days of its filing, and must note in the record the date and manner of sending the copy.

(5) *Duty of the State upon Receiving a Notice.* Upon receiving a copy of a notice, the State must notify any victim who has requested notification of post-conviction proceedings.

**(b) Appointment of Counsel.**

(1) *Capital Cases.* After the Supreme Court has affirmed a capital defendant's conviction and sentence, it must appoint counsel who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041. Alternatively, the Supreme Court may authorize the presiding judge of the county where the case originated to appoint counsel. If the presiding judge makes an appointment, the court must file a copy of the appointment order with the Supreme Court. If a capital defendant files a successive notice, the presiding judge must appoint the defendant's previous post-conviction counsel, unless the defendant waives counsel or there is good cause to appoint another qualified attorney who meets the standards of Rules 6.5 and 6.8 and A.R.S. § 13-4041.

(2) *Noncapital Cases.* No later than 15 days after the filing of a notice of a defendant's timely or first Rule 32 proceeding, the presiding judge must appoint counsel for the defendant if: (A) the defendant requests it; and (B) the judge has previously determined that the defendant is indigent or the defendant has completed an affidavit of indigency. Upon the filing of all other notices in a noncapital case, the presiding judge may appoint counsel for an indigent defendant if requested.

**(c) Time for Filing a Petition for Post-Conviction Relief.**

(1) *Capital Cases.*

(A) *Filing Deadline for First Petition.* In a capital case, the defendant must file a petition no later than 12 months after the first notice is filed.

(B) *Filing Deadline for Any Successive Petition.* On a successive notice in a capital case, the defendant must file the petition no later than 30 days after the notice is filed.

(C) *Time Extensions.* For good cause, the court may grant a capital defendant one 60-day extension in which to file a petition. For good cause and after considering the rights of the victim, including the right to a prompt and final conclusion of a case after conviction and sentence, the court may grant additional 30-day extensions for good cause.

(D) *Notice of Status.* The defendant must file a notice in the Supreme Court advising the Court of the status of the proceeding if a petition is not filed:

(i) within 12 months after counsel is appointed; or

(ii) if the defendant is proceeding without counsel, within 12 months after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

The defendant must file a status report in the Supreme Court every 60 days until a petition is filed.

*(2) Noncapital Cases.*

(A) Filing Deadline. In a noncapital case, appointed counsel must file a petition no later than 60 days after the date of appointment. A defendant without counsel must file a petition no later than 60 days after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

(B) Time Extensions. For good cause and after considering the rights of the victim, including the right to a prompt and final conclusion of a case after conviction and sentence, the court may grant a defendant in a noncapital case a 30-day extension to file the petition. The court may grant additional 30-day extensions only on a showing of extraordinary circumstances.

**(d) Duty of Counsel; Extension of Time for the Defendant.**

(1) *Duty*. In a Rule 32 proceeding, counsel must investigate the defendant's case for any and all colorable claims.

*(2) If Counsel Finds No Colorable Claims.*

(A) Counsel's Notice. In an of-right proceeding, if counsel determines there are no colorable claims, counsel must file a notice advising the court of this determination. The notice should include a summary of the facts and procedural history of the case, including appropriate citations to the record. The notice also must identify the specific materials that counsel reviewed, the date when counsel provided the record to the defendant, and the contents of the record provided. After counsel files a notice, counsel's role is limited to acting as advisory counsel until the trial court's final determination in the Rule 32 proceeding unless the court orders otherwise.

(B) Defendant's Pro Se Petition. Upon receipt of counsel's notice, the court must allow the defendant to file a petition on his or her own behalf, and extend the time for filing a petition by 45 days from the date counsel filed the notice. The court may grant additional extensions only on a showing of extraordinary circumstances.

**(e) Transcript Preparation.**

(1) *Requests for Transcripts.* If the trial court proceedings were not transcribed, the defendant may request that certified transcripts be prepared. The court or clerk must provide a form for the defendant to make this request.

(2) *Order.* The court must promptly review the defendant's request and order the preparation of only those transcripts it deems necessary for resolving issues the defendant will raise in the petition.

(3) *Deadline.* Certified transcripts must be prepared and filed no later than 60 days after the entry of the order granting the request.

(4) *Cost.* If the defendant is indigent, the transcripts must be prepared at county expense.

(5) *Extending the Deadline for Filing a Petition.* If a defendant requests the preparation of certified transcripts, the defendant's deadline for filing a petition under (c) is extended by the time between the request and either the transcripts' final preparation or the court's denial of the request.

**(f) Assignment of a Judge.** The presiding judge must, if possible, assign a proceeding for post-conviction relief to the sentencing judge. If the sentencing judge's testimony will be relevant, the case must be reassigned to another judge.

**(g) Stay of Execution of a Death Sentence on a Successive Petition.** Once the defendant has received a sentence of death and the Supreme Court has fixed the time for executing the sentence, the trial court may not grant a stay of execution if the defendant files a successive petition. In those circumstances, the defendant must file an application for a stay with the Supreme Court, and the application must show with particularity any claims that are not precluded under Rule 32.2. If the Supreme Court grants a stay, the Supreme Court clerk must notify the defendant, the Attorney General, and the Director of the State Department of Corrections.

**Rule 32.6. Response and Reply; Amendments; Review**

**(a) State's Response.** The State must file its response no later than 45 days after the defendant files the petition. The court may grant the State a 30-day extension to file its response for good cause, and may grant the State additional extensions only on a showing of extraordinary circumstances and after considering the rights of the victim.

including the right to a prompt and final conclusion of a case after conviction and sentence. The State's response must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities, and must attach any affidavits, records, or other evidence that contradicts the petition's allegations.

**(b) Defendant's Reply.** No later than 15 days after a response is served, the defendant may file a reply. The court may for good cause grant an extension of time, after considering the rights of the victim, including the right to a prompt and final conclusion of a case after conviction and sentence,

**(c) Amending the Petition.** After the filing of a post-conviction relief petition, the court may permit amendments only for good cause.

**(d) Review and Further Proceedings.**

(1) *Summary Disposition.* If, after identifying all precluded and untimely claims, the court determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule, the court must summarily dismiss the petition.

(2) *Setting a Hearing.* If the court does not summarily dismiss the petition, it must set a status conference or hearing within 30 days on those claims that present a material issue of fact. The court also may set a hearing on those claims that present only a material issue of law.

(3) *Notice to Victim.* If a hearing is ordered, the State must notify any victim of the time and place of the hearing if the victim has requested such notice under a statute or court rule relating to victims' rights.

**~~Rule 39. Victims' Rights~~**

**~~(a) Definitions and Limitations.~~**

~~(1) *Criminal Proceeding.* As used in this rule, a "criminal proceeding" is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.~~

~~(2) *Identifying and Locating Information.* As used in this rule, "identifying and locating information" includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.~~

~~(3) *Limitations.*~~

~~(A) *Cessation of Victim Status.* A victim retains the rights provided in these rules until~~

~~the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.~~

~~(B) Legal Entities. The victim's rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.~~

~~**(b) Victims' Rights.** These rules must be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule, a victim has and is entitled to assert each of the following rights:~~

~~(1) the right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;~~

~~(2) the right to notice regarding the rights available to a victim under this rule and any other provision of law, and the court must prominently post or read the statement of rights in accordance with A.R.S. § 13-4438;~~

~~(3) upon request, the right to reasonable notice of the date, time, and place of any criminal proceeding in accordance with A.R.S. § 13-4409;~~

~~(4) the right to be present at all criminal proceedings;~~

~~(5) upon request, the right to be informed of any permanent or temporary release or any proposed release of the defendant;~~

~~(6) upon request, the right to confer with the State regarding:~~

~~(A) any decision about the preconviction release of the defendant;~~

~~(B) any pretrial resolution including any diversion program or plea offer;~~

~~(C) a decision not to initiate a criminal prosecution or to dismiss charges; and~~

~~(D) the trial, before the trial begins;~~

~~(7) upon request, the right to notice of and to be heard at any criminal proceeding involving:~~

~~(A) the initial appearance;~~

~~(B) the accused's post-arrest release or release conditions;~~

~~(C) a proposed suspension of Rule 8 or a continuance of a trial date;~~

~~(D) the court's consideration of a negotiated plea resolution;~~

~~(E) sentencing;~~

~~(F) the modification of any term of probation that will substantially affect the victim's safety, the defendant's contact with the victim, or restitution;~~

~~(G) the early termination of probation;~~

~~(H) a probation revocation disposition; and~~

~~(I) post-conviction release.~~

~~(8) the right to be accompanied at any interview, deposition, or criminal proceeding by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate, unless testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt;~~

~~(9) if the victim is eligible, the right to the assistance of a facility dog when testifying as provided in A.R.S. § 13-4442;~~

~~(10) the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera;~~

~~(11) the right to require the prosecutor to withhold, during discovery and other proceedings, the victim's identifying and locating information.~~

~~(A) Exception. A court may order disclosure of the victim's identifying and locating information as necessary to protect the defendant's constitutional rights. If disclosure is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not convey the information to the defendant without prior court authorization.~~

~~(B) Redactions. Rule 15.5(e) applies to information withheld under this rule;~~

~~(12) the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on the defendant's behalf, and:~~

~~(A) the defense must communicate requests to interview a victim to the prosecutor, not the victim;~~

~~(B) a victim's response to such requests must be communicated through the prosecutor; and~~

~~(C) if there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview;~~

~~(13) at any interview or deposition conducted by defense counsel, the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse;~~

~~(14) the right to terminate an interview at any time or refuse to answer any question during the interview;~~

~~(15) the right to a copy of any presentence report provided to the defendant except those parts that are excised by the court or are confidential by law;~~

- (16) the right to be informed of the disposition of the case;
- (17) the right to a speedy trial or disposition and a prompt and final conclusion of the case after conviction and sentence; and
- (18) the right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking the right.

**(c) Exercising the Right to Be Heard.**

(1) *Nature of the Right.* If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain, support, or refute the victim's statement. This subsection does not apply to victim-impact statements made in a capital case under A.R.S. § 13-752(R).

(2) *Victims in Custody.* If a victim is in custody for an offense, the victim's right to be heard under this rule is satisfied by affording the victim the opportunity to submit a written statement.

(3) *Victims Not in Custody.* A victim who is not in custody may exercise the right to be heard under this rule through an oral statement or by submitting a written or recorded statement.

(4) *At Sentencing.* The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.

**(d) Assistance and Representation.**

(1) *Right to Prosecutor's Assistance.* A victim has the right to the prosecutor's assistance in asserting rights enumerated in this rule or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.

(2) *Standing.* The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by this rule or by any other provision of law.

(3) *Conflicts.* If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information for the appropriate state or local bar association.

~~(4) *Representation by Counsel.* In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. After a victim's counsel files a notice of appearance, all parties must endorse the victim's counsel on all pleadings. When present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.~~

**~~(e) Victim's Duties.~~**

~~(1) *Generally.* Any victim desiring to claim the notification rights and privileges provided in this rule must provide his or her full name, address, and telephone number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.~~

~~(2) *Legal Entities.*~~

~~(A) *Designation of a Representative.* If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.~~

~~(B) *Notice.* The prosecutor must notify the defendant and the court if the prosecutor receives notice under (e)(2)(A).~~

~~(C) *Effect.* After notice is provided under (e)(2)(B), only the representative designated under (e)(2)(A) may assert the victim's rights on behalf of the legal entity.~~

~~(D) *Changes in Designation.* The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.~~

~~(f) **Waiver.** A victim may waive the rights and privileges enumerated in this rule. A prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under this rule.~~

**~~(g) Court Enforcement of Victim Notice Requirements.~~**

~~(1) *Court's Duty to Inquire.* At the beginning of any proceeding that takes place more than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.~~

~~(2) *If the Victim Has Been Notified.* If the victim has been notified as requested, the~~

~~court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must immediately comply with (d)(1).~~

~~(3) *If the Victim Has Not Been Notified.* If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.~~

~~**(h) Appointment of Victim's Representative.** Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.~~

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

11 In the Matter of:

Supreme Court No. R-19-0016

12 **PETITION TO AMEND THE**  
13 **ARIZONA RULES OF CRIMINAL**  
14 **PROCEDURE**

15 **COMMENT OF**  
16 **THE ARIZONA PROSECUTING**  
17 **ATTORNEYS' ADVISORY**  
18 **COUNCIL**

19 **I. BACKGROUND OF PETITION**

20 The Arizona Voice for Crime Victims has again petitioned the Supreme  
21 Court<sup>1</sup> to amend the Arizona Rules of Criminal Procedure by integrating existing  
22 victims' rights provisions from the Arizona Constitution and its implementing  
23 legislation into each applicable rule throughout the criminal rules. In conjunction  
24 with this integration, the petition again proposes the repeal of existing Rule 39  
25 ("Victims' Rights"). Because of the overhaul of the Rules of Criminal Procedure,  
adopted in R-17-0002, effective January 1, 2018, the proposed amendments

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<sup>1</sup> A substantially similar petition was filed in 2018 in R-18-0001.

1 contained in the Appendix to the petition are vastly improved from the previous  
2 petition. Notably, those provisions of Rule 39(b)-(g) which were omitted from the  
3 proposed integration in R-18-0001 have been included in the proposed integration  
4 in this petition. Other objectionable provisions that were contained in R-18-0001  
5 have been addressed or removed in the new petition.  
6

7       The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") has  
8 considered the proposed changes in the new petition and, as it did with R-18-0001,  
9 generally supports them, with some cautionary comments. While APAAC again  
10 agrees that integrating victims' rights into the various criminal rules can have a  
11 meaningful impact on protecting and improving rights of crime victims, APAAC  
12 has identified some recurring provisions in need of clarification, and Council  
13 members continue to express concern over the full repeal of Rule 39.  
14  
15

## 16 **II. DISCUSSION/ANALYSIS**

17       In 1990, Arizona voters approved Prop 104 which amended the Arizona  
18 Constitution to add a Victims' Bill of Rights ("VBR"). Ariz. Const. art. 2, § 2.1.  
19 The following year, the Arizona Legislature passed the Victims' Rights  
20 Implementation Act ("VRIA") which was codified as A.R.S. §§ 13-4401 *et seq.* Ch.  
21 229, 1991 Ariz. Sess. Laws 1137. In its review of the proposed rule changes in this  
22 new petition, APAAC has identified certain areas for suggested clarification in the  
23 integration of victims' rights into the rules.  
24  
25

1           **A.    Suggested Integration Clarifications**

2                   **1.    Redundancies**

3  
4           As it did in its previous petition, Petitioner has taken some provisions of Rule  
5 39 which are otherwise covered by the VBR and VRIA and eliminated them,  
6 removing those redundancies between the various laws. However, some other  
7 provisions of the VRIA have been rewritten into the proposed amended rules,  
8 creating new redundancies. *See* proposed Rule 15.3(g), containing nearly identical  
9 language to A.R.S. § 13-4433; proposed Rule 18.1(c), containing nearly identical  
10 language to A.R.S. § 13-4419(B); proposed Rule 19.7, containing nearly identical  
11 language to A.R.S. § 13-4442; proposed Rule 19.8(a), containing nearly identical  
12 language to A.R.S. § 13-4434(A); and proposed Rule 27.3(c)(1)(A), containing  
13 nearly identical language to A.R.S. § 13-4415(B). APAAC recommends eliminating  
14 these redundancies.  
15  
16

17                   **2.    Discrepancies**

18  
19           In other instances, there are duplications and discrepancies in the proposed  
20 amended rules. Proposed Rule 1.2(a) contains duplicate language to proposed Rule  
21 1.4(j). Proposed Rule 1.10(b)(5) contains duplicate language to proposed Rule  
22 1.10(f). Proposed Rule 26.4 (“Presentence Report”) mirrors current Rule 39(b)(15)  
23 giving a victim the right to have a “copy” of the presentence report. However,  
24 A.R.S. § 13-4425 gives a victim the right “to inspect” the presentence report.  
25

1 APAAC recommends that this discrepancy be addressed in the petition.

### 2 3. Elevating Victims to Party Status

3  
4 Some provisions of the proposed rule changes in the petition can be read to  
5 elevate victims to a “party” status. Rule 1.3 (“Computation of Time”) computes  
6 certain time limitations for when a party may or must act. The petition again  
7 proposes adding “*or crime victim*” as an actor under the rule. Proposed Rule  
8 1.3(a)(5). Similarly, Rule 1.7 (“Filing and Service of Documents”) provides for how  
9 and when documents are filed with the court. The petition proposes that every  
10 person filing a document with any court must serve a copy of the document with the  
11 “*victim’s attorney*.” Proposed Rule 1.7(c). Rule 1.8 (“Clerk’s Distribution of  
12 Minute Entries and Other Documents”) provides for the distribution of minute entry  
13 rulings. The petition proposes that every minute entry must be distributed “*to any*  
14 *victim’s attorney*.” Proposed Rule 1.8(a). Finally, Rule 1.9 (“Motions, Oral  
15 Argument, and Proposed Orders”) addresses the content, format and service of  
16 motions. The petition proposes that a “*victim’s attorney*” be served with every  
17 proposed order. Proposed Rule 1.9(f). APAAC again suggests a clarification.

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20  
21 Crime victims have “the right to participate and be notified of certain criminal  
22 proceedings.” *State v. Lamberton*, 183 Ariz. 47, 49 (1995). However, crime victims  
23 are not “parties” and have no right to “control the proceedings, to plead defenses, or  
24 to examine or cross-examine witnesses.” *Id.* at 49; *see also Lindsay R. v. Cohen*,

1 236 Ariz. 565, 567, ¶ 8 (App. 2015) (“The VBR does not make victims ‘parties’ to  
2 the prosecution[.]”); *Lynn v. Reinstein*, 205 Ariz. 186, 191 ¶ 15 (2003) (“[n]o statute  
3 or rule confers party status upon a victim[.]”).  
4

5 A victim does have “standing to seek an order, to bring a special action or to  
6 file a notice of appearance in an appellate proceeding” in order to enforce a right or  
7 challenge a denial of a right. A.R.S. § 13-4437.A. And a victim has the right to be  
8 represented by counsel in asserting any right. *Id.* In *State ex rel. Montgomery v.*  
9 *Padilla*, 238 Ariz. 560 (App. 2015), Division One interpreted the statute and held  
10 that the subject matter of requests by victims in a criminal case is limited and “must  
11 be directed to ‘enforc[ing] any right or to challeng[ing] an order denying any right  
12 guaranteed to victims.’” *Padilla*, at 566, ¶ 22. APAAC recommends that Petitioner  
13 clarify that the proposed changes to the rules enumerated here apply to only those  
14 matters that directly involve a victim enforcing a right or challenging a denial of a  
15 right.  
16  
17  
18

#### 19 **4. Rule 15.1 (Disclosure)**

20 As it did in R-18-0001, Petitioner proposes limitations on a court’s ability to  
21 order disclosure. Rule 15.1(g)(1) allows a court, on a defendant’s motion, to order  
22 any person to make available material or information if the court finds substantial  
23 need and undue hardship to gain that information by other means. The petition  
24 proposes limiting this disclosure provision to any person “*other than the victim.*”  
25

1 Ariz. Const. art. 2, § 2.1.(A).5 gives a victim the right to refuse a “discovery request  
2 by the defendant[.]” However, in *State ex rel. Romley v. Superior Court (Roper)*,  
3 172 Ariz. 232 (App. 1992), the court ruled that while the VBR allows a victim to  
4 refuse a discovery request by the defendant, the VBR “must yield to the federal and  
5 state constitutions’ mandates of due process of law” in order for a defendant to have  
6 a fair trial and present an adequate theory of the case. 172 Ariz. at 240. There, the  
7 matter was remanded for an *in camera* review of the victim’s medical records. While  
8 *Roper* was fact-specific to the defendant’s justification defense, it illustrates that a  
9 due process right to a fundamentally fair trial may outweigh a victim’s right to refuse  
10 a discovery request. (See also, *State ex rel. Romley v. Dairman*, 208 Ariz. 484, 490,  
11 ¶¶ 22-23 (App. 2004) (independent constitutional interests of the defendant and  
12 victim require the court to exercise its discretion in protecting each of the competing  
13 interests); *State v. Riggs*, 189 Ariz. 327, 330 (1997) (“if...the victim’s state  
14 constitutional rights conflict with a defendant’s federal constitutional rights to due  
15 process and effective cross-examination, the victim’s rights must yield”). APAAC  
16 again recommends that Petitioner consider modifying its proposal to say “*other than*  
17 *the victim absent a determination by the court that the evidence would be*  
18 *exculpatory.*”

#### 24 5. Rules 16.3 (Pretrial conference)

25 As it did in R-18-0001, Petitioner proposes limitations on a court’s ability to

1 set evidentiary hearings and pretrial conferences. Rule 16.3(d) allows the court at a  
2 pretrial conference to hear motions, set evidentiary hearings and other pretrial  
3 conferences, obtain stipulations on facts, and determine other matters affecting the  
4 trial, such as time limits, juror notebooks and managing exhibits. The petition  
5 proposes a limitation on this rule that the court may only set evidentiary hearing or  
6 additional pretrial conferences “*after considering the rights and views of the victim,*  
7 *the victim’s right to a speedy trial, and the victim’s right to be present at all*  
8 *proceedings.*” A.R.S. § 13-4435.F requires the court, before ruling on a motion for  
9 a continuance, to consider the victim’s views and rights to a speedy trial. APAAC  
10 recommends that the proposed changes to Rule 16.3 be clarified to apply only to  
11 continuances considered by the court at the pretrial conference, as outlined in A.R.S.  
12 § 13-4435.F.

13  
14  
15  
16 **6. Rules 16.4 (Dismissal of prosecution)**

17 As it did in R-18-0001, Petitioner proposes a requirement that the court  
18 consider the views of a victim before dismissing a prosecution. Rule 16.4(a) allows  
19 the State to move for a dismissal of a prosecution for good cause, which the court  
20 may grant if dismissal is not to avoid Rule 8 time limits. Petitioner again proposes  
21 adding a requirement to the rule that the court may only order the dismissal under  
22 this subsection “*after considering the views of the victim.*” This proposal inserts the  
23 court into the State’s decision to dismiss a prosecution, which is not something that  
24  
25

1 currently exists either in the VBR or VRIA statutes. A fair reading of the proposed  
2 rule change language could give a victim the right to object to a dismissal. Certainly,  
3 a victim has the right to confer with the prosecution about a dismissal (A.R.S. § 13-  
4 4419.A), but that right does not extend to the court denying a dismissal if the victim  
5 objects. A prosecuting attorney must be free to decide which cases to pursue or not,  
6 and the caselaw is clear that a prosecutor has broad discretion to prosecute cases  
7 “regardless of the wishes of the victim.” *State v. Granados*, 172 Ariz. 405, 408, 837  
8 P.2d 1140, 1143 (App. 1991). Under the VRIA, a victim has no authority to direct  
9 the prosecution of a case. A.R.S. § 13-4419.C. APAAC recommends that if the  
10 proposed revision is to be adopted, it should be amended to state “*after determining*  
11 *that the victim has conferred with the prosecutor.*”  
12  
13  
14

15 In addition, Rule 16.4(d) states that dismissal of a prosecution is generally  
16 without prejudice unless the interests of justice require dismissal to be with  
17 prejudice. The petition proposes adding a requirement that dismissal can be with  
18 prejudice “*only after considering the rights of the victim to justice and due process.*”  
19 APAAC again cautions that whether to dismiss a case with or without prejudice is a  
20 purely legal determination by the court which must weigh all the factors that bear on  
21 that issue. *State v. Garcia*, 170 Ariz. 245, 248, 823 P.2d 693, 696 (App. 1991). Any  
22 consideration of the interests of justice by the court should inherently include the  
23 victim’s right to due process and justice.  
24  
25

1           **B.     Repeal of Rule 39**

2           Petitioner asserts that Rule 39 “does not provide proper guidance to trial courts  
3 and attorneys” on when victims’ rights apply under the various rules. Petition, p. 3.  
4 However, for thirty years, Rule 39 has been often cited and commonly understood  
5 by courts and practitioners as a primary source for victims’ rights. Rule 39 was the  
6 foundation upon which both the VBR and VRJA were based. Numerous appellate  
7 decisions affecting the rights of crime victims address specific provisions of Rule  
8 39. Across the state prosecutors’ offices and victim advocates utilize Rule 39 as a  
9 tool for training and understanding victims’ rights. As it did in its comment to R-18-  
10 0001, APAAC again cautions that by a full repeal of Rule 39, a long-standing and  
11 stalwart source for victims’ rights information could be lost and those enumerated  
12 rights diminished in the process.  
13  
14  
15

16           **III.   CONCLUSION**

17           The Arizona Prosecuting Attorneys’ Advisory Council recognizes and again  
18 commends the Arizona Voice for Crime Victims on its efforts to provide victims a  
19 more meaningful participation in the criminal justice process by integrating victims’  
20 rights throughout the various Arizona Rules of Criminal Procedure.  
21  
22

23     ...  
24     ...  
25     ...

1 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of March, 2019.

2  
3 Elizabeth Burton Ortiz  
4 Elizabeth Burton Ortiz, #012838  
5 Executive Director  
6 Arizona Prosecuting Attorneys'  
7 Advisory Council

8 Electronic copy filed with the  
9 Clerk of the Arizona Supreme Court  
10 this 18 day of March, 2019.

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By: 

1 WILLIAM G. MONTGOMERY  
2 MARICOPA COUNTY ATTORNEY  
3 (FIRM STATE BAR NO. 00032000)

4 MICHAEL R. McVEY  
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10  
11  
12 **ARIZONA SUPREME COURT**  
13

14 **IN RE:**

R-19-0016

15 **PETITION TO AMEND THE**  
16 **ARIZONA RULES OF CRIMINAL**  
17 **PROCEDURE**

MARICOPA COUNTY ATTORNEY'S  
RESPONSE TO PETITION TO AMEND THE  
RULES OF CRIMINAL PROCEDURE  
(VICTIMS' RIGHTS)

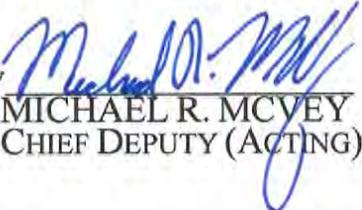
18 The Maricopa County Attorney hereby responds to the Petition to Amend the  
19 Rules of Criminal Procedure by integrating victims' rights into the rules and removing  
20 Rule 39 and asks this Court to grant the Petition. Last year, in comment to a similar  
21 Petition, the Maricopa County Attorney's Office (MCAO) filed a joint comment with  
22 Petitioner, Arizona Voice for Crime Victims, which made significant modifications to  
23 the initial Petition. The Petition submitted this year incorporates those changes that  
24 were proposed in last year's joint comment and it adequately addresses MCAO's  
25 concerns with the initial Petition filed last year.

26 MCAO agrees with Petitioner that integrating victims' rights into the rules will  
27 help courts and practitioners appropriately adhere to and enforce these rights. As  
28

1 currently drafted, victims' rights are an afterthought at the end of the rules and are  
2 easily overlooked or ignored when practitioners or courts refer to individual rules of  
3 procedure for guidance. Victims' rights are protected in the Arizona Constitution and  
4 they deserve the same presence and protection within the Arizona Rules of Criminal  
5 Procedure as the procedural rights of the parties. The Petition's integration of the rights  
6 within the rules and the abrogation of Rule 39 will achieve that necessary equality.  
7 Therefore, the Maricopa County Attorney asks this Court to grant the Petition.  
8  
9

10  
11 Respectfully submitted this 1<sup>st</sup> day of May 2019.

12  
13 WILLIAM G. MONTGOMERY  
14 MARICOPA COUNTY ATTORNEY

15 By   
16 MICHAEL R. MCVEY  
17 CHIEF DEPUTY (ACTING)  
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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND THE**  
11 **ARIZONA RULES OF CRIMINAL**  
12 **PROCEDURE**

Supreme Court No. R-19-0016

13 **COMMENT OF THE**  
14 **STATE BAR OF ARIZONA**

15 Pursuant to Rule 28(D) of the Arizona Rules of Supreme Court, the State Bar  
16 of Arizona (the "State Bar") hereby submits the following as its Comment to the  
17 above-captioned Petition.

18 The analysis and details for this Comment are substantially the product of the  
19 State Bar's Criminal Practice and Procedure Committee, composed of a balance of  
20 prosecution and defense practitioners, and judicial members.

21 **BACKGROUND OF PETITION R-19-0016**

22 More than two years ago, the Supreme Court Task Force on the Arizona  
23 Rules of Criminal Procedure completed a global restyling of the Rules of Criminal  
24 Procedure and Submitted Rule Change Petition R-17-0002. The revisions proposed  
25 in R-17-0002 were approved by this Court. During the Task Force review process,

1 representatives of victim's rights organizations suggested that Rule 39 be deleted,  
2 and other criminal rules be modified to add language regarding victims' rights. The  
3 committee charged with revising the Rules of Criminal Procedure declined to adopt  
4 the suggested modifications.  
5

6 This same Petitioner filed Petition R-18-0001 which sought to delete Rule 39,  
7 Ariz. Rules Crim. Pro., and amend dozens of criminal rules in the process. Rule  
8 Petition R-18-0001 was not adopted. In the instant petition, R-19-0016, the proposal  
9 again seeks to accomplish what was not accomplished via the Supreme Court Task  
10 Force on the Arizona Rules of Criminal Procedure or via Petition R-18-0001.  
11

## 12 **DISCUSSION**

13  
14 A comparison between Petition R-18-001 and Petition R-19-0016 shows that  
15 the majority of proposed modifications contained in the new petition are virtually  
16 identical to the former petition. Some aspects of this Petition utilize slightly  
17 different language than previously proposed, where others utilize identical language  
18 but in a different subsection of the same rule. Consequently, much of this comment  
19 is similar to the State Bar's Comment on R-18-0001. There are, however, some  
20 newly proposed rule changes in R-19-0016 that were not in the prior petition.  
21

22 Like Petition R-18-0001, many of the proposed modifications seek to raise  
23 crime victims to the status of parties, permitting them to file pleadings and otherwise  
24 be heard on matters which do not pertain exclusively to victims' rights. But victims  
25

1 are not parties to criminal proceedings and may not challenge the legal rulings of trial  
2 judges pertaining to the merits of a criminal case.

3 Article 2, Section 2.1(A) of the Arizona Constitution, otherwise referred to as  
4 the Victims' Bill of Rights (VBR), provides that victims have a right to have "all rules  
5 governing criminal procedure and the admissibility of evidence" protect victims. (*Id.*  
6 at Section 2.1(A)(11)). However, this court has held that this provision is to be  
7 "narrowly construed" to "deal [] with procedural rules *pertaining to victims* and not  
8 with the substantive general subject of the [Supreme Court's] rule making power."  
9 *Slayton v. Shumway*, 166 Ariz. 87, 92 (1990)(emphasis added).

10 Since *Slayton* was decided, Arizona has consistently reaffirmed its holding:

11 [The] 'scope of legislative rulemaking power under [the]  
12 VBR extends to those rules that define, implement, preserve  
13 and protect *the specific rights unique* and particular to crime  
14 victims, as guaranteed and *created by* [the] VBR.'

15 *State v. Brown*, 194 Ariz. 340, 343 (1999) (emphasis added); *See also, Champlin v.*  
16 *Sargeant*, 192 Ariz. 371, 373 n. 2 (1998) (rulemaking power under VBR "extends  
17 only so far as necessary to protect rights created by the [VBR] and not beyond.");  
18 *State v. Hansen*, 215 Ariz. 287, 290 (2007) (same).

19 *Slayton* and its progeny make it clear that the VBR, Article 2, Section  
20 2.1(A)(11), cannot and does not require consideration of victim rights in connection  
21 with *all* evidentiary matters and *all* Arizona Rules of Criminal Procedure. *Slayton*,  
22 166 Ariz. at 89, 92.

1 As before, the Petition seeks to abrogate Rule 39. (*See*, Appendix A of the  
2 Petition at pp. 63-68). The Petition asserts that abrogating Rule 39 and integrating  
3 its provisions into the remaining Rules of Criminal Procedure will not create new  
4 victims' rights. (Petition at 6, l. 6-7). However, many of the proposed modifications  
5 discussed in Exhibit A, below, clearly attempt to create victim rights where no such  
6 right exists in either Article 2, Section 2.1 of the Arizona Constitution, Rule 39 of  
7 the Rules of Criminal Procedure, or the implementing statutes, A.R.S. §§13-4401,  
8  
9 *et. seq.*

11 Like last year's petition, the changes sought by R-19-0016 are too numerous  
12 to address in a memorandum format. Attached to this Comment as Exhibit A is an  
13 analysis of many of the proposals contained within Petition R-19-0016.

### 15 CONCLUSION

16 Victims' rights are already succinctly stated in Rule 39, Ariz. Rules of Crim.  
17 Pro., and many are duplicated in the Arizona statutes. The Petition seeks to abrogate  
18 Rule 39 and redistribute the enumerated victims' rights throughout virtually every  
19 other Rule of Criminal Procedure. Such an overhaul and redistribution of Rule 39's  
20 protections remove from the rules an easily accessible, comprehensive listing of all  
21 victims' rights. In addition to creating rights where none currently exist, this petition  
22 will not provide attorneys and judges with a better understanding of victims' rights.  
23  
24 It will have the opposite result, making it more difficult for Victims, the Courts, the  
25

1 State, and the Defense, to understand the scope of victims' rights, to access the  
2 rights, and to determine how to apply the law to victims' rights.

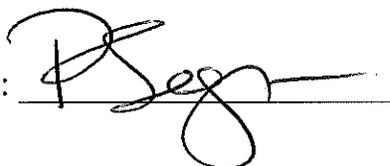
3  
4 Modification and/or expansion of Victims' Rights coupled with a substantial  
5 overhaul of the newly modified Rules of Criminal Procedure should proceed through  
6 consultation, review, and discussion with other interested members of the criminal  
7 justice system such as State, County, and Municipal Prosecution Agencies, the  
8 Defense Bar, and members of the State, County, and Municipal Judiciary.

9  
10 For the above-stated reasons, the State Bar of Arizona respectfully requests  
11 that the Arizona Supreme Court not amend the Criminal Rules as requested in the  
12 Petition.

13  
14  
15 RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of May, 2019.

16  
17   
18 Lisa M. Panahi  
19 General Counsel

20  
21 Electronic copy filed with the  
22 Clerk of the Supreme Court of Arizona  
23 this 1<sup>st</sup> day of May, 2019.

24 by:   
25

## Exhibit A

### Rule 1.3 (a)(5) Computation of Time.

The petition seeks to modify subsection (a)(5) of the rule to include crime victims in the rule's time computation. Subtle as it is, the proposed modification is works to sanction the filing of pleadings by crime victims or their counsel. While victims have a right to be heard in limited, delineated circumstances, only *parties* may file pleadings. *Lynn v. Reinstein*, 205 Ariz. 186, ¶ 15 (2003); *State v. Lamberton*, 183 Ariz. 47 (1995). The rule should not be modified as requested.

### Rule 1.5(c)(3) Defendant's Appearance by Videoconference.

The rule provides for a defendant's appearance in certain proceedings by "interactive audiovisual system" when the parties so stipulate. The Petition seeks to amend the rule to preclude such an appearance by stipulation *unless* the interactive audiovisual system "will allow a victim means to view and participate in the proceedings and ensure compliance with all victims' rights laws." (Appendix A of Petition at 7).

In-custody defendants have no control over the system utilized by the court and jail. And while out-of-custody defendants may (with the approval of the court) appear through Skype, criminal defendants have no way to ensure victims are conferenced in to the interactive audiovisual system utilized. Because proceedings employing an interactive audiovisual system take place in open court, victims are

free to appear in court to exercise any right specifically afforded by the VBR. Modifying the rule to make use of the methodology contingent upon the victim's participation in *the interactive system* will effectively nullify the authorized process. The rule should not be modified as requested.

**Rule 1.9 Motions, Oral Argument, and Proposed Orders.**

Petitioner seeks to amend subsection (b) of Rule 1.9 to add this sentence: “When addressing matters that impact any victim's rights, a victim may file motions, responses, and replies that comply with these rules.” (Appendix A of Petition at 10). While victims clearly have a right to be heard concerning issues implicating the rights enumerated in the Constitution, neither the Constitution, the statutes nor Rule 39 grants any victim (or their counsel) the right to file pleadings. Only *parties* may file pleadings, and victims are not *parties* to the criminal action. They may not be heard on purely legal matters divorced from those *unique, peculiar rights created by VBR. Lynn v. Reinstein, 205 Ariz. 186, 191 (2003) (“ . . . [V]ictims are not parties to a defendant’s criminal case.”)*. *See, also, State v. Lamberton, 183 Ariz. 47, 49 (1995)* (The VBR provides “victims the right to participate and be notified of certain criminal proceedings. This is not the same as making victims ‘parties.’”).

Despite this clearly established case law, the Petition asserts:

It is important to point out that in seeking integration, AVCV is not asserting that victims are parties to a criminal

case not is AVCV seeking to elevate victims to party status.

*Petition at 6.*

But the proposed amendment to subsection (b) accomplishes exactly what the petition asserts it does not seek to accomplish – elevate victims to party status with the right to file motions, responses, and replies on “*matters that impact any victim’s rights.*” It is the Petitioner’s position that *all criminal and evidentiary rules in all criminal proceedings* impact victim’s rights. (Petition at 5). As such, the proposed language invites additional litigation over the legal positions of a victim or differing positions of multiple victims which would require written responses or argument to preserve the record. The workload for the State, the Defense, and the Trial Courts and Appellate Courts will increase significantly.

Notably, the former petition proposed this modification, but with different language. (*See*, Petition R-18-0001, Appendix A to R-18-0001 at p. 5). A victim’s “right to be heard” does not expressly include the right to file pleadings. Were it otherwise, Article 2, Section 2.1 of the Constitution, Rule 39, and/or the implementing statutes would have provided for it. Despite claiming otherwise, the Petition seeks to create a right which does not currently exist. The proposed modification should be rejected.

**Rule 4.2(c) Combining an Initial Appearance with an Arraignment.**

The Petition seeks to modify the provision allowing for a combined Initial Appearance with an Arraignment to require “if requested, the victim has been given notice and an opportunity to be present and heard.” (Appendix A at 15). A victim’s right to be heard in this situation already exists. *See*, Article 2, Section 2.1(A)(4) of the Arizona Constitution.

**Rule 5.1(c)(2) Preliminary Hearings/Continuance.** The proposed modification seeks to limit a magistrate’s authority to continue a preliminary hearing by conditioning such an order upon the magistrate’s “consideration of the victim’s right to a speedy trial . . . .” (Appendix A at 16).

The right to a speedy trial, however, was not created by the VBR. Paragraph 10 of Article 2, Section 2.1(A)<sup>1</sup> of the Arizona Constitution, “which addresses a general ‘speedy trial’ right, neither create[d] a right nor define[d] a right peculiar and unique to victims.” *State ex rel. Napolitano v. Brown*, 194 Ariz. 340, 343 ¶12 (1999). Further, when in conflict, a criminal defendant’s Sixth and Fourteenth Amendment rights trump a victim’s desire for a speedy trial. *State ex rel. Romley v. Superior Court/Roper (RPI)*, 172 Ariz. 232, 236, (App.1992) (“We therefore hold that when the defendant’s constitutional right to due process conflicts with the

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<sup>1</sup> The codification of the Victims’ Bill of Rights.

Victim’s Bill of Rights in a direct manner, . . . then [defendant’s] due process is the superior right.”).

As proposed, the revision runs afoul of established case law by rendering the defendant’s constitutional rights subservient to those of the victim. The proposal should be rejected.

**Proposed Rule 6.3(c)(1) Duties of Counsel; Withdrawal.**

The proposed modification seeks to limit a magistrate’s authority to grant a motion by counsel to withdraw by conditioning such an order upon the magistrate’s “consider[ation of] the victim’s right to a speedy trial.” (Appendix A at 18). As mentioned above, the right to a speedy trial was not created by the VBR. Paragraph 10 of Article 2, Section 2.1(A) of the Arizona Constitution, “neither create[d] a right nor define[d] a right peculiar and unique to victims.” *State ex rel. Napolitano v. Brown, supra*, at 343, ¶12. Further, when in conflict, a criminal defendant’s Sixth and Fourteenth Amendment rights trump a victim’s desire for a speedy trial. *State ex rel. Romley v. Superior Court/Roper (RPI), supra*. As proposed, the revision runs afoul of established case law by rendering the defendant’s constitutional rights subservient to those of the victim. The proposal should be rejected.

**Rule 6.7(a) Appointment of Investigators / Experts for Indigent Defendants.**

The rule as written addresses the court’s obligation to appoint investigators, experts and mitigation specialists necessary for a defendant’s case. The Petition

seeks to require the court to impose work deadlines on each appointed investigator/expert based on a consideration of “the victim’s right to a speedy trial.” (Appendix A at 19).

Such an advisory is unproductive and unnecessary under the circumstances since defense investigators and experts work for the defense attorney, and the defense attorney is charged with complying with speedy trial rules. Moreover, as mentioned in the two preceding sections, the right to a speedy trial was not created by the VBR. Paragraph 10 of Article 2, Section 2.1(A) of the Arizona Constitution, “neither create[d] a right nor define[d] a right peculiar and unique to victims.” *State ex rel. Napolitano v. Brown, supra*, at 343, ¶12. The proposed modification should be rejected.

#### **Rule 7.4(b) Bail Eligibility Hearing.**

The Petition proposes to strike the current Subsection (b)(2), which states: “Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g).” Rule 39(g) covers Court enforcement of victim notice requirements. The Petition proposes to replace the above quoted language with a lengthy paragraph regarding Victim participation in Bail Eligibility Hearings. The majority of the proposed language comes from Rule 39(b)(7), Ariz. Rules of Crim. Pro., so this part of the proposal is already addressed in Rule 39.

However, the third sentence of the proposed language reads:

*If a victim objects to being called as a witness in a bail eligibility hearing the Court must require the party wishing to present the victim's testimony to make an offer of proof and the Court may require a victim to testify only if the Court finds that the evidence in the offer of proof would likely impact the Court's decision. . . . If the opposing party stipulates to the information in the offer of proof, the victim will not be required to testify.*

Proposed Rule 7.4(b)(2).

Again, the Petition attempts to create a right where none exists. This Court and the Court of Appeals have recognized that victims do not have a right to refuse to testify at trial or in any criminal pre-trial proceeding. *See, State v. Riggs*, 189 Ariz. 327, 330-331 (1997); *State v. Brown*, 233 Ariz. 153, ¶26 (App. 2013); *P.M. v. Gould*, 212 Ariz. 541, ¶16 (App. 2006); *S.A. v. Superior Court*, 171 Ariz. 529, 531 (App.1992); *Benton v. Superior Court*, 182 Ariz. 466 (App. 1995); and *State ex rel Dean v. City Court, City of Tucson*, 173 Ariz. 515 (App. 1993).

The proposal should be rejected.

**Rule 8.1(e) Suspension of Rule 8.**

The rule authorizes either party to move for a hearing to establish extraordinary circumstances requiring a suspension of Arizona's speedy trial provisions. Petitioner seeks a rule change compelling an opportunity to be heard on any such motion, as well as compelling the court's consideration of "the victim's right to speedy trial" before ruling on the motion. (Appendix A at pp. 31-32).

As to this proposed revision and other proposed revisions to Rule 8, this modification is unnecessary because Rule 39 already addresses a victim's speedy trial issues. Victims already have the right to be heard on suspension of Rule 8 and speedy trial issues. Rule 39(b)(7)(C). Ariz. Rules Crim. Pro.

**Rule 8.5(b) Continuing a Trial Date/Grounds.**

The rule sets forth the procedure for a party's motion to continue a trial. The rule states that a continuance may be ordered "only on a showing that extraordinary circumstances exist, and that delay is indispensable to the interests of justice, and only for so long as is necessary to serve the interests of justice." The Petition seeks to modify the requisite showing to include consideration of the victim's right to a speedy trial. (Appendix A at 32).

The proposed modification is unnecessary because Rule 39 already provides Victims the right to be heard on trial continuances. Rule 39(b)(7)(C). Ariz. Rules Crim. Pro. Further, this proposed revision potentially conflicts with a defendant's due process rights.

**Rule 10.3 Changing the Place of Trial.**

Subsection (c) of the rule permits a party to seek a change of the place of trial if the party demonstrates that a fair and impartial trial cannot be had in the current location. A defendant's right to a fair and impartial trial is guaranteed by the Sixth

Amendment of the United States Constitution, and Article 2, Sections 4, 23, and 24 of the Arizona Constitution.

A victim's right to be heard already exists. But the Petition goes even farther by requiring the court's consideration of "the victim's right to be present" as well as directing the Court to "consider alternatives to moving the trial that will . . . reasonably allow[] the victim to exercise the right to be present." (Appendix A at 34). The proposed modification can be read to suggest a victim's right to argue the *legal* justification warranting a change of venue thus making a victim a party to the proceedings with the right to present legal arguments. But victims have no right to make legal arguments.

Courts already consider the inconvenience to witnesses when ruling on change of venue motions. Such consideration necessarily includes both testifying and non-testifying crime victims. The rule should not be modified as requested.

**Rule 15.2(h)(i)(B) Defense Additional Disclosure in Capital Cases.**

Subsection 15.2(h)(i)(B) addresses extensions of time for disclosure and/or amendment of disclosure on a showing of good cause. The Petition proposes to augment the rule by requiring consideration of "the victim's right to a speedy trial." (Appendix A at 43). This revision again conflicts with a defendant's due process rights and is unnecessary in light of the existence of paragraph 10 of Article 2,

Section 2.1(A) of the Arizona Constitution, as well as Rule 39(b)(7)(C) of the Arizona Rules of Criminal Procedure.

**Proposed Rule 15.3 Depositions; Victims' Right to Refuse.**

In addition to amending the current heading of Rule 15.3, the Petition proposes an entirely new subsection (g) – consisting of 4 subparts. Most of the content in proposed subsection (g) is already covered by Rule 39 and is duplicated by the statutes. However, under proposed subpart (1), entitled, “Communication,” the petitioner proposes to add: “A defendant, a defendant's attorney, or any person acting on the defendant's behalf may not contact the victim.”

The sentence invites problems for several reasons. First, any no-contact order existing between the defendant and the victim is, when appropriate, issued by the court, typically during an initial appearance or arraignment. As A.R.S. §13-4431 states, the goal of victim provisions is “minimizing victim contact” with the accused. Contact between a victim and an accused is an issue reserved for the court on a case-by-case basis.

Second, there is nothing in Article 2, Section 2.1 of the Arizona Constitution, Rule 39, or the implementing statutes that prohibit any and all contact between a defense attorney and a victim. *See, e.g., State ex rel Dean v. City Court, City of Tucson*, 173 Ariz. 515, 516 (App. 1993) (“[W]e find nothing in [Article 2, Section 2.1], either express or implied, which supports the state’s argument that victims have

an absolute right not to be exposed to contact with defendants or their attorneys until the time of trial.”). Rule 39(b)(12)(A) & (B) does, however, prohibit defense lawyers from contacting victims concerning discovery, depositions, requests for interviews. Victims who have not opted-in are still “victims” by definition. *A.R.S. §13-4401(19)*. As currently written, Rule 39 avoids problems arising from this important distinction.

Third, the sentence at issue precludes contact with the victim “by any person acting on the defendant's behalf.” As an extension, if a relative or friend or acquaintance of the defendant, *acting on their own accord* (as opposed to the direction of the accused) contacts the victim “on the defendant's behalf,” nothing in the Constitution, statutes or Rule 39 prohibits that contact. More importantly, Arizona has approved of “contact” by those authorized to serve subpoenas upon victims, which of course is contact by a “person acting on the defendant's behalf.” *See, State ex rel Dean v. City Court, City of Tucson*, 173 Ariz. 515 (App. 1993). In light of the foregoing, the proposed language should be rejected as overbroad.

**Rule 15.6 Continuing Duty to Disclose; Final Disclosure Deadline; Extension.**

Subsection (e) of the rule addresses the procedure for extensions of time for disclosure deadlines due to the need to complete testing. The Petition would add that if the Court grants an extension, the Court must consider the Victim’s right to

a speedy trial in determining the new deadlines. (Appendix A at 46). This revision is unnecessary in light of the existence of paragraph 10 of Article 2, Section 2.1(A) of the Arizona Constitution as well as Rule 39(b)(7)(C) of the Arizona Rules of Criminal Procedure.

**Rule 16.3(d) Pretrial Conference/Scope of Proceeding.**

The current rule establishes pretrial conferences for the purpose of accomplishing certain objectives. The rule permits the court to hear motions made at or filed before the conference; set additional conferences and evidentiary hearings; obtain stipulations to relevant facts; and discuss and determine any other matters that will promote a fair and expeditious trial.

The Petition seeks to require a court to *first* “consider the rights and views of the victim,” the “victim’s right to be present at all proceedings,” and victim speedy trial considerations before addressing any matters outlined. (Appendix A at 47). While victims have the right to be heard, victims have no *specific, unique, peculiar* right *created* by VBR to be heard with respect to any of the issues set forth in Rule 16.3(d), e.g., motions, stipulations, use of juror notebooks, opening statements, jury instructions, etc. The Petition seeks to create new rights elevating victims to the status of a party to the proceedings with the right to address legal issues. The proposed revision should be rejected.

### **Rule 16.4 Dismissal of Prosecution.**

First, subsection (a) of the rule permits dismissal of a prosecution on motion of the State upon a finding of good cause and that the dismissal is not sought to avoid Rule 8 time limits. The Petition seeks to augment this subsection by precluding dismissal absent consideration of the views of the victim. (Appendix A at 48).

Next, subsection (d) of the rule currently provides that dismissal of a prosecution “is without prejudice to commencing another prosecution, unless the court finds that the interests of justice require the dismissal to be with prejudice.” The Petition seeks to insert a requirement that the court first consider the rights of the victim to justice and due process before reaching a decision concerning dismissal with prejudice. (Appendix A at 48).

Whether a dismissal of a criminal prosecution occurs with prejudice is purely a *matter of law* about which VBR creates no right. When the prosecution moves to dismiss due to an insufficiency of evidence necessary to convict, the matter is one of law grounded in the prosecutor’s legal assessment of the case. So too, where a defendant moves for dismissal of a charging document as “insufficient as a matter of law” in accordance with Rule 16.4(b), the decision to grant or deny the motion rests squarely in the law.

A court's decision to dismiss with prejudice is grounded in the law governing the case. For example, where the prosecution is barred by double jeopardy, it is the law that dictates the matter be dismissed with prejudice. Because the Court's decision is governed by law, and because the VBR creates no specific right to be heard on matters of law governing the merits of a prosecution, the proposed rule amendment must be rejected.

**Rule 27.8(b)(2) Probation Revocation/Violation Hearing.**

The current rule provides for a probationer's right to be present during a violation hearing and advises that such hearing may proceed in the probationer's absence in certain circumstances. The Petition seeks to modify the rule to add that the victim also has a right to be present during the violation hearing – about which there is no debate. However, to avoid any confusion, any modification to the rule must also state that the violation hearing may proceed in the absence of the victim.

**Rule 31.3(b) Suspension of an Appeal.**

Subsection (1) of the rule currently provides that an appellate court, on its own motion or on that of a party, may suspend an appeal if a motion under Rule 24 (motion for new trial) or a petition under Rule 32 is pending. The Petition seeks to modify the rule to require the appellate court to first consider “the rights of the victim, including the right to prompt and final conclusion of the case after conviction and sentence,” before suspending an appeal. (Appendix A at 58).

However, victims have no *specific, unique, peculiar* right *created* by the VBR with respect to whether or not an appellate court should suspend an appeal. As previously noted, victims are not afforded the status of a “party” under the VBR, thus the proposed modification should be rejected.

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**SUPREME COURT OF ARIZONA**

No. R -19-0016

In the Matter of:  
Petition to Amend the Arizona Rules  
of Criminal Procedure

**COMMENT IN OPPOSITION TO  
ARIZONA VOICE FOR CRIME  
VICTIMS' PETITION TO AMEND  
THE ARIZONA RULES OF  
CRIMINAL PROCEDURE.**

Pursuant to Rule 28 of the Arizona Rules of Supreme Court, the Maricopa County Public Defender's Office and Arizona Attorneys for Criminal Justice respectfully submit the following Comment in Opposition to Petition R-19-0016, Arizona Voice for Crime Victims' ("AVCV") Petition to Amend the Rules of Criminal Procedure ("Petition").

The Maricopa County Public Defender ("MCPD") is the largest indigent defense firm in the State of Arizona with over 200 deputy public defenders providing indigent legal services in the Maricopa County Justice and Superior Courts. During the past fiscal year, the MCPD handled almost 36,000 criminal cases.

Arizona Attorneys for Criminal Justice (“AACJ”) is the Arizona affiliate of the National Association of Criminal Defense Lawyers. AACJ was founded in 1986 to give a voice to the rights of the criminally accused and to those who defend the accused, both in the public and private sectors. AACJ is dedicated to protecting the rights of the accused in courts, promoting excellence in the practice of criminal law, and fostering public awareness of citizens’ rights, the criminal justice system, and the role of a defense lawyer.

***Discussion:***

**I. The Arizona Supreme Court Task Force to redraft the rules of criminal procedure has already considered and rejected AVCV’s proposal to eliminate and disseminate Rule 39 throughout the Rules.**

In 2015, this Court created a Task Force to restyle the Arizona Rules of Criminal Procedure. [Admin. Order 2015-123](#). AVCV proposed to eliminate and incorporate Rule 39 during the April 7, 2017, meeting of the Task Force. *See* [CRTF draft meeting minutes, 4/7/2017](#), 1–2. The Task Force considered the proposal to eliminate and integrate Rule 39 throughout the rules. However, the Task Force rejected the proposal and declined to include references to victims in several Rules. *See, e.g., id.* at 3 (refusing to change Rule 7.3 to include AVCV’s mandatory no-contact provision), 3–4 (rejecting proposal to modify right to be heard), 4 (refusing to modify Rule 7.6(c) because bond forfeiture is a civil proceeding), 4 (rejecting proposals to add references to victims in Rules 8.1, 8.2,

and 8.4 “because they were impractical, substantive, or cumulative”), 5 (declining to modify Rule 9.3), 6 (refusing proposal to modify Rule 10), 10 (rejecting proposed change to Rule 26). Nonetheless, the Task Force included new language in the Rules where the Task Force deemed the Rules needed clarity about victims’ rights. *See, e.g., id.* at 8 (adopting proposed change to Rule 27.1), 8 (adopting proposed change to Rule 1.2).

Notably, some members of the Task Force believed there was value in Rule 39 as an umbrella rule. *See id.* at 4. Part of the reason the Task Force rejected AVCV’s proposal was that members were concerned that parsing Rule 39 “rights throughout the [R]ules might actually dilute them.” *Id.*

**II. AVCV’s 2018 proposal was criticized for eliminating a useful resource in Rule 39, and for creating substantive changes to elevate victims to party status under the guise of a stylistic change.**

Failing to change the Rules through the Task Force in 2017, AVCV petitioned to change the Rules in 2018 by filing Rule Change Petition R-18-0001 on January 3, 2018. The Petition met significant pushback, which can be separated into two categories of criticism. First, Rule 39 is effective at consolidating and informing practitioners of a victim’s rights, and therefore it should not be eliminated. Second, AVCV claimed its proposed modifications were stylistic, but they were actually an attempt to make substantive changes to the Rules, such as elevating victims’ attorneys to party status in criminal proceedings.

The Arizona State Bar noted that “Rule 39 is crucial to the [criminal] process and must not be deleted,” and criticized the proposed modifications to the Rules as “seek[ing] to raise crime victims to the status of parties, permitting them to file pleadings and be heard on matters not exclusively pertaining to victims’ rights.” See [Comment of the State Bar of Ariz., Sup. Ct. No. R-18-0001, 2.](#)

The Honorable Sam Myers, the Criminal Presiding Judge of Maricopa County, stated that “[t]he elimination of Rule 39 would have a detrimental effect on the courts because it would remove from the Criminal Rules the comprehensive overview relied upon by judicial officers for a concise listing of all of the rights of victims in a criminal proceeding.” He criticized the modifications to the Rules, noting that “though not explicitly mentioned in the body of the petition itself, the proposed changes in several of the specific rule amendments amount to a substantive change in criminal procedure and/or an expansion of victims’ rights not currently contained in rules, statutes or the Constitution.” [Hon. Sam Myers, Comment to Proposed Changes to the Rules of Criminal Procedure, Sup. Ct. No. R-18-0001, 1-2.](#)

The Arizona Prosecuting Attorneys’ Advisory Council (“APAAC”) wrote the only Rule Comment that did not object to modifying the Rules to elevate victims to the status of parties. Nevertheless, APAAC cautioned against the repeal of Rule 39, stating that “by repealing Rule 39 in its entirety, a long-standing and

stalwart source for victims’ rights could be lost and those enumerated rights somehow diminished.” See [Comment of the Ariz. Prosecuting Attorneys’ Advisory Council, Sup. Ct. No. R-18-0001, 11, lns. 4-8.](#)

The Maricopa County Attorney’s Office (“MCAO”) collaborated with AVCV on a joint comment. This comment suggested amendments to the original proposal—some cosmetic and others substantial. Notably, AVCV rolled back on a number of those fixes in this year’s proposal.

Most worrisome is that this year’s proposal still has the same significant problems as last year’s proposal—it seeks to elevate crime victims to the status parties and eliminates Rule 39.

**III. AVCV’s 2019 Petition is flawed like its 2018 Petition because it attempts to elevate victims to party status and eliminates a useful resource for judges and practitioners in Rule 39.**

For the second year in a row, AVCV purports its petition is a stylistic “integration” of Rule 39 into a number of Rules.<sup>1</sup> The words “integration” or “integrating” are used twelve times in the Petition,<sup>2</sup> and the Petition makes no argument for substantive changes to victim’s rights. Indeed, the Petition states its purpose is not to “create new victims’ rights or violate the rights of the accused.” See Pet., 7. Instead, the AVCV states the purpose of its Petition is merely to “give

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<sup>1</sup> Rules 1.2, 1.3, 1.4, 1.5, 1.7, 1.8, 1.9, 1.10, 4.1, 4.2, 5.1, 5.4, 5.8, 6.3, 6.7, 7.2, 7.3, 7.4, 7.5, 7.6, 8.1, 8.2, 8.5, 10.2, 10.3, 15.1, 15.2, 15.3, 16.3, 16.4, 17.1, 18.1, 19.7, 19.8, 26.7, 26.10, 26.17, 27.3, 27.7, 27.8, 27.10, 31.3, 32.4, 32.6 and 39.

<sup>2</sup> Up from eight references in the AVCV’s 2018 Petition.

effect to the VBR” and to “provide comprehensive guidance to criminal justice professionals.” *Id.* This language is identical to AVCV’s 2018 Petition and remains false.

A court rule may not define or regulate a substantive right. *Patterson v. Mahoney*, 219 Ariz. 453, ¶ 12 (App. 2008). Substantive rights arise from statutes or the Constitution. *Id.*; *see, e.g., Simpson v. Miller*, 241 Ariz. 341, ¶¶ 9, 21 (2017) (holding right to liberty is fundamental and substantive); *Tibbs v. Florida*, 457 U.S. 31, 45 (1982) (stating Due Process Clause requires substantial procedural protections to shield defendants against the devastation of imprisonment and the high cost of wrongful conviction).

Although AVCV took some of the most egregious “integrations” out of this year’s Petition, AVCV still seeks significant substantive changes, while claiming the Petition seeks only stylistic change. AVCV became less ambitious in some regards. For instance, AVCV eliminated a 2018 proposed reduction in the timeline for capital defendants under Rule 6.7, as well as a 2018 proposed Rule 15.6 change that would have placed a victim’s speedy trial rights above the due process rights of a defendant. Nevertheless, AVCV’s 2019 Petition retains several other problematic substantive changes to the Rules reminiscent of last year’s proposal.

The following list highlights some of the same proposed substantive changes contained in this year’s Petition, which go beyond the scope of stylistic integration by creating new victims’ rights and limiting the due-process rights of the accused:

1. The proposed change to Rule 1.9 explicitly grants a victim new rights, including the right to file motions, ask for arguments and hearings, and grants the victim’s attorney a new right to propose court orders. The right to propose orders is uniquely retained by attorneys of victims, such as attorneys at the AVCV. Pet., Appx. A: Abridged Text of Proposed Changes, 10.
2. The proposed Rule 7.3 establishes an automatic order proscribing the defendant contact with a victim, and it shifts the burden to the defendant to show “good cause” to overcome the order. Pet., Appx. A, 24.
3. The proposed Rule 7.5 creates new reasons a victim can seek to modify a defendant’s release conditions. Pet., Appx. A, 27.
4. The proposed Rule 16.3 allows a victim to interject into the proceedings before the court hears motions, sets hearings or conferences, accepts stipulations, or does anything else at any pretrial hearing. Pet., Appx. A, 47.

These changes are identical in impact, if not in form, to proposed substantive changes in last year’s Petition. AVCV’s proposed modifications do not merely “integrate” Rule 39 into the Rules; the Petition is replete with substantive changes that would provide new procedural rights for victims at the cost of a defendant’s due process rights and the integrity of the criminal justice system as a whole. Meanwhile, rather than addressing the need for substantive changes, AVCV claims that its proposed changes are all merely integration of existing rules.

AVCV states in its Petition that “AVCV is not asserting that victims are parties to a criminal case nor is AVCV seeking to elevate victims to party status,” correctly noting that this would be contrary to Arizona law. Pet., 6. However, the modifications proposed by AVCV effectively elevate crime victims to the status of parties. Close scrutiny of the specific wording of the proposed changes to Rule 1.9 reveals the Petition’s intent to elevate crime victims to the status of parties. The Petition includes the following proposed changes:

1. Rule 1.9(b) “Service of Motion; Response; Reply” would read “(w)hen addressing matters that impact any victim’s rights, a victim may file motions, responses, and replies that comply with these rules.” Pet., Appx. A, 10.
2. In Rule 1.9(d) “Waiver of Requirements,” the Petition would eliminate an essential qualifying phrase limiting waiver to parties or the court. *Id.*
3. In Rule 1.9(e) “Oral Argument,” the Petition would eliminate the qualifying phrase “(o)n a party’s request or on its own” as a necessary precursor for setting an hearing or waiving requirements of motions, arguments, or orders. *Id.*
4. Rule 1.9(f) “Proposed Orders” would read “(a) party or victim’s attorney must serve the proposed order on the court and all other parties and victim’s attorney. A party or victim’s attorney must not file a proposed order, and the court will not docket it, until a judge has reviewed and signed it ....” *Id.*

These changes mirror last year’s proposed changes, which would explicitly grant a victim’s attorney new rights to file motions, ask for arguments and hearings, and propose court orders. Pet. R-18-0001, Appx. A: Abridged Text of Proposed Changes, 5. The only significant change in this year’s Petition is that

AVCV inserted the phrase “when addressing matters that impact any victim’s rights . . .” Pet., Appx. A, 10. This qualifying phrase is so overly broad as to be meaningless because virtually any matter can be shoehorned into a “victim’s rights” argument under the broad language of the Victim’s Bill of Rights, which reads “*all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims’ rights.*” Ariz. Const. art. II, §2.1(A)(11) (emphasis added).

As AVCV may anticipate, the proposed changes to Rule 1.9, combined with the broad language of Article II, would grant victims the ability to litigate at evidentiary hearings, suppression hearings, dismissal hearings, and conceivably any other hearing that might take place during a criminal proceeding. This renders the qualifying phrase “. . . (w)hen addressing matters that impact any victim’s rights” included in this year’s Petition meaningless. Since that qualifying phrase was the only significant change between last year’s proposal and this year’s proposal, and because that qualifying phrase would not actually serve as an effective qualifier, there is no significant distinction between this year’s petition and last year’s petition regarding the elevation of victims to party status.

Neither Rule 39 nor the Victim’s Bill of Rights intended to elevate victims to party status, and that is what the proposed changes would accomplish. That is improper. Furthermore, it is improper to propose such substantive changes under

the guise of style, especially without any discussion or presentation of facts that demonstrate the need, impact, or efficacy of such changes to the Rules.

**IV. Proposed Rule 1.9, which would grant victims the right to present motions and participate in oral arguments, is unwise and intrudes on the exclusive province of the state.**

In 1940, Attorney General Robert Jackson addressed the Second Annual Conference of United States Attorneys in Washington D.C. He opened by acknowledging what has only grown more true over time, the immense power of prosecutors. “The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous.” Robert H. Jackson, *THE FEDERAL PROSECUTOR*, 31 *Am. Inst. Crim. L. & Criminology* 3 (1940-1941). “While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.” *Id.* These statements are equally true for prosecutors at the state, county, and local levels. The power of the prosecutor is enormous.

Jackson was aware that the vast grant of power should not come at the cost of “the best in our American traditions.” *Id.* He concluded that because of this enormous power, prosecutors also have enormous responsibilities. “A sensitivity to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen’s safety lies in a prosecutor who tempers zeal with human

kindness, who seeks the truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.” *Id.* at 6.

It is for this reason that Arizona’s ethical rules task prosecutors with “the responsibility of a minister of justice and not simply that of an advocate.” Ariz. R. Sup. Ct. 42, E.R. 3.8, cmt. 1; *accord State v. Hulsey*, 243 Ariz. 367, ¶ 123 (2018). This is the balance of the criminal justice system.

Meanwhile, a victim has the right “to be treated with fairness, respect and dignity, and to be free from intimidation, harassment and abuse, throughout the criminal justice process.” Ariz. Const. art. II, § 2.1(A)(1). No part of the rules governing criminal procedure should abrogate the rights of a victim to be so treated. Ariz. Const. art. II § 2.1(A)(11). However, “victims are not parties to a defendant’s criminal case.” *Lynn v. Reinstein*, 205 Ariz. 186, ¶ 15 (2003).

The proposed changes would go beyond these enumerated rights and obligations, and insert the victim into the delicate balance between the prosecution and defense in a way not contemplated by the VBR. Under the VBR, a victim’s right to be heard applies to hearings that might result in a defendant’s release. *See* Ariz. Const. art. II, § 2.1(A)(4), (9). The VBR further grants victims the right to be present and to be informed at various stages of the criminal proceeding. *See* Ariz. Const. art. II, § 2.1(A)(2), (3), (7), (12). At its core, the VBR intends to *protect and inform* the victim. What the Petition seeks, and what the VBR does not intend, is to

make victims a quasi-party, equal with the defendant and the state throughout the entire criminal process.

The proposed changes would grant a victim's attorney unprecedented power, but with none of the ethical obligations and responsibilities of the prosecutor. The victim's attorney would gain new powers to present motions, serve replies, request waivers of requirements, set motions for argument, and propose orders. *See* Petition, Appx. A: Abridged Text of Proposed Changes, Rule 1.9: Motions, Oral Argument, and Proposed Orders. The proposed Rule 1.9 would convert a victim's attorney from a counselor for the victim into a party to the criminal proceeding, making them an adjunct prosecutor. This expansion of power exceeds the victim's right to be informed or be treated with dignity and respect and tramples on the province of the prosecutor and the due-process rights of the defendant.

Unlike a prosecutor, a victim has none of the prosecutor's ethical obligations. Unlike the prosecutor, the victim is not bound to seek the truth or be impartial. Unlike a prosecutor, a victim is not a minister of justice and need not be sensitive to fair play. To elevate the victim or their attorney to party status in a criminal proceeding violates the most fundamental notions of justice.

***Conclusion:***

The MCPD and AACJ oppose the changes proposed by the Petition. Victims and their attorneys should not be elevated to the position of party in criminal

proceedings. The Victim's Bill of Rights does not give the victim or the victim's attorney the right to be heard at evidentiary hearings or any other hearing where a defendant is not being released or sentenced, and neither should the Arizona Rules of Criminal Procedure. Nor should victims, who may be biased by their circumstances, be given a role in the disposition of justice. That is rightfully the exclusive province of the State.

Furthermore, the changes, justified as merely stylistic, invent new rights for the victim's attorney that do not exist and abrogate a defendant's substantive due-process rights. The petitioners attempt to accomplish these changes without any showing of need. Based on the forgoing, the MCPD and AACJ oppose the Petition.

RESPECTFULLY SUBMITTED this 1st day of May, 2019.

By: /s/ Mikel Steinfeld  
MIKEL STEINFELD  
DEPUTY MARICOPA COUNTY  
PUBLIC DEFENDER

By: /s/ David Euchner  
DAVID EUCHNER  
CO-CHAIR AACJ AMICUS COMMITTEE



## Commission on Victims in the Courts

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<b>Date Action Required:</b>	<b>Type of Action Required:</b>	<b>Subject: Victim Right to Privacy &amp; Safety -Body Cam Video Redacted/Unredacted to Defense</b>
June 14, 2019	<input type="checkbox"/> Formal Action/Request	
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

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PRESENTER(S): Dan Levey

**DISCUSSION:**

Provide info to the committee on a bill that was proposed this year. The bill was held so that stakeholder meetings can be held for next year session.

**RECOMMENDED MOTION:**



PROPOSED  
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1313  
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 13-4434, Arizona Revised Statutes, is amended to  
3 read:

4 13-4434. Victim's right to privacy; exception; definitions

5 A. The victim has the right at any court proceeding not to testify  
6 regarding any identifying or locating information unless the victim  
7 consents or the court orders disclosure on finding that a compelling need  
8 for the information exists. A court proceeding on the motion shall be in  
9 camera.

10 B. A victim's identifying and locating information that is obtained,  
11 compiled or reported by a law enforcement agency or prosecution agency  
12 shall be redacted by the originating agency and prosecution agencies from  
13 records pertaining to the criminal case involving the victim, including  
14 discovery disclosed to the defendant.

15 C. NOTWITHSTANDING SUBSECTION B OF THIS SECTION, A PROSECUTION  
16 AGENCY MAY PROVIDE AUDIO OR VIDEO RECORDING THAT MAY CONTAIN A VICTIM'S  
17 IDENTIFYING OR LOCATING INFORMATION TO A DEFENSE ATTORNEY WITHOUT FIRST  
18 REVIEWING THE AUDIO OR VIDEO RECORDING AND REDACTING ANY VICTIM IDENTIFYING  
19 OR LOCATING INFORMATION IF THE DEFENSE ATTORNEY AGREES BEFORE BEING  
20 PROVIDED THE AUDIO OR VIDEO RECORDING TO LIMIT THE USE OF THE AUDIO OR  
21 VIDEO RECORDING TO THE PURPOSES FOR WHICH THE AUDIO OR VIDEO RECORDING IS  
22 PROVIDED, TO ENSURE THE SECURITY AND CONFIDENTIALITY OF THE AUDIO OR VIDEO  
23 RECORDING AND TO NOT DISSEMINATE THE AUDIO OR VIDEO RECORDING TO ANOTHER

1 INDIVIDUAL OR AGENCY. IF A DEFENSE ATTORNEY RECEIVES UNREDACTED AUDIO OR  
2 VIDEO RECORDING PURSUANT TO THIS SUBSECTION AND DETERMINES THAT IT IS  
3 NECESSARY TO DISSEMINATE ALL OR ANY PORTION OF THE AUDIO OR VIDEO RECORDING  
4 TO ANOTHER INDIVIDUAL OR AGENCY, THE DEFENSE ATTORNEY MUST NOTIFY THE  
5 PROSECUTION AGENCY THAT DISCLOSED THE AUDIO OR VIDEO RECORDING. THE  
6 PROSECUTION AGENCY, WITHIN A REASONABLE AMOUNT OF TIME, SHALL REVIEW THE  
7 AUDIO OR VIDEO RECORDING, REDACT ANY VICTIM IDENTIFYING OR LOCATING  
8 INFORMATION AND PROVIDE THE DEFENSE ATTORNEY WITH A REDACTED COPY OF THE  
9 AUDIO OR VIDEO RECORDING. THE DEFENSE ATTORNEY MAY DISSEMINATE ONLY THE  
10 REDACTED COPY OF THE AUDIO OR VIDEO RECORDING TO ANOTHER INDIVIDUAL OR  
11 AGENCY.

12 ~~E.~~ D. Subsection B of this section does not apply to:

13 1. The victim's name except, if the victim is a minor, the victim's  
14 name may be redacted from public records pertaining to the crime if the  
15 countervailing interests of confidentiality, privacy, the rights of the  
16 minor or the best interests of this state outweigh the public interest in  
17 disclosure.

18 2. Any records that are transmitted between law enforcement and  
19 prosecution agencies or a court.

20 3. Any records if the victim or, if the victim is a minor, the  
21 victim's representative as designated under section 13-4403 has consented  
22 to the release of the information.

23 4. The general location at which the reported crime occurred.

24 ~~E.~~ E. For the purposes of this section:

25 1. "DEFENSE ATTORNEY" MEANS AN ATTORNEY AND THE ATTORNEY'S  
26 NONATTORNEY STAFF IF THE ATTORNEY IS A MEMBER IN GOOD STANDING OF THE STATE  
27 BAR OF ARIZONA AND HAS ENTERED A NOTICE OF APPEARANCE ON BEHALF OF A  
28 DEFENDANT IN A CRIMINAL CASE.

29 ~~F.~~ 2. "Identifying information" includes a victim's date of birth,  
30 social security number and official state or government issued driver  
31 license or identification number.



1           5. Ensure the rapid exchange of information concerning the  
2 commission of crime and the detection of violators of the law among the  
3 criminal justice agencies of other states and of the federal government.

4           6. Furnish assistance to peace officers throughout this state in  
5 crime scene investigation for the detection of latent fingerprints and in  
6 the comparison of latent fingerprints.

7           7. Conduct periodic operational audits of the central state  
8 repository and of a representative sample of other agencies that  
9 contribute records to or receive criminal justice information from the  
10 central state repository or through the Arizona criminal justice  
11 information system.

12           8. Establish and enforce the necessary physical and system  
13 safeguards to ensure that the criminal justice information maintained and  
14 disseminated by the central state repository or through the Arizona  
15 criminal justice information system is appropriately protected from  
16 unauthorized inquiry, modification, destruction or dissemination as  
17 required by this section.

18           9. Aid and encourage coordination and cooperation among criminal  
19 justice agencies through the statewide and interstate exchange of criminal  
20 justice information.

21           10. Provide training and proficiency testing on the use of criminal  
22 justice information to agencies receiving information from the central  
23 state repository or through the Arizona criminal justice information  
24 system.

25           11. Operate and maintain the Arizona automated fingerprint  
26 identification system established by section 41-2411.

27           12. Provide criminal history record information to the  
28 fingerprinting division for the purpose of screening applicants for  
29 fingerprint clearance cards.

30           B. The director may establish guidelines for the submission and  
31 retention of criminal justice information as deemed useful for the study  
32 or prevention of crime and for the administration of criminal justice.

1           C. The chief officers of criminal justice agencies of this state or  
2 its political subdivisions shall provide to the central state repository  
3 fingerprints and information concerning personal identification data,  
4 descriptions, crimes for which persons are arrested, process control  
5 numbers and dispositions and such other information as may be pertinent to  
6 all persons who have been charged with, arrested for, convicted of or  
7 summoned to court as criminal defendants for felony offenses or offenses  
8 involving domestic violence as defined in section 13-3601 or violations of  
9 title 13, chapter 14 or title 28, chapter 4 that have occurred in this  
10 state.

11           D. The chief officers of law enforcement agencies of this state or  
12 its political subdivisions shall provide to the department such  
13 information as necessary to operate the statewide uniform crime reporting  
14 program and to cooperate with the federal government uniform crime  
15 reporting program.

16           E. The chief officers of criminal justice agencies of this state or  
17 its political subdivisions shall comply with the training and proficiency  
18 testing guidelines as required by the department to comply with the  
19 federal national crime information center mandates.

20           F. The chief officers of criminal justice agencies of this state or  
21 its political subdivisions also shall provide to the department  
22 information concerning crimes that manifest evidence of prejudice based on  
23 race, color, religion, national origin, sexual orientation, gender or  
24 disability.

25           G. The director shall authorize the exchange of criminal justice  
26 information between the central state repository, or through the Arizona  
27 criminal justice information system, whether directly or through any  
28 intermediary, only as follows:

29           1. With criminal justice agencies of the federal government, Indian  
30 tribes, this state or its political subdivisions and other states, on  
31 request by the chief officers of such agencies or their designated  
32 representatives, specifically for the purposes of the administration of

1 criminal justice and for evaluating the fitness of current and prospective  
2 criminal justice employees.

3 2. With any noncriminal justice agency pursuant to a statute,  
4 ordinance or executive order that specifically authorizes the noncriminal  
5 justice agency to receive criminal history record information for the  
6 purpose of evaluating the fitness of current or prospective licensees,  
7 employees, contract employees or volunteers, on submission of the  
8 subject's fingerprints and the prescribed fee. Each statute, ordinance,  
9 or executive order that authorizes noncriminal justice agencies to receive  
10 criminal history record information for these purposes shall identify the  
11 specific categories of licensees, employees, contract employees or  
12 volunteers, and shall require that fingerprints of the specified  
13 individuals be submitted in conjunction with such requests for criminal  
14 history record information.

15 3. With the board of fingerprinting for the purpose of conducting  
16 good cause exceptions pursuant to section 41-619.55 and central registry  
17 exceptions pursuant to section 41-619.57.

18 4. With any individual for any lawful purpose on submission of the  
19 subject of record's fingerprints and the prescribed fee.

20 5. With the governor, if the governor elects to become actively  
21 involved in the investigation of criminal activity or the administration  
22 of criminal justice in accordance with the governor's constitutional duty  
23 to ensure that the laws are faithfully executed or as needed to carry out  
24 the other responsibilities of the governor's office.

25 6. With regional computer centers that maintain authorized  
26 computer-to-computer interfaces with the department, that are criminal  
27 justice agencies or under the management control of a criminal justice  
28 agency and that are established by a statute, ordinance or executive order  
29 to provide automated data processing services to criminal justice agencies  
30 specifically for the purposes of the administration of criminal justice or  
31 evaluating the fitness of regional computer center employees who have

1 access to the Arizona criminal justice information system and the national  
2 crime information center system.

3 7. With an individual who asserts a belief that criminal history  
4 record information relating to the individual is maintained by an agency  
5 or in an information system in this state that is subject to this section.  
6 On submission of fingerprints, the individual may review this information  
7 for the purpose of determining its accuracy and completeness by making  
8 application to the agency operating the system. Rules adopted under this  
9 section shall include provisions for administrative review and necessary  
10 correction of any inaccurate or incomplete information. The review and  
11 challenge process authorized by this paragraph is limited to criminal  
12 history record information.

13 8. With individuals and agencies pursuant to a specific agreement  
14 with a criminal justice agency to provide services required for the  
15 administration of criminal justice pursuant to that agreement if the  
16 agreement specifically authorizes access to data, limits the use of data  
17 to purposes for which given and ensures the security and confidentiality  
18 of the data consistent with this section.

19 9. With individuals and agencies for the express purpose of  
20 research, evaluative or statistical activities pursuant to an agreement  
21 with a criminal justice agency if the agreement specifically authorizes  
22 access to data, limits the use of data to research, evaluative or  
23 statistical purposes and ensures the confidentiality and security of the  
24 data consistent with this section.

25 10. With the auditor general for audit purposes.

26 11. With central state repositories of other states for noncriminal  
27 justice purposes for dissemination in accordance with the laws of those  
28 states.

29 12. On submission of the fingerprint card, with the department of  
30 child safety and a tribal social services agency to provide criminal  
31 history record information on prospective adoptive parents for the purpose  
32 of conducting the preadoption certification investigation under title 8,

1 chapter 1, article 1 if the department of economic security is conducting  
2 the investigation, or with an agency or a person appointed by the court,  
3 if the agency or person is conducting the investigation. Information  
4 received under this paragraph shall only be used for the purposes of the  
5 preadoption certification investigation.

6 13. With the department of child safety, a tribal social services  
7 agency and the superior court for the purpose of evaluating the fitness of  
8 custodians or prospective custodians of juveniles, including parents,  
9 relatives and prospective guardians. Information received under this  
10 paragraph shall only be used for the purposes of that evaluation. The  
11 information shall be provided on submission of either:

12 (a) The fingerprint card.

13 (b) The name, date of birth and social security number of the  
14 person.

15 14. On submission of a fingerprint card, provide criminal history  
16 record information to the superior court for the purpose of evaluating the  
17 fitness of investigators appointed under section 14-5303 or 14-5407,  
18 guardians appointed under section 14-5206 or 14-5304 or conservators  
19 appointed under section 14-5401.

20 15. With the supreme court to provide criminal history record  
21 information on prospective fiduciaries pursuant to section 14-5651.

22 16. With the department of juvenile corrections to provide criminal  
23 history record information pursuant to section 41-2814.

24 17. On submission of the fingerprint card, provide criminal history  
25 record information to the Arizona peace officer standards and training  
26 board or a board certified law enforcement academy to evaluate the fitness  
27 of prospective cadets.

28 18. With the internet sex offender website database established  
29 pursuant to section 13-3827.

30 19. With licensees of the United States nuclear regulatory  
31 commission for the purpose of determining whether an individual should be  
32 granted unescorted access to the protected area of a commercial nuclear

1 generating station on submission of the subject of record's fingerprints  
2 and the prescribed fee.

3 20. With the department of education for the purpose of evaluating  
4 the fitness of a certificated teacher or administrator or an applicant for  
5 a teaching or an administrative certificate provided that the department  
6 of education or its employees or agents have reasonable suspicion that the  
7 certificated person engaged in conduct that would be a criminal violation  
8 of the laws of this state or was involved in immoral or unprofessional  
9 conduct or that the applicant engaged in conduct that would warrant  
10 disciplinary action if the applicant were certificated at the time of the  
11 alleged conduct. The information shall be provided on the submission of  
12 either:

13 (a) The fingerprint card.

14 (b) The name, date of birth and social security number of the  
15 person.

16 21. With each school district and charter school in this state. The  
17 state board of education and the state board for charter schools shall  
18 provide the department of public safety with a current list of e-mail  
19 addresses for each school district and charter school in this state and  
20 shall periodically provide the department of public safety with updated  
21 e-mail addresses. If the department of public safety is notified that a  
22 person who is required to have a fingerprint clearance card to be employed  
23 by or to engage in volunteer activities at a school district or charter  
24 school has been arrested for or convicted of an offense listed in section  
25 41-1758.03, subsection B or has been arrested for or convicted of an  
26 offense that amounts to unprofessional conduct under section 15-550, the  
27 department of public safety shall notify each school district and charter  
28 school in this state that the person's fingerprint clearance card has been  
29 suspended or revoked.

30 22. With a tribal social services agency and the department of child  
31 safety as provided by law, which currently is the Adam Walsh child  
32 protection and safety act of 2006 (42 United States Code section 16961),

1 for the purposes of investigating or responding to reports of child abuse,  
2 neglect or exploitation. Information received pursuant to this paragraph  
3 from the national crime information center, the interstate identification  
4 index and the Arizona criminal justice information system network shall  
5 only be used for the purposes of investigating or responding as prescribed  
6 in this paragraph. The information shall be provided on submission to the  
7 department of public safety of either:

8 (a) The fingerprints of the person being investigated.

9 (b) The name, date of birth and social security number of the  
10 person.

11 23. With a nonprofit organization that interacts with children or  
12 vulnerable adults for the lawful purpose of evaluating the fitness of all  
13 current and prospective employees, contractors and volunteers of the  
14 organization. The criminal history record information shall be provided on  
15 submission of the applicant fingerprint card and the prescribed fee.

16 24. With the superior court for the purpose of determining an  
17 individual's eligibility for substance abuse and treatment courts in a  
18 family or juvenile case.

19 25. With the governor to provide criminal history record information  
20 on prospective gubernatorial nominees, appointees and employees as provided  
21 by law.

22 26. WITH A DEFENSE ATTORNEY, IF THE INFORMATION IS RECEIVED AS PART  
23 OF THE DISCLOSURE FROM A STATE, COUNTY OR CITY PROSECUTOR IN A CRIMINAL  
24 CASE, THE DEFENSE ATTORNEY LIMITS THE USE OF THE INFORMATION TO THE  
25 PURPOSES FOR WHICH THE INFORMATION IS GIVEN AND ENSURES THAT THE SECURITY  
26 AND CONFIDENTIALITY OF THE INFORMATION IS CONSISTENT WITH THIS SECTION. IF  
27 A DEFENSE ATTORNEY RECEIVES CRIMINAL JUSTICE INFORMATION THAT HAS NOT BEEN  
28 REVIEWED AND REDACTED BY THE STATE, COUNTY OR CITY PROSECUTOR WHO DISCLOSED  
29 THE INFORMATION, THE DEFENSE ATTORNEY MAY NOT DISSEMINATE THE INFORMATION  
30 TO ANOTHER INDIVIDUAL OR AGENCY. IF THE DEFENSE ATTORNEY DETERMINES THAT  
31 IT IS NECESSARY TO DISSEMINATE ANY CRIMINAL JUSTICE INFORMATION THAT HAS  
32 NOT BEEN REVIEWED OR REDACTED TO ANOTHER INDIVIDUAL OR AGENCY, THE DEFENSE

1 ATTORNEY MUST NOTIFY THE STATE, COUNTY OR CITY PROSECUTOR WHO DISCLOSED THE  
2 INFORMATION. THE PROSECUTOR, WITHIN A REASONABLE AMOUNT OF TIME, SHALL  
3 REVIEW THE INFORMATION, REDACT THE INFORMATION AND PROVIDE THE DEFENSE  
4 ATTORNEY WITH A REDACTED COPY OF THE CRIMINAL JUSTICE INFORMATION. THE  
5 DEFENSE ATTORNEY MAY DISSEMINATE ONLY THE REDACTED COPY OF THE CRIMINAL  
6 JUSTICE INFORMATION TO ANOTHER INDIVIDUAL OR AGENCY.

7 H. The director shall adopt rules necessary to execute this section.

8 I. The director, in the manner prescribed by law, shall remove and  
9 destroy records that the director determines are no longer of value in the  
10 detection or prevention of crime.

11 J. The director shall establish a fee in an amount necessary to  
12 cover the cost of federal noncriminal justice fingerprint processing for  
13 criminal history record information checks that are authorized by law for  
14 noncriminal justice employment, licensing or other lawful purposes. An  
15 additional fee may be charged by the department for state noncriminal  
16 justice fingerprint processing. Fees submitted to the department for  
17 state noncriminal justice fingerprint processing are not refundable.

18 K. The director shall establish a fee in an amount necessary to  
19 cover the cost of processing copies of department reports, eight by ten  
20 inch black and white photographs or eight by ten inch color photographs of  
21 traffic accident scenes.

22 L. Except as provided in subsection O of this section, each agency  
23 authorized by this section may charge a fee, in addition to any other fees  
24 prescribed by law, in an amount necessary to cover the cost of state and  
25 federal noncriminal justice fingerprint processing for criminal history  
26 record information checks that are authorized by law for noncriminal  
27 justice employment, licensing or other lawful purposes.

28 M. A fingerprint account within the records processing fund is  
29 established for the purpose of separately accounting for the collection  
30 and payment of fees for noncriminal justice fingerprint processing by the  
31 department. Monies collected for this purpose shall be credited to the  
32 account, and payments by the department to the United States for federal

1 noncriminal justice fingerprint processing shall be charged against the  
2 account. Monies in the account not required for payment to the United  
3 States shall be used by the department in support of the department's  
4 noncriminal justice fingerprint processing duties. At the end of each  
5 fiscal year, any balance in the account not required for payment to the  
6 United States or to support the department's noncriminal justice  
7 fingerprint processing duties reverts to the state general fund.

8 N. A records processing fund is established for the purpose of  
9 separately accounting for the collection and payment of fees for  
10 department reports and photographs of traffic accident scenes processed by  
11 the department. Monies collected for this purpose shall be credited to  
12 the fund and shall be used by the department in support of functions  
13 related to providing copies of department reports and photographs. At the  
14 end of each fiscal year, any balance in the fund not required for support  
15 of the functions related to providing copies of department reports and  
16 photographs reverts to the state general fund.

17 O. The department of child safety may pay from appropriated monies  
18 the cost of federal fingerprint processing or federal criminal history  
19 record information checks that are authorized by law for employees and  
20 volunteers of the department, guardians pursuant to section 8-453,  
21 subsection A, paragraph 6, the licensing of foster parents or the  
22 certification of adoptive parents.

23 P. The director shall adopt rules that provide for:

- 24 1. The collection and disposition of fees pursuant to this section.  
25 2. The refusal of service to those agencies that are delinquent in  
26 paying these fees.

27 Q. The director shall ensure that the following limitations are  
28 observed regarding dissemination of criminal justice information obtained  
29 from the central state repository or through the Arizona criminal justice  
30 information system:

1           1. Any criminal justice agency that obtains criminal justice  
2 information from the central state repository or through the Arizona  
3 criminal justice information system assumes responsibility for the  
4 security of the information and shall not secondarily disseminate this  
5 information to any individual or agency not authorized to receive this  
6 information directly from the central state repository or originating  
7 agency.

8           2. Dissemination to an authorized agency or individual may be  
9 accomplished by a criminal justice agency only if the dissemination is for  
10 criminal justice purposes in connection with the prescribed duties of the  
11 agency and not in violation of this section.

12           3. Criminal history record information disseminated to noncriminal  
13 justice agencies or to individuals shall be used only for the purposes for  
14 which it was given. Secondary dissemination is prohibited unless  
15 otherwise authorized by law.

16           4. The existence or nonexistence of criminal history record  
17 information shall not be confirmed to any individual or agency not  
18 authorized to receive the information itself.

19           5. Criminal history record information to be released for  
20 noncriminal justice purposes to agencies of other states shall only be  
21 released to the central state repositories of those states for  
22 dissemination in accordance with the laws of those states.

23           6. Criminal history record information shall be released to  
24 noncriminal justice agencies of the federal government pursuant to the  
25 terms of the federal security clearance information act (P.L. 99-169).

26           R. This section and the rules adopted under this section apply to  
27 all agencies and individuals collecting, storing or disseminating criminal  
28 justice information processed by manual or automated operations if the  
29 collection, storage or dissemination is funded in whole or in part with  
30 monies made available by the law enforcement assistance administration  
31 after July 1, 1973, pursuant to title I of the crime control act of 1973,  
32 and to all agencies that interact with or receive criminal justice

1 information from or through the central state repository and through the  
2 Arizona criminal justice information system.

3 S. This section does not apply to criminal history record  
4 information contained in:

5 1. Posters, arrest warrants, announcements or lists for identifying  
6 or apprehending fugitives or wanted persons.

7 2. Original records of entry such as police blotters maintained by  
8 criminal justice agencies, compiled chronologically and required by law or  
9 long-standing custom to be made public if these records are organized on a  
10 chronological basis.

11 3. Transcripts or records of judicial proceedings if released by a  
12 court or legislative or administrative proceedings.

13 4. Announcements of executive clemency or pardon.

14 5. Computer databases, other than the Arizona criminal justice  
15 information system, that are specifically designed for community  
16 notification of an offender's presence in the community pursuant to  
17 section 13-3825 or for public informational purposes authorized by section  
18 13-3827.

19 T. Nothing in this section prevents a criminal justice agency from  
20 disclosing to the public criminal history record information that is  
21 reasonably contemporaneous to the event for which an individual is  
22 currently within the criminal justice system, including information noted  
23 on traffic accident reports concerning citations, blood alcohol tests or  
24 arrests made in connection with the traffic accident being investigated.

25 U. In order to ensure that complete and accurate criminal history  
26 record information is maintained and disseminated by the central state  
27 repository:

28 1. The booking agency shall take legible ten-print fingerprints of  
29 all persons who are arrested for offenses listed in subsection C of this  
30 section. The booking agency shall obtain a process control number and  
31 provide to the person fingerprinted a document that indicates proof of the

1 fingerprinting and that informs the person that the document must be  
2 presented to the court.

3 2. Except as provided in paragraph 3 of this subsection, if a  
4 person is summoned to court as a result of an indictment or complaint for  
5 an offense listed in subsection C of this section, the court shall order  
6 the person to appear before the county sheriff and provide legible  
7 ten-print fingerprints. The county sheriff shall obtain a process control  
8 number and provide a document to the person fingerprinted that indicates  
9 proof of the fingerprinting and that informs the person that the document  
10 must be presented to the court. For the purposes of this paragraph,  
11 "summoned" includes a written promise to appear by the defendant on a  
12 uniform traffic ticket and complaint.

13 3. If a person is arrested for a misdemeanor offense listed in  
14 subsection C of this section by a city or town law enforcement agency, the  
15 person shall appear before the law enforcement agency that arrested the  
16 defendant and provide legible ten-print fingerprints. The law enforcement  
17 agency shall obtain a process control number and provide a document to the  
18 person fingerprinted that indicates proof of the fingerprinting and that  
19 informs the person that the document must be presented to the court.

20 4. The mandatory fingerprint compliance form shall contain the  
21 following information:

22 (a) Whether ten-print fingerprints have been obtained from the  
23 person.

24 (b) Whether a process control number was obtained.

25 (c) The offense or offenses for which the process control number  
26 was obtained.

27 (d) Any report number of the arresting authority.

28 (e) Instructions on reporting for ten-print fingerprinting,  
29 including available times and locations for reporting for ten-print  
30 fingerprinting.

1 (f) Instructions that direct the person to provide the form to the  
2 court at the person's next court appearance.

3 5. Within ten days after a person is fingerprinted, the arresting  
4 authority or agency that took the fingerprints shall forward the  
5 fingerprints to the department in the manner or form required by the  
6 department.

7 6. On the issuance of a summons for a defendant who is charged with  
8 an offense listed in subsection C of this section, the summons shall  
9 direct the defendant to provide ten-print fingerprints to the appropriate  
10 law enforcement agency.

11 7. At the initial appearance or on the arraignment of a summoned  
12 defendant who is charged with an offense listed in subsection C of this  
13 section, if the person does not present a completed mandatory fingerprint  
14 compliance form to the court or if the court has not received the process  
15 control number, the court shall order that within twenty calendar days the  
16 defendant be ten-print fingerprinted at a designated time and place by the  
17 appropriate law enforcement agency.

18 8. If the defendant fails to present a completed mandatory  
19 fingerprint compliance form or if the court has not received the process  
20 control number, the court, on its own motion, may remand the defendant  
21 into custody for ten-print fingerprinting. If otherwise eligible for  
22 release, the defendant shall be released from custody after being  
23 ten-print fingerprinted.

24 9. In every criminal case in which the defendant is incarcerated or  
25 fingerprinted as a result of the charge, an originating law enforcement  
26 agency or prosecutor, within forty days of the disposition, shall advise  
27 the central state repository of all dispositions concerning the  
28 termination of criminal proceedings against an individual arrested for an  
29 offense specified in subsection C of this section. This information shall  
30 be submitted on a form or in a manner required by the department.

1           10. Dispositions resulting from formal proceedings in a court  
2 having jurisdiction in a criminal action against an individual who is  
3 arrested for an offense specified in subsection C of this section or  
4 section 8-341, subsection W, paragraph 3 shall be reported to the central  
5 state repository within forty days of the date of the disposition. This  
6 information shall be submitted on a form or in a manner specified by rules  
7 approved by the supreme court.

8           11. The state department of corrections or the department of  
9 juvenile corrections, within forty days, shall advise the central state  
10 repository that it has assumed supervision of a person convicted of an  
11 offense specified in subsection C of this section or section 8-341,  
12 subsection W, paragraph 3. The state department of corrections or the  
13 department of juvenile corrections shall also report dispositions that  
14 occur thereafter to the central state repository within forty days of the  
15 date of the dispositions. This information shall be submitted on a form  
16 or in a manner required by the department of public safety.

17           12. Each criminal justice agency shall query the central state  
18 repository before dissemination of any criminal history record information  
19 to ensure the completeness of the information. Inquiries shall be made  
20 before any dissemination except in those cases in which time is of the  
21 essence and the repository is technically incapable of responding within  
22 the necessary time period. If time is of the essence, the inquiry shall  
23 still be made and the response shall be provided as soon as possible.

24           V. The director shall adopt rules specifying that any agency that  
25 collects, stores or disseminates criminal justice information that is  
26 subject to this section shall establish effective security measures to  
27 protect the information from unauthorized access, disclosure, modification  
28 or dissemination. The rules shall include reasonable safeguards to  
29 protect the affected information systems from fire, flood, wind, theft,  
30 sabotage or other natural or man-made hazards or disasters.

1           W. The department shall make available to agencies that contribute  
2 to, or receive criminal justice information from, the central state  
3 repository or through the Arizona criminal justice information system a  
4 continuing training program in the proper methods for collecting, storing  
5 and disseminating information in compliance with this section.

6           X. Nothing in this section creates a cause of action or a right to  
7 bring an action including an action based on discrimination due to sexual  
8 orientation.

9           Y. For the purposes of this section:

10           1. "Administration of criminal justice" means performance of the  
11 detection, apprehension, detention, pretrial release, posttrial release,  
12 prosecution, adjudication, correctional supervision or rehabilitation of  
13 criminal offenders. Administration of criminal justice includes  
14 enforcement of criminal traffic offenses and civil traffic violations,  
15 including parking violations, when performed by a criminal justice agency.  
16 Administration of criminal justice also includes criminal identification  
17 activities and the collection, storage and dissemination of criminal  
18 history record information.

19           2. "Administrative records" means records that contain adequate and  
20 proper documentation of the organization, functions, policies, decisions,  
21 procedures and essential transactions of the agency and that are designed  
22 to furnish information to protect the rights of this state and of persons  
23 directly affected by the agency's activities.

24           3. "Arizona criminal justice information system" or "system" means  
25 the statewide information system managed by the director for the  
26 collection, processing, preservation, dissemination and exchange of  
27 criminal justice information and includes the electronic equipment,  
28 facilities, procedures and agreements necessary to exchange this  
29 information.

30           4. "Booking agency" means the county sheriff or, if a person is  
31 booked into a municipal jail, the municipal law enforcement agency.

1           5. "Central state repository" means the central location within the  
2 department for the collection, storage and dissemination of Arizona  
3 criminal history records and related criminal justice information.

4           6. "Criminal history record information" and "criminal history  
5 record" means information that is collected by criminal justice agencies  
6 on individuals and that consists of identifiable descriptions and  
7 notations of arrests, detentions, indictments and other formal criminal  
8 charges, and any disposition arising from those actions, sentencing,  
9 formal correctional supervisory action and release. Criminal history  
10 record information and criminal history record do not include  
11 identification information to the extent that the information does not  
12 indicate involvement of the individual in the criminal justice system or  
13 information relating to juveniles unless they have been adjudicated as  
14 adults.

15           7. "Criminal justice agency" means either:

16           (a) A court at any governmental level with criminal or equivalent  
17 jurisdiction, including courts of any foreign sovereignty duly recognized  
18 by the federal government.

19           (b) A government agency or subunit of a government agency that is  
20 specifically authorized to perform as its principal function the  
21 administration of criminal justice pursuant to a statute, ordinance or  
22 executive order and that allocates more than fifty percent of its annual  
23 budget to the administration of criminal justice. This subdivision  
24 includes agencies of any foreign sovereignty duly recognized by the  
25 federal government.

26           8. "Criminal justice information" means information that is  
27 collected by criminal justice agencies and that is needed for the  
28 performance of their legally authorized and required functions, such as  
29 criminal history record information, citation information, stolen property  
30 information, traffic accident reports, wanted persons information and  
31 system network log searches. Criminal justice information does not  
32 include the administrative records of a criminal justice agency.

1           9. "DEFENSE ATTORNEY" MEANS AN ATTORNEY AND THE ATTORNEY'S  
2 NONATTORNEY STAFF IF THE ATTORNEY IS A MEMBER IN GOOD STANDING OF THE  
3 STATE BAR OF ARIZONA AND HAS ENTERED A NOTICE OF APPEARANCE ON BEHALF OF A  
4 DEFENDANT IN A CRIMINAL CASE.

5           ~~9.~~ 10. "Disposition" means information disclosing that a decision  
6 has been made not to bring criminal charges or that criminal proceedings  
7 have been concluded or information relating to sentencing, correctional  
8 supervision, release from correctional supervision, the outcome of an  
9 appellate review of criminal proceedings or executive clemency.

10           ~~10.~~ 11. "Dissemination" means the written, oral or electronic  
11 communication or transfer of criminal justice information to individuals  
12 and agencies other than the criminal justice agency that maintains the  
13 information. Dissemination includes the act of confirming the existence  
14 or nonexistence of criminal justice information.

15           ~~11.~~ 12. "Management control":

16           (a) Means the authority to set and enforce:

17           (i) Priorities regarding development and operation of criminal  
18 justice information systems and programs.

19           (ii) Standards for the selection, supervision and termination of  
20 personnel involved in the development of criminal justice information  
21 systems and programs and in the collection, maintenance, analysis and  
22 dissemination of criminal justice information.

23           (iii) Policies governing the operation of computers, circuits and  
24 telecommunications terminals used to process criminal justice information  
25 to the extent that the equipment is used to process, store or transmit  
26 criminal justice information.

27           (b) Includes the supervision of equipment, systems design,  
28 programming and operating procedures necessary for the development and  
29 implementation of automated criminal justice information systems.

1           ~~12.~~ 13. "Process control number" means the Arizona automated  
2 fingerprint identification system number that attaches to each arrest  
3 event at the time of fingerprinting and that is assigned to the arrest  
4 fingerprint card, disposition form and other pertinent documents.

5           ~~13.~~ 14. "Secondary dissemination" means the dissemination of  
6 criminal justice information from an individual or agency that originally  
7 obtained the information from the central state repository or through the  
8 Arizona criminal justice information system to another individual or  
9 agency.

10           ~~14.~~ 15. "Sexual orientation" means consensual homosexuality or  
11 heterosexuality.

12           ~~15.~~ 16. "Subject of record" means the person who is the primary  
13 subject of a criminal justice record."

14 Amend title to conform

JOHN M. ALLEN

1313ALLEN J  
03/22/2019  
5:13 PM  
C: sp



## Commission on Victims in the Courts

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<b>Date Action Required:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 14, 2019	<input type="checkbox"/> Formal Action/Request	Sexual Assault Kit Initiative
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

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PRESENTER(S): Rachel Mitchell, Division Chief, Maricopa County Attorney's Office  
Jim Markey, Phoenix Police (Retired)

DISCUSSION: Sexual Assault Kit Initiative (SAKI) Update on Local and National efforts to address untested rape kits.

RECOMMENDED MOTION: Information only.