

R-08-0019
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Procedure, be adopted in accordance with Attachment 2 hereto,
effective January 1, 2010.

DATED this _____ day of September, 2009.

Rebecca White Berch
Chief Justice

TO:
Rule 28 Distribution

ATTACHMENT 1*

RULE 23, RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 23. Detention and Probable Cause Hearing.

A. [No change]

B. Admission to detention. Upon admission to the detention facility, the authorized juvenile court officer shall:

1. Notify the juvenile of the reason for admission;
2. Notify the parent, guardian or custodian of the juvenile of the reason for admission and inform such persons of the location, date and time of the detention hearing. The detention hearing may be held without the presence of the juvenile's parent, guardian or custodian, if they cannot be located or fail to appear for the hearing;
3. Make a written record of the time and manner of notification;
4. Make a determination of whether the juvenile's conduct endangers or could endanger the safety of other detained juveniles and if so, restrict the juvenile's contact with other detained juveniles;
5. Advise the juvenile of the right to telephone a parent, guardian or custodian and counsel immediately after admission to a detention facility;
~~and~~
6. Advise the juvenile of the right to visitation, in private, by the parent, guardian or custodian and counsel. After the initial visit, the juvenile may be visited during normal visiting hours or by special appointment if required to prepare for a hearing- ~~and~~;
7. If the juvenile was arrested for an offense listed in A.R.S. Section 13-610(O)(3), obtain from the arresting agency proof of compliance with A.R.S. Section 13-610(K).

C - F. [No change]

* Additions to text adopted on an emergency basis are indicated by underlining and deletions are indicated by ~~strikeouts~~.

G. Revocation of Release; DNA Testing. ~~Upon a verified petition by a juvenile probation officer supervising the juvenile, or by the prosecutor, stating facts or circumstances constituting~~ The juvenile probation officer responsible for supervising the juvenile or the prosecutor may file a written request with the court to revoke the juvenile's release if there is probable cause to believe that a juvenile who has been ordered as a condition of release to provide a DNA sample pursuant to A.R.S. section 8-238 and to provide proof of compliance has not complied with that order, and the court having jurisdiction over the juvenile shall issue a warrant or summons to secure the juvenile's presence in court. The court shall proceed in accordance with the requirements of this rule and A.R.S. section 8-238.

H. Order for DNA Testing. Upon petition of an arresting authority or custodial agency, submitted under penalty of perjury, stating that the juvenile is detained for an offense listed in A.R.S. Sec. 13-610(O)(3) and that the juvenile refused to provide a sample of buccal cells or other bodily substances, the court shall order that the juvenile appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency shall provide to the juvenile a copy of the court order prior to or at the time of taking the sample.

~~H.~~ **I. Release to County Jail. [No change]**

~~J.~~ **J. Review of Detention. [No change]**

RULE 28, RULES OF PROCEDURE FOR THE JUVENILE COURT

Rule 28. Advisory Hearing.

A. – B. [No change]

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

1 . - 7. [No change]

8. Set conditions of release, if any, and advise the juvenile that any violation of the terms and conditions of release may result in the issuance of a warrant for the arrest and detention of the juvenile. If the juvenile has been arrested for

an offense listed in A.R.S. section ~~8-238~~ 13-610(O)(3) and the juvenile has been summoned to appear at an advisory hearing, the judicial officer shall order as a condition of release that the juvenile report within five days to the law enforcement agency that arrested the juvenile, or to the agency's designee, ~~and~~ submit to DNA testing, and provide proof of compliance at the next scheduled court proceeding. The judicial officer shall advise the juvenile that willful failure to comply with this order ~~may~~ shall result in revocation of the juvenile's release, including arrest and detention for violation of a condition of release, as provided in Rule 23F G.

9. [No change.]

D. – E. [No change]

RULE 7.3, RULES OF CRIMINAL PROCEDURE

Rule 7.3. Conditions of release.

a. Mandatory Conditions. Every order of release under this rule shall contain the following conditions:

(1) - (4) [No change]

(5) If a person charged with an offense listed in A.R.S. section 13-610(O)(3) has been summoned to appear in court, the court shall order that the person report within five days after release to the arresting law enforcement agency or its designee and submit ~~biological substances~~ a sample of buccal cells or other bodily substances for DNA testing as directed and provide proof of compliance at the next scheduled court proceeding. The judicial officer shall advise the person that willful failure to comply with this order ~~may~~ shall result in revocation of the person's release, including arrest and confinement for violation of a condition of release, as provided in Rule 7.5 and A.R.S. 13-3967.

b. [No change.]

RULE 7.5, RULES OF CRIMINAL PROCEDURE

Rule 7.5. Review of conditions; revocation of release.

a. – c. [No change]

d. Revocation of Release; DNA Testing. ~~Upon a verified petition by the prosecutor~~ The prosecutor may file a motion stating facts or circumstances constituting probable cause to believe that a defendant who has been ordered as a condition of release to provide a ~~DNA sample~~ of buccal cells or other bodily substances for DNA testing pursuant to A.R.S. section 13-3967(F)(4) and provide proof of compliance has not complied with that order, ~~the court having jurisdiction over the defendant shall issue a warrant or summons under Rule 3.2 to secure the defendant's presence in court. A copy of the petition shall be served with the warrant or summons.~~ At the defendant's next court appearance, ~~t~~The court shall proceed in accordance with the requirements of this rule and A.R.S. section 13-3967(F)(4).

Attachment 2*

RULE 26(A)(5), RULES OF PROCEDURE FOR THE JUVENILE COURT

5. If the juvenile is appearing for an offense listed in A.R.S. Sec. 13-610(O)(3), advise the juvenile to appear at a designated time and place for a sample of buccal cells or other bodily substances to be taken for DNA testing, and to provide proof of compliance to the court at the proceeding to which the juvenile has been summoned.

RULE 2.7, RULES OF CRIMINAL PROCEDURE

Rule 2.7. Refusal to provide DNA sample. Upon petition of an arresting authority or custodial agency, submitted under penalty of perjury, stating that a person is in custody for an offense listed in A.R.S. sec. 13-610(O)(3), and that the arrested person refused to provide a sample of buccal cells or other bodily substances for DNA testing, the court shall order that the person appear at a designated time and place and permit the taking of a sample of buccal cells or other bodily substances for DNA testing. The arresting authority or custodial agency shall provide to the person a copy of the court order prior to or at the time of taking the sample.

RULE 4.1, RULES OF CRIMINAL PROCEDURE

Rule 4.1. Procedure upon arrest.

a. – d. [No change]

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 pursuant to A.R.S. section 13-610(K), proof of compliance shall be provided to the court prior to the Initial Appearance.

RULE 4.2, RULES OF CRIMINAL PROCEDURE

* Changes or additions to text are indicated by underlining and deletions from text are indicated by ~~strikeouts~~.

Rule 4.2. Initial appearance.

a. In *general*. At the suspect's initial appearance, the magistrate shall:

- (1) Ascertain the suspect's true name and address and, if necessary, amend the formal charges to reflect it, and instruct the suspect to notify the court promptly of any change of address;
- (2) Inform the defendant of the charges;
- (3) Inform the defendant of the right to counsel and the right to remain silent;
- (4) Determine whether probable cause exists for the purpose of release from custody. If no probable cause is found, the defendant shall immediately be released from custody;
- (5) Appoint counsel if the suspect is eligible for and requests appointed counsel under Rule 6;
- (6) Consider comments offered by the victim concerning the conditions of release. The magistrate shall permit the victim to comment orally or in writing, on the issue of the suspect's release;
- (7) Determine the conditions of release in accordance with Rule 7.2 including whether the defendant is non-bailable pursuant to A.R.S. Const. Art. 2 § 22 and A.R.S. 13-3961; ~~and~~
- (8) For summoned defendants charged with a felony offense, a violation of Title 13, Chapter 14, or Title 28, Chapter 4, or a domestic violence offense as defined in §13-3601 the court shall order that the defendant be fingerprinted at a designated time and place if it appears that the defendant was not previously fingerprinted ; and
- (9) For an in-custody defendant who was arrested for an offense listed in A.R.S. Section 13-610(O)(3), if the court has not received proof of compliance with A.R.S. Section 13-610(K), the court shall order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing .

b. – c. [No change]

RULE 41 (FORMS), RULES OF CRIMINAL PROCEDURE, FORM 3(a)

Form 3(a). Summons: Fingerprint and/or DNA Sample Required

_____ COURT _____ County, Arizona

STATE OF ARIZONA Plaintiff

_____ [CASE/COMPLAINT NO.]

_____ SUMMONS

-vs-

_____ (Fingerprint and/or DNA Sample Required)
Defendant (FIRST, MI, LAST)

TO: _____

YOU ARE ORDERED to appear at [name of entity and address] _____
(Required for all felonies) _____ between the hours of _____ a.m./ p.m. at a
ny time prior to your court appearance date to be photographed and fingerprinted.

YOU ARE ORDERED to appear at [name of entity and address] _____ (required
pursuant to A.R.S. §13-610(L) between the hours of _____ a.m./p.m. at any time prior to your court
appearance date to provide a sample of buccal cells or other bodily substances for DNA
testing.

YOU ARE SUMMONED to appear before this court for the following reason:

[(List reason for summons; e.g., filing of indictment, information or complaint
(list charges or other reasons)].

YOU ARE ORDERED TO REPORT on _____, 20 ___ at ___ a.m./p.m.

LOCATED AT: _____

**IMPORTANT. YOU ARE REQUIRED TO BRING THIS SUMMONS TO THE LAW ENFORCEMENT ENTITY AT
THE TIME YOU APPEAR FOR FINGERPRINTS AND/OR A DNA SAMPLE. YOU MUST ALSO BRING THIS
SUMMONS TO YOUR COURT APPEARANCE TO PROVE THAT YOU HAVE PROVIDED FINGERPRINTS
AND/OR A DNA SAMPLE, AS ORDERED ABOVE.**

IF YOU FAIL TO APPEAR AS ORDERED, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

Date: _____

Judicial Officer

Requests for reasonable accommodation for persons with disabilities must be made to the court by
parties least 3 working days in advance of a scheduled court proceeding.

CERTIFICATE OF PERSONAL SERVICE

I swear that I personally served this summons as follows:

Date Received: _____ Date Served: _____ Time Served: _____

Person Served: _____

Location Where Served: _____

_____ County.

Officer Serving Summons

CERTIFICATE OF SERVICE BY MAILING

I certify that a copy of this document was sent by Registered or Certified mail, return receipt requested, to the defendant at the above-listed address.

Dated: _____

CLERK

SPACE FOR THE LAW ENFORCEMENT AGENCY'S INKED STAMP(S) TO CONFIRM THAT THE DEFENDANT PROVIDED FINGERPRINTS AND/OR A DNA SAMPLE.

<p>STAMP BEARING THE NAME OF THE LAW ENFORCEMENT AGENCY</p> <p>By: _____ [Badge Number]</p> <p>Date: _____</p> <p>Time: _____</p> <p><input type="checkbox"/> Fingerprints taken</p> <p><input type="checkbox"/> DNA sample obtained</p>
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