



# Initial Appearances and Arraignments

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**Charles Adornetto**  
Judicial Education Officer  
Maricopa County Justice  
Courts



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## What Type of Proceeding Are You Doing?

- “Pure” IA or combined IA/Arraignment?
- At the jail?
- Public defender present?
- Prosecutor present?
- Recording?
- Setting it to an arraignment or a PTC or a preliminary hearing?
- Taking a plea?
- Victims’ rights complied with?

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## “Pure” Initial Appearance

- (Setting it to an arraignment or preliminary hearing)
- Rule 4
- Determine probable cause
- Ascertain true name and address
- Advise of charges
- Advise of rights
- Determine release conditions
- Order fingerprints and/or DNA
- Set next court date
- (Appoint attorney; set bond review date; bond eligibility hearing)

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## IA—Rule 4.2(a)

- Magistrate must:
- (Magistrate: includes JPs and municipal judges, 1.4(c))
- **1** Determine true name and address; amend charges to correct name; advise person to promptly notify court of any change of address
- Get phone number and email too
- **2** Inform of charges and, if possible, give a copy
- **3** Inform defendant of right to counsel and right to remain silent
- **4** Determine if probable cause and, if not, release from custody
- (PC= believe offense occurred and defendant committed it, 2.4(a))

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## IA—Rule 4.2(a)

- Magistrate must:
  - 5 Appoint counsel if defendant requests and is eligible for counsel
  - (Eligibility for misdemeanors= may result in jail time and for limited purpose of determining release conditions at or following the IA if detained, 6.1(b)(1).) (Pet 21-0051 may have added “if defendant is detained on bond at the IA”)
  - 6 Permit and consider oral or written comments from victims re: release conditions
  - 7 If eligible for bail, consider release conditions per 7.2(a)

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## Right to Release

- 7.2(a)(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), unless the court determines that additional conditions are reasonably necessary to 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).

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## Determining Amount of Bond

- **7.2(a)(3):** When determining amount of bond, must consider

### **13-3967(B):**

- **1** View of victim;
- **2** Nature and circumstances of the charge;
- **3** Prior serious or violent arrests or convictions;
- **4** Evidence that def is danger to community;
- **5** Results of risk or lethality assessment;
- **6** Weight of evidence against the accused;
- **7** Def's family ties, employment, resources, character, mental condition

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## Warrants/FTAs

- Review a warrant to determine if it is a pre or post-adjudication FTA

Type of Warrant	Type of FTA
13-2506(A)(2) Def. is charged with Failure to Appear in the 2 <sup>nd</sup> Degree, a class 2 misdemeanor	ATTC arraignments when all the information on the ATTC is filled out correctly with defendant's signature
Rule 3.1(d)	ATTC Arraignments when 13-2506(A)(2) does not apply
Rule 3.1(d)	PTCs, NJTs, JTs and Sentencing
Rule 3.1(c) (PC was found)	Long Form Complaint Arraignments
Rule 26.12(c)(3)	OSCs for Post-adjudication compliance OSCs for Failure to Pay
Rule 27.6	Probation Violation Arraignments and subsequent PTCs and PVHs

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## IA—Rule 7.4 Conditions of Release

- At IA, court must issue an order containing conditions of release and inform def of consequences for violating a condition and may immediately issue an arrest warrant for violation
- Later review of conditions must comply with victims' rights and give opposing party opportunity to respond
- **(New)** No later than 10 days after IA, court must determine whether to amend conditions for def in custody on bond and may hold hearing.
- **(New)** State has BOP to prove by POE that a bond is necessary in accord with 13-3967(B)

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## IA—Rule 7.3 Conditions of Release

- 4 mandatory conditions: appear for all court proceedings; not commit criminal offense; not leave state w/o permission; diligently pursue an appeal
- 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
- Can impose other non-monetary conditions
- Can require a cash bond; secured appearance bond; a deposit bond; or an unsecured appearance bond.

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## Animal Cruelty

- HB 2372, effective Sept 24, 2022
- If a judicial officer orders the release of a person who is currently serving a term of probation for a violation of animal cruelty and who is charged with a new violation of animal cruelty, on the person's own recognizance or on the execution of bail, the judicial officer is required to impose a condition of release that prohibits the person from possessing or having contact with any animal.
- (Added to 7.3(b)(3) by Pet R22-0029?)

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## IA—Rule 4.2(a)—Not Bail Eligible

- 8 Determine if not eligible for bail:
  - A. Def committed capital offense or any felony while def was on pretrial release for a separate felony (7.2(b)(1)) or
  - B. Can't ensure safety per 7.2(b)(3) (probably typo, meant 2)
    - A Is it a "dangerous offense" per 13-105
    - B Weight of evidence
    - C History and characteristics of Def
    - D Seriousness of danger to victim and community
    - E Recommendation of PTS and risk assessment
    - F Victim statement
    - G Anything else relevant

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## Not Eligible for Bail?

- 7.2(b)(2) Not eligible for bail per **Const. Art 2, Sec. 22(A)(3)**, def charged with felony and court finds all 3:
  - **A** Proof evident or presumption great def committed felony;
  - **B** Clear and convincing evidence def poses a substantial danger to victim or community or if state files certification def engaged in conduct constituting a dangerous crime against children or terrorism; and
  - **C** No condition or combination of release conditions will reasonably assure safety of victim or community

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## Not Eligible for Bail?

- **Note!** **Const. Art 2, Sec. 22(A)(3)**, also includes no bail “For serious felony offenses as prescribed by the legislature if the person charged has entered or remained in the United States illegally and if the proof is evident or the presumption great as to the present charge.”
  - (also in 13-3961)
  - Probably unconstitutional
- **4.2(a)(9)**, if not eligible for bail, must schedule a bail eligibility hearing in Superior Court per 7.2(b)(4)

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## IA—Rule 4.2(a)

- Magistrate must:
  - **10** Order a 10-print fingerprint if 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., a domestic violence offense as defined in A.R.S. § 13-3601, or an offense listed in A.R.S. §§ 32-2422(A)(4), 32-2441(A)(4), 32-2612(A)(4), 32-2622(A)(4), 41-1758.03(B) or (C), or 41-1758.07(B) or (C); and (Added by Pet R22-0029?)
  - 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
  - AOC is preparing list, effective January 1, 2023

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## IA—Rule 4.2(a)

- Magistrate must:
  - **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) (any offense in chapter 11 of this title, a violation of section 13-1402, 13-1403, 13-1404, 13-1405, 13-1406, 13-1410, 13-1411, 13-1417, 13-1507, 13-1508, 13-3208, 13-3214, 13-3555 or 13-3608 or a violation of any serious offense as defined in section 13-706 that is a dangerous offense) and
    - (B) the court has not received proof of compliance with A.R.S. § 13-610(K).

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## IA—Rule 4.2(b) (Felony)

- Magistrate must:
  - **1** Inform def of right to a preliminary hearing and how to waive
  - **2** Unless waived, set the time for a preliminary hearing

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## Appearance on Petition to Revoke

- New Rule 27.6(b), **added by Pet 22-0003?**
- When the probationer appears in court under Rule 27.7 or Rule 27.8, the court must make a release determination as follows:
  - **(2)** *in a limited jurisdiction court*, by ordering release conditions under Rule 7.3(a) and (c) that will reasonably assure the probationer's appearance and protect the victim, any other person, or the community. If the court determines that the probationer in all reasonable probability will receive a sentence of incarceration, or if additional conditions under Rule 7.3(c) will not assure the probationer's appearance or protect the victim, another person, or the community, the court may order that the probationer be held in custody.

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# IA: Scheduling

- Set a preliminary hearing within 10 days for in custody and 20 days for out of custody
- Set an arraignment within 10 days for in custody and 30 days for out of custody
- If not eligible for bail, must schedule a bail eligibility hearing in Superior Court per 7.2(b)(4)
- In some courts, you may set a 48 hour review if no felony long form so that defendant may be released if no long form timely filed, or a 10 day review date for defs bonded on misdemeanors

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# IA: Scheduling

If doing it yourself, prepare a chart in advance. For example:

**Month 2022**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

Bonded Misd or Misd Warrant: 1<sup>st</sup> Tues @ 1:30: \_\_\_\_\_

Bonded Felony Long Form 48 hr review: Sat/Sun: 1<sup>st</sup> Weds @ 9:00: \_\_\_\_\_ (Mon hol +1)  
 Mon: 1: 1<sup>st</sup> Thurs @ 9:00: \_\_\_\_\_

OR Misd: 2<sup>nd</sup> Tues @ 1:30: \_\_\_\_\_

Bonded Felony PH: 10 days: Sat: 2<sup>nd</sup> Tues @ 11:00: \_\_\_\_\_  
 Sun: 2<sup>nd</sup> Weds @ 11:00: \_\_\_\_\_  
 Mon: 2<sup>nd</sup> Thurs @ 11:00: \_\_\_\_\_

OR Felony PH 20: days: Sat: 3<sup>rd</sup> Fri @ 11:00: \_\_\_\_\_  
 Sun/Mon: 4<sup>th</sup> Mon @ 11:00: \_\_\_\_\_

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## Blended IA/Arraignment

- Misdemeanors only!
- Taking a plea or setting it to PTC
- Everything from Rule 4 and now add Rule 14
- Additional rights must be read (including jury trial)
- If taking COP, now must comply with Rules 4, 14 and 17
- And, of course 39 (victims' rights)

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## Arraignments—Rule 14

- The purpose of an arraignment is to formally advise defendants of the charges against them and their legal rights, to assure they are provided counsel if applicable, to enter a plea, and to set a trial date or a later court date.
- May be held in conjunction with IA
- In LJ courts, may be waived with written NG plea; and/or may now be conducted telephonically

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## Arraignments—Rule 14.4

- Court must:
  - (a) enter the defendant's plea of not guilty, unless the defendant pleads guilty or no contest and the court accepts the plea;
  - (b) decide motions concerning release conditions under Rule 7;
  - (c,d) set and written notice of date for trial or PTC and other important deadlines

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## Arraignments—Rule 14.4

- (e) inform the defendant of the following:
  - (1) the right to counsel and the right to court-appointed counsel if eligible;
  - (2) the right to jury trial, if applicable;
  - (3) the right to be present at all future proceedings;
  - (4) the failure to appear at future proceedings may result in the defendant being charged with a new offense and the court issuing an arrest warrant;
  - (5) all proceedings may be held in the defendant's absence, other than sentencing; and
  - (6) the defendant may lose the right to a direct appeal if the defendant's absence from sentencing causes sentencing to occur more than 90 days after any conviction;

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## Arraignments—Rule 14.4

- Court must:
- (f) appoint counsel if applicable;
- (g) 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:
  - the defendant is charged with a felony; sex offense; DUI or DV offense
  - And doesn't have proof it has already been done

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## Right to Jury Trial

- Shoplifting/Theft
- Reckless Driving
- Aggressive Driving (Maricopa County)
- DUI/OUI
- Resisting Arrest
- Unlawful Imprisonment
- Indecent exposure
- Prostitution?
- Allegation of Sexual Motivation

### And a new one...

Causing death by a moving violation, § 28-672

(Not necessarily for serious physical injury)

Bridgeman v. Certa, 251

Ariz. 471 (Az. App. 2021)

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## Arraignments Without Prosecutor Present— When to Accept Guilty Pleas

- Ensure state has waived presence
- DO NOT PROCEED:
- Victim cases
- DUI or Reckless
- If defendant insistent, can note on record defendant wishes to enter guilty plea and set to Acceptance of Plea proceeding with Notice to State



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## Arraignments— When to Accept Guilty Pleas

- If no plea agreement, Def must plead guilty to everything
- Combined civil and criminal traffic complaints:
- As Def must plead guilty/responsible to all charges, so may be to their benefit to go to PTC
- 17.1(c): A plea of no contest may be accepted only after the court gives due consideration to parties' views (so can't accept w/o prosecutor)

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## CHANGE OF PLEA

Judge must inform the defendant of maximum and minimum possible penalties.

Maximums:

Offense	Jail	Fine	Probation
Class 1 misd.	6 mos.	\$2,500	3 yrs. *5 DUI
Class 2 misd.	4 mos.	\$750	2 yrs.
Class 3 misd.	30 days	\$500	1 yr.
Petty offense		\$300	

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## Changes of Plea---Rule 17

- Def must be in person except
- 17.1(f)(1) Telephonic Pleas
- 17.1(f)(2) Plea by mail—no victims and no jail (unless already incarcerated)
- 17.2 Court must address defendant personally, inform defendant, and ensure defendant understands everything in the COP form!

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## Changes of Plea—Rule 17 (Relatively NEW)

- 17.1(f)(1) Telephonic pleas may be audio-only; visual; or ODR
- 17.1(f)(1)(A) Discretionary for any misdemeanor offense (eliminates 100 mile and medical requirements)
- 17.1(f)(1)(B) Written form must be substantially to Form 28 and may be ODR
- 17.1(f)(1)(B)(i) May plead to amended charges in plea
- 17.1(f)(1)(B)(ii) May accept driver license or photo ID with name and birthdate instead of FP (except see C below)
- 17.1(f)(1)(B)(iii) Must return any other form prosecutor deems necessary
- 17.1(f)(1)(C)(i) Still require FP for 13-607(A) offenses
- 17.1(f)(1)(C)(ii) May defer acceptance of plea if no FP until get it

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## Changes of Plea—Rule 17 (NEW)

- 17.1(f)(1)(C)(iii) “In extraordinary circumstances, instead of requiring” FP, may permit another method, including “allowing the defendant to use a notary public to witness the defendant’s signature on the form.”
- 17.1(f)(1)(D) Court must hold telephonic with parties and advise may be used for prior conviction
- 17.1(f)(1)(E) May sentence telephonically
- 17.1(f)(1)(F) Victims’ rights continue to apply and victim may participate

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## Minimum Penalties

- Suspended sentence.
- DUI (see chart)
- 2nd Reckless.
- Domestic Violence.
- Contracting without a license.
- Possession of Marijuana 13-3405.
- Possession of Prescription Drug 13-3406.
- Equine tripping 13-2910.09.
- Furnishing tobacco to minor
- Prostitution 13-3214
- Street Racing

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## Victim/Restitution Cases

- Ensure Victims' Rights have been complied with prior to taking pleas on victim cases!
- If necessary, set to a pretrial conference or a change of plea setting.
- If possible restitution, plea **no longer** must include a restitution cap
- Plea can identify period of time court will retain jurisdiction for victim to assert possible restitution claim

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## Attachments

- Sample Criminal Cheat Sheet
- Sample Civil Traffic Cheat Sheet
- DUI Sentence Chart
- Victim Crimes

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## Questions?

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