



NEWS RELEASE

ARIZONA SUPREME COURT

ADMINISTRATIVE OFFICE OF THE COURTS

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Chief Justice McGregor Announces New Rules to Govern Prop. 100 Cases

Today, the Arizona Supreme Court modified the Arizona Rules of Criminal Procedure that govern the operation of the Arizona courts when processing cases that fall within the provisions of Proposition 100. Proposition 100 is a Constitutional Amendment that withholds bail from people who are charged with certain serious felony crimes and who have entered or remained in this country illegally.

Earlier this year, questions arose regarding the standard of proof the State must meet to establish that a person is illegally present in this country and therefore ineligible for bail. To establish statewide consistency in the application of Proposition 100, Chief Justice Ruth V. McGregor, applying existing law, issued Administrative Order 2007-30. The Chief Justice also wrote to the Legislature inviting them to clarify the existing statutes.

Subsequently, the Legislature passed Senate Bill 1265, which requires that the State meet the standard of proof of “probable cause” with regard to immigration status. Governor Napolitano has now signed Senate Bill 1265 into law. Acting in accord with the statute, the Supreme Court has adopted court rules that go into effect immediately. The rules direct Arizona courts to use the statutory “probable cause” standard. Because the burden of proof level has been further clarified, Administrative Order 2007-30 is no longer in effect.

The rules the Court enacted also eliminate mandatory timelines for subsequent hearings on bail issues. Prior to the enactment of these rules, and based on current law that specifies how to handle other non-bailable offenses, a hearing regarding bail eligibility had to be held within 24 hours following an initial appearance, and only defense counsel could request a subsequent hearing.

The new statute and rules require that a decision regarding bail status will be made at the defendant’s initial appearance. If new evidence becomes available in the case, the rules permit either the prosecutor or defense counsel to request a subsequent hearing following a defendant’s initial appearance. This option is particularly important in potential Proposition 100 cases because law enforcement frequently relies on other government agencies for information about a defendant’s legal status. Often, that information is not immediately available. Similarly, defendants do not always have proof of legal status available at the initial appearance.

The new rules will assist the court, legal community, and law enforcement to determine a defendant’s legal status in a timely manner. A complete copy of the rules is available at www.supreme.state.az.us.

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