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Attorneys for Victims

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR [GEOGRAPHICAL] COUNTY

STATE OF ARIZONA,)	
)	
Plaintiff,)	NO. [insert case #]
)	
v.)	
)	CRIME VICTIM'S MOTION FOR
)	REEXAMINATION HEARING
)	ON RELEASE CONDITIONS AND
[NAME OF DEFENDANT],)	MOTION TO HOLD DEFENDANT
)	NON-BONDABLE
Defendant,)	
)	(Assigned to [judge name/calendar])
[NAME OF THE VICTIM,)	
use Initials or Pseudonyms throughout)	
where needed],)	
)	
Crime Victim.)	(Request for oral argument)
_____)	

[VICTIM NAME], mother of the Minor Crime Victims, by and through undersigned counsel, hereby moves this Honorable Court, pursuant to Article II, § 2.1(A)(1)-(4), (11), § 2.1(E), and § 22, as well as Arizona Revised Statutes (A.R.S.) §§ 13-4403(C), 13-4406, 13-4408, 13-4409, 13-4412, 13-4420, 13-4421, 13-4422, 13-4432, 13-4436, 13-4437 and Rule 39 of the Arizona Rules of Criminal Procedure, to conduct a reexamination hearing on the Defendant's release conditions and hold the Defendant non-bondable pursuant to the attached Memorandum of Points and Authorities.

RESPECTFULLY submitted this [number] day of [month], 2012.

By _____
[Attorney Name (State Bar #)]
[firm/organization name]
Attorney for Crime Victims

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

On [date], the Defendant was indicted on: Count 1, Sexual Conduct with a Minor, a Class 2 Felony, Dangerous Crimes Against Children; Count 2, Furnishing Obscene Materials to Minors, a Class 4 Felony; and Count 3, Molestation of a Child, a Class 2 Felony, Dangerous Crimes Against Children. Counsel for Victims notified the State that Victims wish to be present and heard at any hearing involving post-arrest release decisions.

Defendant was arrested on [date], and an initial appearance and arraignment was held that same day without notice to the Victims. Further, the Defendant was released on bond without notice or input from the Victims and in violation of the Arizona Constitution and Statutes. The Victims learned of the arrest and release status eight days later via a minute entry in the mail.

The Minor Crime Victims began suffering chronic sexual abuse by the Defendant at [date/age]. The horrific sexual abuse has caused both victims to suffer a profound fear of the defendant and severe emotional pain and depression, including suicidal thoughts. Ms. [name], the children's mother and guardian, is extremely concerned for the physical safety and emotional well-being of her children.

The Victims respectfully request this Court to conduct a reexamination hearing on the Defendant's release status and hold the Defendant non-bondable.

II. This Court Should Hold a Reexamination Hearing on the Defendant's Release Conditions.

Crime victims have a constitutional right "[t]o be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process." Ariz. Const. art. II, § 2.1(A)(1). Furthermore, victims have the right to be present and informed of criminal proceedings and to "be heard at any proceeding involving a post-arrest

release decision.” Ariz. Const. art. II, § 2.1(A)(3), (4); *see also* A.R.S. §§ 13-4406, -4408 to -4409, -4412, -4420 to -4422.

The remedy for violations of victim’s rights is a reexamination hearing. *State ex rel. Hance v. Arizona Bd. Of Pardons and Paroles*, 178 Ariz. 591, 875 P.2d 824 (Ariz. Ct. App. 1993); A.R.S. § 13-4436. The Arizona statute provides that the Court “*shall* afford the victim a reexamination proceeding” and “the Court *shall* reconsider any decision that arises from a proceeding in which the victim’s right was not protected and shall ensure that the victim’s rights are thereafter protected.” A.R.S. § 13-4436(A) (emphasis added). A crime victim is entitled to have a court’s decision “set aside and have a new hearing ordered” so that the victim “is afforded the opportunity to be present and heard.” *Hance*, 178 Ariz. at 598-99, 875 P.2d at 831-32.

The Defendant was arraigned and released without notice or input from the victims in violation of the Victims’ constitutional and statutory rights. The Victims respectfully request a reexamination hearing on the Defendant’s release conditions pursuant to A.R.S. § 13-4436.

III. The Defendant should be held non-bondable pursuant to the Arizona Constitution and Statutes.

The Arizona Constitution provides that persons charged with certain crimes shall be held without bail, including sexual conduct with a minor under fifteen years of age and molestation of child under fifteen years of age. *See* Ariz. Const. art. II, § 22. The Arizona Constitution clearly states that all persons shall be bailable ... except for ... “capital offenses [and] sexual assault” *Id.* The Arizona Supreme Court has ruled that “[w]here a constitutional provision is clear, no judicial construction is required or proper.” *State v. Roscoe*, 185 Ariz. 68, 71, 912 P.2d 1297, 1300 (1996) (citing *Pinetop-Lakeside Sanitary Dist. V. Ferguson*, 129 Ariz. 300, 302, 630 P.2d 1032, 1034 (1981) (“If the language [of the statute] is plain, we need look no further.”)).

Furthermore, "...[I]mplementing statutes and rules cannot eliminate or narrow rights guaranteed by the state constitution." *State v. Lamberton*, 183 Ariz. 47, 50, 899 P.2d 939, 942 (1995). The Arizona Constitution is clear. If a person is charged with sexual conduct with a minor and molestation of a child, the Defendant is ineligible for bond. Additionally, victims can move to have a bond revoked pursuant to A.R.S. § 13-4432.

United States Supreme Court precedent as well as the Arizona Constitution recognizes that the right to bail is not absolute. The Arizona Constitution codified the United States Supreme Court's ruling in *United States v. Salerno*, recognizing that besides flight risk, other compelling governmental interest such as the safety of victims, witnesses and the community at large should be considered when setting pretrial release conditions and that certain offenses may not be bailable at all. *Salerno*, 481 U.S. 739 (1987).

It is the public policy of the State of Arizona to make sexual conduct with a minor and molestation of a child non-bailable offenses. At a minimum, the amount of bail should be set at a higher amount. To do otherwise would contravene the fundamental purposes of bail.

The voters of Arizona voted overwhelmingly to keep alleged child molesters in custody for the safety of the community and for the safety of the victims. Bond ought not have been granted in this case. The Victims are terrified for their safety as well as the safety of other children in the community. The Victims respectfully ask this court to revoke bail or in the alternative, modify the current bail and conditions of release in order to protect the safety of the Victims and the community.

IV. Conclusion

For the foregoing reasons, the Victims respectfully request a reexamination hearing on the Defendant's release conditions. Further, the Victims move to have the Defendant's bond revoked and have the Defendant held non-bondable.

RESPECTFULLY SUBMITTED THIS ____ DAY OF [MONTH], 2012

By _____
[Attorney Name (State Bar #)]
[firm/organization name]
Attorney for Crime Victims.

ORIGINAL of the following
mailed this ____ day of [month], 2012,
to the Clerk of the [geographical] County Superior Court

and

Copies of the foregoing sent via facsimile
and/or emailed this ____ day of [month], 2012, to:

[Judge Name]

Judge of the [geographical] County Superior Court

[address]

Phone: [phone #]

Fax: [Fax #]

Email: [Email address]

[Prosecutor Name]

[Prosecutor's Title]

[address]

Phone: [phone #]

Fax: [Fax #]

Email: [Email address]

[Defense Attorney Name]

Attorney for Defendant

[address]

Phone: [phone #]

Fax: [Fax #]

Email: [Email address]