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8 **IN THE ARIZONA SUPREME COURT**

9 IN THE MATTER OF:

R-22-0035

10
11 PETITION TO AMEND THE
12 ARIZONA RULES OF CRIMINAL
13 PROCEDURE

COMMENT OF ARIZONA VOICE
FOR CRIME VICTIMS

14 (Section (v) amendments)

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16 Pursuant to Rule 28(e) of the Arizona Rules of the Supreme Court, Arizona
17 Voice for Crime Victims (AVCV) respectfully submits this comment to R-22-
18 0035, *Petition to Amend the Arizona Rules of Criminal Procedure, Section (v)*
19 *amendments*, filed by the Hon. John R. Lopez IV on July 12, 2022 to bring the
20 Section (v) amendments before this Court for consideration. As discussed below,
21 AVCV supports the Section (v) amendments.
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1 **I. Introduction**

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

17 **II. This Court Should Adopt the Section (v) Amendments**

18 With a few minor edits which are discussed in Section III, AVCV fully
19 supports the Section (v) amendments. The Section (v) amendments accomplish the
20 goal of fully integrating victims' rights throughout Arizona's Rules of Criminal
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1 Procedure. Additionally, the Committee on Criminal Rules Regarding Victims
2 (“Committee”), comprised of various criminal justice stakeholders, reviewed and
3 discussed each individual amendment in meticulous detail. While the majority of
4 the members of the Committee do not support any form of integration of victims’
5 rights into the rules, all of the members were able to raise concerns and make
6 suggestions related to the language and the need for each of the proposed Section
7 (v) amendments.
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10 Unlike the rights of the accused or the duties of the State, which are
11 appropriately and carefully presented throughout the rules, victims’ rights are not
12 consistently addressed outside of Rule 39, which provides an overview of the
13 rights of crime victims. The Section (v) amendments fully integrate victims’ rights
14 into the rules providing instruction to prosecutors, defense attorneys, courts, and
15 other criminal justice professionals on when and how victims’ rights are applicable
16 at various stages of the criminal justice process. The Section (v) amendments are
17 consistent with the constitutional right established in paragraph 11 of Arizona’s
18 VBR, that “all rules governing criminal procedure and the admissibility of
19 evidence in all criminal proceedings protect victims' rights.” Ariz. Const. art. II., §
20 2.1(A)(11).
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24 Other organizations providing services to victims, as well as victims who
25 have endured the criminal justice process, also support the Section (v)

1 amendments. AVCV has attached letters of support from its own Board of
2 Directors, the National Organization of Parents of Murdered Children as well as
3 the Valley of the Sun Chapter, and individual victims who have experienced the
4 criminal justice process. Appendix A.¹

6 **III. Proposed Edits to Section (v) Amendments**

7 AVCV respectfully urges this Court to consider the below edits, AVCV's
8 edits, which are also attached as Appendix B, are as follows.

10 **Proposed Rule 1.4(v)**

11 AVCV recommends striking the words "or entity." Current law expressly
12 encompasses an entity within the definition of a person. "[A] '[p]erson' includes a
13 corporation, company, partnership, firm, association or society, as well as a natural
14 person." A.R.S. 1-215(29). AVCV also recommends replacing "that" with "the" in
15 an effort to have the language of the rules remain consistent with the language of
16 the VBR. Ariz. Const. art. II, § 2.1(C).

18 **(v) Victims' Rights.**

19 "Victim" means a person ~~or entity~~ against whom the
20 criminal offense has been committed or a representative
21 who is designated or appointed to act on their behalf. If
22 the person against whom the offense was committed was
23 killed or incapacitated, "victim" includes the person's

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¹ Not available in word format.

1 spouse, parent, child, grandparent, or sibling, or another
2 individual specified in A.R.S. § 13-4401, unless ~~that the~~
3 person is in custody or is the accused.
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5 **Proposed Rule 4.2(v)(1)**

6 AVCV recommends adding a second sentence that states: “The court must
7 permit the victim to be heard and must consider the victim’s oral or written
8 statement concerning the defendant’s possible release and conditions of release.”
9 Including language in the rule that courts must permit a victim to make a statement
10 is consistent with the constitutional right to be heard regarding a post-arrest release
11 decision. Ariz. Const. art. II, § 2.1(A)(4). Further, judicial officers are required to
12 take the “views of the victim” into account before determining the method of
13 release or the amount of bail. A.R.S. § 13-3967(B)(1).
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16 **(v) Victims’ Rights.**

17 (1) At the defendant’s initial appearance, a victim has a
18 right to be heard concerning the defendant’s possible
19 release and the conditions of release. **The court must**
20 **permit the victim to be heard and must consider the**
21 **victim’s oral or written statement concerning the**
22 **defendant’s possible release and conditions of release.**
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24 **Proposed Rule 15.1(v)(1)**
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1 Since the Committee last met, proposed statutory amendments to A.R.S. §
2 13-4434 became effective. AVCV, suggests amending proposed Rule 15.1(v)(1) to
3 reflect the language of A.R.S. § 13-4434(D) as well as referencing the statutory
4 provision.
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6 **(v)Victims' Rights.**

7 *(1)Victim's Identifying or Locating Information.*

8 The State is not required to disclose a victim's
9 identifying or locating information. **As provided in**
10 **A.R.S. § 13-4434 (D), a court may order the victim's**
11 **identifying and locating information to be disclosed in**
12 **a specific case if it is necessary to protect the**
13 **defendant's constitutional rights or when the**
14 **information is not reasonably able to be redacted**
15 **because of undue burden or expense. Before the**
16 **court discloses the information, the victim must be**
17 **notified and has the right to be heard by the court. If**
18 **the disclosure is made to the defendant's attorney, the**
19 **defendant's attorney may not disclose the information**
20 **to any person other than the attorney's staff and a**
21 **designated investigator. The defendant's attorney**
22 **may not provide the disclosed information to the**
23 **defendant without specific authorization from the**
24 **court. ~~unless the court finds, after considering the~~**
25 **rights of the victim, that disclosure is required to**

1 ~~protect the defendant's constitutional rights. If~~
2 ~~disclosure of personal identifying or locating~~
3 ~~information is made to the defendant's attorney, the~~
4 ~~defendant's attorney must not disclose the~~
5 ~~information to any person other than the defendant's~~
6 ~~attorney's staff and designated investigator. The~~
7 ~~information provided to the defendant's attorney~~
8 ~~must not be conveyed to the defendant without prior~~
9 ~~court authorization.~~ Rule 15.5(e) applies to information
10 withheld under this rule.
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12 **Proposed Rule 15.3(v)**

13 AVCV suggests amending the title to include the phrase "Other Discovery
14 Requests" to remain consistent with the language of the VBR. Ariz. Const. art. II, §
15 2.1(A)(5).
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17 **Rule 15.3. Depositions and Other Discovery Requests**

18 **Proposed Rule 19.1(v)(2)**

19 AVCV proposes including the language related to consent of the victim so
20 that rule provision reflects the personal nature of victims' rights and is also
21 consistent with the relevant statutory provision, A.R.S. § 13-4434(A).
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23 *(2) Identifying and Locating Information.*

1 A victim has the right to refuse to testify regarding any
2 identifying or locating information, unless the **victim**
3 **consents or** court orders disclosure after finding a
4 compelling need for the information. The court must
5 conduct a proceeding on a motion to require such
6 testimony *in camera*.

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8 **Proposed Rule 24.3(v)**

9 AVCV proposes including the citation to Arizona’s Victims’ Bill of Rights,
10 Ariz. Const. II, § 2.1, in addition to the citation to Rule 39.

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12 **(v) Victims’ Rights.**

13 The provisions of **Arizona’s Victims’ Bill of Rights,**
14 **Ariz. Const. art. II, § 2.1 and Rule 39** apply to any
15 criminal proceeding concerning mitigation of a monetary
16 obligation, including mitigation under section (b).

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18 **IV. Conclusion**

19 AVCV respectfully urges this Court to accept the above edits and adopt the
20 Section (v) amendments, allowing for victims’ rights to be fully integrated
21 throughout Arizona’s Rules of Criminal Procedure, which serves as a guide to all
22 who work in the criminal justice system. Adoption of the Section (v) amendments
23 would give effect to the VBR by ensuring that attorneys, courts, and others will
24 understand how and when victims’ rights are applicable during the criminal justice
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