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ARIZONA SUPREME COURT

In the matter of:)	
)	
PETITION TO AMEND RULE 41,)	Supreme Court No. R-24 - _____
ARIZONA RULES OF CRIMINAL)	
PROCEDURE TO REPLACE FORM)	Petition and Motion to
4(a) AND ABROGATE FORM 4(b))	Suspend Rule 28(a)(2)
_____)	

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Rule 41, Arizona Rules of Criminal Procedure, to replace Form 4(a) and abrogate Form 4(b) at the recommendation of the Task Force on Pretrial Risk Assessment and Form IV.

Petitioner also respectfully moves this Court to suspend the portion of Supreme Court Rule 28(a)(2) that requires rule petitions to be filed by January 10, 2024, for consideration at the Court’s August Rules Agenda, but to keep intact that portion of Supreme Court Rule 28(a)(2) that would allow the Court’s consideration of this petition at its August 2024 Rules Agenda. This would allow the Court to consider the petition a year sooner than it would without the rule suspension,

allowing stakeholders to begin using any updated version of the Form 4(a) that the Court may adopt.

I. Background

The Arizona Judicial Branch is committed to improving the use of evidence-based practices in determination and conditions of pretrial release to promote defendant accountability and community protection. When an individual is booked into jail, a law enforcement officer or employee completes what is known as the “Form 4.” Technically, the “Form 4” completed by law enforcement is the Arizona Rules of Criminal Procedure, Rule 41, Form 4(a). The defendant completes Form 4(b). However, use of Form 4(b) is not universal.

Arizona courts have used the nationally recognized Public Safety Assessment (PSA) instrument for felony pretrial release determinations, since 2015. The PSA provides judicial officers valuable information, which is to be considered in conjunction with other key factors, to determine the risk of flight and propensity for future violent crime on the part of pretrial defendants.

In December of 2022, law enforcement officials wrote to Chief Justice Robert Brutinel, expressing concern over the PSA tool and the Form 4(a) and how they were being used in pretrial release decisions. An initial meeting was held to discuss those concerns and it was determined that a review of pretrial processes would be appropriate. In January 2023, Chief Justice Brutinel established the Task Force on

Pretrial Risk Assessment and Form IV (“Task Force”) through Administrative Order [2023-20](#), determining that it is in the best interests of the justice system to evaluate the current use of the PSA instrument and the Supreme Court’s Form 4 to determine if any improvements need to be made. The Administrative Order further mandated the Task Force to evaluate the current use of the PSA instrument and Form 4(a) and determine if any improvements need to be made. Specifically, as to the Form 4(a), the Task Force was asked to look at the policies, procedures, and instructions related to the use of the PSA and the Form 4 and whether additional training is needed for law enforcement officers in the use of the Form 4.

Petitioner chaired the Task Force and appointed two sub-groups; one to study and make recommendations on the Form 4 and another to do the same on the PSA. The Form 4 group forwarded recommendations on modifications to the Form 4(a) to the entire Task Force for consideration and ultimate adoption. This Petition reflects the recommendations of the Task Force as to the Forms 4(a) and 4(b).

II. The Form 4(a)

As noted above, the Form 4(a) is codified in Rule 41, Arizona Rules of Criminal Procedure, and was last amended in January 2016. Law enforcement officers complete and provide the form to the jail when a person is booked and ultimately to the court for the initial appearance. The form includes pertinent information surrounding the alleged offense, such as victim information and the

defendant's demographics. The form also provides historical information on the defendant, such as prior arrests, convictions, and failures to appear (when available). Of significance, the form includes a probable cause statement, which is a summary of the conduct of the defendant that the officer believes constitutes a crime and forms the basis for an arrest. Frequently, this is the only information the judicial officer has pertaining to the instant offense at the time of the initial appearance. The form may also be used later in the case to determine conditions of release to be imposed if a defendant fails to appear at a pre-trial proceeding and by jail personnel in obtaining information that will assist in the management of the jail population.

III. The Public Safety Risk Assessment (PSA)

In addition to the Form 4(a), to assist the judicial officer in making decisions regarding appropriate conditions for release, a pretrial risk assessment tool called the Public Safety Risk Assessment is used. The PSA is an actuarial assessment based on the person's criminal history that estimates the likelihood of: (1) the defendant failing to appear in court pretrial, (2) a new arrest while on pretrial release, and (3) a new arrest for a violent offense while on pretrial release.

The PSA provides judges with research-based information that they weigh, along with several other factors, to make informed pretrial release decisions. The PSA is a nationally validated tool that uses nine factors that are derived from information contained in a person's adult criminal history, which reflects pending

charges, prior convictions and sentences, adult court appearance history, and traffic and criminal charges that carry a potential penalty of incarceration.

IV. Modifications to the Form 4(a)

The PSA and Form 4 discussed above provide the court with the majority, if not the totality of the information used to determine release conditions at the initial appearance. It only makes sense that there should be a correlation between the information obtained on the PSA with that on the Form 4(a).

Specific concerns and ideas for improvement of Form 4(a) were provided by criminal justice stakeholders including law enforcement departments, judicial officers (including initial appearance commissioners), prosecutors, defense, adult probation, and the Arizona Peace Officer Standards and Training Board. Comments by Task Force members show that there are problems in ensuring the form is properly completed and at times, an insufficient factual probable cause statement is included.

The current three-page Form 4(a) is longer than necessary and cumbersome. Additionally, information that might be relevant to the judicial officer and the jail may have changed over the years based upon knowledge gained and investigative techniques. This in itself is cause for review.

The Task Force recommendations and the proposed revised Form 4(a) reflect improvements to the form to include clarifying questions in order to focus on

relevant and helpful data, questions that relate to the information gathered for the Pretrial Risk Assessment, and the removal of duplicative and unnecessary information. While realizing many agencies will utilize an electronic version of the form, the revised form is reduced to two pages in order to make it easier for law enforcement agencies and officers to integrate into their specific systems and to complete. In order to accomplish these goals, the form utilizes full-page questions in lieu of columns in the first page and a half. The revised form provides an option to include an attachment to provide the Probable Cause Statement and other relevant information to the court.

The revised Form 4(a) rearranges the questionnaire in a logical sequence designed to inform the judicial officer of the pertinent information gathered by law enforcement. It is beneficial if a judicial officer can look at any Form 4 and know where on the document particular information is located. The revised Form 4(a) is included as Appendix A. The current Form 4(a) is included as Appendix B for reference. Below is a summary of the significant changes.

1. The Task Force recommends the following deletions from Form 4(a):

Section A, General Information:

- Whether the charges listed on the form require a DNA sample, and whether one was secured – Not a question an arresting or booking officer will ordinarily know.

Section B, Probable Cause Statement:

- Statement that a sexual assault, sexual conduct with a minor under the age of fifteen or molestation of a child under fifteen is not bondable – No longer the law. See *Chantry v. Astrowsky*, 395 P.3d 1114 (Ariz. App. Div. 1 2017)

Section D, Circumstances of the Offense:

- Whether medical attention was necessary – Not relevant to the determination at Initial Appearance.
- Nature of injuries –May not be known by the arresting or booking officer. The revised Form 4(a), Section D contains a check box for “physical illness/physical injury.”

Section H, Drug Offenses:

- Section removed in its entirety. The relevant information will be included in the probable cause statement and this duplicate section requires additional time and writing for the official completing the form.

2. The Task Force recommends a reorganization and renaming of some sections of Form 4(a) as follows:

- Section A – General Information
- Section B – Probable Cause Statement

- Section C – Defendant Information
- Section D – Mental, Physical Health and Substance Abuse
- Section E – Other Information
- Section F – Circumstances of the Offense
- Section G – Crime(s) Against Persons
- Section H – Domestic Violence Defendant Issues

3. The Task Force recommends the following significant additions to Form 4(a):

Section A – General Information

- Name of the Victim – Rule 7.3 may require a no contact order.

Section B – Probable Cause Statement

- The results of any blood alcohol test and any field or laboratory testing and the quantity or weight of the drugs, if known (quantity is moved from the former Section H).

Section C – Defendant Information

- Phone number for defendant, in order to enhance the ability to contact the defendant.
- A mailing address for the defendant, as it might be different than the home address.

- Specifically mentions a post office box as an alternative address, common in rural areas.
- Change the term “Homeless” to “Unhoused” to reflect current terminology.
- Includes Military Status, moved from a standalone section.

Section D – Mental, Physical Health and Substance Abuse

- New Section heading “Mental, Physical Health and Substance Abuse”.
- Any indication of Alcohol Abuse, Mental Health Issues, Development Disability, Other substance abuse, Physical illness/Physical injury - moved from Circumstances of Offense.
- Any indication the defendant is suicidal.
- The Defendant was under the influence of alcohol or drugs at the time of the offense – moved from Circumstances of the Offense

Section E – Other Information:

- Defendant committed the offense while on release for any other felony – Current language states that the defendant was “already admitted to bail” on a separate charge. However, the case law is such as for this purpose “admitted to bail” includes release on one’s own recognizance. See *Heath v. Kiger*, 176 P.3d 690 (Ariz. 2008).

Section G – Crimes Against Persons

- Defendant is currently the subject of a Lifetime No-Contact Injunction, to account for the addition of A.R.S. § 13-719.

Section H – Domestic Violence Defendant Issues

- Offense involved harassment, as this is relevant to domestic violence.
- Offense involved strangulation, as this is relevant to domestic violence.

4. Reorganization

The Task Force recommends moving various questions in order to better place them and make the document more easily readable.

V. Abrogation of Form 4(b)

Form 4(b) is to be completed by the defendant. It is not as widely used as Form 4(a). The form contains a number of questions, which in the context of a criminal investigation could impact the defendant's right against self-incrimination. The Task Force recognized the constitutional and legal issues associated with the Form 4(b) in relationship to its limited value. The Task Force therefore recommends that Form 4(b) no longer be required and be abrogated, with the Form 4(b) spot in the rule being reserved (Appendix C).

VI. Pre-Filing Comment

The proposed revised Form 4(a) will be circulated to law enforcement for comment through the Law Enforcement Legal Advisors Association and to other stakeholders.

VII. Request

Petitioner respectfully requests that this Court grant his motion to suspend the portion of Supreme Court Rule 28(a)(2) that requires rule petitions to be filed by January 10, 2024 but keep intact that portion of Supreme Court Rule 28(a)(2) that would allow the Court's consideration of this petition at its August 2024 Rules Agenda. If the Court grants this motion, Petitioner respectfully requests that this Court open this petition for public comment, consider the petition and comments in the regular course provided by Supreme Court Rule 28, abrogate the current Form 4(a) and adopt the proposed revised Form 4(a) as set forth in Appendix A, and abrogate Form 4(b), with the Form 4(b) spot in the rule being reserved.

RESPECTFULLY SUBMITTED this 18th day of January, 2024.

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