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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	Supreme Court No.
)	R-24-0041
Petition to Amend Rule 41, Arizona Rules)	
of Criminal Procedure, to Replace Form)	Request to File Late
Form 4(a) and Abrogate Form 4(b))	Comment and Comment
)	
_____)	

The Honorable Wendy Million and the Honorable Ron Reinstein (“Commentors”) jointly submit this comment regarding Petition No. R-24-0041 (“rule petition”), to request that this Court’s consideration of the proposed changes to Forms 4(a) and (b), in Rule 41, Arizona Rules of Criminal Procedure additionally include non-substantive technical changes to Form 4(c), Release Questionnaire: Intimate Partner Risk Assessment as set forth in Appendix A.

Commentors acknowledge that comments to the rule petition were due no later than May 1, 2024 pursuant to this Court’s January 23, 2024 Order. However, the issues that the proposed amendments are intended to address were only raised recently during a COVIC meeting. Therefore, Commentors respectfully request that this Court permit this late comment to be filed and considered with the rule petition at its August 2024 Rules Agenda.

I. Background

On January 18, 2024, Petitioner David K. Byers Administrative Director, Administrative Office of the Courts, petitioned 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 (“Task Force”). The rationale for the Task Force’s recommendations to Form 4(a) was, in part, to add clarifying language to assist law enforcement in completing the form so that relevant and helpful information can be gathered. Since Form 4(c) is part of the “Release Questionnaire” forms, Commentors believe that it would be prudent and efficient for this Court to simultaneously consider slight, technical clarifying changes to Form 4(c) that serve the same purpose as the proposed changes to Form 4(a).

II. Discussion

Form 4(c) is administered by law enforcement officers to victims of domestic violence, serving as a pivotal tool for gathering essential information from them. The content and disclosure procedures of this form hold significant

importance for victim safety and informed decision-making. Nonetheless, there are notable concerns about ensuring these victims consistently understand the disclosure risks associated with their responses and the potential discoverability of the information they provide.

Despite training efforts provided to law enforcement on communicating this, there remains a risk that victims may not fully comprehend the potential consequences of their disclosures, particularly in cases where their safety may be compromised.

III. Proposed Amendments to Form 4(c)

The text of the proposed amendments are set forth in Appendix A, with additions underlined and deletions stricken, and are summarized below.

A. The first proposed amendment to Form 4(c) changes the instructions to law enforcement at the top of the form from “Questions are asked on the scene; Victim participation is voluntary” to “Questions are asked on the scene. Inform victims their participation is voluntary, their answers are discoverable, and may be seen by others.” The proposed changes are set forth in Appendix A and as follows, with additions underlined and deletions stricken:

Questions are asked on the scene; ~~Inform~~ Inform ~~victims their~~ participation is voluntary, their answers are discoverable, and may be seen by others.

The intent of this proposed amendment is to underscore the voluntary nature of the form and its associated disclosure risks, empowering survivors to make well-informed decisions about their participation.

B. The second proposed amendment to Form 4(c) seeks to provide clarity regarding question 7a and adds three checkboxes: “Yes”, “No”, and “Decline”. Despite its frequent inclusion in the risk assessment results, question 7a is not part of the validated risk questions. The proposed amendment as set forth in Appendix A aims to clarify that it should not be factored in when scoring the risk assessment by adding a note where the current “yes”, “no”, and “decline” checkboxes are and moving the checkboxes to directly follow the question.

C. The third proposed amendment to Form 4(c) inserts a section between the Tier 1 questions and Tier 2 questions to clarify that after the last Tier 1 question (7.a), the assessment should be scored and to instruct on how it should be scored. Specifically, the proposed amendments provide instruction on how many “yes” answers constitute an “elevated risk,” how many “yes” answers constitute a “high risk,” adds checkboxes for the same, and adds a “Total Yes” line.

D. The fourth proposed amendment eliminates current question 13a and combines the text of the question with current question 13.

V. Vetting

The issues that the proposed amendments are intended to address were raised during a COVIC meeting, but due to the meeting schedules of COVIC and CIDVC, the proposed amendments have not been vetted to either body or to external stakeholders. However, given the timing of the next rule petition cycle (filing deadline of January 10, 2025, with any adopted rule amendments

becoming effective January 1, 2026), technical nature of the changes, the nature of the form's use and that the other two release questionnaire forms are being considered at this Court's August 2024 Rules Agenda, Commentors believe it is appropriate for this Court to consider the proposed changes to Form 4(c) at that time as well. Commentors intend to vet these changes with COVIC and CIDVC, but cannot do so before Petitioner's Reply deadline because these bodies do not meet again until June and September, respectfully.

VI. Conclusion

In light of these considerations and by addressing these concerns comprehensively, we can ensure that our pretrial procedures align with best practices, prioritizing victim safety and informed decision-making.

VII. Request

For the reasons stated above, Commentors respectfully request that this Court permit the filing of this late comment, consider at its August 2024 Rules Agenda the amendments to Form 4(c) as set forth in Appendix A alongside the amendments to Forms 4(a) and (b) as set forth in the rule petition, and adopt at its August 2024 Rules Agenda the proposed amendments to all three forms as set forth in the rule petition and Appendix A of this comment, with an effective date of January 1, 2025.

However, should this Court desire to have a public comment period related to Form 4(c), Commentors propose that at its August 2024 Rules Agenda, this Court adopt Form 4(a) and abrogate Form 4(b) as requested in the rule petition,

effective January 1, 2025, and provisionally adopt the proposed changes to Form 4(c) at its August 2024 Rules Agenda, reopen the rule petition for comments related to Form 4(c), and consider permanent adoption of the proposed amendments to Form 4(c) at its December 2024 Rules Agenda.

Respectfully submitted this 14th day of May 2024.

/s/ Wendy Million
Honorable Wendy A. Million
Magistrate, Tucson City Court

/s/ Ron Reinstein
Honorable Ron Reinstein
Judge, Superior Court Arizona (Ret.)

Appendix A

(Additions underlined and deletions stricken)

Form 4(c): Release Questionnaire
Intimate Partner Risk Assessment*

Defendant's Name _____ DOB _____ Booking No. _____
 Law Enforcement Agency _____ Report No. _____
 Victim's Name _____ Incident Date _____

Questions are asked on the scene; <u>Inform</u> victims their participation is voluntary, their answers are discoverable, and may be seen by others.		Yes	No	Decline
Tier 1				
1.	Has physical violence increased in frequency or severity over the past six months? Alternate wording: Is the pushing, grabbing, hitting, or other violence happening more often?			
2.	Is he/she violently and constantly jealous of you?			
3.	Do you believe he/she is capable of killing you?			
4.	Has he/she ever beaten you while you were pregnant ? (e.g. hit, kicked, shoved, pushed, thrown, or physically hurt with a weapon or object)			
5.	Has he/she ever used a weapon or object to hurt or threaten you?			
6.	Has he/she ever tried to kill you?			
7.	Has he/she ever choked/strangled/suffocated you?			
7a.	If you answered "Yes" to Question 7, has this <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decline happened more than once?	Do not score question 7a but record any response to it		
Yes to 2 or 3 Tier 1 questions = "Elevated Risk" Yes to 4 or more Tier 1 questions = "High Risk"		Total Yes: _____ Elevated <input type="checkbox"/> High <input type="checkbox"/>		
Tier 2				
8.	Does he/she control most or all of your daily activities?			
9.	Is he/she known to carry or possess a gun ?			
10.	Has he/she ever forced you to have sex when you did not wish to do so?			
11.	Does he/she use illegal drugs or misuse prescription drugs ? (e.g. meth, cocaine, painkillers)			
12.	Has he/she threatened to harm people you care about ?			
13.	Did you end your relationship with him/her within the past six months? <u>Does he/she know or sense you are planning on ending your relationship?</u>			
13a	If you answered "No" to Question 13, does he/she know or sense you are planning on ending your relationship?			
14.	Has he/she experienced significant financial loss in the last six months?			
15.	Is he/she unemployed ?			
16.	Has he/she ever threatened or tried to commit suicide ?			
17.	Has he/she threatened to kill you?			
18.	Has he/she threatened or abused your pets ?			

"Yes" to 2 or 3 Tier 1 questions = "Elevated Risk" / "Yes" to 4 or more Tier 1 questions = "High Risk"

"Elevated Risk" and "High Risk" scores trigger law enforcement officers to offer follow up responses in the form of providing or connecting victims to supportive resources or resource information.

- Victim referred for follow up based on responses to the assessment
- Victim referred for follow up based on the officer's professional judgment
- No referral

* To be considered at Initial Appearance. See A.R.S. § 13-3967(B).

These questions are asked, with the permission of the victim, in intimate partner violence incidents resulting in arrest of the alleged offender (or where the alleged offender has fled but will be arrested when apprehended). Participation in this assessment is entirely voluntary and victims must be informed that they may decline to answer any or all questions. This form is included with the police report provided to the court, the prosecutor, and defense counsel.

Victims who score at “Elevated Risk” or “High Risk” are referred to a victim advocate if one is available and to a domestic violence services agency or referral service that can provide safety planning and information about additional available services.

Victims who score in the “Elevated Risk” category (a “Yes” response to 2 or 3 Tier 1 questions) experience a 6 times higher risk of severe re-assault or near lethal violence within seven months when compared to those with fewer than 2 Tier 1 risk factors present. It is estimated that 9 percent of victims at “Elevated Risk” will experience severe re-assault within seven months, versus 1.6 percent of victims that answer “Yes” to fewer than 2 Tier One questions.

Victims who score in the “High Risk” category (a “Yes” response to 4 or more Tier 1 questions) experience a 10.5 times higher risk of severe re-assault or near lethal violence within seven months when compared to those with fewer than 2 Tier 1 risk factors present. It is estimated that 15 percent of victims at “High Risk” will experience severe re-assault within seven months.

The above unpublished statistical analyses were generated using data from the Oklahoma Lethality Assessment Study funded by the National Institute of Justice. See Messing, J. T., Campbell, J., Webster, D. W., Brown, S., Patchell, B., & Wilson, J. S. (2015). The Oklahoma lethality assessment study: A quasi-experimental evaluation of the Lethality Assessment Program. *Social Service Review*, 89(3), 499-530. https://www.researchgate.net/publication/282982226_The_Oklahoma_Lethality_Assessment_Study_A_QuasiExperimental_Evaluation_of_the_Lethality_Assessment_Program

Additional empirical support for this assessment is from:

Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C. R., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S. A., Manganello, J., Xu, X., Schollenberger, J., Fry, V., & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health*, 93(7), 1089-1097. <http://ajph.aphapublications.org/doi/full/10.2105/AJPH.93.7.1089>

Snider, C., Webster, D., O’Sullivan, C. S., Campbell, J. (2009). Intimate partner violence: Development of a brief risk assessment for the emergency department. *Academic Emergency Medicine*, 16, 1208-1216. <http://onlinelibrary.wiley.com/doi/10.1111/j.1553-2712.2009.00457.x/pdf>