

David K. Byers  
Administrative Director  
Administrative Office of the Courts  
1501 W. Washington, Suite 411  
Phoenix, AZ 85007-3327  
Phone: (602) 452-3301  
Projects2@courts.az.gov

**ARIZONA SUPREME COURT**

In the matter of:	)	
	)	
PETITION TO AMEND RULE 41,	)	Supreme Court No. R-24-0041
ARIZONA RULES OF CRIMINAL	)	
PROCEDURE TO REPLACE FORM 4(a)	)	REPLY
AND ABROGATE FORM 4(b)	)	
_____	)	

David K. Byers, Administrative Director, Administrative Office of the Courts, and Petitioner in this matter, hereby replies pursuant to Rule 28(e)(5), Rules of the Supreme Court of Arizona and this Court’s Order dated January 23, 2024.

**I. Procedural History**

On January 18, 2024, Petitioner filed petition R-24-0041 to amend Rule 41, 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 moved this Court to suspend the portion of Supreme Court Rule 28(a)(2) requiring 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 Court granted Petitioner’s motion and opened the petition for public comment until May 1, 2024, with any reply due by June 3, 2024. This petition received one comment, and Petitioner files this reply to address that comment.

## **II. Discussion**

The comment received on this petition was jointly submitted by the Honorable Wendy Million of the Tucson City Court in Pima County and the Honorable Ron Reinstein, Superior Court of Arizona (ret.) (hereinafter, collectively “Commentors”). Commentors do not take a position on the petition, but rather request that in addition to Petitioner’s proposed changes to Form 4(a) and abrogation of Form 4(b), this Court consider changes to Form 4(c) at the same time.

Form 4(c) is the last of the three forms that make up the “Release Questionnaire” forms under Criminal Rule 41, Form 4. Petitioner agrees with Commentors that if the other two Form 4 release questionnaires are being considered at this Court’s August 2024 Rules Agenda, it is appropriate for this Court to consider the proposed changes to Form 4(c) at that time as well.

Commentors proposed four changes to Form 4(c):

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 intent of this proposed amendment is to underscore the voluntary nature of the form and its associated disclosure risks. Petitioner has no objection to this proposed amendment and recommends that the Court adopt it as proposed by Commentors.

B. The second proposed amendment to Form 4(c) seeks to provide clarity regarding question 7a and adds three checkboxes: “Yes”, “No”, and “Decline”. It is Petitioner’s understanding that when the research related to the risk assessment was conducted, question 7a related to the number of strangulations was not statistically weighed in the study and therefore should not be scored to determine risk. Therefore, the proposed amendment seeks to clarify that 7a should not be factored in when scoring the risk assessment. Petitioner has no objection to this proposed amendment and recommends that the Court adopt it as proposed by Commentors.

C. The third proposed amendment to Form 4(c) inserts a section between the Tier 1 questions and Tier 2 questions to direct when the answers to Tier 1 questions should be tallied to determine risk. Petitioner has no objection to this proposed amendment and recommends that the Court adopt it as proposed by Commentors.

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

with this proposed amendment, as combining questions 13 and 13a will create a compound question to which the existing checkboxes will not provide a clear answer. Petitioner therefore opposes this proposed amendment and recommends that the Court decline to adopt the proposed amendments and leave questions 13 and 13a separate. Petitioner has vetted this position with Commentors, and they agree that leaving 13 and 13a as two separate questions instead of combining them is appropriate.

### **III. Conclusion**

Petitioner appreciates the comment submitted, and Petitioner supports the Commentor's first three proposed amendments to Form 4(c) but recommends that the Court decline to adopt the fourth proposed amendment related to questions 13 and 13a.

### **IV. Request**

Petitioner respectfully requests that in addition to Petitioner's proposed changes to Form 4(a) and abrogation of Form 4(b), this Court consider changes to Form 4(c) at the same time, adopt the first three proposed amendments to Form 4(c) as set forth in the Appendix to Commentor's comment, and decline to adopt the fourth proposed change regarding questions 13 and 13a.

Respectfully submitted this 24<sup>th</sup> day of May, 2024.

By /s/David K. Byers  
David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington, Suite 411  
Phoenix, Arizona 85007  
(602) 452-3301  
Projects2@courts.az.gov