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9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

11 In the Matter of:

Supreme Court No. R-16-0046

12 **PETITION TO AMEND**
13 **APPENDIX TO ARIZONA RULES**
14 **OF CRIMINAL PROCEDURE**

SUPPLEMENTAL PETITION

15 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the Arizona
16 Prosecuting Attorneys' Advisory Council ("APAAC") supplements the petition
17 filed in December, 2016 to adopt a risk assessment form as an addendum to Form
18 4(a), Arizona Rules of Criminal Procedure. Because the Supreme Court's Rules
19 Forum received several comments to the filed petition, all in support but some
20 offering suggestions, APAAC will briefly respond to those comments in this
21 supplemental petition.

22 Arizona Association of Superior Court Clerks

23 The Arizona Association of Superior Court Clerks has recommended
24 modifying the proposed form to clarify that it is "Confidential" – to be used only by
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1 law enforcement, the court, probation officers and court clerks. APAAC has
2 considered this recommendation but cannot endorse it. While APAAC firmly agrees
3 that victims of intimate partner violence need the protections of the criminal justice
4 system, there is simply no authority for making the risk assessments confidential.
5 First, A.R.S. § 13-3967(B) requires judicial officers making release determinations
6 to consider “the results of a risk or lethality assessment” in domestic violence cases.
7 No provision is made in that statute for keeping those results confidential. Second,
8 risk assessment questions and answers are routinely made a part of law enforcement
9 departmental reports, which are provided in criminal discovery under Rule 15.1 and
10 are subject to the state’s *Brady* obligations under *Brady v. Maryland*, 371 U.S. 812,
11 83 S.Ct. 56, 9 L.Ed.2d 54 (1962). Third, apart from personal identifying and locating
12 information contained therein, risk assessments are not protected by the victim’s
13 right to privacy under A.R.S. § 13-4434(B) or in public records requests under
14 A.R.S. § 39-121. And finally, protecting information contained in risk assessments
15 is not one of the enumerated victims’ rights in Rule 39(b).
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20 Administrators of risk assessments should inform victims about who will have
21 access to the information, and currently there are written protocols requiring law
22 enforcement who administer the risk assessment to notify respondents that what they
23 share may be discoverable. But there is currently no authority for making the
24 assessment itself confidential.
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1 Committee on the Impact of Domestic Violence and the Courts

2 The Committee on the Impact of Domestic Violence and the Courts
3 recommends that training protocols be established to ensure victim safety,
4 connection to victim services and confidentiality. Although the recommendation
5 itself does not directly impact the content of the petition, APAAC ardently concurs
6 with this general recommendation. In fact, development and implementation of
7 training policies for how risk assessments should be conducted and tracked are
8 already being adopted with preparatory trainings scheduled this summer. But it is
9 clear training protocols must be adopted by law enforcement agencies administering
10 the assessment, which protocols must put victim safety foremost and have as their
11 aim connecting a victim to services and maintaining a victim's privacy.
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15 State Bar of Arizona

16 The State Bar of Arizona has recommended minor stylistic and substantive
17 word changes to the petition. Those recommendations have each been considered
18 and accepted by APAAC, and they are reflected in the revised form 4(a) Addendum,
19 attached hereto. First, the State Bar points out that the proposed addendum contains
20 a "Tier 2" set of questions (questions eight through sixteen) without an identified
21 Tier 1 section. APAAC agrees that this was an oversight. A "Tier 1" heading, which
22 applies to questions asked at the scene of the crime, should preface questions one
23 through seven. Second, the State Bar recommends adding the question "Has he/she
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1 ever threatened to kill you?” Based on research, the recommended question has a
2 much less predictive significance compared with addendum question six (“Has
3 he/she ever tried to kill you?”), and APAAC agrees to add the State Bar’s
4 recommended question as a separate question seventeen in Tier 2, to provide
5 contextual knowledge about the case. Third, the State Bar recommends adding the
6 words “or your pets” to proposed question twelve. Research recommends against
7 coupling the ‘threat to harm pets’ question with one involving threats to harm a
8 person because that combines a known risk factor with one that is not known to
9 increase risk. APAAC agrees to add the State Bar’s recommended question as a
10 separate question eighteen in Tier 2, to provide contextual information about the
11 case.
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15 APAAC appreciates the support it received to the petition as well as the
16 comments designed to improve the addendum. With the changes proposed in this
17 supplemental petition, APAAC urges the Supreme Court to adopt the rule change
18 proposed in this supplemental petition.
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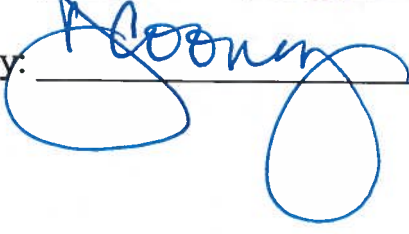
20 RESPECTFULLY SUBMITTED this 30th day of June, 2017.

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23 Elizabeth Ortiz, #012838
24 Executive Director
25 Arizona Prosecuting Attorneys’
Advisory Council

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Electronic copy filed with the
Clerk of the Arizona Supreme Court
this 30th day of June, 2017.

by: 

Form 4: Release Questionnaire Addendum
Intimate Partner Risk Assessment *

Defendant's Name _____ DOB _____ Booking No. _____

Law Enforcement Agency _____ Report No. _____

Victim's Name _____

Question	Yes	No	Decline
Tier 1: Ask on scene.			
1. Has the physical violence increased in frequency or severity over the past six months? a. 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. Have you ever been beaten by <u>NAME SUSPECT</u> 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. Has this happened more than once? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decline			
Tier 2: Discretionary. Ask on scene or during follow up.			
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? 13a. If you answered "no" to Question 13, does he/she know or sense you are planning on ending your relationship? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decline			
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 tool
- Victim referred for follow up based on the officer's professional judgment
- No referral

* Otherwise known as Domestic Violence Lethality Assessment.

Proposed Explanatory Language to be printed on back of Form 4 Addendum

These questions are asked of the victim in any intimate partner violence incident resulting in arrest of the suspected perpetrator. The responses set forth on this form are included with the police report provided to the court, the prosecutor, and defense counsel if counsel is appointed.

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. Further questions may be asked of them at that time.

"Elevated Risk" means risk of severe re-assault or near lethal violence.

Victims who scored in the "risk" category (a 'yes' response to 2 or 3 Tier 1 risk factors) experienced a 6 times more elevated risk of severe re-assault or near lethal violence when compared to those with fewer than 2 Tier 1 risk factors present.

Victims who scored in the "high-risk" category (a 'yes' response to 4 or more Tier 1 risk factors) experienced a 10.5 times more elevated risk of severe re-assault or near lethal violence when compared to those with fewer than 2 Tier 1 risk factors present.

These analyses are unpublished. They were generated using data from the NIJ funded Oklahoma Lethality Assessment Study, published by Messing et al. in 2015 (citation below).

Empirical support for this tool can be found in the following peer reviewed work:

1. 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, Xiao, 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>

2. 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>

3. 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