Commission on Victims in the Courts

Friday, January 20, 2012 APPROVED - Minutes

10:00 a.m. to 12:00 p.m. State Courts Building 1501 W. Washington Phoenix, AZ 85007 Conference Room 119 A&B

Members Present:

Hon. Ronald Reinstein (Chair)

Mr. James J. Belanger

Mr. Michael Breeze

Hon. Peter Cahill

Ms. Shelly Corzo

Ms. Sydney Davis

Ms. JoAnn Del Colle (telephonically)

Ms. Karen Duffy

Cpt. Larry Farnsworth

Hon. Elizabeth Finn

Ms. Daisy Flores (telephonically)

Ms. Leslie James

Mr. Dan Levey

Hon. Evelyn Marez

Hon. Anna Montoya-Paez

Ms. Pam Moreton

Ms. Kim MacEachern, proxy for

Ms. Elizabeth Ortiz

Mr. Douglas Rayes

Hon. Antonio Riojas, Jr

Hon. Richard Weiss

Mr. Errol Dimenstein

(proxy – David Sanders)

Ms. Cindy Nelson

(proxy – Dr. Kathryn Coffman)

Members Absent:

Hon. William O'Neil Ms. Keli Luther

Staff:

Ms. Carol Mitchell Ms. Jerri Medina

Presenters/Guests:

Mr. Jerry Landau, Legislative Officer

Ms. Erin Hertzog, Government Affairs Intern

Ms. Kim Knox, Maricopa County Finance

Ms. Dimple Smith, Lead Victim Advocate

Pima County

I. Regular Business

A. Welcome and Opening Remarks

The January 20, 2012 meeting of the Commission on Victims in the Courts (COVIC) was called to order by Chair, Honorable Ronald Reinstein, at 10:07 a.m.

B. Approval of September 30, 2011 Minutes

Minutes from the September 30, 2011 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the September 30, 2011 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Announcements

The Chair made the following announcements:

2012 Reappointment process

The 2012 reappointment/appointment selection process has begun. If you are up for reappointment please contact Carol Mitchell as to your availability going forward on the committee. If you know anyone that would like to become a member of COVIC, please give their name and information to either Hon. Ron Reinstein or Carol Mitchell.

Judicial Conference Committee

Judicial Conference Committee for the Supreme Court asked COVIC to sponsor a presentation on victims' issues. The conference committee requested a balanced viewpoint on victimization and victims' rights issues. The conference committee approved a proposed presentation bringing in guest speakers to speak based on their type of victim experience.

Mr. Brooks Douglass (played Heaven's Rain movie clip) would represent a "victim of a crime". The second type that we are looking at is a "victim of the system", an exonerated person who was wrongly convicted. We have four names under review for final selection.

Last year at the conference, we did a full presentation on eye witness identification with Jennifer Dysart from the John Jay College of Criminal Justice in New York City.

Court of Appeals Openings & Applications

Applications are being accepted for two vacancies created on Division One of the Arizona Court of Appeals by the retirement of Judge Daniel Barker and the resignation of Judge Patrick Irvine. Court of Appeals needs more applications and must have a constitutional list before the final applicants can be sent to the Governor for appointment. They have extended the application period to January 31, 2012. Attached is a link to the website where the application can be downloaded. http://www.azcourts.gov/jnc/ApplyforaVacancy.aspx

III. Presentations

A. Guilty Pleas/Factual Basis

Hon. Evelyn Marez presented a request to incorporate a court practice for victims. It is generally felt that a victim wants to hear the defendant admit to the crime and acknowledge the harm done from committing the crime. To do this, defendants would be asked to read or state the factual basis of the crime in court with the victim present. Even the smallest statement as in "this is what I did", helps.

There was discussion with several variations on how a defendant could state a factual basis. It was generally felt the defendant should not "ad lib" the factual basis, this tends to become too lengthy.

A key discussion point was on how to signal the judge or prosecutor that a victim is in the courtroom and how to facilitate attention to the factual basis statement. In justice and city courts there are times when an attorney is not present during proceedings to notify the judge with the only process being the reading of the departmental report. Most judges have had training on victim issues through judge orientation and we can add this specific topic to the annual training.

Also a concern was raised about the judge reviewing the factual basis of the case with the defendant in such a way that it turns into an Alford plea.

Many judges prefer to have the defense attorney or the prosecutor establish the facts of the crime. Then, judges can ask the defendant directly if the facts were correct and admit they committed the offense.

B. Maricopa County Criminal Court Tower

Hon. Douglas Rayes, Presiding Judge spoke on the new Maricopa County Criminal Court Tower and its benefits to the court community. Phoenix is the 4th largest trial court in the United States with more than 222,000 cases filed in fiscal year 2011. The court house has been designed with separate traffic flows for each of the stakeholders: public, judicial officers/staff and in-custody defendants. Extensive planning went into designing the courts to ensure that victims feel safe from encountering the defendant, defendant's family or the press in both the courtroom and within public areas like a restroom.

Courtrooms are also setup with more security areas for the in-custody defendants.

There are also rooms behind the courtrooms for the attorneys to meet without going several floors upstairs to the judge's chambers.

This new court tower is seen as one of the most victim-friendly courts in the country as many suggestions received from victim focus groups during the planning stage, were incorporated.

C. Legislative Session Update

Mr. Jerry Landau, Legislative Liaison and Erin Hertzog, Government Affairs Intern gave a preliminary update of upcoming bills that affect victims' rights.

HB 2432 mandates the surety be relieved from liability, if the defendant fails to appear as required, so long as the defendant is surrendered by the surety or bail bond agent before or within thirty days after the defendants' failure to appear. It requires the bail bondsmen to go out and look for the defendant to force them to appear within the 30 days instead of losing the bond money. APAAC is opposing it.

HB 2550 is a request from Pima County attorney's office, expanding the definition of a criminal offense in relation to crime victims' rights to include misdemeanor, or petty offense.

HB 2556 is putting into statutes that restitution "may" be done at the time restitution is ordered instead of at the time of sentencing.

HB2558 clarifies the order of restitution and doesn't prevent the victim from filing a civil claim.

HB 2559 is the reading of victims' rights at the daily commencement of criminal docket. The intent was to expand the victims' rights to all victims of all crimes, even ones in limited jurisdiction courts.

HB 2615 affect changes in the period of limitation to 35 years after the minor reaches 18 for a civil action for the recovery of damages as a result of sexual offense, sexual exploitation, or incest.

IV. Old Business

A. Victim ID Protection Rule petition update

COVIC is working on a rule petition to put victim initials in lieu of full names on all charging documents, court pleadings, minute entries, transcripts, all motions filed by either side in cases that have child victims and adult sexual assault victims. This petition has been presented to various committees within the last month in which all have unanimously approved in concept. Their recommendation is to continue moving the petition forward and COVIC established a workgroup to raise and address concerns.

The intent of this petition is to minimize access to the names of specific types of crime victims in public and online court records information. There is no intent to make it so impersonal that only the victim's initials are used in any proceedings. COVIC filed the initial petition as a two-step process with comments due April 2nd 2012.

From those findings, COVIC may file an amended petition on May 7th 2012, with an additional comment period extended until June 4th 2012.

There are issues that we will ask guests to participate in by bringing in their knowledge, expertise and feedback such as, representatives from the First Amendment Coalition.

Discussion on several of the issues that have already been presented to the committee:

- In smaller or rural communities the use of initials is not enough to conceal identity and may need to use pseudonyms, "minor relative"
- Researching cases that have initial only in the defense of a defendant
- Use of a confidential data sheet accessible by courts, prosecutors and attorneys only (currently being used in family court)
- Availability and use by the press including bloggers
- Use of victim names in open court and impact on transcripts

Santa Cruz County held a meeting to work with court staff and prosecutors to focus on using initials only going forward on victim cases. However, the use of pseudonyms will be on a case by case basis until they can work out a permanent solution.

COVIC members are asked to present the Victims Rule ID information to any other committees they are involved in and bring all issues from those meetings back to the COVIC workgroup for review.

V. New Business

A. Video presentation – 2011 Justice and Law Enforcement Medal Recipient

National Institute of Justice launched the National Missing and Unidentified Person System (NamUS) in 2009. Chuck Heurich won the award on behalf of the system and Judge Reinstein wanted to show a video about what's being done on behalf of the unidentified victims.

NamUS is a powerful, fully searchable online Justice Department database used for investigating and solving missing and unidentified person cases nationwide. It is the one place where everyone across the country interested in solving such cases – law enforcement, medical examiners' offices to coroners' offices, victims' advocates and families can share information.

NamUS provides unprecedented access to fully searchable information reaches across jurisdictional lines and often provides investigators with new data. In addition, the system automatically cross-searches the missing against the unidentified, and presents potential matches to investigators, dramatically reducing search time.

B. Notice to Victim

Hon. Elizabeth Finn would like COVIC to consider creating a workgroup on victim information collection at time of incident or investigation. There was discussion on how victim notification was hampered due to lack of information gathered at either the time of the incident or in the initial police investigation. Judge Finn would like to have a workgroup research and come up with a "best practices" guideline for law enforcement and/or victim advocates who have the initial contact with a victim during the investigation. COVIC will refer to the Administration of Justice workgroup.

C. Law Enforcement Patrol Notification

Dan Levey informed COVIC, that he and Judge Douglas Rayes are in a group that has met at the Attorney General's office discussing possible ways to ensure the conditions of release are given to law enforcement patrol. There have been times when law enforcement patrol does not have a copy of the judicial order in a "no contact" situation. This is especially important when responding to a domestic violence incident or cases involving a prior victim of a crime. They are looking to develop a way of keeping court orders in "real time" similar to the warrants process.

D. DNA Collection

Judge Reinstein has been meeting with Kent Catani, Attorney General's office and Joe Sciarotta, Chief Counsel with Governors office on issues regarding DNA money and the law that requires that DNA to be taken at time of arrest. We have asked the Governor's office to include the DNA money into this year's budget which is a surcharge of 7% of every fine in the state. When the DNA money was swept into the general fund it slowed down the analysis of any sample that had been collected and created a large backlog. This makes the state database and CODIS not as rich as it should be. Also, kits are not being provided to law enforcement, so in an arrestee case the DNA is not being collected as required by law. However, Department of Corrections and Adult Probation offices are still administering DNA kits at their own costs.

VI. Adjournment

MOTION: To adjourn presented. *Motion seconded and passed unanimously.* The meeting adjourned at 11:43 a.m.