

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Minutes

Tuesday, May 12, 2015

10:00 a.m. to 12:00 p.m.

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Keith D. Barth, Judge Marianne T. Bayardi, Judge Carol Scott Berry, Carla F. Boatner, Chief Steven W. Campbell, Gloria E. Full, Patricia George, Esq., Anna Harper-Guerrero, Dorothy Hastings, Judge Statia D. Hendrix, Patricia Madsen, Dana Martinez, Judge Wyatt J. Palmer, Deputy Chief Andrew R. Reinhardt, Assistant Chief Sandra Renteria, Shannon Rich, Rebecca Strickland, Tracey J. Wilkinson

Absent/Excused: Ellen R. Brown, Diane L. Culin, Joi Davenport, Lynn Fazz, Captain Jeffrey Newnum, Judge Patricia A. Trebesch

Presenters/Guests: Patrick Scott, Administrative Office of the Courts (AOC)

AOC Committee Staff: Kay Radwanski, Julie Graber

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The May 12, 2015, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:01 a.m. by Judge Wendy Million, chair. Judge Million welcomed existing members and introduced newly appointed members, Judge Marianne T. Bayardi, Phoenix Municipal Court, and Deputy Chief Andrew R. Reinhardt, Prescott Police Department.

B. Approval of Minutes

The draft minutes from the February 10, 2015, meeting of the CIDVC were presented for approval.

Motion: To approve the February 10, 2015, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge Keith Barth, **Seconded by** Judge Carol Scott Berry. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Creating Accessibility for Survivors of Abuse Who Are Deaf

Anna Harper-Guerrero, Emerge! Center Against Domestic Abuse (Emerge!), provided an overview of Pima County's project and collaboration with the deaf community to ensure that survivors of abuse who are deaf are able to access the same information and can participate in the same programs as those who can hear. Ms. Harper-Guerrero stressed the importance of creating accessibility for domestic violence survivors who are deaf and providing services that fit the needs of the deaf clients. She discussed the impact of audism on delivering services to the deaf community. Those who hear set the standards

and norms for business, and audism manifests itself when those who hear do not provide reasonable accommodations to, or do not address the needs of, the deaf community, and when they require the deaf community to adopt hearing ways of communication at the expense of Deaf culture and American Sign Language (ASL).

Ms. Guerrero acknowledged that most domestic violence programs are not truly accessible to the deaf community and illustrated how they also lack cultural awareness and sensitivity. The communication needs of the deaf community, for example, are not taken into account when developing materials or when providing services like counseling and group meetings. In addition, the busy shelter environment affects the deaf community differently and actually increases social isolation.

She reviewed the steps that were taken at Emerge! to create accessibility, which started with educating themselves by talking with the deaf community's main service providers; conducting needs assessment; researching equipment; and cross-training all staff about deaf culture. The second step was to evaluate the current service system. New expectations of inclusion, commitment, and flexibility were established with staff to ensure deaf clients have access to the same services, their interests and needs are met, and they are provided with interpreters, even if it requires changes in procedures. In addition, a video phone was installed at all sites in a location that provided both accessibility and privacy for the deaf client; materials were developed for survivors who are deaf, including a video orientation about the shelter environment and the services provided; and outreach was conducted for ASL volunteers.

Ms. Harper-Guerrero described the current efforts to build support within the deaf community to identify and address safety concerns for the insulated population and to focus on sustainability, regardless of available funding, with continued collaboration with the deaf community's service providers, re-evaluation of the service delivery system, re-design of access points for services, and ongoing education to become better advocates for the deaf.

Member comments:

- The discussion about audism highlighted how communication is not a priority for those who hear when it should be a priority.
- Domestic violence survivors who are deaf have reported obstacles with law enforcement from the start. Chief Steven Campbell acknowledged the need for more work to ensure all areas of victim services are covered. Emerge! offered to provide education to law enforcement regarding the deaf community.

B. Legislative Report; SB1035: Domestic Violence Offender Treatment Programs

Kay Radwanski reviewed the legislative report for this year's session. The general effective date is July 3, 2015.

HB2294 – courts; approved screening; treatment facilities: Adds the Department of Veterans Affairs to the list of authorized providers for treatment programs. The bill has been signed.

HB2553 – sex trafficking; vacating conviction: Authorizes a person convicted of prostitution to apply to the court to have the conviction vacated if the person can show that the offense was as a direct result of having been a victim of sex trafficking; allows the court to proceed without a hearing if the prosecutor does not oppose the application; and implements procedures for vacating the conviction, including an order sealing the case file. The new law only applies to violations of A.R.S. § 13-3214 committed prior to July 24, 2014, and does not apply to convictions for a municipal ordinance.

SB1295 – fingerprinting; judgment of guilt; records: Allows the court to obtain and record the defendant's two fingerprint biometric-based identifier instead of affixing the right index fingerprint to help track criminal history reports.

SB1035 – Domestic violence offender treatment programs: Authorizes a court to approve domestic violence offender treatment programs, subject to rules created by the Arizona Supreme Court. The bill has been signed into law with a delayed effective date of January 1, 2016. Ms. Radwanski discussed the process for how these rules will be developed, depending on whether the rules are adopted in the court or administrative rules, and recommended pursuing the simpler vetting process and amending the Arizona Code of Judicial Administration. The following members agreed to be part of a workgroup to develop these rules: Judge Marianne Bayardi, Judge Carol Scott Berry, Gloria Full, Patricia George, Anna Harper-Guerrero, Judge Wendy Million, Shannon Rich, Rebecca Strickland, and Tracy Wilkinson.

C. Comment to Rule 28 Petitions

Judge Million reviewed comments to the rule petitions that were filed affecting the Arizona Rules of Protective Order Procedure (ARPOP):

R-15-0010: Filed by CIDVC to restyle, simplify, and clarify the ARPOP rules. One comment has been received to date in support of the amendments to ARPOP's evidence rules. If additional comments are filed by the May 20, 2015, deadline, the ARPOP Workgroup will prepare replies that can be reviewed by CIDVC in a virtual meeting.

R-15-0016: Requests that the Supreme Court repeal Rule 6(E)(4)(e)(2) regarding firearms and Injunctions Against Harassment on grounds that it violates the Fourth Amendment. Judge Million reviewed the ARPOP Workgroup's draft comment in opposition to the petition and sought the committee's approval and authorization to file the comment on CIDVC's behalf.

Motion: To approve CIDVC's comment to the rule petition and authorize Judge Million to file it on CIDVC's behalf, as discussed. **Action:** Approve, **Moved by** Judge Barth, **Seconded by** Chief Campbell. Motion passed unanimously.

D. Report: NICS Task Force Meeting

Chief Steven Campbell and Kay Radwanski reported on discussion from the April 14, 2015, meeting of the NICS Task Force that focused on reporting release conditions to the National Instant Criminal Background Check System (NICS) for cases related to domestic violence and making protective order information immediately available for law enforcement. The task force was established by the Arizona Criminal Justice Commission (ACJC), which is working on improving the flow of information into NICS.

Release conditions:

- Of the people who attended the April 14 NICS Task Force meeting, 72 percent strongly agreed that all conditions of release (COR) prohibiting the possession of firearms should be reported to NICS to ensure law enforcement has knowledge of COR.
- The task force agreed mostly that COR transmitted to NICS should be done through AJACS, or any other system used by the Administrative Office of the Courts.
- 84 percent strongly agreed that the system used to report COR must be able to modify or cancel a record automatically because COR might change or expire.
- 96 percent strongly agreed that law enforcement should have access to COR via their automated systems.

Protective order process:

Chief Campbell discussed the benefits of maximizing technology and automation, making Orders of Protection (OPs) immediately available to all Arizona law enforcement agencies for service, and entering the served OPs into NCIC within 24 hours of service.

- Of those attending the NICS Task Force meeting, 68 percent strongly agreed and 28 percent agreed that a statewide protocol should be developed that defines how OPs should be served.
 - Chief Campbell explained how OPs are served in the City of El Mirage and why cooperation is needed between law enforcement agencies to promote cross-jurisdiction service. An officer from El Mirage should be able to take the opportunity to obtain a defendant's firearms when serving an OP, whether the OP was issued in El Mirage or elsewhere.
 - CIDVC members from Maricopa County raised issues with the surrendering of firearms when the OP is served. Superior court judges in Maricopa County have been trained to put the Maricopa County Sheriff's Office (MCSO) as the law enforcement agency on all OPs, but MCSO will not accept surrendered firearms from the serving law enforcement agency.
 - Several members suggested that judges rewrite the OP so that the defendant must surrender firearms to *law enforcement*, subject to the OP, rather than to a *specific* law enforcement agency. The defendant must also get a receipt from law enforcement at the time of surrender to address liability and safekeeping issues.
 - The task force strongly agreed that law enforcement should develop a mechanism to track the service of OPs as well as the service attempts.

- A member inquired about the impact of SB1064 on the service of protective orders. Ms. Radwanski noted that this bill only applies to photo enforcement violations.
- Of those attending the NICS Task Force meeting, 48 percent strongly agreed and 32 percent agreed that once the plaintiff has authorized service, the OP should be transmitted electronically from the court to the serving law enforcement agency. The system must be capable of transmitting the petition, the defendant's guide sheet and declaration of service forms.
- Of those attending the NICS Task Force meeting, 40 percent strongly agreed and 40 percent agreed that the law enforcement agency that serves the OP should enter it into NCIC within 24 hours of service.
 - Chief Campbell discussed the advantages of entering OPs into NCIC within 24 hours of service over waiting for the sheriff's office to receive and enter the data, which could delay the availability of the information by up to two weeks and compromise the plaintiff's safety. As the holder of records, the county sheriff must maintain a repository for protective orders; however, Arizona law does not require entry of the information into NCIC.
 - In Scottsdale, law enforcement officers already enter the information into NCIC and could do the same for OPs.
 - The serving law enforcement agency must have the system capability to enter the OP into NCIC.

Ms. Radwanski reviewed and commented on two recent articles that appeared in *The Arizona Republic* regarding domestic violence and firearms: 1. Walsh, Jim. "Study: Arizona domestic-violence victims die from guns at twice U.S. rate." *The Arizona Republic* 8 May 2015; and 2. Bones, Allie. "Separate abusers from their guns." *The Arizona Republic* 11 May 2015.

She explained that there are several reasons why protective orders are not entered into NCIC. The plaintiff can decide if or when an order is to be served and may choose not to serve the order if the plaintiff is not ready. In some cases, orders are not entered into the system because the defendant successfully avoids service or cannot be found, while some orders cannot be entered due to data integrity issues when there is information missing in the required fields.

Regarding firearms, she explained that judges must follow legal standards and can order the defendant to surrender firearms to law enforcement only when the plaintiff presents evidence that the defendant is a credible threat to the plaintiff's physical safety.

Member comments:

- Judges should inquire about risk factors and whether the plaintiff is working with an advocate. The recant rate drops if a plaintiff has an advocate.

- Lethality assessments should be standardized, and judges should be educated about them when addressing release conditions, protective orders, and firearms prohibition.

E. Update: Bench Briefings

Judge Million reported that the bench briefings have been well received, but efforts need to be made to improve audience engagement. In addition, Ms. Radwanski, Kathy Sekardi (AOC), and Judge Million were nominated for a 2015 COJET Excellence in Education award for the work on the bench briefings. CIDVC will be sponsoring two sessions at the Judicial Education Conference. One session will address treatment for domestic violence offenders and the other will focus on domestic violence and children.

F. Workgroup Reports:

- **Orders, Enforcement and Access**
- **Training and Education**

Orders, Enforcement and Access Workgroup: Judge Berry reported that the workgroup is developing a best practices model for setting up remote video conferencing to issue protective orders for courts and advocates. Judge Wyatt Palmer shared how he established such a process between Justice Court #2 in Graham County and Mt. Graham Safe House. He is working with Judge Berry on a bench card that can serve as a guide for all parties.

Training and Education Workgroup: Judge Barth reported that the workgroup is working on bench cards regarding protective order procedures and considering alternative methods to inform and remind new and existing judges about available and accessible resources. Members agreed that annual domestic violence training should be mandatory for judicial officers to address recurring access to justice issues. Ms. Radwanski will research how CIDVC can accomplish this goal.

Judge Bayardi joined the Training and Education Workgroup, while Deputy Chief Andrew Reinhardt joined the Orders, Enforcement and Access Workgroup.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

None present.

B. Next Committee Meeting Date

Wednesday, September 15, 2015

10:00 a.m. to 2:00 p.m.

State Courts Building, Room 119

1501 W. Washington Street

Phoenix, AZ 85007

The meeting adjourned at 12:01 p.m.