

Commission on Victims in the Courts

Friday, February 25, 2011

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119

Members Present:

Hon. Lex Anderson

Mr. James J. Belanger

Ms. Patricia Bigwood

Mr. Michael Branham

Dr. Kathryn Coffman

Ms. Shelly Corzo

Ms. Sydney Davis

Ms. Karen Duffy (*telephonically*)

Cpt. Larry Farnsworth

Ms. Daisy Flores

Ms. Leslie James

Ms. Keli Luther

Mr. Dan Levey

Hon. Anna Montoya-Paez

Hon. William O'Neil

Ms. Elizabeth Ortiz

Mr. Doug Pilcher

Mr. Paul Prato

Hon. Douglas Rayes

Hon. Ronald Reinstein (*Chair*)

Hon. Antonio Riojas, Jr.

Mr. David Sanders

Hon. Richard Weiss

Members Absent:

None

Presenters/Guests:

Hon. Christopher Whitten

Staff:

Ms. Carol Mitchell

Ms. Kimberly Reid

I. Regular Business

A. Welcome and Opening Remarks

The February 25, 2011 meeting of the Commission on Victims in the Courts (COVIC) was called to order by Chair, Honorable Ronald Reinstein, at 10:07 a.m.

Judge Reinstein made the following announcements:

- The Arizona Crimes Against Women and Children conference will take place on October 6-7, 2011 at the Glendale Conference Center. (Addendum A)
- This will be Ms. Kimberly Reid's last COVIC meeting, as she has accepted a position with the Administrative Office of the Courts' Information Technology Division.
- Mr. Dan Levey announced National Crime Victims' Rights Week scheduled during the week of April 12th and some of the scheduled recognition events.(Addendum B)
- The reappointment process is underway for fourteen members. Members were provided with index cards to provide names of potential candidates that reside outside of Maricopa County.

B. Approval of October 1, 2010 Minutes

Minutes from the October 1, 2010 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the October 1, 2010 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Old Business

A. Children in the Court Workgroup Update

Judge Weiss updated the group about the proposed guidelines that COVIC worked on were officially approved by an administrative order this month. There were many court, legal and administrative representatives who worked on the standards as they passed from COVIC to the Committee on Juvenile Courts. The document entitled "Duties and Responsibilities of Appointed Counsel and Guardians Ad Litem for Child Representation in Dependency Cases" was originally signed in [Administrative Order 2011-16](#) and amended in [Administrative Order 2011-29](#).

Discussion:

Mr. Michael Branham thanked those who worked on this on behalf of the law enforcement community.

B. Victim Identification Protections

Judge Reinstein plans to present the following recommendations at the April Arizona Prosecuting Attorney Advisory Council meeting in effort to bring heightened awareness of victim sensitivity and privacy protections. Prosecutors have the ability to address/prevent the disclosure of victim information, particularly with minor victims in court documents filed by their office. The following bullet points were drafted for commission members to review and approve:

- Utilize initials to identify minor victims in all written pleadings
 - Long form complaints/Information and Indictments
 - Motions/Continuances
 - Appellate briefs
- Utilize initials for all victims of sexual offenses in written pleadings
- Utilize term “minor relative” for incest cases in written pleadings
- Invoke victim rights to privacy in non-trial, court proceedings to protect victim identification
- Instruct law enforcement to use initials for minors in Form 4 probable cause statements
- Future consideration to amend A.R.S. § 13-4434 to exclude minor victims.

MOTION: COVIC supports the recommendations as presented. Motion seconded.

Discussion:

Some concerns were raised about how courts and law enforcement will identify victims if not listed in the charging document. Judge Antonio Riojas, Jr. stated that his limited jurisdiction court receives a separate document with victim information.

The legal representatives on the committee expressed that initials will not be an issue as they have alternate ways of identifying the victim.

This will be a training issue for law enforcement as names and identifying information are typically listed on “Form 4s”. News agencies usually use Form 4s for case information. The law enforcement officers will need to be instructed to only use initials on these forms.

AMENDED MOTION: COVIC supports the recommendations with replacing the term “written pleadings” with court documents, so not to limit the type of public documents that the recommendation encompasses. *Motion seconded and passed unanimously.*

- Utilize initials to identify minor victims in all court documents
 - Long form complaints/Information and Indictments
 - Motions/Continuances
 - Appellate briefs
- Utilize initials for all victims of sexual offenses in court documents
- Utilize term “minor relative” for incest cases in court documents
- Invoke victim rights to privacy in non-trial, court proceedings to protect victim identification
- Instruct law enforcement to use initials for minors in Form 4 probable cause statements

- Future consideration to amend A.R.S. § 13-4434 to exclude minor victims.

ACTION ITEM: A workgroup will be formed to determine how best to proceed with applying these recommendations on a larger scale. The workgroup's recommendation will be discussed at the May 2011 COVIC meeting.

III. New Business

A. Vision 21 Initiative

Judge Reinstein explained that National Crime Victim Law Institute (NCVLI) has four stakeholder groups, each of which has or will be conducting a national meeting to assist in the compilation of a report about the current state of victims' affairs in the United States. Judge Reinstein and Mr. Levey were representing Arizona at the *Role of the Crime Victims Field in Response to Crime and Delinquency* stakeholder conference.

The NCVLI has also published an article about protecting victims from harassment and intimidation by pro se defendants. The Commission discussed that this is mainly a judicial education issue and perhaps it should be included in new judge orientation.

Discussion:

- Ms. Keli Luther would like some consideration given to amending the statute protecting victims in the courtroom to include accommodations for vulnerable adult victims. Ms. Elizabeth Ortiz invited Ms. Luther to conduct a training session for the APAAC prosecutors on victim accommodations.

B. Annual Strategic Planning

Judge Reinstein asked members to give input on strategic planning for the upcoming 2011 commission work year. Carol Mitchell presented a PowerPoint highlighting COVIC's guiding principles and related tasks. The following new recommendations were suggested under each category:

Make recommendations regarding training and education for judges and court personnel on victims' rights and treatment of victims.

- Consider future victim rights/sensitivity training sessions at the 2012 judicial conference and law enforcement academies.

Work to promote the improved collection and disbursement of restitution

- Evaluate any enhancements to the restitution website

- Research uncollected restitution funds being held by clerks' offices and help create a relationship between prosecutors and clerks to locate current addresses for victims.
- Pima has a grant-funded restitution court coordinator.

Make other recommendations that preserve victims; constitutional rights and administration of justice.

- Formal rule to outline victim protections from charging through appeals process

Liaison with other established victims' advocacy organizations while maintaining neutrality.

- Create an email account or website to collect public feedback about victims' issues.
- Invite a guest speaker on "guilty but insane" expert from psychiatric review board.
- Request a presentation about available resources at the Clemency board and proceedings.

C. Legislative Update

Jerry Landau was unable to attend the meeting and the Chair invited comments from members who have knowledge or involvement with pending legislation. Dan Levey shared information on the following bills:

HB2238 proposes to expand the definition of child abuse with a new definition of torture that includes abuse which does not inflict physical injury. The proposed torture definition is, "Intentionally or knowingly causing pain, injury or physical suffering for the purpose of coercion, control or punishment." At this point, it does not look like the legislature will pass this bill.

- Ms. Kathryn Coffman expressed concerns that the current statute only addresses physical abuse when there are many cases of emotional torture of children.
- It was cautioned about the definition due to the unintended consequence of criminalizing activities not intended for torture, such as some athletic coaching activities which result in physical exhaustion.

HB2232 proposes that a criminal restitution order would be completed at the time of sentencing as opposed to at the end of sentence. There is general support of this bill; however, it does not appear to be moving.

HB2404 would require the trial court to order a criminal restitution order at the time the defendant absconds from probation.

HB2302 proposes that domestic violence victims could use a confidential address at the secretary of state's office. All court related documents would be sent to the secretary of state who would then forward the mail to the confidential address. This would keep the victim's address out of court documents and make it harder for the perpetrator to locate the victim.

IV. Workgroup Updates

A. Restitution

Dan Levey did not have any additional update at this time, as he discussed the current status of some restitution-related legislation.

B. Administration of Justice

The workgroup Chair will plan to reconvene the group to discuss various topics.

Next Meeting:

May 20, 2011
10:00 a.m.
State Courts Building
Phoenix, AZ 85007
Conference Room 119

C. Call to the Public

Captain Larry Farnsworth will be sending out a statewide survey to law enforcement agencies about the service of protective orders. If you would like to see the questions or would like to propose a question for the survey, please see Cpt. Farnsworth after the meeting.

D. Adjournment

The meeting adjourned at 12:10 p.m.

Commission on Victims in the Courts

Friday, May 20, 2011

Final - 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
Dr. Kathryn Coffman
Ms. Shelly Corzo
Ms. Karen Duffy
Cpt. Larry Farnsworth
Ms. Leslie James
Mr. Dan Levey
Hon. Evelyn Marez
Ms. Pam Moreton
Ms. Elizabeth Ortiz
Mr. Doug Pilcher
Mr. David Sanders
Hon. Richard Weiss
Ms. Daisy Flores (*telephonically*)
Hon. Antonio Riojas, Jr. (*telephonically*)
Hon. Warren Granville
(*Hon. Douglas Rayes proxy*)

Presenters/Guests:

Mr. Patrick Scott
Mr. Jerry Landau

Staff:

Ms. Carol Mitchell
Ms. Jerri Medina

Members Absent:


Mr. Michael Branham
Hon. Peter Cahill
Ms. Sydney Davis
Ms. JoAnn Del Colle
Hon. Elizabeth Finn
Ms. Keli Luther
Hon. Anna Montoya-Paez
Hon. William O'Neil


I. Regular Business

A. Welcome and Opening Remarks

The May 20, 2011 meeting of the Commission on Victims in the Courts (COVIC) was called to order by Chair, Honorable Ronald Reinstein, at 10:07 a.m.

Judge Reinstein made the following announcements:

 Welcomed new members and presented re-appointed members with letters from Chief Justice.

 COVIC Member, Leslie James announced that her sister's murderers' conviction was recently upheld by the Supreme Court. She acknowledged the judges in her trial case and victim notification systems. This was a cold case that DNA evidence provided the key to conviction.

B. Supreme Court decision:

Judge Reinstein provided the Supreme Court summary that addressed victims' rights during an ex parte hearing. Judge Granville, from Maricopa County Supreme Court provided background information regarding the mitigation process and resulting decision. This decision had good language in it for victims' rights.

Morehart/Duffy v. Barton -The full opinion at:

<http://www.azcourts.gov/Portals/23/pdf2011/CV100327PR.pdf>

C. Approval of February 11, 2011 Minutes

Minutes from the February 11, 2011 Commission on Victims in the Courts meeting were presented for approval.

MOTION: To approve the February 11, 2010 Commission on Victims in the Courts minutes as presented. *Motion seconded and passed unanimously.*

II. Old Business

A. APAAC/ Victim Identification Update

Elizabeth Ortiz explained that the Arizona Prosecuting Attorneys' Advisory Council (APAAC) is comprised of the Attorney General, the fifteen elected County Attorneys, several Chief City Court Prosecutors, the Administrative Director of the Arizona Supreme Court, and the Dean of the Sandra Day O'Connor School of Law. Judge Reinstein spoke at the APAAC meeting on April 1, 2011, regarding COVIC's victim identification protection recommendations. The APAAC members were very receptive to the information presented by Judge Reinstein, and instructed their Executive Director to work with various Council representatives to develop a "best practices" recommendation regarding how pleadings and other legal documents can be modified to protect victims' identities by utilizing initials. The best practices recommendation will be presented to the APAAC Council at its August 2, 2011, meeting.

III. New Business

A. APAAC/ Victim notification and self-surrender

Patrick Scott from AOC presented a question and concern that he received through the "Court Answer Line" (where anyone in the court system can ask a question and we will find the answer). A person came into Justice Court on an arrest warrant for failure to appear and sought to have the warrant cleared up. The court heard the matter and set release conditions without contacting the victim.

How do various courts and law enforcement currently process a self-surrendering defendant and victim notification? What are the best practices and standards across the state?

Discussion:

- Persons who self-surrender should go specifically to law enforcement which would give time for the notification process to happen. When a self-surrender goes to the jail, they will call the prosecutor and then process through the system. Superior Court will get notices to quash a warrant. Once they have been booked into the jail, then the process of victim notification would happen.
- All committee members encouraged self-surrender in order to move cases forward within the court system. In one county alone, they currently pay approximately \$8,000,000 a year in jail board costs. With 3,000-4,000 people self-surrender a year, it's a big savings on \$200 a day in jail board costs.
- Give notice to all parties involved at "next" court event instead of an immediate decision on the day of surrender. It is important that Judges know that there is a victim in this case that needs notification. One Court puts a "code" on the bond amount that would identify that victim notification is needed. Judge can have a release discussion and give victim a chance to speak and with the possibility of modifying release.

Hon. Antonio Riojas, chair of the Limited Jurisdiction Court Committee (LJC) will bring this to the attention of LJC to develop recommendations at their August 31, 2011 meeting.

B. Psychiatric Review Board Information regarding victim notification

Judge Reinstein announced that Ms. Sydney Vivian, Executive Director for the Psychiatric Security Review Board plans to share information for procedures at the Psychiatric Review Board, at our September committee meeting. Judge Reinstein asked the committee if they had any questions in regards to "guilty, except insane" verdict and how crime victims are involved and/or notified as defendants proceed

through this type of sentence, to please send this information to Carol Mitchell. The following questions were presented:

- What triggers notification to victim when defendant is conditionally released when found guilty, except insane? What makes them eligible to go back into the community?
- Does the Review board have control over individuals that go to AZ State Hospital while in custody situations? Go from hospital to prison would they then be under civil commitment?
- Do we still have anyone whom might be considered temporarily insane and ok to be release? Since AZ law was changed to guilty, except insane we have seen no challenge to law. Guilty except insane, board reviews cases and eligibility to be released into the prison system.

C. Legislative Update

Jerry Landau, Director of Government Affairs shared an update from this legislative session:

- Ch 33 – Budget reconciliation bill, Arizona Department of Corrections (ADC)/County Jail. The ADC will transfer those sentenced to 1 year or less or aggravated DUI to the county jail, this will take effect 7/1/12. Below is a list of questions that have been raised:
 - Who has control of inmate – County Sherriff or ADC? Who is responsible for the notice to victims?
 - If there's a violation of conditions, what happens at that time?
- Ch 58 - Sexual conduct with a minor is a class 2 Felony if the offender was related, a teacher, or clergyman/priest.
- Ch 58 - \$500 fee imposed on a person who is convicted of Dangerous Crimes against Children (DCAC) or Sexual Assault. This becomes effective January 1, 2012.
 - Assessment cannot be waived and is not subject to surcharge.
 - Money collected is used for the cost of medical expenses needed in the investigation of DCAC or Sexual Assault crime.
 - Forensic interview and medical expenses in order to secure evidence shall be paid by the county in which the offense occurred.
- Ch 173 - Major project out of the Secretary of State (SOS) (based on a Colorado law) to establish a protected persons of database giving victims a separate address kept on file at the SOS offices. Voter registration & confidentiality to prohibit general public from accessing the address, telephone number and voting precinct number contained within information.

- Address Confidentiality Program (ACP) must be setup by December 31, 2012, the SOS has worked and will continue to work with the courts. \$50 assessment added on stalking, domestic violence and harassment cases in order to start the funding on this program, effective January 1, 2012.
- ☐ Ch 263 – Courts now retain jurisdiction and enters criminal restitution order if defendant absconds from probation.
- ☐ Ch 296 - \$50 assessment added for family offenses goes toward the domestic violence shelter fund. This is not subject to any additional surcharge.
- ☐ Ch 351 – Juvenile DNA testing requirements (technical change)
 - If a juvenile is charged with one of the enumerated offenses and is required to appear at an advisory hearing the investigating law enforcement agency must obtain a DNA sample for submission to the Department of Public Safety. It does not change the law, but brings the process more in line with current practice.
- ☐ A COVIC member indicated collections of DNA samples are way down around the state, which directly impacts cold cases and victims. DNA related surcharge is
 - Reduced by 1% effective January 1, 2012. Concerns were expressed that the lack of funding will reduce DNA samples being taken.
 - Some probation departments are committing funds to continuing collections.
- ☐ Ch 99 – (SB1212) May have unintended logistical consequences for restitution where it worked for the Clerk of the Court to collect on restitution payments using the same CR number and the defendant.

D. Restitution/ Financial Recovery Project

Judge Reinstein addressed an inquiry to Jerry Landau about whether Arizona can create a restitution project based on a federal program. The Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Texas utilizes their civil division to aggressively go after collection and execution of judgments on behalf of victims. They maximize restitution to victims by going after 401K plans, insurance proceeds, annuities, etc.

- ☐ Is this under the mandatory Restitution Act (federal act) or is it something that can be done here?
- ☐ Are there any impediments in the Arizona law?
- ☐ Can it be done here for County Attorneys or the Attorney General's office to assist victims in getting their restitution civilly once they are off probation or out of prison? Currently, what are our statutes? Jerry will speak with county attorneys.

Discussion:

- FO
ST Mr. Dan Levey will talk to APAAC if available resources to research this also.
- FO
ST Jim Belanger suggested county attorneys and/or courts should create an RFP to bid to collect restitution as a means to get money on behalf of victims.
- FO
ST Jerry Landau commented that he has continued to encourage federal delegation to support interception of federal tax returns for restitution.
- FO
ST David Sanders shared that in Pima County, if a defendant goes into arrears on restitution (60 days without any kind of payment) the county will assess a penalty of 28% on the amount still due. This has been very effective along with a Collections department. It's believed the Board of Supervisors provided probation the authority to asses this fee.
- FO
ST Collections office within the Maricopa County Clerk's office that collects millions each year in fines, fees and restitutions.

IV. Workgroup Updates

A. Restitution Workgroup

The workgroup provided sample letters as part of a plan to develop written procedures to assist victims in filing documents related to restitution liens. Since more changes are expected, the final versions will be presented at the next meeting. The workgroup update concluded.

Dr. Cathy Coffman brought up an issue that could be addressed by both COVIC and the Committee on the Impact of Domestic Violence in the Courts (CIDVIC). When reviewing child fatality cases, it wasn't a clear if information regarding DV was being share with the court during custody proceedings. This issue may be referred to Kay Radwanski, Judge Finn and Judge O'Neil because of their expertise with domestic violence cases.

V. Call to the Public

Captain Larry Farnsworth talked about the statewide survey sent out to law enforcement agencies regarding service of protective orders. Maricopa Sheriff's Office is going to start taking orders of protection from JP, Municipal or Superior Court on the service of orders of protection via fax. Service of OP's will also be served in the jails. This service is in effort to make it easier for victims and they hope it will become a "best practice". If you would like to see the questions or would like a copy of the survey, please see Cpt. Farnsworth after the meeting.

VI. Adjournment

MOTION: To adjourn presented. *Motion seconded and passed unanimously.* The meeting adjourned at 12:02 p.m.

Commission on Victims in the Courts

Friday, September 30, 2011

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
Ms. Shelly Corzo
Ms. Sydney Davis
Ms. JoAnn Del Colle (telephonically)
Ms. Karen Duffy
Hon. Elizabeth Finn
Ms. Leslie James (telephonically)
Mr. Dan Levey
Ms. Keli Luther
Hon. Anna Montoya-Paez (telephonically)
Ms. Pam Moreton
Ms. Elizabeth Ortiz
Mr. Douglas Rayes
Hon. Antonio Riojas, Jr
Mr. David Sanders
Hon. Richard Weiss

Members Absent:

Hon. Peter Cahill
Dr. Kathryn Coffman
Cpt. Larry Farnsworth
Ms. Daisy Flores
Hon. Evelyn Marez
Hon. William O'Neil
Mr. Doug Pilcher

Staff:

Ms. Carol Mitchell
Ms. Jerri Medina

Presenters/Guests:

Ms. Sydney Vivian, PSRB
Mr. Duane Belcher, Board of Executive Clemency
Ms. Kim MacEachern, APAAC
Mr. Michael Durham – Lobbyist
Ms. Tammy Wray, Maricopa Public Defender's Office
Ms. Jennifer Greene, AOC Asst. Counsel

I. Regular Business

A. Welcome and Opening Remarks

The September 30, 2011 meeting of the Commission on Victims in the Courts (COVIC) was called to order by Chair, Honorable Ronald Reinstein, at 10:03 a.m.

B. Approval of May 20, 2011 Minutes


Minutes from the May 20, 2011 Commission on Victims in the Courts meeting were presented for approval.


MOTION: To approve the May 20, 2010 Commission on Victims in the Courts minutes as presented. Motion seconded and passed unanimously.

C. Approval of 2012 Meeting Dates

Meeting dates for 2012, Commission on Victims in the Courts meetings were presented for approval.

 January 20, 2012

 May 11, 2012

 September 14, 2012

MOTION: To approve the 2012 Commission on Victims in the Courts meeting dates as presented. Motion seconded and passed unanimously.

II. Announcements

New Judge Orientation

Judge Reinstein thanked Keli Luther & Mike Piccarreta, Criminal Defense Attorney in Tucson for their presentation on victim issues and the law. Shelly Corzo also presented her experience as a crime victim and her impact statement at sentencing and was greatly praised by the judges.

Clerks Association Meeting

The Clerks may be moving forward with a new legislative change regarding the definition of a victim in order to prioritize restitution payments to an individual private citizen victim before business entity victim and which restitution case payments will be paid first, i.e. current active cases vs. older cases.

International Judicial Academy Program in the Hague

Judge Reinstein recently returned from a conference held in the Netherlands. He was amazed at the level of victim participation in the criminal tribunals of Yugoslavia, Rwanda, Sierra Leon and Lebanon, as well as the International Criminal Court. In all these courts, victims have “almost” become a party to the process with the ability of victim attorneys to examine and cross-examine witnesses. Victims can also do opening statements, and closing arguments, allowing for full victim participation.

III. Presentations

A. Psychiatric Security Review Board Information (PSRB)

Ms. Sydney Vivian has been with the PSRB since 1994. The Board is comprised of five board members: 1) Psychiatrist, 2) Psychologist, 3) Psychiatrist or a Psychologist, 4) lay member and 5) an individual experienced in Parole and Probation. The Board meets monthly and members have a term of four years, with most of the current board members having at least two terms of experience.

Handouts

- 1) Summary of PSRB population
- 2) AZ Statutes for PSRB

Victim information is provided by the county attorney's office and victims are notified by mail with a form to opt in to receive notification of all hearings, once an individual enters the Arizona State hospital. Notification continues unless victims opt out.

PSRB held a meeting and seminar with victim advocacy groups, which has helped broaden the victim advocate knowledge base and understanding of the PSRB role.

Ms. Vivian provided an overview of PSRB's role with victims and victim advocacy groups and the procedures when putting an individual back into the community:

When an individual is sentenced to the jurisdiction of the PSRB, they are first placed in the hospital for an evaluation and are entitled to a hearing after 120 days; however it usually takes approximately one year for the evaluation process. Most hearings occur after the evaluation; however, the hospital can recommend a hearing at any time. After the hearing the hospital usually recommends a two-fold process:

1. Condition of release from the hospital, with a graduated pass formula. A recommendation of release with a supervised person such as a staff member of the hospital; later, release with family members, and then finally out on their own.
2. Once they have successfully completed the prior steps and the condition of release; the hospital will re-evaluate the individual and recommend a new condition of release. Conditions of release greatly depend on the patient and the crime.

Once the individuals are placed in the community they will have 30 days report to PSRB and the hospital. Individuals are followed by PSRB closely, for example: if they have moved and failed to notify PSRB; then PSRB will revoke their release. The Board is very strict on conditions of release.

Once out in the community for awhile, PSRB will hold hearings for an amendment to their condition of release. Victims are notified of all hearings, prior to their term expiring and the expected final hearing date.

If the individual needs to be civilly committed, PSRB will send a recommendation to the county attorney requesting civil commitment. The victim receives notice that the individual's term has expired and this concludes the process with PSRB.

Questions and discussion from the COVIC board members:

Is the term based on the classification and what the presumptive sentence is of that particular crime? If an individual is sentenced to the State Hospital due to being found guilty except insane; the Psychiatric Security Review Board maintains jurisdiction for the presumptive sentence and that does not include priors.

The law changed in 2004 and became effective in 2007, regarding these types of individuals that were still considered dangerous to others. Recently, more minute entries indicate, if an individual is no longer SMI (Seriously Mental Ill), they are to finish out their term by returning to the Department Of Corrections. PSRB transferred the first individual to DOC in July 2011 since this law went into effect.

Is there a notification to the victim on a weekend pass? As long as the individual is in the hospital the victim will receive all notifications on all passes including 3-hour, weekends and long-term passes.

Can the judge only impose a presumptive sentence if the individual is found guilty except insane? Yes, except if it's a life sentence. Also, judges do not have to give individuals pre-sentence incarceration credit for the hospital stay.

Does the Board determine the finding of incompetence? No, most individuals will go into the hospital for a 75-day evaluation and the submission for finding will be sent to the judge. A conviction occurs by either jury trial or a submission which is tantamount to plea, or through mental health records. The judge makes the finding that they are guilty except insane.

Is there a written statute for written notice to a victim? If shorter than five days, the victims are called directly. Written notice is provided for hearings within 20 days.

Keli Luther expressed her appreciation for the information and was glad to hear that notification is getting better because about 8 years ago there were problems with lack of notification and supervision on some of the field trips.

Ms. Vivian remarked that recently, hospitals have clamped down on passes, especially self-passes. However, some patients have done well and have functioned to the point of holding a job for several years.

B. Board of Executive Clemency and Victim Rights

Mr. Duane Belcher, Executive Director of the Board of Executive Clemency has been with the board since 1992, and has chaired the board since 1996. Mr. Belcher provided two handouts:

- 1) History of the Board of Executive Clemency
- 2) 403 Clemency and commutation and reapplication

He explained the Board of Executive Clemency still functions as the Board of Pardons and Paroles for those offenders who committed crimes prior to January 1, 1994 and pointed out that a revised criminal code was instituted after 1994, known as "Truth in Sentencing".

General Parole is a conditional release, after the person has served the required amount of time by statute and they're certified eligible for Parole. The Parole Board holds a hearing to decide on the appropriateness of the candidate to receive parole. Notification to a victim is a 15-day notice by statute. Under the "old code – pre 1994", once an individual comes up on the 25 year mark of their sentence they will be eligible for a parole hearing every 6 months in which the victim will be noticed every time for the remainder of the individuals life in prison.

For persons sentenced between Jan '84 to Jan '94, under §41-1604.06(G), when a victim gives their impact statement at the Clemency Board hearings they can petition to change the defendant's period of parole hearings from every 6 months to up to 12 months. This allows the board to hear directly from the victim and if granted, the hearing schedule changes would be an internal board procedure.

There is also a mechanism in place where the convicted person can apply for a commutation of sentence, if they were sentenced after 1/1/1994. Two years after imprisonment if a person is "statutorily eligible", they can apply for executive clemency called a Commutation of Sentence. Currently, a backlog of over 900 clemency applications exists, due to reduced hearing schedule as a result of budget cuts.

A.R.S. §13-603(L) opens the door for an offender to apply for some kind of commutation of sentence. The 603(L) provision allows a judge to enter a special order at the time of sentencing when the judge finds that the mandated sentence is "clearly excessive". The convicted person would be able to ask for a lesser sentence within 90 days of entry into DOC. This is a tool for all judges to use to reduce the sentence. However, it still must go through clemency process with the Board and the Governor on the basis of merit.

Are the victims noticed in 603(L) cases? Are they allowed to be heard on the issue before the clemency board and do they understand why and what the process is for? 603(L) recommendation is done by the judge at time of the sentencing. The County Attorney's Office and victims are notified of the court proceedings and victims can be heard.

403 handout about clemency and commutation and reapplication. If a person is eligible, the sentence imposed by the court can be changed. Example: a person receives 25 years; once served 80% of the sentence is served, an application for clemency, called Commutation of Sentence, is available.

Post 1994 1st degree murder when it said, "sentence serving life is no less than 25 years and be eligible for release". They didn't define the word "release".

There has been a case recently where a defendant was allowed a new hearing based on the word "parole", used in his sentencing. However, when "Truth in Sentencing" went into effect and this eliminated parole altogether. We still have seen mention in minute entries and plea agreements "eligible for parole". The only mechanism to provide a shorter sentence is a commutation of sentence.

Would the Board consider any recommendations from a judge stating that this person should never be released? Yes, the board does receive those recommendations and does take it into serious consideration when recommending release. Victims can also give statements that can influence the release of a defendant. In some cases, advocating to the board for clemency (example of brothers, 1 was killed in accident).

What do we propose as a remedy to relief? The recommendation to inform judges, prosecutors and attorney's with a need to understand the law in regards to the elimination of parole. In the past the parole has been interchanged with commutation even though the law is not the same. There may be a need to recommend legislative changes to clarify the difference.

Is there a period of when a defendant waives their right to a parole hearing, they can reverse their cancelation? An individual has to waive or accept every hearing and it sometimes occurs on the hearing date.

C. Guilty Pleas/ Factual Basis

This item was not discussed.

D. Connecting the Dots/ DV/ Child Welfare

ASU sponsored a conference with the O'Conner House regarding domestic violence and child welfare or child maltreatment cases. Victim issues are clear in DV cases because victims are defined in criminal code. But in abuse and neglect cases, the children are victims also but are not necessarily defined in the criminal code. A contradictory issue exists between the abuse and neglect side where the policy is of family reunification, whereas the policy of the DV side is to protect the safety of the victim and children.

The child protective system does not have batterer intervention systems. When Child Protective Services (CPS) removes a child, it may re-victimize the child by removing them from the home or safety of one parent into an unknown environment.

Concern was also expressed by Judge Finn because of an increased number of women seeking protective orders in limited jurisdiction courts as a result of a CPS requirement. Victims bring in a checklist from CPS to obtain an order of protection so they can get their kids back. The O'Connor House is in the forefront of this issue and they should be able to set up a "best practices" going forward.

COVIC does not plan to take any action at this point, as the Committee on the Impact of Domestic Violence (CIDVC) and the O'Conner House may be best suited to address these issues.

IV. Old Business

A. APAAC/ Victim Identification Update -

COVIC dealt with the privacy issue of child victim identification in appellate court opinions over a year ago which became the impetus of additional work and recommendations to improve victim privacy. After Judge Reinstein presented COVIC's recommendation to APAAC, the group drafted the attached proposed guidance.

APAAC representatives Elizabeth Ortiz and Kim MacEachern shared that APAAC did consider the recommendation at a previous meeting and plans to adopt at their next meeting. Once voted on and approved, it will become an official guidance document of APAAC and will be distributed to the various prosecutorial offices. APAAC's legislative policy committee is looking into the idea of pursuing a statutory change to mandate these procedures instead of being a "guidance" document only. However, they will wait to see the outcome of the next item on the agenda.

V. New Business

A. Victim ID Protection Draft Rule Petition

Jennifer Greene, AOC legal counsel helped draft the rule petition on behalf of COVIC's previous recommendation. Some courts are currently using victim initials, but an actual policy does not exist. This proposal limits the use of initials in place of victim's names for all victims of sexual offenses and all minor victims in all case types. The process for the rule petition is that it will be vetted through other Supreme Court committees and submitted to the Arizona Judicial Council for approval to file by January 2012. Once filed, the petition would be open for public comments from other stakeholders.

Jim Belanger raised a concern about determining identification several years later if only initials are used in the court records. He had a scenario where he used records from 1978 to identify a victim who had later become a defendant in a capital murder case. His position is that there is a need to have some kind of mechanism that allows for retrieval of identifying information 10 to 20 years later. There needs to be some other system to be able to retrieve that information in a sealed file.

Keli Luther suggested that research should be done analyzing federal, juvenile and probation cases, where initials have been used for years. The name could be cross

referenced to find these files or through grand jury proceedings. There are other mechanisms, but its best left up to the victim to decide.

MOTION: To approve the proposed rule forward for further discussion as presented. Motion seconded and passed unanimously.

The chair recommended this petition be sent through the committee process and then once it clears this process, we may implement a work group.

VI. Workgroup Updates

A. Restitution Workgroup – Approve restitution letters for web

Dan Levey explained the handouts provide information to victims for filing and releasing restitution liens and suggests these instructions go on the website. Dan also noted that the Gila County Attorney’s Office (per Daisy Flores) will start filing restitution liens on behalf of the victims, at the time of sentencing, for all felony cases and certain misdemeanors.

MOTION: To approve posting instructions for restitution forms on how to file and release restitution liens on the Commission on Victims in the Courts Restitution website. Motion seconded and passed unanimously.

VII. Call to the Public

Mike Durham is a registered lobbyist and gave a presentation on behalf of cold case victims. He has worked on the AG’s Cold Case task force with Dan Levey and was also involved in the evidence retention preservation statute that resulted in legislation.

Mike contacted COVIC to speak on behalf of cold cases with the purpose of his testimony to make an appeal to COVIC and to assert the rights of cold case victims as defined by the AZ Constitution. His opinion was that courts should have influence over law enforcement’s procedures in actively pursuing cold cases.

Discussion:

Judge Reinstein indicated that due to the nature of cold cases, where a case has not been filed in the courts, the courts do not have any jurisdiction.

VIII. Adjournment

MOTION: To adjourn presented. Motion seconded and passed unanimously. The meeting adjourned at 12:12 p.m.