

**Arizona Supreme Court
Commission on Victims in the Courts**

March 3, 2017 Meeting Agenda

1501 W. Washington St., Phoenix, Arizona, 85007
State Courts Building, Conference Room 345A/B

(602) 452-3288 or (520) 388-4330 / Access Code:

<https://arizonacourts.webex.com/arizonacourts/j.php?MTID=md6d62dcf7d2864a49ca3d1121f3a5604>

10:00 a.m. – 12:00 p.m.

-
- | | | |
|---------------|--|---|
| 5 min | Call to Order / Welcome / Introductions / Announcements | Judge Ronald Reinstein, Chair |
| | Approval of Minutes – October 21, 2016** | Judge Ronald Reinstein, Chair |
| 10 min | Taskforce on Court Management of Digital Evidence Update | Judge Samuel Thumma, Chair |
| 15 min | Legislative Overview | Amy Love, AOC Staff |
| 20 min | Arizona Attorney General’s Office of Victims Services (OVS) Compliance Program | Kirstin Flores, OVS Director;
Colette Chapman, Victims’ Rights Compliance Administrator;
Judge Ronald Reinstein |
| 15 min | APAAC Lethality Assessment Working Group** | Amelia Cramer (PCAO);
Jon Eliason (MCAO) |
| 10 min | Taskforce on Fair Justice For All Update | Judge Ronald Reinstein, Chair |
| 10 min | SAFER Grant Updates | Jim Markey, SAFER member |
| 10 min | Governor’s Sexual Assault Evidence Collection Kit Taskforce Report | Colleen Clase |
| 15 min | Criminal Rules Taskforce** | Judge Joseph Welty, Chair;
Mark Meltzer, AOC Staff |
| 5 min | Caselaw Update & New Trends | Judge Ronald Reinstein, Chair |
| 5 min | Announcements / Call to the Public / Adjournment | Judge Ronald Reinstein, Chair |

****Important Voting Items**

Next Meeting:

Friday, June 9, 2017

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

Arizona State Courts Building, Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Lynn Golden at (602) 452-3195. Requests should be made as early as possible to allow time to arrange for the accommodation.

Arizona Supreme Court
Commission on Victims in the Courts
October 21, 2016
10:00 a.m. to 12:00 p.m.
State Courts Building
1501 W. Washington, Phoenix, AZ 85007
Conference Room 345 A/B

Present: Judge Ronald Reinstein (ret.); Mr. Timothy J. Agan; Mr. Michael Breeze; Ms. Colleen Case; Ms. Amelia Craig Cramer (Proxy for Elizabeth Ortiz); Ms. Sydney Davis; Judge Elizabeth Finn; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Ms. Christine Kelly; Captain John Leavitt; Mr. Dan Levey; Judge Evelyn Marez; Chief Rod McKone; Ms. Jane Nicoletti-Jones; Ms. Debra Olsen; Mr. William Owsley; Ms. Karyn Rasile and Mr. Randall Udelman (Proxy for Judge Richard Weiss)

Telephonic: Judge Maria Elena Cruz; Judge Sam Myers

Absent/Excused: Ms. Shelly Corzo Shaffer; Ms. Keli Luther; Sgt. Jim Markey (Ret.); Ms. Laura Penny; Judge Sarah (Sally) Simmons; Ms. Leesa Berens Weisz

Presenters/Guests: Ms. Amy Bocks; Ms. Susie Checkett; Ms. Shawn Cox; Ms. Amelia Craig Cramer; Mr. Jon Eliason; Ms. Kelsey Frazier; Mr. Tom O'Connell; Ms. Susan Pickard; Ms. Alex Rucker; Ms. Kathy Sekardi; Judge Roland Steinle (ret.); Mr. Randall Udelman, Ms. Emily Gennar; Alexandra Rucker; Ms. Kim Knox

Administrative Office of the Courts: Ms. Lynn Golden; Ms. Denise Lundin

I. REGULAR BUSINESS

i. Welcome and Opening Remarks

The October 21, 2016 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:00 a.m. The Chair welcomed the attendees and asked for Commission member roll call and introductions of staff and guests.

ii. Approval of the June 10, 2016 Minutes

The draft minutes from the June 10, 2016 meet were presented for approval. The chair called for any omissions or corrections to the minutes.

Motion was made by Judge Elizabeth Finn to approve the June 10, 2016 meeting minutes. Seconded by Mr. Michael Breeze. Motion passed unanimously.

II. PRESENTATIONS

i. Restitution Workgroup Report

The Chair introduced Ms. Kirstin Flores, COVIC Member and Restitution Workgroup Chair. Ms. Flores stated that at the last COVIC Meeting in June, The Chair reinstated the Restitution Workgroup. The group consisted of 20 members who met four times since the June Meeting. At each four-hour meeting there was an aggressive agenda, a committed membership, and they accomplished a lot of impressive work. The general goal of the workgroup was to address restitution issues and ascertain best practices statewide. Staff at the Attorney General's office has encountered real problems in the system, and they hoped this workgroup could address those areas. The underlying thought was to provide clarification to victims. The workgroup narrowed their levels of priority to 1) reviewing and updating legislation, 2) the content and forms on the AOC Restitution Webpage, 3) Restitution Court, which the group addressed at the same time the recommendations of the Taskforce on Fair Justice for All came out, and 4) the Victim Locate Project, which was brought to the group's attention by the Maricopa County Clerk of the Court's office. A subject matter expert from each of these areas presented the workgroup's recommendations and rationale for those recommendations.

Before workgroup member Mr. Randall Udelman began his presentation regarding proposed legislative changes, the Chair stated that the court's legislative package was due in August. However, if the Attorney General's office wanted to advance any of the statutes, they could be presented to the Arizona Judicial Council at its December Meeting. There also has to be a determination by AOC Legal Staff as the court can't engage in advocacy, but it can engage in activities that improve the court system.

Mr. Udelman shared proposed legislative changes to some of the issues the workgroup noted in connection with assisting crime victims in receiving restitution. Mr. Udelman listed the following statutes that were reviewed, revised, and are being brought before COVIC for consideration. (For purposes of clarity, the statute is listed, the section in question is cited, and the rationale behind revision is stated).

ARS § 8-383. Implementation of rights and duties

- A. Except as provided in sections 8-385 and 8-386, the rights and duties that are established by this article arise on the arrest or formal charging of a juvenile who is alleged to be responsible for a delinquent act against a victim. The rights and duties continue to be enforceable pursuant to this article until the final disposition of the charges, including acquittal or dismissal of the charges, all post-adjudication release, review and appellate proceedings and

the discharge of all proceedings related to restitution. If a delinquent is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a judgment is entered in favor of the victim pursuant to section 8-344.

ARSS 13-4402. Implementation of rights and duties

- A. Except as provided in sections 13-4404 and 13-4405, the rights and duties that are established by this chapter arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this chapter until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable by the superior court until restitution is paid or ~~criminal restitution order is entered in favor of the victim pursuant to section 13-805...~~

Rationale: Confirms that the court retains jurisdiction until the victim receives restitution in full.

ARSS 8-344. Restitution payments

- D. The juvenile court shall retain jurisdiction of the case after the juvenile attains eighteen years of age for the purpose of ordering, modifying, and enforcing the manner in which court-ordered payments are to be made. After a juvenile attains eighteen years of age, the juvenile court shall enter the following...

ARSS 13-805. Jurisdiction

- A. The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing ~~the manner in which~~ court-ordered payments ~~are made~~ until paid in full or until the defendant's sentence expires.
- C. C.3. For limited jurisdiction courts, a criminal restitution order shall be entered within one year of the date of the original restitution order.
- F. All monies paid pursuant to a criminal restitution order entered by the ~~superior~~ court shall be paid to the clerk of the ~~superior~~ court.

Rationale: Confirms that the court retains jurisdiction until victim receives restitution in full.

A commission member mentioned that in her court, criminal restitution orders are not issued until the original date of expiration of probation has expired, and there have been at least six warrants issued for failure to pay. The commission member expressed concern that the proposed revisions would cause increased work, storage of files, and maintenance of records for Limited Jurisdiction courts. Glendale CROs that are issued take money out of the system for the victim and prevent the case to ever go to warrant again. The CRO is then sent to the victim. Double payments (from the insurance company for the defendant and then an additional payment to the victim through the court) have occurred. The commission member felt that eliminating the CRO will be difficult, especially with payments being collected by FARE.

Mr. Udelman stated that the statutory changes the workgroup is recommending are simply harmonizing with what Arizona case law currently states. The workgroup seeks consistency across the courts.

ARSS 13-806. Restitution lien

- A. The state or any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien. A filing fee or any other charge is not required for filing or recording a restitution lien.
- C. A restitution lien may be filed by:
 - 1. A prosecutor in a criminal proceeding in which there was an economic loss after the filing of a misdemeanor complaint or felony information or indictment. ~~At the time of arraignment, t~~ The Prosecutor shall give the defendant notice of any restitution lien filed.
 - 2. A victim in a criminal proceeding who suffers an economic loss may file a request with the court for a restitution lien after the filing of a misdemeanor complaint or felony information or indictment. The prosecutor shall give the defendant notice of any restitution lien filed by a crime victim, after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.
 - 3. The court shall order that any restitution liens which have been filed or perfected be released if a defendant is acquitted or the state elects not to proceed forward with prosecution in any criminal proceeding.

Rationale: Provides victims with a tool for enforcement of their constitutionally protected right to receive prompt restitution.

A commission member asked what if the victim files a restitution lien and the prosecutor is unaware - how would the prosecutor know to give that notice to the defense? Mr. Udelman stated the court has to order the Restitution Lien, and then set a hearing or give notice to all parties, including the defendant. The

commission member asked why the responsibility fell to the prosecutors in lieu of the victim or the court supplying the notice. Mr. Udelman stated it's the same obligation the prosecutor has in C.1, so the obligation should be consistent. Further discussion may be warranted as to this potential change.

ARS§ 13-810. Consequences of nonpayment of fines, fees, restitution or incarceration costs

- C. In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, the court on receipt of a petition and issuance of an order to show cause has jurisdiction to preserve rights over all restitution liens entered pursuant to 13-806(B) and perfected pursuant to 13-806(D).
- ~~C~~ D. At any hearing on the order to show cause, the court, the prosecuting attorney or a person entitled to restitution may examine the defendant under oath concerning the defendant's financial condition, employment and assets or on any other matter relating to the defendant's ability to pay restitution.
- ~~D~~ E. If the court finds that the defendant has willfully failed to pay a fine, a fee, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may do one of the following:
 - ~~E~~ F. If the court finds that the default is not willful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including...
 - ~~F~~ G. If a fine, a fee, restitution or incarceration costs are imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay them from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A or B of this section.
- H. WHEN THE COURT IMPOSES A FINE, A FEE, RESTITUTION OR INCARCERATION COSTS UNDER THIS SECTION, ON REQUEST AND AT NO COST TO THE REQUESTING PARTY, THE CLERK OF THAT COURT SHALL MAKE THE DEFENDANT'S PAYMENT HISTORY AVAILABLE TO THE PROSECUTOR, THE VICTIM, AND THE SENTENCING COURT.

Rationale: Provides an enforcement tool for seeking to obtain money/property subject to a valid and perfected restitution lien without court approval. Confirms victims can receive payment history from the clerk of the court at no cost.

ARS§ 31-412. Criteria for release on parole; release; custody of parolee; definition

- E Payment of restitution by the prisoner in accordance with subsection D of this section shall be made through the clerk of the superior court in the county in which the prisoner was sentenced for the offense for which the prisoner has been imprisoned in the same manner as restitution is paid as a condition of probation. The clerk of the superior court shall report to the board monthly whether or not restitution has been paid for that month by the prisoner. THE CLERK OF THE SUPERIOR COURT SHALL AT NO COST MAKE THE PRISONER'S PAYMENT HISTORY AVAILABLE TO THE BOARD, THE DEPARTMENT AND VICTIMS.

The Chair commented that in ARS§ 13-810.H it calls for “on request,” but it does not state this in ARS§ 31-412. How often does the Clerk have to fulfill this request? Mr. Udelman’s responded, and Ms. Chris Kelly verified, that these changes were recommended by the Arizona Association of Superior Court Clerks as current procedure is not being done on a regular basis, it will be done “on request” from this point forward. Both statutes should read that way.

ARS§ 22-116. Funds in possession of justice of the peace; deposit with county treasurer; payment to claimants; disposition of unclaimed funds.

- C. The treasurer shall deposit monies from unclaimed victim restitution payments in the victim compensation and assistance fund established by section 41-2407 for the purpose of establishing, maintaining and supporting programs that compensate and assist victims of crime.

Rationale: Confirms victims can receive payment history from the clerk of the court at no cost. Redirects unclaimed victim restitution payments to victim compensation programs. Comports with superior court procedure.

ARS§ 13-105.16 Economic Loss

Mr. Udelman brought up the subject of an additional statute the Workgroup had discussed, which was not included in the PowerPoint presentation. This statute deals with the definition of “economic loss.” Mr. Udelman feels strongly that the exclusion of “consequential damages” should be reviewed and this term should be removed.

A commission member suggested sharing this information with LJC to ensure some consistency, even if the proposed legislative changes don’t go through.

The Chair stated that the Restitution Workgroup wanted to request continued dissection of the statutes dealing with Restitution. Mr. Dan Levey moved that this work continue through the Restitution Workgroup. Seconded. Motion passes unanimously.

Ms. Denise Lundin, AOC Staff, shared the concept of clarification for victims that the Chair had asked that the Restitution Workgroup focus on. To that end, a Workgroup was created to look at revamping, revising and streamlining the AzCourts.gov Restitution Webpage. The goals of this sub-workgroup were: 1) to minimize “clicks” to “one-click” when possible, 2) make the website more user-friendly, 3) to write in plain English, 4) less scrolling, and 5) larger fonts. The proposed changes are summarized as follows:

1. Adding a “Victims Restitution Resources” listing in the Self Help drop-down list.
2. Focusing on the Chief Justice’s letter and his message on Restitution.
3. Adding One-click buttons with active links in addition to the left-side drop-down menu.
4. Adding New pages – “Who Is Eligible for Restitution?,” “Restitution Resources,” a revised FAQ page and “Forms and Instructions” page, revamping the Statute list for easier reading and titling it, “Restitution Laws in AZ”, and a “Do You Need Help Getting Restitution?” button.
5. Checking all links to ensure they were live and viable, focusing on direct links to information and resources.

Ms. Lundin stated that since the website is already active, staff will be moving forward with these proposed changes as soon as possible, however, input from the commission is welcome.

Ms. Amy Bocks gave an overview of the revised Restitution Forms and Instructions drafted by the Restitution Workgroup. The rationale for focusing on this area of restitution was that some of the information has become outdated, and recently some advocates reported that some victims were unsuccessful in filing their restitution liens due to difficulties in understanding the instructions, completing the forms, or court acceptance of the filing of the liens. The workgroup has updated and simplified the forms to look more like a pleading and be more user-friendly, created clarification on instructions, added a form for a judgment creditor to be used statewide, and created an enforcement mechanism along with ARS § 13-810 with a Petition to Show Cause.

Judge Finn requested that a copy of the workgroup’s PowerPoint presentation be sent to all the members for further study. The Chair stated that while federal prosecutors assist with execution of monetary judgments for victims, in Arizona there is no statutory authority for this.

Workgroup Members Mr. Levey and Judge Roland Steinle (Ret.) shared the workgroup’s input on the Fair Justice for All Taskforce Recommendations that relate to restitution and Restitution Court. Mr. Levey questioned whether the project was truly “fair justice for all” when victims or crime victim representation were not included on the committee. There were concerns that should have been addressed

during the process, and the oversight, while not intentional, should be considered. Mr. Levey stated that recommendation #57 – the hosting of a “One-Day Kick-Off Summit” inviting all stakeholders, doesn’t include crime victims and should include a victim’s advocate and/or crime victim. Regarding recommendation #10, which deals with earned-time credit, he remarked that our system depends on fines and fees and to give defendants earned time credit for something that they should be doing seems contrary to fair justice, realizing it doesn’t include restitution. While this was not of big importance to the workgroup, Mr. Levey feels strongly about it.

Judge Steinle addressed recommendation #32, promoting the use of Restitution Courts, which the Workgroup strongly supports. He has produced a draft of a Best Practices Guide for Restitution Courts to assist in this endeavor. Judge Steinle stated that Orders to Show Cause were always used instead of Warrants in his Restitution Court. He also shared a concern about the recommendation of counsel for defendants at Restitution Hearings. This would not be cost-effective as there are alternatives, such as civil contempt, and would not provide much remedy in Restitution Court. Providing such assistance to everyone who feels their liberty is at loss is not really cost-effective to the state, especially in regards to the Public Defender’s Offices. He gave an example which would require representation in Family Court. This also needs further study.

Judge Cruz commented that as a member of the Fair Justice for All Taskforce, this specific recommendation, #32, was debated heavily with a member of the Maricopa County Public Defender’s Office. She opposed the recommendation based on a similar opinion to Judge Steinle. She also raised the issue that non-payment of restitution is a civil contempt proceeding within a criminal case, as a violation of a direct order. This brings up an added expense on behalf of the defendant which could be going instead towards restitution payments. Victims will also incur a cost for filing. This piece definitely needs to be readdressed and possibly revised. Mr. Breeze registered his concern with the representation issue, specifically 5th and 6th Amendment concerns.

The Chair stated he felt the Taskforce was careful to exclude Restitution on issues regarding payment of fines and fees, with the impetus on Limited Jurisdiction courts. Ms. Flores noted the lack of data on Restitution payment collection was problematic. Also, the Restitution Workgroup would like to continue to work on statutes, developing Best Practices for not just Restitution Courts but consistency around the state regarding ordering, collecting and enforcing restitution, examining the Victim Locate Fund in depth, maintaining and marketing the AOC Restitution website, and addressing training needs around the state. She thanked the members of the workgroup – it was a very productive group, and she hopes the work will continue.

B. Fair Justice for All Taskforce Recommendations

The Chair gave some background on the Taskforce starting as part of the Chief Justice's Strategic Agenda, focusing on studies of who is in jail for non-payment of fines and fees post-conviction, and introduced Mr. Tom O'Connell, Taskforce Co-Chair, who provided an overview of its recommendations.

Mr. O'Connell stated that the Taskforce's impetus was the focus on people being punished for being poor. While there should be consequences for violating the law, fees and fines should not restrict people's ability to be gainfully employed, productive and pay fines and fees. Restitution and victim-related issues did relate to the Taskforce's goals, with the thought of not causing harm to victims. The Taskforce members were selected by the Chief Justice and Mr. O'Connell acknowledged that a victim representative was not included, however it was an oversight. The Taskforce consists of 24 members representing various aspects of criminal justice, with a goal of a report by October 31, 2016. (Note: COVIC member Judge Cruz served on the Taskforce.) Some court rules and statutes may be changed as a result of the recommendations. All AOC standing committees are being presented with the information and recommendations of the Taskforce, and they are seeking approval and input from these committees.

Mr. O'Connell gave statistics and examples of the barriers defendants can face in paying fines and fees and the cycle of poverty being one of the biggest ones. Reasonable sanctions is one focal point. There are eleven principles and 65 recommendations contained in the report. Mr. O'Connell shared a detailed example of a situation where the cycle of poverty combined with high fees and failure to appear creates a bigger problem than just dealing with penalties and consequences in criminal justice. The ability for judges to mitigate penalties and fines is a preference. Automated tools for assessment of ability to pay is the ideal. Convenient and reasonable payment options are beneficial as well. Alternatives to paying fines, such as community restitution hours for municipal and justice courts are suggested. Getting defendants easier access for payment options and making it easier to appear in court are other recommendations. Reminders of court dates would assist in penalty fulfillment. Suspension of a driver's license should be a last resort, as it can affect one's ability to maintain employment, and subsequently afford to make fines and fees payments. Non-jail enforcement alternatives, such as use of Restitution Courts, FARE for collection of money before issuing a warrant, and intercepting federal income taxes to make payments is suggested. More work needs to be done with special needs offenders who are habitually in front of the court.

The Taskforce also addressed shifting from the idea of eliminating money for freedom as much as possible and using a risk-based release criteria to determine who is eligible for release conditions. Even short term incarceration can lead to detrimental effects

on the families of defendants. Pretrial defendants should not have to remain in custody solely because they are poor. High-risk defendants should not have the benefit of being able to afford high cash bails as a term of release. Pre-trial detention was studied, and it was found that there was extensive collateral damage in some cases. High bails, paid for by bail bondsmen at a high rate, are also detrimental. Bail decisions should be individualized. Along these lines, the recommendation for counsel being appointed to detainees after initial appearance was suggested. Only high-risk individuals should be detained, such as capital and other violent offenses with no bail conditions allowed. Mr. O'Connell shared examples from cases in other states where defendants released with unsecured and lower bonds returned regularly for subsequent hearings. Expanded use of public safety risk-assessments for limited jurisdiction court cases would help determine stipulations for release.

The Chair noted that some counties have done snapshot studies as to who is in jail and for what which gave striking results. Captain Leavitt stated that field release is maximized, and believes the issues are one-sided, because no one has presented to the legislature the fact that excessive fines and surcharges, such as for speeding tickets, should be reassessed because the cost scares people away from going to court, leading to warrants being issued, leading to detention, leading to the cycle stated by the Task Force. A family should not be bankrupted over a traffic citation. The court system should not be funded by traffic fines. The Chair stated that funding of the system should be looked at and discussed, and the system should be improved. The surcharges pay for a variety of good programs, but it's mostly on people who have been picked up for traffic offenses. It's an issue that can be debated. There will be a lot of discussion on this in the legislature, courts and public. In Washington, DC Superior Court, pretrial detention for dangerousness is only for people being kept in jail if they've been determined to be a danger to the community, a danger to a particular person or a serious risk not to appear. They have had very good results of non-commission of new crimes and an increased appearance rate.

Captain Leavitt stated that in Pima County the failure to appear rates were 50% lower after starting a "robo-call" program to remind people to appear in court. Additionally, there are people in the justice system who feel it's more important to get defendants to respect the law than use a more flexible consequence, but that has proven to be ineffective and unfair. Ms. Crane stated that in Pima County, non-violent, poor offenders are in jail more often than a truly dangerous individual who can post bail. Pima County is trying to change that. Mr. Udelman stated that as a victims' attorney, he is more concerned when a crime victim is injured and is unable to perform in his career for the rest of his life. He is concerned with some of the recommendations, and the discussion about risk assessment tools as they don't take into account the massive economic losses that crime victims face if there are no pre-conviction tools to possibly secure some assets for the benefit of the victim. Mr. O'Connell thanked everyone for their input and points raised.

The Chair recognized the work of the Restitution Workgroup and the Taskforce, and stated that there is not a lot of data nationally on the correlation between restitution collection and high fines. If fines are impossible to pay, the collection rate will be much less. If they are realistic you see more dollars come in. Restitution workgroup member Knox shared insight on interest being an incentive for re-payment as it has been reduced, postponed, or waived by judges to get defendants to pay in full. The Chair wondered if it had been discussed that the individual victim should receive restitution first, before insurance companies or corporate entity. Mr. Udelman stated that the tool of ARS § 13-805.E (interest on restitution) could be made discretionary instead of mandatory to incentivize the defendant to pay. Mr. O'Connell agreed it was a good point.

Mr. O'Connell asked that, with consideration of the comments made, would COVIC support the recommendations, with the understanding there will be follow-up on the points raised. The Chair recognized there was dissention, even among Taskforce members, so there will definitely be more discussion. Mr. Breeze moved that COVIC approve the proposals made by the Taskforce on Fair Justice for All, with the proviso that there is input from interested parties. Judge Cruz requested that the recommendations of concern be referenced by specific number. The Chair created a sub-committee to go through the recommendations and cite by number the ones with concerns and appointed Ms. Lundin, Ms. Flores, Mr. O'Connell as an ex-officio member, and Ms. Colleen Case to it. Mr. Breeze's motion was amended to include this proviso. The motion was seconded by Judge Finn. Voting aye – 19. Voting nay – 3. Motion passed.

C. APAAC Lethality Assessment Working Group Report

Ms. Amelia Craig Cramer, Chief Deputy, Pima County Attorney's Office, shared that in June Elizabeth Ortiz reported on the progress of APAAC's Lethality Assessment Working Group. The action items for the group included identifying the protocols and lists of lethality assessment questions being used in Arizona jurisdictions, and for Dr. Neil Websdale from NAU and Dr. Jill Messing from ASU to examine these and recommend what could be applied statewide. Ms. Cramer and Mr. Jon Elason have submitted a written report in which consensus was reached in the set of questions that should be asked in the Lethality Assessment. The members believe this assessment should more rightly be called an "Intimate Partner Risk Assessment," however the statute will need to be changed. The experts in this area, along with Dr. Jackie Campbell in Maryland, came up with an agreed-upon list of questions. Dr. Campbell uses a victim-centered approach, which Pima County also focuses on. Other counties are using it as a law enforcement tool, to inform the court or establish conditions of release which is more a defendant-centered approach. The doctors believe these questions accomplish both goals. This assessment can provide consequences for the defendant and assist in safety planning and determining the

types of services a victim may need, which helps break the cycle of violence. There are upcoming working group meetings to draft a protocol that would be used by law enforcement on scene and victim advocates, with options if no advocate is available on scene or telephonically.

The Chair stated that getting the experts to agree on this was an exceptional effort. Mr. Eliason said that there is good support from the court and advocates for this project and he anticipates that after the final report is approved by APAAC they will return to COVIC for approval, as well as CIDVC, to include Tier One questions as an addendum to Form 4. The focus will then be on training. Ms. Cramer stated that the Governor's Office participated at the last meeting and is providing some funding for research and analysis of data. At some point there will be a need for funding additional victim services for those victims who demonstrate to be a high risk from the protocol. There was a discussion regarding adding another question concerning harm to pets to the assessment. Mr. Eliason and Ms. Cramer stated that the research backing the questions are very specific and there will probably not be a change although they will take the suggestion back to the working group.

Judge Finn questioned the change of the name to the form and that in domestic violence situations it is not always an intimate partner relationship that is the threat, but a roommate or former roommate, etc. who fit into the definition of Domestic Violence offenses. She expressed concern that the title change may deter police officers from using the new form as broadly as the current lethality assessment. Mr. Eliason responded that the research and literature deals with intimate partners. Ms. Cramer stated that they will take the title recommendation to the working group and that there was discussion in the working group about the importance of getting the data needed for Intimate Partners separately so that it could be statistically validated with evidence based research. She stated the working group also discussed that the form could be used in other circumstances such as sexual assaults involving family members.

Judge Finn stated that her court has a DV Offense specific report and this lethality assessment is used in what looks like a minor incident, the less-severe domestic violence cases, where OR is routine; however when looking at the total history this tool helps show dangerousness, leading to holding the defendant. Some other jurisdictions have their own lethality reports so they may use the new one and their own.

D. SAFER and DANY/ SAK

The Chair stated that a national report has been drafted by the Sexual Assault Forensic Evidence Reporting Act Workgroup and is being vetted. Ms. Karen Rasile shared that Jim Markey is absent due to his attendance at the workgroup's meeting

and sent her a summary report: The guide is in final editorial review and is about 100 pages long with 35 recommendations. A date for release has not been determined.

Mr. Elason reminded members that on a local level, a year ago the Maricopa County Attorney's office was awarded \$1.9 million toward the testing of untested sexual assault kits. At the same time the City of Tempe Police Department received just over \$350,000, and Tucson received just over one million dollars as well. Today the backlog estimate in Maricopa County is over 4,000, with 759 kits submitted for out-of-state lab testing, which are then sent back to government labs for data accuracy review and then uploaded into CODIS if profile eligible. Of those 759 kits, 163 CODIS eligible profiles have been uploaded so far, and of those, 57 have received CODIS hits with 30 of those offender hits, four are forensic or unsolved cases. At least one was from another state. Two people have been arrested and indicted which resulted in one pleading guilty so far. He gave examples of the types of offenders they have found – all serial rapists- with several more soon to be indicted. He cited that human error does pop up and “breaks in the chain” occur, and the support for testing every kit is compelling. A report shows testing all kits saves money in police work.

Last month the Maricopa County Attorney's Office and Phoenix Police Department received a grant from BJA for the funding of downstream work on the kits – prosecutor, detectives, victim notification, and property room work. Additionally, the Governor's Taskforce Report included an inventory of over 6,000 kits statewide that need to be tested, and are recommending legislation to require the testing of all sexual assault kits submitted and for an annual accounting report by law enforcement agencies regarding the status of its sexual assault kits. The Arizona Sexual Assault Evidence Collection Kit Task Force Report can be found at: <http://azgovernor.gov/governor/news/2016/10/committed-clearing-untested-rape-kit-backlog>

Mr. Elason also reported that the Maricopa County Attorney's Office has spearheaded a multi-disciplinary sex assault protocol, to include medical, prosecution, lab, victim notification and services which has led to departments changing how they handle this issue. The expectation is that the protocol will be finished by the end of 2016. The Chair stated the national and state groups have focused on turnaround time (ideal is 30-60 days, which is difficult for some labs to handle). Mr. Elason stated Maricopa County has an advantage because it can account for every single reported sexual assault case from the beginning; it doesn't have the same struggles as other states do. Captain Leavitt stated that in Tucson there has been misreporting in the media that there are untested rape kits that have probative value that are on the shelves; however Tucson has zero unprocessed kits where the suspect has not been identified and never has had that issue. This process has allowed TPD a way to put people's DNA into CODIS and it is now a matter of hours for the kit to go to the crime lab and they have made cases within

four hours with the DPS Crime Lab. He remarked that it is a great program and TPD expects to be able to convict 15 people with the funds it has received. Mr. Elason says human error did cause a few kits to go untested in other jurisdictions.

III. Potential 2017 COVIC Meeting Dates

Ms. Denise Lundin shared that the AOC creates a Master Calendar regarding committee meetings at a meeting in November. She will be sending out possible meeting dates for COVIC in 2017, and asks the members to email Ms. Lynn Golden or herself with conflicts for scheduling purposes. (Note: The 2017 meeting dates are: March 3rd, June 9th and October 27th.)

IV. CALL TO PUBLIC

Good of the Order / Call to the Public

- a. The Chair asked if there were any other announcements. Ms. Sydney Davis praised Ms. Lynn Golden, AOC Staff, on her recent performance in a local theatre production. Ms. Flores stated the Victims' Rights portion of the Judge's Bench book is being reviewed, and anyone interested in providing input, please let her know as soon as possible, as they are on a tight schedule for it.
- b. The Chair then made a call to the public for comment. There was none.

V. ADJOURNMENT

Motion was made by Mr. Breeze at 12:36 p.m. to adjourn. Seconded by Judge Timothy Agan. Motion passed unanimously.

VI. NEXT COMMITTEE DATE

March 3, 2017
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007

**Arizona Supreme Court
Commission on Victims in the Courts**

March 3, 2017 Meeting Agenda

1501 W. Washington St., Phoenix, Arizona, 85007
State Courts Building, Conference Room 345A/B

(602) 452-3288 or (520) 388-4330 / Access Code:

<https://arizonacourts.webex.com/arizonacourts/j.php?MTID=md6d62def7d2864a49ca3d1121f3a5604>

10:00 a.m. – 12:00 p.m.

-
- | | | |
|---------------|--|---|
| 5 min | Call to Order / Welcome / Introductions / Announcements | Judge Ronald Reinstein, Chair |
| | Approval of Minutes – October 21, 2016** | Judge Ronald Reinstein, Chair |
| 10 min | Taskforce on Court Management of Digital Evidence Update | Judge Samuel Thumma, Chair |
| 15 min | Legislative Overview | Amy Love, AOC Staff |
| 20 min | Arizona Attorney General’s Office of Victims Services (OVS) Compliance Program | Kirstin Flores, OVS Director;
Colette Chapman, Victims’ Rights Compliance Administrator;
Judge Ronald Reinstein |
| 15 min | APAAC Lethality Assessment Working Group** | Amelia Cramer (PCAO);
Jon Eliason (MCAO) |
| 10 min | Taskforce on Fair Justice For All Update | Judge Ronald Reinstein, Chair |
| 10 min | SAFER Grant Updates | Jim Markey, SAFER member |
| 10 min | Governor’s Sexual Assault Evidence Collection Kit Taskforce Report | Colleen Clase |
| 5 min | Criminal Rules Taskforce** | Judge Joseph Welty, Chair;
Mark Meltzer, AOC Staff |
| 5 min | Caselaw Update & New Trends | Judge Ronald Reinstein, Chair |
| 5 min | Announcements / Call to the Public / Adjournment | Judge Ronald Reinstein, Chair |

****Important Voting Items**

Next Meeting:

Friday, June 9, 2017

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

Arizona State Courts Building, Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Lynn Golden at (602) 452-3195. Requests should be made as early as possible to allow time to arrange for the accommodation.

**Arizona Supreme Court
Commission on Victims in the Courts
October 21, 2016
10:00 a.m. to 12:00 p.m.
State Courts Building
1501 W. Washington, Phoenix, AZ 85007
Conference Room 345 A/B**

Present: Judge Ronald Reinstein (ret.); Mr. Timothy J. Agan; Mr. Michael Breeze; Ms. Colleen Clase; Ms. Amelia Craig Cramer (Proxy for Elizabeth Ortiz); Ms. Sydney Davis; Judge Elizabeth Finn; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Ms. Christine Kelly; Captain John Leavitt; Mr. Dan Levey; Judge Evelyn Marez; Chief Rod McKone; Ms. Jane Nicoletti-Jones; Ms. Debra Olsen; Mr. William Owsley; Ms. Karyn Rasile and Mr. Randall Udelman (Proxy for Judge Richard Weiss)

Telephonic: Judge Maria Elena Cruz; Judge Sam Myers

Absent/Excused: Ms. Shelly Corzo Shaffer; Ms. Keli Luther; Sgt. Jim Markey (Ret.); Ms. Laura Penny; Judge Sarah (Sally) Simmons; Ms. Leesa Berens Weisz

Presenters/Guests: Ms. Amy Bocks; Ms. Susie Checkett; Ms. Shawn Cox; Ms. Amelia Craig Cramer; Mr. Jon Eliason; Ms. Kelsey Frazier; Mr. Tom O'Connell; Ms. Susan Pickard; Ms. Alex Rucker; Ms. Kathy Sekardi; Judge Roland Steinle (ret.); Mr. Randall Udelman, Ms. Emily Gennar; Alexandra Rucker; Ms. Kim Knox

Administrative Office of the Courts: Ms. Lynn Golden; Ms. Denise Lundin

I. REGULAR BUSINESS

i. Welcome and Opening Remarks

The October 21, 2016 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:00 a.m. The Chair welcomed the attendees and asked for Commission member roll call and introductions of staff and guests.

ii. Approval of the June 10, 2016 Minutes

The draft minutes from the June 10, 2016 meet were presented for approval. The chair called for any omissions or corrections to the minutes.

- Motion was made by Judge Elizabeth Finn to approve the June 10, 2016 meeting minutes. Seconded by Mr. Michael Breeze. Motion passed unanimously.

II. PRESENTATIONS

i. Restitution Workgroup Report

The Chair introduced Ms. Kirstin Flores, COVIC Member and Restitution Workgroup Chair. Ms. Flores stated that at the last COVIC Meeting in June, The Chair reinstated the Restitution Workgroup. The group consisted of 20 members who met four times since the June Meeting. At each four-hour meeting there was an aggressive agenda, a committed membership, and they accomplished a lot of impressive work. The general goal of the workgroup was to address restitution issues and ascertain best practices statewide. Staff at the Attorney General's office has encountered real problems in the system, and they hoped this workgroup could address those areas. The underlying thought was to provide clarification to victims. The workgroup narrowed their levels of priority to 1) reviewing and updating legislation, 2) the content and forms on the AOC Restitution Webpage, 3) Restitution Court, which the group addressed at the same time the recommendations of the Taskforce on Fair Justice for All came out, and 4) the Victim Locate Project, which was brought to the group's attention by the Maricopa County Clerk of the Court's office. A subject matter expert from each of these areas presented the workgroup's recommendations and rationale for those recommendations.

Before workgroup member Mr. Randall Udelman began his presentation regarding proposed legislative changes, the Chair stated that the court's legislative package was due in August. However, if the Attorney General's office wanted to advance any of the statutes, they could be presented to the Arizona Judicial Council at its December Meeting. There also has to be a determination by AOC Legal Staff as the court can't engage in advocacy, but it can engage in activities that improve the court system.

Mr. Udelman shared proposed legislative changes to some of the issues the workgroup noted in connection with assisting crime victims in receiving restitution. Mr. Udelman listed the following statutes that were reviewed, revised, and are being brought before COVIC for consideration. (For purposes of clarity, the statute is listed, the section in question is cited, and the rationale behind revision is stated).

ARS § 8-383. Implementation of rights and duties

- A. Except as provided in sections 8-385 and 8-386, the rights and duties that are established by this article arise on the arrest or formal charging of a juvenile who is alleged to be responsible for a delinquent act against a victim. The rights and duties continue to be enforceable pursuant to this article until the final disposition of the charges, including acquittal or dismissal of the charges, all post-adjudication release, review and appellate proceedings and

the discharge of all proceedings related to restitution. If a delinquent is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid ~~or a judgment is entered in favor of the victim pursuant to section 8-344.~~

ARS § 13-4402. Implementation of rights and duties

- A. Except as provided in sections 13-4404 and 13-4405, the rights and duties that are established by this chapter arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this chapter until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable by the superior court until restitution is paid ~~or criminal restitution order is entered in favor of the victim pursuant to section 13-805...~~

Rationale: Confirms that the court retains jurisdiction until the victim receives restitution in full.

ARS § 8-344. Restitution payments

- D. The juvenile court shall retain jurisdiction of the case after the juvenile attains eighteen years of age for the purpose of ordering, modifying, and enforcing the manner in which court-ordered court-ordered payments ~~are to be made~~. After a juvenile attains eighteen years of age, the juvenile court shall enter the following...

ARS § 13-805. Jurisdiction

- A. The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing ~~the manner in which~~ court-ordered payments ~~are made~~ until paid in full ~~or until the defendant's sentence expires~~.
- C. C.3. For limited jurisdiction courts, a criminal restitution order shall be entered within one year of the date of the original restitution order.
- F. All monies paid pursuant to a criminal restitution order entered by the ~~superior~~ court shall be paid to the clerk of the ~~superior~~ court.

Rationale: Confirms that the court retains jurisdiction until victim receives restitution in full.

A commission member mentioned that in her court, criminal restitution orders are not issued until the original date of expiration of probation has expired, and there have been at least six warrants issued for failure to pay. The commission member expressed concern that the proposed revisions would cause increased work, storage of files, and maintenance of records for Limited Jurisdiction courts. Glendale CROs that are issued take money out of the system for the victim and prevent the case to ever go to warrant again. The CRO is then sent to the victim. Double payments (from the insurance company for the defendant and then an additional payment to the victim through the court) have occurred. The commission member felt that eliminating the CRO will be difficult, especially with payments being collected by FARE.

Mr. Udelman stated that the statutory changes the workgroup is recommending are simply harmonizing with what Arizona case law currently states. The workgroup seeks consistency across the courts.

ARS § 13-806. Restitution lien

- A. The state or any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien. A filing fee or any other charge is not required for filing or recording a restitution lien.
- C. A restitution lien may be filed by:
 - 1. A prosecutor in a criminal proceeding in which there was an economic loss after the filing of a misdemeanor complaint or felony information or indictment. ~~At the time of arraignment, †~~ The Prosecutor shall give the defendant notice of any restitution lien filed.
 - 2. A victim in a criminal proceeding who suffers an economic loss may file a request with the court for a restitution lien after the filing of a misdemeanor complaint or felony information or indictment. The prosecutor shall give the defendant notice of any restitution lien filed by a crime victim, after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.
 - 3. The court shall order that any restitution liens which have been filed or perfected be released if a defendant is acquitted or the state elects not to proceed forward with prosecution in any criminal proceeding.

Rationale: Provides victims with a tool for enforcement of their constitutionally protected right to receive prompt restitution.

A commission member asked what if the victim files a restitution lien and the prosecutor is unaware - how would the prosecutor know to give that notice to the defense? Mr. Udelman stated the court has to order the Restitution Lien, and then set a hearing or give notice to all parties, including the defendant. The

commission member asked why the responsibility fell to the prosecutors in lieu of the victim or the court supplying the notice. Mr. Udelman stated it's the same obligation the prosecutor has in C.1, so the obligation should be consistent. Further discussion may be warranted as to this potential change.

ARS § 13-810. Consequences of nonpayment of fines, fees, restitution or incarceration costs

- C. In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, the court on receipt of a petition and issuance of an order to show cause has jurisdiction to preserve rights over all restitution liens entered pursuant to 13-806(B) and perfected pursuant to 13-806(D).
- ~~C.~~ D. At any hearing on the order to show cause, the court, the prosecuting attorney or a person entitled to restitution may examine the defendant under oath concerning the defendant's financial condition, employment and assets or on any other matter relating to the defendant's ability to pay restitution.
- ~~D.~~ E. If the court finds that the defendant has willfully failed to pay a fine, a fee, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may do one of the following:
- ~~E.~~ F. If the court finds that the default is not willful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including...
- ~~F.~~ G. If a fine, a fee, restitution or incarceration costs are imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay them from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A or B of this section.
- H. WHEN THE COURT IMPOSES A FINE, A FEE, RESTITUTION OR INCARCERATION COSTS UNDER THIS SECTION, ON REQUEST AND AT NO COST TO THE REQUESTING PARTY, THE CLERK OF THAT COURT SHALL MAKE THE DEFENDANT'S PAYMENT HISTORY AVAILABLE TO THE PROSECUTOR, THE VICTIM, AND THE SENTENCING COURT.

Rationale: Provides an enforcement tool for seeking to obtain money/property subject to a valid and perfected restitution lien without court approval. Confirms victims can receive payment history from the clerk of the court at no cost.

ARS § 31-412. Criteria for release on parole; release; custody of parolee; definition

- E. Payment of restitution by the prisoner in accordance with subsection D of this section shall be made through the clerk of the superior court in the county in which the prisoner was sentenced for the offense for which the prisoner has been imprisoned in the same manner as restitution is paid as a condition of probation. The clerk of the superior court shall report to the board monthly whether or not restitution has been paid for that month by the prisoner. THE CLERK OF THE SUPERIOR COURT SHALL AT NO COST MAKE THE PRISONER'S PAYMENT HISTORY AVAILABLE TO THE BOARD, THE DEPARTMENT AND VICTIMS.

The Chair commented that in ARS § 13-810.H it calls for “on request,” but it does not state this in ARS § 31-412. How often does the Clerk have to fulfill this request? Mr. Udelman’s responded, and Ms. Chris Kelly verified, that these changes were recommended by the Arizona Association of Superior Court Clerks as current procedure is not being done on a regular basis, it will be done “on request” from this point forward. Both statutes should read that way.

ARS § 22-116. Funds in possession of justice of the peace; deposit with county treasurer; payment to claimants; disposition of unclaimed funds.

- C. The treasurer shall deposit monies from unclaimed victim restitution payments in the victim compensation and assistance fund established by section 41-2407 for the purpose of establishing, maintaining and supporting programs that compensate and assist victims of crime.

Rationale: Confirms victims can receive payment history from the clerk of the court at no cost. Redirects unclaimed victim restitution payments to victim compensation programs. Comports with superior court procedure.

ARS § 13-105.16 Economic Loss

Mr. Udelman brought up the subject of an additional statute the Workgroup had discussed, which was not included in the PowerPoint presentation. This statute deals with the definition of “economic loss.” Mr. Udelman feels strongly that the exclusion of “consequential damages” should be reviewed and this term should be removed.

A commission member suggested sharing this information with LJC to ensure some consistency, even if the proposed legislative changes don’t go through.

The Chair stated that the Restitution Workgroup wanted to request continued dissection of the statutes dealing with Restitution. Mr. Dan Levey moved that this work continue through the Restitution Workgroup. Seconded. Motion passes unanimously.

Ms. Denise Lundin, AOC Staff, shared the concept of clarification for victims that the Chair had asked that the Restitution Workgroup focus on. To that end, a Workgroup was created to look at revamping, revising and streamlining the AzCourts.gov Restitution Webpage. The goals of this sub-workgroup were: 1) to minimize “clicks” to “one-click” when possible, 2) make the website more user-friendly, 3) to write in plain English, 4) less scrolling, and 5) larger fonts. The proposed changes are summarized as follows:

1. Adding a “Victims Restitution Resources” listing in the Self Help drop-down list.
2. Focusing on the Chief Justice’s letter and his message on Restitution.
3. Adding One-click buttons with active links in addition to the left-side drop-down menu.
4. Adding New pages – “Who Is Eligible for Restitution?,” “Restitution Resources,” a revised FAQ page and “Forms and Instructions” page, revamping the Statute list for easier reading and titling it, “Restitution Laws in AZ”, and a “Do You Need Help Getting Restitution?” button.
5. Checking all links to ensure they were live and viable, focusing on direct links to information and resources.

Ms. Lundin stated that since the website is already active, staff will be moving forward with these proposed changes as soon as possible, however, input from the commission is welcome.

Ms. Amy Bocks gave an overview of the revised Restitution Forms and Instructions drafted by the Restitution Workgroup. The rationale for focusing on this area of restitution was that some of the information has become outdated, and recently some advocates reported that some victims were unsuccessful in filing their restitution liens due to difficulties in understanding the instructions, completing the forms, or court acceptance of the filing of the liens. The workgroup has updated and simplified the forms to look more like a pleading and be more user-friendly, created clarification on instructions, added a form for a judgment creditor to be used statewide, and created an enforcement mechanism along with ARS § 13-810 with a Petition to Show Cause.

Judge Finn requested that a copy of the workgroup’s PowerPoint presentation be sent to all the members for further study. The Chair stated that while federal prosecutors assist with execution of monetary judgments for victims, in Arizona there is no statutory authority for this.

Workgroup Members Mr. Levey and Judge Roland Steinle (Ret.) shared the workgroup’s input on the Fair Justice for All Taskforce Recommendations that relate to restitution and Restitution Court. Mr. Levey questioned whether the project was truly “fair justice for all” when victims or crime victim representation were not included on the committee. There were concerns that should have been addressed

during the process, and the oversight, while not intentional, should be considered. Mr. Levey stated that recommendation #57 – the hosting of a “One-Day Kick-Off Summit” inviting all stakeholders, doesn’t include crime victims and should include a victim’s advocate and/or crime victim. Regarding recommendation #10, which deals with earned-time credit, he remarked that our system depends on fines and fees and to give defendants earned time credit for something that they should be doing seems contrary to fair justice, realizing it doesn’t include restitution. While this was not of big importance to the workgroup, Mr. Levey feels strongly about it.

Judge Steinle addressed recommendation #32, promoting the use of Restitution Courts, which the Workgroup strongly supports. He has produced a draft of a Best Practices Guide for Restitution Courts to assist in this endeavor. Judge Steinle stated that Orders to Show Cause were always used instead of Warrants in his Restitution Court. He also shared a concern about the recommendation of counsel for defendants at Restitution Hearings. This would not be cost-effective as there are alternatives, such as civil contempt, and would not provide much remedy in Restitution Court. Providing such assistance to everyone who feels their liberty is at loss is not really cost-effective to the state, especially in regards to the Public Defender’s Offices. He gave an example which would require representation in Family Court. This also needs further study.

Judge Cruz commented that as a member of the Fair Justice for All Taskforce, this specific recommendation, #32, was debated heavily with a member of the Maricopa County Public Defender’s Office. She opposed the recommendation based on a similar opinion to Judge Steinle. She also raised the issue that non-payment of restitution is a civil contempt proceeding within a criminal case, as a violation of a direct order. This brings up an added expense on behalf of the defendant which could be going instead towards restitution payments. Victims will also incur a cost for filing. This piece definitely needs to be readdressed and possibly revised. Mr. Breeze registered his concern with the representation issue, specifically 5th and 6th Amendment concerns.

The Chair stated he felt the Taskforce was careful to exclude Restitution on issues regarding payment of fines and fees, with the impetus on Limited Jurisdiction courts. Ms. Flores noted the lack of data on Restitution payment collection was problematic. Also, the Restitution Workgroup would like to continue to work on statutes, developing Best Practices for not just Restitution Courts but consistency around the state regarding ordering, collecting and enforcing restitution, examining the Victim Locate Fund in depth, maintaining and marketing the AOC Restitution website, and addressing training needs around the state. She thanked the members of the workgroup – it was a very productive group, and she hopes the work will continue.

B. Fair Justice for All Taskforce Recommendations

The Chair gave some background on the Taskforce starting as part of the Chief Justice's Strategic Agenda, focusing on studies of who is in jail for non-payment of fines and fees post-conviction, and introduced Mr. Tom O'Connell, Taskforce Co-Chair, who provided an overview of its recommendations.

Mr. O'Connell stated that the Taskforce's impetus was the focus on people being punished for being poor. While there should be consequences for violating the law, fees and fines should not restrict people's ability to be gainfully employed, productive and pay fines and fees. Restitution and victim-related issues did relate to the Taskforce's goals, with the thought of not causing harm to victims. The Taskforce members were selected by the Chief Justice and Mr. O'Connell acknowledged that a victim representative was not included, however it was an oversight. The Taskforce consists of 24 members representing various aspects of criminal justice, with a goal of a report by October 31, 2016. (Note: COVIC member Judge Cruz served on the Taskforce.) Some court rules and statutes may be changed as a result of the recommendations. All AOC standing committees are being presented with the information and recommendations of the Taskforce, and they are seeking approval and input from these committees.

Mr. O'Connell gave statistics and examples of the barriers defendants can face in paying fines and fees and the cycle of poverty being one of the biggest ones. Reasonable sanctions is one focal point. There are eleven principles and 65 recommendations contained in the report. Mr. O'Connell shared a detailed example of a situation where the cycle of poverty combined with high fees and failure to appear creates a bigger problem than just dealing with penalties and consequences in criminal justice. The ability for judges to mitigate penalties and fines is a preference. Automated tools for assessment of ability to pay is the ideal. Convenient and reasonable payment options are beneficial as well. Alternatives to paying fines, such as community restitution hours for municipal and justice courts are suggested. Getting defendants easier access for payment options and making it easier to appear in court are other recommendations. Reminders of court dates would assist in penalty fulfillment. Suspension of a driver's license should be a last resort, as it can affect one's ability to maintain employment, and subsequently afford to make fines and fees payments. Non-jail enforcement alternatives, such as use of Restitution Courts, FARE for collection of money before issuing a warrant, and intercepting federal income taxes to make payments is suggested. More work needs to be done with special needs offenders who are habitually in front of the court.

The Taskforce also addressed shifting from the idea of eliminating money for freedom as much as possible and using a risk-based release criteria to determine who is eligible for release conditions. Even short term incarceration can lead to detrimental effects

on the families of defendants. Pretrial defendants should not have to remain in custody solely because they are poor. High-risk defendants should not have the benefit of being able to afford high cash bails as a term of release. Pre-trial detention was studied, and it was found that there was extensive collateral damage in some cases. High bails, paid for by bail bondsmen at a high rate, are also detrimental. Bail decisions should be individualized. Along these lines, the recommendation for counsel being appointed to detainees after initial appearance was suggested. Only high-risk individuals should be detained, such as capital and other violent offenses with no bail conditions allowed. Mr. O'Connell shared examples from cases in other states where defendants released with unsecured and lower bonds returned regularly for subsequent hearings. Expanded use of public safety risk-assessments for limited jurisdiction court cases would help determine stipulations for release.

The Chair noted that some counties have done snapshot studies as to who is in jail and for what which gave striking results. Captain Leavitt stated that field release is maximized, and believes the issues are one-sided, because no one has presented to the legislature the fact that excessive fines and surcharges, such as for speeding tickets, should be reassessed because the cost scares people away from going to court, leading to warrants being issued, leading to detention, leading to the cycle stated by the Task Force. A family should not be bankrupted over a traffic citation. The court system should not be funded by traffic fines. The Chair stated that funding of the system should be looked at and discussed, and the system should be improved. The surcharges pay for a variety of good programs, but it's mostly on people who have been picked up for traffic offenses. It's an issue that can be debated. There will be a lot of discussion on this in the legislature, courts and public. In Washington, DC Superior Court, pretrial detention for dangerousness is only for people being kept in jail if they've been determined to be a danger to the community, a danger to a particular person or a serious risk not to appear. They have had very good results of non-commission of new crimes and an increased appearance rate.

Captain Leavitt stated that in Pima County the failure to appear rates were 50% lower after starting a "robo-call" program to remind people to appear in court. Additionally, there are people in the justice system who feel it's more important to get defendants to respect the law than use a more flexible consequence, but that has proven to be ineffective and unfair. Ms. Crane stated that in Pima County, non-violent, poor offenders are in jail more often than a truly dangerous individual who can post bail. Pima County is trying to change that. Mr. Udelman stated that as a victims' attorney, he is more concerned when a crime victim is injured and is unable to perform in his career for the rest of his life. He is concerned with some of the recommendations, and the discussion about risk assessment tools as they don't take into account the massive economic losses that crime victims face if there are no pre-conviction tools to possibly secure some assets for the benefit of the victim. Mr. O'Connell thanked everyone for their input and points raised.

The Chair recognized the work of the Restitution Workgroup and the Taskforce, and stated that there is not a lot of data nationally on the correlation between restitution collection and high fines. If fines are impossible to pay, the collection rate will be much less. If they are realistic you see more dollars come in. Restitution workgroup member Knox shared insight on interest being an incentive for re-payment as it has been reduced, postponed, or waived by judges to get defendants to pay in full. The Chair wondered if it had been discussed that the individual victim should receive restitution first, before insurance companies or corporate entity. Mr. Udelman stated that the tool of ARS § 13-805.E (interest on restitution) could be made discretionary instead of mandatory to incentivize the defendant to pay. Mr. O'Connell agreed it was a good point.

Mr. O'Connell asked that, with consideration of the comments made, would COVIC support the recommendations, with the understanding there will be follow-up on the points raised. The Chair recognized there was dissention, even among Taskforce members, so there will definitely be more discussion. Mr. Breeze moved that COVIC approve the proposals made by the Taskforce on Fair Justice for All, with the proviso that there is input from interested parties. Judge Cruz requested that the recommendations of concern be referenced by specific number. The Chair created a sub-committee to go through the recommendations and cite by number the ones with concerns and appointed Ms. Lundin, Ms. Flores, Mr. O'Connell as an ex-officio member, and Ms. Colleen Clase to it. Mr. Breeze's motion was amended to include this proviso. The motion was seconded by Judge Finn. Voting aye – 19. Voting nay – 3. Motion passed.

C. APAAC Lethality Assessment Working Group Report

Ms. Amelia Craig Cramer, Chief Deputy, Pima County Attorney's Office, shared that in June Elizabeth Ortiz reported on the progress of APAAC's Lethality Assessment Working Group. The action items for the group included identifying the protocols and lists of lethality assessment questions being used in Arizona jurisdictions, and for Dr. Neil Websdale from NAU and Dr. Jill Messing from ASU to examine these and recommend what could be applied statewide. Ms. Cramer and Mr. Jon Eliason have submitted a written report in which consensus was reached in the set of questions that should be asked in the Lethality Assessment. The members believe this assessment should more rightly be called an "Intimate Partner Risk Assessment," however the statute will need to be changed. The experts in this area, along with Dr. Jackie Campbell in Maryland, came up with an agreed-upon list of questions. Dr. Campbell uses a victim-centered approach, which Pima County also focuses on. Other counties are using it as a law enforcement tool, to inform the court or establish conditions of release which is more a defendant-centered approach. The doctors believe these questions accomplish both goals. This assessment can provide consequences for the defendant and assist in safety planning and determining the

types of services a victim may need, which helps break the cycle of violence. There are upcoming working group meetings to draft a protocol that would be used by law enforcement on scene and victim advocates, with options if no advocate is available on scene or telephonically.

The Chair stated that getting the experts to agree on this was an exceptional effort. Mr. Eliason said that there is good support from the court and advocates for this project and he anticipates that after the final report is approved by APAAC they will return to COVIC for approval, as well as CIDVC, to include Tier One questions as an addendum to Form 4. The focus will then be on training. Ms. Cramer stated that the Governor's Office participated at the last meeting and is providing some funding for research and analysis of data. At some point there will be a need for funding additional victim services for those victims who demonstrate to be a high risk from the protocol. There was a discussion regarding adding another question concerning harm to pets to the assessment. Mr. Eliason and Ms. Cramer stated that the research backing the questions are very specific and there will probably not be a change although they will take the suggestion back to the working group.

Judge Finn questioned the change of the name to the form and that in domestic violence situations it is not always an intimate partner relationship that is the threat, but a roommate or former roommate, etc. who fit into the definition of Domestic Violence offenses. She expressed concern that the title change may deter police officers from using the new form as broadly as the current lethality assessment. Mr. Eliason responded that the research and literature deals with intimate partners. Ms. Cramer stated that they will take the title recommendation to the working group and that there was discussion in the working group about the importance of getting the data needed for Intimate Partners separately so that it could be statistically validated with evidence based research. She stated the working group also discussed that the form could be used in other circumstances such as sexual assaults involving family members.

Judge Finn stated that her court has a DV Offense specific report and this lethality assessment is used in what looks like a minor incident, the less-severe domestic violence cases, where OR is routine; however when looking at the total history this tool helps show dangerousness, leading to holding the defendant. Some other jurisdictions have their own lethality reports so they may use the new one and their own.

D. SAFER and DANY / SAK

The Chair stated that a national report has been drafted by the Sexual Assault Forensic Evidence Reporting Act Workgroup and is being vetted. Ms. Karen Rasile shared that Jim Markey is absent due to his attendance at the workgroup's meeting

and sent her a summary report: The guide is in final editorial review and is about 100 pages long with 35 recommendations. A date for release has not been determined.

Mr. Eliason reminded members that on a local level, a year ago the Maricopa County Attorney's office was awarded \$1.9 million toward the testing of untested sexual assault kits. At the same time the City of Tempe Police Department received just over \$350,000, and Tucson received just over one million dollars as well. Today the backlog estimate in Maricopa County is over 4,000, with 759 kits submitted for out-of-state lab testing, which are then sent back to government labs for data accuracy review and then uploaded into CODIS if profile eligible. Of those 759 kits, 163 CODIS eligible profiles have been uploaded so far, and of those, 57 have received CODIS hits with 30 of those offender hits, four are forensic or unsolved cases. At least one was from another state. Two people have been arrested and indicted which resulted in one pleading guilty so far. He gave examples of the types of offenders they have found – all serial rapists- with several more soon to be indicted. He cited that human error does pop up and "breaks in the chain" occur, and the support for testing every kit is compelling. A report shows testing all kits saves money in police work.

Last month the Maricopa County Attorney's Office and Phoenix Police Department received a grant from BJA for the funding of downstream work on the kits – prosecutor, detectives, victim notification, and property room work. Additionally, the Governor's Taskforce Report included an inventory of over 6,000 kits statewide that need to be tested, and are recommending legislation to require the testing of all sexual assault kits submitted and for an annual accounting report by law enforcement agencies regarding the status of its sexual assault kits. The Arizona Sexual Assault Evidence Collection Kit Task Force Report can be found at: <http://azgovernor.gov/governor/news/2016/10/committed-clearing-untested-rape-kit-backlog>

Mr. Eliason also reported that the Maricopa County Attorney's Office has spearheaded a multi-disciplinary sex assault protocol, to include medical, prosecution, lab, victim notification and services which has led to departments changing how they handle this issue. The expectation is that the protocol will be finished by the end of 2016. The Chair stated the national and state groups have focused on turnaround time (ideal is 30-60 days, which is difficult for some labs to handle). Mr. Eliason stated Maricopa County has an advantage because it can account for every single reported sexual assault case from the beginning; it doesn't have the same struggles as other states do. Captain Leavitt stated that in Tucson there has been misreporting in the media that there are untested rape kits that have probative value that are on the shelves; however Tucson has zero unprocessed kits where the suspect has not been identified and never has had that issue. This process has allowed TPD a way to put people's DNA into CODIS and it is now a matter of hours for the kit to go to the crime lab and they have made cases within

four hours with the DPS Crime Lab. He remarked that it is a great program and TPD expects to be able to convict 15 people with the funds it has received. Mr. Eliason says human error did cause a few kits to go untested in other jurisdictions.

III. Potential 2017 COVIC Meeting Dates

Ms. Denise Lundin shared that the AOC creates a Master Calendar regarding committee meetings at a meeting in November. She will be sending out possible meeting dates for COVIC in 2017, and asks the members to email Ms. Lynn Golden or herself with conflicts for scheduling purposes. (Note: The 2017 meeting dates are: March 3rd, June 9th and October 27th.)

IV. CALL TO PUBLIC

Good of the Order / Call to the Public

- a. The Chair asked if there were any other announcements. Ms. Sydney Davis praised Ms. Lynn Golden, AOC Staff, on her recent performance in a local theatre production. Ms. Flores stated the Victims' Rights portion of the Judge's Bench book is being reviewed, and anyone interested in providing input, please let her know as soon as possible, as they are on a tight schedule for it.
- b. The Chair then made a call to the public for comment. There was none.

V. ADJOURNMENT

Motion was made by Mr. Breeze at 12:36 p.m. to adjourn. Seconded by Judge Timothy Agan. Motion passed unanimously.

VI. NEXT COMMITTEE DATE

March 3, 2017
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 3, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Task Force on Court Management of Digital Evidence

FROM: Kay Radwanski, AOC

PRESENTER: Judge Samuel A. Thumma, Vice Chief Judge, Court of Appeals, Div. I; chair of the Task Force on Court Management of Digital Evidence

DISCUSSION & TIME ESTIMATES: As a follow up to his June 10, 2016, preview, Sam will update COVIC on the work of the Task Force on Court Management of Digital Evidence. The Chief Justice established the Task Force to make recommendations regarding court policy surrounding storage and management, court rules, and formats for various types of digital evidence that may be part of a court case. Among the court rules the Task Force was directed to consider are those addressing access to public records and privacy concerns of victims, non-victim witnesses, and other identifying information that may be captured in video evidence.

RECOMMENDED MOTION (IF ANY): Information only.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 3, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Overview

FROM: AOC Legislative Team

PRESENTER: Amy Love, AOC Deputy Director of Government Affairs

DISCUSSION & TIME ESTIMATES: Overview of proposed legislation as it pertains to victims' rights. 20 minutes.

RECOMMENDED MOTION (IF ANY): N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 3, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Attorney General's Victims' Rights Compliance Program

FROM: Attorney General's Office of Victim Services (OVS)

PRESENTER:

Kirstin Flores, OVS Director, Colette Chapman, Victims' Rights Compliance Administrator and Judge Reinstein

DISCUSSION & TIME ESTIMATES:

Background and explanation of the compliance and victim complaint resolution program within the OVS and COVIC's role when the judiciary is found in violation of victims' rights. 20 minutes.

RECOMMENDED MOTION (IF ANY):

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates



**Office of Arizona
Attorney General
Tom Horne**

1275 West Washington Street
Phoenix, AZ 85007
Phone: 602-542-4911
Fax: 602-542-8453

INSIDE THIS ISSUE:

Page 2: Victim's Right to Confer with the Prosecutor/To be present and heard at plea negotiations

Page 3: VR Enforcement Officer Assessment, Unfounded and Other Violations, Update: Right to Refuse Defense Interview

The Victims' Rights Brief is published by the Arizona Attorney General's Office of Victim Services, which remains wholly responsible for its content.

The goal in generating the Brief is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system.

For more information about Victims' Rights, visit us at www.azag.gov/victim-services

Have an idea for an article in the Victims' Rights Brief? Contact Colette Chapman at 602-542-8848 or email colette.chapman@azag.gov

Victims' Rights Enforcement

The Arizona Attorney General's Office of Victim Services employs a Victims' Rights Enforcement Officer (Enforcement Officer) who receives and examines victims' rights complaints in a neutral and unbiased manner in order to facilitate resolution in furtherance of the law. The Enforcement Officer assists crime victims by addressing victim complaints and conducting inquiries into alleged violations of victims' rights laws.

The Enforcement Officer position was established in 1999 within the Office of Victim Services as a result of a recognized need for enforcement of victims' rights laws and accountability of those responsible for providing mandated victims' rights.

It is important to note that the Enforcement Officer is not a victim advocate; and, information provided in the complaint and provided to the Enforcement Officer is not privileged or confidential and may be shared with the government or legal agency that is the subject of the complaint or other relevant parties.

FY14 Victims' Rights Complaint Data

In FY14, the Victims' Rights Enforcement Officer responded to 32 complaints that were investigated as alleged victims' rights violations. Out of the 32 complaints investigated:

- 16 violations were found
- 7 agencies were issued a letter(s) of findings (as a result of those violations) outlining the complainant's allegation and subsequent violation(s).



The two most frequent types violations involved:

1. Issues surrounding the victim's right to confer with the prosecutor.
2. The right to be present and heard at plea negotiation proceedings.

Victim's Right to Confer with the Prosecutor

One of the most empowering and important aspects of victims' rights statutes involves the victim's right to confer with the prosecutor throughout the criminal justice process. The Arizona Constitution's Victims' Bill of Rights, Article 2, Section 2.1 (A)(6) states, "...a victim of crime has a right: [t]o confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition."

Further, A.R.S. § 13-4419(A)(B) specifies, "[o]n request of the victim, the prosecuting attorney shall confer with the victim about the disposition of a criminal offense, including the victim's views about a decision not to proceed with a criminal prosecution, dismissal, plea or sentence negotiations and pretrial diversion programs... before the commencement of the trial."

However, the most common type of victims' rights violations involve the victim's right to confer with the prosecutor:

- One violation occurred because, even though a victim requested to confer with the prosecutor about a plea agreement, she was denied due to time constraints.
- Other violations occurred due to the failure of the prosecutor to confer with the victim(s) before offering a plea agreement in court and prior to dismissing a case.

All of these violations resulted in confusion and consternation for the victim(s).

Victim's Right to be Present and Heard at Plea Negotiation Proceedings

The second most common violation was related to A.R.S. § 13-4423 – Plea negotiation proceedings. *Please note the concurrent responsibilities for the prosecutor and court noted in this statute.*

13-4423. Plea negotiation proceedings

A. On request of the victim, the victim has the right to be present and be heard at any proceeding in which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court.

B. The court shall not accept a plea agreement unless:

1. The prosecuting attorney advises the court that before requesting the negotiated plea reasonable efforts were made to confer with the victim pursuant to section 13-4419.
2. Reasonable efforts are made to give the victim notice of the plea proceeding pursuant to section 13-4409 and to inform the victim that the victim has the right to be present and, if present, to be heard.
3. The prosecuting attorney advises the court that to the best of the prosecutor's knowledge notice requirements of this chapter have been complied with and the prosecutor informs the court of the victim's position, if known, regarding the negotiated plea.

Consider the following three scenarios that resulted in victims' rights violations:

- A case management conference turned into a plea negotiation proceeding, unbeknownst to the victim.
- A judge held a plea negotiation proceeding earlier than scheduled even though the prosecuting attorney informed the judge the victim was planning to attend.
- A prosecuting attorney prevented the victim from speaking at a proceeding because that statement would be heard at sentencing.

Although the three scenarios are different, the outcome was the same: the victim was not afforded the right to be heard at the plea negotiation proceeding.

Victims' Rights Enforcement Officer Assessment of Violations

Agency policies and procedures consistently include the prosecutorial responsibility to confer; and it does appear that the victims are made aware of the right to confer with the prosecutor and be present and heard at plea negotiation proceedings. However, daily practices associated with these rights sometimes fall short of what the statute requires. **It is recommended that, along with victim advocates, all prosecutors be trained and made aware of these policies and procedures and their responsibilities therein.**

Unfounded Complaints and Other Complaints Received by the Victims' Rights Enforcement Officer

Complaints that are received, but determined to *not* constitute a victims' rights violation (unfounded complaints) usually involve perception issues with law enforcement procedures, plea agreements, declinations, and subjective opinions about personal interaction with criminal justice system personnel.

However, the Enforcement Officer also receives numerous complaints, which *do not* involve victims' rights. Issues encompass a wide-range of topics that are not within the Enforcement Officer's authority to investigate and include, but are not limited to the following:

- Civil matters
- CPS and Child Support Enforcement
- Consumer fraud
- Civil Rights violations
- Mortgage issues

These complaints were forwarded to the Victim Services general inbox where OVS staff provides information and resources related to the issue presented.

Victims' Rights complaint forms can be found on the Attorney General's home page at <https://www.azag.gov/> under Complaints.

Victims' Rights UPDATE: The Right to Refuse a Defense Interview

An Opinion from the Arizona Supreme Court released on October 27, 2014 holds the following:

¶1 In a criminal case, a parent who exercises victims' rights on behalf of a minor child is statutorily entitled to refuse a defense interview. We hold that the parent's right to refuse an interview does not expire when the victim turns eighteen, but instead continues until the case ends...¶22 We hold that a parent who exercises victims' rights on behalf of a minor child is entitled to refuse a defense interview through the final disposition of the charges, even if the child earlier turns eighteen. *J.D. v. Hegyi*, 236 Ariz. 39, 335 P.3d 1118 (2014).

The Opinion does not advise on other victims' rights that can be exercised by a parent on behalf of a minor child once the child turns eighteen. Instead, it is limited in scope and addresses only the right to refuse a defense interview.

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates



Office of Arizona Attorney General Mark Brnovich
1275 West Washington St.
Phoenix, AZ 85007
Phone: 602-542-4911
Fax: 602-542-8453
www.azag.gov

Victims' Rights Enforcement

The Arizona Attorney General's Office of Victim Services employs a Victims' Rights Enforcement Officer (Enforcement Officer) who receives and examines victims' rights complaints in a neutral and unbiased manner in order to facilitate resolution in furtherance of the law. The Enforcement Officer assists crime victims by addressing victim complaints and conducting an investigation into the alleged violation of victims' rights laws.

The Enforcement Officer position was established in 1999 within the Office of Victim Services as a result of a recognized need for enforcement of victims' rights laws and accountability of those responsible for providing mandated victims' rights.

This edition of the Victims' Rights Brief will focus on some specific areas of concern that arose during FY2015 year and will address ongoing issues related to violations in misdemeanor cases.

INSIDE THIS ISSUE:

- Page 2:** Response to Victims' Rights Complaints
- Page 2:** Specific Areas of Concern
- Page 3:** Rule Changes
- Page 3:** Distinguished Service Awards

Victims' Rights Complaints - FY2015

In FY2015, the Enforcement Officer responded to 34 victims' rights complaints wherein 18 violations were found and 11 agencies or persons were identified as having violated victims' rights laws. Of the 11 investigations involving victims' rights violations, six were misdemeanor cases with the majority containing multiple violations. The two main violations that occurred were related to law enforcement responsibilities associated with A.R.S. §§ 13-4405 (Information provided to victim by law enforcement agencies) and 13-4406 (Notice of initial appearance).

As for A.R.S. § 13-4405, it was found in some instances, the Victims' Rights Request/Waiver form (Request/Waiver) was not provided to the victim on scene when the suspect was arrested but rather mailed to the victim after the IA had already occurred. No other means of notification of the IA by telephone or in person were noted. In other cases, the victim was not made aware of the suspect's arrest. As a result of not being provided information on the Initial Appearance (IA), the victim was not afforded the opportunity to be heard at this proceeding as is his/her right. A.R.S. § 13-4421 provides that, "[t]he victim has the right to be heard at the initial appearance of the person suspected of committing the criminal offense against the victim."

The Victims' Rights Brief is published by the Arizona Attorney General's Office of Victim Services, which remains wholly responsible for its content.

The goal in generating the Brief is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system.

For more information about Victims' Rights, visit us at www.azag.gov/victim-services

Response to Victims' Rights Complaints

Every complaint alleging a victims' rights violation, whether substantiated or not, creates at the very least, a heightened awareness of victims' rights. Actions taken by agencies in response to victims' rights complaints were very positive. One agency worked with the different courts in its jurisdiction to develop consistent IA times and dates so accurate information on the IA would be available to the victim. The end result was a signed order from a Judge establishing fixed times for conducting initial appearances in each of the County's Justice Courts in accordance with the AZ Rule of Criminal Procedure, Rule 4.1.(d), "Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance. Each presiding judge shall take such steps as are necessary to assure that a magistrate is available every day of the week to hold initial appearances required by Section (a). In addition, the presiding judge shall also assure that at least one fixed time is set each day for conducting initial appearances and that local law enforcement agencies have been notified of the fixed time(s)."

Other agencies provided training for personnel and re-examined and revised agency policies and protocol to prevent future violations.

Specific Areas of Concern

The importance of notifying victims of the IA cannot be overstated. Failure to do so can result in several victims' rights violations. There have been instances, particularly in misdemeanor cases, where a suspect pleads guilty, is sentenced, and subsequently released at the IA, unbeknownst to the victim or prosecutorial agency.

Consider the following hypothetical scenario and victims' rights violations that occur:

On May 1, 2015, a 911 call at 10:00am is placed by a woman (victim) who reports her husband (suspect) assaulted her in their home. Her husband left the residence and his whereabouts are unknown. The Officer arrives at the residence and completes a report. The Officer provides a Request/Waiver form to the victim and the victim invokes her rights. The Request/Waiver form indicates that the suspect is known but not in custody. Eight hours later, law enforcement arrests the suspect at his brother's home. The suspect is charged with misdemeanor assault and booked into the local jail. The IA is held the next day at 10:00am. During the IA, the suspect pleads guilty, release conditions are set, and is sentenced. However, the victim was not notified of the arrest until 3:00 in the afternoon on May 2, 2015 when she contacted law enforcement wondering if they found her husband.

In this scenario, the victim was not informed of the arrest or provided information on the IA, in violation of A.R.S. §§ 13-4405(f)(g) and 13-4406. Because the defendant plead guilty and was sentenced in the same proceeding there is a violation as to A.R.S. § 13-4410 where, in misdemeanor cases, the victim shall be notified of the conviction, the right to make an impact statement and what it can include, the right to be present and heard at any pre-sentence or sentencing proceeding, the right to file a restitution lien and of the time, place and date of the sentencing proceeding. Further, the AZ Constitution Article 2, Section 2.1 provides, "...a victim of crime has a right [t]o confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case..."

While our office understands court schedules are burdensome, *compliance with victims' rights cannot be overshadowed by convenience.*

Remedies:

1. Incorporate statutory requirements into policies and procedures with regard to notice of the IA.
2. Work with the courts in your area - review AZ Rule of Criminal Procedure 4.1.(d).
3. Train staff on victims' rights.

Training is provided by the AZ Attorney General's Office of Victim Services at no cost. To register or request victims' rights training, please visit <https://www.azag.gov/victim-services/victims-rights-training-schedule> or contact us at (602) 542-8456.

Rule Changes

Arizona Supreme Court No. R-15-0011 amended Rules 15.5 and 39, Arizona Rules of Criminal Procedure effective January 1, 2016. Additions to the text are noted by underlining.

Rule 15.5 Excision and protective orders **e. Claims of Privilege or Protection.** All redactions must be identified in documents produced in discovery and the party making a redaction must state its legal basis if it is not clear from the context.

Rule 39 Victims' Rights (b)(10) The right to require the prosecutor to withhold, during discovery and other proceedings, the home address and telephone number of the victim, the address and telephone number of the victim's place of employment, and the name of the victim's employer, providing, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant. Rule 15.5(e) applies to information withheld pursuant to this rule.

Distinguished Service Awards

The Arizona Attorney General's Office of Victim Services is soliciting nominations to formally acknowledge the work of those in the victims' rights field during the National Crime Victims' Rights Week held April 10-16, 2016.

Please download the announcement and nomination form for the *2016 Distinguished Service Awards* at <https://www.azag.gov/victim-services/victim-services-0>. Please share this announcement and nomination form with your agency's employees and contacts. It is our hope that you and your employees help identify the many deserving and dedicated individuals who are committed to serving victims of crime.



Have an idea for an article in the Victims' Rights Brief?

Contact Colette Chapman at 602-542-8848 or email colette.chapman@azag.gov

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates



**Office of the Arizona
Attorney General
Mark Brnovich**
1275 West Washington St.
Phoenix, AZ 85007
Phone: 602-542-4911
Fax: 602-542-7453
Online: www.azag.gov

INSIDE THIS ISSUE:

- Page 2:** FY2016 Victims' Rights Violations Statistics
- Page 3:** Specific Concerns related to A.R.S. § 13-4423
- Page 4:** General Tips for Compliance
- Page 5:** Attorney General's Office Distinguished Service Awards - Call for Nominations
- Page 5:** Save the Date: 2017 Victims' Rights Week Event

The **Victims' Rights Brief** is published by the Office of the Arizona Attorney General, Office of Victim Services. The goal in generating the Brief is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system.

To learn more about victims' rights visit us at www.azag.gov/victim-services

If you have questions, suggestions or an idea for an article, contact **Colette Chapman** at (602) 542-8848 or email colette.chapman@azag.gov.

Victims' Rights Compliance - FY2016 A Call to Action!

In 1999, the Victims' Rights Enforcement Officer was established within the Victim Services Section as a result of a recognized need for enforcement of victims' rights laws and accountability of those responsible for providing mandated victims' rights. This position continues today within the Office of Victim Services (OVS) as the State Victims' Rights Administrator for Compliance (Compliance Administrator).

The Compliance Administrator receives and examines victims' rights complaints in a neutral and unbiased manner in order to facilitate resolution in furtherance of the law. The Compliance Administrator assists crime victims by promoting participation in the justice process and ensuring that justice is served through upholding victims' rights. For criminal and juvenile justice agencies, the Compliance Administrator provides support and technical assistance to aid agencies in performing mandated victims' rights services. The Compliance Administrator promotes accountability, provides feedback and recommendations to ensure compliance, and exonerates agencies from unjustified criticism when alleged violations are unfounded.

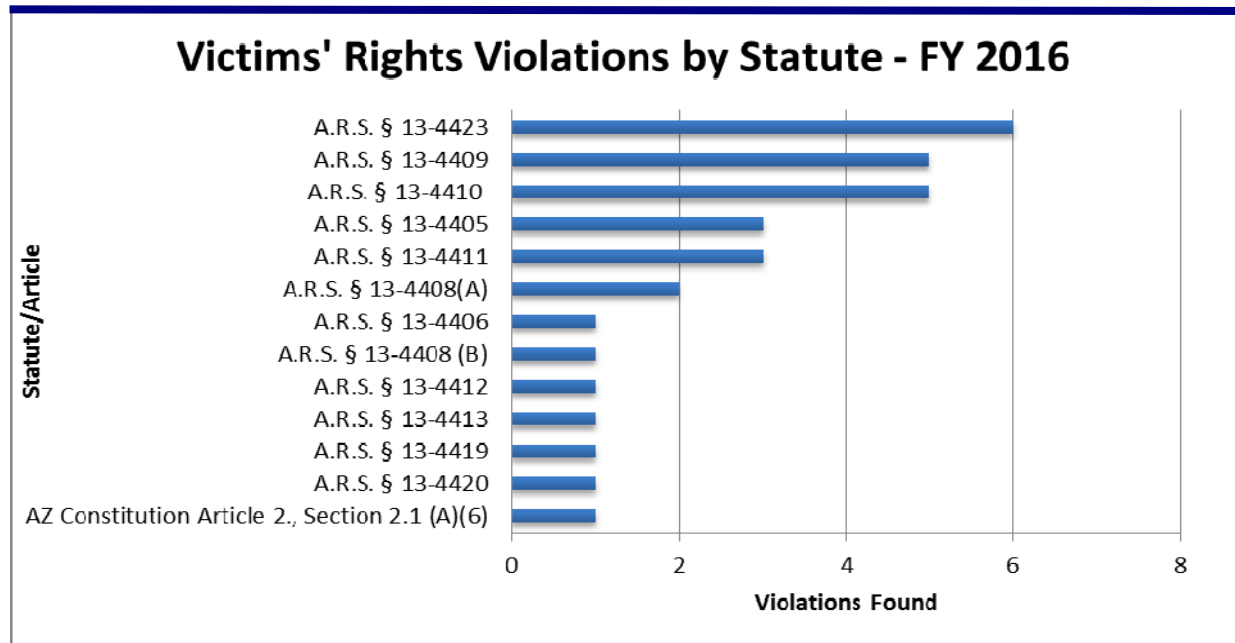
The OVS observed a high number of substantiated victim's rights violations during FY2016. The goal of this Victims' Rights Brief is to bring compliance issues to the forefront as a **call to action** so that agencies and persons responsible for providing mandated victims' rights services will review current practices and take the important steps necessary to ensure victims' rights are upheld.

This edition of the Victims' Rights Brief will review findings of victims' rights violations during the FY2016, address specific concerns related to plea negotiation proceedings, and provide general tips for compliance.

FY2016 VICTIMS' RIGHTS VIOLATIONS: STATISTICS

The Compliance Administrator responded to 31 complaints that were investigated as alleged victims' rights violations. Of the 31 investigations, 31 violations were found and 14 agencies (courts, law enforcement and prosecutorial) were subsequently issued a letter of findings outlining the complainant's allegation and the agency's violation(s).

As indicated in the graph below, the most frequent findings involved issues surrounding A.R.S. § 13-4423, plea negotiation proceedings; A.R.S. § 13-4409, notice of criminal proceedings; and A.R.S. § 13-4410 notice of conviction, acquittal or dismissal.



- ◆ A.R.S. § 13-4423 - **Plea negotiation proceedings**
- ◆ A.R.S. § 13-4409 - **Notice of criminal proceedings**
- ◆ A.R.S. § 13-4410 - **Notice of conviction, acquittal or dismissal; impact statement**
- ◆ A.R.S. § 13-4405 - **Information provided to victim by law enforcement agencies**
- ◆ A.R.S. § 13-4411 - **Notice of sentence imposed, post-conviction review and appellate proceedings**
- ◆ A.R.S. § 13-4408(A) - **Pretrial Notice**
- ◆ A.R.S. § 13-4406 - **Notice of initial appearance**
- ◆ A.R.S. § 13-4408 (B) - **Declination**
- ◆ A.R.S. § 13-4412 - **Notice of release**
- ◆ A.R.S. § 13-4413 - **Notice of prisoner's status**
- ◆ A.R.S. § 13-4419 - **Victim conference with prosecuting attorney**
- ◆ A.R.S. § 13-4420 - **Criminal proceedings; right to be present**
- ◆ AZ Constitution Article 2., Section 2.1 (A)(6) - **Right to confer with the prosecution**

SPECIFIC CONCERNS RELATED TO A.R.S. § 13-4423, PLEA NEGOTIATION PROCEEDINGS

The violations related to plea negotiation proceedings are especially concerning because these cases were clearly victim cases and the victims had opted-in to receive victim rights. In reviewing audio and written transcripts of these proceedings, there was mention of a victim; but not related to whether or not reasonable attempts were made to give notice to the victim of the plea proceeding or to confer with the prosecutor. In one case, the prosecutor did confer with the victim prior to the plea proceeding but the victim was not provided notice of the plea proceeding. In another case, there was no evidence of notice or attempts to confer with the victim. In these cases, plea agreements were accepted by the court.

When a plea proceeding is scheduled or when another proceeding transitions into a plea proceeding, prosecutors should know the answers to the questions below:

- ◇ Were reasonable efforts made to give the victim notice of the plea proceeding?
- ◇ Were reasonable efforts made to confer with the victim?
- ◇ Can you avow to the court that to the best of your knowledge notice requirements have been complied with and can you inform the court of the victim's position, if known, regarding the negotiated plea?
- ◇ Are agency and prosecutor efforts clearly documented?

As the assigned prosecutor in a case, are you advising the prosecutor who is standing in for you of the agency's efforts to comply with A.R.S. § 13-4423?

Conversely, if you are a prosecutor standing in for another prosecutor at a plea proceeding, do you know the answers to the aforementioned questions?

Do you know if there is a victim in the case?



If you don't know, inform the court! Get it on the record!

GENERAL TIPS FOR COMPLIANCE

- 1) **Develop policies and procedures.** The development of policies and procedures will guide decisions and direction, identify daily practices, and evidence compliance of victim services. Overall, procedure should include the following:
 - ◇ Statutory requirements and associated timelines
 - ◇ Daily practices
 - ◇ The responsible party (by title) to carry out the provision of mandated services
- 2) **Communication is key!** Effective communication between prosecutors and victim advocates/victim service units is essential when serving victims. Hopefully, this isn't an "ah-ha" statement. It is also important to evidence compliance by documenting the agency's efforts to meet the requirements of victims' rights statutes.
- 3) **Take that extra step!!** Sometimes, while reviewing complaints it becomes so clear that if an agency or person would have just taken an extra step, dug a little deeper, asked a few more questions, been more curious and not been content with the status quo, fewer violations would occur.
- 4) **Ongoing Training.**
 - ◇ Highlight one or two victims' rights statutes a month at staff meetings, research and write about it, discuss it, share with all agency staff.
 - ◇ Be clear on your agency's responsibilities related to victims' rights.
 - ◇ Attend or host the Basic Victims' Rights and Advanced Victims' Rights Training provided by the OVS on an annual basis to receive legislative updates and information on case law.

To locate training near you, or to request training, please visit our website at:
<https://www.azag.gov/victim-services/victims-rights-training-schedule>

It should be noted that through the victims' rights complaints filed with our office, the OVS was able to identify and address systemic victims' rights issues throughout Arizona. Agency responses and actions taken as a result of a complaint have effected positive changes and will continue to do so through an elevated awareness and concentrated efforts in serving victims of crime.

ATTORNEY GENERAL'S OFFICE OF VICTIM SERVICES 2017 DISTINGUISHED SERVICE AWARDS Now Accepting Nominations!

It is time, once again, to nominate and formally acknowledge the work of those in the victims' rights field during the National Crime Victims' Rights Week held April 2 - 8, 2017.

Nomination forms must be postmarked or received by our office by Friday, February 3, 2017.

Nomination forms can be found at: <https://www.azag.gov/victim-services/victim-services-0>

Awards will be presented during the multi-agency
Victims' Rights Week Recognition event on April 4, 2017

★ ★ NATIONAL CRIME VICTIMS' RIGHTS WEEK ★ APRIL 2-8 ★ 2017 ★ ★

STRENGTH ★ RESILIENCE ★ JUSTICE

★ **SAVE THE DATE** ★

Join us as we recognize

National Crime Victims' Rights Week

Tuesday April 4, 2017 at 11:30 AM

RSVP Required - More Details Coming Soon

A JOINT COLLABORATION OF:



Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: APAAC Lethality Assessment Working Group Report and Petition to Amend Form 4 (R-16-0046)
March 3, 2017	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: APAAC Lethality Assessment Working Group

PRESENTER: Amelia Cramer (PCAO); Jon Eliason (MCAO)

DISCUSSION & TIME ESTIMATES: Report from the APAAC working group and action taken by APAAC. **15 minutes**

RECOMMENDED MOTION (IF ANY): Move for COVIC to post a comment in support of the petition.

Rule Petition Link:

<https://www.azcourts.gov/Rules-Forum/afv/search/f/-1?q=r-16-0046&rt=0>

1 Elizabeth Ortiz, Bar No. 012838
2 Executive Director
3 Arizona Prosecuting Attorneys'
4 Advisory Council
5 1951 West Camelback Road, Suite 202
6 Phoenix, AZ 85015-3407
7 (602) 542-7222 / FAX (602) 274-4215
8 Elizabeth.Ortiz@apaac.az.gov

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

11 In the Matter of:

Supreme Court No. R-_____

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

PETITION

15 To protect the rights and safety of domestic violence victims, and to
16 promote the effective administration of justice, the Arizona Prosecuting
17 Attorneys' Advisory Council (APAAC) petitions this Court to adopt the attached
18 form as an Addendum to Form 4(a) in the Appendix to the Arizona Rules of
19 Criminal Procedure.

20 DATED this 14th day of December, 2016.

21 

22 Elizabeth Ortiz, #012838
23 Arizona Prosecuting Attorneys'
24 Advisory Council

25 ...

1 In determining the conditions of release or amount of bail for a criminal
2 defendant, a judicial officer must consider, among other things, “[t]he results of a
3 risk or lethality assessment in a domestic violence charge that is presented to the
4 court.” A.R.S. § 13-3967(B)(5). To aid judicial officers with this task, law
5 enforcement agencies around the state have developed forms to document and
6 present the results of such assessments, with the result that different forms are
7 used in each county.
8
9

10 At the request of the Administrative Office of the Courts, the Commission
11 on Victims in the Courts, the Committee on the Impact of Domestic Violence and
12 the Courts, and APAAC assembled a working group to examine how lethality
13 assessments are used in the criminal justice system in Arizona. A group
14 including recognized experts in the field has worked together to create the
15 attached risk assessment form, combining the research of the experts and the
16 input of the other members of the group. (The risk assessment form is contained
17 on page 1 of the attachment, while the rest of the document explains the form.)
18
19

20 The form will provide a great benefit by ensuring uniformity throughout
21 the state. Law enforcement agencies will be encouraged to implement statewide
22 policy in a uniform manner. Judicial officers will receive a form they are familiar
23 with, no matter which law enforcement agency has investigated a case.
24
25

1 Even more importantly, the form is beneficial because it is backed by
2 research and statistically validated to predict dangerousness to victims. In that
3 regard, it will benefit courts, victims, and defendants alike.
4

5 **CONCLUSION:**

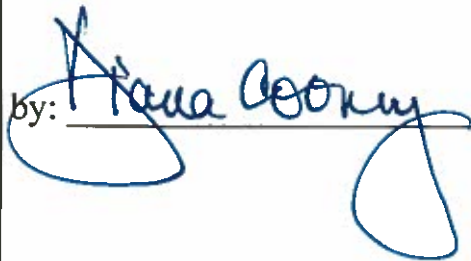
6 Because the attached form will help law enforcement agencies to
7 communicate information necessary to assist the courts to protect victims and do
8 justice, APAAC urges this Court to adopt the form as the model assessment to be
9 used as an Addendum to Form 4(a) in the Appendix to the Rules of Criminal
10 Procedure.
11

12 RESPECTFULLY SUBMITTED this 14th day of December, 2016.
13

14 

15 _____
16 Elizabeth Ortiz, #012838
17 Executive Director
18 Arizona Prosecuting Attorneys'
Advisory Council

19 Electronic copy filed this 14th day
20 of December, 2016, with the
21 Clerk of the Arizona Supreme Court,

22 by: 
23 _____
24

Form 4: Release Questionnaire Addendum
Intimate Partner Risk Assessment*

Defendant's Name _____ DOB _____ Booking No. _____

Law Enforcement Agency _____ Report No. _____

Victim Name _____

Question	Yes	No	Decline
1. <i>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?</i>			
2. <i>Is he/she violently and constantly jealous of you?</i>			
3. <i>Do you believe he/she is capable of killing you?</i>			
4. <i>Have you ever been beaten by NAME SUSPECT while you were pregnant? (e.g. hit, kicked, shoved, pushed, thrown, or physically hurt with a weapon or object)</i>			
5. <i>Has he/she ever used a weapon or object to hurt or threaten you?</i>			
6. <i>Has he/she ever tried to kill you?</i>			
7. <i>Has he/she ever choked/strangled/suffocated you? If this has happened more than once, check here</i>			
Tier 2: Ask on scene or during follow up.			
8. <i>Does he/she control most or all of your daily activities?</i>			
9. <i>Is he/she known to carry or possess a gun?</i>			
10. <i>Has he/she ever forced you to have sex when you did not wish to do so?</i>			
11. <i>Does he/she use illegal drugs or misuse prescription drugs? (e.g. meth, cocaine, painkillers,</i>			
12. <i>Has he/she threatened to harm people you care about?</i>			
13. <i>Did you end your relationship with him/her within the past six months? Does he/she know or sense you are planning on ending your relationship with</i>			
14. <i>Has he/she experienced significant financial loss in the last six months?</i>			
15. <i>Is he/she unemployed?</i>			
16. <i>Has he/she ever threatened or tried to commit suicide?</i>			

Yes to 2 or 3 questions = "risk"

Yes to 4 or more questions = "high risk"

"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 Partner Lethality Assessment

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

These questions are asked of the victim in any domestic 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 "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 services that are available. Further questions may be asked of them at that time.

"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 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 risk factors present.

Victims who scored in the "high-risk" category (a 'yes' response to 4 or more 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 risk factors present.

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

Form 4
Release Questionnaire Addendum
Intimate Partner Risk Assessment*

Law Enforcement Agency _____ Report
No. _____

Question	Yes	No	Decline
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 NAME SUSPECT 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? If this has happened more than once , check here			
<i>Tier 2: Ask on scene or during follow up.</i>			
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? Does he/she know or sense you are planning on ending your relationship with			
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 ?			

Yes to 2 or 3 questions = "risk"
Yes to 4 or more questions = "high risk"

"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 Partner Lethality Assessment



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

These questions are asked of the victim in any domestic 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 "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 services that are available. Further questions may be asked of them at that time.

"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 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 risk factors present.

Victims who scored in the "high-risk" category (a 'yes' response to 4 or more 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 risk factors present.

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



[FAQ](#)

Register

Login

ATTENTION:

This site has been recently moved.

If you had an account on our old forum site, you will have to **register** a new account here in order to be able to post replies.

[Message from the Chief Justice](#)

[Current Arizona Rules](#)

[Amendments from Recent Rule Agendas](#)

[Rule Amendments \(2006 to present\)](#)

[Advisory Committee on Rules of Evidence](#)

[Pending Rules List](#)

Welcome!

This website allows you to electronically file and monitor court rule petitions and comments and to view existing rules of court, recent amendments of those rules, and pending rule petitions and comments. Any visitor to this site may view posts on this website, but to post a petition or comment you must register and log in. To view instructions on how to register and how to file a petition or comment, please visit our [Frequently Asked Questions \(FAQ\) page](#).

[Unanswered](#) [Active Topics](#)

[Forums](#) [Search Forums](#) ▾

Search:

Modify Search

Keyword(s): **r-16-0046**

Search Results

Search took 0.96 seconds

R-16-0046 to Amend Appendix to Rules of Criminal Procedure

Started 14 Dec 2016 @ 03:12 PM by Diana Cooney

0

354

In: **Rules of Criminal Procedure**

By: Diana Cooney

14 Dec 2016 @ 03:12 PM

Results 1 - 1 of 1

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: Update re: Task Force for Fair Justice for All
March 3, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: AOC

PRESENTER: Judge Reinstein

DISCUSSION & TIME ESTIMATES: Judge Reinstein will report on the feedback from the Task Force after submission of COVIC's response to its report and the status of the Task Force's Recommendations. (Will also be discussed in the Legislative Overview) 10 Minutes.

RECOMMENDED MOTION (IF ANY): None

Commission on Victims in the Courts (COVIC) Response to the Recommendations of the Task Force on Fair Justice for All

COVIC met on October 21, 2016 and Tom O'Connell, Vice-Chair of the Task Force, gave a thorough presentation of its recommendations to the commission. COVIC voted to support the Task Force's recommendations with the understanding that the members have concerns that need to be addressed. They are as follows:

Representation

Membership on the task force should have included a crime victim, a victim advocate, or both.

Eliminate or reduce the imposition of the 10% annual interest rate on any Criminal Restitution Order. (Recommendation No. 11)

The interest rate should not be reduced or eliminated on Criminal Restitution Orders (CROs). CROs and liens are treated the same as a civil judgment and restitution liens should not be singled out from other civil judgments, making victims second class judgment creditors. Further, and perhaps most importantly, it is a constitutional right for a victim to receive "prompt restitution" but the reality is that often it is 7-8 years old in owing or never completely paid. The interest charged on the order has been used as an incentive to get the defendant to pay the full amount in a timely manner. There are cases in which small business owners who have been victimized with restitution owed must get financing at a high interest rate in order to keep their businesses going. This group suggests that perhaps it could be made discretionary with the victim's approval, or with interest postponed and not assessed if paid off by a certain time. More discussion is needed.

Promote the use of restitution courts... Provide judicial training on... appointment of counsel at hearings involving a defendant's loss of liberty. (Recommendation No. 32)

Restitution courts – COVIC's Restitution workgroup agrees that restitution courts are excellent tools for assuring payment of restitution. As such, the workgroup has drafted a white paper on Best Practices - Restitution Court. The commission's and workgroup's members stand ready to assist with subject matter expertise when/if this recommendation is advanced for implementation. Further, the group agrees that judicial training is needed, not just for restitution court but regarding restitution as a whole. COVIC also stands ready to assist with judicial training needs as well as training for probation personnel.

Appointment of counsel – COVIC members respectfully disagree among each other as to whether there should be representation at hearings involving a defendant's loss of liberty. There could be serious funding issues involving this and the implications could also bleed into family court. It needs further study.

Kick-off Summit (Recommendation No. 57)

A crime victim, a victim advocate, or both, should be included in the list of stakeholders who will be invited to this one day event.

In General

- The costs of fines and traffic school have become unreasonable with all the surcharges, etc. added on. However, surcharges, fees, assessments, etc. are used to fund various direct crime victim services in Arizona, which, if reduced, would hurt victims.
- There was an observation that trying to teach people to obey the law by jailing them doesn't work.
- The workgroup recognizes and agrees with the Task Force that data on how restitution is imposed, collected and enforced is not available. Workgroup members came up against this problem regularly during discussions. It is difficult to make improvements and/or recommendations to a system when there is no hard data to back up discussions and ideas.

Thank you for the opportunity to supplement our approval of the Task Force's Recommendations with these provisos.

Hon. Ron Reinstein (Ret.)

Chair, Commission on Victims in the Courts

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: SAFER Grant Update
March 3, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: SAFER Team member

PRESENTER: Jim Markey

DISCUSSION & TIME ESTIMATES: Mr. Markey will update the commission on the status of the report produced by the National Sexual Assault Forensic Evidence Reporting Workgroup.

RECOMMENDED MOTION (IF ANY): None.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: Report of the Governor's Sexual Assault Kit Task Force
March 3, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: Task Force and COVIC Member

PRESENTER: Colleen Clase, Senior Attorney, Arizona Voice for Crime Victims

DISCUSSION & TIME ESTIMATES: Ms. Clase will report on the recommendations made by the Governor's Task Force. 10 Minutes.

RECOMMENDED MOTION (IF ANY): None.

Governor Ducey's FY 2018 Budget Will Fully Fund The Testing Of All Remaining Rape Kits

News Release

January 9, 2017     

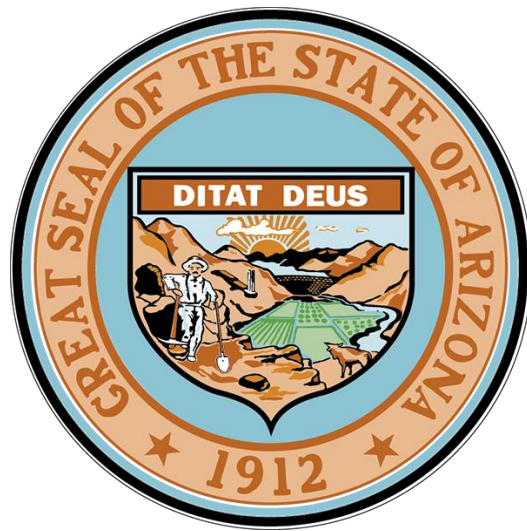
PHOENIX — Governor Doug Ducey announced today during his State of the State address that his fiscal year 2018 budget will fully fund the testing of all remaining rape kits in Arizona:

"My budget fully funds the testing of all remaining rape kits. And with the recommendations of our task force, we are ready to move forward with legislation requiring all future kits to be tested. Let's get this done, and for the thousands of women who have been victimized, finally ensure justice."

In October 2016, Governor Ducey **announced** plans to immediately move forward on recommendations from the Sexual Assault Evidence Collection Kit Task Force regarding untested rape kits in Arizona. The task force was **established** in January 2016 upon the issuance of Executive Order 2016-02.

We have has already seen two recent indictments thanks to these early efforts to test forgotten rape kits

ARIZONA SEXUAL ASSAULT EVIDENCE COLLECTION KIT TASK FORCE



SEPTEMBER 30, 2016



ARIZONA SEXUAL ASSAULT EVIDENCE COLLECTION KIT TABLE OF CONTENTS

Introduction	3
Definitions	3-4
Inventory	5-8
Best Practices	8-12
<i>Medical Forensic Exam</i>	9-10
<i>Law Enforcement</i>	10-11
<i>Crime Laboratory</i>	11-12
<i>Victim Notification & Engagement</i>	12
Model Policy	13-15
Tracking	15-16
Legislation	16
Education	16
Funding	16-18
Task Force Review	18
Acknowledgements.....	18
Attachment A: Crime Laboratory Flow Chart for Sex Crimes Evidence Kit Processing	19-20

I. INTRODUCTION

On January 11, 2016, Governor Douglas A. Ducey established the Arizona Sexual Assault Evidence Collection Kit Task Force by Executive Order 2016-02. The Task Force is charged with multiple responsibilities, which include: documenting the location of all untested sexual assault kits in Arizona; providing legislative recommendations to ensure every kit is tested in a timely manner; developing statewide protocols; and recommending a statewide tracking system for sexual assault kits. The members of the Arizona Sexual Assault Evidence Collection Kit Task Force are:

- Colonel Frank Milstead (Co-Chairperson), Arizona Department of Public Safety
- Bill Montgomery (Co-Chairperson), Maricopa County Attorney
- Mark Brnovich, Arizona Attorney General
- Representative Kate Brophy McGee, Arizona House of Representatives
- Colleen Clase, Arizona Voice for Crime Victims
- Christina Corieri, Office of Governor Doug Ducey
- Sheriff Mark J. Dannels, Cochise County Sheriff
- Director Jesse Delmar, Navajo Nation Division of Public Safety
- Senator Katie Hobbs, Arizona State Senate
- Jessye Johnson, Arizona Coalition to End Sexual and Domestic Violence
- Todd Larson, HonorHealth
- Barbara LaWall, Pima County Attorney
- Senator Debbie Lesko, Arizona State Senate
- Representative Phil Lovas, Arizona House of Representatives
- Myriah Mhoon, Arizona Governor’s Office of Youth, Faith and Family
- Sheila Polk, Yavapai County Attorney
- Assistant Chief Mary Roberts, Phoenix Police Department
- Chief Pete Wingert, Paradise Valley Police Department

II. DEFINITIONS

Jurisdictions throughout the nation use a variety of terminology (such as unsubmitted, unprocessed, untested, not analyzed, awaiting testing) to describe the sex crimes evidence kits identified during their inventory. For the purposes of the Task Force’s recommendations the following are definitions of terminology used throughout this document:

Backlog	A Sex Crimes Evidence Kit (SCEK) or other related evidence, from a case that is not unfounded and has not been tested for more than 30 days from when laboratory analysis was requested.
---------	--

CODIS	Combined Deoxyribonucleic Acid Index System (CODIS). It is the generic term used to describe the program and software supplied by the FBI to support criminal justice DNA databases used. CODIS links DNA evidence obtained from crime scenes, thereby identifying serial criminals. CODIS also compares crime scene evidence to database profiles, which includes convicted offenders and arrestees, thereby providing investigators with the identity of the putative perpetrator. In addition, CODIS can link DNA evidence obtained from unidentified human remains to relatives of missing persons and/or missing persons. The goal of CODIS is to provide investigative connection with felony sexual offenses or homicides.
CODIS eligibility	A term used to describe what is allowed to be entered and searched within the CODIS system. In order for DNA records to be eligible to be maintained and searched in the forensic indexes at NDIS or SDIS, they must be from crime scene evidence. The DNA records offered to NDIS and/or SDIS must also be attributable to the putative perpetrator. DNA records voluntarily provided solely for the purposes of elimination are not acceptable.
Non-report kits	Sex crimes evidence kits that are collected and documented during a medical forensic exam which a victim has not reported to law enforcement.
Sex crime & sexual assault	These terms are used interchangeably throughout this document, and mean any violation of A.R.S. § 13-1404 through 13-1406.01, 13-1409 through 13-1412, 13-1417 through 13-1419, and 13-1423.
SCEK	A sex crimes evidence kit (SCEK) is a collection of evidence gathered from the victim by a medical professional, often a specially trained medical forensic examiner. The type of evidence collected depends on what occurred during the assault. The contents of a kit vary by jurisdiction, but generally include swabs, test tubes, microscopic slides, and evidence collection envelopes for hairs and fibers.
Tested	Forensic testing has been completed on one or more samples from the SCEK or other evidence. All of the samples in the SCEK may not have had DNA testing completed, as DNA analysis is performed only on the samples that test positive for DNA.
Trauma-informed	Responders have a fundamental understanding of the emotional, psychological and physical effects of trauma, and how these effects impact a victim's cognition, decision-making, memory and behavior.
Unfounded	At the conclusion of a reasonable law enforcement investigation, there is direct evidence which clearly and convincingly establishes that a crime did not occur.
Unsubmitted	A sex crimes evidence kit in the possession of the law enforcement agency that has not been submitted to a forensic laboratory for testing and analysis.
Untested	Refers to a sex crimes evidence kit (or other evidence) that is at a crime lab, but has not yet been through forensic testing.
Victim Centered	The victim's safety and needs are prioritized, and are the primary consideration for all responders throughout the criminal justice process and provision of services. A crime victim's constitutional and statutory rights are observed and protected throughout the criminal justice system.
YSTR or Y-Screening	An alternative laboratory process for testing of biological samples such as SCEKs for the presence of male DNA. This laboratory process is useful when dealing with mixtures containing female and male components.

III. INVENTORY

The Task Force conducted a statewide survey of all law enforcement agencies throughout Arizona for unsubmitted sex crimes evidence kits and determined there are 6,424 unsubmitted sex crimes evidence kits across Arizona. Of these kits, 4,367 are in Maricopa County alone.

In reviewing the inventory, it is important to understand the history of why sex crimes evidence kits went untested or were not submitted to the crime laboratory for testing in the first place. Primary causes include limited resources for both police agencies and crime laboratories, investigative discretion and prosecutorial decision making. Over the past several years the demand for DNA testing has grown dramatically due to technology advancements, and state and municipal crime laboratories often struggle to maintain sufficient funding for personnel and equipment. Crime laboratories have to prioritize the many cases and crime scenes processed each year, which can create a backlog for DNA analysis. However, many sex crimes evidence kits never make it to a crime laboratory for testing. Law enforcement agencies struggle with personnel and resources for investigations and technology resources for evidence tracking. Although some agencies have policies in place for submitting sex crime evidence kits, in the past, the decision has generally been left to the discretion of the investigating officer. The practice of many jurisdictions was to submit the kit for testing only if the offender was unknown; therefore in cases where the offender was known, but there was a question of consent, kits were not submitted. Additionally, if it was determined that the case was not going to move forward with prosecution, kits were often not submitted for testing. Ultimately, agencies grappled with decisions on using limited resources to test kits on cases that were not continuing forward through the criminal justice process or where the offender was known to law enforcement. However, as outlined in this report, the importance for testing these kits is crucial for ensuring justice for victims and letting perpetrators know that they will be held accountable for their crimes.

There are various efforts underway that complement the work of the Task Force in addressing the unsubmitted and/or backlog of sex crimes evidence kits in Arizona. Similar to the Task Force, the Maricopa County Attorney's Office has a multidisciplinary working group to examine the issue of unsubmitted kits and make recommendations for Maricopa County. The Maricopa County Attorney's Office is the recipient of a District Attorney of New York (DANY) grant for \$1.9 million. In addition, the Tempe Police Department received a separate DANY grant in the amount of \$363,000 to cover the remainder of its unsubmitted sex crimes evidence kits. Just prior to the submission of this report, the Maricopa County Attorney's Office and the Phoenix Police Department were awarded grants for approximately \$1.2 million and \$1.5 million respectively, which we anticipate will cover the remainder of unsubmitted and/or backlog of kits in Maricopa County.

The Tucson Police Department is also a recipient of their own DANY grant in the amount of \$1,038,000 which is currently being used to test 1,200 untested sex crimes evidence kits, leaving 908 remaining in their jurisdiction after the grant is fully expended.

There may be additional jurisdictions in the process of applying for grant opportunities, but it is unknown at this time what amounts may be awarded. As such, after the currently secured grants are expended there will be approximately 2,000 sex crimes evidence kits to test statewide.

The chart below contains the current statewide inventory of sex crimes evidence kits.^{1 2}

	Agency	County	Unsubmitted SCEKs
Sheriff	Apache	Apache	25
PD	Eager	Apache	1
PD	Springerville	Apache	0
PD	St. Johns	Apache	0
PD	Benson	Cochise	0
PD	Bisbee	Cochise	0
Sheriff	Cochise	Cochise	1
PD	Douglas	Cochise	5
PD	Huachuca City	Cochise	0
PD	Sierra Vista	Cochise	32
PD	Tombstone	Cochise	0
PD	Wilcox	Cochise	8
Sheriff	Coconino	Coconino	11
PD	Flagstaff	Coconino	166
PD	Fredonia	Coconino	2
PD	Northern Arizona	Coconino	0
PD	Page	Coconino	21
PD	Williams	Coconino	0
Sheriff	Gila	Gila	0
PD	Globe	Gila	0
PD	Hayden	Gila	0
PD	Miami	Gila	0
PD	Payson	Gila	29
Sheriff	Graham	Graham	0
PD	Pima	Graham	0
PD	Safford	Graham	3
PD	Thatcher	Graham	0
PD	Clifton	Greenlee	2
Sheriff	Greenlee	Greenlee	0
Sheriff	La Paz	La Paz	5
PD	Parker	La Paz	0
PD	Quartzsite	La Paz	0
PD	Apache Junction	Maricopa	36
PD	Arizona State University	Maricopa	11

¹ The survey was distributed to law enforcement agencies under Arizona state law jurisdiction. Arizona also has several tribal law enforcement agencies, some of which participated in the survey voluntarily, whose sexual assault crimes are under the jurisdiction of federal prosecutors.

² The Maricopa County Attorney's Office (MCAO) has a working group in conjunction with their DANY grant. MCAO also conducted an inventory of law enforcement agencies in Maricopa County. Due to the timing of agencies responses, the inventory results may be different due to the submission of kits for testing after their initial response.

	Agency	County	Unsubmitted SCEKs
PD	Avondale	Maricopa	68
PD	Buckeye	Maricopa	35
PD	Chandler	Maricopa	186
PD	Eastern Arizona College	Maricopa	0
PD	El Mirage	Maricopa	7
PD	Gilbert	Maricopa	114
PD	Glendale	Maricopa	180
PD	Goodyear	Maricopa	53
Sheriff	Maricopa	Maricopa	283
PD	Maricopa Community	Maricopa	0
PD	Mesa	Maricopa	612
PD	Paradise Valley	Maricopa	0
PD	Peoria	Maricopa	129
PD	Phoenix	Maricopa	2,129
PD	Scottsdale	Maricopa	0
PD	Surprise	Maricopa	9
PD	Tempe	Maricopa	500
PD	Tolleson	Maricopa	15
PD	Wickenburg	Maricopa	0
PD	Bullhead City	Mohave	65
PD	Colorado City	Mohave	0
PD	Kingman	Mohave	0
PD	Lake Havasu	Mohave	12
Sheriff	Mohave	Mohave	0
PD	Holbrook	Navajo	0
Sheriff	Navajo	Navajo	0
PD	Pinetop - Lakeside	Navajo	1
PD	Show Low	Navajo	23
PD	Snowflake - Taylor	Navajo	6
PD	Winslow	Navajo	0
PD	Marana	Pima	21
PD	Oro Valley	Pima	0
Sheriff	Pima	Pima	392
PD	Pima Community College	Pima	0
PD	Sahuarita	Pima	0
PD	South Tucson	Pima	11
PD	Tucson	Pima	908
PD	University of Arizona	Pima	15
PD	Casa Grande	Pinal	29
PD	Central Arizona College	Pinal	5
PD	Coolidge	Pinal	0
PD	Eloy	Pinal	24

	Agency	County	Unsubmitted SCEKs
PD	Florence	Pinal	10
PD	Kearny	Pinal	0
PD	Mammoth	Pinal	0
PD	Maricopa	Pinal	11
Sheriff	Pinal	Pinal	6
PD	Superior	Pinal	0
PD	Nogales	Santa Cruz	16
PD	Patagonia	Santa Cruz	0
Sheriff	Santa Cruz	Santa Cruz	0
PD	Camp Verde	Yavapai	4
PD	Chino Valley	Yavapai	4
PD	Clarkdale	Yavapai	0
PD	Cottonwood	Yavapai	3
PD	Jerome	Yavapai	0
PD	Prescott	Yavapai	5
PD	Prescott Valley	Yavapai	1
PD	Sedona	Yavapai	1
Sheriff	Yavapai	Yavapai	31
PD	Yavapai Community	Yavapai	0
PD	AZ Western College	Yuma	0
PD	San Luis	Yuma	3
PD	Somerton	Yuma	0
PD	Wellton	Yuma	1
PD	Yuma	Yuma	82
Sheriff	Yuma	Yuma	56
TOTAL			6,424

IV. BEST PRACTICES

The intent of this section is to identify best practices to assist jurisdictions and organizations in the development of policies and protocols. This section addresses issues that arise in the course of working with sexual assault evidence. These recommendations represent the ideal approach, understanding that communities may be limited by funding, infrastructure or resources to implement this guidance in total.

The goal of this section is to provide a high level outline of best practices to improve the response from the time of the initial victim disclosure through any ultimate disposition of a case. To provide the highest level of service, with the victim always in mind, all involved disciplines including medical, law enforcement, victim advocates and forensic laboratories are encouraged to work together to process sex crimes evidence kits in a timely and effective manner.

The Task Force recognizes that it is of primary importance to use a victim centered and trauma informed approach in developing and recommending policies and procedures surrounding sexual assault crimes. This approach leads to the timely submission of evidence to forensic laboratories, enhances investigations, promotes speed in prosecutorial decision-making and ultimately reduces trauma to victims in the criminal justice system. These recommendations include best practices for protocols nationally and from other states.

A. MEDICAL FORENSIC EXAM

Collecting evidence is an important part of any investigative process and is increasingly sensitive in sexual assault crimes where the crime scene and the victim are one in the same. As such, a strong emphasis should be placed on supporting the victim throughout the evidence collection process, making the role of the medical forensic examiner a vital component in this process. Arizona uses a standard sex crimes evidence kit statewide for the collection of evidence in a medical forensic exam. This section is not intended to supersede existing medical forensic exam protocols, but provide standard guidelines for medical forensic exams. Medical care is the first and foremost duty of a medical forensic examiner and these recommendations do not seek to change or alter the provision of medical care.

Although victims are encouraged to report and cooperate with law enforcement in a timely manner in order to facilitate the successful investigation of the case, the decision to report a sexual assault to law enforcement rests with the victim. If the victim suffered a gunshot wound, knife wound or “other material injury which may have resulted from a fight, brawl, robbery or other illegal or unlawful act”, attending medical personnel must make a report to police pursuant to A.R.S. § 13-3806. The victim, however, retains the right to decline to speak with law enforcement, except under mandatory reporting situations where a child may be the victim of physical or sexual abuse or neglect.

As such, a medical forensic exam is a resource that is provided for all sexual assault victims including those who choose not to report. Under the provisions of the Violence Against Women Act (VAWA) of 2005, (U.S. Code § 3796gg), states must ensure that victims of sexual assault have access to a medical forensic exam, free of charge, even if the victim chooses not to report the crime to the police or otherwise participate with the law enforcement authorities or the criminal justice system. These non-reported kits afford victims access to medical care and allow important evidence to be collected, without forcing the victim to immediately decide whether to report the assault to law enforcement. Allowing victims a choice of reporting gives victims power and control over their participation in the criminal justice system. Medical forensic examiners should provide the victim with information on procedures in place for storage, tracking and the timeline for destruction of the kit.

Pursuant to A.R.S. § 13-1414, any medical or forensic interview expenses arising out of the need to secure evidence that a person has been the victim of a dangerous crime against children as defined in section 13-705 or a sexual assault shall be paid by the county in which the offense occurred. Medical providers are prohibited from billing the sexual assault victim for the cost of the exam, and the victim’s insurance cannot be billed for the cost of the medical forensic examination. A victim’s cooperation with police is not necessary for an exam to be paid for by the county. A sexual assault examination should be offered at no charge to the patient with a chief complaint of sexual assault that occurred within the last 120 hours. However, the victim retains the right to decline a medical forensic

exam. In cases where victims choose not to report the assault to law enforcement, jurisdictions shall store non-report kits in accordance with national best practice standards of one year.

For cases reported to law enforcement, federal privacy regulations created by the Health Insurance Portability and Accountability Act (HIPAA) require patients to give written authorization for a release of health information to non-healthcare providers. Written consent to release medical information can be obtained at the time of the examination, authorizing law enforcement and prosecution access to a copy of the medical record. The contracted medical provider will retain all original medical records indefinitely. Medical forensic examiners should have policies in place for the retention of records in accordance with the statute of limitations and other criminal justice needs. Policies should be put into place that not only comply with health information standards, but are useful to the needs of law enforcement.

In addition to the victim, the investigating agency must determine whether a forensic sexual assault examination should be conducted with the suspect through the individual's consent or a search warrant.

After the collection of evidence through the medical forensic exam, the hospital or exam facility shall notify the law enforcement agency and all evidence should be transferred to law enforcement. The Task Force recommends notification be made to the law enforcement agency as soon as possible, but ideally no longer than 24 hours.

B. LAW ENFORCEMENT

Sexual assault is a traumatic experience that can cause victims to display a variety of emotional and behavioral responses; there is no typical reaction. It is vital that law enforcement conduct every sexual assault investigation from a victim centered and trauma informed approach; treating all victims with dignity and respect. Trauma may impact emotional reaction and memory. A sexual assault victim may be unable to provide a full account of the incident and the victim may be irritable, argumentative, not cry or have a flat affect, etc. Additionally, victims may become uncooperative, recant or decline prosecution, there is no typical reaction. Law enforcement should not perceive these vast victim behaviors as indication of a false report and should continue with a thorough evidence-based investigation. All sexual assault reports should be investigated until evidence proves otherwise. Law enforcement professionalism creates a positive environment that plays a key role in respecting the victim's trust and participation throughout the criminal justice process.

Law enforcement is often the first responder for victims of sexual assault and can be the first to explain the process of a medical forensic examination to the victim. If the victim has been assaulted within the last 120 hours, law enforcement officers should provide information to the victim about the option of having a medical forensic exam and the benefits of having the exam. Additionally, officers should advise the victim they have the right to receive a medical forensic exam even if they do not want to participate in the criminal justice process and that neither the victim nor their insurance carrier will be billed for the exam and evidence collection.

Post examination, the hospital or exam facility should notify the law enforcement agency as soon as possible, ideally no later than 24 hours in order to arrange for transfer of the sex crimes evidence kit to law enforcement. Law enforcement agencies should impound all sex crimes evidence kits into their

property and evidence storage system using a single term for a sex crimes evidence kit to ensure proper tracking and reports. Law enforcement agencies should submit the sex crimes evidence kit as soon as possible to a crime laboratory for analysis, ideally, no later than fourteen days after collection unless it is determined the case is unfounded or it is a non-report kit.

The only circumstances in which a sex crimes evidence kit should not be submitted to the laboratory for testing is if law enforcement determines the case is unfounded or a victim chooses not to report. In unfounded cases, law enforcement has determined a crime did not occur and the case is solved, therefore the sex crimes evidence kit would be destroyed, as it is not evidence in a crime. In cases where victims choose not to report the assault to law enforcement, jurisdictions shall store non-report kits for one year. For non-report kits where the jurisdiction is in question, the law enforcement agency whose jurisdiction includes the location of the medical facility that collected the kit, will take possession of the kit, absent further investigation that establishes the location where the crime occurred. Law enforcement agencies should impound non-report kits in a category that establishes the evidence as a sex crimes evidence kit but does not affect crime reporting statistics until a law enforcement agency has the opportunity to investigate. Prior to destruction of the sex crimes evidence kit, law enforcement will attempt to contact the victim to inform them of the destruction date and verify they do not want to assist in the criminal justice process. Providing this final notification ensures that the victim has an outlet to speak to law enforcement without the pressure of making the initial contact. This approach recognizes the effect that trauma has on the victim by providing an opportunity to report a crime later in the process.

In all other circumstances, law enforcement in Arizona should submit all sex crimes evidence kits for testing in every case in which a sexual assault is being investigated. Sex crimes evidence kits should be tested even if the identity of the suspect is known and regardless if the case is ultimately prosecuted. Testing all kits builds trust with victims who choose to undergo the medical forensic exam and report to law enforcement. Testing all kits can identify or confirm the suspect's identity and can link cases across jurisdictions to help identify serial and unknown offenders. The Task Force recommends all sex crimes evidence kits collected as evidence in a sexual assault case in Arizona be submitted to the crime laboratory for testing unless a determination is made by law enforcement that the case is unfounded or the victim has not reported.

C. CRIME LABORATORY

Sex crimes evidence kits are processed by crime laboratories in order to generate a DNA profile from crime scene evidence eligible for the Combined DNA Index System (CODIS). CODIS is the system of DNA databases at the national, state and local levels for storing and searching DNA records contributed by federal, state and local forensic laboratories for criminal identification purposes. In the case of a sexual assault, a DNA profile of the suspected perpetrator (forensic unknown) is developed from the swabs in the sex crimes evidence kit. The forensic unknown profile attributed to the suspected perpetrator is searched against the local, state and national databases of convicted offender and arrestee profiles. In addition, the profiles are not only searched against other offender and arrestee profiles, but also other forensic unknown profiles in order to link cases together. If there is a candidate match in the convicted offender or arrestee index, the laboratory will follow the confirmation procedures and if confirmed, the offender hit will provide the identity of the suspected perpetrator to the submitting law enforcement agency.

All processing and analysis of sex crimes evidence kits should be done in accordance with the ISO 17025 standards for testing and calibration laboratories and the FBI's Quality Assurance Standards (QAS). Sex crimes evidence kits can be submitted to a state or municipal forensic laboratory who may outsource kits to a vendor laboratory should there be a substantial influx of case submissions, as anticipated to test these previously unsubmitted kits.

The FBI's Quality Assurance Standards require that DNA records are technically reviewed before being entered into CODIS or issuing a report. Thus, when the vendor laboratory completes the analysis of the sex crimes evidence kit samples, the vendor laboratory must review the resulting DNA records before a report is provided to the originating state or municipal forensic laboratory. The originating state or municipal forensic laboratory must then review the DNA case records to determine if the results are CODIS eligible and if so, is responsible for entering the information into the CODIS database and preparing any CODIS related reports. If outsourcing is used, it is important to verify the vendor laboratory's compliance with the FBI Director's QAS for forensic DNA testing laboratories and accreditation by an approved accrediting agency so that records generated by the vendor laboratory are eligible for upload into CODIS.

D. VICTIM NOTIFICATION AND ENGAGEMENT

While unsubmitted sex crimes evidence kits have been the focus, it is important to understand what a CODIS hit means for the investigation and how victims are notified. A CODIS hit is considered an investigative lead that still requires independent confirmation testing and comparison by the investigating law enforcement agency through a reference sample from the individual identified through the CODIS hit. Following up on these leads are a crucial part of the process. In addition to the identification of a suspected perpetrator, a CODIS hit may be beneficial for excluding potential suspects, reducing wrongful arrests, assisting in the exoneration of the wrongfully convicted, linking cases within a state and across the nation and providing validation to the victim.

As unsubmitted kits are tested, it is important for agencies to establish procedures for reconnecting with victims whose cases have grown cold in order to mitigate additional trauma to victims. Individuals that make the notification to victims should have training to understand the effect of trauma on survivors and the range of survivor responses. Victims should be given a choice about whether and when to receive information about their cases. Offering a victim a way to opt in or opt out of receiving information ensures they are in control of the process and maintains confidentiality and can help in setting appropriate expectations.

Law enforcement agencies should work with a multi-disciplinary team including victim advocates, crime laboratory personnel and prosecutors to establish a system of accountability to follow up on CODIS hits. Victim notification and engagement should be done with care and sensitivity using a trauma-informed approach. Depending how much time has passed since the assault, a victim may be in a very different stage of life and may not have disclosed past events to the people currently in her or his life. Law enforcement agencies should establish a victim notification protocol for informing victims of the status of their sexual assault cases and notifying them of the results of the laboratory testing.

V. MODEL POLICY

The Task Force recommends that law enforcement agencies establish a specific policy for the investigation of sex crimes. The goal of this section is to provide minimum standards that should be included in an agency's policy in regards to the collection, submission and retention of sex crimes evidence kits to ensure best practice recommendations are followed.

1) MEDICAL FORENSIC EXAMINATION

A. UNDERSTANDING AND EXPLAINING THE EXAMINATION TO THE VICTIM

A sexual assault medical forensic examination typically includes a medical history, a physical examination, treatment for injury, and prophylactic treatment for pregnancy or sexually transmitted diseases. If a victim chooses, forensic evidence is also collected through the use of a sex crimes evidence kit. Sexual assault medical forensic examinations are typically performed by a medical forensic examiner, if available, or at a local hospital emergency room.

- a. Victims have a right to receive a forensic examination and have evidence collected, even if they do not want to participate in the criminal justice process.
- b. Medical facilities will perform an examination to any person stating they have been assaulted within the previous 120 hours.
- c. Victims cannot be billed for the examination and evidence collection. A.R.S. § 13-1414 requires the county to pay for all sexual assault examinations.

B. REFERRAL FOR MEDICAL FORENSIC EXAMINATION

If the victim has been assaulted within the last 120 hours, inform the victim of the option to have a medical forensic exam (i.e. medical care and treatment as well as potential evidence. *[insert contact information for forensic nurse examiner(s) in your jurisdiction]*). Inform the victim they cannot be charged for the examination. If necessary or requested, provide the victim with transportation to the examination.

C. EXAMINATION

Law enforcement should not be present when the medical forensic examiner is conducting the examination. However, if the examination is being conducted on an inmate, take appropriate safety measures including presence of an officer during the examination, if necessary.

2) SEX CRIMES EVIDENCE KIT

A. CHAIN OF CUSTODY

The department is responsible for maintaining the chain of custody for the sex crimes evidence kit after it has been collected from the medical provider. Obtain documentation of the chain of custody from the medical provider prior to taking possession of the kit.

B. DEPARTMENT RECORD NUMBER

If the sexual assault took place within the jurisdiction of the department, the department shall match the SCEK to an existing department record number or assign a number to the SCEK. If an investigation has not already begun, an investigator should be assigned to make contact with the victim as soon as possible.

C. COLLECTION AND SUBMISSION

Victims of sexual assault have an expectation the evidence recovered during a medical forensic exam will be handled carefully and tested expeditiously. As such, notifications and timelines of each step below should be done as soon as possible, but ideally no later than the timeline outlined.

1. Medical forensic examiners to notify law enforcement to pick up the kit from the hospital or exam facility within 24 hours of kit collection.
2. Law enforcement agency to pick up kit from the medical forensic examiner within 72 hours after notification.
3. Law enforcement agency to submit kit to *[insert crime laboratory facility]* within 14 days of collection.
4. If it is determined the kit belongs to another jurisdiction the law enforcement agency shall notify and transfer the kit to the proper jurisdiction as soon as possible.
5. In cases where victims choose not to report the assault to law enforcement, jurisdictions shall store non-report kits for one year.
6. For non-report kits where the jurisdiction is in question, the law enforcement agency whose jurisdiction includes the location of the medical facility that collected the kit, will take possession of the kit, absent further investigation that establishes the location where the crime occurred.

D. IMPOUNDING

1. Law enforcement agencies should impound all sex crime evidence into their property and evidence storage using a single identifying category to ensure proper tracking and reporting.
2. Law enforcement agencies should impound non-report kits in a category that establishes the evidence as a sex crimes evidence kit, but does not affect crime reporting statistics until a law enforcement agency has the opportunity to investigate.

E. SUBMISSION GUIDELINES

The only circumstances in which a sex crimes evidence kit should not be submitted to the laboratory for testing is if law enforcement determines the case is unfounded or a victim chooses not to report. The presumption in favor of testing ensures sex offender DNA will be uploaded into state and federal law enforcement databases for appropriate use. Sex crimes evidence kits should be tested even if the identity of the suspect is known and regardless if the case is ultimately prosecuted. Testing all kits builds trust with victims who choose to undergo the medical forensic exam and report to law enforcement. Testing all kits can identify or confirm the suspect's identity and can link cases across jurisdictions to help identify serial and unknown offenders.

1. Unfounded Cases: Are cases after the conclusion of a reasonable law enforcement investigation, there is direct evidence which clearly and convincingly establishes that a crime did not occur. In unfounded cases, law enforcement has determined a crime did not occur and the case is solved, therefore the sex crimes evidence kit will be destroyed as it is not evidence in a crime.
2. Non-Report Cases: Kits will be stored for one year after collection. Prior to destruction of the sex crimes evidence kit, law enforcement will attempt to contact the victim to inform them of the destruction date and verify they do not want to assist in the criminal justice process. Providing this final notification ensures that the victim has an outlet to speak to law enforcement without the pressure of making the initial contact. This approach recognizes the

effect that trauma has on the victim by providing an opportunity to report a crime later in the process.

3. All other cases: Kits will be submitted to *[insert crime laboratory]* for testing as soon as possible, ideally within 14 days of collection.

F. STORAGE

The department is responsible for storing/preserving the SCEK after the completion of the forensic testing. The SCEK shall be stored in adherence with the law enforcement retention standards.

3) **CODIS DNA HIT**

A CODIS hit is considered an investigative lead which still requires independent confirmation testing and comparison by the investigating law enforcement agency through a reference sample from the individual identified through the CODIS hit. Following up on these leads are a crucial part of the process. In addition to the identification of a suspected perpetrator, a CODIS hit may be beneficial for excluding potential suspects, reducing wrongful arrests, assisting in the exoneration of the wrongfully convicted, linking cases within a state and across the nation and providing validation to the victim.

A. VICTIM NOTIFICATION

Investigators should work with a multidisciplinary team including victim advocate organization and prosecutor to ensure victim-centered and trauma-informed notification. Victim notification of a CODIS hit should be done by law enforcement, victim advocate or designee who has training to understand the effect of trauma on victims and the range of victim responses. The individual responsible for notification will ensure the following:

1. Inform victim of a CODIS hit. Notification may be delayed if disclosure would interfere with investigation.
2. Make contact in a compassionate, respectful and empathetic manner.
3. Ensure the victim feels safe and in control. After initial contact, victims should be empowered to choose how they receive information about their case.
4. Provide complete information about the status of their case and who they can contact with questions and concerns throughout the process.
5. Protect privacy and confidentiality of the victim. Depending on the length of time since the assault, the survivor's family, friends and coworkers may not be aware of the crime.
6. Offer support and resources to connect with local victim service providers.

VI. **TRACKING**

A tracking system is essential to ensure best practices are followed and all sex crimes evidence kits that are collected are submitted to the laboratory for analysis, with the exception of cases that are unfounded or the victim chooses not to report to law enforcement. The Task Force recommends that the state mandate the implementation of a tracking system that can follow the path of a sex crimes evidence kit throughout the entire process; from issuance, to the hospital or forensic examiner, to the responding law enforcement agency, through the crime lab and ultimately to the kit's final disposition, storage or destruction.

To implement a statewide tracking system the Task Force recommends the Department of Public Safety explore opportunities to contract with a vendor that is capable of providing evidence tracking services for sex crimes evidence kits statewide. The Department of Public Safety should report back to the Governor's Office the availability and cost of implementing a statewide tracking system.

VII. LEGISLATION

A growing number of states are turning to legislation to address various topics surrounding the issue of unsubmitted or backlogged sex crimes evidence kits. The priority of the Task Force is to ensure all previously unsubmitted kits are tested and that moving forward, Arizona establishes a system of accountability throughout the sex crimes evidence kit process. The Task Force recommends legislation be enacted that requires all sex crimes evidence kits to be submitted to a laboratory for analysis unless a determination is made by law enforcement that the case is unfounded or the victim chooses not to report. The Task Force recommends a statewide tracking system be put in place to be used by medical forensic examiners, law enforcement agencies and crime laboratories to ensure accountability of all kits. Finally, the Task Force recommends legislation be enacted to require law enforcement agencies to perform an annual audit verifying sex crimes evidence kits in their property and evidence are present and in their specified location. It is important to note that the ability for law enforcement agencies and crime laboratories to implement newly enacted legislation and policies are dependent on whether additional resources and funding are also dedicated where required.

VIII. EDUCATION

It is crucial that law enforcement, prosecutors and advocates are educated on the findings of this Task Force and the recommendations for best practices for sex crimes evidence kits are followed. As such, law enforcement, prosecutors and advocates should receive victim-centered, trauma informed training. Task Force members will work with stakeholders to identify and communicate available trainings.

IX. FUNDING

The Task Force has divided the funding recommendations into two sections. The first section is intended to address funding for the previously unsubmitted kits identified across the state through the statewide inventory. The second section speaks to future funding necessary due to best practice recommendations as stated.

A. UNSUBMITTED KITS

As discussed in Section III of this report a statewide inventory of unsubmitted sex crimes evidence kits resulted in 6,424 kits that were never submitted to the laboratory for testing. However, many jurisdictions have been successful in receiving grant funding to begin testing these kits. After the current grants secured are expended, we anticipate approximately 2,000 remaining kits to be tested. The Department of Public Safety will begin testing these remaining unsubmitted sex crimes evidence kits with the \$500,000 general fund appropriation received from Laws 2016, Chapter 117. This amount should cover approximately 625 sex crimes evidence kits.

Additional funding will be needed to cover the remaining kits after the appropriation is expended. The Maricopa County Attorney's Office and the Phoenix Police Department have indicated they will be applying for additional grant opportunities to help fund remaining kits in their jurisdiction. In addition, the Department of Public Safety will be exploring multiple opportunities to test these remaining kits which will include:

1. NIJ-FBI Sexual Assault Kit Partnership: The National Institute of Justice (NIJ) and the Federal Bureau of Investigation (FBI) formed a partnership to help address the issue of unsubmitted sex crimes evidence kits. The FBI will be a centralized testing laboratory for sex crimes evidence kits to be submitted from the nation's law enforcement agencies and public forensic laboratories. Each month, the FBI laboratory will process and test a limited number of previously unsubmitted kits while scientists at the NIJ collect and analyze data about the kits. Each agency is permitted to send no more than 30 unsubmitted sex crimes evidence kits per request.
2. District Attorney of New York Rape Kit Backlog Elimination Program (DANY): This grant is administered by the office of the Manhattan District Attorney and provides funding through a competitive grant program to help jurisdictions across the country test unsubmitted and/or backlogged sex crimes evidence kits.
3. Sexual Assault Kit Initiative (SAKI): This grant is administered by the Bureau of Justice Assistance and provides funding through a competitive grant program to support the comprehensive reform of jurisdictions' approaches to sexual assault cases resulting from evidence found in sex crimes evidence kits that have never been submitted to a forensic laboratory. The goal is to create a coordinated multidisciplinary response that ensures just resolution to these cases whenever possible through a victim-centered approach, as well as to build jurisdictions' capacity to prevent the development of conditions that lead to high numbers of unsubmitted sex crimes evidence kits in the future.

The Task Force recommends contracting with private laboratories to outsource any previously unsubmitted kits. However, even with outsourcing kits, several steps will need to be taken by state and municipal laboratories to review the work of the private laboratory before the DNA profile can be entered into CODIS. (*See attachment A*) The Task Force recommends additional funding for laboratories to complete the additional steps after outsourcing kits to private laboratories to ensure a backlog of cases waiting for review prior to entry in to CODIS does not occur. Further, after determining the amount of grant funding awarded, the Department of Public Safety, will report to the Governor's Office any additional funding needed to cover the remaining unsubmitted sex crimes evidence kits.

B. FUNDING FOR BEST PRACTICES

Arizona has a total of nine crime laboratories; four state laboratories at the Department of Public Safety and five municipal laboratories in Phoenix, Mesa, Scottsdale, Chandler, and Tucson Police Department. A comparison of forensic scientist salaries across the state indicates that the Department of Public Safety is significantly below those of municipal laboratories, on average almost 25% lower. The scientists who leave the Department of Public Safety are typically experienced, highly trained personnel, while replacements require training. This results in the state paying significant funding to train forensic scientists and then that experience moves to another laboratory. In order to attract and

retain employees at the state's four laboratories, the Task Force recommends increasing forensic scientist and supervisor pay to a more competitive salary.

Lastly, additional funding will be required for crime laboratories as Arizona moves to a policy of testing all kits. The Department of Public Safety crime laboratories have already received an increase in more than 100% of submissions since the Task Force began its work. This increase is expected to level out after this peak, but will remain approximately 40% higher than the previous year's testing. The increase in testing will require additional resources for laboratory personnel and equipment. The Task Force recommends funding be provided to state and municipal laboratories for personnel and equipment to adequately handle the increase in evidence analysis.

X. TASK FORCE REVIEW

Though the Task Force has worked diligently to involve many stakeholders when formulating this report, the Task Force understands that further review may be necessary after the practical application of the recommendations are realized. As such, the Task Force suggests its members reconvene six months after the report is submitted to discuss revisions that are needed based on stakeholder feedback.

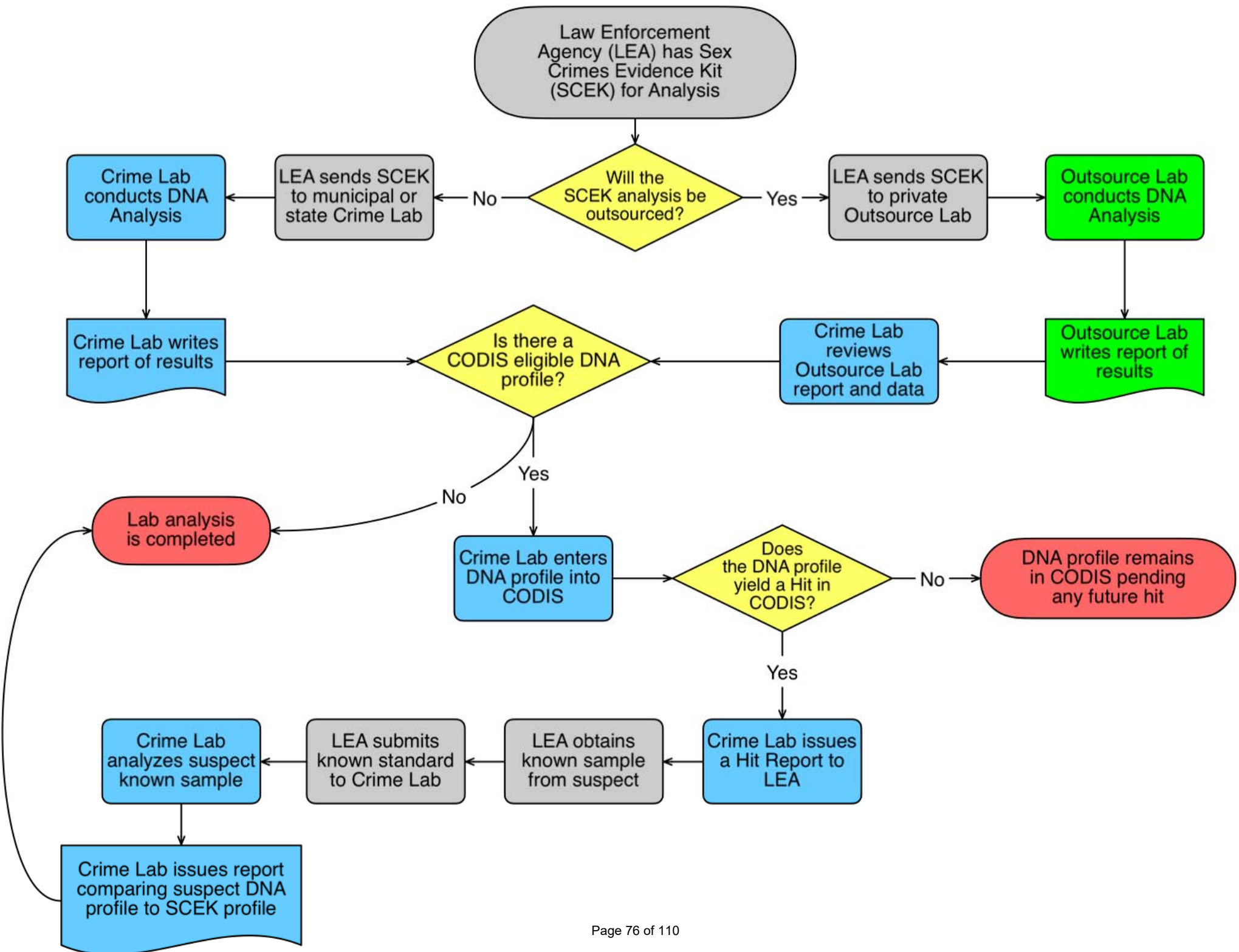
XI. ACKNOWLEDGEMENTS

In drafting this report the Task Force relied on not only the expertise of its members, but also other jurisdictions and organizations with knowledge on this subject. We would like to acknowledge the following organizations and resources that were used to contribute to this report:

- Department of Justice and Office of Justice Programs. *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach Draft*, 2016.
- International Association of Chiefs of Police. *Investigating Sexual Assault Model Policy and Guidelines*, 2005.
- National Institute for Justice. *Special Report, Down the Road: Testing Evidence in Sexual Assaults*, 2016.
- Michigan Domestic and Sexual Violence Prevention and Treatment Board. *Michigan Model Policy: The Law Enforcement Response to Sexual Assault*, 2015.
- Maricopa County Attorney's Office Sexual Assault Kit Working Group. *Draft Sexual Assault Kit Protocol*, 2016.
- End the Backlog. www.endthebacklog.org

ATTACHMENT A

*Crime Laboratory Flow Chart for
Processing Sex Crime
Evidence Kits*



Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 3, 2017	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Other	Criminal Rules Task Force

FROM: Task Force on the Arizona Rules of Criminal Procedure

PRESENTER:

Hon. Joseph Welty, Chair
Criminal Rules Task Force

DISCUSSION & TIME ESTIMATES: This presentation will update COVIC members on the status of R-17-0002. R-17-0002 is a rule petition the Criminal Rules Task Force filed in January 2017 that requests comprehensive revisions to the criminal rules. This presentation will focus on Criminal Rule 39, “victims’ rights.” Meeting materials include current and proposed versions of Rule 39, a proposed version of Rule 31.14, and an analysis of proposed changes to these rules.

RECOMMENDED MOTION (IF ANY): COVIC as a whole may take formal action to support all or any part of the rule petition, including Rule 39. Otherwise, individual members are invited to file comments. The initial comment deadline is March 14, 2017. The Criminal Rules Task Force will meet on April 7 and it may file a supplemental petition by April 26 in response to the initial comments. The petition will then be reopened until May 31, 2017 for additional comments.

Rule 31.14. Provisions Applicable Only to Briefs in Capital Case Appeals [Proposed rule]

(a) Length of Briefs. Opening briefs and answering briefs in a capital case appeal must not exceed 28,000 words. Reply briefs must not exceed 14,000 words.

(a) Time for Filing. An opening brief in a capital case must be filed no later than 90 days after the court issues a notice that the record is complete. An answering brief must be filed no later than 60 days after the appellant's brief is served. A reply brief must be filed no later than 30 days after the appellee's brief is served.

(b) Request for an Extension of Time to File a Brief.

(1) Factors a Court Must Consider. In ruling on any request for an extension of a time limit to file a brief, the court must consider the rights of the defendant and the rights of the victim to a prompt and final conclusion of the case.

(2) Notice to the Victim.

(A) Generally. If the victim in a capital case has filed a notice of appearance as provided in A.R.S. § 13-4042, a party requesting an extension of time to file a brief must provide notice of the request to the victim.

(B) Who Must Receive Notice.

(i) The victim may specify in the notice of appearance whether notification should be provided directly to the victim or to another person, including the prosecutor.

(ii) Unless the victim specifies a different method in the notice of appearance, notice must be provided through the prosecutor's office handling the appeal.

(C) Timing.

(i) If the victim has requested direct notification, the party requesting an extension of time must provide notice to the victim no later than 24 hours after filing the request.

(ii) If the prosecutor has the duty to notify the victim on behalf of the defendant, the prosecutor must provide notice to the victim no later than 24 hours after receiving the request.

(D) Manner of Providing Notice.

(i) The victim's notice of appearance may specify whether notice must be provided electronically, by telephone, or by regular mail.

Criminal Rule 31.14: Proposed rule with analysis

- (ii) Notice must be provided in the manner specified in the victim’s notice of appearance. If no method is specified, notice must be provided by regular mail.

Excerpt from Rule-by-Rule Analysis:

Rule 31.14. Provisions Applicable Only to Briefs in Capital Case Appeals

Proposed Rules 31.14(a) (“Length of Briefs”) and (b) (“Time for Filing”) derive from current Rule 31.13(f), governing briefs filed in capital case appeals. Additionally, proposed Rule 31.14(c) (“Request for Extension of Time to File a Brief”) derives from current Rule 31.27 (“Extensions of time; notification of victims”). The proposed rule makes only stylistic changes to those current rules’ contents.

Rule 39. Victims' rights [Current rule]

a. Definitions.

1. *Victim.* As used in this rule, a “victim” is defined in accordance with the definition provided in the Arizona Revised Statutes. With regard to the rights to be notified and to be heard pursuant to this rule, a person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition. If a victim is in custody for an offense, the victim's right to be heard pursuant to this rule is satisfied through affording the victim the opportunity to submit a written statement, where legally permissible and in the discretion of the court. A victim not in custody may exercise his or her right to be heard pursuant to this rule by appearing personally, or where legally permissible and in the discretion of the court, by submitting a written statement, an audiotape or videotape. The victims' rights of any corporation, partnership, association, or other similar legal entity shall be limited as provided by statute.

2. *Criminal Proceeding.* As used in this rule, a “criminal proceeding” is defined as a trial, hearing, (including hearing before trial), oral argument, or other matter scheduled and held before a trial court at which the defendant has the right to be present, or any post-conviction proceeding.

b. Victims' Rights. These rules shall be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule in these Rules of Criminal Procedure, a victim shall have and be entitled to assert each of the following rights:

1. The right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.

2. The right to be provided with written notice regarding those rights available to the victim under this rule and under any other provision of law.

3. Upon request, the right to be given reasonable notice of the date, time and place of any criminal proceeding.

4. The right to be present at all criminal proceedings.

5. The right to be notified of any escape of the defendant.

6. Upon request, the right to be informed of any release or proposed release of the defendant, whether that release be before expiration of the sentence or by expiration of the sentence, and whether it be permanent or temporary in nature.

7. Upon request, the right to confer with the prosecution, prior to trial when applicable, in connection with any decision involving the pre-conviction release of the defendant, a plea bargain, a decision not to proceed with a criminal prosecution, dismissal of charges, plea or sentence negotiation, a pretrial diversion program, or other disposition prior to trial; the rights to be heard at any such proceeding and at sentencing.

8. The right to be accompanied at any interview, deposition, or judicial proceeding by a parent or other relative, except persons whose testimony is required in the case. If the court finds, under this subsection 8 or subsection 9 below, that a party's claim that a

Criminal Rule 39: current and proposed rule with analysis

person is a prospective witness is not made in good faith, it may impose any sanction it finds just, including holding counsel in contempt.

9. The right to name an appropriate support person, including a victim's caseworker, to accompany the victim at any interview, deposition, or court proceeding, except where such support person's testimony is required in the case.

10. The right to require the prosecutor to withhold, during discovery and other proceedings, the victim's date of birth, social security number, official state- or government-issued driver license or identification number, home address, telephone number, e-mail address, the address and telephone number of the victim's place of employment, and the name of the victim's employer; provided, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant. Rule 15.5(e) applies to information withheld pursuant to this rule.

11. The right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant. After charges are filed, defense initiated requests to interview the victim shall be communicated to the victim through the prosecutor. The victim's response to such requests shall also be communicated through the prosecutor. If there is any comment or evidence at trial regarding the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Arizona Constitution.

12. At any interview or deposition to be conducted by defense counsel, the right to condition the interview or deposition on any of the following:

(i) Specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that the interview or deposition be held at the victim's home, at the prosecutor's office, or in an appropriate location in the courthouse.

(ii) The right to terminate the interview or deposition if it is not conducted in a dignified and professional matter.

13. The right to a copy of any pre-sentence report provided the defendant except those parts excised by the court or made confidential by the law.

14. The right to be informed of the disposition of the case.

15. The right to a speedy trial or disposition and prompt and final conclusion of the case after conviction and sentence.

16. The right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included thereunder, and of the procedures for invoking the right.

c. Assistance and Representation.

1. The victim shall also have the right to the assistance of the prosecutor in the assertion of the rights enumerated in this rule or otherwise provided for by law. The

Criminal Rule 39: current and proposed rule with analysis

prosecutor shall have the responsibility to inform the victim, as defined by these rules, of the rights provided by these rules and by law, and to provide the victim with notices and information which the victim is entitled by these rules and by law to receive from the prosecutor.

2. The prosecutor shall have standing in any judicial proceeding, upon the victim's request, to assert any of the rights to which the victim is entitled by this rule or by any other provision of law.

3. In any event of any conflict of interest between the state or any other prosecutorial entity and the wishes of the victim, the prosecutor shall have the responsibility to direct the victim to the appropriate legal referral, legal assistance, or legal aid agency.

4. In asserting any of the rights enumerated in this rule or provided for in any other provision of the law, the victim shall also have the right to engage and be represented by personal counsel of his or her choice.

d. Victims Duty to Implement Rights. Any victim desiring to claim the notification rights and privileges provided by this rule must provide his or her full name, address and telephone number to the entity prosecuting the case and to any other entity from which notice is requested by the victim. If the victim is a corporation, partnership, association or other legal entity and has requested notice of the hearings to which it is entitled by law, that legal entity shall promptly designate a representative by giving notice thereof, including such representative's address and telephone number, to the prosecutor and to any other entity from which notice is requested by the victim. Upon receipt of such notice, the prosecutor shall notify the defendant and the court thereof. Thereafter, only such a designated representative shall be entitled to assert a claim to victims' rights on behalf of that legal entity. Any change in designation must be provided in writing to the prosecutor and to any other entity from which notice is requested by the victim.

e. Waiver. The rights and privileges enumerated in this rule may be waived by any victim. Failure to keep the address and telephone number current or to designate such representative of a legal entity shall be considered as a waiver of notification rights under this rule.

f. Court Enforcement of Victim Notice Requirements

1. At the commencement of any proceeding which takes place more than seven days after the filing of charges by the prosecutor and at which the victim has a right to be heard, the court shall inquire of the prosecutor or otherwise ascertain whether the victim has requested notice and been notified of the proceeding.

2. If the victim has been notified as requested, the court shall further inquire of the prosecutor whether the victim is present. If the victim is present and the prosecutor advises the court that the victim wishes to be addressed by the court, the court shall inquire whether the victim has been advised by the prosecutor of the rights conferred by this rule. If the victim has not been so advised, the court shall recess the hearing and the

prosecutor shall immediately comply with subsection (c)(1) of this rule. The court shall also provide the victim with a written list of the victims' rights enumerated in subsection (b) of this rule.

3. If the victim has not been notified as requested, the court should not proceed unless public policy, the specific provisions of a statute, or the interests of due process otherwise require. In the absence of such considerations the court shall have discretion to reconsider any ruling made at a proceeding of which the victim did not receive notice as requested.

g. Appointment of Victim's Representative. Upon request, the court shall appoint a representative for a minor victim or a representative for an incapacitated victim, as provided by ARS § 13-4403. Notice of appointment of such representative shall be given by the court to the parties.

Rule 39. Victims' Rights [Proposed rule]

(a) Definitions.

(1) *Victim.*

(A) *Generally.* As used in these rules, the term “victim” is defined in accordance with the definition provided in A.R.S. § 13-4401.

(B) *Cessation of Victim Status.* A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.

(C) *Legal Entities.* The victim’s rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

(2) *Criminal Proceeding.* As used in this rule, a “criminal proceeding” is any matter scheduled and held before a trial court at which the defendant has the right to be present, including any post-conviction matter.

(3) *Identifying and Locating Information.* As used in this rule, “identifying and locating information” includes a person’s date of birth, social security number, official state or government issued driver license or identification number, the person’s address, telephone number, email addresses, and place of employment.

(b) *Victims' Rights.* These rules must be construed to preserve and protect a victim’s rights to justice and due process. Notwithstanding the provisions of any other rule, a victim has and is entitled to assert each of the following rights:

(1) the right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;

(2) the right to notice regarding the rights available to a victim under this rule and any other provision of law, and the court must prominently post or read the statement of rights in accordance with A.R.S. § 13-4438;

(3) upon request, the right to reasonable notice of the date, time, and place of any criminal proceeding in accordance with A.R.S. § 13-4409;

(4) the right to be present at all criminal proceedings;

(5) upon request, the right to be informed of any permanent or temporary release or any proposed release of the defendant;

(6) upon request, the right to confer with the State regarding:

(A) any decision about the pre-conviction release of the defendant;

Criminal Rule 39: current and proposed rule with analysis

- (B) any pretrial resolution including any diversion program or plea offer;
 - (C) a decision not to initiate a criminal prosecution or to dismiss charges; and
 - (D) the trial, before the trial begins;
- (7) upon request, the right to be heard at any court proceeding involving:
- (A) the initial appearance;
 - (B) the accused's post-arrest release or release conditions;
 - (C) the court's consideration of a negotiated plea resolution;
 - (D) sentencing;
 - (E) the modification of any term of probation that will substantially affect the victim's safety, the defendant's contact with the victim, or restitution;
 - (F) a probation revocation disposition; and
 - (G) post-conviction release.
- (8) the right to be accompanied at any interview, deposition, or criminal proceeding by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate, unless testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt;
- (9) if the victim is eligible, the right to the assistance of a facility dog when testifying as provided in A.R.S. § 13-4442;
- (10) the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera;
- (11) the right to require the prosecutor to withhold, during discovery and other proceedings, the victim's identifying and locating information.
- (A) *Exception.* A court may order disclosure of the victim's identifying and locating information as necessary to protect the defendant's constitutional rights. If disclosure is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not convey the information to the defendant without prior court authorization.

- (B) *Redactions.* Rule 15.5(e) applies to information withheld under this rule;
- (12) the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on the defendant's behalf, and:
- (A) the defense must communicate requests to interview a victim to the prosecutor, not the victim;
 - (B) a victim's response to such requests must be communicated through the prosecutor; and
 - (C) if there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview;
- (13) at any interview or deposition conducted by defense counsel, the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse;
- (14) the right to terminate an interview at any time or refuse to answer any question during the interview;
- (15) the right to a copy of any presentence report provided to the defendant except those parts that are excised by the court or are confidential by law;
- (16) the right to be informed of the disposition of the case;
- (17) the right to a speedy trial or disposition and a prompt and final conclusion of the case after conviction and sentence; and
- (18) the right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking the right.
- (c) Exercising the Right to Be Heard.**
- (1) *Nature of the Right.* If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain, support, or refute the victim's statement. This rule does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).

Criminal Rule 39: current and proposed rule with analysis

- (2) ***Victims in Custody.*** If a victim is in custody for an offense, the victim's right to be heard under this rule is satisfied by affording the victim the opportunity to submit a written statement.
- (3) ***Victims Not in Custody.*** A victim who is not in custody may exercise the right to be heard under this rule through an oral statement or by submitting a written or recorded statement.
- (4) ***At Sentencing.*** The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.

(d) Assistance and Representation.

- (1) ***Right to Prosecutor's Assistance.*** A victim has the right to the prosecutor's assistance in asserting rights enumerated in this rule or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.
- (2) ***Standing.*** The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by this rule or by any other provision of law.
- (3) ***Conflicts.*** If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information to the appropriate state or local bar association for referral to a lawyer.
- (4) ***Representation by Counsel.*** In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.

(e) Victim's Duties.

- (1) ***Generally.*** Any victim desiring to claim the notification rights and privileges provided in this rule must provide his or her full name, address, and telephone number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.

(2) Legal Entities.

- (A) Designation of a Representative.** If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.
- (B) Notice.** The prosecutor must notify the defendant and the court if the prosecutor receives notice under (e)(2)(A).
- (C) Effect.** After notice is provided under (e)(2)(B), only the representative designated under (e)(2)(A) may assert the victim's rights on behalf of the legal entity.
- (D) Changes in Designation.** The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.

(f) Waiver. A victim may waive the rights and privileges enumerated in this rule. A prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under this rule.

(g) Court Enforcement of Victim Notice Requirements.

- (1) Court's Duty to Inquire.** At the beginning of any proceeding that takes place more than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.
- (2) If the Victim Has Been Notified.** If the victim has been notified as requested, the court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must immediately comply with (d)(1).
- (3) If the Victim Has Not Been Notified.** If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.

COVIC: 03.03.2017

Criminal Rule 39: current and proposed rule with analysis

(h) Appointment of Victim’s Representative. Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.

Rule-by-Rule Analysis

Rule 39. Victim's Rights

Rule 39(a). Definitions

The Task Force's proposed changes to Rule 39(a) are stylistic but three sets of changes are noteworthy:

(a) The Task Force proposes to modify the current definition of "victim" in proposed Rule 39(a)(1) by simply referring to the applicable definitions in the underlying statutory source instead of repeating those definitions in the rule. The Task Force proposes relocating the current rule's provisions about how a victim in or out of custody can exercise the right to proposed new Rule 39(c), which provides more detailed information regarding the right to be heard.

(b) Proposed Rule 39(a)(2) streamlines the current definition of "criminal proceeding" by eliminating the references to specific types of hearings because they are redundant. The elimination of those specific hearings from the definition is not intended to be a substantive change. The proposed rule retains the specific reference to post-conviction hearings, however, to be clear that a victim's rights do not end at sentencing.

(c) Finally, to make later rules easier to read, the Task Force proposes adding a definition of "identifying and locating information," which is taken from the underlying statute and the language in current Rule 39(b)(10).

Rule 39(b). Victims' Rights

Rule 39(b) lists a victim's specific rights. This section was significantly restyled to use lists instead of large paragraphs when possible to make it easier to read and to locate specific rights. The Task Force's proposed changes to the rule are stylistic with the following exceptions:

(a) The Task Force proposes eliminating current Rule 39(b)(5), which gives a victim the right to be notified if a defendant escapes. Because that right is enforced only by law enforcement agencies and not by the courts or prosecutors, the Task Force felt that a reference to that particular right did not belong in these procedural rules.

(b) Proposed Rule 39(b)(2) makes two changes to the current rule:

(1) First, the Task Force proposes modifying current Rule 39(b)(2) by removing the requirement that the victim be provided with a written list of his or her rights. This requirement is not one of the rights set forth in the Arizona Constitution or the underlying statute. Moreover, courts are not currently providing victims with a written list

Criminal Rule 39: current and proposed rule with analysis

of rights, and it is unnecessary to do so. Although a victim has the right to notice of the various rights, notice is accomplished in practice in a variety of ways, including orally.

(2) The definition in the proposed rule also adds a reference to A.R.S. § 13-4438 to emphasize the court's obligation to provide and, in superior court, to read aloud the statement of rights set forth in the statute.

(c) Proposed Rule 39(b)(3) modifies current Rule 39(b)(3) by adding a reference to A.R.S. § 13-4409. The reference would be helpful because the statute provides specific instructions to courts about setting criminal proceedings to ensure that victims have time to receive proper notification. In the Task Force's opinion, referring to the statute is better (and simpler) than repeating all the statutory specifics in the rule.

(d) Proposed Rules 39(b)(6) and (7) divide the current Rule 39(b)(7) into two separate sections—proposed Rule 39(b)(6) addresses the specific rights to confer with the prosecutor and proposed Rule 39(b)(7) addresses the right to be heard by the court. Proposed Rule 39(b)(6) reorganizes and simplifies the rights listed in the current rule but no substantive changes are intended. Proposed Rule 39(b)(7) lists the specific types of court proceedings in which a victim has a right to be heard, and is based on A.R.S. §§ 13-4412, 13-4422 to -4423, 13-4426 to -4427. The proposed rule adds the right to be heard at probation modification and disposition hearings and the right to be heard in any post-conviction release proceeding. Neither right is included in the current rule.

(e) Proposed Rule 39(b)(8) combines a victim's right to be accompanied to specific events and the right to choose who will accompany them, which are currently divided into Rule 39(b)(8) and (9). Because the two rules relate to the same events, the Task Force believes it is better to combine the rules into one rule.

(f) Although the Task Force is divided over the issue, a majority favors adding proposed new Rule 39(b)(9):

(1) The proposed rule would provide for the right to the assistance of a facility dog as described in A.R.S. § 13-4442, which was enacted in 2016. The statute contains very specific rules describing how to provide notice that a facility dog will be used, the court's duty to instruct the jury on the presence of the dog, and the definition of "facility dog." Again, the Task Force believes that referring to the statute is a better way to alert the court and parties to this right than repeating all the statutory provisions in the rule.

(2) The Task Force questions the constitutionality of this statute because it appears to infringe on Supreme Court's constitutional rulemaking function. Some Task Force members believe that this reference to the statute should not be included in the rules to allow parties to litigate the constitutionality of the statute.

Criminal Rule 39: current and proposed rule with analysis

(g) The Task Force proposes adding a new Rule 39(b)(10) to incorporate the provisions of A.R.S. § 13-4434(A), which gives a victim the right to refuse to testify about any identifying or locating information unless the court orders disclosure. Because this statute deals with limitations on a victim's testimony and the court's procedures for handling challenges to those limitations in individual cases, the Task Force believes the statutory provisions should be part of these procedural rules.

(h) To accommodate adding proposed new Rule 39(b)(10), the Task Force proposes renumbering current Rule 39(b)(10) as Rule 39(b)(11). The only change the Task Force proposes is the separating the right and the exceptions, but no substantive changes are intended.

(i) To accommodate adding proposed new Rule 39(b)(10), the Task Force proposes renumbering current Rule 39(b)(11) as Rule 39(b)(12). The Task Force proposes modifying the current rule's provision that limits the application of the right to "after charges are filed." The proposed rule eliminates that phrase because a victim's rights attach upon arrest or formal charging under A.R.S. § 13-4402. Consequently, to the extent the current rule can be read to limit the right to situations where charges have been filed, it is inconsistent with the statutory right.

(j) Proposed Rule 39(b)(13), which deals with a victim's right to set reasonable conditions on any interview, is derived from current Rule 39(b)(12)(i). The Task Force proposes various stylistic changes to this rule, but no substantive changes are intended.

(k) Proposed Rule 39(b)(14), which concerns a victim's right to terminate an interview, is derived, with some modifications, from current Rule 39(12)(ii).

(1) The current rule states that a victim has the right to terminate "the interview or deposition if it is not conducted in a dignified and professional manner." The Task Force proposes deleting the qualifying language "if it is not conducted in a dignified and professional manner." Under A.R.S. § 13-4433(D), a victim has a right to terminate a defense interview at any time and for any reason. To the extent the qualifying language is interpreted to restrict when a victim may terminate an interview, it imposes a restriction not found in the statute.

(2) The Task Force also believes that the current rule's inclusion of depositions is confusing and inaccurate. A deposition is a court-ordered event under Rule 15.3 and the applicable civil rules. If the deposition was lawfully ordered, a victim would not have the right to terminate that proceeding beyond what any deponent would have under the rules. The victims' rights statutes do not address depositions and it would be rare for a court to order a victim to be deposed. Thus, the Task Force proposes to remove the rule's reference to depositions.

Rule 39(c). Exercising the Right to Be Heard

The Task Force's proposes adding a new Rule 39(c) to specifically address how a victim may exercise the right to be heard and the nature of that right.

Proposed Rule 39(c)(1) is taken from A.R.S. § 13-4426.01 which specifies that victims do not exercise their right to be heard by the court by being a witness, they are not subject to cross-examination, and they are not required to disclose their statements to the parties. The statute and this rule apply to situations where a victim is addressing the court in the court proceedings described in proposed Rule 39(b)(7). Neither this rule, nor the corresponding statute, describes the procedures that must be followed when a victim presents a victim impact statement to a jury during a capital penalty trial. The last sentence of the proposed rule is intended to specify that limitation to avoid any confusion.

Proposed Rules 39(c)(2) and (3) are taken from information currently included in the definitions in Rule 39(a)(1). The Task Force proposes modifying the current provision slightly to make it clear that an in-custody victim's right to be heard is satisfied by giving the victim the opportunity to submit a written statement. For victims who are not in custody, proposed Rule 39(c)(3) modifies the current rule to the extent that the current rule gives the court discretion over the way a victim chooses to exercise the right. A.R.S. § 13-4428(B) gives victims the discretion to decide how they want to be heard. The proposed rule clarifies that out-of-custody victims may exercise the right to be heard by giving oral statements in person to the court or by providing the court with a written or recorded statement.

Proposed Rule 39(c)(4) provides specifics regarding what a victim may do when exercising the right to be heard at sentencing. This proposed rule is an addition to the current rules and is based on A.R.S. §§ 13-4424 and 13-4426.

Rule 39(d). Assistance and Representation

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(c) as Rule 39(d). The Task Force's other proposed changes to the rule are stylistic with the following exceptions:

(a) Proposed Rule 39(d)(3) slightly modifies the content of the current Rule 39(c)(3):

(1) The current rule refers to "conflict of interests" between the prosecutor and the victim. The Task Force is concerned about using that phrase because it is a term of art referring to a lawyer's ethical obligations under Arizona Ethical Rules 1.7, 1.9, and 1.18. None of those rules appears to apply to the type of "conflict" to which the current rule seems to be referring. If there is an ethical conflict of interest between a prosecutor and a victim, the prosecutor likely would have to withdraw and have the case

Criminal Rule 39: current and proposed rule with analysis

reassigned to another prosecutor or another prosecuting agency. The remedy provided in the current rule—directing the victim “to the appropriate legal referral, legal assistance, or legal aid agency”—would not resolve an ethical conflict of interest between the prosecutor and the victim.

(2) The Task Force believes that in the context of this rule, which mainly describes how a prosecutor can assert rights on behalf of a victim notwithstanding the fact that the prosecutor does not represent the victim, the phrase “conflict of interest” must refer to disagreements between the prosecutor and the victim about how to assert certain rights. In that context, it makes sense for the prosecutor to refer the victim to other sources that might provide representation specifically to assert the victim’s rights.

(3) To clear up this confusion, the Task Force proposes to eliminate the phrase “conflict of interest” and instead use “[i]f any conflict arises between the prosecutor and a victim in asserting the victim’s rights.”

(b) The Task Force also is concerned with the current rule’s specific reference in Rule 39(c)(3) to “legal assistance or legal aid agency.” The Task Force believes the rule was intended to require the prosecutor to do more than simply tell the victim that he or she has the right to hire his or her own lawyer. On the other hand, if a prosecutor and a victim seriously disagree on an issue, a prosecutor should not make a referral to a particular lawyer or agency because it could create an ethical conflict of interest. Ultimately, the Task Force decided to propose in Rule 39(d)(3) that the rule should direct the prosecutor to refer the victim to a state bar or local bar association for an appropriate referral, which may include pro bono or reduced cost services

(c) The last sentence of proposed Rule 39(d)(4) is not part of current Rule 39(c)(4). That sentence was added to reflect a 2016 statutory change in A.R.S. § 13-4437(E), which specifically authorizes a victim’s attorney to present evidence and make arguments in restitution hearings.

Rule 39(e). Victim’s Duties

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(d) as Rule 39(e).

In addition to restyling the rule, the Task Force’s proposes to add a notice requirement under proposed Rule 39(e)(2)(D) to correct an oversight in the current rule. The current rule requires the prosecutor to notify the defense and the court when a legal entity designates a representative to assert victim’s rights, and also provides a method for a legal entity to change the representative. The rule, however, does not specifically require the prosecutor to provide notice to the defense and the court if the legal entity changes its representative. Proposed Rule 39(e)(2)(D) adds that requirement.

Criminal Rule 39: current and proposed rule with analysis

The Task Force's other proposed changes to the rule are stylistic.

Rule 39(f). Waiver

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(e) as Rule 39(f). The Task Force's other proposed changes to the rule are stylistic.

Rule 39(g). Court Enforcement of Victim Notice Requirements

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(f) as Rule 39(g). Consistent with the discussion above regarding Rule 39(b)(2), the Task Force proposes removing the requirement that the victim be provided with a written list of his or her rights. The Task Force's other proposed changes to the rule are stylistic.

Rule 39(h). Appointment of Victim's Representative

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(g) as Rule 39(h). The Task Force's other proposed changes to the rule are stylistic.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: Case Law Update and New Trends
March 3, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: AOC

PRESENTER: Judge Reinstein

DISCUSSION & TIME ESTIMATES: Judge Reinstein will review an important state supreme court opinion and comment on “Genetic Informants” and “Familial DNA.” 5 Minutes

RECOMMENDED MOTION (IF ANY): None.

IN THE
SUPREME COURT OF THE STATE OF ARIZONA

**JASON DONALD SIMPSON, A.K.A.
JASON DONALD SIMPSON, SR.,**
Petitioner,

v.

**HONORABLE PHEMONIA MILLER, JUDGE PRO TEMPORE OF THE SUPERIOR
COURT OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF MARICOPA,**
Respondent Commissioner,

STATE OF ARIZONA,
Real Party in Interest.

JOE PAUL MARTINEZ,
Petitioner,

v.

**HONORABLE ROLAND J. STEINLE, JUDGE OF THE SUPERIOR COURT OF THE
STATE OF ARIZONA, IN AND FOR THE COUNTY OF MARICOPA,**
Respondent Judge,

STATE OF ARIZONA,
Real Party in Interest.

No. CR-16-0227-PR
Filed February 9, 2017

Special Actions from the Superior Court in Maricopa County
The Honorable Phemonia Miller, Judge Pro Tempore
The Honorable Roland J. Steinle, Judge

Nos. CR2015-0134762; CR2014-118356,

REVERSED AND REMANDED

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

Opinion of the Court of Appeals, Division One
240 Ariz. 208, 377 P.3d 1003 (App. 2016)

VACATED

COUNSEL:

William G. Montgomery, Maricopa County Attorney, David R. Cole (argued), Deputy County Attorney, Phoenix, Attorneys for State of Arizona

Woodrow C. Thompson, Hannah H. Porter, Katherine E. Hollist, Gallagher & Kennedy, P.A., Phoenix; Hector J. Diaz, Andrea S. Tazioli, Quarles & Brady, LLP, Phoenix, Attorneys for Jason Donald Simpson

Jean-Jacques Cabou (argued), Alexis E. Danneman, Sarah R. Gonski, Perkins Coie, LLP, Phoenix; Brian F. Russo, Law Offices of Brian F. Russo, Phoenix, Attorneys for Joe Paul Martinez

Mark Brnovich, Arizona Attorney General, Eryn M. McCarthy, Assistant Attorney General, Phoenix, Attorneys for Amicus Curiae Arizona Superior Court in Maricopa County

Mark Brnovich, Arizona Attorney General, Dominic Draye, Solicitor General, Rusty D. Crandell, Assistant Attorney General, Michael G. Bailey (argued), Assistant Attorney General, Phoenix, Attorneys for Amicus Curiae Arizona Attorney General; Robert L. Ellman, General Counsel, House of Representatives, Phoenix, Attorney for Amicus Curiae Speaker of Arizona House of Representatives; and Greg Jernigan, General Counsel, Arizona State Senate, Phoenix, Attorney for Amicus Curiae President of Arizona Senate

Kathleen E. Brody, American Civil Liberties Union Foundation of Arizona, Phoenix; Andrea Woods, Ezekiel Edwards, American Civil Liberties Union Foundation, Criminal Law Reform Project, New York, NY, Attorneys for American Civil Liberties Union and American Civil Liberties Union of Arizona; and Anne Chapman, Mitchell Stein Carey, PC, Phoenix, Attorneys for Amicus Curiae National Association of Criminal Defense Lawyers

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

Mikel P. Steinfeld, Maricopa County Public Defender's Office, Phoenix, and David J. Euchner, Pima County Public Defender's Office, Tucson, Attorneys for Amicus Curiae Arizona Attorneys for Criminal Justice, et al.

Colleen Clase, Jessica Gattuso, Eric Aiken, Scottsdale, Arizona Voice for Crime Victims; Jamie Balson, Arizona Coalition to End Sexual & Domestic Violence, Phoenix, Attorneys for D.D. and D.L.

JUSTICE BOLICK authored the opinion of the Court, in which CHIEF JUSTICE BALES, VICE CHIEF JUSTICE PELANDER, and JUSTICES BRUTINEL and TIMMER joined.

JUSTICE BOLICK, opinion of the Court:

¶1 Arizona's Constitution and laws forbid bail for defendants accused of sexual conduct with a minor under age fifteen when the proof is evident or the presumption great that the defendant committed the crime. Because that prohibition is not narrowly focused to protect public safety, we hold that it violates the Fourteenth Amendment's due process guarantee.

I.

¶2 Article 2, section 22(A) of the Arizona Constitution's Declaration of Rights provides in part:

All persons charged with crime shall be bailable by sufficient sureties, except:

1. For capital offenses, sexual assault, sexual conduct with a minor under fifteen years of age or molestation of a child under fifteen years of age when the proof is evident or the presumption great.

¶3 The crimes of sexual assault, sexual conduct with a minor under age fifteen, and molestation of a child under age fifteen were added to capital offenses under section (A)(1) by the voters through Proposition 103 in 2002. The legislature codified the provisions of section (A)(1) in A.R.S. § 13-3961(A)(2)-(4).

¶4 The State charged Joe Paul Martinez with multiple sexual offenses, including sexual conduct with a minor under age fifteen, a class 2

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

felony under A.R.S. § 13-1405(B) and a dangerous crime against children under A.R.S. § 13-705(P)(1)(e). (After we granted review, Jason Donald Simpson accepted a plea agreement, making his case moot. We therefore focus on Martinez’s case.) Martinez filed a petition to be released on bail. The trial court conducted an evidentiary hearing and concluded that the proof was evident or presumption great that Martinez committed sexual conduct with a minor under age fifteen, thus rendering him ineligible for bail pursuant to A.R.S. § 13-3961(A)(3). He has been held in custody without bail since April 2014.

¶5 Martinez unsuccessfully challenged the facial constitutionality of § 13-3961(A)(3) and the corresponding provision of the Arizona Constitution, article 2, section 22(A)(1). Accepting special action jurisdiction and granting relief, the court of appeals, by a 2-1 vote, reversed, holding the provisions unconstitutional because an individualized determination of dangerousness is necessary to withhold bail. *Simpson v. Miller*, 240 Ariz. 208, 215 ¶ 22, 377 P.3d 1003, 1010 (App. 2016).

¶6 We granted review because the constitutional issue presented is one of first impression and statewide importance. *See Brewer v. Burns*, 222 Ariz. 234, 237 ¶ 8, 213 P.3d 671, 674 (2009). We have jurisdiction pursuant to article 6, section 5 of the Arizona Constitution and A.R.S. § 12-120.24.

II.

¶7 This case presents questions of law, which we review de novo. *US West Commc’ns, Inc. v. Ariz. Corp. Comm’n*, 201 Ariz. 242, 244 ¶ 7, 34 P.3d 351, 353 (2001). In a facial constitutional challenge, the party challenging the law must establish that it “is unconstitutional in all of its applications,” a standard the United States Supreme Court characterizes as “exacting.” *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2451 (2015).

¶8 Reviewing a state constitutional provision under the United States Constitution requires great care. In our federalist system of dual sovereignty, states retain certain antecedent powers, including the power to protect their citizens from crime. *See, e.g., Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1870–71 (2016); *Gonzales v. Raich*, 545 U.S. 1, 42 (2005) (O’Connor, J., dissenting) (“The States’ core police powers have always included authority to define criminal law and to protect the health, safety, and welfare of their citizens.”). In that system, state constitutions are our basic charters of state governance. *See John D. Leshy, The Making of the Arizona Constitution*, 20 Ariz. St. L.J. 1, 4–5 (1988). Consequently, we strive whenever possible to uphold their provisions. Where the national and state

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

constitutions conflict irreconcilably, however, the latter must yield under the Supremacy Clause. U.S. Const. art. VI, cl. 2; *see also* Ariz. Const. art. 2, § 3.

¶9 In this case, state interests of the highest order, advanced through article 2, section 22(A)(1), collide with the fundamental due process right to be free from bodily restraint. “No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” *Rasmussen by Mitchell v. Fleming*, 154 Ariz. 207, 215–16, 741 P.2d 674, 682–83 (1987) (quoting *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891)). Thus, “[i]n our society liberty is the norm, and detention prior to trial . . . is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). At the same time, the United States Supreme Court has “repeatedly held that the Government’s regulatory interest in community safety can, in appropriate circumstances, outweigh an individual’s liberty interest.” *Id.* at 748.

¶10 Freedom from pretrial detention absent extraordinary circumstances traces to the common law, where the general rule was against pretrial incarceration and in favor of bail, except for capital crimes – an exception grounded in the belief that defendants in such cases would flee to save their lives. *Simpson v. Owens*, 207 Ariz. 261, 267 ¶ 18, 85 P.3d 478, 484 (App. 2004). At common law, there were two hundred capital crimes, which were reduced to twenty in the American colonies. *Id.* at 268 ¶ 19, 85 P.3d at 485. For capital defendants, bail could be denied “where the proof is evident or the presumption great” that the defendant committed the charged offense – language echoed in article 2, section 22(A) of the Arizona Constitution.

¶11 The right to bail in non-capital cases is rooted in American and Arizona law:

From the passage of the Judiciary Act of 1789, 1 Stat. 73, 91, to the present Federal Rules of Criminal Procedure, Rule 46(a)(1), . . . federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

serves to prevent the infliction of punishment
prior to conviction.

Stack v. Boyle, 342 U.S. 1, 4 (1951) (citing *Hudson v. Parker*, 156 U.S. 277, 285 (1895)). The Eighth Amendment and article 2, section 15 of the Arizona Constitution also prohibit “excessive bail.” And of course article 2, section 22(A) recognizes a right to bail subject to specified exceptions.

¶12 However, the right to bail does not arise from the Eighth Amendment itself. The Eighth Amendment derives from the English Bill of Rights Act, which “has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail.” *Carlson v. Landon*, 342 U.S. 524, 545 (1952).

¶13 Thus, the “Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country.” *Id.*; see also *Salerno*, 481 U.S. at 752 (noting that the Eighth Amendment “says nothing about whether bail shall be available at all”), 754–55 (“[W]hen Congress has mandated detention on the basis of a compelling interest other than prevention of flight, . . . the Eighth Amendment does not require release on bail.”); accord *State ex rel. Romley v. Rayes*, 206 Ariz. 58, 62 ¶ 12, 75 P.3d 148, 152 (App. 2003) (holding that Proposition 103 does not violate the Eighth Amendment). Rather, due process requires that pretrial detention may be used only for regulatory rather than punitive purposes. See *Salerno*, 481 U.S. at 747–48.

¶14 In *Salerno*, the Court upheld the Bail Reform Act of 1984 against a substantive due process challenge. 481 U.S. at 747. The law allowed courts to deny bail for serious crimes of violence, offenses for which the sentence is life imprisonment or death, serious drug offenses, and certain repeat offenders. *Id.* In addition to showing probable cause that the defendant committed the crime, the government also was required to prove by clear and convincing evidence in a “full-blown adversary hearing” that “no conditions of release can reasonably assure the safety of the community or any person.” *Id.* at 750. “Given the legitimate and compelling regulatory purpose of the Act” to prevent future crime by defendants who have committed serious offenses, plus “the procedural protections it offers,” the Court concluded that the law was not facially invalid under the Due Process Clause. *Id.* at 752. *Salerno* provides the framework with which we assess the constitutionality of article 2, section 22(A)(1) and A.R.S. § 13-3961(A)(3).

III.

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

¶15 The bail provisions enacted through Proposition 103 are similar in some respects to those upheld in *Salerno*. Like the Bail Reform Act, they are limited to specific serious crimes, they are intended to protect public safety by preventing defendants from committing future crimes, and they require a full-blown adversarial hearing. But unlike the hearing in *Salerno* to determine that a defendant posed a danger to specific individuals or the community at large, the hearing at issue here determines only “if the proof is evident or the presumption great” that the person committed the offense charged. It does not consider whether the defendant poses a danger to others.

¶16 The “proof evident or presumption great” standard is robust. In *Simpson v. Owens*, our court of appeals held that the state’s burden “is met if all of the evidence, fully considered by the court, makes it plain and clear to the understanding . . . [and] dispassionate judgment of the court that the accused committed one of the offenses enumerated in A.R.S. § 13-3961(A).” 207 Ariz. at 274 ¶ 40, 85 P.3d at 491 (adding that the “proof must be substantial, but it need not rise to proof beyond a reasonable doubt”). The court stated that “the hearing should take place as soon as is practicable to ensure that the accused is afforded due process and to maintain the presumption of innocence.” *Id.* at 278 ¶ 55, 85 P.3d at 495. At the hearing, the defendant is entitled to counsel and can cross-examine witnesses. *Id.* at 275–76 ¶ 44, 85 P.3d at 492–93. The trial court must determine with specific factual findings that the proof is evident or the presumption is great. *Id.*

¶17 In *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 775 (9th Cir. 2014), the Ninth Circuit sitting en banc struck down article 2, section 22(A)(4) and A.R.S. § 13-3961(A)(5), which forbade bail for illegal immigrants who were found to have committed certain serious felony offenses “if the proof is evident or the presumption great” that the defendant committed the specified crime. The court applied a “heightened scrutiny” standard derived from *Salerno*. *Id.* at 779–80. Construing *Salerno* to apply a three-part test, the court concluded that the challenged provisions “do not address an established ‘particularly acute problem,’ are not limited to ‘a specific category of extremely serious offenses,’ and do not afford the individualized determination of flight risk or dangerousness that *Salerno* deemed essential.” *Id.* at 791. It thus concluded that the laws “are not narrowly tailored to serve a compelling interest.” *Id.*

¶18 In this case, the court of appeals also concluded that all three *Salerno* factors are necessary to uphold a bail restriction. *Simpson*, 240 Ariz. at 211 ¶ 13, 377 P.3d at 1006 (“*Salerno* did not even suggest that fewer than all of the safeguards in the Bail Reform Act might be allowable.”). The court

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

found that the challenged provisions violated *Salerno's* third prong because they require a court "to turn a blind eye to the individual facts and automatically deny bail in *every* case based on proof of likely guilt." *Id.* at 212 ¶ 14, 377 P.3d at 1007. Thus, the majority concluded "that the absence of the third *Salerno* factor is constitutionally fatal." *Id.* ¶ 15.

¶19 The dissenting judge found that categorical bans on bail have not been limited to murder or other capital crimes, *id.* at 217–18 ¶¶ 34–36, 377 P.3d at 1012–13 (Gould, J., dissenting); that "Arizona's offense-based procedure" thus "falls within a well-established framework that has been used throughout the United States for many years," *id.* at 218 ¶ 37, 377 P.3d at 1013; and that *Salerno* did not impose a rigid three-part test but rather "simply held that the Act's procedures 'suffice to repel a facial [constitutional] challenge.'" *Id.* ¶ 39. As a result, according to the dissent, "we cannot even say that Arizona's no bond provisions are unconstitutional as to one of the actual litigants before us, much less unconstitutional in every conceivable application." *Id.* at 220 ¶ 48, 377 P.3d at 1015.

¶20 As a threshold matter, we conclude that the challenged provisions are regulatory, not punitive, and therefore do not constitute a per se due process violation. As with the Bail Reform Act in *Salerno*, 481 U.S. at 747, nothing surrounding Proposition 103's adoption indicates that the pretrial detention provisions were formulated to punish criminal defendants. All ballot arguments supporting Proposition 103 focused on protecting public safety by preventing additional crimes. *See* Ariz. Sec'y of State, 2002 Publicity Pamphlet 16–17 (2002), *available at* <http://apps.azsos.gov/election/2002/Info/pubpamphlet/english/prop103.pdf>. "There is no doubt that preventing danger to the community is a legitimate regulatory goal." *Salerno*, 481 U.S. at 747.

¶21 We disagree with both the Ninth Circuit in *Lopez-Valenzuela* and the court of appeals majority here that the three factors set forth in *Salerno* are due process prerequisites for offense-specific pretrial detention procedures. Rather, they were indicia reflecting the constitutionality of the statute at issue in *Salerno*. *See State v. Furgal*, 13 A.3d 272, 278–79 (N.H. 2010) ("The defendant conflates sufficient conditions with necessary ones. We do not read *Salerno* to hold that all statutory bail schemes must include an individualized inquiry into a defendant's dangerousness in order to pass constitutional muster."). Indeed, the Court found that the Bail Reform Act's safeguards "are more exacting" and "far exceed" those found sufficient in other contexts. *Salerno*, 481 U.S. at 752. Rather, it is clear from *Salerno* and other decisions that the constitutionality of a pretrial detention scheme

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

turns on whether particular procedures satisfy substantive due process standards. *See id.* at 748–49 (listing cases in which pretrial detention was upheld and acknowledging the “general rule” that “the government may not detain a person prior to a judgment of guilt in a criminal trial,” but noting that “these cases show a sufficient number of exceptions to the rule that the congressional action challenged here can hardly be characterized as totally novel”).

¶22 Some confusion exists over the level of scrutiny courts should apply to mandatory detention laws. The United States Supreme Court has characterized the right to be free from bodily restraint as “fundamental.” *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Ordinarily, infringement of fundamental rights triggers strict scrutiny, which requires that the government demonstrate a compelling interest to which the restriction is narrowly tailored. A challenged law “rarely survives such scrutiny.” *Burson v. Freeman*, 504 U.S. 191, 200 (1992) (applying strict scrutiny in voting rights context). But the Court has not consistently applied strict scrutiny to infringement of fundamental rights. *See, e.g., Foucha*, 504 U.S. at 86 (requiring a “particularly convincing reason” for involuntary confinement); *Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982) (utilizing a balancing test between interests of the state and “reasonable conditions of safety and freedom from unreasonable restraints” and determining whether professional judgment was exercised); *see also* Adam Winkler, *Fundamentally Wrong About Fundamental Rights*, 23 *Const. Comment.* 227, 232 (2006) (observing that “strict scrutiny is only occasionally the applicable standard” in the fundamental rights context).

¶23 We agree with the Ninth Circuit that *Salerno* applied “heightened scrutiny” to the Bail Reform Act. *Lopez-Valenzuela*, 770 F.3d at 780. However, the standard the Ninth Circuit ultimately applied – whether the bail restrictions are “narrowly tailored to serve a compelling interest,” *id.* at 791 – reflects strict scrutiny, the most exacting constitutional review standard. *See, e.g., Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198, 2221 (2016). *Salerno* did not require this standard. Rather, it described the government’s interest as “both legitimate and compelling,” and the act’s provisions as “narrowly focuse[d] on a particularly acute problem.” 481 U.S. at 749–50. Indeed, the Court instructed that “the present statute providing for pretrial detention on the basis of dangerousness must be evaluated in precisely the same manner that we evaluated the laws” in the prior cases it listed, *id.* at 749 – none of which appear to have applied strict

SIMPSON/MARTINEZ v. HONS. MILLER/STEINLE (STATE)
Opinion of the Court

scrutiny.¹ Although the terms “legitimate and compelling” and “narrowly focused” are not clearly defined terms of constitutional art, *Salerno* gives them sufficient substance to guide our analysis.²

¶24 The state’s objectives here satisfy the first part of the *Salerno* test because “[t]he government’s interest in preventing crime by arrestees is both legitimate and compelling.” 481 U.S. at 749. Likewise, the pretrial detention “operates only on individuals who have been arrested for a specific category of extremely serious offenses.” *Id.* at 750.

¶25 However, *Salerno* also examined whether the process at issue was narrowly focused on accomplishing the government’s objective—in that case (as here) preventing harm. In *Salerno*, that objective was served by an individualized determination of dangerousness. As the Court held, “When the Government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community, we believe that, consistent with the Due Process Clause, a court may disable the arrestee from executing that threat.” *Id.* at 751.

¶26 Although we do not read *Salerno* or other decisions to require such individualized determinations in every case, if the state chooses not to provide such determinations, its procedure “would have to serve as a

¹ See, e.g., *Gerstein v. Pugh*, 420 U.S. 103, 105 (1975) (finding judicial determination of probable cause a prerequisite for pretrial detention under the Fourth Amendment); *Jackson v. Indiana*, 406 U.S. 715, 717 (1972) (applying rational basis to conclude that a committed person accused of a criminal offense cannot be held more than a reasonable period of time necessary to determine whether he will attain capacity); *Greenwood v. United States*, 350 U.S. 366, 375 (1956) (finding under Necessary and Proper Clause that civil commitment was acceptable); *Ludecke v. Watkins*, 335 U.S. 160, 161 (1948) (holding President’s power to remove enemy aliens judicially unreviewable based on executive power in time of war).

² Decisions subsequent to *Salerno* are context-specific, continuing the Court’s case-by-case approach, and do not significantly illuminate the applicable standard. See, e.g., *Demore v. Kim*, 538 U.S. 510, 530 (2003) (upholding pretrial detention policy for deportable criminal aliens without individual determinations of flight risk); *Reno v. Flores*, 507 U.S. 292, 302–03 (1993) (ruling that limited release policies for juvenile alien detainees do not facially violate due process); *Foucha*, 504 U.S. at 83 (ruling that continued commitment of insanity acquittee after conditions of insanity and dangerousness have disappeared violates due process).

convincing proxy for unmanageable flight risk or dangerousness.” *Lopez-Valenzuela*, 770 F.3d at 786. Historically, capital offense charges have been considered to present an inherent flight risk sufficient to justify bail denial. *See, e.g., id.* Likewise, certain crimes (or circumstances under which crimes are committed) may present such inherent risk of future dangerousness that bail might appropriately be denied by proof evident or presumption great that the defendant committed the crime. *See Furgal*, 13 A.3d at 279 (discussing long history of denying bail based on evidence of defendant’s guilt in serious crimes).

¶27 The crime charged against Martinez, however, is not in itself a proxy for dangerousness. Section 13-1405(A) states, “A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.” Section 13-1405(B) classifies felonies for sexual conduct with a minor under age fifteen but does not alter the definition of the crime. The crime can be committed by a person of any age, and may be consensual. Hence, as the court of appeals noted, *Simpson*, 240 Ariz. at 215 ¶ 20, 377 P.3d at 1010, the offense sweeps in situations where teenagers engage in consensual sex. In such instances, evident proof or presumption great that the defendant committed the crime would suggest little or nothing about the defendant’s danger to anyone. *Cf. A.R.S. § 13-1406* (defining sexual assault as “intentionally or knowingly engaging in sexual intercourse or oral sexual contact . . . without consent of such person”).

¶28 The challenged provisions also are not narrowly focused given alternatives that would serve the state’s objective equally well at less cost to individual liberty. Although we do not apply the strict scrutiny standard requiring the state to show the absence of less-restrictive alternatives to satisfy its objective, *see Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 357 (1978) (Brennan, J., concurring in part and dissenting in part), the presence of such alternatives demonstrates that the procedures are not narrowly focused. *See Foucha*, 504 U.S. at 82.

¶29 Because Martinez is charged with a felony, he would be subject to A.R.S. § 13-3961(D), which allows the court to deny bail on the state’s motion if the court finds by clear and convincing evidence following a hearing that (1) “the person charged poses a substantial danger to another person or the community,” (2) “no condition or combination of conditions of release may be imposed that will reasonably assure the safety of the other person or the community,” and (3) “the proof is evident or the presumption great that the person committed the offense.” This procedure is essentially the same as the one upheld in *Salerno*. Under this provision, the state may

deploy the entire range of permissible conditions of release to ensure community safety, including GPS monitoring. The court may deny bail altogether for defendants for whom such conditions are inadequate, which may well include many or most defendants accused of sexual conduct with a minor under age fifteen.

¶30 Under our reading of *Salerno*, the state may deny bail categorically for crimes that inherently demonstrate future dangerousness, when the proof is evident or presumption great that the defendant committed the crime. What it may not do, consistent with due process, is deny bail categorically for those accused of crimes that do not inherently predict future dangerousness.

¶31 The State urges that we should not hold the challenged provisions unconstitutional on their face because they may not be unconstitutional in all instances. *See, e.g., Salerno*, 481 U.S. at 751. The State, however, is confusing the constitutionality of detention in specific cases with the requirement that it be imposed in all cases. Sexual conduct with a minor is always a serious crime. In many but not all instances, its commission may indicate a threat of future dangerousness toward the victim or others. But because it is not inherently predictive of future dangerousness, detention requires a case-specific inquiry. Accordingly, we hold that the provisions of article 2, section 22(A) of the Arizona Constitution and A.R.S. § 13-3961(A)(3), categorically denying bail for all persons charged with sexual conduct with a minor, are unconstitutional on their face. Defendants for whom future dangerousness is proved may still be held under A.R.S. § 13-3961(D) as set forth above.

IV.

¶32 For the foregoing reasons, we reverse the trial court's decision, vacate the court of appeals' opinion, and remand to the trial court for further proceedings consistent with this opinion.

**Arizona Supreme Court
Commission on Victims in the**

Courts June 9, 2017 Meeting Agenda

1501 W. Washington St., Phoenix, Arizona, 85007
State Courts Building, Conference Room 345A/B

(602) 452-3533 or (520) 388-4331 / Access Code: 996 044 381

<https://arizonacourts.webex.com/arizonacourts/j.php?MTID=m40e3c2185c49a7d099200ae34b8ecd95>

10:00 a.m. – 2:00 p.m.

5 min	Call to order / Welcome / Introductions / Announcements	Judge Ronald Reinsten, Chair
	Approval of Minutes – March 3, 2017**	Judge Ronald Reinsten, Chair
15 min	COVIC Portrait	Chris Manes, AOC Media Tech
20 min	Legislative Update	Jerry Landau, AOC Legislative Affairs Director
20 min	COVIC Presentation at NCVLI	Judge Ronald Reinstein, Chair Kristin Flores, COVIC Member Denise Lundin, COVIC/AOC Staff
10 min	Restitution Workgroup	Kirstin Flores, OVS Director, AZ AG's Office and Workgroup Chair
20 min	Cold Cases – New Developments	Judge Ronald Reinstein, Chair Jon Eliason
10 min	Update on Criminal Rules Task Force	Denise Lundin, COVIC/AOC Staff
10 min	Update on Lethality Assessment Reports	Denise Lundin, COVIC/AOC Staff Kay Radwanski, AOC Staff
10 min	Victims' Bill of Rights Lawsuit	Judge Ronald Reinstein, Chair
10 min	CIDVIC-ADC Workgroup re: serving Ops on Prison Inmates	Kay Radwanski, AOC Staff
30 min	Lunch	
30 min	Mini-Strategic Planning Session	Judge Ronald Reinstein, Chair Denise Lundin, COVIC/AOC Staff Lynn Golden, COVIC/AOC Staff
5 min	Call to the Public / Adjournment	Judge Ronald Reinstein, Chair

**Important Voting Items

Next Meeting:

Friday, October 27, 2017

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

Arizona State Courts Building, Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Lynn Golden at (602) 452-3195. Requests should be made as early as possible to allow time to arrange for the accommodation.

Arizona Supreme Court
Commission on Victims in the Courts
March 3, 2017
10:00 a.m. to 12:00 p.m.
State Courts Building
1501 W. Washington, Phoenix, AZ 85007
Conference Room 345 A/B

Present: Judge Ronald Reinstein (Ret.); Mr. Timothy J. Agan; Mr. Michael Breeze; Judge Maria Elena Cruz; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Christine Kelly; Captain John Leavitt; Mr. Dan Levey; Ms. Keli Luther; Judge Evelyn Marez; Sgt. Jim Markey (Ret.); Chief Rod McKone; Judge Sam Myers; Ms. Jane Nicoletti-Jones; Ms. Debra Olsen; Ms. Laura Penny; Ms. Karyn Rasile; Judge Richard Weiss; Ms. Erin Yabu (*proxy for Ms. Elizabeth Ortiz*)

Telephonic: Ms. Colleen Clase; Ms. Shelly Corzo-Shaffer; Ms. Sydney Davis; Ms. Leslie James; Judge Elizabeth Finn; Mr. William Owsley; Judge Sarah (Sally) Simmons; Ms. Leesa Berens Weisz

Absent/Excused: None

Presenters/Guests: Judge James Beene; Justice Clint Bolick; Judge Kent Cattani; Ms. Colette Chapman; Ms. Amelia Cramer; Mr. Jon Eliason; Ms. Tierra Fairman; Ms. Debbie Lee; Justice John R. Lopez; Judge Paul McMurdie; Judge Samuel Thumma; Judge Joseph Welty

Administrative Office of the Courts: Ms. Catherine Clarich; Ms. Lynn Golden; Ms. Amy Love; Ms. Denise Lundin; Mr. Mark Meltzer

1. REGULAR BUSINESS

a) Call to Order, Welcome, and Introductions

The March 2017 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:01 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

b) Announcements

The Chair congratulated Ms. Kim Hedrick on her recent presentation to the military at the Presidio for the Pentagon on behalf of victims.

COVIC appointments and reappointments are coming up. Members whose terms are expiring have expressed an interest in staying on the committee, but we need the names of alternates for the Chief Justice to consider as well, so if anyone has someone in mind, please contact Ms. Denise Lundin as soon as possible.

Ronald Reinstein, COVIC Chair, Kirstin Flores, COVIC Member and Denise Lundin, AOC Staff, have been selected by the National Crime Victim Law Institute's Annual Conference in Portland in May to present on behalf of COVIC, sharing background and work that COVIC has done.

c) Approval of the October 21, 2016 Minutes

The draft minutes from the October 21, 2016 meeting were presented for approval. The chair called for any omissions or corrections to the minutes.

- Motion was made by Mr. Michael Breeze to approve the October 21, 2016 meeting minutes. Seconded by Ms. Kirstin Flores. Motion passed unanimously.

2. PRESENTATIONS

a) Taskforce on Court Management of Digital Evidence

Judge Samuel Thumma, Chair, shared an update on this taskforce. They have met twice. The five main issues they are addressing are:

- 1) Should court digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
- 2) Should management of court digital evidence be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?
- 3) Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
- 4) Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?
- 5) Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?

The three sub-workgroups are: Storage and Management, Court Rules, and Formats. The next meeting is March 17, 2017, with a report to the Arizona Judicial Council on October 1, 2017. Materials and Minutes are posted on the Azcourts.gov website, and they welcome input.

More information about the taskforce can be found on the Azcourts.gov website: <http://www.azcourts.gov/csccommittees/Digital-Evidence-Task-Force>

b) **Legislative Overview**

Amy Love, AOC Government Affairs, gave an update on proposed legislation pertaining to victims' rights. One-thousand and fifty-five bills were heard so far this session. Highlighted were:

- HB2241 – VICTIMS' RIGHTS; PLEADING ENDORSEMENTS (counsel for victims)
- HB2269 – VICTIM'S RIGHTS; REQUIREMENTS; MONETARY JUDGEMENTS (monetary judgements for previously incarcerated person must fulfill restitution and incarceration costs first)
- HB2444 – SEXUAL ASSAULT; VICTIM ADVOCATES; PRIVILEGE (advocate prohibited from being examined at trial with some exceptions)
- H2290 & SB1071 – PROVISIONAL LICENSES; CRIMINAL CONVICTIONS (provisional to regular licenses with good record)
- SB1107 – CHILD FAMILY ADVOCACY CENTER; FUND (permanent guardianship and central registry listings) and part of SB1360 – DEPENDENCY PROCEEDINGS; PERMANENT GUARDIANSHIPS; REUNIFICATION
- SB1069 – SETTING ASIDE CONVICTION; EMPLOYMENT (when conviction set aside, response on applications affected) – Ms. Kirstin Flores asked if victims would be notified in this case. Certain counties do this at this time.

More information about the bills presented can be found on the Arizona State Legislature's website, <http://www.azleg.gov/Bills/>.

c) **Arizona Attorney General's Office of Victims Services (OVS) Compliance Program**

Ms. Flores, OVS Director, Ms. Colette Chapman, AG Victims' Rights Compliance Administrator and Judge Ronald Reinstein (Ret.), COVIC Chair gave background information and an explanation of the compliance and victim complaint resolution program within the OVS and Judge Reinstein's role when the judiciary is found in violation of victims' rights. Judge Reinstein gave more detail about the types of violations that have been presented to date and how they are being addressed.

d) **APAAC Lethality Assessment Working Group**

Ms. Amelia Cramer, Pima County Attorney's Office, and Mr. Jon Eliason, Maricopa County Attorney's Office gave a report from the Lethality Assessment Working Group and an update on action taken by the Arizona Prosecuting Attorney's Advisory Council (APAAC). Judge Finn mentioned issues related to non-uniform reports being accepted in I.A. courts. Mr. Eliason said that there will be training on the Lethality Assessment as well. APAAC has asked that COVIC post a comment in support of its petition on the *Court Rules Forum* to Amend the Appendix to Arizona

Rules of Criminal Procedure with an Addendum to Form 4 “Release Questionnaire Addendum – Intimate Partner Risk Assessment.” The issue of name redaction was brought up – quadruplicate forms that allow for pre-redaction are used in Pima County. Victim name is not accessible to the public, but available for the defense part of the training packet. Possibly using initials vs. full names should be considered. Motion was made for this request by Judge Maria Elena Cruz. Seconded by Judge Sally Simmons. Vote passed unanimously to approve. Judge Reinstein asked Kay Radwanski and Denise Lundin, AOC Staff, to form a small working group from COVIC, COSC and CIDVIC to look at the redaction issue.

e) Task Force on Fair Justice for All Update

Judge Reinstein shared the final Commission on Victims in the Courts response to the recommendations of the Task Force on Fair Justice for All. It included a summation of the information presented at the last meeting, current legislative status of the rule changes that have been presented to the legislature, and the ensuing discussion on how the recommendations might affect victims. Judge Maria Elena Cruz, Task Force Member, started a pilot program regarding fine reductions in limited jurisdiction courts in Yuma County for non-criminal matters. Comments to the Task Force, which is still meeting, are encouraged.

f) SAFER Grant Update

Mr. Jim Markey, SAFER member and COVIC Committee member, gave a brief history of the SAFER Act and an update on the status of the report produced by the National Sexual Assault Forensic Evidence Reporting Workgroup. One big concern was victim notification and participation. Mr. Eliason reported on the process to ship kits to be tested and the statistics presented upon their return to the crime labs. There is a strong emphasis on timelines. The group is now working on sexual assault protocol for Maricopa County and following up on leads and prosecutions.

Judge Ronald Reinstein reviewed two recently reported cold cases and commented on “Genetic Informants” and “Familial DNA”. A handout of recent media accounts of DNA being used to assist in investigating and solving crimes was shared with the group.

g) Criminal Rules Task Force

Judge Joseph Welty, Task Force Chair and Mr. Mark Meltzer, AOC Staff, presented an update on the status of R-17-0002, which is a rule petition the Criminal Rules Task Force filed in January 2017 that restyles the criminal rules. He specifically focused on the Rule 39 workgroup’s draft and explained why some substantive changes need to be made. Judge Welty asked COVIC to take formal action to support this rule petition and comment on it on the Court Rules Forum. Motion was made to support the re-styling efforts of the task force by Judge Sam Myers. Seconded by Judge Weiss. Unanimously approved. A second motion was

made by Judge Myers approving re-styling efforts on Criminal Rule 31.14.
Seconded by Ms. Sydney Davis. Unanimously approved.

h) Caselaw and Current Trends

Judge Reinstein shared information on a film that will be shown on March 17, 2017 locally "I Am Jane Doe", which details human trafficking. He also shared a case, *Simpson v. Miller*, a Supreme Court decision from February 2017 that impacts the court system. The Arizona Constitution states that if a person is charged with sexual conduct with a minor, capital murder, sexual assault or child molestation or abuse, they are non-bondable. This opinion states as to sexual conduct with a minor or child molestation or abuse this is a violation of the United States Constitution under the 14th Amendment and cites *United States v. Salerno*. Case examples were shared.

3. CALL TO PUBLIC

a) Good of the Order / Call to the Public

There was nothing reported.

4. ADJOURNMENT

a) Adjourn

Motion was made by Mr. Timothy Agan at 12:35 p.m. to adjourn. Seconded by Judge Finn. Motion passed unanimously

5. NEXT COMMITTEE DATE

Friday, June 9, 2017
10:00 a.m. to 2:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007

Arizona Supreme Court
 Commission on Victims in the
 Courts June 9, 2017 Meeting Agenda
 1501 W. Washington St., Phoenix, Arizona, 85007
 State Courts Building, Conference Room 345A/B

(602) 452-3533 or (520) 388-4331 / Access Code: 996 044 381

<https://arizonacourts.webex.com/arizonacourts/j.php?MTID=m40e3c2185c49a7d099200ae34b8ecd95>

10:00 a.m. – 2:00 p.m.

<i>5 min</i>	Call to order / Welcome / Introductions	Judge Ronald Reinsten, Chair
	<i>Approval of Minutes – March 3, 2017**</i>	Judge Ronald Reinstein, Chair
<i>15 min</i>	COVIC Portrait	Chris Manes, AOC Media Tech
<i>20 min</i>	Legislative Update	Jerry Landau, AOC Legislative Affairs Director
<i>20 min</i>	COVIC Presentation at NCVLI	Judge Ronald Reinstein, Chair Kristin Flores, COVIC Member Denise Lundin, COVIC/AOC Staff
<i>10 min</i>	Restitution Workgroup	Kirstin Flores, OVS Director, AZ AG's Office and Workgroup Chair
<i>20 min</i>	Cold Cases – New Developments	Judge Ronald Reinstein, Chair Jon Eliason
<i>10 min</i>	Update on Criminal Rules Task Force	Denise Lundin, COVIC/AOC Staff
<i>10 min</i>	Update on Lethality Assessment Reports	Denise Lundin, COVIC/AOC Staff Kay Radwanski, AOC Staff
<i>10 min</i>	Victims' Bill of Rights Lawsuit	Judge Ronald Reinstein, Chair
<i>10 min</i>	CIDVIC-ADC Workgroup re: serving Ops on Prison Inmates	Kay Radwanski, AOC Staff
<i>30 min</i>	Lunch	
<i>30 min</i>	Mini-Strategic Planning Session	Judge Ronald Reinstein, Chair Denise Lundin, COVIC/AOC Staff Lynn Golden, COVIC/AOC Staff
<i>5 min</i>	Announcements / Call to the Public / Adjournment	Judge Ronald Reinstein, Chair

**Important Voting Items

Next Meeting:
 Friday, October 27, 2017
 10:00 a.m. - 12:00 p.m.
 Arizona State Courts Building, Conference Room 345 A/B

Arizona Supreme Court
Commission on Victims in the Courts
March 3, 2017
10:00 a.m. to 12:00 p.m.
State Courts Building
1501 W. Washington, Phoenix, AZ 85007
Conference Room 345 A/B

Present: Judge Ronald Reinstein (Ret.); Mr. Timothy J. Agan; Mr. Michael Breeze; Judge Maria Elena Cruz; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Christine Kelly; Captain John Leavitt; Mr. Dan Levey; Ms. Keli Luther; Judge Evelyn Marez; Sgt. Jim Markey (Ret.); Chief Rod McKone; Judge Sam Myers; Ms. Jane Nicoletti-Jones; Ms. Debra Olsen; Ms. Laura Penny; Ms. Karyn Rasile; Judge Richard Weiss; Ms. Erin Yabu (*proxy for Ms. Elizabeth Ortiz*)

Telephonic: Ms. Colleen Clase; Ms. Shelly Corzo-Shaffer; Ms. Sydney Davis; Ms. Leslie James; Judge Elizabeth Finn; Mr. William Owsley; Judge Sarah (Sally) Simmons; Ms. Leesa Berens Weisz

Absent/Excused: None

Presenters/Guests: Judge James Beene; Justice Clint Bolick; Judge Kent Cattani; Ms. Colette Chapman; Ms. Amelia Cramer; Mr. Jon Eliason; Ms. Tierra Fairman; Ms. Debbie Lee; Justice John R. Lopez; Judge Paul McMurdie; Judge Samuel Thumma; Judge Joseph Welty

Administrative Office of the Courts: Ms. Catherine Clarich; Ms. Lynn Golden; Ms. Amy Love; Ms. Denise Lundin; Mr. Mark Meltzer

1. REGULAR BUSINESS

a) Call to Order, Welcome, and Introductions

The March 2017 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:01 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

b) Announcements

The Chair congratulated Ms. Kim Hedrick on her recent presentation to the military at the Presidio for the Pentagon on behalf of victims.

COVIC appointments and reappointments are coming up. Members whose terms are expiring have expressed an interest in staying on the committee, but we need the names of alternates for the Chief Justice to consider as well, so if anyone has someone in mind, please contact Ms. Denise Lundin as soon as possible.

Ronald Reinstein, COVIC Chair, Kirstin Flores, COVIC Member and Denise Lundin, AOC Staff, have been selected by the National Crime Victim Law Institute's Annual Conference in Portland in May to present on behalf of COVIC, sharing background and work that COVIC has done.

c) Approval of the October 21, 2016 Minutes

The draft minutes from the October 21, 2016 meeting were presented for approval. The chair called for any omissions or corrections to the minutes.

- Motion was made by Mr. Michael Breeze to approve the October 21, 2016 meeting minutes. Seconded by Ms. Kirstin Flores. Motion passed unanimously.

2. PRESENTATIONS

a) Taskforce on Court Management of Digital Evidence

Judge Samuel Thumma, Chair, shared an update on this taskforce. They have met twice. The five main issues they are addressing are:

- 1) Should court digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
- 2) Should management of court digital evidence be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?
- 3) Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
- 4) Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?
- 5) Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?

The three sub-workgroups are: Storage and Management, Court Rules, and Formats. The next meeting is March 17, 2017, with a report to the Arizona Judicial Council on October 1, 2017. Materials and Minutes are posted on the Azcourts.gov website, and they welcome input.

More information about the taskforce can be found on the Azcourts.gov website: <http://www.azcourts.gov/cscommittees/Digital-Evidence-Task-Force>

b) Legislative Overview

Amy Love, AOC Government Affairs, gave an update on proposed legislation pertaining to victims' rights. One-thousand and fifty-five bills were heard so far this session. Highlighted were:

- HB2241 – VICTIMS' RIGHTS; PLEADING ENDORSEMENTS (counsel for victims)
- HB2269 – VICTIM'S RIGHTS; REQUIREMENTS; MONETARY JUDGEMENTS (monetary judgements for previously incarcerated person must fulfill restitution and incarceration costs first)
- HB2444 – SEXUAL ASSAULT; VICTIM ADVOCATES; PRIVILEGE (advocate prohibited from being examined at trial with some exceptions)
- H2290 & SB1071 – PROVISIONAL LICENSES; CRIMINAL CONVICTIONS (provisional to regular licenses with good record)
- SB1107 – CHILD FAMILY ADVOCACY CENTER; FUND (permanent guardianship and central registry listings) and part of SB1360 – DEPENDENCY PROCEEDINGS; PERMANENT GUARDIANSHIPS; REUNIFICATION
- SB1069 – SETTING ASIDE CONVICTION; EMPLOYMENT (when conviction set aside, response on applications affected) – Ms. Kirstin Flores asked if victims would be notified in this case. Certain counties do this at this time.

More information about the bills presented can be found on the Arizona State Legislature's website, <http://www.azleg.gov/Bills/>.

c) Arizona Attorney General's Office of Victims Services (OVS) Compliance Program

Ms. Flores, OVS Director, Ms. Colette Chapman, AG Victims' Rights Compliance Administrator and Judge Ronald Reinstein (Ret.), COVIC Chair gave background information and an explanation of the compliance and victim complaint resolution program within the OVS and Judge Reinstein's role when the judiciary is found in violation of victims' rights. Judge Reinstein gave more detail about the types of violations that have been presented to date and how they are being addressed.

d) APAAC Lethality Assessment Working Group

Ms. Amelia Cramer, Pima County Attorney's Office, and Mr. Jon Eliason, Maricopa County Attorney's Office gave a report from the Lethality Assessment Working Group and an update on action taken by the Arizona Prosecuting Attorney's Advisory Council (APAAC). Judge Finn mentioned issues related to non-uniform reports being accepted in I.A. courts. Mr. Eliason said that there will be training on the Lethality Assessment as well. APAAC has asked that COVIC post a comment in support of its petition on the *Court Rules Forum* to Amend the Appendix to Arizona

Rules of Criminal Procedure with an Addendum to Form 4 “Release Questionnaire Addendum – Intimate Partner Risk Assessment.” The issue of name redaction was brought up – quadruplicate forms that allow for pre-redaction are used in Pima County. Victim name is not accessible to the public, but available for the defense part of the training packet. Possibly using initials vs. full names should be considered. Motion was made for this request by Judge Maria Elena Cruz. Seconded by Judge Sally Simmons. Vote passed unanimously to approve. Judge Reinstein asked Kay Radwanski and Denise Lundin, AOC Staff, to form a small working group from COVIC, COSC and CIDVIC to look at the redaction issue.

e) Task Force on Fair Justice for All Update

Judge Reinstein shared the final Commission on Victims in the Courts response to the recommendations of the Task Force on Fair Justice for All. It included a summation of the information presented at the last meeting, current legislative status of the rule changes that have been presented to the legislature, and the ensuing discussion on how the recommendations might affect victims. Judge Maria Elena Cruz, Task Force Member, started a pilot program regarding fine reductions in limited jurisdiction courts in Yuma County for non-criminal matters. Comments to the Task Force, which is still meeting, are encouraged.

f) SAFER Grant Update

Mr. Jim Markey, SAFER member and COVIC Committee member, gave a brief history of the SAFER Act and an update on the status of the report produced by the National Sexual Assault Forensic Evidence Reporting Workgroup. One big concern was victim notification and participation. Mr. Eliason reported on the process to ship kits to be tested and the statistics presented upon their return to the crime labs. There is a strong emphasis on timelines. The group is now working on sexual assault protocol for Maricopa County and following up on leads and prosecutions.

Judge Ronald Reinstein reviewed two recently reported cold cases and commented on “Genetic Informants” and “Familial DNA”. A handout of recent media accounts of DNA being used to assist in investigating and solving crimes was shared with the group.

g) Criminal Rules Task Force

Judge Joseph Welty, Task Force Chair and Mr. Mark Meltzer, AOC Staff, presented an update on the status of R-17-0002, which is a rule petition the Criminal Rules Task Force filed in January 2017 that restyles the criminal rules. He specifically focused on the Rule 39 workgroup’s draft and explained why some substantive changes need to be made. Judge Welty asked COVIC to take formal action to support this rule petition and comment on it on the Court Rules Forum. Motion was made to support the re-styling efforts of the task force by Judge Sam Myers. Seconded by Judge Weiss. Unanimously approved. A second motion was

made by Judge Myers approving re-styling efforts on Criminal Rule 31.14.
Seconded by Ms. Sydney Davis. Unanimously approved.

h) Caselaw and Current Trends

Judge Reinstein shared information on a film that will be shown on March 17, 2017 locally "I Am Jane Doe", which details human trafficking. He also shared a case, *Simpson v. Miller*, a Supreme Court decision from February 2017 that impacts the court system. The Arizona Constitution states that if a person is charged with sexual conduct with a minor, capital murder, sexual assault or child molestation or abuse, they are non-bondable. This opinion states as to sexual conduct with a minor or child molestation or abuse this is a violation of the United States Constitution under the 14th Amendment and cites *United States v. Salerno*. Case examples were shared.

3. CALL TO PUBLIC

a) Good of the Order / Call to the Public

There was nothing reported.

4. ADJOURNMENT

a) Adjourn

Motion was made by Mr. Timothy Agan at 12:35 p.m. to adjourn. Seconded by Judge Finn. Motion passed unanimously

5. NEXT COMMITTEE DATE

Friday, June 9, 2017
10:00 a.m. to 2:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 9, 2017	<input type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Other	Commission Portrait

FROM: AOC Public Information Office

PRESENTER: Chris Manes, AOC Media Tech

DISCUSSION & TIME ESTIMATES:

Public Information Office is requesting to take photos of the board.
15 minutes

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 9, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Update

FROM: AOC

PRESENTER: Jerry Landau, Legislative Affairs Director

DISCUSSION & TIME ESTIMATES:

Mr. Landau will report on recent legislative changes relating to victims' rights legislation.
20 Minutes.

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 9, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	COVIC Presentation at NCVLI Conference

FROM: COVIC Chair

PRESENTERS: Judge Reinstein, Kirstin Flores and Denise Lundin

DISCUSSION & TIME ESTIMATES:

A portion of the PowerPoint the COVIC panel presented at the National Crime Victim Law Institute's Annual Crime Victim Law Conference in Portland, OR last month will be shown and discussed.

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: Restitution Workgroup update
June 9, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: COVIC Restitution Workgroup

PRESENTER:

Kirstin Flores, Director, Office of Victim Services, AZ Attorney General's Office and Restitution Workgroup Chair

DISCUSSION & TIME ESTIMATES:

Setting up next round of meetings in order to strategize on next moves and develop/re-institute subcommittees.

Looking to work on Victim Locate Fund statewide, developing best practices for Restitution Court, developing restitution training (to include lien forms, website, etc), promote website, statistical tracking and new legislation.

10 Minutes.

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: New Developments in Cold Cases
June 9, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: Arizona Forensic Science Advisory Committee

PRESENTERS: Judge Reinstein and Jon Eliason

DISCUSSION & TIME ESTIMATES:

New forensic techniques are aiding law enforcement in Cold Case investigations. This presentation will focus on Familial DNA, Genealogy DNA and DNA Phenotyping methods.

20 Minutes.

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: Update on Criminal Rules Task Force
June 9, 2017	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: AOC

PRESENTER: Denise Lundin, COVIC Staff

DISCUSSION & TIME ESTIMATES:

Additional revisions were made to Criminal Rule 39 since COVIC voted to support the Criminal Rules Task Force's original petition. Ms. Lundin will outline the changes and request support from the members.

10 Minutes.

RECOMMENDED MOTION (IF ANY):

Move to support the Criminal Rules Task Force's April 25, 2017 revisions to Criminal Rule 39.

Supplemental
APPENDIX B

Rule 39. Victim's Rights

Rule 39(a). Definitions

The Task Force's proposed changes to Rule 39(a) are stylistic but three sets of changes are noteworthy:

(a) ~~The Task Force proposes to modify the current definition of "victim" in proposed Rule 39(a)(1) by simply referring to the applicable definitions in the underlying statutory source instead of repeating those definitions in the rule.~~ The Task Force proposes relocating the current rule's provisions in Rule 39(a)(1) about how a victim in or out of custody can exercise the right to be heard to proposed new Rule 39(c), which provides more detailed information regarding the right to be heard.

(b) The definition of "victim" in current Rule 39(a)(1) has been moved to proposed amended Rule 1.4(h) so it appears along with all the other terms that are commonly used throughout the rules. The Task Force also moved provisions for "Cessation of Victim Status" and "Legal Entities," which appeared in the initially proposed draft as proposed Rule 39(a)(B) and (C), to a new proposed Rule 39(a)(3)(A) and (B), under the heading of "Limitations." The Task Force also modified the title of subpart (a) to add "and Limitations" to "Definitions." Last, the Task Force renumbered the subparts "Criminal Proceeding" and "Identifying and Locating Information" to be proposed Rule 39(a)(1) and (2).

~~(bc)~~ Proposed Rule 39(a)(21) streamlines the current definition of "criminal proceeding" by eliminating the references to specific types of hearings because they are redundant. The elimination of those specific hearings from the definition is not intended to be a substantive change. The proposed rule retains the specific reference to post-conviction hearings, however, to be clear that a victim's rights do not end at sentencing.

(d) The Task Force slightly modified the definition of "criminal proceeding" in newly renumbered proposed Rule 39(a)(1) to include "any matter scheduled and held before a trial court, *telephonically or in person*, at which the defendant has the right to be present, including any post-conviction matter." (Addition shown in italics.) The change clarifies that when proposed Rule 39(b)(4) gives a victim "the right to be present at all criminal proceedings," it includes telephonic hearings. The Task Force made the change based on anecdotal reports that victims are sometimes denied the right to join telephonic hearings.

(ee) Finally, to make later rules easier to read, the Task Force proposes adding a definition of "identifying and locating information," which is taken from the underlying statute and the language in current Rule 39(b)(10).

Rule 39(b). Victims' Rights

Rule 39(b) lists a victim's specific rights. This section was significantly restyled to use lists instead of large paragraphs when possible to make it easier to read and to locate specific rights. The Task Force's proposed changes to the rule are stylistic with the following exceptions:

(a) The Task Force proposes eliminating current Rule 39(b)(5), which gives a victim the right to be notified if a defendant escapes. Because that right is enforced only by law enforcement agencies and not by the courts or prosecutors, the Task Force felt that a reference to that particular right did not belong in these procedural rules.

(b) Proposed Rule 39(b)(2) makes two changes to the current rule:

(1) First, the Task Force proposes modifying current Rule 39(b)(2) by removing the requirement that the victim be provided with a written list of his or her rights. This requirement is not one of the rights set forth in the Arizona Constitution or the underlying statute. Moreover, courts are not currently providing victims with a written list of rights, and it is unnecessary to do so. Although a victim has the right to notice of the various rights, notice is accomplished in practice in a variety of ways, including orally.

(2) The definition in the proposed rule also adds a reference to A.R.S. § 13-4438 to emphasize the court's obligation to provide and, in superior court, to read aloud the statement of rights set forth in the statute.

(c) Proposed Rule 39(b)(3) modifies current Rule 39(b)(3) by adding a reference to A.R.S. § 13-4409. The reference would be helpful because the statute provides specific instructions to courts about setting criminal proceedings to ensure that victims have time to receive proper notification. In the Task Force's opinion, referring to the statute is better (and simpler) than repeating all the statutory specifics in the rule.

(d) Proposed Rules 39(b)(6) and (7) divide the current Rule 39(b)(7) into two separate sections—proposed Rule 39(b)(6) addresses the specific rights to confer with the prosecutor and proposed Rule 39(b)(7) addresses the right to receive notice and be heard by the court. Proposed Rule 39(b)(6) reorganizes and simplifies the rights listed in the current rule but no substantive changes are intended. Proposed Rule 39(b)(7) lists the specific types of court proceedings in which a victim has a right to be heard, and is based on A.R.S. §§ 13-4412, 13-4422 to -4423, 13-4426 to -4427. The proposed rule adds the right to be heard at: (1) a probation modification, early termination of probation, and disposition hearings; (2) and the right to be heard in any post-conviction release proceeding; and (3) a hearing regarding a suspension of Rule 8 or a continuance of a trial date. ~~Neither right is included in~~ The current rule does not refer to any of these proceedings.

(e) Proposed Rule 39(b)(8) combines a victim's right to be accompanied to specific events and the right to choose who will accompany them, which are currently divided into Rule 39(b)(8) and (9). Because the two rules relate to the same events, the Task Force believes it is better to combine the rules into one rule.

(f) Although the Task Force is divided over the issue, a majority favors adding proposed new Rule 39(b)(9):

(1) The proposed rule would provide for the right to the assistance of a facility dog as described in A.R.S. § 13-4442, which was enacted in 2016. The statute contains very specific rules describing how to provide notice that a facility dog will be used, the court's duty to instruct the jury on the presence of the dog, and the definition of "facility dog." Again, the Task Force believes that referring to the statute is a better way to alert the court and parties to this right than repeating all the statutory provisions in the rule.

(2) The Task Force questions the constitutionality of this statute because it appears to infringe on Supreme Court's constitutional rulemaking function. Some Task Force members believe that this reference to the statute should not be included in the rules to allow parties to litigate the constitutionality of the statute.

(g) The Task Force proposes adding a new Rule 39(b)(10) to incorporate the provisions of A.R.S. § 13-4434(A), which gives a victim the right to refuse to testify about any identifying or locating information unless the court orders disclosure. Because this statute deals with limitations on a victim's testimony and the court's procedures for handling challenges to those limitations in individual cases, the Task Force believes the statutory provisions should be part of these procedural rules.

(h) To accommodate adding proposed new Rule 39(b)(10), the Task Force proposes renumbering current Rule 39(b)(10) as Rule 39(b)(11). The only change the Task Force proposes is the separating the right and the exceptions, but no substantive changes are intended.

(i) To accommodate adding proposed new Rule 39(b)(10), the Task Force proposes renumbering current Rule 39(b)(11) as Rule 39(b)(12). The Task Force proposes modifying the current rule's provision that limits the application of the right to "after charges are filed." The proposed rule eliminates that phrase because a victim's rights attach upon arrest or formal charging under A.R.S. § 13-4402. Consequently, to the extent the current rule can be read to limit the right to situations where charges have been filed, it is inconsistent with the statutory right.

(j) Proposed Rule 39(b)(13), which deals with a victim's right to set reasonable conditions on any interview, is derived from current Rule 39(b)(12)(i). The

Task Force proposes various stylistic changes to this rule, but no substantive changes are intended.

(k) Proposed Rule 39(b)(14), which concerns a victim's right to terminate an interview, is derived, with some modifications, from current Rule 39(12)(ii).

(1) The current rule states that a victim has the right to terminate "the interview or deposition if it is not conducted in a dignified and professional manner." The Task Force proposes deleting the qualifying language "if it is not conducted in a dignified and professional manner." Under A.R.S. § 13-4433(D), a victim has a right to terminate a defense interview at any time and for any reason. To the extent the qualifying language is interpreted to restrict when a victim may terminate an interview, it imposes a restriction not found in the statute.

(2) The Task Force also believes that the current rule's inclusion of depositions is confusing and inaccurate. A deposition is a court-ordered event under Rule 15.3 and the applicable civil rules. If the deposition was lawfully ordered, a victim would not have the right to terminate that proceeding beyond what any deponent would have under the rules. The victims' rights statutes do not address depositions and it would be rare for a court to order a victim to be deposed. Thus, the Task Force proposes to remove the rule's reference to depositions.

Rule 39(c). Exercising the Right to Be Heard

The Task Force's proposes adding a new Rule 39(c) to specifically address how a victim may exercise the right to be heard and the nature of that right.

Proposed Rule 39(c)(1) is taken from A.R.S. § 13-4426.01 which specifies that victims do not exercise their right to be heard by the court by being a witness, they are not subject to cross-examination, and they are not required to disclose their statements to the parties. The statute and this rule apply to situations where a victim is addressing the court in the court proceedings described in proposed Rule 39(b)(7). Neither this rule, nor the corresponding statute, describes the procedures that must be followed when a victim presents a victim impact statement to a jury during a capital penalty trial. The last sentence of the proposed rule is intended to specify that limitation to avoid any confusion.

Proposed Rules 39(c)(2) and (3) are taken from information currently included in the definitions in Rule 39(a)(1). The Task Force proposes modifying the current provision slightly to make it clear that an in-custody victim's right to be heard is satisfied by giving the victim the opportunity to submit a written statement. For victims who are not in custody, proposed Rule 39(c)(3) modifies the current rule to the extent that the current rule gives the court discretion over the way a victim chooses to exercise the right. A.R.S. § 13-4428(B) gives victims the discretion to decide how they want to be heard. The proposed rule clarifies that out-of-custody victims may exercise the right to be heard by giving oral

statements in person to the court or by providing the court with a written or recorded statement.

Proposed Rule 39(c)(4) provides specifics regarding what a victim may do when exercising the right to be heard at sentencing. This proposed rule is an addition to the current rules and is based on A.R.S. §§ 13-4424 and 13-4426.

Rule 39(d). Assistance and Representation

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(c) as Rule 39(d). The Task Force's other proposed changes to the rule are stylistic with the following exceptions:

(a) Proposed Rule 39(d)(3) slightly modifies the content of the current Rule 39(c)(3):

(1) The current rule refers to “conflict of interests” between the prosecutor and the victim. The Task Force is concerned about using that phrase because it is a term of art referring to a lawyer’s ethical obligations under Arizona Ethical Rules 1.7, 1.9, and 1.18. None of those rules appears to apply to the type of “conflict” to which the current rule seems to be referring. If there is an ethical conflict of interest between a prosecutor and a victim, the prosecutor likely would have to withdraw and have the case reassigned to another prosecutor or another prosecuting agency. The remedy provided in the current rule—directing the victim “to the appropriate legal referral, legal assistance, or legal aid agency”—would not resolve an ethical conflict of interest between the prosecutor and the victim.

(2) The Task Force believes that in the context of this rule, which mainly describes how a prosecutor can assert rights on behalf of a victim notwithstanding the fact that the prosecutor does not represent the victim, the phrase “conflict of interest” must refer to disagreements between the prosecutor and the victim about how to assert certain rights. In that context, it makes sense for the prosecutor to refer the victim to other sources that might provide representation specifically to assert the victim’s rights.

(3) To clear up this confusion, the Task Force proposes to eliminate the phrase “conflict of interest” and instead use “[i]f any conflict arises between the prosecutor and a victim in asserting the victim’s rights.”

(b) The Task Force also is concerned with the current rule’s specific reference in Rule 39(c)(3) to “legal assistance or legal aid agency.” The Task Force believes the rule was intended to require the prosecutor to do more than simply tell the victim that he or she has the right to hire his or her own lawyer. On the other hand, if a prosecutor and a victim seriously disagree on an issue, a prosecutor should not make a referral to a particular lawyer or agency because it could create an ethical conflict of

interest. Ultimately, the Task Force decided to propose in Rule 39(d)(3) that the rule should direct the prosecutor to refer the victim to a state bar or local bar association, or the Attorney General's Victim's Rights Program, for an appropriate referral, which may include pro bono or reduced cost services.

(c) Consistent with a recently adopted statute, the Task Force added two sentences following the first sentence: "After a victim's counsel files a notice of appearance, all parties must endorse the victim's counsel on all pleadings. When present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights."

(ed) The last sentence of proposed Rule 39(d)(4) is not part of current Rule 39(c)(4). That sentence was added to reflect a 2016 statutory change in A.R.S. § 13-4437(E), which specifically authorizes a victim's attorney to present evidence and make arguments in restitution hearings.

Rule 39(e). Victim's Duties

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(d) as Rule 39(e).

In addition to restyling the rule, the Task Force's proposes to add a notice requirement under proposed Rule 39(e)(2)(D) to correct an oversight in the current rule. The current rule requires the prosecutor to notify the defense and the court when a legal entity designates a representative to assert victim's rights, and also provides a method for a legal entity to change the representative. The rule, however, does not specifically require the prosecutor to provide notice to the defense and the court if the legal entity changes its representative. Proposed Rule 39(e)(2)(D) adds that requirement.

The Task Force's other proposed changes to the rule are stylistic.

Rule 39(f). Waiver

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(e) as Rule 39(f). The Task Force's other proposed changes to the rule are stylistic.

Rule 39(g). Court Enforcement of Victim Notice Requirements

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(f) as Rule 39(g). Consistent with the discussion above regarding Rule 39(b)(2), the Task Force proposes removing the requirement that the victim be provided with a written list of his or her rights. The Task Force's other proposed changes to the rule are stylistic.

Rule 39(h). Appointment of Victim’s Representative

To accommodate adding proposed new Rule 39(c), the Task Force proposes renumbering current Rule 39(g) as Rule 39(h). The Task Force’s other proposed changes to the rule are stylistic.

Rule 40. Transfer for Juvenile Prosecution

The Task Force’s proposed changes to this rule are stylistic with three exceptions:

(a) In proposed Rule 40(b), the Task Force proposes using the word “must” instead of the current rule’s use of the word “shall.” The intent is to make it clear that a court is required to hold a transfer hearing if the defendant asks for a hearing or if a court orders it on its own initiative because the court decides it is appropriate or because it is required by law.

(b) The Task Force proposes adding a statutory reference to proposed Rule 40(h) that identifies the factors a court should consider in making a transfer decision.

(c) The Task Force proposes adding a provision in proposed Rule 40(j) stating that a court determination regarding transfer must occur “with all possible speed.” Currently, the rule says that the determination must be made “at the conclusion of the hearing,” which seems to say (perhaps inadvertently) that a court must rule from the bench. The proposed amendment would give the court the option of considering the matter further after a hearing, but it also conveys that a court should make the decision as soon as possible.

Rule 41. Forms

Currently, Rule 41 provides that all court forms must “comply with the formatting requirements of Rule 10, Rules of Civil Procedure.” The Task Force proposes deleting this provision because proposed Rule 1.6(b)(1)(J) provides that none of the criminal rules’ formatting requirements apply to printed court forms. The Task Force’s other proposed changes to the rule are stylistic.

Supplemental APPENDIX A

(c) **Burden of Proof.** The defendant has the burden of proving factual allegations by a preponderance of the evidence. If the defendant proves a constitutional violation, the State has the burden of proving beyond a reasonable doubt that the violation was harmless.

(d) Decision.

(1) **Timing.** The court must rule no later than 10 days after the hearing ends, except if the volume of the evidence or the complexity of the issues require additional time.

(2) **Findings and Conclusions.** The court must make specific findings of fact and expressly state its conclusions of law relating to each issue presented.

(3) **Decision in the Defendant's Favor.** If the court finds in the defendant's favor, it must enter appropriate orders concerning:

(A) the conviction, sentence, or detention;

(B) any further proceedings, including a new trial and conditions of release; and

(C) other matters that may be necessary and proper.

(e) **Transcript.** On a party's request, the court must order the preparation of a certified transcript of the evidentiary hearing. The request must be made within the time allowed for filing a petition for review. If the defendant is indigent, preparation of the evidentiary hearing transcript will be at county expense.

Rule 32.9. Review

(a) Filing of a Motion for Rehearing.

(1) **Timing and Content.** No later than 15 days after entry of the trial court's final decision on a petition, any party aggrieved by the decision may file a motion for rehearing. The motion must state in detail the grounds of the court's alleged errors.

(2) **Response and Reply.** An opposing party may not file a response to a motion for rehearing unless the court requests one, but the court may not grant a motion for rehearing without requesting and considering a response. If a response is filed, the moving party may file a reply no later than 10 days after the response is served.

(3) **Effect on Appellate Rights.** Filing of a motion for rehearing is not a prerequisite to filing a petition for review under (c).

(b) Disposition if Motion Granted. If the court grants the motion for rehearing, it may either amend its previous ruling without a hearing, or grant a new hearing and then either amend or reaffirm its previous ruling. In either case, it must state its reasons for amending a previous ruling. The State must notify the victim of any action taken by the court if the victim has requested notification.

(c) Petition and Cross-Petition for Review.

(1) Time and Place for Filing.

(A) Petition. No later than 30 days after the entry of the trial court’s final decision on a petition or a motion for rehearing, an aggrieved party may petition the appropriate appellate court for review of the decision.

(B) Cross-Petition. The opposing party may file a cross-petition for review no later than 15 days after a petition for review is served.

(C) Place for Filing. The parties must file the petition for review, cross-petition, and all responsive filings with the appellate court and not the trial court.

(D) Computation of Time and Modifying Deadlines. Rule 31.3(d) governs the computation of any appellate court deadline in this rule, and an appellate court may modify any deadline in accordance with Rule 31.3(e).

(2) Notice of Filing and Additional Record Designation. No later than 3 days after a petition or cross-petition for review is filed, the petitioner and cross-petitioner must file with the trial court a “notice of filing.” The notice of filing may designate additional items for the record described in (e). These items may include additional certified transcripts of trial court proceedings prepared under Rule 32.4(e), or that were otherwise available to the trial court and the parties, and are material to the issues raised in the petition for review.

(3) Motions. Motions for extensions of time to file petitions or cross-petitions for review must be filed with the trial court, which must decide the motions promptly. The parties must file all other motions in the appellate court.

(4) Form and Contents of a Petition or Cross-Petition for Review.

(A) Form and Length. Petitions and cross-petitions for review, along with other documents filed with the appellate clerk, must comply with the formatting requirements of Rule 31.6(b). The petition or cross-petition must contain a caption with the name of the appellate court, the title of the case, a space for the appellate court case number, the trial court case number, and a brief descriptive title. The caption must designate the parties as they appear in the

trial court's caption. The petition or cross-petition must not exceed 6,000 words if typed or 22 pages if handwritten, exclusive of an appendix and copies of the trial court's rulings.

(B) Contents. A petition or cross-petition for review must contain:

- (i)** copies of the trial court's rulings entered under Rules 32.6(d), 32.8(d) and 32.9(b);
- (ii)** a statement of issues the trial court decided that the defendant is presenting for appellate review;
- (iii)** a statement of material facts concerning the issues presented for review, including specific references to the record for each material fact; and
- (iv)** reasons why the appellate court should grant the petition, including citations to supporting legal authority, if known.

(C) Effect of a Motion for Rehearing. The filing of a motion for rehearing under (a) does not limit the issues a party may raise in a petition or cross-petition for review.

(D) Waiver. A party's failure to raise any issue that could be raised in the petition or cross-petition for review constitutes a waiver of appellate review of that issue.

(5) Appendix Accompanying Petition or Cross-Petition.

(A) Generally. Unless otherwise ordered, a petition or cross-petition may be accompanied by an appendix. The petition or cross-petition must not incorporate any document by reference, except the appendix, ~~except the appendix~~. An appendix that exceeds 15 pages in length, exclusive of the trial court's rulings, must be submitted separately from the petition or cross-petition.

(B) Capital Cases. In capital cases, the parties must submit an appendix that supports all of the petition's references to the trial court record, with copies of supporting portions of the record.

(C) Noncapital Cases. In non-capital cases, an appendix is not required, but the petition must contain specific references to the record to support all material factual statements.

Formatted: Highlight

(6) Service; Response; Reply.

(A) Service. A party filing a petition, cross-petition, appendix, response, reply, or a related filing must serve a copy of the filing on all other parties. The serving party must file a certificate of service complying with Rule 1.7(c)(3), identifying who was served and the date and manner of service.

(B) Response. No later than 30 days after a petition or cross-petition is served, a party opposing the petition or cross-petition may file a response. The response must not exceed 6,000 words if typed and 22 pages if handwritten, exclusive of an appendix, and must comply with the form requirements in (c)(4)(A). An appendix to a response must comply with the form and substantive requirements in (c)(5).

(C) Reply. No later than 10 days after a response is served, a party may file a reply. The reply is limited to matters addressed in the response and may not exceed 3,000 words if typed and 11 pages if handwritten. It also must comply with the form requirements in (c)(4)(A), and may not include an appendix.

(7) Amicus Curiae. Rules 31.13(a)(7) and 31.15 govern filing and responding to an amicus curiae brief.

(d) Stay Pending Review. The State's filing of a motion for rehearing or a petition for review of an order granting a new trial automatically stays the order until appellate review is completed. For any relief the trial court grants to a defendant other than a new trial, granting a stay pending further review is within the discretion of the trial court or the appellate court.

(e) Transmitting the Record to the Appellate Court.

(1) In Noncapital Cases. No later than 45 days after receiving a notice of filing under (c)(2), the trial court clerk must transmit the record, including the trial court file and transcripts filed in the trial court, to the appellate court.

(2) In Capital Cases. The trial court clerk may transmit the record of post-conviction proceedings to the appellate court only if the appellate court requests it. The record includes copies of the notice of post-conviction relief, the petition for post-conviction relief, response and reply, all motions and responsive pleadings, all minute entries and orders issued in the post-conviction proceedings, transcripts filed in the trial court, and any exhibits admitted by the trial court in the post-conviction proceedings.

- (f) **Disposition.** The appellate court may grant review of the petition and may order oral argument. Upon granting review, the court may grant or deny relief and issue other orders it deems necessary and proper.
- (g) **Reconsideration or Review of an Appellate Court Decision.** The provisions in Rules 31.20 and 31.21 relating to motions for reconsideration and petitions for review in criminal appeals govern motions for reconsideration and petitions for review of an appellate court decision entered under (f).
- (h) **Return of the Record.** After a petition for review is resolved, the appellate clerk must return the record to the trial court clerk for retention.
- (i) **Notice to the Victim.** Upon the victim's request, the State must notify the victim of any action taken by the appellate court.

Rule 32.10. Review of an Intellectual Disability Determination in Capital Cases

No later than 10 days after the trial court makes a finding on intellectual disability, the State or the defendant may file with the Court of Appeals a petition for special action challenging the finding. The Rules of Procedure for Special Actions govern the special action, except the Court of Appeals must accept jurisdiction and decide any issue raised.

Rule 32.11. Extensions of Time; Victim Notice and Service

- (a) **Notice to the Victim.** If the victim in a capital case has filed a notice of appearance under A.R.S. § 13-4234.01, a party requesting an extension of time to file a brief must serve or otherwise provide notice of the request to the victim.
- (b) **Manner and Timing of Service or Notice.**
 - (1) **Victim's Choice of the Manner of Service.** The victim may specify in the notice of appearance whether the service of the request should be to the victim or whether it should go to another person, including the prosecutor, and whether service of the notice should be electronic, by telephone, or by regular mail. Service must be made in the manner specified in the victim's notice of appearance or, if no method is specified, by regular mail. If the victim has requested direct notification, the party requesting an extension of time must serve the victim with notice no later than 24 hours after filing the request.
 - (2) **Service Through the Prosecutor.** If the victim has not specified a method of service or if the victim has requested service through the prosecutor, the party requesting the extension of time must serve the prosecutor's office handling the post-conviction proceeding. If the prosecutor has the duty to notify the victim on

behalf of the defendant, the prosecutor must do so no later than 24 hours after receiving the request.

(c) Victim's Response. A victim may file a response to the request no later than 10 days after it is served.

(d) Factors. In ruling on any request for an extension of ~~a~~-time to file a brief, the court must consider the rights of the defendant and the victim to a prompt and final conclusion of the case.

Rule 32.12. Post-Conviction Deoxyribonucleic Acid Testing

(a) Generally. Any person who has been convicted and sentenced for a felony offense may petition the court at any time for forensic deoxyribonucleic acid (DNA) testing of any evidence:

- (1) in the possession or control of the court or the State;
- (2) related to the investigation or prosecution that resulted in the judgment of conviction; and
- (3) that may contain biological evidence.

(b) Manner of Filing; Response. The defendant must file the petition under the same criminal cause number as the felony conviction, and the clerk must distribute it in the manner provided in Rule 32.4(a)(4). The State must respond to the petition no later than 45 days after it is served.

(c) Appointment of Counsel. The court may appoint counsel for an indigent defendant at any time during proceedings under this rule.

(d) Court Orders.

- (1) **Mandatory Testing.** After considering the petition and the State's response, the court must order DNA testing if the court finds that:
 - (A) a reasonable probability exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing;
 - (B) the evidence is still in existence; and
 - (C) the evidence was not previously subjected to DNA testing, or the evidence was not subjected to the type of DNA testing that defendant now requests and the requested testing may resolve an issue not resolved by previous testing.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 9, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Update on Lethality Assessment Reports

FROM: AOC

PRESENTERS:

Denise Lundin and Kay Radwanski, AOC Staff

DISCUSSION & TIME ESTIMATES:

Staff will update the members on APAAC's petition for rule change and the comments received on the Rules Forum Page.

5 Minutes.

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 9, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Victims' Bill of Rights Lawsuit

FROM: AOC

PRESENTER: Judge Reinstein

DISCUSSION & TIME ESTIMATES:

Judge Reinstein will discuss a recent filing in Federal District Court pertaining to defense attorney contact with crime victims.

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 9, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	CIDVC-ADC Workgroup re: serving OPs on Prison Inmates

FROM: AOC

PRESENTER: Kay Radwanski, AOC Staff

DISCUSSION & TIME ESTIMATES:

The Committee on the Impact of Domestic Violence and the Courts (CIDVC) has formed a workgroup with the Arizona Department of Corrections' Office of Victims Services and other stakeholders to examine issues relating to obtaining and serving Orders of Protection on inmates incarcerated at the Arizona Department of Corrections. Ms. Radwanski will report on its first meeting.

10 Minutes.

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: Mini-Strategic Planning Session
June 9, 2017	<input type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Other	

FROM: AOC

PRESENTERS:

Judge Reinstein, Denise Lundin and Lynn Golden

DISCUSSION & TIME ESTIMATES:

Members will review Arizona Code of Judicial Administration Section 1-111 (Commission on Victims in the Courts) and identify priority issues for COVIC's focus for the upcoming term.

30 Minutes.

RECOMMENDED MOTION (IF ANY):

N/A

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 1: Judicial Branch Administration
Chapter 1: Leadership
Section 1-111: Commission on Victims in the Courts

- A. General Purpose.** The Commission on Victims in the Courts (COVIC) is established as a standing committee of the Arizona Judicial Council (AJC). The commission shall:
1. Advise the council on matters affecting victims' rights and the administration of justice;
 2. Make recommendations to the committee on continuing education and training and the AJC regarding training and education for judges and court personnel on victims' rights and appropriate treatment of victims;
 3. Work with the committee on probation and other court committees and entities as necessary to promote the improved collection and disbursement of victim restitution;
 4. Serve as the judicial branch liaison to other established victims' advocacy organizations; and
 5. Make other recommendations to the AJC that preserve the rights afforded to victims in Az. Const. Art. 2, § 2.1 and ACJA § 5-204.
- B. Membership and Terms.** The chief justice shall appoint a chair and members of the commission for terms of varying lengths and may reappoint members for successive terms. The membership is comprised of court and non-court personnel. The court membership includes superior and limited court jurisdiction representatives. The non-court membership includes representatives from victim advocacy organizations, public members and victim rights agencies to include: law enforcement, prosecution agencies and defense counsel. Other members may be appointed at the chief justice's discretion.
- C. Responsibility of Members.** Commission members shall attend and actively participate in COVIC meetings and shall serve on COVIC advisory committees as necessary. A member may designate a proxy, subject to the requirements of ACJA § 1-104 (D) and in conjunction with COVIC procedures described in subsection (F).
- D. Organization.** The chief justice shall appoint the chair of COVIC and other leadership as needed to organize commission affairs. The chair may appoint advisory committees as necessary to assist in commission business.
- E. Meetings.** The commission shall meet no less than three times a year. Additional meetings may be called at the discretion of the chair. All meetings shall be noticed and conducted in compliance with the judicial department's open meeting policy, as prescribed in ACJA § 1-202.

F. Actions. The commission shall adopt procedural rules for conducting commission business. The rules shall prescribe quorum requirements, proxy use and the majority needed to authorize commission meeting actions.

G. Staff. Under the direction of the chief justice, the Administrative Office of the Courts (AOC) shall provide staff to the commission and may conduct or coordinate commission-recommended research.

H. Funding. The commission, with the assistance of AOC, may seek grant funding from local, state and national organizations to conduct or coordinate management projects and research studies as recommended by the commission. To the extent available, supreme court funds may also be used to partially or fully fund the commission's expenses.

Adopted by Administrative Order 2006-25 effective March 10, 2006.

Arizona Supreme Court
Commission on Victims in the Courts

October 27, 2017

Meeting Agenda

1501 W. Washington St., Phoenix, Arizona, 85007
State Courts Building, Conference Room 345A/B

(602) 452-3533 or (520) 388-4331 / Access Code: 996 822 096

<https://arizonacourts.webex.com/arizonacourts/j.php?MTID=ma077daecb6b359fa8a37736f82f4bd4e>

10:00 a.m. – 12:00 p.m.

5 min	Call to order / Welcome / Introductions / Announcements	Judge Ronald Reinsten, Chair
	Approval of Minutes – June 9, 2017**	Judge Ronald Reinstein, Chair
10 min	Proposed Legislation	Amy Love, AOC Legislative Affairs
20 min	Digital Evidence Taskforce Update	Judge Sam Thumma, Chair
15 min	Noticing Victims’ Attorneys re: Hearings	Judge Sam Myers, COVIC Member and Presiding Criminal Judge, Maricopa Superior Court; Judge Ronald Reinstein, Chair
20 min	Attorney General’s Office Victims’ Rights Advisory Committee (VRAC) IA workgroup – Survey Results	Kirstin Flores, COVIC Member; Colette Chapman, AG’s OVS; Bill Burke, VRAC Committee Members
20 min	Arizona Voice for Crime Victims (AVCV) Proposed Petition to Amend Criminal Rule 39	Colleen Clase, Sr. Attorney, AVCV
20 min	Restitution Workgroup Report and Recommendations**	Kirstin Flores, COVIC Member and Committee Chair
10 min	Results of Mini-Strategic Planning Session from June 9, 2017 Meeting	Denise Lundin, COVIC Staff
5 min	DV Lethality Assessment Update	Judge Ronald Reinstein, Chair
10 min	Nordstrom vs. Arizona DOC Settlement Agreement	Judge Ronald Reinstein, Chair
5 min	Call to the Public / Adjournment	Judge Ronald Reinstein, Chair

****Important Voting Items**

Next Meeting:

March 2, 2018

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

Arizona State Courts Building, Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Lynn Golden at (602) 452-3195. Requests should be made as early as possible to allow time to arrange for the accommodation.

Arizona Supreme Court Commission on Victims in the Courts

June 9, 2017

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

Present: Judge Ronald Reinstein; Mr. Timothy J. Agan; Ms. Colleen Clase; Ms. Shelly Corzo Shaffer; Ms. Sydney Davis; Judge Elizabeth Finn; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Ms. Christine Kelly; Captain John Leavitt; Mr. Dan Levey; Chief Rod McKone; Ms. Jane Nicoletti-Jones; Ms. Elizabeth Ortiz; Ms. Laura Penny; Judge Richard Weiss; and Ms. Leesa Berens Weisz.

Telephonic: Mr. Michael Breeze; Judge Maria Elena Cruz; Judge Sam Myers; Judge Sarah (Sally) Simmons

Absent/Excused: Ms. Keli Luther; Judge Evelyn Marez; Sgt. Jim Markey (Ret.); Ms. Debra Olsen; Mr. William Owsley; Ms. Karyn Rasile

Presenters/Guests: Mr. Jerry Landau, AOC; Ms. Melody Lenhardt, MAVS; Mr. Jon Eliason, MCAO; Mr. Mark Meltzer, AOC; Mr. Jeffrey Ong, AZ Senate; Ms. Kay Radwanski, AOC/CIDVIC

Administrative Office of the Courts: Ms. Denise Lundin; Ms. Lynn Golden

I. REGULAR BUSINESS

A. Call to Order / Welcome / Introductions / Announcements

The June 2017 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:07 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

B. Announcements

Congratulations to Judge Maria Elena Cruz on being appointed to the Arizona Court of Appeals Division I. On June 21-23, 2017 Judge Cruz, Mr. Dan Levey, Ms. Kim Hedrick, and Judge Wendy Million will be presenting at the Judicial Conference on "Victims in Court", covering statutes and rules, and focusing on what a judge can do while a victim is being heard, providing an atmosphere where a victim can feel empowered, and interaction in a courtroom during a victim statement. On June 19, 2017, Ms. Denise Lundin and Judge Reinstein will be presenting to the Judicial Council an update on COVIC accomplishments over the past few years. Ms. Shelly Shaffer will be leaving COVIC, as she is moving to Florida. Judge Reinstein shared personal thanks and thoughts on the contributions Ms. Shaffer has made with judges and working with COVIC. Ms. Lundin shared that Judge Reinstein received the Chief Justice's "Distinguished Services Award 2017" recently.

C. Approval of the March 3, 2017 Minutes

The draft minutes from the March 3, 2017 meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes.

Motion was made by Ms. Sydney Davis to approve the March 3, 2017 meeting minutes. Seconded by Mr. Dan Levey. Motion passed unanimously.

II. UPDATES

A. Legislative Updates

Jerry Landau, AOC Staff, shared information on the following bills that affected victims that were passed this Legislative session:

- Chapter 14/SB1157: competency hearings; jurisdiction; referral - allows courts to transfer jurisdiction on Rule 11 hearings to Limited Jurisdiction courts.
- Chapter 36/ HB2241 victims' rights; pleading endorsements - requires counsel for a crime victim to be endorsed on all pleadings after a notice of appearance has been filed.
- Chapter 64/HB2444 sexual assault; victim advocates; privilege - adds victim advocates to privileged communications with victims under certain circumstances.
- Chapter 87/SB1422: vacating conviction; trafficking; local offenses - This amendment now includes local ordinances regarding persons who were convicted of prostitution prior to July 24, 2014 who can request the conviction be vacated if they can show they were victims of sex trafficking. Section amended: § 13-907.01.
- Chapter 125/HB2375 victims; medical bills; prohibited acts - licensed healthcare providers who provide services through the Victim Compensation and Assistance Fund (VCAF) agree that funds received are considered as payment in full.
- Chapter 229/HB2269: victims' rights' requirements; monetary judgements - regarding victim information and electronic correspondence, redaction of a minor's name, a person incarcerated by department of corrections receiving monetary judgments against certain parties, and jurisdiction for restitution orders in favor of a victim. Also includes pre-conviction liens after filing complaint, victim notification, obligates county treasurer to transfer unclaimed victim restitution monies to victim compensation and assistance fund.

B. Restitution Workgroup Update (taken out of order)

Ms. Kirstin Flores, Chair, gave an update on the future of the Restitution Workgroup. General goals involved addressing issues with the current system. The workgroup will meet next Friday, June 16, 2017, focusing on Legislation, Victim

Locate Fund, Website and Forms, and Restitution Court Guidelines subcommittees. The workgroup is comprised of COVIC and non-COVIC members who have expertise in their fields that relate to restitution.

C. Cold Cases – New Developments

Judge Reinstein and Mr. Jon Eliason, MCAO shared information on some recent local cold cases where DNA and scientific study is being utilized to find perpetrator(s) and solve these cases.

D. Criminal Rules Task Force – Petition to Amend the Arizona Rules of Criminal Procedure Rule 17-0002

Ms. Lundin shared an update on the last meeting of the Criminal Rules Task Force on March 3, 2017 which included approving Rule 39, changes were made and noted on the Court Rules Forum. In late August/early September, the Supreme Court will make the final vote on the rules. Please see Appendix A and B in the Meeting Materials packet for detailed information. Ms. Colleen Clase, Arizona Voice for Crime Victims, shared information on the comment filed by her group, regarding challenges they have faced regarding victims' rights.

E. Lethality Assessment Reports – Petition to Amend Form 4 (a) Appendix to Arizona Rules of Criminal Procedure Rule 46-0046

Ms. Kay Radwanski, AOC Court Programs Staff, and Ms. Lundin reported on the Petition for Rule Change timeline regarding these assessments. Various groups have made suggestions and comments regarding the assessment and its requirements and wording, and Ms. Radwanski shared that CIDVC approved the use of the Lethality Assessments, but also wanted training protocols to be closely adhered to, especially the protection of victim confidentiality and who uses the assessment and shares the information in it. Continued provision of victim services is also very important.

F. NCVLI Presentation (taken out of order)

Judge Reinstein, Ms. Flores and Ms. Lundin shared the video presented at the April 2017 NCVLI Conference in Portland, OR, on behalf of COVIC, featuring video clips of current and former court justices and current COVIC members. Several representatives from other states expressed interest in creating COVICs in their own states, and that they were very impressed with what COVIC has done and plans to do on behalf of victims. Judge Reinstein also took this opportunity to mention that in April the Arizona Attorney General's Office of Victim Services received a national award presented in Washington, DC, honoring them with the United States Attorney General's Office of Victims' Services Award for Victims' Rights.

III. NEW BUSINESS

A. CIDVC/AZDOC Workgroup re: serving OPs on Prison Inmates

Ms. Radwanski shared information on the challenges encountered serving Orders of Protection on inmates in custody. This service is provided by the Arizona Department of Corrections Office of Victims' Services. A workgroup to develop tools, best practices and the marketing of this service met June 5, 2017.

B. Victims' Bill of Rights Lawsuit

Judge Reinstein spoke regarding a recently filed lawsuit by the Arizona Attorneys for Criminal Justice and other entities regarding the Arizona law that states victims cannot be interviewed by the defense in a case unless contact is initiated through the prosecutor's office, and the victim has a right to refusal (ARS 44-33B). This subject was discussed at length. Some COVIC members shared personal stories regarding their experiences regarding this issue. The question of a pro se defendant cross-examining a victim was discussed.

IV. LUNCH BREAK

V. MINI-STRATEGIC SESSION

The members in attendance were asked to brainstorm and share the top 3 subjects they would like to see COVIC address in the coming year, and then choose from ideas listed as to the top three suggestions that they feel are most important. The results from this session will be shared at the October 2017 COVIC Quarterly Meeting.

VI. CALL TO PUBLIC

A. Call to the Public

Judge Finn and Ms. Elizabeth Ortiz from APAAC have been team teaching the professionalism course for the State Bar, and they stress attorney ethics and dealing with victims.

VII. ADJOURNMENT

A. Adjourn

Motion was made by Ms. Leesa Berens Weisz at 1:18 p.m. to adjourn. Seconded by Ms. Davis. Motion passed unanimously.

VIII. NEXT COMMITTEE MEETING DATE

October 27, 2017
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007

Arizona Supreme Court
Commission on Victims in the Courts

October 27, 2017

Meeting Agenda

1501 W. Washington St., Phoenix, Arizona, 85007
State Courts Building, Conference Room 345A/B

(602) 452-3533 or (520) 388-4331 / Access Code: 996 822 096

<https://arizonacourts.webex.com/arizonacourts/j.php?MTID=ma077daecb6b359fa8a37736f82f4bd4e>

10:00 a.m. – 12:00 p.m.

5 min	Call to order / Welcome / Introductions / Announcements	Judge Ronald Reinsten, Chair
	Approval of Minutes – June 9, 2017**	Judge Ronald Reinsten, Chair
10 min	Proposed Legislation	Amy Love, AOC Legislative Affairs
20 min	Digital Evidence Taskforce Update	Judge Sam Thumma, Chair
15 min	Noticing Victims' Attorneys re: Hearings	Judge Sam Myers, COVIC Member and Presiding Criminal Judge, Maricopa Superior Court; Judge Ronald Reinsten, Chair
20 min	Attorney General's Office Victims' Rights Advisory Committee (VRAC) IA workgroup – Survey Results	Kirstin Flores, COVIC Member; Colette Chapman, AG's OVS; Bill Burke, VRAC Committee Member
20 min	Arizona Voice for Crime Victims (AVCV) Proposed Petition to Amend Criminal Rule 39	Colleen Clase, Sr. Attorney, AVCV
20 min	Restitution Workgroup Report and Recommendations**	Kirstin Flores, COVIC Member and Committee Chair
10 min	Results of Mini-Strategic Planning Session from June 9, 2017 Meeting	Denise Lundin, COVIC Staff
5 min	DV Lethality Assessment Update	Judge Ronald Reinsten, Chair
10 min	Nordstrom vs. Arizona DOC Settlement Agreement	Judge Ronald Reinsten, Chair
5 min	Call to the Public / Adjournment	Judge Ronald Reinsten, Chair

****Important Voting Items**

Next Meeting:

March 2, 2018

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

Arizona State Courts Building, Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Lynn Golden at (602) 452-3195. Requests should be made as early as possible to allow time to arrange for the accommodation.

Arizona Supreme Court Commission on Victims in the Courts

June 9, 2017

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

Present: Judge Ronald Reinstein; Mr. Timothy J. Agan; Ms. Colleen Clase; Ms. Shelly Corzo Shaffer; Ms. Sydney Davis; Judge Elizabeth Finn; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Ms. Christine Kelly; Captain John Leavitt; Mr. Dan Levey; Chief Rod McKone; Ms. Jane Nicoletti-Jones; Ms. Elizabeth Ortiz; Ms. Laura Penny; Judge Richard Weiss; and Ms. Leesa Berens Weisz.

Telephonic: Mr. Michael Breeze; Judge Maria Elena Cruz; Judge Sam Myers; Judge Sarah (Sally) Simmons

Absent/Excused: Ms. Keli Luther; Judge Evelyn Marez; Sgt. Jim Markey (Ret.); Ms. Debra Olsen; Mr. William Owsley; Ms. Karyn Rasile

Presenters/Guests: Mr. Jerry Landau, AOC; Ms. Melody Lenhardt, MAVS; Mr. Jon Eliason, MCAO; Mr. Mark Meltzer, AOC; Mr. Jeffrey Ong, AZ Senate; Ms. Kay Radwanski, AOC/CIDVIC

Administrative Office of the Courts: Ms. Denise Lundin; Ms. Lynn Golden

I. REGULAR BUSINESS

A. Call to Order / Welcome / Introductions / Announcements

The June 2017 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:07 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

B. Announcements

Congratulations to Judge Maria Elena Cruz on being appointed to the Arizona Court of Appeals Division I. On June 21-23, 2017 Judge Cruz, Mr. Dan Levey, Ms. Kim Hedrick, and Judge Wendy Million will be presenting at the Judicial Conference on "Victims in Court", covering statutes and rules, and focusing on what a judge can do while a victim is being heard, providing an atmosphere where a victim can feel empowered, and interaction in a courtroom during a victim statement. On June 19, 2017, Ms. Denise Lundin and Judge Reinstein will be presenting to the Judicial Council an update on COVIC accomplishments over the past few years. Ms. Shelly Shaffer will be leaving COVIC, as she is moving to Florida. Judge Reinstein shared personal thanks and thoughts on the contributions Ms. Shaffer has made with judges and working with COVIC. Ms. Lundin shared that Judge Reinstein received the Chief Justice's "Distinguished Services Award 2017" recently.

C. Approval of the March 3, 2017 Minutes

The draft minutes from the March 3, 2017 meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes.

Motion was made by Ms. Sydney Davis to approve the March 3, 2017 meeting minutes. Seconded by Mr. Dan Levey. Motion passed unanimously.

II. UPDATES

A. Legislative Updates

Jerry Landau, AOC Staff, shared information on the following bills that affected victims that were passed this Legislative session:

- **Chapter 14/SB1157: competency hearings; jurisdiction; referral** - allows courts to transfer jurisdiction on Rule 11 hearings to Limited Jurisdiction courts.
- **Chapter 36/ HB2241 victims' rights; pleading endorsements** - requires counsel for a crime victim to be endorsed on all pleadings after a notice of appearance has been filed.
- **Chapter 64/HB2444 sexual assault; victim advocates; privilege** - adds victim advocates to privileged communications with victims under certain circumstances.
- **Chapter 87/SB1422: vacating conviction; trafficking; local offenses** - This amendment now includes local ordinances regarding persons who were convicted of prostitution prior to July 24, 2014 who can request the conviction be vacated if they can show they were victims of sex trafficking. Section amended: § 13-907.01.
- **Chapter 125/HB2375 victims; medical bills; prohibited acts** - licensed healthcare providers who provide services through the Victim Compensation and Assistance Fund (VCAF) agree that funds received are considered as payment in full.
- **Chapter 229/HB2269: victims' rights' requirements; monetary judgements** - regarding victim information and electronic correspondence, redaction of a minor's name, a person incarcerated by department of corrections receiving monetary judgments against certain parties, and jurisdiction for restitution orders in favor of a victim. Also includes pre-conviction liens after filing complaint, victim notification, obligates county treasurer to transfer unclaimed victim restitution monies to victim compensation and assistance fund.

B. Restitution Workgroup Update (taken out of order)

Ms. Kirstin Flores, Chair, gave an update on the future of the Restitution Workgroup. General goals involved addressing issues with the current system. The workgroup will meet next Friday, June 16, 2017, focusing on Legislation, Victim

Locate Fund, Website and Forms, and Restitution Court Guidelines subcommittees. The workgroup is comprised of COVIC and non-COVIC members who have expertise in their fields that relate to restitution.

C. Cold Cases – New Developments

Judge Reinstein and Mr. Jon Eliason, MCAO shared information on some recent local cold cases where DNA and scientific study is being utilized to find perpetrator(s) and solve these cases.

D. Criminal Rules Task Force – Petition to Amend the Arizona Rules of Criminal Procedure Rule 17-0002

Ms. Lundin shared an update on the last meeting of the Criminal Rules Task Force on March 3, 2017 which included approving Rule 39, changes were made and noted on the Court Rules Forum. In late August/early September, the Supreme Court will make the final vote on the rules. Please see Appendix A and B in the Meeting Materials packet for detailed information. Ms. Colleen Clase, Arizona Voice for Crime Victims, shared information on the comment filed by her group, regarding challenges they have faced regarding victims' rights.

E. Lethality Assessment Reports – Petition to Amend Form 4 (a) Appendix to Arizona Rules of Criminal Procedure Rule 46-0046

Ms. Kay Radwanski, AOC Court Programs Staff, and Ms. Lundin reported on the Petition for Rule Change timeline regarding these assessments. Various groups have made suggestions and comments regarding the assessment and its requirements and wording, and Ms. Radwanski shared that CIDVC approved the use of the Lethality Assessments, but also wanted training protocols to be closely adhered to, especially the protection of victim confidentiality and who uses the assessment and shares the information in it. Continued provision of victim services is also very important.

F. NCVLI Presentation (taken out of order)

Judge Reinstein, Ms. Flores and Ms. Lundin shared the video presented at the April 2017 NCVLI Conference in Portland, OR, on behalf of COVIC, featuring video clips of current and former court justices and current COVIC members. Several representatives from other states expressed interest in creating COVICs in their own states, and that they were very impressed with what COVIC has done and plans to do on behalf of victims. Judge Reinstein also took this opportunity to mention that in April the Arizona Attorney General's Office of Victim Services received a national award presented in Washington, DC, honoring them with the United States Attorney General's Office of Victims' Services Award for Victims' Rights.

III. NEW BUSINESS

A. CIDVC/AZDOC Workgroup re: serving OPs on Prison Inmates

Ms. Radwanski shared information on the challenges encountered serving Orders of Protection on inmates in custody. This service is provided by the Arizona Department of Corrections Office of Victims' Services. A workgroup to develop tools, best practices and the marketing of this service met June 5, 2017.

B. Victims' Bill of Rights Lawsuit

Judge Reinstein spoke regarding a recently filed lawsuit by the Arizona Attorneys for Criminal Justice and other entities regarding the Arizona law that states victims cannot be interviewed by the defense in a case unless contact is initiated through the prosecutor's office, and the victim has a right to refusal (ARS 44-33B). This subject was discussed at length. Some COVIC members shared personal stories regarding their experiences regarding this issue. The question of a pro se defendant cross-examining a victim was discussed.

IV. LUNCH BREAK

V. MINI-STRATEGIC SESSION

The members in attendance were asked to brainstorm and share the top 3 subjects they would like to see COVIC address in the coming year, and then choose from ideas listed as to the top three suggestions that they feel are most important. The results from this session will be shared at the October 2017 COVIC Quarterly Meeting.

VI. CALL TO PUBLIC

A. Call to the Public

Judge Finn and Ms. Elizabeth Ortiz from APAAC have been team teaching the professionalism course for the State Bar, and they stress attorney ethics and dealing with victims.

VII. ADJOURNMENT

A. Adjourn

Motion was made by Ms. Leesa Berens Weisz at 1:18 p.m. to adjourn. Seconded by Ms. Davis. Motion passed unanimously.

VIII. NEXT COMMITTEE MEETING DATE

October 27, 2017

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

State Courts Building, Room 345 A/B

1501 W. Washington St., Phoenix, AZ 85007

Commission on Victims in the Courts

Meeting Date:

October 27, 2017

**Type of Action
Required:**

- Formal Action Request
- Information Only
- Other

Subject:

Proposed Legislation

FROM: AOC

PRESENTER(S):

Amy Love, Deputy Director of Government Affairs

DISCUSSION & TIME ESTIMATES:

Ms. Love will review proposed legislation relating to crime victims.

10 minutes.

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 27, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Update on Recommendations of Task Force on Court Management of Digital Evidence

FROM: Jennifer Albright

PRESENTER: Honorable Sam Thumma, Chief Judge, Arizona Court of Appeals, Division 1; Chair of DETF

DISCUSSION & TIME ESTIMATES:

Judge Thumma would like to share with the Committee the recommendations of the Task Force, particularly those that surround victim rights and non-victim witness privacy.

Report available here:

<http://www.azcourts.gov/Portals/74/DETF/Report/DETF%20Final%20Report.pdf>

20 minutes.

RECOMMENDED MOTION (IF ANY): none



Report and Recommendations of the Arizona Task Force on Court Management of Digital Evidence

October 1, 2017

Table of Contents

MEMBERS.....	1
EXECUTIVE SUMMARY.....	3
Creation and Charge of the Task Force.....	3
Overview of this Report.....	4
The Task Force and the Task Force Process	4
Summary of Task Force Recommendations and Ongoing Efforts.....	5
MANAGEMENT OF DIGITAL EVIDENCE.....	9
Background.....	9
The Evolving Court Record Format	9
The Truly Digital Evidence Concept.....	11
Task Force Meetings	14
WORKGROUP REPORTS.....	16
Digital Formats Workgroup Report	16
Storage and Management Workgroup Report	21
Rules Workgroup Report.....	27
APPENDIX A – Administrative Orders	35
APPENDIX B-Arizona Code of Judicial Administration § 1-504.....	40
APPENDIX C-Arizona Code of Judicial Administration § 1-506	44
APPENDIX D-Arizona Code of Judicial Administration § 1-507	48
APPENDIX E-Arizona Code of Judicial Administration § 1-604.....	54
APPENDIX F-Arizona Code of Judicial Administration § 1-606.....	57
APPENDIX G– Proposed Amendments to the Arizona Rules of Evidence	59
APPENDIX H– Proposed Amendments to the Arizona Rules of Criminal Procedure	61
APPENDIX I–Proposed Amendments to the Arizona Rules of Family Law Procedure.....	65
APPENDIX J–Proposed Amendments to the Arizona Rules of Protective Order Procedure	66
APPENDIX K–Proposed Amendments to the Arizona Juvenile Court Rules	67
APPENDIX L–Proposed Amendments to the Arizona Rules for Eviction Actions	70



Arizona Task Force on Court Management of Digital Evidence

MEMBERS

Honorable Samuel A. Thumma, Chair

Chief Judge, Arizona Court of Appeals, Division One

Mike Baumstark

Deputy Administrative Director
Administrative Office of the Courts

Jeff Fine

Court Administrator
Maricopa County Justice Courts

David Bodney

Partner, Ballard Spahr LLP

Jennifer Garcia

Assistant Federal Defender
Federal Public Defender

Honorable Kyle Bryson

Presiding Judge
Superior Court in Pima County

Honorable Charles Gurtler

Presiding Judge
Mohave County Superior Court

Colleen Clase

Senior Counsel
Arizona Voice for Crime Victims

Aaron Harder

Bureau Chief - Vehicular Crimes
Maricopa County Attorney's Office

Jessica Cortes

Court Administrator
City of Flagstaff Municipal Court

Honorable Michael Jeanes

Clerk of the Court
Superior Court in Maricopa County

Honorable David Cunanan

Superior Court in Maricopa County

Laura Keller

Electronic Records Archivist
Arizona State Library, Archives, and Public
Records

Karen Emerson

Deputy Public Defender
Maricopa Office of the Public Defender

Michael Kurtenbach

Executive Assistant Chief
Community Services Division
City of Phoenix Police Department

Honorable Maria Felix

Justice of the Peace
Pima County Consolidated Court



William Long

Organized Crime/Intelligence Bureau
Commander
Arizona Department of Public Safety

Zora Manjencich

Assistant Division Chief, Criminal
Office of the Attorney General

James Melendres

Partner, Snell & Wilmer LLP

Michael Mitchell

Special Assistant to the Chief Deputy
Maricopa County Attorney's Office

Jamie Sheppard

Senior Project Manager
E-Discovery Services & Strategy
Perkins Coie LLP

Honorable Don Taylor

Chief Presiding Judge
City of Phoenix Municipal Court

AOC Staff

Theresa Barrett

Manager, Court Programs Unit
Court Services Division

Jennifer Albright

Senior Court Policy Analyst
Court Services Division

Kay Radwanski

Senior Court Policy Analyst
Court Services Division

Sabrina Nash

Court Programs Specialist
Court Services Division

Additional Resources

Jennifer Thorson

Law Clerk
Superior Court in Pima County



Report and Recommendations of the Arizona Task Force on Court Management of Digital Evidence

October 1, 2017

EXECUTIVE SUMMARY

Creation and Charge of the Task Force

Arizona Supreme Court Chief Justice Scott Bales issued Administrative Order No. 2016-129, establishing the Arizona Task Force on Court Management of Digital Evidence, on December 6, 2016. The administrative order is the result, in no small part, of the recent exponential growth of digital evidence used in court, from devices such as smart-device cameras, body-worn cameras, and other public and private surveillance equipment. The administrative order created the task force to address the unique challenges faced by courts in receiving, retrieving, accessing, formatting, converting, and retaining digital evidence.

The administrative order cites to the [Joint Technology Committee Resource Bulletin: Managing Digital Evidence in the Courts](#) as providing “a good framework for discussion and relevant policy development.” The bulletin is a February 2016 publication of the Joint Technology Committee established by the Conference of State Court Administrators, the National Association for Court Management, and the National Center for State Courts. The administrative order established the task force to review and make recommendations on five policy questions posed in the bulletin:

“Court management systems are not currently designed to manage large quantities of digital evidence, which means that courts and industry must find creative ways to deal immediately with the dramatically increasing volume of digital evidence, while planning for and developing new capabilities.”

Joint Technology
Committee Resource
Bulletin: Managing Digital
Evidence in the Courts at 1.



- Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?
- Should court digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
- Should management of court digital evidence be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?
- Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
- Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?

The administrative order further directed the task force to review the Bulletin for additional information on these and other policy issues, as well as any other relevant journals, publications, and other research related to the topic, and make recommendations as deemed appropriate. The administrative order directed the task force to submit this report and recommendations to the Arizona Judicial Council (AJC) by October 1, 2017, and to file any rule change petition not later than January 10, 2018, with respect to any proposed rule changes.

Overview of this Report

This report begins with a summary of the membership of the task force, the processes used to develop the recommendations, and a summary of the recommendations themselves. The report then discusses court management of digital evidence, starting with a background discussion providing context for the issues explored. This background is followed by a discussion of the evolving court record format and the truly digital evidence concept. The report then provides a summary of each task force meeting, with additional detail available on the task force's [website](#). Detailed workgroup reports providing the core foundation for the recommendations round out the body of the report. The report includes appendices containing reference documents and recommended rule changes.

The Task Force and the Task Force Process

Members of the task force were selected, quite intentionally, to represent a wide variety of different perspectives in dealing with court management of digital evidence. Members include rural and urban superior court and city court judges; a justice of the peace; lawyers in private practice; a county prosecutor; an assistant Arizona Attorney



General; state and federal criminal defense attorneys; a victims rights advocate; an electronic discovery expert; representatives of the Arizona Department of Public Safety and the City of Phoenix Police Department; the Maricopa County Clerk of Court; rural and urban justice and municipal court administrators; an electronic records archivist from the Arizona State Library, Archives and Public Records, as well as experts from the Arizona Administrative Office of the Courts (AOC). The intention was to make sure the task force included all perspectives in its work while keeping the number of members manageable. The task force also undertook various outreach efforts and solicited and encouraged input from the public in general and a variety of stakeholders interested in the effort.

Starting in January 2017, the task force met approximately monthly, learning about and discussing various issues and technology related to digital evidence formats, storage, and management, considering the approaches to use and recommendations to make, and then preparing and refining this report. The task force heard from speakers, both nationally and locally, in the private and public sectors, and within and outside of the courts, addressing various topics relevant to the effort. These discussions were interactive and included demonstrations of past, current, and emerging technology.

Early in the effort, the task force formed three workgroups: (1) digital formats, (2) storage and management, and (3) court rules. Each task force member was affiliated with one workgroup. In between task force meetings, task force members met with their workgroups to investigate, develop, and refine recommendations addressing these key components of the task force's work. Task force meetings included presentations by the workgroups, along with questions from and feedback by all task force members about the efforts of the individual workgroups. This facilitated input from different perspectives, avoided communication gaps, accounted for overlap among workgroups, ensured the workgroups were not working in isolation, and recognized that members of one workgroup may have substantial interest in and knowledge that would help the efforts of another workgroup.

Summary of Task Force Recommendations and Ongoing Efforts

Through the work of the members, including its workgroups, the task force developed a strong consensus on the following recommendations for court management of digital evidence, in response to the policy questions posed in the administrative order, addressing: (1) digital formats, (2) storage and management, and (3) court rules.



- **1.** A standardized set of formats and technical protocols should be identified, adopted, and set forth in the relevant sections of the [Arizona Code of Judicial Administration](#) (ACJA) for all courts for the submission, viewing, storage, and archival preservation of digital evidence. Standardization requirements should account for five interdependent principles: (1) efficient handling of digital evidence at all phases—from submission of the evidence to the court through viewing, storage, and archival preservation; (2) rapidly changing technologies; (3) flexibility to account for technology in a specific case to ensure the just resolution of the case; (4) maintaining the integrity of the evidence; and (5) reasonable access to the parties and the public.
- **2.** An amendment should be made to the ACJA requiring digital evidence to be submitted in a standard format, unless a court makes a specific finding that the admission of evidence in a non-standardized format is necessary in the interests of justice. The recommended exception should include a requirement that the party submitting digital evidence in a non-standardized format provide technology to allow the evidence to be played or otherwise used in court. Training for judicial officers is also recommended to assist the court in determining whether non-standardized formats are necessary.
- **3.** Deciding whether digital evidence should be stored locally, off-site, using cloud services, or some combination or alternative, as well as whether storage and management should be centralized or decentralized, should be guided by a set of minimum technical requirements. Local courts should include specific considerations in their decision-making, including the capacity to afford and maintain the necessary technology, availability of adequate bandwidth, storage capacity expansion, and integration capabilities with other existing or future software applications.
- **4.** Courts should take measures to enhance the use and presentation of digital evidence in the courtroom, including the use of technology to accept digital evidence in the courtroom, how parties can submit and present digital evidence from personal devices (including necessary conversion and redaction), and staff training for the acquisition, storage, and management of digital evidence. These measures should include guidance for self-represented litigants.



-
5. The Arizona Administrative Office of the Courts (AOC) should develop best practices as well as policies and procedures to increase the success of digital evidence management solutions adopted. The AOC should also work with local courts on developing a means to offset the costs associated with technology needs created by the increased receipt and storage of digital evidence.
-
6. Arizona Supreme Court Rules 122 and 123 govern public access to court records. The rights and privacy of victims and non-victim witnesses can be at opposition with the right of the public to access evidence admitted into the court record. Rule 123 should be amended to ensure that it addresses digital evidence, including exhibits, and that the portions of the rule that govern public access, particularly remote electronic access, be amended to ensure sufficient protection of victims' rights and privacy concerns. The Arizona Supreme Court should work with local courts, prosecuting and defending agencies, law enforcement groups, media organizations, and other interested individuals and organizations to develop consistent policies around the issue of non-victim witnesses. In addition, consideration should be given to management of digital evidence introduced by self-represented litigants that may not be redacted to protect victim and non-victim witness privacy rights upon submission to the court.
-
7. Amendments should be made to the Arizona Rules of Evidence to expressly address digital evidence, including adding a definition of "video" to Rule 1001 and adding references to "video" in Rules 1002, 1004, 1007, and 1008.
-
8. Amendments should be made to the Arizona Rules of Criminal Procedure, the Arizona Rules of Family Law Procedure, the Arizona Rules of Protective Order Procedure, the Arizona Juvenile Court Rules, and the Arizona Rules for Eviction Actions to modernize the rules to include references to digital evidence and electronically stored information, as has already occurred in other rule sets such as the Arizona Rules of Civil Procedure.
-
9. A standard definition of digital evidence should be added to the various procedural rule sets where not otherwise included. The recommended



definition is “Digital evidence, also known as electronic evidence, is any information created, stored, or transmitted in digital format.”

-
- 10.** Education and training, on both legal and technical competence, should be developed and implemented to facilitate and advance court management of digital evidence, for attorneys, parties (including self-represented persons), court staff, and judicial officers. The AOC should develop resource guides for self-represented litigants as well as templates for local court use that include information on requirements surrounding redaction, standardized formats, converting, submitting, and using digital evidence in the court.

A more detailed description of the background and reasoning supporting these recommendations follows in the section on Workgroup Reports.

Although this report is now finalized, the task force continues in other ongoing efforts. The task force continues to solicit input on proposed rule changes identified by the Rules Workgroup, endorsed by the task force and attached in current form as Appendices G – L to this report. The hope is to file a rule change petition with final versions of those proposed rule changes not later than January 10, 2018. In addition, on August 31, 2017, the Arizona Supreme Court referred Petition R-17-0027 (which seeks to provide an express procedure for the disclosure of video from officer body-worn cameras in the Arizona Rules of Criminal Procedure 15.1 and 15.4) to the task force for consideration. That consideration is a work in progress, with comments to be provided after the completion of this report. Task force members also are continuing their outreach efforts.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 27, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Noticing Victims' Attorneys

FROM: Maricopa County Superior Court

PRESENTER: Judge Sam Myers, Presiding Criminal Judge, Maricopa County Superior Court and Judge Reinstein, Chair.

DISCUSSION & TIME ESTIMATES:

Victims' attorneys are not being informed by minute entry or by the prosecutor about various hearing dates. Discuss potential solutions and the possibility that this is also occurring statewide.

15 minutes.

RECOMMENDED MOTION (IF ANY):

None

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: AGO Victims' Rights Advisory Committee: Current Practices in Misdemeanor Cases – Survey Results
October 27, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: Kirstin Flores, Director OVS and Chair of VRAC

PRESENTERS: Colette Chapman, Iva Rody and Bill Burke

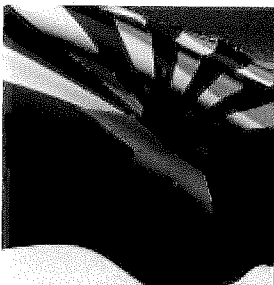
DISCUSSION & TIME ESTIMATES:

Looking for suggestions on increasing judges' awareness of and compliance with victims' rights

20 minutes

RECOMMENDED MOTION (IF ANY):

N/A



Arizona Attorney General
Office of Victim Services
Serving Arizona's Crime Victims

Arizona
Attorney General's
Office

Phoenix:
Ph: 602.542.4911
Fax: 602.542.8453

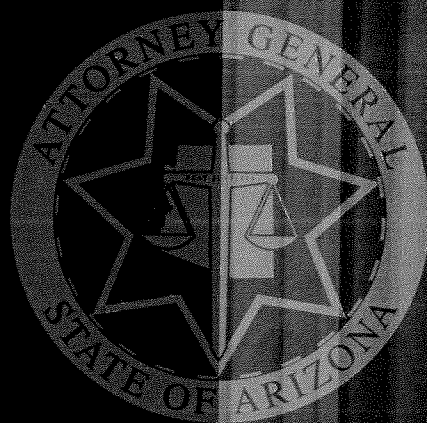
Tucson:
Ph: 520.628.6456
Fax: 520.628.6566

Toll Free:
866.742.4911

Learn more about
Victims' Rights at
www.azag.gov

Basic and
Advanced
Victims' Rights
2017-2018

Victims' Rights Education



COURSE DESCRIPTIONS

Basic Victims' Rights*

This presentation is suggested for employees new to victims' rights OR for anyone who needs a refresher. Content covers fundamental information about victims' rights in Arizona.

Please note: It is highly recommended that one attends Basic Victims' Rights prior to attending Advanced Victims' Rights.

Agenda

- Brief History
- Definitions
- Victims' Journey through the Justice System with Applicable Rights and Responsibilities
 - Pre-Conviction/Adjudication
 - Restitution
 - Post-Conviction/Adjudication
- Victims' Compensation Programs

Basic Victims' Rights is presented from 9 a.m. to 3 p.m. with a one-hour break for lunch (lunch on your own).

Advanced Victims' Rights

This presentation is for experienced victim services providers, Basic Victims' Rights graduates, and anyone interested in gaining a deeper understanding of victims' rights in the state of Arizona.

Agenda

- 2017 Legislative Updates
- Case Law Discussion
- Making Cents out of Restitution

Advanced Victims' Rights is presented in a 3 hour session from 9 a.m. to 12 p.m.

Basic and Advanced Victims' Rights Presentations are approved for AZPOST, COJET and CLE credit.

**Meets VOCA victims' rights training requirement*

OTHER OFFERINGS

The Office of Victim Services also offers specific presentations on the following subjects:

- Capital Crime Cases and the Impact on Victims (1.5 hours)
- Victims Have Rights? (1.5 hours)
- Victims' Rights for Prosecution (2 hours)
- Victims' Rights for Law Enforcement (1.5 hours/AZPOST credit certified)
- Victims' Rights for Probation (1 hour)

These presentations are not eligible for VOCA credit, and there is a minimum of 15 attendees required to schedule a training session.

SCHEDULE AND REGISTRATION INFORMATION

Visit the OVS Victims' Rights Education and Outreach page at www.azag.gov/victims-rights-training-schedule for the most up to date information and to:

- View the 2017-2018 schedule, which includes dates and locations currently scheduled.*
- Register for a session.
- Request a session for your agency/organization.

**Dates, locations and training topics are subject to change and are scheduled throughout the year.*

If you have additional questions, please contact our office at OVSTraining@azag.gov or call 602-542-8456/8458.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 27, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	AVCV's Petition to integrate Victims' Rights throughout Criminal Rule 39

FROM: Arizona Voice for Crime Victims

PRESENTER: Colleen Clase, Senior Attorney

DISCUSSION & TIME ESTIMATES:

AVCV intends to file a petition for rule change re: integrating victims' rights throughout Rule 39, Arizona Rules of Criminal Procedure.

20 minutes

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 27, 2017	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	COVIC Restitution Workgroup update

FROM: Kirstin Flores, Director OVS and Chair of the COVIC Restitution Workgroup

PRESENTER: Kirstin Flores

DISCUSSION & TIME ESTIMATES:

Update on activity to date of the Restitution Workgroup. Input requested on moving forward on some agenda items.

20 minutes.

RECOMMENDED MOTION (IF ANY):

To be determined.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 27, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Results of Mini-Strategic Planning Session

FROM: AOC

PRESENTER: Denise Lundin, COVIC Staff

DISCUSSION & TIME ESTIMATES:

Review results of Mini-strategic Planning Session from June 9, 2017 meeting and request guidance/priorities/contacts.

10 minutes

RECOMMENDED MOTION (IF ANY):

N/A

COVIC's Mini-Strategic Plan – June 9, 2017

The members in attendance at the June 9, 2017 COVIC Quarterly Meeting were asked to brainstorm and share the top 3 subjects they would like to see COVIC address in the coming year, and then choose from ideas listed as to the top three suggestions that they feel are most important. The results from this session were:

TRAINING *(number of votes)*

- On-going judicial training and curriculum at conferences (7)
- Implement an AZ Post class for law enforcement with advocates and victims to understand the neurobiology of victims (7)
- Develop standardized victim court orientation both at the beginning of the justice process and prior to the victim testifying (4)
- Training for prosecutors/victim advocates regarding child witnesses in molestation cases (3)
- Preserving victims' rights while still allowing interviews, stopping interview if attorney becomes abusive or aggressive (3)
- Restitution Court protocols and training
- Education Committee to develop curriculum on Victims' Rights in the courts
- Technical assistance for agencies and groups that need assistance

COLLECTIONS *(number of votes)*

- Stronger statewide restitution efforts (3)
- FARE payment priority issue (3)

SPEAKERS *(number of votes)*

Possible subjects:

- Victims' amendment to Federal Constitution (4)
- "Miller Cases" (children's' cases with life or defacto life sentences) (3)
- Parole vs. Resentencing or commutations in cases of life sentences or defacto life sentences and plea bargains regarding juveniles

OTHER SUBJECTS *(number of votes)*

- Facilitate and strengthen cross-jurisdiction access to records in domestic violence cases with Native American nations and Limited Jurisdiction courts (2)
- Facilitate and strengthen extradition agreements between State of Arizona and Native American nations (2)
- Follow-through services from Lethality Assessment (2)
- Address confidentiality concerns for victims of crimes other than domestic violence (1)
- Issue of a victim not being considered a victim in a subsequent proceeding with the same defendant (1)
- Child victims' representation where dependency and criminal actions intersect
- Address differences in misdemeanor and felony courts

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 27, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	DV Lethality Assessment Update

FROM: AOC

PRESENTER: Judge Reinstein, Chair

DISCUSSION & TIME ESTIMATES:

Judge Reinstein will provide an update on the supreme court rules conference meeting pertaining to R-16-0046, petition to amend Form 4(a), Appendix to Arizona Rules of Criminal Procedure.

5 minutes.

RECOMMENDED MOTION (IF ANY):

None

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 27, 2017	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Nordstrom vs AZ DOC Settlement Agreement for Death Row Inmates

FROM: AOC

PRESENTER: Judge Ron Reinstein, Chair

DISCUSSION & TIME ESTIMATES:

Judge Reinstein will discuss how this settlement agreement resulted in a major change in activities and housing of death row inmates.

RECOMMENDED MOTION (IF ANY):

N/A

1 ARIZONA CAPITAL REPRESENTATION PROJECT
 2 101 East Pennington Street, Suite 201
 Tucson, Arizona 85701
 Telephone: (520) 229-8550
 3 SAM KOOISTRA ASB NO 032776
SAM@AZCAPITALPROJECT.ORG

4 JACKSON & ODEN, P.C.
 5 3573 East Sunrise Drive, Suite 125
 Tucson, Arizona 85718
 Telephone: (520) 884-0024
 Fax: (520) 884-0025
 6 TODD JACKSON ASB NO. 012202
TJACKSON@JACKSONODENLAW.COM

7 **Attorneys for Plaintiff**

8
 9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE DISTRICT OF ARIZONA**

11 SCOTT DOUGLAS NORDSTROM,
 12
 13 Plaintiff,

No. CV-15-02176-PHX-DGC (JZB)

14 vs.

**STIPULATION AND NOTICE OF
 SETTLEMENT**

15 CHARLES RYAN, DIRECTOR, ARIZONA
 16 DEPARTMENT OF CORRECTION; JAMES
 O'NEIL, WARDEN, ASPC EYMAN; STACI
 17 FAY, DEPUTY WARDEN, BROWNING
 18 UNIT,

19 Defendants.
 20

21 Plaintiff and Defendants, by and through counsel, submit the following stipulation and
 22 notice to the Court of settlement. The following stipulation sets forth the essential terms of
 23 the settlement, and shall be binding and enforceable on the parties. As more fully set forth
 24 below, the settlement contemplates and requires implementation through a formal amendment
 25 to Arizona Department of Corrections Order 801 ("D.O. 801") and Director's Instruction 326
 26 ("D.I. 326"), to be completed within 120 days, and the parties have agreed that the Court shall
 27
 28

1 retain jurisdiction to enforce this stipulation of settlement, pending finalization of such
2 amendments and submission of a final order of dismissal to the Court.
3

4 The terms of the parties' settlement are as follows:

5 1. D.I. 326 and D.O. 801 shall be modified to eliminate the existing permanent
6 classification of inmates with a death sentence to maximum custody units, and to permit
7 death row inmates to seek and obtain re-classification to close custody status based on the
8 criteria currently available to non-death sentenced maximum custody inmates.
9

10 2. Death sentenced inmates who are re-classified to close custody status may
11 be housed as a group, rather than with non-death sentenced inmates, provided, however,
12 that nothing herein shall alter existing protocols and procedures relating to protective
13 custody assignments.
14

15 3. The conditions and restrictions of confinement, and quality of facilities,
16 utilized for close custody housing for death sentenced inmates shall be equivalent to that
17 of existing close custody housing facilities used for non-death sentenced inmates. Further,
18 the facilities housing close custody death sentenced inmates shall provide adequate space
19 for confidential communication with legal counsel. Any additional policies or regulations
20 not otherwise specified herein shall be amended as necessary to implement these
21 conditions.
22
23

24 4. D.O. 910 shall be amended to exempt death sentenced inmates classified as
25 close custody from participation in the functional literacy program.
26
27
28

1 5. The amendments to D.I. 326, D.O. 801, and D.O. 910 contemplated herein
2 shall be completed and implemented within one hundred twenty (120) days.
3

4 6. Plaintiff's current disciplinary record meets the criteria for reclassification to
5 close custody and he shall be reclassified to such status and transferred to such housing
6 upon adoption of the above referenced amendments, and within one hundred twenty (120)
7 days of this stipulation. Nothing in this stipulation shall be interpreted to require Plaintiff
8 to remain classified as a close custody inmate if he no longer meets the requirements for
9 close custody classification.
10

11 7. This stipulation establishes a binding settlement that may be specifically
12 enforced by the parties through injunctive or other appropriate equitable relief, and
13 resolves Plaintiff's claims regarding his existing conditions of confinement as set forth in
14 the complaint. Nothing herein shall be construed as a future waiver of rights regarding
15 the adequacy of conditions at the facility(ies) to which Plaintiff is transferred and housed
16 in the future.
17

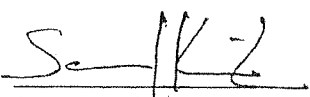
18 8. The existing scheduling order deadlines established in the matter shall be
19 vacated, and the Court shall set a status conference in approximately one hundred fifty
20 (150) days at which conference the parties shall report to the Court on the status and
21 implementation of the amendments and terms described above, and whether this matter
22 may be dismissed or further enforcement of this settlement is required.
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

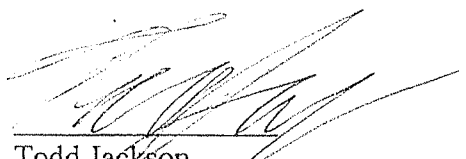
9. The parties reserve their respective rights and positions with respect to attorneys' fees and costs, which issue shall be separately negotiated and, if no agreement is reached, submitted for resolution by the Court.

RESPECTFULLY SUBMITTED this 3rd day of March ~~February~~, 2017.

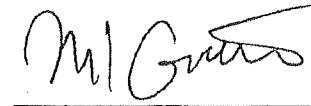
ARIZONA CAPITAL REPRESENTATION PROJECT

By: 
Sam Kooistra

JACKSON & ODEN, P.C.

By: 
Todd Jackson
Attorneys for Plaintiff

Michael Gottfried
Assistant Attorney General

By: 
Michael E. Gottfried
Attorneys for Defendants

1 ARIZONA CAPITAL REPRESENTATION PROJECT
2 101 East Pennington Street, Suite 201
3 Tucson, Arizona 85701
4 Telephone: (520) 229-8550
5 SAM KOOISTRA ASB NO 032776
6 SAM@AZCAPITALPROJECT.ORG

7 JACKSON & ODEN, P.C.
8 3573 East Sunrise Drive, Suite 125
9 Tucson, Arizona 85718
10 Telephone: (520) 884-0024
11 Fax: (520) 884-0025
12 TODD JACKSON ASB NO. 012202
13 TJACKSON@JACKSONODENLAW.COM

14 **Attorneys for Plaintiff**

15 UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF ARIZONA

17 SCOTT DOUGLAS NORDSTROM,
18
19 Plaintiff,

No. CV-15-02176-PHX-DGC (JZB)

20 vs.

21 **STIPULATION AND NOTICE OF
22 SETTLEMENT**

23 CHARLES RYAN, DIRECTOR, ARIZONA
24 DEPARTMENT OF CORRECTION; JAMES
25 O'NEIL, WARDEN, ASPC EYMAN; STACI
26 FAY, DEPUTY WARDEN, BROWNING
27 UNIT,

28 Defendants.

Plaintiff and Defendants, by and through counsel, submit the following stipulation and notice to the Court of settlement. The following stipulation sets forth the essential terms of the settlement, and shall be binding and enforceable on the parties. As more fully set forth below, the settlement contemplates and requires implementation through a formal amendment to Arizona Department of Corrections Order 801 ("D.O. 801") and Director's Instruction 326 ("D.I. 326"), to be completed within 120 days, and the parties have agreed that the Court shall

1 retain jurisdiction to enforce this stipulation of settlement, pending finalization of such
2 amendments and submission of a final order of dismissal to the Court.
3

4 The terms of the parties' settlement are as follows:

5 1. D.I. 326 and D.O. 801 shall be modified to eliminate the existing permanent
6 classification of inmates with a death sentence to maximum custody units, and to permit
7 death row inmates to seek and obtain re-classification to close custody status based on the
8 criteria currently available to non-death sentenced maximum custody inmates.
9

10 2. Death sentenced inmates who are re-classified to close custody status may
11 be housed as a group, rather than with non-death sentenced inmates, provided, however,
12 that nothing herein shall alter existing protocols and procedures relating to protective
13 custody assignments.
14

15 3. The conditions and restrictions of confinement, and quality of facilities,
16 utilized for close custody housing for death sentenced inmates shall be equivalent to that
17 of existing close custody housing facilities used for non-death sentenced inmates. Further,
18 the facilities housing close custody death sentenced inmates shall provide adequate space
19 for confidential communication with legal counsel. Any additional policies or regulations
20 not otherwise specified herein shall be amended as necessary to implement these
21 conditions.
22
23

24 4. D.O. 910 shall be amended to exempt death sentenced inmates classified as
25 close custody from participation in the functional literacy program.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. The amendments to D.I. 326, D.O. 801, and D.O. 910 contemplated herein shall be completed and implemented within one hundred twenty (120) days.

6. Plaintiff's current disciplinary record meets the criteria for reclassification to close custody and he shall be reclassified to such status and transferred to such housing upon adoption of the above referenced amendments, and within one hundred twenty (120) days of this stipulation. Nothing in this stipulation shall be interpreted to require Plaintiff to remain classified as a close custody inmate if he no longer meets the requirements for close custody classification.

7. This stipulation establishes a binding settlement that may be specifically enforced by the parties through injunctive or other appropriate equitable relief, and resolves Plaintiff's claims regarding his existing conditions of confinement as set forth in the complaint. Nothing herein shall be construed as a future waiver of rights regarding the adequacy of conditions at the facility(ies) to which Plaintiff is transferred and housed in the future.

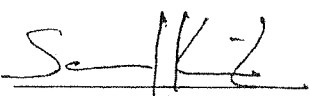
8. The existing scheduling order deadlines established in the matter shall be vacated, and the Court shall set a status conference in approximately one hundred fifty (150) days at which conference the parties shall report to the Court on the status and implementation of the amendments and terms described above, and whether this matter may be dismissed or further enforcement of this settlement is required.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

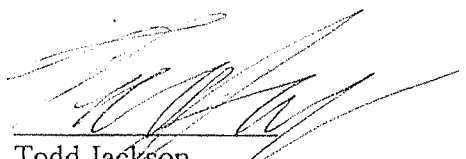
9. The parties reserve their respective rights and positions with respect to attorneys' fees and costs, which issue shall be separately negotiated and, if no agreement is reached, submitted for resolution by the Court.

RESPECTFULLY SUBMITTED this 3rd day of March ~~February~~, 2017.

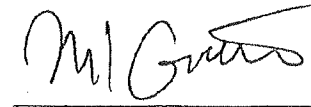
ARIZONA CAPITAL REPRESENTATION PROJECT

By: 
Sam Kooistra

JACKSON & ODEN, P.C.

By: 
Todd Jackson
Attorneys for Plaintiff

Michael Gottfried
Assistant Attorney General

By: 
Michael E. Gottfried
Attorneys for Defendants