

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Approved Minutes

February 14, 2017; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Marianne T. Bayardi, Judge Carol Scott Berry, Anna Harper-Guerrero, Dorothy Hastings, Judge Statia D. Hendrix, Patricia Madsen, John R. Raeder III, Amy Jo Rebenar, Assistant Chief Mary Roberts, Shannon Schell, Rebecca Strickland, Tracey J. Wilkinson

Telephonic: Michelle Chamblee, Diane L. Culin, Lynn Fazz, Deborah Fresquez, Patricia George, Bonnie Lawrie-Higgins, Judge Patricia A. Trebesch

Absent/Excused: Judge Keith Barth, Carla F. Boatner, Sergeant Douglas Musick, Captain Jeffrey Newnum, Judge Wyatt J. Palmer, Pearl Puente

Presenters/Guests: Amelia Craig Cramer (PCAO), Jon Eliason (MCAO), Jaquel Moody (ADC), Judge Elizabeth Finn (Glendale City Court), Myron Pecora (AOC), Denise Lundin (AOC)

AOC Staff: Kay Radwanski, Karla Williams

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The February 14, 2017, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:02 a.m. by Judge Wendy Million, chair.

B. Approval of Minutes

The draft minutes from the September 13, 2016, CIDVC meeting were presented for approval.

Motion: To approve the September 13, 2016, meeting minutes, as presented. **Moved by** Judge Statia D. Hendrix, **Seconded by** Judge Marianne T. Bayardi. Motion passed unanimously.

The draft minutes from the November 1, 2016, CIDVC meeting were presented for approval.

Motion: To approve the November 1, 2016, meeting minutes, as presented. **Moved by** Judge Marianne T. Bayardi, **Seconded by** Dorothy Hastings. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. APAAC Lethality Assessment Working Group Report

Amelia Craig Cramer, chief deputy, Pima County Attorney's Office, and Jon Eliason, deputy chief, Maricopa County Attorney's Office, co-chairs of the APAAC Lethality Assessment Working Group, reported on the working group's progress. Mr. Eliason gave a brief

background on the Arizona Prosecuting Attorneys' Advisory Council (APAAC) and the roles of criminal justice and law enforcement in domestic violence issues. In 2016, APAAC had been asked to form a group to recommend a universal approach to intimate partner lethality assessment and questions that should be asked of a victim by law enforcement during a domestic violence call. The group has worked on a statewide lethality assessment model based on the Maryland model, developed by Jacqueline Campbell, a nursing professor who focuses on victim's services. Pima County was the first in Arizona to implement the lethality assessment. A.R.S. § 13-3967(B)(5) was amended in 2015 to require judges at initial appearance to consider results of lethality assessments. The Pima County presiding judge at that time asked law enforcement agencies and county attorneys to work together on a standardized form that could be submitted to the judges. APACC has filed Rule Petition [R-16-0046](#), requesting changes to Form 4, for the Supreme Court's consideration; the petition is open for comment until May 22. The APAAC working group is seeking CIDVC's support for the proposal. CIDVC can file a comment as a committee or individual CIDVC members can file comments on their own.

Ms. Cramer explained that validated research supports the proposed Form 4 revisions. The first seven questions on the form are the most predictive of the likelihood of the victim being at risk for serious physical violence or death. Question 4, regarding pregnancy, will be asked only of female victims. Law enforcement can use the form (1) to get information to the courts and (2) to connect the victim to services. The form is a public document that is discoverable by the defendant. Ms. Cramer noted that victims can decline to participate in the assessment if they fear disclosure of information poses a risk. If approved, training on implementation will be provided, and research will continue to be reevaluated. The Governor's Office for Youth, Faith and Families has committed funding for training.

B. Service of Protective Orders; Screening Inmate Mail and Telephone Calls

Jaquel Moody, victim advocate, Office of Victim Services, Arizona Department of Corrections (ADC), discussed procedures used by her agency to serve protective orders on inmates and screen inmate mail and telephone calls. She also shared materials that show how to use the ADC data search to get information about an inmate's release date.

Ms. Moody informed that ADC can serve a protective order on an inmate in custody. ADC can also advise whether an inmate has been paroled or has a probation tail. Court staff or advocates can let victims know that they can contact ADC to find out the protocol for having a protective order served on an inmate in ADC custody. Ms. Moody noted that victims should be reminded that addresses on protective order petitions are not confidential if the plaintiff has included them there. The address will not be printed on the Order of Protection, but if the plaintiff has included addresses on the petition, they will appear on the copy that is served on the defendant.

Besides serving protective orders, ADC also filters mail for about 43,000 inmates. Victims have the right stop mail from inmates. Ms. Moody stated that inmates who violate mail and telephone contact rules are rare, but if violations happen, ADC takes disciplinary action, such as revocation of privileges.

Judge Million proposed that CIDVC and ADC work together on best practices for information sharing. The following members agreed to participate: Judge Million, Judge Carol Scott Berry, Judge Bayardi, Michelle Chamblee, Anna Harper-Guerrero, and Rebecca Strickland.

C. AOC Project-Protective Orders Analysis and CPOR/LPOR Update

Myron Pecora, senior business analyst, AOC Information Technology Division, introduced a new AOC grant project to study protective order processing statewide and to investigate potential new technology platforms for the Court Protective Order Repository (CPOR) and the Law Enforcement Order Repository (LPOR). He explained the approach, status, and plans for soliciting additional stakeholders' participation. Phase 1 is to be completed by mid-2017. He reported that the Arizona Criminal Justice Commission (ACJC) also has obtained a grant to study improvements to protective order processes. The AOC and ACJC are working together to avoid duplicating efforts.

Some of the project goals are:

- Ensure that the National Instant Criminal Background Check System (NICS) checks flagged individuals who have outstanding protective orders issued against them
- Enhance the level of public safety for plaintiffs (victims).
- Enhance law enforcement safety (availability of protective order data for the users who need it)
- Improved electronic data sharing among courts, Sheriffs, AZ DPS, other law enforcement; more automated repository additions/updates, including automatic data transfer to NCIC through AZ DPS
- Improved granularity of data on electronic protective orders
- Improved data quality and more widespread adoption (courts, Sheriffs, and other law enforcement) of a new CPOR/LPOR solution.

D. Protective Orders Forms, ACJA 5-207

CIDVC's Forms Workgroup met recently to discuss proposed changes to the general petition, the Plaintiff's Guide Sheet, the Defendant's Guide Sheet, and the "Things You Should Know About Protective Orders" booklet. The Supreme Court also recently adopted technical changes to ACJA 5-207: Orders of Protection and Injunctions Against Harassment. Workgroup members discussed ideas that are under consideration as well as proposals suggested by two courts. The workgroup's goal is to make the forms more user friendly for the parties, especially the Plaintiff's and the Defendant's guide sheets, which contain essential information for each party. The Supreme Court is promoting greater access to justice, which includes making forms and court rules easy to understand.

Kay Radwanski, AOC, reported that a court proposed making all plaintiff addresses confidential by default. A.R.S. § 13-3602(C)(1) states that the plaintiff's address can be kept confidential if the defendant does not know this information. The statute is not specific as to which type of address. Also, in G(3), if a court issues an Order of Protection, the court can restrain the defendant from other locations such as work, school, and specifically designated locations. Ms. Radwanski emphasized that on the Plaintiff's Guide Sheet, the plaintiff has the option to restrict addresses. Any address that is not marked confidential will appear on the petition, which is also served on the defendant.

Ms. Radwanski stated that all forms changes must be approved by AOC Administrative Director Dave Byers. He considers CIDVC's recommendations when deciding on changes.

Member comments:

- Defendants should have notice of the places from which they are prohibited.
- Law enforcement officers will have difficulty enforcing orders that lack of information about prohibited locations.

- Enforcement becomes problematic when the prohibited places are public or if the plaintiff changes workplaces.
- Prosecutors would decline to prosecute a protective order violation if the order is vague.

Ms. Radwanski will notify the requesting court about CIDVC's position on its proposal.

E. ARPOP Rule Petitions R-17-0023 and R-17-0026

Kay Radwanski, AOC, briefly explained the process for amending court rules. Each year, the Arizona Supreme Court opens the court rules to anyone who wishes to request amendment of current rules, propose new rules, or eliminate current rules. Rule petitions are normally filed by January 10 of each year. The Supreme Court justices meet in late August to decide on the rule petitions.

Two petitions affecting the Arizona Rules of Protective Order Procedure (ARPOP) have been filed in the current cycle. Petition R-17-0023 seeks to amend Rule 36(a) Admissible Evidence. Rules 23, 25, and 26 have been modified to clarify that the plaintiff must indicate on the petition all of the allegations that will be relied on at a contested hearing. The petitioner is suggesting that this language be restated in Rule 36. The deadline to submit comments to petitions is May 22, 2017.

Members discussed further clarifying Rules 23, 25, and 26 and adding further explanation in the Plaintiff's Guide Sheet.

Motion: To authorize Judge Million to respond to Petition R-17-0023 on CIDVC's behalf.

Moved by Judge Berry, **Seconded by** Judge Statia D. Hendrix. Motion passed unanimously.

Petition R-17-0026 requests repeal of Rule 25(g), regarding firearms and Injunctions Against Harassment. This is the fourth petition in recent years seeking repeal of this rule. CIDVC has opposed repeal of this rule in the past, noting that the statute authorizes a judge to take any action necessary to protect the plaintiff. Members felt a similar response is again warranted.

Motion To authorize Judge Million to respond to Petition R-17-0026 on CIDVC's behalf.

Moved by Amy Rebenar, **Seconded by** Rebecca Strickland. Motion passed unanimously.

F. Train-the-Trainer Project Planning

At the November 2016 meeting, Judge Million proposed a train-the-trainer project for CIDVC members. At least one representative from each membership category would be trained on relevant protective order issues. The trained member could then provide training to others in their particular subject matter area. Members who wish to participate should notify Ms. Radwanski.

Among the topics members would like to hear more about during the training are:

- The intersection between family law and protective order cases
- Safety of parties and court staff during contested hearings
- Minors and protective orders
- Firearms issues; firearms surrender
- Full faith and credit
- Service of petitions and orders
- Enforcement of orders; violations
- Issues regarding immigrants and protective orders
- Language access

G. Workgroup Reports

Judicial Education Workgroup. Judge Bayardi said the workgroup proposed three training sessions to the Judicial Conference planning committee. Two of the proposals have been approved for the 2017 conference. Retired Judge Karen Adam (Pima County) and Loretta Frederick, Battered Women's Justice Project, will present on domestic violence and child custody decision-making. Jerry Bowles, a retired judge from Kentucky, will present on judges' use of domestic violence lethality assessments. Judge Bayardi reported that there is an interest in developing a webinar on firearms and protective orders.

Orders, Enforcement and Access Workgroup. Judge Berry reported that the workgroup needs to finish research on remote conferencing and Internet and document security. The workgroup is developing a how-to guide for courts and advocates for remote (video) *ex parte* protective order hearings. Judge Million would like to have the project ready for presentation to the Arizona Commission on Access to Justice (ACAJ) in May. ACAJ had asked CIDVC to take on this project.

Training and Education Workgroup—no report.

H. Internet Resources on Intimate Partner and Family Violence

Judge Million shared the following resources: The National Council of Juvenile and Family Courts Judges (<http://www.ncjfcj.org>) and the Battered Women's Justice Project (<http://www.bwjp.org>). Both organizations offer many resources and training opportunities. Judge Million highlighted some information on these websites that may be of interest to CIDVC members as well as self-represented litigants and victim advocates.

III. OTHER BUSINESS

A. Good of the Order/Call to the Public

No one from the public was present.

B. Next Committee Meeting: May 2, 10 a.m., Conference Room 119 A/B

The meeting adjourned at 1:18 p.m.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Approved Minutes

May 2, 2017; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Keith Barth, Judge Marianne T. Bayardi, Judge Carol Scott Berry, Carla F. Boatner, Diane L. Culin, Anna Harper-Guerrero, Dorothy Hastings, Judge Stacia D. Hendrix, Sergeant Douglas Musick, Judge Wyatt J. Palmer, John R. Raeder III, Rebecca Strickland, Thea Walsh (proxy for Shannon Schell) Tracey J. Wilkinson

Telephonic: Michelle Chamblee, Deborah Fresquez, Patricia George, Bonnie Lawrie-Higgins, Amy Rebenar

Absent/Excused: Lynn Fazz, Patricia Madsen, Captain Jeffrey Newnum, Pearl Puente, Assistant Chief Mary Roberts, Judge Patricia A. Trebesch

Presenters/Guests: Judge George T. Anagnost, Dr. Alesha Durfee, Dr. Jill Messing, Paul Thomas

AOC Staff: Kay Radwanski, Karla Williams

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The May 2, 2017, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:02 a.m. by Judge Wendy Million, chair.

B. Approval of Minutes

The draft minutes from the February 14, 2017, CIDVC meeting were presented for approval.

Motion: To approve the February 14, 2017, meeting minutes as presented. **Moved by** Diane Culin, **Seconded by** Tracey Wilkinson. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Understanding the Variation in Protection Order Filing and Issuance Rates

Dr. Alesha Durfee, Arizona State University, and Paul Thomas, court administrator, Mesa Municipal Court presented on the Variation in Protection Orders Filing and Issuance Rates Project. The project is being conducted under a researcher/practitioner/partner grant from

the National Institute of Justice. The partners are Arizona State University, Mesa Municipal Court, and the National Center for State Courts. Dr. Brenda Uekert, NCSC, has been working with Dr. Durfee and Mr. Thomas on the project.

In Arizona, plaintiffs can file for Orders of Protection and Injunctions Against Harassment at any court. However, no research has examined whether plaintiffs take advantage of this provision. Using data from 1,400 protection order case files from seven municipal courts, this project analyzed the significant variation found among Arizona municipal courts in population-adjusted protection order filing rates and issuance rates. The project is reviewing the following key research questions:

1. Do petitioners take advantage of the residency requirement waiver?
2. What accounts for the statistically significant differences in *filing rates* among Arizona courts?
3. What accounts for the statistically significant differences in *issuance rates* among Arizona courts?

Highlights

- Issuance rates in Arizona: justice courts 91%; municipal courts 87%; and superior courts 85%.
- The research focused on all domestic relationships.
- Four models were analyzed: demographic characteristics, allegations of violence, individual characteristics, and individual characteristics with court-fixed effects.
- Preliminary results indicate that female petitioners are more likely to receive protective orders than males; certain ethnicities are more likely to have protective orders entered against them; and living-together relationships are more likely to be issued protective orders than married couples.
- The final report will be available to CIDVC by the end of the year.

B. Replication and Expansion of the National Intimate Partner Homicide Study

Dr. Jill Messing, Arizona State University, provided a brief background regarding the development of the Danger Assessment (DA), which was developed 25 years ago by Dr. Jacquelyn Campbell, Johns Hopkins University. Dr. Messing, who has studied with Dr. Campbell, noted that the DA is the only risk assessment intended to predict intimate partner homicide. More recently, Dr. Messing has worked with Dr. Neil Websdale, Northern Arizona University, to develop a risk assessment model called The Arizona Intimate Partner Risk Assessment Instrument System (APRAIS). Law enforcement officers and victim advocates in Arizona are being encouraged to use this evidence-based tool and protocol to gather information and identify potential risk of severe re-assault or near-lethal intimate partner violence. APRAIS has been implemented in Yavapai County.

Dr. Messing then described a study that is under review by the Office on Violence Against Women to replicate and expand risk assessment research. An opportunity to participate in the homicide replication and expansion study was offered.

Dr. Messing also discussed:

- Who is at a very high risk and the kind of interventions that can be offered
- Risk factors and questions used on the risk assessment
- The higher risk of violent crime for victims of strangulation
- Issues from the original study, e.g., most data comes from urban areas, not rural, and no data was collected on male victims or on female victims of female partners.
- Opportunities for statewide training on APRAIS

C. Protective Order Petition Pilot Project

Judge George T. Anagnost, presiding judge of the Peoria Municipal Court, reported on the results of a pilot project for the protective order petition. In September 2016, Peoria Municipal Court was given permission to pilot a different version of the protective order General Petition that is used statewide. Peoria was required to track and evaluate the variations in the pilot version of the petition. Peoria issued 110 orders over three months. The pilot version of the petition was isolated from the statewide form to track the time it would take complete the pilot form. Petitioners took 15 to 18 minutes to complete it. Judge Anagnost commented that Peoria's version seemed easier to understand. He said the pilot form has received positive feedback, and he proposed that the piloted form be adopted as a universal form for all the Arizona courts.

Kay Radwanski explained that Dave Byers, AOC director, is authorized by ACJA § 5-207 to approve changes to the protective order forms. The goal is to have standardized, mandatory protective order forms in all Arizona courts. Any forms changes proposed by CIDVC would have to be approved by Mr. Byers.

Motion: Direct CIDVC's Forms Workgroup to combine the best parts of Peoria's pilot form and the current statewide form for CIDVC's review and approval. **Moved by** Judge Wyatt Palmer. **Seconded by:** Ms. Culin. Motion passed unanimously.

D. Workgroup Reports

CIDVC/ADC Collaboration.

At the February CIDVC meeting, the Arizona Department of Corrections (ADC) presented on its procedures to serve protective orders on inmates. It was suggested that CIDVC members collaborate with the ADC to assist on getting the information out to the courts and other agencies. A workgroup comprised of CIDVC members and ADC representatives was formed and will meet on June 5.

Orders, Enforcement, and Access Workgroup.

Judge Carol Scott Berry, workgroup chair, reported on a remote access technology procedure that her workgroup was assigned to develop. This procedure would allow domestic violence victims to participate by video in *ex parte* protective order hearings. Judge Berry presented a draft guide for conducting remote *ex parte* hearings and a guide for safe Internet communications and transfer of documents for CIDVC approval. The next step for the workgroup will be to develop a plan to inform courts, advocates, and law enforcement agencies about the guides and to promote use of these procedures. The bench card is ready to be presented to the courts. Courts can choose with advocacy agency to use. Judge Million suggested to add a bullet under item number 3. "Activate the video link" and this part does not have to be confidential. This project will be presented to the Arizona Commission on Access to Justice and to the Judicial Conference.

MOTION: Approve the guides--Remote Petition Process for Ex Parte Protective Order Hearings and Safe Communications for Remote Ex Parte Protective Orders--as presented. **Moved by** Ms. Culin. **Seconded by** Judge Palmer. Motion passed unanimously.

Judicial Education Workgroup

Judge Million announced that there will be several sessions on domestic violence at the 2017 Judicial Conference in June. Two of the sessions were proposed by CIDVC. Judge Jerry Bowles, a retired judge from Kentucky, will discuss lethality in domestic violence cases. Judge Karen Adam, a retired judge from the Superior Court in Pima County, and Loretta Fredricks, Battered Women's Justice Project, will present a custody/parenting time matrix for judges to use when making legal decision-making and parenting time decisions in family cases that also involve domestic violence. Judge Million will participate in a panel discussion on victims' rights; she will speak specifically about domestic violence victims.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- Ms. Radwanski announced a newly redesigned [Protective Order Forms webpage](#) and provided a brief demonstration of it. She praised Julie Graber, AOC specialist, for her efforts in redesigning the webpage.
- No one responded to the Call to the Public.

B. Next Meeting: September 12, 2017; 10 a.m., Conference Room 119 A/B

The meeting adjourned at 1:05 p.m.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Approved Minutes

September 12, 2017; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Carol Scott Berry, Patricia George, Judge Statia Hendrix, Patricia Madsen, Leah Meyers (proxy for Dorothy Hastings), Captain Jeffrey Newnum, Judge Wyatt J. Palmer, John R. Raeder III, Amy Jo Rebenar, Iva Rody (proxy for Chief Terry Young), Judge Bruce Staggs, Judge Adams Watters, Tracey J. Wilkinson

Telephonic: Judge Marianne T. Bayardi, Michelle Chamblee, Lynn Fazz, Anna Harper-Guerrero, Jessye Johnson, Susan Johnson-Molina, Bonnie Lawrie-Higgins, Rebecca Strickland

Absent/Excused: Diane L. Culin, Deborah Fresquez, Pearl Puente, Assistant Chief Mary Roberts, Judge Patricia A. Trebesch

Presenters/Guests: Marc Peoples, Arizona Criminal Justice Commission

AOC Staff: Kay Radwanski, Annette Mariani

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

New members were welcomed and introductions were made: Judge Bruce Staggs, Benson Justice Court; Judge Adam Watters, Pima County; Chief Terry Young, Surprise Police Department. (proxy, Iva Rody), Susan Johnson-Molina, Northern AZ VA Healthcare System; Jessye Johnson, Arizona Coalition to End Sexual and Domestic Violence.

Judge Million welcomed back members who have been reappointed for another term. They are Lynn Fazz, Judge Wyatt J. Palmer, Rebecca Strickland, Dorothy Hastings, and Anna Harper-Guerrero.

B. Approval of Minutes

The draft minutes from the May 2, 2017, CIDVC meeting were presented for approval.

Motion: To approve the May 2, 2017, meeting minutes as presented. **Moved by** Judge Carol Scott Berry, **Seconded by** Judge Statia Hendrix. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. CIDVC's Role Among Judicial Committees

Kay Radwanski, AOC, welcomed new appointees and provided a presentation on the role of the Arizona Judicial Council (AJC), the Arizona Code of Judicial Administration (ACJA), and the structure and charge of the Committee on the Impact of Domestic Violence (CIDVC)

CIDVC is governed by ACJA 1-110. It was established in 1994 with the purpose of:

- assisting AJC with development and implementation of policies that acknowledge the severity of the problems in domestic violence in Arizona;
- increasing awareness of victim resources;
- providing sanctions for criminal conduct;
- enhancing follow through by law enforcement to enforce orders of protection;
- assessing local proceedings and services and make recommendations for system changes that will promote and enhance safety for victims and the professionals that interact with them; and
- encouraging offender accountability.

Some of the ways in which the committee fulfills its charge is by making recommendations for the mandatory AOC-approved protective order forms, keeping up with changes in the law or court rules that may affect those forms, and monitoring the Arizona Rules of Protective Order Procedure.

B. Use of Lethality Assessments in the Courts

Judge Wendy Million discussed ways judicial officers can use information on domestic violence lethality assessments. The Arizona Prosecuting Attorneys' Advisory Council (APAAC) had filed a petition (R-16-0046) requesting changes to Form 4, Rules of Criminal Procedure, for the Supreme Court's consideration. The petition requests amendment of Form 4 to include the APRAIS tool; it has been continued pending further order of the court. Information about the APRAIS tool been presented and is being discussed across the state by multidisciplinary groups. Judge Million and Judge Mark Moran, Coconino County Superior Court, presented information on how lethality assessments could be used in courts at a session in August.

When a judge is determining the conditions of release or bail in a domestic violence case, ARS § 13-3697 directs the judge to consider is the results of a risk or a lethality assessment if one is presented.

How can judges use a lethality assessment to make better release decisions?

- ✓ Need to be better educated on how to use them
- ✓ Judges can use information from the assessment as a reason to keep the defendant in custody if it is determined that the defendant poses a risk to the victim if released
- ✓ Can release be based solely on the lethality assessment? Some results can be high, but the facts do not necessarily match and the defendant may not have any history that would warrant keeping them in custody.
- ✓ If a judge is educated about lethality assessments, the judge can use the information to set effective conditions of release. For example, if the defendant is a suicide risk or has signs of depression, a mental health assessment can be ordered. If the defendant poses a serious threat to the victim, no contact conditions can be set. If there are indications of substance abuse, alcohol and drug testing can be ordered.
- ✓ Judges can apply these factors in other cases, such as pre-trial services, probation, family law, and protective orders.

C. ACJC Legislative Proposals

Marc Peoples, criminal justice systems improvement manager, Arizona Criminal Justice Commission (ACJC), presented the recommendations resulting from ACJC's Order of Protection Statewide Assessment. ACJC's goal is to reinvent the Order of Protection and Injunction Against Harassment process: by improving protection, safety, and efficiency by streamlining the issuance, service and NCIC entry process; increasing the number of orders in NCIC by increasing service; and reducing domestic violence injury and death.

During the summer, an ACJC team conducted meetings with representatives in all 15 counties participated in this assessment. Participants included victim advocates, prosecutors, judges, and court personnel. All counties were asked to address how they manage Orders of Protection.

Existing policies were evaluated, gaps were identified, nuances regarding orders were examined. The assessment looked at streamlining the process, increase the numbers of OPs/IAHs in the National Instant Criminal Background Check System (NICS) database by increasing the number of orders served. An overall schedule was then introduced with a September 26, 2017 date of reviewing policies to cover recommendations and a technology meeting scheduled for September 27, 2017, to discuss implementation based on policy.

Topics discussed included:

- Changes in service. The court—not the plaintiff—would initiate service of an issued order by sending it directly to law enforcement. Procedures could be developed to serve an order when an officer makes incidental contact with a defendant.
- Safety plans. A goal would be to have a person speak with a victim advocate prior to filing a petition for a protective order. But if the person did not wish to speak to an advocate or if an advocate was not available, the person still could file a petition for a protective order.

- Automation. Technology could be used to allow a person to fill out a petition electronically, but then the petition could be held in a queue until the person goes to a court to file it. Also, the Supreme Court/AOC could create an automated database that would serve as the repository of orders. The Supreme Court—instead of the county sheriffs—would become the holder of record. Law enforcement could confirm validity of an order by checking with the Supreme Court database.
- Statewide, court personnel objected to the idea of having contested hearings set automatically after issuance of an *ex parte* order. Arizona courts would have difficulty handling the additional caseload.

D. Lighting Arizona Purple

John Raeder, Governor’s Office of Youth, Faith and Family, presented information about the Governor’s Commission to Prevent Violence Against Women’s Lighting Arizona Purple Awareness Campaign. The kickoff date is October 2, 2017, on the capital lawn, where the Governor will light the capitol dome purple for the month of October. Mr. Raeder encouraged committee members to share this information with their network contacts.

E. Rule Petitions – Rules Agenda Meeting

The Supreme Court met recently to consider all petitions filed in the current rules cycle. Information on petitions of interest to CIDVC was presented.

	PETITIONER	INFORMATION
R-17-0023	Mike Palmer	Filed for the purpose of asking the court to amend Rule 36(a) ARPOP, to make it clear that the plaintiff can rely only on the allegations in the petition in a contested hearing. The Court agreed, and verbiage was added to Rule 36: <i>The court must limit the scope of the hearing to the allegations of the petition.</i>
R-17-0026	Mike Palmer	The petitioner requested repeal of Rule 25(g), ARPOP, regarding the requirement that a judge ask a plaintiff about the defendant’s access to or use of firearms on a petition for an Injunction Against Harassment. The petition was denied.
R-16-0046	Arizona Prosecuting Attorneys’ Advisory Council (APAAC)	The petition requested amendment of Form 4(a), Rules of Criminal Procedure, to include a statewide standardized lethality assessment. The court has continued this petition until the further order.
R-17-0030	Maricopa County Attorney’s Office Arizona Attorney General Arizona Voice for Crime Victims	Petitioners requested amendment of Rule 7.3, Rules of Criminal Procedure, to make no-contact with the victim a mandatory condition of release, unless the court finds good cause to conclude that the victim’s safety would not be protected without a no-contact order. CIDVC filed a comment noting that while the rule makes sense in criminal cases, it may not always be best in domestic violence cases because of the different dynamics, children in common, and financial support. If there is no contact, the defendant may not be able to continue employment, which can lead to homelessness and a hardship on the family. The court amended this rule, leaving it as a discretionary item for the judge, not mandatory.

F. Case Law Update - State v. Haskie

Kay Radwanski, AOC, reported on the Arizona Supreme Court's recent opinion in State v. Haskie (242 Ariz. 582, 2017). In 2016, the Arizona Court of Appeals issued an opinion in State v. Haskie (240 Ariz. 269, 2016). Haskie was a sequel to State v. Ketchner (236 Ariz. 262, 2014) in that the same expert testified in each case. In Ketchner, a Mohave County case, the expert testified about lethality factors and the typical behavior of domestic violence abusers. The Supreme Court, in 2014, said the expert's testimony was inadmissible profile evidence and was not harmless error. In Haskie, a Coconino County case, the expert testified as a "cold expert" on the counterintuitive behaviors of domestic violence *victims* and why a victim might recant. The Court of Appeals found that her testimony was not offender profiling or impermissible vouching of the victim's credibility. The case was subsequently appealed to the Arizona Supreme Court. In its August 15, 2017, opinion, the Supreme Court affirmed the decision of the Superior Court in Coconino County and vacated in part the opinion of the Court of Appeals.

Haskie and Ketchner both deal with profile evidence. Profile evidence tends to show that a defendant possesses one or more characteristics of other people engaged in a certain activity. In Ketchner, the Court held that profile evidence is not allowed in a case when directed toward a *defendant's* conduct. But expert testimony that explains a *victim's* inconsistent behavior is admissible to help jurors to understand why a person may exhibit certain behaviors. The Court held that evidence of defendant characteristics may be admissible if it is relevant and passes a Rule 403, Rules of Evidence, analysis. The Court suggested using "cold expert" carefully and not drifting too far into areas that may lead to inappropriate profiling of a defendant.

G. Train-the-Trainer

A day-long Train-the-Trainer event for CIDVC members has been scheduled for November 28, 2017. Members should contact Kay Radwanski to sign up for this event.

H. Workgroup Reorganization

Judge Million will request that CIDVC have a table at the 2018 Judicial Conference to highlight all the materials the group has developed, such as judicial bench cards and best practice guides.

Workgroups were reorganized as follows:

- Judicial Education, Judge Marianne Bayardi, lead.
- Orders, Enforcement, and Access Workgroup, Judge Berry, lead. The workgroup will take over projects from the disbanded Training and Education Workgroup.
- Risk Assessment Workgroup, Judge Bayardi, lead.
- Firearms Workgroup - Judge Million, lead.

- DV Forms Workgroup, Judge Million, lead.
- CIDVC/CIVIC/ADC Workgroup, Rebecca Strickland, lead.

Members will be asked to email Kay Radwanski with their workgroup preferences.

I. Judicial Education Workgroup

Judge Bayardi presented the CIDVC-sponsored sessions at the 2017 Judicial Conference. Judge Jerry Bowles, a retired judge from Kentucky, presented on lethality in domestic violence cases. Judge Karen Adam, a retired judge from the Superior Court in Pima County, presented on a custody/parenting time matrix developed in collaboration with the Battered Women's Justice Project. Both presentations were well received with an audience of nearly 175 participants between both sessions. Judges were provided with practical and useful information to assist them on the bench.

Judge Hendrix announced a training opportunity at the Scottsdale City Court during October's Domestic Violence Month. Doreen Nicholas, Arizona Coalition to End Sexual and Domestic Violence, will provide a three-hour DV 101 COJET training on October 5, 2017. East Valley limited jurisdiction courts have been invited to attend. Members may share the invitation with other small courts.

III. OTHER BUSINESS

A. Announcements/Call to the Public

Ursula Johnston addressed the committee during the Call to the Public.

B. Next Meeting: November 7, 2017; 10 a.m., Conference Room 119 A/B

The meeting adjourned at 1:18 pm.

COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

Approved Minutes

November 7, 2017; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

Present: Judge Wendy Million (chair), Judge Carol Scott Berry, Diane L. Culin, Judge Statia Hendrix, Jessye Johnson, Patricia Madsen, Judge Wyatt J. Palmer, Pearl Puente, Judge Bruce Staggs, Rebecca Strickland, Kristi Ward (proxy for Tracey Wilkinson), Chief Terry Young

Telephonic: Anna Harper-Guerrero, Bonnie Lawrie-Higgins, John Raeder III, Amy Jo Rebenar, Judge Patricia A. Trebesch, Judge Adam Watters

Absent/Excused: Judge Marianne T. Bayardi, Michelle Chamblee, Lynn Fazz, Deborah Fresquez, Patricia George, Susan Johnson-Molina, Captain Jeffrey Newnum, Assistant Chief Mary Roberts

Presenters/Guests: Amy Love, AOC; Marc Peoples, Arizona Criminal Justice Commission; Jaime Watson, Arizona Criminal Justice Commission; Iva Rody, West Valley Domestic Violence Fatality Review Team; Bobbi Sudberry, Kaity's Way

AOC Staff: Kay Radwanski, Theresa Barrett, Sabrina Nash, Angela Pennington

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The November 7, 2017, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:06 am by Judge Wendy Million, chair. Judge Million announced that Dorothy Hastings has resigned from CIDVC due to a loss of her grant-funded position. Kristi Ward, Maricopa County Adult Probation Department, was introduced as proxy for Tracey Wilkinson.

B. Approval of Minutes

The draft minutes from the September 12, 2017, CIDVC meeting were presented for approval.

Motion: To approve the September 12, 2017, meeting minutes with the current minutes stating that Rebecca Strickland had been previously misidentified as being the head of

the CIDVC-COVIC-ADC Workgroup. **Moved by** Judge Statia Hendrix, **Seconded by** Judge Carol Scott Berry. Motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Orders of Protection/Injunctions Against Harassment.

Amy Love, AOC deputy government affairs director, introduced the topic and requested feedback on draft legislation regarding Orders of Protection (OP) and Injunctions Against Harassment (IAH) being proposed by the Arizona Criminal Justice Commission (ACJC). Marc Peoples, ACJC criminal justice systems improvement manager, then provided background on the bill, including a Power Point presentation and supplemental packet of the draft legislation.

The draft legislation calls for the following changes in protocol to improve the OP/IAH process within the state of Arizona:

- changes in protocol for the service of protective orders;
- allowing for automated processes (use of the “cloud”) among justice partners; and
- also proposes changing all references in ARS §§ 13-3602; 13-3624; 12-1809 and 12-1810 from Plaintiff/Defendant to Petitioner/Respondent.

Motion: To support ACJC’s legislative proposal in concept. After further discussion, the motion was amended to support the proposal in concept with caveats about renaming the parties, aligning the legislation with the Arizona Rules of Protective Order Procedure, and with concerns as to automatic service. **Moved by** Judge Wyatt Palmer, **Seconded by** Diane Culin. Motion passed unanimously.

B. FY 2017 Report and Recommendations: West Valley DV Fatality Review Team.

Iva Rody, chair of the West Valley Domestic Violence Fatality Review Team, presented to the committee the Fiscal Year 2017 WVDVFR Annual Report. With this report came three recommendations to three different organizations:

- ✓ For the AOC:
 - to request assistance from a local victim assistant program for the plaintiff and
 - create a form similar to the Defendant’s Guide Sheet to advise the plaintiff of the next steps of the OP process.
- ✓ For law enforcement to incorporate new protocols for:
 - annual training about victim assistance and proper documentation;
 - the use of lethality assessment as a best practice when responding to and investigating intimate partner violence, and
 - encouraging officers to create information reports to document calls for service involving domestic violence.
- ✓ For the Arizona State Board of Education to require any security guards working for schools or school districts to:

- meet the requirements of A.R.S. § 32-2632 during all times of employment and
- attend a minimum of two hours triannual training focusing solely upon family and domestic violence.

Kay Radwanski, AOC, explained that all Arizona courts are required to provide the Plaintiff's Guide Sheet to a plaintiff when the person files a petition for an Order of Protection. CIDVC also has a Forms Workgroup, which is in the process revising the sheet to make it more user-friendly.

C. Judicial Engagement Network.

Judge Hendrix reported on the Judicial Engagement Network Conference that she and Judge Million attended recently. The Judicial Engagement Network is nationwide organization of judges who have the desire and focus to improve the judicial system and community response to domestic violence issues. Participants at the conference discussed how, within their courthouses and communities, they could impact thinking and change and be better leaders by engaging the partners and other leaders in their communities to call meetings or make changes to procedures. The organization does have a website that is partially open to the public.

D. R-16-0046: Rule Petition Regarding Lethality Assessment.

Ms. Radwanski updated the committee regarding rule petition R-16-0046. In December 2016, the Arizona Prosecuting Attorneys' Advisory Council (APAAC) filed a petition to amend the Arizona Rules of Criminal Procedure, Form 4(a), by adding a risk assessment form. The petition, reviewed by the Supreme Court justices in their August rules agenda meeting, was held until further order of the court.

A meeting was convened on October 30, 2017, to discuss the petition and the form. Prior to that, during the comment period, CIDVC had filed comments expressing concerns about training on this form. Concerns focused on victim safety. Because victim participation in the lethality assessment is optional, not mandatory, and because the victim's responses are not confidential, a victim could face repercussions for answering the questions posed by law enforcement. APAAC filed a supplemental petition in June 2017, and the form went out for additional comment. The form was further revised at the October meeting and was resubmitted to the Supreme Court for consideration during the December rules agenda meeting.

E. Workgroup Reports.

Orders, Enforcement & Access

Judge Berry reported on her presentation to the Arizona Commission on Access to Justice (ACAJ) on November 8, 2017. She distributed copies of the guides that CIDVC's OEA Workgroup had developed on remote protective order guidelines. Work on additional bench cards will continue.

Judicial Education

Judge Bruce Staggs will be taking over as workgroup lead. He requested domestic violence-related topics for the 2018 Judicial Conference.

CIDVC-COVIC-ADC Workgroup/Risk Assessment Workgroup

Judge Marianne Bayardi will be heading up these two workgroups and will convene meetings after the first of the year.

Firearms Workgroup

Judge Million will lead the Firearms Workgroup. Webinar links will be shared with workgroup members regarding firearms surrender programs.

III. OTHER BUSINESS

A. Announcements/Call to the Public

- Train the Trainer will take place November 28.
- Ms. Radwanski introduced an article, featured in the Arizona *Daily Star*, which was written by Judge Million on the relationship between firearms and domestic violence. The article was also featured on the Judiciary Branch's home webpage through mid-November. Additionally, Tucson City Court has been chosen by the U.S. Department of Justice's Office of Violence Against Women to be a Domestic Violence Mentor Court. For this, they have received a two-year grant.
- No one responded to the Call to the Public.

B. Next Meeting. February 13, 2018; 10 a.m., Conference Room 119 A/B.

The meeting adjourned at 12:20 pm.