

# COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

## Approved Minutes

February 13, 2018; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

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**Present:** Judge Wendy Million (chair), Judge Marianne T. Bayardi, Judge Carol Scott Berry, Judge Statia Hendrix, Jessye Johnson, Patricia Madsen, Leah Meyers, Amy Offenber, Judge Wyatt J. Palmer, Sergeant Lauren Pettey, Pearl Puente, Amy Jo Rebenar, Judge Bruce Staggs, Rebecca Strickland, Tracey Wilkinson,

**Telephonic:** Michelle Chamblee, Diane L. Culin, Deborah Fresquez, John Raeder III, Judge Patricia A. Trebesch, Judge Adam Watters, Chief Terry Young

**Absent/Excused:** Lynn Fazz, Anna Harper-Guerrero, Captain Jeffrey Newnum, Susan Johnson-Molina, Bonnie Lawrie-Higgins, Assistant Chief Mary Roberts

**Presenters/Guests:** Erin Bertino, MSN-Ed Nursing Supervisor, Forensic Nurse Examiner, Honor Health; Amy Love, AOC Deputy Director, Government Affairs; Whitney Walker, Policy Coordinator and Advocacy, Arizona Coalition to End Sexual and Domestic Violence

**Administrative Office of the Court (AOC) Staff:** Theresa Barrett, Kay Radwanski, Angela Pennington

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The February 13, 2018, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:05 a.m. by Judge Wendy Million, chair.

### B. Approval of Minutes

The draft minutes from the November 7, 2017, CIDVC meeting were presented for approval.

**Motion:** To approve the November 13, 2017, meeting minutes. **Moved by** Judge Statia Hendrix, **Seconded by** Judge Marianne T. Bayardi. Motion passed unanimously.

### C. Introduction of New Members

New members were welcomed and introductions were made: Amy Offenber, domestic violence liaison Phoenix City Prosecutor's Office; Leah Meyers, Arizona Alliance for

Community Health Centers; and Sergeant Lauren Pettey, Domestic Violence Unit in the Tucson Police Department. Angela Pennington was introduced as a new AOC staff member.

Judge Million was welcomed back as she has been reappointed as chair for another term.

Patricia George and Dorothy Hastings, who are no longer on CIDVC, were thanked for their service.

## **II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS**

### **A. Role of the Forensic Nurse Examiner**

Erin Bertino, MSN-Ed nursing supervisor, forensic nurse examiner, Honor Health, provided background information on forensic medical exams and assault victims. The Honor Health Forensic Nurse Examiner Unit currently sees more than 200 patients per month. This number has doubled since adding domestic violence and strangulation exams in 2012. The clinic serves Maricopa County but will see patients from other counties if they come to Maricopa County. The unit sees sexual assault victims ages 13 and up and domestic violence and strangulation victims of all ages, from infants and upward. They also work with other agencies (law enforcement, victim advocates, crisis intervention, Department of Children's Services, etc.) as a multi-disciplinary team to ensure that patients have the support and care they need under one roof. They have five advocacy centers available to serve the public.

The clinic specializes in Violence Against Women Act (VAWA) exams for sexual assault victims and domestic violence and strangulation exams. VAWA exams allow victims to have forensic medical exams or evidence collection even if they do not want involvement with law enforcement. These exams assist law enforcement by collecting information that cannot be photographed. During "injury documentation," the forensic nurse, in addition to looking for obvious injury to the neck, asks about signs and symptoms that could be indicative of strangulation such as headaches, pain with neck movement or swallowing, disturbances to vision or hearing, vomiting after the incident, or loss of bowel control.

Ms. Bertino stressed the importance of the exams and the multidisciplinary team. Regular emergency room staff may not be trained or qualified to perform forensic medical exams. Injuries, especially from strangulation, do not always present up front but can cause serious harm later, such as with an internal bleed from a dissected carotid artery or a stroke caused by brain injury due to lack of oxygen and loss of consciousness during the event. The nurse can also assist the victim with safety planning. Repeat DV victims are seven times more likely to be killed by their abusers if they stay in their relationship. Many fear what can happen if their abuser finds out what they are doing and will give the nurses a truncated amount of time to get things done. Having the team under one roof means victims can get access quickly to the resources they need.

In response to questions, Ms. Bertino provided the following information:

- A forensic nurse can provide information to a prosecutor or testify to a jury about symptoms that were reported by the victim but unable to be seen by explaining the

signs and symptoms of strangulation and the anatomy and biology of the neck. Digital cameras are used to document and follow the progression of injuries. CDs of the photos, along with narrative reports, are given to law enforcement.

- The Forensic Nurse Unit can provide basic medical care under the authority of the medical director. If a higher level of care is needed, a patient can be referred to an urgent care or an emergency room or transported to a hospital.
- A forensic nurse must have 40 hours of training on performing the exams and 40 hours of training on domestic violence. The classroom training is followed by 6-8 precepted exams with a forensic nurse examiner.
- The Maricopa County office acts as a resource for the rural counties. The program also is working on “telemedicine” for victims in remote locations.
- Domestic violence and strangulation victims are referred by law enforcement, who must authorize the exams. Law enforcement authorization is needed because the county pays for the exam. There is no cost to the patient.
- Once contacted, the nurse has a one-hour window to meet the victim at one of five centers or at a hospital. The exam should take place within five days of the incident so the victim’s neck can be swabbed for DNA evidence. An exam performed past the five-day mark does not include the neck swab.
- An exam kit, if done, must be submitted even if the victim does not want it to be tested. If deadly weapons are involved, statutes also mandate that there be a mandatory report. Hospital protocols may also require hospital personnel to contact law enforcement, even if the patient requests they do not.
- Detectives should be trained to question victims about neck pain, pain with swallowing, coughing, headaches or vomiting, hearing or vision changes, or numbness or tingling anywhere. They can then testify about this information in court.
- Patrol officers are given a N.U.R.S.E. card, with questions to ask the victim on scene.

Sergeant Lauren Pettey, Tucson Police Department, stated that the Tucson PD has a list of standardized questions that patrol will ask in strangulation investigations. They will also try to get a taped statement from the victim right away, followed by a visit from a detective.

Amy Rebenar, human services planner, Maricopa Association of Governments, noted that the Maricopa County Attorney’s Office has a domestic violence protocol on its website under Reports and Documents. The protocol, revised in 2015, has a chapter on strangulation.

## **B. Workgroup Report: Protective Order Forms**

Kay Radwanski, AOC, offered materials from the “Train the Trainer” event to those who were unable to attend or those who would like additional copies. Judge Million proposed a second

“Train the Trainer” event for those who were unable to attend. CIDVC members who did attend and feel comfortable training others should provide their names to Ms. Radwanski.

Ms. Radwanski then recapped the approval process for changes to the protective order forms. All forms must be approved by AOC Administrative Director Dave Byers. While he has final authority to approve forms changes, he gives weight to CIDVC’s recommendations.

Copies of the current approved forms and the draft revised forms were provided. The Protective Order Forms Workgroup will be proposing changes to several forms, notably:

- Plaintiff’s Guide Sheet
  - split into two forms—the Plaintiff’s Guide Sheet and the Plaintiff’s Information Sheet. The Plaintiff’s Guide Sheet goes with the plaintiff; the Plaintiff’s Information Sheet stays in the court file.
  - augment the use of white space and change the font to improve readability.
  - update the language to make it simpler, especially to self-represented litigants.
  - add a **READ THIS FIRST** box to emphasize the importance of the information.
  - reorganize the list of relationships so that intimate partner relationships are first.
  - added a separate paragraph for “Animals.”
- Plaintiff’s Information Sheet (new)
  - add a notation “**THIS FORM IS NOT A PUBLIC RECORD.**” (See ARS § 13-3602(C)(1).)
  - restructure the paragraph about confidential addresses.
  - add a notation for third-party petitioners.
  - emphasize an estimated date of birth for the defendant, if the actual birth date is unknown.
- Petition
  - redesign the header, adding space for third-party petitioners.
  - split question 3 (prior DV history) into two parts to explain the information more fully to the court.
  - move question 4 (allegations) to the top of the second page; add dashed lines to guide writing space; add a note above the box about the contested hearing.
  - for question 6, add a note and gray text on the information lines not to list confidential addresses.
  - Change question 8 to a request for relief to protect an animal; eliminate the request for defendant to attend DV counseling, as it cannot be ordered ex parte.
- Defendant’s Guide Sheet
  - add an explanation of difference between the petition and an order.
- Hearing Order
  - change “On Plaintiff’s Motion” to “At Plaintiff’s Request” for the sake of consistency and to avoid confusion among self-represented litigants.
  - remove “See Notice of Hearing,” and change “continues the hearing set for” to “continues the hearing to.”

Questions were raised about confidentiality of a petition after it is completed. Confidentiality of petitions is governed by Rule 123, Rules of the Supreme Court, and the Arizona Rules of Protective Order Procedure (ARPOP). Generally:

- A petition that is filed but denied is a public record.
- A petition that has been granted but not served remains confidential until it is served or until it expires.
- If a petition is filed, but the plaintiff does not follow through with seeing the judge, the petition is considered withdrawn. A petition that has been withdrawn becomes public record.

Judge Million noted that allowing a withdrawn petition to become a public record is a safety concern and asked the ARPOP Workgroup to consider the issue. A petition to add or change a court rule would have to be filed by January 10, 2019. Judge Million also asked the Arizona Criminal Justice Commission (ACJC) proposal to design a system that would allow a plaintiff to fill out the petition online and store it in “the cloud.” Would a petition that is stored in the cloud be a public record? Ms. Radwanski explained that until the plaintiff appears at a court and asks for the petition to be filed, it is a draft and not subject to disclosure.

Ms. Radwanski suggested that any decision on the forms changes be postponed until after the end of the legislative session. Pending legislation could affect the proposed changes.

### **C. Update: Rule Petitions, Case Law**

Ms. Radwanski discussed R-16-0046, a rule petition regarding lethality assessment and domestic violence. Beginning April 2, 2018, changes to Form 4(c), the Intimate Partner Risk Assessment, become effective. It is an attachment to Rule 41, Rules of Criminal Procedure, as a recommended form for law enforcement. It is comprised of a two-tier questionnaire, with the first tier being mandatory for law enforcement to ask at a domestic violence incident where the parties are intimate partners. The second tier questions are voluntary. The form is not confidential and is discoverable by the defendant or the defendant’s attorney. Language has been added to the forms to emphasize the victim’s voluntary participation.

Judge Million will participate with Dr. Neil Websdale, Northern Arizona University, and a law enforcement officer to film a training video for the lethality assessment form. The video, being produced at the AOC, should be distributed to judges by mid-March. The Arizona Peace Officers Standards and Training Board (AZPOST) is also putting together training for law enforcement officers on how to best use the form. Judge Million advised the group that she and Ms. Radwanski are also working on a bench card in regard to the new form.

Form 4(c) can now be used any time in the appropriate situation. ARS § 13-3967 requires the court to consider any lethality or risk assessment provided at the time of the person’s arrest. The goal in training judges is help them understand this information as they set release conditions for the defendant. Judge Million noted the importance of educating judges on how to interpret the information on the form but also to know about its discoverability. She expressed concern that if the lethality assessment is turned in with a protection order

petition, it will have to be included when served on the defendant. Plaintiffs need to be informed that the lethality assessment is voluntary, and that if completed, it will be included in the papers served.

Ms. Radwanski next reported on two recent opinions related to domestic violence: *Stimmel v. Sessions* (879 F.3d 198, Sixth Cir. 2018) and *Shah v. Vakharwala* (Ariz. Court of Appeals, Div. 1, 2018).

*Stimmel v. Sessions* is another test of the Lautenberg amendment to the federal Gun Control Act. The Sixth Circuit's decision conforms to what other circuits have ruled. The Lautenberg Amendment, 18 U.S.C. § 922(g)(9), applies to a person who has been convicted of misdemeanor domestic violence offense involving the use, or attempted use, of physical force or the threatened use of a deadly weapon against an intimate partner. A prohibited person receives a lifetime ban on owning or acquiring firearms of any kind, unless the conviction is set aside.

In *Shah v. Vakharwala*, the defendant, living in Georgia, appealed the Maricopa County Superior Court's grant of an Order of Protection, arguing that violations of that order must occur in Arizona to be considered violations. In addition to the jurisdictional issue, he argued against the sufficiency of evidence, said the court did not state the basis for continuing, modifying or revoking the order, and claimed that the court intimidated him into not testifying. In upholding the Superior Court's order, the Court of Appeals found that he submitted himself to the court's jurisdiction by entering a general appearance; there is no requirement that violations of the order occur within state boundaries; the judge did clearly state on the record, even if it was not written in the minute entry, the basis for continuing the order; and as Vakharwala did not raise the argument of intimidation in the superior court, he had waived his right to it here.

#### D. Legislative Update

Amy Love, AOC deputy director of government affairs, introduced Summer Stevens, an undergraduate student and Supreme Court legislative intern. She expressed thanks to Ms. Stevens and also to another intern (not in attendance), Franci Luna Diaz, for their assistance in tracking legislation as it moves through the process. Ms. Love then provided an update regarding bills of interest to CIDVC.

Bill	Information
HB2249	The Arizona Criminal Justice Commission's (ACJC) omnibus in respect to Injunctions Against Harassment and Orders of Protection. Currently moving through the legislative process, it has made it through the House Judiciary Committee. There are still some Justices of the Peace who have voiced concerns over the transferring of the decision making regarding service of an order from the victim to the court.
SB1186	Amending ARS § 12-1809, relating to Injunctions Against Harassment. This bill did not receive a hearing, but it is still possible that it could be placed

	on the Appropriations Committee agenda. Senator John Kavanaugh was apprised of the fact that a sexual assault victim is not eligible for an IAH because the law requires a series of events to occur in order to qualify.
SB1393	Currently, Arizona law leaves solely to the court's discretion the disposition of in vitro human embryos in a divorce matter. This bill would direct the court to award the embryos to the spouse who wants them, releasing the spouse who does not from any future right, obligation or interest in any resulting child.
HB2020	Amending A.R.S. § 12-612, by adding section 12-720. This bill would void and prohibits the entering of a confidentiality agreement that restricts disclosure of factual information regarding the attempted, alleged, or actual sexual assault or harassment. There would be some exceptions in this bill. This bill is moving through the legislature.
HB2299	This bill would require any person placed on probation for a domestic violence offense to turn over any owned firearms to the appropriate law enforcement agency within 24 hours after sentencing. There is no movement on it at this time.
HB2454	This bill would allow a tenant to terminate a rental agreement if the tenant provides written notice to the landlord that they had been the victim of a sexual assault in the domicile.
HB2006	This bill removes parental/guardian or judicial exceptions to marriage before the age of 18, unless the person is emancipated by court order.

## E. Workgroup Reports

### Judicial Education

Judge Million informed the committee that the Judicial Education Workgroup has recommended Dr. Christopher Wilson for one session at the Judicial Conference. He will speak about the neurobiology of domestic violence. Judge Million and Ms. Radwanski will present a session on firearms and risk assessment. CIDVC will have a table with materials, staffed by Ms. Radwanski.

### Orders, Enforcement, and Access

Judge Carol Scott Berry reported that CIDVC's OEA Workgroup has finished its work on the remote protective order guides. Work on bench cards for ex parte hearings will continue. The workgroup has decided to do two bench cards, one for judges and one for the parties involved in the case. The judge's card will be formatted to match other bench cards created by CIDVC. The workgroup is asking other judicial members of the committee for suggestions and advice on this card. For the card for parties, workgroup members will each write a section of the bench card, based on their area of expertise: Judge Berry—courts; Tracy

Wilkinson—law enforcement; Jessye Johnson and Whitney Walker—advocates; Patricia Madsen—attorneys; and Rebecca Strickland—prosecutors.

### **CIDVC-COVIC-ADC Workgroup**

Judge Bayardi is leading this workgroup in conjunction with the Commission on Victims in the Courts (COVIC) and the Arizona Department of Corrections (ADC). The purpose is for courts to understand the process for having protective orders served on inmates in ADC custody so that information can be shared with plaintiffs. Judge Million recommended developing a best practices guide for statewide distribution.

### **Risk Assessment Workgroup**

Judge Bayardi reported that the workgroup has plans to create a bench card for proper use of the lethality assessment. The workgroup would also like to put together information for judges about non-photographable or non-visible signs and symptoms of strangulation.

### **Firearms Workgroup**

This workgroup, led by Judge Million, is focusing on the topic of firearms surrender and Orders of Protection. Judge Million reported that she and the domestic court coordinator at her court developed some forms that were introduced during a meeting with prosecutors, defense attorneys, and law enforcement officers. At that meeting, a concern was raised that their form could pose a Fifth Amendment issue if it required a defendant to admit possession, or lack thereof, of a firearm. Work to revise the form will continue.

Judge Berry asked whether defendants are actually turning in guns. Judge Million referenced a case she had where the defendant admitted to owning firearms and was told to turn them in to law enforcement. The defendant did not turn in his firearms, the prosecutor was notified, but no further action was taken in regard to the defendant's non-compliance.

## **III. OTHER BUSINESS**

### **A. Announcements/Call to the Public**

- No announcements.
- No one responded to the Call to the Public.

### **B. Next Meeting.** Tuesday, May 8, 2018; 10 a.m.

Arizona State Courts Building, Conference Room 119 A/B  
1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 1:07 pm.

# COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

## Approved Minutes

May 8, 2018; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

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**Present:** Judge Wendy Million (chair), Judge Marianne T. Bayardi, Judge Carol Scott Berry, Judge Statia Hendrix, Whitney Walker (proxy for Jessye Johnson), Patricia Madsen, Dorothy Hastings (proxy for Leah Meyers), Amy Offenber, Judge Wyatt J. Palmer, Sergeant Lauren Pettey, John Raeder III, Judge Bruce Staggs, Chief Terry Young

**Telephonic:** Michelle Chamblee, Diane L. Culin, Deborah Fresquez, Susan Johnson-Molina, Judge Adam Watters

**Absent/Excused:** Lynn Fazz, Anna Harper-Guerrero, Bonnie Lawrie-Higgins, Pearl Puente, Amy Jo Rebenar, Rebecca Strickland, Judge Patricia A. Trebesch, Tracey Wilkinson

**Presenters/Guests:** Lisa Akers, Tucson City Court; Bob Buller, Tempe Police Department; Heather Murphy, AOC director of communications; Bobbi Sudberry, executive director, Kaity's Way; Jessica Swanson, court administrator, Guadalupe Municipal Court; Cindy Trimble, AOC Executive Office

**Administrative Office of the Courts (AOC) Staff:** Theresa Barrett, Kay Radwanski

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The May 8, 2018, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:07 a.m. by Judge Wendy Million, chair.

### B. Current Membership

Judge Million congratulated Judge Marianne T. Bayardi and Diane L. Culin on their reappointment to the committee. She acknowledged the resignations of Captain Jeffrey Newnum and Assistant Chief Mary Roberts and the movement of Sgt. Lauren Pettey to a Law Enforcement Seat on the committee. John Raeder III announced that he is taking a new position outside of the Governor's Office and will be resigning his seat on the committee.

Whitney Walker was introduced as proxy for Jessye Johnson, and Dorothy Hastings was introduced as proxy for Leah Meyers.

### C. Approval of Minutes

The draft minutes from the February 13, 2018, CIDVC meeting were presented for approval.

**Motion:** To approve the February 13, 2018, meeting minutes. **Moved by** Judge Wyatt J. Palmer. **Seconded by** Judge Statia Hendrix. Motion passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. An Introduction to [AzCourtHelp.org](http://AzCourtHelp.org)

Heather Murphy, director of communications, Administrative Office of the Courts (AOC), provided a visual demonstration of the key features of the [AzCourtHelp.org](http://AzCourtHelp.org) website. Ms. Murphy provided information on its creation, necessity, and progress.

- [AzCourtHelp.org](http://AzCourtHelp.org) is a virtual legal resource center and can be accessed through this website address from anywhere in the world.
- The website has won national and international awards for the use of technology to improve the businesses of justice.
- It was created to address the issue of access to justice in Arizona. This site helps provide resources for self-represented litigants to prepare for their cases.
- The site also addresses topics outside the state court jurisdiction, such as immigration. It was built to be a comprehensive domain of legal information and resources.
- [AzCourtHelp.org/public-events](http://AzCourtHelp.org/public-events) provides online webinars. The site is optimized for any kind of laptop, tablet or smart phone.
- The site also provides legal glossaries, court forms, Frequently Asked Questions (FAQs), and browse-by-topic sections.
- Live Chat is staffed 18 hours a week by five volunteer law librarians, with plans to grow this feature.
- Find My Court provides accepted methods of payment at courts, parking and security information, language and disability access, and hours and holidays. For some of the courts, photos and visual tours are also provided, with more to come.
- Changeable font sizes, screen reading technology for those with visual impairments, and videos in both English and Spanish with compatibility to Google Translate for more language options are available to increase accessibility.
- The site does not use cookies and, as an added form of security, will not “track” users.

AZCourtHelp.org, is a collaboration among the AOC, the Arizona Commission on Access to Justice, and the State Bar Foundation for Legal Services & Education, and in partnership with Coconino County, the Department of Economic Security, and the Arizona Attorney General's Office. Attendees were provided with a package of AzCourtHelp.org materials, along with a form and email to request additional supplies.

## B. 2019 – 2024 Strategic Agenda

Cindy Trimble, AOC Executive Office, appeared on behalf of Vice Chief Justice Brutinel to discuss efforts for the Judicial Branch's next strategic agenda. She provided an overview of the Supreme Court's strategic planning process and requested assistance with ideas and suggestions for the upcoming strategic agenda.

Ms. Trimble would like to receive input on the new strategic agenda on or before June 4. The executive office would like to have the information together to present to the Arizona Judicial Council (AJC) meeting in mid-June. The AJC will be asked to approve a draft strategic plan in either October or December. Work on graphics, organization, binding, and marketing will begin between the beginning of next year and June, with the agenda being announced at the AJC meeting in June 2019.

The committee discussed the issues that they have been working on to come up with recommendations for the strategic agenda.

- Current issues being worked on:
  - HB2249 has been passed and will become effective in 2020, resulting in changes to the service process for Injunctions Against Harassment and Orders of Protection. Changes to ARPOP and the forms will also be necessary because of the passage of HB2249.
  - Training and education for the judges with the suggestion to create more bench guides.
  - Increasing accessibility of the Judiciary to domestic violence victims.
  - More training for court staff on topics such as stalking, domestic violence, and protective orders.
  - Domestic violence offender treatment standards.
- Suggestions from members included:
  - Full faith and credit of orders of protection especially regarding tribal jurisdictions and working collaboratively with them.
  - Prohibited possessors, firearms, and Orders of Protection:
    - Follow-up consequences for prohibited possessors.
    - Focus on lower level offenders by the U.S. Justice Department.
    - Possible connection with the US Attorney's Office.
  - Mandatory domestic violence training for family court and *pro tem* judges and court staff.

Judge Million asked Kay Radwanski to compile the information provided into a document to be presented to the AJC as the CIDVC recommendations.

### C. Firearms Surrender in Domestic Violence Cases

Judge Million and Lisa Akers, domestic violence court coordinator, Tucson City Court, presented the Tucson Firearms Surrender form developed for DV court and also spoke about the process and community coordination behind Tucson City Court's program.

The forms were developed as a new protocol to assist in fixing the gaps in defendant firearm surrender cases. Forms from several counties and states were used as models. Judge Million and Mrs. Akers also met with the Tucson City Prosecutor's Office, the Pima County Adult Probation Office, Emerge! Center Against Domestic Abuse, the Tucson Police Department (Lt. Colin King and Sgt. Lauren Pettey), two private defense attorneys, and the judicial ethics person for suggestions and feedback during development. Forms include:

- Order to Surrender Firearm;
- Proof of Surrender;
- Firearms Return Instructions policy;
- Firearms Surrender Instructions;
- Affidavit of 3<sup>rd</sup> Party Transfer of Weapons;
- Order of Release of Firearms.

Judge Million asked the CIDVC Firearms Workgroup, using Tucson's forms as a template, to develop best practices forms for statewide use and make them adaptable for protective order hearings.

Issues brought up during the discussion included:

- The defendant must admit to owning firearms, the prosecutors must let the court know that guns are seized at the time of arrest, or there must be mention of firearms in the probable cause statement for a judge to issue an order prohibiting guns for the duration of the case.
- A defendant's failure to comply with an order to surrender firearms is insufficient for a search. If the defendant admits to having to surrender, but does not do so, then the defendant could be subject to further charges.
- The process of having a defendant say under oath or sign that the defendant does not have any guns has been removed. A defense attorney would not advise a client to do so, as it is a possible Fifth Amendment violation.
- Police say they have no storage space to hold surrendered firearms.
- Surrendering firearms to a family member is not the best option.

It was suggested that CIDVC develop bench cards and forms to get other courts thinking about what they can do and how they can adapt it to their jurisdictions.

#### **D. Legislative and Protective Orders – HB 2249**

Kay Radwanski provided information on the passage of HB2249, which passed through the legislature with little discussion and almost no opposition. The bill has a delayed effective date of January 1, 2020, and it will affect protective order forms and ARPOP rules. A petition to amend ARPOP must be filed by January 10, 2019, to be heard in August 2019, with modified rules becoming effective concurrently with HB 2249 in January 2020.

The statutory revisions in HB2249 include changes to service, reporting to the National Crime Information Center (NCIC), cloud-based petitions, extended duration of Emergency Orders of Protection (EOP), and plaintiff address confidentiality.

When the revised law takes effect in 2020, each court will become responsible for sending the order to the appropriate agency for service. The timeframe for doing so is unclear, as the word “immediately” was removed from the bill.

The responsibility of reporting and getting Order of Protection (OP) information to NCIC will move from the sheriffs’ offices to the AOC in 2020. The Information Technology Department (ITD) is working on automation to move the current Court Protective Order Repository (CPOR) database to a SQL server. Mr. Raeder was thanked for directing STOP Grant money to this project. ITD will work on an interface to allow data transfer from the AOC to NCIC. This will assist in helping law enforcement agencies anywhere in the country to validate OPs.

HB 2249 reduces the return of service requirement from 7 business days to 72 hours. For this, an electronic web portal has been envisioned so that whoever serves the order can document service and enter it into the system. The system will need to be available to all, as process servers and constables do not have the same access to the Arizona Criminal Justice Information System (ACJIS) as law enforcement officers. The revised statute requires that if service is not completed within 15 days, the serving agency must notify the plaintiff and continue attempting to serve the order until it expires.

Part of the vision going forward is a system that will allow a person to fill out a petition online and send it to “the cloud” for an as yet unspecified time. When the person is ready to file the petition, the person would go to a court and provide a code that was generated when the petition was prepared. The court would retrieve the petition and file it as a court document. And then, as explained, if the court issues the order, the court becomes responsible for sending to the appropriate agency for service

Concerns about an opt out and victim education were mentioned. Under the new process, once an order is issued by the court, the plaintiff loses control of deciding when to submit the order for service on the defendant. This could cause a “chilling effect” among victims, as under current law, the plaintiff has one year to have the order served. CIDVC webpages and education materials will need to be updated to address these concerns.

Duration of EOPs has been extended to 72 hours. Currently, an EOP expires at 5 p.m. on the next judicial business day following its issuance. The revised statute also requires a judge who issues or authorizes the EOP to “document” it, a process that is not defined. As a

procedure to “document” is unclear, CIDVC may want to consider whether to define it by rule or develop a form. With EOPs, law enforcement is still obligated to report it to NCIC.

An additional change is that in OP/IAH cases, the plaintiff’s address will be deemed confidential. Under current statute, the address can be kept confidential only if the defendant does not know it. This eliminates the requirements of the court to make a finding as to whether the address should be kept confidential.

Judge Million proposed that the ARPOP and Forms workgroups merge into one group and meet in July or August to consider rules and forms that will need to be amended in light of this legislation.

### **Form 4(c) Risk Assessment Training**

Ms. Radwanski provided an update on the new Form 4(c) Risk Assessment, part of Rule 41, Rules of Criminal Procedure. Form 4(c) was incorporated into the court rules after a petition was submitted requesting approval of a statewide lethality assessment form. Form 4(c) was adopted and became effective April 2, 2018. The AOC, with assistance from Judge Million, Dr. Neil Websdale (NAU) and Greg Giangobbe (NAU), created a bench card and a one-hour training video on Form 4(c) for judicial officers, which was available two weeks prior to implementation of the form. Other criminal justice partners are also developing videos catering to their specific audiences. Judge Million expressed her concern about how few judges have watched the video.

If law enforcement provides it, a judge must consider Form 4(c) at a person’s initial appearance to help decide release conditions. Use of Form 4(c) by law enforcement is voluntary, as is the victim’s participation. Additional training is necessary as not all agencies understand the voluntariness of the form. CIDVC members were told that the Maricopa County Sheriff’s Office was refusing to book defendants into the county jail unless a Form 4(c) was provided. Theresa Barrett agreed to follow up with court administration to clear up any misunderstanding. Additional explanation to the courts may also follow through a statewide memorandum.

Other issues include transmitting the form from law enforcement to the court in time for the initial appearance. Officers also need to be aware that they should mark the checkbox labeled “declined” if the victim does not wish to participate in the assessment. Judge Million noted that sufficient copies should be provided. The court should retain one in the file, but the state and the defendant are also entitled to have copies.

Judge Hendrix noted that her counterparts in her court equate the use of the risk assessment with the use of a bond or high bond. She believes there is a need for further education to emphasize other options for conditions of release. She also noted this stance can be an issue if the judge’s position is contrary to that of the prosecutor or the victim.

Amy Offenbergh commented that training for prosecutors has been done in individual meetings, and the topic is on the Arizona Prosecuting Attorneys' Advisory Council (APAAC) summer conference agenda.

Mr. Raeder noted that a training contract between the Governor's Office and Dr. Websdale is ongoing and that if there are additional training issues, Dr. Websdale should be contacted for assistance.

## **E. Workgroup Reports**

### **Firearms Workgroup**

This workgroup, led by Judge Million, is focusing on the topic of firearms surrender and Orders of Protection. Sgt. Pettey, Amy Offenber, and Deborah Fresquez volunteered to join the other four members of this group. Judge Million will set a meeting for this workgroup.

### **Risk Assessment Workgroup**

Judge Bayardi, workgroup lead, will be contacting members soon to set up a meeting.

### **Orders, Enforcement, and Access**

Judge Carol Scott Berry reported that CIDVC's OEA Workgroup has finished its work on a bench card for the *ex parte* Order of Protection procedure. It has been designed like the other bench cards and goes step by step through the process. Members reviewed the draft bench card and made several proposed changes. The final form will be laminated and hole punched. This bench card is for all judges, will be handed out at the Judicial Conference, and can be included in the bench book as a resource. It should be part of New Judge Orientation for both limited jurisdiction and superior court judges.

It was noted that Judge Million and Justice Ann Scott Timmer recently recorded a 10-minute podcast about protective orders. Listeners can find the podcast on the [AZ CourtHelp.org](http://AZCourtHelp.org) website. Members discussed the possibility of developing a CIDVC podcast.

### **Protective Order Forms Workgroup and ARPOP**

As the five members of the ARPOP Workgroup are also on the Protective Order Forms Workgroup, these groups will combine. They will meet in July to discuss changes to ARPOP and forms that may be needed as a result of the recently passed legislation.

### **Arizona Department of Corrections Ad Hoc Workgroup**

Judge Bayardi is leading this group. A meeting announcement will be forthcoming.

### **Judicial Education**

Judge Million asked that proposals for speakers for the next judicial conference should submit their suggestions to Judge Bruce Staggs.

Judge Million proposed a new Education workgroup that could develop podcast scripts and also develop educational programs about the courts for presentation in schools. Ms. Walker, Ms. Offenber, Leah Meyers, Ms. Culin, Judge Adam Watters, and Patricia Madsen were proposed for membership in this new workgroup.

## **III. OTHER BUSINESS**

### **A. Announcements/Call to the Public**

- Guests Jessica Swanson, court administrator, Guadalupe Municipal Court, and Detective Bob Buller, Tucson Police Department, were introduced.
- Judge Million spoke about her DV Mentor Court and reminded members that she and the prosecutors are available to travel to speak about it.
- CIDVC's [webpage](#), [AZCourtHelp.org](#), and [AZCourts.gov](#) were mentioned as resources for domestic violence resources.
- No one responded to the Call to the Public.

**B. Next Meeting.** Tuesday, September 11, 2018; 10 a.m.  
Arizona State Courts Building, Conference Room 119 A/B  
1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 12:58 pm.

# COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

## Approved Minutes

September 11, 2018; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

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**Present:** Judge Wendy Million (chair), Judge Carol Scott Berry, Judge Statia Hendrix, Patricia Madsen, Leah Meyers, Amy Offenber, Pearl Puente, Amy Jo Rebenar, Judge Bruce Staggs, Rebecca Strickland, Whitney Walker, Kristi Ward, Tracey Wilkinson, Commander Phillip Johnson (proxy for Chief Terry Young)

**Telephonic:** Judge Marianne T. Bayardi, Michelle Chamblee, Anna Harper-Guerrero, Susan Johnson-Molina, Judge Adam Watters

**Absent/Excused:** Diane L. Culin, Lynn Fazz, Deborah Fresquez, Bonnie Lawrie-Higgins, Officer Christopher Malast, Judge Wyatt J. Palmer, Sergeant Lauren Pettey, Judge Patricia A. Trebesch,

**Presenters/Guests:** Allie Bones, CEO, Arizona Coalition to End Sexual and Domestic Violence; Nichole Ciriello Intern at Arizona Coalition to End Sexual and Domestic Violence; John Costello, student, ASU; Dr. Alesha Durfee, Arizona State University; Catherine Gaudreau; Michele Gillich, AOC ITD Architecture Project Manager; Amy Love, AOC Deputy Director, Paul Thomas, Court Administrator, Mesa Municipal Court

**Administrative Office of the Courts (AOC) Staff:** Theresa Barrett, Angela Pennington, Kay Radwanski

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The September 11, 2018, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:07 a.m. by Judge Wendy Million, chair.

### B. Current Membership

Judge Million welcomed Kristi Ward, Whitney Walker and Officer Christopher Malast on their appointment to the committee and congratulated Deborah Fresquez on her reappointment. She also introduced Commander Phillip Johnson as proxy for Chief Terry Young.

The committee introduced themselves for benefit of presenters and guests.

### C. Approval of Minutes

The draft minutes from the February 13, 2018, CIDVC meeting were presented for approval at 10:55 am after a quorum was reached. Judge Carol Scott Berry asked for the minutes to be corrected to show that she was present.

**Motion:** To approve the February 13, 2018, meeting minutes with the correction. **Moved by** Judge Statia Hendrix. **Seconded by:** Amy Offenburg. Motion passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. ASU Protection Order Study

Dr. Alesha Durfee provide a summary of a three-year ASU Protection Order study, which was funded by the National Institute of Justice through a Researcher-Practitioner Partnership Grant. The study is called Investigating the Impact of Institutional and Contextual Factors on Protection Order Decision-Making. Dr. Durfee has brought the information gleaned from the data to CIDVC to give an overview of the findings, and to get the committee's opinion on what information they consider important.

The study produced two main quantitative data sets: DV-POD, Domestic Violence Protection Order Data and DV-CIP, Domestic Violence Court Institutional Practices.

DV-POD consists of:

- 1,388 randomly selected Protection Order Cases from 7 participating municipal courts in 2015.
- Information culled from the orders included:
  - What the order asked for.
  - What the order granted.
  - Demographic characteristics.
  - The distance to the courthouse the order was filed in.
    - Arizona is the only state in the country that allows for a waiver of jurisdiction for Orders of Protection.
      - Data shows that plaintiffs and plaintiff's advocates are using this as a safety measure.
      - It is possible that other states could follow suit.
- Data was merged with administrative data from the Administrative Office of the Courts (AOC), the 2015 American Community Survey
  - to compare to census tracked information to determine language proficiency and income equality.

The DV-CIP is a survey about the formal and informal practices of the seven participating courts.

Qualitative data came from the DV-IS, Domestic Violence Interview Survey.

- 80 audio recorded and then transcribed interviews conducted between 2016-2017.

- Interviewees included judges, clerks, police officers, legal and domestic violence advocates and former petitioners.
  - Petitioners volunteered and were not the same ones as used for the quantitative data for safety reasons.

Opened up the survey to all domestic relationships. Did have women filing against women and men filing against men. Not a hetero normative dynamic. African Americans were overrepresented in the data set. Asian Pacific Islander, Native American, Alaskan Native, underrepresented. Data set was not limited to intimate partners, used the legal definition of abuse. Increases in electronic or technological abuse. Percentage that reported sexual abuse very low. Could be underrepresented due to the public nature of the filing and hearing. A change in venue to a more private setting could show an increase in numbers. Formal system contact, can it (police report/witness statement) be used instead of having to complete the narrative which the survey shows judges, advocates, etc say is very traumatic for the plaintiff? Question on the form, all on one line, have you or the defendant been charge with, arrested for, or filed for a protection of order? Contradictory. Only checked yes or no, does not distinguish who or what. Use the information to adjust provisions of the orders granted. Underreporting of guns and weapons – is there another way to illicit this information from the plaintiffs? Legal terminology on the forms was confusing, what to complete, how and what to put where. Narratives are difficult for plaintiffs to write and for them to adjudicate. More training Forms and instructions – private location – concise and comprehensive information. How can clerks assist without violating their role as they cannot give legal advice. Series of 2 – 6 minute videos for judges. CIDVC may avail themselves of ASU’s resources to complete. Coordinating service causes undue burden. Either cannot serve, or serves but jeopardizes the plaintiff’s safety. Email system to serve whenever convenient. Final summary report – sent out by end of year. What would be most useful to CIDVC from the information just presented to be put into an executive summary what kind of fact sheets for funding or education for staff or public policy recommendations from CIDVC and the Coalition and creating a series of training modules and powerpoints. National Center for Courts will be taking the analyses, creating CourTools (NCSC) and disseminating the results nationally. They will be doing a series of articles and also a researcher practitioner report.

Questions asked – courts were asked specifically about their cases. Advocacy – 40% low, current role is too constrained as seen by an overview of the policies, not necessarily plaintiff testimony. Rewriting rules of protective order procedure. What do you think is confusing about the forms to cover what was found in the study. LE training – initial call and especially repeated calls – frustration. Plaintiff’s did not have full info when going to the court. One pd had Bottom of the carbon copy was all blacked out except for the cells with the defendant’s info, address, license, etc. and that meant they had it for service also. Possible to do a mini survey for courts to assess themselves to better serve the public? NSCS will do that (CourTools info) National institute of justice very interested in continuing, could possibly do studies on superior or rural, etc. service of orders? Came up quite a bit. Service is key issue – 2 areas, process to obtain and service not enough study. Most studies are judicial decision making. Those areas are larger barriers. Advocates – employed by gov’t vs non-profit?

## B. Domestic Violence and the Family Court System

Allie Bones, CEO Arizona Coalition to End Sexual and Domestic Violence. Dwight Jones case. NCJFCJ Battered women's justice project Domestic Violence within the family court system Jennifer Arsenian with the NCJFCJ talking about their family court enhancement project Multiyear enhancement over 4 years David Keck from National Center the Battered Women's Justice Project. Speaking about family court.

Allie – Here in response to the incidences involving Dwight Jones. Since those incidences, several questions have been raised about the family court's responses to their divorce and custody cases. Not really the usual subject for CIDVC, but in the absence of a Supreme Court committee such as the Domestic Relations Committee, this is the most appropriate venue for these discussions.

Jennifer Arsenian are going to discuss their Family Court Enhancement project. David Keck will speak about firearms restrictions. Focus is being put on

- Domestic violence in the family court system has long been an issue.
- Domestic violence is no longer a private family matter
  - Allegations must be taken seriously
  - Some attorneys are advising their clients to not bring up dv issues, as the court does not like these issues.
  - Information gathered from victims says they hear many bad things and that the court is unsympathetic to victims.
- Specific recommendations from the coalition include:
  - More training for all that are involved in the family court system
    - Training needs to be more universal.
  - Risk Assessments, look at more comprehensive risk
    - Risk to the victim and also to the community
    - Loss of control can contribute to escalation.
  - Call to action to receive feedback from all points in the system.
    - All points include criminal courts, orders of protections, and family court and communications between the different dockets.

Jennifer Arsenian speaks about the National Council of Juvenile and Family Court Judges' Family Court Enhancement Project. Multi-year demonstration project funded through the Office of violence against women and dept of justice 4 sites around the country – Cook County, IL; Hennepin County, MN; Multnomah County, OR; and Delaware, the whole state due to its size. Four sites have been working for over 4 years child related relief in the context of civil protection orders or custody cases and determining ways to improve their system. Each site was provided as a demonstrations site and were assigned a technical assistance team. They were also provided with a mentor judge. Goal of the project is to improve the family

court response to custody cases and parenting decisions involving dv so that any resulting parenting arrangements protect the emotional well-being of the victimized parent and the children. The project functioned under foundation of 5 values: safety and wellbeing of children and parents; access to justice; due process; collaboration; accountability and transparency. Multi-disciplinary team to think about existing barriers and gaps. Looking at ways to gather info, both stakeholders and litigants. What are safety concerns, what is the communication like amongst the system, where are the barriers to litigants, and what are our enforcement problems? Litigant and stakeholder surveys, listening surveys with the community, case data and files, mapping activities through the eyes of the litigant. Ongoing avenues for people to provide feedback on the system. Systemic changes. Minn: created a specialized court calendar – Order of Protection/Child-related relief calendar and outreach to the native communities. Multnomah county: ongoing training for all court staff, family practitioners and stakeholders on procedural justice and trauma informed response. Training has helped to identify particular issues such as developing new and revising current screening and assessment tools. Also did a lot of work around SRL access to info, ensuring they had a court system people could navigate and increase the ability of litigants to navigate the system. Cook County, IL: Civil protection order process designed a process that uses a highly skilled and trained child relief expeditor. Also looked at ensuring they were doing outreach for ESL litigants using bilingual staff and translated forms. Delaware: looked at the court rules and procedures and were able to make changes that increased access to child related relief in both the civil protection order and custody systems. Increased the number of dockets, protection from abuse/civil protection order and also made changes to their rules to reduce barriers that existed between the civil protection order system and the child custody system for better communication. Their focus with these changes was access to justice, and they are still continuing to identify and continuing to assess this issue.

All of the sites did info gathering around what are the barriers for SRL or what are the barriers preventing victims from seeking necessary child related relief. All sites worked on SRL materials: videos, SRL packets, revised forms, signage in courthouse for navigation. Courts also look at community outreach and awareness of programs; dedicated more court time where needed for SRL; and creating partnerships for in court services.

Improvement of relationships through the collaboration of family enhancement program and understood better the need for a nuanced response to meet the needs of the litigants and their children. At the “lessons learned” stage. Taking results found/technical assistance, examining and culling the information to producing different documents, trainings, curricula and a presenting that through a family court enhancement website which will be launched in 2019. Key lessons any process needs to be a deliberate process with a wide range of stakeholders and have an ongoing mechanism to ensure litigants voices are heard and safety for victim parents and the children.

David Keck director of the national center on domestic violence and firearms thru the battered women’s justice project. He did go over the statutory schemes for protection order specifically with respect to firearms surrender. Looked over recommendations that came out of the Tucson project – has some specific observations. Talk about issue of getting info

about firearms from the petitioners. Done in some jurisdictions, but not always. Unfair to place the burden or focus about firearms on the petitioner. Can put the victim in danger. Frequently observed, petitioner is in best position to give info, but defendant will know where it came from. Need to get info in a confidential manner, respect the victim's autonomy and their right to decline to answer.

Opinion – the protection order/firearms protocols that are being used around the country have 3 important components that lead to the effectiveness of the protocols.

The process – at the time the decision is made about the protective order, the court is in the position to assess under state and federal laws whether the defendant can be required to no longer possess or purchase firearms, and in Arizona, a discretionary decision about firearms surrender.

The 2<sup>nd</sup> component – determine whether or not the defendant possesses firearms. Doesn't help to ask defendant – can assert 5<sup>th</sup> amendment rights. Other jurisdictions have gotten around this by granting use immunity for that statement. (Minn – statutory – any statement that a respondent or defendant makes in a hearing cannot be used against them in any other proceeding.) If granted immunity, negates the use of the 5<sup>th</sup> amendment. Other jurisdictions consider it an “involuntary statement” and involuntary statements can't be used for any other purpose. Must decide which is the priority - t firearm surrender or prosecution of illegal possession of firearms.

Final step is to order surrender of firearms, but also ensure compliance. One very effective method used around the country is a compliance hearing. During the original hearing when the surrender is ordered, approx. a week later the defendant has to come back and show cause if he has not complied. Short, can be canceled if shows proof of surrender.

Other issues important – differences in the authorities made responsible for firearm surrender. Some use probation and parole, others law enforcement. Order of protection is not a criminal case, but in a case with an order to surrender and/or a compliance hearing, the court still has jurisdiction over the defendant. Protection order hearings also have a due process element whenever you're talking about firearms. Under federal law if the protection order meets the federal requirements, then the defendant isn't allowed to own a firearm or ammunition. Other issue identified in report was storage. However, towns and cities with firearm surrender programs do not seem to have an issue with storage. Can be looked at in the future if it does become an issue.

Modifications for those victims that want one, don't want one, want one, etc.

Discussion took place in the form of comments, suggestions, and questions. Suggestions included:

Allie – no magic wand would CIDVC be willing to create a workgroup or subcommittee to assist. Can use technical assist from NCJFCS and BWJP.

WM – can we get the training from Oregon. Would like to use for a push for mandatory dv training. JA - is willing to provide the information and contact to Amanda Kay, the tech assist for that site.

Court processes can facilitate risk. Need to have conversations about coercive/controlling behavior. Does training exist so that judges understand they can consider things other than a police report. Need to improve responses.

Carol Scott Berry – would like to receive information, forms, etc. on firearms surrender for her court. David Keck replies – have Wisconsin forms and is willing to consult. Wisconsin amended their statute – possible here could help. Compliance hearing – can find in contempt if not

Judge million – has requested from Chief Justice Bales family court judges and a family court attorney positions on the committee to assist with the buy in from family court.

### **C. AZ Statewide Protective Order Project – 2020**

Michele Gillich, ITD Architecture Project Manager and Robert Roll, Technical Lead for the Protective Order system gave a brief overview of the technological changes coming to the AOC based on the passage of House Bill 2249. We will be automate the process for 4 different orders of protection. We are changing the system based on legislative changes. 2020 AOC will officially become the holder of records and sending them to NCIC, it will no longer be the law enforcement offices. Servicing agency will have only 72 hours vs 7 days to return the service to the court. Project phases:

1. Public portal to allow electronic filing online court electronic cms system
2. Integration from the court electronic file manager (efm) any court in az can accept the
3. Allow transference to the AOC Central Case Repository for transmission of service
4. Service to law enforcement
5. Notification of service: Law enforcement provides service and will provide notifications of service to court and plaintiff
6. AOC transmission to DPS to serve to NCIC

Currently being built is the public portal is being built so that anywhere you have internet access you can file. Hoping to have beta testing available in July 2019. Will sit in cloud until ready – more pressure for advocates as go from courthouse. Judge Million – escape button – yes, save and abort, safety first. Will be working with Kay on the policy for modifications and processes if petitioner is at the courthouse, once turned into the clerk submitted, it is accepted. Mark Peeples from ACJC funding available for courts that need kiosks. Still working on the actual process with law enforcement. Will offer the system to law enforcement ( a web portal or a direct service to the AOC) will depend on what technology the law enforcement has still working on authorizations, etc. Working with DPS on notifications to

make sure law enforcement is checking for and receiving notifications Still able to use paper filings.

#### **D. Workgroup Reports**

Million: the discussion by the speakers are the same things that we have been discussing, but would like to see the committee solidify plans, maybe change workgroups. Would like to wait for recommendations from a study committee currently underway (Jones situation). Would like to ask/recommend for judges' mandatory dv training and to have a couple of family law judges join the committee.

#### **Risk Assessment Workgroup**

Judge Bayardi, workgroup lead, had meeting. Decided to create a comprehensive system map for how OP work. Basic flow chart but Would like to bring in the different personnel clerk, judge, advocate, law enforcement which handle each step to assist with process to create a system map

Judge million wants to do a bench briefing on the form 4? Hopes the committee will be able to come up with something like a bench card for this project.

#### **Orders, Enforcement, and Access**

Judge Carol Scott Berry mentioned the OEA Workgroup's last project, a bench card for the *ex parte* Order of Protection procedure. It was brought up that contested hearings would be the next logical bench card to be produced. The bench card was offered to the committee for use in their offices.

Discussed the Judicial Conference CIDVC sponsored 2 sessions at the 2018 Judicial Conference, one on Domestic Violence, gun laws and risk assessment present by kay and judge million and the other was on the neurobiology of domestic violence presented by Dr. Christopher Wilson from Oregon. Dr. Wilson will be speaking at the Arizona Coalition for Victims Services 02/2019. It was recommended that the committee members attend.

#### **Protective Order Forms Workgroup and ARPOP**

The ARPOP Workgroup is working on their forms but is waiting for a draft of the ARPOP rules from Judge Million in light of HB2249. The group will come up with a draft and then send a question to Dr. Durfee about what people hated about the forms and compare it to what they've done. Discussion about some of the changes that have been made.

#### **Judicial Education**

Recommendations to assist in deciding what the next judicial conference subject should be. Only new one prevent child abuse from adverse childhood experiences, dr websdale on the risk assessment tool, sex trafficking, dr cardenas from barrow on traumatic brain injury, David keck from the battered women's justice project and dr Wilson trauma informed

courtroom. Let's wait for a couple months until after the conference judge million will be attending. Discussion to continue at November's meeting.

### **CIDVC/COVIC/ADC Ad Hoc Workgroup**

Judges Million and Bayardi are working their way the Protective Orders at DOC issue. Will discuss with corrections officers How to get them served, etc. come up with information for advocates and separate for judges and court staff

### **Firearms Worgroup**

Will be submitting forms to the committee for scrubbing to make them more universal. Amy Love offered her assistance for this project.

### **Arizona Department of Corrections Ad Hoc Workgroup**

Judge Bayardi is leading this group. A meeting announcement will be forthcoming.

## **III. OTHER BUSINESS**

### **A. Announcements/Call to the Public**

- Meeting dates for 2019 were given to the committee members.
- No one responded to the Call to the Public.

### **B. Next Meeting.** Tuesday, November 13, 2018; 10 a.m. Arizona State Courts Building, Conference Room 119 A/B 1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 12:45 pm.

# COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS

## Approved Minutes

November 13, 2018; 10:00 a.m.

Arizona State Courts Building

Conference Room 119A/B

1501 W. Washington Street, Phoenix, AZ 85007

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**Present:** Judge Wendy Million (chair), Judge Marianne T. Bayardi, Judge Carol Scott Berry, Diane L. Culin, Judge Statia Hendrix, Patricia Madsen, Officer Christopher Malast, Amy Offenberg, Judge Wyatt J. Palmer, Sergeant Lauren Pettey, Pearl Puente, Whitney Walker, Kristi Ward, Chief Terry Young

**Telephonic:** Michelle Chamblee, Lynn Fazz, Deborah Fresquez, Susan Johnson-Molina, Judge Bruce Staggs, Judge Patricia A. Trebesch

**Absent/Excused:** Anna Harper-Guerrero, Bonnie Lawrie-Higgins, Leah Meyers, Rebecca Strickland, Judge Adam Watters, Tracey Wilkinson

**Presenters/Guests:** Detective Billy Fisher, Tucson Police Department Domestic Violence Unit; Judge Catherine Gaudreau, Surprise City Court; Trinidad Gullet, AOC ITD; Dr. Glynnis Zieman, Barrow Institute

**Administrative Office of the Courts (AOC) Staff:** Angela Pennington, Kay Radwanski

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The September 11, 2018, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) was called to order at 10:06 a.m. by Judge Wendy Million, chair. Guests Detective Billy Fisher and Judge Catherine Gaudreau were introduced, and new member Officer Christopher Malast introduced himself to the committee.

### B. Approval of Minutes

The draft minutes from the September 11, 2018, CIDVC meeting were presented for approval

**Motion:** To approve the September 11, 2018, meeting minutes as presented. **Moved by:** Diane Culin. **Seconded by:** Judge Carol Scott Berry. Motion passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Arizona Protective Orders 2020

#### a. Update on public web portal

Trinidad Gullet, AOC ITD, was introduced by Kay Radwanski. Ms. Gullet and Ms. Radwanski have been working together on the public portal through which plaintiffs will be able to complete petitions for protective orders.

With the passage of [HB2249](#) in 2018, the Supreme Court will become the central repository for Orders of Protection and injunctions effective January 1, 2020. Ms. Gullet explained that interfaces will be built to allow AJACS, the case management system supported by the Administrative Office of the Courts (AOC), and systems used by law enforcement agencies to “speak” to each other. Changes to the protective order forms need to be addressed. CIDVC had approved changes to some of the forms, but those proposals were delayed while HB2249 was moving through the legislative process. Glendale City Court has agreed to pilot the web portal beginning July 2019. A signed directive or administrative order will need to be in place to allow Glendale to use modified forms prior to full implementation in 2020. This provides an opportunity for comments and improvements before the deadline start date.

Whitney Walker, Judge Marianne Bayardi, Amy Offenburg, Ms. Culin, Officer Malast, and Patricia Madsen volunteered to review the portal interface as the developer creates it.

Discussion included:

- Whether the portal will be available in different formats (e.g., laptop, tablet, or smartphone). Ms. Gullett indicated that the developer will be asked to design it for these formats.
- Plaintiffs are not required to file petitions through the portal. Paper forms will be available at courthouses. However, court staff will have to enter data manually from the petition to create a case in the case management system. If granted, the petition and the order would then move into the service portal for access by law enforcement.
- Service of the Order of Protection.
  - The revised statute requires law enforcement must continue to try to serve the defendant throughout the year that the OP can be served. A question was raised regarding the plaintiff’s ability to dismiss the OP and stop service attempts. The plaintiff would need a court dismissal, and the court would need to alert law enforcement to cease service attempts.
  - In the portal, the plaintiff will answer questions that will populate the Service of Process Information form. On this form, the plaintiff can indicate times and places where the defendant likely can be served. A suggestion also was made to add a line for the name of a probation officer for those defendants who are on probation.

- A law enforcement agency will be able to contract with a process server to perform service on its behalf. A web-based service portal would need to be accessible to process servers and constables because they do not have access to the Arizona Criminal Justice Information Service (ACJIS), as do sworn law enforcement officers.
- The service portal should be designed to work as close to real time as possible, updating approximately every 15 minutes.
- Law enforcement agencies will have to develop policies on how they will manage cross-jurisdictional service.
- The service portal is not being designed to function as a victim notification system. But ARS § 13-3602, as revised, allows for use of a victim notification system if it becomes available.
- The service portal will be a statewide system. ITD is currently working on interfaces so all agencies can access it. It was suggested that the interface have a home page so that law enforcement agencies could access linked pages to document attempts at service, transfer of service, and a notification to plaintiff option.
- Judge Million noted the need for checklists for each agency that could be involved in service (e.g., law enforcement, victim advocacy, lawyer, etc.) to assist them in the process.
- The need to encourage plaintiffs to speak to victim advocates before beginning the process was emphasized. Also, the need for training for everyone involved in the protective order process was noted.

**b. Changes to protective order forms**

The committee discussed proposed changes to the Plaintiff’s Information Sheet, the Plaintiff’s Guide Sheet, the Defendant’s Guide Sheet, the general petition, and the Notice of Brady Indicator.

The discrepancy between question 3 on the current petition form and the Order of Protection statute was discussed. Question 3 reads, *“Have you or the defendant been charged or arrested for domestic violence OR requested a protective order?”* ARS § 13-3602(C)(5) requires the plaintiff to provide the “name of the court in which any prior or pending proceeding or order was sought or issued concerning the conduct that is sought to be restrained.” It was suggested that question 3 be replaced with: *“Name of court, if any in which any other protective order related to this conduct has been filed,”* adding a line for the name of the court and the case number.

The title of the Notice to Sheriff of Brady Indicator will be changed as the form will no longer go to the sheriff after January 1, 2020. Bullet points will be added to the two elements (restraints on conduct and explicit language prohibiting use of force) that are applicable to every Order of Protection. Other changes were recommended and noted.

**c. Amendment to ARPOP rules**

The committee intends to file a petition asking the Supreme Court to adopt changes to the Arizona Rules of Protective Order Procedure (ARPOP). The petition must be filed by January 10, 2019. Proposed changes were discussed. In addition to changes needed for HB2249 implementation, the Ad Hoc Committee on Rules of Evidence asked CIDVC to consider amending Rule 36 to mirror the family law rule on evidence. Also, an amendment will be proposed to Rule 42, ARPOP, to clarify that Orders of Protections and the two harassment injunctions are not subject to Rule 54(c), Rules of Civil Procedure, or Rule 78(c), Rules of Family Law Procedure. The two divisions of the Court of Appeals handle protective order appeals differently, with Division 1 accepting them as final and appealable and Division 2 rejecting them because the orders do not have Rule 54(c) language.

**Motion:** Approval to move the forms forward with revisions discussed at this meeting. **Moved by:** Judge Wyatt Palmer. **Seconded by:** Ms. Offenberg. Motion passed unanimously.

**Motion:** Authorization for Judge Million to finalize changes to ARPOP and file the petition on CIDVC's behalf. **Moved by:** Judge Palmer. **Seconded by:** Ms. Culin. Motion passed unanimously.

**B. ARPOP Rule Change Proposal from the Justice of the Peace Association**

Judge Bruce Staggs discussed a rule change proposal that the Justice of the Peace Association asked him to share with CIDVC. The association's proposal would require a limited jurisdiction court to transfer an Injunction Against Harassment to superior court under certain circumstances. The example provided is when a former spouse petitions for an injunction against the ex-spouse's new partner, asking the court to prevent the new partner from having contact with the mutual children of the ex-spouses. This prohibition could affect the parenting time rights of the ex-spouse who is involved with the new partner.

Judge Million explained that the issue has been discussed before and that the superior court does not want the injunctions to be transferred because they do not involve the same parties in the family law case. Judge Million said that this request does not often actually involve domestic violence and is not necessarily related to the purpose of this committee, as such the committee should not take a position. After further discussion, it was decided that the committee would remain neutral on this proposition.

**C. Discussion – Rule Petition R-18-0035 and Order Granting Expedited Adoption**

Ms. Radwanski provided an overview of Rule 15.3(a), Rules of Criminal Procedure, which was revised in 2018. This revised rule was not thought to be a substantive change, but it has been interpreted by some judges to mean that a victim cannot be deposed by the prosecutor or the defendant. As a result, prosecutors have had to dismiss some cases.

The Arizona Prosecuting Attorneys Advisory Council (APAAC) filed an emergency petition to revert to the previous rule, which the Supreme Court granted on an expedited basis, but the petition is open for comment. Judge Ron Reinstein, chair of the Commission on Victims in

the Court (COVIC), advised CIDVC of the issue. After discussion, CIDVC members agreed that any comment to the petition made by COVIC would be sufficient.

#### **D. Case Law Update: *Alma S. v DCS***

Ms. Radwanski provided a review of *Alma C. v. DCS* (249 Ariz. 146, 2018). In this case, the Arizona Supreme Court opinion affirmed the Juvenile Court's decision to sever a mother's parental rights and vacated a decision from the Court of Appeals. The Supreme Court's decision was based on an analysis of the steps taken to sever the mother's parental rights. It was held that the Juvenile Court's decision was supported by clear and convincing that severance of her parent rights was in the children's best interests. Ms. Radwanski explained that this case is important because often it is victims of domestic violence who cannot protect themselves or their children. Failure to protect a child puts parental rights at risk.

#### **E. Domestic Violence Training for Judges and Court Staff**

CIDVC, through Judge Million, has provided several proposals to the AOC's Education Services Division for the 2019 Judicial Conference. They are:

- A session on domestic violence and mass shootings with Dr. Neil Websdale (NAU) and Dr. Virgil Hancock (University of Arizona).
- An exercise that will allow each participant to play the role of a domestic violence victim to help understand how experiencing domestic violence trauma can affect decision making.
- A plenary session by Dr. Christopher Wilson on the trauma-informed courtroom.

Judge Million suggested that training on the H2249 changes be implemented before 2020. She also suggested production of bench briefings with other committee members and to repeat the Train the Trainer event with representatives from different disciplines.

#### **F. Workgroup Reports**

Judge Million advised that Judge Statia Hendrix will lead a new workgroup that will be responsible for work on checklists for the new protective order procedures. Judge Million would like representatives from each: law enforcement, prosecution, and advocacy.

##### **Orders, Enforcement, and Access**

Judge Carol Scott Berry reported that the group met on November 7 to discuss future projects, including the drafting of a bench card on contested hearings and pre-issuance hearings. Workgroup member Judge Catherine Gaudreau, Surprise City Court, has volunteered to create a draft. Judge Berry also reported on efforts to circulate the bench cards more widely. The AOC publication, "Things You Should know about Protective Orders," also will be updated.

## **G. Domestic Violence Victims and Traumatic Brain Injury**

Dr. Glynnis Zieman, a neurologist from the Barrow Concussion and Brain Injury Center, discussed brain injuries and how her program treats traumatic brain injury in patients who have experienced domestic violence. She discussed the signs and symptoms of brain injury, classifications of brain injuries, groups most prone to brain injury, and the most prevalent causes. She talked about treatments that are used at the Barrow Concussion and Brain Injury Center. Dr. Zieman noted that there are few studies on injuries and domestic violence because of underreporting and the victims not seeking out care.

Dr. Zieman, Ashley Bridwell, a social worker at Barrow, and another colleague opened a clinic for the lower-income population at the center. Referrals come from domestic violence and homeless shelters that work in conjunction with the clinic.

## **III. OTHER BUSINESS**

### **A. Announcements/Call to the Public**

- Judge Million and Ms. Radwanski updated the Domestic Violence and Protective Order Bench Book at the request of the AOC's Education Services Division. The bench book is available to judges through the AOC's Wendell website.
- Judge Million, Judge Hendrix, and Ms. Radwanski participated in a webinar for the National Association for Court Management (NACM). They were part of a nationwide team that recently updated NACM's 2017 mini-guide titled *A Guide to Domestic Violence Cases*.
- No one responded to the Call to the Public.

### **B. Next Meeting.** Tuesday, February 12, 2019; 10 a.m. Arizona State Courts Building, Conference Room 119 A/B 1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 1:40 pm.