

Commission on Victims in the Courts

Friday, January 25, 2013

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

Approved: 5/17/13

Present: Judge Ronald Reinstein, Chair; Michael Breeze, Judge Peter Cahill, Dr. Kathryn Coffman, Sydney Davis, Karen Duffy, Captain Larry Farnsworth, Judge Elizabeth Finn, Kirstin Flores, Leslie James, Keli Luther, Judge Evelyn Marez, Judge Anna Montoya-Paez-*telephonically*, Pam Moreton, Elizabeth Ortiz, Doug Pilcher, Judge Richard Weiss, Chief Cindy Winn

Absent/Excused: James Belanger, Shelly Corzo Shaffer, Jim Markey, Judge William O'Neil, Judge Antonio Riojas Jr., and JoAnn Del Colle.

Presenters/Guests: Renee Werner, MCSO Victims Unit; Kathleen Cheechi, MCSO Victims Unit; Aaron Nash, Clerk of the Court Maricopa County; Kim Knox, Maricopa County Collections; Dan Levy, POMC; Theresa Barrett, AOC; Cindy Cook, AOC; Cindy Trimble, AOC

Staff: Carol Mitchell, AOC; Jerri Medina, AOC

I. Regular Business

A. Welcome and Opening Remarks

The January 25, 2013 meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:01 a.m.

The Chair asked for Commission member roll call and introductions of staff and guests.

Membership appointment cycles will expire soon and Carol Mitchell will be in touch with those eligible and interested in applying for reappointment. The Chair also acknowledged the following people for their service to our committee: Daisy Flores and Judge Doug Rayes. Ms. Daisy Flores started private practice in Gila County and Judge Doug Rayes is no longer the Presiding Criminal Judge. Dan Levy, also in attendance today was recognized for his past years of service on COVIC and accomplishments with victim issues on a national basis.

The American Probation & Parole Association's Winter Conference was held in Phoenix last week and several members of COVIC participated in a town hall-style presentation to discuss victim issues.

The Chair thanked Judge Cahill, Keli Luther, Judge Reinstein, Shelly Corzo Shaffer, Chief Cindy Winn, Carol Mitchell and Judge O'Neil for their time and participation. The session received good feedback from people, and two of our committee members were able to tell their victim impact story which we hope will encourage other jurisdictions across the nation that came to the conference to sponsor a victim's commission in their respective jurisdictions.

B. Approval of September 21, 2012 Minutes

The draft minutes from the September 21, 2012, meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes from September 21, 2012 meeting.

- Motion was called for the approval of minutes presented; seconded and passed unanimously.

The Chair reminded members of future meeting dates for 2013 and a fourth meeting may be added if necessary.

Kirstin Flores, Chair for the Attorney General's Office Victim Advisory Committee reviewed legislation that is pending in both victims' rights and domestic violence related proposals. She reported that at the Advisory committee meeting, the AZ Department of Corrections brought up the issue involving defendants sentenced after 1994 (after the law changed) to 25 years to life. 2019 marks the year when the first of those cases will reach 25 years and concern is raised because defendants believe they are eligible for parole, but may have been misinformed about their chance of parole either in court minute entries, by a defense attorney, etc. This issue has been on the Department of Corrections and Board of Clemency radar for a while and hopes to work with the Appeals Division at the Attorney General's Office to address concerns of victims and defendants regarding this change.

II. Old Business

A. Victim ID Protection Rule Petition Update

Honorable Ronald Reinstein gave an update on COVIC's petition submitted to the Arizona Supreme Court regarding victims and court records. The workgroup reworked the petition due to feedback from the Supreme Court and other stakeholders who wanted to allow limited media access. The Supreme Court ordered restricting electronic access to criminal cases with victims of all adult sex crimes under ARS Title 13, Chapters 14, 32, 35 & 35.1 and all juvenile victims of any crimes. Additionally, all appellate cases (digital and paper records including decisions, opinions) will use a

victim identifier in place of a victim's name, with the exception of deceased victims. COVIC may consider submitting another rule petition to expand victim protection in the future.

The Supreme Court provided a nine month implementation period with the effective date set for September 1, 2013. COVIC wants to discuss impact on various stakeholders in the process especially the prosecutors which will have an additional responsibility to notify the court of these case types.

Judge Reinstein introduced Aaron Nash, Special Counsel with the Maricopa County Clerk of the Superior Court. Aaron shared that for implementation considerations, various stake holders across agencies (IT folks for programming needs, county and attorney general prosecutors, criminal court administration, court room clerks) and customer service people that primarily deal with access to the court records, need to be consulted about the impact of this rule change. Currently, criminal minute entries are the only documents online with the majority of documents filed from Maricopa County. The prosecutor would notify the clerk that the case falls under the "victim ID" exclusion category, and then the IT staff will work behind the scenes with programming to set a flag, so that minute entry doesn't show up in any online searches. It would be the same with sentencing minute entries.

When looking at implementation, courts need to have a clear understanding that it is any child victim in any case. The programming will be simple for specific statutes that involve child in the title, but for other cases, such as a DUI crash with a minor in the car, that case may not be as easily identifiable.

COVIC would like to start a state-wide implementation workgroup to help facilitate this petition rule. An important recommendation would be to ensure the Arizona Prosecuting Attorneys Advisory Council (APAAC) reviews the notification process from prosecutors, especially in the smaller counties. COVIC would like to facilitate that process or come up with "best practices" guidance for prosecutors and courts. The workgroup should include representation from the AG's Office, APAAC, IT from AOC, Criminal Court Administration, a judge and several people from COVIC. COVIC will also plan to revisit the issue after implementation to assess the real impact and determine any relevant issues that would support another rule petition.

- Motion presented:
Move to form a workgroup (including key stake holders) to make implementation recommendations to report back at our May meeting and have Aaron Nash serve as chair. Seconded by Breeze/Cahill; unanimously passed. Other volunteers included: Karen Duffy; Pam Moreton; Elizabeth Ortiz; Lori Ash and Kristin Flores.

Does ECR (Electronic Court Records) fall under this protection? With ECR is there going to be an exception the public can have access. The rule change is geared to the

general public not someone that has special court access and is registered to look at their own case through electronic court records (ECR). This rule is also not expected to impact lower courts or tribal courts.

III. New Business

A. Maricopa County Sherriff's Office (MCSO) – Victim Assistance and Notification Unit (VANU)

At the last COVIC meeting Captain Farnsworth and Keli Luther talked about creating a victim notification similar to the form police now use. Commander Kathleen Checchi and Officer Renee Warner are here today to speak about victim notification rights in IA (Initial Appearance) court and the work that the MCSO does with the VANU. VANU has been in around for 22 years and has done a tremendous amount of work on behalf of victims. The VANU phone number is (602) 876-8276.

Commander Checchi shared the process victims have to speak in IA court. When MCSO is on the scene of a victim crime, they complete a victim notification form and advise the victim that VANU is their first point of contact. VANU is a 24/7 operation, they can guide the victim to services such as shelters, rape crisis counseling, domestic abuse centers, safe houses, community information, and statutory rights. VANU is immediately notified that the criminal is going to a hearing and reach out to victims for notification. The victim form gives victims the option to “opt” in for notification. This form is maintained and updated through the Attorney General’s Office.

VANU staff is scheduling presentations across the valley to get a consistent message out to the community and give victims needed information. VANU is in the process of creating a standalone victim assistance website which is expected to rollout in March 2013. A demonstration of the new website was provided and received positive feedback from commission members. Currently, on the MCSO website under the “Are you a victim” tab you can also find various resources and the VANU contact information. Victims will be able to access information regarding their case via the internet and update their contact information in a confidential manner.

Other counties may also have the opportunity to use the MSCO template for in the future. This website is still a work in progress and all ideas and suggestions are welcome.

A critical link to the success of victim notification is law enforcement officer training on the use of this form and the importance is that officers constantly need reminding about distributing the form to victims at the scene of the crime. VANU continue to educate officers out in the field in the use of this form and victim rights information. MSCO has an annual training process over the use of forms and this form will be added to that training curriculum.

B. Juvenile cases and victim notice

Pam Moreton tabled this item until the next meeting.

C. Arizona Case Processing Standards Steering Committee

Judge Peter Cahill and Cindy Cook provided handouts and spoke about the ongoing committee effort toward developing model time standards for processing court cases.

Model time standards have been developed at the national level through the National Center for State Courts (NCSC) and our state formed a committee to begin evaluating appropriate standards for our judicial system. These standards are intended to be used as a management tool for the courts to assess delivery of judicial services. The goal is to determine how our judicial system is doing and where improvements can be made. The standards are not to be considered rules governing individual cases or as creating rights for individual litigants; but rather any deviation of the standards should be justified by serving justice. The committee identified 19 different case types within both general and limited jurisdiction court cases including: civil cases; probate; mental health; juvenile delinquency; child welfare and criminal cases.

The standards are set usually in tiers; the first set being those that we expect to be quickly resolved. The next set of cases to measure would be the biggest group of cases and they should be resolved within a specific period. The third tier would be the more difficult or complex cases that usually go to trial. All of our standards have left room for a very small amount of "outlier" cases, such as death penalty cases.

The committee has spent considerable time evaluating whether the national standards were reasonable for our courts and what was the acceptable method of tracking time standards. Some excluded time exceptions within the case types were identified such as warrant time, diversion cases.

Some of the case types were highlighted and discussed including misdemeanors and DUIs and criminal matters with victims.

On February 15, 2012, a website will be available listing the nineteen case types and their corresponding recommended case processing time standards with a public comments forum. Please forward the information in the handout to anyone within the legal community that you think has some expertise in this area and can provide feedback. Once the comment period is completed, an update will be provided to all the standing committees for review and approval prior to submission to the Arizona Judicial Council.

Some COVIC members expressed an interest in more specifics within case types, such as how long child victim cases take in the system. Although the committee did not drill down to that level of detail for their work, it may be something COVIC would consider as a future research or investigative project. Specifically, a question was raised about how long child victim cases are taking to move through the justice system

and particularly sex crime cases that utilize expert testimony become very complex and take a long time to hear. The Chair recalled that Arizona has a statute citing the use of a “certificate of special public importance” in which you can use to put a trial on the fast track.

D. Strategic Agenda 2015

The Chair acknowledged that COVIC was created by Chief Justice McGregor as a result of being part of the strategic plan goal involving the administration of justice for children and victims. Carol Mitchell addressed COVIC about the Supreme Court’s upcoming Strategic Agenda planning process. In 2015, Vice Chief Justice Bales will become the new Chief Justice and a new strategic agenda will be put in place. A PowerPoint presentation was reviewed and several goals from the current agenda were highlighted, demonstrating that the strategic agenda produces quality ideas and results. All the Supreme Court’s standing committees are being asked to submit ideas and recommendations.

The workgroup may want to look at current court trends and issues that affect our environment over the next five years. Recommend new goals and objectives to strengthen that agenda and then recommend projects and initiatives. Give a voice to any thoughts, ideas and things that have been stirring that would impact not just victims but the justice system as a whole and what might improve our process. Sydney Davis suggested that COVIC’s prior year’s strategic initiatives list be reviewed and serve as the basis for potential recommendations. Additionally, the following ideas were raised:

- Developing best practices for working with child victims in a violent crime cases
- Addressing needs of Non-English speaking victims and victims’ families
- Expand and improve restitution and collection on judgments
- Automate the victim notification form
- Suggest victim-related interview questions for judicial selection process
- Improve initial appearance notifications

Motion by Michael Breeze to create workgroup with the authority to make recommendations for the 2015 Strategic Agenda on behalf of COVIC.

- Seconded by Keli Luther; passed unanimously.

Interested volunteers included: Mike Breeze, Dr. Coffman, Kirstin Flores, Keli Luther, Judge Ron Reinstein and Carol Mitchell, Kim Knox and Judge Richard Weiss.

IV. Call to Public

A. Good of the Order/Call to the Public

Kim Knox, Maricopa County Collections Department gave an update on HB 2256, which goes into effect April 1, 2013 and changes a portion of criminal restitution. HB

2256 moves restitution from the end of the sentence to the beginning which is strictly a procedural change with no additional punishment. Kim is aware of at least one Public Defender's office that has recently authored an article in opposition to the bill to collecting interest from the time of sentencing and imposing a lien on property.

Kim also discussed the restitution liens process involving vehicles and the Automobile Dealership Association is looking to change the law. Dealers have the ability to run a \$4.00 records search for a clouded title. Individual consumers are unable to get this information and has caused several problems of people buying vehicles and later unable to register them due to outstanding liens. DMV liens have been one of the most valuable victim restitution tools and were often the only time that victims actually get paid for restitution. Several victim groups will be monitoring this bill to try to avoid losing this viable reimbursement stream for crime victims.

The Chair excused himself to attend another meeting and asked Honorable Peter Cahill to serve as acting chair for the remainder of the meeting.

Judge Elizabeth Finn spoke about the upcoming multi-disciplinary summit for domestic violence on March 15th and will share information via email to the members of COVIC.

V. Adjourn

A. **Motion:** To adjourn at 12:24pm. Motion was seconded and passed.

B. Next Committee Meeting Date:

Friday, May 17, 2013

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

State Courts Building, Room 119 A/B

1501 W. Washington St., Phoenix, AZ 85007

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

APPROVED 10/18/13

Present: Judge Ronald Reinstein; Chair; Michael Breeze; Judge Peter Cahill; Shelly Corzo-Schaffer (*telephonically*); Sydney Davis; Judge Timothy Dickerson; Karen Duffy; Captain Larry Farnsworth (*telephonically*); Judge Elizabeth Finn; Kirstin Flores; John Gillis (*proxy for Keli Luther*); Michael Lessler; Judge Evelyn Marez; Pam Moreton; Karyn Rasile; Barbara Marshall (*proxy: Elizabeth Ortiz*); Judge Sally Simmons (*telephonically*); Dimple Ann Smith; Judge Richard Weiss; Judge Joseph Kreamer (*proxy for Judge Joseph Welty*), Chief Cindy Winn (*telephonically*).

Absent/Excused: Daniel Levey; Leslie James; Sgt. Ret. Jim Markey; Doug Pilcher;

Presenters/Guests: Aaron Nash, COVIC Victim Identification Workgroup; Judge Antonio Riojas, Arizona Case Processing Standards Steering Committee; Cindy Cook, AOC, Arizona Case Processing Standards Steering Committee; John Gillis, Victims Services, Maricopa County Attorney's Office; Barbara Marshall, Victims Services, Maricopa County Attorney's Office; Judge Joseph Kreamer, Maricopa County Superior Court.

Staff: Carol Mitchell, AOC; Kelly Gray, AOC; Jerri Media, AOC.

I. Regular Business

A. Welcome and Opening Remarks

The May 17, 2013 meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:01 a.m.

The Chair asked for Commission member roll call and introductions of staff and guests.

The Chair recognized all outgoing Committee members. The Chair acknowledged the contributions of the outgoing members including Judge Antonio Riojas, Judge William O'Neil, Dr. Kathryn Coffman, and Judge Anna Montoya-Paez.

The Chair welcomed the new Committee members and gave background information on each new member:

- Judge Sally Simmons, Presiding Judge, Arizona Superior Court in Pima County
- Judge Joseph Welty, Presiding Criminal Judge, Arizona Superior Court in Maricopa County
- Judge Timothy Dickerson, Sierra Vista Justice of the Peace and City of Sierra Vista Magistrate.
- Michael Lessler, Chief Deputy County Attorney, Coconino County
- Karyn Rasile, Supervisor, Scottsdale Healthcare Forensic Nurse Examiners
- Dimple Ann Smith, Lead Advocate, Pima County Attorney's Office, Victim Services Division
- Daniel Levey, Executive Director, National Organization of Parents of Murdered Children.

The Chair acknowledged all the reappointments to the committee including Judge Peter Cahill, Pam Moreton, Judge Elizabeth Finn, and Leslie James.

The Chair introduced the guests including Barbara Marshall (proxy for Elizabeth Ortiz), Aaron Nash, John Gillis (proxy for Keli Luther), Judge Joseph Kreamer (proxy for Judge Joseph Welty), and Cindy Cook.

B. Approval of January 25, 2013 Minutes

The draft minutes from the January 25, 2013 meeting of the Commission on Victims in the Courts were presented for approval. The Chair called for any omissions or corrections to the minutes from January 25, 2013 meeting.

- Motion was called by Judge Richard Weiss for the approval of minutes presented; Sydney Davis seconded; motion passed unanimously.

The Chair reminded members the next COVIC meeting is on Friday, October 25, 2013.

II. Old Business

A. Victim ID Protection Rule Implementation Update:

Aaron Nash, Chair of the Implementation Workgroup, presented an update on the process of executing some of the new/changed court rules (approved rule petition R-12-2004) that will take effect on September 1, 2013.

Since the last COVIC meeting, this workgroup met on March 20, 2013 and May 7, 2013. Mr. Nash believes that implementation of the rule changes is on track to meet the September 1, 2013 target. The technology seems to be in place for Pima, Maricopa, and AJACS users to implement on time.

The workgroup first focused on how this rule applies to victims in juvenile cases and victims of sex crimes, then dealt with how prosecutors and clerks should handle these cases, and finally made recommendations about how to implement these changes. Information online will be restricted in any case where the victim is a juvenile or in which a defendant is charged with any offense listed in A.R.S. §§ 13-1401, -3201, -3501, and -3551. Prosecutors and clerks will have to communicate that the case falls within the parameters when entering case data into case management systems. Accurate coding of these cases by clerks will prevent the information from appearing online. Though the rule does not define a victim identifier, the workgroup recommends numbering of victims in court documents. For example: Victim 1, Victim 2, etc.

Carol Mitchell emphasized that cases need to be identified at the beginning. Prosecutors and clerks should code these cases properly when charging defendants. Judge Reinstein would like to speak to the Arizona Prosecuting Attorneys' Advisory Council (APAAC), and possibly to the State Bar of Arizona, to help reinforce the importance of prosecutors notifying clerks when charging, and clerks properly coding and indentifying these cases in case management systems.

The Administrative Office of the Courts (AOC) intends to draft a letter from the Court Services Division Director to judges, Clerks of Court, and court administrators. The draft "Use of Victim Names in Court Records and Online" document submitted in this meeting is a communication piece to courts that will likely be merged into other documentation to be developed by the AOC for advertising and implementing the rule change. The biggest impact will be on prosecutors and clerks' offices.

There was discussion about implementation of the rule on new cases vs. older/appeals cases, the affect of the rule inside the courtroom, and courts effected by this change. Discussion points included:

- The September 1, 2013 implementation date applies to new cases only.
- There have already been over 300 old appellate cases where victims' names have been removed.
- Loss of identity of the victim can create problems in the courtroom where the judge has to make decisions based on a "person" not an "it".
- The intention of the rule was not use pseudonym in the courtroom; it was intended for online access/records purposes, not to depersonalize the victim in the courtroom. The victim can "Opt Out" of this rule provision.
- When prosecutors are developing pseudonym procedures, it was recommended that they seek input from the Defense Bar. This may help reduce duplications of charging documents.
- The rule change appears to primarily impact general jurisdiction courts.

B. Strategic Agenda Recommendations:

The Supreme Court creates a five (5) year Strategic Agenda. All committees under the Supreme Court were asked to give input on the issues that affect their committee. COVIC created a workgroup to help in this process. COVIC authorized the workgroup to make recommendations on behalf of the Commission in order to meet the submission deadline. Based on what this Commission has discussed before as priorities, the workgroup came up with several ideas:

- Strengthening the Administration of Justice
 - Using technology efficiently: Encourage the coordination of technology solutions to ensure victim safety by making terms and conditions of release readily accessible to law enforcement.
 - Improving Public Access, Transparency, and Accountability:
 - ☐ Create uniform procedures for processing and collecting on restitution judgments and
 - ☐ Extend language access services to victims and victim families in court proceedings.
 - Concerns were raised about the general nature of the restitution goal. It was suggested that there be more specific language regarding the process of restitution collection and follow-up activities, i.e. including a reporting requirement to the Chief Justice, be incorporated in the goal. This point was acknowledged and it was suggested that all the goals presented were made intentionally broad in order to achieve progress in every county. If there is suggested language on any of the goals, please forward your proposed verbiage to Carol Mitchell.
 - ☐ There was discussion about making language access a targeted Strategic Agenda item as there are still issues with how non-English speaking members of a victim's family are handled in the court.
- Improving Communications
 - Communication with Other Branches of Government and Justice System Partners: Improve intra-court communications between judicial officers on family, juvenile and/or the criminal bench for cases involving child victims to reduce conflicting contact orders.
- Protecting Children, Families, and Communities
 - Protecting Vulnerable Children and Families: Evaluate the resource entitled, "Multidisciplinary Protocol for the Investigation of Child Abuse" to suggest revisions to court-related victim impacts within the judicial, juvenile court, juvenile and adult probation, mental health and victim services chapters.
 - Protecting Communities: Revise criminal benchbook for judicial officers to include information on impact of trauma on children, child accommodations for court proceedings and best practices

that help reduce delay in processing violent crimes involving children.

These ideas will be submitted to the AOC. The AOC will review them and submit them to the Supreme Court for consideration and possible inclusion in the Strategic Agenda. This process should be complete by June 2013. It is possible that none of the goals outlined will be incorporated into the Strategic Agenda. Regardless of the outcome this Committee may decide to address these tasks.

C. Arizona Case Processing Standards Steering Committee:

Judge Antonio Riojas and Ms. Cindy Cook presented the proposed case processing standards from the Arizona Case Processing Standards Steering Committee. The committee has completed a review of the national model, the Arizona rules and statutes and the comments received, and have developed final recommendations for case processing standards for all case types except probate case types. The comment deadline for probate types is May 31, 2013. The Comment Forum can be found at:

<http://www.azcourts.gov/caseprocessingstandards/login.aspx?ReturnUrl=%2fcaseprocessingstandards%2fhome.aspx>.

The final recommendations have been or will be presented to most of the standing committees for recommendation to the Arizona Judicial Council on October 24, 2013.

The administrative order signed by the Chief Justice will include language that the standards are provisionally adopted pending development of reports, validation and clean-up of data, and training. These reports will be for court use only so they can manage their cases and will not be released publicly until the data is validated and we have re-visited the standards in light of this data. Pursuant to Rule 123(e)(6) preliminary reports for the courts use are not available to the public

Three (3) case types were presented in this meeting including criminal felony, criminal misdemeanor, and criminal misdemeanor DUI.

- Criminal Felony
 - There were no changes since the last time this issue was presented to the Commission.
 - 65% within 90 days
 - 85% within 180 days
 - 96% within 365 days
 - Death Penalty cases will be included as part of the 4% disposed after 365 days
- ***Motion was called by Judge Richard Weiss to approve the criminal felony case standards as presented with the proviso that reports will be***

developed, the data will be validated and cleaned-up, and training will be provided. Michael Breeze seconded; motion passed unanimously.

- Criminal Misdemeanor
 - Since the last time this issue was addressed, there was a statement added that petty offenses will be included; there were no other changes made.
 - The Committee stayed with the national model standard but added the following comment: “These standards are based on the assumption that most of these cases are resolved without an attorney. These standards should be revisited if penalties on misdemeanor cases continue to become more stringent and attorney involvement increases.”
 - The Arizona Case Processing Standards Steering Committee recommends that Arizona comport with the national model:
 - ☐ 75% within 60 days
 - ☐ 90% within 90 days
 - ☐ 98% within 180 days
 - Criminal traffic cases are included.
 - Petty offenses are included.
 - Criminal local ordinance cases are included.
 - DUI cases are excluded.

To come up with the standard, the Committee began with the national standards, compared data from eight (8) different Arizona courts (that included justice and city courts; rural and urban) and solicited input from the local courts. Local courts agreed with the standard. Criminal felony and misdemeanor DUI have different standards, and the time in which the defendant is in a diversion program is excluded.

- ***Motion was called by Judge Ronald Reinstein to approve the criminal misdemeanor case standards as presented with the proviso that reports will be developed, the data will be validated and cleaned-up, and training will be provided. Judge Richard Weiss seconded; motion passed unanimously.***

- Criminal Misdemeanor DUI
 - There were no changes since the last time this issue was presented to the Commission.
 - This is an existing standard and the standard has been piloted in Arizona and the Arizona Case Processing Standards Steering Committee is recommending that this standard be adopted at the same time as the other standards are adopted.
 - ☐ 85% within 120 days
 - ☐ 93% within 180 days
 - Criminal misdemeanor cases are excluded.
 - Criminal traffic cases are excluded.

- Criminal local ordinance cases are excluded
- ***Motion was called by Judge Ronald Reinstein to approve the criminal misdemeanor DUI case standards as presented with the proviso that reports will be developed, the data will be validated and cleaned-up, and training will be provided. Michael Breeze seconded; motion passed unanimously.***

D. Amended Rule Petition from Wireless Committee:

In September of 2012, Mark Meltzer gave a presentation to COVIC regarding wireless devices in the courtroom. During that meeting, COVIC had given input in the rules petition process with the goal of having an automatic victim “opt-out” statement; victims should not have to specifically request that the proceeding not be recorded. Under the new language proposed in Ariz. R. Sup. Ct. 122(c)(5), a victim’s attorney, a prosecutor’s victim advocate, as well as anyone who calls a witness to testify, has a responsibility to notify that victim or witness of coverage, and his/her right to object, prior to the victim’s appearance or the witness’ testimony at the proceeding. Judge Richard Weiss pointed out that the way this rule may be set up, the victim may never know there is a request to cover a proceeding. In turn, the victim may be harmed more as he/she may not have the opportunity to timely file their objection to the coverage.

Further, a new proposed rule was developed, Ariz. R. Sup. Ct. 122.1, which addresses the use of portable electronic devices in a courthouse. There was discussion regarding the use of the word “terminate” vs. “prohibit” in Ariz. R. Sup. Ct. 122.1(e). Judge Elizabeth Finn argued that the word “terminate” in the sentence implies that the judge would only take action *after* the disturbance has occurred; whereas use of the word “prohibit” would allow the judge to take action *before* the disturbance even occurs. Judge Finn and others intend to file a comment on this issue

A counterpoint to this argument was presented by Ms. Barbara Marshall (proxy for Elizabeth Ortiz). Outright prohibition of use of portable electronic devices in the court may cause difficulty in the courtroom as many attorneys are transitioning to a paperless system in which a mobile device is necessary to retrieve data about the case. If an attorney is prohibited from using his/her device in the courtroom, there may be issues with answering the judge’s question regarding the case, scheduling proceeding, etc.

Discussions centered around the judge controlling the courtroom. During the formulation of this proposed rule, the “terminate” vs. “prohibit” argument was made. The Committee decided specifically to keep the word “terminate”. Judge Antonio Riojas argued that commonsense usually prevails regarding use of a mobile device in the courtroom, and a judge should have the ability to use his/her own discretion in the courtroom. Judge Ronald Reinstein recommended to Ms. Barbara Marshall that APAAC submit a comment regarding this issue in the comment forum.

Another issue was brought up by Judge Ronald Reinstein regarding the use of mobile devices in the jury selection process. During the voir dire process an attorney can look up information on the Internet to find out more about potential jurors, influencing the process of selecting a jury. As technology improves, issues regarding the use of a mobile device in the courtroom will continue to occur.

Members of the committee may file separate comments to these proposed rules, as individuals, or on behalf of their organization/employer. This Committee will not be filing a comment as a group.

An Amended Rule Petition has been filed for both of these proposed rules and the comment period closes on June 5, 2013. The comments forum can be found at:

<http://azdnn.dnnmax.com/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/CourtRulesForum/tabid/91/view/topics/forumid/7/Default.aspx>

III. New Business

A. Juvenile Detention/Advisory Hearings within 24 hours:

Ms. Pam Moreton shared her concerns of a potential conflict between rules of juvenile court and the victim's right statutes dealing with juvenile cases. Specifically, there seems to be a conflict in the area of detention and advisory hearings regarding victim notification.

Ms. Pam Moreton identified four (4) potential conflicts:

- Ariz. Juv. Ct. R. 23, which addresses detention of the juvenile, does not indicate an advisory hearing be held within 24 hours, only that "a hearing" take place. The detention hearing complies with this requirement if performed within 24 hours. An advisory hearing is not mentioned.
- Ariz. Juv. Ct. R. 28, which addresses the advisory hearing, seems to conflict with itself. In Ariz. Juv. Ct. R. 28(A) the purpose outlined does not mention victim participation; however in Ariz. Juv. Ct. R. 28(C)(6)(a-b) the rule directs the court to comply with Victims' Rights.
- A.R.S § 8-389, which addresses preliminary notice of rights given to the victim, says "at the time of the charging or seven days after the prosecutor charges a delinquent offense if the accused is not in custody, the prosecutor's office shall give the victim notice of the following..." This statement is unclear as to the meaning. Does this mean that the prosecutor must notify the victim immediately if the juvenile is in custody?
- A.R.S § 8-390, which addresses how the prosecutor's office and victim are notified of scheduled proceedings, A.R.S § 8-390(B) only provides for the detention hearing to be exempt from five (5) days notice from the courts to the prosecutor's office. The prosecutor is required to notify

victims of scheduled proceeding in a timely manner, which can be up to five (5) days in advance.

Yavapai County is now setting 'detention/advisory hearings' that require prosecution and the defense be present. The judges reset the advisory hearing to comply with the five (5) day notification requirement in A.R.S § 8-390. If a detention hearing (without the advisory portion) is scheduled on the weekend, prosecutors and defense attorneys are not available. The advisory hearing is scheduled for the following Monday at 9:00am and the prosecutors do not have time to comply with the victim notification statues.

Victim notification of proceedings in juvenile cases seems to be an issue in most counties. Each county handles this issue differently, however the issues are similar. Judge Peter Cahill, who is the Chair of the Commission on Juvenile Courts (COJC), suggests that Pam Moreton, Chad Campbell (AOC Juvenile Services), and Carol Mitchell meet to discuss this matter and present it to the COJC.

B. Sentencing Rules/Statutes in Misdemeanor Cases:

Ms. Kirstin Flores, Director of the Arizona Attorney General's Office of Victim Services discussed the services provided by her office.

In addition to victims' rights advocacy, the office has a support component that provides assistance and funding to 58 different criminal justice programs around the state. As part of the funding, the Victim Services Office conducts audits to ensure that the funds are being spent correctly and that they are in compliance with all victims rights laws.

Ms. Flores reviewed an audit finding of a county attorney's office where the court in that jurisdiction had a practice of sentencing misdemeanor cases during the initial appearance when the defendant has plead guilty. In these instances, the prosecutor was not present, so the County Attorney's office was never aware of the case to provide victims' rights. The audit found that this practice was in violation of some victims' rights laws. This prompted an informal statewide survey, and it was found that 8 of the 15 offices had similar procedures.

The first thought of the OVS was that there be a rule amendment to Ariz. R. Crim. P. 26.3, however this idea was abandoned after receiving some input from other COVIC member. Instead the OVS is looking to make procedural changes and training initiatives with various AOC committees/commissions and stakeholders. The Arizona Attorney General's Office is considering altering law enforcement forms to notify victims that sentencing could occur at that initial appearance. The office is also considering conducting training in affected counties and facilitate discussion with the Justice of the Peace offices.

It was discussed that Initial Appearance procedures vary greatly throughout the state in limited jurisdiction courts after input from Judge Elizabeth Finn, Judge Timothy Dickerson, Judge Antonio Riojas, and Judge Ronald Reinstein.

Judge Ronald Reinstein suggested that this matter be discussed with Paul Julien at Judicial Education Services, who is involved with judicial training and sending out information regarding limited jurisdiction courts. He also suggested that he, Ms. Flores, and Carol Mitchell attend the next LJC meeting on August 21, 2013 to present this issue.

IV. Call to Public

A. Good of the Order/Call to the Public

Judge Ronald Reinstein commented that any commission member can bring up any issue at any time. This Commission provides an avenue for victims/victims representative to speak to stakeholders. If any commission members know of someone that would like to speak to the committee, please invite that person to do so.

V. Adjourn

A. Motion to adjourn at 11:49 a.m. by Michael Breeze. Motion was seconded by Judge Timothy Dickerson; motion passed.

B. Next Committee Meeting Date:

Friday, October 25, 2013

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

State Courts Building, Room 119 A/B

1501 W. Washington St., Phoenix, AZ 85007

Commission on Victims in the Courts

Friday, October 18, 2013

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

APPROVED 2/21/14

Present: Judge Ronald Reinstein, Chairperson; James Belanger, Michael Breeze, Judge Peter Cahill, Sydney Davis, Judge Timothy Dickerson-*telephonically*, Captain Larry Farnsworth, Judge Elizabeth Finn-*telephonically*, Kirstin Flores, Michael Lessler, Daniel Levey, Keli Luther-*telephonically*, James Markey, Pam Moreton, Elizabeth Ortiz, Karyn Rasile, Judge Sally Simmons, Dimple Smith, Judge Richard Weiss, Judge Joseph Welty, and Cindy Winn-*telephonically*.

Absent/Excused: Shelly Corzo Shaffer, Karen Duffy, Leslie James, Judge Evelyn Marez, and Doug Pilcher.

Presenters/Guests: Mr. Jerry Landau, AOC-*telephonically*, Cindy Trimble, AOC, and Aaron Nash, Maricopa County Clerk of Superior Court's Office.

Staff: Carol Mitchell, AOC, Kelly Gray, AOC

I. Regular Business

A. Welcome and Opening Remarks

The January 25, 2013 meeting of the Commission on Victims in the Courts was called to order by Chair, Honorable Ronald Reinstein, at 10:04 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

B. Approval of May 2013 Meeting Minutes

The draft minutes from the May 17, 2013, meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes from May 17, 2013 meeting.

- ***Motion was called by Ms. Karen Duffy to approve the May 17, 2013 meeting minutes. Ms. Kristin Flores seconded; motion passed unanimously.***

C. Identify 2014 Tentative Meeting Dates

The Chairperson reviewed the tentative 2014 meeting dates of this committee. The Commission on Victims in the Courts will tentatively meet on the following dates:

- *Friday, February 21, 2014*
- *Friday, June 20, 2014*
- *Friday, October 3, 2014*

Ms. Carol Mitchell will notify the committee if the dates present any conflicts with the Arizona Judicial Council's meeting dates.

II. Old Business

A. Legislative Update

A proposed change to Criminal Restitution Order (CRO) legislation was presented by Mr. Jerry Landau. The proposed change to the statute removes language related to absconding from probation or sentence under A.R.S. § 13-805. It would read as follows:

A.R.S. § 13-805(C):

"C. At the time the defendant completes the defendant's period of probation or the defendant's sentence ~~or the defendant absconds from probation or the defendant's sentence~~, the court shall enter both:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered, if a criminal restitution order is not issued pursuant to subsection b of this section."

Proponents believe the current language mandates CROs for monies owed to victims when a defendant absconds (failure to report, or escape-and-recapture during probation or serving a sentence) creates multiple CROs, thus compounding the number of orders and resources required from the courts to administer the CRO. They believe that the proposed change would streamline the process, allowing one-time calculations for monies owed to victims, fines and fees, interest, and collections costs.

Mr. Landau indicated that the AJC and AOC are currently neutral on the proposal at this time. The AJC deferred action in its October 2013 meeting in

order to give COVIC, and other groups, a chance to review the legislative changes and give recommendations. The AJC may discuss it again at the December 2013 meeting.

A concern was raised that the proposed legislation would in essence remove the mandatory provision to order a CRO and add an additional step for a victim to perform to receive restitution. It was pointed out that if a CRO was issued *only* at the end of probation or at the end of sentence, victims of a serious crime could be waiting many years for restitution. Further, a committee member suggested that issuing a CRO at the time of sentencing may be more effective to receiving earlier payments as the offender may have assets that could have a lien applied; waiting until after probation/sentence could allow the offender to transfer property, monies, etc. to another individual/out of the country before restitution payments could be made. The additional steps required in removing the mandatory provision by victims, in addition to barriers to receiving restitution, would significantly and negatively impact victims in the courts.

- ***Judge Richard Weiss presented a motion to make criminal restitution mandatory only at the time of sentencing. Seconded by Ms. Karyn Rasile.***

Further discussion about the proposed motion and legislation revealed that there were concerns about what victims may desire in relation to CROs. It was noted that some victims, particularly in Family Court cases, may not want a CRO issued.

It was suggested that the judge should have more discretion when deciding to issue a CRO. It was determined that a change should relate to A.R.S. § 13-805(B) and should revise the language from “may” order to “shall” order a CRO at the time of sentencing. However, the group did not amend the proposed revision to the language in A.R.S. § 13-805(C) related to absconder status, as the revision in section B would make this moot relative to victim restitution and any CRO based on the absconder status would only relate to fines, fees, etc..

- ***Judge Richard Weiss later amended the motion; motion to make criminal restitution mandatory only at the time of sentencing, unless otherwise requested by the victim. Motion passed by majority; 16 yay, 3 nay.***

13-805. Jurisdiction

A. The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing the manner in which court-ordered payments are made until paid in full or until the defendant's sentence expires.

B. At the time the defendant is ordered to pay restitution by the superior court, the court ~~may~~ **SHALL, UNLESS OTHERWISE REQUESTED BY THE VICTIM,** enter a criminal restitution order in favor of ~~each person~~ **A VICTIM** who is entitled to

restitution for the unpaid balance of any restitution order. A criminal restitution order does not affect any other monetary obligation imposed on the defendant pursuant to law.

C. At the time the defendant completes the defendant's period of probation or the defendant's sentence or the defendant absconds from probation or the defendant's sentence, the court shall enter both:

1. A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

2. A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered, if a criminal restitution order is not issued pursuant to subsection b of this section.

D. The clerk of the court shall notify each person who is entitled to restitution of the criminal restitution order.

E. A criminal restitution order may be recorded and is enforceable as any civil judgment, except that a criminal restitution order does not require renewal pursuant to section 12-1611 or 12-1612. Enforcement of a criminal restitution order by any person who is entitled to restitution or by the state includes the collection of interest that accrues at a rate of ten per cent per annum. A criminal restitution order does not expire until paid in full.

F. All monies paid pursuant to a criminal restitution order entered by the superior court shall be paid to the clerk of the superior court.

G. Monies received as a result of a criminal restitution order entered pursuant to this section shall be distributed in the following order of priority:

1. Restitution ordered that is reduced to a criminal restitution order.

2. Associated interest.

H. The interest accrued pursuant to subsection E of this section does not apply to fees imposed for collection of the court ordered payments.

I. A criminal restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the defendant.

B. Strategic Agenda Presentation

Cindy Trimble, AOC audit officer, discussed the FY 2015-2019 Judicial Branch Strategic Agenda. She is working with Vice Chief Justice Scott Bales and the AJC Strategic Agenda Subcommittee on the plan, which is tentatively titled "Justice for All Arizona: Courts Serving Communities."

In early 2013, Ms. Trimble solicited ideas and suggestions from various AJC subcommittees. The next step was to synthesize the information into a well-rounded and thoughtful plan. In this meeting, Ms. Trimble presented a draft version that is still a work in process. Emerging themes focus on access to justice, evidence-based practices, improving processes, training and workforce development, and proactive communication with the public. Ms. Trimble presented the draft to AJC this month and a final version is set to go before AJC in December 2013 for implementation on July 1, 2014.

The current goals – Promoting Access to Justice; Protecting Children, Families, and Communities; Improving Court Processes to Better Serve the Public; Enhancing Professionalism and Efficiency within the Judicial System, and

Improving Communications and Community Participation – are serving as placeholders for main ideas; however some of the subtopics are still being developed.

Dialogue during this meeting focused on goal two of the agenda: Protecting Children, Families, and Communities. This goal is typically a mainstay of every strategic agenda; however Justice Bales' focus on the development of a Center for Evidence-Based Practices is being highlighted this year. The chairperson has been working with various groups and Justice Bales to develop this idea.

New to the Strategic Agenda is the topic of human trafficking. Human trafficking raises a variety of issues and challenges for state courts. The focus given to this issue in the Strategic Agenda will begin the process of identifying and obtaining a better understanding of the types of crimes and victims involved, which will better prepare the courts to handle such cases.

Regarding general topic of human trafficking and abuse, Karyn Rasile, Supervisor, Scottsdale Healthcare Forensic Nurse Examiners, has a presentation that she gives on this subject. The Chairperson requested that Ms. Rasile present at the next COVIC meeting in February 2014.

Additionally, the chairperson commented on goal four, Enhancing Professionalism and Efficiency within the Judicial System. COVIC member, Judge Joseph Welty, has been working with the Judicial Education department to further develop and improve new judge orientation and other educational materials. Improving web-based video and audio conference capabilities, as well as development of guidelines for the use of social media by employees was briefly discussed.

C. Victim ID Protection Rule Implementation Update

Judge Ronald Reinstein, and Mr. Aaron Nash, Special Counsel & Public Information Officer at Clerk of Superior Court, Maricopa County presented an update on the process of implementing approved rule petition R-12-2004 that took effect on September 1, 2013.

Several counties and entities have experienced changes and programming issues; however many issues have been resolved. Various counties are addressing the implementation in different ways based on how the clerks and prosecutorial agencies share information. It was suggested that judges continue to be involved in the decision-making and determine if sealing cases on a case-by-case basis would provide more flexibility.

Although some questions were submitted to AOC from a limited jurisdiction court regarding the impact of the rule, there was very little concern expressed by limited court members of COVIC as this was primarily written for cases that have documents posted online.

III. New Business

A. Juvenile Violation Hearings and Victims Rights

Ms. Dimple Smith from the Pima County Attorney's Office and COVIC member discussed the practice in juvenile courts/probation in Arizona on victim notification and rights at a Violation of Probation (VOP) detention hearing.

It was pointed out that victims who opted in to receive notice of hearing are not being sent written notice and victims were routinely excluded from providing input at VOP detention hearings. Ms. Smith believed that this may be an across the board issue, therefore brought it to this committee. Although no other counties had similar experiences, it was suggested that Ms. Smith may want to submit this topic to the Committee on Juvenile Courts. Judge Simmons will investigate to determine any appropriate next steps towards resolution.

B. Conditions of Release / LJC Judge Cheat Sheet

Ms. Kirstin Flores, Director of the Attorney General's Office of Victim Services, first updated the group on the Internal Audit findings discussed at COVIC's May 2013.

In the May 2013, Ms. Flores reviewed an audit finding of a county attorney's office where the court in that jurisdiction had a practice of sentencing misdemeanor cases during the initial appearance when the defendant has plead guilty. In these instances, the prosecutor was not present, so the County Attorney's office was never aware of the case to provide victims' rights. The audit found that this practice was in violation of some victims' rights laws. This prompted an informal statewide survey, and it was found that 8 of the 15 offices had similar procedures. Later, Ms. Flores contacted Mr. Paul Julien, Judicial Education Officer at the AOC to discuss judicial training related to this issue.

Ms. Flores indicated that Mr. Julien had sent the related judge orientation and training materials to the Attorney General's Office for appropriate updating. Ms. Flores is considering making a judicial tip sheet or "cheat sheet" document to assist judges when sentencing that will remind judges of a victim's rights. Ms. Flores will be working with Mr. Julien in the coming months to improve training materials regarding this issue. It was suggested that the materials should reflect the diversity of the Arizona courts, at all levels, including a distinction between rural and urban court procedures.

Ms. Flores also identified issues regarding law enforcement's access to release orders and modifications to those orders. Victim rights laws indicate that a copy of the release order and modifications are to be sent to the victim through either

the prosecutor's office or through the County Sheriff's office. Other law enforcement agencies need this information in the field to effectively police situations involving domestic violence and other violent crime where the suspected perpetrator has been released on bond/bail.

Previous discussions have occurred within Maricopa County between the court and the Sheriff's office regarding potential solutions. It was suggested that because this is a statewide issue, more work needs to be done with this topic. The limited jurisdiction courts have their own jail courts that produce release orders which are not available to law enforcement. Further, it was pointed out that A.R.S §13-3624 says that "The court, within twenty-four hours after a defendant is arrested for an act of domestic violence, shall register a certified copy of the release order with the sheriff's office of the county in which the order was issued. The court shall notify the sheriff's office of material changes in the release order, if the conditions of the release order are no longer in effect and when the charges are resolved." and most Arizona courts are not in compliance with this law.

Judge Elizabeth Finn suggested that a subcommittee of this group was necessary to address this issue for limited jurisdiction courts.

The chairperson agreed that this important issue should be investigated further by a subcommittee consisting of the following COVIC members:

Judge Elizabeth Finn, Chairperson
Ms. Kirstin Flores
Mr. Daniel Levey
Ms. Pam Morton
Mr. Larry Farnsworth
Mr. James Markey

Ms. Carol Mitchell will provide Judge Finn with the contact information for the rest of the group.

IV. Call to Public

A. Good of the Order/Call to the Public

The chairperson called to the public for commentary. Judge Ronald Reinstein indicated that in the next meeting of this group, he would like Ms. Karyn Raisle to present on strangulation and DV cases and how forensic examinations are done by sexual assault nurse examiners (SANE nurses). He would also like Ms. Kristin Flores to update the group on the progress of the tip sheet.

Mr. Dan Levey shared information about a fundraiser sponsored by the Parents of Murdered Children at the Brunswick Zone Glendale on January 25, 2014 and indicated there was a flyer available on the table.

Ms. Sydney Davis is performing at the Herberger Theater in the lunchtime theater. She invited the group to attend.

Ms. Kristin Flores indicated that the 2013/2014 Victim Rights Training schedule is available at www.azag.gov. Her office has revamped the training to make it more effective and comprehensive.

V. Adjourn

A. Motion to Adjourn:

- *Judge Richard Weiss presented a motion to adjourn at 12:05pm. Seconded by Judge Peter Cahill. Motion passed.*

B. Next Committee Meeting Date:

Friday, February 21, 2014
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 119 A/B
1501 W. Washington St., Phoenix, AZ 85007