

Commission on Victims in the Courts

Friday, February 21, 2014

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

APPROVED 6/20/2014

Present: Judge Ronald Reinstein, Chair, Michael Breeze, Judge Peter Cahill, Sydney Davis, Karen Duffy-*telephonically*, Captain Larry Farnsworth-*telephonically*, Kirstin Flores, Leslie James, Michael Lessler, Judge Evelyn Marez, Jim Markey, Pam Moreton-*telephonically*, Elizabeth Ortiz-*by proxy Barbara Marshall*, Doug Pilcher, Karyn Rasile, Judge Sally Simmons-*telephonically*, Dimple Smith-*telephonically*, Judge Richard Weiss-*telephonically*, Judge Joseph Welty-*telephonically*, Chief Cindy Winn

Absent/Excused: James Belanger, Judge Timothy Dickerson, Judge Elizabeth Finn, Dan Levey, Shelly Corzo-Shaffer, Keli Luther

Presenters/Guests: Amy Love, Legislative Liaison/AOC, Colleen Clase, Arizona Voice for Crime Victims

Staff: Carol Mitchell, AOC; Kelly Gray, AOC

I. Regular Business

A. Welcome and Opening Remarks

The February 21, 2014 meeting of the Commission on Victims in the Courts was called to order by the Chair, Honorable Ronald Reinstein, at 10:04 a.m.

The Chair asked for a Commission member roll call and introductions of staff and guests. The Chair presented, and asked the group, for upcoming events and announcements.

National Crime Victim's Rights Week begins on Sunday, April 6, 2014 through Saturday, April 12, 2014. Ms. Flores indicated that there will be a lunch event on Wednesday, April 9, 2014 that will likely be held at the Kroc Corps Community Center, near Phoenix South Mountain, in Maricopa County.

Judge Marez, mentioned that Navajo County is having their 5th Annual Victims' Rights Symposium in Snowflake, Arizona on Friday, April 11, 2014.

The Chair indicated that the Office for Victims of Crime (OVC) provided materials that are designed to help communities and victim assistance providers promote awareness of crime victim issues. The guide provided includes educational content, campaign materials, artwork, and a theme video for National Crime Victim's Rights Week. Individuals and/or agencies can view the guide online or download all materials for use offline at <http://ovc.ncjrs.gov/ncvrw2013/index.html>.

The Chair discussed that the Office for Victims of Crime annually recognizes individuals and organizations that demonstrate outstanding service in supporting victims and victim services. Each year there is an awards ceremony held in Washington, DC to honor individuals, organizations, and programs for their outstanding efforts on behalf of crime victims. The Chair nominated COVIC for a public policy award through the Arizona Attorney General's Office annual victim rights recognition luncheon and awards ceremony.

The Chair mentioned that he and Jim Markey are attending a working group in Washington D.C. sponsored by the National Institute of Justice. The group will discuss the Sexual Assault Forensic Evidence Reporting Act (SAFER), a section of the Violence Against Women Act (VAWA). SAFER was a non-funded directive that instructs agencies to test the Sexual Assault Test Kits in evidence. The upcoming roundtable will afford participants an opportunity to discuss funding of the research needed to identify the kits that need to be processed and rollout of the program for agencies across the country.

B. Approval of October 18, 2013 Minutes

The draft minutes from the October 18, 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 October 18, 2013 meeting.

- Motion was called by Judge Peter Cahill for the approval of minutes; Ms. Sydney Davis seconded; motion passed unanimously.

II. New Business

A. Legislative Update

Ms. Amy Love, Legislative Liaison for the AOC, presented information on legislation related to victims. Ms. Love reviewed the following legislative bills:

H2057: Setting Aside Conviction; Public Records

On request and showing of good cause, a judge, justice of the peace or magistrate is authorized to seal the record of a person whose judgment of guilt is set aside. Public agencies are prohibited from knowingly displaying or disclosing any information in a sealed record. First sponsor: Rep. Kavanagh.

Commentary: This bill never went to hearing.

H2307: Sentencing; Probation

For the purpose of sentencing repetitive felony offenders and dangerous felony offenders, if the presentence report includes a clear and compelling recommendation that the person is seriously mentally ill or has a history of mental illness and would benefit from supervised probation, the court is authorized to suspend the imposition or execution of sentence and place the person on supervised probation. First sponsor: Rep. J. Pierce.

Commentary: The strike-everything amendment to HB2307 allows each county to establish a County Attorney Deferred Prosecution Fund. It requires the court to hold regular review hearings on the progress of persons in deferred prosecution programs. It requires an annual report be prepared by the county attorney and the chief probation officer that includes, the number of persons diverted through diversion programs established pursuant to section 11-361 in each county in the previous fiscal year, the number of persons charged by the county attorney with a criminal offense in the previous fiscal year, the average length of time on probation for a person who is sentenced to a term of probation in the county and the probation department's most recent cost per person for supervised probation. The AOC is concerned about the wording of this piece of legislation and will be working on recommendations for changes.

There were concerns raised about funding of this legislation. It was discussed that the resources needed to monitor deferred defendants as required in the reporting requirements is not supported financially. In response, it was pointed out that the way this proposed legislation is written, it allows for funding through general fund appropriation, federal monies appropriated through for prosecution programs, grants, gifts, donations, and legislative appropriations, and that this legislation is permissive, not mandatory.

Further it was pointed out that many courts already have a deferred sentencing program. What does this legislation do? In response, it was discussed that the legislation creates a reporting requirement not otherwise utilized.

Also, there was discussion about how this legislation may affect the court's and county attorney's ability to sentence. A question was raised that if the court/county attorney did not want court monitoring as allowed by other statutes, how would this affect their sole authority on diversion programs?

H2314: Prosecutor Presence; Interview of Minor

The defendant, defendant's attorney or an agent of the defendant is prohibited from interviewing a minor child who is a victim and who has agreed to an interview unless the prosecutor is present, even if the minor child's parent initiates contact with the defendant, defendant's attorney or agent of the defendant. First sponsor: Rep. J. Pierce

Commentary: This was included as an FYI for this group.

H2454: Human Trafficking; Prostitution

Various changes relating to human trafficking. For cases where the minor is 15, 16 or 17 years of age, the minimum, presumptive and maximum sentences are increased for a person who commits child prostitution by causing a minor to engage in prostitution or financing, controlling or owning prostitution activity involving a minor. It is child prostitution to engage in prostitution with a minor who the person should have known, instead of only who the person knows, is 15, 16 or 17 years of age. The list of acts constituting aggravating circumstances for sentencing felony sex trafficking is expanded to include that the defendant recruited, enticed or obtained the victim from a shelter designed to serve victims of human trafficking, domestic violence or sexual assault, or runaways, foster children or the homeless. Child prostitution, sex trafficking, and trafficking of persons for forced labor or services are added to the list of acts that constitute "racketeering." If a person committed acts of prostitution as a direct result of being a victim of sex trafficking, it is an affirmative defense to prosecution for prostitution. First sponsor: Rep. E. Farnsworth.

Commentary: The amendment to H2454 requires escort agencies to include their license number when advertising their services and to keep on file for at least one year proof of the age of any escort used in advertising. Establishes civil penalties for violations of these laws. Requires that the civil penalties collected from these violations be deposited in the Human Trafficking Victim Assistance Fund. Establishes the following affirmative defenses: If the escort whose services were offered in an advertisement for escort services was eighteen years of age or older at the time the advertisement was published; The escort or escort agency possessed a valid license at the time the advertisement was published. Expands the criminal offense, "Commercial sexual exploitation of a minor".

H2563: Juvenile Crime Victims' Rights

Various changes to victims' rights for juvenile offenses, including that a vulnerable adult is added to certain protections granted to a minor. Adds various requirements that victims be given notice of specified rights. A victim's contact and identifying information obtained or reported by a law enforcement agency must be redacted in publicly accessible records pertaining to the criminal case involving the victim, with some exceptions. Statute governing the effect of failure to comply is repealed and replaced. A victim of a delinquent act has the right to receive one copy of the police report from the investigating law enforcement agency at no charge. A juvenile who is adjudicated in a delinquency proceeding is precluded from subsequently denying the essential allegations of the delinquent act in any civil proceeding brought by the victim or the state, including adjudications resulting from no contest pleas. First sponsor: Rep. J. Pierce.

Commentary: The perceived goal of this bill is to have juvenile and adult crime victims' rights to match in both A.R.S. § 8 and A.R.S. § 13 language. This bill made it out of committee this week.

H2593: Death; Post conviction; Appellate Proceedings; Dismissal

On a convicted defendant's death, the court is required to dismiss any pending appeal or post conviction proceeding. The death does not abate the defendant's criminal conviction or sentence or any restitution, fine or assessment imposed by the sentencing court. First sponsor: Rep. Allen.

Commentary: It was discussed that that current law suggests that conviction abatement of a defendant occurs at death on appeal. Recently the Arizona Supreme Court held that for cases pending Rule 32 post-conviction proceedings, upon death of a defendant, conviction and restitution does not abate, but did not go as far as when a case is under appeal.

H2625: Penalty Assessment; Victims' Rights Enforcement

Increases the penalty assessment levied on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalties imposed for traffic violations or a violation of game and fish statutes to \$15, from \$13. Increases the amount from each penalty assessment that the city or county treasurer is required to remit to the State Treasurer to \$10, from \$8, and requires \$2 of the assessment to be deposited in the newly established Victim's Rights Enforcement Fund, to be administered by the Department of Public Safety. The Dept is required to distribute monies from the Fund to nonprofit organizations and entities that provide specified services to crime victims and meet other specified requirements. First sponsor: Rep. Tobin

Commentary: The House judiciary committee amendment clarifies that the non-profit organizations and entities applying for funds shall not be

limited with respect to the type of crimes committed against the victim population they serve.

H2632: Prohibited Possessor; Order of Protection

For the purpose of regulations on weapons, the definition of "prohibited possessor" is expanded to include a person who is subject to an order of protection that prohibits the person from possessing a firearm and that was issued after a hearing that the person had an opportunity to participate in. First sponsor: Rep. Campbell

Commentary: This bill never went to hearing.

S1371: Prostitution; Children

Various changes relating to child prostitution. For cases where the minor is 15, 16 or 17 years of age, the minimum, presumptive and maximum sentences are increased for a person who commits child prostitution by causing a minor to engage in prostitution or financing, controlling or owning prostitution activity involving a minor. It is a class 1 (highest) misdemeanor to knowingly enter a house of prostitution or engage a prostitution enterprise for the purpose of paying money or other valuable consideration for sexual conduct. A child may be taken into temporary custody by a peace officer or a Child Protective Services worker if probable cause exists to believe that the child is a victim or will imminently become a victim of child prostitution or sex trafficking. A minor who is a victim of child prostitution cannot be charged with a violation of child prostitution. A person who was previously convicted or adjudicated delinquent for such a violation may apply to the court that pronounced sentence or imposed probation to have the judgment of guilt or adjudication expunged. First sponsor: Sen. Hobbs

Commentary: This bill never went to hearing.

S1411: Order of Protection; Warnings

A petition for an order of protection must contain warnings to the petitioner that making a false accusation of domestic violence is perjury and that a substantiated false accusation of domestic violence may have an adverse effect in any child custody or marital relations proceeding. An order of protection must include a statement that the defendant has the right to object to the order using an attached form. The burden of proof to determine if an order of protection should remain in place is by clear and convincing evidence. First sponsor: Sen. Murphy

Commentary: The bill passed in committee in the Senate on February 20, 2014. During hearing, issues were raised about the proposed warning language on the Order of Protection. The proposed language may violate the Violence Against Women Act., but it is believed that if

the bill proceeds, the problem will be addressed. Additionally this bill increases the burden of proof to determine if an order should remain in place by clear and convincing evidence. It is believed that if this bill moves out of the Senate, it is unlikely that it will receive a hearing in the House.

B. COVIC Reappointment Process

Every March this Commission has members whose appointment term ends. Some members of this group are appointed due to their position in the victim rights community, and others are selected based upon other recommendations. One of the goals in the reappointment process is to increase the diversity of appointees to include candidates from outlying counties and disciplines.

This year the following member terms are expiring: James Belanger, Michael Breeze, Sydney Davis, Karen Duffy, Captain Larry Farnsworth, Doug Pilcher, Judge Evelyn Marez and Judge Joseph Welty terms are expiring. Carol Mitchell and the Chair have already started the reappointment process, but would like this Commission's assistance in recommending additional candidates. The reappointment process calls for providing both the name of the reappointment individual and an alternate for the Chief Justice to choose from. If you, or your colleagues, have a recommendation for an individual to serve on this Commission, please contact Carol Mitchell at (602) 452-3965 or via email at cmitchell@courts.az.gov. Even if an individual is not selected in this reappointment cycle, he/she can be placed on the list for future cycles.

C. SANE Presentation

Ms. Karen Rasile, Forensic Nurse Manager with the Scottsdale Lincoln Health Network (SLHN), presented information on the role of Sexual Assault Nurse Examiners (SANE) and explained the forensic examination process in strangulation cases.

The SLHN Forensic Nurse program has partnered with the Maricopa County Attorneys' Office and law enforcement agencies throughout the valley to provide forensic exams for sexual assault and minor sex trafficking cases. The purpose of the medical-forensic examination is to identify all injuries that may help corroborate a victim's story, identify the assailant through DNA, and other purposes. The Forensic Nurse Examiners can perform exams anywhere in Maricopa County other than a private residence. Typically the exams are performed in one of the five (5) Maricopa County Advocacy Centers located throughout the valley, other health care facilities, and prisons/jails.

Ms. Rasile explained the role of Forensic Nurses in domestic violence strangulation cases. Strangulation is defined as intentionally or knowingly impeding the breathing or circulation of another and is a Class 4 Felony. Strangulation cases were not successfully prosecuted in the past due to lack of evidence and/or victim cooperation. In late 2011, a pilot program was developed in Maricopa County. Piloted in Glendale and Chandler, the program helped increase prosecution rates of strangulation cases by 47.5%. The Forensic Nurses now assist law enforcement agencies in recognizing and properly addressing possible strangulation cases in the field.

Ms. Rasile provided examples and facts regarding strangulation. She explained that only 4.4 pounds of pressure can close the jugular veins, and 11 pounds of pressure can close the carotid arteries. It can be less than 10 seconds to render someone unconscious from strangulation. She presented photographs of victim injuries and explained that 35% of victims have injuries too minor to photograph, as well as provide additional information about injuries.

During the Q&A session after the presentation, many good points and commentary were expressed. The discussion centered around other programs throughout Arizona, the difficulty of reaching the far counties in Arizona, the medical documentation provided by the Forensic Nurses, and the benefits of the integrity of testimony provided by a Forensic Nurse Examiner in court because the nurses serve as a non-biased, third party providing acute medical services.

D. Brainstorm/Discussion about COVIC Priority Areas

COVIC was established with the following focus areas: making recommendations regarding training and education for judges and court personnel on victims' rights and treatment of victims; working to promote the improved collection and disbursement of restitution; serving as liaison with other established victims' advocacy organizations while maintaining neutrality, and making other recommendations that preserve victims' constitutional rights and administration of justice.

In May of 2013, this Commission made recommendations to the AJC regarding Victims' Rights for the 2015 Strategic Agenda. In this meeting, the Chair requested discussion about the focus of the Commission in the coming year based on the recommendations provided to the AJC.

Encourage the coordination of technology solutions to ensure victim safety by making terms and conditions of release readily accessible to law enforcement.

Discussion: The focus of this conversation was an update on the progress of the working group established in the last COVIC meeting to address this issue. When the first meeting of this group is scheduled,

the initial focus is likely to be on limited jurisdiction court notification of the terms and conditions of release, and improved communication between law enforcement and the courts.

Create uniform procedures for processing and collecting on restitution judgments.

Discussion: The primary focus of this conversation centered on issues in the restitution process throughout the country. One of the current topics is what happens when a conviction is reversed on appeal and some restitution has been paid. Is the defendant repaid what he/she has already paid out? If so, who repays the defendant (the State or Plaintiff)? The consensus is that the State repays the defendant, but there have been other cases where the defendant was NOT entitled to repayment. Arizona does not require repayment to the defendant upon reversal.

Additionally, an important issue related to restitution is the collection of restitution judgments. The US Attorney's Office, Civil Division assists victims with the collection of a restitution judgment; however in Arizona and in most states in the country, victims are left on their own to execute/collect on the judgment. In the federal courts, the mandate is written into the prosecuting attorney legislation. In Arizona, some courts have adopted system where nonpayment of restitution is treated similarly to a contempt of court issue. It was suggested that this should be an issue to focus on in the coming year and this Commission can help advance some resolutions to this issue.

Extend language access services to victims and victim families in court proceedings.

Discussion: The focus of this conversation was on the difficulty in finding qualified interpreters for languages beyond Spanish, as well as the difficulty in finding multiple interpreters of the same language for the same hearing (one for the defendant, one for the plaintiff, etc.). The discussion went on to address the efficiency of using the Video Remote Interpreting equipment for remote counties and the cost savings. If there are any questions about language access, Carol Mitchell is available to assist at (602) 452-3965.

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 and improve communication with other branches of government and justice system partners.

Discussion: The focus of this discussion was on the need for better communication between courts and the informal system currently in use in some courts. In Pima County, there have been efforts over the past

year to formalize communication between courts and other governmental agencies. Though the issue is not as pronounced in the remote/smaller county courts because judges handle multiple case types, there are still issues in some juvenile cases. When the planned formal written protocol from Pima County is complete, the Chair requests that the plan be made available in order to possibly establish a statewide formal communication system.

Evaluate the resource titled, "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.

Discussion: This conversation centered on the progress already made toward this goal, as some COVIC members provided input for the judicial/court sections. In Maricopa County in there is work being done to improve protocol in many different areas including probation, law enforcement, juvenile court, and judicial protocols.

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.

Discussion: The focus of this discussion was the progress made already on this goal and suggestions for the publication. The Chair has been working with the AOC Education Services Division to revise the Criminal Benchbook and include an appendix with Victims' Rights. If any member of this Commission has suggestion about content, please contact Carol Mitchell at (602) 452-3965 or via email at cmitchell@courts.az.gov.

Additional areas of concern to focus on in the coming year suggested by Commission members include:

Electronic notifications (Arizona Board of Executive Clemency): A Committee member was concerned about Arizona Board of Executive Clemency notification to victims by the U.S. Mail. It was suggested that this board start using electronic system, similar to that used by the Arizona Supreme Court to announce decisions and administrative actions..

Electronic notifications (other agency letters to victims): There was a concern raised about the frequency and content of letters provided to victims. Victims receive many notices, including information regarding motions, stays, etc. It was pointed out that this is very cumbersome and confusing to the victim of a crime. This is especially evident in cases where a defendant is sentenced for consecutive terms. For example, a defendant may be eligible for probation on one of the charges in the case, but not in

another, more serious offense. The letter doesn't clarify well which charge(s) are being addressed in the letter.

Public record requests: Concerns were raised about public record requests for victim-related records. Recently there have been requests from media and others for victim-related records including autopsy photos, crime scene photos, and other sensitive documents. It was suggested that this Commission discuss further possible changes to legislation and dissemination of information to the media related to victims.

Media access to the court and records: During discussion, there were concerns voiced about the negative victim impact when there are requests for sensitive documents like crime scene photos, etc. Victims could be traumatized by additional court hearings to stop the release of records and possible media scrutiny. Additional questions were raised about the designation of entities (bloggers, etc.) and what is considered "the media."

III. Call to Public

A. Good of the Order/Call to the Public

Colleen Clase, Arizona Voice for Crime Victims, raised concerns about how the AZTurboCourt e-filing system, handles filings and fees for special actions. Recently her organization was registered as an entity that filing fees were raised, solving the issue for her agency, but there are pro bono victim attorneys that are still experiencing problems.

Ms. Clase identified a few issues that she has seen in courts also. She raised concerns about defendant and law enforcement behavior while in court before a hearing begins. She pointed out that in some court rooms the victim is physically present to see the alleged defendant engaging in inappropriately jovial conversations with law enforcement and other personnel. This can be very disturbing to the victim.

In response, it was pointed that attorneys sometimes appear to be having good-humored conversation in the courtroom, but in reality they are really working to resolve the case as quickly as possible, a legitimate business purpose. Sometimes this can be misinterpreted by the defendant and others in the court, allowing improper behavior to develop. It was suggested that one of the best ways to quiet the courtroom is to remind everyone that the proceedings are being recorded. Ultimately the judge has control of the courtroom.

Finally, Ms. Clase brought up an issue she had experienced in a restitution hearing with a victim. In this case, the victim and State Prosecutor did not agree on the restitution for a particular charge, but the prosecutor was still allowed to direct the hearing even though she could not make an argument for the victim in

good faith. Ms. Clase was allowed to be heard, and the victim was read her rights, but Ms. Clase felt that it was inappropriate for the prosecutor to represent the victim.

IV. Adjourn

A. Motion

The Chair called for a motion to adjourn at 12:13pm.

- Motion was called by Judge Peter Cahill for adjournment; Mr. Michael Breeze seconded; motion passed unanimously.

B. Next Committee Meeting Date:

Friday, June 20, 2014

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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APPROVED 10/3/14

Present: Judge Ronald Reinstein, Chair; Timothy Agan, Michael Breeze, , Shelly Corzo-Schafer, Sydney Davis, Judge Timothy Dickerson-telephonically, Karen Duffy-telephonically, Kirstin Flores, Leslie James, Dan Levey, Keli Luther, Judge Evelyn Marez, Jim Markey, Chief Jerald Monahan, Pam Moreton, William Owsley, Karyn Rasile, Judge Sally Simmons-telephonically, Dimple Ann Smith, Judge Richard Weiss, Judge Joseph Welty- by proxy Joseph Kreamer, Chief Cindy Winn-telephonically

Absent/Excused: Judge Peter Cahill, Judge Elizabeth Finn, Michael Lessler, and Elizabeth Ortiz

Presenters/Guests: Vince Figarelli, Crime Laboratory Superintendent

Staff: Carol Mitchell, AOC; Kelly Gray, AOC

I. Regular Business

A. Welcome and Opening Remarks

The June 20, 2014 meeting of the Commission on Victims in the Courts was called to order by the Chair, the Honorable Ronald Reinstein, at 10:04 a.m.

The Chair asked for member roll call and introductions of staff and guests. The Chair introduced the members recently appointed to this commission; Mr. Tim Agan and Mr. William W. Owsley from the Office of the Legal Advocate, and Chief Jerald Monahan of the Prescott Police Department. He congratulated members reappointed to additional terms; Judge Joseph Welty, Mr. Michael Breeze, Ms. Karen Duffy, Judge Evelyn Marez, and Ms. Sydney Davis.

B. Emergency Evacuation Procedures

Ms. Carol Mitchell explained the emergency procedures for the building including where to exit the AOC Building, procedures for evacuation, where to regroup, and if assistance is needed in the event of an emergency.

If you know you will need assistance evacuating in the event of an emergency, please contact Carol Mitchell at cmitchell@courts.az.gov or by telephone at (602) 452-3965.

C. Approval of February 21, 2014 Minutes

The draft minutes from the February 21, 2014, meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes; there were none.

- Motion was called by Judge Sally Simmons for the approval of minutes; Ms. Sydney Davis seconded; motion passed unanimously.

II. New Business

A. Criminal Rule 41, Form 4(a)

Ms. Kirstin Flores from the Arizona Attorney General's Office discussed a proposed change to Ariz. R. Crim. P. 41, Form 4(a), the "Release Questionnaire." Form 4(a) is to be completed by law enforcement and is used in the initial appearance for the purposes described in Ariz. R. Crim. P. 4.1 – 4.2.

The Attorney General's Victims' Rights Advisory Committee (VRAC) recently discussed the victims' rights of child victims who are in the custody of the Department of Child Safety (DCS). It was proposed that further protection of child victims' rights could be served by adding a question/checkbox to Form 4(a) which indicates if DCS is involved in the case, as law enforcement may not be present at the initial appearance. This proposed question/checkbox will be filled out by law enforcement as part of the "Release Questionnaire," limiting the possibility that the non-offending parent/guardian will answer this question incorrectly when prompted by the judge at the hearing. It was argued that by knowing that DCS is involved in the case gives more information for the initial appearance judicial officer, and further protects child victims by bringing the seriousness of the offense to the attention of the judge.

It was pointed out that there would be implications for law enforcement, and that this proposed change/addition to Form 4(a) must be assessed by various AOC committees and other law enforcement committees/groups to ensure all considerations are discussed. Further, there was discussion about where this proposed question/checkbox would be on the form, if all counties used this form currently, if this proposed question/checkbox would be related to the charge at hand only, and potential issues with contradictory court orders between various courts. It was suggested that this change/addition to Form 4(a) be proposed with the unrelated changes to Ariz. R. Crim. P. 41, Form 4(b), which may be submitted as a rule change through the AOC.

- Motion was called by Ms. Kristin Flores to approve the concept of adding a question/check to Ariz. R. Crim. P. 41, Form 4(a). The details of proposed

question/checkbox will be presented to COVIC at the October 3, 2014 meeting after Ms. Flores meets with VRAC. An additional motion approving/denying the addition of the question/checkbox is required at the October 2014 meeting. Mr. Michael Breeze seconded; motion passed unanimously.

B. Sexual Assault Awareness

Chief Jerald Monahan discussed “Start by Believing” campaign and presented additional information.

The Start by Believing campaign is a public awareness campaign that focuses on the public response to sexual assault. Start by Believing encourages the public to respond to a victim of sexual assault in a more positive way that can aid victims in the path toward justice and healing. The campaign features unique messaging and campaign materials, web and social media outreach, and opportunities for corporate partnership and support. Chief Monahan presented a slide show that powerfully illustrated the issue of sexual assault and highlighted a few of the initiatives that have been launched.

Though Start by Believing is a national campaign, Arizona is a leading supporter of the program. In Chinle, Arizona the Hopi, Zuni, Apache, and Navajo Coalitions rented billboard space to spread the word about Start by Believing. Apache Junction became the first Arizona city to issue a proclamation to Start by Believing. Many other cities followed Apache Junction, and Arizona State University Police Chief and President also launched the campaign. Additionally, in April 2014, in honor of Victims’ Rights Week, Governor Jan Brewer recognized the Start by Believing campaign, and the Arizona House of Representatives proclaimed Arizona to be a Start by Believing state. The campaign has recently even reached into Sonora, Mexico through a partnership with Nogales, Arizona.

There was discussion regarding the defendants’ rights and point of view. It was pointed out that this initiative does not impact the defendants’ rights as the standards of probable cause, proof beyond a reasonable doubt, and presumption of innocence are still intact. Many cases will still not be prosecuted as there is a lack of evidence, but there is benefit in encouraging a climate of reporting and speeding the recovery of a victim.

Additionally, there was discussion about the Forensic Nurse independent sexual assault exam. It was pointed out that an Arizona county has a process which delays the commencement of an exam. This county is the only participating county that has this process, leading to a higher rate of examination request denials.

Further, Mr. Jim Markey discussed a free training opportunity in Flagstaff for law enforcement. On August 19, 2014 through August 22, 2014, there will be a multidisciplinary sexual assault investigation class at which he and Karyn Rasile will be presenting. There will be discussions about human trafficking, forensics, prosecution, etc. Please contact an Arizona Peace Officer Standards and Training

(POST) representative for additional information at (602) 223-2514 or <https://post.az.gov/>.

C. DNA Databases: CODIS and Rapid DNA

Mr. Vince Figarelli, Superintendent with the Arizona Department of Public Safety, discussed CODIS and Rapid DNA.

The Combined DNA Index System (CODIS) is a database of DNA profiles of offenders, forensic samples from crime scenes, and missing person related samples that is useful for linking unsolved cases, providing investigative leads in unsolved cases, and providing investigative information in missing person cases. CODIS is a combination of several databases including National DNA Index System (NDIS), State DNA Index System (SDIS), and Local DNA Index System (LDIS). CODIS searches samples collected from relatives of missing persons, missing persons, unidentified human remains, convicted offenders/arrestees (all convicted felons, people arrested of qualifying offenses in Arizona and adjudicated juveniles), and forensic unknowns (non-suspect cases and cases with suspects). Samples NOT searched include victims, investigative leads, consensual sex partners, and known samples.

Arizona began collecting database samples from Convicted Sex Offenders in 1993. Since 2004 Arizona has been collecting DNA samples from all convicted felons pursuant to ARS code §13-610. Since 2008, in addition to collecting from all convicted felons, Arizona has been collecting DNA samples from certain violent arrestees as well. The possibility of solving unsolved crimes increases due to evolving technology can help victims of crime receive justice. As technology evolves, smaller and smaller samples are required to develop DNA profiles, and the length of time it takes to develop that profile is shortened.

The Arizona DPS Rapid DNA Program (“the Program”) is an initiative developed by the Department of Public Safety (DPS) that will dramatically decrease the length of time required to develop a DNA profile for police investigatory purposes.

The Program has three (3) primary uses including providing investigative leads to law enforcement from forensic samples, identification of victims, and identification of apprehended individuals (comparison to forensic unknowns). The Program will not allow upload of arrestee and convicted offender profiles into CODIS or other databases.

The IntegenX RapidHit 200 machines will be located in three (3) DPS laboratories in Phoenix, Tucson, and Flagstaff. The rapid DNA machine generates a DNA profile in about 90 minutes. To begin with, only single source sampling will be available (blood or saliva).

Issues were raised regarding the collection, storage, and searching of victim DNA in the investigative process. Questions were raised about any release statements/documents signed by a victim for collection of DNA during the

investigation of a crime, and if the permission granted allows for storage and searching of the DNA collected in the future. It was pointed out that some Arizona police departments collect and store victim DNA for the purpose of identifying suspects in future cases (“victim today, offender tomorrow” type scenarios). Members of this Commission raised concerns about the legality of this procedure in relation to Fourth Amendment rights. Ms. Dimple Smith agreed to further investigate this issue with the police department(s) in question using this practice.

D. Parent Representation

Mr. William Owsley, from the Office of the Legal Advocate, discussed the proposed Attorney Standards for Parent Representation rule changes.

The Attorney Standards for Parent Representation (the Standards) is a set of proposed guidelines developed through a statewide subcommittee of the Court Improvement Program Advisory Workgroup that all attorneys who represent parents and attorneys appointed as guardian ad litem for parents in dependency cases in Arizona must adhere to. In developing the Standards, the workgroup considered input from system partners in attendance at the Hearing Their Voices – A Discussion About Parent Representation Symposium that was held September 26, 2013, best practices within Arizona, and well-accepted standards developed by nationally recognized organizations.

The Committee on Juvenile Courts (COJC) approved the Standards in late May 2014, and the Standards are being disseminated for comment until 5:00 p.m. on Thursday, July 31, 2014. Mr. Owsley invited this Commission to make comments at www.azcip.org before the comment period deadline.

After the comment period expires the COJC will bring the Standards to the Arizona Judicial Council (AJC) in October 2014 for final approval.

E. Legislative Review

The Chair reviewed the documentation provided by Ms. Amy Love, Legislative Liaison for the AOC and highlighted a few pieces of legislation impacting victims. Please click [here](#) to review the legislative materials.

F. Victim Identification Rule Update

The Chair discussed amendments to Ariz. R. Crim. P. 39(b) which will be implemented in the near future.

Recently the Arizona Legislature passed House Bill 2454 (affecting A.R.S. § 13-4434) which further defined what identifying information and locating information a victim has the right not to disclose during testimony unless he/she consents, or the court

orders disclosure. This legislation defines “identifying information” as a victim’s date of birth, social security number and official state or government issued driver license or identification number, and defines “locating information” as the victim’s address, telephone number, e-mail address, and place of employment. These changes are to become effective July 24, 2014.

Ariz. R. Crim. P. 39 substantively mirrors A.R.S. §13-4434, and an amendment to the Arizona Rules of Criminal Procedure is required. The Arizona Supreme Court amended Ariz. R. Crim. P. 39(b)(10) on an expedited basis to include the newly protected pieces of victim information. The Arizona Supreme Court also ordered that this matter be open for comment until September 26, 2014.

Various legal groups/organizations disagree with the amendment to Ariz. R. Crim. P. 39. Concerns were raised about necessity of having the date of birth of a victim for identification purposes in the event of a conflict of interest and/or prior knowledge situations arise (information gained about a victim in a previous privileged context). In response, the county attorney offices indicated that they could perform the required checks; however, the defense bar is opposed to this solution. Defense groups in particular were uncertain about the ability of the county attorney to properly perform these checks as the county attorney offices have limited information. The Chair indicated that the comment period is still open, so additional developments may be forthcoming.

III. Call to Public/Adjournment

A. Good of the Order/Call to the Public

The Chair made a Call to the Public; there were no comments or questions by the public.

B. Adjournment

The June 20, 2014 meeting of the Commission on Victims in the Courts was adjourned by the Chair, the Honorable Ronald Reinstein, at 11:48 a.m.

C. Next Committee Meeting Date:

Friday, October 3, 2014
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

October 3, 2014

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

APPROVED 2/27/15

Present: Judge Ronald Reinstein, Chair; Mr. Timothy Agan; Mr. Michael Breeze; Ms. Sydney Davis; Judge Elizabeth Finn; Ms. Kirsten Flores; Mr. Dan Levey; Judge Evelyn Marez; Mr. James Markey; Chief Jerald Monahan; Ms. Pam Moreton; Mr. William Owsley; Ms. Dimple Smith; Judge Richard Weiss; and Judge Scott McCoy *proxy for Judge Joseph Welty*.

Telephonic: Judge Timothy Dickerson; Ms. Karen Duffy; Ms. Elizabeth Ortiz; Ms. Karen Rasile; and Chief Cindy Winn.

Absent/Excused: Judge Peter Cahill; Ms. Shelly Corzo-Shaffer; Ms. Leslie James; Mr. Michael Lessler; Ms. Keli Luther; and Judge Sally Simmons.

Presenters/Guests: Ms. Colleen Clase; Ms. Diane Johnson; Mr. Michael Kiefer; Mr. E.J. Montini; Ms. Laurie Roberts; and Ms. Mary Wallace.

Administrative Office of the Courts (AOC): Mr. Dave Byers; Ms. Kelly Gray; Ms. Melinda Hardman; Mr. Paul Julien; Mr. Mark Meltzer; Ms. Carol Mitchell; Ms. Heather Murphy; and Ms. Amy Wood.

I. Regular Business

A. Welcome and Opening Remarks

The October 3, 2014 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:00 a.m.

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

B. Approval of June 20, 2014 Minutes

The draft minutes from the June 20, 2014 meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes. There were none.

- Motion was made by Judge Timothy Dickerson to approve the draft meeting minutes of the June 20, 2014 meeting of this Commission. Seconded by Ms. Sydney Davis. Motion passed unanimously.

C. 2015 COVIC Meeting Dates

The following dates were proposed for the 2015 COVIC meeting schedule. The dates are “tentative”, meaning that the dates must still be coordinated with the 2015 Arizona Judicial Council (AJC) schedule. Please feel free to calendar these as tentative in the meantime, and Ms. Carol Mitchell will notify this body regarding the final meeting dates by December 2014.

- Friday, February 27, 2015
- Friday, June 12, 2015
- Friday, October 2, 2015

D. Announcements

Ms. Leslie James did not attend this meeting as she was appointed to the Board of Directors of the American Public Power Association (APPA). Congratulations Ms. James!

II. Presentations

A. Victims and the Media

Several journalists from the Arizona Republic, Mr. Michael Kiefer, Mr. E.J. Montini and Ms. Laurie Roberts, participated in a panel discussion on victims and the media. The Commission was engaged by depth of discussion and presented a number of questions that touched on many topics including the interplay between the media and crime victims, the media’s role in court, faults of the justice system in relation to victims, the approach to victim privacy, social media’s effect on reporting, the changing attitudes regarding Victims’ Rights, and story development. Thank you to the panel for your time, expertise, and participation!

III. New Business

A. Revision of ACJA § 3-402: Superior Court Record Retention & Disposition

Judge Pamela S. Gates, Chair of the Committee to Revise Arizona Code of Judicial Administration (ACJA) § 3-402, Superior Court Records Retention & Disposition, presented revisions to the section. The Committee was established by Arizona Supreme Court [Administrative Order 2014-13](#) to review and update,

as necessary, the provisions of ACJA § 3-402. The Committee will report its recommendations to the AJC at the October 2014 meeting.

The Committee is proposing several changes to ACJA § 3-402 that simplify the retention process, use similar language as the applicable legal authority, minimize complex trainings on record retention, and make the schedule more “user friendly.”

The most current proposed draft can be found on the [Superior Court Record Retention & Disposition Committee](#) webpage.

There was confusion expressed about the Juvenile Adoption, Severance, and Dependency case file retention. Under the proposed schedule, these records are to be retained by the court for 100 years, then transferred to LAPR for permanent retention. These juvenile file types have varying statutes that control their availability. The scope of the Committee’s task does not include petitioning for changes to these statutes, however, the Committee will identify a couple of issues it noted as worthy of further consideration.

Additionally, questions were raised about the removal of probation records from the schedule, both adult and juvenile, with the agreement that those records will be set out in a new probation records retention schedule. Probation files are distinct and the Committee felt that a probation-focused group would be better equipped to discuss the changes required to the retention schedule. Probation file retention will be addressed in either an Administrative Order or additional section in the ACJA. A timeline for this change has not been developed; however, the current schedule is still in effect and governs retention of probation files.

Finally, questions were raised about the format of files transferred to LAPR and the ability to open/use these files in the future. In response, it was discussed that LAPR does not have any responsibility under law to upgrade file formats, nor does it have the resources to do so.

- Motion was made by Ms. Sydney Davis to approve the changes to ACJA § 3-402 as proposed by the Committee to Revise Arizona Code of Judicial Administration (ACJA) § 3-402, Superior Court Record Retention & Disposition. Seconded by Mr. Michael Breeze. Motion passed. Judge Richard Weiss abstained.

B. Legislative Review

Judge Ronald Reinstein presented the legislative review as the AOC legislative team was unable to attend the meeting.

During a recent Arizona Justice of the Peace Association meeting, a judge introduced the concept of permitting a justice of the peace to order community restitution in lieu of all or part of a criminal fine or civil penalty if it was in the best

interest of justice. The rate would be determined by the presiding justice of the peace of the county. It does not apply to criminal restitution (by its wording does not apply to surcharges or assessments either).

As of September 27, 2014 the AOC has not taken a position in favor or against this concept, but has drafted preliminary language to address the issue.

“Fines; civil penalties; community restitution

Section 1. 13-824. Uncollectible monetary obligations; community restitution

A. A COURT MAY ORDER A DEFENDANT TO PERFORM COMMUNITY RESTITUTION IN LIEU OF ALL OR A PORTION OF A FINE, CIVIL PENALTY OR OTHER MONETARY OBLIGATION IMPOSED IF BOTH OF THE FOLOWING APPLY:

1. THE DEFENDNAT HAS BEEEN SENTENCED TO PAY A FINE OR CIVIL PENALTY, AND

2. THE COURT FINDS THE DEFENDANT IS INDIGENT AND UNABLE TO PAY ALL OR A PORTION THE FINE, CIVIL PENALTY OR OTHER MONETARY OBLIGATION RESULTING IN THE MONIES OWED BEING UNCOLLECTIBLE.

B. SUBSECTION A. DOES NOT APPLY TO A FINE, CIVIL PENALTY OR OTHER MONETARY OBLIGATION MANDATED BY LAW OR TO ANY FINANCIAL RESTITUTION.

Section 2. 13-824. Fines, civil penalties; community restitution

A. A COURT MAY IN LIEU OF IMPOSING A FINE OR CIVIL PENALTY ORDER A DEFEDNANT TO PERFORM COMMUNITY RESTITUTION.

B. SUBSECTION A. DOES NOT APPLY TO A FINE OR CIVIL PENALTY MANDATED BY LAW.”

The proposed concept suggests that in the post sentencing process, if a court has done everything possible to collect a fine from the defendant and was unsuccessful, the court should have the ability to substitute community service in lieu of payment of the fine.

There were concerns raised that the proposed changes would affect current and newly implemented restitution laws. In response it was pointed out that the proposed change does not include restitution, only criminal fines or civil penalties.

Further debate included discussion on the process for collecting unpaid fees and fines, costs associated with the process, and the practicality of imposing community service. It was pointed out that the Arizona Justice of the Peace Association has yet to take a position on the matter. It was agreed that there was

a problem, but further discussion was needed before moving forward with a decision from this Commission.

- Motion was made by Judge Timothy Dickerson to table the issue with the understanding that this group would discuss the issue further in the next meeting scheduled for February 2015. Seconded by Judge Evelyn Marez. Motion passed unanimously.

IV. Old Business

A. Criminal Rule 41, Form 4(a) Proposed Revision

Ms. Kirstin Flores from the Arizona Attorney General's Office again discussed a proposed change to Ariz. R. Crim. P. 41, Form 4(a), the "Release Questionnaire." Form 4(a) is completed by law enforcement and used in the initial appearance for the purposes described in Ariz. R. Crim. P. 4.1 – 4.2.

In the last meeting of this Commission, it was discussed that the Attorney General's Victims' Rights Advisory Committee (VRAC) recently took up the issue of the rights of child victims who are involved in a case with Department of Child Safety (DCS). In the VRAC meeting it was proposed that further protection of child victims' rights could be served by adding a question/checkbox to Form 4(a) which indicates if DCS is involved in the case, as law enforcement may not be present at the initial appearance. This proposed question/checkbox would be filled out by law enforcement as part of the "Release Questionnaire", limiting the possibility that the non-offending parent/guardian will answer this question incorrectly when prompted by the judge at the hearing.

Ms. Flores presented a rough draft of the changes for approval of this Commission.

On page 3 of Form 4(a):

"I. OTHER AGENCY INVOLVEMENT:

1. Were children present during the incident?

[] Yes

[] No

2. Is DCS involved?

[] Yes

[] No"

The language would be added to the form with additional questions about veterans and homelessness status following the proposed language. The Commission was not asked to vote on the additional language regarding veterans and the homeless, as those changes are being proposed by another group.

Issues were raised with the proposed language of “Is DCS involved?” citing some ambiguity that lead to questions of relevance at an initial appearance. What is “involvement” in relation to the case—an investigation? A call to DCS? In rebuttal, it was pointed out that the language is comprehensive enough to allow the judicial official at the hearing the freedom to investigate further if it is relevant to the current charges.

A Commission member indicated that he would like to see more development of the language. It was discussed that the language may be refined as additional information is added like the proposed veterans and homelessness language.

- Motion was made by Judge Timothy Dickerson to approve the language as written for the Ariz. R. Crim. P. 41, Form 4(a), the “Release Questionnaire.” Seconded by Judge Evelyn Marez. Motion passed. Mr. Michael Breeze abstained.

B. Victim Identification Rule Update

The Chair discussed amendments to Ariz. R. Crim. P. 39(b) which was implemented in July 2014. Changes made to A.R.S. § 13-4434 further defined what identifying information and location information a victim has the right not to disclose during testimony unless he/she consents, or the court orders disclosure. This legislation defines “identifying information” as a victim’s date of birth, social security number and official state or government issued driver license or identification number, and defines “locating information” as the victim’s address, telephone number, e-mail address, and place of employment.

Judge Reinstein asked for feedback from the group regarding its implementation and asked if there were any issues that have developed with prosecution, defense, victim advocacy, etc. with the change. There were no comments.

V. Good of the Order/Call to the Public

A. Arizona Supreme Court Case Notification System Issues

Ms. Colleen Clase and Ms. Mary Wallace from the Arizona Voice for Crime Victims (AVCV) discussed an issue with the case notification system supported by the Arizona Supreme Court. The case notification feature allows registered users of the Public Access to Court Information system to subscribe to cases that they are interested in tracking. When a change occurs on the subscribed case, the user is notified by e-mail.

Recently an issue was revealed regarding the notices sent by the case notification system. The message indicated that there were additional/changes to the charges in some cases. The email message showed the word "Charge(s)" in the "Change(s) Made" column of the e-mail, when really the change(s) made in the case were not charge information, but additional filings like minute entries, motions, etc.

Ms. Clase and Ms. Wallace emphasized the seriousness of the issue by explaining that they had received calls from upset victims who thought the charges were changed and/or reduced, even on old cases. The Commission agreed that this was an important issue that needed to be resolved.

Ms. Carol Mitchell will revisit this issue with the AOC IT Support group. She indicated that she needed additional examples to fully investigate and requested that anyone who came across the issue contact her with the case name/information. Ms. Mitchell will report back the progress to the group in the next meeting of this Commission.

B. Identity Theft Victim Resources

The Chair was recently contacted by a judge in Maricopa County who was concerned about a child victim of identity theft. The child's social security and identity was stolen and the parents had little to no support from the advocacy office in her town, other officials, and the social security office. The parents had no way to know how deep the damage to the child's identity went, were given almost no resources to investigate, and the girl was denied a new social security number. The Chair asked for suggestions and resources that he could pass along.

In response, a Commission member suggested the [Identity Theft Repair Kit](#) provided by the Arizona Attorney General. There was interest in this brochure and Ms. Mitchell agreed to forward the link to the Commission.

C. Adjournment

- Motion was made by Mr. Dan Levey to adjourn the October 3, 2014 meeting of the Commission on Victims in the Courts. Seconded by Mr. James Markey. Motion passed unanimously.

D. Next Commission Meeting Date:

****TENTATIVE****

February 27, 2015

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

State Courts Building, Room 119 A/B

1501 W. Washington St., Phoenix, AZ 85007

