

# Commission on Victims in the Courts

**February 27, 2015**

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

**APPROVED 6/12/15**

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**Present:** Judge Ronald Reinstein, Chair; Mr. Timothy Agan; Mr. Michael Breeze; Judge Peter Cahill; Ms. Shelly Corzo-Shaffer; Judge Elizabeth Finn; Ms. Kirsten Flores; Mr. Dan Levey; Mr. Michael Lessler; Ms. Keli Luther; Sgt. Ret. James Markey; Ms. Elizabeth Ortiz; Ms. Linda Christian (*proxy for William Owsley*); Ms. Karyn Rasile; Judge Joseph Welty; Chief Cindy Winn.

**Telephonic:** Judge Timothy Dickerson; Ms. Karen Duffy; Ms. Leslie James; Judge Evelyn Marez; and Judge Sally Simmons.

**Absent/Excused:** Ms. Sydney Davis; Chief Jerald Monahan; and Judge Richard Weiss.

**Presenters/Guests:** Jon Eliason; Ms. Jennifer Greene; Mr. John Humphries; Sgt. Domenick Kaufman; Mr. Joseph Kelroy; Mr. Jerry Landau; Ms. Zora Manjencich; Ms. Heather Murphy; Mr. Aaron Nash; and Ms. Amy Wood.

**Administrative Office of the Courts:** Ms. Carol Mitchell; Ms. Denise Lundin; and Ms. Kelly Gray.

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## **I. Regular Business**

### **A. Welcome and Opening Remarks**

The February 27, 2015 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:07 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

### **B. Announcements:**

#### **i. 20<sup>th</sup> Annual Valley of the Sun Chapter Parents of Murdered Children Fund Raiser and Auction**

The Valley of the Sun Chapter Parents of Murdered Children will be having a dinner and fundraiser on Friday, February 27, 2015 at 5:30 p.m. at the El

Zaribah Shriners, located at 552 North 40th Street, Phoenix, Arizona. The Chair will be attending with Mr. Dan Levey.

**ii. National Institute of Justice, SAFER Working Group, New Orleans, March 2015**

Chair Reinstein, Ms. Karyn Rasile, and Sgt. Ret. James Markey will be attending a SAFER working group in New Orleans the week of March 9, 2015 (related the Sexual Assault Forensic Evidence Reporting Act, SAFER).

**iii. New COVIC Staff and Membership Changes**

Ms. Carol Mitchell will no longer staff COVIC and was honored at the meeting with an appreciation token. Ms. Mitchell will still be with the Administrative Office of the Courts, but will focus on language access issues in the courts. The Commission thanked Carol for her dedication, hard work, and efforts throughout many years of service.

The Commission welcomed Ms. Denise Lundin as the new staff person to the commission beginning in March 2015. Denise brings a wealth of knowledge and expertise from her time as the Clerk of the Superior Court in Cochise County, as well as her time at the Administrative Office of the Courts (AOC).

Sadly, Ms. Dimple Smith and Ms. Pam Moreton have resigned their appointments to COVIC. Ms. Smith has taken a position in North Dakota and Ms. Moreton is no longer the Director of Victim Services for the Yavapai County Attorney's Office. The Commission thanked both members for their important service to COVIC.

**C. Approval of October 3, 2014 Minutes**

The draft minutes from the October 3, 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.

- Motion was made by Mr. Michael Breeze to approve the draft meeting minutes of the October 2014 meeting of the Commission on Victims in the Courts. Seconded by Mr. Timothy Agan. Motion passed unanimously.

**II. Presentations**

## A. Domestic Human Trafficking

Sgt. Domenick Kaufman of the Mesa Police Department presented information about domestic sex trafficking.

Sex trafficking is the exploitation of persons for commercial sex where the victims are controlled by force, deception or coercion. Domestic *Minor* Sex Trafficking is the exploitation of any person under the age of 18 for commercial sex. At its core is child rape for profit. Trafficking does not necessarily involve the crossing of borders as U.S. citizens are being trafficked. Typically the victims did not understand the implications of the lifestyle when they were recruited. They do not choose to commit unlawful acts, are not paid for services, have no freedom of movement, and leaving/escaping is not an option.

Sex trafficking often has several tracks including:

- The traditional pimp/prostitute scenario track ("Main Street"; strip clubs; brothels)
- The massage parlors/escort services track
- The circuit track (organized around major events)
- The digital track (escort ads; social media; porn webcam shows)

Sex trafficking violates both State and Federal laws, including A.R.S § 13-3212, which addresses child prostitution, and A.R.S. § 13-1307A, which addresses sex trafficking.

Victims of trafficking are often at-risk populations including runaways, foster children, abuse victims, and the financially desperate. Victims are often groomed into the life. Traffickers manipulate vulnerable people into believing that they are "choosing" such a life. Sometimes a trafficker poses as a romantic partner who ultimately ends up pimping the victim and controlling through isolation, degradation and physical torture, mixed in with occasional indulgences. The mindset of victims often includes distrust of outsiders and law enforcement in particular. Often they do not self-identify as victims, and blame themselves for the predicament. Victims may fear for safety of their families, who are often threatened by traffickers, and fear losing basic needs (food, shelter, etc.).

Responding to trafficking involves a three pronged approach including education, deletion of supply, and reduction of demand. Often victims need immediate assistance (housing, food, medical, safety and security, language interpretation and legal services), as well as longer term mental health & substance abuse assistance, income assistance (cash, living assistance), a legal status (T visa, immigration, etc.) and/or other services.

A victim centered approach allows authorities to break the cycle and to build stronger cases against traffickers. This approach includes prioritizing the safety, privacy, and well-being of the victim, understanding the exploitation of vulnerable

victims, understanding the impact of victim trauma, and how trauma affects victim behavior.

There were questions for Sgt. Kauffman from the group regarding the impact of the Internet on human trafficking. Sgt. Kauffman elaborated on various Internet outlets for selling sex and how the movement of the operations often shift from hour to hour. He also elaborated on the use of smart phones and social media to gain access to young girls and boys, and the ease of circumventing security settings.

## **B. Human Sex Trafficking Symposium Update**

Mr. Joseph Kelroy, Director, Juvenile Justice Services Division, presented an overview of the Human Sex Trafficking Symposium conducted in December of 2014 at the AOC.

The Human Sex Trafficking Symposium was developed out of a workgroup at the AOC, to discuss this important issue. Participants included judges and court staff from around the state, specialty court judges from Nevada and California, a Probation Officer from California, and speakers from the National Center for Public Policy Research and the Center for Court Innovation. The goal was to provide information to the group, and well as help the AOC and area stakeholders identify areas to target and how to deal with this issue effectively in the future.

Five focus areas were identified, which included specialized programming, multi-system collaboration, specialty courts, training, and awareness. The AOC's Juvenile Justice Services Division (JJSD) and Adult Probation Services Division, are collaborating with individuals from Arizona State University in an effort to provide training programs to stakeholders including juvenile and adult probation providers, prosecutors, judges, detention officers, and Department of Children Services staff.

Additionally, the JJSD has been exploring the potential of converting a Yavapai County detention center to set up a residential programs for victims of sex trafficking..

In addition to the efforts at AOC, there are many other efforts underway across the state to address issues related to sex trafficking. New focus has been placed on this issue by the Arizona Human Trafficking Council, which is co-chaired by Ms. Cindy McCain (McCain Institute Human Trafficking Advisory Council) and Mr. Gil Orrantia (Director, Arizona Department of Homeland Security). The group has a website and hotline available to raise awareness: [www.endsextrafficking.az.gov](http://www.endsextrafficking.az.gov) or (888) 373-7888.

If anyone has any questions, please feel free to contact Mr. Joseph Kelroy at [jkelroy@courts.az.gov](mailto:jkelroy@courts.az.gov).

### III. New Business

#### A. Legislative Review

Mr. Jerry Landau, Arizona Supreme Court, Legislative Office, presented several house bills to the group. He noted that the Arizona House of Representatives has finished hearing bills in the original House. Bills have progressed through the Committee of the Whole, and Third Reading Roll Call. Within the next three to four weeks, bills will proceed through the Arizona Senate.

##### H2087: Sex Offender Registration; Address Verification

A person who is required to register as a sex offender is required to verify the person's address if requested by the Department of Public Safety.

General Comments: None

First Sponsor: Rep. Borrelli

##### H2204: Criminal Restitution Order; Courts

Statute allowing the court to enter a criminal restitution order in favor of each person entitled to restitution. Provides for governing those orders in all courts, instead of exclusively in the Superior Court.

General Comments: House JUD amendment requires criminal restitution orders that are entered by the Superior Court to be paid to the Superior Court.

First Sponsor: Rep. Boyer

##### H2205: Traffic Offense; Restitution

Failure to stop and remain at the scene of an accident by a driver involved in an accident is no longer exempt from the statute allowing restitution for offenses causing economic loss.

General Comments: None

First Sponsor: Rep. Boyer

##### H2553: Human Trafficking Victim; Vacating Conviction

A person convicted of prostitution or any other non-dangerous offense that was committed as a direct result of the person being a victim of human trafficking is permitted to apply to the judge who pronounced sentence requesting that conviction be vacated. The court is required to grant the application and vacate the conviction if the court finds that the person's participation in the offense was a direct result of being a victim of human trafficking. Information that must be

included in the application, the application process, and the evidence that may be considered are specified. Applies to a victim of human trafficking who was convicted prior to July 24, 2014.

General Comments: A hearing is only required if the prosecutor opposes the application to vacate conviction. Disqualifies vacated conviction as a historical prior.

Additionally, Mr. Landau commented this is a significantly pared backed version of the original bill. This bill only applies to statewide prostitution statutes; not to municipal ordinances. It is pending rules in the House and is still being discussed by the Maricopa County Attorney's Office and the House Judiciary Chair. The Arizona Supreme Court asked for one change, a minute entry to be included in the file showing the judgment had been vacated.

He also wanted the group to consider the issue of how the information is reported on background checks. If the victim states that he/she was not convicted of a crime on a job application, and if the employer runs a check, it will still indicate that the victim was arrested for a crime. Police records are partially controlled by the Federal government. Though there are annotations, etc. that can be made to police files, it was pointed out that there is still record of the arrest, which may pose challenges for victims. This is a known issue that hopefully will be addressed with revisions to language in legislative process.

First Sponsor: Rep. Steele

A committee member asked Mr. Landau about S.B. 1460, still moving through the process. S.B. 1460 restores an offender's right to possess a firearm if the person's judgment of guilt is set aside, thereby restoring the right two years earlier than is currently allowed and legalizes certain prohibited weapons, including silencers, sawed-off shotguns and nunchucks. Mr. Landau indicated that he does not believe the bill will survive the process.

## **B. Code Section/Rule Change Proposals**

Ms. Jennifer Greene, Assistant Counsel, AOC Legal Services Division, presented two amendments to the Arizona Code of Judicial Administration (ACJA) and updated the Commission of the status of a rule petition related to the Arizona Rules of Criminal Procedure.

### **i. Arizona Code of Judicial Administration, Section 5-204**

The technical amendments to this code section would change it to conform to legislation passed by:

- Laws 2013, Chapter 55 § 1 (HB 2309), which broadened the applicability of victims' rights pertaining to juvenile offenses to include all misdemeanors, petty offenses, and criminal ordinance violations.
- Laws 2014 Chapter 269 § 6 (HB 2563), which requires the appellate courts to send a victim who requests notice a copy of the memorandum decision or opinion in a juvenile delinquency appeal concurrently with the parties.
- Motion was made by Judge Joseph Welty to approve the conforming technical amendments to ACJA section 5-204. Seconded by Mr. Michael Breeze. Motion passed unanimously.

**ii. Arizona Rules of Criminal Procedure, Rule 41: Form 4(a)**

In the last meeting of this Commission, there was an approved motion to add additional information to Ariz. R. Crim. P. 41, Form 4(a), the "Release Questionnaire." There is petition pending, [Supreme Court No. R-15-0026](#) which is available for view on the [Court Rules Forum](#). The proposed changes include a question related to the involvement of the Department of Child Safety (as this Commission suggested), as well as questions about military service and if the defendant is homeless.

Judge Evelyn Marez brought to the attention of law enforcement in her county the benefits of use Form 4(a) and will continue to recommend the use of this or another form with similar language.

**iii. Appellate Opinions**

Chair Ronald Reinstein reviewed two recent court opinions related to victim rights.

J.D. v. Hon. Hegyi, 234 Ariz. 210, 320 P.3d 826 (App. 2014).

Filed October 27, 2014; vacated and remanded. In a criminal case, a parent who exercises victim's rights on behalf of a minor child is statutorily entitled to refuse a defense interview. The Arizona Supreme Court held that the parent's right to refuse an interview does not expire when the victim turns eighteen, but instead continues until the case ends.

Lindsay R. v. Hon. Cohen, No. 1 CA-SA 14-0186 (App. 2015).

Filed January 13, 2015; petitioner's request for relief denied. The petitioners contended that under the Victims' Bill of Rights ("VBR"), victim's counsel was authorized to substitute for the prosecutor in criminal restitution proceedings.

Because no provision of the VBR authorizes privatization of the restitution process, the Court of Appeals held that such substitution was not allowed.

Discussion regarding both cases ensued.

### **C. COVIC Education Topics**

COVIC has been asked to develop a training session for the upcoming Judicial Conference in June. The Chair asked if any members of this Commission had suggestions about topics to include, and possible participation on a panel discussion.

It was suggested that topics include an update on recent and pending changes to laws that affect victims' rights. Additionally, although the New Judge Orientation discusses basic victims' rights and laws, a more in-depth discussion about the procedures in the courtroom could be beneficial in the upcoming conference, especially for rural judges. Lastly, it was suggested that a panel with different types of victims could be well received. The goal is to present topics that would be of interest to most judges attending.

Please contact Denise Lundin at (602) 452-3614 or via email at [dlundin@courts.az.gov](mailto:dlundin@courts.az.gov) with any additional suggestions or comments.

## **IV. Old Business**

### **A. Victim Identification Rule Update**

The chair stated that questions had arisen regarding the recent amendments to Supreme Court Rule 123 and that some clarification was needed as to what constitutes remote access vs. online access and what processes are in place. Specifically, how is the rule working? Mr. Jon Eliason, Major Crimes Division Chief at the Maricopa County Attorney's office and Ms. Keli Luther explained their office practice: Prosecutors use victim identifiers in their charging documents and name the victims in a motion filed nearly simultaneously. They audited some cases to see if the names were displayed remotely and they were not. When they went to the clerk's office they learned that the clerk provides computer terminals for the public to be able to view the electronic file and that the documents and names were available for viewing when accessed in this manner.

[Editor's note: the definition of Remote Electronic Access from Supreme Court Rule 123(b)(17) is: "means access by electronic means that permits the viewer to search, inspect, or copy a record without the need to physically visit a court facility."]

They noted that law enforcement and defense attorneys were leaving victims' names out of their documents and that education was working. Karen Duffy explained the Pima County Clerk's office procedure is the same as Maricopa County's except that victim identifiers are not used in pleadings. Statewide, if prosecutors don't want the public to view victims' names in the paper or electronic file available in the clerk's office they would need to file a motion to seal on a case-by-case basis.

Aaron Nash, Special Counsel and Public Information Officer for the Clerk of the Superior Court in Maricopa County, explained the office's records procedure, that the docket and documents are available for viewing at computer terminals in the office. He noted that filed exhibits, including photographs, in the clerk's custody are public records and also available to the public at the clerk's office, when not sealed by the court.

The chair suggested a work group could be formed to examine what problems have arisen since the rule change and what might be potential solutions. He asked that those interested in serving contact Denise Lundin at (602) 452-3614 [dlundin@courts.az.gov](mailto:dlundin@courts.az.gov) .

## **B. Public Access Victim Notification Update**

Ms. Carol Mitchell gave an update on the public access case notification system issues discussed at the October 2014 meeting of this body. 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. A victim received one of these emails and 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 such as minute entries, motions, etc.

Ms. Mitchell brought this issue to AOC IT Department. The project has been assigned to staff and they are currently working on the issue. Ms. Denise Lundin will present any progress in the next meeting.

## **C. Language Access Update**

Ms. Carol Mitchell reviewed important elements of language access, available resources, and how it affects victims in the courts.

Language access in the courts is rooted in Title VI of the Civil Rights Act of 1964 (which prohibits discrimination in any program or activity receiving federal assistance) and Executive Order 13166 (which guides agencies receiving federal assistance to provide meaningful access). In a letter sent to state court

administrators in 2010, the Department of Justice instructed courts to provide interpreter coverage for ALL case types at no cost to parties. These services should be extended beyond the courtroom to ensure effective communication in court-appointed/supervised functions.

In Arizona, Chief Justice Berch signed Administrative Order 2011-96 requiring courts to create Language Access Plans (LAP), which the AOC drafted a template for courts use. The Presiding Judge of each county determined if individual courts needed a plan or were covered under one general county plan. The templates were updated in May 2014.

The May 2014 changes to the LAP template included:

- Removed language about coverage in certain case types
- Added reference to Video Remote Interpreting
- Added information about court-ordered services and programs
- Incorporated AOC translated forms website and new training material
- Included complaint process and form template

Additionally, AOC Operational Reviews will include confirmation of an LAP on file (May 2014 version compliant), use of Language ID cards and signage readily available, and staff awareness of resources, including the new complaint form. It is recommended that courts take the time to consider items like signage posted in the court/public areas, voicemail messages for main phone lines, public materials/pamphlets, and information on the court's website when developing language access programs. Moreover, it is suggested that courts analyze demographic data, track language requests, and hire experienced bilingual staff as part of their LAP.

Resources available to court staff include an intranet page, as well as public [Resources for Interpreters](#) webpage. Additionally, Ms. Carol Mitchell is available to assist courts and members of the public at (602) 452-3965 or [cmitchell@courts.az.gov](mailto:cmitchell@courts.az.gov).

## **V. Call to Public**

### **A. Good of the Order/Call to the Public**

#### **i. Victims' Rights Week Event, April 2015:**

The Arizona Attorney General's Office, Victim Services, is hosting an event on April 21, 2015. Ms. Cindy McCain will be the keynote speaker. The event is free, but registration is required. Ms. Denise Lundin will send out the notification to all the members.

**ii. Domestic Violence Conference, August 2015:**

The Glendale Domestic Violence Task Force in cooperation with AOC Education Services Division, and the Coalition to End Sexual Violence, MAG and APAC, are hosting a multi-disciplinary domestic violence conference in Glendale on August 20, 2015 – August 21, 2015. Registration has not started yet, however “save-the-date” notices will soon be sent. An email was sent to a variety of judges soliciting training and panel ideas recently, so there will be a variety of topics covered and resources available.

**VI. Adjournment**

**A. Adjourn**

- Motion was made by Mr. Michael Breeze at 12:09 p.m. to adjourn. Seconded by Mr. Michael Lessler. Motion passed unanimously

**VII. Next Committee Meeting Date:**

June 12, 2015  
10:00 a.m. to 12:00 p.m.  
State Courts Building, Room 119 A/B  
1501 W. Washington St., Phoenix, AZ 85007

Arizona Supreme Court  
Commission on Victims in the Courts

June 12, 2015

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 345 A/B

**APPROVED 10/23/15**

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**Present:** Judge Ronald Reinstein, Chair; Mr. Timothy Agan; Mr. Michael Breeze; Judge Maria Elena Cruz; Ms. Sydney Davis; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Mr. Dan Levey; Ms. Keli Luther; Judge Evelyn Marez; Sgt. Ret. James Markey; Chief Jerald Monahan; Judge Sam Myers; Ms. Debra Olsen; Ms. Elizabeth Ortiz; Mr. William Owsley; Ms. Karyn Rasile; Judge Richard Weiss; Chief Cindy Winn.

**Telephonic:** Ms. Karen Duffy; Judge Sally Simmons.

**Absent/Excused:** Ms. Shelly Corzo-Shaffer; Judge Timothy Dickerson; Judge Elizabeth Finn; Mr. Michael Lessler.

**Presenters/Guests:** Chief Justice Scott Bales; Attorney General Mark Brnovich; Ms. Christine Groninger; Ms. Holli Sanger-Alarco; Ms. Allison Sedowski.

**Administrative Office of the Courts:** Ms. Denise Lundin; Ms. Kelly Gray.

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

The June 2015 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:02 a.m. The Chair asked for commission member roll call and introductions of staff and guests.

**B. Announcements**

**i. Evacuation Plan Announcement**

Ms. Kelly Gray described evacuation procedures for conference room 345 A/B and the method of communicating special evacuation needs to the commission and attendees.

## **ii. Arizona Attorney General's 2015 Distinguished Service Award**

Mr. Mark Brnovich and Chief Justice Scott Bales congratulated the commission for receiving the Arizona Attorney General 2015 Distinguished Service Award in recognition of the commission's positive impact on public policy on behalf of victims of crime. Chief Justice Bales thanked the commission members for their service and encouraged them to refer others to volunteer for committee work in the Arizona judicial system. Mr. Mark Brnovich expressed his sincere gratitude to the commission for their work in the area of victim rights.

## **iii. New Member Introductions**

Judge Sam Myers, Judge Maria Elena Cruz, Ms. Debra Olsen, and Ms. Kim Hedrick introduced themselves and provided further information about themselves.

## **C. Approval of the February 2015 Minutes**

The draft minutes from the February 2015 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 Ms. Elizabeth Ortiz to approve the February 24, 2015 meeting minutes of the Commission on Victims in the Courts. Seconded by Mr. Michael Breeze. Motion passed unanimously.

## **II. PRESENTATIONS**

### **A. Sexual Assault Forensic Evidence Reporting Act (SAFER)**

Ms. Karyn Rasile, Mr. James Markey, and Ms. Allison Sedowski presented information on the Sexual Assault Forensic Evidence Reporting Act (SAFER). The SAFER Act was passed to address the backlog of sexual assault kit testing across the country.

Mr. Markey indicated that there were grants provided by the New York City District Attorney's Office to address the backlog nationwide, and to address the root cause of the accumulation of untested sexual assault kits. Through those grants, a committee was formed which implemented a registry for the purpose of reporting/collection of data and providing the status of processing sexual assault kits. The committee developed and disseminated best practices for DNA analysis related to sexual assault kits, created best practices for testing kits and recommended timeframes for analysis of kits.

Additionally, a working group was developed to discuss the ongoing issues related to the processing of sexual assault kits.

Ms. Sedowski discussed the crime lab's impact on the prosecution of sexual assault cases and the procedures required to analyze kits. She provided a scientific perspective and several new approaches on the processing of sexual assault kits.

Ms. Karyn Rasile discussed the impact of the Sexual Assault Nurse Examiner (SANE) program in Arizona and the consistency of information, services, and processes provided to victims. She recommended several changes including a staffed sexual assault information line/email, adding a form for lab feedback, the use of multiple disciplinary teams to assist victims, and encouraging victim-centered methods and policies.

Discussion ensued regarding the development of policies and procedures and ultimately training for professionals throughout the state.

#### **B. Increasing the Effectiveness of "Lay Legal Advocates"**

Ms. Chris Groninger, Director of Strategic Initiatives for the Arizona Foundation for Legal Services & Education reported on the idea of increasing the effectiveness of "Lay Legal Advocates" outlined in a communication to the Arizona Commission on Access to Justice.

Ms. Groninger explained that Arizona's "Lay Legal Advocates" help victims make important, positive changes in their lives. However, limitations currently exist in rules and court procedures that reduce their effectiveness. Ms. Groninger shared the perspective of court and advocacy communities, that expanding the role of Arizona's "Lay Legal Advocates" will increase and improve access to justice for victims across the state.

Some ideas put forth include:

- i. Enacting regulatory and rule changes to allow Domestic Violence Lay Legal Advocates do more to help survivors of abuse complete legal documents and pleadings.
- ii. Adoption of best-practices guidelines and implementation of new training with regard to advocates accompanying abuse survivors to court and sitting with victim at the "counsel table."
- iii. Additional training of court employees to facilitate better communication of legal information to victims and advocates.

- iv. Development of a “Navigator” type program, similar to the one developed for the New York State Court system that could expand and further develop the ability of Arizona’s Lay Legal Advocates to assist victims with various legal issues.

Plans are to run a small pilot project for a year and receive feedback before developing recommendations. This concept will be brought to the next meetings of the Committee on Domestic Violence and the Courts and the Commission on Access to Justice.

### III. NEW BUSINESS

#### A. Legislation and Rule Update

Ms. Amy Love presented the following recently passed legislation:

- i. H2166: DCS information; egregious abuse; neglect

Discussion: Ms. Love indicated that in previous versions of this legislation, there was language that affected the way courts do business. The language was removed/revised in the final version.

- ii. H2203: Post-conviction release hearings; recordings; free

Discussion: None

- iii. H2204: Criminal restitution order; courts

Discussion: Ms. Love indicated that this legislation allows all courts to enter criminal restitution orders. Previously only trial courts were permitted to enter restitution orders.

- iv. H2205: Emergency service providers; civil liability (~~traffic offense;~~ restitution)

Discussion: None

- v. H2239: Police reports; victims; attorneys

Discussion: None

- vi. H2517: Internet crimes against children; fund

Discussion: None

- vii. H2553: Sex trafficking; vacating conviction (~~human trafficking victim; vacating conviction~~)

Discussion: None

#### **B. Order Amending Rules 29 & 41 of the Arizona Rules of Criminal Procedure (HB2553 Controlling)**

Mr. Patrick Scott discussed Arizona Supreme Court Order R-15-0032 amending rules 29 and 41 of the Arizona Rules of Criminal Procedure. Amendments related to H2553 becoming law.

An emergency order by the Arizona Supreme Court was filed to amend Rule 29 and mandated a new Form 21(a) under Rule 41 of the Arizona Rules of Criminal Procedure. The order added/changed language in Rule 29 that allows a sex trafficking victim to apply to the court that pronounced sentence to vacate a conviction of a violation of A.R.S. § 13-3214 committed prior to July 24, 2014 pursuant to A.R.S. § 13-907. The order becomes effective July 3, 2015.

Mr. Scott indicated that H2553 is applicable to A.R.S. § 13-3214 only, and that local ordinance violations are not included in this type of relief. He further explained that if the application is granted, background checks would show the conviction, but will indicate that the conviction was vacated. Additionally those individuals who were granted relief under H2253 would still have to disclose the conviction when applying for an Arizona Fingerprint Clearance Card. Mr. Scott clarified that the law applies to *offenses* committed prior to July 24, 2014 (as opposed to the *conviction* date).

### **IV. OLD BUSINESS**

#### **A. Code Section/Rule Change Proposals**

##### **i. Rule 41, Form 4(a) Comment and Proposed Workgroup**

Mr. Patrick Scott and Chair Ronald Reinstein discussed the proposed changes to Ariz. R. Crim. P. 41, Form 4(a), "Release Questionnaire." Form 4(a) is used in the defendant's initial appearance hearing to provide additional information to the hearing officer regarding the defendant. In past meetings of this body, the commission voted to approve some language changes to Form 4(a). The language proposed on the form was regarding the presence of

children during the incident and if the Department of Child Safety (DCS) was involved.

The Administrative Office of the Courts filed a petition to amend Form 4(a) and 4(b) in response to recent amendments to A.R.S. §§ 22-601 and -602, made by HB 2457 (Laws 2014, Chapter 37). A response to that petition was filed by the State Bar of Arizona that supports the petition with one caveat regarding the inclusion of a question inquiring whether the DCS was involved in the matter related to defendant.

The State Bar of Arizona contends that the "Release Questionnaire" is subject to Rule 15 discovery requirements and that DCS information is confidential, and may only be released in specific circumstances under law. It argues that there are no exceptions for release in a criminal matter under A.R.S Title 8 and release of confidential information is considered a Class 2 misdemeanor under A.R.S. § 8-806. If the changes to Form 4(a) regarding DCS involvement were approved, the Arizona State Bar asserts that there will be conflicting laws between the criminal rules and children's code under A.R.S. § 8.

In response to these issues, it was determined that further study is required. A working group has been formed, staffed by Mr. Jerry Landau of the Administrative Office of the Courts. The first meeting is scheduled for July 2, 2015. The Chair indicated that he will update the Commission in future meetings regarding this issue.

#### ii. ACJA 5-204 Technical Amendment

Mr. Patrick Scott updated the group on changes to Arizona Code of Judicial Administration (ACJA) § 5-204. In the last meeting of this body, the commission voted to approve technical amendments to ACJA § 5-204 that would conform the rule to legislation recently passed. Administrative Order 2015-23 was issued on March 4, 2015 which broadened the applicability of victims' rights pertaining to juvenile offenses to include all misdemeanors, petty offenses, and criminal ordinance violations.

#### B. Victim ID Rule Update (taken out of order)

The Chair discussed victim identification issues related to Arizona Supreme Court Rule 123, Public Access to the Judicial Records of the State of Arizona. In the last meeting of this body there were concerns raised

regarding accessibility of court records from computer terminals in superior court clerks' offices.

After further review of the rule and discussions with personnel from the Clerks of the Superior Court in Maricopa County and Pima County, it was determined that these terminals described were analogous to viewing a physical record at the court. Viewing records that may contain victim identification information at the court/clerk's office is allowed under Arizona Supreme Court Rule 123. Viewing electronic records that may contain victim identification information remotely is not permitted under the rule. For these reasons, the Chair indicated that a workgroup was not necessary at this time.

#### **C. Victims' Rights Panel at Judicial Conference (taken out of order)**

The Chair stated that he will lead a panel discussion on Victims' Rights at the Arizona Judicial Conference scheduled for June 19, 2015.

#### **D. Update on Minor Victims of Sex Trafficking in Arizona Probation**

Ms. Holli Sanger-Alarco, Program Manager/Contracts & Monitoring Unit for the Juvenile Justice Services Division (JJSD) of the Administrative Office of the Courts, discussed implementation plans to address identification of minor sex trafficking victims and connect those victims with appropriate programming and services.

Ms. Sanger-Alarco said that the JJSD has entered into a contract with Dr. Dominique Roe-Sepowitz, MSW, Ph.D., associate professor of Social Work at Arizona State University, to provide training to the JJSD probation officers later this year on minor victims of sex trafficking. Additionally, her division is working to contract with therapists who are trauma trained in order to better serve minor victims of sex trafficking.

In the last meeting the commission, it was mentioned that the JJSD had been exploring the potential of converting a Yavapai County detention center into a residential program for victims of sex trafficking. Ms. Sanger-Alarco indicated that ultimately the conversion was cost prohibitive and the project would not move forward at this time. However, the JJSD is considering modifying the service specifications to move forward in a different way to better serve the minor victims of sex trafficking population.

## V. CALL TO PUBLIC

### A. Good of the Order/Call to the Public

- i. Mr. Dan Levey to the National Crime Victim Law Institute in Portland, Oregon to present on Arizona's restitution courts.
- ii. Ms. Kirstin Flores discussed funding available through the Victims of Crime Act (VOCA). These funds, which are administered through the Department of Public Safety (DPS), are used for non-mandated victim services programs in Arizona. Typically Arizona is granted about 9 million dollars statewide each year. During the next federal fiscal year, it is anticipated that Arizona will be granted up to 44 million dollars. The grant process is scheduled to begin in early August 2015. Representatives from DPS are available to discuss programs eligible for funding only as long as the solicitation is open. The DPS Crime Victim Services webpage is located at [http://www.azdps.gov/Services/Crime\\_Victims/](http://www.azdps.gov/Services/Crime_Victims/).
- iii. The Chair asked that if a member of the commission was interested in presenting on any issue or topic, please feel free to contact him or Denise Lundin at [dlundin@courts.az.gov](mailto:dlundin@courts.az.gov).

## VI. ADJOURNMENT

### A. Adjourn

- Motion was made by Judge Richard Weiss at 11:50 a.m. to adjourn. Seconded by Ms. Sydney Davis. Motion passed unanimously

## VII. NEXT COMMITTEE DATE

October 23, 2015  
10:00 a.m. to 12:00 p.m.  
State Courts Building, Room 345 A/B  
1501 W. Washington St., Phoenix, AZ, 85007

Arizona Supreme Court  
Commission on Victims in the Courts

October 23, 2015  
10:00 a.m. to 12:00 p.m.  
State Courts Building  
1501 W. Washington, Phoenix, AZ 85007  
Conference Room 345 A/B

**APPROVED 2/26/16**

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Present: Judge Ronald Reinstein, Chair; Mr. Timothy Agan; Mr. Michael Breeze; Judge Maria Elena Cruz; Ms. Sydney Davis; Judge Elizabeth Finn; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Mr. Michael Lessler; Mr. Dan Levey; Judge Evelyn Marez; Sgt. Ret. James Markey; Chief Jerald Monahan; Judge Sam Myers; Ms. Debra Olsen; Ms. Elizabeth Ortiz – proxy Barbara Marshall; Mr. William Owsley; Judge Richard Weiss; Chief Cindy Winn.

Telephonic: Ms. Karen Duffy

Absent/Excused: Ms. Shelly Corzo-Shaffer; Judge Timothy Dickerson; Ms. Karyn Rasile; Ms. Keli Luther; and Judge Sally Simmons.

Presenters/Guests: Ms. Colleen Clase; Ms. Shawn Cox; and Mr. Steven J. Twist.

Administrative Office of the Courts: Mr. Eric Ciminski; Ms. Heather Murphy; Ms. Jane Price; Mr. Patrick Scott; Ms. Kathy Waters; and Ms. Amy Wood.

Staff to the Committee: Ms. Denise Lundin; Ms. Kelly Gray.

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**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

The October 2015 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. Announcements

### i. Evacuation Plan Announcement

Ms. Kelly Gray described evacuation procedures for conference room 345 A/B and the method of communicating special evacuation needs to the commission and attendees.

### ii. Maricopa County Bar Association Hall of Fame

The Chair stated Judge Elizabeth Finn was selected for the Maricopa County Bar Association Hall of Fame. Judge Finn responded by stating that the Chair was also named. The Hall of Fame recognizes individuals who have built the legal profession in Maricopa County and beyond, who have made extraordinary contributions to the law and justice, and who have distinguished themselves at the highest levels of public service. They will be honored in a ceremony on October 27, 2015.

## C. Approval of the June 2015 Minutes

The draft minutes from the June 12, 2015 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 Richard Weiss to approve the June 2015 meeting as drafted. Seconded by Judge Sam Myers. Passed unanimously.

## II. PRESENTATIONS

### A. 25<sup>th</sup> Anniversary of the Victims' Rights Constitutional Amendment

Retired Judge Fredrick Newton introduced Mr. Steven J. Twist. Judge Newton served as a judge in the Coconino County Superior Court from 1993 to 2010 and served as Presiding Judge from 2002 to 2008. Prior to that, he worked in the Coconino County Attorney's Office and served as Chief Deputy County Attorney. Judge Newton emphasized the importance of Az. Const. Art. 2 § 2.1 (Victims' Bill of Rights) and he thanked Mr. Twist for his role in drafting and support of the Arizona's Victims Bill of Rights constitutional amendment.

Mr. Steven J. Twist, currently an Adjunct Professor at Sandra Day O'Connor College of Law, Arizona State University, drafted the Arizona Victims' Rights constitutional amendment in 1990. Mr. Twist discussed the history of the

amendment including the 1990 ballot proposition, important cases that led to the call for victims' rights legislation, and the individuals/groups that were essential in the development of the amendment. He emphasized fundamental concepts when forming the amendment that are still as relevant today as when the legislation was adopted. He discussed several case law challenges related to the amendment that have impacted the applicability and authority of legislation. He also discussed current challenges and the need for further case law development related to the amendment, as follows:

"To preserve and protect victims' rights to justice and due process, a victim of crime has a right:"

id. (1) "To be treated with fairness, respect, and dignity..." and "...to be free from intimidation, harassment or abuse..."

 There are some citations in case law, but there are still many areas which the application of these principles have yet to be fully developed.

id. (3) "To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present."

 This area is particularly in challenging in I.A. court as there are limited resources available to agencies and timely notice may not be given. A more robust notification process is needed.

id. (5) "To refuse...other discovery request by the defendant..."

 There are many instances where a challenge to the discovery process could be brought, however a victim may not be notified promptly of the defense's discovery request.

id. (10) "To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence."

 There are cases in this state that have taken up to seven years from arrest to trial. Extended timeframes can be especially difficult for victims who would like to move forward after their trauma.

id. (11) "To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights."

 This area of application of the law could be explored further as victims are often excluded from Motion to Suppress hearings.

Though there are still challenges with compliance in some areas of the amendment, for 25 years the amendment has assisted victims of crime through the litigation process and upheld important values that are critical to the welfare of Arizona.

## B. Changes to ACJA § 6-103: Victims' Rights Requirements for Probation Personal

Ms. Kathy Waters, Director of Adult Probation Services, discussed proposed changes to the ACJA §6-103 and introduced Ms. Jane Price, the new Administrative Services Manager of Adult Probation Services.

She explained that the proposed changes would:

- Conform the definition of "delinquent act" to A.R.S. §8- 201(11).
- Clarify that the notification rights set forth in the ACJA §6-103 applies to opted-in victims pursuant to A.R.S §13-4417 and A.R.S §8-398.
- Provide clarifying language as to when probation departments need to notify opted-in victims versus the obligations of the court to notify.
- Add the requirements for departments to have a provision for communicating with limited-English speaking victims.

Several concerns were discussed including formatting issues (which Ms. Waters will correct in the final draft) and questions related to timely notice of hearings. A committee member mentioned that she received notice of a probation hearing in the mail three days after the hearing was held in the case where she was identified as a crime victim. Several comments were made regarding the language in the current and proposed changes including the possibility of defining "timely notice" and "method of notice." Ms. Waters agreed to examine ACJA §6-103 further and let the committee know how the code addresses timely notice and the method of notice.

- Motion was made by Judge Elizabeth Finn to support the proposed changes with the proviso that Ms. Waters follow up with the committee regarding timely notice and method of notice information. Seconded by Judge Richard Weiss. Passed unanimously.

Ms. Waters reported that ACJA §6-103(F)(1) (Duties of Juvenile Probation) currently reads, "Utilize all available means to contact victims and, where appropriate, the victim's family telephonically, electronically, personally, or in writing to ascertain the emotional, economic and physical impact the delinquent offense has had on the victim" and ACJA §6-103(E)(4)(a) (Duties of Adult Probation) currently reads, "Utilize all available means to contact victims telephonically, electronically, personally, or in writing to ascertain, pursuant to A.R.S. §13-4424(B), "The probation officer shall consider the economic, physical and psychological impact that the criminal offense has had on the victim and the victim's immediate family pursuant to A.R.S §12-253."

### C. Establishing Pretrial Justice in Arizona

Ms. Kathy Waters, Director of Adult Probation Services, presented information regarding pretrial justice that was of interest to the group. She explained that the 2014 – 2019 Strategic Agenda includes the goal to improve and expand the use of evidence-based practices to determine pretrial release conditions for low-risk offenders.

She described the foundational concepts for evidence based pretrial justice including its purpose and the use of objective risk assessments. She explained that the goal of the program is to assist the court in making informed pretrial decisions, effectively supervise defendants, ensure the defendants meet court obligations, and uphold the legal and constitutional rights of defendants.

Ms. Waters explained validated objective risk assessments, including the one used in a pilot in Arizona, the Public Safety Assessment (PSA). The PSA was developed by the Laura and John Arnold Foundation and uses non-interview dependent factors, separately predicts failure to appear and new criminal activity, and predicts risk of new violent criminal activity.

She went on to tell the group that in March 2015 the Arizona Judicial Council approved the adoption of the PSA and described the next steps in the implementation. She told the group that the AOC is working with the Arnold Foundation on statewide training and implementation of the PSA in the coming year.

### D. When Victims Experience Trauma

The Chair regrettably informed the group that Ms. Shelly Corzo-Shaffer's presentation "When Victims Experience Trauma," scheduled on the agenda for 11:00 a.m., would have to be postponed. Ms. Corzo-Shaffer had an emergency and could not attend the meeting, but she will present it in a future meeting of this body.

## III. NEW BUSINESS

### A. Domestic Violence Risk and Lethality Assessments Legislation

The Chair discussed HB 2164 which amended A.R.S §13.3906 and A.R.S §13.3967 which relate to bail. The amendment changed the language in A.R.S §13.3967 to allow the judicial officer, when determining the method of release or the amount of bail during the initial appearance, to take into account (among other items), "The results of a risk or lethality assessment in a domestic violence charge that is presented to the court." The Chair mentioned that there

were issues related to how this information would be relayed to the judge, including the possibility of placing the assessment language on Az. R. Crim. P. 41 Form 4(a). Ms. Kay Radwanski, staff to the Committee on the Impact of Domestic Violence and the Courts (CIDVC), will present more information related to this change in a future meeting of this body.

## IV. OLD BUSINESS

### A. Status of Public Access Change Request

Mr. Eric Ciminski presented changes to the victim notification system previously discussed by this committee. 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 email. Victims received an email and 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 email, when really the change made in the case was not charge information, but additional filings such as minute entries, motions, etc.

He indicated that the notification email has been changed so that it includes only the case number, case name, and information about when it was last updated. He went on to add that there was a sentence included in the notification encouraging the recipient to contact the court associated with the case.

### B. Status Changes to Criminal Rule 41, Form 4(a)

Mr. Patrick Scott presented information about the status of changes made to Az. R. Crim. P. 41 Form 4(a) previously discussed by this committee. The changes included a question related to the involvement of the Department of Child Safety (DCS) (as this commission suggested), as well as questions about military service and if the defendant is homeless.

The State Bar Association filed a response to the proposed changes that objected to the language on the form, arguing that the way the question was phrased created issues with disclosure. DCS information is confidential under A.R.S. §8-807 and the Bar felt that the officer may be prompted to actively inquire into DCS records to determine if the defendant was involved in some way, and then disclose the information inappropriately. The changes to the form were adopted in Arizona Supreme Court Order R-15-0026 in August 2015. In the final adopted form, there is a two-part question that reads "Did the offense involve a child victim? [ ] Yes [ ] No. If yes, was DCS notified? [ ] Yes [ ] No."

Ms. Kirstin Flores indicated that she had presented this change to the [Governor's Commission to Prevent Violence Against Women](#) and she received feedback from the group which suggested that training should be a component with the implementation of the form. Ms. Flores indicated Ms. Elizabeth Ortiz may be able to provide training through [Arizona Prosecuting Attorneys Advisory Council](#) as she sits on that committee, as well as discussing it with [Arizona Peace Officer Standards and Training Board](#).

### C. Case Law Update

Chair Reinstein presented several recent cases that are of importance to the Victims' Rights community:

#### State v. Ray, Court of Appeals, Div. Two – Special Action 8/24/15

The Arizona Court of Appeals, Division Two (COA2) vacated the respondent judge's order permitting the defendant to interview the victims and their representative.

The defendant was charged with three counts of continuous sexual abuse of a child, two counts of sexual abuse of a minor under the age of fifteen, and two counts of child molestation. The indictment named four victims. The victims knew each other, and the defendant argued that they spoke to each other about him and sought to compel interviews with each victim and their representative. The trial court granted the defendant's Motion to Compel, but prohibited him from asking any questions that sought to obtain, by indirect means, information about the victims' own incidents. The victims had invoked their right not to be interviewed by the defense.

COA2 found that the case cited by the trial court did not apply and the interviews should be precluded on all counts of the indictment so that victims could not be cross interviewed regarding the other victims.

#### State v. Carlson, Arizona Supreme Court – 6/18/15

The Arizona Supreme Court affirmed the conviction of the defendant, however the Court found the trial court erred regarding the victim impact evidence.

The defendant was convicted of murder. His attorney objected to the victim impact statements. A letter written by the victim's daughter appeared to advocate for the death penalty or at least a sentence of natural life. There is a long line of cases in Arizona and the federal courts, which hold that victims can't ask for, or address in any way, the potential sentence in capital cases.

The Court found the trial court erred in allowing the statement, but the error was harmless as it was brief and the court's instruction to the jury said the jurors could not consider the victim's sentencing recommendation. They went on to explain that although in this case the error was harmless, in other cases it may not be. They cautioned prosecutors and judges to carefully review potential victim impact evidence for compliance with the rules.

State ex. rel Montgomery v. Padilla, Simcox (Real Party in Interest),  
Court of Appeals, Div. One – Special Action 9/10/15 (Memorandum  
Decision)

The Arizona Court of Appeals, Division One (COA1) granted relief and remanded the case to the trial court saying that the superior court did not properly apply A.R.S. §13-1421 and Az. Const. Art. 2 § 2.1 (Victims' Bill of Rights).

The defendant was charged with three counts of sexual conduct with a minor, two counts of child molestation, and one count of furnishing harmful items to minors.

The defendant, who was representing himself, wanted to introduce evidence that Victim 1 had made prior allegations against another individual (not the defendant), arguing that such evidence would constitute a third-party defense. The lower court ruled that such evidence was admissible, concluding that the defendant met the burden of proof by showing that there were allegations made against another individual.

The COA1 found that prior allegations of abuse would only be allowed if false allegations had been made and that was not the case here.

Additionally the COA1 ruled that the superior court erred in its interpretation of Lindsay R. v. Cohen, 236 Ariz. 565 (App. 2015), by not allowing victim's attorney to participate in the pretrial proceedings as Lindsay was limited to the privatization of a restitution matter.

He also provided a list of several older cases that have impacted Victims' Rights in Arizona ([see meeting materials](#))

#### D. Sexual Assault Forensic Evidence Reporting Act (SAFER) Update [Taken Out of Order]

In the last meeting of this body, it was reported that there were grants available to agencies, provided through the Manhattan District Attorney's Office and the U.S. Justice Department, called the Sexual Assault Kit Initiative, to address the backlog of untested sexual assault kits. The Maricopa County Attorney's Office,

in a joint initiative with other stakeholders, was successful in obtaining a grant through the program. The Chair will be serving on a workgroup that is overseeing the process and will update the committee with additional information in the coming year.

Additionally, the Chair reported that he, Ms. Karyn Rasile, and Sgt. Ret. James Markey are scheduled to attend a three day meeting in December 2015 in Washington D.C. to finalize the recommendations of the SAFER working group.

#### E. Human Sex Trafficking Upcoming Conference [Taken Out of Order]

The Chair announced that there is an upcoming human sex trafficking conference in November 2015 called the Shared Hope Conference. He and Judge Richard Weiss will be attending.

### V. CALL TO PUBLIC

#### A. Good of the Order/Call to the Public

The Chair made a call to the public. There were no responses.

### VI. ADJOURNMENT

#### A. Adjourn

The meeting was adjourned at 12:01 p.m.

### VII. NEXT COMMITTEE DATE

Ms. Denise Lundin will finalize the 2016 COVIC meeting calendar in November 2015 and send the schedule to the group.

(Editor's Note: The 2016 dates are February 26<sup>th</sup>, June 10<sup>th</sup>, and October 21<sup>st</sup>.)