

Arizona Supreme Court
Commission on Victims in the Courts

February 26, 2016

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

State Courts Building

1501 W. Washington, Phoenix, AZ, 85007

Conference Room 119 A/B

APPROVED
JUNE 10, 2016

Present: Judge Ronald Reinstein; Mr. Timothy J. Agan; Mr. Michael Breeze; Ms. Shelly Corzo-Shaffer; 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; Ms. Keli Luther; Chief Jerald Monahan; Judge Sam Myers; Ms. Debra Olsen; Ms. Elizabeth Ortiz; Ms. Karyn Rasile; and Judge Richard Weiss.

Telephonic (Members): Judge Timothy Dickerson, Judge Evelyn Marez; Sgt. Jim Markey (Ret.); and Judge Sarah (Sally) Simmons.

Telephonic (Guests): Ms. Anna Harper-Guerrero; Deputy Chief Andrew R. Reinhardt; Judge Patricia A. Trebesch; and Mr. Neil Websdale.

Absent/Excused: Chief Cindy Winn, Ms. Karen Duffy and Mr. William Owsley.

Presenters/Guests: Ms. Colleen Clase; Ms. Amelia Cramer; Mr. Jon Eliason; Ms. Erin Goeman; Mr. Jerry Landau; Ms. Tasha Menaker; Mr. Chris Michalsky; Michele Molyneaux; Mr. John Raeder; Ms. Kay Radwanski; Ms. Shannon Rich; and Ms. Tracy Wilkinson.

Administrative Office of the Courts (AOC): Ms. Kelly Gray and Ms. Amy Wood.

I. BUSINESS OF THE COMMISSION

A. Welcome and Opening Remarks

The February 2016 meeting of the Commission on Victims in the Courts (COVIC) 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

Ms. Karen Duffy has retired from the Pima County Clerk of the Superior Court and will no longer serve on the Commission as a Clerk Member.

Judge Maria Elena Cruz was recently appointed Presiding Judge of Superior Court, Division 5 (Arizona Superior Court in Yuma County) beginning on March 25, 2016.

C. Approval of the October 2015 Minutes

The draft minutes from the October 23, 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.

- A motion was made by Ms. Sydney Davis to approve the October 2015 minutes of the Commission on Victims in the Courts. Seconded by Mr. Michael Breeze. Motion passed unanimously.

D. Domestic Violence Risk and Lethality Assessments

Ms. Amelia Cramer, Chief Deputy of the Pima County Attorney's Office, and Mr. Jon Eliason from Maricopa County Attorney's Office, presented information about the implementation of an amendment to A.R.S § 13-3967, passed last year, which requires judicial officers to review the results of Lethality Assessments and consider them in any release determination.

As background, the Chair explained that there is a need for education and training about the new legislation in the judicial and police communities. He recently attended a meeting of the Commission on Impact of Domestic Violence in the Courts (CIDVC) to discuss this topic and a workgroup was formed. The Chair would like COVIC members to consider joining this group to help develop some type of a plan of recommendations and guidelines, whether it be statewide or county-wide.

Ms. Cramer described directing a team which developed the lethality assessment tool for Pima County agencies. She provided an overview of the lethality assessment model, the development, and key components in Pima County's process. She presented several goals including identifying victims of domestic violence who are at the greatest risk of being killed, identifying high lethality risk factors, raising awareness of victim issues, and encouraging domestic violence victims to seek follow-up support services and community resources.

She explained some of the benefits of using the lethality assessment including prevention, enhanced services, and greater education/awareness of victim

needs. The process developed in Pima County is a collaborative model where law enforcement is given a simple tool (form) to quickly identify a victim's level of risk and identify the lethality factor. Victims are immediately connected with services to meet their immediate and ongoing needs, including shelter and safety.

She elaborated on some procedural aspects with regard to utilization of the form. She explained that a standardized form was developed in Pima County and the form is used in cases where the victim is an intimate partner with the accused, as opposed to other types of assault cases.

Law enforcement officers in Pima County are instructed to use the form when the officer thinks there may be a risk of death to the victim. Additionally, officers are instructed to call a pre-established domestic violence service provider hotline to assist victims with safety planning, etc. while onsite with the victim. Ms. Cramer emphasized the first three questions as they are good indicators of lethality:

1. Has he/she ever used a weapon against you or threatened you with a weapon?
2. Has he/she threatened to kill you or your children?
3. Do you think he/she might try to kill you?

The last seven questions are also important:

4. Does he/she have a gun or can he/she get one easily?
5. Has he/she ever tried to choke you?
6. Is he/she violently or constantly jealous or does he/she control most of your daily activities?
7. Have you left him/her or separated after living together or being married?
8. Is he/she unemployed?
9. Has he/she ever tried to kill himself/herself?
10. Do you have a child that he/she knows is not his/hers?
11. Does he/she follow or spy on you or leave threatening messages?

She explained that if a victim answers "Yes" to questions 1, 2, or 3, this will automatically indicate a High Lethality Screen. If the victim answers "No" to questions 1, 2, or 3 but "Yes" to any four in questions 4 through 11, this will also automatically indicate a High Lethality Screen. In addition, an officer may trigger a protocol referral whenever he or she feel it is appropriate. When a High Lethality Screen is triggered, the officer advises the victim that he/she is in danger and that people in his/her situation have been killed. The officer calls the hotline to get information to help the victim and the officer indicates that he/she would like for the victim to consider speaking to the hotline about safety planning. If the victim is willing to speak to the hotline, the officer stands by and waits to speak to the hotline again.

Several challenges with the implementation of the process were discussed including the transition from paper to electronic, duplicative data entry for courts if the advocacy agency does the lethality assessment as the advocacy agency and police use different forms, and the lack of funding and resources for police agencies and advocacy groups to implement the program.

Dr. Websdale raised concerns about the validation of the Lethality Assessment. He stated the research has only been internally validated and lethal outcomes cannot be predicted. Research relied on proxy-informant information, which is problematic. Dr. Websdale's opinion is that more discussion was warranted prior to the enactment of legislation and before this tool was proposed. He indicated that there are a number of constitutional and research issues that need to be debated specific to Arizona. He pointed out that there have been serious questions raised nationally by various communities. The Chair commented that these are the issues that a working group of interested people can address.

In response to the concerns raised, Ms. Cramer indicated that the judicial officer deciding release conditions still evaluates the weight of lethality assessment when making his or her decision; and that the information provided in the lethality assessment is still valuable.

Different perspectives were expressed, including the impact of the lethality assessment on the victim, and how it can help keep the victim safe. It was pointed out that where a version of the lethality assessment was being used, the judicial officers appreciated the additional information and the judicial officer was able to make more informed decisions about release.

Additionally, it was pointed out that the lethality assessment and Form 4 sometimes have different goals; the lethality assessment is used to help the victim obtain services whereas the Form 4 is often used as a tool for police to communicate information obtained during their investigation. It was pointed out that even if a lethality assessment is used, the court orders issued do not make it to patrol officers typically. Therefore, an officer responding to a domestic violence cases may not know about do-not-contact orders, etc.

Mr. Eliason discussed how Maricopa County's law enforcement officers handle the lethality assessment or other assessments used. He pointed out that there are several different approaches used in Maricopa that range from the use of a full lethality assessment to a method of asking only the top three or four vital questions (based on the responses from the victim, the case would be given a higher or lower risk determination). In Maricopa County, where the lethality assessment is used, it is usually the police officer that completes the form, not a victim advocacy group. After the initial assessment is determined, then a victim advocacy group is contacted, depending on the needs of the victim.

The Justice of the Peace members indicated that some of the smaller Arizona counties do not use lethality assessments, but may use a number of methods to assign risk. There was interest expressed in the use of the lethality assessments and a desire for more education was expressed.

Individuals were identified from COVIC and CIDVC and others who may be interested in serving on a work group to discuss these issues further.

E. AJC Legislative Package and Updates

Mr. Jerry Landau, AOC Government Affairs Office, presented a review of bills related to the victims' community. Members were provided a handout.

Bills that are moving forward: Permitting victims to have a "facility dog" accompany them in court (HB2375), allowing victim's attorney to argue at a restitution hearing, along with the prosecutor and defense (HB2376), limiting the availability of victim information under the public records law, and bills that affect defendants that victims need to know about – the ability to end Sex Offender Registration, and prisoner transition programs and community reentry programs (DOC sponsored).

Dan Levey mentioned a resolution (HCR2008) which would designate September 25, 2016 as Arizona Day of Remembrance for Murder Victims.

Kirstin Flores stated that an amendment to HB2376 addresses related language in Title 8 and inquired if HB2375 will also be amended with regard to Title 8. Mr. Landau responded that the sponsor of the amendment is the Maricopa County Attorney's Office and the question should be forwarded to that office.

More information about the bills presented can be found on the Arizona State Legislature's website, <http://www.azleg.gov/Bills.asp>.

F. When Victims Experience Trauma Presentation

Ms. Shelly Corzo-Shaffer, COVIC Public Member, discussed the impact of trauma on crime victims and shared insights from her personal journey. She explained how she was affected by the murder of her husband by a random act of violence. Ms. Corzo-Shaffer elaborated on the effects of trauma on the brain and body, as well as common issues experienced by victims while trying to find justice and healing from trauma. She stressed some of her experiences with the criminal justice system which exacerbated an already traumatic situation. She provided valuable insights into the victim experience and pointed to

opportunities where people working in the criminal justice system could serve victims well by considering the trauma victims are under when interacting with people in the system. Members thanked Ms. Corzo-Shaffer for sharing her story and the information regarding trauma.

G. National Start by Believing Day

Chief Jerald Monahan, COVIC Member, updated the group on the Start by Believing campaign and discussed the upcoming National Start by Believing Day activities. He informed the group that April 4, 2016 was declared National Start by Believing Day by the Start by Believing campaign, which is affiliated with End Violence Against Women International (EVAWI). He provided links to materials and information about National Start by Believing Day.

More information about the Start by Believing campaign is available at <http://startbybelieving.org/>.

More information about EVAWI is available at <http://www.evawintl.org/>.

H. SAFER and DANY-SAK Grant Updates

Sgt. Jim Markey, Ms. Karyn Rasile and the Chair updated the group on the national Sexual Assault Forensic Evidence Reporting Act (SAFER) workgroup's efforts that have been discussed in previous meetings of this body. Its report has been completed and awaiting finalization. There will be a national symposium in September 2016. The Governor also has a Task Force and the Chair and Mr. Eliason will be presenting to this group next week.

Jon Eliason provided information about the DANY-SAK Grant. As background, Maricopa County Attorney's Office started surveying police departments to get information on the actual number of backlogged kits as they were seeking funding to get them tested. There has been an attitude shift in the treatment of these untested kits.

The definition of a backlog sex kit is an untested sex kit which is over 365 days old. There is not a uniform way to track untested kits. Most are in police evidence locations. A multi-disciplinary team was formed to apply for a New York District Attorney (DANY) grant. Maricopa County was awarded nearly \$2,000,000 which will test about 2,000 backlogged kits. The Governor's Task Force will focus on what is happening at the state level. Maricopa County will be writing a sex assault protocol that could be replicated around the state. DNA testing is a resource for law enforcement and helps with CODIS hits.

Karyn Rasile commented that she is working on getting the standard for kits in Arizona changed because the aspirate method, currently used, is not

recommended. This would also reduce costs. Mr. Eliason commented that some crime lab professionals believe that it's a valuable evidence source so more discussion is needed.

More information about New York's grant program is available at <http://manhattanda.org/sites/default/files/Manhattan%20DA%20Backlog%20Elimination%20Grant%20Program%20RFP.pdf>.

More information about Maricopa County Attorney's Office's program is available at <http://www.maricopacountyattorney.org/newsroom/news-releases/2015/2015-09-10-Maricopa-County-Attorneys-Office-Wins-Grant-to-Eliminate-Backlog-of-Untested-Rape-Kits.html>.

II. ANNOUNCEMENTS

The Chair made a Call to Public. No members of the public spoke, however, Commission members had announcements to share.

Mr. Dan Levey mentioned that the National Organization of Parents of Murdered Children is having a fundraising event on April 14, 2016, Night at the Improv Comedy Club. More details will be forthcoming to the commission.

Ms. Kirstin Flores mentioned that National Crime Victims' Rights Week is April 10, 2016 – April 16, 2016. Several Arizona agencies have collaborated again this year to recognize National Crime Victims' Rights Week and the Arizona Attorney General's office is hosting an event on April 11, 2016. More information will be released when the details are made available.

III. ADJOURNMENT

A motion was made by Mr. Michael Breeze at 12:02 p.m. to adjourn. Seconded by Chief Jerald Monahan. Motion passed unanimously.

IV. NEXT COMMITTEE DATE

Friday, June 10, 2016
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
June 10, 2016
10:00 a.m. to 12:00 p.m.
State Courts Building
1501 W. Washington, Phoenix, AZ 85007
Conference Room 119 A/B

Present: Judge Ronald Reinstein; Mr. Timothy J. Agan; Ms. Leesa Berens Weisz; Mr. Michael Breeze; Judge Maria Elena Cruz; Ms. Sydney Davis; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Ms. Christine Kelley; Asst. Chief John Leavitt; Mr. Dan Levey; Judge Evelyn Marez; Sgt. Jim Markey (Ret.); Chief Rod McKone; Ms. Jane Nicoletti-Jones; Ms. Debra Olsen; Ms. Elizabeth Ortiz; Mr. William Owsley; Ms. Laura Penney; Judge Sarah (Sally) Simmons; and Judge Richard Weiss

Telephonic: Ms. Shelly Corzo Shaffer; Judge Sam Myers; Ms. Karyn Rasile;

Absent/Excused: Ms. Colleen Clase; Judge Elizabeth Finn; Ms. Keli Luther

Presenters/Guests: Ms. Terri Capozzi; Ms. Janet Johnson; Judge Sam Thumma;

Administrative Office of the Courts: Ms. Jennifer Albright; Ms. Theresa Barrett; Mr. Mike Baumstark; Ms. Kelly Gray; Ms. Jennifer Greene; Ms. Lynn Golden; Ms. Janet Johnson; Ms. Denise Lundin; Ms. Valerie Marin; Ms. Carol Mitchell; Ms. Kay Radwanski; Ms. Angela Rhudy; Mr. Patrick Scott; Ms. Thea Walsh; Ms. Amy Wood

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The June 2016 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

The Chair made brief remarks thanking Ms. Carol Mitchell and Ms. Denise Lundin for their work on the Commission.

C. Approval of the February 26, 2016 Minutes

The draft minutes from the February 26, 2016 meet were presented for approval. The chair called for any omissions or corrections to the minutes.

E0
E1 Motion was made by Judge Sally Simmons to approve the February 26, 2016 meeting minutes. Seconded by Judge Evelyn Marez. Motion passed unanimously.

II. PRESENTATIONS

A. Managing Digital Evidence in Courts

The Chair introduced Judge Sam Thumma, Vice Chief Judge of the Arizona Court of Appeals, Division One, who will chair a new Supreme Court committee that is being formed regarding Digital Evidence. The Chair wanted the committee to be aware of this subject due to the growing movement in the country regarding the use of body worn cameras by law enforcement and how such use will impact victim privacy and identification issues.

Judge Thumma relayed that he anticipates working with a group expected to be formed by the Chief Justice which will be tasked to look at the processing and handling of digital evidence in court. He called the commission's attention to the white paper (the National Center for State Courts Joint Technology Committee Resource Bulletin on Managing Digital Evidence in Courts) that was included in the commission meeting packet. This paper provides a strong foundation to start the conversation on comparatively new technology. Collaboration between the new committee and COVIC is anticipated on several issues.

A commission member observed that a primary focus will be the time intensive redaction of victim information. Judge Thumma agreed and commented issues such as the responsibility for redacting and how information is stored and shared.

The Chair stated that he sits on the National Advisory Council for the National Crime Victim Law Institute in Portland OR. This issue came up in a recent meeting regarding victim privacy and body cameras.

Another commission member pointed out that maintaining the privacy of witnesses as well due to recently passed legislation should also be considerations.

Judge Thumma thanked the Commission for their attention on his report and asked the Commission to look over the information provided as there will be more discussion in the future.

B. Supreme Court Rule Petition No. R-16-0035: Arizona Rules Criminal Procedure, 15.1(J) (taken out of order)

Ms. Jennifer Greene, AOC Legal Counsel, stated that in March the Arizona Legislature presented and the Governor signed a bill informally referred to as the “Revenge Porn Bill”, which made statutory changes on an emergency basis to protect images of adults in addition to child victims. Subsequently, the Supreme Court adopted an emergency rule change to amend Arizona Rules of Criminal Procedure, 15.1(J). This rule change adds adult images to the child pornography images disclosure governance which were already in place. While this rule is now in effect, there is currently a comment period that runs until September 23, 2016. Any comments by the Commission should be submitted by this date.

C. COVIC 10 Year Anniversary (taken out of order)

The Chair commemorated COVIC’s 10 Year Anniversary by giving a brief history of the formation of the commission by then Chief Justice Ruth McGregor in 2006. A PowerPoint with highlights of the Commission’s purpose and accomplishments was presented. There are charter members still participating in the Commission, including Mr. Dan Levey, Ms. Sydney Davis, and Judge Richard Weiss. Several prominent previous members were acknowledged as well.

The chair continued his comments regarding COVIC’s accomplishments, thanking former Chief Justice Berch and Chief Justice Bales for their support of the Commission, as well as Mr. Dave Byers, Executive Director of the AOC, Mr. Mike Baumstark, Deputy Director of the AOC, and Ms. Amy Wood, Court Services Manager, for their support and assistance. He mentioned that last year COVIC was awarded the Attorney General’s Office Distinguished Service Award for Public Policy and concluded by thanking members and welcoming the new members to the Commission.

D. Legislative Update (taken out of order)

Mr. Jerry Landau, and Ms. Amy Love, AOC Government Affairs, presented new legislation that affects victims in the courts. Mr. Landau stated that HB2374, the Child Prostitution Statute is expanded to include “knowingly providing a means to which the minor can engage in prostitution.”

HB2375, The Facility Dog bill codifies what’s going on throughout the State; the court must allow a victim under the age of 18 to use a facility dog to accompany the victim during testifying. If the victim is 18 or above, or a witness, it’s discretionary with the court. Jury instructions must be given describing the role of the facility dog as a trained animal. Jury instructions will be written to comply with the parameters set in statute. The bill raises the use

of facility dogs to a higher level, which might increase the amount of litigation that comes with it. The Chair stated the statute isn't specific to the issue of the location of the facility dog in the courtroom. He also stated that the State Bar Jury Criminal Instructions Committee will need to take a look at jury instructions that are uniform.

HB2376 codifies the situation where a victim has the right to present evidence to the court to make an argument regarding restitution. The victim or victim's attorney may address the court.

HB2383 now protects the personal identification of a witness as well as a victim. Mr. Landau stressed that this legislation deals with the public records statute, not the discovery or criminal statutes, or the criminal rules. The statute does provide exceptions for disclosure under Rule 15, and also for information that's exchanged between the court and other entities. The second paragraph in the law is intended to deal with records transmitted between law enforcement and prosecution. This will be based on a public records request.

HB2539 is now a law that allows a defendant convicted of sexual conduct with a minor who has to register (as a sex offender) under certain enumerated parameters, to request the court to remove that registration (the defendant is under age 22 and the victim is either 15, 16 or 17 years old), however there are a number of exclusions.

There weren't that many bills dealing with victims' issues this year but they were important bills. In the AOC Government Affairs office, there is a compilation of the legislative summary involving all the bills that affect the Judicial Branch and the court system.

Mr. Dan Levey mentioned HCR2008 was passed, which created a Day of Remembrance for Murder Victims and Their Families (September 25, 2016) which coincides with the national Day of Remembrance. There was some dissent by legislators on the vote for this issue.

More information about the bills presented can be found on the Arizona State Legislature's website, <http://www.azleg.gov/Bills.asp>.

E. DV Risk and Lethality Assessments Legislation Workgroup (taken out of order)

The Chair introduced an update on the status of the workgroup formed to discuss the issues raised at the February 26, 2016 Commission meeting regarding last year's amendment to ARS § 13-3967. Judge Reinstein stated that Ms. Elizabeth Ortiz would be presenting on the Domestic Violence Risk and Lethality Assessments Legislation Workgroup. The Chair also

recognized Ms. Kay Radwanski, AOC Court Services Staff to the Commission on the Impact of Domestic Violence and the Courts (CIDVC), and reminded the Commission about the February 26, 2016 presentation by Ms. Amelia Cramer, Chief Deputy of the Pima County Attorney's Office and Mr. Jon Eliason from Maricopa County Attorney's Office on the Lethality Assessment, in which a good, spirited discussion was held. After the last Commission meeting it was decided that the Arizona Prosecuting Attorneys' Advisory Council (APAAC) would be the best entity to move this issue forward, because law enforcement will be tasked with doing the assessments. There was a very good group of volunteer participants from CIDVC and COVIC. Ms. Ortiz has agreed to move this project forward, with the Council's approval, and worked with the president of APAAC, Ms. Sheila Polk, Yavapai County Attorney, with Ms. Cramer and Mr. Eliason being the co-chairs.

Ms. Elizabeth Ortiz requested the Commission look at the minutes from the APAAC Lethality Assessment Working Group, which had been distributed to the Commission. She stated that Ms. Cramer and Mr. Eliason chaired a meeting that took place on May 11, 2016 at APAAC. A number of COVIC, CIDVC members, law enforcement, representatives from NAU, ASU, and the City of Phoenix, among others, were there, and there is room for more who are interested in the issue. The goal that was established at that meeting was that in the next 6 to 9 months to determine what a Lethality Assessment should look like. One of the topics while going through the research on the assessment tool was to not lose the victim-centric approach. The next meeting for this workgroup will be September 9, 2016 at 1:00 p.m. at APAAC. Everyone on the Commission is invited to attend in person, via telephone, or through video-conferencing. APAAC is located at 19th Avenue and Camelback Road in Phoenix.

The action items for the next meeting are:

1. Identify a list of different standardized questions that are being used.
2. Identify which assessment is being used in each of Arizona's 15 counties.
3. Dr. Websdale from NAU and Dr. Messing from ASU have agreed to compare the different protocols that are currently being used statewide.

Anyone who is not on the distribution list who is interested in participating, please let Ms. Ortiz know.

The Chair stated that this project was prompted by legislation that the Courts, at arraignment or initial appearance, had to consider any lethality assessment in domestic violence cases. It does not mandate that law enforcement have a DV Assessment and it was discovered that law enforcement in some of the rural counties did not know of the legislation nor were aware of the

assessment. In addition, many different types of assessments are being used in the state. The question of how to present this to the court – whether within, or as a supplement, to the Form 4, to provide consistency for judges and know how to interpret it, is one issue for the APAAC committee to discuss. Judge Simmons stated that training will be important and consistency will help tremendously.

Judge Weiss stated that the assessment was presented through the Mohave County Criminal Justice Coordinating Committee through Judge Sipe and the Mohave County victim advocate, and while there seemed to be some idea that it would be helpful, there was pushback from law enforcement. He observed that there needs to be a real emphasis on training law enforcement on the importance of what this can do in protecting our communities.

F. Introduction to Minor Victims of Sex Trafficking: What You Need to Know (taken out of order)

Ms. Valerie Marin, AOC, presented the work that the Juvenile Justice Services Division (JJSD) is doing in the area of Minor Victims of Sex Trafficking. The JJSD is responsible for the effective administration of programs for delinquent and incorrigible youth in coordination with the juvenile courts. JJSD was awarded a grant from the Governor's Office of Youth, Faith and Family, which provided them with an opportunity to work on a statewide human trafficking initiative. The work on this issue can be categorized into four major areas:

- Awareness
- Training
- Research
- The Future

Each juvenile court services director of the state's 15 counties appointed a county sex trafficking specialist who received specialist training and who will act as the liaison between the AOC and the Superior Court and their counties. Work was done with the Arizona State University (ASU) Design Team to produce sex trafficking reference guides (distributed) that include the national hotline number, the federal definition of sex trafficking, physical indicators, risk factors and warning signs.

Ms. Marin provided detail in the training involved for the specialists. A training video was produced based on the advanced training programs, which is available for public viewing as well as being COJET accredited. The JJSD Treatment Unit also received a grant from the Governor's Office to offer trauma-informed care and Adverse Childhood Experience trainings

throughout the state, and has trained over 500 staff, with two more trainings to occur in the next few months.

As part of the Governor's grant, JJSD partnered with ASU to survey all case-carrying probation officers to determine the number of sex-trafficked victims currently on caseloads. Changes are being considered in data gathering methods and ad hoc reports for the counties are being developed.

At a recent meeting of the Arizona Human Trafficking Council at the Governor's Office, a draft version of the Arizona Guidelines for Developing a Regional Response for Youth Sex Trafficking Victims was presented. This is anticipated to become a statewide protocol that will be used by multiple agencies to identify and treat victims. Three core principles provide a foundation: 1) services should be victim-centered, 2) all responders should demonstrate cultural competency, and 3) all of these youths are victims.

Evidence of success was reported through instances cited including breaking up sex-trafficking rings and saving a kidnapped youth that involved the FBI. Yavapai County has produced a music video to spread awareness called "If You See Something, Say Something", which Ms. Marin showed the commission members.

G. Arizona Coalition to End Sexual and Domestic Violence (ACESDV), Sexual Assault Response Department Overview (taken out of order)

Ms. Tasha Menaker, ACESDV, was unable to attend the Commission meeting due to illness. The Chair stated he hoped to have Ms. Menaker rescheduled to present at the October meeting.

H. National Crime Victims' Rights Week (taken out of order)

Ms. Kirstin Flores, Member, and Director of the Attorney General's Office of Victim Services, presented an overview on National Crime Victims' Rights Week, which was recognized nationally in April. The Attorney General's Office collaborates with other agencies to recognize Crime Victims' Rights Week. Recognition for people who work to ensure victims' rights are upheld is done at a luncheon, where awards: Triumph Over Tragedy (from the Governor's Office), Distinguished Service (from the Attorney General's Office), Justice for All (Maricopa County Attorney's Office) to ensure that people who are out in the trenches and doing the work getting victims' rights upheld are recognized and that victims have a voice in the system. This year's awards from the Attorney General's Office included The Verde Valley Sanctuary for Advocacy and Direct Services (accompanying victims in court and in helping victims obtain protective orders, helping with the local domestic violence shelters, operating a thrift shop to assist DV victims work

experience), The Cochise County Domestic Violence Fatality Review Team for Service Coordination (implementing recommendations in an active way), Ms. Rebecca Begay from the City of Mesa Prosecutor's Office for Innovative Practices (recognizing a need to provide a safe and secure environment for victims that didn't exist in their court previously), and Pastor Brian Steele with the Phoenix Dream Center for Leadership for his work with adult human trafficking victims. She wanted to bring this to the attention of the Commission as it does its work, to consider nominating people (groups and individuals) for these awards.

It was stated that Navajo County recognizes Victims' Rights Week with an annual Victims' Symposium for organizations and participants – there were over 200 participants at this year's 6th annual event. Judge Evelyn Marez was awarded the Distinguished Judicial Award.

I. Restitutions Issues Workgroup (taken out of order)

Ms. Kirstin Flores shared that the Attorney General's Office has Victim Advocates who work on cases being prosecuted by the AG's office, as well as a Restitution Advocate who helps monitor restitution on AG cases, and who works with probation officers when restitution is non-compliant. The AG's Office also has a training program on victims' rights, including restitution issues. As a result of these programs, the AG's Office has come up with a list of questions that keep arising about restitution, so Ms. Flores thinks some of these questions could be answered with the reimplementation of a Restitution Workgroup from COVIC. Questions include wording of statutes, enforceability, the issuance of Criminal Restitution Orders, at what point do parents cease to be responsible for juvenile offenders, and restitution lien paperwork issues. She suggested the Workgroup come up with guidelines for referrals to Restitution Court, or guidelines on how and when restitution is ordered. Judge Weiss and the Chair discussed parental limits issues. The Chair stated in Federal Court US Attorney's Office Civil Division assists victims in executing on criminal restitution orders and judgments, while in the state system victims are left to their own devices. Chief McKone stated each US Attorney's Office has a financial litigation unit that assists victims in collections. Judge Weiss asked about the issue of underrepresentation of attorneys in collecting restitution. Judge Cruz stated that currently defendants are not appointed counsel in post-conviction restitution hearings because it is considered a civil proceeding within the context of a criminal case. The task force (The Task Force on Fair Justice for All) has recommended that there be further study on the appointment of counsel issue, based on county resources.

The Chair asked for volunteers to be on the Restitution Workgroup, and to let Ms. Flores or Ms. Lundin know.

J. SAFER and DANY/SAK Grant Updates (taken out of order)

The Chair introduced Mr. Jim Markey and Ms. Karyn Rasile (by telephone), COVIC Members. Judge Reinstein, Mr. Markey and Ms. Rasile are all members of the Sexual Assault Forensic Evidence Reporting (SAFER) national workgroup with the next meeting set for June 22 – 24, 2016 in Washington, DC. Mr. Markey is working on a final report that will go out in the fall of 2016. Mr. Markey shared some background of the SAFER Act of 2013, when policies, protocols and procedures relating to the issue of untested sexual assault kits around the country were addressed. There are still several levels of federal bureaucracy the report has to go through. Ms. Alison Sedowski from the Phoenix Crime Lab also is a member of the Arizona team. Recommendations have been submitted regarding the investigation of sexual assault, the managing and handling of sexual assault evidence to include sexual assault kits, the collection process involving those kits, timelines and guidelines for the submission and testing of those items, as well as lab recommendations. Nationally, jurisdictions in the states are already developing their own policies and protocols. Twenty-five states have done statewide audits of the number of sexual assault kits that they have, 18 have enacted legislation for submission timelines, 11 have enacted legislation for analysis timelines, 10 have enacted victim notification policies and procedures, eight states now require law enforcement to submit annual reports on the number of sexual assault kits they have in storage, three are developing an electronic management kit tracking system. The SAK project (a BJA project) put in \$35,000,000 this year, will probably do so again next year, and the District Attorney of New York put in another \$35,000,000 for applicants to address their untested sexual assault kits. Tucson PD, Tempe PD and Maricopa County Attorney's Office are all recipients of grants from the New York D. A.'s Office. There is a big granting meeting in Washington DC next week. Mr. Markey estimates there are about 50 jurisdictions involved with receiving grant funding across the country, from state level to regional level to local level with about 80,000 counted sexual assault kits. Next year 15-20 additional sites will be added.

The Chair shared insight on the funding for this program. He stated the data that comes from this program will be very interesting, and there has been noted success. Mr. Markey shared that studies have found that while the number of men committing sexual assaults is small, but for those that do, a very large number of them are serial offenders. The Chair noted that Vice-President Biden has taken a strong interest in this subject as well. Ms. Rasile stated there will be some collections guidelines from the nursing standpoint, decreasing the number of swabs which will increase the amount of sample on the swabs, which will help cut down on time in the lab and make

a better sample. This will correct and improve the process to avoid getting in this position again in the future.

K. Shared Hope Conference

The Chair stated that the Shared Hope Conference would take place June 28 – 29, 2016 in the Phoenix area. Judge Weiss and Judge Reinstein went to a previous conference that was very impactful. In Maricopa County the organization is called “TRUST”, with Nancy Baldwin as the Executive Director, and they were funded by a grant from the former CEO of General Dynamics. Judge Weiss commented it was a great conference and does a lot to help with the awareness that most of us don’t have yet. Judge Reinstein has seen a positive shift on seeing the children as child victims instead of child defendants. Elizabeth Ortiz stated there has been training for prosecutors with police officers training on things to look for in police reports to identify people who may be victims. Judge Weiss stated that under the risk factors, they probably exist for every teenage dependent child we have, so the crossover youth program we have in Arizona is also helping identify and providing some trauma care to those youngsters.

If anyone is interested in attending the Shared Hope Conference, we can get them information.

L. Start by Believing Campaign Revisited

Judge Ronald Reinstein shared some insights on the Start by Believing Campaign regarding the handling of sexual assault cases.

This issue will be discussed in more depth at the October meeting.

More information about the Start by Believing campaign is available at <http://startbybelieving.org/>.

III. CALL TO PUBLIC

A. Good of the Order/Call to the Public

Judge Cruz stated that the Yuma County Restitution Court started in the fall of 2014, collecting approximately \$153,000 in restitution recently. Restitution Court takes place once a month, with about 15 cases, with people paying and thus avoiding court. It has been very successful. There were additional, general comments made about Restitution Courts by other members.

IV. ADJOURNMENT

A. Adjourn

Motion was made by Mr. Michael Breeze at 11:55 a.m. to adjourn.
Seconded by Mr. Timothy Agan. Motion passed unanimously

V. NEXT COMMITTEE DATE

Friday, October 21, 2016
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 21, 2016
10:00 a.m. to 12:00 p.m.
State Courts Building
1501 W. Washington, Phoenix, AZ 85007
Conference Room 345 A/B

Present: Judge Ronald Reinstein (ret.); Mr. Timothy J. Agan; Mr. Michael Breeze; Ms. Colleen Case; Ms. Amelia Craig Cramer (Proxy for Elizabeth Ortiz); Ms. Sydney Davis; Judge Elizabeth Finn; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Ms. Christine Kelly; Captain John Leavitt; Mr. Dan Levey; Judge Evelyn Marez; Chief Rod McKone; Ms. Jane Nicoletti-Jones; Ms. Debra Olsen; Mr. William Owsley; Ms. Karyn Rasile and Mr. Randall Udelman (Proxy for Judge Richard Weiss)

Telephonic: Judge Maria Elena Cruz; Judge Sam Myers

Absent/Excused: Ms. Shelly Corzo Shaffer; Ms. Keli Luther; Sgt. Jim Markey (Ret.); Ms. Laura Penny; Judge Sarah (Sally) Simmons; Ms. Leesa Berens Weisz

Presenters/Guests: Ms. Amy Bocks; Ms. Susie Checkett; Ms. Shawn Cox; Ms. Amelia Craig Cramer; Mr. Jon Eliason; Ms. Kelsey Frazier; Mr. Tom O'Connell; Ms. Susan Pickard; Ms. Alex Rucker; Ms. Kathy Sekardi; Judge Roland Steinle (ret.); Mr. Randall Udelman, Ms. Emily Gennar; Alexandra Rucker; Ms. Kim Knox

Administrative Office of the Courts: Ms. Lynn Golden; Ms. Denise Lundin

I. REGULAR BUSINESS

i. Welcome and Opening Remarks

The October 21, 2016 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 welcomed the attendees and asked for Commission member roll call and introductions of staff and guests.

ii. Approval of the June 10, 2016 Minutes

The draft minutes from the June 10, 2016 meet were presented for approval. The chair called for any omissions or corrections to the minutes.

Motion was made by Judge Elizabeth Finn to approve the June 10, 2016 meeting minutes. Seconded by Mr. Michael Breeze. Motion passed unanimously.

II. PRESENTATIONS

i. Restitution Workgroup Report

The Chair introduced Ms. Kirstin Flores, COVIC Member and Restitution Workgroup Chair. Ms. Flores stated that at the last COVIC Meeting in June, The Chair reinstated the Restitution Workgroup. The group consisted of 20 members who met four times since the June Meeting. At each four-hour meeting there was an aggressive agenda, a committed membership, and they accomplished a lot of impressive work. The general goal of the workgroup was to address restitution issues and ascertain best practices statewide. Staff at the Attorney General's office has encountered real problems in the system, and they hoped this workgroup could address those areas. The underlying thought was to provide clarification to victims. The workgroup narrowed their levels of priority to 1) reviewing and updating legislation, 2) the content and forms on the AOC Restitution Webpage, 3) Restitution Court, which the group addressed at the same time the recommendations of the Taskforce on Fair Justice for All came out, and 4) the Victim Locate Project, which was brought to the group's attention by the Maricopa County Clerk of the Court's office. A subject matter expert from each of these areas presented the workgroup's recommendations and rationale for those recommendations.

Before workgroup member Mr. Randall Udelman began his presentation regarding proposed legislative changes, the Chair stated that the court's legislative package was due in August. However, if the Attorney General's office wanted to advance any of the statutes, they could be presented to the Arizona Judicial Council at its December Meeting. There also has to be a determination by AOC Legal Staff as the court can't engage in advocacy, but it can engage in activities that improve the court system.

Mr. Udelman shared proposed legislative changes to some of the issues the workgroup noted in connection with assisting crime victims in receiving restitution. Mr. Udelman listed the following statutes that were reviewed, revised, and are being brought before COVIC for consideration. (For purposes of clarity, the statute is listed, the section in question is cited, and the rationale behind revision is stated).

ARS § 8-383. Implementation of rights and duties

- A. Except as provided in sections 8-385 and 8-386, the rights and duties that are established by this article arise on the arrest or formal charging of a juvenile who is alleged to be responsible for a delinquent act against a victim. The rights and duties continue to be enforceable pursuant to this article until the final disposition of the charges, including acquittal or dismissal of the charges, all post-adjudication release, review and appellate proceedings and

the discharge of all proceedings related to restitution. If a delinquent is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a judgment is entered in favor of the victim pursuant to section 8-344.

ARSS 13-4402. Implementation of rights and duties

- A. Except as provided in sections 13-4404 and 13-4405, the rights and duties that are established by this chapter arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this chapter until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable by the superior court until restitution is paid or ~~criminal restitution order is entered in favor of the victim pursuant to section 13-805...~~

Rationale: Confirms that the court retains jurisdiction until the victim receives restitution in full.

ARSS 8-344. Restitution payments

- D. The juvenile court shall retain jurisdiction of the case after the juvenile attains eighteen years of age for the purpose of ordering, modifying, and enforcing the manner in which court-ordered payments are to be made. After a juvenile attains eighteen years of age, the juvenile court shall enter the following...

ARSS 13-805. Jurisdiction

- A. The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing ~~the manner in which~~ court-ordered payments ~~are made~~ until paid in full or until the defendant's sentence expires.
- C. C.3. For limited jurisdiction courts, a criminal restitution order shall be entered within one year of the date of the original restitution order.
- F. All monies paid pursuant to a criminal restitution order entered by the ~~superior~~ court shall be paid to the clerk of the ~~superior~~ court.

Rationale: Confirms that the court retains jurisdiction until victim receives restitution in full.

A commission member mentioned that in her court, criminal restitution orders are not issued until the original date of expiration of probation has expired, and there have been at least six warrants issued for failure to pay. The commission member expressed concern that the proposed revisions would cause increased work, storage of files, and maintenance of records for Limited Jurisdiction courts. Glendale CROs that are issued take money out of the system for the victim and prevent the case to ever go to warrant again. The CRO is then sent to the victim. Double payments (from the insurance company for the defendant and then an additional payment to the victim through the court) have occurred. The commission member felt that eliminating the CRO will be difficult, especially with payments being collected by FARE.

Mr. Udelman stated that the statutory changes the workgroup is recommending are simply harmonizing with what Arizona case law currently states. The workgroup seeks consistency across the courts.

ARSS 13-806. Restitution lien

- A. The state or any person entitled to restitution pursuant to a court order may file in accordance with this section a restitution lien. A filing fee or any other charge is not required for filing or recording a restitution lien.
- C. A restitution lien may be filed by:
 - 1. A prosecutor in a criminal proceeding in which there was an economic loss after the filing of a misdemeanor complaint or felony information or indictment. ~~At the time of arraignment, t~~ The Prosecutor shall give the defendant notice of any restitution lien filed.
 - 2. A victim in a criminal proceeding who suffers an economic loss may file a request with the court for a restitution lien after the filing of a misdemeanor complaint or felony information or indictment. The prosecutor shall give the defendant notice of any restitution lien filed by a crime victim, after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.
 - 3. The court shall order that any restitution liens which have been filed or perfected be released if a defendant is acquitted or the state elects not to proceed forward with prosecution in any criminal proceeding.

Rationale: Provides victims with a tool for enforcement of their constitutionally protected right to receive prompt restitution.

A commission member asked what if the victim files a restitution lien and the prosecutor is unaware - how would the prosecutor know to give that notice to the defense? Mr. Udelman stated the court has to order the Restitution Lien, and then set a hearing or give notice to all parties, including the defendant. The

commission member asked why the responsibility fell to the prosecutors in lieu of the victim or the court supplying the notice. Mr. Udelman stated it's the same obligation the prosecutor has in C.1, so the obligation should be consistent. Further discussion may be warranted as to this potential change.

ARS§ 13-810. Consequences of nonpayment of fines, fees, restitution or incarceration costs

- C. In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, the court on receipt of a petition and issuance of an order to show cause has jurisdiction to preserve rights over all restitution liens entered pursuant to 13-806(B) and perfected pursuant to 13-806(D).
- ~~C~~ D. At any hearing on the order to show cause, the court, the prosecuting attorney or a person entitled to restitution may examine the defendant under oath concerning the defendant's financial condition, employment and assets or on any other matter relating to the defendant's ability to pay restitution.
- ~~D~~ E. If the court finds that the defendant has willfully failed to pay a fine, a fee, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may do one of the following:
 - ~~E~~ F. If the court finds that the default is not willful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including...
 - ~~F~~ G. If a fine, a fee, restitution or incarceration costs are imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay them from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A or B of this section.
- H. WHEN THE COURT IMPOSES A FINE, A FEE, RESTITUTION OR INCARCERATION COSTS UNDER THIS SECTION, ON REQUEST AND AT NO COST TO THE REQUESTING PARTY, THE CLERK OF THAT COURT SHALL MAKE THE DEFENDANT'S PAYMENT HISTORY AVAILABLE TO THE PROSECUTOR, THE VICTIM, AND THE SENTENCING COURT.

Rationale: Provides an enforcement tool for seeking to obtain money/property subject to a valid and perfected restitution lien without court approval. Confirms victims can receive payment history from the clerk of the court at no cost.

ARS§ 31-412. Criteria for release on parole; release; custody of parolee; definition

- E Payment of restitution by the prisoner in accordance with subsection D of this section shall be made through the clerk of the superior court in the county in which the prisoner was sentenced for the offense for which the prisoner has been imprisoned in the same manner as restitution is paid as a condition of probation. The clerk of the superior court shall report to the board monthly whether or not restitution has been paid for that month by the prisoner. THE CLERK OF THE SUPERIOR COURT SHALL AT NO COST MAKE THE PRISONER'S PAYMENT HISTORY AVAILABLE TO THE BOARD, THE DEPARTMENT AND VICTIMS.

The Chair commented that in ARS§ 13-810.H it calls for “on request,” but it does not state this in ARS§ 31-412. How often does the Clerk have to fulfill this request? Mr. Udelman’s responded, and Ms. Chris Kelly verified, that these changes were recommended by the Arizona Association of Superior Court Clerks as current procedure is not being done on a regular basis, it will be done “on request” from this point forward. Both statutes should read that way.

ARS§ 22-116. Funds in possession of justice of the peace; deposit with county treasurer; payment to claimants; disposition of unclaimed funds.

- C. The treasurer shall deposit monies from unclaimed victim restitution payments in the victim compensation and assistance fund established by section 41-2407 for the purpose of establishing, maintaining and supporting programs that compensate and assist victims of crime.

Rationale: Confirms victims can receive payment history from the clerk of the court at no cost. Redirects unclaimed victim restitution payments to victim compensation programs. Comports with superior court procedure.

ARS§ 13-105.16 Economic Loss

Mr. Udelman brought up the subject of an additional statute the Workgroup had discussed, which was not included in the PowerPoint presentation. This statute deals with the definition of “economic loss.” Mr. Udelman feels strongly that the exclusion of “consequential damages” should be reviewed and this term should be removed.

A commission member suggested sharing this information with LJC to ensure some consistency, even if the proposed legislative changes don’t go through.

The Chair stated that the Restitution Workgroup wanted to request continued dissection of the statutes dealing with Restitution. Mr. Dan Levey moved that this work continue through the Restitution Workgroup. Seconded. Motion passes unanimously.

Ms. Denise Lundin, AOC Staff, shared the concept of clarification for victims that the Chair had asked that the Restitution Workgroup focus on. To that end, a Workgroup was created to look at revamping, revising and streamlining the AzCourts.gov Restitution Webpage. The goals of this sub-workgroup were: 1) to minimize “clicks” to “one-click” when possible, 2) make the website more user-friendly, 3) to write in plain English, 4) less scrolling, and 5) larger fonts. The proposed changes are summarized as follows:

1. Adding a “Victims Restitution Resources” listing in the Self Help drop-down list.
2. Focusing on the Chief Justice’s letter and his message on Restitution.
3. Adding One-click buttons with active links in addition to the left-side drop-down menu.
4. Adding New pages – “Who Is Eligible for Restitution?,” “Restitution Resources,” a revised FAQ page and “Forms and Instructions” page, revamping the Statute list for easier reading and titling it, “Restitution Laws in AZ”, and a “Do You Need Help Getting Restitution?” button.
5. Checking all links to ensure they were live and viable, focusing on direct links to information and resources.

Ms. Lundin stated that since the website is already active, staff will be moving forward with these proposed changes as soon as possible, however, input from the commission is welcome.

Ms. Amy Bocks gave an overview of the revised Restitution Forms and Instructions drafted by the Restitution Workgroup. The rationale for focusing on this area of restitution was that some of the information has become outdated, and recently some advocates reported that some victims were unsuccessful in filing their restitution liens due to difficulties in understanding the instructions, completing the forms, or court acceptance of the filing of the liens. The workgroup has updated and simplified the forms to look more like a pleading and be more user-friendly, created clarification on instructions, added a form for a judgment creditor to be used statewide, and created an enforcement mechanism along with ARS § 13-810 with a Petition to Show Cause.

Judge Finn requested that a copy of the workgroup’s PowerPoint presentation be sent to all the members for further study. The Chair stated that while federal prosecutors assist with execution of monetary judgments for victims, in Arizona there is no statutory authority for this.

Workgroup Members Mr. Levey and Judge Roland Steinle (Ret.) shared the workgroup’s input on the Fair Justice for All Taskforce Recommendations that relate to restitution and Restitution Court. Mr. Levey questioned whether the project was truly “fair justice for all” when victims or crime victim representation were not included on the committee. There were concerns that should have been addressed

during the process, and the oversight, while not intentional, should be considered. Mr. Levey stated that recommendation #57 – the hosting of a “One-Day Kick-Off Summit” inviting all stakeholders, doesn’t include crime victims and should include a victim’s advocate and/or crime victim. Regarding recommendation #10, which deals with earned-time credit, he remarked that our system depends on fines and fees and to give defendants earned time credit for something that they should be doing seems contrary to fair justice, realizing it doesn’t include restitution. While this was not of big importance to the workgroup, Mr. Levey feels strongly about it.

Judge Steinle addressed recommendation #32, promoting the use of Restitution Courts, which the Workgroup strongly supports. He has produced a draft of a Best Practices Guide for Restitution Courts to assist in this endeavor. Judge Steinle stated that Orders to Show Cause were always used instead of Warrants in his Restitution Court. He also shared a concern about the recommendation of counsel for defendants at Restitution Hearings. This would not be cost-effective as there are alternatives, such as civil contempt, and would not provide much remedy in Restitution Court. Providing such assistance to everyone who feels their liberty is at loss is not really cost-effective to the state, especially in regards to the Public Defender’s Offices. He gave an example which would require representation in Family Court. This also needs further study.

Judge Cruz commented that as a member of the Fair Justice for All Taskforce, this specific recommendation, #32, was debated heavily with a member of the Maricopa County Public Defender’s Office. She opposed the recommendation based on a similar opinion to Judge Steinle. She also raised the issue that non-payment of restitution is a civil contempt proceeding within a criminal case, as a violation of a direct order. This brings up an added expense on behalf of the defendant which could be going instead towards restitution payments. Victims will also incur a cost for filing. This piece definitely needs to be readdressed and possibly revised. Mr. Breeze registered his concern with the representation issue, specifically 5th and 6th Amendment concerns.

The Chair stated he felt the Taskforce was careful to exclude Restitution on issues regarding payment of fines and fees, with the impetus on Limited Jurisdiction courts. Ms. Flores noted the lack of data on Restitution payment collection was problematic. Also, the Restitution Workgroup would like to continue to work on statutes, developing Best Practices for not just Restitution Courts but consistency around the state regarding ordering, collecting and enforcing restitution, examining the Victim Locate Fund in depth, maintaining and marketing the AOC Restitution website, and addressing training needs around the state. She thanked the members of the workgroup – it was a very productive group, and she hopes the work will continue.

B. Fair Justice for All Taskforce Recommendations

The Chair gave some background on the Taskforce starting as part of the Chief Justice's Strategic Agenda, focusing on studies of who is in jail for non-payment of fines and fees post-conviction, and introduced Mr. Tom O'Connell, Taskforce Co-Chair, who provided an overview of its recommendations.

Mr. O'Connell stated that the Taskforce's impetus was the focus on people being punished for being poor. While there should be consequences for violating the law, fees and fines should not restrict people's ability to be gainfully employed, productive and pay fines and fees. Restitution and victim-related issues did relate to the Taskforce's goals, with the thought of not causing harm to victims. The Taskforce members were selected by the Chief Justice and Mr. O'Connell acknowledged that a victim representative was not included, however it was an oversight. The Taskforce consists of 24 members representing various aspects of criminal justice, with a goal of a report by October 31, 2016. (Note: COVIC member Judge Cruz served on the Taskforce.) Some court rules and statutes may be changed as a result of the recommendations. All AOC standing committees are being presented with the information and recommendations of the Taskforce, and they are seeking approval and input from these committees.

Mr. O'Connell gave statistics and examples of the barriers defendants can face in paying fines and fees and the cycle of poverty being one of the biggest ones. Reasonable sanctions is one focal point. There are eleven principles and 65 recommendations contained in the report. Mr. O'Connell shared a detailed example of a situation where the cycle of poverty combined with high fees and failure to appear creates a bigger problem than just dealing with penalties and consequences in criminal justice. The ability for judges to mitigate penalties and fines is a preference. Automated tools for assessment of ability to pay is the ideal. Convenient and reasonable payment options are beneficial as well. Alternatives to paying fines, such as community restitution hours for municipal and justice courts are suggested. Getting defendants easier access for payment options and making it easier to appear in court are other recommendations. Reminders of court dates would assist in penalty fulfillment. Suspension of a driver's license should be a last resort, as it can affect one's ability to maintain employment, and subsequently afford to make fines and fees payments. Non-jail enforcement alternatives, such as use of Restitution Courts, FARE for collection of money before issuing a warrant, and intercepting federal income taxes to make payments is suggested. More work needs to be done with special needs offenders who are habitually in front of the court.

The Taskforce also addressed shifting from the idea of eliminating money for freedom as much as possible and using a risk-based release criteria to determine who is eligible for release conditions. Even short term incarceration can lead to detrimental effects

on the families of defendants. Pretrial defendants should not have to remain in custody solely because they are poor. High-risk defendants should not have the benefit of being able to afford high cash bails as a term of release. Pre-trial detention was studied, and it was found that there was extensive collateral damage in some cases. High bails, paid for by bail bondsmen at a high rate, are also detrimental. Bail decisions should be individualized. Along these lines, the recommendation for counsel being appointed to detainees after initial appearance was suggested. Only high-risk individuals should be detained, such as capital and other violent offenses with no bail conditions allowed. Mr. O'Connell shared examples from cases in other states where defendants released with unsecured and lower bonds returned regularly for subsequent hearings. Expanded use of public safety risk-assessments for limited jurisdiction court cases would help determine stipulations for release.

The Chair noted that some counties have done snapshot studies as to who is in jail and for what which gave striking results. Captain Leavitt stated that field release is maximized, and believes the issues are one-sided, because no one has presented to the legislature the fact that excessive fines and surcharges, such as for speeding tickets, should be reassessed because the cost scares people away from going to court, leading to warrants being issued, leading to detention, leading to the cycle stated by the Task Force. A family should not be bankrupted over a traffic citation. The court system should not be funded by traffic fines. The Chair stated that funding of the system should be looked at and discussed, and the system should be improved. The surcharges pay for a variety of good programs, but it's mostly on people who have been picked up for traffic offenses. It's an issue that can be debated. There will be a lot of discussion on this in the legislature, courts and public. In Washington, DC Superior Court, pretrial detention for dangerousness is only for people being kept in jail if they've been determined to be a danger to the community, a danger to a particular person or a serious risk not to appear. They have had very good results of non-commission of new crimes and an increased appearance rate.

Captain Leavitt stated that in Pima County the failure to appear rates were 50% lower after starting a "robo-call" program to remind people to appear in court. Additionally, there are people in the justice system who feel it's more important to get defendants to respect the law than use a more flexible consequence, but that has proven to be ineffective and unfair. Ms. Crane stated that in Pima County, non-violent, poor offenders are in jail more often than a truly dangerous individual who can post bail. Pima County is trying to change that. Mr. Udelman stated that as a victims' attorney, he is more concerned when a crime victim is injured and is unable to perform in his career for the rest of his life. He is concerned with some of the recommendations, and the discussion about risk assessment tools as they don't take into account the massive economic losses that crime victims face if there are no pre-conviction tools to possibly secure some assets for the benefit of the victim. Mr. O'Connell thanked everyone for their input and points raised.

The Chair recognized the work of the Restitution Workgroup and the Taskforce, and stated that there is not a lot of data nationally on the correlation between restitution collection and high fines. If fines are impossible to pay, the collection rate will be much less. If they are realistic you see more dollars come in. Restitution workgroup member Knox shared insight on interest being an incentive for re-payment as it has been reduced, postponed, or waived by judges to get defendants to pay in full. The Chair wondered if it had been discussed that the individual victim should receive restitution first, before insurance companies or corporate entity. Mr. Udelman stated that the tool of ARS § 13-805.E (interest on restitution) could be made discretionary instead of mandatory to incentivize the defendant to pay. Mr. O'Connell agreed it was a good point.

Mr. O'Connell asked that, with consideration of the comments made, would COVIC support the recommendations, with the understanding there will be follow-up on the points raised. The Chair recognized there was dissention, even among Taskforce members, so there will definitely be more discussion. Mr. Breeze moved that COVIC approve the proposals made by the Taskforce on Fair Justice for All, with the proviso that there is input from interested parties. Judge Cruz requested that the recommendations of concern be referenced by specific number. The Chair created a sub-committee to go through the recommendations and cite by number the ones with concerns and appointed Ms. Lundin, Ms. Flores, Mr. O'Connell as an ex-officio member, and Ms. Colleen Case to it. Mr. Breeze's motion was amended to include this proviso. The motion was seconded by Judge Finn. Voting aye – 19. Voting nay – 3. Motion passed.

C. APAAC Lethality Assessment Working Group Report

Ms. Amelia Craig Cramer, Chief Deputy, Pima County Attorney's Office, shared that in June Elizabeth Ortiz reported on the progress of APAAC's Lethality Assessment Working Group. The action items for the group included identifying the protocols and lists of lethality assessment questions being used in Arizona jurisdictions, and for Dr. Neil Websdale from NAU and Dr. Jill Messing from ASU to examine these and recommend what could be applied statewide. Ms. Cramer and Mr. Jon Elason have submitted a written report in which consensus was reached in the set of questions that should be asked in the Lethality Assessment. The members believe this assessment should more rightly be called an "Intimate Partner Risk Assessment," however the statute will need to be changed. The experts in this area, along with Dr. Jackie Campbell in Maryland, came up with an agreed-upon list of questions. Dr. Campbell uses a victim-centered approach, which Pima County also focuses on. Other counties are using it as a law enforcement tool, to inform the court or establish conditions of release which is more a defendant-centered approach. The doctors believe these questions accomplish both goals. This assessment can provide consequences for the defendant and assist in safety planning and determining the

types of services a victim may need, which helps break the cycle of violence. There are upcoming working group meetings to draft a protocol that would be used by law enforcement on scene and victim advocates, with options if no advocate is available on scene or telephonically.

The Chair stated that getting the experts to agree on this was an exceptional effort. Mr. Eliason said that there is good support from the court and advocates for this project and he anticipates that after the final report is approved by APAAC they will return to COVIC for approval, as well as CIDVC, to include Tier One questions as an addendum to Form 4. The focus will then be on training. Ms. Cramer stated that the Governor's Office participated at the last meeting and is providing some funding for research and analysis of data. At some point there will be a need for funding additional victim services for those victims who demonstrate to be a high risk from the protocol. There was a discussion regarding adding another question concerning harm to pets to the assessment. Mr. Eliason and Ms. Cramer stated that the research backing the questions are very specific and there will probably not be a change although they will take the suggestion back to the working group.

Judge Finn questioned the change of the name to the form and that in domestic violence situations it is not always an intimate partner relationship that is the threat, but a roommate or former roommate, etc. who fit into the definition of Domestic Violence offenses. She expressed concern that the title change may deter police officers from using the new form as broadly as the current lethality assessment. Mr. Eliason responded that the research and literature deals with intimate partners. Ms. Cramer stated that they will take the title recommendation to the working group and that there was discussion in the working group about the importance of getting the data needed for Intimate Partners separately so that it could be statistically validated with evidence based research. She stated the working group also discussed that the form could be used in other circumstances such as sexual assaults involving family members.

Judge Finn stated that her court has a DV Offense specific report and this lethality assessment is used in what looks like a minor incident, the less-severe domestic violence cases, where OR is routine; however when looking at the total history this tool helps show dangerousness, leading to holding the defendant. Some other jurisdictions have their own lethality reports so they may use the new one and their own.

D. SAFER and DANY/ SAK

The Chair stated that a national report has been drafted by the Sexual Assault Forensic Evidence Reporting Act Workgroup and is being vetted. Ms. Karen Rasile shared that Jim Markey is absent due to his attendance at the workgroup's meeting

and sent her a summary report: The guide is in final editorial review and is about 100 pages long with 35 recommendations. A date for release has not been determined.

Mr. Elason reminded members that on a local level, a year ago the Maricopa County Attorney's office was awarded \$1.9 million toward the testing of untested sexual assault kits. At the same time the City of Tempe Police Department received just over \$350,000, and Tucson received just over one million dollars as well. Today the backlog estimate in Maricopa County is over 4,000, with 759 kits submitted for out-of-state lab testing, which are then sent back to government labs for data accuracy review and then uploaded into CODIS if profile eligible. Of those 759 kits, 163 CODIS eligible profiles have been uploaded so far, and of those, 57 have received CODIS hits with 30 of those offender hits, four are forensic or unsolved cases. At least one was from another state. Two people have been arrested and indicted which resulted in one pleading guilty so far. He gave examples of the types of offenders they have found – all serial rapists- with several more soon to be indicted. He cited that human error does pop up and “breaks in the chain” occur, and the support for testing every kit is compelling. A report shows testing all kits saves money in police work.

Last month the Maricopa County Attorney's Office and Phoenix Police Department received a grant from BJA for the funding of downstream work on the kits – prosecutor, detectives, victim notification, and property room work. Additionally, the Governor's Taskforce Report included an inventory of over 6,000 kits statewide that need to be tested, and are recommending legislation to require the testing of all sexual assault kits submitted and for an annual accounting report by law enforcement agencies regarding the status of its sexual assault kits. The Arizona Sexual Assault Evidence Collection Kit Task Force Report can be found at: <http://azgovernor.gov/governor/news/2016/10/committed-clearing-untested-rape-kit-backlog>

Mr. Elason also reported that the Maricopa County Attorney's Office has spearheaded a multi-disciplinary sex assault protocol, to include medical, prosecution, lab, victim notification and services which has led to departments changing how they handle this issue. The expectation is that the protocol will be finished by the end of 2016. The Chair stated the national and state groups have focused on turnaround time (ideal is 30-60 days, which is difficult for some labs to handle). Mr. Elason stated Maricopa County has an advantage because it can account for every single reported sexual assault case from the beginning; it doesn't have the same struggles as other states do. Captain Leavitt stated that in Tucson there has been misreporting in the media that there are untested rape kits that have probative value that are on the shelves; however Tucson has zero unprocessed kits where the suspect has not been identified and never has had that issue. This process has allowed TPD a way to put people's DNA into CODIS and it is now a matter of hours for the kit to go to the crime lab and they have made cases within

four hours with the DPS Crime Lab. He remarked that it is a great program and TPD expects to be able to convict 15 people with the funds it has received. Mr. Elason says human error did cause a few kits to go untested in other jurisdictions.

III. Potential 2017 COVIC Meeting Dates

Ms. Denise Lundin shared that the AOC creates a Master Calendar regarding committee meetings at a meeting in November. She will be sending out possible meeting dates for COVIC in 2017, and asks the members to email Ms. Lynn Golden or herself with conflicts for scheduling purposes. (Note: The 2017 meeting dates are: March 3rd, June 9th and October 27th.)

IV. CALL TO PUBLIC

Good of the Order / Call to the Public

- a. The Chair asked if there were any other announcements. Ms. Sydney Davis praised Ms. Lynn Golden, AOC Staff, on her recent performance in a local theatre production. Ms. Flores stated the Victims' Rights portion of the Judge's Bench book is being reviewed, and anyone interested in providing input, please let her know as soon as possible, as they are on a tight schedule for it.
- b. The Chair then made a call to the public for comment. There was none.

V. ADJOURNMENT

Motion was made by Mr. Breeze at 12:36 p.m. to adjourn. Seconded by Judge Timothy Agan. Motion passed unanimously.

VI. NEXT COMMITTEE DATE

March 3, 2017
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007