

Arizona Supreme Court
Commission on Victims in the Courts

March 2, 2018

Meeting Agenda

1501 W. Washington St., Phoenix, Arizona, 85007
State Courts Building, Conference Room 345A/B

10:00 a.m. – 12:00 p.m.

10 min	Call to order / Welcome / Introductions / Announcements	Hon. Ronald Reinsten, Chair Denise Lundin, COVIC Staff
	<i>Approval of Minutes – October 27, 2017**</i>	Hon. Ronald Reinstein, Chair
20 min	Legislative Update	Jerry Landau, Director of Government Affairs
10 min	Digital Evidence Task Force Update (R-18-0008)	Judge Ronald Reinstein, Chair
10 min	Restitution Workgroup Update – Focus on Education and Training	Kirstin Flores, Workgroup Chair
30 min	Planning for the Supreme Court’s next Strategic Agenda **	Hon. Ronald Reinstein, Chair Denise Lundin, COVIC Staff;
5 min	Neurobiology of Trauma Training	Denise Lundin, COVIC Staff
10 min	Noticing Victims’ Attorneys re: hearings update	Chris Kelly, Chief Deputy, Clerk of the Superior Court, Maricopa County
20 min	Arizona Voice for Crime Victims (AVCV) Petition to Amend Arizona Rules of Criminal Procedure (R-18-0001) **	Colleen Clase, Sr. Attorney, AVCV
5 min	Call to the Public / Adjournment	Judge Ronald Reinstein, Chair

****Important Voting Items**

Next Meeting:

June 8, 2018

February/March of 2018

10:00 a.m. - 2:00 p.m.

Arizona State Courts Building, Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Lynn Golden at (602) 452-3195. Requests should be made as early as possible to allow time to arrange for the accommodation.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 2, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislative Update

FROM: AOC

PRESENTER: Jerry Landau, Director of Government Affairs

DISCUSSION & TIME ESTIMATES: Mr. Landau will provide an update on proposed legislation affecting victims' rights.

20 minutes

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 2, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Update on Digital Evidence Task Force's Work

FROM: AOC

PRESENTER: Judge Reinstein, COVIC Chair

DISCUSSION & TIME ESTIMATES:

Judge Reinstein will update the commission on DETF's petition to amend multiple court rules to reference digital evidence and address disclosure of electronically stored information (R-18-0008).

Petition can be found at: <https://www.azcourts.gov/Rules-Forum/aft/825>

10 Minutes

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 2, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Restitution Workgroup Update

FROM: Restitution Workgroup Chair

PRESENTER: Kirstin Flores

DISCUSSION & TIME ESTIMATES: Recent activities of the workgroup and next steps.

10 minutes

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 2, 2018	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Strategic Agenda Recommendations & Formation of Workgroup

FROM: AOC

PRESENTER: Judge Reinstein (Chair) and Denise Lundin (Staff)

DISCUSSION & TIME ESTIMATES: Planning has begun on the Arizona Supreme Court's 2019 – 2024 Strategic Agenda and input on issues affecting COVIC's work is requested. An overview of the current Strategic Agenda will be highlighted. Staff suggests that a small workgroup be formed to help in this process and make recommendations on behalf of the commission.

The current Strategic Agenda can be found at:

<http://www.azcourts.gov/portals/0/AdvancingJusticeTogetherSA.pdf>

Its Annual Updates can be found at:

<http://www.azcourts.gov/AZ-Courts/Strategic-Agenda-Annual-Updates>

30 minutes

RECOMMENDED MOTION (IF ANY): To form a workgroup with authority to make recommendations on behalf of COVIC for the Supreme Court's 2019 – 2024 Strategic Agenda.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 2, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Neurobiology of Trauma Training

FROM: AOC

PRESENTER: Denise Lundin, COVIC Staff

DISCUSSION & TIME ESTIMATES: Overview of recent two-day training to become trauma informed and the benefits possible for stakeholders working with victims.

Links to summaries of training materials can be found here:

<https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=842>

<https://www.scanva.org/the-neurobiology-of-trauma-an-important-introduction/>

5 minutes

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 2, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Noticing Victims' Attorneys re: Hearings

FROM: Maricopa County Clerk of the Superior Court

PRESENTER: Chris Kelly, Chief Deputy

DISCUSSION & TIME ESTIMATES: Chris will provide an update on efforts to ensure victims' attorneys are endorsed on court documents regarding hearings.

10 minutes

RECOMMENDED MOTION (IF ANY):

N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
March 2, 2018	<input checked="" type="checkbox"/> Formal Action Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	AVCV's Petition to Amend Arizona Rules of Criminal Procedure

FROM:

PRESENTER: Colleen Clase, Arizona Voice for Crime Victims

DISCUSSION & TIME ESTIMATES: 10-15 minutes, discussion on AVCV's rule petition seeking to integrate victims' rights throughout the rules of criminal procedure (R-18-0001)

Petition can be found at: <http://www.azcourts.gov/Rules-Forum/aft/800>

RECOMMENDED MOTION (IF ANY): Motion to Support AVCV's rule petition

1 ARIZONA VOICE FOR CRIME VICTIMS
2 Steven J. Twist (State Bar # 004081)
3 Colleen Clase (State Bar # 029360)
4 Jessica Gattuso (State Bar # 025492)
5 Eric Aiken (State Bar # 032418)
6 111 E. Taylor Street
7 Phoenix, AZ. 85004
8 602-600-2661
9 cclase@voiceforvictims.org
10 colleen.avcv@gmail.com

11 **IN THE ARIZONA SUPREME COURT**

12 IN THE MATTER OF:
13 PETITION TO AMEND THE
14 ARIZONA RULES OF CRIMINAL
15 PROCEDURE

16 R-
17 PETITION TO AMEND THE
18 ARIZONA RULES OF CRIMINAL
19 PROCEDURE

20 Pursuant to Rule 28 of the Arizona Rules of the Supreme Court, Arizona
21 Voice for Crime Victims (AVCV) respectfully submits this petition to amend the
22 Arizona Rules of Criminal Procedure by integrating the rights guaranteed to
23 victims by our constitution, Ariz. Const. art. II, § 2.1, and its implementing
24 legislation, Ariz. Const. art. II, §§ 2.1(D) and A.R.S. §§ 13-4401-42, throughout
25 each applicable rule provision and repealing Rule 39. The proposed amendments
are attached as Appendix A and Appendix B.

1 Arizona Voice for Crime Victims (AVCV), founded in 1996, is a non-profit
2 organization located in Phoenix, Arizona that provides pro bono legal
3 representation and social services to victims of crime in state and federal criminal
4 proceedings. AVCV seeks to foster a fair and compassionate justice system in
5 which all crime victims are informed of their rights under the Arizona Victims'
6 Bill of Rights (VBR), fully understand their rights, and have a meaningful way to
7 participate and assert these constitutional guarantees throughout the criminal
8 justice process. To achieve these goals, AVCV empowers victims of crime
9 through legal advocacy and social services. A key part of AVCV's mission is
10 working to give the judiciary information and policy insights that may be helpful in
11 ensuring that victims' rights are upheld by educating the judiciary of the practical
12 day-to-day application of victims' rights in their courtrooms. When criminal court
13 judges and the attorneys involved in each criminal case fully understand when and
14 how victims' rights apply in each situation, victims can truly have the meaningful
15 participation that the VBR intended.

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20 Currently, Rule 39 of the Arizona Rules of Criminal Procedure generally
21 addresses victims' rights. Rule 39 was adopted "in response to the growing
22 perception that victims of crime [were] encountering serious problems with the
23 criminal justice system." Ariz. R. Crim. P. 39 cmt. (1989). Attempting to
24 "ameliorate, if possible, the problems encountered by victims," the Court adopted
25

1 Rule 39 in the hope it would “comprehensively” address the concerns of victims.
2 *Id.* After voters adopted the VBR in November 1990, Rule 39 had to be amended
3 to conform to the mandates of the state constitution. Rule 39, however, still only
4 provides an overview of what rights crime victims are entitled to. Unlike the rights
5 of the accused or the rights of the state, which are appropriately and carefully
6 presented in the criminal rules, Rule 39 does not provide proper guidance to trial
7 courts and attorneys on when victims’ rights apply in relation to the remainder of
8 the Rules. To take a comprehensive approach to victims’ rights, full integration
9 into the Rules, in a way that instructs trial courts and attorneys what the VBR
10 mandates in each situation, is required.
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14 Proposition 104 aimed to change the criminal justice culture for victims in
15 Arizona by providing constitutional rights that would take victims from the
16 sidelines of the criminal justice system to becoming active participants. Steven J.
17 Twist & Keelah E.G. Williams, *Twenty-Five Years of Victims’ Rights in Arizona*,
18 47 Ariz. St. L.J. 421 (2015). Proposition 104 received overwhelming support of
19 Arizona’s voters and the Arizona Victims’ Bill of Rights (VBR) became effective
20 on November 27, 1990. Gessner H. Harrison, *The Good, the Bad, and the Ugly:*
21 *Arizona’s Courts and the Crime Victims’ Bill of Rights*, 34 Ariz. St. L.J. 531, 532
22 (2002). The VBR enumerated specific rights to justice and due process, which
23
24 include rights:
25

- 1 1. To be treated with fairness, respect, and dignity, and to be free from
2 intimidation, harassment, or abuse, throughout the criminal justice
3 process.
- 4 2. To be informed, upon request, when the accused or convicted
5 person is released from custody or has escaped.
- 6 3. To be present at and, upon request, to be informed of all criminal
7 proceedings where the defendant has the right to be present.
- 8 4. To be heard at any proceeding involving a post-arrest release
9 decision, a negotiated plea, and sentencing.
- 10 5. To refuse an interview, deposition, or other discovery request by
11 the defendant, the defendant's attorney, or other person acting on
12 behalf of the defendant.
- 13 6. To confer with the prosecution, after the crime against the victim
14 has been charged, before trial or before any disposition of the case and
15 to be informed of the disposition.
- 16 7. To read pre-sentence reports relating to the crime against the victim
17 when they are available to the defendant.
- 18 8. To receive prompt restitution from the person or persons convicted
19 of the criminal conduct that caused the victim's loss or injury.
- 20 9. To be heard at any proceeding when any post-conviction release
21 from confinement is being considered.
- 22 10. To a speedy trial or disposition and prompt and final conclusion of
23 the case after the conviction and sentence.
- 24 11. To have all rules governing criminal procedure and the
25 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.
12. To be informed of victims' constitutional rights.

Ariz. Const. art. II, §§ 2.1(A)(1)-(12)

1 Full integration of victims’ rights into each applicable Arizona Rule of
2 Criminal Procedure is justified by the very language of the VBR, which
3 guarantees, among other things, that victims have a right to be treated with
4 fairness, respect, and dignity throughout the criminal justice process and to have
5 “all rules governing criminal procedure and the admissibility of evidence in all
6 criminal proceedings protect victims' rights.” Ariz. Const. art. II, § 2.1(A)(1) and
7 (11). This Court has acknowledged that the VBR broadly recognizes these rights
8 to fairness, respect, and dignity. *J.D.;M.M. v. Hegyi*, 236 Ariz. 39, 42 (Ariz.
9 2014). The purpose of the VBR and its implementing legislation is to provide
10 crime victims with the “basic rights of respect, protection, participation and healing
11 of their ordeals.” *Champlain v. Sargeant*, 192 Ariz. 371, 375 (Ariz. 1998) (citing
12 1991 Ariz. Sess. Laws ch. 229, § 2). The constitutional mandate requiring that
13 victims be treated with “fairness” throughout the criminal justice process can be
14 best achieved by fully integrating victims’ right into the Arizona Rules of Criminal
15 Procedure, which, in turn, will “integrate victims into the day to day workings of
16 the process.” Paul Cassell, *Treating Crime Victims Fairly: Integrating Victims into*
17 *the Federal Rules of Criminal Procedure*, 2007 Utah L. Rev. 861, 863 (2007).
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23 Moreover, integrating victims’ rights into each applicable rule would be
24 consistent with the rights established in paragraph 11 of the VBR, namely that “all
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1 *rules* governing criminal procedure and the admissibility of evidence in all
2 criminal proceedings protect victims' rights.” (emphasis added.)

3
4 Maintaining Rule 39 would only continue to provide a general overview of
5 victims’ rights and welcome misunderstanding of their applicability by trial courts
6 and attorneys. Full integration of the VBR into the applicable Rules would not
7 create new victims’ rights or violate the rights of the accused. Rather, it would
8 give effect to the VBR by allowing victims meaningful participation into the day-
9 to-day workings of the process. Additionally, full integration would provide
10 comprehensive guidance to criminal justice professionals using the constitutional
11 and statutory mandates that already exist. Ensuring each applicable rule fully
12 complies with the constitutional and statutory provisions will safeguard the rights
13 of crime victims, especially for the majority who do not have the benefit of their
14 own counsel.
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18 Arizona has traditionally been on the forefront of victims’ rights. It was one
19 of the first states in the country to provide victims of crime with constitutional
20 rights. Harrison, 34 Ariz. St. L.J. at 532 (2002). Since then, this Court has been
21 tasked with balancing the rights of victims with those of the accused and has
22 addressed issues of first impression that have both protected and upheld victims’
23 rights in Arizona and provided guidance to other jurisdictions in the country.
24
25 AVCV asks the Court to leave a legacy for future criminal justice professionals by

Samuel A. Thumma
Chair, Task Force on Court Management of Digital Evidence
Chief Judge, Arizona Court of Appeals
Division One
State Courts Building
1501 West Washington
Phoenix, Arizona 85007
Telephone: (602) 452-6700

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of)
) Arizona Supreme Court No. R-18-____
PETITION TO AMEND ARIZONA)
RULES OF EVIDENCE 1001, 1002,)
1004, 1006, 1007, 1008; ARIZONA)
RULES OF CRIMINAL PROCEDURE)
15.1, 15.2, 15.3; ARIZONA RULES OF)
PROCEDURE FOR THE JUVENILE)
COURT 16, 44, 73; and ARIZONA)
RULE OF PROCEDURE FOR)
EVICITION ACTIONS 10)
_____)

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Task Force on Court Management of Digital Evidence (“Task Force”) petitions the Court to amend Arizona Rules of Evidence 1001, 1002, 1004, 1006, 1007, 1008; Arizona Rules of Criminal Procedure 15.1, 15.2, 15.3; Arizona Rules of Procedure for Juvenile Courts 16, 44, 73; and Arizona Rule of Procedure for Eviction Actions 10, as reflected in the attachments hereto, effective January 1, 2019.

I. INTRODUCTION AND BACKGROUND.

Established on December 6, 2016, by Arizona Supreme Court Administrative Order 2016-129, the Task Force was asked to review five policy questions regarding court management of digital evidence and to make recommendations on each. The policy questions were:

1. Should court digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
2. Should management of court digital evidence be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?
3. Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
4. Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?
5. Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?

The administrative order also directs the Task Force to file any corresponding rule change petition not later than January 10, 2018, and further directs that the Task Force will remain in place until July 31, 2018.

The administrative order cites to the Joint Technology Committee Resource Bulletin: Managing Digital Evidence in the Courts (*Bulletin*) as providing “a good framework for discussion and relevant policy development.” That *Bulletin* is a February 2016 publication of the Joint Technology Committee established by the Conference of State Court Administrators, the National Association for Court Management, and the National Center for State Courts. The Task Force used the *Bulletin* as a key reference in its work.

Throughout 2017, the Task Force met to consider these issues. As directed by the administrative order, the Task Force submitted its report and recommendations to the Arizona Judicial Council (AJC) by October 1, 2017. The Report and Recommendations of the Arizona Task Force on Court Management of Digital Evidence (*Report*), along with other Task Force information, can be found at the Task Force’s webpage: <http://www.azcourts.gov/cscommittees/Digital-Evidence-Task-Force>.

As more fully described in the *Report*, a key component of the Task Force’s work “was to analyze the implications of allowing exhibits to cross the threshold from party to the court in digital form and then be used, going forward, in digital form,” which the Task Force called a “truly digital evidence concept.” [*Report* at 11] The Arizona judicial system does not currently use this truly digital evidence concept, and the Task Force “found no court in the United States that currently uses

this concept.” [Report at 13] As a result, many Task Force recommendations address considerations that will be relevant when Arizona decides to adopt a truly digital evidence concept. [Report at 6-8] As noted by the Task Force, a future adoption of the truly digital evidence concept in Arizona will require significant changes in technology and corresponding changes to procedural rules regarding how digital evidence is received, used, maintained, and managed by the court and accessed by others. [Id.] Among other things, future adoption of the truly digital evidence concept in Arizona will require significant changes to relevant sections of the Arizona Code of Judicial Administration and to Arizona Supreme Court Rule 123. [Id.] Those changes, however, are for future consideration at a time when Arizona adopts a truly digital evidence concept and are not addressed in this petition.

Recognizing this truly digital evidence concept currently is not used in Arizona, the Task Force also looked at Arizona’s current procedural rule sets to determine whether they accounted for pre-trial disclosure of such information. The Task Force determined that the Arizona Rules of Civil Procedure were the only rule set at the time of its deliberations that expressly addressed disclosure of this type of information. As a result, the *Report* did not suggest changes to the Arizona Rules of Civil Procedure but did suggest several possible rule changes to other procedural rule sets. [Report at 7 & Appendices G-L]

The rule changes sought in this petition are the product of significant study, deliberation, drafting, and revision by the Task Force, both leading up to the *Report* and in further consideration after the *Report* was issued. On October 11, 2017, the AJC considered and approved the *Report*, which included a recommendation for the filing of a rule change petition. During that consideration, the AJC provided feedback to the Task Force that was taken into account in crafting the rule changes sought in this petition. As a result, some suggestions in this petition differ from those in the *Report*, three of which merit specific mention:

- *First*, this petition suggests adding to the Arizona Rules of Evidence the following definition for the term “video”: “Video is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.” This definition is revised somewhat from the definition in the *Report* to provide additional clarity and confirm that the focus is moving images, regardless of whether accompanied by sound.
- *Second*, this petition suggests adding in various procedural rule sets the phrase “electronically stored information” instead of the phrase “digital evidence” suggested in the *Report*. Among other things, the phrase “electronically stored information” has been used in the Arizona Rules of Civil Procedure for a decade and also is used in the Arizona Rules of Evidence, the Arizona Rules of Family Law Procedure, and the Arizona Supreme Court’s Rules of Professional Conduct governing lawyers. Although a different phrase likely will be necessary to describe such information held by the court after the adoption of the truly digital evidence concept in Arizona, for now, the Task Force decided to suggest using the more familiar phrase “electronically stored information.”

- *Third*, the petition does not seek changes to the definition of “evidence” contained in the Arizona Rules of Protective Order Procedure. Focusing on the truly digital evidence concept, the *Report* [at 31, 66] had suggested a change in the definition of “admissible evidence” to include electronically stored information. Again, although such a rule change likely will be necessary after the adoption of the truly digital evidence concept in Arizona, the Task Force concluded that no such change is needed at this time.¹

Before addressing the specific changes requested and the reasoning for those requests, it is important to note that the current rules overall appear to be working when it comes to disclosure and production of electronically stored information for use at a hearing or trial. As such, the procedural rule sets do not need wholesale substantive revisions to address the increasing use of such information, although a few areas where revisions are necessary are discussed below. For these reasons, the Task Force recommends the rule changes requested here as set forth in Appendices A through D (clean versions presented first, followed by redline versions).

II. SUMMARY OF PROPOSED AMENDMENTS TO ARIZONA RULES OF EVIDENCE 1001, 1002, 1004, 1006, 1007, AND 1008.

The proposed amendments to the Arizona Rules of Evidence are intended to modernize five rules addressing the content of writings, recordings, and photographs (Article X of that rule set). The Task Force recognizes that, although the current

¹ For similar reasons, this petition does not seek a change to the definition of “evidence” used in Arizona Rule of Probate Procedure 2(E).

rules appear to be working, the language and concepts in Rules 1001, 1002, 1004, 1006, 1007, and 1008 do need modernization. For example, Rule 1001(b) limits the definition of the term “recording” to “letters, words, numbers, or their equivalent recorded in any manner.” The phrase “or their equivalent” is used to allow the rule to encompass digital media like a digital video involving non-verbal action. To expressly and directly address video images, however, the Task Force recommends expressly defining “video” in Rule 1001 and including that defined term in Rules 1002, 1004, 1006, 1007, and 1008.

The Task Force contemplated various definitions of the term “video.” The Task Force also considered the variety of formats that involve images that are other than still images as contemplated by the term “photograph,” and recognized formats will change in the future. The definition of “video” that was unanimously supported and that is included in the proposed amended rules reflected in Appendices A-1 and A-2 is: “Video is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.” The other changes suggested to the Arizona Rules of Evidence specifically include or build upon this definition of “video.” *See* Appendices A-1 and A-2.

III. SUMMARY OF PROPOSED AMENDMENTS TO OTHER PROCEDURAL RULE SETS.

As relevant to the Task Force’s work, the various Arizona procedural rule sets use two different approaches, turning on the disclosure required for intended exhibits.

The first approach is contained in the Arizona Rules of Criminal Procedure (and rule sets that adopt a similar approach), which describe documents and things, but not electronically stored information, for disclosure obligations. *See* Ariz. R. Crim. P. 15.1(b)(5) (2018) (requiring the State, in supplemental disclosure, to provide “a list of all documents, photographs, and other tangible objects the State intends to use at trial or that were obtained from, or purportedly belong to, the defendant”); 15.1(i)(3)(A)(iii) (2018) (similar); 15.1(i)(4)(D) (2018) (similar); 15.2(c)(3) (2018) (similar for defense disclosure); 15.2(h)(1)(iv) (2018) (similar); 15.3(c)(1)(D) (2018) (requiring motion for taking deposition to “designate any nonprivileged documents, photographs, or other tangible objects that the person must produce at the deposition”).

The second approach is contained the Arizona Rules of Civil Procedure (and rule sets that adopt a similar approach), which use the electronically stored information concept for disclosure and discovery, regardless of whether the information disclosed is to be used at trial. *See, e.g.,* Ariz. R. Civ. P. 16(d)(1), (3)(A) (2018) (scheduling conference may address electronically stored information); Ariz.

R. Civ. P. 26(b)(2)(B) (2018) (governing disclosure and production of “electronically stored information” during discovery of civil case); Ariz. R. Civ. P. 26.1(a)(8), (9) (2018) (disclosure of electronically stored information, including for use at trial); Ariz. R. Civ. P. 26.1(h) (2018) (privilege claims for, and inadvertent production of, electronically stored information); Ariz. R. Civ. P. 33(d) (2018) (option to produce electronically stored information in answer to interrogatory); Ariz. R. Civ. P. 34 (2018) (production of electronically stored information); Ariz. R. Civ. P. 37(g) (2018) (sanctions for failure to preserve electronically stored information); Ariz. R. Civ. P. 45(c)(2) (2018) (subpoenas seeking electronically stored information).

The Task Force recognizes that the “electronically stored information” concept was added to the Arizona Rules of Civil Procedure effective January 1, 2008. That phrase encompasses the digital evidence concept the Task Force originally contemplated recommending. More recently, the Arizona Rules of Evidence, the Arizona Rules of Family Law Procedure, and the Arizona Supreme Court’s Rules of Professional Conduct governing lawyers have included the phrase. Given this use and experience, the Task Force ultimately concluded that using the phrase electronically stored information, where appropriate, in the other procedural rule sets would update the rules to account for the disclosure and discovery of information that was not a document, photograph, or other tangible object.

The discussion that follows highlights the recommended changes to fully incorporate the electronically stored information concept in procedural rule sets, starting with the Arizona Rules of Criminal Procedure (and rule sets that adopt a similar approach).

a. Summary of the Proposed Amendments to the Arizona Rules of Criminal Procedure.

The Task Force closely reviewed the Arizona Rules of Criminal Procedure to determine if any changes were needed to address the handling of electronically stored evidence.² As relevant here, the Task Force noted that the rules currently do not contain language that specifically requires disclosure of electronically stored information. To make plain that disclosure of electronically stored information is both authorized and required, the Task Force recommends that Rules 15.1, 15.2, and 15.3 be amended to include language expressly addressing disclosure of electronically stored information. The result is to add “electronically stored information” to the various references in these rules to disclosure of “a list of documents, photographs, and other tangible objects.” *See* Appendices B-1 and B-2.

²In addition, on August 31, 2017, the Arizona Supreme Court referred Rule Change Petition R-17-0027 (seeking to amend Arizona Rules of Criminal Procedure 15.1 and 15.4) to the Task Force for consideration. On November 22, 2017, the Task Force filed a comment on that petition. On December 11, 2017, the Arizona Supreme Court denied Petition R-17-0027.

b. Summary of Proposed Amendments To Rule Sets Similar to the Arizona Rules of Criminal Procedure.

i. The Arizona Rules of Procedure for Juvenile Court.

The Arizona Rules of Procedure for Juvenile Court track, in relevant part, the Arizona Rules of Criminal Procedure. Accordingly, for reasons similar to those in III(a) above, the Task Force recommends amendments to the Arizona Rules of Procedure for Juvenile Court 16, 44, and 73 to make plain that disclosure of “electronically stored information” is required, as suggested in the proposed amendments to the Arizona Rules of Criminal Procedure. *See* Appendices C-1 and C-2.

ii. The Arizona Rules of Procedure for Eviction Actions.

The Arizona Rules on Eviction Actions, in relevant part, use an approach similar to the Arizona Rules of Criminal Procedure. Accordingly, for reasons similar to those in III(a) above, the Task Force recommends an amendment to Arizona Rule of Eviction Action 10 to make plain that disclosure of “electronically stored information” is required, as suggested in the proposed amendments to the Arizona Rules of Criminal Procedure. *See* Appendices D-1 and D-2.

c. The Arizona Rules of Civil Procedure.

The Arizona Rules of Civil Procedure underwent a comprehensive restyling effective January 1, 2017, and during the work of the Task Force, additional changes to that rule set were adopted effective January 1, 2018, and July 1, 2018. Both before

and after those changes, that rule set expressly directs disclosure, discovery and use of electronically stored information. Accordingly, the Task Force makes no suggested changes to the Arizona Rules of Civil Procedure.

d. The Arizona Rules of Family Law Procedure.

The Arizona Rules of Family Law Procedure, as applicable here, use an approach similar to the Arizona Rules of Civil Procedure. The Arizona Rules of Family Law Procedure are based on the Arizona Rules of Civil Procedure, but “as [the civil rules] existed before the 2016 amendments,” which became effective January 1, 2017. Ariz. R. Fam. L.P. 2(A). The Arizona Rules of Civil Procedure, however, address electronically stored information in much more detail than do the Arizona Rules of Family Law Procedure.

The *Report* [at 30, 62] recommends changes to Arizona Rule of Family Law Procedure 49 to include a subsection on electronically stored information, akin to obligations contained in the Arizona Rules of Civil Procedure. The *Report* [at 30] also noted that, pursuant to Administrative Order No. 2016-131, the Arizona Supreme Court established a task force to “review the Arizona Rules of Family Law Procedure to identify possible changes to conform to modern usage and to clarify and simplify language . . . with the goal of submitting a rule petition . . . with respect to any proposed rule changes.” The family law rules task force has until March 31, 2018, to file such a rule change petition. The Task Force understands that, at present,

the family law rules task force intends to request amendments to Rule 49 addressing electronically stored information. Accordingly, the Task Force is not at this time requesting any amendments to the Arizona Rules of Family Law Procedure, deferring any suggestion or comment on such changes until after consideration of the rule change petition to be filed by the family law rules task force.

CONCLUSION

Petitioner respectfully request that the Court consider this petition and proposed rule changes at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment, and that the Court adopt the proposed rules as they currently appear, or as modified in light of comments received, with an effective date of January 1, 2019.

DATED this 10th day of January, 2018.

_____/s/_____

Samuel A. Thumma
Chair, Task Force on Court Management of
Digital Evidence

ATTACHMENTS³

Appendix A-1: Arizona Rules of Evidence (clean)

Rule 1001. Definitions That Apply to This Article

In this article:

- (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.
- (b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.
- (c) A “photograph” means a photographic image or its equivalent stored in any form.
- (d) A “video” is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.
- (e) An “original” of a writing, recording, or video means the writing, ~~or~~ recording, or video itself or any counterpart intended to have the same effect by the person who executed, issued, or created it. For electronically stored information, “original” means any printout--or other output perceived by sight--if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.
- (f) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, photograph, or video is required in order to prove its content unless these rules or an applicable statute provides otherwise.

Rule 1004. Admissibility of Other Evidence of Contents

An original is not required and other evidence of the content of a writing, recording, photograph, or video is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;

³ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, photograph, or video is not closely related to a controlling issue.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, photographs, or video that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Rule 1007. Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, photograph, or video by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines--in accordance with Rule 104(b)--any issue about whether:

(a) an asserted writing, recording, photograph, or video ever existed;

(b) another one produced at the trial or hearing is the original; or

(c) other evidence of content accurately reflects the content.

Appendix A-2: Arizona Rules of Evidence (mark-up)

Rule 1001. Definitions That Apply to This Article

In this article:

(a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.

(b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A “photograph” means a photographic image or its equivalent stored in any form.

(d) A “video” is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.

~~(d)~~(e) An “original” of a writing, ~~or~~ recording, or video means the writing, ~~or~~ recording, or video itself or any counterpart intended to have the same effect by the person who executed, ~~or~~ issued, or created it. For electronically stored information, “original” means any printout--or other output readable perceived by sight--if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.

~~(e)~~(f) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, ~~or~~ photograph, or video is required in order to prove its content unless these rules or an applicable statute provides otherwise.

Rule 1004. Admissibility of Other Evidence of Contents

An original is not required and other evidence of the content of a writing, recording, ~~or~~ photograph, or video is admissible if:

(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) an original cannot be obtained by any available judicial process;

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, ~~or~~ photograph, or video is not closely related to a controlling issue.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, ~~or~~ photographs, or video that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Rule 1007. Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, ~~or~~ photograph, or video by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines--in accordance with Rule 104(b)--any issue about whether:

- (a) an asserted writing, recording, ~~or~~ photograph, or video ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

Appendix B-1: Arizona Rules of Criminal Procedure (clean)

Rule 15.1. The State's Disclosures

(a) [no change]

(b) Supplemental Disclosure. Except as provided by Rule 39(b), the State must make available to the defendant the following material and information within the State's possession or control:

(1) – (4) [no change]

(5) a list of all documents, photographs, other tangible objects, and electronically stored information the State intends to use at trial or that were obtained from or purportedly belong to the defendant;

(6) – (11) [no change]

(c) - (h) [no change]

(i) Additional Disclosures in a Capital Case.

(1) - (2) [no change]

(3) Initial Disclosures.

(A) Generally. No later than 30 days after filing a notice of intent to seek the death penalty, the State must disclose the following to the defendant:

(i) the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness;

(ii) the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

(iii) a list of all documents, photographs, other tangible objects, or electronically stored information the State intends to use to support each identified aggravating circumstance at the aggravation hearing; and

(iv) all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(B) Time Extensions. The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures

only if the State shows good cause or the parties stipulate to the deadline extension.

(4) *Rebuttal and Penalty Phase Disclosures.* No later than 60 days after receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following to the defendant:

(A) the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness;

(B) the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness;

(C) the name and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and

(D) a list of all documents, photographs, other tangible objects, or electronically stored information the State intends to use during the aggravation and penalty hearings.

(j) [no change].

Rule 15.2. The Defendant's Disclosures

(a) – (b) [no change]

(c) **Content of Disclosure.** At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

(1) – (2) [no change]

(3) a list of all documents, photographs, other tangible objects, and electronically stored information the defendant intends to use a trial.

(d) - (g) [no change]

(h) Additional Disclosures in a Capital Case.

(1) *Initial Disclosures.*

(A) *Generally.* No later than 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

(i) a list of all mitigating circumstances the defendant intends to prove;

- (ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;
- (iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and
- (iv) a list of all documents, photographs, other tangible objects, or electronically stored information the defendant intends to use during the aggravation and penalty hearings.

(B) Time Extensions. The court may extend the deadline for the defendant's initial disclosures under (h)(i) or allow the defendant to amend those disclosures only if the defendant shows good cause or the parties stipulate to the deadline extension.

(2) Late Disclosures. [no change]

Rule 15.3. Depositions

(a) – (b) [no change]

(c) Motion for Taking Deposition; Notice; Service.

(1) Requirements. A motion to take a deposition must:

- (A)** state the name and address of the person to be deposed;
- (B)** show that a deposition may be ordered under (a) or (b);
- (C)** specify the time and place for taking the deposition; and
- (D)** designate any nonprivileged documents, photographs, other tangible objects, or electronically stored information that the person must produce at the deposition.

(2) – (3) [no change]

(d) – (f) [no change]

Appendix B-2: Arizona Rules of Criminal Procedure (mark-up)

Rule 15.1. The State's Disclosures

(a) [no change]

(b) Supplemental Disclosure. Except as provided by Rule 39(b), the State must make available to the defendant the following material and information within the State's possession or control:

(1) – (4) [no change]

(5) a list of all documents, photographs, ~~and~~ other tangible objects, and electronically stored information the State intends to use at trial or that were obtained from or purportedly belong to the defendant;

(6) – (11) [no change]

(c) – (h) [no change]

(i) Additional Disclosures in a Capital Case.

(1) - (2) [no change]

(3) Initial Disclosures.

(A) Generally. No later than 30 days after filing a notice of intent to seek the death penalty, the State must disclose the following to the defendant:

(i) the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness;

(ii) the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

(iii) a list of all documents, photographs, ~~or~~ other tangible objects, or electronically stored information the State intends to use to support each identified aggravating circumstance at the aggravation hearing; and

(iv) all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(B) Time Extensions. The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures only if the State shows good cause or the parties stipulate to the deadline extension.

(4) Rebuttal and Penalty Phase Disclosures. No later than 60 days after receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following to the defendant:

(A) the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness;

(B) the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness;

(C) the name and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and

(D) a list of all documents, photographs, ~~or~~ other tangible objects, or electronically stored information the State intends to use during the aggravation and penalty hearings.

(j) [no change].

Rule 15.2. The Defendant's Disclosures

(a) – (b) [no change]

(c) Content of Disclosure. At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

(1) – (2) [no change]

(3) a list of all documents, photographs, ~~and~~ other tangible objects, and electronically stored information the defendant intends to use a trial.

(d) - (g) [no change]

(h) Additional Disclosures in a Capital Case.

(1) Initial Disclosures.

(A) Generally. No later than 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

(i) a list of all mitigating circumstances the defendant intends to prove;

- (ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;
- (iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and
- (iv) a list of all documents, photographs, ~~or~~ other tangible objects, or electronically stored information the defendant intends to use during the aggravation and penalty hearings.

(B) Time Extensions. The court may extend the deadline for the defendant's initial disclosures under (h)(i) or allow the defendant to amend those disclosures only if the defendant shows good cause or the parties stipulate to the deadline extension.

(2) Late Disclosures. [no change]

Rule 15.3. Depositions

(a) – (b) [no change]

(c) Motion for Taking Deposition; Notice; Service.

(1) Requirements. A motion to take a deposition must:

- (A)** state the name and address of the person to be deposed;
- (B)** show that a deposition may be ordered under (a) or (b);
- (C)** specify the time and place for taking the deposition; and
- (D)** designate any nonprivileged documents, photographs, ~~or~~ other tangible objects, or electronically stored information that the person must produce at the deposition.

(2) – (3) [no change]

(d) – (f) [no change]

Appendix C-1: Arizona Rules of Procedure for the Juvenile Court (clean)

Rule 16. Discovery

A. [no change]

B. Disclosure by the State.

1. Time Limits. Within ten (10) days of the advisory hearing, the prosecutor shall make available to the juvenile for examination and reproduction the following material and information within the prosecutor's possession or control:

- a. The names and addresses of all persons whom the prosecutor will call as witnesses at the adjudication hearing together with their relevant written or recorded statements;
- b. All statements of the juvenile and of any other juvenile for whom there is a companion adjudication hearing scheduled for the same time;
- c. The names and addresses of experts who have personally examined the juvenile or any evidence in the particular case, together with the results of physical examinations and scientific tests, experiments or comparisons, including all written reports or statements made by an expert in connection with the particular case;
- d. A list of all papers, documents, photographs, tangible objects, or electronically stored information which the prosecutor will use at the adjudication hearing, and upon further written request shall make available to the juvenile for examination, testing and reproduction any specified items contained in the list. The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section; and
- e. All material or information which tends to mitigate or negate the juvenile's alleged delinquent conduct.

2. - 3. [no change]

C. Disclosure by Juvenile.

1. - 2. [no change]

3. Disclosures by Juvenile. Simultaneously with the filing of the notice of defenses/witnesses as required by this rule, the juvenile shall make available to the prosecutor for examination and reproduction:

- a. The names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all statements made by them in connection with the particular case;

- b. The names and addresses of experts who will be called at the adjudication hearing, together with the results of physical examinations, scientific tests, experiments or comparisons, including all written reports and statements made by the expert in connection with the particular case; and
 - c. A list of all papers, documents, photographs, other tangible objects, and electronically stored information which the juvenile will use at the adjudication hearing.
- 4. - 6.** [no change]

D. – F. [no change]

Rule 44. Disclosure and Discovery

A. Scope of Disclosure. All information which is not privileged shall be disclosed. Disclosure shall be made in the least burdensome and most cost effective manner which shall include the inspection of materials, with or without copying.

Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;
5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;
9. Records of prior criminal convictions;
10. Medical and psychological records and reports;
11. Results of medical or other diagnostic tests; and
12. Any other information relevant to the proceedings.

B. - G. [no change]

Rule 73. Disclosure and Discovery

A. Scope of Disclosure. Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;

5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;
9. Records of prior criminal convictions;
10. Medical and psychological records and reports;
11. Results of medical or other diagnostic tests; and
12. Any other information relevant to the proceedings.

B. – D. [no change]

Appendix C-2: Arizona Rules of Procedure for the Juvenile Court (mark-up)

Rule 16. Discovery

A. [no change]

B. Disclosure by the State.

1. Time Limits. Within ten (10) days of the advisory hearing, the prosecutor shall make available to the juvenile for examination and reproduction the following material and information within the prosecutor's possession or control:

- a. The names and addresses of all persons whom the prosecutor will call as witnesses at the adjudication hearing together with their relevant written or recorded statements;
- b. All statements of the juvenile and of any other juvenile for whom there is a companion adjudication hearing scheduled for the same time;
- c. The names and addresses of experts who have personally examined the juvenile or any evidence in the particular case, together with the results of physical examinations and scientific tests, experiments or comparisons, including all written reports or statements made by an expert in connection with the particular case;
- d. A list of all papers, documents, photographs, ~~or~~ tangible objects, or electronically stored information which the prosecutor will use at the adjudication hearing, and upon further written request shall make available to the juvenile for examination, testing and reproduction any specified items contained in the list. The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section; and
- e. All material or information which tends to mitigate or negate the juvenile's alleged delinquent conduct.

2. - 3. [no change]

C. Disclosure by Juvenile.

1. - 2. [no change]

3. Disclosures by Juvenile. Simultaneously with the filing of the notice of defenses/witnesses as required by this rule, the juvenile shall make available to the prosecutor for examination and reproduction:

- a. The names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all statements made by them in connection with the particular case;

- b. The names and addresses of experts who will be called at the adjudication hearing, together with the results of physical examinations, scientific tests, experiments or comparisons, including all written reports and statements made by the expert in connection with the particular case; and
 - c. A list of all papers, documents, photographs, ~~and~~ other tangible objects, and electronically stored information which the juvenile will use at the adjudication hearing.
- 4. - 6.** [no change]

D. – F. [no change]

Rule 44. Disclosure and Discovery

A. Scope of Disclosure. All information which is not privileged shall be disclosed. Disclosure shall be made in the least burdensome and most cost effective manner which shall include the inspection of materials, with or without copying.

Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;
5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;
- ~~9. 8.~~ Records of prior criminal convictions;
- ~~10. 9.~~ Medical and psychological records and reports;
- ~~11. 10.~~ Results of medical or other diagnostic tests; and
- ~~12. 11.~~ Any other information relevant to the proceedings.

B. - G. [no change]

Rule 73. Disclosure and Discovery

A. Scope of Disclosure. Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;

5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;
9. ~~8.~~ Records of prior criminal convictions;
10. ~~9.~~ Medical and psychological records and reports;
11. ~~10.~~ Results of medical or other diagnostic tests; and
12. ~~11.~~ Any other information relevant to the proceedings.

B. – D. [no change]

Appendix D-1: Arizona Rules of Procedure for Eviction Actions (clean)

Rule 10. Disclosure

a. Upon request, a party shall provide to the other party: 1) a copy of any lease agreement; 2) a list of witnesses and exhibits; 3) if nonpayment of rent is an issue, an accounting of charges and payments for the preceding six months; and 4) copies of any documents (including any electronically stored information) the party intends to introduce as an exhibit at trial.

b. – d. [no change]

Appendix D-2: Arizona Rules of Procedure for Eviction Actions (mark-up)

Rule 10. Disclosure

a. Upon request, a party shall provide to the other party: 1) a copy of any lease agreement; 2) a list of witnesses and exhibits; 3) if nonpayment of rent is an issue, an accounting of charges and payments for the preceding six months; and 4) copies of any documents (including any electronically stored information) the party intends to introduce as an exhibit at trial.

b. – d. [no change]

Arizona Supreme Court
Commission on Victims in the Courts

June 8, 2018

Meeting Agenda

1501 W. Washington St., Phoenix, Arizona, 85007
State Courts Building, Conference Room 345A/B

10:00 a.m. – 2:00 p.m.

5 min	Call to order / Welcome / Introductions / Announcements	Judge Ron Reinstein, Chair
	<i>Approval of Minutes – March 2, 2018**</i>	Judge Ron Reinstein, Chair
15 min	Legislative Update	Amy Love, AOC Legislative Affairs
60 min	Solving Cold Cases – Familial DNA Victim Involvement and Interaction	Kris Cano, Director, Scottsdale Forensic Services; Vincent Figarelli, Superintendent, Arizona DPS Crime Lab; Chief Scott Popp, Scottsdale PD
20 min	LUNCH	
60 min	Decoding Sex Buyers – The Work of CEASE, Arizona	Angelyn Bayless, Director, CEASE, Arizona and Executive Director, Arizona Anti-Trafficking Network
15 min	Intimate Partner Assessment Update	Kay Radwanski, AOC Staff
15 min	Restitution Workgroup Update	Kirstin Flores, Workgroup Chair
10 min	Arizona Caselaw Update	Judge Ron Reinstein, Chair
10 min	Strategic Agenda Workgroup Report	Denise Lundin, COVIC Staff
10 min	Vicarious Trauma Toolkit	Denise Lundin, COVIC Staff
5 min	Call to the Public / Adjournment	Judge Ron Reinstein, Chair

****Important Voting Items**

Next Meeting:

October 19, 2018

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

Arizona State Courts Building, Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Lynn Golden at (602) 452-3195. Requests should be made as early as possible to allow time to arrange for the accommodation.

Arizona Supreme Court
Commission on Victims in the Courts

March 2, 2018

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 345 A/B

Present: Hon. Ronald Reinstein; Mr. Timothy Agan; Mr. Michael Breeze; Ms. Colleen Clase; Hon. Maria Elena Cruz; Ms. Kirstin Flores; Hon. Pamela Frasher Gates (*proxy for Hon. Sam Myers*); Ms. Kim Hedrick; Ms. Leslie James; Asst. Chief John Leavitt; Mr. Dan Levey; Hon. Evelyn Marez; Sgt. Jim Markey (Ret.); Chief Rod McKone; Mr. Aaron Nash (*proxy for Ms. Christine Kelly*); Ms. Jane Nicoletti-Jones; Ms. Elizabeth Ortiz; Ms. Laura Penny; Ms. Karyn Rasile; Hon. Richard Weiss;

Telephonic: Ms. Sydney Davis; Ms. Debra Olsen; Mr. William Owsley; Hon. Antonio Riojas, Jr.; Hon. Sally Simmons

Absent/Excused: Ms. Leesa Berens Weisz

Presenters/Guests: Vice Chief Justice Robert Brutinel; Ms. Luna Diaz; Mr. Jerry Landau, AOC Legislative Officer; Ms. Summer Stevens

Administrative Office of the Courts: Ms. Jennifer Albright; Ms. Cathy Clarich; Ms. Denise Lundin; Ms. Lynn Golden

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The March 2018 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:04 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

B. Announcements –

Hon. Ronald Reinstein, Chair and Ms. Denise Lundin, COVIC Staff shared the following announcements –

Mr. Dan Levey has been appointed to the Taskforce on Rule 32 Revisions for Rules on Criminal Procedure. Ms. Leslie James recently presented at a national Cold Case Conference, honoring her sister and recently passed father. Ms. Keli Luther had resigned last year from the Commission and is fighting health issues with vigor. Ms. Luther was recently honored by the Maricopa County Attorney's Office, AVCV and the Sandra Day O'Connor School of Law with a scholarship in her name, the "Keli Luther Victims' Rights Externship." Ms. Kim Hedrick was nominated by

numerous entities for the Arizona Coalition to End Sexual and Domestic Violence's 2018 THRIVE Three-Heart Survivor Award and will be receiving it at a ceremony on May 19, 2018. Ms. Hedrick spoke at the Judicial Conference last year and was well received. We are beginning the reappointment process and seeking new members to replace members who have left. Members whose terms are ending were announced. They will be contacted by the AOC Staff about continuing service and the Chair requests members submit other names for consideration for Chief Justice appointment to the Commission.

C. Approval of the October 27, 2017 Minutes

The draft minutes from the October 27, 2017 meeting of the Commission on Victims in the Courts were presented for approval. The Chair called for any omissions or corrections to the minutes.

- A correction was noted by Ms. Kirstin Flores. Correction will be made. Motion was made by Mr. Agan to approve the October 27, 2017 meeting minute as corrected. Seconded by Mr. Michael Breeze. Motion passed.

D. Presentation by Guest Speaker

Vice Chief Justice Robert Brutinel of the Arizona Supreme Court shared some insight on the court's strategic planning process and his thoughts for the next Strategic Agenda. Access to Justice, Juvenile Law, and Court Management are potential initiatives, in addition to previous ones, that he would like to focus on. He asked members to relay any initiatives that they'd like to add to the plan.

II. LEGISLATIVE UPDATE -

Mr. Jerry Landau, AOC Director of Public Affairs, presented an update on the following bills of interest to the crime victim community before the Arizona Legislature.

H2020: Nondisclosure Agreements; Sexual Assault; Harassment – limiting use of non-disclosures

H2245: Prohibited Bail; Sexual Conduct; Molestation – increases crimes subject to non-bailable offenses

H2249: Protective Orders; Filing Requirements – Service of Orders of Protection

H2312: Setting Aside Conviction: Requirements – Clerk of Court prohibited from charging filing fee to have judgment of guilt set aside and sets factors court must consider when determining to set aside a conviction

H2313: Sentencing; Monetary Obligations; Fine Mitigation – Courts can mitigate mandatory fines with monies going to Victims' assessment

S1041: Residency Restrictions: Sex Offenders: Victims – defendants required to register as sex offenders limited in residence proximity to victim

S1211: Sentence: Life Imprisonment; Parole Eligibility – post 1994 convictions of life with possibility of parole must be on lifetime parole, unless revoked.

S1503: Delinquent Restitution; Monthly Report; Hearing – Clerk of the Court must transmit monthly report to probation department any probationers delinquent in the payment of restitution

III. DIGITAL EVIDENCE TASKFORCE UPDATE -

Judge Reinstein gave a brief synopsis of the work done previously by the Digital Evidence Taskforce. Ms. Jennifer Albright, AOC Taskforce staff, gave a summary of the work accomplished to date, to include a Final Report. Recommendations were presented to the Arizona Judicial Council and the Chief Justice. In January, the Taskforce filed a petition for rule changes to several sets of rules. The petition can be found under the Rules of Evidence section as R-18-0008. The phrase, “electronically stored information” is used throughout the proposed rule changes.

IV. RESTITUTION WORKGROUP UPDATE -

Ms. Kirstin Flores, Workgroup Chair and COVIC Member, presented information from the most recent meeting in December of 2017. The focus of this meeting was training for judges, advocates, prosecutors and court staff. Restitution Webpage updates have been made including Pre-Conviction Restitution Lien information, Payment History and Order to Show Cause requests.

V. NOTICING VICTIMS’ ATTORNEYS RE: HEARINGS UPDATE (taken out of order)-

Mr. Aaron Nash of the Maricopa County Clerk of Superior Court’s Office of the Superior Court of Maricopa County attended as proxy for Ms. Christine Kelly, Chief Deputy. Mr. Nash presented information on victims’ attorneys receiving notices of hearing. Once an attorney files a notice of appearance the Clerk will add them into their system, so they will be endorsed on minute entries. If an attorney appears in court, the Clerk will capture information to endorse them on that specific hearing’s minute entry, but the attorney will still need to file a notice of appearance to get subsequent notice of minute entries in the system. Remote access is available in Maricopa County. Non-minute entries are not a clerk’s process, so other orders should have victims’ counsel copied. E-filing in Maricopa County is, however, included in their system, so those entries should appear. Maricopa County Clerk’s Office has been monitoring this since January 1, 2018. For Juvenile case counsel, the Clerks are checking for endorsement into the system.

VI. ARIZONA VOICE FOR CRIME VICTIMS’ (AVCV) PETITION TO AMEND AZ CRIMINAL RULES OF PROCEDURE (taken out of order) -

Ms. Colleen Clase, Sr. Attorney for AVCV and COVIC Member, presented information regarding AVCV’s filing of a rule change petition in January, proposing

amending the rules of Criminal Procedure, to include eliminating Rule 39, and integrating victims' rights throughout the rules, where the right would be applicable. Discussion ensued.

- Motion was made by Ms. Clase for COVIC to support AVCV's Petition No. 18-0001 and file a comment in support of said petition. Seconded by Judge Sally Simmons. Vote was: Aye: seven Nay: sixteen. Ms. Elizabeth Ortiz abstained due to APAAC members unable to convene and vote in time . One member was not present to vote. Motion failed.

VII. STRATEGIC AGENDA -

Ms. Denise Lundin presented information on the upcoming Strategic Agenda planning process and how COVIC relates to it. It was requested that COVIC convene a workgroup to discuss and submit ideas from COVIC to share with the AOC Directors for their end of March meeting, and the subsequent April Supreme Court Retreat. The following members of COVIC volunteered to serve on the COVIC Strategic Agenda Workgroup – Mr. Timothy Agan, Ms. Elizabeth Ortiz, Ms. Kim Hedrick, and Ms. Leslie James. This workgroup will work with Judge Reinstein and COVIC Staff on this project.

- Motion was made by Judge Reinstein to create a Strategic Agenda Workgroup to discuss and present possible COVIC ideas for the next Strategic Agenda. Seconded by Mr. Michael Breeze. Motion passed.

VIII. NEUROBIOLOGY OF TRAUMA TRAINING -

Ms. Lundin presented on DPS-sponsored and VOCA-funded recent two-day training on the Neurobiology of Trauma, which she attended. Ms. Lundin highly recommends this training to COVIC members.

IX. CALL TO PUBLIC -

Judge Reinstein mentioned that COVIC, in conjunction with CIDVC, did a lot of work on the Lethality Assessment (Form 4c). The Supreme Court adopted it in December 2017 and it will take effect on April 2nd. Training in its use will be provided by the AOC Education Services and Court Services Divisions, in association with other entities. A Bench card is also being developed. Ms. Amelia Cramer from the Pima County Attorney's Office, Mr. Jon Eliason from the Maricopa County Attorney's Office, and Ms. Elizabeth Ortiz and APAAC are to be commended for their work on this project.

Ms. James spoke on the recent Cold Case Conference and thanked Mr. Jon Eliason for his work on it. It was a very moving and helpful experience for her and she

believes more attention is being placed on these cases. Judge Reinstein also mentioned Familial Searching being implemented through DPS Crime Labs.

Ms. Kirstin Flores announced that National Crime Victims' Rights Week is April 8-14, 2018 and the statewide recognition event will be held on April 9, 2018. The Honorable Maria Verdin, former Superior Court Judge and current policy attorney for Marsy's Law for All, which works to expand victims' rights in all 50 states, will be the keynote speaker. Invitations will go out on Monday, March 5, 2018 by email.

X. ADJOURNMENT -

- Motion was made by Mr. Agan to adjourn. Seconded by Mr. Breeze. Motion passed. Meeting adjourned at 12:05 p.m.

XI. NEXT COMMITTEE MEETING DATE

June 8, 2018
10:00 a.m. to 2:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 8, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Solving Cold Cases - Familial DNA & other methods Victim Involvement & Interaction

FROM: Group Presentation

PRESENTERS: Vince Figarelli, Director of DPS Crime Lab
Scott Popp, Assistant Chief, Scottsdale Police Department
Kris Cano, Director of City of Scottsdale Crime Lab

DISCUSSION & TIME ESTIMATES: Solving Cold Case homicides using genealogical testing. Law enforcement interaction with victims. 1 hour

<https://www.azcentral.com/story/news/local/scottsdale/2018/04/16/how-familial-dna-search-used-find-scottsdale-murder-suspect-ian-mitcham-allison-feldman/509143002/>

<https://www.forensicmag.com/news/2018/04/arizona-nabs-murder-suspect-familial-dna-searching-first-try#.Ws5QpstB-fk.email>

<https://www.mercurynews.com/2018/04/26/ancestry-23andme-deny-assisting-law-enforcement-in-east-area-rapist-case/>

<https://www.nytimes.com/2018/05/03/us/golden-state-killer-genealogy.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news>

<https://www.nytimes.com/2018/04/27/us/golden-state-killer-case-joseph-deangelo.html>

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 8, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Decoding Sex Buyers

FROM: CEASE (Cities Empowered Against Sexual Exploitation), Arizona

PRESENTER: Angelyn Bayless, Director, CEASE Arizona and Executive Director of the Arizona Anti-Trafficking Network

DISCUSSION & TIME ESTIMATES: Ms. Bayless, a published author and national trainer for law enforcement, policy makers, and others on human trafficking, will present on CEASE, Arizona's efforts in combatting human sex trafficking by focusing on the demand side of the equation to get individuals who seek to buy sex online to "cease" – whether by shame, shock, or education.

Arizona Anti-Trafficking Network's website is at: www.aatnaz.org

One hour

RECOMMENDED MOTION (IF ANY): N/A

<https://reason.com/volokh/2018/05/02/tentative-thoughts-on-the-use-of-geneolo>

<https://www.forensicmag.com/news/2018/05/dna-doe-project-ids-2001-motel-suicide-using-genealogy#.WvNZMP3kcYw.email>

RECOMMENDED MOTION (IF ANY): N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 8, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Form 4(c) Intimate Partner Assessment Update

FROM: Kay Radwanski, senior court policy analyst, AOC Court Services

PRESENTER: Kay Radwanski

DISCUSSION & TIME ESTIMATES: [15 minutes]

In December 2017, the Arizona Supreme Court adopted the Form 4(c) Release Questionnaire as a recommended risk assessment form. When setting release conditions, judicial officers are required to consider this form, if provided, or any risk or lethality assessment provided by law enforcement. The AOC's Education Services and Court Services divisions teamed up to provide judicial education on the use of Form 4(c). The recorded training featured Judge Wendy Million, Tucson City Court and chair of CIDVC; Dr. Neil Websdale, a professor at Northern Arizona University, and Greg Giangobbe, law enforcement coordinator, NAU Family Violence Institute. The training video was released in mid-March. A bench card was developed to assist judicial officers in understanding the purpose of the form and how to evaluate the information on it when setting release conditions for a defendant.

<http://www.phoenixnewtimes.com/news/arizona-one-of-worst-in-nation-for-domestic-violence-10388817>

RECOMMENDED MOTION (IF ANY): N/A



PROTECTING VICTIMS OF INTIMATE PARTNER VIOLENCE: Arizona's Emerging Risk Assessment Model

By Neil Websdale, Director, Family Violence Institute (FVI), Northern Arizona University (NAU); Jerald Monahan, Chief, Yavapai College, Arizona; and Greg Giangobbe, Law Enforcement Training Coordinator, FVI, NAU

The diligent patrol officer reported the episode thoughtfully. He had administered the pilot risk assessment carefully, using the new departmental protocol; his training; and his talent for listening, observing, and perceiving potential danger. He reported that the alleged female victim of intimate partner violence (IPV) answered all seven of the “key” risk questions negatively. According to her, the alleged offender had never tried to kill her, strangle or choke her, beat her when she was pregnant, use a weapon or object to threaten or hurt her, increase the frequency or severity of his physical violence, or exhibit violent and constant jealousy, and she did not consider him capable of killing her. So, what, then? No problem? Just another slap or shove during a Friday night argument steeped in booze? Or an episode of disorderly conduct that prompted the neighbors to call the police?

The officer didn't readily accept either of those explanations. He had sensed signs of fear or terror in the victim. Indeed, he reported that the woman had consistently interjected “no” before he had finished asking each risk assessment question. Her seemingly anxious and hasty answers concerned him. Statistically speaking, her “no” responses suggested she was not at “elevated” or “high” risk of severe re-assault within the next seven months. However, the officer's training, intuition, and experience told him the initial assessment might be what risk assessors call “a false negative.” He therefore used his professional judgment to flag the case for further attention. The officer's goals were to protect and serve, to prevent severe re-assault or worse, and to hold offenders accountable.

The Arizona CIRA Trifecta: Statutory Innovation, Criminal Procedure Rule Change, and AZPOST Leadership

The officer in the preceding scenario was piloting an innovative community informed risk assessment (CIRA) tool developed in Yavapai County, Arizona.¹ It was designed to help officers protect and serve victims, refer victims to support services, and educate victims about the possible dangers they face. It later became the template for the development of a statewide uniform risk assessment tool known as the Arizona Intimate Partner Risk Assessment Instrument System (APRAIS). Prior to the final development of the APRAIS tool in 2017, a 2015 statutory amendment required Arizona judicial officers to consider the results of a risk or lethality assessment when setting bail in domestic violence cases.²

In December 2017, the Arizona Supreme Court changed the rules of criminal procedure, recommending the reporting of risk in IPV cases through the APRAIS form, thereby

moving toward standardizing the risk addendum to the law enforcement release questionnaire (charging sheet) presented to the court at the initial arraignment. The legislative changes concerning release on bail in cases involving domestic violence charges were a game changer. The law states the judicial officer “shall take into account ... [t]he results of a risk assessment or lethality assessment in a domestic violence charge presented to the court.”³ The statutory change served as a catalyst for the creation of a statewide uniform risk assessment tool. The idea of such a tool was to create a shared language of risk and to encourage police departments to conduct risk assessments.⁴ The fast-evolving Yavapai tool and protocols, developed through pilot projects at the Prescott and Prescott Valley Police Departments, informed the creation of what eventually became known as the APRAIS tool and protocols. These legislative developments and changes in the rules of criminal procedure significantly impacted law enforcement’s response to IPV in Arizona. The Arizona Peace Officer Standards and Training Board (AZPOST) supported these innovations, and AZPOST and the Family Violence Institute (FVI) at Northern Arizona University (NAU) agreed to work together to provide consistent, uniform training to Arizona police officers in the use of the APRAIS.

The Community and Institutional Origins of APRAIS

Over a period of three years (2014–2017), the pilot project team from the FVI at NAU worked with the Prescott and Prescott Valley Police Departments and other Yavapai County community stakeholders to fashion a CIRA tool and accompanying law enforcement and advocacy protocols. To gain further insights into the complexities of assessing risk, the FVI team analyzed police reports, rode with officers, and talked with numerous community stakeholders. The developmental process was not always harmonious. Particularly in the early stages, individual officer’s attitudes ran the gamut from antagonistic, skeptical, and resigned, to favorably disposed, enthusiastic, and energetic. A few of the negative reactions included statements like, “Why should we spend more time at these scenes? It just increases danger to officers”; “We don’t have time for this”; “The assessment is just one more form to fill out”; “What difference does it make? Prosecutors won’t prosecute anyway because she won’t cooperate, she’ll recant, or even testify on her abuser’s behalf”; and, rather important, “It doesn’t matter because the risk assessment won’t get before the judge to influence bail setting, let alone any trial.”

Despite some officers’ misgivings, the local police chiefs and the county attorney backed the pilot project. Over time, patrol officers incorporated the assessment into

their handling of IPV calls. The 83-member coordinated community response (CCR) team in Yavapai County was consistently positive about developing the risk tool. The CCR, convened largely to confront domestic violence, was diverse, with members including personnel from numerous agencies, community stakeholders, and concerned citizens. Command staff serving on the CCR offered a wealth of insights concerning officer perceptions of danger, time available to conduct risk assessments, and the frustrations officers felt about not knowing the outcome of the IPV cases they worked. A concerned psychologist contributed information about offenders from his perspective as a facilitator of a batterer intervention program. A pastor talked about IPV among faith communities. A couple whose daughter was murdered by her partner offered nuanced insights from yet another angle.

Yavapai County Presiding Judge David Mackey told the FVI team he would not participate in the process of building a CIRA initiative without wide-ranging community input. Of pivotal importance was Judge Mackey’s insistence to involve both defense counsel and prosecution. Judge Mackey’s concerns included adhering to the principles of due process, maintaining the impartiality

of the judiciary, gathering more information to inform the decision-making of the courts in IPV cases, and ultimately reinforcing the rule of law and enhancing the credibility and legitimacy of the criminal justice system. Judge Mackey especially wanted more information about IPV cases to help judicial officers set bail. Making opening remarks at a risk assessment training at Yavapai College in Prescott in July 2017, he mentioned a case he had previously worked where an abuser murdered his female partner. Powerfully, Judge Mackey simply stated the community needed to do more in these complex IPV cases. If it did not, he stressed, people would continue to die.⁵

At one meeting of judges and magistrates, some suggested that IPV risk assessments bordered on being unconstitutional, potentially denying the accused bail because he or she had been deemed a “high risk” on the basis of an imprecise predictive science. Others welcomed the idea of reviewing more risk information in a uniform and systematic manner. Some meeting attendees acknowledged their frustration with the complexity of IPV cases and the seemingly counterintuitive behavior of victims. The mélange of perspectives among the Yavapai County judiciary mirrored the range of viewpoints

APRAIS AT A GLANCE: KEY FACTS

- ✓ The APRAIS community-informed tool and protocol was developed in Yavapai County, Arizona, over a two- to three-year period using extensive feedback from law enforcement, victim advocates, survivors, and other community agencies and stakeholders.
- ✓ The APRAIS philosophy carefully balances respect for victim autonomy, dignity, and informed consent rights, with the constitutional rights of the accused. The APRAIS protocol recommends law enforcement officers inform victims that their participation is voluntary and that anything they share in the assessment is discoverable.
- ✓ The APRAIS tool has 7 Tier 1 mandatory, validated risk questions and 9 optional Tier 2 “contextual” questions. Responses to both provide a nuanced understanding of the case and encourage more detailed police report writing and follow-up.
- ✓ The APRAIS protocol stresses the importance of building rapport with victims, listening to their stories, and respecting their courage. In so doing, APRAIS enhances community policing.
- ✓ Initial outcomes suggest APRAIS educates victims about their potential danger and their options for support services.



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among other local agencies and stakeholders, and these competing concerns would resurface later at the state level, as various interested parties gathered to try to create a uniform statewide risk assessment tool.

The discussions with community stakeholders, which took place across almost two years, resulted in the building of a risk tool with seven mandatory Tier One (T1) questions and nine optional Tier Two (T2) ones.⁶ The community settled on seven questions as the “ideal” number—not too many to make the process burdensome, but sufficient to provide enough discerning information to perhaps identify an intimate partner offender who is more likely to kill or maim the victim. Once victims agreed to participate in the risk assessment, patrol officers were required to ask the T1 (more predictive) questions. T2 questions were to be asked at the officer’s discretion, although over time, officers usually posed those as well, rolling them into their conversations with victims. Dr. Jill Messing, a leading authority on risk assessment in IPV cases, validated the seven T1 questions, confirming them as the seven most predictive behaviors of future severe re-assault within the ensuing seven months.⁷ T2 contained other important questions that, although of lesser predictive value, were nevertheless deemed important by CCR members because they provided valuable contextual information.

Aware of the possible statewide deployment of the tool, CCR members and the FVI team recognized that other Arizona counties interested in the Yavapai risk model might want to fashion their own T2 questions, emphasizing risks peculiar to their locales. As an example, the Yavapai CCR included the question, “Does he or she use illegal drugs or misuse prescription drugs?” Members thought this was important because of the large number of drug treatment facilities in the Prescott community and the significance of addiction to opioids among some victims of IPV. Officers had encountered what they saw as particularly dangerous IPV cases in which abusers supplied victims with heroin or fentanyl and reported that victims would endure heinous violence and abuse just to get their fix.

Then, on December 13, 2017, the Arizona Supreme Court approved the petition and amended Rule 41 of the Arizona Rules of Criminal Procedure.⁸ The court approved the APRAIS tool as the recommended addendum to the law enforcement release questionnaire. The rule change, effective April 2, 2018, permits but does not mandate law enforcement agencies report IPV risk information to the courts through the uniform APRAIS addendum. The APRAIS addendum does not contribute information to the trial or sentencing phase. In other words, the risk data inform judges, commissioners, and magistrates about the potential risks posed



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by the accused to the victim, thus adding information for bail setting purposes. It also provides victims, the police, and victim advocates with more information.

The intricate debates about the criminal justice uses of risk assessments and predictive analytics are of relatively recent origin and of great importance.⁹ Among this discourse are issues directly relevant to the APRAIS tool and law enforcement executives, including the science of the APRAIS; respecting victim choices; building rapport in communities; and initial outcomes and lessons learned.

The Science of APRAIS

The APRAIS tool draws upon at least 40 years of case studies and descriptive statistical research into intimate partner homicide (IPH), 20 years of work by domestic violence fatality review teams, and a number of cross-sectional (one point in time) and prospective (tracking cases over time) risk studies.¹⁰ It makes no claim to predict with any degree of certainty future severe re-assault, near-death incidents, or IPH. Rather, the APRAIS is as much a reconnaissance and referral intervention tool as it is a risk assessment tool. As such, it provides important details about intimate relationships, primarily helping responders distinguish between lower-level, less severe IPV, sometimes referred to as situational couple violence, and intimate terrorism, a course of controlling conduct, domination, degradation, abuse, and violence characterized by more severe offenses such as beating during pregnancy, strangulation, weapons use, chronic violence linked to jealousy, and previous efforts to commit IPH.¹¹ Put simply, the APRAIS seeks to identify cases where the harm to victims, their children, and the community might be greatest.

The APRAIS risk classification includes three levels: (1) risk, (2) elevated risk, and (3) high risk. If the respondent answers “yes” to zero or one of the T1 questions, the case remains in the “risk” category; two to three “yes” responses signify an “elevated risk”; and four or more “yes” answers qualify the situation as a “high-risk” case. Elevated and high-risk cases trigger referrals to victim advocacy services and law enforcement follow-up. Respondents in the elevated risk category have a six-fold greater risk of severe re-assault when compared to those with fewer than two “yes” responses. Those in the high-risk category experience a more than ten-fold greater risk. On the surface, these statements of relative risk (i.e., those in the “elevated” and “high” risk groups compared with the “risk” group) look compelling. However, the APRAIS statisticians were also keen to present a balanced picture by pointing out the “absolute” as well as the “relative” risks.¹² In terms of absolute risk or the true positive rate, among those victims who answer four or more APRAIS questions “yes,” approximately 15 percent of them will

actually experience severe re-assault within the next seven months.¹³

Respecting Victim Choices

The APRAIS is not designed to be part of a criminal investigation or to establish probable cause. The risk assessment is administered only after the on-scene investigation is complete. Obviously, some risk information may be shared during the investigation, and it is important that officers reconfirm the presence of previously stated risk factors when they begin the assessment. Participation in the APRAIS is voluntary, and it is important that officers inform victims

of their right to choose whether to answer APRAIS questions.¹⁴ Some risk assessments note whether victims “refused” to answer risk assessment questions. The use of the word “refuse” in IPV cases might have negative implications for victims, making them more likely to be seen as uncooperative; therefore, the APRAIS method uses the language of “declination,” not refusal, to avoid this potential problem.

In recognition of the relatively low true positive rate, officers tell victims the APRAIS assesses potential danger. They also notify victims in everyday language that the risk information they share is discoverable. Focus

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groups with survivors in Yavapai County confirmed that upward of 80 percent of victims prefer to be told that their abusers can find out how they answered the risk questions.¹⁵ Importantly, many risk assessment tools do not notify victims of discoverability. According to legal scholar, Professor Margaret Johnson, this failure is an affront to the autonomy and dignity rights of victims that can be easily rectified by obtaining informed consent prior to the assessment.¹⁶

Patrol officers' knowledge of the neighborhoods and communities they work in is an essential element of effective community policing.

It is also important for officers to notify victims about available community services such as victim advocacy. Unless proven otherwise, such notification ought not expressly state or imply that receiving those community advocacy services renders victims safer than not receiving such services. However, explaining that advocacy services may offer emergency shelter, counseling, transitional housing, and legal assistance may be helpful to the victim. The idea is to communicate with victims clearly, while at the same time advising them that they can choose how to proceed. It is also important for officers to acknowledge the predictive limitations of the APRAIS tool. Telling victims in a non-alarmist but honest, clear, and direct way they scored in the high-risk category takes skill and care. The APRAIS approach stresses the importance of building rapport, making appropriate eye contact, showing interest in the victim's responses, and expressing concern rather than checking off items.

Building Rapport in Communities

Patrol officers' knowledge of the neighborhoods and communities they work in is an essential element of effective community policing. Doing good, thorough, professional risk assessments in IPV cases not only provides greater knowledge about victims, it also is one more way of protecting and serving the community and improving community-police relations.

Administering risk assessment tools reminds officers what to look for in abusive relationships. But, in addition to improving officer understanding of victims, other advantages appear likely. Researchers' initial evaluation of one risk assessment tool found that the administration of the tool was associated with an increase in victims taking protective actions and a decrease in the frequency and severity of future violence.¹⁷ An

officer who learns more about the dynamics of IPV is more likely to understand the seemingly counterintuitive behavior of victims. Trauma has a lot to do with victim behavior. Officers who engage with victims in a non-judgmental manner recognize the courage it took for the victims to come forward, listen attentively as they gather risk and other information, and are more likely to improve community-police relations.

Initial Outcomes & Lessons Learned

It will take 5–10 years to evaluate the impact of the APRAIS on IPV recidivism, repeat police calls for service, officer injuries in IPV cases, victim and perpetrator use of support services, and other such effects. Nevertheless, existing lessons learned warrant mention.

Early feedback from law enforcement and victims is encouraging. During the pilot project, one officer suggested that the assessment tool had improved domestic violence reports overall. Officers and victim advocates at the Prescott and Prescott Valley Police Departments report that administering the tool tends to increase officers' understanding of IPV cases and increase victims' perceptions that the officers care. One victim reported,

After taking the questionnaire for a second time, the officer advised me I was at high risk for danger. His concern for me concerned me. I was able to get out of the relationship before it got out of hand.¹⁸

Significantly, victim declination rates appear low. In Prescott, only 10 percent of the victims offered the APRAIS declined to participate. The declination rate in Prescott Valley is around 30 percent. The APRAIS team suspects the relatively low declination rate stems from the strong emphasis on rapport building; the relative simplicity of the form; and the notification of discoverability and its accompanying philosophy of respecting the autonomy, dignity, and informed consent rights of victims.

A significant number of IPV calls resulted in patrol officers deciding not to offer the APRAIS. This may be due to a range of reasons, including situations in which the officers perceived that victims were distraught and unable or unwilling to participate; officers sensed that the victim was intoxicated or otherwise impaired due to substance use; officers were unable to contact the victim at the time of the report; the call involved a third party (e.g., neighbor) and the parties on scene denied any IPV; officers determined that the call was a verbal dispute and that no crime had occurred; and officers were simply unwilling to offer the tool.

IPV is first and foremost a community problem. Law enforcement approaches embedded in the community have considerable potential to effectively confront it. The Arizona (APRAIS) CIRA is one such approach, developed, as noted, through the trifecta of statutory innovation, creative rule change, and law enforcement leadership. ❖

Notes:

¹The project was funded from January 2015 to December 2017 by the Arizona Governor's Office for Youth, Faith and Family using U.S. Department of Justice, Office of Violence Against Women STOP TA monies.

²AZ Rev. Stat. § 13-3967 (2015).

³AZ Rev. Stat. § 13-3967 (B)(5) (2017).

⁴The proposed legislative change came from the Pima County, Tucson area of Arizona.

⁵David Mackey, Opening Remarks (speech, Law Enforcement and Advocacy Training on Intimate Partner Violence Risk Assessments, Prescott, AZ, July 25, 2017).

⁶The questions derive from the work of Dr. Jacqueline Campbell. See for example, Jacqueline Campbell et al., "Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study," *American Journal of Public Health* 93, no. 7 (2003): 1089–1097.

⁷Dr. Jill Messing validated the T1 questions by statistically analyzing data generated from the Oklahoma Lethality Assessment Study

Neil Websdale is director of the Family Violence Institute at Northern Arizona University and director of the National Domestic Violence Fatality Review Initiative (NDVFRI). His social policy work involves helping to establish networks of domestic violence fatality review teams across the United States and elsewhere.

Jerald Monahan is the law enforcement liaison for the nonprofit organization, End Violence Against Women International and the police chief at Yavapai College in Prescott, Arizona. Chief Monahan has 40 years of public safety service in Arizona and works across the United States to promote the development of domestic violence fatality review teams.

Greg Giangobbe is a law enforcement training coordinator for the Family Violence Institute at Northern Arizona University. He has more than 28 years of public safety experience, serving as a Phoenix police officer in assignments in patrol, neighborhood enforcement, and community action. Greg also served at the Arizona Law Enforcement Academy as the senior lead recruit training officer and senior lead defensive tactics instructor, as well as the chief of college security for a community college in Arizona.

funded by the National Institute of Justice. See Jill T. Messing et al., "The Oklahoma Lethality Assessment Study: A Quasi-Experimental Evaluation of the Lethality Assessment Program," *Social Service Review* 89, no. 3 (2015): 499–530. Additional empirical support for the APRAIS tool came from Campbell et al., "Risk Factors for Femicide in Abusive Relationships" and Carolyn Snider, et al., "Intimate Partner Violence: Development of a Brief Risk Assessment for the Emergency Department," *Academic Emergency Medicine*, no. 16 (2009): 1208–1216.

⁸Arizona Supreme Court No. R-16-0046, filed December 13, 2017, order amending rule 41 to add Form 4(C) to Appendix, Arizona Rules of Criminal Procedure.

⁹See, for example, Liberty Aldrich, "The Use of Risk Assessments in Judicial Decision-Making," *Domestic Violence Report* 21, no. 5 (June/July 2016): 71.; Jamie Balson, "Using Danger Assessment in the Prosecution of Domestic Violence Cases," *Domestic Violence Report* 21, no. 5 (June/July 2016): 75–77; Richard A. Berk, Susan B. Sorenson, and Geoffrey Barnes, "Forecasting Domestic Violence: A Machine Learning Approach to Help Inform Arraignment Decisions," *Journal of Empirical Legal Studies* 13, no. 1 (March 2016): 94–115; Margaret Johnson, "Balancing Liberty, Dignity, and Safety: The Impact of Domestic Violence Lethality Screening," *Cardozo Law Review* 32, no. 2 (2010): 519–580; Julie Saffren, "Using Judicial Knowledge of Lethality Factors in Civil Domestic Violence Matters," *Domestic Violence Report* 21, no. 5 (June/July 2016): 73–75.

¹⁰For an overview, see R. Emerson Dobash and Russell P. Dobash, *When Men Murder Women* (New York, NY: Oxford University Press, 2015); Neil Websdale, *Understanding Domestic Homicide* (Boston, MA: Northeastern University Press, 1999); and Martin Daily and Margo I. Wilson, *Homicide: Foundations of Human Behavior* (New York, NY: Aldine de Gruyter, 1988); See Neil Websdale, Adrienne Celaya, and Stephanie Mayer, "United States," in *Domestic Homicides and Death Reviews: An International Perspective*, ed. Myrna Dawson (London, UK: Palgrave-MacMillan, 2017): 27–57; Campbell et al., "Risk Factors for Femicide in Abusive Relationships"; Messing et al., "The Oklahoma Lethality Assessment Study"; Snider et al., "Intimate Partner Violence."

¹¹Michael Johnson, *A Typology of Domestic Violence* (Boston, MA: Northeastern University Press, 2008).

¹²Dr. Jill Messing, Arizona State University, and Dr. Steven Barger, NAU, serve as the APRAIS statisticians.

¹³The presentation of the APRAIS true positive rate derives from the work of Dr. Jill Messing in the Oklahoma Lethality Assessment Study (2015) and subsequent discussions of the APRAIS research team including Drs. Steven Barger, Kathleen Ferraro, Jill Messing, and Neil Websdale.

¹⁴Specifically, Johnson argues, "there should be full transparency to women subjected to abuse and legal system actors about the benefits and disadvantages of danger assessments... [A]ll administrators of lethality assessments should ensure that they obtain women's informed consent prior to conducting the screening." See Johnson, "Balancing Liberty, Dignity, and Safety," 580.

¹⁵Space precludes addressing the important issue of body cameras and the notification of the discoverability of risk assessment information gleaned after the investigation phase. The batterer that learns from a checked box on a risk assessment that his partner

claims he has tried to kill her in the past may react differently than if he learns this information from a video recording.

¹⁶Johnson, "Balancing Liberty, Dignity, and Safety."

¹⁷Messing et al., "The Oklahoma Lethality Assessment Study."

¹⁸Survey item response from an anonymous victim reported as part of the follow-up on a Victims of Crime Act–funded training grant concerning IPV risk assessment (2017).



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Domestic Violence and Release Conditions: *Form 4(c) Intimate Partner Risk Assessment*

1. RELEVANT LAWS AND RULES

ARS § 13-3967. Release on bailable offenses before trial

(B) In determining the method of release or the amount of bail, the judicial officer ... shall take into account all of the following:

1. The views of the victim,
2. The nature and circumstances of the offense charged.
5. *The results of a risk or lethality assessment in a domestic violence charge that is presented to the court.*

Rule 7.2. Right To Release

(3)(A) Nature and circumstances of the offense charged

(D) Nature and seriousness of the danger to the victim.....that would be posed by releasing the defendant on bail, including any threat to a victim ...

(E) the recommendation of the pretrial services program based on an **appropriate** risk assessment instrument.

(F) any victim statement about the offense and release on bail...

Rule 7.3(c). Conditions of Release

... In making determinations under this rule, the court **must** consider, if provided, the results of a risk assessment approved by the Supreme Court (*see Rule 41, Form 4(c)*) and a law enforcement agency's lethality assessment.

2. SPECIAL CONSIDERATIONS IN DOMESTIC VIOLENCE CASES

- A DV risk assessment is not about the defendant's willingness or ability to attend court in the future. It is about the probability that the defendant will inflict future serious injury or even death on the victim or others in the community.
- Regular pre-trial risk assessments are not appropriate instruments for DV intimate partner cases. Hence, ARS § 13-3967 and Rule 7.3(c).
- A DV victim is different than other crime victims. The victim often wants contact with the defendant--despite the risks.
- Be aware of the difference among a risk assessment, a lethality assessment, and the Form 4(c) Intimate Partner Risk Assessment.



3. RULE 41, FORM 4(C) INTIMATE PARTNER RISK ASSESSMENT

- Applies only to **intimate partners**
- Is administered by a law enforcement officer at the scene
- Requires the victim's agreement to participate
- Is not confidential and is discoverable
- Is not disclosed to the court if a victim advocate conducts the assessment, but the results can be disclosed (for example, "Victim is at high/low risk of future assault or death at the hands of the defendant.")

The results of this Intimate Partner Risk Assessment mean that the facts of the instant case are not as important as the dynamics of the parties' entire relationship. Why? Because it is likely that the defendant and the victim will continue to have contact with each other.

HIGH RISK: Yes to 4 or more questions in Tier 1

- This means the victim (and family or others in the victim's workplace, for example) are at high risk of experiencing violence by the defendant if the defendant is released.

ELEVATED RISK: Yes to 2-3 questions in Tier 1

- This means the victim (and family or others in the victim's workplace, for example) are at an increased risk of experiencing violence by the defendant if the defendant is released.

Tier 2 Questions

- Any of these behaviors indicate a coercive controlling relationship often seen in domestic violence dynamics. This case is likely not a one-time occurrence.
- Most of these behaviors have been statistically shown to be risk factors in DV cases. The victim who is being stalked, sexually assaulted, and controlled is at higher risk.

4. APPROPRIATE CONDITIONS OF RELEASE

High bond	If the risk assessment, criminal history, the facts of the current case (threats with a gun, threats of suicide, and especially strangulation, leaving marks or not) reveal a very dangerous defendant, it is within the court's purview to protect the victim and the community by ensuring that the defendant stays in custody pending the outcome of the case.
Prohibit firearms	In cases where the risk is high or elevated or there have been threats of suicide or death, prohibit possession of firearms and order all firearms to be turned in promptly to law enforcement. By itself, the presence of a firearm in the home statistically increases the risk of fatality in an DV intimate partner case.
Short set the next court date	This makes sure the defendant is compliant with court orders. Invite the victim to attend and speak to an advocate, if one is available. Exposing victims to continual safety planning and services is another invaluable way to ensure their safety.
Victim contact	If the victim wants contact with the defendant but the court prohibits it, the victim may face risk of homelessness or financial instability. Additionally, the time of separation is a perilous time statistically for victims. Unless the case is very dangerous, try to honor the victim's wishes.
Substance abuse testing and treatment	If available, testing is particularly useful. Even having a defendant come to court and blow on a handheld Intoxilyzer three mornings a week holds the defendant more accountable to court orders.
Domestic violence treatment	Order the defendant to begin domestic violence counseling, especially if this is not the defendant's first arrest for DV and the facts indicate a coercive-controlling relationship. See ARS § 13-3601.01.

Form 4(c): Release Questionnaire
Intimate Partner Risk Assessment *

Defendant's Name _____ DOB _____ Booking No. _____
 Law Enforcement Agency _____ Report No. _____
 Victim's Name _____ Incident Date _____

Questions are asked on the scene; Victim participation is voluntary		Yes	No	Decline
Tier 1				
1.	Has physical violence increased in frequency or severity over the past six months? Alternate wording: Is the pushing, grabbing, hitting, or other violence happening more often?			
2.	Is he/she violently and constantly jealous of you?			
3.	Do you believe he/she is capable of killing you?			
4.	Has he/she ever beaten you while you were pregnant ? (e.g. hit, kicked, shoved, pushed, thrown, or physically hurt with a weapon or object)			
5.	Has he/she ever used a weapon or object to hurt or threaten you?			
6.	Has he/she ever tried to kill you?			
7.	Has he/she ever choked/strangled/suffocated you?			
7a.	If you answered "Yes" to Question 7, has this happened more than once?			
Tier 2				
8.	Does he/she control most or all of your daily activities?			
9.	Is he/she known to carry or possess a gun ?			
10.	Has he/she ever forced you to have sex when you did not wish to do so?			
11.	Does he/she use illegal drugs or misuse prescription drugs ? (e.g. meth, cocaine, painkillers)			
12.	Has he/she threatened to harm people you care about ?			
13.	Did you end your relationship with him/her within the past six months?			
13a.	If you answered "No" to Question 13, does he/she know or sense you are planning on ending your relationship?			
14.	Has he/she experienced significant financial loss in the last six months?			
15.	Is he/she unemployed ?			
16.	Has he/she ever threatened or tried to commit suicide ?			
17.	Has he/she threatened to kill you?			
18.	Has he/she threatened or abused your pets ?			

"Yes" to 2 or 3 Tier 1 questions = "Elevated Risk" / "Yes" to 4 or more Tier 1 questions = "High Risk"
 "Elevated Risk" and "High Risk" scores trigger law enforcement officers to offer follow up responses in the form of providing or connecting victims to supportive resources or resource information.

Action: Victim referred for followup based on responses to the assessment
 Victim referred for followup based on the officer's professional judgment
 No referral

* To be considered at Initial Appearance. See A.R.S. § 13-3967(B).



These questions are asked, with the permission of the victim, in intimate partner violence incidents resulting in arrest of the alleged offender (or where the alleged offender has fled but will be arrested when apprehended). Participation in this assessment is entirely voluntary and victims must be informed that they may decline to answer any or all questions. This form is included with the police report provided to the court, the prosecutor, and defense counsel.

Victims who score at "Elevated Risk" or "High Risk" are referred to a victim advocate if one is available and to a domestic violence services agency or referral service that can provide safety planning and information about additional available services.

Victims who score in the "Elevated Risk" category (a "Yes" response to 2 or 3 Tier 1 questions) experience a 6 times higher risk of severe re-assault or near lethal violence within seven months when compared to those with fewer than 2 Tier 1 risk factors present. It is estimated that 9 percent of victims at "Elevated Risk" will experience severe re-assault within seven months, versus 1.6 percent of victims that answer "Yes" to fewer than 2 Tier One questions.

Victims who score in the "High Risk" category (a "Yes" response to 4 or more Tier 1 questions) experience a 10.5 times higher risk of severe re-assault or near lethal violence within seven months when compared to those with fewer than 2 Tier 1 risk factors present. It is estimated that 15 percent of victims at "High Risk" will experience severe re-assault within seven months.

The above unpublished statistical analyses were generated using data from the Oklahoma Lethality Assessment Study funded by the National Institute of Justice. See Messing, J. T., Campbell, J., Webster, D. W., Brown, S., Patchell, B., & Wilson, J. S. (2015). The Oklahoma lethality assessment study: A quasi-experimental evaluation of the Lethality Assessment Program. *Social Service Review*, 89(3), 499-530
https://www.researchgate.net/publication/282982226_The_Oklahoma_Lethality_Assessment_Study_A_QuasiExperimental_Evaluation_of_the_Lethality_Assessment_Program

Additional empirical support for this assessment is from:

Campbell, J. C., Webster, D., Koziol-McLain, J., Block, C. R., Campbell, D., Curry, M. A., Gary, F., Glass, N., McFarlane, J., Sachs, C., Sharps, P., Ulrich, Y., Wilt, S. A., Manganello, J., Xu, X., Schollenberger, J., Fry, V., & Laughon, K. (2003). Risk factors for femicide in abusive relationships: Results from a multisite case control study. *American Journal of Public Health*, 93(7), 1089-1097.
<http://ajph.aphapublications.org/doi/full/10.2105/AJPH.93.7.1089>

Snider, C., Webster, D., O'Sullivan, C. S., Campbell, J. (2009). Intimate partner violence: Development of a brief risk assessment for the emergency department. *Academic Emergency Medicine*, 16, 1208-1216.
<http://onlinelibrary.wiley.com/doi/10.1111/j.1553-2712.2009.00457.x/pdf>



Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 8, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Restitution Workgroup Update

FROM: Restitution Workgroup Chair

PRESENTER: Kirstin Flores, Director, Arizona Attorney General's Office of Victim Services

DISCUSSION & TIME ESTIMATES: Recent activities of the workgroup.

15 minutes

RECOMMENDED MOTION (IF ANY): N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 8, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Caselaw Update

FROM: AOC

PRESENTER: Judge Ron Reinstein, COVIC Chair

DISCUSSION & TIME ESTIMATES:

Recent Arizona appellate court decisions affecting victims' rights.

10 minutes

RECOMMENDED MOTION (IF ANY): N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 8, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Judicial Branch Strategic Agenda Workgroup Report

FROM: COVIC Working group

PRESENTER: Denise Lundin and workgroup members

DISCUSSION & TIME ESTIMATES: Provide update on COVIC's comments and recommendations and status of the process.

10 minutes

RECOMMENDED MOTION (IF ANY): N/A

To: Marcus Reinkensmeyer, Director, AOC Court Services
Through: Cathy Clarich, Manager, Caseflow Management Unit
From: Judge Ron Reinstein (ret.), COVIC Chair
Re: Strategic Agenda Planning Process
Date: March 29, 2018

Thank you for the opportunity to provide input on the Judicial Branch Strategic Agenda Planning process for 2018. The Commission on Victims in the Courts (COVIC) formed a working group to review the current agenda and to provide comments and recommendations regarding victims' rights and the court's responsibilities. We have two suggestions: Continue efforts to track and collect restitution payments and continue efforts to address trauma in our court system.

Improved record keeping and tracking of restitution payments will further Goal 1 - Promoting Access to Justice and Goal 3- Improving Court Processes

The Arizona Constitution gives crime victims the right to receive prompt payment of restitution. While great gains have been made over the years by Arizona Courts to improve the restitution collection process, the Commission finds that statewide efforts are not uniform and accurate statewide statistics are lacking. A uniform collection of information regarding restitution – amounts owed, collected, and outstanding would assist in ensuring victims are provided optimal information and methods to seek prompt restitution. This information would be critical to determine the extent of any systematic shortcomings and to develop strategies to enhance collection. The technology to produce meaningful reports is available. Enhanced use of this technology would ensure that statewide collection efforts are robust and consistent. Commission members believe this is a core function of the court and would fall under the current objectives: ***Access to court and court information using technology in Goal 1*** and ***Judicial system process improvement*** and ***Court data repositories and justice system data exchanges in Goal 3***. Timely and accurate information benefits both defendants and victims.

Trauma focus would further Goal 4 - Enhancing Professionalism Within Arizona's Courts and Goal 5 - Improving Communications and Community Participation

Another constitutional right for crime victims is “To be treated with fairness, respect, and dignity... throughout the criminal justice process.” Great strides have been made toward ensuring this right through judicial training and court rules. However, the Commission hears anecdotal accounts of judicial officers and staff who fall short. Part of the problem is the lack of trauma-informed training that would equip judicial officers and court staff with tools to better interact with victims in court. The training should also address the vicarious trauma that judicial officers and court staff encounter in their daily work tasks. The impact of this untreated vicarious trauma can affect their interactions with victims and the public and it also impacts the wellness and productivity of the workforce. The Supreme Court has taken an important first step by training a few hundred court employees. Commission members stress that this training is very important and that these efforts must be continued and made available to a greater number of judicial officers and court staff. Perhaps using online methods, some of this training could also be developed for use by victims and the public. The current objectives relevant here would be ***Judicial excellence*** and ***Workforce development*** in Goal 4 and ***Communications with the public and education communities*** in Goal 5.

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
June 8, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	The Vicarious Trauma Toolkit

FROM: AOC

PRESENTER: Denise Lundin

DISCUSSION & TIME ESTIMATES: Information regarding the Office for Victims of Crime (OVC) online resource that provides tools to help organizations whose staff work with victims.

The Vicarious Trauma Toolkit can be accessed at: www.ovc.gov/vtt

10 minutes

RECOMMENDED MOTION (IF ANY): N/A

Arizona Supreme Court
Commission on Victims in the Courts

October 19, 2018

Meeting Agenda

1501 W. Washington St., Phoenix, Arizona, 85007
State Courts Building, Conference Room 345A/B

10:00 a.m. – 12:00 p.m.

15 min	New Member Orientation (9:45am – 10:00am)	Denise Lundin, COVIC Staff
10 min	Call to order / Welcome / Introductions / Announcements	Judge Ron Reinstein, Chair
	<i>Approval of Minutes – June 6, 2018**</i>	Judge Ron Reinstein, Chair
20 min	Guest Speaker – Marsy’s Law – Advocating for state and US Constitutional Amendments for Crime Victims’ Rights	Judge Maria del Mar Verdin (Ret.), Maricopa County Superior Court
30 min	Guest Speaker – Victim Offender Dialogue (VOD) Program	Mr. Daniel Torrez, Arizona Dept. of Corrections (ADC), Office of Victim Services
15 min	Vision 21: Advancing Technology to Assist Crime Victims	Ms. Chris Groninger, Arizona Bar Foundation
10 min	Restitution Workgroup Update	Ms. Kirstin Flores, Workgroup Chair
10 min	AZ Rules of Criminal Procedure – Rule 15.3	Judge Richard Weiss, Maricopa County Superior Court
5 min	Arizona Caselaw & Court Opinions Update	Judge Ron Reinstein, Chair
10 min	Guest Speaker – AZ Crime Victim Rights Law Group	Mr. Randall Udelman, Atty. Mr. Dan Levey
5 min	2019 Potential Meeting Dates	Ms. Lynn Golden, COVIC Staff
5 min	Call to the Public / Adjournment	Judge Ron Reinstein, Chair

****Important Voting Items**

Next Meeting:

Feb/March 2019

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

Arizona State Courts Building, Conference Room 345 A/B

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Lynn Golden at (602) 452-3195. Requests should be made as early as possible to allow time to arrange for the accommodation.

**Arizona Supreme Court
Commission on Victims in the Courts**

Friday June 8, 2018

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

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 345 A/B

Present: Hon. Ronald Reinstein; Mr. Ammon Barker (*proxy for Ms. Jane Nicoletti-Jones*); Ms. Leesa Berens Weisz; Mr. Michael Breeze; Judge Maria Elena Cruz; Ms. Sydney Davis; Ms. Michelle Frisen (*proxy for Ms. Karyn Rasile*); Ms. Kim Hedrick; Ms. Lindsey Herf (*proxy for Mr. Timothy Agan*); Ms. Leslie James; Ms. Christine Kelly; Asst. Chief John Leavitt; Mr. Dan Levey; Sgt. Jim Markey (Ret.); Ms. Barbara Marshall (*proxy for Ms. Elizabeth Ortiz*); Chief Rod McKone; Hon. Sam Meyers; Ms. Debra Olsen; Mr. William Owsley; Hon. Antonio Riojas, Jr.; Hon. Sarah (Sally) Simmons; Hon. Richard Weiss

Telephonic: none

Absent/Excused: Ms. Colleen Clase; Ms. Laura Penny

Presenters/Guests: Ms. Lisa Petty Banen; Ms. Angelyn Bayless; Ms. Erin Bertino; Ms. Melissa Brickhouse-Thomas; Ms. Kim Cano; Mr. Vincent Figarelli; Ms. Teresa Fuller; Justice Andrew Gould; Ms. Donna Halloran; Ms. Latrice Jackson-Anderson; Mr. Thomas Lane; Judge Paul McMurdie; Assistant Chief Scott Popp; Ms. Judy Schaffert; Ms. Laurel Whisler; Mr. Austin Yost

Administrative Office of the Courts: Ms. Lynn Golden; Ms. Amy Love; Ms. Denise Lundin; Ms. Heather Murphy; Ms. Kay Radwanski; Mr. Marcus Reinkensmeyer

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

The June 2018 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, presenters and guests.

B. Announcements –

Hon. Ronald Reinstein, Chair and Ms. Denise Lundin, COVIC Staff shared the following announcements –

- 1) Judge Reinstein acknowledged some members who have recently received awards – First, recognition by the Attorney General’s Office Distinguished Service Award to Ms. Chris Kelly on behalf of the Maricopa County Clerk’s Office Victim Locate Program. Second, and by the Coalition Against Sexual Assault and Domestic Violence, the Three Heart Survivor Award was recently given to Ms. Kim Hedrick for her work as a survivor of sexual assault and victim advocate. Third, Amy Love, Deputy Director of Legislative Affairs, was also recognized by the Coalition, regarding recent events involving reporting abuse.
- 2) The Administrative Order regarding reappointments and new appointments has been signed by the Chief Justice. Congratulations to the following reappointed members: Ms. Colleen Clase, Ms. Sydney Davis, Ms. Chris Kelly, Captain John Leavitt, Sergeant James Markey, Judge Sam Myers, Ms. Jane Nicoletti-Jones, Judge Richard Weiss, as well as Judge Ron Reinstein as COVIC Chairperson. Congratulations as well to the following new members: Mr. Jon Eliason, Ms. Vanessa Helms, and Judge Kellie Johnson.

C. Approval of the March 2, 2018 Minutes

The draft minutes from the March 2, 2018 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 March 2, 2018 meeting minutes. Seconded by Ms. Sydney Davis. Motion passed, and minutes approved.

II. LEGISLATIVE UPDATE -

Ms. Amy Love, AOC Legislative Affairs, presented an update on the following Legislative issues -

H2020: Nondisclosure Agreements; Sexual Assault; Harassment – limiting use of non-disclosures.

H2249: Protective Orders; Filing Requirements – Service of Orders of Protection.

H2312: Setting Aside Conviction: Requirements – Clerk of Court prohibited from charging filing fee to have judgment of guilt set aside and sets factors court must consider when determining whether to set aside a conviction.

H2313: Sentencing; Monetary Obligations; Fine Mitigation – Courts can mitigate mandatory fines with monies going to Victims’ assistance.

S1041: Residency Restrictions: Sex Offenders: Victims – defendants required to register as sex offenders limited in residence proximity to victim.

S1211: Sentence: Life Imprisonment; Parole Eligibility – post-1994 convictions of life with possibility of parole must be on lifetime parole, unless revoked. Judge Reinstein shared additional information on this bill.

S1503: Delinquent Restitution; Monthly Report; Hearing – Doubles the number of months to four before probation office must notify the court of defendant's delinquency in the payment of restitution.

III. GUEST SPEAKERS

A. Solving Cold Cases - Familial DNA, Victim Involvement and Interaction

Director Kris Cano, Scottsdale Forensic Services, Superintendent Vincent Figarelli, AZ DPS Crime Lab, and Assistant Chief Scott Popp, Scottsdale PD, gave a presentation regarding using Familial DNA to solve cold cases, genealogical searching, and shared insight on a recent arrest in the Allison Feldman murder case.

IV. INTIMATE PARTNER ASSESSMENT UPDATE (taken out of order) –

Ms. Kay Radwanski, AOC Staff, gave an update on recent work finalizing the Intimate Partner Risk Assessment Form which took effect in April. CIDVC also developed a bench card to assist judges with release conditions.

Continuation of Guest Speakers -

B. Decoding Sex Buyers – The Work of CEASE, Arizona

Ms. Angelyn Bayless, Director of CEASE, Arizona and Executive Director of the Arizona Anti-Trafficking Network, presented on her work which focuses on the demand side of sex-trafficking in the state through innovative methods.

V. RESTITUTION WORKGROUP UPDATE -

Ms. Kirstin Flores, Workgroup Chair, gave an update on the workgroup's progress. It is presently focused on identifying best practices and bringing awareness around the state, with education being a top priority. A sub-committee will be working on revising training manuals for judicial officers. Chief Rod McKone reported that the work on gathering statistics is ongoing and challenging. Ms. Flores stated that next up will be "Big Ideas."

VI. ARIZONA CASELAW UPDATE -

Judge Reinstein gave an update on recent Arizona appellate court opinions impacting victims' rights.

VII. STRATEGIC AGENDA WORKGROUP REPORT -

Ms. Denise Lundin, COVIC Staff, shared the final recommendations made to the Chief Justice from COVIC for the upcoming Strategic Agenda. The two items the group focused on were tracking restitution and providing trauma training for court employees who deal with some very intense situations on a regular basis.

VIII. VICARIOUS TRAUMA TOOLKIT -

Ms. Lundin shared information on the Vicarious Trauma Toolkit, an online resource that provides many helpful tools to those agencies that regularly work with people experiencing traumatic events. Its website is www.ovc.gov/vtt.

IX. CALL TO PUBLIC -

Judge Reinstein made a Call to the Public. There was none.

X. ADJOURNMENT -

- Motion was made by Mr. Breeze to adjourn. Seconded by Chief Rod McKone. Motion passed. Meeting adjourned at 2:02 p.m.
-

XI. NEXT COMMITTEE MEETING DATE

**October 19, 2018
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 345 A/B
1501 W. Washington St., Phoenix, AZ 85007**

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 19, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Marsy's Law – Advocating for state and US Constitutional Amendments for Crime Victims' Rights

FROM: Marsy's Law Organization

PRESENTER: Hon. Maria del Mar Verdin (Ret.)

DISCUSSION & TIME ESTIMATES: 20 minutes

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject: AZ Department of Corrections (ADC) Victim Offender Dialogue (VOD) Program
October 19, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

FROM: ADC Office of Victim Services, Daniel L. Torrez

PRESENTER: Daniel L. Torrez, VOD-Coordinator

DISCUSSION & TIME ESTIMATES: 30-45 minute PPT presentation

RECOMMENDED MOTION (IF ANY): N/A

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 19, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Vision 21: Advancing Technology to Assist Crime Victims

FROM:

PRESENTER: Chris Groninger, Arizona Bar Foundation

DISCUSSION & TIME ESTIMATES: 10 Minutes, 5 Minutes Q&A

The U.S. Department of Justice's Office for Victims of Crime created the *VISION 21: Transforming Victim Services* initiative in 2013 to expand the vision and impact of services to victims of crime. As well as holistic recommendations and a comprehensive examination of the crime victims field, the Vision 21 initiative is a funding resource for efforts to increase crime victim access to support, services, and justice. In September 2018, the Office for Victims of Crime announced that Arizona received the Vision 21: Advancing the Use of Technology to Assist Crime Victims grant award to support a proposal submitted by the Arizona Foundation for Legal Services & Education. With this \$1.1 million two-year award, the Foundation will develop and implement technology to expand and enhance access to civil legal information and resources for Arizona victims of crime. Using a statewide network of stakeholder collaboration to develop and review content and the technology resource created will be replicable to other jurisdictions. The collaboration and technology solution will establish an online portal to support a virtual statewide crime victim self-help center, provide an online civil legal assistance resource center, offer information specific to crime victim services and service providers, increase awareness and visibility of services to crime victims, and promote new and existing opportunities for the legal community to work with crime victims.

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 19, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Restitution Workgroup Update

FROM: COVIC's Restitution Workgroup

PRESENTER: Kirstin Flores, Chair

DISCUSSION & TIME ESTIMATES: 10 minutes

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 19, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	AZ Rules of Criminal Procedure Rule 15.3

FROM: Judge Richard Weiss

PRESENTER: Judge Richard Weiss

DISCUSSION & TIME ESTIMATES:

Arizona Rules of Criminal Procedure Rule 15.3. - Whether the state has a right to depose a victim.

Five (5) minutes

RECOMMENDED MOTION (IF ANY):

Rule 15.3. Depositions

Arizona Revised Statutes Annotated Rules of Criminal Procedure

Arizona Revised Statutes Annotated
 Rules of Criminal Procedure (Refs & Annos)
 IV. Pretrial Procedures
 Rule 15. Disclosure (Refs & Annos)
 16A A.R.S. Rules Crim.Proc., Rule 15.3

Rule 15.3. Depositions

(a) Availability. A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant and a victim, by oral deposition under the following circumstances:

- (1) a party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at trial; or
- (2) a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or
- (3) a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify at a trial or hearing.

(b) Follow-up Examination. If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:

- (1) the magistrate limited the person's previous testimony under Rule 5.3; and
- (2) the person will not cooperate in granting a personal interview.

(c) Motion for Taking Deposition; Notice; Service.

(1) *Requirements.* A motion to take a deposition must:

- (A) state the name and address of the person to be deposed;
- (B) show that a deposition may be ordered under (a) or (b);
- (C) specify the time and place for taking the deposition; and
- (D) designate any nonprivileged documents, photographs, or other tangible objects that the person must produce at the deposition.

(2) *Order.* If the court grants the motion, it may modify any of the moving party's proposed terms and specify additional conditions governing how the deposition will be conducted.

(3) *Notice and Subpoena.* If the court grants the motion, the moving party must notice the deposition in the manner provided in Arizona Rule of Civil Procedure 30(b). The notice must specify the terms and conditions in the court's order granting the deposition. The moving party also must serve a subpoena on the deponent in the manner provided in A.R.S. § 13-4072(A)-(E) or as otherwise ordered by the court.

(d) Manner of Taking.

(1) *Generally.* Unless this rule provides or the court orders otherwise, the parties must conduct depositions in the manner provided in Rules 28(a) and 30 of the Arizona Rules of Civil Procedure.

(2) *Deposition by Written Questions.* If the parties consent, the court may order that a deposition be taken on written questions in the manner provided in Rule 31 of the Arizona Rules of Civil Procedure.

(3) *Deponent Statement.* Before the deposition, a party who possesses a statement of a deponent must make it available to any other party who would be entitled to the statement at trial.

(4) *Recording.* A deposition may be recorded by someone other than a certified court reporter. If someone other than a certified court reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording no later than 14 days after the deposition, or no later than 10 days before trial, whichever is earlier.

(5) *Remote Means.* The parties may agree or the court may order that the parties conduct the deposition by telephone or other remote means.

(e) The Defendant's Right to Be Present. A defendant has the right to be present at any deposition ordered under (a)(1) or (a)(3). If a defendant is in custody, the moving party must notify the custodial officer of the deposition's time and place. Unless the defendant waives the right to be present, the officer must produce the defendant for the deposition and remain with the defendant until it is completed.

(f) Use. A party may use a deposition in the same manner as former testimony.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.
<Promulgated August 31, 2017>

Editors' Notes

HISTORICAL AND STATUTORY NOTES

Former Rule 15.3, relating to depositions, was abrogated effective Jan. 1, 2018. See, now, this rule.

16A A. R. S. Rules Crim. Proc., Rule 15.3, AZ ST RCRP Rule 15.3

The Arizona Court Rules are current with amendments received through 8/1/18. The Code of Judicial Administration is current with amendments received through 4/15/18

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 19, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Caselaw Update

FROM: AOC

PRESENTER: Judge Reinstein, Chair

DISCUSSION & TIME ESTIMATES: Recent Arizona appellate court opinions
10 minutes

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 19, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Arizona Crime Victim Rights Law Group

FROM: Arizona Crime Victim Rights Law Group

PRESENTER: Randall Udelman & Dan Levey

DISCUSSION & TIME ESTIMATES: 10 Min

RECOMMENDED MOTION (IF ANY):

Commission on Victims in the Courts

Meeting Date:	Type of Action Required:	Subject:
October 19, 2018	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Potential Meetings Dates for COVIC 2019

FROM: COVIC Staff

PRESENTER(S): Lynn Golden, COVIC Staff

DISCUSSION & TIME ESTIMATE: 5 min

RECOMMENDED MOTION (IF ANY):

Planning has begun for the AZ State Court Buildings calendar and committee meetings. Below are the potential dates for the 2019 COVIC Quarterly meetings.

Please review your personal calendars and look for information on finalized dates from COVIC Staff soon.

Friday, March 1, 2018

Friday, March 15, 2019

Friday June 7, 2019

Friday June 14, 2019

Friday, October 4, 2019

Friday, October 18, 2019