

**COMMITTEE ON THE IMPACT OF DOMESTIC VIOLENCE AND THE COURTS
MINUTES**

February 8, 2006

10:00 AM – 2:00 PM

State Courts Building,

1501 W. Washington St, Room 119 A&B

Conference Call Number: (602) 542-9003

CIDVC Website: <http://www.supreme.state.az.us/cidvc/>

MEMBERS PRESENT

Hon. William O'Neil, Chair
Barbara Appenzeller, CPA
Evelyn Buckner, MSW
Lt. Mark Carpenter
Capt. Larry Farnsworth
Joan Fox, DDS
Hon. Sherry L. Geisler
Tracy Hannah, Esq.
Hon. Jeanne Hicks
Kristen Hoffmeyer, Esq
Bridget Humphrey, Esq.
Sheri Lauritano, Esq.
Hon. Michelle Lue Sang
Hon. Dennis Lusk
Paul O'Connell
Hon. Carolyn Passamonte
Doug Pilcher
Robert Roll
Ginger Spencer
Dale Wiebusch
Tracey Wilkinson
Patricia Wuensche
Hon. Benjamin Zvenia

GUESTS

Richard Toon, Ph.D., Morrison Institute for Public Policy
Bill Hart, Morrison Institute for Public Policy
Dave Weinstock via teleconference
Leila Gholam, AOC
JoAnne Del-Colle, Governor's Division for Women

MEMBERS NOT PRESENT

Hon. Ellie Brown
Hon. Wendy Hernandez
Hon. Ronald I. Karp
Patricia Klahr
Jerald Monahan
Hon. Mark Moran
Doris Robinson Wait, Esq.

STAFF PRESENT

Konnie Neal, Committee Specialist
Kim Ruiz, Support Staff

QUORUM: YES

I. CALL TO ORDER

A. WELCOME AND OPENING REMARKS

Judge William O'Neil, chair, called the February 8, 2006 meeting for the Committee on the Impact of Domestic Violence and the Courts to order at 10:13 am. Judge O'Neil welcomed new members and guests to the Committee and meeting. All members introduced themselves and received their new 2006 binders. Judge O'Neil gave a brief description of the specific parameters for member appointments to ensure statewide representation.

B. APPROVAL OF MINUTES FROM November 2, 2005

Minutes for the November 2, 2005, Committee on the Impact of Domestic Violence and the Courts meeting was presented for approval.

MOTION: Motion was made and seconded to approve the November 2, 2005 meeting minutes. Motion passed unanimously. 23-0-0. CIDVC-06-001

II. DOMESTIC VIOLENCE RULES COMMITTEE

Judge O'Neil gave a brief history of why the DV Rules Committee was established and identified the following work results:

- The mission is to protect the public.
- It is important to place Domestic Violence Rules in both ARFLP and Civil Law to capture Limited Jurisdiction Courts and Superior Courts.
- The DV Benchbook would be best served as a true benchbook for Judges. The intent is to make it more usable and easier for judges. This requires pulling the rules, scripts and directives to the judge out of the references and resources. Then creating a Benchbook for judges and a Reference book available to the public.

III. *LAYERS OF MEANING: DOMESTIC VIOLENCE AND LAW ENFORCEMENT ATTITUDES IN ARIZONA (Morrison Institute)*

Richard Toon, PhD and Bill Hart of the Morrison Institute presented the results of their study on law enforcement attitudes toward domestic violence.

Their study addressed three issues:

1. WHAT – Surveyed 1st responders, since they are the gatekeepers of the entire justice response, about their views, values and attitudes.
2. WHO – 777 patrol-level officers and 31 detectives, supervisors and Domestic Violence experts.
3. HOW – Surveyed officers and conducted individual interviews with detectives and supervisors.

Their major findings were:

- Officers believe domestic violence spreads crime and violence throughout the state
- Officers consider domestic violence a major problem
- Officers view domestic violence as a “real crime”
- Officers consider arrest alone of limited value in reducing domestic violence
- Officers often struggle to understand victims' actions and attitudes

- Officers feel too few cases are prosecuted
- Officers want more discretion in domestic violence cases

Suggestions from the findings:

- Promote domestic violence training for officers
- Strengthen community efforts to prevent domestic violence
- Strengthen Arizona's criminal justice response to domestic violence
- Map key domestic violence decision points
- Review how prosecution functions as part of the overall system

Ginger Spencer asked if having Victim Advocates helps keep the victims involved in the process. They confirmed that officers felt having someone there advocating for the victim would help them through the process and keep the victim involved.

Judge O'Neil recommended the next study to focus on the attitudes of Judges and Prosecutors.

IV. LEGISLATIVE UPDATE

Dale Wiebusch and Leila Gholam gave the following updates:

HB2716: "Judicial Gatekeeper bill" the judge assigned to a case will have a hearing to determine the "reasonableness" of a complaint made against mental health professionals. The chilling effect of mental health professionals removing themselves from cases due to threats is that children are not being evaluated and treated. (Presented by Dr. David Weinstock via teleconference)

SB1097: It would have taken us backwards with our Orders of Protection and would have threatened VAWA funds as it was originally worded, but now it is a striker bill that is not going anywhere; it would have included the line to this effect: "You have the right to get an Order of Protection if you so desire."

SB1147: This bill updates the language in statute 13-2915 from "party line" and specifying that individuals and businesses cannot deny phone usage to people in a domestic violence emergency. This bill would make such a denial a Class 2 misdemeanor. This will not be a stand alone statutory change; it will be a change in the domestic violence code only.

SB1342: Has been pulled and needs to be worked on this summer, because it currently blurs the line of who serves Orders of Protection. It was to allow a victim to take an Order of Protection to any law enforcement agency where the defendant is located. There was opposition from Chiefs of Police due to blurring the service lines.

SB1493: Similar bill to SB1342, and it has also been killed.

SB1164: Strangulation bill that will move it up from a misdemeanor to a felony if you strangle or suffocate someone.

HB2124: Is moving forward.

SB1145: "Castle Doctrine" states a person can shoot and kill a person who breaks into his or her home. There was talk of expanding this to a person's car. The problem is that it currently excludes people who are named on the lease or title, even when they have an Order of Protection against them. They are going to add language to address domestic violence situations.

V. DV TRAINER REPORT / PROJECT PASSPORT UPDATE

Pat Wuensche explained that the process of rewriting the DV module to correspond with the DV Project Passport will not change the initial rollout date of Fall 2006. She then gave a brief history and update of what Project Passport is:

- It is a national movement to make the first page of all Order of Protection forms look similar and contain the same information to make it easier for law enforcement;
- She is working on having the form more accessible on the internet.

The following points were raised:

- Concern was expressed about having the form on the internet for people to complete by themselves without professional assistance; because they will potentially think once they fill out the form that is all they need to do, not knowing they need to take it to be served.
- It was proposed that counties just starting up their internet self-service forms just attach a link to the CIDVC site, so they don't have to recreate the form.

VI. COURT DOMESTIC VIOLENCE ISSUES

A. LIMITED JURISDICTION COURTS RETENTION OF PROTECTIVE ORDER RECORDS

Konnie Neal presented the issue: LJC currently keep Protective Orders five years and Melinda Hardman, of the AOC, is working with an LJC subcommittee who has proposed reducing retention to three years. She then posed the following questions to the Committee:

- Are there legal issues? Would any federal laws be violated?
- Superior Court currently retains for five years; should both Superior and LJ courts have the same retention period?
- Is an electronic record the same as the actual document?
- Should records that have Brady implications be held longer?

The following discussion ensued:

- Robert Roll mentioned that NCIC currently retains records for five years after their expiration, so that is a back-up.
- It was pointed out that cases where a bench warrant has been outstanding for more than three years (which is not uncommon) and finally gets to court would be dropped because the file has been destroyed.
- Cases with Brady implications are another concern; because there will be no record after three years, what happens to Brady?
- What if someone violates an Order of Protection after three years but there is no record of the Order of Protection?
- Are there plans to microfilm the Orders before they are destroyed? (No, because they are not considered court records.)
- Electronic storing is not available to all courts, so that is not an option at this time.
- Regarding other states: New York retains their Protective Orders 50 years.

- The city of Glendale has the following retention record: 25 years for sex crimes; 5 years for felonies and 2 years for misdemeanors. However, in reality they keep all records indefinitely.

Another discussion ensued about the timeline of Protective Orders:

- They have to be served in the State of Arizona within 12 months or they expire;
- Once they are served they are good for another 12 months from the date of service;
- The five or three year timeline for retention starts running once the Order expires.

MOTION: Motion was made and seconded for the Committee to recommend that Limited Jurisdiction Courts continue to retain their Protective Order records for five years, for the protection of the victims. 23-0-0. CIDVC-06-002

B. JUDICIAL ACCESSIBILITY TO PROTECTIVE ORDER COURT RECORDS (CPOR/LPOR & DV CASE LOOK-UP)

Konnie Neal presented the issue: An email that was sent to the Chief Justice's Good to Great website questioned whether courts communicate with each other. The woman who wrote the email had a situation where an ex-spouse was filing protective orders against her in multiple courts to force her to show up in court for all the hearings. She was frustrated and asked why the courts could not see that he had orders of protection frivolously filed against her in other courts that were quashed. It sounds like a "court shopping" situation. Konnie then posed the following questions:

- Do courts currently have the necessary technology to communicate?
- If they do, is it ethical for a judge to access this information prior to issuing protective orders?
- Would this impede a victim from getting a protective order by slowing the process? Would it cost more in court time and resources?

The following discussion ensued:

- Should it even be a factor whether someone has multiple protective orders filed when a judge is considering the validity of the order before them?
- If there was electronic ability, is it reliable? It isn't the original document and there could be errors in data entry and also information from the original left out due to lack of space.
- Is this investigative work for a judge? Does this go against the adversarial system? Judges would have the ability to not only review a defendant's history, but also a victim's, which could also affect the decision. Is that appropriate?
- Doesn't this violate the Rules of Evidence for judges who are only supposed to review the information of the case before them?

Robert Roll gave a presentation of DV Case Look-up and a brief review of CPOR and LPOR:

- DV Case Look-up maintains a database of all protective orders, in all states, in every stage of the process.
- Currently only a limited few have access to the full database.

- Only protective orders that have been served go onto the public access site. A person's name is typed in, and the program pulls up every case with which the name is associated, whether defendant, plaintiff or just a party named in the case (i.e. children).
- One issue: It cannot be determined if all the listings under a name are in fact the same person.

Discussion then ensued about the use of DV Case Look-up:

- Concerns were stated about introducing this technology as something judges should look at or are required to look at, because then the judge is kind of being directed on to use that information, which is at the detriment of the people before them.
- Not enough credit is given to the judges. It just provides them information to determine if there are more questions they need to ask, not disqualify the protective order.
- Do you fall into a trap that allows legislature to suggest doing away with *ex parte* hearings, because the judge is already doing research and presenting evidence of their own? Isn't it really a hearing they're doing? Shouldn't the other party have the same opportunity to do what the judge is doing?

Some stated concerns and dilemmas with CPOR and DV Look-up follow:

- There are data entry errors, on top of reconciling the orders coming out of courts with CPOR. A judge considering this data before issuing an Order could have inaccurate information.
- This could potentially slow the process down.
- Rules of Evidence require that if the court is going to use a court record from another court, that it be a certified copy. This is not a copy of the record; this is an entry by an unknown person.
- As heard above in the *Layers of Meaning* study, officers do not want to respond to a DV call to a house that they repeatedly go to. Isn't this allowing a judge to consider the same thing? To not issue an Order of Protection because they've already been to multiple courts seeking one?
- Our own Benchbook says there is no limit to the number of protective orders a person can petition.
- This is just another way of gathering information for a judge. It is also a way of determining the candor of the person before them.

It was determined that this discussion requires more debate, and it should be placed on the next meeting's agenda.

VII. WORKGROUP REPORTS

Judge O'Neil gave a brief overview of the CIVDC Workgroups then had all the workgroup chairs introduce themselves and summarize what their Workgroup does. Konnie Neal gave a refresher of the Workgroups and encouraged new members to join and also recommend non-committee members.

A. DV EDUCATION WORKGROUP (Shari Lauritano for Judge Moran)

Shari Lauritano gave a PowerPoint presentation of a portion of the work product the DV Education Workgroup is rolling out to local schools.

- Their pilot school was South Mountain High School, but they changed it to Phoenix Union High School.
- They will go to schools and have a troop of kids act out various Domestic Violence skits for the schools.
- They will show the PowerPoint presentation which explains what domestic violence is and various perspectives of a DV case: Victim, Police, Advocate, Prosecutor, Defense Attorney, Defendant and the Judge.
- Their intent is to go into all school levels, so they will adapt the skits and PowerPoint content to be age appropriate.

It was suggested that they also adapt their skits and PowerPoint to be culturally representative of their audiences.

No other Workgroups presented.

VIII. FATALITY REVIEW TEAM UPDATE

Evelyn Buckner gave the current status of review teams. Points discussed were:

- There are currently no teams up and running, but Phoenix has been working on their team since October.
- The Governor's Office presented and pushed this bill through, but at this time it does not provide funding or staff for the review teams.
- Communities need to create their review teams.
- The Attorney General's Office will gather the information and disseminate it.
- They are currently not sure who will be making recommendations of systematic change.
- There will be a lag time while review teams are still being established.

IX. CALL TO THE PUBLIC

There were no public present

X. ADJOURNMENT

Judge William O'Neil, chair, adjourned the meeting at 1:50 p.m.

NEXT MEETING

Wednesday, May 3, 2006

10:00 am to 2:00 pm

State Courts Building, Conference Room 345 A/B