

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

May 6, 2008

10:00 AM –2:00 PM

State Courts Building,

1501 W. Washington St., Room 119 A/B

MEMBERS PRESENT

Barbara Appenzeller, CPA
Lt. Mark Carpenter
Honorable Anita Escobedo
Dr. Jennifer J. Casaletto
Tracey Hannah, Esq.
Laura Horsley
Honorable Lynda J. Howell
Bridget Humphrey, Esq.
Leonard Montenaro
(Proxy for Hon. Michelle Lue Sang)
Honorable Dennis Lusk
Patricia Madsen, Esq.
Leah Meyers, GOCYF/DFW
Honorable Wendy Million
Jerold Monahan
Paul O’Connell
Honorable William O’Neil, Chair
Doug Pilcher
Renaë Tenny

Kim Van Nimwegen, MSW
Honorable Benjamin Zvenia

MEMBERS ABSENT

Joan Fox, DDS
Cheryl L. Karp, Ph.D.
Scott Mascher
Honorable Carolyn Passamonte
Honorable Jack Peyton
Catherine Shugrue-Schaffner, Esq
Tracey Wilkinson

STAFF

Kay Radwanski
Lorraine Nevarez

Guests

Kendra Leiby - AZCADV
Mike Breitling - Risk &Needs
Assessment

I. CALL TO ORDER

A. Welcome and Opening Remarks

Judge O’Neil, chair, called the May 6, 2008, meeting of the Committee on the Impact of Domestic Violence and the Courts to order at 10:15 a.m. Judge O’Neil welcomed the members.

B. Approval of Minutes from February 2, 2008

Minutes of the February 2, 2008, meeting of the Committee on the Impact of Domestic Violence and the Courts were presented for approval.

MOTION: Motion was made and seconded to approve the February 2, 2008, meeting minutes. Motion passed unanimously. CIDVC-08-002

II. Domestic Violence Survivor's Self-Representation Manual

Patricia Madsen, Esq., Community Legal Services (CLS), discussed the self-representation manual for pro per litigants that CLS is preparing in collaboration with the AZ Coalition Against Domestic Violence. The self-representation manual currently is in the production stage and will be targeted toward domestic violence victims and survivors. The manual will be available in Spanish. The manual will provide basic instructional information such as attire to wear in court, how to subpoena witnesses, and how to organize evidence, and it also will provide examples on cross-examination questions. Once the manual is finalized, it will be placed on the AZ Coalition Domestic Violence website to be available for the public to download.

Community Legal Services provides free legal assistance on civil matters to the low-income population in Maricopa County; however, CLS also provides assistance to Mohave County, Yuma County, Yavapai County and La Paz counties. CLS provides assistance in family law, public benefits, employment issues, education issues, housing issues, consumer's issues and a statewide farm worker program. Community Legal Services also has a volunteer lawyers program.

III. Update: Forms and Processes Workgroup

Judge Elizabeth Finn, chair of the Forms and Processes Workgroup, was at an ABA meeting and unable to attend, so Kay provided an update. The Forms and Processes Workgroup was revamped to include members from municipal and superior courts, law enforcement, sheriffs' offices, and the AOC. The workgroup's objectives are to evaluate protective order forms and related business processes and develop training methods and tools to make forms or processes more effective with minimal impact on existing technology. Some opportunities include improving or developing new court processes without incurring costs for changes in technology, improving understanding of ARPOP and DV case processing for judges, court staff and law enforcement, create tools that can be used to train new personnel in event of staff turnover, and improve procedures between courts and sheriffs' offices.

Kay also discussed some issues the workgroup is currently discussing regarding transferring cases and how to best indicate in the case management system that a case has been transferred back to the original hearing court. She also discussed some changes made to several forms to improve their clarity. Other issues the workgroup will be discussing are making the Sheriff's Office aware of transferred cases through use of the transfer order; ensuring that court staff are aware that the Holder of Record box on protective order forms must contain the name and telephone number of the county sheriff; training court staff to send complete, legible forms to sheriffs' offices; and developing court contacts lists for sheriffs' offices.

IV. Warnings on DV Convictions and Protection Orders

Judge Million and Leah Meyers discussed the Brady and Lautenberg warnings that appear on various forms that are provided to defendants. Currently, the federal Violence Against Women Act (VAWA) provides grant money to states for domestic violence programs. A new grant provision requires the state to certify that it has a judicial administrative policy or practice in place to notify domestic violence offenders of all applicable federal, state, or local firearms restrictions. The purpose of the judicial notification certification is to verify proper notification was given to defendants. Judge Million has drafted an article on this topic, and it will be posted on the Wendell webpage.

V. Workgroup Reports

- A. DV Forms Workgroup (Hon. Elizabeth Finn, Chair) – Update previously given under minute section “Warnings on DV Convictions and Protection Orders.”
- B. DV Resource Book (Hon. Michelle Lue Sang, Chair) –No update at this time.
- C. Best Practices (Hon. Wendy Million)- The workgroup will look at the recommendations in the “Systems Alert” report and conduct statewide surveys to see what practices are occurring in Arizona courts. The workgroup has divided the back section of the report, Policy Implications and Recommendations, into four categories: (1) police, (2) prosecution and victim's services, (3) courts, and (4) offender treatment. They will study these issues and offer a set of best practices for the state to view.
- D. DV Education Workgroup (Hon. Michelle Lue Sang, Chair) – The workgroup/CIDVC is sponsoring two judicial conference sessions this year. One session will include a discussion of the Morrison Institute's “Systems Alert” report and the Arizona Rules of

Protective Order and Procedure (ARPOP). In the second session, two speakers will discuss the conduct of plaintiffs and defendants in the courtroom and provide information to the judges on how these behaviors impact the case before the court.

E. Legislative Workgroup (Hon. Benjamin Zvenia, Acting Chair)—No update at this time.

F. Batterer’s Treatment Policies and Programs (Tracy Hannah, Chair)-Judge Million advised that she and Ms. Hannah have discussed merging this workgroup into the Best Practices Workgroup as both are addressing issues identified in the Morrison Institute report. Judge Million and Ms. Hannah will co-chair the combined workgroup.

VI. Legislative Report

1. HB 2248 Electronic communications; harassment; order; protection

Primary sponsor: Rep. Bob Robson

<http://www.azleg.gov/legtext/48leg/2r/bills/hb2248p.pdf>

Injunction against harassment; petition; venue; fees; notices; enforcement; definition

(Amending § 12-1809, Arizona Revised Statutes; relating to injunction against harassment)

- Clarifies in subsection E that the court, when deciding whether to issue an injunction against harassment, must review the petition, any other pleadings on files and any evidence submitted by the plaintiff, *including any evidence of harassment by electronic contact or communication.*

Harassment; classification; definition

(Amending § 13-2921, Arizona Revised Statutes; relating to harassment)

- In subsection (A)(1), adds the word *contacts* to the acts that constitute harassment.

Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction

(Amending § 13-3602, Arizona Revised Statutes; relating to orders of protection)

- Clarifies in subsection E that the court, when deciding whether to issue an order of protection, must review the petition, any other pleadings on files and any evidence submitted by the plaintiff, *including any evidence of harassment by electronic contact or communication.*

STATUS: No progress this week

- Assigned to the Judiciary and Rules committees
- 1/22/08 - first read
- 1/23/08- second read
- 2/28/08- passed by Judiciary (9-0-0-1) (do pass)
- 2/28/08- passed by Rules (7-0-0-3) (constitutional and in proper form)
- 3/3/08-Majority caucus calendar
- 3/3/08-consent calendar
- 3/11/08- passed House (59-0-1); ready for Senate
- 3/11/08- transmitted to Senate

- 3/12/08-first read Senate
- 3/12/08-second read Senate
- 3/17/08- assigned to Senate Judiciary and Rules
- 4/7/08-passed by Senate Judiciary (6-0-1-0) (do pass)
- 4/14/08-passed by Senate Rules (proper for consideration)
- 4/15/08-Senate caucus calendar

2. HB 2374 Domestic violence; dating relationships §13-3601

Primary sponsors: Rep. Pete Hershberger and Senator Rebecca Rios

<http://www.azleg.gov/legtext/48leg/2r/bills/hb2374p.pdf>

Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice
(Amending section 13-3601, Arizona Revised Statutes; relating to domestic violence)

- Adds subsection 6: relationship between the victim and the defendant is currently or was previously a significant romantic or sexual relationship. Requires the court to consider factors to determine that the relationship is or was previously a significant romantic or sexual relationship:
 - Type of relationship.
 - Length of the relationship.
 - Frequency of the interaction between the victim and the defendant.
 - If the relationship has terminated, length of time since termination.

STATUS: Not progressing

- Assigned to the Judiciary and Rules committees
- 1/23/08 - first read
- 1/28/08 - second read

3. HB 2407 Harassment; classification; definition

Primary sponsors: Rep. Pete Hershberger, Rep. David Bradley

<http://www.azleg.gov/legtext/48leg/2r/bills/hb2407p.pdf>

Harassment; classification; definition

(Amending § 13-2921, Arizona Revised Statutes)

- In subsection C, changes the classification of harassment from a class 1 misdemeanor to a class 5 felony if the defendant is at least 18 years old and knows or has reason to know the victim is a minor.
- In subsection E, expands the definition of harassment to include:
 - Conduct that serves no legitimate purpose and that would cause a reasonable person to suffer substantial emotional distress and the conduct in fact causes substantial emotional distress, and
 - Conduct that consists of contact by a person who is at least 18 years of age with a minor and that would cause a reasonable parent to fear for the well-being of the parent's minor child who is the target of the contact.

STATUS: Not progressing

- 2/21/08 – assigned to Judiciary and Rules committees

- 2/21/08 – first read
- 2/25/08 – second read

4. HB 2545 **Strangulation and suffocation; study committee**

Primary sponsors: Rep. Kyrsten Sinema, Rep. Steve Gallardo, Rep. David Lujan, and Rep. David Schapira

<http://www.azleg.gov/legtext/48leg/2r/bills/hb2545p.pdf>

An Act - Establishing the Strangulation and Suffocation Study Committee

- Provides for the establishment of the Strangulation and Suffocation Study Committee consisting of 19 members.
- Committee shall research and report on:
 - Prevalence of intentional strangulation or suffocation in domestic violence situations in this state.
 - The reporting and recording practices of peace officers in relation to strangulation or suffocation involving domestic violence calls.
 - The number and circumstances of cases involving strangulation or suffocation that are considered misdemeanors and felonies.
 - The outcomes of plea bargains in cases involving strangulation or suffocation.
 - The training currently required for first responders regarding physical indications of strangulation or suffocation.
- The committee shall make recommendations to improve law enforcement, judicial and victim advocate responses to strangulation or suffocation cases.
- On or before December 31, 2008, the committee shall submit a report regarding its findings and recommendations to the governor, speaker of the house, president of the senate and the state coalition against domestic violence that has a member who serves on the committee.

STATUS: Not progressing

- Assigned to the Judiciary and Rules committees
- 1/29/08 - first read
- 1/30/08 - second read

5. HB 2681 **Orders of protection; animals**

Primary sponsors: Rep. Jonathan Paton, Rep. Ed Ableser, Rep. Marian McClure

<http://www.azleg.gov/legtext/48leg/2r/bills/hb2681p.pdf>

Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction

(Amending § 13-3602, Arizona Revised Statutes; relating to orders of protection)

- Adds subsection G(7), regarding custody of animals, to the types of relief a judge may grant when issuing an order of protection. Specifically, the court, may:
 - Grant the petitioner the exclusive care, custody or control of any animal that is owned, possessed, leased, kept or held by the petitioner, the respondent, or a minor child residing in the residence or household of the petitioner or the respondent, and
 - Order the respondent to stay away from the animal, and
 - Forbid the respondent from taking, transferring, encumbering, concealing, harming or otherwise disposing of the animal.

STATUS: Not progressing

- Assigned to the Judiciary and Rules committees
- 2/4/08 - first read
- 2/5/08 - second read

6. HB 2687 Victims' rights; statement of rights

Primary sponsors: Rep. Jackie Thrasher, Rep. Ed Ableser, Rep. David Lujan, Rep. Kyrsten Sinema, Rep. Theresa Ulmer, Rep. Nancy Young Wright

<http://www.azleg.gov/legtext/48leg/2r/bills/hb2687p.pdf>

Statement of rights

(Amending § 13-4438, Arizona Revised Statutes; relating to victim's rights)

- Requires the posting of the statement of victim's rights, as set forth in the statute, in both English and Spanish outside of every courtroom entrance;
- Requires the reading of the victim's rights statement at the beginning of the regular criminal docket; and
- Adds the requirement that the victim's rights statement be read not only by judges of the superior court but also by judges of limited jurisdiction courts.

STATUS: Not progressing

- Assigned to the Judiciary and Rules committees
- 2/5/08 - first read
- 2/6/08 - second read

7. SB 1100 Domestic violence and child abuse (Strike Everything amendment)

Primary sponsors: Sen. Leah Landrum Taylor, Sen. Tom O'Halleran, Sen. Rebecca Rios

<http://www.azleg.gov/legtext/48leg/2r/proposed/s.1100954pshs.pdf>

Domestic violence and child abuse

(Amending § 25.403.03, Arizona Revised Statutes)

- Allows the court to request or order the services of the Division of Children and Family Services, Department of Economic Security, if the court believes that a child may be the victim of child abuse or neglect.
- Changes prohibitive language to permissive language.

STATUS: Signed into law

- Assigned to the Public Safety and Human Services and Rules committees
- 1/16/08 - first read (original bill)
- 1/16/08 - second read (original bill)
- 2/28/08 – passed PSHS (5-1-1-0) (do pass amended/strike everything)
- 3/3/08 – passed by Rules (proper for consideration)
- 3/4/08 – caucus calendar • 3/13/08 – Committee of the Whole
- 3/18/08 – third read; passed Senate 28-1-1
- 3/18/08 – transmitted to House
- 3/24/08 – first read House
- 3/24/08 – assigned to House Human Services and Rules committees

- 3/25/08 – second read House
- 3/27/08 – passed Human Services Committee, 6-0-0-4
- 4/15/08 – passed by House Rules, 8-0-2-0 (constitutional and in proper form)
- 4/21/08 – third read
- 4/21/08 – transmitted to Senate
- 4/22/08 – transmitted to Governor
- 4/28/08 – signed by Governor

8. SB 1335 Aggravated domestic violence; violation

Primary sponsor: Sen. Tim Bee

<http://www.azleg.gov/legtext/48leg/2r/bills/sb1335p.pdf>

Aggravated domestic violence; classification; definition

(Amending § 13.3601.02, Arizona Revised Statutes; relating to family offenses)

- Heightens the severity of aggravated domestic violence by imposing guilt upon a *second* (rather than third) or subsequent conviction of a domestic violence offense within an 84-month period;
- Disqualifies a person convicted of *one* (rather than two) prior violation of a domestic violence offense within an 84-month period from eligibility for probation, pardon, commutation, or suspension of sentence or release until the person has served four months in jail; and
- Disqualifies a person convicted of *two* (rather than three) prior violations of a domestic violence offense within an 84-month period from eligibility for probation, pardon, commutation, or suspension of sentence or release until the person has served eight months in jail.

STATUS: Not progressing

- Assigned to Public Safety and Human Services and Rules committees
- 1/31/08 – first read
- 2/4/08 – second read
- 2/14/08 – passed by PSHS (5-0-2-0) (do pass)
- 2/18/08 - passed by Rules (proper for consideration); placed on consent calendar
- 2/19/08 – passed in minority and majority caucuses
- 3/3/08 – third read; passed 26-1-3-0
- 3/3/08 – transmitted to the House
- 3/12/08 – first read House
- 3/12/08 – assigned to House Judiciary and Rules
- 3/13/08 – second read House

9. SB 1363 Marriage license fees; domestic violence

Primary sponsors: Sen. Paula Aboud, Sen. Amanda Aguirre

<http://www.azleg.gov/legtext/48leg/2r/bills/sb1363p.pdf>

Fees

(Amending § 12-284, Arizona Revised Statutes; relating to court fees)

- Imposes a surcharge (no dollar amount designated) for each filing of a certified copy or abstract of a marriage application or license, which surcharge shall be used to provide funding for domestic violence shelters pursuant to § 36-3002; and
- Requires the clerk to transmit the collected surcharges to the state treasurer each month for deposit in the domestic violence shelter fund established by § 36-3002.

(Amending § 12-284.03, Arizona Revised Statutes; relating to distribution of fees)

- Technical change

(Amending § 36-3002, Arizona Revised Statutes; relating to domestic violence shelter fund)

- Technical change

STATUS: Not progressing
 •Assigned to Public Safety and Human Services and Rules committees
 • 2/4/08 - first read
 • 2/5/08 - second read

10. SB1386 Domestic violence; definition

Primary sponsor: Sen. Linda Gray

<http://www.azleg.gov/legtext/48leg/2r/proposed/s.1386245pshs.pdf>

Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice

(Amending § 13-3601, Arizona Revised Statutes; relating to domestic violence)

- Per strike everything amendment, changes from mandatory to discretionary the requirement that an indictment, information, complaint, summons or warrant that is issued and involves domestic violence to:
 - State that the offense involved domestic violence.
 - Be designated by “DV.”
- Makes technical changes.
- Emergency measure that becomes effective on the signature of the Governor.

STATUS: Not progressing
 • Assigned to the Public Safety and Human Services, Judiciary, and Rules committees
 • 2/5/08 - first read
 • 2/6/08 - second read
 • 2/14/08 – held by PSHS
 • 2/19/08 – withdrawn from Judiciary
 • 2/27/08 – strike everything
 • 2/28/08 – held by PSHS
 • 4/10/08- on House Human Services agenda if first read and assigned

11. SB 1395 Orders of protection; animals

Primary sponsors: Sen. Karen Johnson, Sen. Paula Aboud

<http://www.azleg.gov/legtext/48leg/2r/bills/sb1395p.pdf>

STATUS: STRIKE EVERYTHING – bill subject changed to proceedings at the counting center; scanned ballots

- Assigned to the Judiciary and Rules committees
- 2/5/08 - first read
- 2/6/08 - second read

12. SB1432 Domestic violence; child custody

Primary sponsor: Sen. Barbara Leff

<http://www.azleg.gov/legtext/48leg/2r/bills/sb1432p.pdf>

Custody; best interests of child

(Amending § 25-403, Arizona Revised Statutes; relating to child custody)

- Clarifies, among the relevant factors that a court must consider in determining custody, that subsection 6 (“the parent more likely to allow the child frequent and meaningful continuing contact with the other parent”) does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.

(Amending § 25-403.3, Arizona Revised Statutes; relating to domestic violence and child abuse)

- Establishes a standard of proof of clear and convincing evidence to rebuttable presumption that award of custody to the parent who committed an act of domestic violence against the other parent is contrary to the child’s best interests.
- Requires the court to make written findings of fact regarding relevant factors in determining whether a person has committed domestic violence.
- Requires the court to make written findings of fact regarding considerations used to determine whether the presumption has been rebutted by clear and convincing evidence.

STATUS: No progress this week

- Assigned to Public Safety and Human Services and Rules committees
- 2/5/08 - first read
- 2/7/08 - second read
- 2/20/08 - amended
- 2/21/08 – passed by PSHS (6-0-1-0) (do pass amended)
- 2/25/08 – passed by Rules (proper for consideration)
- 2/26/08 – passed by Majority and Minority caucuses
- 3/3/08 – Committee of the Whole
- 3/10/08 – Third Read
- 3/10/08 – passed Senate 24-1-5; ready for House
- 3/10/08 – transmitted to House
- 3/20/08 – first read House
- 3/20/08 – assigned to House Judiciary and Rules committees
- 3/24/08 – second read House
- 4/14/08 – on Education (K-12) Committee, if withdrawn from primary committee
- 4/21/08 – held by Judiciary Committee

VII. Call to the Public

Mike Breitling, Risk & Needs Assessment, addressed the committee about a system that is currently being used at Phoenix Municipal Court and Tucson City courts. There are three different domestic violence assessments available: (1) domestic violence inventory for male or female adults (2) domestic violence juvenile inventory (3) pre and post clinical test that allows for assessing improvement. These assessments can keep court records for a lifetime history. The assessments have about 150 questions and take around 30 minutes to administer.

VIII. Adjournment

The meeting was adjourned at 2:00 p.m.

Next Meeting:

Tuesday, September 9, 2008

10:00 a.m. – 2:00 p.m.

State Courts Building, Conference Room 119 A/B