

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

September 9, 2008

10:00 AM –2:00 PM

State Courts Building,

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

MEMBERS PRESENT

Allison Bones, AZCADV
Lt. Mark Carpenter
Honorable Anita Escobedo
Joan Fox, D.D.S.
Tracey Hannah, Esq. (by telephone)
Bridget Humphrey, Esq.
Cmdr. Scott Mascher
Honorable Michelle Lue Sang
Honorable Dennis Lusk
Patricia Madsen, Esq.
Leah Meyers, GOCYF/DFW
Honorable Wendy Million
Police Chief Jerald Monahan
Paul O'Connell
Honorable William O'Neil, Chair
Doug Pilcher
Renaë Tenney
Tracey Wilkinson
Honorable Benjamín Zvenia
(by telephone)

MEMBERS ABSENT

Barbara Appenzeller, CPA
Dr. Jennifer J. Casaletto
Laura Horsley
Sheri Lauritano, Esq.
Honorable Lynda J. Howell
Cheryl L. Karp, Ph.D.
Honorable Jack Peyton
Catherine Shugrue-Schaffner, Esq

STAFF

Kay Radwanski
Lorraine Nevarez

Guests

Kendra Leiby, AZCADV
Blake Holub, MAG
Honorable Ronald Karp (retired)

I. CALL TO ORDER

A. Welcome and Opening Remarks

Judge O'Neil, chair, called the September 9, 2008, meeting of the Committee on the Impact of Domestic Violence and the Courts (CIDVC) to order at 10:15 a.m. Judge O'Neil welcomed the members.

B. Approval of Minutes from May 6, 2008

Minutes of the May 6, 2008, CIDVC meeting were presented for approval.

MOTION: Motion was made and seconded to approve the May 6, 2008, meeting minutes. Motion passed unanimously. CIDVC-08-003

II. Teleconference Etiquette

Diane Allen, AOC, discussed helpful hints and tips for making the telephone conference system function more efficiently, providing a better experience for members who participate telephonically. Some of those helpful tips are as follows:

- If possible, avoid using a speaker phone.
- If possible, do not use a cell phone. A desk phone, without the speaker function enabled, works best with the conference system technology.
- Avoid noisy areas.

Judge O'Neil reminded committee members that their attendance is very important. A member can attend by phone, in person, or by sending another person to serve as proxy. A proxy form must be submitted prior to the meeting. Also, the member cannot direct the proxy on how to vote.

III. Phoenix DV Fatality Review

In April 2005, Governor Napolitano signed into law Senate Bill 1071, authorizing creation of domestic violence fatality review teams and providing the teams protection against civil litigation. The City of Phoenix established the first DV Fatality Review Team (DVFRT), launching the project in 2006. The team's purpose is to examine domestic violence fatalities in order to better understand the dynamics of domestic violence cases and make recommendations for system improvements.

Libby Bissa, City of Phoenix Family Advocacy Center, and Commander Kim Humphrey, Phoenix Police Department, discussed their report on Phoenix' first DV fatality review. In the case studied, the victim was murdered by the defendant, father of her child, at a parenting time exchange. The defendant had repeated contact with the criminal justice system over a number of years, but he was never held accountable for his actions.

The presenters discussed recommendations made by the DVFRT for the system response to these specific cases. They are as follows:

- Increase communication regarding misdemeanor and felony prosecutions;
- Develop a multi-department/agency Phoenix domestic violence coordination team;
- Develop 'best practices" protocols for the Threat Management Team;
- Increase the use of forensic medical exams;
- Develop cross-system communication abilities among prosecutors, advocates, and police and probation units;
- Hire additional advocates for immediate response;
- Increase the knowledge and skills of all members of the criminal justice system, and
- Develop improved processes for assessing lethality for domestic violence victims.

IV. Safe Havens Supervised Visitation and Safe Exchange Grant in Pinal County

Rachel Whyte, Program Administrator, Governor's Office for Children, Youth and Families, and Jerald Monahan, Chief, Apache Junction Police Department, discussed a three-year planning and implementation grant awarded to Pinal County that is being used to set up supervised visitation and safe exchanges for parenting time. The first program site will be implemented in Casa Grande. The purpose is to increase safety for victims and their children by increasing opportunities for supervised visitation and safe exchange in cases of domestic violence. The goals of the programs are:

- To design a safe, child-centered supervised visitation and exchange program for parents and guardians for cases pending in Family Court where there is a history of domestic violence.
- To implement a collaborative and sustainable program of supervised visitation and safe exchanges for parents and guardians for cases pending in Family Court where there is a history of domestic violence.
- To create a model supervised visitation and safe exchange program for other communities throughout the State of Arizona.

An advisory committee meets monthly to discuss ways to help develop a community needs assessment, policies, protocols, trainings, safety plan, etc., and to help identify roles and individuals for implementation of the program in Pinal County.

V. AZCADV Legislative Survey Results

Kendra Leiby, AZCADV, gave a presentation on the Coalition's legislative survey results. The survey helps AZCADV determine its priorities for the organization's legislative agenda next year. Their results indicated the following legislative needs:

- DV Budget
- DV Child Custody
- Legal Assistance Fund
- Aggravated Domestic Violence
- Dating Relationships
- Strangulation/Suffocation
- Protective Order Service/Facilitation
- Address Confidentiality Program

VI. Potential Judiciary Branch Legislative Proposals

Amy Love, Legislative Analyst, AOC, discussed a legislative proposal received by the AOC's legislative team. This proposal requested that all statutory references to "domestic violence" be changed to "domestic victim." The core issue of this proposal stems from the perception of what constitutes domestic "violence." At least one state, Wisconsin, uses the term "domestic abuse," rather than "domestic violence" in its statute. Ms. Love requested feedback from the Committee regarding the terminology.

Committee Comments:

- Domestic violence has its own definition in this state as it does in other states. Laws should change when moving something forward; this proposal only renames a term. The Judicial College could address this issue with more training on domestic violence.
- Domestic violence is not solely physical harm. It can be emotional, physiological etc.
- Education would be a better approach to this issue.

MOTION: The Committee would not support the AOC moving forward with this type of bill. Motion passed unanimously. CIDVC-08-004

VII. Workgroup Reports

- A. DV Forms and Process Workgroup (Hon. Elizabeth Finn, Chair) – Staff discussed some of technical changes the workgroup is recommending for following forms: (1) Notice of Hearing Prior to-order of protection, injunction against harassment, injunction against workplace harassment. (2) Plaintiff's Guide Sheet for Protective Orders (3) Request—hearing, dismiss order, cancel hearing and order and (4) Hearing Order. The Committee recommended the workgroup review the forms again based on the suggestions and comments given by other committee members.

- B. DV Resource Book (Hon. Michelle Lue Sang, Chair) – The Judicial Education Division’s Publication Committee will have oversight of the domestic violence civil and criminal bench books. Judge Million, who also is a member of the Publications Committee, has re-formatted the DV civil bench book to make it more useful to judges on the bench. The bench book is available on the intranet AJIN. The bench book is organized in conjunction with the Arizona Rules of Protective Order Procedure and includes notes from the previous version of the bench book and comments from the rules. It was suggested that the bench book include more scripts for the judges’ benefit. The previous DV civil bench book contains extensive information on domestic violence and resources, such as contact information for shelters. The group discussed the possibility of CIDVC developing this valuable information into a separate resource book. Under the auspices of the Publications Committee, the DV criminal bench book will be incorporated into the standard Criminal Bench Book as criminal procedure for DV cases is not different from procedure in other types of criminal matters.
- C. Best Practices (Hon. Wendy Million, Tracy Hannah) - No update at this time.
- D. DV Education Workgroup (Hon. Michelle Lue Sang, Chair) – The workgroup’s focus is on sessions for the Judicial Conference. Any suggestions would be greatly appreciated.
- E. Legislative Workgroup (Hon. Benjamin Zvenia, Acting Chair)—No update at this time.

VIII. Discussion: “No Contact” Provision on Protective Orders

Patricia Madsen, Community Legal Services, has heard from lay advocates that some police officers believe a protective order is unenforceable unless it includes a physical distance that defendant must stay from the plaintiff. This is incorrect as the statutes make no such requirement. Chief Monahan offered to bring the issue to the East Valley Chiefs Association. The Forms and Process Workgroup will be developing an information sheet for law enforcement. This issue of “no contact” provision on protective orders will be added to the information sheet. This information sheet could be used in training or placed in a common area where officers gather to pick up forms.

IX. Petition to Amend ARPOP

Judge O’Neil discussed a petition submitted to the Arizona Supreme Court regarding changes to ARPOP. HB 2248, signed into law during the most recent legislative session,

requires judges, when deciding whether to issue protective orders, to consider evidence of harassment by electronic contact or communication. The rules petition requests the inclusion of the statutory language in ARPOP Rule 6 so the rule mirrors the statute. Also, because of a statutory change in the warning language on Orders of Protection in 2007, technical changes to statutory citations within the rules became necessary.

X. Legislative Update, Douglass v. State

Staff gave a legislative update on the final summary of the DV-related bills as follows:

| | Bill | Description |
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| Passed | HB 2248 - Electronic communications; harassment; order; protection | Requires the court, when deciding whether to issue an injunction against harassment or an order of protection, to review the petition, any other pleadings on file and any evidence submitted by the plaintiff, <i>including any evidence of harassment by electronic contact or communication</i> . Amends ARS §§ 12-1809 and 13-3602. |
| | SB 1100 - Domestic violence and child abuse | 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. Amends ARS § 25.403.03. |
| | SB1476 - Probation; facilities; safe communities act | Allows the court to adjust the period of a defendant’s supervised probation for earned time credit. Requires the Legislature to annually appropriate up to 40 percent of any cost savings related to a reduction in probation revocations and new crimes committed by probationers to the Adult Probation Services Fund of each county. Amends ARS §§ 12-267, 13-901, 13-903 and 13-917; amends Title 12, Ch. 2, Art. 7, Arizona Revised Statutes, by adding Section 12-270; amends Title 41, Ch. 11, Art. 1, Arizona Revised Statutes, by adding Section 41-1608. |
| Failed | HB 2374 - Domestic violence; dating relationships | Would have amended ARS § 13-3601 by adding dating relationship to the definition of domestic violence. Set forth factors for the court to consider in determining whether a |

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| | relationship met the definition. |
| HB 2407 - Harassment; classification; definition | Would have amended ARS § 13-2921 to change the classification of harassment from a class 1 misdemeanor to a class 5 felony if the defendant was at least 18 years old and knew or had reason to know the victim was a minor; would have expanded the definition of harassment. |
| HB 2545 - Strangulation and suffocation; study committee | Would have established a committee, made recommendations, and prepared a report on the issue of intentional strangulation or suffocation in domestic violence situations. |
| HB 2681 - Orders of protection; animals | Would have amended ARS § 13-3602 to include custody of animals to the types of relief a judge could grant when issuing an order of protection. |
| HB 2687 - Victim's rights; statement of rights | Would have amended ARS § 13-4438 to require posting and reading of a statement of victim's rights in courthouses and at the beginning of the regular criminal docket; would have extended the reading requirement to limited jurisdiction courts. |
| SB 1335 - Aggravated domestic violence; violation | Would have amended ARS § 13-360102 by heightening the severity of aggravated domestic violence by imposing guilt upon a second (rather than third) or subsequent conviction of a DV offense within an 84-month period. |
| SB 1363 - Marriage license fees; domestic violence | Would have amended ARS § 12-284 by imposing a surcharge for certified copies or abstracts of marriage applications or licenses; surcharge would have been used to provide funding for DV shelters. |
| SB 1386 - Domestic violence; definition | Would have amended ARS § 13-3601 to change from mandatory to discretionary the requirement that an indictment, information, complaint, summons or warrant that is issued and involves DV to state that the offense involved domestic violence and that it be designated by "DV." |
| SB 1432 - Domestic violence; child custody | Would have amended ARS §§ 25-403 and 25-403.3 to clarify that the subsection 6 factor ("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 |

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| | <p>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; would have established a standard of proof of clear and convincing evidence to the rebuttable presumption that an award of custody to a parent who committed an act of DV against the other parent is contrary to the child's best interests.</p> |
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Staff also discussed *Douglass v. State* (2008 WL 962906, Ariz. App. Div. 1). This case involved prosecution of a defendant for contempt of a protection order. Arizona is unique in that it has a victim's rights provision in its constitution that gives victims of any type of crime certain rights (such as the right to not be required to speak to the defendant or defendant's attorney) that other states may not offer to them. In this particular case, the wife had a protection order against the husband (defendant) and he violated the order. Since the civil order was violated, it became a criminal matter -- *State of Arizona v. Douglass*. Defendant argued that the criminal matter changed the status of the wife from victim to witness, allowing her to be deposed by his attorney. However, the Court of Appeals upheld the superior court and the justice court. The court concluded that the Order of Protection exists because the plaintiff went to court seeking protection and she is a victim under the Victims' Rights Bill; therefore, she could not be deposed in the criminal contempt case. This also is important in cases where victims want to make victim impact statements at time of sentencing.

XI. Call to the Public

No members of the public addressed the committee.

XIII. Adjournment

The meeting was adjourned at 1:55 p.m.

Next Meeting:

Tuesday, November 4, 2008, 10:00 a.m. – 2:00 p.m.
 State Courts Building, Conference Room 119 A/B