

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

September 5, 2007
10:00 AM –2:00 PM
State Courts Building,
1501 W. Washington St, Room 345 A/B

MEMBERS PRESENT

Barbara Appenzeller, CPA
Lt. Mark Carpenter
(via proxy Detective Brian Peach)
Jennifer J. Casaletto
Honorable Anita Escobedo
Larry Farnsworth
Joan Fox, DDS
Wendy Hernandez
Kristen Hoffmeyer, Esq.
(via proxy Stephanie Low)
Bridget Humphrey, Esq.
Cheryl L. Karp, Ph.D.
Honorable Ronald I. Karp
Sheri Lauritano, Esq.
Honorable Michelle Lue Sang
Honorable Dennis Lusk
Honorable Mark Moran
Paul O'Connell
Honorable William O'Neil, Chair
Doug Pilcher
Robert Roll
Kim Van Nimwegen, MSW
Tracey Wilkinson
Honorable Benjamin Zvenia

MEMBERS ABSENT

Jerold Monahan
Honorable Sherry L. Geisler
Tracey Hannah, Esq.
Patricia Klahr
Honorable Carolyn Passamonte
Honorable Jack Peyton
Catherine Shugrue-Schaffner

STAFF

Kay Radwanski
Lorraine Nevarez

Guests

Leah Heathcoat, CAAFA
Jami Cornish, Community Legal Services
Lindsay Simmons, AZCADV
Kendra Leiby, AZCADV
Amy S. Peter, MAG
Renae Tenney, MAG
Chris Groninger, AZFLSE
Theresa Barrett, AOC
Amy Wood, AOC
Julie Dybas, AOC
Paul Julien, AOC

I. CALL TO ORDER

A. Welcome and Opening Remarks

Judge O'Neil, chair, called the September 5, 2007, meeting of the Committee on the Impact of Domestic Violence and the Courts to order at 10:05 a.m. Judge O'Neil welcomed the members.

B. Approval of Minutes from June 6, 2007

Minutes of the June 6, 2007, 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 June 6, 2007, meeting minutes. Motion passed unanimously.
CIDVC-07-004**

II. Discussion -- Proxy Clarification

Judge O'Neil gave an update on the ACJA § 1-104, advising that a proxy must be a non-member of the committee. Chief Justice McGregor clarified the proxy policy in a memo provided in the committee members' packets.

III. Maricopa Association of Governments

Renae Tenney, Human Services Planner, Maricopa Association of Governments (MAG), gave a presentation about MAG's domestic violence initiatives. MAG, a council of governments serving communities across the region, is a voluntary association of 25 cities and towns. MAG is charged with policy making and regional planning in the areas of transportation, environmental issues and human services. The MAG Regional Domestic Violence Council was founded in 2000 and is comprised of elected officials, service providers, first responders, healthcare providers, and private business owners. Currently, the council has already initiated training, research and outreach in domestic violence.

One of MAG's recent projects is Youth Empowerment. The purpose of Youth Empowerment is to raise teen awareness about violence in dating relationships. Youth do not feel safe in their relationships, homes or their communities. About 51% of teens say they or someone they know has experienced violence in a dating relationship. Since there was a need for teen violence education, the council decided to create the Youth Empowerment Project targeted to junior high and high school students about the issue of teen dating violence. The deliverables for this project include: (1) fact sheets; (2) resource lists; (3) testimonials; (4) public service announcement competition, and (5) Web of Friends website. MAG is in the process of contacting schools, youth organizations, and faith-based groups, encouraging them to enter the public service announcement competition. Web of Friends is the official site for the project and has all the deliverables available. Volunteer opportunities include promoting the Youth Empowerment project and recruiting judges for the public service announcement competition.

IV. Revision of ACJA § 5-204. Administration of Victims' Rights

Amy Wood, AOC, gave an update on the revision of the Administration of Victims Rights code section. The purpose for the revision is (1) legislation SB1286 (2) case law (State v. Klein and State v. Hansen) and (3) to make the code section complement the priority of payment code section as opposed to covering the same issue in both code sections. The code section includes new definitions of the terms *crime* and *victim* and addresses disbursement of restitution.

**MOTION: Motion was made and seconded to approve the recommendation for current changes in the Victims Rights Code Section. Motion passed unanimously.
CIDVC-07-005**

V. Update on CPOR/Phoenix Municipal Project

Doug Pilcher and Robert Roll gave an update on the CPOR/Phoenix pilot project. The Court Protective Order Repository (CPOR) contains data from the case management systems in the state of Arizona. Currently, CPOR receives protective order data from all but three courts, but in January, because of Project Passport moving forward, CPOR will receive protective order data from all courts. CPOR is the master of record and Law Enforcement is the holder of record, meaning the courts can modify protective orders. Currently, there are 231,000 protective orders in CPOR. The Law Enforcement Protective Order Repository (LPOR) contains data about protective orders that have been issued. Coconino, Navajo, Gila and La Paz counties are fully utilizing CPOR and LPOR. These counties are sending their information electronically into CPOR, which moves the information into LPOR and finally to NCIC, a national repository. The goal is to have protective orders transmitted electronically to these databases for better accuracy.

The CPOR/Phoenix pilot project will give probation officers in the municipal court's Pretrial Services Unit limited access to CPOR for the purpose of viewing a defendant's protective order history. The information will be used to complete a lethality assessment, which is part of a pre-sentence report. Any information Pretrial Services retrieves from CPOR is proprietary and will be destroyed after the judge has reviewed it.

VI. Draft Code: Priority of Offender Payment for Superior Court

Julie Dybas, AOC, gave an update on the draft code for Priority of Offender Payment in Superior courts. The existing code deals with adult offenders in single cases. The Priority of Offender Payment for Superior Court Code was developed because of: (1) lack of juvenile-type information; (2) new case management systems and the need for more information, and (3) continuous questions regarding the definition of "active" and "inactive" cases. The Priority of Offender Payment code section provides clarification regarding allocation of fees and restitution paid by a defendant. The code section will be sent out to other Supreme Court committees for comment.

VI. ABA Annual Meeting-DV Update

Judge Zvenia gave an update on the 2007 ABA Annual Conference in San Francisco, CA. He said he wanted to share all information that was presented so the domestic violence committees can continue to be progressive and innovative leaders in the 21st Century. The following information was presented:

A. VAWA 2005

The Violence Against Women Act, unanimously reauthorized by the U.S. Congress and signed into law, amended federal criminal statutes, provided funding for proven effective programs, and created new programs to fill gaps in the original legislation. Changes in all three of these areas provided additional avenues to address domestic and sexual violence experienced by teens and young adults.

B. Changes in Criminal Law

The original VAWA act passed in 1994 did not address dating relationships. Dating relationships were not subject to this statute, whether involving adults or minors.

VAWA 2005 amended the statute making it a federal crime to cross state lines or use the mail “with intent to kill, injure, harass, or intimidate...a dating partner” and place that person in reasonable fear. The amendment goes on to define dating partner as “a person who is or has been in a social relationship based on a consideration of (a) the length of the relationship; (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.” (18 USC § 2266) This change provided additional protection for adult dating relationships, but it is particularly critical for teens and young adults who are less likely to be married to, living with, or having a child with their intimate partners.

Another important change in the federal criminal law under VAWA 2005 included expanded coverage of the crime of stalking. The federal crime of stalking (18 USC § 2261A) was broadened in three ways: the actions covered; the stalker’s intentions, and the victim’s resulting fear. The law previously only applied to interstate stalking. Responding to the ever-changing technology now available (i.e., text and instant messaging, emails, etc.) and opportunities for its misuse, VAWA 2005 amended the statute to include “plac[ing] someone under surveillance or using interactive computer service” in the course of stalking. With the high usage of technology by teens and young adults, this change is particularly important to address reality in their world. Prosecution is further aided by amendments expanding stalker’s required intent from “intent to cause death or injury” to “intent to kill, injure, harass or intimidate, or to cause substantial emotional distress.” Finally, cyber stalking was criminalized by amending the prohibition on “obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications” to cover internet communications as well (47 USC §v 223(h)).

C. Funding for Services to Victims of Teen Dating Violence

As in the case in the federal criminal statutes, the definition of domestic violence within VAWA programs is limited to relationships where the parties have been married, live together, or have a child in common. In the 2000 reauthorization, a definition of dating violence was added to VAWA. However, most programs funded under VAWA were designated for domestic violence services only; they did not include the term “dating violence.” VAWA 2005 addressed this problem by expanding all existing programs to cover domestic violence, dating violence, sexual assault and stalking. Moreover, the language used had always been silent as to the age of the victims who could be served. VAWA 2005 amended all programs to clearly state that both adult and youth victims can be served under these programs. This includes the important Legal Assistance for Victims of Violence Programs (42 USC § 379gg-6). Programs will be targeted to provide services to victims of teen dating violence.

A new program in this area is called the Services to Advocate for and Respond to Youth program (42USC § 14043c) or STARY, which will provide much-needed funding to stop the cycle of violence where it is most likely to occur — youth ages 16-24. (Data for this comes from Bureau of Justice Statistics, USDOJ, NCJ 187635, Intimate Partner Violence and Age of Victim, 1993-1999 (October 2001)).

Also, the Access to Justice for Youth program (42 USC § 1043c-1) was created to help communities build a systemic response to teen dating violence. Finally, the Supporting Teens through Education and Protection program (42 USC § 14043c-3) or STEP focuses on resources on the one location where large numbers of youth can be reached — schools. While schools have been envisioned as a safe haven, this is far from the truth as violence in schools has shattered this idea and has left many young people afraid of the very place they are sent to grow and mature. Thousands of incidents of rape and sexual assault are reported in the public schools.

All above information was reported to bring this to the committee's attention to see if and what areas of its responsibility need changes or amending to stay focused in the future.

VII. Update on ARPOP and Petition

Judge O'Neil gave an update on the status of the Rules. The Rules were made available for public comment but no comments were received. The Domestic Violence Rules Committee submitted a petition in June, requesting adoption of the Rules with a delayed effective date of January 1, 2009. The Supreme Court is meeting in September to review all Rules petitions.

VIII. Workgroup Reports

- A. DV Forms Workgroup (Commissioner Passamonte, Chair) -- No update at this time
- B. DV Benchbook (Hon. Wendy Hernandez, Chair) -- In the process of working with Education Services in updating the Benchbook.
- C. DV Criminal Benchbook (Hon. Mark Moran, Chair) -- The criminal Benchbook was released in 2004 and needs a complete revision.
- D. DV Education Workgroup (Hon. Mark Moran, Chair) -- Requesting ideas for the next judicial conference.
- E. Legislative Workgroup (Chair Vacant)—No update at this time. Judge Zvenia agreed to be Acting Chair of this workgroup until a permanent chair is appointed. Paul O'Connell, Dennis Lusk, and Kyle Bryson asked to be added to this workgroup.
- F. CPOR Policy/Technology Workgroup (Robert Roll, Chair)—Update previously given in the minutes.

VIII. Legislative Update

SB1424 Aggravated Domestic Violence

Increases the look-back period in which a third or subsequent domestic violence offense becomes an aggravated domestic violence offense from 60 months to 84 months, similar to the Aggravated DUI statute.

SB1227 Domestic Violence; Lease Termination

In pertinent part, permits a tenant who is a victim of domestic violence to terminate a rental agreement if written notice is provided within 30 days to a landlord and a request is made to be released from the rental agreement. The victim must provide the landlord with either a copy of any protective order or a copy of a written departmental report from a law enforcement agency that states that the tenant notified the law enforcement agency that the tenant was a victim of domestic violence. The landlord may request a receipt or signed statement that an order of protection has been submitted to an authorized officer of the court for service as well as the name and address of the person named if known by the victim. A person named in the departmental report or the order of protection who provokes an early lease termination is deemed to have interfered with the residential rental agreement between the landlord and the tenant, and may be civilly liable for all economic losses incurred by a landlord, including unpaid rent, early lease termination fees, costs to repair damage to the premises and any reductions or waivers of rent for the domestic violence early lease termination. An emergency order of protection or protection order issued to a resident of a rental property automatically applies to the entire residential rental property in which the tenant has a rental agreement.

SB1006 Public Records; Confidentiality

Adds probation officers, among others, to the list of persons who may request redaction of personal identifying information, such as home address and phone numbers, from records maintained by the county assessor, recorder or treasurer or by the state Department of Transportation. Probation officers were already included in the statutes under different language.

SB1286 Victims' Rights Omnibus

Requires probation officers supervising adults to monitor restitution payments. Requires the clerk of the court to provide to the prosecutor and the court a monthly report listing defendants who are in default of restitution. Failure to pay restitution subjects a defendant to an order to show cause re: contempt. Probation may be extended five years for a felony and two years for a misdemeanor if restitution is still outstanding. Effective January 1, 2008, modifies the warning on an *ex parte* Order of Protection to state that the defendant will be subject to arrest and prosecuted for interference with judicial proceedings and any other crime if the order is violated. Requires the agency with custody of the defendant to notify the victim and other designated persons, if known, on an Order of Protection if the defendant is released after being arrested for an IJP. The Prosecutor's Office must provide a victim with notice of any continuance.

Effective December 1, 2007. a victim who requests notice of post-conviction or appellate proceedings shall receive immediate notice from the prosecutor of proceedings and any

decisions that arise. A victim or victim's counsel who requests notice must receive a copy of the memorandum decision or opinion from the Supreme Court or the Court of Appeals concurrently with the parties.

Prohibits any victim contact or identifying information from becoming publicly accessible and requires victim contact information to be redacted from a police report by the originating agency. This provision does not apply to: a victim's name, records transmitted between law enforcement, prosecutors and the court, records that the victim consented to release, or the address or location at which the crime occurred.

Requires the court or clerk to provide at no charge to a victim the minute entry or portion of the record arising out of the offense committed against the victim if reasonably necessary for the purpose of representation regarding a claimed victim's right.

Requires the prosecutor to make reasonable efforts to notify a victim of any request for a continuance. Requires the court, if the request for continuance is in writing and the victim is represented by counsel who files a notice of appearance, to make reasonable efforts to notify the victim's counsel of the request in the same manner as the party notified. A continuance may be granted only if there are extraordinary circumstances and the delay is indispensable to the interests of justice and only for so long as is in the interest of justice. The reason for the continuance must be stated on the record. Does not apply to municipal and justice of the peace courts; however, the intent is that the extraordinary circumstances and interest of justice provisions apply to all courts.

V. Benchbook Updates

Paul Julien, Judicial Education Officer, AOC, agreed to partner with CIDVC in updating the Criminal and Civil DV Benchbooks. The plan is to completely overhaul the benchbooks within the next year. The possibility of combining both the civil and criminal DV benchbooks was discussed. The goal is for the current materials to be developed into a true benchbook containing scripts and legal reference information. Resource material found in the current civil DV benchbook will be incorporated into a separate resource manual that will be available to the public. Meanwhile, Judge Hernandez will work on a revision of the civil benchbook that will incorporate the Arizona Rules of Protective Order Procedure. Likewise, Judge Moran will update the criminal benchbook. These two updated benchbooks will be used until the overhaul by Education Services. Judge Hernandez noted that court staff rely heavily on the current benchbook so CIDVC may want to consider development of a separate staff manual. The committee will consider whether the proposed resource manual will fulfill that purpose.

IV. Call to the Public/Adjournment

No members of the public wished to address the committee. Chair adjourned the meeting at 2:00 p.m.

Next Meeting:

Wednesday, November 14, 2007

10:00 a.m. – 2:00 p.m.

State Courts Building, Conference Room 345 A/B