

Unfinished Issues

1) **Renaming DV Benchbook**

The AOC Education Services Division wants to rename the DV Benchbook to reflect their philosophy that a “benchbook” should consist of scripts and checklists. This will require that the DV Benchbook be split into two books. One would be a “DV Manual” that will contain the educational materials that are currently in CIDVC’s benchbook. The second would be a “DV Benchbook” that will contain the scripts and checklists. There is nothing prohibiting the “DV Manual” from containing the scripts and checklists.

2) **Committee on workplace violence**

Injunction Against Workplace Harassment - Judge Moran (April 04, 2001)

The AOC management is not convinced that there is sufficient work to warrant creating another committee. Also DPS wants a yes or no on firearms prohibition. Judge Moran will draft a letter to recommend the IAWH be moved to Human Resources.

3) **Regional Practice Discrepancies**

Regional Practice Discrepancies - Patrick Scott, AOC- CSD April 04, 2001

This has to do with the Superior court of Pima and Yavapai Counties turning DV victims away and sending them to a limited jurisdiction court to get an OP. This needs to be addressed across the board; the committee should gather cooperation from general jurisdiction judges. CIDVC wants to promote a policy change to delete paragraph 2 from the “Access to the Courts” section (p.9) of the DV Benchbook. If a judge or commissioner is present in the court, the victim’s petition should be heard. The victim should not be referred to another court. Members are asked to gather actual incidents of this happening in the state and provide to Judge Moran. Judge Moran will present the issue as an informational item to the AJC, superior court, presiding judges committee get on. Go ahead and publish the OP benchbook.

Motion: Promote a policy change close the victim referral loophole.

Action: Pass

Rejecting Victims: Committee Discussion October 18, 2001

Several judges reported recent incidents of courts stating that protective orders are not issued by their court and referred the victim to another jurisdiction. How do we stop this practice? One anecdotal problem reportedly put forth by Judge Anagnost is the belief that in the limited jurisdiction courts 2/3rds of protective orders cases are used as a substitute for domestic relations case. From a volume standpoint he supports sending these cases to superior court. It was noted that the statutes may need to be revised to allow this action. Along with the issue of shuffling victims to other courts, Judge Anagnost reportedly voiced a concern regarding the ability of judges to access more information on defendants. Uncovering information in the Court Protective Order Repository (CPOR) that same parties in the protective order case are also involved in other similar case may impact the judge’s

decision in the protection order case. Perhaps the issue of information access by judges may require a statute/policy (DV Benchbook) change or the issue may be addressed in the Policy Workgroup. Additionally, some judges don't want to handle violation of protective order cases if violation occurred outside their jurisdiction. A point was brought up that in criminal cases charges should be filed where violations occur.

A discussion ensued on the topic of police departments refusing to serve orders from another jurisdiction, despite statute instructing law enforcement to perform the service. Two specific police departments, Mesa and Glendale, were identified as having policies that support not serving an order. Glendale also refuses to provide a law enforcement standby to allow the defendant to retrieve personal items from the home in cases where exclusive use of the residence by the victim is ordered by the court. Chief McCann suggests that it is possible that city attorney advised law enforcement to not do a standby due to a perceived liability issue. It could be perceived as a type of extortion if a property dispute erupts and the officer enforces order and makes the defendant leave. Chief McCann also related a view from the Chiefs of Police Association that the service of injunctions is an unfunded mandate. However, there are those police departments which believe law enforcement should be aware of dispute in their jurisdiction to monitor situation and provide an informed response for officer safety. We must have ways for insuring there is an accountability measure for an agency's non-compliance with statutes. Chief McCann volunteered to address the Chiefs of Police Association and Judge Moran volunteered to bring up the issue in appropriate state meetings and committees.

The following issues were also discussed:

Court shopping, where a victim petition is denied at one court and then the victim goes to another court to petition for an order. If the judge has access to this information, the judge may question victim on it more closely.

Savvy defendants, as the defendant gets more educated on the system, they can develop more tactics to impact the ability of a victim to get an order. One tactic is to get a protective order issued; then when the victim goes to the court to request an order, the judge sees the defendant's previous order and questions the issue.

Exclusive use of the residence, a problem which needs resolution. It is hoped that once the CPOR becomes active, this problem will be solved. Again, these are a policy issues related to the use and type of information available to judges. Commissioner Wotruba requested clarification on the progress in making CPOR available to the superior courts.

Motion: Proposal that this be dealt with through the presiding judges in each county and that we select an appropriate forum for Judge Moran or CIDVC members to address this issue.

Action: Approved

4) **DV Quarterly**

DV Quarterly: Commissioner Wotruba June 05, 2001

CIDVC needs to do some marketing let people know what we do and that we are a resource. A short, one page bulletin format, published on a quarterly basis, is an effective method. It will contain several categories, such as "DV Deaths," "What's New," "Legislation," "Old Issues," and "Scenarios." Included will be references to the benchbook and the scenarios that will be thought provoking.

Motion: Publish in hard copy form and on Wendell; add the effective date of August 9 for this year's legislation; under "Old Issues" place categories for "Judges," "Law Enforcement" and "Victims;" use a larger font and more bold; publish on July 01, 2001.

Action: Pass

5) **Definition of "material injury"**

Clarifying language Oct 10, 2001

Dr. Partap requested that clarification of "material injury" be developed. As physicians have mandatory reporting requirements for domestic violence assaults, it is important that the interpretation of the legal language be accurate and correct. Dr. Lanier added that adult health care providers also ask about safety of the patient as well as their children's safety. Should the physician warn the patient that they are a mandatory reporter? Dr. Partap is on a panel which is developing a training video on this topic. Jerry Bernstein volunteered to assist Dr. Partap. Two other resources are the AG Office and Ann Tarpay from the Department of Human Services.

Release of medical record

Dr. Lanier stated that an adult medical record does not have to be released to the spouse, however, in CPS cases the child's record can be released to both parents. This can compromise the safety of the victim. Can confidentiality be extended all cases where domestic violence is revealed? Judge Moran discussed this with a professor from NAU while working on the Criminal Benchbook. The professor stated that the spouse has no right to privileged information due to the potential for further abusive actions (harass, get back on, etc) Since it is a safety issue and barrier to pediatric healthcare perhaps a policy create copies of record in these cases and file the copies in a separate file. The committee should look at the legislation to clarify disclosure in DV cases and define child abuse more clearly- especially in cases where the child witnesses the violence. Mr. Bernstein volunteered to assist.

6) **Spanish forms for the Web issue**

7) **Ethics opinion**

Ethics Opinion: August 8, 2002

New ethics opinions on judicial involvement in multi-disciplinary committees have been crafted around the country that gives hope to the possibility of revising Arizona's ethic opinion. The committee needs to develop reconsideration with a narrow focus. The arguments, pro & con, need to be distilled with a focus on how question is framed. Include a question on court staff participation; specifically ask if are they included. Workgroup, perhaps a spokes person from CIDVC / AOC to represent the courts.

Ethics Opinion Dianne Post Oct 16, 2002

Ms. Post presented a report on the ethics opinion reconsideration task. One solution includes developing a guideline for determining the acceptability of a commission or commission to include judges. There are many groups/ commissions on which judicial participation will be very helpful. The committee needs to define a specific question with a very narrow focus. A systematic evaluation of a problem needs input by judges along with the other criminal justice representatives; this could be the focus of the question. For instance: can a judge sit on the Governor's DV Commission? The aim or purpose of the commission on which the judge wants to participate must be considered. However, there are various judges currently on various commissions, using any one of them as an example for a question specifically opens up the possibility of removing these judges from these groups. One person suggested that it may be best to try to get an opinion that allows a judge to recuse him/herself if needed. Judges need the contact with the community as well to keep in touch with what is happening in their jurisdiction. The committee should craft the question is such a way that leads to an affirmative response using the administration of justice or connection to the community as a key. In the request putting a package together we should discuss the efficacy of the system and working together to provide expertise and ask if the "example commission's" agenda conforms to ethics rules. It may be wise to use a different, non-DV committee. This avoids using precedent in deciding the response, if it results in a positive response, then send a second request to clarify the discrepancy. Perhaps we should use a different fact pattern, with a similar, yet different set of circumstances, instead of asking for a re-consideration. This unfortunately makes it a two step approach.

Motion: Table for further research and discussion

Vote: Pass

8) **Service of OPs**

Service of OP by Mesa Police: Lt. Doug Kline February 14, 2002

Service of OPs by local police departments is a long standing issue. At the last meeting the committee heard from Glendale PD. CIDVC has also received complaints regarding Mesa police failing to serve or enforce OPs. By inviting them to speak to CIDVC we gained a clearer understanding of their policies and how to address complaints. The officers are receiving the training and the Mesa Police Department is interested in knowing if their policies are violated. Lt. Kline advised us to instruct people with complaints to contact the Mesa Family Advocacy Center or a Field Supervisor. Lt. Kline requested that the OP form

be changed to clarify “stand by” situations in paragraph 4. Additionally Lt. Kline stated that OPs stating “Keep xx number of feet away” is not a problem; perhaps stating “on or near” will be more helpful. Judges should be very specific about the details of their orders.

Service of OP by Law Enforcement Dec 12, 2001

Complaints have been received that Glendale and Mesa police are not following the full faith and credit requirements on serving orders. Glendale’s interpretation is that they are not required to perform the service. Sgt. Carpenter, Glendale, stated that their General Order instructs them to serve OP. Glendale’s warrant officer accepts orders from outside their jurisdiction and , will use victim copy for service, if they know the defendant is at a particular place. Sgt. Carpenter will ask their legal advisor to review statute 13-3602(D). Chief Jan Strauss of Mesa takes Arizona Chiefs of Police position in that it is another unfunded mandate, so not serving there orders. Chief McCann will contact Chief Strauss in Mesa regarding their process policy and report to the committee.

9) Brady issues (some courts won't remove)-who is going to do what?

10) AO98-66 -to ACJA 5-209

A.O 98-66: C. Drezak October 16, 2002

The AOC is in the process of changing a variety of Administrative Orders (AO) into Administrative Codes. AO 98-66 outlines court policies for domestic violence cases. The rewritten version into Administrative Code is an updated version that includes new statutes and a requirement for mandatory DV training. Some suggested changes include rewording of B.(1)(b) regarding the hearing of a petition; clarifying the section discussing “mutual orders;” rewording section C(1)(a) regarding the availability of courts to issue protective orders, except for as applicable in section 2(b).

Motion: Defer until the December meeting.

Vote: Pass

Tasks: Committee is to review the document and email any suggested changes to Catherine.

CPOR Policy workgroup: Judge Moran February 19, 2003

A meeting was held on February 7, 2003 with law enforcement representatives to specifically discuss the issue of law enforcement access to unserved protection orders. After much discussion on the pros and cons of the issue, the workgroup recommends that CIDVC approve a policy that allows access to unserved protection orders by law enforcement. The workgroup feels this is in the best interest of and protects the safety of both victims and officers. Specific implementation steps were not identified; however, the AOC has the ability to incorporate such a process into the Court Protective Order Repository (CPOR). A point of interest was noted. In the business process there is sometimes an asynchronous flow of the certificate of service paperwork. Currently the business process functions on the following assumption: 1) order is issued, 2) order is served, 3) certificate of service is returned to the court, 4) the court forwards the certificate to holder of record (HoR), and 5) the HoR enters the service information into the National Criminal Information Computer (NCIC). However, sometimes the certificate of service reaches the HoR before reaching the court. An example of this occurrence is when a sheriff’s officer serves the order and the

same sheriff's office is the HoR. Sending the certificate of service to the court and then having the court return the certificate of service back to the sheriff's office can take a week. Meanwhile there is a valid, enforceable order "on the street" that law enforcement cannot act upon due to the fact that the order is still listed as "unserved" and therefore inaccessible to law enforcement. As such, CIDVC should at least consider granting access to unserved orders to the Holders of Record. The workgroup meeting minutes are available upon request. There is also a list of remaining policy issues which need to be discussed and the compiled list is available on the CPOR Policy Workgroup web page. A formal recommendation package will be presented for approval at the April 16, 2003 meeting. An undecided issue: Whether to approve this position now.

CPOR Policy Workgroup Report: Judge Moran October 16, 2002

Judge Moran presented a progress report on the workgroup's accomplishments. Many issues are still not agreed upon, so there is no formal document for the committee to review. Part of the problem is that the various criminal justice agencies have very differing needs and concerns. It may be easier to agree on general guidelines than specific rules at this point. With this in mind, the workgroup did agree on a break down by users : victim, courts, LE, etc, and suggested a general rule with specific exceptions granted as needed. As a general rule, only make available to any group orders that have been served. No information on unserved orders will be available to the public in general. A protected address is not disclosable, even by judges. The issue of allowing law enforcement access to unserved orders has been deferred. This issue will be brought to the full committee.