



Commission
to Prevent Violence
Against Women

Governor’s Commission to Prevent Violence Against Women
May 9, 2023, 10:00 AM
Arizona Prosecuting Attorneys’ Advisory Council
3838 N. Central Ave, Phoenix, AZ 85012

A general meeting of the Governor’s Commission to Prevent Violence Against Women was convened on May 9, 2023, notice having been duly given.

Members Present (12)	Members Absent (5)
Elizabeth Ortiz, Co-Chair	Nicole Bidwill
Kate Brophy McGee, Co-Chair	Richard Jessup
Kirstin Flores	Eve Scarff
Maritza Valenzuela Proxy for Sheila Sjolander	Kay Radwanski
Tene Marion	Monica Yelin
Jenna Panas	
Ed Mercurio-Sakwa	
Jon Smith	
Beth Hoel	
Mark Perkovich Proxy for Neil Websdale	
Patricia Klahr	
Jon Eliason	
Staff and Guests Present (5)	
Emily Uline-Olmstead	Vicki Otto
Conrad Lindo	David Newstone
	Jamie Balson

Call to Order

- **Elizabeth Ortiz, Co-Chair**, called the Governor’s Commission to Prevent Violence Against Women meeting to order at **10:01 AM** with 12 members present, and quorum met.

Welcome/Introductions

- **Kate Brophy McGee, Co-Chair**, welcomed everyone and conducted the roll call.

Approval of Minutes

- **Elizabeth Ortiz, Co-Chair**, requested a review of the **March 7, 2023**, meeting minutes.

- **Jenna Panas** noted the misspelling of the acronym for Family Violence Prevention & Services Act Program (FVPSA) within the third bullet of her agency presentation. This revision was accepted.
- **Kirstin Flores** motioned to accept the **March 7, 2023**, minutes as amended. **Jenna Panas** seconded the motion. **Jon Eliason** abstained due to not being present at the meeting. The motion passed with no dissenting votes.

Oklahoma v. Castro-Huerta

- **Vicki Otto** was introduced by **Kate Brophy McGee, Co-Chair**, as the Pima County Attorney's Office Criminal Division Training Director to provide an overview of the Oklahoma v. Castro-Huerta case. **Kate Brophy McGee, Co-Chair**, stated **Ms. Otto** graduated from the University of Arizona, James E. Rogers College of Law in 2002 and has worked for the Pima County Attorney's Office for almost 17 years.
- **Vicki Otto** began her presentation with an overview of the 2013 Violence Against Women Act (VAWA) which extended tribal prosecution authority over non-Indians for certain domestic violence offenses committed against tribal members in Indian country. **Ms. Otto** continued that this was further expanded in 2023 with the VAWA reauthorization and included the following list of offenses: stalking, harassment, certain crimes against children, certain assaults against law officers and court personnel, interfering with criminal investigations, and sexual offenses committed by non-Indians against tribal members in Indian country. **Ms. Otto** noted tribes may implement all, some, or none of the provisions of VAWA 2013 and VAWA 2023.
- **Vickie Otto** provided an overview of the Oklahoma v. Castro-Huerta case; Castro-Huerta was non-Indian and his wife and stepdaughter were registered members of the Muscogee (Creek) Nation. **Ms. Otto** explained Castro-Huerta starved his stepdaughter until she weighed only 19 pounds and was in critical condition. The law permitted tribal authorities to prosecute tribal members for offenses committed against other tribal members, so the tribe only had jurisdiction over Castro-Huerta's wife. **Ms. Otto** clarified this case occurred in 2014 before the VAWA 2023 expansion but the Oklahoma prosecution resulted in a sentence of 35 years. However, Castro-Huerta appealed the case because it occurred before the 2023 expansion and the federal prosecution resulted in a sentence of 7 years that Oklahoma then appealed with the Supreme Court.
- **Ms. Otto** highlighted the importance of the Oklahoma v. Castro-Huerta case and the effects it's had: Indian country is now established as part of the state(s) it is in, not separate; Federal preemption does not prevent a state from exercising jurisdiction in Indian country; and under the analysis of *Bracker*, state jurisdiction in Indian country does not infringe upon tribal sovereignty. **Ms. Otto** added that federal and state governments have concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country.
- **Vicki Otto** provided an overview of the current impact the Oklahoma v. Castro-Huerta case is having within Pima County. **Ms. Otto** stated there is a moderate influx of domestic violence cases being investigated by the police departments of the Pascua Yaqui Tribe and Tohono O'odham Nation. Unfortunately, **Ms. Otto** stated it is still unknown the exact number of domestic violence cases due to cases that arise at casinos that involve tribal victims and non-tribal patrons. She added over time, the number of domestic violence cases may increase the number of domestic violence however is still unclear the overall impact it will have domestic violence cases within Arizona.

- **Vicki Otto** ended her presentation with a discussion on the impact of Oklahoma v. Castro-Huerta moving forward to include non-tribal jurisdiction having meaningful relationships with tribal counterparts in every role and identification of resources. **Ms. Otto** further explained the implementation of the changes around Oklahoma v. Castro-Huerta should include increasing culturally sensitive victim advocacy, expanding technology supports, stakeholder training, the different dynamics of expert testimony, and the importance of implementing culturally sensitive trial advocacy.
- **Kirstin Flores** thanked **Ms. Otto** for her presentation and asked how law enforcement is deciding who the cases should be presented to for prosecution. **Vicki Otto** explained in cases when there is concurrent state and federal jurisdiction, they compare sentencing, specialist units, consecutive sentences, and the jurisdictions where it has been reported. **Ms. Flores** thanked **Ms. Otto** for that explanation because there are different victim rights to consider for state vs federal cases.
- **Kate Brophy McGee, Co-Chair**, thanked **Ms. Otto** for her presentation and asked what the initial step should be for the statewide implementation of these changes. **Vicki Otto** explained the importance of building relationships among the different jurisdictions and the biggest barrier to that being staff relationships. **Ms. Otto** stated a comprehensive website or database with agency contacts that include prosecutors and victim advocates would be helpful.

Lifetime Injunctions

- **Jamie Balson** was introduced by **Elizabeth Ortiz, Co-Chair**, to highlight the recent changes within Arizona Revised Statutes as it relates to lifetime injunctions. **Ms. Balson's** career focuses on working on behalf of crime victims to promote greater access to justice within the legal system. **Ms. Balson** has worked in several roles with this goal in mind including being a civil attorney for surviving families of domestic violence homicide, teaching at domestic violence protection order legal clinics, working as a major crimes prosecutor handling domestic violence cases, and currently, **Ms. Balson** works exclusively as a crime victims' rights attorney at the nonprofit she founded, [Legal Services for Crime Victims in Arizona \(LSCVA\)](#).
- **Jamie Balson** thanked the commission for their invitation to present and explained the changes in Arizona Revised Statute (A.R.S.) as it relates to lifetime injunctions. **Ms. Balson** stated the changes within A.R.S. 13-719 now allow at the time of sentencing, on the request of the victim or the prosecutor, the court shall issue an injunction that prohibits the defendant from contacting the victim if the defendant is convicted of any of the following offenses: a dangerous offense as defined in section 13-105 that is a felony, a serious offense or violent or aggravated felony as defined in section 13-706 and a felony offense included in chapter 14 or 35.1 of this title.
- **Jamie Balson** defined a dangerous offense as an offense that involves the discharge, use, or threatening exhibition of a deadly weapon, dangerous instrument, or the intentional infliction of serious physical injury on another person. **Ms. Balson** went on to explain the definitions of a deadly weapon, dangerous instrument, and serious physical injury as defined in A.R.S.
- **Ms. Balson** reviewed the offenses defined as being serious including but not limited to: first-degree murder, second-degree murder, manslaughter, aggravated assault with serious physical injury, use or threatening exhibition of a deadly weapon or dangerous instrument, sexual assault, any dangerous crime against children (DCAC), arson of an

occupied structure, armed robbery, burglary in the first degree, kidnapping, sexual conduct with a minor under 15 and child sex trafficking.

- **Jamie Balson** provided an additional explanation of a violent or aggravated felony to include but not limited to: first-degree murder, second-degree murder, aggravated assault with serious physical injury or discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, kidnapping, sexual conduct, minor, and child sex trafficking. **Ms. Balson** further defined sexual offenses within Title 13, Chapter 14, and within Commercial Sexual Exploitation of Child within Title 13, Chapter 35.1.
- **Jamie Balson** explained preparatory offense means any offenses listed in Title 13, Chapter 0 of the criminal code including attempt, solicitation, conspiracy, and facilitation. **Ms. Balson** then provided a further explanation of how the lifetime injunctions will impact A.R.S. 13-719 sections C, D, and E.
- **Jamie Balson** stated the Arizona Office of the Courts (AOC) created a [form](#) that survivors can complete without the assistance of a lawyer. **Ms. Balson** ended her presentation stating that if a lifetime injunction is violated, it would be similar to any other protective order repercussions. **Ms. Balson** added that once law enforcement confirms the order is valid in the National Crime Information Center (NCIC), AOC has immediate grounds to make an arrest.
- **Elizabeth Ortiz, Co-Chair**, thanked **Jamie Balson** for her presentation and all the resources she continues to provide to the Arizona Prosecuting Attorneys Advisory Council (APAAC) team. **Kate Brophy McGee, Co-Chair**, also thanked **Jamie Balson** for her presentation, stating her method of presenting the Arizona Revised Statute was clear.
- **Jon Eliason** stated he had no questions but would like to thank **Jamie Balson** for the presentation and the work that she does with LSCVA.

Rape Survivor Child Custody Act

- **David Newstone** was introduced by **Kate Brophy McGee, Co-Chair**, to present on the recent change within Arizona Revised Statute (A.R.S.) as it relates to the Rape Survivor Child Custody Act (RSCCA). **David Newstone** is the Director of Legal Services and General Counsel at [Defenders of Children](#), a Phoenix-based nonprofit organization that provides free litigation and clinical therapy services to individuals throughout Arizona with a focus on providing access to justice and healing to child survivors of abuse and neglect.
- **David Newstone** started his presentation by sharing his lived experience of domestic violence as a child and the importance of this experience while working with children and their families.
- **Mr. Newstone** explained the congressional findings that led to the establishment of RSCCA: tens of thousands of women become pregnant through rape every year with a significant number of these women carrying to term and raising those children, rape is one of the most under-prosecuted serious crimes and it is estimated that fewer than 5% of cases result in a criminal conviction of the rapist, and men who father children through rape should be prohibited from having parental rights (legal decision-making, parenting time, and/or visitation) over those children.
- **David Newstone** provided the commission with a historical context of the problem which led to the RSCCA change. **Mr. Newstone** explained that in 2015, only six states had laws allowing the mother of a child conceived through rape to ask a court to terminate their

rapist's parental rights to that child based on the highest civil standard of proof known as "clear and convincing evidence." This led to the majority of states requiring the child's father to be convicted of rape based on the significantly higher criminal standard of proof beyond a reasonable doubt. **Mr. Newstone** highlighted that some states did not and still do not permit the mother to fully terminate their rapist's parental rights even after a conviction.

- **David Newstone** stated the purpose of RSCCA is to encourage states to enact legislation providing the full and final termination of a rapist's parental rights based on "clear and convincing evidence" that the child was conceived through rape. **Mr. Newstone** emphasized how the federal government supported changes within state statutes as it correlates to an increase in a states' STOP and SASP formula grant awards.
- **Mr. Newstone** stated that Arizona became eligible for these changes in 2021 via [SB 1007](#) which amended [A.R.S. § 8-533](#). **David Newstone** explained these amendments included evidence sufficient to justify the termination of the parent-child relationship shall include "clear and convincing evidence" that the parent committed a sexual assault against the petitioning parent and the child was conceived as a result of the sexual assault. **Mr. Newstone** stated the court shall also consider the best interests of the child.
- **David Newstone** provided an overview of RSCCA's legal impacts, such as: removing the requirement of a criminal conviction, making deadlines imposed by statutes of limitations irrelevant, permitting victims of rape to terminate their rapists' parental rights in Juvenile Court using the same "clear and convincing evidence" civil standard of proof, provides victims of rape with a means to avoid having to engage in lengthy child custody battles in Family Court, and reduces the power of rapists to threaten to seek parental rights over children conceived through rape.
- **David Newstone** ended his presentation emphasizing the importance of supporting the entire survivor and their family. Defenders of Children has an outpatient clinic located within the office and this increases the safety of victims, reduces additional trauma, and facilitates healing.
- **Kate Brophy McGee, Co-Chair**, thanked **David Newstone** for his presentation and the services provided within his organization.
- **Maritza Valenzuela** asked **Mr. Newstone** if Defenders of Children was a national organization. **Mr. Newstone** stated that Defenders of Children is an Arizona based organization with headquarters located in Phoenix but they do provide statewide services. **David Newstone** added in 2022, the organization served families in eight different Arizona counties.
- **Kate Brophy McGee, Co-Chair**, relayed a story of a constituent she worked with to expand no contact orders. It was a horrific case of child abuse and once the individual turned 18, the father began contacting him, which led to the individual having to re-apply for a no-contact order on an annual basis. **Kate Brophy McGee, Co-Chair**, asked if there were any additional protections in place that last longer than one and two years. **Mr. Newstone** stated he unfortunately is unaware of any additional no-contact order support within Arizona.

Upcoming Meetings

- **Kate Brophy McGee, Co-Chair**, asked commission members to reflect on the presentations shared and any additional presenters that need to be brought forward that focus around the commission.

- **Elizabeth Ortiz, Co-Chair**, provided the upcoming meeting dates:
 - August 15th, 2023
 - November 14th, 2023

Adjourn

- **Elizabeth Ortiz, Co-Chair**, called for adjournment.
 - **Kirstin Flores** motioned to adjourn. **Jon Eliason** seconded the motion. The motion was approved unanimously and the meeting adjourned at **11:36 AM**.

Dated the 12th of May 2023
Governor's Commission to Prevent Violence Against Women
Respectfully Submitted By:
Emily Uline-Olmstead
Justice Program Manager, GOYFF

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