

CRIME VICTIMS' SERVICES DIVISION * CRIME VICTIMS' RIGHTS SECTION
TASK FORCE ON VICTIMS' RIGHTS ENFORCEMENT
MEETING MINUTES



APPROVED

Date: July 22, 2013

Committee: **Task Force on Victims' Rights Enforcement**

Attendees: Co-Chair – Shannon Sivell. Jamie Breyman on behalf of Nancy Howton, Debra Bridges, Doug Hanson, Seantel Heisel, Kim Larson, Denise Peña on behalf of Truls Neal, Michael Schmidt on behalf of Jeff Howes, Chanpone Sinlapasai, John Stein, Terry Thompson, Kristin Winges-Yanez

Teleconference Attendees: Cynthia Stinson

Staff Attendees: Shirley Didier, Rozlyn Finfrock (*note taker*)

Introductions – Task Force members gave self-introductions including their title and agency.

Welcome – Shannon Sivell

Updates – Denise Peña discussed the new victims' services position at Multnomah County Community Justice. She is developing policies and procedures for both the adult and juvenile systems, several positions were added to assist victims.

Review of minutes – Minutes of the January 28, 2013 meeting were reviewed. Shirley noted that Cynthia's name was left off the attendees list. Roz was given written corrections/additions for the UTCR amendment section. Page numbers will be added to the minutes.

The changes were accepted by the members, will be made by CVSD and sent back out to the members by email for final approval.

Legislative Reports –

- **Mike Schmidt for Multnomah Co DDA Jeff Howes** – Mike was counsel to both judiciary committees during this past session and reported on some crime bills that passed. At the time he was not working for a DA so he does not have ODAA opinion.
 - **SB 40** – Restructures marijuana penalties. Mike has not cross referenced this bill with HB 3194.
 - **SB 55** – Relating to jury instructions. Modified so the jury has discretion to be finder of fact.
 - **SB 82** – Declared an emergency, takes effect on passage. Eliminates automatic suspension of driving privileges for possession of less than an ounce of marijuana.

Privileges may still be revoked if person is under 18 and court determined suspension is necessary for the safety of the community.

- **SB 421** – Declared an emergency, takes effect on passage. Relating to civil commitments. Individuals found to be extremely dangerous mentally ill may be committed to the jurisdiction of the PSRB for a maximum period of 24 months. Notification of victims for hearings, conditional release, discharge or escape falls under duties of the PSRB while under their jurisdiction.
- **SB 673** – Declared an emergency, takes effect on passage. Relating to sex trafficking of children. Amends ORS 147.015 regarding failure to notify law enforcement in a timely manner – the fact the victim was subjected to sexual exploitation is prima facie evidence of good cause. This section applies to prosecutions commenced on or after the effective date of this bill.
- **SB 834** – Declared an emergency, takes effect on passage. Related to initiating a false report and repayment of costs incurred.
- **HB 2627** – Declared an emergency, takes effect on passage. Relating to DUI diversion agreements. Before dismissing DUII charge with prejudice court, DA or city attorney may issue an order requiring defendant to show cause why court should not terminate diversion agreement. Case shall be dismissed with prejudice if defendant has complied with and performed all condition of diversion and owes \$500 or less in diversion fees which must be paid before on the day of the hearing. Defendant may still owe restitution in case. Allows ordering restitution in diversion cases and wrap the costs together in one case instead of having two cases going on. However there is no criminal money judgment to tie the restitution to once the diversion case is dismissed so court would have to enter a money judgment order.

Members would like to check with Kimberly Dailey on entering the money judgment piece and have her report back through email or at the next meeting.

- **HB 2962** – Declared an emergency, takes effect on passage. Relating to speedy trial. Eliminates statutory speedy trial, repeals the statute on April 1 2014 – it is a docket clearing mechanism. Cases get bumped because defendant is not in custody by cases where the defendant is in custody so the victim keeps showing up. The case ends up getting dismissed with prejudice meaning that it can be retried but it starts all over again. Defendant actually has to show that they have lost out by the case taking so long. No comparison done if this bill violates victim's right to speedy trial.
- **HB 3277** – Declared an emergency, takes effect on passage. Relating to restitution for crime victims. This bill is addressing the McLaughlin case, state has to present information on restitution at the time of sentencing or within 90 days after entry of the judgment. Defense attorney must have the info 10 days

before the hearing, within good cause an extension can be granted, such as the victim brings additional documentation with them to court.

- **HB 3281** – Relating to Johnson v DPSST. Closes a loop hole preventing defense or agents of the defense from concealing their identity. They must tell the victim in person or in writing who they are and the capacity they are contacting the victim. They must also advise the victim that the victim has the right to not talk to anyone associated with the defense unless they wish or have a representative present with them. Shawn Wiley had left a message to inform the Task Force that the Office of Public Defense Services is sending out information regarding this bill to those who are part of the Public Defender's Office
- **HB 3327** – Declared an emergency, takes effect on passage. Relating to expunction amends ORS 137.225 & 419A.262. Court to set aside sex crime outlined in ORS 181.830 (1)(a) if relieved of their duty to register (Rape III, Sod III), under 16 and if less than 3 year difference, victim's lack of consent due solely on incapacity to consent by reason of being less than specified age, victim was at least 12 years of age. This is a very specific bill put forward by Barker and Kotek. He did the research and there are possibly only 1-2 offenders who are able to get relief with the parameters. Is there victim notification? Mike believes that they have to apply for relief so there would be a hearing.
- **Rosemary Brewer, OCVLC** – Not present at the meeting to report.
- **Shawn Wiley, Office of Public Defender** – Unable to attend the meeting or send a representative to report.
- **Kristin Wings-Yanez, Sex Offender Registration/tier system** – Update on BOPPPS – Jay Scroggins who was on this workgroup and went through all of the hearings is no longer with the Board. Brenda Carney is the new BOPPPS Director.
HB 2549 – Declaring an emergency, takes effect on passage. Bill creates a three (3) tier system for classifying sex offenders based on the statistical likelihood of committing another sex crime. The tier system goes into effect at the end of 2016/beginning 2017.
 - Level 3 is the highest level with the highest risk of reoffending, has the widest range of notification and will require lifetime registration. They may petition BOPPPS to be reclassified as a level 2 but will never be reclassified lower than a 2 offender. The word “predatory” is now built into a level 3 offender and is classified as a “sexually violent dangerous offender”.
 - Level 2 is a moderate risk to reoffend, has a moderate range of notification and is required to register for 10 years before petitioning to be reclassified as a level 1 offender. They must then wait 5 years after reclassification to petition for relief from registration.
 - Level 1 is the lowest risk to reoffend, has a limited range of notification and is required to register for 5 years. They may petition for relief from registration 5

years after the date of supervision is terminated, discharged from the jurisdiction of the court, PSRB or OHA.

Some of the intent behind the bill may be to make up the backlog at OSP for getting offenders on the registry which is about 6 months behind. Hopefully with the tier system OSP will be able to provide better information to the public and the lower risk offenders will be able to get off the registry. The BOPPS will evaluate all offenders on the Static 99R. The law does not specify which tool is used to evaluate offenders so it can change as other tools are developed. The tool used will most likely be identified in Rule. They will start now on the 4,000 offenders that have been off supervision for some time and not had an assessment done with the goal of completing them before the tier system begins. The Board currently assesses all offenders while on supervision.

If the POP is funded for the next 2 years, they will begin looking at write procedures for the assessments and additional hearings. They will need to fund another staff person to take on the additional hearings as well. Kristin believes that victims will track the new hearings (reclassification) just like they do other hearings. Question was raised about who would notify victims of the 4,000 who will be evaluated within the next 2 years. Part of this notification process fits into what Debbie Wojciechowski (victim services specialist for the Board) is already doing. Some of the changes such as going from a level 3 to 2 maybe administrative and may not have a hearing.

Seantel asked about any discussion about a tool to use for juveniles (those age 15-17 charged as an adult) who were convicted under M-11 since the Static 99R is not to be used on someone under 18 or females. They Static 99R does account for the age when the offender was released but would not account for the time the offender committed the crime especially if under 18. Kristen did not know the answer or the discussion that was covered; the Task Force may be able to find out more from Brenda Carney who is the new executive director of the BOPPPS or Jay Scroggin and have it reported back to the members.

Kristen hopes to have a small informal workgroup moving forward.

The BOPPPS recently also found that the language in the statute for certain felony crimes such as Rape I, Sodomy I, SA1, Sexual Penetration 1, etc only had 1 year of *active* Post-prison supervision so they built a statutory fix into HB 2549 to allow for longer *active* supervision.

- **Kimberly Dailey, Judicial** – Not present at the meeting to report.
- **Cynthia Stinson, Sexual Assault Protective Order (SAPO)** – After several sessions this bill passed. The effective date is January 1, 2014. To cut down on the fiscal impact the SATF agreed to create the form and other documents. They are

currently in the process of creating the forms to be approved by the Chief Justice in September. She believes they will have a one (1) year expiration date before needing to be renewed, similar to a FAPA. They are more similar to a FAPA than a stalking order of protection.

- **Terry Thompson, Juvenile –**
 - **HB 3278** – Relating to appeals in juvenile court proceedings. With agreement of both parties to an appeal from a judgment or order of the juvenile court, court may vacate the judgment or order and remand the matter to the juvenile court to reconsider.

- **Jamie Breyman, DOC -**
 - **HB 3194** – Emergency Clause, take effect on passage. This bill is the outcome of the Public Safety Commission. No less than 10% of grant awarded funds go to the county where intervention can be provided in the community that prevents a person from committing a crime and ending up in a DOC facility. Debra Bridges believes it is more prevention than intervention. It is funded through CJC, separate from the Byrne Grant. Jamie believes we will see more things gear up in September. She knows there will be an application process for the funds. As the bill becomes more clarified Nancy Howton will be able to speak to the members about what is discussed and the process. Jamie suggested inviting Craig Prins to a meeting as he would be the best person to explain how CJC is handling the money and their process.

- **DOJ Staff:**
 - **Crime Victims' Rights Task Force Sunset –**
HB 2774 – Emergency declared to exist, takes effect on passage. Repealed the 2009 law that put a sunset on the Task Force and required submitting reports to the President of the Senate and the Speaker of the House.

 - **Restitution Pilot Project –**
Funding for the projects goes through December 2013. DOJ has been asked to go in front of the E-Board during the short session to see about additional funding to further the project.

 - **HB 2226** – Declaring an emergency, takes effect on passage. Relating to change of name proceedings. Upon the request of an applicant, the court shall waive the requirement of public notice if the applicant is a certified adult program participant in the Address Confidentiality Program (ACP) unless they find good cause not to. This bill was able to be used for the first time just a couple of weeks ago in Yamhill County.

 - **HB 3282** – Declaring an emergency, takes effect on passage. Relating to crime victims' rights. Resulting from the Bray case, if order can be given orally or has to be written. HB 3282 states that it must be written, and then the 7 days starts. The bill also addresses the aspect of who is representing the victim in this type of

appeal and this made clear that it is DOJ (the Attorney General); the prosecutor will not be representing the victim. It was discussed that this provision may reduce access for victims to file appeals. This was brought up by NCVLI and ODAA but no one at the meeting was able to speak on the outcome.

Members would like to have Meg or Rosemary comment on this at the next meeting or before via email to the Task Force.

Task Force Business

- **Vacancies** – AG Rosenblum is looking forward to taking a more active role with the Task Force. Shirley gave an update on some of the members who have had a difficult time making it to several of the meetings and raised a few questions regarding suggestions for representation by those agencies and others who have not been actively represented. A suggestion was made that since we were missing several members that this topic be held until the next meeting. Some agreed but there were a few suggestions as well.
 - Chief Dan Brown – has not officially resigned but have not heard from him since last fall. Debra commented that he is getting ready to retire.
 - Oregon Association Chiefs of Police (OACP) –
 - Kevin Campbell from OACP would be a good contact.
 - Have not had representation from the Sheriff's Association for about 4 years.
 - Contact Jason Myers from Marion County Sheriff's Office who is now president of the OR State Sheriffs' Association (OSSA). He is community focused and could do the outreach.
 - The Task Force felt:
 - It would be a good recruitment approach to talk about review of statutes and possible legislative changes that would impact Law Enforcement. One example is the notification statute (ORS 147.417) clarifying language regarding LE notification of victims' rights. The pocket card provided by CVSD includes victims' rights notification and crime victim compensation information but statute does not clearly require the victims' rights notification by police agencies. Perhaps meeting with the association, identify who is up and coming in leadership.
 - Look at who is rising in leadership through OACP and OSSA, maybe get someone who will stay with the Task Force longer.
 - Recommendation for a judge (would need to be appointed by the Chief Justice) with experience both in adult and juvenile system.
 - Current member appointments ended June 30, 2013. Please email Shirley to let her know if you will be continuing your appointment. If not, please give suggestions for your replacement.
- **Structure** – Members asked if the Task Force would be returning to a committee structure and having smaller meetings between our quarterly meetings. A Legislative Committee was one that members felt strongly about pulling together but there were questions as to what their role/function would be as it has been more undefined under the current and last AG. Would they be submitting ideas for new legislation, bringing forth ideas to change current legislation, tracking legislation, etc.

- Shirley discussed the other active subcommittees including the Immigrant Crime Victims' Rights group and the Juvenile Justice workgroup – the Task Force recommends continuing these.
- Doug Hanson asked about the non-compliance subcommittee and whether it would be reconvened as he is interested in continuing that work. Shirley mentioned that CVSD is looking at the compliance models and statutes from other states and that Shannon would like a model put into place in Oregon.
- **2013 Legislative Report – (pgs 4-8)** –lists issues to take a closer look at – cleaning up statutes. Maybe AAG Greg Rios can take a part in and some on the TF. Part of the issue is that the statues are all over the place and unless you are looking specifically for them, they are not easily found. Several questions about spirit of statute and intent of victims' rights statutes.statute –
Info related to notification PP – Denise agrees and would be willing to participate on a subcommittee, Kristen & Denise will put together some examples
Terry - also need to look at notifications regarding sanctions
- **Noted Gaps/Issues from 2013 legislative session** – We need to continue to look for any new revenues to tap into – things that other states have done that may work in OR.

Other Reports

- **Immigrant CVR Subcommittee** –The goal this year of the Immigrant Subcommittee was to create an UVisa certification list for OR and it was passed around to TF (green). Debra gave Chanpone some changes. **Don't backdate UVisa's – attorney only has 6 months to file on behalf of the victim so the date should reflect the actual date signed. Sometimes the attorney gets the UVisa and it is already expired due to being backdated.**

Certification for children working in the fields. Also have a team called The Foreign-Born Human Trafficking Task Force (pink) she has permission to share their information and plan to include this on the DOJ CVR web page.

DOMA – I130 press release (purple)

Chanpone will be the one updating the documents handed out today if you any corrections for your office or find errors, please let her know and she will get them corrected.

- **Juvenile Department visits – general observations** –
Shirley has now visited all of the county Juvenile Department. Her goal was to roll out the Juvenile Victims' Rights Request Form (JVRRF) and Juvenile Victims' Rights Guide (JVVG) that were created and finalized in 2012 by the Juvenile Subcommittee. Some of the below issues could also be addressed by this subcommittee and then made as recommendations back to the Juvenile Directors. The subcommittee needs an avenue back out into the departments for implementation and cooperation. Some of what is happening in the communities is influenced by the nature of politics and culture.

There were many differences Shirley noticed between how victim notification is done in counties regarding if they are provided in the Juvenile Department or in the DA's Office.

- In some counties the DA's Office handles felonies and the Juvenile Department handles misdemeanors.
 - There are 2 counties where the Juvenile Department handles felony cases with limited assistance from the DA's Office.
- Protecting victims' personal identifiers: this is a problem area. DA's Offices on the Central/East side (CEOJJC region) are good at protecting personal identifiers. There are about 19 counties on the West side of the Cascades that have problems with the defense giving out victim information and the victims or the parents of the juveniles are getting harassed.
- Restitution in each county is different:
 - Some have restitution only caseloads
 - Some counties send restitution to "collections" after 30 days but they were not clear on what "collections" was. Is it back to the court?
 - There are two counties where the judge will not order full restitution or restitution at all.
 - Overall Shirley feels that Juvenile Departments do a better job at collecting restitution than the adult system (except in pilot program counties).
- Circuit courts handle things differently than County Courts
- There was a question about how many counties are using mediation groups. Shirley does not believe a lot due to limited resources available.
- There are many juvenile departments who want to do the right things for victims.
- Be thinking about things the Task Force can change in statute – rights that are automatic in the adult system are requested rights in the juvenile system. Should we look at making them consistent?
- Shirley will be doing a FAQ resulting from these visits and sending them out to the county directors. They will also be listed on the CVR webpage.
- **2013 NCVRW Commemoration** – This year Diane Wehage from Clackamas County District Attorney's Victim Assistance Program was honored along with Clackamas County for their response to the Clackamas County Town Center shooting. Diane in turn gave thanks to all of the agencies who responded with them including neighboring law enforcement victim advocates, non-profits and other DAVAP offices. A nomination was put forward by Debra Bridges that Diane Wehage will be honored at the national NCVRW 2014 commemoration. Shirley talked with victims' rights coordinators from Connecticut after the New Town tragedy and instead of cohesive collaboration with partners as reflected in Oregon, there were a lot of politics that added to the trauma of the event.

Adjourn

Next meeting of the Task Force is Monday October 28, 2013.