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Joint Subcommittee on Marsy's Law

Meeting Minutes—November 19, 2019

The meeting began at 12:04 pm with the following people in attendance:

Michael Schmid, Chair

John Roman, Vice Chair

R.J. Haughey

Christopher Maranges

Michael Sasso

Maureen Walsh

Tom Hall, ACRC

Laura Roe, ACRC

Kristina Samuels, ACRC

Jane McNeill, CrimPRC

Hon. Deborah Sisco, CrimPRC

Robert Holborn, CrimPRC

Candice Brower, JCRC

Joel Silvershein, JCRC

Matt Wilson, JCRC

Ira Karmalin, TCRC

Carter Hillstrom, TCRC

Also in attendance:

Cindy Guerra

Stacy Charlette

Paul Fleming

Karen Rushing

Mark Caramanica

Laura Roth

Paul Hawkes

David Ellspermann

Beth Allman

Heather Telfer, Staff Liaison

Krys Godwin, Staff Liaison

The first matter discussed was regarding the scheduling of the future meetings. Several people raised a concern about the proposed Tuesday noon schedule. After some discussion, it was agreed the meetings would be held on Wednesdays at noon, beginning December 4.

The discussion then shifted to the first block of information sharing. This meeting focused on the impact of Marsy's Law from the law enforcement perspective. Specifically, there was concern regarding law enforcement usage of computer

submissions. Also the victim/witness information system: how information is shared with them and about them.

The St. Petersburg clerk explained the opt in box system that office is using, but also explained this is not very clear when the file goes to the next step of the state attorney review.

Tom Hall asked questions regarding how that system works within the clerk's office, between clerks.

Laura Rushing raised a question regarding documents transferred from law enforcement or a jail to a clerk's office and how each county does it differently.

It was urged that a singular statewide system be developed. One concern raised by Mike that it is too burdensome to have paper within filings. Tom explained that many jurisdictions have their own forms and format for filing—these are not statewide.

Kristina Samuels explained that it would be most ideal if there was something in place at case initiation; no clause in a rule requires that. Yet, the status could change any time during a case.

Laura Rushing responded to Ms. Samuels explaining consideration must be given to cases when the requests came in late or if the case is older than the constitutional amendment. She shared that proposed subdivision (c)—given by the clerks—addresses that concern.

At that time there was more discussion and information shared by the subcommittee members. The discussion defined the next few steps of the subcommittee:

For the December 4th meeting: Tom Hall and Laura Roth will share what was presented at the FCTC meeting regarding this constitutional amendment and a victim advocate representative will speak of current processes that are in place or available.

For the December 11th meeting: Paul Hawkes will discuss the opt in/opt out process options.

At which point John Roman shared some concern about an opt in provision of law. It was mentioned that Jason Golden has written a letter arguing for an opt in interpretation. Mike agreed to disagree about the determination of law interpretation, recognizing that is not the role of the subcommittee.

At this point, the meeting was closed and the members were reminded of the next meeting date.

Joint Subcommittee on Marsy's Law
December 11, 2019

Michael Schmid, Chair
John Roman, Vice Chair
Perry Adair
R.J. Haughey
Christopher Maranges
Michael Sasso
Maureen Walsh
Tom Hall, ACRC
Laura Roe, ACRC
Kristina Samuels, ACRC
Jane McNeill, CrimPRC
Hon. Deborah Sisco, CrimPRC
Robert Holborn, CrimPRC
Candice Brower, JCRC
Joel Silvershein, JCRC Matt Wilson, JCRC
Carter Hillstrom, TCRC

Cindy Andrews

Greg Harrell

Cindy Guerra

Paul Fleming

Mark Caramanica

Laura Roth

Paul Hawkes

David Ellspermann

Jean Spurbeck

Antonio Jaimes

Dustin Mett

Savanah Sullivan

Heather Telfer, Staff Liaison

Krys Godwin, Staff Liaison

Chair Schmid shared the path of the subcommittee for the next few weeks.

Laura Roe shared an incorrect link but she will share a corrected link.

Laura Roth was invited to speak and share how the clerks are addressing Marsy's Law. They recognized that law enforcement officers were having victims sign opt-in forms as they were the first contact. Because of this, various clerks were seeing this be

addressed in different ways. The concern by the clerks is that if the RJAC or the matrix have the interpretation of the new law that all documents with this concern would result in everything be protected and unmanageable. So it was good for the option of an “opt-in” option.

Also, there needed to be more clear information given to the victims of exactly what is truly confidential or can be. The idea, with the proposed rule 2.420 amendment, is to have the victim’s option to travel with the case/ arrest affidavit so the clerks and court would have that. The option within subdivision (b) was to have redaction recognized at receipt of the document. Recognize that there are technology challenges for this concern. Sometimes technology for convenience is not always workable for some reasons and necessities. Having a form establishes the grounds and base for clerk’s behavior. If merely a check-box, then often a default. So there are concerns that this will be checked by habit though not necessarily correct or necessary. Clerks do feel that RJAC address this and amend the rule to design some practice. This will also give victims the feeling that they are being protected. For liability purposes, this needs to be a rule to help define this for clerks, courts, and victims. Would like:

1. opt-in form is able to be obtained by victim and in the file
2. clerks could take action by check box, not routinely reviewed
3. that, if created electronically, this form or information could be part of the arrest information/form
4. have the victim sign a form in the clerk’s office after case creation but that may defeat the purpose of keeping the information confidential

Mike shared his appreciation for this summary of information. Opened the call up for questions. None received.

Paul Hawkes was then invited to speak about the victim’s point of view and why they may want to keep their information private though part of a criminal case. His organization offers his assistance to help develop rules to keep in mind the due process concerns and the victim’s rights are protected. He recognized that Marsy’s Law cannot compete with due process concerns, but it must trump public records access laws.

Joel S shared his concern about when a defendant’s constitutional rights come up against the victim’s rights under Marsy’s Law. There are documents and information already protected under F.S. 119.

Paul explained that Marsy’s Law does not violate the defendant’s due process concerns. Marsy’s Law prevents any type of public disclosure of a victim’s information.

Mark C, from the media perspective, there was disagreement because of 1st amendment concerns must also be taken into consideration.

Paul explained this is not for any information, but for public records concerns. The routine release of public records where the victim has no say is what the constitution provides.

Mark then continued with the concern voicing the public access versus victim's rights may change.

Paul agrees and understands.

Chair Mike explains Mark's concern regarding the control of records once released. Why have information kept confidential if that victim has now appeared in court and spoken information.

Kim—if the victim requests their information to be protected yet speaks in court, that does not mean that what is said in court is all that is within the documents of the court file. What is said may be name and incident; what is in the file may be address, phone numbers, medical records.

Mark merely was asking that the subcommittee address these concern: public access rights that may trump Marsy's Law rights. Though checked at beginning the cases, that may change and have 1st amendment access concerns.

Tom Hall explained that the clerk's point of view and the proposed rule amendment is to merely protect what is in the court file as necessary over the progress of the case. This would merely give initial direction to the clerks, recognizing that this may change as the case progresses and a court may order or direct otherwise.

Mike asked how 2.420 does not address Marsy's Law protection that is not already addressed for clerk's and victims.

Tom said this does not fit in the 23; those are what the clerk does in specific documents, not every file. This would require extensive review and expense to have a program reviewing all documents for possible victim information.

Laura R – the 23 are “automatic” protections, even if no notice is filed. The clerk protects those 23. This separate section is suggested because otherwise this would require all files to be protected.

Mike asked about what happens if not in 23.

Laura explained that, if not in the 23, then a motion is required. That would require a victim to file a motion for protection of their personal information.

Kristina S agreed that, as a clerk, if not in the 23, then they look for an order. If no order, then not protected.

Mike explained his concern that it is up to the victim, like other filer requirements, so why is this different that it needs specific amendments.

Paul explained that this is a factually different scenario than others given the procedure of criminal cases.

Joel asked, is the information shared with the court unredacted? [yes] If going to first appearance, is that information unredacted. [Laura: this is dependent on the matrix designed by FCTC. This is able to be amended if necessary.] If have these documents, then transferred to public defender unredacted. [yes] but that would be subject to 119. Essentially: are we getting to the point where we have a redacted and unredacted file for every case?

Paul shared there are two ways documents must be confidential: F.S. 119 and constitution. Already have that and may need two files.

Tom agreed. Must have either two files or good redaction software

Mike gave the floor to Laura Roe to talk about the uniform arrest affidavit format (not actual name).

Laura Roe explained that this is very clearly a data set: this will be data points for officers to fill out at the time of arrest. For officers to fill out. This information can be limited to whom it is forwarded. There is a place for victim to indicate its choice under Marsy's Law. Concerns regarding a change in decision by the victim arose, so would be better indicated in another time or location. A vendor for a new system to generate this data set is currently being sought. It is recognized that victims do change their mind. However, better to indicate the victims have and recognize their rights rather than that they change their mind. Have RJAC indicate a requirement that victims be informed of their rights. Not have the police officers to be relied upon to have another form or another task; easier to have merely a check box within the current form or system. The victims can later waive their rights. Protect at the beginning; once information is shared, it cannot be withdrawn. Better to have protected and then shared if victim releases. Requesting that RJAC request the FDLE include within their forms to have such information included within the forms.

Mike then summarized the question, asked for a bit more explanation or questions, then proposing perhaps a vote may be ready for that question.

Tom Hall recommends the subcommittee propose to the committee to write a letter to the chief justice asking that he write a letter to fdle.

Krys suggested the letter come from the chair, not from the full committee.

Tom then raised the concern that the chief may not feel comfortable with this . Perhaps should discuss.

Laura Roe proposed a straw vote be taken to see if the subcommittee supports this general idea.

Conversation continued regarding opt in, opportunity to prevent disclosure. What if victim is unconscious? Default to opt in?

Any opposition to seeing whether chair is opposed to sending the letter? No one opposed.

Agenda next week was shared: continue idea of letter, structure on where this is going within the subcommittee.

Ad Hoc Joint Subcommittee on Marsy's Law

Minutes for meeting on December 18, 2019

Michael Schmid, Chair
John Roman, Vice Chair
Perry Adair
Michael Sasso
Tom Hall, ACRC
Laura Roe, ACRC
Kristina Samuels, ACRC
Jane McNeill, CrimPRC
Linda Berman, JCRC
Richard Curry
Joel Silvershein, JCRC
Matt Wilson, JCRC
Carter Hillstrom, TCRC

Visitors:

Beth Allman
Cindy Andrews
Mark Caramanica
Cindy Guerra
Antonio Jaimes
Dustin Mett
Stacy Mininoshim
Laura Roth
Karen Rushing
Jean Spurbeck
Krys Godwin, Staff Liaison

Chair Mike Schmid shared the current status of the FDLE uniform arrest affidavit. He checked with the State Attorney's Office for the 13th Circuit. The FDLE committee disbanded two months ago. FDLE is currently seeking bids for the uniform affidavit. As proposed, the affidavit may have a button to indicate if the victim has received a Marsy's Law notice, but not if they intend to opt-in or remain confidential under paragraph five.

The Chair of the RJAC is not in favor of sending a letter to the director of FDLE. We will continue to consider creating a rule.

Perry Adair - began a discussion comparing paragraph five to six. His thought was that five was automatic and not an opt-in. Chair Schmid responded that both the

Tampa Police Department and the Hillsborough Sheriff's Office take the same position, but others disagree and believe it is a opt-in.

Tom Hall - queried, who is going to give the opt-in information to the clerk's? At least the affidavit is part of the court file. The affidavit is automatically protected. It will contain categories for victims and family members, but the clerks will not know how to identify those with privileges.

Jean Spurbeck - stated the victim in the affidavit appears later on a witness list.

Mark Caramanica - if the burden is placed on the clerk, it will slow down the process.

Unknown voice – we can block access to the affidavit.

Tom Hall - replied Laura Roth talked about it. When it is a witness list, some lawyer has had their hands on it, and they ought to know the rules.

Unknown voice – the local state attorney should be redacting the documents.

Perry Adair – different filers have different ways to deal with problems.

Unknown voice – when considering 11c, section five does not need to be affirmatively invoked.

Perry Adair – then gave a historical analysis of cases dealing with access to public records (the minutes will not summarize this lengthy presentation. Mr. Adair provided to the subcommittee after the meeting the cites for the cases he discussed).

Tom Hall - commented that Mr. Adair did a great job of discussing key cases.

Thereafter there was discussion on whether we can tell law enforcement what they need to file. Chair Schmid posed the question can we address the issues we have been tasked with without dealing with whether paragraph five is opt-in or not?

Kristine Samuels - stated if it is automatically privileged then the clerk's look for it, if not, then the party needs to alert the clerk.

Chair Schmid - indicated five is not one of the twenty-three, so a rule is needed to identify if a victim opts-in.

Tom Hall – stated if someone id's the opt-in, then treat as notice like it is one of the twenty-three.

Perry Adair – discussed previous meeting where Paul Hawkes discussed the opt-in and the types of documents the clerk needs to look at. Identifying info needs to be taken out.

Laura Roth - responded that she met with Paul Hawkes and he is supportive of the clerk's proposed solution.

Chair Schmid - stated he (Hawkes) is supportive and believes five is automatic.

Unknown voice – auto or not may be an unavoidable issue. The clerks will be asked to look at certain documents.

Tom Hall – look at court decisions that have limitations of authority on this issue.

Adair Perry – look at cases he cited and ask members to draft a rule.

Joel Silvershein – he has a bigger issue with Marsy's law, ton of conflicting issues. Defendant's rights and First Amendment issues. How can a rule solve the bigger problems Marsy's law presents? LEOs are the first to have contact with the victims.

Tom Hall – agrees legislation may be needed rather than a rule.

Chair Schmid – Marsy's Law impacts different stages. The rule captures a broad area. Write a rule that tells LEOs how to treat this information. Locally victim's information is written in a way that it is blocked from the clerk's view.

Joel Silvershein – the SAO gives up the witness list.

Chair Schmid – Paul Hawkes understands that. Victim's info is treated differently in public records versus criminal discovery. Marsy applies to the public records context. Subpoenas, discovery, notice of taking deposition are typically filed, police reports are not.

Tom Hall – in post-conviction there are filings with the victim's info.

Tom Hall volunteers to work with Perry Adair and take a stab at the rule language.

Thereafter the meeting was adjourned.

January 8, 2020 meeting minutes
Ad Hoc Joint Subcommittee on Marsy's Law

Attendance:

Members:

Michael Schmid, Chair
John Roman, Vice Chair
Perry Adair
R.J. Haughey
Christopher Maranges
Hon. Jon Morgan
Michael Sasso
Maureen Walsh
Tom Hall, ACRC
Laura Roe, ACRC
Kristina Samuels, ACRC
Robert Holborn, CrimPRC
Linda Berman, JCRC
Candice Brower, JCRC
Joel Silvershein, JCRC
Carter Hillstrom, TCRC

Guests:

Beth Allman
Cindy Andrews
Mark Caramanica
Paul Fleming
Cindy Guerra
Antonio Jaimes
Stacy Mininoshim
Laura Roth
Karen Rushing
Jean Spurbeck
Mikalla Davis, Staff Liaison

Joint Ad Hoc Subcommittee on Marsy's Law Members and Guests,

The agenda for tomorrow will be:

Michael Schmid, chair welcomed all members and guests. Mr. Schmid noted that there was a quorum.

The subcommittee discussed requesting ~~aan~~ RJA full committee vote on a request to FDLE regarding including a Marsy's Law data point in the Uniform Arrest Affidavit data set. Mr. Schmid informed the subcommittee that the requested change to the uniform arrest affidavit is at the request of the legislature and has passed the Committees. However, while there is a box for whether the victim was notified of their rights. There is no box that tells whether the victim is exert or waive their rights. The amendment is already out for bid. Should the RJA Committee write a letter? The subcommittee decide that each liaison to each Committee reach out to the chair to explain and ask whether they would be willing to sign a letter.

Tom Hall talked to OSCA about this issue. OSCA felt it was premature for the chief justice to take any action until there is a report from the joint subcommittee. OSCA thought there was no problem in the joint subcommittee writing a letter. Mr. Hall stressed that we are not telling FDLE to take any action we are just making them know of a ~~potential issues~~potential issue.

Laura ~~Roe~~Roe spoke to FDLE and they are amenable to it. She volunteered to draft letter. Tom Hall will help. He suggested the chair of each committee sign the letter, so it is a joint request.

Mr. Schmid informed the subcommittee that would like to have a preliminarily votes before asking the Court for an extension of time.

Next the subcommittee discussed the procedure for a committee vote on whether the constitutional amendment creates a right that must be asserted by the victim, whether resolution of this dispute is necessary for amendment of the rules, and then whether victim information should be included in the list of 23 or in a separate subsection.

Mr. Schmid made the argument that it doesn't matter if its opt in or automatic because the clerks still have to process it.

Perry Adair commented that it would matter as the ~~the~~ draft rule submitted by the court assumes that it is opt in. If there is no evidence either way of victim opt in, then there's nothing for the clerk to do.

Tom Hall doesn't matter because we can submit two versions with two alternatives. We do not know which position is right. We could call it a Majority ~~v.s.~~vs. minority report.

Kristina Samuels stated if it's not on the list 23 then it doesn't matter whether its opt in or automatic as somebody only acts if someone tells the clerk. If its automatic, then it needs to be one of the 23.

Laura Roe there are other automatic items that are not on the list of 23.

Tom Hall states that word "automatically" complicates as there are two legal questions: automatic under constitution or automatic in the court file. There are things that are confidential but not automatically confidential in the court file. If its automatic under the court file, then its part of the 23.

A member commented that it would be impossible to find all the victim information.

Another topic of whether it should be apart of the existing rule or should be in a separate rule.

Perry Adair commented that once a lawyer involved than the lawyer should be responsible for protecting the information. So, we are just concerned with Law Enforcement or pro se filing.

Mike Schmid when the SAO is involved they should know, but what about a Pro Se filer?

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Kristina Samuel commented that the notice requirements of the 23 and Marcy law are different. Would it make sense to put in the same rule?

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Candice Brower stated we can interpret the law. We shouldn't answer the question whether it is automatic or not because we need a case in controversy.

Perry Adair don't know how to proceed with drafting without voting on whether is automatic or not.

Mr. Sasso agrees with Mr. Schmid it doesn't matter that we vote on whether its automatic or not. The issue will resolve in the courts.

Laura Roe thinks it makes sense to not have Marcy's law in the 23. Notice

Kristina Samuels opt-in or not, the question is should it be part of the list of 23?

Laura Roe agrees with Kristina.

Tom Halls say we should draft both.

Kristina Samuel and Perry Adair will draft a separate rule but that is opt in.

Thereafter there was a discussion about having a face to face meeting during the bar meeting.

January 15, 2020 meeting minutes
Ad Hoc Joint Subcommittee on Marsy's Law

Attendance:

Members:

Michael Schmid, Chair
John Roman, Vice Chair
Perry Adair
R.J. Haughey
Michael Sasso
Maureen Walsh
Tom Hall, ACRC
ACRC (Alison Smith)
Kristina Samuels, ACRC
Linda Berman, JCRC
Candice Brower, JCRC
Joel Silvershein, JCRC
Carter Hillstrom, TCRC
Jane McNeill
Matt Wilson

Guests:

Cindy Andrews
Mark Caramanica
Paul Fleming
Cindy Guerra
Antonio Jaimes
Stacy Mininoshim
Laura Roth
Jean Spurbeck
Mikalla Davis, Staff Liaison

**Joint Ad Hoc Subcommittee on Marsy's Law Members and
Guests,**

Chair Mike Schmid inquired if other committees were adding the issue of the letter to FDLE to their agendas for February 7, 2020.

Linda Berman: it has been added to the Juvenile Rules meeting in February.

Tom Hall: his committee is adding it.

Jane McNeil: indicated Crim Rules can add it.

Chair: see if the committees approve of signing the letter.

Krys: the Bar's General Counsel is considering if Bar letterhead can be used.

Carter Hillstrom: it has been added to their agenda.

Maureen Walsh: we will add it.

Chair: we will discuss the two rule versions prepared by Kristina Samuels and Perry Adair.

Kristina Samuels: tried to draft a rule without interpreting the amendment. If it is not included with the list of twenty-three, how is it going to work? What are the procedures to protect the information? This is a rule existing between the twenty-three and by motion. It is the procedure for how the clerk will handle it.

Chair: you use the term opt-in form.

Kristina Samuels: if not part of the twenty-three we can take away the opt-in language from the proposed rule. Current procedure it is part of the twenty-three or file a motion. This is a hybrid that does not require a motion.

Chair: there is not a clean way for law enforcement officers to file things. Tampa PD files their paperwork with the Sheriff's Office,

then it goes to the State Attorney's Office. FDLE can have a page two or a button that LEO's can click.

Unknown Voice (hereafter U/V): not thinking LEO would file a separate document.

U/V: we're talking about a check off box so everyone's on notice.

U/V: the box is a problem; we're not saying who is asking for it to be protected.

Chair: UAA submitted to the clerk is redacted, the SAO has the full version. If a box is checked the SAO knows which information to keep confidential.

U/V: at first appearances does the magistrate need to know the victim's name?

Chair: the judge can get the victim's info from the SAO.

Tom Hall: the SAO takes on a new role, who is the victim. If not right the first time, the information is in the court file. What if the victim originally doesn't care, then later opts-in, do you go back and redact?

U/V: if you don't do it right in the beginning, can't get it back.

U/V: in 119 if it is out in court, then it becomes Public Record. It is Marsy's Law versus First Amendment and Due Process rights. Section B is a contravention of 119. Tom's point is well taken.

Kristina Samuels: the clerk's are already doing this.

Chair: this was mentioned at a SAO meeting today. What are you going to do? How are you going to know how a victim can be identified? How are you going to catch all the redactions?

U/V: victim of sexual crime, you must look for it.

Joel Silvershein: few things go into a court file after the affidavit. Liker the initial discovery response. What about a depo notice by a PD? Who is responsible for redacting the pleading?

U/V: post-conviction is chock full of names.

Kristina Samuels: post-conviction motions stopped me from adding it to the list of twenty-three.

Chair: the process can be the clerk locks it down until judicial review.

Mark Caramanica: on the civil side speed is an issue. There can be a challenge on access grounds. Upon filing identify information that is there.

Chair: burden is currently on the filer. It needs to get a quick review by someone. Looked at by the clerk and court. Balancing act to walk here.

Mark Caramanica: we can carve out an exception for certain situations.

Perry Adair: impossible for the clerk without direction. Rule incorporates 2.420 and takes language from that amendment. The clerk can say the file is not available for disclosure. It will cause some delay. The rule is heavily in favor of the victim versus the media. Once the cat's out of the bag it doesn't make a difference. Notice of non-disclosure, that goes up right away. People know that things are not being disclosed. This rule doesn't speak to every proceeding, but the vast majority.

Mark Caramanica: the media is against this process. No notice and the file is closed down. This is costly and burdensome on the media and counties. The Nicholas Cruz case resulted in three to four motions. Litigation with multiple media sources. First Amendment versus victim's rights.

Tom Hall: in reality there is an obligation on someone to protect information, so there will be a delay.

Perry Adair: really tough question. Victim information is out there. There is open access to courts. I'm not sold on a motion to protect this information. The information is what constitutes the record. I'm more concerned about the rights of victims than media's need to put it on the air.

Chair: discussion of *Arizona v. Roscoe*, 185 Arizona 68 (1996). Whether a law enforcement officer can be a victim. Let's consider putting two rules before the Florida Supreme Court.

Tom Hall: usually Court does not like two reports. They may want majority and minority versions, no big deal.

Krys: report can have majority and minority versions. It needs substantive arguments with research.

Perry Adair: we have already hashed it out.

Tom Hall: I agree we need more time to digest both of these. Let's review and give suggestions. Don't know if they can be merged.

Chair: can people add edits and comments by next week? We can be voting on them, though they may not be in final form. Send your substantive edits to Kristina and Perry. We are not trying to force a change to a rule.

Joel Silvershein: this is a Florida Supreme Court referral to this committee.

U/V: we need to deal with it and not put it to another committee.

Thereafter the conference call was concluded.

January 22, 2020 meeting minutes

Ad Hoc Joint Subcommittee on Marsy's Law

Attendance:

Members:

Michael Schmid, Chair
John Roman, Vice Chair
Perry Adair
R.J. Haughey
Christopher Maranges
Michael Sasso
Maureen Walsh
Tom Hall, ACRC
Laura Roe, ACRC
Kristina Samuels, ACRC
Jane McNeill, CrimPRC
Hon. Deborah Sisco, CrimPRC
Robert Holborn, CrimPRC
Linda Berman, JCRC
Candice Brower, JCRC
Richard Curry
Matt Wilson, JCRC
Ira Karmalin, TCRC
Joel Silvershein JCRC

Guests:

Cyndi Andrews
Mark Caramanica
Cindy Guerra

Antonio Jaimes
Dustin Mett
Stacy Mininoshim
Laura Roth
Jean Spurbeck
Savanah Sullivan
Mikalla Davis

Joint Ad Hoc Subcommittee on Marsy's Law Members and Guests,

Chair Mike Schmid stated that there was not an agenda for today's conference call. He wants to take a straw poll to determine if the committee feels paragraph five of Marsy's law is automatic or an affirmative choice to be made by the victim.

Tom Hall – is the right automatic or not. Additionally, does it pertain to public records or just the court file?

Chair - agrees, if automatic does it apply to public records or the court file? Once in the court file what are the clerk's duties? If automatic for public records, then not necessarily automatic for court records.

Tom Hall – everything is public in public records unless exempted by the legislature. For court records not automatic unless it is part of the twenty-three. Then confidential when it hits the court file.

Laura Roe – if automatic for the purpose of court records, then on the list of twenty-three, if not, consider alternative method. If automatic include on the list of twenty-three.

Chair – the list of twenty-three is not necessarily every automatic thing. Exemption determined by the clerk.

Laura Roe – once filed and you don't file a notice it is going to be disclosed.

Joel Silvershein – presumption is everything is public.

Tom Hall – discusses 2010 amendment. In court files presumption is everything is open, nothing is automatic. At the time of the amendment nineteen things were confidential. Public records open unless exemption. Everything is open except for the twenty-three.

Joel Silvershein – filer can create a sheet(?)

Jean Spurlock – based on the list of twenty-three it is easily identifiable.

Chair – we can say it is auto for public records but not auto for court records.

Tom Hall – if determined it is auto put it in the twenty-three. Marsy's Law is different, intended to be auto but doesn't meet the test. Then not part of the twenty-three, it is in middle ground. Then need to file something.

Perry Adair – cases presume you can not diminish the protections of the amendment. Public record versus court record is not particularly helpful. The horse is out of the barn. Protections are eviscerated. It is automatic and protected whatever it is, in my view.

Tom Hall – right now the rule says anything confidential under the constitution or statute needs to be handled differently once it is in the court file. Can't treat them the same.

Joel Silvershein – there are competing constitutional interests. Pres access, due process rights of the defendant, and entitlement to full discovery. We claim a protection, the press proceeds on constitutional grounds.

Laura Roe – someone has to notify the clerk. If information is confidential at the St. Pete Police, we are protecting the records. If you don't think a motion is required, then require a notice. Then not an automatic right.

Mark Caramanica – Arizona notice and let clerk know what is protected. Have a procedure on how to invoke that right.

Tom Hall – I agree with that.

Chair – as Joel said there are three competing constitutional rights. The court will decide which right gives up another right. At what point are court records public records. Different uses tip in favor of another use. If there is a public records request and it is auto, the clerks shouldn't give it out. But the defendant's sixth amendment rights kick in. How to decide which right trumps another. Have a rule in a separate section. If public record request, how is it locked down? Define what is victim information? The

defendant's due process prevails, but the general public is different. That is one way to go about this.

Mark Caramanica – that approach doesn't alleviate the problem. Is it different for police?

Unknown voice (hereafter U/V) – does Perry's proposal flip the issue?

Chair – it comes back to is it automatic or not? Read the Arizona cases. We can't do a balancing test; the court will do that. I am leaning toward a poll if five is mandatory at the end of the day. We will have different opinions in the end.

Laura Roe – is the information being filed with the clerk automatic or not?

Tom Hall – I'm prepared to vote today. The Florida Supreme Court considered felony restoration of rights a couple of weeks ago. They utilized a textual interpretation like Justice Scalia did. If using a textual interpretation, it should be protected.

Candice Brower – interpretation is not our role.

Chair – I sympathize and agree but don't see how we can go forward without at least a straw vote. Whatever rule we draft we have to make an interpretation.

Tom Hall – the court referred it to us.

Chair – let's have a straw poll. It is subject to change. We have a lot more decisions to make.

Kristina Samuels – what are we voting on? Assuming it is automatic, add it to the twenty-three?

Chair – we're not there yet. If paragraph five is mandatory, then the clerk treats it as mandatory; where do we go next?

Laura Roe – use of the word mandatory. Does it have to be asserted or once filed is it mandatory automatically? I'll take a stab: the right is automatic or has to be asserted once in the court file. The moment it is filed is it entitled to protections.

Chair – 16(A) automatic when the information is in the court file.

Tom Hall – that is accurate.

Chair – call the roll for the straw poll.

Poll is taken: the vote is eleven to seven that paragraph five is *not* automatic.

Chair – we will proceed as if the paragraph is not automatic. The committee leans toward not being automatic, not add it to the twenty-three.

U/V correct.

Chair – not automatically exempt. Committee focuses on notice, where we should go next.

Laura Roe – should we have a separate rule.

John Roman – there is another subcommittee amending rule 2.420. If we amend that rule, we will have to dovetail it into their work.

Krys – another question would be which version of 2.420 would we be amending?

Jane McNeil – we need a separate rule.

Chair – 2.423 is available for a new rule. Question raised and there was no voiced opposition to creating a new rule.

Laura Roe – procedure and language we all need.

Kristin Samuels – suggestion by Clerk Roth is going in the right direction. Could be the majority position. I think we should have a majority and minority position.

Chair – I think that's exactly what's going to happen.

Tom Hall - CJIS voted to put a check box in UAA. We can stop writing the letter. Not clear what it is going to say.

Chair – we should draft a majority and minority rule. Let's draft out an actual rule. Send out your comments.

Thereafter the conference call was concluded.

February 26, 2020 meeting minutes DRAFT

Ad Hoc Joint Subcommittee on Marsy's Law

Attendance:

Members:

Michael Schmid, Chair
John Roman, Vice Chair
R.J. Haughey
Michael Sasso
Maureen Walsh
Laura Roe, ACRC
Kristina Samuels, ACRC
Jane McNeill, CrimPRC
Robert Holborn, CrimPRC
Linda Berman, JCRC
Candice Brower, JCRC
Joel Silvershein, JCRC
Carter Hillstrom, TCRC

Visitors:

Cyndi Andrews
Mark Caramanica
Keith Upson
Antonio Jaimes
Dustin Mett
Stacy Mininshim
Laura Roth

Jean Spurbeck
Krys Godwin, Staff Liaison

Joint Ad Hoc Subcommittee on Marsy's Law Members and Guests,

Role taken.

Chair Mike Schmid – due to a meeting Tom Hall and some of the clerks have a conflict. The Notice of Confidential Crime Victim Information form was sent out on Monday. The issue to discuss is if the notice should specifically cite D(2).

Joel Silvershein – good idea. If there are changes in the rule, then we would have to change the notice. 2.423 is general enough, you do not have to change the notice if there is a change in subsections.

Laura Roe – the crime victim, any non-party can file, applies to any person. Rather than cite both subsections, cite to the rule.

Chair – if there is no objection, we will strike D(2). Tom Hall wants to strike “hereafter”. No opposition to striking that. Tom and John raised issues as to the certificate of service. It is outdated. The certificate is taken from what is currently in the books and rules. Tom suggests removing “fax”.

Michael Sasso and Maureen Walsh – in rule 2.516 fax is removed.

Krys Godwin – in the proposed rule 2.516 portal is substituted for fax.

John Roman – some internet service or social media providers only accept court orders, such as nondisclosure orders, via fax.

Unknown Voice (hereafter U/V) – is it a copy of the revised form in 2.516?

Krys Godwin – it is not in the rule.

Chair – we meshed 2.420 and 2.516, so there is a slight conflict between the two. Stick with a consistency with 2.516. “Hereby” was removed. We should stick with the proposed change by RJAC. If there is no objection, we will remove fax.

Joel Silvershein – put in the explanation to the court we are being consistent with 2.516.

Chair – Laura (Roe) suggested that the word rule be lower case rather than upper case. Made those changes. We’ll have two votes, first for the notice, then second, for the rule.

U/V – in the appellate rules “non-party” is not hyphenated.

Krys Godwin – in rule 2.240 it is hyphenated.

U/V - but in 2.420 E and D it is not hyphenated.

Krys Godwin – we may have corrected that.

U/V - current version of 2.420 is not hyphenated.

Krys Godwin – taking out the hyphen is the preference then?

Chair – we will make that change along with the other changes. Laura Roe made changes to rule 2.423. There are agreed upon edits to the notice. I propose we vote. Any further discussion? Chair makes a motion to approve rule 2.423 in version sent out today. We'll vote on the rule first.

Joel Silvershein – I'll second the motion.

Motion carried by unanimous voice vote.

Chair – makes motion to approve Notice of Crime Victim Information form with changes made on the phone.

Michael Sasso – I second the motion.

Motion carried by unanimous voice vote. Both motions passed thirteen to zero.

Chair – do we need majority and minority reports? During initial debates there were differences of opinion as to paragraph five. There was a proposed minority rule. Let's have a discussion if we satisfied the minority view. I believe we have satisfied it. Anyone feel we need a minority report?

Kristina Samuels – this rule balances the clerk's needs.

Chair – anyone feel a minority report is needed? We'll schedule one more meeting next week. E-mail if you feel a minority report is needed. I ask everyone to look at the Florida Supreme Court referral. Please read it. Have we accomplished what we needed to do? We will discuss this next week.

Kristina Samuels – can Krys email the referral? This rule creates rights, do other rules need to be addressed?

Chair – share your comments before next meeting.

Laura Roe – other committees working on their own rules. We should reach out to the respective rule committees.

Robert Holborn – attempted to make a comment when the conference call experienced technical difficulties.

Thereafter the conference call was concluded via email from the chair.

March 4, 2020 meeting minutes DRAFT

Ad Hoc Joint Subcommittee on Marsy's Law

Attendance:

Members:

Michael Schmid, Chair
John Roman, Vice Chair
Perry Adair
Christopher Maranges
Michael Sasso
Maureen Walsh
Tom Hall, ACRC
Laura Roe, ACRC
Kristina Samuels, ACRC
Jane McNeill, CrimPRC
Robert Holborn, CrimPRC
Linda Berman, JCRC
Candice Brower, JCRC
Joel Silvershein, JCRC
Carter Hillstrom, TCRC

Visitors:

Beth Allman
Cyndi Andrews
Mark Caramanica
Dustin Mett
Stacy Mininshim
Laura Roth
Karen Rushing
Jean Spurbeck

R.J. Haughey
Michael Sasso
Maureen Walsh
Laura Roe, ACRC
Kristina Samuels, ACRC
Jane McNeill, CrimPRC
Robert Holborn, CrimPRC
Linda Berman, JCRC
Candice Brower, JCRC
Joel Silvershein, JCRC
Carter Hillstrom, TCRC
Krys Godwin, Staff Liaison

Joint Ad Hoc Subcommittee on Marsy's Law Members and Guests,

Role taken.

Chair Mike Schmid – we will address two issues: if we need a minority report and deciding after review of the referral, what else needs to be done. Based on our rule, is a minority report needed to address we were divided as to 16(B)(5)?

Perry Adair – we had enough of a split that we need a minority report.

C – do you want to advance a minority rule or a minority position in the report but not forward a rule? If the Supreme Court (Fla.) agrees with the minority position, then could be a different rule. We can include the rule and minority report.

Perry Adair – we can attach what my rule looks like and explain the concerns. Do it all in one report, but not put rule forward. We never got to a final rule form with the committee.

C – I agree, it is a draft not in final form. It did not advance beyond a draft. Any thoughts?

Joel Silvershein – we don't need a minority report. The argument we got into, the question if it is opt-in or not, we were not asked that question, not sent to us. There was a split in the committee, report the vote in oral argument.

Laura Roe – I agree with Joel.

Joel Silvershein – does it require filing?

Kristina Samuels – it does, but not the minority position.

Michael Sasso – I agree with Joel, don't have a minority report. If the rule is submitted as an alternative, can not put another version without a minority report.

Tom Hall – don't attach minority rule, we didn't get far enough with it. The report should explain we took a vote, it is not automatic, then formed a rule. Marsy's Law (supporters) may object to the rule believing it is automatic. Court may want to know why so many voted automatic.

C – we voted last week; we need to move forward. We don't need to regurgitate exactly what was said, it can go into the minority view. I was in the minority in the vote, we have to go forward. Mention the vote but not attach the draft minority rule. The minority can draft or finalize the rule and draft a minority

report. The report will reflect the vote taken. The disagreement over opt-in. If Perry wants to draft a conflict version, but majority (of committee) doesn't want draft attached, but report will make reference to the vote.

Laura Roe – the vote was a straw poll.

C – that's a fair comment.

Tom Hall – we can always file a comment.

C – not going to hide we had a disagreement, but we still came out with a rule. We'll phrase it as a straw vote. Any other comments? What is the deadline for a minority report?

Krys Godwin – we will publish it for the Court the end of next week. It will be in the April Bar News.

C – we don't need the report yet?

Krys Godwin - yes, we need the rule, then comments, then to the Board of Governors.

C – minority report and drafts can come out at a much later time.

Krys Godwin – correct.

Perry Adair – I'll make my comment when it is published.

C – publish rule, vote already taken. Krys, we'll get back to you on report. Tom Hall said his committee looked at the rule. Can we say the committees have looked at their own rules to see if changes

need to be made? That other committees reviewed their rules to make a final determination if changes need to be made.

Tom Hall – we'll have to make changes for post-conviction. Appellate Rules thinks something needs to be done. Just say Appellate wants to submit something.

C – we should submit it together. If submitted separately it will slow everything down. Bring them forward at the same time.

Tom Hall – submit it as time sensitive. More time needed for other rule changes.

Krys Godwin – let's fast track it. Can other committees look at it in the next month?

Unknown Voice (hereafter U/V) – the chair of the Criminal Rules Committee in January of 2019 ordered it. Rule committee did not need to take action. Suggested a fast track proposed RJA rule to consider it. Criminal is not going to have any rule changes.

U/V – I can address this. I do not think criminal will make any changes to their rules.

C – traffic?

Krys Godwin – already addressed by traffic.

Linda Berman – already added it to a subcommittee. We're not going to propose rule changes. Present delinquency and dependency with the final rule out of this committee.

C – find out by next Friday, let us know by that date. Looks like Appellate will have changes, but not ready by next Friday.

Tom Hall – two questions: three people attend the meetings of this committee. Then we need not go back to the RJAC? Proposed changes not next Friday and not in thirty days. We should aim for June. I haven't had a chance to look at the schedule. There is a much bigger group in Appellate. Post-conviction may have to send it to Criminal.

Laura Roe – go back to committees. Flag 6(A) notice of right to be heard. Other rights point them out.

C – we looked at paragraph five. We didn't expand it beyond five. But good point, we were focusing on B (5), but whole lot more to Marsy's Law. I agree and if anyone feels we didn't address enough, then tell us.

Krys Godwin – we'll publish it in the April 1 Bar News and ask for an April 15 deadline. We'll ask Judge Gagliardi if she wants an RJAC vote, electronically next week, not waiting until June. I'll ask her in an email. What else we need to get done? I will try to get it together today. We will not publish something that is incorrect, make sure we have the correct version.

C – after the comments come in?

Krys Godwin – we'll review the comments, then to the June meeting. Appellate reviews and then publish in May Bar News. Then full RJAC vote, then Board of Governors in July. Understanding there may be a majority and minority report. The Board of Governors vote, then file.

C – we'll not reconvene until after the April 15 comments.

Tom Hall – April 15 is the deadline for publishing?

Krys Godwin – correct.

C – we're not going to schedule another meeting until the comments come back which is after April 15.

Thereafter the conference call was concluded.

May 6, 2020 meeting minutes DRAFT

Ad Hoc Joint Subcommittee on Marsy's Law

Attendance:

Members:

Michael Schmid, Chair
John Roman, Vice Chair
Perry Adair
R.J. Haughey
Michael Sasso
Tom Hall, ACRC
Laura Roe, ACRC
Kristina Samuels, ACRC
Jane McNeill, CrimPRC
Hon. Deborah Sisco, CrimPRC
Robert Holborn, CrimPRC
Linda Berman, JCRC
Cliff Wilson, JCRC
Joel Silvershein, JCRC
Matt Wilson, JCRC
Ira Karmalin, TCRC

Visitors:

Beth Allman
Cyndi Andrews
Mikalla Davis
Antonio Jaimes
Dustin Mett
Stacy Mininshim

Linda Norbut
Laura Roth
Karen Rushing
Jean Spurbeck
Roger Weeden
Keith Upson
Krys Godwin, Staff Liaison

**Joint Ad Hoc Subcommittee on Marsy's Law Members and
Guests,**

Role taken.

Chair Mike Schmid (hereinafter referred to as C) – comments to proposed rule 2.423 closed on April 30, 2020. The purpose of our meeting is to discuss all comments received. Only one comment was received which was from the firm THOMAS & LoCICERO PL. We will discuss it. I've read through it and the case cited *Courthouse News Service v. Schaefer*, No. 2:18-cv-391, 2020 WL 863516 (E.D. Va. Feb. 21, 2020) brought up an issue I had not thought about. The last page of the comment makes a recommendation to change language in the rule and a recommendation that the filer submit a redacted and unredacted version of a document. I invite Linda Norbut to address the committee.

Linda Norbut – I have nothing to add in addition to the comment submitted. Our main concern is with quick access. If any of the recommendations slow down the procedures, it is not our intent.

Laura Roe – I have a question. Changing the notice of crime victim information. It does not contain confidential information. How does it affect speed of access?

Linda Nobut – confidential information is not in the notice.

Laura Roe – it is not affecting access.

Linda Norbut – our concern is speed and general access, as little off the table for public records.

Laura Roe – file two versions of documents, this will not increase the speed of public access to filings.

Unknown Voice – this will slow things down. Redaction of the notice of filing.

Kristina Samuels – I agree, rule 2.420 notices are public documents. In this context it is more complicated what needs to be redacted. Redacted copies provided to the clerk's office.

Laura Roe – court reporters file a transcript. Notice identifies confidential information. It is easier for redaction. Decision time for the clerks is based on the notice, then later reacts it. What is Marsy's Law? What information is the filer claiming is confidential? Filer can say middle of a certain page. It is easier if the notice is specific, it takes less time.

C – as to the notice I thought at first the comment was well taken. The notice does not need to be protected. Where things are that need to be confidential. I looked at the notice form. That paragraph, the notice is not confidential, only certain information

contained within. What if a victim files the notice themselves? The certificate of service will have the victim's name and address.

We wanted the victim to be able to file their own motions. As Laura said, other things may be written on the notice. I suggest we not change the verbiage of the rule. Let's discuss it. I make a motion to take no action on the comment's first proposal.

Michael Sasso – I second the motion.

C – any opposed?

Krys Godwin – R.J. joined the call.

C - hearing no voiced opposition the motion carries unanimously (vote is sixteen to zero).

C – there are concerns with the second recommendation, filing a redacted version of the same document. How would law enforcement do that? It removes the role of the clerk. I read the Virginia case. They have a law in place that clerks do not have a burden to make redactions. Only the filer makes the redactions. Our case is different than Virginia. Our clerks have responsibility. In Virginia, any delay is not allowed. This could potentially harm the clerks. They would be required to make an immediate release as opposed to responding that redactions are needed. Let's discuss this.

Laura Roe – we have not had a collective clerk call, so I am speaking for myself. The second redacted copy causes more problems. We need to keep a clean docket. Filing the notice to the clerk creates the obligation for the clerks to find it (confidential information). The Clerks are trained. If clerks don't do it at all, when

the filer is pro se, we have to take their word for it. There will be confusion with two different versions of the same document. Now there will be two docketed versions. The filer controls them. No responsibility or validation by the clerk.

Tom Hall – when the clerks have two different versions of a document, according to the Matrix, access is the same. There is a Federal case when the First Amendment rights attach. You get immediate and contemporaneous access to a document used by a judge to make a decision. There is a 7th Circuit case involving the Cook County clerk. The Federal court said this is a state decision up to state courts to decide. A 7th circuit opinion by Judge Blechman states contemporaneous does not mean right that minute. Delay can be hours; the court is concerned with delays of months.

C – in the Virginia case the facts are different. It dealt with the filings in civil cases. We don't need to go into an analysis. Court relied on the facts. The filer is responsible for redaction. The court said the clerk cannot claim confidentiality concerns if the rule says all the burden is on the filer. Then there is immediate access. I suggest keeping the burden on the filer and clerk, leaving the rule as is. Any further discussion? Any additional action needed?

Tom Hall – do we need a motion? I make a motion to take no action.

Joel Silvershein – I second the motion.

(Thereafter a roll call vote was taken, it was approved sixteen to zero).

C – those were the two issues we needed to address. We considered and reviewed them

Krys Godwin – the rule needs to go to the Board of Governors. Tom Hall and I talked about appellate having a rule.

Kristina Samuels – appellate’s rule has nothing to do with confidentiality.

Krys Godwin – there is no need to wait.

Tom Hall – what does the referral letter by the Supreme Court say?

C – all committees are to consider what changes need to be made. The Court wants us to move on it. I’m not in favor of delaying it.

Tom Hall – I claim appellate, I’m O.K. with it. They are two different subjects.

Kristina Samuels – I’m O.K. with it.

Thereafter a discussion between Krys Godwin and Tom Hall that the proposed rule does not have to be approved by the full Rules of Judicial Administration Committee, citing R. Jud. Admin. 2.140(B). The rule would be sent to the Supreme Court after approval by the Board of Governors. Tom Hall thought appellate may be able to catch up if the rule is not submitted in May. However, he does not suggest delaying this rule.

Kristina Samuels – I’m not optimistic about the appellate meeting tomorrow.

Thereafter a discussion between the chair, Krys Godwin, and Tom Hall that this committee will submit a report to the Supreme Court signed by Judge Gagliardi as chair of the RJAC, Michael Schmid as chair of this committee, and the executive director of the Florida Bar.

Thereafter the conference call was concluded.