

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates



**Office of Arizona
Attorney General
Tom Horne**

1275 West Washington Street
Phoenix, AZ 85007
Phone: 602-542-4911

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The Victims' Rights Brief is published by the Arizona Attorney General's Office of Victim Services, which remains wholly responsible for its content. The goal in generating the Brief is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system. To learn more about victims' rights visit us at www.azag.gov.

Have an idea for an article in the Victims' Rights Brief? Contact Colette Chapman at 602-542-8848 or colette.chapman@azag.gov

Identifying Victims of Crime

CRIMINAL OFFENSE DEFINITION

The August 2012 Victims' Rights Brief 2012 Legislative Update provided information related to the amended definition of "criminal offense," which included all misdemeanors, petty offenses, or violations of local criminal ordinances. Below is an excerpt from the Victims' Rights Brief explaining why this applies to victims of both adult and juvenile offenses.

Before HB 2550, the term "criminal offense" had the same meaning as a "delinquent act" in the juvenile victim rights statutes. In State v. Klein, 214 Ariz. 205, 150 P.3d 778 (App.2007), the Arizona Court of Appeals held that the definition of "criminal offense" unconstitutionally limited the categories of victims protected by the Victims' Bill of Rights. Therefore, all victims of crime, including victims of crimes not involving physical injury, the threat of physical injury, or a sexual offense (the prior definition of "criminal offense"), must be afforded the same constitutional rights.

Given the expanded definition of "criminal offense," which includes **all misdemeanors, petty offenses or violations of local criminal ordinances**, we have received several questions regarding how to determine whether there is a victim of a criminal offense.

When determining whether there is a victim of crime, law enforcement must generally ask, "**Who was the crime committed against?**" This will often involve a facts-and-circumstances, as well as type-of-crime, analysis. For example, **has the business or person experienced a harm/injury, loss, or threat based upon a criminal violation?** These questions will also involve a determination of the nature of the charge, such as whether a criminal or civil violation has occurred.

When identifying a victim of crime, we hope law enforcement and prosecution agencies generally err on the side of caution, and attempt to comply in good faith with the constitutional and statutory provisions of Arizona's Victims' Rights. Of course there will be many occasions in which the crime is victimless.

We have provided a few examples below that exemplify situations experienced by law enforcement and prosecutorial agencies when attempting to determine whether a victim was harmed by a crime. Because each situation is different, these examples illustrate the difficulties law enforcement encounter when dealing with crimes in the community.

WHO IS A VICTIM?

Disturbing the Peace

Officers are dispatched to a house party on a Saturday night after they receive a noise complaint. The complainant tells the dispatcher that the noise and music are deafening, and she cannot sleep. The caller identifies herself as a neighbor but does not provide police with her

WHO IS A VICTIM? Disturbing the Peace (Continued)

name or contact information. Officers respond to the house party, and the noise ends abruptly. Officers charge the host of the party, a juvenile, with disturbing the peace. Is there a victim in this case for officers to provide Victims' Rights notification?

In this scenario, there may or may not be a victim. If police are able to ascertain who made the call, or identify another neighbor that was disturbed by the noise, officers could rightly determine that there are victims for this crime. According to Arizona law, the misdemeanor crime of disturbing the peace of a neighborhood by making a loud and unusual noise does not require evidence that any particular neighbor has been disturbed, but may be proven by an objective standard. *In re. Julio L.*, 197 Ariz. 1, 3–4, ¶¶ 8, 11, 3 P.3d 383, 385–86 (2000). Therefore, if the police cannot identify which neighbor contacted them, or identify another neighbor that was disturbed by the noise, they could still charge the juvenile with disturbing the peace. This example illustrates the fact that Victims' Rights do not depend upon the specific crime charged. Identifying a victim will depend upon the unique circumstances of every crime responded to by law enforcement. In the above example of disturbing the public, police may or may not be able to identify a victim.

The Intoxicated Patron

An overly-intoxicated patron is asked by a “bouncer” to leave the establishment. The patron refuses, and is then forcibly removed by the bouncer and subsequently charged with criminal trespass. Who is the victim?

The bouncer would not be a “victim” of the criminal trespass. If the patron struck the bouncer during the struggle, however, the bouncer would be a victim of an assault or other related criminal charge. For the criminal trespass, the bar (legal entity) would be the victim. However, law enforcement could reasonably determine that the crime is victimless, provided the intoxicated bar patron is removed from the premises.

Dog at Large

A woman is walking in a park when another person's dog runs up to her and scares her. The dog is not on a leash. Law enforcement responds to the situation. Is the woman a “victim” of a dog-at-large misdemeanor, codified at A.R.S. § 11-1012?

As A.R.S. § 11-1019 makes clear, a violation of this statute is criminal, a class 2 misdemeanor. Thus, if a complainant alerted law enforcement to the “dog at large,” and was attacked or threatened by the animal, you could have a victim of this crime. The victim, however, may not want Victims' Rights notification, but law enforcement should endeavor to provide notification. On the other hand, if law enforcement found the “dog at large,” and no person was involved, you would not have a victim. If the dog-at-large attacks or aggressively confronts an individual, such conduct could also give rise to assault charges, in which case you would clearly have a victim.

Theft

Two teenage girls enter a department store and approach the cosmetics section, where they remain for about 15 minutes. As they are leaving the store, they are stopped by a security officer, who had witnessed the girls putting items in their purse. The stolen cosmetics are valued at \$11.19. Is there a victim in this case?

Because the law now includes all misdemeanors, the department store would be listed as the victim in this case and is entitled to the limited victims' rights of a legal entity.

WHAT NOW?

Given these changes, we hope law enforcement and prosecutorial agencies will evaluate every crime and employ good faith efforts to determine whether someone is entitled to receive Victims' Rights. If questions arise, please consult your legal counsel or call our office for assistance.

Amending the Constitution of Arizona: “Crime Victims Protection Act of 2012”

On November 6, 2012, the people of Arizona overwhelmingly approved Proposition 114 which, upon proclamation of the Governor, will amend the Arizona Constitution to provide that a crime victim is not liable for damages incurred by a person who is harmed while attempting to engage in, engaging in, or fleeing from conduct that is classified as a felony offense. This Proposition was placed on the ballot with sponsorship from former state Senate President Russell Pearce and the Arizona Citizens Defense League, Inc.

For a full review of Proposition 114, please visit the Secretary of State's website at <http://www.azsos.gov/election/2012/info/PubPamphlet/english/prop114.pdf>.