

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates



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The **Victims' Rights Brief** is published by the Office of the Arizona Attorney General, Office of Victim Services. 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/victim-services

If you have questions, suggestions or an idea for an article, contact **Colette Chapman** at (602) 542-8848 or email colette.chapman@azag.gov.

INITIAL APPEARANCES IN MISDEMEANOR COURT

In 2012, the Arizona Attorney General's Office of Victim Services (AGO/OVS) became aware of a victims' rights issue in misdemeanor cases where without notice to the victim or prosecuting agency, defendants pled guilty to charges and the hearing officer proceeded to sentencing at the Initial Appearance (IA). At that time, all fifteen County Attorney's Offices were surveyed to determine the magnitude of the problem. Nine indicated common occurrences and practices where victims were not notified of sentencing or of the right to be heard at a sentencing proceeding when a defendant pled guilty and was sentenced at the IA.

In 2016, the Victims' Rights Advisory Committee (VRAC) of the Arizona Attorney General's Office, aimed to achieve a more in depth review of the current practices related to victims' rights in misdemeanor cases where the defendant pleads guilty at the IA and is sentenced. Additionally, VRAC wanted information on the implementation of victims' rights in cases where the defendant had a warrant out for his/her arrest and subsequently self-surrendered to the court.

A VRAC subcommittee was created and charged with developing a survey, "Common Practices in Misdemeanor Cases" for the purpose of identifying barriers to compliance in misdemeanor cases; and, if necessary, developing practical solutions to ensure victims' rights. The workgroup consisted of a city prosecutor, law enforcement victim assistance coordinator, county attorney victim services director and OVS staff with guidance from the Administrative Office of the Courts (AOC) and the AGO Criminal Division. The AOC afforded the survey to judges, pro-tems and justices of the peace responsible for misdemeanor cases and APAAC provided the survey to prosecutors. Responses to the survey were managed by the OVS.

The subcommittee presented the survey results to the VRAC and to the Commission on Victims in the Courts (COVIC).

SURVEY SUMMARY

Questions to the survey were pointedly related to IAs in misdemeanor cases that are held within 24 hours and arraignments (cite and release). Additional questions were asked with regard to practices in cases when a defendant with a warrant out for his/her arrest, self-surrenders to the court, and in situations when the IA and sentencing are held concurrently. The survey did not include questions with regard to IA as a result of a summons.

There were a total of 114 responses to the survey with the majority of the responses coming from municipal court judges, justices of the peace, and pro-tems (64%) and the remaining 36% from prosecutors at the county and city level. The vast number (90%) of survey participants work full time.

VICTIMS' RIGHTS: COMMON PRACTICES IN MISDEMEANOR CASES RELATED TO IAS

Seventy-nine percent (79%) of the respondents reported that IAs are held either one set time a day or multiple pre-set times leaving the remaining 21% as "other." Those who responded as "other" were asked to specify how often IAs were held in their jurisdiction. Below are the respondents' comments.

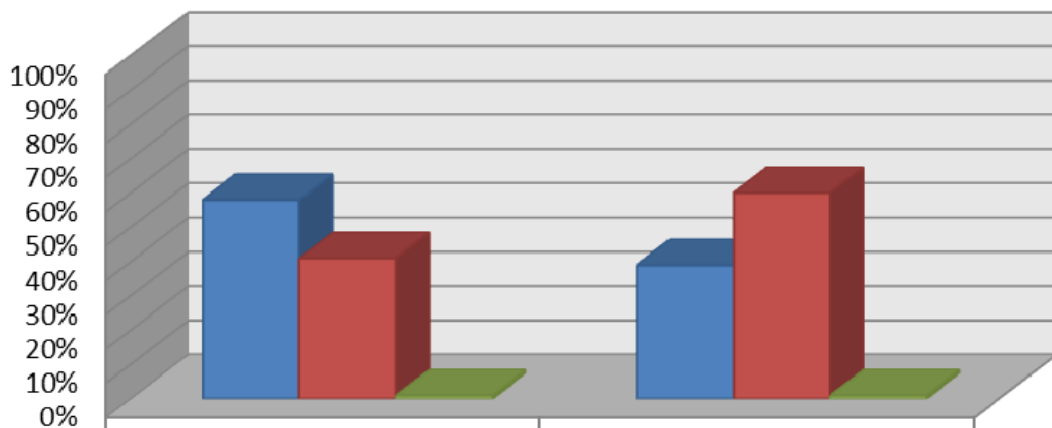
- ◆ *"I have to schedule [Initial Appearances] as the schedule permits. On weekends...I conduct video [Initial Appearances] which I try to schedule at the same time every day, but sometimes with my schedule and police schedules, it doesn't always work."*
- ◆ *"Initial appearances are held as needed = when an officer walks in with a defendant they just arrested."*
- ◆ *"One set time but additional [Initial Appearances] can be held at various un-set times."*
- ◆ *"At pre-set time of the day for scheduled IA/Arraignment related to cite and release uniform complaints, and as needed within the 24 hour period when people are arrested."*
- ◆ *"Three times per week and then walk-in Defendants at any time."*
- ◆ *"Daily as needed - 24/7"*
- ◆ *"Multiple times a day not always [pre-set.]"*
- ◆ *"They are normally held between 9 a.m. and 10 a.m. every morning, by polycom. Because we share the polycom between 6 justice courts times sometimes vary."*
- ◆ *"Three times per week and then walk-in Defendants at any time."*

16A A.R.S. Rules Crim. Proc., Rule 4.1 Procedure upon Arrest

(d) Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance. Each presiding judge must make a magistrate available every day of the week to hold the initial appearances required under Rule 4.1(a). The presiding judge also must set at least one fixed time each day for conducting initial appearances, and notify local law enforcement agencies of the fixed time.

THE SURVEY SAYS!

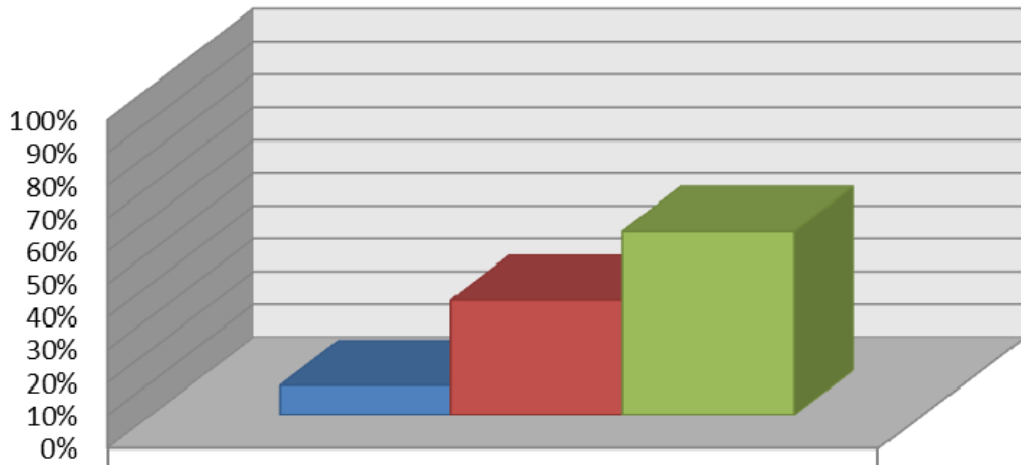
In cases involving victims, how common is it for defendants to plead guilty and be sentenced at the following:



| | | |
|-------------|-----|-----|
| ■ Never | 58% | 39% |
| ■ Sometimes | 41% | 60% |
| ■ Always | 1% | 1% |

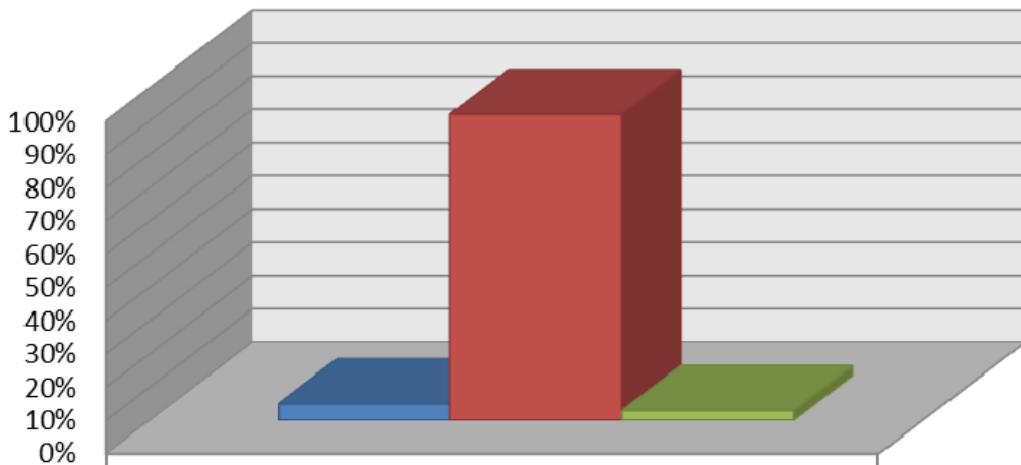
THE SURVEY SAYS! (CONTINUED FROM PAGE 2)

In cases involving victims, how common is it for judges to defer sentencing in order to allow for victim notification and input?



| | Responses |
|-----------|-----------|
| Never | 9% |
| Sometimes | 35% |
| Always | 56% |

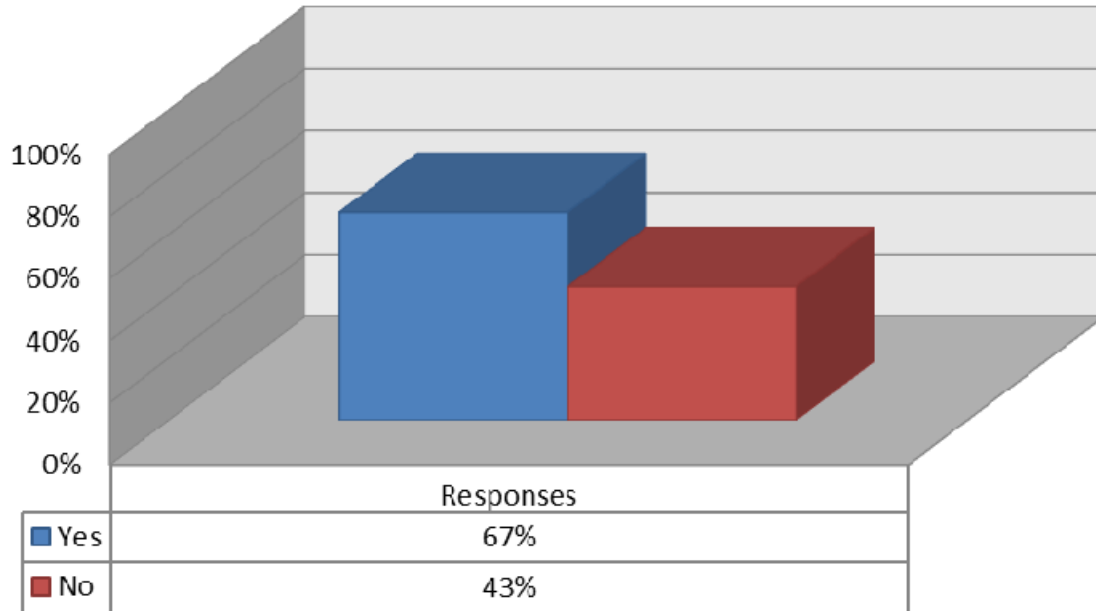
How often do defendants self-surrender?



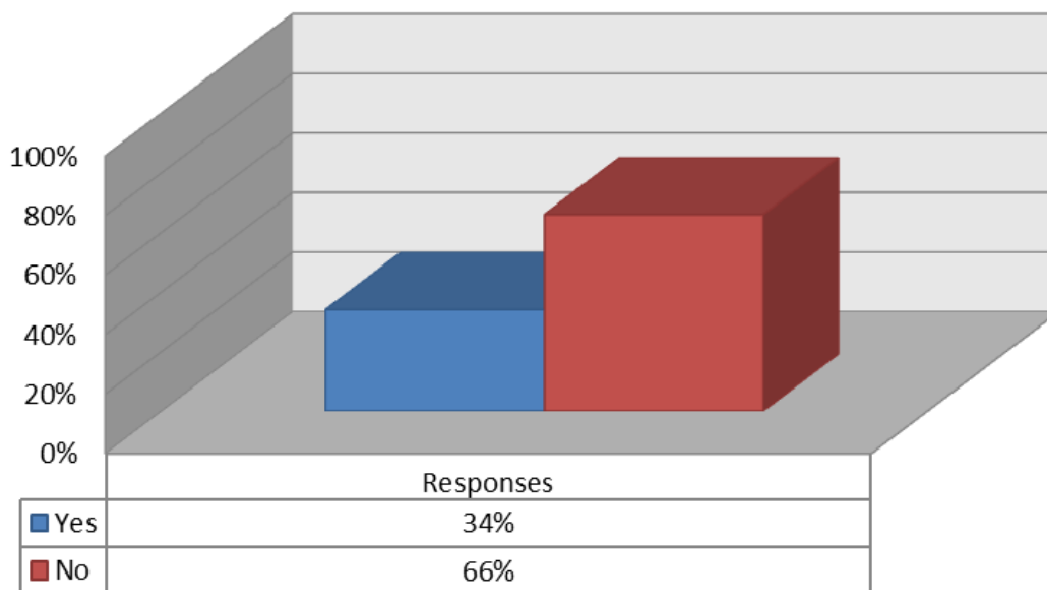
| | Responses |
|-----------|-----------|
| Never | 5% |
| Sometimes | 92% |
| Always | 3% |

THE SURVEY SAYS! (CONTINUED FROM PAGE 3)

**If a defendant self-surrenders,
is an Initial Appearance held at this time?**

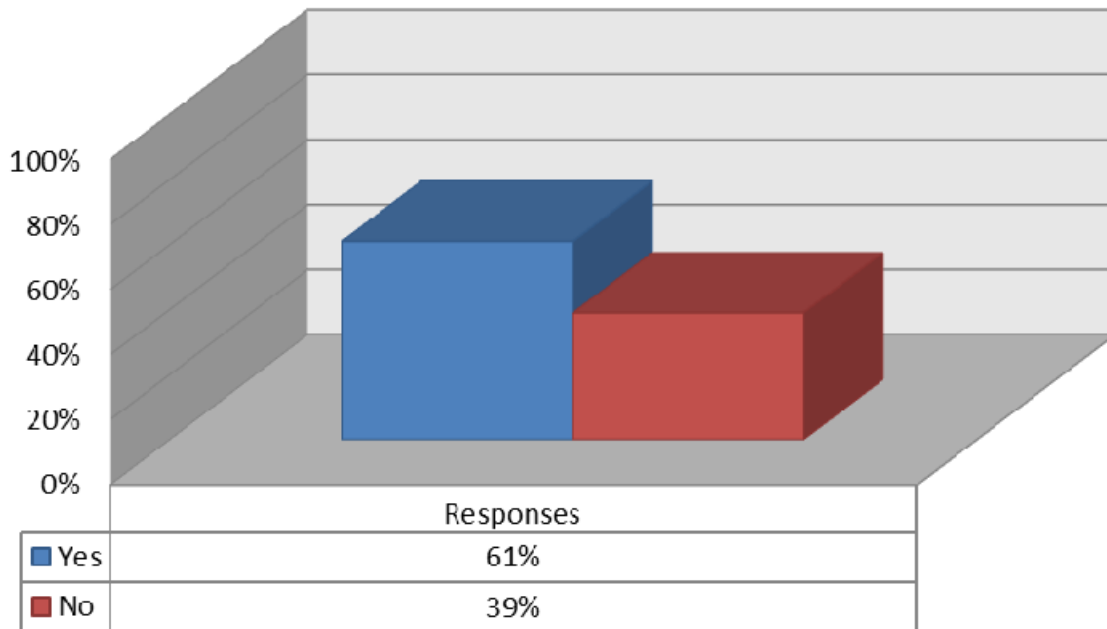


**If an Initial Appearance is held at self-surrender,
is the victim being notified?**



THE SURVEY SAYS! (CONTINUED FROM PAGE 4)

Given your experience, are judges, pro tem judges, and justices of the peace well versed in victims' rights mandates?



SUMMARY OF SURVEY FINDINGS

In examining the results of the survey, we found that in some areas, there is not a set time for IAs, and that victims may not have access to participate (be heard) at the IA when the agency uses video conferencing. Additionally, roughly 9% of the respondents indicated that judges never defer sentencing in order to allow for victim notification and input and 35% indicated that “sometimes” judges do defer sentencing. The combined percentage where victims are not afforded his/her rights related to sentencing is significant. It is also apparent that when a defendant self-surrenders (warrant status) that IAs are taking place unbeknownst to the victim.

As previously stated, questions to the survey were pointedly related to IAs in misdemeanor cases that are held within 24 hours of an arrest, arraignments (in the case of cite and release) sentencing, and when a defendant with a warrant out for his/her arrest self-surrenders to the court. On the following page is a list of statutes that govern victims’ rights that affect compliance when IAs and sentencing are held concurrently unbeknownst to the victim. As you can see from the list, at times law enforcement and prosecutorial agencies are prevented from fulfilling their responsibilities when IAs and sentencing occur at the same proceeding.

STATUTES

A.R.S. § 13-4406 Notice of initial appearance (self-surrender)

A.R.S. § 13-4410 Notice of conviction, acquittal or dismissal; impact statement

A.R.S. § 13-4419 Victim conference with prosecuting attorney

A.R.S. § 13-4420 Criminal proceedings; right to be present

A.R.S. § 13-4421 Initial Appearance – right to be heard (self-surrender)

A.R.S. § 13-4426 Sentencing



ARIZONA CONSTITUTION, ARTICLE 2, SECTION 2.1 VICTIMS' BILL OF RIGHTS (A)(3)(4)(6)

- (A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:
- (3) To be present and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present
 - (4) To be heard at any proceedings involving a post arrest release decision, a negotiated plea, and sentencing.
 - (6) To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.

Not on this list are issues related to restitution, which also need to be considered.

IAS IN MISDEMEANOR CASES: THE COMPLEXITIES, THE CONUNDRUM

The challenges for agencies responsible for ensuring compliance with victims' rights in misdemeanor cases are undeniable. Respondents, judicial officers and prosecutors alike, recognize barriers to compliance when ensuring victims' rights are afforded when a defendant pleads guilty and is sentenced at the IA.

One respondent wrote, " I am aware of no way to ensure that victims' rights are afforded when a defendant pleads guilty and is sentenced while in custody at the initial appearance, unless perhaps the prosecutor, victim advocate, or victim is present. It is possible to ensure victims' rights are afforded when a defendant pleads guilty and is sentenced at the arraignment, so long as a procedure is in place to provide adequate notice to the prosecutor, and so long as the prosecutor and victim advocate are present in order to confirm that victim notice has occurred. It may also be possible to ensure victims' rights are afforded when a defendant self-surrenders, if the court has a self-surrender procedure in place where reasonable prior notice is given to the prosecutor prior to the initial appearance being held. It still may not be possible to accept a guilty plea and conduct sentencing, but it should be possible to achieve protections equivalent to those set forth in Rule 4.1 for initial appearances."

IAS IN MISDEMEANOR CASES: THE COMPLEXITIES, THE CONUNDRUM (CONTINUED FROM PAGE 6)

BARRIERS TO COMPLIANCE - RESPONDENT COMMENTS

- 1) *"The State makes minimal effort to be involved with victims in misdemeanor cases."*
- 2) *"Courts want to move their cases more than they want to wait for the victim."*
- 3) *"Balancing rights of defendant with rights of victim."*
- 4) *"Judges wanting to clear their dockets perhaps."*
- 5) *"There are courts in which a victim does not have access to appear at an initial appearance."*
- 6) *"I do not believe most limited jurisdiction courts have well-considered procedures for self-surrenders. Most courts hold "walk-in" court, where initial appearances are held on warrants without notice to either the prosecutor or the victim."*
- 7) *"There just isn't enough time to have meaningful contact with victims."*
- 8) *"Time -- the ability to contact the victim in such a short time frame -- and the volume of cases at the misdemeanor level."*
- 9) *"Many JPs ignore victim's rights and accept and enter pleas and go straight to sentencing."*
- 10) *"Lack of knowledge of the requirements by law enforcement officers, particularly in small jurisdictions/departments."*
- 11) *"Lack of notice to Victims by law enforcement..."*
- 12) *"...officers are not always giving out victim information at arrest so victims may not know their rights to be present and heard at the initial appearance or arraignment."*



ENCOURAGING COMMENTS

- 13) *"Victims are entitled to input and to be present."*
- 14) *"Our sentencing is postponed for Victim input, if not available."*
- 15) *"Not a practice to sentence on victim cases at arraignments in our municipal court."*
- 16) *"Victims almost always know of the general time for the Initial Appearance and Victims always know the date/time of the Arraignment."*
- 17) *"It is because of victim rights that I do not allow a plea at IA/arraignment."*
- 18) *"In cases where there is an alleged victim, if the defendant pleads guilty at arraignment, the sentence should not be imposed; rather, the case should be set for sentencing with victim notification."*
- 19) *"I do not accept guilty pleas at the initial appearance in victim cases."*
- 20) *"Victims' Rights are very important and the court treats them accordingly. Caution is always taken to make sure a victim who wishes to make a statement or provide input is provided that opportunity."*
- 21) *There does not appear to be much of a barrier in this justice court as the judges are very conscientious of [victims'] rights."*

MOVING FORWARD

Also undeniable is the victims' right to be present and heard at the IA and sentencing. The goal here is to be intentional when serving victims. The need for victims' rights has long been established and there is purpose in serving the victim well. Below are some general concepts to consider:

- ◆ Be intentional - victims' rights should not be an afterthought
- ◆ Ensure compliance with Rule 4.1 (d) Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance
- ◆ Establish procedures related to Rule 1.5 Interactive Audiovisual Systems
- ◆ Consider Initial Appearance Masters – Rule 4.3
- ◆ Become familiar with statutory responsibilities of other agencies
- ◆ Establish procedures related to a warrant "self-surrender"
- ◆ With victim cases, judges should defer sentencing to a later date
- ◆ Train staff on victims' rights

**Victims' Rights Education is provided by the Arizona Attorney General's
Office of Victim Services at no cost.**

To register or request a presentation, please visit

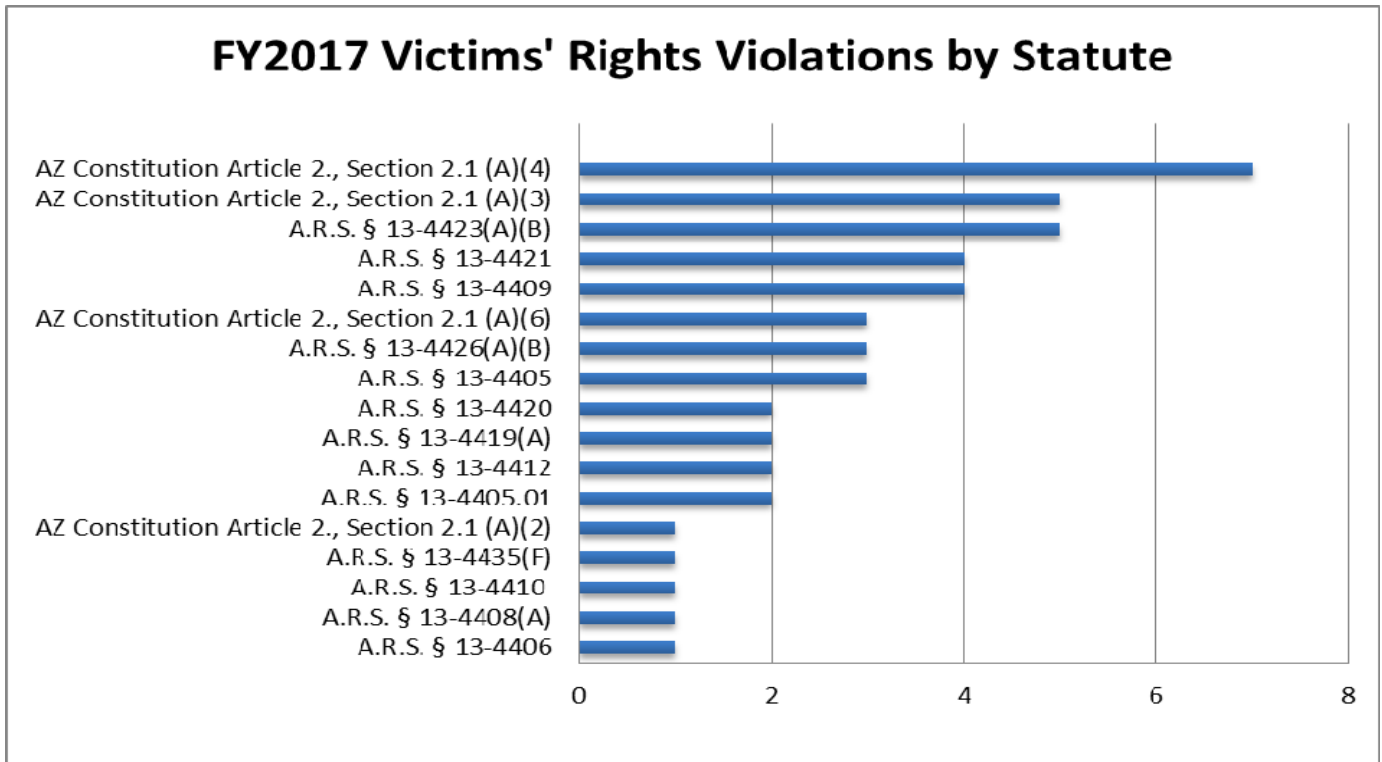
<https://www.azag.gov/victim-services/victims-rights-outreach-education-schedule>

EVALUATION OF VICTIMS' RIGHTS COMPLIANCE - FY2017

The State Victims' Rights Administrator - Compliance (Compliance Administrator) responded to 33 complaints that were investigated as alleged victims' rights violations. Of the 33 investigations, 47 violations were found and 11 agencies were subsequently issued a letter(s) of finding outlining the complainant's allegation(s) and the agency's violation(s). The most frequent findings involved issues surrounding the victim's right to be heard at any proceeding involving a post-arrest release decision, a negotiated plea and sentencing, [AZ Constitution, Article 2., Section 2.1(A)(4)] the victims' right to be present and informed of all criminal proceedings, [AZ Constitution, Article 2., Section 2.1(A)(4)] and issues related to plea negotiation proceedings. [A.R.S. § 13-4423]

OVS resolved complaints by contacting the complainant and involved agencies, reviewing pertinent documents, offering resources to the agencies, and offering information and resources to the complainant. Unfounded complaints usually involved perception issues with law enforcement procedures, plea agreements, case turn downs for prosecution, and subjective opinions about personal interaction with criminal justice system personnel.

EVALUATION OF VICTIMS' RIGHTS COMPLIANCE - FY2017 (CONTINUED FROM PAGE 8)



- ◆ **AZ Constitution Article 2., Section 2.1 (A)(4)** - Right to be heard
- ◆ **AZ Constitution Article 2., Section 2.1 (A)(3)** - Right to be present and informed of all criminal proceedings
- ◆ **A.R.S. § 13-4409** - Notice of criminal proceedings
- ◆ **A.R.S. § 13-4421** - Initial Appearance
- ◆ **A.R.S. § 13-4405** - Information provided to victim by law enforcement agencies
- ◆ **A.R.S. § 13-4423(A)(B)** - Plea negotiation proceedings
- ◆ **A.R.S. § 13-4426(A)(B)** - Sentencing
- ◆ **AZ Constitution Article 2., Section 2.1 (A)(6)** - Right to confer with the prosecution
- ◆ **A.R.S. § 13-4405.01** – Issuance and execution of arrest warrants
- ◆ **A.R.S. § 13-4412** - Notice of release
- ◆ **A.R.S. § 13-4419(A)** - Victim conference with prosecuting attorney
- ◆ **A.R.S. § 13-4420** - Criminal proceedings; right to be present
- ◆ **A.R.S. § 13-4406** - Notice of initial appearance
- ◆ **A.R.S. § 13-4408(A)** - Pretrial Notice
- ◆ **A.R.S. § 13-4410** - Notice of conviction, acquittal or dismissal impact statement
- ◆ **A.R.S. § 13-4435(F)** - Speedy trial; continuance; notice
- ◆ **AZ Constitution Article 2., Section 2.1 (A)(2)** - right to be informed of when the accused or convicted person is released from custody or has escaped

As a direct result of the VRP victims' rights complaint investigations, the OVS has been able to identify and address systemic victims' rights issues throughout Arizona. Through agency responses and actions taken as a result of a complaint, OVS continues to observe positive changes and heightened awareness of victims' rights that have permeated throughout the criminal justice system in Arizona. Such changes include: increased awareness of procedural issues in Limited Jurisdiction Courts related to misdemeanor cases; training for personnel; review and revision of agency policy and procedures; review and revision of training documents; and changes in daily practices related to the provision of victims' rights.



EXPAND THE CIRCLE
REACH ALL VICTIMS

National Crime Victims' Rights Week | April 8-14
2018

The 2018 National Crime Victims' Rights Week Recognition Event for Arizona will be held on **Monday, April 9, 2018 at 11:00 AM** at the El Zaribah Shrine Auditorium.

This annual event is presented jointly by the Governor's Office, Arizona Attorney General's Office, Maricopa County Attorney's Office, Arizona Department of Corrections, Arizona Department of Juvenile Corrections and Arizona Department of Public Safety; and is held to honor and remember victims of crime and recognize those agencies and individuals who assist them in their journey.

For full details and registration, visit <https://2018vrwevent.eventbrite.com>.
Registration by Monday, March 26 is required to attend, as seating is limited.

Questions? Call 602-542-8807 or email vrwevent@azag.gov.