

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates



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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.

For more information about Victims' Rights, visit us at www.azag.gov/victim-services

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

Victims' Rights Enforcement

The Arizona Attorney General's Office of Victim Services employs a Victims' Rights Enforcement Officer (Enforcement Officer) who receives and examines victims' rights complaints in a neutral and unbiased manner in order to facilitate resolution in furtherance of the law. The Enforcement Officer assists crime victims by addressing victim complaints and conducting inquiries into alleged violations of victims' rights laws.

The Enforcement Officer position was established in 1999 within the Office of Victim Services as a result of a recognized need for enforcement of victims' rights laws and accountability of those responsible for providing mandated victims' rights.

It is important to note that the Enforcement Officer is not a victim advocate; and, information provided in the complaint and provided to the Enforcement Officer is not privileged or confidential and may be shared with the government or legal agency that is the subject of the complaint or other relevant parties.

FY14 Victims' Rights Complaint Data

In FY14, the Victims' Rights Enforcement Officer responded to 32 complaints that were investigated as alleged victims' rights violations. Out of the 32 complaints investigated:

- 16 violations were found
- 7 agencies were issued a letter(s) of findings (as a result of those violations) outlining the complainant's allegation and subsequent violation(s).



The two most frequent types violations involved:

1. Issues surrounding the victim's right to confer with the prosecutor.
2. The right to be present and heard at plea negotiation proceedings.

Victim's Right to Confer with the Prosecutor

One of the most empowering and important aspects of victims' rights statutes involves the victim's right to confer with the prosecutor throughout the criminal justice process. The Arizona Constitution's Victims' Bill of Rights, Article 2, Section 2.1 (A)(6) states, "...a victim of crime has a right: [t]o 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."

Further, A.R.S. § 13-4419(A)(B) specifies, "[o]n request of the victim, the prosecuting attorney shall confer with the victim about the disposition of a criminal offense, including the victim's views about a decision not to proceed with a criminal prosecution, dismissal, plea or sentence negotiations and pretrial diversion programs... before the commencement of the trial."

However, the most common type of victims' rights violations involve the victim's right to confer with the prosecutor:

- One violation occurred because, even though a victim requested to confer with the prosecutor about a plea agreement, she was denied due to time constraints.
- Other violations occurred due to the failure of the prosecutor to confer with the victim(s) before offering a plea agreement in court and prior to dismissing a case.

All of these violations resulted in confusion and consternation for the victim(s).

Victim's Right to be Present and Heard at Plea Negotiation Proceedings

The second most common violation was related to A.R.S. § 13-4423 – Plea negotiation proceedings. *Please note the concurrent responsibilities for the prosecutor and court noted in this statute.*

13-4423. Plea negotiation proceedings

A. On request of the victim, the victim has the right to be present and be heard at any proceeding in which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court.

B. The court shall not accept a plea agreement unless:

1. The prosecuting attorney advises the court that before requesting the negotiated plea reasonable efforts were made to confer with the victim pursuant to section 13-4419.
2. Reasonable efforts are made to give the victim notice of the plea proceeding pursuant to section 13-4409 and to inform the victim that the victim has the right to be present and, if present, to be heard.
3. The prosecuting attorney advises the court that to the best of the prosecutor's knowledge notice requirements of this chapter have been complied with and the prosecutor informs the court of the victim's position, if known, regarding the negotiated plea.

Consider the following three scenarios that resulted in victims' rights violations:

- A case management conference turned into a plea negotiation proceeding, unbeknownst to the victim.
- A judge held a plea negotiation proceeding earlier than scheduled even though the prosecuting attorney informed the judge the victim was planning to attend.
- A prosecuting attorney prevented the victim from speaking at a proceeding because that statement would be heard at sentencing.

Although the three scenarios are different, the outcome was the same: the victim was not afforded the right to be heard at the plea negotiation proceeding.

Victims' Rights Enforcement Officer Assessment of Violations

Agency policies and procedures consistently include the prosecutorial responsibility to confer; and it does appear that the victims are made aware of the right to confer with the prosecutor and be present and heard at plea negotiation proceedings. However, daily practices associated with these rights sometimes fall short of what the statute requires. **It is recommended that, along with victim advocates, all prosecutors be trained and made aware of these policies and procedures and their responsibilities therein.**

Unfounded Complaints and Other Complaints Received by the Victims' Rights Enforcement Officer

Complaints that are received, but determined to *not* constitute a victims' rights violation (unfounded complaints) usually involve perception issues with law enforcement procedures, plea agreements, declinations, and subjective opinions about personal interaction with criminal justice system personnel.

However, the Enforcement Officer also receives numerous complaints, which *do not* involve victims' rights. Issues encompass a wide-range of topics that are not within the Enforcement Officer's authority to investigate and include, but are not limited to the following:

- Civil matters
- CPS and Child Support Enforcement
- Consumer fraud
- Civil Rights violations
- Mortgage issues

These complaints were forwarded to the Victim Services general inbox where OVS staff provides information and resources related to the issue presented.

Victims' Rights complaint forms can be found on the Attorney General's home page at <https://www.azag.gov/> under Complaints.

Victims' Rights UPDATE: The Right to Refuse a Defense Interview

An Opinion from the Arizona Supreme Court released on October 27, 2014 holds the following:

¶1 In a criminal case, a parent who exercises victims' rights on behalf of a minor child is statutorily entitled to refuse a defense interview. We hold that the parent's right to refuse an interview does not expire when the victim turns eighteen, but instead continues until the case ends...¶22 We hold that a parent who exercises victims' rights on behalf of a minor child is entitled to refuse a defense interview through the final disposition of the charges, even if the child earlier turns eighteen. *J.D. v. Hegyi*, 236 Ariz. 39, 335 P.3d 1118 (2014).

The Opinion does not advise on other victims' rights that can be exercised by a parent on behalf of a minor child once the child turns eighteen. Instead, it is limited in scope and addresses only the right to refuse a defense interview.