

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

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 an investigation into the alleged violation 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.

This edition of the Victims' Rights Brief will focus on some specific areas of concern that arose during FY2015 year and will address ongoing issues related to violations in misdemeanor cases.

Victims' Rights Complaints - FY2015

In FY2015, the Enforcement Officer responded to 34 victims' rights complaints wherein 18 violations were found and 11 agencies or persons were identified as having violated victims' rights laws. Of the 11 investigations involving victims' rights violations, six were misdemeanor cases with the majority containing multiple violations. The two main violations that occurred were related to law enforcement responsibilities associated with A.R.S. §§ 13-4405 (Information provided to victim by law enforcement agencies) and 13-4406 (Notice of initial appearance).

As for A.R.S. § 13-4405, it was found in some instances, the Victims' Rights Request/Waiver form (Request/Waiver) was not provided to the victim on scene when the suspect was arrested but rather mailed to the victim after the IA had already occurred. No other means of notification of the IA by telephone or in person were noted. In other cases, the victim was not made aware of the suspect's arrest. As a result of not being provided information on the Initial Appearance (IA), the victim was not afforded the opportunity to be heard at this proceeding as is his/her right. A.R.S. § 13-4421 provides that, "[t]he victim has the right to be heard at the initial appearance of the person suspected of committing the criminal offense against the victim."

Response to Victims' Rights Complaints

Every complaint alleging a victims' rights violation, whether substantiated or not, creates at the very least, a heightened awareness of victims' rights. Actions taken by agencies in response to victims' rights complaints were very positive. One agency worked with the different courts in its jurisdiction to develop consistent IA times and dates so accurate information on the IA would be available to the victim. The end result was a signed order from a Judge establishing fixed times for conducting initial appearances in each of the County's Justice Courts in accordance with the AZ Rule of Criminal Procedure, Rule 4.1.(d), "Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance. Each presiding judge shall take such steps as are necessary to assure that a magistrate is available every day of the week to hold initial appearances required by Section (a). In addition, the presiding judge shall also assure that at least one fixed time is set each day for conducting initial appearances and that local law enforcement agencies have been notified of the fixed time(s)."

Other agencies provided training for personnel and re-examined and revised agency policies and protocol to prevent future violations.

Specific Areas of Concern

The importance of notifying victims of the IA cannot be overstated. Failure to do so can result in several victims' rights violations. There have been instances, particularly in misdemeanor cases, where a suspect pleads guilty, is sentenced, and subsequently released at the IA, unbeknownst to the victim or prosecutorial agency.

Consider the following hypothetical scenario and victims' rights violations that occur:

On May 1, 2015, a 911 call at 10:00am is placed by a woman (victim) who reports her husband (suspect) assaulted her in their home. Her husband left the residence and his whereabouts are unknown. The Officer arrives at the residence and completes a report. The Officer provides a Request/Waiver form to the victim and the victim invokes her rights. The Request/Waiver form indicates that the suspect is known but not in custody. Eight hours later, law enforcement arrests the suspect at his brother's home. The suspect is charged with misdemeanor assault and booked into the local jail. The IA is held the next day at 10:00am. During the IA, the suspect pleads guilty, release conditions are set, and is sentenced. However, the victim was not notified of the arrest until 3:00 in the afternoon on May 2, 2015 when she contacted law enforcement wondering if they found her husband.

In this scenario, the victim was not informed of the arrest or provided information on the IA, in violation of A.R.S. §§ 13-4405(f)(g) and 13-4406. Because the defendant plead guilty and was sentenced in the same proceeding there is a violation as to A.R.S. § 13-4410 where, in misdemeanor cases, the victim shall be notified of the conviction, the right to make an impact statement and what it can include, the right to be present and heard at any pre-sentence or sentencing proceeding, the right to file a restitution lien and of the time, place and date of the sentencing proceeding. Further, the AZ Constitution Article 2, Section 2.1 provides, "...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..."

While our office understands court schedules are burdensome, *compliance with victims' rights cannot be overshadowed by convenience.*

Remedies:

1. Incorporate statutory requirements into policies and procedures with regard to notice of the IA.
2. Work with the courts in your area - review AZ Rule of Criminal Procedure 4.1.(d).
3. Train staff on victims' rights.

Training is provided by the AZ Attorney General's Office of Victim Services at no cost. To register or request victims' rights training, please visit <https://www.azag.gov/victim-services/victims-rights-training-schedule> or contact us at (602) 542-8456.

Rule Changes

Arizona Supreme Court No. R-15-0011 amended Rules 15.5 and 39, Arizona Rules of Criminal Procedure effective January 1, 2016. Additions to the text are noted by underlining.

Rule 15.5 Excision and protective orders **e. Claims of Privilege or Protection.** All redactions must be identified in documents produced in discovery and the party making a redaction must state its legal basis if it is not clear from the context.

Rule 39 Victims' Rights (b)(10) The right to require the prosecutor to withhold, during discovery and other proceedings, the home address and telephone number of the victim, the address and telephone number of the victim's place of employment, and the name of the victim's employer, providing, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant. Rule 15.5(e) applies to information withheld pursuant to this rule.

Distinguished Service Awards

The Arizona Attorney General's Office of Victim Services is soliciting nominations to formally acknowledge the work of those in the victims' rights field during the National Crime Victims' Rights Week held April 10-16, 2016.

Please download the announcement and nomination form for the *2016 Distinguished Service Awards* at <https://www.azag.gov/victim-services/victim-services-0>. Please share this announcement and nomination form with your agency's employees and contacts. It is our hope that you and your employees help identify the many deserving and dedicated individuals who are committed to serving victims of crime.



Have an idea for an article in the Victims' Rights Brief?

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