

# VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates

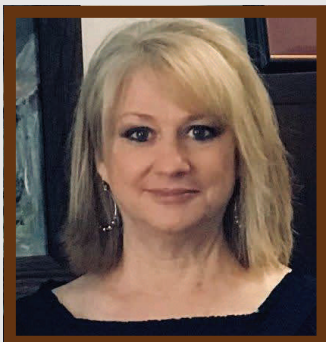


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If you have questions, suggestions or an idea for an article, contact **Colette Chapman** at (602) 542-8848 or email [Colette.Chapman@azag.gov](mailto:Colette.Chapman@azag.gov).



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*The Victims' Rights Brief is published by 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/victimservices](http://www.azag.gov/victimservices).*

## REVISITING PRACTICES

This edition of the Victims' Rights Brief is part of a series that will focus on victims' rights issues that have been identified multiple times throughout the state in my nine year tenure serving as the State Victims' Rights Compliance Administrator. The issues may have not risen to the level of a victims' rights violation, but have caused confusion, concern and resentment in victims and therefore deserve attention. These are not one-time problems; if the situation or scenario as described is familiar to you, please know it is not unique to you or your agency. The purpose of this article is to highlight certain situations for discussion among your staff, colleagues and supervisors. As you read this, ask yourself:

- ◆ Do your policies and procedures reflect the statutes?
- ◆ Do your daily practices reflect policies and procedures?
- ◆ Do your daily practices revolve around mandated victim services or around your agency's resources or lack thereof to provide said services?

Policies and procedures should include: statutory requirements and associated timelines, daily practices and the responsible party (by position) to carry out the provision of mandated services.

### *Below are issues that deserve thoughtful consideration:*

#### **Requesting Victims' Rights/Opting -in .... (Pre-conviction)**

Although victims can request or opt-in for victims' rights at any stage of the criminal justice process, they are only required to opt-in at two different junctures; pre-conviction, as soon as the detection of a criminal offense has occurred and post-conviction, after sentencing. [A.R.S. §§ 13-4405, 13-4411, 8-386 and 8-392]

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***The issue below is related to pre-conviction rights and does not negate the victim requirement to opt-in for post-conviction notice.***

The first opportunity for a victim to opt-in for victim notification is through the Victims' Rights Request/Waiver (R/W) form provided by law enforcement. When a victim has opted-in at this stage they have opted-in for all "upon request" rights as specified in A.R.S. 13-4405(A)(1), "[a]s soon after the detection of a criminal offense as the victim may be contacted without interfering with an investigation or arrest, the law enforcement agency that has responsibility for investigating the criminal offense shall provide electronic forms, pamphlets, information cards or other materials to the victim: *That allows the victim to request or waive applicable rights to which the victim is entitled, on request, under this article.*" [Emphasis added]

A prosecuting agency should have a form in which the victim can opt-in, in circumstances where a R/W form was not submitted by law enforcement to the prosecuting agency at the time of the suspect's arrest or when the case was otherwise submitted for review as required by A.R.S. § 13-4405(C). However, several prosecuting agencies require the victim to opt-in again for "upon request" pre-conviction rights even when there is a R/W on file indicating the victim has opted-in for victims' rights. This additional requirement is presented to the victim as a checklist where he/she checks which rights they want to exercise during the prosecutorial phase of the case.

Remember to document all of your efforts to demonstrate compliance with the requirements of victims' rights statutes.

There is not a requirement that a victim make repeated requests to opt-in for pre-conviction victims' rights once it is indicated on the R/W form; not opting-in a second time (for pre-conviction) victims' rights is not considered a waiver of rights. Because it is not required by law for the victim to repeatedly opt-in for notification, is your practice, the best practice? What is the reasoning behind it?

\*As a side-note, for the purpose of victims' rights complaints filed with our office, if there is a R/W form on file and in possession of the prosecuting agency, that victim has opted-in for victims' rights regardless if he/she failed to complete an additional opt-in form provided by the prosecuting agency.

## **Waiving (Declining) Victims' Rights.....**

Many victims waive victims' rights because of their belief if they request victims' rights, they are responsible for or agreeing with the suspect being charged and going to jail. Conversely, some criminal justice agencies consider a victims' unwillingness to participate in the prosecution of a case, a waiver of victims' rights. A victim's refusal to assist with prosecution or his/her refusal to cooperate with law enforcement does not constitute a waiver of victims' rights. What is your practice in educating staff and victims of the meaning of waiving victims' rights?

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## Courtesy Victims/Courtesy Notice...

Many prosecuting agencies provide “courtesy notice” to people who do not meet the legal definition of a victim but who may have requested notice or to be kept apprised of the case. While this practice is acceptable, problems arise when the notification letters sent to the “courtesy victim” are not revised and advise that person of their victims’ rights, which do not exist. It is important to manage expectations of the person you are providing courtesy notice to as it is confusing when a person receiving notice is advised that they are a victim and entitled to victims’ rights in a notification letter and then are barred from exercising those rights.

One option is to copy the person on the notification letter that is sent to the actual (or legal) victim. This should be done only if the victim asks or agrees to the person being copied on the letter; it should not be an automatic option.

*Stay tuned for the next edition of the Victims’ Rights Brief where I will be examining issues related to conferring.*

If you have questions and or need assistance with policy revisions, please contact our office.

## A Message from Education and Outreach



We are proud to announce that the FFY2021 Basic and Advanced Victims’ Rights presentations are now open for registration! This year’s Advanced topic is “**Victims in the Spotlight: How Victims of Crime Shape Law and Victims’ Rights.**”

We will continue to conduct all presentations via webinar on BigMarker.com. We are excited to offer this option and feel it upholds the high standard that you all have come to expect from OVS presentations while conducting education safely and with flexibility.

REGISTER TODAY! You can also request other victims’ rights presentations including but not limited to: Criminal Appeals, Probation and Law Enforcement.

Please visit our website: <https://www.azag.gov/criminal/victim-services/training>.