

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners, and Advocates

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2005 Legislative Update: Victims' Rights

The 1st Regular Session of the 47th Legislature saw the passage of numerous changes relating to victims' rights that were signed into law by the Governor.

For a review of the Victims' Rights Laws, please refer to Title 13, Chapter 40; Title 8, Chapter 3, Article 7, of the Arizona Revised Statutes. The following is a summary of the legislative changes:

Dismissed Counts

A.R.S. §§13-4402.01 & 8-383.01

These new statutes will allow a victim, on request, to continue to exercise all rights of a crime victim throughout the criminal justice process, in both juvenile dispositions and adult cases, even if the criminal count(s) committed against the victim was dismissed due to a plea agreement. Additionally, prosecutors have a duty to notify the probation department if the victim requested victims' rights for the dismissed count(s) and to forward information that would enable the probation department to carry out its duties with regard to the victim's rights.

Notice of Probation Modification, Termination or Revocation

A.R.S. §§13-4415 & 8-396

Requires the court, in addition to current requirements under §§13-4415 & 8-396, to notify a victim, who requests notification and provides contact information, of any hearing on a proposed modification of the terms of probation or intensive probation of a delinquent or defendant.

Additionally, requires the probation department, on request of the victim who has provided a current address or other contact information, to notify the victim of the following:

- ✓ any proposed modification to any term of probation that affects restitution, incarceration status or the delinquent's or defendant's contact with or the safety of the victim;
- ✓ the victim's right to be heard at any hearing regarding modification of probation;
- ✓ any violation of any term of probation that results in the filing with the court of a petition to revoke probation;

- ✓ that a petition to revoke probation alleging that the juvenile or defendant has absconded from probation has been filed with the court;
- ✓ any conduct by the juvenile or defendant that raises a substantial concern for the victim's safety.

Lastly, the court has a duty to notify the Department of Juvenile Corrections of a victim's request to post adjudication notice if probation is revoked and the juvenile is committed to the Department of Juvenile Corrections.

Standing to Invoke Rights in Appellate Proceedings **A.R.S. §§13-4437 & 8-416**

Amends §§13-4437 and 8-416 to stipulate that a victim, in an adult case or juvenile disposition, has standing to file a notice of appearance in an appellate proceeding seeking to enforce or challenge that victim's rights. It also requires that the counsel for the victim, on the filing of a notice of appearance and if present, to be included in all bench conferences that directly involve an enumerated constitutional victim's right as well as in "in chambers" meetings and sessions with the court that directly involve an enumerated constitutional victim's right.

Reading of Statement of Rights **A.R.S. §§13-4438 & 8-421**

Amends §13-4438, that was adopted in 2004, by modifying the current statement of rights read to victims of adult offenders in a criminal court case to include that a victim has rights to justice and due process under Arizona law, including the right to speedy trial and a prompt and final conclusion of the case.

Additionally, §8-421 was added to the juvenile victims' rights statutes to require the superior court judge to read a statement of rights to crime victims of juvenile offenses to ensure that a victim who comes before the court has been advised of the victims' constitutional rights.

Juvenile Restitution, Notice and Fees **A.R.S. §§8-344, 8-391 & 8-418**

Amends §8-344 to require the court to retain jurisdiction of the juvenile's case after the juvenile attains 18 years of age in order to modify the manner in which court-ordered payments are made. The changes will also require the clerk of the court to send a copy of the juvenile restitution order to each person entitled to restitution. The statute change also allows a juvenile restitution order to be recorded and enforced as any civil judgment, except that a juvenile restitution order does not require renewal and does not expire until paid in full. Also stipulates that the juvenile restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the juvenile.

Also amended is §8-391. In addition to the other notice requirements, this change will now require the prosecutor to notify the victim that a predisposition or disposition proceeding may immediately follow adjudication.

Changes to §8-418 include requiring the Court, in all delinquent juvenile court matters involving a victim, or the juvenile probation officer if the juvenile is referred to a community based alternative program or a diversion program, to assess the parents of the delinquent a fee, unless the parent or sibling of the juvenile is the victim. Additionally, the parental assessment fee has increased from \$15 to \$25.

Requests for Extensions of Time in Capital Appeal Cases **A.R.S. §§13-4042 & 13-4234.01**

Title 13, Chapter 38, Article 18 is amended by adding §13-4042 for appellate proceedings and §13-4234.01 for post-conviction proceedings. The change provides that in any criminal appellate or post-conviction relief proceeding in a capital case in which an extension of time to file a brief is requested, the victim, after filing of a notice of appearance, has a right to respond to the request for an extension of time within ten days. The victim, on filing a notice of appearance, is required to serve a copy to the state and the defendant. It also allows the victim to exercise the right to respond through the state. Additionally, it requires the party requesting the extension of time to provide the notice of the request to the victim in a manner prescribed by the court. However, the provisions do not provide any party or the victim with a right to oral argument.

As a result of these two new statutes, the definition of an “appellate proceeding” under the crime victims’ rights definitions (§§8-382 & 13-4401) was changed from a review of a lower court’s decision to any contested matter. However, it should be noted that the two newly added statutes are repealed after September 30, 2007.

Commutation by the Board of Executive Clemency **A.R.S. §31-403**

Title 31, Chapter 3, Article 1 is amended by adding §31-403. The statute prohibits a person who is otherwise eligible for commutation and who is denied commutation from petitioning or being considered by the Board of Executive Clemency for commutation for a period of five years following the person’s denial of commutation if the offense for which the commutation recommendation was denied involved any of the following:

- ✓ first or second degree murder;
- ✓ serious physical injury if the person was sentenced pursuant to the dangerous and repetitive offenders statute;
- ✓ a dangerous crime against children; or
- ✓ a felony offense relating to sexual offenses or sexual exploitation of children.

Permits the Board to extend the period in which it will not consider commutation for the above offenses up to ten years or for a period of time greater than 10 years if the offense involved first or second degree murder, by one of the following votes:

- ✓ a majority affirmative vote if four or more Board members consider the action;
- ✓ a unanimous affirmative vote if three Board members consider the action; or
- ✓ a unanimous affirmative vote if two Board members consider the action and the Chairman concurs after reviewing the information considered by the two members. However, if the Chairman is one of the two Board members, then no action will be taken until the matter will be considered by a meeting in which at least three members are present and voting.

Permits the Board to waive any extension of time before which commutation may be considered if any of the following applies:

- ✓ the person is in imminent danger of death due to a medical condition, as determined by the Board;
- ✓ the person is the subject of a warrant of execution; or
- ✓ the sentence for which commutation is sought is the subject of a special order issued by the court.

These new provisions apply only to offenses that are committed on or after January 1, 2006.

Accrued Interest in Criminal Restitution Order and Judgments

A.R.S. §13-805

Amends §13-805, Jurisdiction (Restitution and Fines Chapter) to add that the enforcement of a criminal restitution order by any person who is entitled to restitution or by the State includes the collection of interest that accrues pursuant to §44-1201. Interest on Judgments (Trade and Commerce Chapter), are to be treated in the same manner as with any civil judgment.



The Victims' Rights Brief is published by the Arizona Attorney General's Office of Victim Services who 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. Questions regarding content can be directed to Mel Burton at (602) 542-4911. To learn more about victims' rights via the internet, visit us at www.azag.gov.