

# VICTIMS' RIGHTS BRIEF

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

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## Victims' Rights 101: A Review

Since their inception, victims' rights laws have been interpreted, clarified, drafted, and adjusted to respond to the needs of the victims in Arizona. As with any law, change happens. As we have entered a new year and updated legislation, when better than the present to address some common misconceptions, confusing language, and even new interpretations of the Victims' Rights statutes.

### **Misconception #1**

Victims' Rights apply to all victims of *any criminal activity*.

**Reality:** Actually, victims of a misdemeanor involving physical injury or threat of physical injury, all felony crimes, or any sexual offense are the definitions of criminal offenses under A.R.S. § 13-4401 (6). The definition of victim under the victims' rights statute covers the person(s) against whom the offense has been committed, including specific family members of the victim if they are killed or incapacitated (for further clarification of the definition of victim, see misconception #2). The Courts have broadly applied Victims' Rights to include a felony DUI where the victim of the traffic accident sustained property damage only, "Victims' Bill of Rights do not require that a victim suffer personal injury to fall within the definition of a crime victim" *State v. Cunningham*, 184 Ariz. 409, 909 P.2d 476 (1995).

### **Misconception #2**

Under the Victim's Rights statutes, victim can include *any family member of the victim*.

**Reality:** There is a very specific definition of who can be considered a victim under the Victims' Rights statutes. While there is no question the victim is the person whom the offense was committed against, in situations of death or incapacitation, there are specific requirements, which were recently amended by 2005 legislation. In this situation, the victim can be "the person's spouse, parent, child, grandparent, sibling, or any other person related to the actual victim by consanguinity or affinity to the second degree of any other lawful representative of the victim, unless in custody for an offense or is the accused" (A.R.S §13-4401 (19)).

To clarify this bundle of legalese, the definition of consanguinity is the relationship by blood or a common ancestor. What are two degrees of consanguinity? It is the grandparent, grandchild, and sibling. As for "affinity" - this relates to a spouse and the marriage unit as being one. Therefore, parents, spouses, siblings, children, grandparents, grandchildren, and any of these relations through marriage could be considered a victim.

### **Misconception #3**

A church or a school would not be considered a *legal entity victim* because they are a non-profit or a religious organization.

**Reality:** A legal entity can be any corporation, partnership, association, or other legal entity. This includes churches, schools, and the like. As a legal entity, there are *limited* Victims' Rights that apply to that entity

~~during the legal process of prosecution (A.R.S. §13-4404). Note: neighborhood associations that have registered with the city, town or county in which it is located can be provided limited rights as well (A.R.S. §13-4401.01).~~

#### **Misconception #4**

Once a victim opts-in or invokes their rights, *their responsibilities are complete and every right is automatically provided.*

**Reality:** There are Victims' Rights that are automatic and rights a victim must request. Once a victim has opted-in, the victim asserts certain rights available to them. It is important a victim stay in contact with their victim service agency. If a victim fails to keep contact information current with the agency responsible for notice, the opt-in status is revoked, ending agency responsibility for notification (A.R.S. § 13-4417 (A)). By reading each statute very carefully, there is definite language that stipulates when the victim can assert a particular right. For instance:

##### **Automatic right:**

A.R.S. §13-4406. Notice of initial appearance

On becoming aware of the date, time and place of the initial appearance of the accused, the law enforcement agency shall inform the victim of such information unless the accused appeared in response to a summons. In that case, the prosecutor's office shall, on receiving such information, provide the notice to the victim.

##### **Victim asserted right:**

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

A. **On 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.

B. **On request of the victim**, the prosecuting attorney shall confer with the victim before the commencement of the trial.

C. The right of the victim to confer with the prosecuting attorney does not include the authority to direct the prosecution of the case.

Note: Victims are required to be notified of all the rights afforded them. Please reference the statutes at <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=13>. Please also note, once you click on the link, you have to scroll down towards the bottom to reach Chapter 40 of Title 13.

## **OVS Announces**

The Office of Victim Services is proud to announce the launching of the Victims' Rights Online Complaint Form. Accessible through our website at [www.azag.gov/victim\\_rights/](http://www.azag.gov/victim_rights/) the form allows individuals yet one more opportunity to have statute violations addressed. We have also added an e-mail address, [victimrights@azag.gov](mailto:victimrights@azag.gov) to give agencies and victims alike the opportunity to pose questions, concerns, etc. to the Victims' Rights Enforcement Officer.

#### **Advanced Victims' Rights Training Announcement:**

The 2006 Advanced Victims' Rights training has begun. We will be looking at case law, legislative updates, as well as a panel discussion on restitution aimed at promoting interagency collaboration with a focus on problem-solving and local issues. Trainings are scheduled in Yuma, Tempe, Prescott and Tucson. There is no fee for the training but prior registration is required. For more information, please contact Crystal Reidy at [OVSTraining@azag.gov](mailto:OVSTraining@azag.gov).



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. Questions regarding content can be directed to Mel Burton at (602) 542-8409. To learn more about victims' rights via the internet, email us at [victimrights@azag.gov](mailto:victimrights@azag.gov) or visit us at [www.azag.gov](http://www.azag.gov).