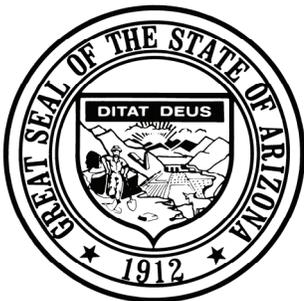


VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates

INSIDE THIS ISSUE:

The Office of Victim Services frequently receives questions about the Pre-conviction Request/Waiver Form. In this issue, some of the most common questions are answered.



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. To learn more about victims' rights visit us at www.azag.gov.

VICTIMS' RIGHTS REQUEST/WAIVER FORM: HOW DOES IT WORK?

Q: Is this form really required by law?

A: Yes. Beginning September 1, 1996, Arizona's victims' rights statutes require law enforcement agencies to provide a multi-copy form to victims upon initial contact. The multi-copy form developed and distributed by the Attorney General's Office is used by 96% of law enforcement agencies statewide. The law does permit law enforcement agencies to develop their own procedures and forms, but the forms must comply with the victims' rights statutes and be approved by the Attorney General's Office.

Q: Who developed this form?

A: A committee of representatives from criminal and juvenile justice systems developed the form.

Q: How can use of a multi-copy form possibly be good for victims?

A: Proper use of the form addresses a major complaint of crime victims: that they are NOT informed of their rights. Additionally, a law enforcement officer that conscientiously guides a victim through the completion of the form helps that

victim in the healing process.

Q: What if I have a victim who is physically or emotionally unable to fill out a form?

A: One option is to encourage the victim to designate a lawful representative to act on his/her behalf; designation of a lawful representative can be noted on the form. Another option is to use the law enforcement "Request/Waiver Exception". This allows the responding agency to note that the victim is unable to complete the form and that rights are being invoked by the officer on the victim's behalf. By law, justice agencies are required to treat this designation as an invocation of rights.

Q: What if I have a victim who lives in another county, state, country, etc.?

A: Copies of the form accompany the case as it proceeds through the justice system. The address of the victim should make no difference to the routing of completed forms.

Q: What if I arrest and detain a suspect in a local

facility and that suspect is wanted on a warrant in another jurisdiction?

A: Statutes direct the agency with original investigative responsibility (i.e. the warrant-requestor) to notify the victim upon arrest of a suspect. The custodial agency must, if the victim has requested rights, notify of the suspect's release (including terms and conditions). Providing such notice clearly requires coordination between law enforcement and custodial agencies. Relaying victim request/waiver information by fax or teletype to another agency in order to accomplish this may be appropriate and may be the most practical solution for agency implementation and compliance.

Q: What if initial contact with a victim is done completely over the phone?

A: While the form is most easily used during in-person contact, it can be used for telephone contact as well. It is recommended that in cases of phone contact, the responding law enforcement agency completes all portions of the form, including those parts normally filled out by the victim (obviously, the victim's signature must be

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REQUEST/WAIVER FORM CONT.

omitted in this case). The tear off information/resource sheet and the victim's copy is to be mailed to the victim. The remaining copies can then be processed according to agency-adopted procedure.

Q: What if the victim is a peace officer victimized in the course of performing his/her duty?

A: A peace officer victimized in the course of his/her duty is entitled to receive the protection and benefits of victims' rights, per a 1994 appellate case *State v. Roscoe*.

Q: Do I have to issue a form if the case is unlikely to be investigated or solved?

A: Yes. The form contains information that all victims of crime are entitled to, by law, regardless of the status of their case. The relevant question for a law enforcement agency is not "Will this crime be investigated or solved?" The relevant question is "Do I, the responding agency, have probable cause to believe that a felony or a misdemeanor with a victim has occurred?" If the answer to the latter question is yes, then the person against whom the offense was committed is a victim by legal definition, and is entitled by law to receive the form and be given an opportunity to request or waive rights.

Q: What if a victim changes his/her mind about a request/waiver decision, or if he/she wants to designate a lawful representative,

change an address, phone number, etc.?

A: If there is no arrest, the law enforcement agency can make the changes directly on the remaining form copies they have on file or fill out a new form, indicating a victim-initiated change. If the case has been submitted to a prosecutor (and form copies have already been routed), the prosecutor can either fill out and route a new form, indicating a victim-initiated change, or inform the other agencies that need to know of the change through other mutually acceptable means.

Q: What if I forget (or am unable) to provide the request/waiver form to a victim at the time of initial contact?

A: Victims' rights statutes mandate that the victim receive this form, and that the form accompany the case as it proceeds through either the juvenile or criminal justice system. Failure to obtain and provide victim request/waiver information will make it very difficult for all entities in the process to provide mandated rights. In fact, some prosecutors, courts, and custodial agencies may adopt policies whereby they will not accept a suspect for booking/detention or a case for charging/referral without the victim request/waiver information.

In addition, failure to provide victims with the form could give cause to victims to exercise their right to seek court intervention for the denial of a right guaran-

teed to them by law, or to seek civil damages for violation of their constitutional and statutory rights.

Q: Is there someone I can talk to about the form during the year if I need to order more forms, if I have questions about using them, or if I have suggestions for improving them?

A: Yes. Any time you need more forms, or if you have questions, revisions or suggestions about the form, please contact Kirstin Flores at (602) 542-8451 or kirstin.flores@azag.gov.

Q. Will the Attorney General continue to develop and distribute this form every year?

A: Yes (assuming no major legislative changes to the contrary). The AG will continue to coordinate this project, at no cost to each agency, as long as victims' rights laws mandate the form and require that the AG provide statewide implementation assistance. Statewide production has added benefits because it lowers the overall cost and promotes statewide uniformity of information provided to crime victims.

Q: Is something better ever going to replace this paper-dependent process?

A: Time, technology, funding, and changes in legislation may change the process in the future. Agencies will be kept apprised if there are new developments in this process.