

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

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

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2013 Legislative Updates

This issue of the Victims' Rights Brief is a summary of laws passed in the 2013 Arizona Legislative session affecting the criminal justice system and victims' rights. Unless otherwise specified, the general effective date for implementation is September 13, 2013. Because the information below provides a brief synopsis and is not inclusive of all provisions of the statute, we encourage you to visit the Arizona State Legislature website at <http://www.azleg.gov> for a complete reading of the statute.

There were also changes made to the Arizona Supreme Court Rules that outlines protections for victims in court documents. Please read the "*Use of Victim Names in Court Records and Online*" memo submitted by the Arizona Supreme Court's Commission on Victims in the Courts. This important document details changes to the criminal, juvenile, and Supreme Court rules, effective September 1, 2013, and is on the third page of this issue of the Victims' Rights Brief.

2013 LEGISLATIVE UPDATES

HB 2309 (criminal offenses; sentencing) Amended A.R.S. §§ 8-381, 13-4414

HB 2309 amended the definition of "delinquent act" to include all misdemeanors, petty offenses, or violations of local criminal ordinances. Conforms to the definition of "criminal offense" amended in 2012. Expands applicability of victim's rights for juvenile offenses to acts that are committed by a juvenile that if committed by an adult would be either a felony offense, misdemeanor offense, petty offense or a violation of a local crime ordinance.

Changes the terminology from "board of pardons and paroles" to "board of executive clemency" in A.R.S. § 13-4414 (notice of post-conviction release; right to be heard; hearing; final decision).

Modifies sentences for repeat felony offenders in certain circumstances in the following statutes: §12-116.08, §13-105 and §13-703

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HB 2311 (Restitution lien; administrative hearing)

Amended A.R.S. §§ 13-804 and 13-806

HB 2311 permits the Director of Transportation to remove a restitution lien from a vehicle record under specified circumstances and prohibits certain liens from being perfected against a motor vehicle title.

Provisions of HB2311:

1. Permits the Director of ADOT (Director), after a hearing, to remove a restitution lien from a vehicle record if the Director finds:
 - a. A person purchased the vehicle without any knowledge that the vehicle was subject to a restitution lien filed; and
 - b. The person who sold the vehicle is an obligor under a restitution lien and sold the vehicle without disclosing to the purchaser that the vehicle was subject to a restitution lien
2. Allows ADOT to remove restitution liens if they were perfected after the effective date of this bill.
3. Requires ADOT to place a code on the obligor's record that automatically restores the restitution lien on any vehicle that is subsequently titled or registered by the obligor.
4. **Requires ADOT to provide notice of the hearing to the governmental agency that requested the lien be placed on the obligor's record, which shall then notify any victim for whom restitution was ordered.**
5. Prohibits a lien created in favor of the state for the total amount of fine, surcharges, assessments, costs, incarceration costs and fees from being perfected against a titled motor vehicle.

HB 2392 (protective orders; confidential information; injunctions)

Amended A.R.S. §§ 12-1809, 12-1810 and 13-3602

HB 2392 makes information collected by law enforcement or the courts for the purposes of service of protective orders or injunctions confidential.

Requires that information beyond the name and address of the defendant in a petition for an injunction prohibiting harassment, workplace harassment or a petition for an order of protection be filed in a separate document or automated database that may only be released upon court order.

HB 2517 (domestic violence; arrest)

Amended A.R.S. § 13-3601

Establishes a minimum age requirement of at least fifteen years before a peace officer is required, with certain exceptions, to make an arrest in domestic violence cases involving a deadly weapon or dangerous instrument.

HB 2517 creates a **new mandate** for law enforcement agencies to provide to alleged or potential victims, websites for local resources related to domestic violence when responding to a domestic violence call.

HB 2097 (pawn shop restitution)

Amended Title 13, Chapter 8; Added § 13-814

Requires a person convicted of theft, or similar violations of the law, to pay restitution to a pawnbroker or precious items dealer if the lawful owner recovers the property.

A.R.S. § 13-814 directs the court to order the defendant to make restitution to a pawnbroker or precious items dealer if the lawful owner of stolen property recovers the property from the pawnbroker or precious items dealer and the person who sold or pledged the property to the pawnbroker or dealer is convicted.

Use of Victim Names in Court Records and Online

The Arizona Supreme Court has approved changes to the criminal, juvenile, and supreme court rules, **effective on September 1, 2013**. These rules include important protections for victims that change the way documents are prepared, filed and maintained.

Information Online

A new rule requirement states that no documents shall be accessible on-line to the general public in any case in which a victim was a juvenile at the time of the offense. This restriction is based on the status of the victim as a juvenile, regardless of the underlying court or case type. Additionally, no documents shall be accessible on-line to the general public in criminal cases in which the defendant is charged with any offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1.

Prosecutors and Clerks

When filing a case, prosecutors must notify court clerks that the case falls within the above parameters. Clerks will need to carefully enter victim and other information in their case management systems to ensure accurate coding in order to prevent case records from appearing online. Prosecutors and the courts in which they file are encouraged to work together to ensure accurate and consistent notification and coding.

Defense, Juvenile and Appellate Court Practitioners

Although the rules allow a victim's name to appear in superior court records, it is standard practice to use a substitute identifier for juveniles rather than their true name. All victims' true names must be replaced with a substitute identifier in appellate briefs and in the appellate courts' opinions, memorandum decisions and orders.

Victim identifier

The rules define a victim identifier as a victim's initials, a pseudonym or other substitute for the victim's true full name. Remembering that the intent of the rule is to protect victims, practitioners are urged to consider all aspects of a case when selecting a victim identifier. For example, in smaller communities, using a victim's initials would identify the victim as if their full name had been used. A rule implementation workgroup of the Commission on Victims in the Courts recommended chronological numbering of victims' identifiers in court documents. For example: Victim 1, Victim 2, etc.

The approved rule petition (R-12-0004) with the final version of the rules is available online at: <http://www.azcourts.gov/Portals/20/2012Rules/120512/R120004.pdf>.

For questions or further assistance on this rule change, please contact Carol Mitchell, Court Specialist with the Administrative Office of the Courts via email: cmitchell@courts.az.gov.