

# VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates



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The **Victims' Rights Brief** is published by the Office of 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/victim-services](http://www.azag.gov/victim-services)

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).

## 2017 Legislative Updates

This issue of the Victims' Rights Brief reviews laws passed in the 2017 Arizona legislative session that affect criminal and juvenile justice systems and victims' rights. The general effective date for implementation is August 9, 2017. The information below provides a brief synopsis and is not inclusive of all provisions of the statutes. We encourage you to visit the Arizona State Legislature website at <http://www.azleg.gov> for a complete reading of the statute.

**Some of the changes made to the victims' rights statutes will require criminal justice agencies to revise victim notification letters and agency policies and procedures.**

### Arizona Revised Statutes Relating to Victims' Rights

**HB2269:** *AMENDING SECTIONS 8-386, 8-386.01, 8-387, 8-407, 8-413 AND 8-415, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 9, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 12; AMENDING SECTIONS 13-805, 13-806, 13-810, 13-4402, 13-4405, 13-4407, 13-4408, 13-4415, 13-4428, 22-116 AND 41-2407*

#### **A.R.S. §§ 13-4405/ 8-386. Information provided to victim by law enforcement agencies**

- ◇ Permits the use of electronic forms, pamphlets, information cards or other materials to be provided to the victim by law enforcement that allows the victim to request or waive applicable rights to which the victim is entitled.

#### **A.R.S. §§ 13-4407/ 8-387. Notice of terms and conditions of release**

- ◇ Allows use of an electronic form, pamphlet, information card or other material as a means for the custodial agency and prosecutor's office (in the case of a criminal offense) and the juvenile court or the department of juvenile corrections to provide a copy of the terms and conditions of release to the victim.

#### **A.R.S. §§ 13-4428/ 8-407. Victim's discretion; form of statement**

- ◇ In addition to an oral statement, submission of a written statement or submission of a statement through audio tape or videotape, allows the victim to use any other video or digital media that is available to the court in order for the victim to exercise his/her right to be heard.

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## **HB 2269 (continued)**

### **A.R.S. § 8-413. Victim's right to privacy; exception; definitions**

- ◇ A minor victim's name may be redacted from public records pertaining to the crime if the countervailing interests of confidentiality, privacy, the rights of the minor or the best interests of this state outweigh the public interest in disclosure.
- ◇ Allows a minor victim's lawful representative to consent to the release of information.

### **A.R.S. § 13-4415. Notice of probation modification, termination or revocation disposition matters; notice of arrest**

- ◇ If a victim has requested Post-Conviction Notice, the Court is required to provide notice of that request to the State Department of Corrections and the Board of Executive Clemency if a defendant's probation is revoked and the defendant is committed to the custody of the State Department of Corrections.
  - ◇ As a result of the victim's request, the State Department of Corrections shall provide victims with notice that is required by A.R.S. §§ 13-4412 and 13-4413 and the Board of Executive Clemency shall provide the victim with the notice that is required by A.R.S. § 13-4414.
- ◆ *Adult Probation will need to update policies and procedures along with victim notification letters (where applicable) to reflect their added responsibilities.*

## ***All things Restitution***

### **A.R.S. § 13-805. Jurisdiction**

- ◇ Specifies that the trial court shall retain jurisdiction for all restitution orders in favor of a victim, including liens and criminal restitution orders, for the purposes of ordering, modifying and enforcing the manner in which payments are made until paid in full.
- ◇ Added that a filing fee, recording fee or any other charge is not required for recording a criminal restitution order.

### **A.R.S. § 13-806. Restitution lien**

- ◇ Allows a prosecutor or a victim in a criminal proceeding in which there was an economic loss to file a request with the court for a pre-conviction restitution lien after the filing of a misdemeanor complaint or felony information or indictment.
- ◇ Permits a victim in a criminal proceeding to file a restitution lien after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.
- ◇ Added that the court shall order the release of any pre-conviction restitution lien that has been filed or perfected if the defendant is acquitted or the state does not proceed with the prosecution.
- ◇ Added that a recording fee is not required for recording a criminal restitution order.

### **A.R.S. § 13-4402. Implementation of rights and duties**

- ◇ Made clear that if a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable by the court until restitution is paid.

### **A.R.S. § 13-4408. Pretrial notice**

- ◇ Added requirement for prosecutorial agencies to provide notice of the victim's right to request a pre-conviction restitution lien pursuant to A.R.S. § 13-806 within seven days after the prosecutor charges a criminal offense by complaint, information or indictment and the accused is in custody or has been served a summons.

- ◆ *Prosecutorial agencies will need to update the notice provided to victims and agency policies and procedures.*

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## **HB 2269 - All things Restitution (continued)**

### **A.R.S. § 13-810. Consequences of nonpayment of fines, fees , restitution or incarceration costs**

- ◇ Specifies that the Court, on receipt of a petition and issuance of any order to show cause, has jurisdiction to preserve rights over all restitution liens entered pursuant to A.R.S. § 13-806(B) and perfected pursuant to A.R.S. § 13-806(E).

### **A.R.S § 22-116. Funds in possession of the justice of the peace; deposit with the county treasurer; payment to claimants; disposition of unclaimed funds**

- ◇ Added the requirement for the justice of the peace to specify whether money paid to the county treasurer was a victim restitution payment.
- ◇ Specifies that the county treasurer shall transfer all unclaimed victim restitution payment monies in the suspension account to the State Treasurer for the deposit in the victim compensation and assistance fund.

### **A.R.S. § 12-1721. Monetary judgment awarded to prisoners; outstanding restitution and incarceration costs**

- ◇ In any civil action, if the monetary judgment is against the state, the monetary judgment may not be paid to a person who is or was previously incarcerated in the State Department of Corrections before all restitution and incarceration costs owed by the person is paid.
- ◇ The monetary judgment must first be used to pay any outstanding restitution if the monetary judgment is not sufficient to pay both restitution and incarceration costs.

***Please note: Restitution is on the agenda for the Attorney General's Office of Victim Services Advanced Training July 1, 2017 – June 30, 2018. Please visit our website at <https://www.azag.gov/victim-services/victims-rights-training-schedule> for more information.***

### ***HB 2241 - AMENDING SECTIONS 8-416 AND 13-4437, ARIZONA REVISED STATUTES; RELATING TO VICTIMS' RIGHTS.***

### **A.R.S. §§13-4437/ 8-416. Standing to invoke rights; recovery of damages; right to counsel**

- ◇ Provides that on the filing of a notice of appearance, counsel for the victim shall be endorsed on all pleadings.

## **Other Legislation of Interest**

**HB 2238** - AMENDING SECTIONS 8-201, 13-701, 13-705, 13-706, 13-902, 13-1307, 13-1308, 13-1309, 13-2301, 13-3212, 13-3620, 13-3821, 13-3827, 41-114, 41-1758.03 AND 41-1758.07, ARIZONA REVISED STATUTES; **RELATING TO SEX TRAFFICKING.**

**HB 2268** - AMENDING TITLE 13, CHAPTER 14, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-1426 AND 13-1427; **RELATING TO SEXUAL ASSAULT EVIDENCE.**

**HB 2444** - AMENDING TITLE 12, CHAPTER 13, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-2240; AMENDING SECTION 13-3620, ARIZONA REVISED STATUTES; **RELATING TO SEXUAL ASSAULT.**

**SB 1107** - AMENDING TITLE 8, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-466; AMENDING TITLE 41, CHAPTER 1, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-191.11; **RELATING TO CHILD AND FAMILY ADVOCACY CENTERS.**