

Crime Victims' Bill of Rights

ARIZONA CONSTITUTIONAL RIGHTS FOR CRIME VICTIMS

ARTICLE II, SECTION 2.1 VICTIMS' BILL OF RIGHTS

- A. To preserve and protect victims' rights to justice and due process, a victim of crime has a right:
1. To be treated with fairness, respect and dignity, and to be free from intimidation, harassment or abuse, throughout the criminal justice process.
 2. To be informed, **upon request**, when the accused or convicted person is released from custody or has escaped.
 3. To be present at and, **upon request**, to be informed of all criminal proceedings when the defendant has the right to be present.
 4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea and sentencing.
 5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
 6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
 7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
 8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
 9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
 10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
 11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the legislature to ensure the protection of these rights.
 12. To be informed of victims' constitutional rights.
- B. A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- C. "Victim" means a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.
- D. The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.
- E. The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislative or retained by victims.

VICTIMS' RIGHTS BEFORE TRIAL

You have the right to be notified, on request:

- of the date, time, and place of court hearings involving the defendant;
- of the release or escape of the defendant from custody

You have the right:

- to be told the name, address, and telephone number of the prosecutor's office handling the case;
- to be informed of victim assistance and other resources available to help you;
- to be told if a prosecutor decides NOT to proceed with a prosecution, and to be given the reasons for such a decision;
- to refuse a defense interview, and to set reasonable conditions for any such interview you choose to grant;
- to have the defendant or any agent of the defendant, make contact with you through the prosecutor's office;
- to name a representative to exercise your rights if you are unable to do so;
- to be present throughout all criminal proceedings at which the defendant has the right to be present;
- to exercise your right to be heard through an oral, written, or video/audio taped statement;
- to have your home address, employer's name and employer's address withheld from disclosure to the defendant and/or defendant's attorney;
- to be protected from unnecessary contact with the defendant, defendant's immediate family and defense witnesses;
- to confer with the prosecutor and be heard at any proceeding involving the release of the defendant from custody;
- to ask the court to revoke bond or personal recognizance release if the prosecution has not made such a request and there have been threats or harassment by, or on behalf of, the defendant;
- to be told of the defendant's release and any hearings to decide the defendant's eligibility for release, including release from a mental health treatment facility if the defendant was hospitalized by court order;
- to confer with the prosecutor before a change of plea and to be heard at any proceeding involving a plea agreement;
- to contest a negotiated plea if reasonable efforts were **NOT** made to notify you beforehand; and
- to confer with the prosecutor before trial.

If there is any conflict of interest or disagreement between you and the prosecutor, you have the right:

- to be directed to the appropriate legal assistance, and
- to be represented by your own attorney at your own expense and your attorney has the right, upon the filing of a notice of appearance and if present, to be included in all bench conferences and in chambers meetings and sessions with the trial court that directly involve your rights according to Article II, Section 2.1 of the Arizona Constitution.

VICTIM'S RIGHTS DURING TRIAL

You have the right:

- to be present in the courtroom;
- to be accompanied by a support person of your choice, including a Victim Witness Advocate, unless that person is a witness

VICTIM'S RIGHTS DURING SENTENCING

You have the right:

- to give the pre-sentence investigator information about the emotional, physical, and financial impact of the crime and your wishing for sentencing;
- to have a copy of the PRESENTENCE REPORT, upon request, when it is given to the defendant;
- to be heard at sentencing, and to give evidence at any aggravation, mitigation, pre-sentencing, or sentencing proceeding;
- to have the court order the defendant to pay restitution for your economic losses directly related to the crime

VICTIM'S RIGHTS AFTER SENTENCING

You have the right, on request:

- to be notified of the sentence imposed by the court;
- to have any property taken in evidence returned, or to be given an explanation for any refusal to return such property;
- to be notified of any hearing regarding work furlough release, home arrest, or any other post conviction hearing directly affecting the defendant;
- to be heard at any proceeding involving work furlough release or home arrest for defendant;
- to be notified by the Board of Pardons and Paroles of a parole hearing, and to state your opinion about parole of the inmate;
- to be notified by the Department of Corrections of the release, escape, or death of the inmate;
- to be notified of any appeal of the defendant's conviction;
- to be notified of the release, including release of the defendant on work furlough, of the inmate from jail;
- to be heard at any proceeding related to the discharge, modification, revocation, or termination of the defendant's probation;
- to contest any post conviction release, unless the defendant is discharged from sentence, when reasonable efforts were **NOT** made to allow you to be present and heard; and,
- to file a Restitution Lien against the defendant's property

RULE 39, RULES OF CRIMINAL PROCEDURE

RULE 39, VICTIMS' RIGHTS

- a. **Victim Defined.** "Victim" means a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.
- b. **Victims' Rights.** Notwithstanding the provisions of any other rule in these Rules of Criminal Procedure, a victim shall have and be entitled to assert each of the following rights:
- The right to be provided with written notice regarding those rights available to the victim under this rule and under any other provision of the law.
 - The right to be given reasonable notice of the date, time, and place of any hearing directly or indirectly involving the defendant, including hearings before trial, the trial itself, and any post-conviction proceedings.
 - The right to be notified of any escape of the defendant.
 - The right to be informed of any release or proposed release of the defendant, whether the release be before expiration of the sentence or by expiration of the sentence, and whether it be permanent or temporary in nature.
 - The right to confer with the prosecution and be heard at any proceeding involving release of the defendant or any plea bargain; and if the case goes to trial, the right to confer with the prosecutor prior to trial.
 - The right to be accompanied at any interview, deposition, or judicial proceeding by a parent or other relative, except persons whose testimony is required in the case.
 - The right to name an appropriate support person, including a victim's caseworker, to accompany the victim at any interview, deposition, or court proceeding, except where such support person's testimony is required in the case.
 - The right to require the prosecutor to withhold, during discovery and other proceedings, the home address of the victim, the address of the victim's place of employment, and the name of the victim's employer; providing, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant.
 - The right to refuse to be interviewed and to refuse to submit to deposition by a defendant acting pro se.
 - The right to refuse to be interviewed or to submit to deposition if the defendant is to be personally present at such interview or deposition. If the interests of justice require that the defendant be able to communicate with counsel during a deposition, the court may make an appropriate order to permit the absent defendant to hear and view such interview or deposition and to communicate by telephone with counsel.
 - At any interview or deposition to be conducted by defense counsel, the right to condition the interview or deposition of any of the following:
 - i. Specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that the interview or deposition be held at the victim's home, at the prosecutor's office or in an appropriate location at the courthouse.
 - ii. The right to terminate the interview or deposition if it is not conducted in a dignified and professional manner.
 - iii. The right to refuse to submit to any deposition, or any portion thereof, on the grounds that it has no legitimate discovery purpose and is not calculated to lead to relevant information. If, on balancing the interest of protection of the victim from further distress against society's interests in furthering the truth-finding function of the proceeding, the court finds there is

no substantial benefit to be derived from requiring the victim to submit to deposition and that any information sought by the defendant could be obtained by written interrogatories, it may order that the victim submit only to written interrogatories.

- The right to a copy of the pre-sentence report when the same is filed in court.
- The right to be informed of the disposition of the case.

c. Assistance and Representation.

- The victim shall also have the right to the assistance of the prosecutor in the assertion of the right enumerated in this rule or otherwise provided for by law. The prosecutor shall have the responsibility to inform the victim of the rights provided by this rule and by law and to provide the victim with notices and information to which the victim is entitled by the rule or by law.
- The prosecutor shall have standing in any judicial proceeding to assert any of the rights to which the victim is entitled by this rule or by other provision of law.
- In the event of any conflict of interest between the state or any other prosecutorial entity and the wishes of the victim, the prosecutor shall have the responsibility to direct the victim to the appropriate legal referral, legal assistance, or legal aid agency.
- In asserting any of the rights enumerated in this rule or provided for in any other provision of the law, the victim shall also have the right to engage and be represented by personal counsel of his/her choice.

d. Waiver. The rights and privileges enumerated in this rule may be waived by any victim. Any victim desiring to claim the rights and privileges provided by this rule must provide the entity prosecuting the case with his/her full name, address and telephone number. Failure to keep the address and telephone number current shall be considered as a waiver of the rule.

RULE 9.3(a), EXCLUSION OF WITNESSES AND SPECTATORS

(a) Witnesses. The court may, and at the request of either party, shall exclude prospective witnesses from the courtroom during opening statements and the testimony of other witnesses. The court shall also direct them not to communicate with each other until all have testified. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, the person shall not be excluded from the courtroom. Once a witness has testified on direct examination and has been made available to all parties for cross-examination, the witness shall be allowed to remain in the courtroom unless the court finds, upon application of a party or witness, that the presence of the witness would be prejudicial to a fair trial.

**ARIZONA REVISED STATUTES (LAWS) REGARDING
RIGHTS TO CRIME VICTIMS**

There are many laws on the books that relate directly or indirectly to crime victims. The list below identifies those laws that were designed to specifically address victims' rights.

DOMESTIC VIOLENCE/ADDRESS CONFIDENTIALLY/VICTIM INFORMATION

- | | |
|------------------|--|
| A.R.S. 8-409(D) | Party to child custody proceeding who is a victim of domestic violence, or who resides in a domestic violence shelter, need not disclose his/her address. |
| A.R.S. 25-314(E) | Petitioner for dissolution of a marriage or legal separation who is a victim of domestic violence, or who resides in a domestic violence shelter, need not disclose his/her address. |
| A.R.S. 13-3601 | An officer responding to a domestic violence call shall inform the alleged or potential victim of available resources. |

VICTIM IMPACT STATEMENT/DUTY OF ADULT PROBATION OFFICER

- | | |
|------------------|---|
| A.R.S. 12-253(4) | The officer shall promptly inquire into the physical, emotional and financial impact of the offense on the victim, and the emotional and financial impact of the offense on the immediate family of the victim and shall notify the victim or the immediate family of the victim of the right to appear personally or by counsel at any aggravation or mitigation proceeding. |
|------------------|---|

GENERAL DEFINITIONS OF HEARINGS AND PROCEEDINGS

The following are basic definitions of hearings and proceedings that may occur during the course of a criminal prosecution. However, each case is unique and the court may combine issues needing to be addressed at any hearing. Please contact the person designated by the prosecutor's office handling the case in which you are involved if you have any questions.

INITIAL APPEARANCE – A proceeding held within 24 hours of arrest. The Judge decides whether the defendant may be released on bond, on his/her own recognizance, or otherwise, and sets bond, if applicable. The Judge may order the defendant not to have contact with the victim, or set other conditions regarding the defendant's release. The Judge may also appoint a lawyer to represent the defendant if he/she cannot afford to hire one.

PRELIMINARY HEARING – A hearing scheduled within **20** days of the initial appearance to determine whether there is enough evidence (Probable Cause) to formally charge the defendant, and the crime or crimes that should be charged. The victim and other witnesses may be required to appear and testify.

ARRAIGNMENT – The defendant is informed of the formal charges and is required to enter a "**plea**" of "**guilty**" or "**not guilty**." If the defendant pleads "**not guilty**," a pre-trial conference or trial will be scheduled within **60** days of the arraignment.

CHANGE OF PLEA – A proceeding at which the court will be given a "**plea agreement**" by the prosecutor and the defendant's attorney. The plea agreement may stipulate that the defendant pleads guilty to the original charges, or to such other charge(s) as the prosecutor and the defendant's attorney have agreed upon.

DISMISSAL – A dismissal of prosecution hearing usually involves a determination by the court as to whether the charges alleged in the indictment or information (complaint) should be dropped for good cause. If the prosecution is dismissed without prejudice, the charges can be re-filed.

CONTINUANCE – Delays are common at all stages of the criminal justice process. Continuances are legal postponements of scheduled proceedings and may occur without warning. Ask the contact person designated by the prosecutor in your case to explain any proceedings you do not understand, and follow the procedures outlined by the prosecutor's office to check for schedule changes in advance of any proceeding that you plan to attend.

COMPETENCY/RULE 11 – A mental competency hearing usually involves determining whether the defendant is mentally competent to stand trial. The court could order that the defendant be civilly committed, released, or stand trial as a competent defendant.

MOTION TO SUPPRESS HEARING – A motion to suppress hearing is usually held to determine whether or no evidence in a criminal case was illegally obtained. If the evidence was in violation of the defendant's fourth amendment (search and seizure), Fifth Amendment (privilege against self incrimination), or sixth amendment (right to assistance of counsel, etc.) rights, the judge will suppress (prevent) the evidence from being presented in the case.

PRE-TRIAL CONFERENCE – A pre-trial conference is usually a discussion between the attorneys and the court. Issues relating to the relevant of facts, the gathering of evidence, and other matters pertinent to the case are discussed. The court could also make decisions relating to the defendant's release conditions, or other motions that could be raised on short notice

TRIAL – A trial is a hearing before a judge (and, usually, a jury) at which evidence is presented by both the prosecutor and the defendant's attorney. The victim(s) and witness(es) are subpoenaed (summoned) to testify, and the judge and/or jury decide whether there is enough evidence to prove the defendant guilty "beyond a reasonable doubt."

AGGRAVATION/MITIGATION HEARING – At an aggravation/mitigation hearing, the court hears evidence and decides whether the defendant's sentence should be aggravated (increased) or mitigated (decreased). This hearing is often combined with the sentencing hearing; however, the court may take the testimony and other evidence under advisement and schedule a later date for sentencing.

SENTENCING – A sentencing is scheduled within **45** days after the defendant pleads guilty or is found guilty at trial. The victim has the right to be heard and to submit a statement at this time. The judge hears testimony regarding the need for restitution; the victim's and defendant's wishes regarding sentence, and reviews the pre-sentence report prepared by the adult probation officer assigned to investigate the matter before rendering sentence.