

16A A.R.S. Rules Crim.Proc., Rule 39

Rule 39. Victims' rights

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Arizona Revised Statutes Annotated [Currentness](#)

Rules of Criminal Procedure ([Refs & Annos](#))

IX. Powers of Court

Rule 39. Victims' Rights

➔ **Rule 39. Victims' rights**

a. Definitions.

1. *Victim.* As used in this rule, a "victim" is defined in accordance with the definition provided in the Arizona Revised Statutes. With regard to the rights to be notified and to be heard pursuant to this rule, a person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition. If a victim is in custody for an offense, the victim's right to be heard pursuant to this rule is satisfied through affording the victim the opportunity to submit a written statement, where legally permissible and in the discretion of the court. A victim not in custody may exercise his or her right to be heard pursuant to this rule by appearing personally, or where legally permissible and in the discretion of the court, by submitting a written statement, an audiotape or videotape. The victims' rights of any corporation, partnership, association, or other similar legal entity shall be limited as provided by statute.
2. *Criminal Proceeding.* As used in this rule, a "criminal proceeding" is defined as a trial, hearing, (including hearing before trial), oral argument, or other matter scheduled and held before a trial court at which the defendant has the right to be present, or any post-conviction proceeding.

b. Victims' Rights. These rules shall be construed to preserve and protect a victim's rights to justice and due process. 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:

1. The right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
2. The right to be provided with written notice regarding those rights available to the victim under this rule and under any other provision of law.
3. Upon request, the right to be given reasonable notice of the date, time and place of any criminal proceeding.
4. The right to be present at all criminal proceedings.
5. The right to be notified of any escape of the defendant.
6. Upon request, the right to be informed of any release or proposed release of the defendant, whether that release be before expiration of the sentence or by expiration of the sentence, and whether it be permanent or temporary in nature.
7. Upon request, the right to confer with the prosecution, prior to trial when applicable, in connection with any decision involving the preconviction release of the defendant, a plea bargain, a decision not to proceed with a criminal prosecution, dismissal of charges, plea or sentence negotiation, a pretrial diversion program, or other disposition prior to trial; the rights to be heard at any such proceeding and at sentencing.
8. 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. If the court finds, under this sub§ 8 or sub§ 9 below, that a party's claim that a person is a prospective witness is not made in good faith, it may impose any sanction it finds just, including holding counsel in contempt.
9. 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.

10. The right to require the prosecutor to withhold, during discovery and other proceedings, the home address and telephone number of the victim, the address and telephone number 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.

11. The right 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. After charges are filed, defense initiated requests to interview the victim shall be communicated to the victim through the prosecutor. The victim's response to such requests shall also be communicated through the prosecutor. If there is any comment or evidence at trial regarding the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Arizona Constitution. For purposes of a pretrial interview, a peace officer shall not be considered a victim if the act that would have made him or her a victim occurs while the peace officer is acting in the scope of his or her official duties.

12. At any interview or deposition to be conducted by defense counsel, the right to condition the interview or deposition on 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 in the courthouse.

(ii) The right to terminate the interview or deposition if it is not conducted in a dignified and professional matter.

13. The right to a copy of any pre-sentence report provided the defendant except those parts excised by the court or made confidential by the law.

14. The right to be informed of the disposition of the case.

15. The right to a speedy trial or disposition and prompt and final conclusion of the case after conviction and sentence.

16. The right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included thereunder, and of the procedures for invoking the right.

c. Assistance and Representation.

1. The victim shall also have the right to the assistance of the prosecutor in the assertion of the rights enumerated in this rule or otherwise provided for by law. The prosecutor shall have the responsibility to inform the victim, as defined by these rules, of the rights provided by these rules and by law, and to provide the victim with notices and information which the victim is entitled by these rules and by law to receive from the prosecutor.

2. The prosecutor shall have standing in any judicial proceeding, upon the victim's request, to assert any of the rights to which the victim is entitled by this rule or by any other provision of law.

3. In any 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.

4. 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 or her choice.

d. Victims Duty to Implement Rights. Any victim desiring to claim the notification rights and privileges provided by this rule must provide his or her full name, address and telephone number to the entity prosecuting the case and to any other entity from which notice is requested by the victim. If the victim is a corporation, partnership, association or other legal entity and has requested notice of the hearings to which it is entitled by law, that legal entity shall promptly designate a representative by giving notice thereof, including such representative's address and telephone number, to the prosecutor and to any other entity from which notice is requested by the victim. Upon receipt of such notice, the prosecutor shall notify the defendant and the court thereof. Thereafter, only such a designated representative shall be entitled to assert a claim to victims' rights on behalf of that legal entity. Any change in designation must be provided in writing to the prosecutor and to any other entity from which notice is requested by the victim.

e. Waiver. The rights and privileges enumerated in this rule may be waived by any victim. Failure to keep the address and telephone number current or to designate such representative of a legal entity shall be considered as a waiver of notification rights under this rule.

f. Court Enforcement of Victim Notice Requirements

1. At the commencement of any proceeding which takes place more than seven days after the filing of charges by the prosecutor and at which the victim has a right to be heard, the court shall inquire of the prosecutor or otherwise ascertain whether the victim has requested notice and been notified of the proceeding.
2. If the victim has been notified as requested, the court shall further inquire of the prosecutor whether the victim is present. If the victim is present and the prosecutor advises the court that the victim wishes to be addressed by the court, the court shall inquire whether the victim has been advised by the prosecutor of the rights conferred by this rule. If the victim has not been so advised, the court shall recess the hearing and the prosecutor shall immediately comply with subsection (c)(1) of this rule. The court shall also provide the victim with a written list of the victims' rights enumerated in subsection (b) of this rule.
3. If the victim has not been notified as requested, the court should not proceed unless public policy, the specific provisions of a statute, or the interests of due process otherwise require. In the absence of such considerations the court shall have discretion to reconsider any ruling made at a proceeding of which the victim did not receive notice as requested.

g. Appointment of Victim's Representative. Upon request, the court shall appoint a representative for a minor victim or a representative for an incapacitated victim, as provided by [ARS § 13-4403](#). Notice of appointment of such representative shall be given by the court to the parties.

CREDIT(S)

Added July 24, 1989, effective Aug. 1, 1989. Amended and effective Sept. 19, 1989; Nov. 12, 1991, effective Dec. 31, 1991; Sept. 24, 1992, effective Sept. 30, 1992, adopted in final form Feb. 25, 1993. Amended July 28, 1993, effective Dec. 1, 1993; Oct. 16, 2003, effective Dec. 1, 2003; Sept. 3, 2009, effective Jan. 1, 2010.

COMMENT

In response to the growing perception that victims of crimes are encountering serious problems with the criminal justice system, the court appointed a distinguished committee to study Rules 9, 15, and 32 of the Rules of Criminal Procedure. Certain modifications to Rule 32 were recommended by the committee and have already been promulgated by the Court. After discussion, the committee submitted alternative proposals for amendments to Rules 9 and 15. In addition, under the provisions of [Rule 28, Rules of the Supreme Court](#), the Supreme Court staff and the Arizona Prosecuting Attorneys Advisory Council submitted proposed amendments to those rules.

After circulating these various proposals for comment, and after public notice, the Court held a public hearing on June 14, 1989. At that hearing, the Court heard comments from many interested persons and organizations, including many crime victims or organizations representing the interests of crime victims.

After taking the matters under advisement, the Court concluded that it should adopt certain modifications to Rule 9.3, which are being promulgated simultaneously with the adoption of this rule. The Court concluded that it should adopt a rule specifically dealing with victims' rights because the various proposals for amendment to Rule 15 uniformly dealt with matters at best peripheral to victims' rights. For instance, the rule changes proposed by Arizona Prosecuting Attorneys' Advisory Council would have prevented defendants or defense counsel from interviewing police officers. While that rule may or may not be a salutary change, it makes a fundamental change in Arizona procedure and one that would benefit police officers, not victims, and might constitute a considerable impediment to the truth-seeking function of the court.

The purpose of the entire proceeding initiated by this Court was to ascertain and ameliorate, if possible, the problems encountered by victims. Consequently, in an attempt to steer a straight course toward that objective, the Court has adopted a rule that deals explicitly, precisely, and, we hope, comprehensively with victims' rights and the concerns conveyed in the written and oral comments submitted to this Court.

In requiring that the victim be notified of various matters (*see, e.g.*, subsections (b)(3) and (4)), the Court is well aware that it generally has no jurisdiction except over lawyers, personnel in the judicial department, and those who are neither lawyers nor employees of the judicial department but are parties to litigation before the court. For example, the court cannot enact rules requiring the Board of Pardons and Paroles or the Department of Corrections to give notice. Thus, the requirements in this rule are directed to prosecutorial agencies staffed by lawyers and engaged in prosecuting cases before the court. Implementation of the rule requiring notice to be given to victims regarding escape, release, parole, and the like may therefore require the enactment of some statutes, a matter we call to the attention of the legislature.

The rule adopted does not cure all problems encountered by victims. Regrettably, neither this Court nor any other institution can solve all the problems arising from the tragedies that befall our society. The best this Court can do is to adopt rules that balance the interests of victims in being treated with dignity and compassion with the interests of society as a whole in preserving the truth-seeking function of judicial proceedings. We bear in mind that what is involved is not so much the "rights of criminals" as constraints against governmental action that the founders of this country believed were fundamental to liberty.

The foregoing rule adopts the major part of the proposals made in the Statement of Recommended Judicial Practices published by the United States Department of Justice's National Institute of Justice.

COMMENT TO 1991 AMENDMENT

The 1991 amendment to Rule 39(a) would generally conform the Rule's definition of "victim" to the definition of that term contained in [Ariz. Const. Art. II, § 2.1](#), the Victims' Bill of Rights. The Victims' Bill, however, defines a "victim" as a person against whom the criminal offense "has been committed." Since many of the rights of victims established by the Bill are intended to apply before the final determination of whether a crime has in fact been committed, the language "or alleged crime" has been added to the definition, to insure that victims' rights are appropriately protected prior to the judicial determination of guilt or innocence. The amended rule would terminate relevant victims' rights upon the acquittal of the defendant or the final dismissal of charges.

Section 2.1(C) of the Victims' Bill of Rights excludes persons in custody for an offense from its definition of "victim." Persons in custody, however, are sometimes the victims of crime, as when a person in custody is assaulted or raped by another inmate. In such situations, it appeared inadvisable to exclude such inmate/victims from the rights guaranteed by the Arizona Constitution. However, it did seem appropriate to limit the inmate/victim's right to be heard to the right to submit a written statement.

In general, it appeared that the definition of victim should be a generous one. Law enforcement officers, for example, should not be excluded from the rights enjoyed by victims because of their employment in the criminal justice system. However, when a deceased or incapacitated victim's next of kin is also the accused, as where one family member is accused of committing homicide on another, exclusion of the accused from the definition of victim is appropriate.

For related statutory provisions, see [ARS §§ 13-4403](#) (appointment of lawful representatives) and 13-4404 (rights of legal entities), as added by Laws 1991, Ch. 229 § 1 et seq., the "Victims' Rights Implementation Act."

The 1991 amendments to Rule 39(b) were among those adopted in order to implement the Victims' Bill of Rights, which was incorporated into the Arizona Constitution in 1990 as [Art. II, § 2.1](#). For related statutory provisions, see generally the Victims' Rights Implementation Act, Laws of 1991, Ch. 229 § 1 et seq.

A victim's failure to keep the prosecutor or other entity notified of changes of address and telephone number constitutes a waiver of the victim's right to notice requirements under the Rule; otherwise, the burden imposed by the notice requirement would be unrealistic.

For related statutory provisions, see § 13-4417 (request for notice) and § 13- 4404 (limited rights of a legal entity), adopted by Laws 1991, Ch. 229 § 1 et seq. (the "Victims' Rights Implementation Act").

New paragraph (e) of Rule 39 enhances effective enforcement of the rights guaranteed by the Victims' Bill of Rights, [Ariz. Const. Art. II, § 2.1](#), as it requires a court to inquire, at the commencement of a proceeding, about whether the victim has requested notice and been notified. Unless there are powerful considerations to the contrary, the court should not proceed unless the required victim notification has been given. In addition, if a court should discover, after ruling on a matter, that a victim entitled to notice did not receive it, the court should ordinarily have discretion to reconsider its ruling, if it is appropriate and constitutional to do so. Paragraph (f) of Rule 39 was added in 1991 as one of those amendments adopted in order to implement the Victims' Bill of Rights, which was incorporated into the Arizona Constitution in 1990 as [Art. II, § 2.1](#) et seq.

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Current with amendments received through 2/25/10

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