

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	Administrative Order
JUDICIAL ADMINISTRATION § 5-204:)	<u>No. 2008 - 23</u>
ADMINISTRATION OF VICTIMS')	(Affecting Administrative
RIGHTS)	Order No. 2004-94)
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An amendment to the above captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on December 5, 2007, and having been approved and recommended for adoption,

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 5-204 is amended as indicated on the attached document. All other provisions of § 5-204 as adopted, remain unchanged and in effect.

Dated this 28th day of February, 2008.

RUTH V. McGREGOR
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 5: Court Operations
Chapter 2: Programs and Standards
Section 5-204: Administration of Victims' Rights

[Added text is shown underlined, deleted text by ~~strikethrough~~]

A. Definitions. In this section the following definitions apply:

“Court” means the superior court or any court of limited jurisdiction.

~~“Criminal history record information” means those records of arrests, convictions, sentences, dismissals and other dispositions of charges against individuals that have been provided to the court by the National Crime Information Center, Arizona Crime Information Center, or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.~~

“Crime means a misdemeanor or a felony pursuant to A.R.S. § 13-105(6).

~~“Criminal offense” means “conduct that gives a peace officer or prosecutor probable cause to believe that a felony or that a misdemeanor involving physical injury, the threat of physical injury or a sexual offense has occurred,” as provided in A.R.S. §13-4401.~~

~~“Victim”, except as otherwise specified, means a person against whom the criminal offense crime or delinquent act has been committed, or if the person is killed or incapacitated, the person's immediate family spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or other lawful representative, except if the person 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 as provided in Article II, § 2.1 of the Arizona Constitution Az. Const. Art. 2, § 2.1, A.R.S. §§ 8-382 and 13-4401.~~

B. Purpose and Applicability. ~~To define~~ This section defines the role and responsibility of courts in preserving and protecting victims’ rights to justice and due process as provided by Az. Const. Art. 2, § 2.1, Art. 6 § 3 and A.R.S. §§ 13-603, -804, -4401 et seq. and 8-381 et seq.

C. Applicability. ~~Pursuant to Article II, §2.1, Article VI, §3 of the Arizona Constitution and A.R.S. §§ 13-603, -804, and -4401 et seq., the following requirements shall govern the administration of victims’ rights.~~ **D. Notice of Criminal Proceedings.**

1. The court shall provide at least five business days notice before the scheduled proceeding to the prosecutor, ~~as required by A.R.S. §13-4409,~~ by written document, telephonic transmission followed up with a written confirmation, facsimile transmission, or any other electronically transmitted message or document which includes the transmittal date, case number, defendant's name, type of hearing, and the date, time and place of next hearing. The court may provide additional information. If notice is initially given by

telephonic transmission, the court shall record the name of the person contacted on a confirming written notice.

2. In the superior court, continuances shall only be granted when extraordinary circumstances exist weighing these circumstances against the victim's right to a speedy trial. The court shall state on the record the reason for any continuance.
3. In the supreme court and court of appeals cases, victims who have requested post-conviction notifications shall be sent a copy of the memorandum decision or opinion from the issuing court concurrently with the parties. If the victim is represented by counsel, the notice shall be provided to the victim's counsel.

E. D. Reading of Victim Rights. At the daily commencement of the regular criminal or delinquent docket in superior court, ~~at which accused persons are arraigned, appear for a status conference, or a change of plea or are sentenced,~~ superior court judges shall read the victims bill-statement of victim rights out loud in court, as required by A.R.S. §13-4438.

F. E. Victim Statements. Any victim requests and victim statements received by court offices shall be forwarded to the appropriate court or prosecuting agency.

F. Transcripts for Crime Victims. On the request of the victim, the court or clerk shall provide at no charge, the minute entry or portion of the record of any proceeding in the case that is reasonably necessary for the purpose of pursuing a claimed victim's right.

G. Inspection of Pre-sentence/Disposition Report. Each court in conjunction with the prosecutor shall develop a written plan and procedures to allow the victim to inspect the presentence/disposition report, ~~as provided in A.R.S. §13-4425.~~ When requested by the victim, the presentence/disposition report should be made available to the victim within the same time frame it is available to the sentencing judge as prescribed in Rule 26.4, Rules of Criminal Procedure and Rule 30.A.1., Rules of Procedure for the Juvenile Court.

H. Criminal History Record Information. Pursuant to Rule 123, Rules ~~of the~~ Supreme Court, all criminal history record information ~~obtained during the presentence investigation shall be handled in court files shall be included~~ as an addendum to the presentence report and shall not be made available for review by the victim. ~~The clerk's office will~~ clerk shall maintain a filing system that will ensure that confidential criminal history information does not become part of the public record and that criminal history and other confidential information is made available only to authorized criminal justice agencies.

I. Minimizing Victim Contacts.

1. The court shall work closely with law enforcement officials, prosecutors, and defense attorneys to assist with separation of defendant and defendant's family from the victim and victim's family or representative, ~~as provided in A.R.S. §13-4431.~~

2. When new court facilities are constructed or renovated, provisions shall be made for separation of the victim and victim's family or representative from the defendant and the defendant's family or representative.

J. Victim Right to Privacy. The court shall ~~adopt~~ develop a written plan and procedures to ensure that victim information is not improperly disclosed, ~~as provided in A.R.S. §13-4434.~~

K. Restitution Payment Processing.

1. ~~Any amounts received shall first be applied to satisfy court ordered restitution until the obligation is paid in full. If the provisions of any restitution order specify a periodic payment plan, then payments shall be applied according to the order until the specified obligations are paid in full. Any remaining balance paid for each case may then be applied to satisfy penalty assessments, fees and fines in that case, as provided by administrative order or this code.~~
Collection of restitution should be done pursuant to ACJA §§ 3-401 and 4-301.

2. The clerk of court or other court entity responsible for receipting and disbursing restitution shall ~~send~~ forward all restitution payments made by cash, cashiers' check, credit card or money order to victims within ten days, unless the amount of any single disbursement is less than ten dollars. The court, clerk of court, or other court agency responsible for receipting and disbursing restitution shall disburse all personal check payments within 21 calendar days of receipt. Where a single disbursement is less than ten dollars the court may develop a clearly defined business system routine to hold funds received for individual victims until the aggregate total in an account reaches a minimum of ten dollars.

3. Notwithstanding subsection (2) above ~~any court policies designed to hold amounts that are less than ten dollars~~, courts receiving restitution payments shall, ~~not less than once each calendar year~~, remit all amounts collected over one dollar to victims not less than once each calendar year. In cases where victims cannot be located then courts, clerks of court or other agencies responsible for restitution payments shall follow state unclaimed property provisions.

4. Restitution that has been ordered and collected on cases which have been appealed shall continue to be disbursed to victims throughout the appeal period.

~~4-5.~~ For purposes of this subsection (K), "victim" also ~~means~~ includes any person, including the surviving dependent of a person, who has suffered physical injury or pecuniary loss resulting from the crime or delinquent act of the accused or a corporation, partnership, association or other legal entity, ~~as provided in A.R.S. §§8-382, 13-4201 and 13-4404.~~

L. Nonpayment of Restitution. Upon notice from the clerk, regarding a defendant's default in payment of restitution, the court, on motion of the prosecutor, on petition of any person entitled to restitution pursuant to a court order or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or warrant for arrest of the defendant's appearance.