

**Arizona Supreme Court  
Commission on Victims in the Courts**

**February 27, 2015 Meeting Agenda**  
1501 W. Washington St. Phoenix, Arizona 85007  
State Courts Building, Conference Room 119 A/B  
**(602) 452-3288 or (520) 388-4330 / Access Code: 9854**

**Call to Order**

10:00 a.m.	Announcements	Hon. Ron Reinstein, Chair
	<i>Approval of October 2014 Meeting Minutes**</i>	

**Presentations**

10:05 a.m.	Human Trafficking Presentation	Sgt. Domenick Kaufman
10:25 a.m.	Human Sex Trafficking Symposium Update	Caroline Lutt-Owens, & Joseph Kelroy

**New Business**

10:40 a.m.	Legislative Review	AOC Legislative Group
11:00 a.m.	Code Section/Rule Change Proposals ACJA 5-204** Rule 41, Form 4(a)	Jennifer Greene
	Appellate Opinions	Hon. Ron Reinstein
11:15 a.m.	COVIC Education Topics	Hon. Ron Reinstein

**Old Business**

11:25 a.m.	Victim Identification Rule Update	Aaron Nash and Keli Luther
11:40 a.m.	Public Access Victim Notification Update	Carol Mitchell
11:45 a.m.	Language Access Update	Carol Mitchell
12:00 p.m.	Call to the Public	Hon. Ron Reinstein

**Adjourn**

**\*\*Important Voting Items**

## Commission on Victims in the Courts

**October 3, 2014**

10:00 a.m. to 12:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

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**Present:** Judge Ronald Reinstein, Chair; Mr. Timothy Agan; Mr. Michael Breeze; Ms. Sydney Davis; Judge Elizabeth Finn; Ms. Kirsten Flores; Mr. Dan Levey; Judge Evelyn Marez; Mr. James Markey; Chief Jerald Monahan; Ms. Pam Moreton; Mr. William Owsley; Ms. Dimple Smith; Judge Richard Weiss; and Judge Scott McCoy *proxy for Judge Joseph Welty*.

**Telephonic:** Judge Timothy Dickerson; Ms. Karen Duffy; Ms. Elizabeth Ortiz; Ms. Karen Rasile; and Chief Cindy Winn.

**Absent/Excused:** Judge Peter Cahill; Ms. Shelly Corzo-Shaffer; Ms. Leslie James; Mr. Michael Lessler; Ms. Keli Luther; and Judge Sally Simmons.

**Presenters/Guests:** Ms. Colleen Clase; Ms. Diane Johnson; Mr. Michael Kiefer; Mr. E.J. Montini; Ms. Laurie Roberts; and Ms. Mary Wallace.

**Administrative Office of the Courts (AOC):** Mr. Dave Byers; Ms. Kelly Gray; Ms. Melinda Hardman; Mr. Paul Julien; Mr. Mark Meltzer; Ms. Carol Mitchell; Ms. Heather Murphy; and Ms. Amy Wood.

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### **I. Regular Business**

#### **A. Welcome and Opening Remarks**

The October 3, 2014 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:00 a.m.

The Chair asked for Commission member roll call and introductions of staff and guests.

#### **B. Approval of June 20, 2014 Minutes**

The draft minutes from the June 20, 2014 meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes. There were none.

- Motion was made by Judge Timothy Dickerson to approve the draft meeting minutes of the June 20, 2014 meeting of this Commission. Seconded by Ms. Sydney Davis. Motion passed unanimously.

## **C. 2015 COVIC Meeting Dates**

The following dates were proposed for the 2015 COVIC meeting schedule. The dates are “tentative”, meaning that the dates must still be coordinated with the 2015 Arizona Judicial Council (AJC) schedule. Please feel free to calendar these as tentative in the meantime, and Ms. Carol Mitchell will notify this body regarding the final meeting dates by December 2014.

- Friday, February 27, 2015
- Friday, June 12, 2015
- Friday, October 2, 2015

## **D. Announcements**

Ms. Leslie James did not attend this meeting as she was appointed to the Board of Directors of the American Public Power Association (APPA). Congratulations Ms. James!

## **II. Presentations**

### **A. Victims and the Media**

Several journalists from the Arizona Republic, Mr. Michael Kiefer, Mr. E.J. Montini and Ms. Laurie Roberts, participated in a panel discussion on victims and the media. The Commission was engaged by depth of discussion and presented a number of questions that touched on many topics including the interplay between the media and crime victims, the media’s role in court, faults of the justice system in relation to victims, the approach to victim privacy, social media’s effect on reporting, the changing attitudes regarding Victims’ Rights, and story development. Thank you to the panel for your time, expertise, and participation!

## **III. New Business**

### **A. Revision of ACJA § 3-402: Superior Court Record Retention & Disposition**

Judge Pamela S. Gates, Chair of the Committee to Revise Arizona Code of Judicial Administration (ACJA) § 3-402, Superior Court Records Retention & Disposition, presented revisions to the section. The Committee was established by Arizona Supreme Court [Administrative Order 2014-13](#) to review and update, as necessary, the provisions of ACJA § 3-402. The Committee will report its recommendations to the AJC at the October 2014 meeting.

The Committee is proposing several changes to ACJA § 3-402 that simplify the retention process, use similar language as the applicable legal authority, minimize complex trainings on record retention, and make the schedule more “user friendly.”

The most current proposed draft can be found on the [Superior Court Record Retention & Disposition Committee](#) webpage.

There was confusion expressed about the Juvenile Adoption, Severance, and Dependency case file retention. Under the proposed schedule, these records are to be retained by the court for 100 years, then transferred to LAPR for permanent retention. These juvenile file types have varying statutes that control their availability. The scope of the Committee’s task does not include petitioning for changes to these statutes, however, the Committee will identify a couple of issues it noted as worthy of further consideration.

Additionally, questions were raised about the removal of probation records from the schedule, both adult and juvenile, with the agreement that those records will be set out in a new probation records retention schedule. Probation files are distinct and the Committee felt that a probation-focused group would be better equipped to discuss the changes required to the retention schedule. Probation file retention will be addressed in either an Administrative Order or additional section in the ACJA. A timeline for this change has not been developed; however, the current schedule is still in effect and governs retention of probation files.

Finally, questions were raised about the format of files transferred to LAPR and the ability to open/use these files in the future. In response, it was discussed that LAPR does not have any responsibility under law to upgrade file formats, nor does it have the resources to do so.

- Motion was made by Ms. Sydney Davis to approve the changes to ACJA § 3-402 as proposed by the Committee to Revise Arizona Code of Judicial Administration (ACJA) § 3-402, Superior Court Record Retention & Disposition. Seconded by Mr. Michael Breeze. Motion passed. Judge Richard Weiss abstained.

## **B. Legislative Review**

Judge Ronald Reinstein presented the legislative review as the AOC legislative team was unable to attend the meeting.

During a recent Arizona Justice of the Peace Association meeting, a judge introduced the concept of permitting a justice of the peace to order community restitution in lieu of all or part of a criminal fine or civil penalty if it was in the best interest of justice. The rate would be determined by the presiding justice of the peace of the county. It does not apply to criminal restitution (by its wording does not apply to surcharges or assessments either).

As of September 27, 2014 the AOC has not taken a position in favor or against this concept, but has drafted preliminary language to address the issue.

**“Fines; civil penalties; community restitution**

**Section 1. 13-824. Uncollectible monetary obligations; community restitution**

**A. A COURT MAY ORDER A DEFENDANT TO PERFORM COMMUNITY RESTITUTION IN LIEU OF ALL OR A PORTION OF A FINE, CIVIL PENALTY OR OTHER MONETARY OBLIGATION IMPOSED IF BOTH OF THE FOLOWING APPLY:**

**1. THE DEFENDNAT HAS BEEEN SENTENCED TO PAY A FINE OR CIVIL PENALTY, AND**

**2. THE COURT FINDS THE DEFENDANT IS INDIGENT AND UNABLE TO PAY ALL OR A PORTION THE FINE, CIVIL PENALTY OR OTHER MONETARY OBLIGATION RESULTING IN THE MONIES OWED BEING UNCOLLECTIBLE.**

**B. SUBSECTION A. DOES NOT APPLY TO A FINE, CIVIL PENALTY OR OTHER MONETARY OBLIGATION MANDATED BY LAW OR TO ANY FINANCIAL RESTITUTION.**

**Section 2. 13-824. Fines, civil penalties; community restitution**

**A. A COURT MAY IN LIEU OF IMPOSING A FINE OR CIVIL PENALTY ORDER A DEFEDNANT TO PERFORM COMMUNITY RESTITUTION.**

**B. SUBSECTION A. DOES NOT APPLY TO A FINE OR CIVIL PENALTY MANDATED BY LAW.”**

The proposed concept suggests that in the post sentencing process, if a court has done everything possible to collect a fine from the defendant and was unsuccessful, the court should have the ability to substitute community service in lieu of payment of the fine.

There were concerns raised that the proposed changes would affect current and newly implemented restitution laws. In response it was pointed out that the proposed change does not include restitution, only criminal fines or civil penalties.

Further debate included discussion on the process for collecting unpaid fees and fines, costs associated with the process, and the practicality of imposing community service. It was pointed out that the Arizona Justice of the Peace Association has yet to take a position on the matter. It was agreed that there was a problem, but further discussion was needed before moving forward with a decision from this Commission.

- Motion was made by Judge Timothy Dickerson to table the issue with the understanding that this group would discuss the issue further in the next meeting scheduled for February 2015. Seconded by Judge Evelyn Marez. Motion passed unanimously.

## **IV. Old Business**

### **A. Criminal Rule 41, Form 4(a) Proposed Revision**

Ms. Kirstin Flores from the Arizona Attorney General's Office again discussed a proposed change to Ariz. R. Crim. P. 41, Form 4(a), the "Release Questionnaire." Form 4(a) is completed by law enforcement and used in the initial appearance for the purposes described in Ariz. R. Crim. P. 4.1 – 4.2.

In the last meeting of this Commission, it was discussed that the Attorney General's Victims' Rights Advisory Committee (VRAC) recently took up the issue of the rights of child victims who are involved in a case with Department of Child Safety (DCS). In the VRAC meeting it was proposed that further protection of child victims' rights could be served by adding a question/checkbox to Form 4(a) which indicates if DCS is involved in the case, as law enforcement may not be present at the initial appearance. This proposed question/checkbox would be filled out by law enforcement as part of the "Release Questionnaire", limiting the possibility that the non-offending parent/guardian will answer this question incorrectly when prompted by the judge at the hearing.

Ms. Flores presented a rough draft of the changes for approval of this Commission.

On page 3 of Form 4(a):

#### **"I. OTHER AGENCY INVOLVEMENT:**

##### **1. Were children present during the incident?**

**[ ] Yes**

**[ ] No**

##### **2. Is DCS involved?**

**[ ] Yes**

**[ ] No"**

The language would be added to the form with additional questions about veterans and homelessness status following the proposed language. The

Commission was not asked to vote on the additional language regarding veterans and the homeless, as those changes are being proposed by another group.

Issues were raised with the proposed language of “Is DCS involved?” citing some ambiguity that lead to questions of relevance at an initial appearance. What is “involvement” in relation to the case—an investigation? A call to DCS? In rebuttal, it was pointed out that the language is comprehensive enough to allow the judicial official at the hearing the freedom to investigate further if it is relevant to the current charges.

A Commission member indicated that he would like to see more development of the language. It was discussed that the language may be refined as additional information is added like the proposed veterans and homelessness language.

- Motion was made by Judge Timothy Dickerson to approve the language as written for the Ariz. R. Crim. P. 41, Form 4(a), the “Release Questionnaire.” Seconded by Judge Evelyn Marez. Motion passed. Mr. Michael Breeze abstained.

## **B. Victim Identification Rule Update**

The Chair discussed amendments to Ariz. R. Crim. P. 39(b) which was implemented in July 2014. Changes made to A.R.S. § 13-4434 further defined what identifying information and location information a victim has the right not to disclose during testimony unless he/she consents, or the court orders disclosure. This legislation defines “identifying information” as a victim’s date of birth, social security number and official state or government issued driver license or identification number, and defines “locating information” as the victim’s address, telephone number, e-mail address, and place of employment.

Judge Reinstein asked for feedback from the group regarding its implementation and asked if there were any issues that have developed with prosecution, defense, victim advocacy, etc. with the change. There were no comments.

## **V. Good of the Order/Call to the Public**

### **A. Arizona Supreme Court Case Notification System Issues**

Ms. Colleen Clase and Ms. Mary Wallace from the Arizona Voice for Crime Victims (AVCV) discussed an issue with the case notification system supported by the Arizona Supreme Court. The case notification feature allows registered users of the Public Access to Court Information system to subscribe to cases that they are interested in tracking. When a change occurs on the subscribed case, the user is notified by e-mail.

Recently an issue was revealed regarding the notices sent by the case notification system. The message indicated that there were additional/changes to the charges in some cases. The email message showed the word "Charge(s)" in the "Change(s) Made" column of the e-mail, when really the change(s) made in the case were not charge information, but additional filings like minute entries, motions, etc.

Ms. Clase and Ms. Wallace emphasized the seriousness of the issue by explaining that they had received calls from upset victims who thought the charges were changed and/or reduced, even on old cases. The Commission agreed that this was an important issue that needed to be resolved.

Ms. Carol Mitchell will revisit this issue with the AOC IT Support group. She indicated that she needed additional examples to fully investigate and requested that anyone who came across the issue contact her with the case name/information. Ms. Mitchell will report back the progress to the group in the next meeting of this Commission.

## **B. Identity Theft Victim Resources**

The Chair was recently contacted by a judge in Maricopa County who was concerned about a child victim of identity theft. The child's social security and identity was stolen and the parents had little to no support from the advocacy office in her town, other officials, and the social security office. The parents had no way to know how deep the damage to the child's identity went, were given almost no resources to investigate, and the girl was denied a new social security number. The Chair asked for suggestions and resources that he could pass along.

In response, a Commission member suggested the [Identity Theft Repair Kit](#) provided by the Arizona Attorney General. There was interest in this brochure and Ms. Mitchell agreed to forward the link to the Commission.

## **C. Adjournment**

- Motion was made by Mr. Dan Levey to adjourn the October 3, 2014 meeting of the Commission on Victims in the Courts. Seconded by Mr. James Markey. Motion passed unanimously.

## **D. Next Commission Meeting Date:**

**\*\*TENTATIVE\*\***

February 27, 2015

10:00 a.m. to 12:00 p.m.

State Courts Building, Room 119 A/B

1501 W. Washington St., Phoenix, AZ 85007

## Commission on Victims in the Courts

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**Meeting Date:**

February 27, 2015

**Type of Action  
Required:**

- Formal Action  
Request**
- Information  
Only**
- Other**

**Subject:**

Human Trafficking

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**FROM:**

**PRESENTER(S):** Sgt. Domenick Kaufman, Mesa Police Department

**DISCUSSION & TIME ESTIMATE:** 20 minutes

Sgt. Kaufman will discuss the impact of sex trafficking in Arizona and the related challenges in addressing the needs of trafficked victims in our community.

**RECOMMENDED MOTION (IF ANY):**

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b> Human Sex Trafficking Symposium
February 27, 2015	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	

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**FROM:** AOC

**PRESENTER(S):**

Caroline Lutt-Owens, Director, Dependent Children's Services and  
Joseph Kelroy, Director, Juvenile Justice Services Divisions

**DISCUSSION & TIME ESTIMATE:** 15 minutes

AOC sponsored a Human Sex Trafficking Symposium on December 15, 2014 featuring national speakers. The presenters will inform the commission of the efforts underway to address this timely topic in the Arizona state courts system.

**RECOMMENDED MOTION (IF ANY):**

None.

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
February 27, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Legislative Review

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**FROM:** AOC Government Affairs Office

**PRESENTER(S):** Jerry Landau/Amy Love

**DISCUSSION & TIME ESTIMATE:** 20 minutes  
Review of victim rights-related legislation.

**RECOMMENDED MOTION (IF ANY):**

# COVIC

## February 27, 2015

52nd Legislature - 1st Regular Session, 2015

Wednesday, Feb 25 2015 11:27 AM

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## COVIC

### Posted Calendars and Committee Hearings

H2087: SEX OFFENDER REGISTRATION; ADDRESS VERIFICATION

*Hearing:* Senate Judiciary (Thursday 02/26/15 at 9:00 AM, Senate Rm. 109)

H2204: CRIMINAL RESTITUTION ORDER; COURTS

*Calendar:* 2/25 House COW

H2205: TRAFFIC OFFENSE; RESTITUTION

*Calendar:* 2/25 House Third Reading

H2553: HUMAN TRAFFICKING VICTIM; VACATING CONVICTION

*Hearing:* House Rules (Wednesday 02/25/15 at 9:00 AM, House Rm. 4)

*Calendar:* 2/25 House Caucus

### Bill Summaries

#### H2087: SEX OFFENDER REGISTRATION; ADDRESS VERIFICATION

A person who is required to register as a sex offender is required to verify the person's address if requested by the Department of Public Safety.

First sponsor: Rep. Borrelli

H2087 Daily History

Date Action

SEX OFFENDER REGISTRATION; ADDRESS VERIFICATION 2/17 referred to Senate jud.

SEX OFFENDER REGISTRATION; ADDRESS VERIFICATION 2/10 passed House 58-0; ready for Senate.

SEX OFFENDER REGISTRATION; ADDRESS VERIFICATION 2/3 from House rules okay.

SEX OFFENDER REGISTRATION; ADDRESS VERIFICATION 2/2 to House consent calendar.

SEX OFFENDER REGISTRATION; ADDRESS VERIFICATION 1/28 from House jud do pass.

SEX OFFENDER REGISTRATION; ADDRESS VERIFICATION 1/26 referred to House jud.

#### H2204: CRIMINAL RESTITUTION ORDER; COURTS

Statute allowing the court to enter a criminal restitution order in favor of each person entitled to restitution and governing those orders applies to all courts, instead of the superior court.

First sponsor: Rep. Boyer

#### General Comments (all lists):

House JUD amendment requires criminal restitution orders that are entered by the superior court to be paid to the superior court.

H2204 Daily History

Date Action

CRIMINAL RESTITUTION ORDER; COURTS 2/24 from House rules okay.

CRIMINAL RESTITUTION ORDER; COURTS 2/18 from House jud with amend #4305.

CRIMINAL RESTITUTION ORDER; COURTS 2/18 House jud amended; report awaited.

CRIMINAL RESTITUTION ORDER; COURTS 1/22 referred to House jud.

#### H2205: TRAFFIC OFFENSE; RESTITUTION

Failure to stop and remain at the scene of an accident by a driver involved in an accident is no longer exempt from statute allowing restitution for offenses

causing economic loss.

First sponsor: Rep. Boyer

H2205 Daily History	Date Action
TRAFFIC OFFENSE; RESTITUTION	2/24 from House rules okay. House COW approved.
TRAFFIC OFFENSE; RESTITUTION	2/18 from House jud do pass.
TRAFFIC OFFENSE; RESTITUTION	2/11 House jud held.
TRAFFIC OFFENSE; RESTITUTION	1/22 referred to House jud.

### **H2553: HUMAN TRAFFICKING VICTIM; VACATING CONVICTION**

A person convicted of prostitution or any other nondangerous offense that was committed as a direct result of the person being a victim of human trafficking is permitted to apply to the judge who pronounced sentence to vacate the person's conviction. The court is required to grant the application and vacate the conviction if the court finds that the person's participation in the offense was a direct result of being a victim of human trafficking. Information that must be included in the application, the application process and the evidence that may be considered are specified. Applies to a victim of human trafficking who was convicted either before or after the effective date of this legislation.

First sponsor: Rep. Steele

#### **General Comments (all lists):**

House JUD Striker amendment allows a person convicted of prostitution prior to January 1, 2015 to apply to the court to vacate the person's conviction if the court finds by clear and convincing evidence that the person's participation in the offense was a direct result of being a victim of sex trafficking. A hearing is only required if the prosecutor opposes the application to vacate conviction. Disqualifies vacated conviction as a historical prior.

H2553 Daily History	Date Action
HUMAN TRAFFICKING VICTIM; VACATING CONVICTION	2/18 from House jud with amend <u>#4308</u> .
HUMAN TRAFFICKING VICTIM; VACATING CONVICTION	2/18 House jud amended; report awaited.
HUMAN TRAFFICKING VICTIM; VACATING CONVICTION	2/11 referred to House jud.

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
February 27, 2015	<input checked="" type="checkbox"/> <b>Formal Action Request</b> <input type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Amendment to ACJA 5-204: Administration of Victims' Rights

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**FROM:** Jennifer Greene, Assistant Counsel, AOC Legal Services

**PRESENTER(S):** Jennifer Greene

**DISCUSSION & TIME ESTIMATE:** 15 minutes

Jennifer Greene will present two technical amendments that need to be made to this ACJA section to the Commission prior to seeking Supreme Court approval. The amendments are explained in the attached Proposal Coversheet.

Jennifer will also update the Commission on the status of Form 4(a) rule petition.

Rule Petition:

[http://azdnn.dnnmax.com/Portals/0/NTForums\\_Attach/1112102097060.pdf](http://azdnn.dnnmax.com/Portals/0/NTForums_Attach/1112102097060.pdf)

**RECOMMENDED MOTION (IF ANY):**

Approve the code section amendments as presented.

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

**1. Effect of the proposal:**

The attached amendments would conform the code section to changes made by:

- Laws 2013, Chapter 55 § 1 (HB 2309), which broadened the applicability of victims' rights pertaining to juvenile offenses to include all misdemeanors, petty offenses, and criminal ordinance violations.
- Laws 2014 Chapter 269 § 6 (HB 2563), which requires the appellate courts to send a victim who requests notice a copy of the memorandum decision or opinion in a juvenile delinquency appeal concurrently with the parties.

**2. Significant new or changed provisions:**

None known.

**3. Committee actions and comments:**

No other committee review has been sought

**4. Controversial issues:**

None.

**5. Recommendation:**

Recommend adoption as presented.

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

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

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

“Criminal Offense” means “conduct that gives a peace officer or prosecutor probable cause to believe that a felony, a misdemeanor, a petty offense or a violation of local criminal ordinance has occurred,” as provided by A.R.S. § 13-4401(6).

“Delinquent act” means an act committed by a juvenile that if committed by an adult would be either (1) a misdemeanor offense ~~involving physical injury, the threat of physical injury or a sexual offense;~~ or (2) a felony offense; (3) a petty offense; or (4) a violation of a local criminal ordinance, in accordance with A.R.S. §§ 8-381 and -382.

“Victim”, except as otherwise specified, means a person against whom a criminal offense or delinquent act has been committed, 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 other lawful representative, except if 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 as provided in Az. Const. Art. 2, § 2.1, A.R.S. §§ 8-382 and 13-4401.

**B. [no changes]**

**C. Notice of ~~Criminal~~ Proceedings.**

1. The court shall provide at least five business days notice before the scheduled proceeding to the prosecutor, 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 or postadjudication 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.

**D. through L.** [no changes].

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
February 27, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Appellate Opinions

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**FROM:** Administrative Office of the Courts

**PRESENTER(S):** Hon. Ron Reinstein

**DISCUSSION & TIME ESTIMATE:** 5 minutes

Review of the most relevant victim-related opinions issued by the Arizona appellate courts.

**J.D.; M.M. v HON. HEGYI/T.D./STATE OF ARIZONA**

<http://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2014/CV-14-0085-PR.pdf>

**LINDSAY R. et al. v. HON. COHEN/MEYN**

<http://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2015/1CA-SA14-0186.pdf>

**RECOMMENDED MOTION (IF ANY):**

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
February 27, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	COVIC Education Topics

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**FROM:** Administrative Office of the Courts

**PRESENTER(S):** Hon. Ron Reinstein

**DISCUSSION & TIME ESTIMATE:** 15 minutes

The Chair is soliciting potential topics/speakers for basic victim rights training to develop a future judicial conference educational session.

**RECOMMENDED MOTION (IF ANY):**

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
February 27, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Victim Identification Rule Update

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**FROM:**

**PRESENTER(S):** Keli Luther, Maricopa County Attorney's Office,  
Aaron Nash, Maricopa County Clerk's Office

**DISCUSSION & TIME ESTIMATE:** 15 min. Discuss implications and impact of victim identification rule petition between agencies and as to what constitutes electronic access.

**RECOMMENDED MOTION (IF ANY):**

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
February 27, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Victim Notification System

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**FROM:** Administrative Office of the Courts

**PRESENTER(S):** Carol Mitchell

**DISCUSSION & TIME ESTIMATE:** 5 minutes

Status update on the suggested changes to the automated victim notification system.

**RECOMMENDED MOTION (IF ANY):**

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
February 27, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Language Access Update

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**FROM:** Administrative Office of the Courts

**PRESENTER(S):** Carol Mitchell, Caseflow Management Unit

**DISCUSSION & TIME ESTIMATE:** 15 minutes

This presentation will review important elements of language access planning and available resources.

Link to AJIN Interpreter Resources Page:

[http://ajinweb/ctserv/cmu/CMU\\_CourtInterpreter.htm](http://ajinweb/ctserv/cmu/CMU_CourtInterpreter.htm)

**RECOMMENDED MOTION (IF ANY):**

**Arizona Supreme Court  
Commission on Victims in the Courts**

**June 12, 2015 Meeting Agenda**

1501 W. Washington St. Phoenix, Arizona 85007  
State Courts Building, Conference Room **345 A/B**

**(602) 452-3288 or (520) 388-4330 / Access Code: 2225**

**Call to Order**

10:00 a.m. Call to Order Hon. Ron Reinstein

Announcements

- Evacuation Plan
- Introductions
- AG's 2015 Distinguished Service Award
- State Bar Award - Judge Peter Cahill
- Special Guests: Chief Justice Scott Bales and Attorney General Mark Brnovich

*Approval of February 2015 Meeting Minutes\*\**

**Presentations**

10:25 a.m. Sexual Assault Forensic Evidence Reporting Act (SAFER) Karyn Rasile, James Markey & Allison Sedowski

10:45 a.m. Increasing the Effectiveness of "Lay Legal Advocates" Christine Groninger

**New Business**

10:55 a.m. Legislation and Rule Update Amy Love

11:10 a.m. Order Amending Rules 29 & 41 of the AZ Rules of Criminal Procedure (HB2553 controlling) Patrick Scott

**Old Business**

11:15 a.m. Code Section/Rule Change Proposals  
- Rule 41, Form 4(a) Comment and Proposed Workgroup Hon. Ron Reinstein

- ACJA §5-204 Technical Amendment Patrick Scott

11:25 a.m. Update on Minor Victims of Sex Trafficking in AZ Probation Holli Sanger-Alarco

11:40 a.m. Victim ID Rule Update Hon. Ron Reinstein

11:50 a.m. Victims' Rights Panel at Judicial Conference Hon. Ron Reinstein

12:00 p.m. Call to the Public Hon. Ron Reinstein

**Adjourn**

***\*\*Important Voting Items***

All times are approximate. The Chair reserves the right to set the order of the agenda. For any item on the agenda, the Committee may vote to go into executive session as permitted by Arizona Code of Judicial Administration §1-202. Please contact Denise Lundin at (602) 452-3614 with any questions concerning this agenda. Persons with a disability may request a reasonable accommodation by contacting Kelly Gray at (602) 452-3647. Requests should be made as early as possible to allow time to arrange for the accommodation.

# Commission on Victims in the Courts

**February 27, 2015**

10:00 a.m. to 12:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 119 A/B

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**Present:** Judge Ronald Reinstein, Chair; Mr. Timothy Agan; Mr. Michael Breeze; Judge Peter Cahill; Ms. Shelly Corzo-Shaffer; Judge Elizabeth Finn; Ms. Kirsten Flores; Mr. Dan Levey; Mr. Michael Lessler; Ms. Keli Luther; Sgt. Ret. James Markey; Ms. Elizabeth Ortiz; Ms. Linda Christian (*proxy for William Owsley*); Ms. Karyn Rasile; Judge Joseph Welty; Chief Cindy Winn.

**Telephonic:** Judge Timothy Dickerson; Ms. Karen Duffy; Ms. Leslie James; Judge Evelyn Marez; and Judge Sally Simmons.

**Absent/Excused:** Ms. Sydney Davis; Chief Jerald Monahan; and Judge Richard Weiss.

**Presenters/Guests:** Jon Eliason; Ms. Jennifer Greene; Mr. John Humphries; Sgt. Domenick Kaufman; Mr. Joseph Kelroy; Mr. Jerry Landau; Ms. Zora Manjencich; Ms. Heather Murphy; Mr. Aaron Nash; and Ms. Amy Wood.

**Administrative Office of the Courts:** Ms. Carol Mitchell; Ms. Denise Lundin; and Ms. Kelly Gray.

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## **I. Regular Business**

### **A. Welcome and Opening Remarks**

The February 27, 2015 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:07 a.m. The Chair asked for Commission member roll call and introductions of staff and guests.

### **B. Announcements:**

#### **i. 20<sup>th</sup> Annual Valley of the Sun Chapter Parents of Murdered Children Fund Raiser and Auction**

The Valley of the Sun Chapter Parents of Murdered Children will be having a dinner and fundraiser on Friday, February 27, 2015 at 5:30 p.m. at the El Zaribah Shriners, located at 552 North 40th Street, Phoenix, Arizona. The Chair will be attending with Mr. Dan Levey.

**ii. National Institute of Justice, SAFER Working Group, New Orleans, March 2015**

Chair Reinstein, Ms. Karyn Rasile, and Sgt. Ret. James Markey will be attending a SAFER working group in New Orleans the week of March 9, 2015 (related the Sexual Assault Forensic Evidence Reporting Act, SAFER).

**iii. New COVIC Staff and Membership Changes**

Ms. Carol Mitchell will no longer staff COVIC and was honored at the meeting with an appreciation token. Ms. Mitchell will still be with the Administrative Office of the Courts, but will focus on language access issues in the courts. The Commission thanked Carol for her dedication, hard work, and efforts throughout many years of service.

The Commission welcomed Ms. Denise Lundin as the new staff person to the commission beginning in March 2015. Denise brings a wealth of knowledge and expertise from her time as the Clerk of the Superior Court in Cochise County, as well as her time at the Administrative Office of the Courts (AOC).

Sadly, Ms. Dimple Smith and Ms. Pam Moreton have resigned their appointments to COVIC. Ms. Smith has taken a position in North Dakota and Ms. Moreton is no longer the Director of Victim Services for the Yavapai County Attorney's Office. The Commission thanked both members for their important service to COVIC.

**C. Approval of October 3, 2014 Minutes**

The draft minutes from the October 3, 2014 meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes.

- Motion was made by Mr. Michael Breeze to approve the draft meeting minutes of the October 2014 meeting of the Commission on Victims in the Courts. Seconded by Mr. Timothy Agan. Motion passed unanimously.

**II. Presentations**

**A. Domestic Human Trafficking**

Sgt. Domenick Kaufman of the Mesa Police Department presented information about domestic sex trafficking.

Sex trafficking is the exploitation of persons for commercial sex where the victims are controlled by force, deception or coercion. Domestic *Minor Sex Trafficking* is the exploitation of any person under the age of 18 for commercial sex. At its core is child rape for profit. Trafficking does not necessarily involve the crossing of borders as U.S. citizens are being trafficked. Typically the victims did not understand the implications of the lifestyle when they were recruited. They do not choose to commit unlawful acts, are not paid for services, have no freedom of movement, and leaving/escaping is not an option.

Sex trafficking often has several tracks including:

- The traditional pimp/prostitute scenario track (“Main Street”; strip clubs; brothels)
- The massage parlors/escort services track
- The circuit track (organized around major events)
- The digital track (escort ads; social media; porn webcam shows)

Sex trafficking violates both State and Federal laws, including A.R.S § 13-3212, which addresses child prostitution, and A.R.S. § 13-1307A, which addresses sex trafficking.

Victims of trafficking are often at-risk populations including runaways, foster children, abuse victims, and the financially desperate. Victims are often groomed into the life. Traffickers manipulate vulnerable people into believing that they are "choosing" such a life. Sometimes a trafficker poses as a romantic partner who ultimately ends up pimping the victim and controlling through isolation, degradation and physical torture, mixed in with occasional indulgences. The mindset of victims often includes distrust of outsiders and law enforcement in particular. Often they do not self-identify as victims, and blame themselves for the predicament. Victims may fear for safety of their families, who are often threatened by traffickers, and fear losing basic needs (food, shelter, etc.).

Responding to trafficking involves a three pronged approach including education, deletion of supply, and reduction of demand. Often victims need immediate assistance (housing, food, medical, safety and security, language interpretation and legal services), as well as longer term mental health & substance abuse assistance, income assistance (cash, living assistance), a legal status (T visa, immigration, etc.) and/or other services.

A victim centered approach allows authorities to break the cycle and to build stronger cases against traffickers. This approach includes prioritizing the safety, privacy, and well-being of the victim, understanding the exploitation of vulnerable victims, understanding the impact of victim trauma, and how trauma affects victim behavior.

There were questions for Sgt. Kauffman from the group regarding the impact of the Internet on human trafficking. Sgt. Kauffman elaborated on various Internet outlets for selling sex and how the movement of the operations often shift from hour to hour. He also elaborated on the use of smart phones and social media to gain access to young girls and boys, and the ease of circumventing security settings.

## **B. Human Sex Trafficking Symposium Update**

Mr. Joseph Kelroy, Director, Juvenile Justice Services Division, presented an overview of the Human Sex Trafficking Symposium conducted in December of 2014 at the AOC.

The Human Sex Trafficking Symposium was developed out of a workgroup at the AOC, to discuss this important issue. Participants included judges and court staff from around the state, specialty court judges from Nevada and California, a Probation Officer from California, and speakers from the National Center for Public Policy Research and the Center for Court Innovation. The goal was to provide information to the group, and well as help the AOC and area stakeholders identify areas to target and how to deal with this issue effectively in the future.

Five focus areas were identified, which included specialized programming, multi-system collaboration, specialty courts, training, and awareness. The AOC's Juvenile Justice Services Division (JJSD) and Adult Probation Services Division, are collaborating with individuals from Arizona State University in an effort to provide training programs to stakeholders including juvenile and adult probation providers, prosecutors, judges, detention officers, and Department of Children Services staff.

Additionally, the JJSD has been exploring the potential of converting a Yavapai County detention center to set up a residential programs for victims of sex trafficking..

In addition to the efforts at AOC, there are many other efforts underway across the state to address issues related to sex trafficking. New focus has been placed on this issue by the Arizona Human Trafficking Council, which is co-chaired by Ms. Cindy McCain (McCain Institute Human Trafficking Advisory Council) and Mr. Gil Orrantia (Director, Arizona Department of Homeland Security). The group has a website and hotline available to raise awareness: [www.endsextrafficking.az.gov](http://www.endsextrafficking.az.gov) or (888) 373-7888.

If anyone has any questions, please feel free to contact Mr. Joseph Kelroy at [jkelroy@courts.az.gov](mailto:jkelroy@courts.az.gov).

## **III. New Business**

## **A. Legislative Review**

Mr. Jerry Landau, Arizona Supreme Court, Legislative Office, presented several house bills to the group. He noted that the Arizona House of Representatives has finished hearing bills in the original House. Bills have progressed through the Committee of the Whole, and Third Reading Roll Call. Within the next three to four weeks, bills will proceed through the Arizona Senate.

### H2087: Sex Offender Registration; Address Verification

A person who is required to register as a sex offender is required to verify the person's address if requested by the Department of Public Safety.

General Comments: None

First Sponsor: Rep. Borrelli

### H2204: Criminal Restitution Order; Courts

Statute allowing the court to enter a criminal restitution order in favor of each person entitled to restitution. Provides for governing those orders in all courts, instead of exclusively in the Superior Court.

General Comments: House JUD amendment requires criminal restitution orders that are entered by the Superior Court to be paid to the Superior Court.

First Sponsor: Rep. Boyer

### H2205: Traffic Offense; Restitution

Failure to stop and remain at the scene of an accident by a driver involved in an accident is no longer exempt from the statute allowing restitution for offenses causing economic loss.

General Comments: None

First Sponsor: Rep. Boyer

### H2553: Human Trafficking Victim; Vacating Conviction

A person convicted of prostitution or any other non-dangerous offense that was committed as a direct result of the person being a victim of human trafficking is permitted to apply to the judge who pronounced sentence requesting that conviction be vacated. The court is required to grant the application and vacate the conviction if the court finds that the person's participation in the offense was a direct result of being a victim of human trafficking. Information that must be included in the application, the application process, and the evidence that may be considered are specified. Applies to a victim of human trafficking who was convicted prior to July 24, 2014.

General Comments: A hearing is only required if the prosecutor opposes the application to vacate conviction. Disqualifies vacated conviction as a historical prior.

Additionally, Mr. Landau commented this is a significantly pared backed version of the original bill. This bill only applies to statewide prostitution statutes; not to municipal ordinances. It is pending rules in the House and is still being discussed by the Maricopa County Attorney's Office and the House Judiciary Chair. The Arizona Supreme Court asked for one change, a minute entry to be included in the file showing the judgment had been vacated.

He also wanted the group to consider the issue of how the information is reported on background checks. If the victim states that he/she was not convicted of a crime on a job application, and if the employer runs a check, it will still indicate that the victim was arrested for a crime. Police records are partially controlled by the Federal government. Though there are annotations, etc. that can be made to police files, it was pointed out that there is still record of the arrest, which may pose challenges for victims. This is a known issue that hopefully will be addressed with revisions to language in legislative process.

First Sponsor: Rep. Steele

A committee member asked Mr. Landau about S.B. 1460, still moving through the process. S.B. 1460 restores an offender's right to possess a firearm if the person's judgment of guilt is set aside, thereby restoring the right two years earlier than is currently allowed and legalizes certain prohibited weapons, including silencers, sawed-off shotguns and nunchucks. Mr. Landau indicated that he does not believe the bill will survive the process.

## **B. Code Section/Rule Change Proposals**

Ms. Jennifer Greene, Assistant Counsel, AOC Legal Services Division, presented two amendments to the Arizona Code of Judicial Administration (ACJA) and updated the Commission of the status of a rule petition related to the Arizona Rules of Criminal Procedure.

### **i. Arizona Code of Judicial Administration, Section 5-204**

The technical amendments to this code section would change it to conform to legislation passed by:

- Laws 2013, Chapter 55 § 1 (HB 2309), which broadened the applicability of victims' rights pertaining to juvenile offenses to include all misdemeanors, petty offenses, and criminal ordinance violations.

- Laws 2014 Chapter 269 § 6 (HB 2563), which requires the appellate courts to send a victim who requests notice a copy of the memorandum decision or opinion in a juvenile delinquency appeal concurrently with the parties.
- Motion was made by Judge Joseph Welty to approve the conforming technical amendments to ACJA section 5-204. Seconded by Mr. Michael Breeze. Motion passed unanimously.

**ii. Arizona Rules of Criminal Procedure, Rule 41: Form 4(a)**

In the last meeting of this Commission, there was an approved motion to add additional information to Ariz. R. Crim. P. 41, Form 4(a), the “Release Questionnaire.” There is petition pending, [Supreme Court No. R-15-0026](#) which is available for view on the [Court Rules Forum](#). The proposed changes include a question related to the involvement of the Department of Child Safety (as this Commission suggested), as well as questions about military service and if the defendant is homeless.

Judge Evelyn Marez brought to the attention of law enforcement in her county the benefits of use Form 4(a) and will continue to recommend the use of this or another form with similar language.

**iii. Appellate Opinions**

Chair Ronald Reinstein reviewed two recent court opinions related to victim rights.

J.D. v. Hon. Hegyi, 234 Ariz. 210, 320 P.3d 826 (App. 2014).

Filed October 27, 2014; vacated and remanded. In a criminal case, a parent who exercises victim’s rights on behalf of a minor child is statutorily entitled to refuse a defense interview. The Arizona Supreme Court held that the parent’s right to refuse an interview does not expire when the victim turns eighteen, but instead continues until the case ends.

Lindsay R. v. Hon. Cohen, No. 1 CA–SA 14–0186 (App. 2015).

Filed January 13, 2015; petitioner’s request for relief denied. The petitioners contended that under the Victims’ Bill of Rights (“VBR”), victim’s counsel was authorized to substitute for the prosecutor in criminal restitution proceedings. Because no provision of the VBR authorizes privatization of the restitution process, the Court of Appeals held that such substitution was not allowed.

Discussion regarding both cases ensued.

### **C. COVIC Education Topics**

COVIC has been asked to develop a training session for the upcoming Judicial Conference in June. The Chair asked if any members of this Commission had suggestions about topics to include, and possible participation on a panel discussion.

It was suggested that topics include an update on recent and pending changes to laws that affect victims' rights. Additionally, although the New Judge Orientation discusses basic victims' rights and laws, a more in-depth discussion about the procedures in the courtroom could be beneficial in the upcoming conference, especially for rural judges. Lastly, it was suggested that a panel with different types of victims could be well received. The goal is to present topics that would be of interest to most judges attending.

Please contact Denise Lundin at (602) 452-3614 or via email at [dlundin@courts.az.gov](mailto:dlundin@courts.az.gov) with any additional suggestions or comments.

## **IV. Old Business**

### **A. Victim Identification Rule Update**

The chair stated that questions had arisen regarding the recent amendments to Supreme Court Rule 123 and that some clarification was needed as to what constitutes remote access vs. online access and what processes are in place. Specifically, how is the rule working? Mr. Jon Eliason, Major Crimes Division Chief at the Maricopa County Attorney's office and Ms. Keli Luther explained their office practice: Prosecutors use victim identifiers in their charging documents and name the victims in a motion filed nearly simultaneously. They audited some cases to see if the names were displayed remotely and they were not. When they went to the clerk's office they learned that the clerk provides computer terminals for the public to be able to view the electronic file and that the documents and names were available for viewing when accessed in this manner.

[Editor's note: the definition of Remote Electronic Access from Supreme Court Rule 123(b)(17) is: "means access by electronic means that permits the viewer to search, inspect, or copy a record without the need to physically visit a court facility."]

They noted that law enforcement and defense attorneys were leaving victims' names out of their documents and that education was working. Karen Duffy explained the Pima County Clerk's office procedure is the same as Maricopa County's except that victim identifiers are not used in pleadings. Statewide, if

prosecutors don't want the public to view victims' names in the paper or electronic file available in the clerk's office they would need to file a motion to seal on a case-by-case basis.

Aaron Nash, Special Counsel and Public Information Officer for the Clerk of the Superior Court in Maricopa County, explained the office's records procedure, that the docket and documents are available for viewing at computer terminals in the office. He noted that filed exhibits, including photographs, in the clerk's custody are public records and also available to the public at the clerk's office, when not sealed by the court.

The chair suggested a work group could be formed to examine what problems have arisen since the rule change and what might be potential solutions. He asked that those interested in serving contact Denise Lundin at (602) 452-3614 [dlundin@courts.az.gov](mailto:dlundin@courts.az.gov).

## **B. Public Access Victim Notification Update**

Ms. Carol Mitchell gave an update on the public access case notification system issues discussed at the October 2014 meeting of this body. The case notification feature allows registered users of the Public Access to Court Information system to subscribe to cases that they are interested in tracking. When a change occurs on the subscribed case, the user is notified by e-mail. A victim received one of these emails and the message indicated that there were additional changes to the charges in some cases. The email message showed the word "Charge(s)" in the "Change(s) Made" column of the e-mail, when really the change(s) made in the case were not charge information, but additional filings such as minute entries, motions, etc.

Ms. Mitchell brought this issue to AOC IT Department. The project has been assigned to staff and they are currently working on the issue. Ms. Denise Lundin will present any progress in the next meeting.

## **C. Language Access Update**

Ms. Carol Mitchell reviewed important elements of language access, available resources, and how it affects victims in the courts.

Language access in the courts is rooted in Title VI of the Civil Rights Act of 1964 (which prohibits discrimination in any program or activity receiving federal assistance) and Executive Order 13166 (which guides agencies receiving federal assistance to provide meaningful access). In a letter sent to state court administrators in 2010, the Department of Justice instructed courts to provide interpreter coverage for ALL case types at no cost to parties. These services should be extended beyond the courtroom to ensure effective communication in court-appointed/supervised functions.

In Arizona, Chief Justice Berch signed Administrative Order 2011-96 requiring courts to create Language Access Plans (LAP), which the AOC drafted a template for courts use. The Presiding Judge of each county determined if individual courts needed a plan or were covered under one general county plan. The templates were updated in May 2014.

The May 2014 changes to the LAP template included:

- Removed language about coverage in certain case types
- Added reference to Video Remote Interpreting
- Added information about court-ordered services and programs
- Incorporated AOC translated forms website and new training material
- Included complaint process and form template

Additionally, AOC Operational Reviews will include confirmation of an LAP on file (May 2014 version compliant), use of Language ID cards and signage readily available, and staff awareness of resources, including the new complaint form. It is recommended that courts take the time to consider items like signage posted in the court/public areas, voicemail messages for main phone lines, public materials/pamphlets, and information on the court's website when developing language access programs. Moreover, it is suggested that courts analyze demographic data, track language requests, and hire experienced bilingual staff as part of their LAP.

Resources available to court staff include an intranet page, as well as public [Resources for Interpreters](#) webpage. Additionally, Ms. Carol Mitchell is available to assist courts and members of the public at (602) 452-3965 or [cmitchell@courts.az.gov](mailto:cmitchell@courts.az.gov).

## **V. Call to Public**

### **A. Good of the Order/Call to the Public**

#### **i. Victims' Rights Week Event, April 2015:**

The Arizona Attorney General's Office, Victim Services, is hosting an event on April 21, 2015. Ms. Cindy McCain will be the keynote speaker. The event is free, but registration is required. Ms. Denise Lundin will send out the notification to all the members.

#### **ii. Domestic Violence Conference, August 2015:**

The Glendale Domestic Violence Task Force in cooperation with AOC Education Services Division, and the Coalition to End Sexual Violence,

MAG and APAC, are hosting a multi-disciplinary domestic violence conference in Glendale on August 20, 2015 – August 21, 2015. Registration has not started yet, however “save-the-date” notices will soon be sent. An email was sent to a variety of judges soliciting training and panel ideas recently, so there will be a variety of topics covered and resources available.

## **VI. Adjournment**

### **A. Adjourn**

- Motion was made by Mr. Michael Breeze at 12:09 p.m. to adjourn. Seconded by Mr. Michael Lessler. Motion passed unanimously

## **VII. Next Committee Meeting Date:**

June 12, 2015  
10:00 a.m. to 12:00 p.m.  
State Courts Building, Room 119 A/B  
1501 W. Washington St., Phoenix, AZ 85007

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 12, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Sexual Assault Forensic Evidence Reporting Act (SAFER)

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**FROM:** SAFER Act Conference Participants

**PRESENTER(S):** Karyn Rasile, Allison Sedowski, and Jim Markey

**DISCUSSION & TIME ESTIMATE: 20 Minues**

**Overview and objectives of the Federal SAFER ACT.**

Sexual Assault Forensic Evidence Reporting Act of 2013 or the SAFER Act of 2013 - Amends the DNA Analysis Backlog Elimination Act of 2000 to authorize the Attorney General to make Debbie Smith grants under such Act to states or local governments to: (1) conduct audits of samples of sexual assault evidence that are awaiting testing; and (2) ensure that the collection and processing of DNA evidence by law enforcement agencies from crimes is carried out in an appropriate and timely manner and in accordance with specified protocols and practices.

**RECOMMENDED MOTION (IF ANY):**

## SAFER ACT 2013

### Sexual Assault Forensic Evidence Reporting Act

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## Addressing the Backlog

- Estimate several THOUSANDS of SAK's
  - Media blitz/JHF FOIA
  - New York and L.A. – completed – TEST ALL
  - Cleveland, Memphis, Jacksonville – in progress
- Detroit/Houston AR Project
  - Root causes
  - Laboratory techniques
  - What will results tell us
  - Victim notification
- BJA and Manhattan DA Grant Funding
  - MCAO applied

- Charlotte, NC (1,019 kits)
- Kansas City, Missouri (1,324 kits)
- Portland, Oregon (1,931 kits)
- San Diego, California (2,873 kits)

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## SAFER ACT Goal

- Grant awards from Debbie Smith Act
  - DNA Backlog Elimination Act of 2000
- Audit SA evidence
- Create registry
  - Reporting
  - Collection date
  - Location/jurisdiction
  - Status of SAK
- National Institute of Justice Committee

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## Reporting

- # "samples"
- # lab submissions
- # testing completed
- # not submitted and why

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## Develop and Disseminate Best Practices for DNA in SA

- Protocol investigative steps
- Handling and storage protocols
- Prioritization of evidence processing
  - Establishing timelines
- Review and recommend value of testing all SA evidence
- Victim notification process
- Encourage SART

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## Crime Lab Impact

- Creating National Best Practices
  - Guidelines for determining what items to test and order of testing
  - Y screening, DNA analysis first then stain identification, new technology, Quick Kits
  - Test All – Test Some – Test Smart
- Recommendations for time frames of DNA analysis from submission to profile completion
  - CODIS entry
- SWGDAM - Sexual Assault Kit Processing Working Group

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### SANE Impact

- All patients receive consistent information
- Patients/victims want a choice whether a case moves forward or not
- Advocate manned Sexual Assault Info line and/or email
- Add a form for lab feedback to the kits
- New Sexual Assault kits should be developed by MDT
  - Do the changes make sense? Logical?
  - Follow principles of patient centered care?
  - Adhere to best practice principles
  - Follow National Standards

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### Advocacy Impact

- Victim – Centered
- Communication
  - Transparency
  - Accountability
  - Timely information
- System interaction
  - Investigation standards
  - Consistency

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### Investigations Impact

- Due diligence
- Raise priorities
- Consistency/standards
- Improved communication
  - MDT approach
- Improved response
  - Offender accountability

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Courts/Prosecution/Defense  
Impact

- Delay (Added pressure on labs)
- Cold Case Issues
- Statute of Limitations—not an issue in AZ
- Evidence Retention Statutes/Policies
- Chain of Custody Essential
- Consent Defense
- Notification of Pleas/Dismissals
- Suspect Elimination

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Thoughts/Comments/Questions

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## Will new focus on rape kit tests put thousands behind bars?



MAY 30, 2015 10:44 AM • BY SHARON COHEN

The evidence piled up for years, abandoned in police property rooms, warehouses and crime labs. Now, tens of thousands of sexual assault kits are giving up their secrets — and rapists who've long remained free may finally face justice.

A dramatic shift is taking hold across the country as police and prosecutors scramble to process these kits and use DNA matches to track down sexual predators, many of whom attacked more women while evidence of their

crimes languished in storage. Lawmakers, meanwhile, are proposing reforms to ensure this doesn't happen again.

"There's definitely momentum," says Sarah Haacke Byrd, managing director of the Joyful Heart Foundation, an advocacy group working on the issue. "In the last year, we really are seeing the tide turn where federal and state governments are offering critically needed leadership and critically needed resources to fix the problem."

In Cleveland, the county prosecutor's office has indicted more than 300 rape suspects since 2013, based on newly tested DNA evidence from old kits. Authorities expect to eventually charge 1,000.

In Houston, authorities recently cleared a backlog of nearly 6,700 kits that included cases dating back to the 1980s. The project, which cost about \$6 million, turned up 850 matches in a national DNA database.

In Detroit, the Wayne County prosecutor's office is seeking donations to help analyze, investigate and prosecute cases from the results of more than 11,000 kits that had been untested. Hamstrung by city and county money troubles, the prosecutor has formed an unusual partnership with two nonprofits to raise \$10 million. So far, contributions have poured in from corporations and residents from all 50 states and eight foreign countries.

There's a new urgency, too, in statehouses from Alaska to Maryland, where legislators in more than 20 states are considering — and in some cases, passing — laws that include auditing all kits and deadlines for submitting and processing DNA evidence. Recent counts in Louisiana found nearly 1,100 unprocessed kits. Disturbingly, nearly 100 additional kits from two New Orleans children's hospitals also have been discovered.

The high-profile campaign also is getting a big financial boost: At least \$76 million— more than half from the feds — will be available for testing, prosecution and reforms.

No one knows how much it will all cost in the end. And it won't be easy to make up for lost time.

In some cases, it's simply too late for justice because statutes of limitations have expired. In others, investigators may have to wade through old, often incomplete, police files, search for witnesses and suspects, confront fading memories and persuade survivors to reopen painful chapters of their lives. It will be a lot slower-going than it is on those prime-time police procedurals.

"It's great entertainment on television that in one hour's time, we have a crime, we take the sample, we get a 'hit,' we arrest the suspect and then he's prosecuted and off to jail," says Doug McGowen, coordinator of Memphis' Sexual Assault Kit Task Force. "That's just not the case, clearly."

In Memphis, about half of more than 12,300 kits have been tested or are waiting to be analyzed. It will take at least 40 hours to follow up on each case and all will be investigated even if there is no DNA match, McGowen says. He estimates the police work and trials could continue until 2019.

But once all the kits are processed, the potential is enormous — both for communities and rape survivors.

As Vice President Joe Biden recently declared: "If we are able to test these rape kits, more crimes will be solved, more crimes will be prevented, and more women will be given back their lives."

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In resurrecting old crimes, investigators have detected an alarming pattern: Many rapists are repeat offenders.

In Cuyahoga County, home to Cleveland, about 30 percent of cases that have developed from testing so far are serial rape suspects. One of them, Robert Green, assaulted seven women over nearly a decade as evidence went unprocessed. He pleaded guilty last fall and was sentenced to up to 135 years in prison.

In Wayne County, home to Detroit, authorities say 288 potential serial rapists have been found among the kits tested. Among the cases to surface is Reginald Holland, who raped a woman in 2005. His identity wasn't known then. Three years later, Holland's DNA was entered in a national database on an unrelated case. By the time his first victim's sexual assault kit was tested in 2012, he'd assaulted four more women. In 2014, he was sentenced to life in prison.

"Yes, it is an embarrassment," county prosecutor Kym Worthy says of these cases. "It shows that we, as this country, do not respect rape victims to the extent that we respect other victims."

Her office is now working with the Michigan Women's Foundation and the Detroit Crime Commission to raise money to complete the testing and investigation of kits and bring suspects to trial.

"These results are coming very fast and furious," she adds. "Because we don't have the

staff of investigators and prosecutors ... in essence we're developing another backlog."

Lisa Bloom, a lawyer, author and TV legal analyst, said while fundraising is a worthy pursuit, it reveals something about the priorities of a justice system where money is always found to prosecute prostitutes and drug crimes. "Women's lives are not worth a grand, apparently," she wrote in an online commentary. "Want to lock up rapists? Hey, have a bake sale!"

Some major financial commitments, though, will ease that burden.

President Barack Obama's 2015 budget set aside \$41 million to help test kits and prosecute perpetrators. This spring, Biden announced the 2016 fiscal year budget includes a proposal for another \$41 million to chip away at the backlog, along with \$20 million to develop reforms that will prevent a recurrence.

Manhattan District Attorney Cyrus Vance Jr. also has pledged up to \$35 million — money his office received from asset forfeiture cases — that he estimates will be enough to test 70,000 kits.

"We felt this was an essential investment," Vance says. "Rapists are sex offenders who are moving from one location to another. There will be crimes that are going to be solved in other states that are linked to New York."

That's already happened. DNA evidence from newly tested Detroit-area rape kits has been linked to crimes in 31 states — New York included — and the District of Columbia.

Vance's office says labs, police and prosecutors from 30 states have expressed interest in the funds, which will be distributed in late summer or early fall.

It took four years for New York City to eliminate its own backlog of 17,000 cases. In Manhattan, that led to 49 indictments, including some "John Doe" cases, which identify suspects by their genetic code and prevent them from avoiding prosecution by using the statute of limitations.

In late April, one of those "John Does" shed his anonymity.

That case dated back to January 1995, when a 25-year-old woman was raped and robbed at knifepoint. A sexual assault evidence kit was taken at a hospital. In 2001, it was entered into the Combined DNA Index System, or CODIS, a national DNA database.

It remained there 14 years. Then, this spring, a break. A DNA profile from Joseph Giardala was added to CODIS because of an unrelated case in Florida. It matched the one from the New York assault.

Giardala, 44, who was arrested in Los Angeles, returned to New York to face charges — more than 20 years later.

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The new attention to sexual assault kits stems from a combination of factors: the persistence of advocacy groups such as the Joyful Heart Foundation, investigative media reports, the willingness of rape survivors to speak out and political support from statehouses up to the White House.

But the full scope of the problem is something of a mystery.

No federal agency tracks untested sexual assault kits, but Joyful Heart estimates it's in the hundreds of thousands. (Texas alone has more than 20,000, according to recent congressional testimony.) The group is getting help from two law firms, working without charge, who are using public record requests to gauge the extent of the backlog in about 25 police departments around the country.

Dallas; Salt Lake City; Portland, Oregon; and Kansas City, Missouri, have reported untested kits. The Las Vegas metro police department has one of the larger backlogs — more than 5,600 kits — and plans to test all of them.

San Francisco police announced last winter they'd sent out 753 rape kits for analysis and are consulting with other departments on the best way to handle those beyond the statute of limitations.

The question remains: How did this happen in the first place?

"There is no smoking gun that you can point to in any city in America to say this is the one reason why we have this accumulation of kits that have been untested," says McGowen, the coordinator of the Memphis task force, who notes that DNA wasn't widely used until the late 1990s. "It's very hard to quantify the actions of people when the science was new ... or when the science wasn't available. We're looking at it through today's lens."

Before DNA, rape kits could be tested for blood group typing, but that was nowhere as definitive and the evidence could broadly exclude or include a suspect — if one had been identified.

DNA proved to be a turning point, but Houston Assistant Police Chief Mary Lentschke notes that police still faced two big obstacles: a shortage of both money and crime lab staff. It has cost \$500 to \$1,500 to test and analyze each kit. And as DNA became more common in crime-solving, labs were overwhelmed with requests for testing, for homicides as well.

"When you don't have the funding and you don't have the staffing, you make decisions on a case-by-case basis," she says.

Some police departments haven't tested kits if the woman knew the assailant, she didn't want to pursue charges or the attacker confessed.

Critics claim these policies reflect a more general attitude of law enforcement not placing a high priority on solving sexual assaults.

"You shouldn't have a kit sitting on a shelf somewhere for 20 years," says Louisiana State Sen. J.P. Morrell, sponsor of a law that required police and sheriffs to report untested kits. "I think the message it sends to everyone is that law enforcement does not take sexual assault seriously. ... Some want to write it off as sloppiness. It's apathy."

Rebecca Campbell, a Michigan State University professor who has consulted and trained police departments on trauma and sexual assault, says skepticism and, at times, hostility toward women who've been raped have added to the problem.

Police often "don't understand trauma," she says. "They often expect a certain set of behaviors: crying and visible signs of distress. If a victim is very calm and quiet, they think

there's no possible way she could have been raped."

Campbell was chief author of a multi-year study that included interviews, data analysis and reviews of 1,595 untested sexual assault kits in Detroit. She concluded that understaffed crime labs and high turnover in police leadership contributed to the decades-old backlog.

But evidence also clearly showed "police treating victims in dehumanizing ways," according to the study funded by the National Institute of Justice, released in April.

Women were often assumed to be prostitutes, the study found, and adolescents frequently perceived as concocting bogus narratives to avoid getting in trouble if, for example, they missed a curfew.

"Law enforcement, generally, they just do not believe victims," Campbell says. "They believe that they're lying, that they're making a story up to cover up for bad behavior."

Illinois Attorney General Lisa Madigan also notes that women whose kits aren't tested promptly may be less inclined to help police and prosecutors. "They may begin to question why they consented to an intrusive medical forensic examination that took hours," she said in recent congressional testimony. "They may wonder why they bothered to report the incident in the first place."

But some say progress is being made in Detroit and other cities with new police training and rules for handling kits, improved understanding of trauma and legal reforms that will prevent new backlogs.

"Police have come a long way," says Sgt. Amy Mills, head of the Dallas police sex assault unit. "I cannot believe the reports I read that were made five years ago, compared to the way they are now. It's just 180 degrees."

When law enforcement deals with rape survivors now, Mills says, "We always start with, 'We believe you,' not 'Convince us.'"

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For the rape survivors themselves, the delays in testing rape kits have been infuriating, frustrating — and inexplicable.

Natasha Alexenko was a college student in New York in 1993 when she was raped and robbed at gunpoint while returning home from her job.

Alexenko says police told her a few years later that they'd pursued all leads and the case was closed.

"I just assumed they knew what they're doing," she says. "Surely, they tested the kit. Surely, they followed up on everything. ... Why wouldn't someone want to apprehend a clearly violent criminal? ... I was very young and naive."

Nearly a decade had passed when the prosecutor's office called to notify Alexenko her rape kit would be tested. "I waited nine-and-half years for someone to tell me I mattered and they were still thinking about me," she says.

In 2007, Victor Rondon was found though a match to a DNA profile after he'd been arrested

on a minor charge in Las Vegas. The next year, Alexenko testified against him in a New York court, and he was sentenced to up to 107 years.

"I felt that was the moment I took back the power from him," Alexenko says of her testimony.

In Memphis, Meaghan Ybos had her own agonizing wait.

She was just 16 when she was raped in 2003 by a knife-wielding, masked man in her suburban Memphis home. She says a female Shelby County investigator told her, "'You know you can go to jail for lying about this. You're not doing this for attention, are you?'"

Nine years later, Ybos says the reception was less hostile when she called Memphis police after hearing TV reports of a serial rapist in the community. She suspected it might be her attacker.

It was only then, in 2012, that she learned her sexual assault kit hadn't been sent out for processing. When it was, the results found a DNA link to Anthony Alliano, a serial rapist.

"Before he was caught, I told myself I had moved on and I had healed, which was the furthest thing from the truth," Ybos now says. "I realize how the attack and the disregard of law enforcement just informed every second of my life. I was still suffering from PTSD. I had trouble concentrating, eating, sleeping. Random sights and sounds would send me into a panic attack. It was always with me in every second of those nine years."

In 2013, Alliano pleaded guilty to raping seven women and girls, including Ybos and a 12 year-old who lived nearby and was attacked two days later.

On the day he was sentenced to up to 178 years in prison, Ybos read a statement in court calling him a "pathetic coward" and vowed to make it easier to prosecute rape in Tennessee.

She became a driving force in drafting and lobbying for a measure that eliminates the statute of limitation on rape cases reported within three years of the crime. In 2014, it was signed into law.

"She stepped forward and she became a spokesperson for survivors in ways many don't," says Tennessee State Sen. Mark Norris, the bill's sponsor. "She did the right thing."

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Sharon Cohen, a Chicago-based national writer, can be reached at [scohen@ap.org](mailto:scohen@ap.org). Mike Householder contributed to this report.

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 12, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Expanding the Role of Lay Legal Advocates

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**FROM:** Judge Peter Cahill

**PRESENTER(S):** Chris Groninger, Arizona Bar Foundation

**DISCUSSION & TIME ESTIMATE: 10 Minutes**

Ms. Groninger will cover the complex role of the Lay Legal Advocate and discuss the benefits & limitations of a lay legal advocate and confidentiality protections

**RECOMMENDED MOTION (IF ANY):**

**PETER J. CAHILL**  
Presiding Judge



**ARIZONA SUPERIOR COURT  
GILA COUNTY**

1400 E. Ash Street  
Globe, Arizona 85501  
(928) 402-8686  
PCahill@courts.az.gov

May 18, 2015

The Hon. Lawrence Winthrop, *Chair*,  
The Arizona Commission on Access to Justice

Re: Increasing the Effectiveness of “Lay Legal Advocates”  
Employed by Domestic Violence Shelters

Dear Judge Winthrop,

Arizona’s “Lay Legal Advocates” help survivors of domestic violence and sexual abuse make important, positive changes in their lives. However, limitations that exist in rules and court procedures unfortunately reduce their effectiveness. This letter is to suggest that the Commission consider “revising court rules and practices to facilitate access and the efficient processing of family court ... cases,” AO No. 2014–83, to increase the opportunities for access to justice for survivors of domestic violence and abuse.

These ideas ought to have been brought up first in Judge Barton’s committee. Their tardy submission is my fault. But, just last Wednesday a group of advocates and others interested in these ideas met and agreed to request consideration by the Commission—tardy or not. Our group is willing to work with you, Judge Barton and staff to discuss this further if you decide that this would be beneficial.

Experience years ago training legal services paralegals so their offices could provide more assistance was frustrating because the resources to hire and manage more paralegals never materialized. *[Only the cruelly callous would point out that my modest efforts were way in back in Territorial days! But, CLS and SALA will confirm that the funding is even less now.]* But there's a bright spot: Arizona's domestic violence programs already have a group of dedicated, well-trained and carefully managed advocates, people who can and are willing to do more for their clients. We believe that these advocates could do much more and do it a lot more effectively if unnecessary limitations on their work were removed.

Here are our preliminary ideas:

1. Survivors must complete paperwork, including pleadings, to get into court and get justice. Rather reasonably, they look to their advocate for help. But as advocates try and help clients complete their paperwork, they must navigate treacherous shoals: the rules governing document preparers as well as the unauthorized practice of law. What advocates can and cannot do is saddening. Imagine the experienced, well-trained and highly knowledgeable legal assistants from your years in private practice. Now, think of them reduced to a mere "scribe," limited to writing down only exactly the words of a client—nothing more, nothing less.

Rules and regulations should allow DV Lay Legal Advocates to do more to help survivors fill-out legal documents, pleadings. The exact regulatory changes needed are topics that deserve study and careful discussion. And, no one is suggesting that advocates start practicing law. But, this is an especially vulnerable and underserved group of people. They deserve greater access to justice. We have the advocates; they are well-trained. They are carefully supervised. And, they can do more. The rules ought to allow it.

Trained advocates employed by non-profit DV agencies who do not accept fees should be permitted to better assist survivors with legal-paperwork.

2. Advocates often accompany survivors to court. They do so for different reasons. Some clients need support when confronting a spouse or partner in the courthouse, especially in the courtroom. Then there's also the daunting prospect of appearing in court and speaking up about not only difficult family issues but also having to make legal arguments.

However, at the very last minute, the client must step forward and sit alone at "counsel table." My view is that judges too often rigidly enforce an unwritten, un-promulgated rule that limits seats at "counsel table" to parties and lawyers. This rule

works well enough—mostly. But, when it is unnecessarily and unreasonably enforced to deprive an exquisitely vulnerable litigant of having their trusted and comforting advocate sit by their side, it is no longer a good rule.

Arizona judges are adept at sorting out difficult situations in court. They ought to be permitted (and trained) to allow, where appropriate, the right people to sit at “counsel table” when they don’t have counsel. Judges should know that they may be flexible and, where appropriate, that they may allow advocates or others to sit with litigants, providing this does not interfere in the proceedings.

Discussions between experienced domestic relations judges, advocates and others would lead to the adoption of best-practices and new training so that judges kept the proceedings orderly and fair.

3. More training so that court employees provide requested legal information and not use the excuse Chief Justice McGregor fought so hard against, *“We don’t give legal advice.”*

Advocates report instances where all too often court staff have not provided legal information where it would have been appropriate to do so. This limits access to the courts.

4. Keeping in mind the Commission’s charge to “study and make recommendations on innovative ways of promoting access to justice for individuals,” perhaps New York’s “Navigator” program might inspire an expanded role for a program modeled on Arizona’s DV advocates.

We already have in place an amazing group of advocates. But this is an underserved population. Wouldn’t something like the “Navigator” program work well in our courthouses to insure that all, and especially the most vulnerable, get access to the courts?

Not only are my suggestions late, they are sadly short on specifics. The good news is that experienced people will work on these ideas. For instance, the Foundation’s Chris Groninger has worked to expand partnerships with legal services offices and DV program legal advocates. Chris confirms: if advocates were more effective, the effectiveness of lawyers would also increase. This group will gladly work with the Commission and your committees to further develop these ideas if you wish.

Sincerely,  
*Peter Cabill*

cc: Ms. Merri Tiseth  
*Legal Advocacy Program Manager*  
Arizona Coalition to End Sexual and Domestic Violence

Ms. Christine Groninger,  
*Director of Strategic Initiatives*  
Arizona Foundation for Legal Services & Education

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 12, 2015	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Legislation and Rule Update

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**FROM:** AOC Government Affairs Office

**PRESENTER(S):** Amy Love

**DISCUSSION & TIME ESTIMATE:** 15 Minutes

Review of victim rights-related legislation.

**RECOMMENDED MOTION (IF ANY):**

## June Legislative Update

52nd Legislature - 1st Regular Session, 2015

Wednesday, Jun 10 2015 8:17 AM

Bill summaries and histories copyright 2015 Arizona Capitol Reports, L.L.C.

### Commission on Victims in the Courts

#### Bill Summaries

H2166: DCS INFORMATION; EGREGIOUS ABUSE; NEGLECT

Modifies the information the Department of Child Safety (DCS) is required to promptly provide to the public regarding a case of child abuse, abandonment or neglect that resulted in a fatality or near fatality. Within 90 days after the date of the report for investigation for a case involving a fatality, near fatality, DCS is required to provide to the public a summary report that includes specified information. DCS is authorized to provide DCS information if an employee has a reasonable belief that "exigent circumstances" exist (defined as a condition or situation in which the death or serious injury to a child will likely result in the near future without immediate intervention). If a crime victim is a minor, the 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 the state outweigh the public interest in disclosure. AS SIGNED BY GOVERNOR.

First sponsor: Rep. Brophy McGee

H2166: DCS INFORMATION; EGREGIOUS ABUSE; NEGLECT 4/10 signed by governor. Chap. 261, Laws 2015.

H2203: POSTCONVICTION RELEASE HEARINGS; RECORDINGS; FREE

On request, the Department of Juvenile Corrections or Board of Executive Clemency is required to provide at no charge to the victim any electronic recordings that are made during a postadjudication or postconviction release hearing. AS SIGNED BY GOVERNOR.

First sponsor: Rep. Boyer

H2203: POSTCONVICTION RELEASE HEARINGS; RECORDINGS; FREE 4/9 signed by governor. Chap. 237, Laws 2015.

H2204: CRIMINAL RESTITUTION ORDER; COURTS

Statute allowing the court to enter a criminal restitution order in favor of each person entitled to restitution and governing those orders applies to all courts, instead of the superior court only. The court is authorized to order a defendant to pay a fine as restitution for a victim of a traffic accident that involves failure to stop or remain at the scene of an accident that resulted only in damage to a vehicle. AS SIGNED BY GOVERNOR.

First sponsor: Rep. Boyer

H2204: CRIMINAL RESTITUTION ORDER; COURTS 4/9 signed by governor. Chap. 238, Laws 2015.

H2205: EMERGENCY SERVICE PROVIDERS; CIVIL LIABILITY (~~TRAFFIC OFFENSE; RESTITUTION~~)

In the provision of 911 services, a person, provider, public entity or any employee of the public entity is not liable for damages in any civil action for injuries, death or loss to a person or property that are incurred by any person with respect to all decisions made and actions or omissions taken that are based on good faith implementation except in the cases of wanton or willful misconduct, regardless of technology platform. Repeals statute providing immunity from civil damages for an act or omission in connection with operating a 911 emergency telephone system or public safety radio communications network except if the person knowingly acted or failed to act in a way that created an unreasonable risk and a high probability of substantial harm. AS SIGNED BY GOVERNOR.

First sponsor: Rep. Boyer

H2205: EMERGENCY SERVICE PROVIDERS; CIVIL LIABILITY 4/9 signed by governor. Chap. 239, Laws 2015.

#### H2239: POLICE REPORTS; VICTIMS; ATTORNEYS

The list of persons who have the right to receive one copy of the police report from the investigating law enforcement agency at no charge if the victim is killed or incapacitated is expanded to include the victim's "attorney" (defined) on behalf of the victim. AS SIGNED BY GOVERNOR.

First sponsor: Rep. Boyer

H2239: POLICE REPORTS; VICTIMS; ATTORNEYS 4/10 signed by governor. Chap. 303, Laws 2015.

#### H2517: INTERNET CRIMES AGAINST CHILDREN; FUND

Establishes the Internet Crimes Against Children Enforcement Fund, to be administered by the Attorney General to continue the operation of the federally recognized Internet Crimes Against Children Task Force Program. The State Lottery Commission is required to transfer the proceeds from any games that are sold from a vending machine in an age-restricted area to the State Treasurer for deposit in the following amounts: \$900,000 each FY in the Internet Crimes Against Children Enforcement Fund, \$100,000 each FY in the Victims' Rights Enforcement Fund and any monies in excess of these amounts in the State Lottery Fund. If the amount transferred from the special instant ticket game proceeds to these Funds is less than the specified amounts, the difference must be transferred to the Funds from the percent of unclaimed lottery prize money that is held for use as additional prizes in future games. If a law enforcement agency receives information that a communication service provider is hosting a website containing an alleged violation of crimes of sexual exploitation of children, the agency is required to serve a notice of the alleged violation on the statutory agent of the communication service provider. Emergency clause. AS SIGNED BY GOVERNOR.

First sponsor: Rep. Boyer

H2517: INTERNET CRIMES AGAINST CHILDREN; FUND 4/9 signed by governor. Chap. 245, Laws 2015.

#### H2553: SEX TRAFFICKING; VACATING CONVICTION (~~HUMAN TRAFFICKING VICTIM; VACATING CONVICTION~~)

A person convicted of prostitution that was committed prior to July 24, 2014 may apply to the court that pronounced sentence to vacate the person's conviction. The court is required to grant the application and vacate the conviction if the court finds by clear and convincing evidence that the person's participation in the offense was a direct result of being a victim of sex trafficking. A conviction vacated does not qualify as a historical prior and cannot be alleged for sentencing repetitive offenders. Except on an application for employment that requires a fingerprint clearance card, a person whose conviction is vacated may in all instances state that the person has never been arrested for, charged with or convicted of the crime that is the subject of the conviction. AS SIGNED BY GOVERNOR.

First sponsor: Rep. Steele

H2553: SEX TRAFFICKING; VACATING CONVICTION 4/6 signed by governor. Chap. 219, Laws 2015.

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 12, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Order Amending Rules 29 & 41 of the Arizona Rules of Criminal Procedure on an Emergency Basis

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**FROM:** AOC

**PRESENTER(S):** Patrick Scott

**DISCUSSION & TIME ESTIMATE: 5 Minutes**

New legislation (HB 2553) allows a person convicted of prostitution prior to July 24, 2014, under A.R.S § 13-3214, to apply to the court that pronounced sentence to vacate the conviction if the party was a victim of sex trafficking. The amendments integrate the new basis for vacating a convicted provided by A.R.S § 13-907.01 and add an application form. The law and rules are effective July 3, 2015.

**RECOMMENDED MOTION (IF ANY):**



Arizona Supreme Court No. R-15-0032  
Page 2 of 5

TO:  
Rule 28 Distribution  
David K Byers

## ATTACHMENT\*

### Rule 29. RESTORATION OF CIVIL RIGHTS OR VACATION OF CONVICTION

#### 29.1 ~~Notice to Probationers~~ Grounds and Notice

**a. Probationers.** ~~Prior to his or her absolute discharge, a probationer shall receive from his or her probation officer, or the court if there is no probation officer, a written notice of the opportunity~~ A probationer may apply to have his or her civil rights restored, to withdraw his or her plea of guilty or no contest, or to vacate his or her conviction pursuant to A.R.S. § 13-907. The probation officer, or the court if there is no probation officer, must provide a written notice of this opportunity prior to the absolute discharge of each probationer.

**b. Sex Trafficking Victims.** A sex trafficking victim may apply to the court that pronounced sentence to vacate a conviction of a violation of A.R.S. § 13-3214 committed prior to July 24, 2014 pursuant to A.R.S. § 13-907.01.

#### 29.2 and 29.3 [no change]

#### 29.4 Response by the prosecutor

At least 10 days before the date of the hearing the prosecutor may file a written response setting forth any reasons for opposing the application, sending a copy thereof to the applicant and his or her attorney, if any. If the prosecutor does not oppose the application or does not timely respond, the court may grant the application without a hearing and issue an order vacating the conviction.

#### 29.5 [no change]

#### 29.6 Record confidential.

When a court grants an application submitted by a sex trafficking victim, all paper and electronic records of the conviction vacated are confidential. The record will be disclosed upon request to the sex trafficking victim or for good cause as ordered by the court. The court must order that notations be made in law enforcement and prosecution records that the conviction was vacated and the applicant was a victim of a crime.



Explain how you were a victim of sex trafficking and, as a direct result, were convicted of prostitution:

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If additional information is required, you may attach additional pages on lined paper.

I state under penalty of perjury that the information I have provided on this form is true and correct.

Date: \_\_\_\_\_ Signature \_\_\_\_\_  
Applicant

**CERTIFICATE OF MAILING**

I CERTIFY that I delivered or mailed a copy of this application to the prosecutor's office that prosecuted the case at the following address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ Signature \_\_\_\_\_  
Applicant

\_\_\_\_\_ Court \_\_\_\_\_ County, Arizona

<b>APPLICANT</b>  (Name/Address/Phone):	<b>CASE NO.</b>  _____  <b>APPLICATION</b>	<b>APPLICATION TO VACATE CONVICTION FOR A PRIOR OFFENSE UNDER A.R.S. § 13-907.01 AND SUPPORTING DECLARATION</b>
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APPLICANT asks the court to vacate the conviction for the crime of Prostitution, under A.R.S. § 13-3214, committed prior to July 24, 2014. The conviction occurred on \_\_\_\_\_ in this court. This relief is sought under A.R.S. § 13-907.01. The law provides that any person so convicted may apply to the sentencing court to vacate the conviction. The applicant is entitled to relief if the applicant can establish by clear and convincing evidence that the applicant's participation in the offense was the direct result of having been a victim of sex trafficking pursuant to A.R.S. § 13-1307.

Explain how you were a victim of sex trafficking and, as a direct result, were convicted of prostitution:

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If additional information is required, you may attach additional pages on lined paper.

I state under penalty of perjury that the information I have provided on this form is true and correct.

Date: \_\_\_\_\_ Signature \_\_\_\_\_  
Applicant

**CERTIFICATE OF MAILING**

I CERTIFY that I delivered or mailed a copy of this application to the prosecutor's office that prosecuted the case at the following address: \_\_\_\_\_

Date: \_\_\_\_\_ Signature \_\_\_\_\_  
Applicant

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 12, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Code Section/Rule Change Proposals

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**FROM:** Administrative Office of the Courts

**PRESENTER(S):** Judge Ronald Reinstein and Patrick Scott

**DISCUSSION & TIME ESTIMATE: 10 Minutes**

Rule 41, Form 4(a): Judge Reinstein will discuss the formation of a workgroup to address the proposal of law enforcement providing notice of DCS involvement at IA hearings.

ACJA 5-204: Mr. Scott will update the group on the status of a technical amendment to the code.

**RECOMMENDED MOTION (IF ANY):**

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
AMENDING ARIZONA CODE OF	)	Administrative Order
JUDICIAL ADMINISTRATION § 5-204:	)	No. 2015 - <u>23</u>
ADMINISTRATION OF VICTIMS'	)	(Affecting Administrative
RIGHTS	)	Order No. 2012-69
_____	)	

Pursuant to the Arizona Code of Judicial Administration § 1-201 (E), the Chief Justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council.

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 remain unchanged and in effect.

Dated this 4th day of March, 2015.

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SCOTT BALES  
Chief Justice

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

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

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

“Criminal Offense” means “conduct that gives a peace officer or prosecutor probable cause to believe that a felony, a misdemeanor, a petty offense or a violation of local criminal ordinance has occurred,” as provided by A.R.S. § 13-4401(6).

“Delinquent act” means an act committed by a juvenile that if committed by an adult would be either (1) a misdemeanor offense ~~involving physical injury, the threat of physical injury or a sexual offense;~~ or (2) a felony offense; (3) a petty offense; or (4) a violation of a local criminal ordinance, in accordance with A.R.S. §§ 8-381 and -382.

“Victim”, except as otherwise specified, means a person against whom a criminal offense or delinquent act has been committed, 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 other lawful representative, except if 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 as provided in Az. Const. Art. 2, § 2.1, A.R.S. §§ 8-382 and 13-4401.

**B. [no changes]**

**C. Notice of ~~Criminal~~ Proceedings.**

1. The court shall provide at least five business days' notice before the scheduled proceeding to the prosecutor, 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 or postadjudication 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.

**D. through L.** [no changes].

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 12, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Update to Minor Victims of Sex Trafficking in Arizona Probation

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**FROM:** Juvenile Justice Services Division (JJSD), AOC

**PRESENTER(S):** Holli Sanger-Alarco, Program Manager / Contracts & Monitoring Unit, JJSD

**DISCUSSION & TIME ESTIMATE: 15 Minutes**

Update on JJSD's Implementation Plans to address identification of minor sex trafficking victims, and connection of those victims with appropriate programming and services.

**RECOMMENDED MOTION (IF ANY):**

# **AOC JJSD Minor Victims of Sex Trafficking Training and Education: 2015**

## **A. Needs/Resources**

### **1) Problem Statement**

The topic of human trafficking is an unfolding social problem that requires the juvenile probation system to become educated and skilled at identification of the signs and symptoms minor victims of sex trafficking and the ability to connect those youth to appropriate programming. The Juvenile Justice Services Division is committed to assisting to develop the capacity of juvenile probation staff to better assess youth on their caseloads and new individuals who enter the probation systems that exhibit signs and symptoms related to minor victims of sex trafficking. Juvenile probation staff will benefit from both broad and specific training on this topic in order to improve their screening and case management abilities.

### **2) Target Population and Service Delivery Area**

Juvenile standard, intensive and surveillance officers working in the field and staff that supervise these direct care will be recipients of regional trainings. A special subset of county probation staff will receive specialized intensive training in July 2015. 15 staff will participate in that expert training in July 2015. Approximately 500 probation staff will participate in general trainings scheduled in Tucson, Phoenix, Globe, Yuma and Flagstaff in August 2015.

### **3) Collection of Relevant Statewide data and Agency Statistics**

JJSD believes that the risk factors of exploitation and substance abuse combine with criminogenic factors that potentiate the obvious health and safety concerns for minor victims of sex trafficking. JJSD also believes that evidence-based concepts of screening and early intervention form the best chance to establish a foundation from which to intervene. JJSD data from JOLTS and the Arizona Juvenile Court Counts publication contain detailed information about the demographics of youth in contact with the juvenile justice, probation and diversion systems. Information about minor victims of sex trafficking is minimal, mostly due to the emerging status of the problem and lack of knowledge an effective screening methodology at the probation level.

An informal survey of out-of-home care providers by the AOC in 2014 indicated that behavioral health providers were able to identify youth who were minor victims of sex trafficking. The prevalence rates identified by some providers were as high as 20%. Others indicated none. It is our contention that a screening methodology at the probation level would rectify this situation and provide the best platform for data collection and subsequent intervention.

### **4. Identify Existing Resources Currently Directed to Needs**

Current initial and annual training are inadequate to meet and reach the identified juvenile probation staff as the schedule and content of that programming is previously pre-determined. The provision of this training will fill this gap, create increased skill sets among probation staff and then allow for inclusion of a subset of the training curriculum into the Arizona Probation Academy Certification program. In addition it will allow for specific training of one human trafficking expert in each juvenile probation department who will act as the probation expert on human and sex trafficking and who will be designated to receive and disseminate future programming and training information.

#### **a. Goals and Objectives**

1. Train Arizona JPO and on signs and symptoms of human and minor sex trafficking
2. Train Arizona JPO and on methods to assess the prevalence of minor victims of sex trafficking on current caseloads
3. Train Arizona JPO and on methods to assess the incidence of minor victims of sex trafficking as those new cases enter the juvenile probation system
4. Create and provide a screening tool for use by Arizona juvenile probation officers
5. Train and designate one staff from each juvenile probation department to act as a local expert on minor victims of sex trafficking
6. Develop a staff training video that will be used in the training and for new-employee orientation

## **B. Implementation Plan**

JJSD will contract with the ASU School of Social Work (SSW) to assist with project development and training. Dr Roe-Sepowitz, faculty member at the SSW, is a nationally recognized expert on human trafficking, a researcher in the field and a direct practitioner with specific direct experience in the screening, assessment and service provision to victims of human trafficking.

### 1. Regional Trainings:

ASU School of Social Work staff will be involved in developing the training curriculum, consulting with probation representatives, development of video content, development of presentation materials, and direct provision of regional probation training at the following locations in August 2015:

Regional Training Locations: Flagstaff, Globe, Phoenix, Tucson, and Yuma

### 2. Training Brochure:

ASU School of Social Work staff will develop a specific 8-page training brochure with defined training components, case examples and resources and arrange for design and printing. To be completed in July 2015

### 3. Specialized Expert Certification Training

ASU staff will develop the training curriculum, arrange for expert quest speakers and provide the training in Phoenix in August 2015

### 4. Research and Survey on Prevalence of Sex Trafficking Cases with Juvenile Probation

ASU staff will Develop and implement a research study using an online survey to collect information from Arizona Juvenile Officers who attended the 5 trainings. Coordinate survey dissemination, monitor data collection, analyze data and produce a written report on the incidence of sex trafficking victims on juvenile probation in Arizona. To be completed in September and October 2015

### 5. Quarterly Support and Follow up Session

Quarterly follow up session to review training information, set the course for the study survey and provide answers to follow up questions from probation staff. Assist each specialist to develop of a regionally specific resource guide for services for identified juvenile probationers who have been sex trafficked. To be conducted in September 2015

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 12, 2015	<input type="checkbox"/> Formal Action Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Victim ID Rule Update

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**FROM:** Administrative Office of the Courts

**PRESENTER(S):** Judge Ronald Reinstein

**DISCUSSION & TIME ESTIMATE:** 10 Minutes

Follow up to last meeting's discussion of victim ID rule and electronic access.

**RECOMMENDED MOTION (IF ANY):**

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
June 12, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Victims' Rights Panel at the Judicial Conference

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**FROM:** Administrative Office of the Courts

**PRESENTER(S):** Judge Ronald Reinstein

**DISCUSSION & TIME ESTIMATE: 10 Minutes**

Judge Reinstein will discuss the upcoming panel planned at the Judicial Conference on June 19, 2015.

**RECOMMENDED MOTION (IF ANY):**

**Arizona Supreme Court  
Commission on Victims in the Courts**

**October 23, 2015 Meeting Agenda**

1501 W. Washington St. Phoenix, Arizona 85007  
State Courts Building, Conference Room 345 A/B

(602) 452-3288 or (520) 388-4330 / Access Code: 9925 / [WebEx Link](#)

**Call to Order and Announcements**

10:00 a.m.	Call to Order	Hon. Ron Reinstein
10:05 a.m.	Announcements	
	• Evacuation Plan	

***Approval of February 2015 Meeting Minutes\*\****

**Presentations**

10:10 a.m.	Victims' Rights Constitutional Amendment – 25th Anniversary	Steve Twist
10:30 a.m.	<b><i>Proposed Changes to ACJA §6-103 Victims' Right Requirements for Probation Personnel**</i></b>	Kathy Waters
10:50 a.m.	Establishing Pretrial in Arizona Courts	Kathy Waters
11:00 a.m.	When Victims Experience Trauma	Shelly Corzo-Shaffer

**New Business**

None

**Old Business**

11:20 a.m.	Status of Public Access Change Request	Leslie James and Eric Ciminski
11:30 a.m.	Status of Changes to Criminal Rule 41, Form 4(a)	Kirstin Flores and Patrick Scott
11:35 a.m.	Case Law Update	Hon. Ron Reinstein
11:40 a.m.	SAFER Act Team Update	Hon. Ron Reinstein
11:45 a.m.	Human Sex Trafficking- Upcoming Conference	Hon. Ron Reinstein

**Next Meeting Date**

11:50 a.m.	To Be Determined
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**Adjourn**

***\*\*Important Voting Items***

Arizona Supreme Court  
Commission on Victims in the Courts

June 12, 2015

10:00 a.m. to 12:00 p.m.

State Courts Building

1501 W. Washington, Phoenix, AZ 85007

Conference Room 345 A/B

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**Present:** Judge Ronald Reinstein, Chair; Mr. Timothy Agan; Mr. Michael Breeze; Judge Maria Elena Cruz; Ms. Sydney Davis; Ms. Kirstin Flores; Ms. Kim Hedrick; Ms. Leslie James; Mr. Dan Levey; Ms. Keli Luther; Judge Evelyn Marez; Sgt. Ret. James Markey; Chief Jerald Monahan; Judge Sam Myers; Ms. Debra Olsen; Ms. Elizabeth Ortiz; Mr. William Owsley; Ms. Karyn Rasile; Judge Richard Weiss; Chief Cindy Winn.

**Telephonic:** Ms. Karen Duffy; Judge Sally Simmons.

**Absent/Excused:** Ms. Shelly Corzo-Shaffer; Judge Timothy Dickerson; Judge Elizabeth Finn; Mr. Michael Lessler.

**Presenters/Guests:** Chief Justice Scott Bales; Attorney General Mark Brnovich; Ms. Christine Groninger; Ms. Holli Sanger-Alarco; Ms. Allison Sedowski.

**Administrative Office of the Courts:** Ms. Denise Lundin; Ms. Kelly Gray.

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The June 2015 meeting of the Commission on Victims in the Courts was called to order by the Honorable Ronald Reinstein, Chair, at 10:02 a.m. The Chair asked for commission member roll call and introductions of staff and guests.

### B. Announcements

#### i. Evacuation Plan Announcement

Ms. Kelly Gray described evacuation procedures for conference room 345 A/B and the method of communicating special evacuation needs to the commission and attendees.

#### ii. Arizona Attorney General's 2015 Distinguished Service Award

Mr. Mark Brnovich and Chief Justice Scott Bales congratulated the commission for receiving the Arizona Attorney General 2015

Distinguished Service Award in recognition of the commission's positive impact on public policy on behalf of victims of crime. Chief Justice Bales thanked the commission members for their service and encouraged them to refer others to volunteer for committee work in the Arizona judicial system. Mr. Mark Brnovich expressed his sincere gratitude to the commission for their work in the area of victim rights.

### **iii. New Member Introductions**

Judge Sam Myers, Judge Maria Elena Cruz, Ms. Debra Olsen, and Ms. Kim Hedrick introduced themselves and provided further information about themselves.

## **C. Approval of the February 2015 Minutes**

The draft minutes from the February 2015 meeting of the Commission on Victims in the Courts were presented for approval. The chair called for any omissions or corrections to the minutes. There were none.

- Motion was made by Ms. Elizabeth Ortiz to approve the February 24, 2015 meeting minutes of the Commission on Victims in the Courts. Seconded by Mr. Michael Breeze. Motion passed unanimously.

## **II. PRESENTATIONS**

### **A. Sexual Assault Forensic Evidence Reporting Act (SAFER)**

Ms. Karyn Rasile, Mr. James Markey, and Ms. Allison Sedowski presented information on the Sexual Assault Forensic Evidence Reporting Act (SAFER). The SAFER Act was passed to address the backlog of sexual assault kit testing across the country.

Mr. Markey indicated that there were grants provided by the New York City District Attorney's Office to address the backlog nationwide, and to address the root cause of the accumulation of untested sexual assault kits. Through those grants, a committee was formed which implemented a registry for the purpose of reporting/collection of data and providing the status of processing sexual assault kits. The committee developed and disseminated best practices for DNA analysis related to sexual assault kits, created best practices for testing kits and recommended timeframes for analysis of kits. Additionally, a working group was developed to discuss the ongoing issues related to the processing of sexual assault kits.

Ms. Sedowski discussed the crime lab's impact on the prosecution of sexual assault cases and the procedures required to analyze kits. She provided a

scientific perspective and several new approaches on the processing of sexual assault kits.

Ms. Karyn Rasile discussed the impact of the Sexual Assault Nurse Examiner (SANE) program in Arizona and the consistency of information, services, and processes provided to victims. She recommended several changes including a staffed sexual assault information line/email, adding a form for lab feedback, the use of multiple disciplinary teams to assist victims, and encouraging victim-centered methods and policies.

Discussion ensued regarding the development of policies and procedures and ultimately training for professionals throughout the state.

## **B. Increasing the Effectiveness of “Lay Legal Advocates”**

Ms. Chris Groninger, Director of Strategic Initiatives for the Arizona Foundation for Legal Services & Education reported on the idea of increasing the effectiveness of “Lay Legal Advocates” outlined in a communication to the Arizona Commission on Access to Justice.

Ms. Groninger explained that Arizona’s “Lay Legal Advocates” help victims make important, positive changes in their lives. However, limitations currently exist in rules and court procedures that reduce their effectiveness. Ms. Groninger shared the perspective of court and advocacy communities, that expanding the role of Arizona’s “Lay Legal Advocates” will increase and improve access to justice for victims across the state.

Some ideas put forth include:

- i. Enacting regulatory and rule changes to allow Domestic Violence Lay Legal Advocates do more to help survivors of abuse complete legal documents and pleadings.
- ii. Adoption of best-practices guidelines and implementation of new training with regard to advocates accompanying abuse survivors to court and sitting with victim at the “counsel table.”
- iii. Additional training of court employees to facilitate better communication of legal information to victims and advocates.
- iv. Development of a “Navigator” type program, similar to the one developed for the New York State Court system that could expand and further develop the ability of Arizona’s Lay Legal Advocates to assist victims with various legal issues.

Plans are to run a small pilot project for a year and receive feedback before developing recommendations. This concept will be brought to the next meetings of the Committee on Domestic Violence and the Courts and the Commission on Access to Justice.

### III. NEW BUSINESS

#### A. Legislation and Rule Update

Ms. Amy Love presented the following recently passed legislation:

- i. H2166: DCS information; egregious abuse; neglect

Discussion: Ms. Love indicated that in previous versions of this legislation, there was language that affected the way courts do business. The language was removed/revised in the final version.

- ii. H2203: Post-conviction release hearings; recordings; free

Discussion: None

- iii. H2204: Criminal restitution order; courts

Discussion: Ms. Love indicated that this legislation allows all courts to enter criminal restitution orders. Previously only trial courts were permitted to enter restitution orders.

- iv. H2205: Emergency service providers; civil liability (~~traffic offense; restitution~~)

Discussion: None

- v. H2239: Police reports; victims; attorneys

Discussion: None

- vi. H2517: Internet crimes against children; fund

Discussion: None

- vii. H2553: Sex trafficking; vacating conviction (~~human trafficking victim; vacating conviction~~)

Discussion: None

## **B. Order Amending Rules 29 & 41 of the Arizona Rules of Criminal Procedure (HB2553 Controlling)**

Mr. Patrick Scott discussed Arizona Supreme Court Order R-15-0032 amending rules 29 and 41 of the Arizona Rules of Criminal Procedure. Amendments related to H2553 becoming law.

An emergency order by the Arizona Supreme Court was filed to amend Rule 29 and mandated a new Form 21(a) under Rule 41 of the Arizona Rules of Criminal Procedure. The order added/changed language in Rule 29 that allows a sex trafficking victim to apply to the court that pronounced sentence to vacate a conviction of a violation of A.R.S. § 13-3214 committed prior to July 24, 2014 pursuant to A.R.S. § 13-907. The order becomes effective July 3, 2015.

Mr. Scott indicated that H2553 is applicable to A.R.S. § 13-3214 only, and that local ordinance violations are not included in this type of relief. He further explained that if the application is granted, background checks would show the conviction, but will indicate that the conviction was vacated. Additionally those individuals who were granted relief under H2253 would still have to disclose the conviction when applying for an Arizona Fingerprint Clearance Card. Mr. Scott clarified that the law applies to *offenses* committed prior to July 24, 2014 (as opposed to the *conviction* date).

## **IV. OLD BUSINESS**

### **A. Code Section/Rule Change Proposals**

#### **i. Rule 41, Form 4(a) Comment and Proposed Workgroup**

Mr. Patrick Scott and Chair Ronald Reinstein discussed the proposed changes to Ariz. R. Crim. P. 41, Form 4(a), "Release Questionnaire." Form 4(a) is used in the defendant's initial appearance hearing to provide additional information to the hearing officer regarding the defendant. In past meetings of this body, the commission voted to approve some language changes to Form 4(a). The language proposed on the form was regarding the presence of children during the incident and if the Department of Child Safety (DCS) was involved.

The Administrative Office of the Courts filed a petition to amend Form 4(a) and 4(b) in response to recent amendments to A.R.S. §§ 22-601 and -602, made by HB 2457 (Laws 2014, Chapter 37). A response

to that petition was filed by the State Bar of Arizona that supports the petition with one caveat regarding the inclusion of a question inquiring whether the DCS was involved in the matter related to defendant.

The State Bar of Arizona contends that the "Release Questionnaire" is subject to Rule 15 discovery requirements and that DCS information is confidential, and may only be released in specific circumstances under law. It argues that there are no exceptions for release in a criminal matter under A.R.S Title 8 and release of confidential information is considered a Class 2 misdemeanor under A.R.S. § 8-806. If the changes to Form 4(a) regarding DCS involvement were approved, the Arizona State Bar asserts that there will be conflicting laws between the criminal rules and children's code under A.R.S. § 8.

In response to these issues, it was determined that further study is required. A working group has been formed, staffed by Mr. Jerry Landau of the Administrative Office of the Courts. The first meeting is scheduled for July 2, 2015. The Chair indicated that he will update the Commission in future meetings regarding this issue.

**ii. ACJA 5-204 Technical Amendment**

Mr. Patrick Scott updated the group on changes to Arizona Code of Judicial Administration (ACJA) § 5-204. In the last meeting of this body, the commission voted to approve technical amendments to ACJA § 5-204 that would conform the rule to legislation recently passed. Administrative Order 2015-23 was issued on March 4, 2015 which broadened the applicability of victims' rights pertaining to juvenile offenses to include all misdemeanors, petty offenses, and criminal ordinance violations.

**B. Victim ID Rule Update (taken out of order)**

The Chair discussed victim identification issues related to Arizona Supreme Court Rule 123, Public Access to the Judicial Records of the State of Arizona. In the last meeting of this body there were concerns raised regarding accessibility of court records from computer terminals in superior court clerks' offices.

After further review of the rule and discussions with personnel from the Clerks of the Superior Court in Maricopa County and Pima County, it was determined that these terminals described were analogous to viewing a physical record at the court. Viewing records that may contain victim

identification information at the court/clerk's office is allowed under Arizona Supreme Court Rule 123. Viewing electronic records that may contain victim identification information remotely is not permitted under the rule. For these reasons, the Chair indicated that a workgroup was not necessary at this time.

### **C. Victims' Rights Panel at Judicial Conference (taken out of order)**

The Chair stated that he will lead a panel discussion on Victims' Rights at the Arizona Judicial Conference scheduled for June 19, 2015.

### **D. Update on Minor Victims of Sex Trafficking in Arizona Probation**

Ms. Holli Sanger-Alarco, Program Manager/Contracts & Monitoring Unit for the Juvenile Justice Services Division (JJSD) of the Administrative Office of the Courts, discussed implementation plans to address identification of minor sex trafficking victims and connect those victims with appropriate programming and services.

Ms. Sanger-Alarco said that the JJSD has entered into a contract with Dr. Dominique Roe-Sepowitz, MSW, Ph.D., associate professor of Social Work at Arizona State University, to provide training to the JJSD probation officers later this year on minor victims of sex trafficking. Additionally, her division is working to contract with therapists who are trauma trained in order to better serve minor victims of sex trafficking.

In the last meeting the commission, it was mentioned that the JJSD had been exploring the potential of converting a Yavapai County detention center into a residential program for victims of sex trafficking. Ms. Sanger-Alarco indicated that ultimately the conversion was cost prohibitive and the project would not move forward at this time. However, the JJSD is considering modifying the service specifications to move forward in a different way to better serve the minor victims of sex trafficking population.

## **V. CALL TO PUBLIC**

### **A. Good of the Order/Call to the Public**

- i. Mr. Dan Levey to the National Crime Victim Law Institute in Portland, Oregon to present on Arizona's restitution courts.
- ii. Ms. Kirstin Flores discussed funding available through the Victims of Crime Act (VOCA). These funds, which are administered through the Department of Public Safety (DPS), are used for non-mandated victim services programs in Arizona. Typically Arizona is granted about 9 million dollars statewide each year. During the next federal fiscal year, it is anticipated that Arizona will be granted up to 44 million dollars. The grant process is scheduled to begin in early August 2015. Representatives from DPS are available to discuss programs eligible for funding only as long as the solicitation is open. The DPS Crime Victim Services webpage is located at [http://www.azdps.gov/Services/Crime\\_Victims/](http://www.azdps.gov/Services/Crime_Victims/).
- iii. The Chair asked that if a member of the commission was interested in presenting on any issue or topic, please feel free to contact him or Denise Lundin at [dlundin@courts.az.gov](mailto:dlundin@courts.az.gov).

## **VI. ADJOURNMENT**

### **A. Adjourn**

- Motion was made by Judge Richard Weiss at 11:50 a.m. to adjourn. Seconded by Ms. Sydney Davis. Motion passed unanimously

## **VII. NEXT COMMITTEE DATE**

October 23, 2015  
10:00 a.m. to 12:00 p.m.  
State Courts Building, Room 345 A/B  
1501 W. Washington St., Phoenix, AZ, 85007

## Commission on Victims in the Courts

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**Meeting Date:**

October 23, 2015

**Type of Action  
Required:**

- Formal Action  
Request**
- Information  
Only**
- Other**

**Subject:**

25<sup>th</sup> Anniversary of  
Victims' Rights  
Constitutional  
Amendment

*20 minutes*

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**FROM:**

The amendment's author

**PRESENTER(S):**

Steve Twist

**DISCUSSION & TIME ESTIMATES:**

A presentation on history of the movement to amend the constitution, changes made since the amendment, and recognition of its importance.

**RECOMMENDED MOTION (IF ANY):**

N/A

47 Ariz. St. L.J. 421

Arizona State Law Journal  
Summer 2015

Article

\*421 TWENTY-FIVE YEARS OF VICTIMS' RIGHTS IN ARIZONA

Steven J. Twist, Keelah E.G. Williams<sup>1</sup>

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## I. INTRODUCTION

On November 6, 1990,<sup>1</sup> Arizona voters approved an amendment to the state constitution<sup>2</sup> granting specific substantive rights to victims of crime. Known as the "Victims' Bill of Rights" (VBR), the amendment will celebrate its anniversary on November 27, 2015.<sup>3</sup>

At the time of its passage, Arizona became one of only six states to afford crime victims' rights protections in their constitutions.<sup>4</sup> The VBR was enacted as part of a national movement that began with the publication of the President's Task Force on Victims of Crime ("Final Report").<sup>5</sup>

The Final Report proposed, *inter alia*, a federal constitutional amendment to protect the rights of crime victims. In applying and interpreting the vital guarantees that protect all citizens, the criminal justice system has lost its balance. It should be clearly understood that this Task Force wishes in no way to vitiate the safeguards that protect the innocent; but it must be urged with equal vigor that \*422 the system has deprived the innocent, the helpless of its protection.

The guiding principle that provides the focus for constitutional liberties is that government must be restrained from infringing the rights of the individual citizen. The victims of crime have been transformed into a group oppressively treated by a system designed to protect them. This oppression must be redressed. To that end it is the recommendation of the Task Force that the Sixth Amendment to the Constitution be augmented.<sup>6</sup>

Following issuance of the Final Report, proponents of crime victims' rights decided initially to focus on the passage of constitutional amendments in the states, before seeking a federal constitutional amendment.<sup>7</sup> As Bob Berman, one of the movement's leaders, testified,

The 'states-first' approach drew the support of many victim advocates. Adopting state amendments for victims' rights would make good use of the 'great laboratory of the states,' that is, it would test whether such constitutional provisions would reduce victims' alienation from their justice system while producing no negative, unintended consequences.<sup>8</sup>

The ensuing decades have seen remarkable advancement in crime victims' rights on a national scale. In 1994, Congress passed the Crime Victims' Rights Act<sup>9</sup> protecting the rights of crime victims in federal courts, and the push for state constitutional rights amendments continues to this day.<sup>10</sup> Arizona's VBR is best understood within this historical context. In fact, the VBR, several states modeled their amendments after \*423 Arizona.<sup>11</sup> Despite the successes at the state level, the experience teaches that texts can often be words on paper, without the power to change the culture of the

unless there is the enervating presence of lawyers and court decisions that give the words life in real cases with rea

Within Arizona, courts have grappled with the challenges of balancing traditional conceptualizations of defend and state interests with the rights of victims, as newly articulated by the VBR.<sup>12</sup> The resulting judicial decisions crime victims' advocates cause for celebration,<sup>13</sup> as well as cause for concern.<sup>14</sup> In honor of the VBR's anniv Article considers twenty-five years of victims' rights law in Arizona. It begins with a brief substantive review of purposes and protections, and an overview of how Arizona courts have approached interpreting the amendme examines how Arizona courts have responded to major victims' rights issues, including defining who is a victi rights to be informed, present, and heard, as well as victims' rights to restitution. Finally, it concludes by con future of victims' rights in Arizona, including significant victims' rights issues yet to be decided, and the pos Victims' Rights Amendment to the U.S. Constitution.

#### \*424 II. THE VICTIMS' BILL OF RIGHTS: PURPOSE, CONTENT, AND INTERPRETATIOI

Each year, millions of Americans become victims of serious and often violent offenses.<sup>15</sup> However, for much century, crime victims were marginalized<sup>16</sup> by the criminal justice system -- viewed primarily as "unfortunate by rather than active participants. After dutifully reporting a crime to the authorities, victims were firmly relej sidelines.<sup>18</sup> Beyond lending support to the prosecution as a witness, the victim's role was one of passive obser gathered evidence, prosecutors made determinations about pursuing cases, charges were filed in the name of defense counsel protected the defendant's interests, and guilt determinations were effected through plea bargain judges, and jurors.<sup>20</sup> Victims remained at the periphery, excluded from and "oppressively burdened by" a crir system originally designed to protect them.<sup>21</sup> Advocates of crime victims' rights decried this injustice, a compelling interests such as fairness to the victim, facilitating truth seeking, and preventing victim alienation reconceptualization of the victim's place in the justice system.<sup>22</sup>

Arizona's voters agreed with these principles, resulting in an amendment to the state constitution. The Victims' E (VBR) was intended to reestablish the important and central role of victims, to humanize and individualize th crime, and to recognize that victims also have rights to fair treatment and due process in criminal procee amendment enumerates specific rights to "justice and due process"<sup>24</sup> for crime victims, which can be group general categories: (1) rights that protect victims from harassment and abuse throughout the criminal justice rights that allow a victim to participate in, contribute \*425 information to, and draw information from a criminal that will be resolved in a timely manner; (3) rights of victims to receive restitution from the person or persons wh the crime; and (4) rights which permit the legislature to act on behalf of crime victims so that the rights secured may be preserved.<sup>25</sup> In 1991, the Arizona legislature adopted the Victims' Rights Implementation Act<sup>26</sup> to realization of the rights established by the VBR, and in 1995, expanded crime victims' rights to victims committed by juveniles.<sup>27</sup> Victims were no longer mere bystanders in the quest for justice; the VBR had g victims "a mandatory participatory voice in Arizona's criminal justice system."<sup>28</sup>

In subsequent years, Arizona's courts have been tasked with interpreting and implementing victims' rights. Cou to reconcile victims' rights with the historically expansive protection of defendants' rights,<sup>29</sup> articulate the bo scope of victims' rights,<sup>30</sup> and determine appropriate remedies when these rights are violated.<sup>31</sup> Overall, a review Supreme Court and Court of Appeals decisions over the past twenty-five years<sup>32</sup> suggests that many of the goal: have been realized. Arizona's jurists have frequently supported and protected victims' right to participate i system and have given effect to victims' right to restitution. However, a handful of cases indicate that the co grappling with balancing victim and defendant due process rights, and \*426 suggest a reluctance to effectuat intended scope within specific domains.<sup>33</sup>

A significant portion of the praise due to Arizona jurists' dispensation of cases involving victims' rights stems Arizona Supreme Court case to apply the VBR, *Knapp v. Martone*.<sup>34</sup> Crucially, *Knapp* established precedent appropriately interpret the newly enacted amendment. In *Knapp*, a trial court ordered Ms. Knapp, the m

murdered children, to submit to a court-ordered deposition requested by her former husband (the defendant never charged with a crime, the state indicated during oral arguments that Ms. Knapp might be a co-conspirator). Against Ms. Knapp's objections, the trial court determined that she was not entitled to protection under the VBR because she did not fit the definition of a victim, based on the assumption that "it could not have been the intent of the drafters of the VBR] to exclude a person, such as Ms. Knapp, who was, is, or could be a suspect in the case."<sup>36</sup> The Arizona Supreme Court reversed the trial court's orders, pointing to the definition of victim articulated by the VBR.<sup>37</sup> The court emphasized the need for Arizona courts to "follow and apply the plain language of this new amendment to our constitution and proscribed trial courts from making "ad hoc exceptions to the constitutional rule."<sup>39</sup>

Although the courts have occasionally faltered in applying the VBR "in a manner consistent with its underlying purpose," Arizona's jurists have remained largely faithful to the guidelines for interpretation demanded by *Knapp*. By closing the door on creative semantic interpretations of the amendment's language, the court gave weight to the plain language expressed by the VBR. Unfortunately, other case holdings<sup>41</sup> suggest that ambiguities in interpreting victims' rights exist, and that this vagueness occasionally results in determinations inconsistent with the spirit of the VBR.<sup>42</sup> In this section, this Article reviews notable Arizona cases addressing major victims' rights issues. Although the implications of these cases are predominantly positive for the state of victims' rights in Arizona, there is still work to be done before the VBR are fully realized.

### III. NOTABLE VICTIMS' RIGHTS CASE LAW IN ARIZONA

Over the past twenty-five years, Arizona courts have addressed more than a hundred cases implicating the VBR. These decisions addressed fundamental principles of victims' rights -- for example, carving the boundaries of who is considered a victim and therefore entitled to protection under the VBR. Many others spoke to issues at the heart of victims' rights, such as the right to be present and the right to be heard. This section provides a brief outline of notable cases addressing key victims' rights issues.

#### A. Who is a Victim?

The VBR defines a victim as "a person against whom the criminal offense has been committed or, if the person is incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is the perpetrator of the offense or is the accused."<sup>44</sup> The Victims' Rights Implementation Act further clarifies that the "accused" refers to a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other pretrial proceedings.<sup>45</sup>

Following the Arizona Supreme Court's decision in *Knapp*, Arizona's jurists have closely adhered to the definition of a victim by the VBR. For example, in *State v. Roscoe*,<sup>46</sup> the Arizona Supreme Court considered a conflict between the provisions of A.R.S. § 13-4433(F) and the Arizona Rules of Criminal Procedure, and the VBR's definition of a victim. The statute, which had been passed in 1992, and a conformed version of Rule 39(b)(11) provided that for purposes of interviews, peace officers were not considered victims if the offense conferring victim status occurred while they were performing official duties.<sup>48</sup> Applying the plain language interpretation set forth by *Knapp*, the court found the exception for peace officers to be an unconstitutional abrogation of the rights provided by the VBR.<sup>49</sup> Furthermore, the court articulated the impropriety of the legislature or courts attempting to restrict the class of 'victim' beyond that articulated in the VBR. "[t]he Bill grants to the legislature the authority to define the rights created therein, not the power to restrict the class of persons entitled to them. . . . [N]either we [n]or the legislature can exclude from the Bill victims who have already been included by the people."<sup>50</sup> In doing so, the court protected the VBR from judicial or legislative action expanding the number of persons entitled to victim status beyond those explicitly enumerated in the VBR's definition of victim.

Courts have interpreted these enumerated exceptions -- individuals "in custody for an offense" or "the accused" -- in a narrow manner, declining to restrict the class of victims protected by the VBR. In *State v. Nichols*,<sup>51</sup> the petitioner, J.

of kidnapping, robbery, and assault while living in Arizona.<sup>52</sup> J.C. moved to Massachusetts, and was later arrested, and incarcerated for an unrelated weapons charge.<sup>53</sup> While in custody in Massachusetts, counsel for the defendant with J.C.'s kidnapping, robbery, and assault requested a pretrial interview with J.C., arguing that J.C. was not a victim because he was in custody on criminal charges.<sup>54</sup> In reviewing a judge's order compelling J.C. to a pretrial interview, the Arizona Court of Appeals considered the definition of "in custody for an offense" in light of its stated purpose: "to preserve and protect a victim's rights to justice and due process."<sup>55</sup> Noting "the victim's right to a pretrial interview has been considered absolute,"<sup>56</sup> the court recognized that no previous Arizona case had held, expressly, that individuals lose victim status or rights if taken into custody for an unrelated reason.<sup>57</sup> The court held that individuals do not suspend or forfeit constitutional rights "in the absence of clear language in \*429 the VBR expressly so provided." The court determined that for the purposes of the 'in custody' exception, victim status could only be denied to individuals taken into custody when a criminal offense is committed against them.<sup>59</sup>

Additional court decisions addressing the VBR's victim definition suggest a generous interpretation of victim status. For example, Arizona courts have upheld victims' rights asserted by parents of minor victims (regardless of whether the victim is alive or deceased),<sup>60</sup> and putative spouses.<sup>61</sup> Courts have held that victims do not need to suffer personal injury to be victims,<sup>62</sup> and that individuals not named in charging documents or complaints are still entitled to invoke constitutional rights as victims.<sup>63</sup> Such inclusive interpretations are consistent with the spirit and aims of the VBR.

However, Arizona's courts have limited individuals' entitlement to victim status in two notable domains. First, courts have suggested a reluctance to fully confer victims' rights on individuals who are also participating as witnesses. In *C. Sargeant*,<sup>64</sup> the Arizona Supreme Court held that witnesses to a defendant's criminal activity are not entitled to pretrial interviews unless specifically named as victims in the charges filed against the defendant, even if the witnesses are victimized by the criminal activity.<sup>65</sup> The defendant in *Champlin* was charged with multiple sexual offenses: molestation of a child and public sexual indecency, stemming from three incidents involving two minors and two adults. In two incidents, the defendant, Champlin, improperly touched one of the children while in the presence of the other child. In both of these incidents, charges filed against Champlin named \*430 only the molested child as a victim and did not name the other child as a victim of any crime.<sup>66</sup> In the third incident, Champlin improperly touched one of the children in the presence of the adult, and charges filed identified both the child and the adult as a victim.<sup>67</sup> Champlin filed pretrial motions to compel depositions from both children and the adult, reasoning that interviews with unnamed victims would be more effective than "victim" interviews,<sup>68</sup> and that only witnesses against whom a defendant had committed an offense on the same occasion as the offense committed against the victim were entitled to victim protections under the VBR. The court argued that victims are not limited only to victims named in the offense count, and "implored the court to apply the definition to the term of victim to the facts of the case."<sup>69</sup>

Unfortunately, the court in *Champlin* held that witnesses to criminal conduct were only protected if also a victim of a specific criminal activity on that occasion.<sup>70</sup> Witnesses who were victims of criminal conduct by the same defendant on separate occasions could be compelled to submit to a pretrial interview, so long as the interview did not address the victimization.<sup>71</sup> As a result, Champlin could interview one child with respect to the first crime, and the other child with respect to the second crime, even though both children were present for both crimes. However, Champlin was not interviewed in a pretrial interview of the adult, as the adult had also been named as a victim in the specific offense count.

The court's conclusion in *Champlin* indicates an unnecessarily restrictive interpretation of the VBR. Given that Arizona establishes minors as victims of public sexual indecency if "in view or at hand" when indecent sex occurs,<sup>72</sup> both children in *Champlin* were victims of a crime regardless of whether or not they were explicitly named in the counts filed against Champlin.<sup>73</sup> The Arizona Court of Appeals had previously established that individuals are entitled to be named as victims of any charged offense to be entitled to protection under the VBR.<sup>74</sup> A few \*431 years after *Champlin*, the Arizona Court of Appeals again considered the rights of witnesses alleging victimization by the defendant in *Stauffer*,<sup>75</sup> where defendant Proto was charged with committing sexual abuse against V.M.<sup>76</sup> The State intended to interview witnesses N.T., T.G., and D.M., each of whom would testify that Proto had committed similar acts of sexual abuse against them.<sup>77</sup> Proto had been convicted of sexual abuse against N.T., with an appeal pending.<sup>78</sup> In contrast, crimes against T.G. and D.M. had not resulted in arrests or criminal charges.<sup>79</sup> Proto sought pretrial interviews

witnesses, each of whom invoked rights under the VBR to refuse to be interviewed about the offenses committed against them.<sup>83</sup>

In addressing the trial judge's order to compel all three interviews, the court of appeals first considered whether a victim established by her own case against Proto extended to a separate prosecution involving a third party against the same defendant.<sup>84</sup> The court interpreted *Champlin* to stand for "the principle that a victim's right to refuse to be interviewed about the offense committed against that victim is inviolate, even as to other offenses allegedly committed against the same victim on the same occasion by the defendant,"<sup>85</sup> and extended this principle to separate prosecutions involving other charges against the same third parties. Because N.T.'s testimony as a witness for V.M. comprised of recounting the criminal offense committed against N.T., N.T. was entitled to retain her victim status and the protections afforded by the VBR.<sup>86</sup>

However, in turning to the two remaining witnesses, the court concluded that the arrest or formal charging of witnesses' rights arise is "victim-specific."<sup>87</sup> Rather than activating victims' rights "for all persons [[the victimized,] victims are limited to the constitutionally defined class of victims against whom the specific offense was committed."<sup>88</sup> Because Proto had not been arrested or charged for any criminal acts committed against these individuals' "rights to \*432 refuse to be interviewed simply [had] not . . . arisen,"<sup>89</sup> and they could not submit to pretrial interview.<sup>90</sup>

Taken together, *Champlin* and *Stauffer* suggest that witnesses are not protected as victims from pretrial interview if victimization arises from incidents other than the specific offense for which they will testify. Even if victimized by the defendant, for the same or similar type of offense, victim status is limited to victims of the specific offense activity for which the defendant is charged. However, victims who are named as victims in the specific offense for which they are testifying in a separate prosecution about an offense for which the victims' rights had attached, remain entitled to refuse to submit to a pretrial interview. The decisions in these two cases suggest that when tasked with delineating victim status, courts continue to grapple with balancing witness-victims' rights to refuse pretrial interviews with defendants' rights to criminal discovery rules.

The second domain in which Arizona courts have narrowly interpreted victim status is with regards to victims of suicide. In *State v. Superior Court*,<sup>91</sup> the defendant, Jafet, was accused of sexually assaulting a victim who committed suicide shortly after the indictment.<sup>92</sup> The State listed the deceased's parents as witnesses, and Jafet's defense requested an order requiring the parents of the deceased sexual assault victim to submit to an interview.<sup>93</sup> The State objected, arguing that the parents were protected under the VBR and entitled to refuse the interviews.<sup>94</sup> A trial court granted the State's motion, and the State appealed.<sup>95</sup> In evaluating the petition, the Arizona Court of Appeals considered the VBR's definition of "a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the spouse, parent, child or other lawful representative . . ."<sup>96</sup> Relying partly on a definition of victim in the Arizona Criminal Procedure, the court determined that a deceased victim "must have been killed by the alleged criminal" and that the parents of the deceased victim to qualify as victims under the VBR.<sup>97</sup>

\*433 The State argued that the defendant's conduct "started a chain of events . . . ultimately result[ing] in the victim's suicide,"<sup>98</sup> therefore creating a "nexus between the death of the victim and the alleged offense."<sup>99</sup> The court rejected the State's argument, stating that "the standard for demonstrating that the alleged criminal offense killed the victim is the showing of causation, which is something more than just any nexus."<sup>100</sup> Given the speculative nature of the causal link between Jafet's conduct and the deceased suicide, the court declined to find a causal relationship, and affirmed the trial court's order compelling the parents to submit to interviews.<sup>101</sup>

The Arizona Court of Appeals' finding has potentially interesting implications for family members of victims in future cases. Although *State v. Superior Court* requires a causal link between the criminal offense and the victim's suicide, it is unclear what fact patterns might satisfy this standard. Perhaps less time intervening between the offense and the victim's suicide, or stronger evidence suggesting the suicide occurred as a direct result of the offense, could confer victim status on family members under the VBR.

In sum, Arizona's courts have generally remained faithful to the definition of victim articulated by the VBR. In many instances courts have broadly interpreted this definition, favoring a generous and relatively comprehensive construction of victim status that is consistent with the spirit and goals of the VBR. However, a handful of cases suggest that courts are hesitant to be overly inclusive in defining victims -- particularly when such labeling might unduly interfere with a defendant's rule-based rights to interview witnesses, and when bestowing victims' rights on third parties if the connection between the victim's death and the charged offense is tenuous.<sup>103</sup> Each of these narrowing constructions could and should be addressed by the legislature.<sup>104</sup>

#### \*434 B. Right to be Informed & Present

The right to be informed is the "linchpin"<sup>105</sup> of the VBR, and refers to both an affirmative obligation of the state to protect a victim of his or her constitutional rights,<sup>106</sup> and -- upon request -- to be notified of certain events and legal proceedings through this right to be informed that victims gain knowledge and empowerment to exercise further rights, such as the right to be present and the right to be heard.

The Arizona Supreme Court first considered the victims' right to be heard under the VBR in *State ex rel Hance v. Board of Pardons and Paroles*.<sup>108</sup> In *Hance*, the Arizona Board of Pardons and Paroles ordered release of a convicted felon, Eric Mageary, to home arrest.<sup>109</sup> Mageary had been considered and denied for parole multiple times between 1984 and 1993 before being granted home release at a parole hearing in May of 1993.<sup>110</sup> The Board had attempted to contact Mageary in 1984 by mailing a letter to her last known address.<sup>111</sup> After the letter had been returned as undeliverable, no further attempts were made to notify the victim of future proceedings.<sup>112</sup> Following a request for rescission by the Governor of Arizona, the Coconino County Attorney, the Arizona Supreme Court vacated the Board's order releasing Mageary and ordered a reexamination hearing.<sup>113</sup> However, the court emphasized that the decision was the result of neither the Governor's request nor the County Attorney's request, but instead was the result of the failure to notify the victim of her rights under the VBR.

Contrary to the Board's claim that it had no duty to notify in the absence of the victim's request, the court determined that the VBR and Victims' Rights Implementation Act impose a "corollary duty on the state"<sup>115</sup> to provide information to victims about their rights "at various stages of criminal proceedings."<sup>116</sup> Because the victim was never informed of her right to request notice of the hearings, her failure to request notice did not release the Board from their obligation to notify victims of proceedings.<sup>117</sup>

Importantly, *Hance* also held that the remedy for the violation of a victim's right to be informed can include setting aside the results of the constitutionally defective hearing, and the ordering of a new hearing.<sup>118</sup> With this determination, the court established a clear and effective deterrent for lackluster attempts to notify victims. Furthermore, the court adopted a "reasonable efforts"<sup>119</sup> standard for notification, and laid the burden firmly with the state.<sup>120</sup>

Once informed, victims may choose to exercise their right to be present at "all criminal proceedings where the defendant has the right to be present."<sup>121</sup> In *State v. Gonzales*,<sup>122</sup> the Arizona Supreme Court firmly upheld this fundamental right. In *Gonzales*, a victim's presence in the courtroom during jury selection did not violate the defendant's due process rights. The defendant, Ernest Gonzales, was sentenced to death for the murder of Darrel Wagner.<sup>124</sup> During jury selection, Wagner's wife, Deborah, sat in the back row of the courtroom -- unnoticed by either the court or counsel for several days. Wagner claimed that Deborah's presence during jury selection was prejudicial, and infringed upon his right to a fair trial. The Arizona Supreme Court decisively rejected this argument in a single paragraph of the opinion, noting that under the VBR a victim had a constitutional right to attend all proceedings that Gonzales had the right to attend.<sup>127</sup>

The holding of *Gonzales* established that more than mere allegations of prejudice are required to impinge on a victim's constitutional right to be present.<sup>128</sup> In *State v. Uriarte*,<sup>129</sup> Arizona's courts further established that a victim's right to be present might supersede certain procedural rules, such as court-ordered exclusion of prospective witnesses.<sup>130</sup> The defendant in *Uriarte* was accused of child molestation.<sup>131</sup> At commencement of the trial, the judge invoked a rule excluding prospective witnesses from the proceedings.<sup>132</sup> The victim's mother, R.A., attended court proceedings on behalf of the child

was called to testify on the last day of trial.<sup>133</sup> The defendant objected, arguing that R.A.'s presence during pre-trial proceedings violated the court order excluding witnesses.<sup>134</sup> The trial court judge overruled this objection on the ground that the victim's parents may exercise all of the minor victim's rights, including the right to be present at trial.<sup>135</sup>

The Arizona Court of Appeals upheld the trial court's decision, holding that the Victim's Rights Implementation Act authorizes a minor victim's parent to exercise all of the victim's rights on behalf of the victim.<sup>136</sup> The court clarified that "on behalf of" does not limit the parent to exercise rights only when the minor victim is unable to exercise rights -- rather, the parent of a minor victim may exercise victims' rights in addition to the minor, for the purpose of providing parental support.<sup>137</sup> Noting a conflict between the Victims' Rights Implementation Act and the Arizona rule governing exclusion of witnesses from trial proceedings, the court concluded that the procedural rules must yield to the constitutional rights granted by the VBR.<sup>138</sup> By doing so, the court reestablished the hierarchical import of the VBR and upheld the purpose and spirit of crime victims' rights in the face of incompatible procedural rules.

However, Arizona's jurists have also placed limitations on the scope of a victim's right to be present. For example, the right to attend does not extend to "all criminal proceedings,"<sup>139</sup> but is instead limited to hearings that the defendant has the right to attend.<sup>140</sup> Thus, a victim may not be \*437 entitled to attend purely procedural hearings.<sup>141</sup> Furthermore, the right to be present does not confer upon victims standing as "parties,"<sup>142</sup> nor "aggrieved"<sup>143</sup> status, nor the right to file petitions for review.<sup>144</sup>

Overall, Arizona's courts have dependably protected crime victims' right to be informed, and once so informed, their right to be present. The right to be informed remains an affirmative obligation of the state, and a violation of this right can result in deficient hearings being set aside and held anew. A victim's right to be present at trial proceedings can automatically result in prejudice to the defendant, and procedural rules may be displaced so as to give way to the victim's constitutional right. However, victims are not considered parties to criminal proceedings, and the right to be present is limited to those proceedings that defendants themselves have a right to attend. Once again, these limitations come about by legislation.

### *C. Right to be Heard -- Victim Impact Statements*

Under the VBR, crime victims have the right to be heard at "any proceeding involving a post-arrest release, plea, negotiated plea, and sentencing,"<sup>145</sup> and "at any proceeding when post-conviction release from confinement is being considered."<sup>146</sup> The most controversial application of this right has been with respect to Victim Impact Statements (VIS).

The content and function of VIS is constrained by a standard articulated by the Supreme Court in *Payne*.<sup>147</sup> There, the Court established that victim statements violate due process if they are "so unduly prejudicial that they render the trial fundamentally unfair."<sup>148</sup> In Arizona capital cases, A.R.S. § 13-703.01(R)<sup>149</sup> authorizes victims to "present evidence about the murdered person and the impact of the murder on the victim and other \*438 family members."<sup>150</sup> In *Payne*, the Supreme Court challenged that the statute is unconstitutional, Arizona's Supreme Court has held that the statute reflects a valid exercise of the legislature's rulemaking authority under the VBR.<sup>151</sup> Victim statements in Arizona's courts serve two purposes: they assist in the determination of a defendant's blameworthiness,<sup>152</sup> and as rebuttal to mitigating evidence.<sup>153</sup> In *Payne*, the Court's discussion of personal characteristics of the murdered person and the impact the murder has had on the community, but, in capital cases, victims are not permitted to recommend a sentence.<sup>154</sup>

The Arizona Supreme Court's rationale for proscribing victims from offering sentence recommendations in capital cases is surely subject to continuing discussion. Roots of the rationale run to the Eighth Amendment's prohibition against cruel and unusual punishment, but it is hard to reconcile this right of the defendant with prohibiting the victim from offering evidence in support of the death penalty in a capital case. Moreover, the victim's constitutional rights to be heard, to be treated with fairness, suggest that the victim should be afforded the same rights of a defendant. There remains uncertainty on this point in other jurisdictions. For example, in Oklahoma, the Supreme Court has concluded that victims in capital cases may make sentencing recommendations,<sup>156</sup> while the

Appeals for the 10th Circuit has concluded to the contrary.<sup>157</sup> Ultimately, the Supreme Court of the United States resolve the conflict.

In *State v. Mann*,<sup>158</sup> the Arizona Supreme Court protected crime victims' right to proffer victim impact info reaffirming that the ability to introduce such information is protected under the VBR's right to be heard.<sup>159</sup> Addi court held that even if victim information inspires a judge to make empathic remarks, this is not in itself prejudice.<sup>160</sup> The defendant in *Mann* was convicted of first-degree murder \*439 and sentenced to death.<sup>161</sup> During victims' family sent a "barrage" of letters to the judge requesting that the defendant receive the death penalty.<sup>162</sup> to the letters, the judge stated that he "understood their feelings."<sup>163</sup> On appeal, the defendant claimed the improperly influenced the judge's sentencing determination.<sup>164</sup> The court disagreed, finding that the judge's cor "merely expressions of empathy, not evidence of prejudice."<sup>165</sup> The court presumed that the trial judge was ignoring irrelevant sentencing factors, particularly in light of the judge's statement that only evidence presented used to establish the necessary aggravating factors.<sup>166</sup> Thus, neither the letters themselves nor the judge's commen that the victim information was unduly prejudicial or improperly considered.

Despite historical controversy regarding the consideration of Victim Impact Statements, Arizona's courts ha provided strong protections to the rights of crime victims to offer victim impact information. Althou recommendations for sentencing are considered immaterial and improper, statements discussing characteri murdered individual and the impact of the crime are relevant for establishing the defendant's blameworthiness a mitigation. By safeguarding victims' right to be heard in this domain, Arizona's jurists aid the realization o fundamental goal of the VBR: the acknowledgement of each victim as a unique individual.

#### D. Right to Restitution

Crime victims in Arizona have a constitutional right to restitution under the VBR.<sup>167</sup> Since the VBR's inception restitution has been one of the most well-protected crime victims' rights in Arizona courts. To determine wheth is merited, courts consider a three-part test: (1) the loss must be economic; (2) the loss must be one that the victi have incurred but for the defendant's criminal offense; and (3) \*440 the criminal conduct must directly cause th loss.<sup>168</sup> Rather than serving a punitive purpose, restitution "forces [the defendant] to recognize the specific cons his criminal activity and accept responsibility for those consequences"<sup>169</sup> with the aim of making the victim wh conviction, the court has an affirmative duty to require the defendant to make restitution.<sup>171</sup> Because restitut penalty or disability,<sup>172</sup> nor part of the adjudication of guilt,<sup>173</sup> it does not require proof beyond a reasonable doubt.

This evidentiary distinction was illustrated in the case *In re Stephanie B.*,<sup>175</sup> wherein the juvenile defendant, St charged with two counts of aggravated assault after an altercation with the victim, Shandra.<sup>176</sup> Stephanie wa punching and kicking Shandra in the face, resulting in chipped and broken teeth.<sup>177</sup> The trial court found S delinquent with respect to the first count, "assault causing the fracture of any body part," but delinquent with r second count, "assault while the victim was impaired."<sup>178</sup> At the restitution hearing, Stephanie was ordered to p reimburse the cost of repairing Shandra's broken teeth.<sup>179</sup> On appeal, Stephanie argued that the restitution order v because she had not been found delinquent on the aggravated assault count containing fracture of a body part.<sup>180</sup> Court of Appeals disagreed, noting that, as part of the sentencing function, restitution is bound by a differen burden than determinations of criminal culpability -- specifically, preponderance of the evidence rather than pro reasonable doubt.<sup>181</sup> Thus, the trial court judge could have appropriately determined that Stephanie was res restitution \*441 based on the adjudication of the first assault count, irrespective of the delinquency determin second assault count.<sup>182</sup>

Even prior to the implementation of the VBR, crime victims in Arizona were statutorily entitled to restitution. victims who did not exercise the right at sentencing could be barred from later attempts to receive restitution, a changes in circumstances.<sup>184</sup> The court in *State v. Contreras*<sup>185</sup> amended these restrictions, holding that r mandatory -- even if the victim declines to request it.<sup>186</sup> In *Contreras*, the defendant pled guilty to first-deg

trespass, and was ordered to serve two years of probation.<sup>187</sup> The plea agreement included an acknowledgment that restitution was required.<sup>188</sup> However, the victim failed to respond to inquiries from the County Attorney's office regarding the value of the stolen property, resulting in no restitution amount recommended to the court and no restitution payment as a condition of probation.<sup>189</sup> Two months later, the defendant's probation officer submitted a petition for conditions of probation so as to include terms ordering restitution.<sup>190</sup> The defendant argued that by failing to inquire about economic losses at the time of sentencing, the victim had effectively waived her right to restitution. The Arizona Court of Appeals disagreed, finding that the victim's lack of reply to the letter requesting information about economic losses did not constitute a waiver of her right to restitution.<sup>192</sup> Further, the court determined that even if a defendant requests restitution, the trial court is not excused of its obligation to impose restitution.<sup>193</sup> This is because the purpose of restitution is not only to serve the victim, but also to rehabilitate the defendant.<sup>194</sup> Importantly, the court emphasized that restitution serves a remedial, rather than punitive, \*442 purpose.<sup>195</sup> Thus, modifying the probation terms to include restitution payments did not result in an increase in punishment, but rather was directed toward "a proper rehabilitation making the victim whole."<sup>196</sup>

Arizona cases following *Contreras* continued to both broaden and strengthen the scope of victims' right to restitution. In respect to paying restitution, Arizona case law has established that restitution payments are not stayed during the trial process,<sup>197</sup> and that consenting to restitution in a plea agreement obligates payment -- even if the charges are later dismissed.<sup>198</sup> With respect to who may receive restitution, Arizona's courts have determined that parents of minor victims are eligible to receive restitution for economic losses,<sup>199</sup> including losses incurred as a result of attending trial (e.g., lost wages),<sup>200</sup> and that losses are voluntary.<sup>201</sup> Additionally, victims remain eligible for restitution even if determined to be partly responsible for the losses suffered. For example, in *State v. Clinton*,<sup>202</sup> Renee Ortiz was a passenger in a van driven by the defendant who was gravely injured when the driver lost control of the vehicle.<sup>203</sup> The driver had been drinking alcoholic beverages. Ortiz requested restitution for medical bills.<sup>204</sup> The defendant pled guilty to aggravated assault, and Ortiz requested restitution for medical bills.<sup>205</sup> The court denied Ortiz restitution because her injuries were partly caused by her own reckless conduct.<sup>206</sup> The Arizona Court of Appeals reversed, concluding that "restitution laws do not benefit only *innocent* victims, they \*443 benefit *all* victims who are in custody or are 'the accused.'"<sup>207</sup>

However, the right to restitution is not without boundaries.<sup>208</sup> Victims are not entitled to restitution against a defendant who is "guilty except insane," as such a determination is not considered a "conviction" for purposes of restitution. Only crimes "committed *against* someone" will yield victims entitled to restitution,<sup>210</sup> and not all persons who are financially harmed as a result of an offense are considered victims.<sup>211</sup> And, in the most concerning opinion to date, the Arizona Court of Appeals held that counsel for the victim is not entitled to offer evidence, examine witnesses, or present arguments in support of substantive restitution claims.<sup>212</sup> Asserting that "restitution is not a claim that belongs to victims,"<sup>213</sup> the court effectively ignored or denied the very personal nature of the restitution right established by the Arizona Constitution. It framed restitution as "justice" for a crime victim, and a matter of "due process" that the victim be allowed to act through private counsel to assert the right. The assertion of this personal right is not -- and should not be -- dependent on the prosecutor deciding whether to seek restitution, and if so, how much.

Overall, however, crime victims' right to restitution has been well defended by Arizona's jurists. Restitution is an automatic, affirmative right for victims, encompassing both mandatory and voluntary losses. The courts' interpretation of and contemplation of the right to restitution have resulted in holdings favorable to crime victims, in no small part due to the categorization as remedial, rather than punitive, action.

### *E. Balancing Victims' and Defendants' Rights*

In general, the past twenty-five years of crime victims' rights cases in Arizona reveals a heartening adherence to the spirit of the VBR. However, a number of cases suggest that Arizona's jurists continue to \*444 grapple with the conflict in balancing victims' and defendants' rights. This misperception is unfortunate. The rights afforded to victims are incompatible with defendants' rights.

Contrary to this notion, several cases improperly weigh defendants' and victims' rights against one another. For example, in *State ex rel. Romley v. Superior Court*,<sup>214</sup> the Arizona Court of Appeals noted, "courts are now faced with extreme questions arising from the inevitable tension between the rights of the accused, who is presumed to be innocent, and the rights of the victim."<sup>215</sup> The defendant in *Romley*, Ann Roper, was charged with aggravated assault.<sup>216</sup> Roper filed a motion requesting that the judge compel the victim to make medical records available to the defense to assist in her self-defense claim.<sup>217</sup> Roper alleged that the victim had "manifest[ed] one of his violent personalities" at the time of the assault and that medical records would prove that the victim had received treatment for a multiple personality disorder.<sup>218</sup> The court granted the disclosure and the State appealed, arguing that the VBR precluded disclosure of the victim's medical records.

In affirming the motion to compel disclosure, the Arizona Court of Appeals opined that "when the defendant's constitutional right to due process conflicts with the Victim's Bill of Rights in a direct manner, such as the facts of this case present, the right to due process is the superior right."<sup>220</sup> The court explained that "due process is the foundation of our system of law and has been first provided to the people in the Magna Carta and given to us by our founders in the United States Constitution." The court concluded by stating that the VBR "should not be a sword in the hands of victims to thwart a defendant's right to effectively present a legitimate defense. Nor . . . a fortress behind which prosecutors may isolate themselves from their constitutional duty to afford a criminal defendant a fair trial."<sup>222</sup> Such language is at once obviously true -- the right to due process and fair trial rights in the U.S. Constitution are the supreme law of the land and indeed do trump the rights of a victim if there is a direct conflict -- but is \*445 also obviously subject to over-reach by inviting unfounded a conflict between defendants' and victims' rights.

In subsequent years, Arizona courts followed the language of *Romley* and continued to evaluate victims' and defendants' rights as competing interests.<sup>223</sup> In 1996, the Arizona Court of Appeals concluded, "[u]nder certain circumstances, a defendant's right to gather exculpatory information can take precedence over the victim's constitutional right to be free from questioning at trial regarding refusal of pretrial interviews."<sup>224</sup> A year later, the Arizona Supreme Court echoed *Romley* when holding that victims have no blanket constitutional right to be free from questioning at trial regarding refusal of pretrial interviews.<sup>225</sup> Similar sentiments were repeated when the Arizona Court of Appeals once again perceived a struggle of "how to properly reconcile the sometimes conflicting interests of the State, defendant and victim in the sentencing portion of a criminal prosecution."<sup>226</sup> While acknowledging that victims' rights are constitutionally protected, the court determined that "[o]n occasion . . . the rights of a victim may be forced to yield to the duties of the State in prosecuting wrongdoers and the rights of the criminal defendant to be free from such prosecutions" lest "society's interest in justice . . . be jeopardized."<sup>227</sup>

The language from these opinions suggests that Arizona courts continue to grapple with balancing defendants' and victims' rights. Weighing these rights against one another, however, seems an inappropriate task if the two spheres of rights are acknowledged to exist in equipoise. Furthermore, such comparisons wrongfully suggest that victims' and defendants' rights are mutually exclusive. Currently, crime victims' advocates are working towards resolving this perceived conflict through a proposed amendment to the U.S. Constitution.<sup>228</sup>

#### \*446 IV. THE FUTURE OF VICTIMS' RIGHTS IN ARIZONA

##### A. Big Issues Still Unresolved

Despite a rich and growing body of jurisprudence that is largely faithful to the text and original intent of the VBR, significant gaps remain in the ability of the VBR to change the culture of the criminal justice system. For example, twenty-five years, it has been the constitutional right of the victim to be informed of, present for, and heard at post-arrest release proceedings -- the Initial Appearance (IA).<sup>229</sup> And yet, this right is rarely preserved at trial. Understandably, it can be difficult. When a municipal police officer arrests a suspect and takes him to a county jail, the county sheriff holds the suspect subject to an independent judicial decision regarding the scheduling of an initial appearance (the prosecutor may or may not get notice of), properly notifying the victim and thereby affording the victim the opportunity to be present and heard can be challenging. But surely not insurmountable. One dares speculate at how the system would

defendant's rights had been overlooked in the same manner for a quarter of a century.

Another challenge is presented by the victim's rights to both a speedy trial and to a prompt and final conclusion after conviction and sentence.<sup>230</sup> These are two separate rights, which the Arizona Supreme Court erroneously cited in the *Napolitano* decision.<sup>231</sup> In capital cases, these rights are regularly ignored without consequence. The courts are not faithful to these constitutional rights, and the challenges this failure poses for victims is significant. During the VBR at the State Capitol in 1990, Candy Lightner stated, "Victims don't want vengeance, they want healing; but no healing until justice is done."<sup>232</sup> A speedy trial and a prompt and final conclusion to the case after conviction for victim healing. Delay itself causes trauma. But in capital cases, delays of years to trial are too often the rule. Decades occur through the post-conviction process. All the while the victims must continue to relive the events of their lives. The Sixth Circuit concluded that unexplained delay in ruling on a crime victim's motion for a speedy trial raised fairness issues.<sup>233</sup> The Supreme Court itself has observed: [T]here is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interest of the accused. The inability of courts to provide a prompt trial has contributed to a large backlog of cases in which, among other things, enables defendants to negotiate more effectively for pleas of guilty to lesser offenses, and otherwise manipulate the system.<sup>234</sup>

Finally, the Arizona Supreme Court has yet to fully take up the issue of the scope of the victim's rights to a speedy trial process.<sup>235</sup> Despite opportunities in each case presented, these words remain largely undiscussed in the case law. These rights are the fundamental basis for each of the rights that follow in article II, section 2.1(A) of the VBR.

### *B. A Victims' Rights Amendment to the U.S. Constitution?*

The victims' rights movement has been divided into two waves. The first wave brought about statutory protections for victims' rights, typically in the form of state statutes.<sup>236</sup> The second wave resulted in constitutional protection for the form of crime victims' bill of rights.<sup>237</sup> Although tremendous progress has been achieved, some crime victims, such as Douglas Beloof, contend that a third wave is needed to fully realize, effectuate, and enforce victims' rights. He argues that -- while representing important advancements in the recognition of crime victims -- the rights afforded by state constitutions remain illusory.<sup>239</sup> Victims' rights have not been fully effected because in many jurisdictions government retains discretion to deny rights, there is no meaningful remedy to enforce victims' rights, and the system remains discretionary.<sup>240</sup> While Arizona has not suffered from these ills, as rights \*448 here are enforceable, the lingering failure to fully embrace the ethic of a more victim-centered justice system.<sup>241</sup>

True changes in the underlying culture of the criminal justice system are likely to come about only through the federal constitutional amendment. This is consistent with the history of the Bill of Rights. James Madison argued that the Bill of Rights needed to be in the Constitution because over time the rights would take on "the character of fundamental rights . . . [[and be] incorporated with the national sentiment."<sup>242</sup> If the rights of crime victims are to be "incorporated with the national sentiment," they will have to become a part of the U.S. Constitution.<sup>243</sup>

## V. CONCLUSION

Victims' rights in Arizona have undergone dramatic changes since the enactment of the Victims' Bill of Rights. Decisions by Arizona courts, in conjunction with decisions by the 9th Circuit and the United States Supreme Court, continue to shape the meaning and scope of victims' rights. No longer pushed aside and forgotten by the system designed to protect them, crime victims have reclaimed their voice in the criminal justice system. In the years to come, Arizona courts may be called upon to decide remaining important unresolved victims' rights issues. The Arizona legislature may be called upon to enact legislation defining and preserving the specific rights of crime victims. And, perhaps most critically, the people of Arizona

called upon to lend their support to a Victims' Rights Amendment to the United States Constitution.

A review of twenty-five years of Victims' Bill of Rights case law demonstrates that Arizona courts largely underlying spirit and intent of the Victims' Bill of Rights, recognizing the interests and rights of crime victims, the challenge remains how best to protect them.

#### Footnotes

<sup>1</sup> Twist is an Adjunct Professor, Sandra Day O'Connor College of Law. Williams is a J.D./Ph.D. candidate, University. The authors wish to thank Jeremy Hamman, Michael Saks, and Steven Neuberg. The authors also extend *Arizona State Law Journal* for assistance in preparing the article for publication.

<sup>2</sup> Gessner H. Harrison, *The Good, the Bad, and the Ugly: Arizona's Courts and the Crime Victims' Bill of Rights*, 34 *Ariz. St. L.J.* 531, 531 n.2 (2002).

<sup>3</sup> ARIZ. CONST. art. II, § 2.1.

<sup>4</sup> Harrison, *supra* note 1, at 532.

<sup>5</sup> *Id.* at 531-32. California is counted among the first five because of the enactment of article 1, section 28 of the California Constitution, which at the time only established the right to restitution as a direct right of crime victims. CAL. CONST. (amended 2008).

<sup>6</sup> PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT 114 (1982), <http://www.ovc.gov/publications/presdntstskforerprt/87299.pdf>. See also OFFICES OF THE U.S. ATTORNEYS, OF JUSTICE, VICTIMS' RIGHTS: CRIME VICTIMS' RIGHTS ACT, <http://www.justice.gov/usao/priority-areas/victims-rights-services/victims-rights> (last visited Apr. 21, 2015).

<sup>7</sup> PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, *supra* note 5, at 114.

<sup>8</sup> See Paul G. Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 13 *UTAH L. REV.* 1373, 1381-83 (recounting the history of crime victims' rights).

<sup>9</sup> *Victims' Bill of Rights Amendment: Hearing on S.J. Res. 52 Before the S. Comm. on the Judiciary*, 104th Cong. (statement of Robert E. Preston, Co-Chairman, National Victims' Constitutional Amendment Network).

<sup>10</sup> Crime Victims' Rights Act, Pub. L. No. 108-405, 118 Stat. 2260, 2261-65 (2004) (codified as amended at 18 U.S.C. and U.S.C. § 10603(d)-(e) (2006)).

<sup>11</sup> As of this writing, 33 states have adopted victims' rights amendments. See *State Victims Rights Amendments*, NAT CONST. AMENDMENT PASSAGE, [www.nvcap.org/states/stvras.html](http://www.nvcap.org/states/stvras.html) (last visited Apr. 2, 2015). In November 2006, Illinois strengthened what had been a weak state victims' rights amendment. *Id.* The text of the Illinois amendment state amendments is available through the above website.

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- <sup>11</sup> See, e.g., CAL. CONST. art I, § 28; OKLA. CONST. art. II, § 34; OR. CONST. art I, § 42; S.C. CONST. art. CONST. art. I, § 35; UTAH CONST. art I, § 28.
- <sup>12</sup> See, e.g., P.M. v. Gould, 136 P.3d 223, 227-28 (Ariz. Ct. App. 2006) (“[I]t is well-accepted that ‘if ... the constitutional rights conflict with a defendant’s federal constitutional rights to due process and effective cross-examination, the defendant’s rights must yield.’”); Arizona ex rel. Romley v. Superior Court, 836 P.2d 445, 453-54 (Ariz. Ct. App. 2002) (“The Victim’s Bill of Rights must yield to the federal and state constitutions’ mandates of due process of law so that the defendant is able to present her theory of self-defense ....”).
- <sup>13</sup> See, e.g., State v. Gonzales, 892 P.2d 838, 848 (Ariz. 1995) (protecting victims’ right to attend all criminal proceedings); Hance v. Ariz. Bd. of Pardons & Paroles, 875 P.2d 824, 830 (Ariz. Ct. App. 1993) (upholding victims’ right to participate in post-conviction release proceedings).
- <sup>14</sup> See, e.g., State ex rel. Napolitano v. Brown, 982 P.2d 815, 817-19 (Ariz. 1999) (misconstruing the court’s rule and restricting the legislature’s ability to enact rules furthering victims’ rights under the VBR); Lindsay v. Cohe, 435 Ariz. Ct. App. 2015 (holding counsel for victim is “not entitled to offer evidence, examine witnesses, or present substantive restitution claims”); see also Harrison, *supra* note 1, at 548-68.
- <sup>15</sup> DOUGLAS E. BELOOF ET AL., VICTIMS IN CRIMINAL PROCEDURE 3 (3d ed. 2010). See generally *Reports of the Federal Bureau of Investigation on the Violent Crime in the U.S.* (2013), [http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/violent-crime/violent-crime-top-10-imemain\\_final](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/violent-crime/violent-crime-top-10-imemain_final) (last visited June 18, 2015).
- <sup>16</sup> BELOOF ET AL., *supra* note 15, at 3.
- <sup>17</sup> Harrison, *supra* note 1, at 533.
- <sup>18</sup> BELOOF ET AL., *supra* note 15, at 3.
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.* at 3-4.
- <sup>21</sup> PRESIDENT’S TASK FORCE ON VICTIMS OF CRIME, *supra* note 5, at 114.
- <sup>22</sup> BELOOF ET AL., *supra* note 15, at 17-20.
- <sup>23</sup> See Harrison, *supra* note 1, at 534; Stellisa Scott, Note, *Beyond the Victims’ Bill of Rights: The Shield Becomes a Sword*, 249 L. REV. 249, 249 (1994).
- <sup>24</sup> ARIZ. CONST. art. II, § 2.1(A).

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<sup>25</sup> See Harrison, *supra* note 1, at 534. The categories presented are a slight variation of those suggested by Harrison. Category 1 refers to ARIZ. CONST. art. II, §§ 2.1(A)(1), (A)(5); Category 2 refers to ARIZ. CONST. art. II, §§ 2.1(A)(2), (A)(3), (A)(7), (A)(9), (A)(10), (A)(12); Category 3 refers to ARIZ. CONST. art. II, § 2.1(A)(8); Category 4 refers to ARIZ. CONST. art. II, §§ 2.1(A)(1), (A)(11), (D).

<sup>26</sup> Victims' Rights Implementation Act, ch. 229, 1991 Ariz. Sess. Laws 1137 (codified as amended in scattered sections of ARIZ. CONST. art. II, §§ 13, 41 (2014)).

<sup>27</sup> Act of Apr. 20, 1995, ch. 197, 1995 Ariz. Sess. Laws 1500 (codified as amended in scattered sections of ARIZ. CONST. art. II, §§ 8, 13, 41 (2014)).

<sup>28</sup> Harrison, *supra* note 1, at 534.

<sup>29</sup> BELOOF ET AL., *supra* note 15, at 15.

<sup>30</sup> See, e.g., Knapp v. Martone, 823 P.2d 685 (Ariz. 1992) (the first Arizona Supreme Court case to consider who qualifies as a victim under the VBR's definition).

<sup>31</sup> See, e.g., Federal Deposit Ins. Corp. v. Colosi, 977 P.2d 836 (Ariz. Ct. App. 1998) (holding that victim can bring a writ of habeas corpus if trial court refuses to enter judgment against defendant for failing to pay restitution, as victim has no other avenue for remedy).

<sup>32</sup> A Westlaw search for Arizona courts citing ARIZ. CONST. art. II, § 2.1 returned 146 reported cases.

<sup>33</sup> See discussion *infra* Part III(A). See also Harrison, *supra* note 1, at 532.

<sup>34</sup> 823 P.2d 685 (Ariz. 1992).

<sup>35</sup> *Id.* at 686-87.

<sup>36</sup> *Id.* at 686.

<sup>37</sup> *Id.* at 689. The VBR defines victim as "a person against whom the criminal offense has been committed or, if the person is incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody or is the accused." ARIZ. CONST. art. II, § 2.1(C).

<sup>38</sup> Knapp, 823 P.2d at 687.

<sup>39</sup> *Id.*

40 Lindsay R. v. Cohen, 343 P.3d 435, 437-38 (Ariz. Ct. App. 2015); Harrison, *supra* note 1, at 532.

41 See discussion *infra* Part III(A).

42 See, e.g., Champlin v. Sargeant, 965 P.2d 763, 764, 766 (Ariz. 1998) (failing to classify minor who observed molestation of another child as a "victim" when minor was not listed as victim in the specific offense count).

43 See *supra* note 32, and accompanying text.

44 ARIZ. CONST. art. II, § 2.1(C).

45 ARIZ. REV. STAT. ANN. § 13-4401(1) (2014).

46 912 P.2d 1297 (Ariz. 1996).

47 *Id.* at 1299.

48 *Id.*

49 *Id.* at 1303.

50 *Id.* at 1302.

51 233 P.3d 1148 (Ariz. Ct. App. 2010).

52 *Id.* at 1149.

53 *Id.*

54 *Id.*

55 *Id.* at 1150.

56 *Id.* at 1151.

57 *Id.*

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58 *Id.* at 1152.

59 *Id.* at 1153.

60 *J.D. v. Hegyi*, 335 P.3d 1118, 1122 (Ariz. 2014) (holding that a parent who exercises rights on behalf of a minor victim to refuse a defense interview through final disposition of charges, even if the minor turns 18 before the case ends); *Smith v. Reeves*, 250 P.3d 196, 201 (Ariz. Ct. App. 2011); *see also Lincoln v. Holt*, 156 P.3d 438, 443 (Ariz. Ct. App. 2008) (holding that the parents or legal guardians of a minor victim are entitled to exercise all victims' rights on their behalf, including the right to refuse a pretrial interview). When a minor victim's parent or guardian is either unwilling or unable to adequately represent the victim's interests, the trial court retains equitable power to appoint a representative. *See Romley v. Dairman*, 95 P.3d 548, 552 (Ariz. Ct. App. 2004).

61 *State v. Guadagni*, 178 P.3d 473, 478 (Ariz. Ct. App. 2008).

62 *State ex rel. Romley v. Super. Ct.*, 909 P.2d 476, 478 (Ariz. Ct. App. 1995).

63 *Id.*; *see also Douglass v. State*, 195 P.3d 189, 191 (Ariz. Ct. App. 2008).

64 965 P.2d 763 (Ariz. 1998).

65 *Id.* at 767; *see also Harrison, supra* note 1, at 549.

66 965 P.2d at 764.

67 *Id.*

68 *Id.*

69 *Id.*

70 *Id.*

71 *Id.* at 765.

72 *Harrison, supra* note 1, at 551 (internal quotation marks omitted).

73 *Champlin*, 965 P.2d at 767.

74 *Id.*

75 *See* Harrison, *supra* note 1, at 552 (citing the holding in *State v. Malott*, 821 P.2d 179, 181 (Ariz. Ct. App. 1991)).

76 *Id.*

77 *See, e.g., State ex rel. Romley v. Super. Ct.*, 909 P.2d 476, 478 (Ariz. Ct. App. 1995).

78 58 P.3d 33 (Ariz. Ct. App. 2002).

79 *Id.* at 34.

80 *Id.*

81 *Id.*

82 *Id.*

83 *Id.*

84 *Id.* at 35.

85 *Id.*

86 *Id.* at 35-36.

87 *Id.* at 36.

88 *Id.*

89 *Id.* at 37.

90 *Id.* at 38.

91 922 P.2d 927 (Ariz. Ct. App. 1996).

92 *Id.* at 929.

93 *Id.*

94 *Id.*

95 *Id.* at 928.

96 *Id.* (emphasis added) (quoting ARIZ. CONST. art. II, § 2.1(C)).

97 *Id.* at 930.

98 *Id.*

99 *Id.*

100 *Id.*

101 *Id.*

102 In *State v. Superior Court*, the deceased committed suicide more than seven months after the alleged sexual assault. *Id.*

103 A third potential domain may be with respect to stepsiblings. In *Allen v. Sanders*, the Arizona Court of Appeals granted a defendant seeking to interview the stepsister of the murder victim. 346 P.3d 30, 30 (Ariz. Ct. App. 2015).

104 For an example of how the legislature might address court rulings unfavorable to victims, consider *Montgomery v. State*, 346 P.3d 420 (Ariz. 2014). In *Chavez*, the Arizona Supreme Court held that the prosecutor could not redact victims' biographical discovery materials without a court order. *Id.* at 420. After the Arizona Supreme Court's opinion, the statute addressing the right to privacy was amended to define "identifying information" as including a victim's date of birth. ARIZ. REV. STAT. § 13-4434(D)(1) (2014).

105 *State ex rel. Hance v. Ariz. Bd. of Pardons & Paroles*, 875 P.2d 824, 380 (Ariz. Ct. App. 1993).

106 ARIZ. CONST. art. II, § 2.1(12).

107 *Id.* § 2.1(2)-(3).

108 See *Hance*, 875 P.2d at 593.

109 *Id.* at 826.

110 *Id.*

111 *Id.*

112 *Id.*

113 *Id.* at 827.

114 *Id.* at 828-29.

115 *Id.* at 831.

116 *Id.*

117 *Id.*

118 *Id.* at 831-32.

119 *Id.* at 831.

120 *Id.* ("Notifying the County Attorney of the upcoming release proceeding was not sufficient under the facts of the issue is whether the victim received that which the constitution guarantees: reasonable efforts by the state to constitutional rights ....").

121 ARIZ. CONST. art. II, § 2.1(3).

122 892 P.2d 838 (Ariz. 1995).

123 *Id.* at 848.

124 *Id.* at 842-43.

125 *Id.* at 848.

126 *Id.*

127 *Id.* Furthermore, the court suggested that there was no evidence that the jurors had noticed Deborah's presence, and noticed, no evidence that her presence was prejudicial. *Id.*

128 *See* Harrison, *supra* note 1, at 536.

129 981 P.2d 575 (Ariz. Ct. App. 1998).

130 *Id.* at 579.

131 *Id.* at 576.

132 *Id.* at 577.

133 *Id.*

134 *Id.*

135 *Id.* at 577-78.

136 *Id.* at 578.

137 *Id.*

138 *Id.* at 579.

139 *See, e.g.,* Morehart v. Barton, 250 P.3d 1139, 1144-45 (Ariz. 2011) (holding that the victim has no right mitigation-related hearing which the defendant had no right to attend).

140 *Id.*

141 *Id.* at 1145.

142 *See, e.g.,* State v. Lamberton, 899 P.2d 939, 941 (Ariz. 1995) ("[T]he VBR and the VRIA give victims the right to be notified of certain criminal proceedings. This is not the same as making victims 'parties.'").

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- 143 *Id.* (“[T]he [v]ictim here is not ‘aggrieved’ within the legal meaning of the term because the judgment of the tri-  
operate to deny her some personal or property right, nor does it impose a substantial burden upon her.”).
- 144 *Id.* at 942.
- 145 ARIZ. CONST. art. II, § 2.1(A)(4).
- 146 *Id.* § 2.1(A)(9).
- 147 501 U.S. 808 (1991).
- 148 *Id.* at 825.
- 149 Current version at ARIZ. REV. STAT. ANN. § 13-752(R) (2014).
- 150 *See, e.g.,* State v. Armstrong, 189 P.3d 378, 388 (Ariz. 2008).
- 151 *Id.* at 389.
- 152 *E.g.,* State v. Gulbrandson, 906 P.2d 579, 599 (Ariz. 1995); *see also* Payne v. Tennessee, 501 U.S. 808, 825 (1991).
- 153 *E.g.,* Armstrong, 189 P.3d at 389; *see also* State v. Carreon, 107 P.3d 900, 918 (Ariz. 2005).
- 154 *E.g.,* Lynn v. Reinstein, 68 P.3d 412, 417 (Ariz. 2003).
- 155 *Id.* at 414-18.
- 156 Dodd v. State, 100 P.3d 1017, 1046 (Okla. Crim. App. 2004).
- 157 Dodd v. Trammell, 753 F.3d 971, 994-96 (10th Cir. 2013).
- 158 934 P.2d 784 (Ariz. 1997).
- 159 *Id.* at 792; *see* Harrison, *supra* note 1, at 547.
- 160 Mann, 934 P.2d at 793.

161 *Id.* at 787.

162 *Id.* at 792.

163 *Id.*

164 *Id.*

165 *Id.* at 793.

166 *Id.* at 792-93.

167 ARIZ. CONST. art. II, § 2.1(8) (A victim of crime has the right to "receive prompt restitution from the person or persons of the criminal conduct that caused the victim's loss or injury.").

168 *State v. Wilkinson*, 39 P.3d 1131, 1133 (Ariz. 2002).

169 *State v. Zaputil*, 207 P.3d 678, 681 (Ariz. Ct. App. 2008).

170 *Id.*

171 *Id.* ("[R]estitution is mandatory under our sentencing scheme."). The court may conduct a hearing if it lacks sufficient evidence to order restitution. *Id.*

172 *Id.*

173 *In re Stephanie B.*, 65 P.3d 114, 118 (Ariz. Ct. App. 2003).

174 *Id.* ("The burden of proof applicable to restitution is proof by a preponderance of the evidence.").

175 *Id.* at 118.

176 *Id.* at 115.

177 *Id.*

178 *Id.* at 116.

179 *Id.*

180 *Id.*

181 *Id.* at 118.

182 *Id.* The court noted how this logic similarly applies to individuals found not guilty of a particular criminal offense related civil matter due to the lower burden of proof. *Id.*

183 *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 13-603(C), 13-804 (2014).

184 *See, e.g.*, *Burton v. Superior Court*, 558 P.2d 992, 995 (Ariz. Ct. App. 1977); *see also* Harrison, *supra* note 1, at 5

185 885 P.2d 138, 139 (Ariz. Ct. App. 1994).

186 *Id.* at 142.

187 *Id.* at 140.

188 *Id.*

189 *Id.*

190 *Id.*

191 *Id.*

192 *Id.* at 142.

193 *Id.*

194 *Id.*

195 *Id.*

<sup>196</sup> *Id.* (quoting *State v. Foy*, 859 P.2d 789, 792 (Ariz. Ct. App. 1993)).

<sup>197</sup> *State v. Hansen*, 160 P.3d 166, 166 (Ariz. 2007). Importantly, the court in *Hansen* was forced to make a decision between enacted pursuant to the VBR and a directly conflicting Arizona Rule of Criminal Procedure. The court found in favor of the VBR, determining that the statute governed as a valid exercise of the legislature's rulemaking authority under the VBI

<sup>198</sup> *State v. Zaputil*, 207 P.3d 678, 682 (Ariz. Ct. App. 2008).

<sup>199</sup> *See, e.g., In re Ryan A.*, 39 P.3d 543, 548 (Ariz. Ct. App. 2002).

<sup>200</sup> *See id.* at 549-50; *see also In re Erika V.*, 983 P.2d 768, 769 (Ariz. Ct. App. 1999) (noting that "the legislative requirement of restitution and the policies underlying mandatory restitution are best fulfilled if 'victim' includes the entity suffering loss resulting from the [defendant's] criminal activity") (citation omitted).

<sup>201</sup> *In re Ryan A.*, 39 P.3d at 548.

<sup>202</sup> 890 P.2d 74 (Ariz. Ct. App. 1995).

<sup>203</sup> *Id.* at 75.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Harrison*, *supra* note 1, at 557.

<sup>209</sup> *State v. Heartfield*, 998 P.2d 1080, 1081 (Ariz. Ct. App. 2000). The court noted, however, that its decision was guided by clear statutory language authorizing restitution for victims of defendants found guilty except insane. *Id.*

<sup>210</sup> *State v. Guadagni*, 178 P.3d 473, 477 (Ariz. Ct. App. 2008).

<sup>211</sup> *Id.* at 478. *See, e.g., State v. French*, 801 P.2d 482, 483-84 (Ariz. Ct. App. 1990) (holding that a motel owner was entitled to restitution for costs incurred as the result of sexual assault on the premises).

<sup>212</sup> *Lindsay R. v. Cohen*, 343 P.3d 435, 438 (Ariz. Ct. App. 2015).

213 *Id.*

214 836 P.2d 445 (Ariz. Ct. App. 1992).

215 *Id.* at 450.

216 *Id.* at 447.

217 *Id.*

218 *Id.*

219 *Id.* at 447-48.

220 *Id.* at 449.

221 *Id.*

222 *Id.* at 454.

223 *But see* State *ex rel.* Romley v. Dairman, 95 P.3d 548, 554 (Ariz. Ct. App. 2004) (“[V]ictims’ rights neither trump by, a defendant’s presumption of innocence. Each set of rights is independent.”).

224 State v. Superior Court, 922 P.2d 927, 930 n.1 (Ariz. Ct. App. 1996) (holding that the parents of a victim who suicide must submit to interview).

225 State v. Riggs, 942 P.2d 1159, 1162 (Ariz. 1997) (“[I]f, in a given case, the victim’s state constitutional right defendant’s federal constitutional rights to due process and effective cross-examination, the victim’s rights must y

226 P.M. v. Gould, 136 P.3d 223, 227 (Ariz. Ct. App. 2006).

227 *Id.*

228 *See* discussion *infra* Part IV(B).

229 ARIZ. CONST. art. II, § 2.1(A)(1-4); ARIZ. R. CRIM. P. 4.1, 4.2.

230 ARIZ. CONST. art. II, § 2.1(A)(10).

231 *See State ex rel. Napolitano v. Brown*, 982 P.2d 815, 816 (Ariz. 1999).

232 Candy Lightner, Founder, Mothers Against Drunk Driving, Remarks at the Rally in Support of the Passage of Arizona Bill of Rights (Sept. 1990) (spoken in the presence of one of the authors).

233 *In re Simons*, 567 F.3d 800, 801 (6th Cir. 2009).

234 *Barker v. Wingo*, 407 U.S. 514, 519 (1972).

235 ARIZ. CONST. art. II, § 2.1(A).

236 BELOOF ET AL., *supra* note 15, at 707.

237 *Id.*

238 Douglas E. Beloof, *The Third Wave of Crime Victims' Rights: Standing Remedy and Review*, 2005 BYU. L. REV. 25 as reprinted in BELOOF ET AL., *supra* note 15, at 707-08.

239 *Id.*

240 *Id.*

241 *See supra* Part IV(A).

242 James Madison, *James Madison to Thomas Jefferson, Oct. 17, 1788*, in 1 THE FOUNDERS' CONSTITUTION HEMES 477 (Philip B. Kurland & Ralph Lerner eds., 1987), available at [http://press-pubs.uchicago.edu/fi\\_documents/v1ch14s47.html](http://press-pubs.uchicago.edu/fi_documents/v1ch14s47.html).

243 Arguments and history are marshalled on the National Victims' Constitutional Amendment Passage website. [www.nvcap.org](http://www.nvcap.org) (last visited June 18, 2015).

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 23, 2015	<input checked="" type="checkbox"/> <b>Formal Action Request</b> <input type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	ACJA 6-103: Victims' Rights Requirements for Probation Personnel  <i>20 minutes</i>

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**FROM:**  
Adult and Juvenile Probation Services

**PRESENTER(S):**  
Kathy Waters

**DISCUSSION & TIME ESTIMATES:**  
Ms. Waters will discuss proposed changes to ACJA after public comments were received.

**RECOMMENDED MOTION (IF ANY):**  
Approval Requested

**ARIZONA CODE OF JUDICIAL ADMINISTRATION  
Proposal Cover Sheet**

**Section 6-103: Victims' Rights Requirements for Probation Personnel**

**1. Effect of the proposal:**

- To conform the definition of “Delinquent act” and the Applicability section to A.R.S. 8-201.
- Clarifies that the notification rights set forth in the ACJA section 6-103 applies to opted in victims pursuant to ARS §13-4417 and ARS §8-398
- To provide clarifying language as to when probation departments need to notify opted-in victims versus the obligations of the court to notify.
- To add the requirements for departments to have a provision for communicating with limited-English speaking victims.

**2. Significant new or changed provisions:**

**3. Committee actions and comments:**

**4. Controversial issues:**

**5. Recommendation:**

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 6: Probation**  
**Chapter 1: General Administration**  
**Section 6-103: Victims' Rights Requirements for Probation Personnel**

**A. Definitions.** In this section unless otherwise specified, the following definitions apply:

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

“Criminal Offense” means “conduct that gives a peace officer or prosecutor probable cause to believe that a felony, a misdemeanor, a petty offense or a violation of local criminal ordinance has occurred,” as provided by A.R.S. § 13-4401(6).

“Delinquent act” means an act to which this article applies pursuant to § 8-381 as provided in A.R.S. § 8-382(9) committed by a juvenile that if committed by an adult would be either (1) a misdemeanor offense involving physical injury, the threat of physical injury or a sexual offense; or (2) a felony offense, in accordance with A.R.S. §§ 8-381 and 382.

“Victim” means a person against whom the criminal offense or delinquent act 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. Applicability.** Pursuant to Az. Const. Art. 2, § 2.1 and Art. 6, § 3 and A.R.S. §§ 13-603, 13-804, 13-4401 et seq., and A.R.S. §§ 8-381 through 8-420, the following requirements shall govern the administration of victims’ rights by adult and juvenile probation departments. Specifically A.R.S. § 8-381 provides: “This article applies to acts that are committed by a juvenile and that if committed by an adult would be either: 1. A misdemeanor offense. 2. A felony offense. 3. A petty offense. 4. A violation of a local criminal ordinance.”

The notification rights set forth in this code section apply to victims who have requested notice pursuant to A.R.S. §13-4417 and A.R.S. §8-398.

**C. [No changes]**

**D. General Duties of Probation.** Adult and juvenile probation departments shall:

1. Maintain the confidentiality and security of all victim information, including but not limited to, addresses, telephone numbers, place of employment, social security number or other locating information; and
2. Provide training concerning victim sensitivity, victim trauma and victims’ rights in orientation for all probation department personnel.

3. Identify language assistance resources for communicating with limited-English speaking victims.

**E. Duties of Adult Probation.** Adult probation departments shall:

1. Pursuant to A.R.S. § 13-4415(B), provide notice to a victim in the following circumstances ~~develop a process to furnish victims who request notice with timely notification of the following:~~

~~A. On request of a victim who has provided an address or other contact information, the court shall notify the victim of any of the following:~~

~~1. A probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.~~

~~2. Any hearing on a proposed modification of the terms of probation or intensive probation.~~

~~3. The arrest of a person who is on supervised probation and who is arrested pursuant to a warrant issued for a probation violation.~~

B. On request of a victim who has provided a current address or other current contact information, the probation department shall notify the victim of the following:

1. Any proposed modification to any term of probation if the modification affects restitution or incarceration status or the defendant's contact with or the safety of the victim.

2. The victim's right to be heard at a hearing that is set to consider any modification to be made to any term of probation.

3. Any violation of any term of probation that results in the filing with the court of a petition to revoke probation.

4. That a petition to revoke probation alleging that the defendant absconded from probation has been filed with the court.

5. Any conduct by the defendant that raises a substantial concern for the victim's safety.

2. Provide the notices required by E(1) when:

(a) A hearing is set to consider any modification to any term of probation.

(b) Filing a petition to revoke probation, including a petition to revoke alleging the defendant has absconded.

3. Provide notice to the victim when the probationer is incarcerated as a condition of probation, as well as when a petition to enact a discretionary jail sanction of 30 or more days is implemented. The notice of incarceration shall also include the anticipated release date, noting the date may change as the incarceration period continues.

4. Provide notice to a victim of modifications from intensive to standard probation or from supervised probation to unsupervised probation.
5. Provide notice to the victim when the probationer leaves or returns to the county or state pursuant to Arizona Rules of Criminal Procedure 27.11(4), ACJA §6-211, or through the Interstate Compact for Adult Offender Supervision.
26. Develop a standardized presentence report format, in conjunction with the superior court, which addresses the emotional, economic and physical losses of victims.;
37. Monitor the payment of restitution by working with the clerk of the court to establish a process by which supervising probation officers are provided with accurate and timely information concerning the collection of court-ordered restitution.;
48. Require probation staff to:
  - a. through b. [No changes]
  - e. ~~Pursuant to A.R.S. § 13-4426:~~
    - A. ~~The victim may present evidence, information and opinions that concern the criminal offense, the defendant, the sentence or the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding.~~
    - B. ~~At any disposition proceeding the victim has the right to be present and to address the court.~~
  - d. ~~Pursuant to A.R.S. § 13-4427:~~
    - A. ~~The victim has the right to be present and be heard at any probation revocation disposition proceeding or any proceeding in which the court is requested to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.~~
    - B. ~~The victim has the right to be heard at any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person if the modification will substantially affect the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.~~
  - ec. Document all victim notifications and attempts to notify the victim;
  - fd. Respond to all queries by victims, providing accurate information in accordance with supreme court rules governing public access to judicial records;

- ~~ge.~~ Within the scope of their duties, minimize contact between victims and victims' family and the probationer and probationer's family;
- ~~hf.~~ Emphasize and address the probationer's responsibility to satisfy any court-ordered restitution at each scheduled visit and immediately address any arrearage in court-ordered restitution with the probationer;
- ~~ig.~~ Notify the court having jurisdiction upon finding that the probationer has become in arrears in an amount totaling two full court-ordered monthly payments of restitution. This notification shall consist of a petition to modify, petition to revoke, or memorandum to the court outlining the reasons for the delinquencies and expected duration thereof. A copy of the memorandum shall be provided to the victim, if the victim has requested notice of restitution modifications; and
- ~~jh.~~ Request court extension of probation pursuant to A.R.S. §13-902(C):

When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:

1. For a felony, not more than five years.
2. For a misdemeanor, not more than two years.

- ~~ki.~~ As provided by A.R.S. § 12-253(7), "Bring defaulting probationers into court when in the probation officer's judgment the conduct of the probationer justifies the court to revoke suspension of the sentence."

- (1) If the probationer is on standard probation supervision and is not located within 90 days, the supervising probation officer shall file a petition to revoke probation, seek a criminal restitution order pursuant to A.R.S. § 13-805(~~AC~~)(1)(2) for a probationer who is an absconder as defined in A.R.S. § 13-105(1), and request that the court issue a warrant. The supervising officer shall file the petition to revoke sooner, when required by local departmental policies, the circumstances surrounding the case or the need for community protection.
- (2) **[No changes]**
- (3) When a petition to revoke is filed prior to the expiration of 90 days, the probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(~~AC~~)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).

**F. through G. [No changes]**

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 23, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Establishing Pretrial in Arizona Courts  <i>10 minutes</i>

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**FROM:**  
Adult Probation Services Division

**PRESENTER(S):**  
Kathy Waters

**DISCUSSION & TIME ESTIMATES:**  
Ms. Waters will present updates on Pretrial in Arizona.

**RECOMMENDED MOTION (IF ANY):**  
N/A

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 23, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	When Victims Experience Trauma  <i>20 minutes</i>

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**FROM:**  
COVIC Member

**PRESENTER:**  
Shelly Corzo-Shaffer

**DISCUSSION & TIME ESTIMATES:**

Ms. Shaffer will discuss the impact that trauma can have on crime victims and share insights from her personal journey.

**RECOMMENDED MOTION (IF ANY):**  
N/A

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 23, 2015	<input type="checkbox"/> <b>Formal Action Request</b>	Status of Public Access Change Request
	<input checked="" type="checkbox"/> <b>Information Only</b>	
	<input type="checkbox"/> <b>Other</b>	<i>5 minutes</i>

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**FROM:**  
Administrative Office of the Courts

**PRESENTER(S):**  
Eric Ciminski and Leslie James

**DISCUSSION & TIME ESTIMATES:**  
The victims' rights community requested changes to the Supreme Court's Victim Case Notification system. This is a status report on the changes made.

**RECOMMENDED MOTION (IF ANY):**  
N/A

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 23, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Change to Criminal Rule 41, Form 4(a)  <i>5 minutes</i>

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**FROM:**

Administrative Office of the Courts

**PRESENTER(S):**

Patrick Scott and Kirstin Flores (Arizona Attorney General's Office)

**DISCUSSION & TIME ESTIMATES:**

Mr. Scott and Ms. Flores will report on an agreement and change to Form 4(a), the "Release Questionnaire."

**RECOMMENDED MOTION (IF ANY):**

N/A



Arizona Supreme Court No. R-15-0026

TO:

Rule 28 Distribution

David K Byers

Elizabeth B Ortiz

John A Furlong



**C. OTHER INFORMATION (Check if applicable)**

1.  Defendant is presently on probation, parole or any other form of release involving other charges or convictions.  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. List any prior:  
Arrests: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Convictions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Failures to Appear (FTA): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Protective Orders: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. There is an indication of:  
 Alcohol Abuse                       Other Substance Abuse  
 Mental Health Issues               Physical Illness  
 Developmental Disability  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Defendant is employed by: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
How long: \_\_\_\_\_

5. Defendant resides at: \_\_\_\_\_  
\_\_\_\_\_  
With Whom: \_\_\_\_\_  
How Long: \_\_\_\_\_  
Alternate address for court notification: \_\_\_\_\_  
\_\_\_\_\_

6. Facts to indicate defendant will flee if released: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Reasons to oppose an unsecured release: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.  Defendant speaks a language other than English  
Language spoken: \_\_\_\_\_  
 American Sign Language  
 Defendant requested an interpreter

**D. CIRCUMSTANCES OF THE OFFENSE**

1.  Defendant used firearm or other weapon  
Type: \_\_\_\_\_

2.  Defendant injured someone.  
Explain: \_\_\_\_\_

3.  Medical attention was necessary  
Nature of injuries: \_\_\_\_\_

4.  Defendant threatened someone  
Nature of threats: \_\_\_\_\_

5. Did the offense involve a child victim?  Yes  No  
If yes, was DCS notified?  Yes  No

5 6. If property offense  
a. Value of property taken/damaged: \_\_\_\_\_  
b.  Property was recovered

6 7. Names of co-defendant(s), if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. CRIME(S) AGAINST PERSONS**

1. Relationship of defendant to victim: \_\_\_\_\_

2.  Victim(s) and defendant reside together.

3. Law enforcement learned of the situation by  Victim  
 Third Party  Officer observation

4.  Previous incidents involving these same parties  
Explain: \_\_\_\_\_  
\_\_\_\_\_

5. Defendant is currently the subject of:  
 Order of Protection  
 Injunction against Harassment  
 Other court order: \_\_\_\_\_

6.  Likelihood of inappropriate contact with victim(s)  
Explain: \_\_\_\_\_  
\_\_\_\_\_

7.  Victim(s) expressed an opinion on defendant's release.  
Explain: \_\_\_\_\_  
\_\_\_\_\_

**F. DOMESTIC VIOLENCE DEFENDANT ISSUES**

- Access to or use of weapons
  - Children/Vulnerable adults present
  - Crime occurred in public
  - Control/ownership/jealousy issues
  - Depression
  - Frequency/intensity of Domestic Violence increasing
  - Kidnapping
  - Potential for multiple violations of court orders
  - Prior history of Domestic Violence
  - Prior Protective Order
  - Recent separations
  - Stalking behavior
  - Threats of homicide/suicide/bodily harm
  - Violence against children, vulnerable adults or animals
- Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**G. CIRCUMSTANCES OF ARREST**

1. Did defendant attempt to:  
 Avoid arrest  Resist arrest  Self Surrender  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.  Defendant was armed when arrested  
Type of weapon: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.  Evidence of the offense was found in defendant's possession  
Explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. State whether defendant was under the influence of alcohol or drugs at the time of the offense  
 Yes  No  Unknown  
Type of substance: \_\_\_\_\_  
\_\_\_\_\_

**H. DRUG OFFENSES**

1. If the defendant is considered to be a drug dealer, state the supporting facts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. State quantities and types of illegal drugs directly involved with offense \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- Methamphetamine was involved:
- Drug field test was positive
- Defendant admission of drug type: \_\_\_\_\_
- Approximate monetary value of drugs: \_\_\_\_\_

3. State whether money was seized  
 Yes  No  
Amount: \_\_\_\_\_

**If this is a fugitive arrest, complete the affidavit as required by the Uniform Criminal Extradition Act (ARS 13-3841 et seq.)**

I certify that the information presented is true to the best of my knowledge:

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Departmental Report #

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Arresting Officer/Agency/ Serial No.  
Duty Phone No. \_\_\_\_\_

COURT \_\_\_\_\_

County, Arizona

<b>State of Arizona</b> Plaintiff -vs- _____ Defendant (FIRST, MI, LAST)	[CASE/COMPLAINT NO.] Booking No. _____	<b>RELEASE QUESTIONNAIRE</b> (To be completed by Defendant)
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Alias(es) \_\_\_\_\_

The following information is for the purpose of determining the conditions under which you may be released at this time. You are not required to answer any question if you feel the answer might be harmful to you. The answers you give to the following questions will be used by the court for the purpose of determining the conditions of your release. However, your answers will be checked against the information supplied by the police, and with the references you yourself give on the form. Any discrepancies may result in higher bail or harsher conditions of release. **Any information you give may be used against you in this or any other matter.**

**General Background**

**1. Background and Residence**

Full Name: \_\_\_\_\_

Sex \_\_\_\_\_ Race \_\_\_\_\_ Date of Birth \_\_\_\_\_

Place of Birth [city, state, country] \_\_\_\_\_

Have you served in the military services of the United States? [ ] Yes [ ] No

Present Citizenship \_\_\_\_\_

If you are not a United States of America citizen, how long have you been in this country? \_\_\_\_\_

Do you need the court to provide an interpreter to help you communicate and to understand what is being said? [ ] Yes [ ] No

If so, what language are you most comfortable speaking?  
[ ] Spanish [ ] American Sign Language [ ] Other language: \_\_\_\_\_

Are you homeless? [ ] Yes [ ] No

Present Address \_\_\_\_\_

How long have you lived at the above address? \_\_\_\_\_

Telephone No. ( ) \_\_\_\_\_ Cell No. ( ) \_\_\_\_\_

Where else have you lived in the past year and for how long?  
\_\_\_\_\_  
\_\_\_\_\_

Where will you go if released today? \_\_\_\_\_

**2. Family**

Are you married/partnered If so, are you living with your spouse/partner? [ ] Yes [ ] No

Are you living with someone? Relationship: \_\_\_\_\_

How many other persons (including your children) are living with you? \_\_\_\_\_

How much do you contribute to their support? \_\_\_\_\_

Do you have regular contact with any other relatives? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**3. Employment**

Are you presently employed? [ ] Yes [ ] No If not, what is your principal means of support?

Explain: \_\_\_\_\_

Employer's Name \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_

What is the nature of your job? \_\_\_\_\_

How long have you worked there? \_\_\_\_\_

**4. Criminal Record**

Do you have any previous criminal record? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**5. Record of Appearance**

Have you ever been released on bail or other conditions pending trial? [ ] Yes [ ] No

Did you ever fail to appear as required? [ ] Yes [ ] No

Explain \_\_\_\_\_

\_\_\_\_\_

**6. Supervision**

Is there any organization or any person who might agree to supervise you and be responsible for your return to court as required? [ ] Yes [ ] No

Organization or person to contact \_\_\_\_\_

\_\_\_\_\_ ( )  
Address City State Zip Telephone

**7. Other Circumstances**

Are there any other matters (such as your health or illness in your family) which you feel the court should consider in making its decision? \_\_\_\_\_

**8. Verification**

Is there any other friend, relative, neighbor or other person who can be called as a reference to this information?

\_\_\_\_\_ ( )  
Name Address City State Zip Telephone

\_\_\_\_\_ ( )  
Name Address City State Zip Telephone

\_\_\_\_\_ ( )  
Name Address City State Zip Telephone

I certify, under penalty of perjury, that the information presented is true and correct to the best of my knowledge.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant Signature  
Contact Telephone No. \_\_\_\_\_

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 23, 2015	<input type="checkbox"/> <b>Formal Action Request</b> <input checked="" type="checkbox"/> <b>Information Only</b> <input type="checkbox"/> <b>Other</b>	Arizona Case Law Update  <i>10 minutes</i>

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**FROM:**  
Administrative Office of the Courts

**PRESENTER(S):**  
Judge Ronald Reinstein

**DISCUSSION & TIME ESTIMATES:**  
Recent decisions regarding victims' rights will be reviewed and victims' rights case law document prepared for recently held training will be shared.

**RECOMMENDED MOTION (IF ANY):**  
N/A

## ARIZONA VICTIMS' RIGHTS CASES UPDATES

### Commission on Victims in the Courts October 23, 2015

#### **Morehart and Duffy v. Barton, ex rel Miller, Arizona Supreme Court – 2010- ARS §13-4420, Rule 39(b)(4), Art. 2, §2.1(a)(3)**

Held that in certain ex parte proceedings, e.g., mitigation investigation, victims are not entitled to be present, because defendant has no right to be present at purely procedural matters. This concerned some out-of-state summonses. Note that the state was not claiming victim had a right to be present.

#### **In Re: Kristen C., Court of Appeals, Div. One - 3/11/99**

Juvenile Court ordered 17 year old defendant to pay entire \$6,000 restitution before she turned 18 (3 days later). The trial court knew a civil judgment would be entered as defendant was making \$5.50/hr. Held: Court was within its discretion because otherwise it would lose jurisdiction on 18<sup>th</sup> birthday and victim wouldn't have been able to get a restitution lien.

#### **State v. Sarullo, Court of Appeals, Div. Two – 11/13/08**

Defendant convicted of Burglary, 2<sup>nd</sup> – 13 year old was in the home. Defendant wanted to interview her, maintaining she was not a victim. COA disagreed and held that occupants are victims. Defendant also wanted other victims' medical/counseling records. Court said defendant was not entitled as there was no sufficient basis and no showing that they were exculpatory.

#### **State v. Tomas Madrid, Court of Appeals, Div. One – 3/18/04**

Restitution was properly ordered for travel, lodging, meals, and incidentals for victim's three children to attend trial. These are economic losses. Mother was murdered. Court said the fact that the victims were in court at all was because of defendant's crimes. They didn't choose to be there and were exercising their constitutional rights.

**State v. John Leonardo, Court of Appeals, Div. Two – 3/31/11**

Trial court ordered child molest victim to submit to defense interview on a separate criminal case involving another victim, saying the child was not a victim in that case. But in the case the child was a victim, the defendant was on probation. COA granted relief because the victim retains her rights while the defendant is on probation.

**State v. Clarence Wayne Dixon, Arizona Supreme Court – 2011**

This dealt with a denial of a Motion to Continue where the defendant had over four years to develop mitigation, but was seeking more time. At the time there was an 18 month deadline in which capital cases were to be tried. Defendant, who was pro per, presented virtually no mitigation even though advisory counsel had prepared significant mitigation evidence. The trial judge considered the rights of the victim's parents to prompt and final disposition under the Arizona Constitution.

**State v. Guadiagni, Court of Appeals, Div. Two – 2008**

Trial court ordered restitution to two wives of defendant in a bigamy case. Defendant said victims weren't eligible for restitution because they were not victims. Court held that the trial court erred in ordering restitution when the defendant and his attorney weren't present, but otherwise entitled to travel expenses, lost wages, and cost of annulment. No waiver of presence by defendant.

**State v. Hegyi/Montane, Court of Appeals, Div. One – Special Action 2013 – ARS §13-4433(g)**

Trial court ordered deposition of the mother of child whose father was murdered in Oct. 2011. The mother refused a defense interview and the trial court entered an order compelling a deposition. The COA found the mother could refuse the interview as she was the child victim's lawful representative. The mother had witnessed the murder and identified the defendant in a lineup as well.

**State v. Chavez/Gill, Arizona Supreme Court – 3/26/04**

Held: State must obtain a court order to authorize redaction of a victim's DOB from law enforcement reports that must be disclosed to defense. COA Div. One opinion vacated. COA said victims have right to privacy and to withhold information such as birthdates. But birthdates were not included in Rule 39(b)(10), (11), ARS §13-4434(A) or the Victims' Bill of Rights. Prosecution was unilaterally redacting. The court invited the legislature to act or that there be broad input in the Rules amendment process.

**State v. Rose, Arizona Supreme Court – 4/5/13**

Police officer killed by defendant. In penalty phases, emotional victim impact testimony from victim's family. Question was whether it was unduly prejudicial and fundamentally unfair. The court found the presentation troubling and that it came very close to crossing the line. Also that the trial judge has a responsibility to exercise sound discretion in balancing probative value with prejudicial effect and the risk of an unfair proceeding. Also sounds a caution to prosecutors and victims. There was a suggestion that courts screen the victim impact statement if necessary to limit an orchestrated, overly dramatic victim impact presentation that may be unduly prejudicial.

In this case the victim's two young sons were dressed in police uniforms, two photos were shown while the widow read a statement, and Last Call was played. The court said it can't condone the type of vengeful language used in court, and strongly encouraged prosecutors and judges to prevent victims from alluding, in any way, to the potential sentence.

Note: In a subsequent capital case, State v. Burns, the Supreme Court again affirmed but noted they were "troubled with the volume and type of materials presented as victim impact evidence in this case." The jury heard more than a dozen victim impact statements, some of which came from people who had never met the victim. They again cautioned victims and prosecutors about piling on victim impact evidence "lest they risk a mistrial." "The trial court should take an active role in pre-screening the nature and scope of victim impact evidence to ensure it doesn't cross the line."

**Lindsay and Samantha R. v. Cohen, Court of Appeals, Div. One – 1/13/15**

The unique facts of this case should be taken into account. The state and victims took the position that victims' counsel could substitute for the prosecutor at the restitution hearing. Court held that nothing in the Victims' Bill of Rights allows "privatization" of the restitution process, therefore substitution not allowed. The prosecutor abdicated its responsibility to the victims' attorney. Defendant moved to strike victims' pleadings and determine counsel. COA held victims' attorney can't direct the prosecution of the case or take the prosecutor's place. "A criminal restitution hearing can't be converted into a civil damage trial."

**State ex rel Smith v. Reeves, Court of Appeals, Div. One – 2011**

The COA held that a child killed in a car accident and his surviving parents are all victims when the charge is Leaving the Scene of a Fatal Accident. The trial court found the charge was not a crime against person and therefore the parents had to submit to an interview. The COA disagreed and found the parents could refuse an interview.

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 23, 2015	<input type="checkbox"/> <b>Formal Action Request</b>	SAFER Update
	<input checked="" type="checkbox"/> <b>Information Only</b>	<i>5 minutes</i>
	<input type="checkbox"/> <b>Other</b>	

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**FROM:**  
Administrative Office of the Courts

**PRESENTER(S):**  
Judge Ronald Reinstein

**DISCUSSION & TIME ESTIMATES:**  
The commission will be updated on the work of the Sexual Assault Forensic Evidence Reporting (SAFER) Act Team.

**RECOMMENDED MOTION (IF ANY):**  
N/A

## Commission on Victims in the Courts

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<b>Meeting Date:</b>	<b>Type of Action Required:</b>	<b>Subject:</b>
October 23, 2015	<input type="checkbox"/> <b>Formal Action Request</b>	Human Sex Trafficking – Upcoming Conference
	<input checked="" type="checkbox"/> <b>Information Only</b>	
	<input type="checkbox"/> <b>Other</b>	<i>5 minutes</i>

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**FROM:**  
Administrative Office of the Courts

**PRESENTER(S):**  
Judge Reinstein

**DISCUSSION & TIME ESTIMATES:**  
The commission will be advised on an upcoming national conference on Human Sex Trafficking.

**RECOMMENDED MOTION (IF ANY):**  
N/A

10/18/2015

CREDA Mail - Case Information: Aug 20 2015 9:11AM



NEW

Leslie James <c...

**Case Information: Aug 20 2015 9:11AM**

2 messages

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Thu, Aug 20

You are receiving this email because recent activity has occurred in the matter for which you subscribe to the Public Access Case Update from the Arizona Supreme Court. The activity has occurred on the below. If you have any questions regarding the activity, please contact the court associated to the

Case Number	Case Title	Last Updated
S-0700-CR-2002019595	St of AZ Vs. Clarence Dixon	8/20/2015 9:10:29 A

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10/18/2015

CREDA Mail - Case Information: Oct 8 2014 9:15AM



OLD

Leslie James <c...

**Case Information: Oct 8 2014 9:15AM**

2 messages

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Wed, Oct 8

You have received this e-mail because you have subscribed to the Public Access Case Update from the Arizona Supreme Court.

Case Number	Case Title	Change(s) Made	Change Date
S-0700-CR-2002019595	St of AZ Vs. Clarence Dixon	Charge(s)	10/8/2014

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creda <creda@creda.cc>  
To: Leslie James <creda@creda.cc>

Sat, Oct 17