

Commission on Victims in the Courts

Friday, March 13, 2020; 10:00 a.m.

Conference Room 345 A/B

State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

[Commission on Victims in the Courts Home Page](#)

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome and Opening Remarks	Judge Ron Reinstein, Chair
10:05	Approval of Minutes—October 18, 2019 <input type="checkbox"/> <i>Formal Action/Request</i>	Judge Reinstein
10:10	AZPOINT: Arizona Protective Order Initiation and Notification Tool	Kay Radwanski
10:40	Legislative Update	Elise Kulik
11:00	Pilot Program: DVLDPs	Chris Groninger
11:15	Discussion on cite and release statute and victim's rights.	Kristin Flores
11:25	Case Updates	Judge Reinstein
11:35	AVCV's Rule Change Petition seeking to integrate Rule 39 throughout the rules of procedure	Colleen Clase
11:50	Good of the Order/Call to the Public	Judge Reinstein
12:00	Adjournment	

Next Meeting

Friday, June 12, 2020; 10 a.m.

Conference Room 345 A/B

Arizona State Courts Building

2020 Meeting Dates

June 12

October 16

*All times are approximate and subject to change. The committee 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 *Susan Pickard*, COVIC staff, at (602) 452-3252 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.

Commission on Victims in the Courts

Friday, October 18, 2019

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

Conference Room 345 A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Judge Ron Reinstein (chair), Colleen Clase, Judge Maria Elena Cruz, Sydney Davis, Jon Eliason, Kristin Flores, Raymond Hanna (proxy for Michael Breeze), Leslie James, Judge Kellie Johnson, Captain John Levitt, Dan Levey, Chief Rod McKone, Karyn Rasile, Jennifer Runge, Christina Spurlock, Judge Patricia Starr, Judge Richard Weiss.

Telephonic: Kimberly Chichester, Elizabeth Ortiz, William Owsley, Judge Antonio Riojas

Absent: Timothy Agan, Vanessa Helms, Jane Nicoletti-Jones, Evelyn Marez, Sargent James Markey

Guests: Chief Justice Robert Brutinel, Arizona Supreme Court, Commander Melisa Zabor, Commander Tracy Nadzieja, Maricopa County Superior Court

Staff: Sabrina Nash, Jennifer Albright, Theresa Barrett, Administrative Office of the Courts (AOC)

I. REGULAR BUSINESS

- A. **Welcome and Opening Remarks** - The October 18, 2019, meeting of the Commission on Victims in the Courts (COVIC) was called to order at 10: a.m. by Judge Ronald Reinstein, Chair.

Judge Reinstein introduced three new members; Judge Patricia Starr, presiding criminal judge, Maricopa County Superior Court; Christina Spurlock, chief deputy clerk, Mohave County, Jennifer Runge, executive director, Victim Witness Services, Coconino County.

- B. **Approval of Minutes** - The draft minutes from the June 14, 2019, meeting of the COVIC were presented for approval. Judge Kellie Johnson stated that she was present at this meeting.

Motion: To approve the June 14, 2019 minutes as amended. **Moved:** Judge Richard Weiss. **Second:** Sydney Davis. **Vote:** Passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. **Remarks on 2020-2024 Strategic Agenda & Victims and the Court**

Chief Justice Brutinel explained that goal of the new five-year strategic plan is to provide a baseline for the courts and all who interact with the court system on the direction the courts will take under the new Chief Justice. In the new strategic agenda, there is still an emphasis on access to justice for domestic violence victims and self-represented

litigants. Justice Brutinel stated that the Task Force on the Delivery of Legal Services (LSTF), chaired by Justice Timmer, released their report and recommendations and noted a few of the recommendations.

- Proposed amendment to Supreme Court Rule 38(d) would clarify that recent law graduates may be certified to engage in the limited practice of law under the supervision of an attorney.
- Proposed amendment to Supreme Court Rule 42, ethical rules 7.1 to 7.5 relative to alternative business structures that would allow capital investment in law firms by non-lawyers.
- Tiered changes to the Arizona Certified Legal Document Preparer program.

He also noted a few of the recommendations from the Committee on Mental Health and the Justice Systems.

- Use of the sequential intercept model to increase awareness of mental health issues.
- How to deescalate inappropriate behaviors and train law enforcement, judges and court staff to recognize mental health issues.
- Creating a partnership with the Arizona Health Care Cost Containment System (AHCCCS) to create crisis drop off centers where law enforcement can take mentally ill individuals to provide them with the mental health services they need.

Justice Brutinel stated that his emphasis is making the courts, judges and court employees more efficient and effective. He discussed the need to provide needed resources and services to the courts, and to collect data to demonstrate that the courts are effective in resolving society's disputes. Some ideas to assist with these goals are:

- Time standards to expedite the processing of court cases.
- Train new judges.
- Creation of a trial judge college.
- Pre-trial release assessment to include victim input.
- Online dispute resolution.

Discussion: Members discussed the lack of consistency with the ordering, collecting and enforcing of restitution orders, the lack of statistics to use when trying to come up with viable solutions, and the considerate and compassionate treatment of mental health defendants and all court visitors.

B. Pre-trial Release Decisions & Victim's Rights

Commander Melissa Zabor, presiding IA commissioner and Commander Tracy Nadzieja, associate presiding IA discussed how Maricopa county makes its pre-trial release decisions. The IA court in Maricopa county is open 24-hours a day, seven days a week, and holds court every three hours for individuals who've been arrested to determine release conditions or set bond. In the preparation time prior to court, the

commissioner reviews the police report, the defendant's criminal history and the research-based recommendation provided to the commissioner before court. The research is based on the following indicators:

- defendant's criminal history
- age
- violence of the offense
- probability of re-offending
- number of failures to appear
- victim statement

The court then makes a recommendation on release or bond. Commissioners are not bound by research-based recommendations however, it does provide them with a research-based informed decision.

Discussion: Members discussed victim statements, victim's appearance, telephonic appearances, remote appearance options for victims of violent crimes.

C. National Organization for Victim Assistance (NOVA) Conference Update

Kirstin Flores, director, Office of the Arizona Attorney General, updated COVIC on the national conference and discussed the creation of an interactive board game that shows the victim's journey through to legal system.

D. Arizona Cold Case Conference

Jon Eliason, deputy attorney, Maricopa County Attorney's Office, reported on the Cold Case conference he chaired in August and discussed some of the tools now being used to crack cold cases and bring justice to victims such as: familial DNA, locating fugitives in Mexico and extradite them back to US, and using cellphone technology to track and apprehend fugitives.

E. Judicial Conference Update (taken out of order)

Judge Reinstein stated that he attended the Judicial Conference in June and shared that the conference sponsored two sessions:

- Victim's issues featuring Leslie James, Kim Chichester and officer Jaime Cole, Goodyear Police Department, about their experiences in the justice system. The session was well received and highly impactful.
- The restitution session titled "*Real Money, Real People*" featured Kirstin Flores, Judge Bluff and Randy Udelman and generated a lot of discussion on restitution.

F. Supreme Court Rules Agenda; Rules 15.3 & 39

Judge Reinstein discussed the following two victim related rule change petitions:

- The Maricopa County Attorney's Office supports the petition for Rule 15.3(A) Arizona Rules of Criminal Procedure which seeks to correct a restyling of the rule that created an unintended consequence that currently affects the prosecutor's ability to dispose a crime victim in an appropriate case.

- Arizona Voice for Crime Victims (AVCV) submitted a petition to integrate the rights guaranteed to victims by the Arizona Constitution and Arizona Revised Statutes throughout each applicable rule provision and repeal Rule 39. The justices decided to keep Rule 39 but are receptive to hearing about specific rules that would merit a rule change.

G. Restitution Issues and Workgroup

Kirstin Flores, director, Office of the Arizona Attorney General, explained that the workgroup reviewed lower jurisdiction courts reference manual for restitution and updated case law.

Rod McKone stated that workgroup has discussed that it is unknown if we are doing well in the collection of restitution. He stated that he is meeting with probation chiefs, clerk's office representatives, AOC and others to discuss refining AJACS so the capacity to track restitution data is possible.

Discussion: to establish best practices for Restitution Courts. Judges Starr and Cruz, Kristin Flores, Rod McKone and Dan Levey to develop.

H. Capital Case Oversight Committee Capital Case Jury Issues Workgroup

Judge Reinstein mentioned that a workgroup is being formed in the Capital Case Oversight Committee to address the issue brought by the Arizona State Bar regarding the jury instructions given to jurors in capital cases. There is some discussion that the instructions may be difficult for jurors to understand.

III. Good of the Order/Call to Public

- Colleen Clase briefly discussed two decisions one on restitution where the trial court didn't order restitution, and another on restitution caps that would assist victim with counseling.
- Judge Reinstein reported on a Capitol Times article regarding the lethality assessment tool used in domestic violence situations and how many law enforcement agencies are not using the lethality assessment or were unaware that it existed, how many JPs didn't know about the lethality assessment.
- Jennifer Albright shared information on the AZPoint web portal that allows victims to file petition for orders of protection and injunctions against harassment.
- Leslie James stated that the 9th circuit denied a rehearing petition on her sister's case and thanked everyone who's been involved with her sister's case.
- Jon Eliason shared that the neighborhood victim's rights statute needs work and stated that he'd be willing to assist.
- Kirstin Flores announced that AG's Office is starting basic victim rights training.
- Dan Levey announced that the Arizona Crime Victim Rights Law Group has a website www.azvictimrights.org to assist anyone needing help.

Call to the Public: None present.

Adjournment: Meeting adjourned at 11:54 p.m.

Next Meeting: Friday, March 13, 2020the

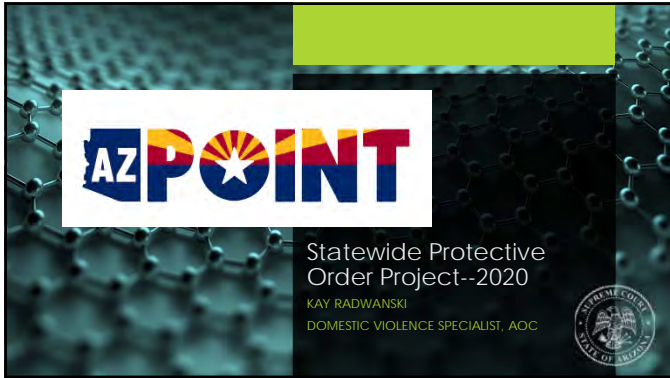
Commission on Victims in the Courts

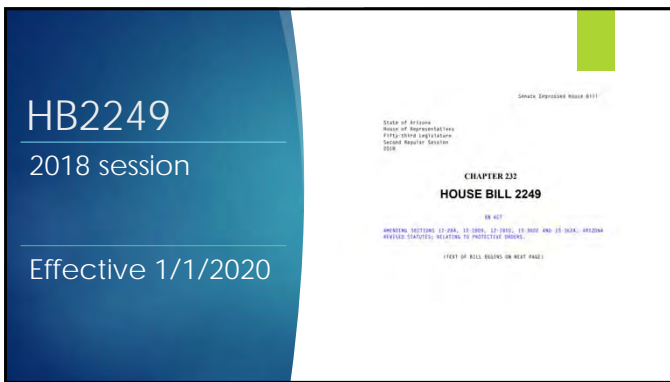
Date Action Required:	Type of Action Required:	Subject: AZPOINT – Arizona Protective Order Initiation and Notification Tool
March 13, 2020	<input type="checkbox"/> Formal Action/Request	
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

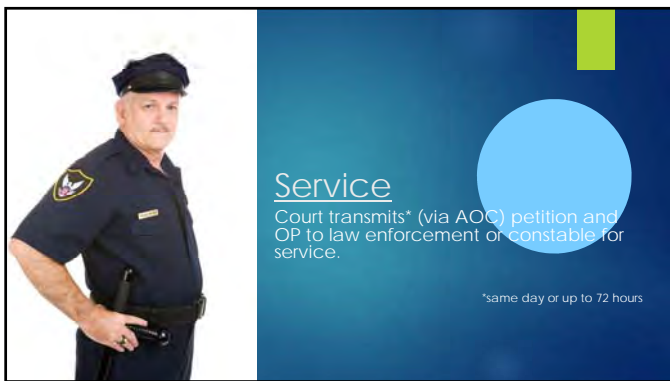
PRESENTER(S): Kay Radwanski, Court Services, AOC

DISCUSSION: Kay will discuss AZPOINT, focusing on the petition portal in which a person can prepare documents needed to file a petition for an Order of Protection. She will briefly discuss the other two components—a Clerk portal and a Servicing Agency portal—that are part of AZPOINT technology.

RECOMMENDED MOTION: Information only.









Arizona Supreme Court

- ▶ Registers served orders with the National Crime Information Center (NCIC).
- ▶ Maintains the Court Protective Order Repository (CPOR)—central database for Orders of Protection, Injunctions Against Harassment, Injunctions Against Workplace Harassment.



AZ Statewide Protective Order Project 2020

Partnership with ACJC

- ▶ ACJC drafted legislation in collaboration with stakeholders.
- ▶ Established goals of automating the protective order system, increasing number of served OPs, enlarging number of OPs reported to NCIC
- ▶ Obtained grant funds to support AOC-ITD technology project

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>Welcome to AZPOINT

Welcome to AZPOINT, the Arizona Protective Order Initiation and Notification Tool. Through an interview, you can quickly fill out the forms that you need to ask for an Order of Protection at an Arizona court. An Order of Protection is a court order that is issued to stop a person from committing domestic violence or from contacting other people in the area. The portal will also help you figure out whether you (the plaintiff) and the person from whom you seek protection (the defendant) have a qualifying relationship for an Order of Protection.

You may also use this portal if you're asking for protection on behalf of another person—either (1) a minor, the parent, guardian, or legal custodian or (2) an adult who is temporarily or permanently unable to request protection.

- If you do not have a qualifying relationship for an Order of Protection, you may be eligible to apply for a **Protective Order**. You must be able to allege one instance of physical violence or at least two incidents of harassment during which the defendant harassed you.
- If you are an employer seeking protection of your business or employees, you may apply for an **Order of Protection** based on a single act or a series of acts of harassment.

Your information will be saved in this portal for up to 90 days. At any time during this 90-day period, you may stop or file your petition at an Arizona court. Use you file your petition at a court, you will be able to update your information if necessary.

You are encouraged to speak to a victim advocate before you file your petition. A victim advocate can help you plan and give you more information about how an Order of Protection works and how it will be enforced.

- ▶ <https://azpoint.accounts.gov/>
- ▶ Guided interview
- ▶ Document completion
- ▶ Petition stored for up to 90 days to allow for editing
- ▶ Plaintiff files at court of choice (unless family court case pending).
- ▶ Court downloads forms from portal
- ▶ Site to be translated into Spanish

More features

- ▶ Can create more than one petition—but only one petition/defendant
- ▶ Generates a petition number for filing.
- ▶ Floating safety button
- ▶ Computer safety information
- ▶ Information on how to obtain a new email address
- ▶ Contact information for ACESDV/NCADV and legal services
- ▶ Hover help
- ▶ Accessible on multiple devices (laptop, PC, Apple, Android, etc.)

 The image shows the AZPOINT logo in the top right corner. Below it is a large circular icon containing a classical building facade, labeled 'Petition Portal'.

How can advocates help?

- ▶ Explain the change in the service process for OPs.
- ▶ Assist with preparation of a SAFETY PLAN.
- ▶ Talk about whether an Order of Protection should be part of the safety plan.
- ▶ Conduct a lethality assessment.



Assisting with AZPOINT--

- ▶ Assist with the guided interview.
- ▶ Help user obtain a new email address if necessary.
- ▶ Discuss—
 - ▶ Computer safety
 - ▶ Whether email or text notifications are safe
 - ▶ Risk of saving a password on a device or computer
- ▶ Talk about the allegations—provide information, not advice.
- ▶ Explain the court process.
- ▶ If you have resources, provide support at court.





"Thank you for all of the work and thought that went into the new AZPOINT system. As an advocate, I am very excited about the changes and feel they are both system-friendly and victim-centered."



--Bethany
Victim Witness Services




Keeping the plaintiff informed


If the OP is not served within 15 days, the serving agency must notify the plaintiff and continue service attempts.

INJUNCTION AGAINST HARASSMENT (IAH) OR WORKPLACE HARASSMENT (IAWH)

Plaintiff must arrange for service; pay fee (unless dating relationship or sexual violence).

Server must file proof of service with the court within 72 hours via Service Portal.

AZ Supreme Court is central repository; will register served IAH with NCIC.



Thank you!

KAY RADWANSKI
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Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject: Legislative Update
March 13, 2020	<input type="checkbox"/> Formal Action/Request	
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Elise Kulik

DISCUSSION: Legislation of interest to members.

RECOMMENDED MOTION: Information only



Legislative Update March 13, 2020

54th Legislature - 2nd Regular Session, 2020

Thursday, Mar 12 2020 9:11 AM

Bill summaries and histories copyright 2020 Arizona Capitol Reports, L.L.C.

Posted Calendars and Committee Hearings

S1278: VICTIMS' PRIVACY; CRIMINAL CASE INFORMATION

Hearing: House Judiciary (Wednesday 03/11/20 at 9:00 AM, House Rm. 4)

S1441: PROTECTION ORDERS; MODIFICATION; RESIDENCE POSSESSION

Hearing: House Judiciary (Wednesday 03/11/20 at 9:00 AM, House Rm. 4)

S1675: CHILD SEX TRAFFICKING; OFFENSE; PENALTY

Hearing: House Judiciary (Wednesday 03/11/20 at 9:00 AM, House Rm. 4)

Bill Summaries

H2236: DEFERRED PROSECUTION PROGRAM; DEFINITION

The county attorney is no longer prohibited from diverting or deferring the prosecution of a person who has been previously convicted of serious offense, a sexual offense, a dangerous offense, or a dangerous crime against children, or a person who has been convicted three or more times of personal possession of a controlled substance or drug paraphernalia.

First sponsor: Rep. J. Allen (R - Dist 15)

H2236: DEFERRED PROSECUTION PROGRAM; DEFINITION 2/27 referred to Senate jud.

H2411: CONVICTIONS; PENALTIES; SURCHARGE DISTRIBUTION

Beginning July 1, 2020, on the first day of each month, for offenses committed before January 1, 2019, the distribution list for monies in the Criminal Justice Enhancement Fund is modified to require 7.68 percent to be deposited in the Victims' Rights Fund and 4.6 percent to the deposited in the Victim Compensation and Assistance Fund, and to reduce the percentages received by each Department and Fund on the current distribution list. The current distribution list applies for offenses committed beginning January 1, 2019. Emergency clause. AS PASSED HOUSE.

First sponsor: Rep. J. Allen (R - Dist 15)

H2411: CONVICTIONS; PENALTIES; SURCHARGE DISTRIBUTION 3/2 referred to Senate jud.

H2414: APPROPRIATIONS; ALTERNATIVE PROSECUTION; DIVERSION PROGRAMS

Appropriates \$11,264,625 from the general fund in each of FY2020-21, FY2021-22 and FY2022-23 to the Arizona Criminal Justice Commission for alternative prosecution and diversion programs. Specifies amounts that must be allocated each fiscal year to each county attorney's office. Monies may be used only to establish and operate alternative prosecution and diversion programs, and to explore, develop, apply and evaluate evidence-based best practices for alternative prosecution and diversion programs. By September 30 of 2021, 2022 and 2023, the Commission is required to report to the Joint Legislative Budget Committee on the use of the monies and the outcomes obtained by the alternative prosecution and diversion programs during the previous fiscal year. AS PASSED HOUSE.

First sponsor: Rep. J. Allen (R - Dist 15)

H2414: APPROPRIATIONS; ALTERNATIVE PROSECUTION; DIVERSION PROGRAMS 2/24 referred to Senate jud, appro.

H2538: HEALTH CARE WORKERS; ASSAULT; PREVENTION

The list of victims of assault that cause an assault to be classified as aggravated assault if the defendant knows of their profession is expanded to include a "health care worker" (defined) while engaged in the health care worker's work duties. Aggravated assault committed on a health care worker in these circumstances is a class 5 (second lowest) felony if the assault involved physical injury. Within six months after the effective date of this legislation, "health care employers" (defined as licensed health care institutions with more than 50 employees) are required to develop, implement and maintain a written workplace violence prevention plan that includes specified provisions. As soon as practicable after a workplace violence incident that a health care employer has knowledge of, the employer is required to investigate the incident and to document the findings, recommendations and corrective measures taken for each investigation conducted.

First sponsor: Rep. Shah (D - Dist 24)

H2538: HEALTH CARE WORKERS; ASSAULT; PREVENTION 3/9 referred to Senate hel-hu ser.

H2580: PRISONERS; DISCHARGE; TRANSITION PROGRAM

The statutory termination date for the Department of Corrections Transition Program is extended ten years to July 1, 2030. Beginning July 1, 2020 and each year thereafter, the Dept is required to release at least 3,500 eligible inmates to enter the Transition Program, except that if the Legislature does not review and determine the minimum number of inmates to be released to enter the Transition Program at least once every five years, at the end of the five-year period the Director of the Dept is required to determine the number of eligible inmates to be released to enter the Transition Program each year during the following five-year period. Additionally, the Dept is required to designate one day each week as the discharge day for all prisoners who are scheduled to be discharged during that week. The Dept is required to inform a prisoner at least one month before the prisoner's discharge of the discharge date. Transition Program provisions are retroactive to July 1, 2020.

First sponsor: Rep. J. Allen (R - Dist 15)

H2580: PRISONERS; DISCHARGE; TRANSITION PROGRAM 3/10 from Senate rules okay.

H2581: DANGEROUS; INCOMPETENT PERSON; EVALUATION; COMMITMENT

Establishes a new chapter in Title 36 (Public Health and Safety) governing procedures for dangerous and incompetent persons who are committed. Requires a biannual examination of such persons, and requires the court to hold a hearing on an examination report that indicates the person is no longer dangerous or incompetent. A committed incompetent is allowed to petition the court for conditional release or discharge under certain circumstances, and requirements for hearings and determinations on the petition are established. Establishes requirements for detention and commitment and for revocation of conditional release. A committed incompetent cannot be transported from a licensed facility except for specified reasons. Also makes various changes to statutes relating to determining whether a defendant is dangerous or incompetent. Information that must be included in an expert's written report of an examination is expanded. More. Retroactive to January 1, 2020. AS PASSED HOUSE.

First sponsor: Rep. J. Allen (R - Dist 15)

H2581: DANGEROUS; INCOMPETENT PERSON; EVALUATION; COMMITMENT 3/9 referred to Senate jud.

H2624: HUMAN TRAFFICKING; CIVIL ACTION; LIABILITY

A person who engages in the trafficking of a person or who intentionally or knowingly benefits from participating in a venture that traffics another person is liable to the person trafficked for damages that arise from the trafficking of that person by the person or venture. It is not a defense to liability that the person was acquitted or has not been prosecuted for or convicted of an offense under the criminal code. A claimant who prevails must be awarded actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown, court costs and reasonable attorney fees, and may also recover exemplary damages. These rights and remedies supplement any other rights and remedies provided by law, including common law rights. AS PASSED HOUSE.

First sponsor: Rep. Bollick (R - Dist 20)

H2624: HUMAN TRAFFICKING; CIVIL ACTION; LIABILITY 3/2 referred to Senate jud.

H2649: PRISONERS; MENTAL HEALTH TRANSITION PROGRAM

The Department of Corrections is required to establish a mental health transition pilot program that provides eligible inmates with transition services in the community. The Dept is required to contract with private or nonprofit entities to provide eligible inmates with mental health transition services, and is required to place at least 500 eligible inmates in the pilot program each year. The Dept is required to adopt rules to implement the program, and required provisions are listed. The Dept is required to conduct an annual study on recidivism of program participants and submit a report to the Governor and the Legislature by July 31 of each year. The pilot program self-repeals January 1, 2025. Appropriates \$1.3 million from the general fund in each of FY2020-21, FY2021-22 and FY2022-23 to the Dept for the pilot program.

First sponsor: Rep. Barto (R - Dist 15)

H2649: PRISONERS; MENTAL HEALTH TRANSITION PROGRAM 3/2 referred to Senate trans-pub safety, appro.

H2683: ANTI-SEMITISM; CRIME REPORTING; AGGRAVATING FACTOR

The Department of Public Safety is required to collect information concerning criminal offenses that manifest evidence of prejudice based on "anti-semitism" (defined). Criminal justice agencies of the state or political subdivisions are required to provide the Dept with information concerning these crimes.

First sponsor: Rep. A. Hernandez (D - Dist 3)

H2683: ANTI-SEMITISM; CRIME REPORTING; AGGRAVATING FACTOR 2/27 House COW approved. Passed House 52-8; ready for Senate.

H2808: PRISONERS; RELEASE CREDITS

For prisoners who are in the eligible earned release credit class, the earned release credit is decreased to 1 day for every 6 days served, from 3 days for every 7 days served. Establishes an additional earned release credit of 1.5 days for every 6 days served if the prisoner is not serving a sentence for or has not been previously convicted of a violent or aggravated felony and has successfully completed a drug treatment program or other major self-improvement program. A previous conviction for a violent or aggravated felony only applies to a prisoner who committed the offense when the prisoner was at least 18 years of age. Reporting requirements for the earned release credit program are modified. Within 30 days after a prisoner qualifies for earned release credits, the Department of Corrections is required to notify a victim that has requested postconviction notices of the earliest release date of the prisoner. Contains a legislative intent section. Applies to prisoners who are serving a term of imprisonment in the Dept on or after the effective date of this legislation. Effective January 1, 2021. AS PASSED HOUSE.

First sponsor: Rep. Blackman (R - Dist 6)

H2808: PRISONERS; RELEASE CREDITS 3/2 referred to Senate jud.

S1172: SEX OFFENDER REGISTRATION; REQUIREMENTS; VEHICLES

If a person who is required to register as a sex offender owns or operates a motor vehicle, the person is required to include on the statement of registration the make, model, color, vehicle identification number and license plate number of the motor vehicle, and is required to notify the sheriff either in person or electronically within 72 hours, excluding weekends and legal holidays, after the person makes any change to that information. If a person who is required to register as a sex offender has more than one residence, the person is required to register in person and in writing every residence and address at least every 90 days with the sheriff in whose jurisdiction the person is physically present. A person who is required to register as a sex offender and who transitions from a permanent residence to a temporary residence or transient status is required to notify the sheriff in person and in writing within 72 hours, excluding weekends and legal holidays. For a juvenile who is required to register as a sex

offender, the duty to register terminates automatically when the person reaches 25 years of age only if the person provides advance written notice to the sheriff in the jurisdiction in which the person is registered. AS PASSED SENATE.

First sponsor: Sen. Livingston (R - Dist 22)

S1172: SEX OFFENDER REGISTRATION; REQUIREMENTS; VEHICLES 3/2 passed Senate 19-10; ready for House.

S1278: VICTIMS' PRIVACY; CRIMINAL CASE INFORMATION

A victim's identifying and locating information that is obtained, compiled or reported by a law enforcement agency or prosecution agency must be redacted from records pertaining to the criminal case involving the victim, including discovery disclosed to the defendant's attorney or any of the attorney's staff.

First sponsor: Sen. Boyer (R - Dist 20)

S1278: VICTIMS' PRIVACY; CRIMINAL CASE INFORMATION 3/11 House jud do pass; report awaited.

S1441: PROTECTION ORDERS; MODIFICATION; RESIDENCE POSSESSION

While an order of protection is in effect, if a party was granted the use and exclusive possession of the parties' residence and subsequently moves out of the house, the party is required to file a notice in writing with the court within five days after moving out of the residence. The court is required to notify the defendant that the plaintiff has moved out of the residence and of the defendant's right to request a hearing. On written request of a party, the court is authorized to hold additional order of protection hearings at any time if there is a change in circumstances related to the primary residence. AS PASSED SENATE.

First sponsor: Sen. E. Farnsworth (R - Dist 12)

S1441: PROTECTION ORDERS; MODIFICATION; RESIDENCE POSSESSION 3/11 House jud amended; report awaited.

S1675: CHILD SEX TRAFFICKING; OFFENSE; PENALTY

The list of actions constituting first-degree murder is expanded to include committing or attempting to commit child sex trafficking and, in the course of and in furtherance of the offense or immediate flight from the offense, the person or another person causes the death of a person. AS PASSED SENATE.

First sponsor: Sen. D. Farnsworth (R - Dist 16)

S1675: CHILD SEX TRAFFICKING; OFFENSE; PENALTY 3/11 House jud held.

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject: Domestic Violence Legal Document Preparer Pilot Program (DVLDP)
March 13, 2020	<input type="checkbox"/> Formal Action/Request	
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Chris Groninger

DISCUSSION: What is the DVLDP pilot program , who qualifies, certification process and importance of DVLDPs.

RECOMMENDED MOTION: Information only.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
AUTHORIZING A LEGAL DOCUMENT) Administrative Order
PREPARER PILOT PROGRAM FOR) No. 2020 - 25
DOMESTIC VIOLENCE CASES AND)
RELATED MATTERS)
_____)

In October 2019, the Arizona Judicial Council (AJC) approved a recommendation of the Task Force on the Delivery of Legal Services for a pilot program proposed by the Arizona Bar Foundation that would increase access to free assistance in completing civil legal forms for domestic violence victims. Known as the Domestic Violence Legal Document Preparer Pilot Program (DVLDP), the proposal would allow authorized employees of domestic violence shelters and service providers in Arizona to assist their shelters' clients in completing court forms to be filed in Order of Protection cases and related civil proceedings, including Family Law, Creditor/Debtor Law, and Landlord/Tenant Law, as well as applications for public benefits.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that:

1. The Domestic Violence Legal Document Preparer Pilot Program is hereby established.
2. Individuals meeting the qualifications for DVLDP certification shall be certified by the Administrative Office of the Courts (AOC) as legal document preparers with a certification as restricted by this Order and are otherwise subject to the provisions of ACJA §§ 7-201, 7-208 and this Order.
3. Candidates for provisional certification as DVLDP's must be nominated by the program director, and must possess the following minimum qualifications:
 - a. A citizen or legal resident of the United States;
 - b. At least eighteen years of age;
 - c. Of good moral character;
 - d. A high school diploma or a general equivalency diploma (GED) evidencing the passing of the general education development test;
 - e. Employment by a domestic violence shelter or service provider in Arizona participating in the pilot program;

- f. Successful completion of a course of study presented by the Arizona Coalition to End Sexual & Domestic Violence in Arizona law related to domestic violence and related Family Law, Creditor/Debtor Law, Landlord/Tenant Law, and Public Benefits.
 - g. A passing grade on a DVLDP Pilot Program substantive law examination administered by the Certification and Licensing Division of the Administrative Office of the Courts (AOC).
4. An individual who has been disbarred by the highest court in any state or who has been denied admission to the practice of law in Arizona or has been denied certification or had their certification revoked or suspended by the Board of Legal Document Preparers is not eligible to participate in this pilot program.
 5. Candidates shall furnish fingerprints to the AOC for a criminal background investigation pursuant to A.R.S. § 12-323 and ACJA § 7-201(E).
 6. Individuals who meet the above-stated requirements will be granted a provisional DVLDP certification by the AOC. Individuals who have a high school diploma or GED shall work under the supervision of an Arizona Legal Aid agency licensed attorney participating in the pilot program for 12 months. Those who have a four-year college degree shall work under the supervision of an Arizona Legal Aid agency licensed attorney participating in the pilot program for six months.
 7. After completing the supervised work requirement and passing the court forms examination administered by AOC, provisional DVLDP certificate holders shall be eligible to apply for full DVLDP certification. The application shall be accompanied by a nominating letter from the applicant's supervising attorney indicating that the applicant has demonstrated proficiency in the areas of law permitted under this program and is capable of working independently.
 8. The AOC shall develop and administer the examinations required for certification under this program and shall issue the certification to applicants who meet the foregoing requirements.
 9. Recipients of DVLDP's services shall not be charged any fees for those services.
 10. DVLDP certification is restricted and such certified individual is only authorized to provide assistance and legal information, but not legal advice, to clients of the participating domestic violence shelter or service provider by which they are employed in the following areas of law:
 - a. Preparing, completing, or assisting clients with completion of court forms and other court or administrative agency documents for filing with any court or administrative agency related to Order of Protection cases and related Family Law, Landlord/Tenant Law, Creditor/Debtor Law, or Public Benefits matters;

- b. Assisting in service of process;
 - c. Assisting in the preparation of evidence for hearings and mediations in the case types noted above;
 - d. Assisting clients during court and administrative hearings; and
 - e. Responding to requests for information from the presiding judicial officer or administrative hearing officer during a hearing.
11. A DVLDP certification expires upon the occurrence of any of the following:
- a. Termination of the pilot program;
 - b. Leaving employment with a participating domestic violence shelter or service provider; or
 - c. On June 30th of odd-numbered years. A certification expiring on June 30th of an odd-numbered year may be renewed as prescribed in ACJA § 7-208.
12. Until further order of the Court, during the duration of the DVLDP Pilot Program, an applicant for DVLDP certification or renewal shall not pay a certification or renewal application fee.
13. Hours worked in preparing legal documents and related services in this pilot program may be applied toward the law-related work experience requirement in ACJA § 7-208(E)(3)(b)(6).

IT IS FURTHER ORDERED that the Administrative Director of the AOC is authorized to establish forms, and additional policies and procedures, including evaluation forms and procedures, required to implement this program.

IT IS FURTHER ORDERED that the Chief Executive Officer, Arizona Bar Foundation, is hereby appointed DVLDP Pilot Program Director.

IT IS FURTHER ORDERED that the DVLDP Pilot Program Director shall provide quarterly reports to the AOC and an annual report to the Judicial Council, on or before February 15th of each year.

Dated this 29th day of January, 2020.

ROBERT BRUTINEL
Chief Justice

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject: 13-3903: Notice to appear and complaint
March 13, 2020	<input type="checkbox"/> Formal Action/Request	
	<input checked="" type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Kristin Flores

DISCUSSION: On ARS §13-3903: Notice to appear and complaint and ARS § 13-4405: Information provided to victim by law enforcement agencies as they apply to victims and the courts.

RECOMMENDED MOTION: Information only.

13-3903. Notice to appear and complaint

A. In any case in which a person is arrested for a misdemeanor offense or a petty offense, the arresting officer may release the arrested person from custody in lieu of taking the person to a law enforcement facility by use of the procedure prescribed in this section.

B. At any time after taking a person arrested for a misdemeanor offense or a petty offense to a law enforcement facility, the arresting officer, instead of taking the person to a magistrate, may release the person from further custody by use of the procedure prescribed in this section.

C. If a person is arrested for a misdemeanor offense or a petty offense and the offense is listed in section 41-1750, subsection C, the person shall not be released pursuant to this section until the person provides either a fingerprint or a two fingerprint biometric-based identifier to the arresting agency. The arresting agency shall provide to the arrested person a mandatory fingerprint compliance form that includes instructions on reporting to the arresting agency for ten-print fingerprinting, including available times and locations for reporting for ten-print fingerprinting.

D. In any case in which a person is arrested for a misdemeanor offense or a petty offense, the arresting officer may prepare in quadruplicate a written notice to appear and complaint, containing the name and address of the person, the offense charged, and the time and place where and when the person shall appear in court, provided:

1. The time specified in the notice to appear is at least five days after arrest.
2. The place specified in the notice shall be the court specified in section 13-3898.
3. The arrested person, in order to secure release as provided in this section, shall give his written promise so to appear in court by signing at least one copy of the written notice and complaint prepared by the arresting officer. The officer shall deliver a copy of the notice and complaint to the person promising to appear. Thereupon, the officer shall forthwith release the person arrested from custody.
4. The officer, as soon as practical, shall deliver the original notice and complaint to the magistrate specified therein. Thereupon, the magistrate shall promptly file the notice and complaint and enter it into the docket of the court.

E. The Arizona traffic ticket and complaint may be utilized not only for the purposes provided by Arizona supreme court rule, but to satisfy the requirements of this section.

F. If a person gives his written promise to appear in court on a designated date pursuant to this section, and thereafter fails to appear, personally or by counsel, on or before that date, the court clerk or other court staff shall file a complaint, in writing, under oath, charging the defendant with a violation of section 13-2506, subsection A, paragraph 2 and issue a warrant for the defendant's arrest.

G. If the person has not previously been arraigned, on the person's appearance in court for arraignment on the charge of violating section 13-2506, subsection A, paragraph 2, the court shall also arraign the person on the charge stated in the notice to appear and complaint for which the person had previously promised to appear.

H. This section does not affect a peace officer's authority to conduct an otherwise lawful search incident to his arrest even though the arrested person is released before being taken to the police station or before a magistrate pursuant to this section.

insert the name and symbol of the law-enforcement agency, city or town or court under whose authority arrest is made.)

Arizona Traffic Ticket and Complaint

Complaint No.	SSN	Military	<input type="checkbox"/> Accident <input type="checkbox"/> Fatality <input type="checkbox"/> Commercial <input type="checkbox"/> Serious Physical Injury <input type="checkbox"/> Haz. Material			Agency Use or Report Number					
Driver's License Number	State	Class	Endorsements					Agency Use			
Interpreter Required? <input type="checkbox"/> Spanish <input type="checkbox"/> Other Language _____		M	H	N	P	T	X	D			
DEFENDANT		First	Middle			Last					
Residential / Commercial Address		City	State	ZIP	Telephone: (Cell Phone) <input type="checkbox"/>						
Mailing Address <input type="checkbox"/> SAME AS ABOVE		Email Address:									
Sex	Weight	Height	Eyes	Hair	Origin	Date of Birth	Restrictions				
VEHICLE		Color	Year	Make	Model	Style	License Plate	State	Expiration		
Registered Owner		Address				Vehicle Identification Number					
The undersigned certifies that:											
ON	Mont h	Day	Year	Time	AM PM	SPEED	Approx	Posted	R&P	Speed Measurement Device	Direction of Travel
AT	Location						Insert Name of Town or County		State of Arizona	Beat	
The defendant committed the following:											
A	Section	ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code		
	Docket Number		Disp. Codes	Date of Disposition	Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense				
B	Section	ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code		
	Docket Number		Disp. Codes	Date of Disposition	Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense				
C	Section	ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code		
	Docket Number		Disp. Codes	Date of Disposition	Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense				
D	Section	ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code		
	Docket Number		Disp. Codes	Date of Disposition	Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense				
E	Section	ARS CC	Violation				Domestic Violence <input type="checkbox"/>		<input type="checkbox"/> Criminal <input type="checkbox"/> Criminal Traffic <input type="checkbox"/> Municipal Code		
	Docket Number		Disp. Codes	Date of Disposition	Sanction		<input type="checkbox"/> Civil Traffic <input type="checkbox"/> Petty Offense				
You must appear at ▶		(Insert here the place of appearance; title and name of Court, Judge, or Juvenile Referee or officer, street address, city or town, Arizona, and court or room number, if applicable; and time of appearance, hour, day, month, and year.)						Court Number:			
At or before the date and time indicated ▶		Month	Day	Year	Time	AM PM					
CRIMINAL <input type="checkbox"/> Without admitting guilt, I promise to appear as directed hereon. CIVIL <input type="checkbox"/> Without admitting responsibility, I acknowledge receipt of this complaint						VICTIM? <input type="checkbox"/> VICTIM NOTIFIED? <input type="checkbox"/> TEN-PRINT FINGERPRINT <input type="checkbox"/> Yes <input type="checkbox"/> No					
X _____						I certify that upon reasonable grounds I believe the defendant committed the above violations and I have served a copy of this complaint upon the defendant.					
						Officer _____		Number _____			
Agency Use _____											

13-4405. Information provided to victim by law enforcement agencies

A. As soon after the detection of a criminal offense as the victim may be contacted without interfering with an investigation or arrest, the law enforcement agency that has responsibility for investigating the criminal offense shall provide electronic forms, pamphlets, information cards or other materials to the victim:

1. That allows the victim to request or waive applicable rights to which the victim is entitled, on request, under this article.
2. That provides the victim a method to designate a lawful representative if the victim chooses pursuant to section 13-4403, subsection A or section 13-4404.
3. That provides notice to the victim of all of the following information:
 - (a) The victim's right under the victims' bill of rights, article II, section 2.1, Constitution of Arizona, to be treated with fairness, respect and dignity and to be free of intimidation, harassment or abuse throughout the criminal or juvenile justice process.
 - (b) The availability, if any, of crisis intervention services and emergency and medical services and, where applicable, that medical expenses arising out of the need to secure evidence may be reimbursed pursuant to section 13-1414.
 - (c) In cases of domestic violence, the procedures and resources available for the protection of the victim pursuant to section 13-3601.
 - (d) The names and telephone numbers of public and private victim assistance programs, including the county victim compensation program and programs that provide counseling, treatment and other support services.
 - (e) The police report number, if available, other identifying case information and the following statement:

If within thirty days you are not notified of an arrest in your case, you may call (the law enforcement agency's telephone number) for the status of the case.

- (f) Whether the suspect is an adult or juvenile, a statement that the victim will be notified by the law enforcement agency at the earliest opportunity after the arrest of a suspect.
- (g) If the suspect is an adult and has been arrested, the victim's right, on request, to be informed of the suspect's release, of the next regularly scheduled time, place and date for initial appearances in the jurisdiction and of the victim's right to be heard at the initial appearance and that, to exercise these rights, the victim is advised to contact the custodial agency regarding the suspect's release and to contact the court regarding any changes to the initial appearance schedule.
- (h) If the victim chooses to exercise the right to be heard through a written statement, how that statement may be submitted to the court.
- (i) That the victim or the immediate family member of the victim, if the victim is killed or incapacitated, has the right to receive one copy of the police report, including any supplements to the report, from the investigating law enforcement agency at no charge pursuant to section 39-127.

B. If at the time of contact with a law enforcement agency the victim is physically or emotionally unable to request or waive applicable rights, the law enforcement agency shall designate this in the format that is authorized by subsection A of this section and the entities that may be subsequently affected shall presume that the victim invoked the victim's right to request applicable rights to which the victim is entitled, on request, unless the victim later waives those rights.

C. The law enforcement agency shall submit a copy of the victim's request or waiver of preconviction rights form to the custodial agency and a copy to the prosecutor if a suspect is arrested, at the time the suspect is taken into custody. If there is no arrest, the form copies shall be submitted to the prosecutor at the time the case is otherwise presented to the prosecutor for review. The prosecutor shall submit a copy of the victim's request or waiver of preconviction rights form to the departments or sections of the prosecutor's office, if applicable, that are mandated by this article to provide victims' rights services on request.

D. If the suspected offender is cited and released, the law enforcement agency responsible for investigating the offense shall inform the victim of the court date and how to obtain additional information about the subsequent criminal proceedings.

E. Law enforcement agencies within a county may establish different procedures designed to efficiently and effectively provide notice of the victim's rights pursuant to this section and notice to affected entities of the victim request or waiver information. If different procedures are established, the procedures shall:

1. Be reported to the entities within a county affected by the procedures and reported to the attorney general.
2. Be designed so that custodial agencies and prosecutors within a county receive notice of the victim's request or waiver of the victim's preconviction rights at the same time that an adult suspect is arrested.
3. Be designed so that prosecutors within a county receive notice of the victim's request or waiver of the victim's preconviction rights, if there is no arrest, at the same time that the case is otherwise presented to the prosecutor for review.
4. Provide that the notice to affected entities of a victim's request or waiver of the victim's preconviction rights includes information that affords the affected entity the ability to contact the victim.
5. Be supported by use of electronic forms, brochures or other written materials that are developed by the law enforcement agencies within a county and reviewed by the attorney general pursuant to section 13-4417, subsection B.

F. If a suspect has not been arrested at the time of contact with the victim pursuant to subsection A of this section, the law enforcement agency that is responsible for investigating the offense shall notify the victim of the arrest of a suspect at the earliest opportunity after the arrest and of the time, place and date for the initial appearance.

Commission on Victims in the Courts

Date Action Required:	Type of Action Required:	Subject: AVCV's Rule Petition
March 13, 2020	<input checked="" type="checkbox"/> Formal Action/Request	
	<input type="checkbox"/> Information Only	
	<input type="checkbox"/> Other	

PRESENTER(S): Colleen Clase

DISCUSSION: AVCV's Rule Change Petition seeking to integrate Rule 39 throughout the rules of procedure.

RECOMMENDED MOTION: Motion for a vote in support of AVCV's Rule Change Petition.

Commission on Victims in the Courts

Friday, June 12, 2020; 10:00 a.m.

Virtual Meeting Access: (346) 248-7799

Meeting ID: 972 0206 5876

Password: 078137

[Commission on Victims in the Courts Home Page](#)

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome and Opening Remarks	Judge Ron Reinstein, Chair
10:05	Approval of Minutes—March 13, 2020 <input type="checkbox"/> Formal Action/Request	All
10:10	Legislative Update	Elise Kulik
10:20	STRIVE – Sustainable Technology Resources & Interventions for Victim Empowerment	Mark Perkovich Asst. Director NAU-Family Violence Institute
10:40	Restitution Court Bench Book-General Jurisdiction	Judge Maria Elena Cruz
10:50	Victim’s Rights Assessment; Waiver Concerns	Kristin Flores
11:00	Rule 39 Petition <input type="checkbox"/> Formal Action/Request	Colleen Clase
11:15	Roundtable Discussion: COVID-19 and Impacts on Victims in Courts	All
11:55	Good of the Order/Call to the Public	Judge Reinstein
12:00 p.m.	Adjournment	

Next Meeting

Friday, October 16, 2020; 10 a.m.

Conference Room 345 A/B

Arizona State Courts Building

2021 Meeting Dates

TBD

*All times are approximate and subject to change. The committee 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 *Jennifer Albright*, COVIC staff, at (602) 452-3453 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. Requests should be made as early as possible to allow time to arrange the accommodation.

Commission on Victims in the Courts

Friday, March 13, 2020

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

Conference Room 345 A/B

1501 West Washington Street

Phoenix, Arizona 85007

Present: Judge Ron Reinstein (chair), Michael Breeze, Colleen Clase, Judge Maria Elena Cruz, Kirstin Flores, Leslie James, Jane Nicoletti-Jones, Christina Spurlock, Judge Richard Weiss

Telephonic: Kimberly Chichester, Jon Eliason, Vanessa Helms, Judge Kellie Johnson, Captain John Leavitt, Dan Levey, Chief Rod McKone, Elizabeth Ortiz, William Owsley, Jennifer Runge, Judge Patricia Starr

Absent: Timothy Agan, Sydney Davis, Sergeant James Markey (ret.), Karen Rasile, Judge Antonio Riojas

Presenters/Guests: Elise Kulik, Chris Groninger, Kay Radwanski, Judge Winthrop

Staff: Theresa Barrett, Sabrina Nash, Susan Pickard, Administrative Office of the Courts (AOC)

I. REGULAR BUSINESS

- A. **Welcome and Opening Remarks** - With a quorum present, the March 13, 2020, meeting of the Commission on Victims in the Courts (COVIC) was called to order at 10:05 a.m. by Judge Ronald Reinstein, Chair.
- B. **Approval of Minutes** - The draft minutes from the October 18, 2019 meeting of the COVIC were presented for approval.
Motion: To approve the October 18, 2019 minutes as amended. **Moved:** Mr. Michael Breeze. **Second:** Mr. Jon Eliason. **Vote:** Passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. **AZPOINT: Arizona Protective Order Initiation and Notification Tool**

Kay Radwanski, AOC Senior Policy Analyst, provided the background and history of the AZPoint project which went into effect January 1, 2020, and highlighted that Protective Orders are to be serviced with 72 hours. Once the court grants the petition the courts transmit the Order of Protection to law enforcement for service. AOC registers protective orders with the National Crime Information Center and is the central repository for protective orders. The AOC partnered with ACJC to implement the goals of the legislature to automate and increase the number of Orders of Protection and Injunctions Against Harassment that are served and reported to NCIC. ACJC obtained grant funds to assist AOC ITD with the technological aspect of creating a web portal. Ms. Radwanski discussed the three portals of AZPOINT.

- **Petition Portal** – is a guided interview to help the petitioner complete the document, which is stored in the portal for up to 90 days to give the petitioner time to edit the document and create a safety plan. The site is accessible on multiple devices, generates a petition confirmation number and has a floating safety button that allows the petitioner to quickly close the document if needed without losing information already entered. The petitioner files at the court of their choice unless a family court case is pending in which case the must filed with that court. The court downloads the forms from the portal.
- **Clerk Portal** – allows court staff to accept and print Petition documents completed via AZPOINT using the petition confirmation number supplied by the petitioner.
- **Service Portal** – permits law enforcement to search for the protective order by a court’s Case Number, print the servicing packet order and the service of process information form if the protective order was completed via AZPoint. Law enforcement will be able to search and enter a declaration of services after the order has been served and can transfer the service assignment from one agency to another.

Ms. Radwanski noted that the AZPOINT portal will be translated into Spanish soon.

B. Legislative Update

Elise Kulik, AOC Legislative Analyst, stated that the legislature was halfway through this session. In response to COVID-19 the legislature is closing its galleries and limiting public access. Some legislators are self-quarantining which may impact upcoming votes on legislation. She reported the legislature hoped to complete the budget before the COVID-19 emergency escalates. She presented the following update on bills in process:

- **HB2411 Convictions; penalties; surcharge distribution** - is a technical bill attempting to errors in distribution to the fund.
- **HB2414 Appropriations; alternative prosecution; diversion programs** - is an appropriations bill to expand diversion program.
- **HB2538 Health care workers; assault; prevention** - now includes heath care workers to the list of protected individuals and has passed out of the House.
- **HB2581 Dangerous; incompetent person; evaluation; commitment** - closes the loophole for those who cannot be restored to competency.
- **HB2649 Prisoners; mental health transition program** – creates a mental health transition pilot program to provide eligible inmates with transition services in the community.
- **HB2808 Functionally literate inmates; release eligibility** – modifies release conditions and credits for inmates.
- **SB1172 Sex offender registration; requirements; vehicles** – decreases the time to register to within three days of adjudication.
- **SB1278 Victims’ privacy; criminal case information** – clarifies 2014 statute that gives the victim the right not to testify regarding any identifying or locating

information in a court proceeding unless the victim consents or it is court ordered.

C. Domestic Violence Legal Document Preparers (DVLDP) Pilot Program

Chris Groninger presented on the Domestic Violence Legal Document Preparers (DVLDP) Pilot Program. The pilot's goal is to provide more access to free legal help to that that could not afford it and provide a means to assist Legal Aid with its high-volume needs. Ms. Groninger discussed the Administrative Order and the structure of the program. Participants will be lay legal advocates that have experience and training working in family law, housing, and debt collection issues. Currently lay legal advocates do similar work, but do not have the capacity to help scribe the documents and give information at the level they can as a DVLDP. Participants will take a substantive law test on the limited scope of the work they are allowed by AO to engage in and will then work under the supervision of a legal aid attorney for those serviced by legal aid agencies before becoming certified to work without attorney supervision.

Ms. Groninger answered questions from members about the details of the program from qualifications to limits on the services that can be offered.

D. Restitution Topics Yuma Restitution Court.

Judge Cruz provided an update on her returning to the bench in Yuma County to hold restitution court. This was the second restitution date of the year. The court is keeping statistics to compare with the prior restitution court in Yuma and to inform the newly formed workgroup from COVIC. The workgroup will work on a bench book for Superior Court Restitution Court. In closing, Judge Cruz discussed the potential for retired judges volunteering as pro tems for other restitution courts around the state.

Discussion on cite and release statute and victim's rights.

Kirstin Flores reported on a concern that was recently raised in her office. The office created a victim's rights waiver form that is provided to law enforcement to allow a victim to opt in for their pre-conviction rights. The form requires the officer provide notice of an initial appearance upon arrest or cite and release. The form states on a cite and release the suspect can appear in court before the initial appearance date. After research, ARS 13-3903(f) as well as the Arizona traffic complaint say the same thing. So the question arose as to who would then notify a victim that the suspect was at court and having an initial appearance.

Ms. Flores wanted to ask the group if anyone has or is aware of a practice where the court notifies victims and whether this should be addressed with legislation. Chair Reinstein noted that in doing restitution complaint reviews there are issues that arise when a defendant comes in on a misdemeanor and has an initial appearance and pleads and is sentenced all at once. He noted the *Klein* case that states victims' rights apply to misdemeanors. Captain Leavitt stated in his county there have been past efforts to have iPads, one where the suspect is being held before being cited and released and one that can be taken to the victim in field. But he is not sure such a practice was in place still.

The question was whether the statute should be amended to prevent the ability of suspect to go to court before set hearing date, so victim does not miss an opportunity to appear as allowed by victims' rights statutes. It was noted that the language allowing persons to appear before a set date is often used by persons passing through the state or are in the state short term, such as for vacation, so any change to statute needs to consider this. Others shared that they have similar issues with persons coming through and wanting to resolve, so the courts have to scramble to determine if they can reach a victim.

Suggested that there be increased education to the bench and that if a victim case the court has to ensure that there is notice to any victim.

E. Case Updates

Judge Reinstein passed on case updates to allow time to address other agenda items.

F. AVCV's Rule Change Petition seeking to integrate Rule 39 throughout the rules of procedure

Judge Reinstein indicated the Justices wanted the Commission to review and provide input, even if after the comment period ends (noting the petition was not in meeting materials so may need to address at June meeting). Colleen Clase did a brief summary of the petition to assist members in preparation for a vote at June meeting. The petition seeks to integrate victims' right into the rules versus having them only in Rule 39. This is the third year this petition has been filed. This year the petition states clearly that a victim is not a party and that Rule 39 would remain in place versus eliminating it once its provisions are integrated into other rules based on feedback to the petition in prior years.

Members briefly discussed positions and asked questions about the petition. Members also discussed other ways to ensure judges are more informed and experienced in applying and addressing appropriately victims' rights as provided in Rule 39.

III. Good of the Order: There was no other business or topic raised by the members.

Call to the Public: None present.

Adjournment: Meeting adjourned at 12:00 p.m.

Next Meeting:

Friday, June 12, 2020

10:00 a.m. to 3:00 p.m.

State Courts Building, Room 119

1501 West Washington Street

Phoenix, AZ 85007

INCREASING legal access to rural victims of crime

PROJECT PARTNERS

Santa Cruz County Attorney's
Office

Mariposa Community Health
Centers

Sierra Vista Family Advocacy
Center

Santa Cruz County Information
Technology Department

Arizona Criminal Justice Commission

CONTACT US:

CALL (520) 375-7695
EMAIL STRIVE@nau.edu
VISIT Striveproject.org

Are you...

A victim in need of assistance?

An agency that serves victims?

An attorney who wants to empower
victims and help them achieve justice?

Contact us today!

This project was made possible by a subgrant from the National Crime Victim Law Institute (NCVLI) pursuant to Grant No. 2017-VF-GX-K130, awarded to NCVLI by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinions, findings, conclusions or recommendations expressed are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice or NCVLI.

https://law.lclark.edu/centers/national_crime_victim_law_institute/projects/rural-victims-of-crime/

NAU is an Equal Opportunity/Affirmative Action
Institution/UM52265_0216

NAU
NORTHERN
ARIZONA
UNIVERSITY

Family Violence
Institute



Sustainable
Technology Resources
& Interventions for
Victim Empowerment





Overarching Goals for STRIVE

Increase access to legal forms and services through multiple secure tele-legal video conferencing sites.

Promote quick access to online information related to protective orders and resources such as the supervisory status of offenders via the STRIVE online portal and a victim resource app.

What is STRIVE?

Sustainable Technology Resources and Interventions for Victim Empowerment (STRIVE) provides computer based resources and mobile phone apps to assist victims of crime in accessing their legal rights.

STRIVE staff educates the community on these resources and works with service providers and first responders to help victims use technology to simplify their access to justice.

Legal Services

Assist victims in obtaining orders of protection/injunctions against harassment through the internet.

Provide online fillable forms that victims need to obtain basic legal rights.

Provide referrals for low bono legal services through the internet.

CONTACT US AT:

CALL (520) 375-7695
EMAIL STRIVE@nau.edu
VISIT Striveproject.org

Mobile App (COMING SOON)

Access to a mobile phone app that allows victims to access legal forms, store orders of protection, and resources.

1 ARIZONA VOICE FOR CRIME VICTIMS
2 Colleen Clase (State Bar # 029360)
3 111 E. Taylor Street
4 Phoenix, AZ. 85004
5 480-600-2661
6 cclase@voiceforvictims.org
7 colleen.avcv@gmail.com

8 **IN THE ARIZONA SUPREME COURT**

9 IN THE MATTER OF:
10 PETITION TO AMEND THE
11 ARIZONA RULES OF CRIMINAL
12 PROCEDURE

R-
13 PETITION TO AMEND THE
14 ARIZONA RULES OF CRIMINAL
15 PROCEDURE

16 Pursuant to Rule 28(a) of the Arizona Rules of the Supreme Court, Arizona
17 Voice for Crime Victims (AVCV) respectfully submits this petition to amend the
18 Arizona Rules of Criminal Procedure by fully integrating the rights guaranteed to
19 victims by our constitution, Ariz. Const. art. II, § 2.1, and its implementing
20 legislation, Ariz. Const. art. II, §§ 2.1(D) and A.R.S. §§ 13-4401-43, throughout
21 each applicable rule provision. AVCV’s proposed amendments are attached to this
22 petition.
23
24
25

1 Arizona Voice for Crime Victims (AVCV), founded in 1996, is a non-profit
2 organization located in Phoenix, Arizona that provides pro bono legal
3 representation and social services to victims of crime in state and federal criminal
4 proceedings. AVCV seeks to foster a fair and compassionate justice system in
5 which all crime victims are informed of their rights under the Arizona Victims'
6 Bill of Rights (VBR), fully understand their rights, and have a meaningful way to
7 participate and assert these constitutional guarantees throughout the criminal
8 justice process. To achieve these goals, AVCV empowers victims of crime
9 through legal advocacy and social services. Another key part of AVCV's mission
10 is to provide information and policy insights in an effort to ensure victims' rights
11 are upheld during the practical day-to-day application of victims' rights in
12 Arizona's courtrooms. When criminal court judges and the attorneys involved in
13 each criminal case fully understand when and how victims' rights apply in each
14 situation, victims can truly have the meaningful participation that the VBR
15 intended.

16
17
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19
20 Currently, Rule 39 of the Arizona Rules of Criminal Procedure generally
21 addresses victims' rights. After voters adopted the VBR in November 1990, Rule
22 39 had to be amended to conform to the mandates of the state constitution. Rule
23 39, as currently presented in the criminal rules, provides an overview of the rights
24 of crime victims. However, the context in which victims' rights will apply is
25

1 lacking. Unlike the rights of the accused or the rights of the state, which are
2 appropriately and carefully presented in the criminal rules, Rule 39 does not
3 provide proper guidance to trial courts and attorneys on when victims' rights apply
4 in relation to the remainder of the rules. A comprehensive approach to victims'
5 rights will require full integration into the criminal rules so that trial courts and
6 attorneys are properly instructed on what the VBR mandates in each situation.
7

8
9 AVCV has previously petitioned this Court to repeal Rule 39 after full
10 integration of victims' rights into the rules. After considering stakeholder concerns
11 over repealing Rule 39, this petition does not propose a repeal of Rule 39.
12 However, AVCV proposes one amendment to Rule 39(a) in the event a future
13 conflict arises between a rule and a provision of Rule 39. AVCV proposes adding
14 subsection (3)(C) that states: "If any provision of Rule 39 conflicts with a rule
15 provision where a victim's right is addressed, the individual rule provision where
16 the victim's rights has been integrated shall prevail."
17

18
19 Proposition 104 aimed to change the criminal justice culture for victims in
20 Arizona by providing constitutional rights that would take victims from the
21 sidelines of the criminal justice system to becoming active participants. Steven J.
22 Twist & Keelah E.G. Williams, *Twenty-Five Years of Victims' Rights in Arizona*,
23 47 Ariz. St. L.J. 421 (2015). Notably, Proposition 104 received overwhelming
24 support of Arizona's voters and the Arizona Victims' Bill of Rights (VBR) became
25

1 effective on November 27, 1990. Gessner H. Harrison, *The Good, the Bad, and*
2 *the Ugly: Arizona's Courts and the Crime Victims' Bill of Rights*, 34 Ariz. St. L.J.
3 531, 532 (2002). The VBR preserved and protected specific rights to justice and
4 due process, including rights:
5

6
7 1. To be treated with fairness, respect, and dignity, and to be free from
8 intimidation, harassment, or abuse, throughout the criminal justice
9 process.

10 2. To be informed, upon request, when the accused or convicted
11 person is released from custody or has escaped.

12 3. To be present at and, upon request, to be informed of all criminal
13 proceedings where the defendant has the right to be present.

14 4. To be heard at any proceeding involving a post-arrest release
15 decision, a negotiated plea, and sentencing.

16 5. To refuse an interview, deposition, or other discovery request by
17 the defendant, the defendant's attorney, or other person acting on
18 behalf of the defendant.

19 6. To confer with the prosecution, after the crime against the victim
20 has been charged, before trial or before any disposition of the case and
21 to be informed of the disposition.

22 7. To read pre-sentence reports relating to the crime against the victim
23 when they are available to the defendant.

24 8. To receive prompt restitution from the person or persons convicted
25 of the criminal conduct that caused the victim's loss or injury.

9. To be heard at any proceeding when any post-conviction release
from confinement is being considered.

10. To a speedy trial or disposition and prompt and final conclusion of
the case after the conviction and sentence.

1 11. To have all rules governing criminal procedure and the
2 admissibility of evidence in all criminal proceedings protect victims'
3 rights and to have these rules be subject to amendment or repeal by
4 the legislature to ensure the protection of these rights.

5 12. To be informed of victims' constitutional rights.

6 Ariz. Const. art. II, §§ 2.1(A)(1)-(12)

7 Integrating victims' rights into each applicable rule would be consistent with
8 the right established in paragraph 11 of the VBR, namely that "*all rules governing*
9 *criminal procedure and the admissibility of evidence in all criminal proceedings*
10 *protect victims' rights.*" (emphasis added.) Ariz. Const. art. II., § 2.1(A)(11). Full
11 integration is further justified by the constitutional right to be treated with fairness,
12 respect, and dignity and to be free from intimidation, harassment, or abuse
13 throughout the criminal justice process. Ariz. Const. art. II, § 2.1(A)(1). This
14 Court has acknowledged that the VBR broadly recognizes these rights to fairness,
15 respect, and dignity. *J.D.;M.M. v. Hegyi*, 236 Ariz. 39, 42 (Ariz. 2014). The
16 purpose of the VBR and its implementing legislation is to provide crime victims
17 with the "basic rights of respect, protection, participation and healing of their
18 ordeals." *Champlain v. Sargeant*, 192 Ariz. 371, 375 (Ariz. 1998) (citing 1991
19 Ariz. Sess. Laws ch. 229, § 2). The constitutional mandate requiring that victims
20 be treated with "fairness" throughout the criminal justice process can be best
21 achieved by fully integrating victims' rights into the Arizona Rules of Criminal
22 Procedure, which, in turn, will "integrate victims into the day to day workings of
23
24
25

1 the process.” Paul Cassell, *Treating Crime Victims Fairly: Integrating Victims into*
2 *the Federal Rules of Criminal Procedure*, 2007 Utah L. Rev. 861, 863 (2007).

3
4 It is important to point out that in seeking integration, AVCV is not asserting
5 that victims are parties to a criminal case nor is AVCV seeking to elevate victims
6 to party status. Arizona case authority is clear that victims of crime are not parties
7 to a criminal prosecution. *State v. Lamberton*, 183 Ariz. 47 (1995) (victim is not
8 an aggrieved party with standing to file her own petition for review in a Rule 32
9 proceeding); *Lindsay R. v. Cohen*, 236 Ariz. 565 (App. 2015) (noting VBR did not
10 make victims parties). AVCV proposes an amendment to Rule 1.2(a) to clarify
11 that fully integrating victims’ rights throughout the rules of procedure will not
12 make victims parties to a criminal case. AVCV proposes adding subsection (3) to
13 read: “*Victims Are Not Parties*. These rules are not to be construed to make victims
14 parties to a criminal case.” Although victims are not parties, they are important
15 participants with enforceable rights throughout the entirety of Arizona’s criminal
16 justice process. AVCV merely seeks to ensure that trial courts and attorneys are
17 aware of each applicable situation where a victim may assert a right guaranteed
18 under the VBR or the VRJA.
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22

23 Our legislature recognizes that victims have a right to meaningful
24 participation during a criminal prosecution. This right has been upheld by our
25 Court of Appeals. A “victim has standing to seek an order, to bring a special

1 action or to file a notice of appearance in an appellate proceeding, seeking to
2 enforce any right to challenge an order denying any right...” A.R.S. § 13-
3 4437(A); *State ex rel. Montgomery v. Padilla*, 238 Ariz. 560, 566 (App. 2015) (A
4 request for an order in a criminal case must be timely, in writing, served and filed
5 with the court. For victims, the subject matter of such a request is limited and must
6 be directed to enforcing any right or to challenging an order denying any right
7 guaranteed to victims). Additionally, “[o]n the filing of a notice of appearance,
8 counsel for the victim shall be endorsed on all pleadings and, if present, be
9 included in all bench conferences and in chambers meetings and sessions with the
10 trial court that directly involve a victim's right...” A.R.S. § 13-4437(D). Because
11 victims have participatory rights, it is essential that Arizona’s trial courts and
12 attorneys are provided proper guidance through this Court’s rule-making authority
13 regarding when victims’ rights apply in relation to the remainder of the criminal
14 rules. Because this guidance is lacking in Rule 39, which states what rights
15 victims have but fails to provide the context in which they apply, some trial courts
16 have overlooked victims’ rights.

21 The following cases are not an exhaustive list¹ of instances where trial courts
22 have violated victims’ rights, but are presented for this Court’s consideration.

25 ¹ AVCV has additional case examples available upon request of this Court..

1 *State v. Simcox*, CR 2013-428563-001. In *State v. Simcox*, the trial court²
2 failed to recognize Rule 39(b)(1) (the right to be treated with fairness, respect and
3 dignity, and to be free from intimidation, harassment, or abuse throughout the
4 criminal justice process) and Rule 39(d)(4) (In asserting any of the rights
5 enumerated in this rule or provided by any other provision of law, a victim has a
6 right to be represented by personal counsel of the victim's choice). When victim's
7 counsel attempted to object to a pro per defendant directly questioning the victim
8 representative at a pretrial evidentiary hearing, the trial court advised that the
9 victim's counsel did not have standing to make argument to the trial court.
10 Instead, he advised, that the victim's counsel would have to make argument to the
11 assigned deputy county attorney (DCA) and that the DCA could decide whether
12 the victim's arguments were worthy of the court's consideration. Having each of
13 these rules integrated as indicated below would have assisted the trial court in
14 understanding victims' rights during the proceedings and the role of the victim's
15 counsel in asserting victims' rights.

16 AVCV proposes placing Rule 39(b)(1) in a prominent place, the very first
17 rule— Rule 1.2 because Rule 1.2 addresses the purpose and construction of the
18 rules. It is crucial that trial courts know that victims' rights are applicable

25 ² This victims' rights violation occurred at a July 23, 2015 hearing. AVCV has a copy of the transcript on file. Ariz. R. Sup. Ct. (a)(4)(B) sets a 20 page limit on the petition and supporting documentation, excluding the text of the proposed rules.

1 throughout the criminal justice process and that they must be construed to protect
2 the rights enumerated in the VBR including the right to be treated with fairness,
3 respect, and dignity, and to be free from intimidation, harassment, or abuse.
4 Placing this important right in Rule 1.2 not only makes sense, but it would
5 emphasize the importance this Court places on victims' rights to trial court judges
6 and practitioners throughout Arizona.
7

8
9 AVCV also proposes replacing Rule 39(d)(4) with a newly created rule,
10 Rule 1.10(b)(4). Placement in Section 1 of the rules where other preliminary
11 matters including motions, time for filing, service, distribution of minute entries,
12 etc. are covered is appropriate. While no one questions whether the government or
13 a criminal defendant can have an attorney, some still question whether a victim can
14 have an attorney. This is a matter that should be addressed for trial court judges
15 and practitioners at the beginning of the rules.
16

17
18 *State v. Temple*, CR 2015-150007-001. In *State v. Temple*, the trial court³
19 judge failed to recognize Rule 39(b)(1) and Rule 39(d)(4). The victim in *Temple*
20 was a DPS trooper who was called to testify at a pretrial evidentiary hearing. At
21 the hearing, defense counsel objected to the victim's counsel being in the well of
22 the courtroom. Despite the fact that the victim was testifying at this hearing, the
23 trial court asked victim's counsel to leave the well of the courtroom denying the
24

25 ³ This victims' rights violation occurred at an April 4, 2017 hearing. AVCV has requested the transcript.

1 victim his right to have his own counsel participate as needed while the victim
2 testified. In this case, having Rules 39(b)(1) and 39(d)(4) integrated as indicated in
3 the Simcox example would have assisted the trial court in understanding victims'
4 rights during the criminal proceedings and the role of counsel in representing a
5 victim who is called to testify during a pre-trial evidentiary hearing.
6

7 *State v. Main*, CR 2015503594. In *State v. Main*, the trial court⁴ failed to
8 acknowledge and consider Rule 39(b)(12) (the right to refuse an interview,
9 deposition, or other discovery request by the defendant, the defendant's attorney,
10 or other person acting on the defendant's behalf...). Defendant Main is facing the
11 death penalty for the murder of a 4 year old child who was in her care. The 4 year
12 old homicide victim's brothers are victims under A.R.S. § 13-4401(19).
13 Additionally, two of them are listed as victims of child abuse on the indictment.
14 Defense counsel, without citing any authority regarding discovery or any authority
15 that would warrant an exception to the rights of the child-victims in this case,
16 sought all medical, counseling, education, and WIC records that currently existed
17 and those that would come into existence at a future time. The trial court did ask
18 for the child-victims' *guardian ad litem* (GAL) in the dependency case to appear at
19 the next hearing. The GAL did appear as ordered, but posed no objection on behalf
20 of the child-victims to having their privileged and confidential records submitted
21
22
23
24

25 ⁴ This victims' rights violation occurred at an October 31, 2016 hearing. AVCV has the transcript on file.

1 for an in camera review despite the fact that defense counsel had not shown a
2 substantial need or sufficiently specific basis to warrant an exception to the child-
3 victims' constitutional rights.
4

5 AVCV proposes replacing Rule 39(b)(12) with newly numbered Rule 15.3
6 (g)(2). Rule 15 addresses discovery. Rule 15.3 currently address depositions.
7 This petition proposes integrating Rule 39(b)(12) by amending Rule 15.3 to
8 include when a victim has a constitutional right to refuse a request of a defendant,
9 whether a deposition or other discovery request. Had Rule 39(b)(12) already been
10 fully integrated into the rules as Rule 15(g)(2) rather than tucked away in Rule 39
11 without any guidance to the trial courts on when and how victims may refuse a
12 defendant's discovery request, the trial court may have known not to order an *in*
13 *camera* review of the child-victims' privileged and confidential records absent the
14 requisite showing to warrant an exception to their constitutional right to refuse a
15 discovery request.
16
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19 *State v. Gilchrist*, JC 2015-148974-001. In *State v. Gilchrist*, the justice
20 court⁵ failed to consider Rule 39(b)(1) and was indifferent to the crime victim's
21 constitutional right to receive prompt restitution from the person convicted of the
22 criminal conduct that caused the victim's injury under Ariz. Const. art. II, §
23 2.1(A)(8). The victim had been attacked by the defendant's dog, at the direction of
24

25 ⁵ This victims' rights violation occurred at a March 23, 2017 hearing. AVCV has a copy of the transcript on file.

1 the defendant, and left with severe injuries that required multiple reconstructive
2 surgeries. In a separate civil suit, a small settlement had been reached. Defense
3 counsel argued that restitution was precluded because of the civil settlement.
4 During a restitution hearing, the justice court questioned the victim's need for the
5 reconstructive surgeries and without regard for her right to be treated with fairness,
6 respect, and dignity, and to be free from intimidation, harassment, and abuse made
7 an inappropriate and harassing comment about the victim, who was present at the
8 hearing, on the record. The justice court stated: "...how do I know if the doctor
9 hasn't said, you know, we've taken care of the bite, but, you know, you're a pretty
10 lady, and this will get you even kind of a Hollywood smile here."

11
12
13
14 This case presents an extreme example of indifference towards victims'
15 rights, specifically the right to be treated with fairness, respect, and dignity, and to
16 be free from intimidation, harassment, or abuse throughout the criminal justice
17 process. As discussed above in the Simcox example, integrating Rule 39(b)(1) by
18 placing it in a prominent place, Rule 1.2 makes sense and is necessary, especially
19 when needed to prevent a judge from being disrespectful to a victim.
20

21 *State v. Bruce*, CR 2017-121025-001. In *State v. Bruce*, the trial court⁶
22 failed to acknowledge and consider Rule 39(b)(7)(B) (upon request, the right to
23 notice of and to be heard at any criminal proceeding involving the accused's post-

24
25
⁶ This victims' rights violation occurred on October 12, 2017. AVCV has a copy of the FTR and is requesting a
copy of the transcript.

1 arrest release or release conditions). The victims attended and wished to be heard
2 at a hearing where the defendant's motion to modify release conditions was being
3 considered so that they could oppose the defendant's request. In this case, the trial
4 court conditioned the right of the victims to be heard on whether they had personal
5 knowledge of the defendant. Rule 39(b)(7)(B), as well as our statutory and
6 constitutional provisions related to a victim's right to be heard regarding a post-
7 arrest release decision, are not conditioned on whether they have personal
8 knowledge of the defendant.
9
10

11 The trial court started by saying:

12
13 Let me make clear what I think is the focus of this
14 hearing. The issue in this hearing is not what the
15 defendant did or did not do. The issue is not the
16 seriousness of the offense, and by that I don't, in any
17 way, trivialize the charge. And, the issue is not what
18 effect his conduct may have had on others. The very
19 narrow issue for this hearing is whether or not the
20 defendant will appear for all proceedings that are
21 scheduled to take place in the future in this court. So,
22 therefore, what I would like to hear and *only* what I want
23 to hear is what conditions are necessary to make sure the
24 defendant appears and what facts support that. Or,
25 alternatively, what makes the defendant a flight risk and
what facts support that.

22 FTR, October 12, 2017, 5:36-6:33 (emphasis added).

23 When the assigned prosecutor brought up the fact that the victims are
24 opposed to modification, the trial court responded:
25

1 Right, I don't mean them any disrespect...but...I can't
2 say it any differently from I did at the outset. The issue
3 here is whether the defendant is going to show up for
4 future court proceedings...and the law is...the least
5 invasive, the least demanding conditions are the only
6 conditions that can be imposed.

7 FTR, October 12, 2017, 13:13-14:00.

8 The prosecutor again brought up the victims towards the end of the hearing.

9 FTR, October 12, 2017, 15:56.

10 The Court again responded:

11 Again, I mean them no disrespect. But, unless they have
12 *personal knowledge* of facts that bear on the likelihood
13 of the defendant appearing for court proceedings, for
14 purposes of this hearing, ...the only thing relevant that I
15 need to hear, and, I suspect they are like most victims,
16 *they don't have that personal knowledge*. So...I've
17 identified the facts that bear on the decision.

18 FTR, October 12, 2017, 16:06-16:45 (emphasis added).

19 AVCV proposes integrating Rule 39(b)(7)(B) into Rule 7.4(c)(2). Rule
20 7.4(c)(2) currently states that a motion to reexamine the conditions of release must
21 comply with victims' rights requirements provided in Rule 39. AVCV proposes
22 amending the language to remove the reference to Rule 39 and instead inform the
23 trial court that: "[a] victim has the right to notice of and the right to be heard at
24 any hearing regarding any motion to modify release conditions." In this instance,
25 integration of Rule 39(b)(7)(B) may have assisted the trial court in knowing that

1 the victims did indeed have a constitutional right to be heard that was not
2 conditioned on having personal knowledge of the defendant.

3
4 *State v. Moreno*, CR 2014-101861-001. In *State v. Moreno*, the trial court⁷
5 failed to acknowledge and consider Rule 39(b)(4) (the right to be present at all
6 criminal proceedings) and Rule 39(b)(7)(E) (the right to be heard at sentencing)
7 when he would only allow child-victims to attend and make a victim impact
8 statement only if their counselor or therapist would provide a note that attending
9 sentencing would not traumatize them further. Here, the trial court conditioned the
10 victims' rights to be present and heard at sentencing on receiving confirmation that
11 the victims would not be further traumatized. Rule 39(b)(4) and Rule 39(b)(7)(E),
12 as well as our statutory and constitutional provisions related to a victim's right to
13 be present and heard at sentencing, are not conditioned on trial courts receiving
14 approval from counselors.
15
16

17
18 AVCV proposes amending Rule 26.10(b)(1) to make clear to trial courts that
19 victims must also have an opportunity to address the court at sentencing.
20 Additionally, AVCV proposes newly numbered rule 1.10(a)(4) that will place
21 exercising the right to be heard in a more prominent place. In this instance, having
22 Rule 1.10(a)(4) in a more prominent place and amending Rule 26.10(b)(1) to
23
24

25 ⁷ This victims' rights violation occurred at a November 7, 2017 hearing. AVCV has a copy of the transcript on file.

1 include victims may have made the trial court aware that conditions, regardless of
2 the intent, cannot be placed on victims' rights.

3
4 Integration of Rule 39 into each individual rule of procedure will provide
5 comprehensive guidance to criminal justice professionals using the constitutional
6 and statutory mandates that already exist to specifically lay out when victims'
7 rights are implicated and must be considered throughout the criminal justice
8 process. Maintaining Rule 39 as the only guide to victims' rights in Arizona's
9 Rules of Criminal Procedure welcomes misunderstanding of their applicability by
10 trial courts and attorneys as it only provides a general overview of victims' rights.
11 Full integration of the VBR into the applicable rules would not create new victims'
12 rights or violate the rights of the accused. Rather, it would give effect to the VBR
13 by allowing victims meaningful participation in the day-to-day workings of the
14 process. Ensuring each applicable rule fully complies with the constitutional and
15 statutory provisions will safeguard the rights of crime victims, especially for the
16 majority who do not have the benefit of their own counsel.
17
18
19

20 Arizona has traditionally been on the forefront of victims' rights. It was one
21 of the first states in the country to provide victims of crime with constitutional
22 rights. Harrison, 34 Ariz. St. L.J. at 532 (2002). Since then, this Court has been
23 tasked with balancing the rights of victims with those of the accused and has
24 addressed issues of first impression that have both protected and upheld victims'
25

Appendix

Proposed Amendments to Arizona Rules of Criminal Procedure

Submitted January 10, 2020

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Rule 1.2. Purpose and Construction

These rules are intended to provide for the just and speedy determination of every criminal proceeding. Courts, parties, and crime victims should construe these rules to secure simplicity in procedure, fairness in administration, the elimination of unnecessary delay and expense, and to protect the fundamental rights of the ~~individual~~ accused and the victim while preserving the public welfare. These rules must be construed to protect the constitutional rights of victims enumerated in Article II, Section 2.1(A) of the Arizona Constitution, including the rights to justice and due process and to be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse throughout the criminal justice process.

(a) Limitations on Victims' Rights.

(1) Cessation of Victim Status. A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.

(2) Legal Entities. The victims' rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

(3) Victims Are Not Parties. These rules are not to be construed to make victims parties to a criminal case.

Rule 1.3. Computation of Time

(a) General Time Computation. When computing any time period more than 24 hours prescribed by these rules, by court order, or by an applicable statute, the following rules apply:

(1) *Day of the Event.* Exclude the day of the act or event from which the designated time period begins to run.

(2) *Last Day.* Include the last day of the period, unless it is a Saturday, Sunday or legal holiday, in which case the period ends on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Time Period Less Than 7 Days.* If the time period is less than 7 days, exclude intermediate Saturdays, Sundays and legal holidays from the computation.

(4) *Next Day.* The "next day" is determined by counting forward when the period is measured after an event, and backward when measured before an event.

(5) *Additional Time After Service.* If a party or crime victim may or must act within a specified time after service and service is made under a method authorized by Rule 1.7(c)(2)(C), (D), or (E), 5 calendar days are added after the specified time period would otherwise expire under (a)(1)-(4), except as provided in Rule 31.3(d). This provision does not apply to the clerk's distribution of notices, minute entries, or other court-generated documents.

(b) If an Arraignment Is Not Held. If an arraignment is not held under Rule 14.5, the date of arraignment for the purpose of computing time is the date the defendant receives notice of the next court date under Rule 5.8.

(c) Entry. A court order is entered when the clerk files it.

Rule 1.4. Definitions

(a) The Defendant. “The defendant” is a person named as such in a complaint, indictment, or information. “The defendant” as used in these rules includes an arrested person who at the time of arrest is not named in a charging document. “The defendant” in the context of certain rules includes the attorney who represents the defendant.

(b) Criminal Proceeding. A “criminal proceeding” is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.

(c) Identifying and Locating Information. As used in this rule, “identifying and locating information” includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.

(d) ~~(b)~~ Limited Jurisdiction Court. A “limited jurisdiction court” is a justice court under A.R.S. §§ 22-101 et seq., or a municipal court under A.R.S. §§ 22-401 et seq.

(e) ~~(c)~~ Magistrate. “Magistrate” means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the Chief Justice and justices of the Supreme Court, judges of the superior court, judges of the court of appeals, justices of the peace, and judges of a municipal court.

(f) ~~(d)~~ Parties. “Parties” means the State of Arizona and the defendants in a case. Use of the word “party” in these rules means either, or any, party.

(g) ~~(e)~~ Person. “Person” includes an entity.

(h) ~~(f)~~ Presiding Judge.

(1) *For the Superior Court.* The superior court presiding judge is the county's presiding judge. In a county that has only one superior court judge, that judge is the presiding judge. In other counties, the Chief Justice of the Supreme Court designates the presiding judge, who may appoint other judges to carry out one or more of the presiding judge's duties.

(2) *For a Limited Jurisdiction Court.* If a court consists only of one judge, that judge is the presiding judge. In courts having more than one judge, the presiding judge is designated by the appropriate authority.

(i) ~~(g)~~ The State. “The State” means the State of Arizona, or any other Arizona state or local governmental entity that files a criminal charge in an Arizona court. “The State” in the context of certain rules includes the prosecutor representing the State.

(j) ~~(h)~~ Victim. “Victim” means a person or persons as defined in A.R.S. § 13-4401.

(1) *Cessation of Victim Status.* A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.

(2) *Legal Entities.* The victims’ rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

Rule 1.5. Interactive Audiovisual Systems

(a) Generally. If the appearance of a defendant or counsel is required in any court, the appearance may be made by using an interactive audiovisual system that complies with the provisions of this rule. Any interactive audiovisual system must meet or exceed minimum operational guidelines adopted by the Administrative Office of the Courts.

(b) Requirements. If an interactive audiovisual system is used:

(1) the system must operate so the court and all parties can view and converse with each other simultaneously;

(2) a full record of the proceedings must be made consistent with the requirements of applicable statutes and rules; and

(3) provisions must be made to:

(A) allow for confidential communications between the defendant and defendant’s counsel before, during, and immediately after the proceeding;

(B) allow a victim a means to view and participate in the proceedings and ensure

compliance with all victims' rights laws;

(C) allow the public a means to view the proceedings consistent with applicable law; and

(D) allow for use of interpreter services when necessary and, if an interpreter is required, the interpreter must be present with the defendant absent compelling circumstances.

(c) When a Defendant May Appear by Videoconference.

(1) *In the Court's Discretion.* A court may require a defendant's appearance by use of an interactive audiovisual system without the parties' consent at any of the following:

(A) an initial appearance;

(B) a misdemeanor arraignment;

(C) a not-guilty felony arraignment;

(D) a hearing on a motion to continue that does not include a waiver of time under Rule 8;

(E) a hearing on an uncontested motion;

(F) a pretrial or status conference;

(G) a change of plea in a misdemeanor case; or

(H) an informal conference held under Rule 32.7.

(2) *Generally Not Permitted.* A court may not require a defendant's appearance by use of an interactive audiovisual system at any trial, contested probation violation hearing, felony sentencing, or felony probation disposition hearing, unless the court finds extraordinary circumstances and the parties consent by written stipulation or on the record.

(3) *By Stipulation.* For any proceeding not included in (c)(1) and (c)(2), the parties may stipulate that the defendant may appear at the proceeding by use of an interactive audiovisual system. The parties must file a stipulation before the proceeding begins or state the stipulation on the record at the start of the proceeding. Before accepting the stipulation, the court must find that the defendant knowingly, intelligently, and voluntarily agrees to appear at the proceeding by use of an interactive audiovisual system- and that the system will allow a victim means to view and participate in the proceedings and ensure compliance with all victims' rights laws.

(4) *Change in Hearing's Scope.* If the scope of a hearing expands beyond that specified

in (c)(1) and (c)(3), the court must reschedule a videoconference, give notice to counsel and the victim, and require the defendant's personal appearance.

Rule 1.7. Filing and Service of Documents

(a) "Filing with the Court" Defined. The filing of a document with the court is accomplished only by filing it with the clerk. If a judge permits, a document may be submitted directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

(b) Effective Date of Filing.

(1) Paper Documents. A document is deemed filed on the date the clerk receives and accepts it. If a document is submitted to a judge and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

(2) Electronically Filed Documents. An electronically filed document is filed on the date and time the clerk receives it. Unless the clerk later rejects the document based on a deficiency, the date and time shown on the email notification from the court's electronic filing portal or as displayed within the portal is the effective date of filing. If a filing is rejected, the clerk must promptly provide the filing party with an explanation for the rejection.

(3) Late Filing Because of an Interruption in Service. If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document.

(4) Incarcerated Parties. If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must deem the filing date to be the date when the document was delivered to jail or prison authorities to deposit in the mail.

(c) Service of All Documents Required; Manner of Service. Every person filing a document with any court must serve a copy of the document on all other parties and to any victim's attorney as follows:

(1) Serving an Attorney. If a party or victim is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) Service Generally. A document is served under this rule by any of the following:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it by U.S. mail to the person's last-known address—in which event service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in (c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner—in which event service is complete upon transmission; or

(E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action—in which event service is complete upon transmission.

(3) *Certificate of Service*. The date and manner of service must be noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

A copy has been or will be mailed/mailed/hand-delivered [select one] on [insert date] to:

*[Name of opposing party or attorney] [Address of opposing party or attorney] [Name of victim's attorney]
[Address of victim's attorney]*

If the precise manner in which service has actually been made is not noted, it will be presumed that the document was served by mail. This presumption will only apply if service in some form has actually been made.

Rule 1.8. Clerk's Distribution of Minute Entries and Other Documents

(a) Generally. The clerk must distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of every minute entry to all parties and to any victim's attorney.

(b) Electronic Distribution. The clerk may distribute minute entries, notices and other court-generated documents to a party or a party's or victim's attorney by electronic means. Electronic distribution of a document is complete when the clerk transmits it to

the email address that the party or attorney has provided to the clerk.

Rule 1.9. Motions, Oral Argument, and Proposed Orders

(a) Content. A motion must include a memorandum that states facts, arguments, and authorities pertinent to the motion.

(b) Service of Motion; Response; Reply. The moving party must serve the motion on all other parties. No later than 10 days after service, another party may file and serve a response, and, no later than 3 days after service of a response, the moving party may file and serve a reply. A reply must be directed only to matters raised in a response. If no response is filed, the court may deem the motion submitted on the record. When addressing matters that impact any victims' rights, a victim may file motions, responses, and replies that comply with these rules.

(c) Length. Unless the court orders otherwise, a motion or response, including a supporting memorandum, may not exceed 11 pages, exclusive of attachments, and a reply may not exceed 6 pages, exclusive of attachments.

(d) Waiver of Requirements. ~~On a party's request or on its own,~~ The court may waive a requirement specified in this rule, or it may overlook a formal defect in a motion.

(e) Oral Argument. ~~On a party's request or on its own,~~ The court may set a motion for argument or hearing.

(f) Proposed Orders. A proposed order must be prepared as a separate document and may not be included as part of a motion, stipulation, or other document. There must be at least two lines of text on the signature page of a proposed order. A party or victim's attorney must serve the proposed order on the court and all other parties and victim's attorney. A party or victim's attorney must not file a proposed order, and the court will not docket it, until a judge has reviewed and signed it. Absent a notice of filing, proposed orders will not be part of the record.

Rule 1.10. Victims' Rights: Exercising the Right to be Heard, The Right to Representation; Victim and Court Obligations.

(a) Exercising the Right to Be Heard

(1) *Nature of the Right.* If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain,

support, or refute the victim's statement. This rule does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).

(2) *Victims in Custody.* If a victim is in custody for an offense, the victim's right to be heard under these rules is satisfied by affording the victim the opportunity to submit a written statement.

(3) *Victims Not in Custody.* A victim who is not in custody may exercise the right to be heard under these rules through an oral statement or by submitting a written or recorded statement.

(4) *At Sentencing.* The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.

(b) Assistance and Representation.

(1) *Right to Prosecutor's Assistance.* A victim has the right to the prosecutor's assistance in asserting rights enumerated in these rules or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.

(2) *Standing.* The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by these rules or by any other provision of law.

(3) *Conflicts.* If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information to the appropriate state or local bar association for referral to a lawyer.

(4) *Representation by Counsel.* In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. After a victim's counsel files a notice of appearance, all parties must endorse the victim's counsel on all pleadings. When present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.

(5) *Appointment of Victim's Representative.* Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. §

13-4403. The court must notify the parties if it appoints a representative.

(c) Victim's Duties.

(1) Generally. Any victim desiring to claim the notification rights and privileges provided in these rules must provide his or her full name, address, and telephone number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.

(2) Legal Entities.

(A) Designation of a Representative. If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.

(B) Notice. The prosecutor must notify the defendant and the court if the prosecutor receives notice under (c)(2)(A).

(C) Effect. After notice is provided under (c)(2)(B), only the representative designated under (c)(2)(A) may assert the victim's rights on behalf of the legal entity.

(D) Changes in Designation. The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.

(d) Waiver. A victim may waive the rights and privileges enumerated in these rules. A prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under these rules.

(e) Court Enforcement of Victim Notice Requirements.

(1) Court's Duty to Inquire. At the beginning of any proceeding that takes place more than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.

(2) If the Victim Has Been Notified. If the victim has been notified as requested, the court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must immediately comply with (b)(1).

(3) If the Victim Has Not Been Notified. If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.

(f) Appointment of Victim's Representative. Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.

Rule 4.1. Procedure upon Arrest

(a) Prompt Initial Appearance. An arrested person must be promptly taken before a magistrate. At the initial appearance, the magistrate will advise the arrested person of those matters set forth in Rule 4.2. If the initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody. Upon request, the victim must be informed of the date, time, and place for the initial appearance.

(b) On Arrest Without a Warrant. A person arrested without a warrant must be taken before the nearest or most accessible magistrate in the county of arrest. A complaint, if not already filed, must be promptly prepared and filed. If a complaint is not filed within 48 hours after the initial appearance before the magistrate, the arrested person must be immediately released from custody and any pending preliminary hearing dates must be vacated. The victim must be notified of any release.

(c) On Arrest with a Warrant.

(1) *Arrest in the County of Issuance.* A person arrested in the county where the warrant was issued must be taken before the magistrate who issued the warrant for an initial appearance. If the magistrate is absent or unable to act, the arrested person must be taken to the nearest or most accessible magistrate in the same county. Upon request, the victim must be informed of the date, time, and place for the initial appearance.

(2) *Arrest in Another County.* If a person is arrested in a county other than the one where the warrant was issued, the person must be taken before the nearest or most accessible magistrate in the county of arrest. If eligible for release as a matter of right, the person must then be released under Rule 7.2. If not released immediately, the arrested person must be taken to the issuing magistrate in the county where the warrant originated, or, if that magistrate is absent or unable to act, before the nearest

or most accessible magistrate in the county where the warrant originated. The victim must be notified of any release.

(d) Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance. Each presiding judge must make a magistrate available every day of the week to hold the initial appearances required under Rule 4.1(a). The presiding judge also must set at least one fixed time each day for conducting initial appearances, and notify local law enforcement agencies of the fixed time(s).

(e) Sample for DNA Testing; Proof of Compliance. If the arresting authority is required to secure a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-610(K), it must provide proof of compliance to the court before the initial appearance.

Rule 4.2. Initial Appearance

(a) Generally. At an initial appearance, the magistrate must:

(1) determine the defendant's true name and address and, if necessary, amend the formal charges to correct the name and instruct the person to promptly notify the court of any change of address;

(2) inform the defendant of the charges and, if available, provide the person with a copy of the complaint, information, or indictment;

(3) inform the defendant of the right to counsel and the right to remain silent;

(4) determine whether there is probable cause for purposes of release from custody, and, if no probable cause is found, immediately release the person from custody;

(5) appoint counsel if the defendant requests and is eligible for appointed counsel under Rule 6;

(6) permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release;

(7) unless the magistrate determines under (a)(8) that release on bail is prohibited, determine the conditions of release under Rule 7.2(a);

(8) determine whether probable cause exists to believe:

(A) the defendant committed a capital offense, or any felony offense committed while the person was on pretrial release for a separate felony charge; or

(B) the defendant committed a felony for which release on bail is prohibited because the defendant poses a substantial danger and no conditions of release will reasonably assure the safety of the victim, any other person, or the community based on the considerations provided in Rule 7.2(b)(3);

(9) if the court determines that the defendant is not eligible for bail based on a determination under (a)(8)(A) or (B), schedule a bail eligibility hearing in superior court as required under Rule 7.2(b)(4);

(10) order a summoned defendant to be 10-print fingerprinted no later than 20 calendar days by the appropriate law enforcement agency at a designated time and place if:

(A) the defendant is charged with a felony offense, a violation of A.R.S. §§ 13-1401 et seq. or A.R.S. §§ 28-1301 et seq., or a domestic violence offense as defined in A.R.S. § 13-3601; and

(B) the defendant does not present a completed mandatory fingerprint compliance form to the court, or if the court has not received the process control number; and

(11) order the arresting agency to secure a sample of buccal cells or other bodily substances for DNA testing if:

(A) the defendant is in-custody and was arrested for an offense listed in A.R.S. § 13-610(O)(3); and

(B) the court has not received proof of compliance with A.R.S. § 13-610(K).

(b) Felonies Charged by Complaint. If a defendant is charged in a complaint with a felony, in addition to following the procedures in (a), the magistrate must:

(1) inform the defendant of the right to a preliminary hearing and the procedures by which that right may be waived; and

(2) unless waived, set the time for a preliminary hearing under Rule 5.1.

(c) Combining an Initial Appearance with an Arraignment. If the defendant is charged with a misdemeanor or indicted for a felony and defense counsel is present or the defendant waives the presence of counsel, and, if requested, the victim has been given notice and an opportunity to be present and heard, the magistrate may arraign a

defendant under Rule 14 during an initial appearance under (a). If, however, the magistrate lacks jurisdiction to try the offense, the magistrate may not arraign the defendant and must instead transfer the case to the proper court for arraignment. If the court finds that delaying the defendant's arraignment is indispensable to the interests of justice, the court when setting a date for the continued arraignment must provide sufficient notice to victims, ~~under Rule 39(b)(2).~~

Rule 5.1. Right to a Preliminary Hearing; Waiver; Continuance

(a) Right to a Preliminary Hearing. A defendant has a right to a preliminary hearing if charged in a complaint with a felony. The victim, if requested, must be given notice of the preliminary hearing. A preliminary hearing must commence before a magistrate no later than 10 days after the defendant's initial appearance if the defendant is in custody, or no later than 20 days after the defendant's initial appearance if the defendant is not in custody, unless:

- (1) the complaint is dismissed;
- (2) the hearing is waived;
- (3) the defendant has been transferred from the juvenile court for criminal prosecution on specified charges; or
- (4) the magistrate orders the hearing continued under (c).

(b) Waiver. The parties may waive a preliminary hearing but the waiver must be in writing and the defendant, defense counsel, and the State must sign it.

(c) Continuance.

(1) *Release Absent Continuance.* If a preliminary hearing for an in-custody defendant did not commence within 10 days as required under (a) and was not continued, the defendant must be released from custody, unless the defendant is charged with a non-bailable offense, in which case the magistrate must immediately notify that county's presiding judge of the reasons for the delay.

(2) *Continuance.* On motion or on its own, a magistrate may continue a preliminary hearing beyond the 20-day deadline specified in (a). A magistrate may continue the hearing only ~~if it~~, if after consideration of the victim's right to a speedy trial, the court finds that extraordinary circumstances exist and that delay is indispensable to the interests of justice. The magistrate also must file a written order detailing the reasons for these findings. The court must promptly notify the parties and, if requested, the victim of the order.

(3) *Resetting Hearing Date.* If the magistrate orders a continuance, the order must reset the preliminary hearing for a specific date to avoid uncertainty and additional

delay.

(d) Hearing Demand. A defendant who is in custody may demand that the court hold a preliminary hearing as soon as practicable. In that event, the magistrate must set a hearing date and must not delay its commencement more than necessary to secure the attendance of counsel, a court reporter, and necessary witnesses, and to provide notice to any victims.

Rule 5.4. Determining Probable Cause

(a) Holding a Defendant to Answer. If a magistrate finds that there is probable cause to believe that an offense has been committed and that the defendant committed it, the magistrate must file a written order holding the defendant to answer for the offense before the superior court. Upon request, the magistrate may reconsider the conditions of release, after giving the victim the right to be heard. Upon the State's request, this rule's requirements are satisfied if a probable cause or proof evident presumption great finding was made at a bail eligibility hearing under Rule 7.2(b)(4).

(b) Amending the Complaint. A magistrate may grant a motion to amend a complaint so that its factual allegations conform to the evidence, but the magistrate must not hold the defendant to answer for crimes different than those charged in the original complaint.

(c) Evidence. A magistrate must base a probable cause finding on substantial evidence, which may include hearsay in the following forms:

- (1) a written report of an expert witness;
- (2) documentary evidence, even without foundation, if there is a substantial basis for believing that foundation will be available at trial and the document is otherwise admissible; or
- (3) a witness's testimony about another person's declarations if such evidence is cumulative or if there are reasonable grounds to believe that the declarant will be personally available for trial.

(d) Lack of Probable Cause. The magistrate must dismiss the complaint and discharge the defendant if a magistrate finds that there is not probable cause to believe that an offense has been committed or that the defendant committed it.

Rule 5.8. Notice if an Arraignment Is Not Held

(a) Notice. If a defendant is held to answer in a county where an arraignment is not held as provided in Rule 14.2(d), the magistrate must:

- (1) enter a plea of not guilty for the defendant and provide the defendant and defense counsel with a notice specifying that a plea of not guilty has been entered;
- (2) set dates for a trial or pretrial conference;
- (3) advise the parties and, if requested, the victim, in writing of the dates set for further proceedings and other important deadlines;
- (4) advise the defendant of the defendant's right to be present at all future proceedings, that any proceeding may be held in the defendant's absence, and that if the defendant fails to appear, the defendant may be charged with an offense and a warrant may be issued for the defendant's arrest; and
- (5) advise the defendant of the right to a jury trial, if applicable.

(b) Notice Form. The magistrate must provide written notice to the defendant of the matters in (a). The defendant and defense counsel must sign the notice and return it to the court.

Rule 6.3. Duties of Counsel; Withdrawal

(a) Notice of Appearance.

(1) *Generally.* Before representing the defendant in court, counsel--whether privately retained or appointed by the court--must file a notice of appearance.

(2) *Earlier Appearance in a Limited Jurisdiction Court.* Counsel who has filed a notice of appearance in a felony case in a limited jurisdiction court does not need to file a new notice of appearance if the defendant is bound over to superior court.

(b) Duty of Continuing Representation. Unless the court permits counsel to withdraw, counsel who represents a defendant at any stage of a case has a continuing duty to represent the defendant in all further proceedings in the trial court, including the filing of a notice of appeal.

(c) Withdrawal.

(1) Before Granting a Motion to Withdraw. Before granting a motion to permit counsel to withdraw, the court must consider the victim's right to a speedy trial.

~~(4)~~ (2) If the Defendant Is Ineligible for Appointed Counsel. Appointed counsel may not withdraw after arraignment on the ground that the defendant is ineligible for appointed counsel unless counsel shows that withdrawal will not disrupt the orderly processing of the case.

~~(2)~~ (3) *If the Case Is Set for Trial.* After a case is set for trial, the court may not permit counsel to withdraw unless counsel files a motion that provides:

(A) the name and address of new counsel and a signed statement from the new counsel that acknowledges the trial date and avows that the new counsel will be prepared for trial; or

(B) ethical grounds for withdrawing.

(d) Duty of Defense Counsel to Preserve the File. Defense counsel must:

(1) maintain records of the case in a manner that will inform successor counsel of all significant developments relevant to the case; and

(2) make available to successor counsel the client's complete records and files, as well as all information regarding every aspect of the representation.

(e) Duty of Successor Counsel to Collect the File in a Capital Case. Immediately upon undertaking representation of a defendant in a capital case in which the defendant was previously represented by counsel, defense counsel must collect the complete file from prior counsel and maintain the records and files in a manner that complies with (d).

Rule 6.7. Appointment of Investigators and Expert Witnesses for Indigent Defendants

(a) Appointment. On application, if the court finds that such assistance is reasonably necessary to adequately present a defense at trial or at sentencing, the court may appoint an investigator, expert witnesses, and/or mitigation specialist for an indigent defendant at county or city expense. After considering the victim's right to a speedy trial, the court should impose reasonable deadlines on anyone appointed under this rule.

(b) Ex Parte Proceeding. A defendant may not make an ex parte request under this rule without showing a need for confidentiality. The court must make a verbatim record of any ex parte proceeding, communication, or request, which must be available for appellate review.

(c) Definition of a "Mitigation Specialist." As used in this rule, a "mitigation specialist" is a person qualified by knowledge, skill, experience, or other training as a mental health or sociology professional to investigate, evaluate, and present psycho-social and other mitigation evidence.

(d) Capital Case. In a capital case, a defendant should make any motion for an expert or mitigation specialist no later than 60 days after the State makes its disclosure under Rule 15.1(i)(3).

Rule 7.2. Right to Release

(a) Before Conviction; Bailable Offenses.

(1) *Presumption of Innocence.* A defendant charged with a crime but not yet convicted is presumed to be innocent.

(2) *Right to Release.* Except as these rules otherwise provide, any defendant charged with an offense bailable as a matter of right must be released pending and during trial on the defendant's own recognizance with only the mandatory conditions of release required under Rule 7.3(a). This rule does not apply if the court determines that such a release will not reasonably assure the defendant's appearance or protect the victim, any other person, or the community from risk of harm by the defendant. If the court makes such a determination, it must impose the least onerous conditions of release set forth in Rule 7.3(c).

(3) *Determining Method of Release or Bail Amount.* In determining the method of release or the amount of bail, the court must consider the factors set forth in A.R.S. § 13-3967(B).

(b) Before Conviction: Defendants Charged with an Offense Not Eligible for Bail.

(1) *Not Eligible Based on Commission of a Specified Felony or Any Felony While on Pretrial Release.* A defendant must not be released if the court finds the proof is evident or the presumption great that the defendant committed:

(A) a capital offense;

(B) any felony offense while the defendant was on pretrial release for a separate felony charge.

(2) *Not Eligible Based on Commission of any Felony and Other Factors.* Under article 2, section 22(A)(3) of the Arizona Constitution, the court may not release any defendant charged with a felony if the court finds all of the following:

(A) the proof is evident or the presumption great that the defendant committed one or more of the charged felony offenses;

(B) clear and convincing evidence that the defendant poses a substantial danger to the victim, any other person, or the community or, on certification by motion of the state,

the defendant engaged in conduct constituting a dangerous crime against children or terrorism; and

(C) no condition or combination of conditions of release will reasonably assure the safety of the victim, any other person, or the community.

(3) *Bail Eligibility Considerations.* In making the determinations required by (b)(2)(B) and (b)(2)(C), the court must consider:

(A) the nature and circumstances of the offense charged, including whether the offense is a “dangerous offense” as defined in A.R.S. § 13-105;

(B) the weight of the evidence against the defendant;

(C) the history and characteristics of the defendant, including the defendant's character, physical and mental condition, past conduct including membership in a criminal street gang, history relating to drug or alcohol abuse, and criminal history;

(D) the nature and seriousness of the danger to the victim, any other person, or the community that would be posed by releasing the defendant on bail, including any threat to a victim or other participants in the judicial process;

(E) the recommendation of the pretrial services program based on an appropriate risk assessment instrument;

(F) any victim statement about the offense and release on bail; and

(G) any other factor relevant to the determination required under (b)(2)(B) and (b)(2)(C).

(4) *Bail Eligibility Hearing.*

(A) Generally. The superior court must hold a hearing to determine whether a defendant held in custody under Rule 4.2(a)(8) is not eligible for bail as required under (b)(1) or (b)(2), unless the defendant waives this hearing. A victim has the right to notice of the hearing and the right to be heard regarding any conditions of release.

(B) Timing. If the State makes an oral motion under A.R.S. § 13-3961(E), the court must hold this hearing within 24 hours of the initial appearance, subject to continuances as provided in A.R.S. § 13-3961. If this motion is not made, the hearing must be held as soon as practicable, but no later than 7 days after the initial appearance unless the detained defendant moves for a continuance or the court finds that extraordinary circumstances exist and delay is indispensable to the interests of justice. For this purpose, extraordinary circumstances are events that would prohibit

the hearing from occurring and that are beyond the prosecutor's control. Upon a finding of extraordinary circumstances, the court may continue the hearing once and for no more than 3 calendar days.

(C) Determination of Probable Cause and Release Conditions. If the court does not find the proof evident or the presumption great under (b)(1) or (b)(2)(A) and there has been no prior finding of probable cause for the charges by a grand jury or through a preliminary hearing, the court must determine whether there is probable cause to believe that an offense was committed and that the defendant committed it.

(i) Probable Cause Found. If the court finds probable cause, or probable cause for the charges was previously determined by a grand jury or through a preliminary hearing, the court must determine the release conditions under (a).

(ii) No Probable Cause Found. Unless there was a finding of probable cause for the charges by a grand jury or through a preliminary hearing, if the court does not find probable cause, the defendant must be released from custody. Upon the State's request, the court must schedule a preliminary hearing as provided in Rule 5.1(a). If the state does not request a preliminary hearing, the court must dismiss the complaint and discharge the defendant, unless probable cause for the charges was previously determined by a grand jury or through a preliminary hearing.

(D) Effect of Findings. If the court finds the proof is evident or the presumption great or finds probable cause, upon the State's request, the court will hold the defendant to answer before the superior court as provided in Rule 5.4 (a).

(E) Findings on the Record. The court's findings must be on the record.

(c) After Conviction.

(1) Superior Court.

(A) *Before Sentencing.* After a defendant is convicted of an offense for which the person will, in all reasonable probability, receive a sentence of imprisonment, the court may not release the person on bail or on the person's own recognizance unless:

(i) the court finds that reasonable grounds exist to believe that the conviction may be set aside on a motion for new trial, judgment of acquittal, or other post-trial motion; or

(ii) the parties stipulate otherwise and the court approves the stipulation.

(B) *After a Sentencing Involving Imprisonment.* If a defendant is convicted of a felony offense and is sentenced to prison, the court may not release the defendant on bail or on the defendant's own recognizance pending appeal unless the court,

after considering the views of the victim, finds the defendant is in such physical condition that continued confinement would endanger the defendant's life.

(C) *Protecting Safety*. In determining release conditions if the defendant is released under (c)(1)(A) or (B), the court must impose conditions that will protect the victim, any other person, and the community from risk of harm by the defendant.

(D) *After Sentence, Pending Appeal*. If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

(E) *Release upon Sentence Completion*. A defendant held in custody pending appeal must be released if the term of incarceration is completed before the appeal is decided.

(2) *Limited Jurisdiction Courts*.

(A) *Conditions of Release on Appeal*. If a defendant files a timely notice of appeal of a conviction for an offense for which the court has imposed a sentence of incarceration, the defendant may remain out of custody under the same conditions of release imposed at or after the defendant's initial appearance or arraignment.

(B) *Lack of Diligence on Appeal*. If a defendant is released pending appeal but fails to diligently pursue the appeal, the court must revoke the release.

(C) *Motion to Amend Conditions of Release*.

(i) Upon the filing of a timely notice of appeal, the court—on motion or on its own—may amend the conditions of release if it finds a substantial risk exists that the defendant presents a danger to the victim, another person or the community, or the defendant is unlikely to return to court if required to do so after the appeal concludes.

(ii) The court must hear a motion under this rule no later than 3 days after filing, although it may continue the hearing for good cause. The defendant may be detained pending the hearing. The hearing must be on the record, and the defendant is entitled to representation by counsel. Any testimony by the defendant is not admissible in another proceeding except as it relates to compliance with prior conditions of release, perjury, or impeachment. The court must state its findings on the record.

(iii) The court may amend the conditions of release in accordance with the standards set forth in Rule 7.3 and Rule 7.4(b). In determining the method of release or the amount of bail, the court must consider the nature and circumstances of the offense, family or local ties, employment, financial resources, the defendant's character and mental condition, the length of residence in the community, the record of arrests or convictions, the risk of harm to the victim, other persons, or the community, and

appearances at prior court proceedings.

(D) Release upon Sentence Completion. A defendant held in custody pending appeal must be released if the defendant's term of incarceration is completed before the appeal is decided.

(E) Superior Court Review. If the trial court enters an order setting a bond or requiring incarceration during the appeal, the defendant may petition the superior court to stay the execution of sentence and to allow the defendant's release either without bond or on a reduced bond.

(d) Burden of Proof. A court must determine issues under (a) and (c) by a preponderance of the evidence. The State bears the burden of establishing factual issues under (a), (b) and (c)(2). The defendant bears the burden of establishing factual issues under (c)(1).

Rule 7.3. Conditions of Release

(a) Mandatory Conditions. Every order of release must contain the following conditions:

- (1) the defendant must appear at all court proceedings;
- (2) the defendant must not commit any criminal offense;
- (3) the defendant must not leave Arizona without the court's permission; ~~and~~
- (4) the defendant must not contact the victim, unless the court clearly finds good cause to conclude the victim's safety would be protected without a no-contact order; and

~~(4)-(5)~~ if a defendant is released during an appeal after judgment and sentence, the defendant will diligently pursue the appeal.

(b) Mandatory Condition if Charged with an Offense Listed in A.R.S. § 13- 610(O)(3).

(1) *Generally.* If a defendant is charged with an offense listed in A.R.S. § 13- 610(O)(3) and has been summoned to appear in court, the magistrate must order the defendant to report to the arresting law enforcement agency or its designee no later than 5 days after release, and submit a sample of buccal cells or other bodily substances for DNA testing as directed. The defendant must provide proof of compliance at the next scheduled court proceeding.

(2) *Required Notice.* The court must inform a defendant that a willful failure to comply with an order under (b)(1) will result in revocation of release.

(c) Additional Conditions. ~~The court must order the defendant not to contact a victim if such an order is reasonable and necessary to protect a victim from physical harm, harassment, intimidation, or abuse.~~ The court also may impose as a condition of release one or more of the following conditions, if the court finds the condition is reasonable and necessary to secure the defendant's appearance or to protect another person or the community from risk of harm by the defendant. In making determinations under this rule, the court must consider, if provided, the results of a risk assessment approved by the Supreme Court and a law enforcement's lethality assessment.

(1) *Non-Monetary Conditions.* A court may impose the following non-monetary conditions:

- (A) placing the defendant in the custody of a designated person or organization that agrees to provide supervision;
- (B) restricting the defendant's travel, associations, or residence;
- (C) prohibiting the defendant from possessing any dangerous weapon;
- (D) engaging in certain described activities, or consuming intoxicating liquors or any controlled substance that is not properly prescribed;
- (E) requiring the defendant to report regularly to and remain under the supervision of an officer of the court;
- (F) returning the defendant to custody after specified hours; or
- (G) imposing any other non-monetary condition that is reasonably related to securing the defendant's appearance or protecting others or the community from risk of harm by the defendant.

(2) *Monetary Conditions.*

(A) Generally. A court's imposition of a monetary condition of release must be based on an individualized determination of the defendant's risk of non-appearance, risk of harm to the victim, or to others or the community, and the defendant's financial circumstances. The court may not rely on a schedule or charge-based bond amounts, and it must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the defendant is unable to pay the imposed monetary condition.

(B) Least Onerous Alternative. If the court determines a monetary condition is necessary, it must impose the least onerous type of condition in the lowest amount necessary to secure the defendant's appearance or protect the victim, or other persons

or the community from risk of harm by the defendant.

(C) Types of Conditions. The types of monetary conditions a court may impose include the following:

- (i) an unsecured appearance bond;
- (ii) a deposit bond;
- (iii) another type of secured bond; and
- (iv) a cash bond.

Rule 7.4. Procedure

(a) Initial Appearance. At an initial appearance, the court must determine bail eligibility and the conditions for release. If the court decides that the defendant is eligible for release, the court must issue an order containing the conditions of release. The order must inform the defendant of the conditions and possible consequences for violating a condition, and that the court may immediately issue a warrant for the defendant's arrest if there is a violation.

(b) Bail Eligibility Hearing.

(1) *Right to Secure Witnesses, Cross-Examine, and Review Witness Statements.* At a bail eligibility hearing, each party has the right to secure the attendance of witnesses, cross-examine any witness who testifies, and to review any previous written statement by the witness before cross-examination.

(2) *Victims.* ~~Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g).~~ A victim has the right to confer with the State about any decision regarding the preconviction release of the defendant. A victim must be given notice of a bail eligibility hearing and the victim has the right to be present and be heard by the court before the court modifies release conditions. If a victim objects to being called as a witness in a bail eligibility hearing, the court must require the party wishing to present the victim's testimony to make an offer of proof and the court may require a victim to testify only if the court finds that the evidence in the offer of proof would likely impact the court's decision on the matters under consideration at the hearing. If the opposing party stipulates to the information in the offer of proof, the victim will not be required to testify.

(3) *Admissibility.* Evidence is admissible at the hearing only if it is material to whether, and under what conditions, to release the defendant on bail and whether probable cause exists to hold the defendant for trial on each charge. Rules or objections calling for the

exclusion of evidence are inapplicable at a bail eligibility hearing.

(c) Later Review of Conditions.

(1) *Generally.* On motion or on its own, a court may reexamine bail eligibility or the conditions of release if the case is transferred to a different court or a motion alleges the existence of material facts not previously presented to the court.

(2) *Motion Requirements and Hearing.* The court may modify the conditions of release only after giving the parties an opportunity to respond to the proposed modification. ~~A motion to reexamine the conditions of release must comply with victims' rights requirements provided in Rule 39.~~ A victim has the right to notice of and the right to be heard at any hearing regarding any motion to modify release conditions.

(3) *Eligibility for Bail.* If the motion is by the State and involves a defendant previously held eligible for bail at the initial appearance, it need not allege new material facts. The court must hold a hearing on the record as soon as practicable, but no later than 7 days after the motion's filing.

(d) Evidence. A court may base a release determination under this rule on evidence that is not admissible under the Arizona Rules of Evidence.

(e) Defendant's Bail Status. If the court makes the findings required under Rule 7.2(b)(1) or (b)(2) to deny bail, the court must order the defendant held without bail until further order. If not, the court must order the defendant released on bail under Rule 7.2(a).

(f) Review of Conditions of Release for Misdemeanors. No later than 10 days after arraignment, the court must determine whether to amend the conditions of release for any defendant held in custody on bond for a misdemeanor.

(g) Appointment of Counsel. The court must appoint counsel in any case in which the defendant is eligible for the appointment of counsel under Rule 6.1(b).

Rule 7.5. Review of Conditions; Revocation of Release

(a) On State's Petition. If the State files a verified petition stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the petition. A copy of the petition must be provided with the summons, warrant, or notice.

(b) On Pretrial Services' Report. If pretrial services submits a written report to the

court stating facts or circumstances showing the defendant has violated a condition of release, the court may issue a summons or warrant under Rule 3.2, or a notice setting a hearing, to secure the defendant's presence in court and to consider the matters raised in the report. A copy of the report must be provided to the State and provided with the summons, warrant, or notice.

(c) On Victim's Petition. If the prosecutor decides not to file a petition under (a), the victim may petition the court to revoke the defendant's bond or own recognizance release, or otherwise modify the conditions of the defendant's release. Before filing a petition, the victim must consult with the prosecutor about the requested relief. The petition must include a statement under oath by the victim asserting any harassment, threats, physical violence, abuse, or intimidation by the defendant, or on the defendant's behalf, against the victim or the victim's immediate family.

(d) Hearing; Modification of Conditions; Revocation.

(1) *Modification of Conditions of Release.* After a hearing on the matters set forth in the petition or report, the court may impose different or additional conditions of release if it finds that the defendant has willfully violated the conditions of release.

(2) *Revocation of Release on a Felony Offense.* The court may revoke release of a person charged with a felony if, after a hearing, the court finds that the proof is evident or presumption great as to the present charge and:

(A) probable cause exists to believe that the person committed another felony during the period of release; or

(B) the person poses a substantial danger to the victim, another person or the community, and no other conditions of release will reasonably assure the safety of the victim, other person or the community.

(e) Revocation of Release: DNA Testing. The State may file a motion asking the court to revoke a defendant's release for failing to comply with the court's order to provide a sample of buccal cells or other bodily substances for DNA testing under A.R.S. § 13-3967(F)(4) and to provide proof of compliance. The motion must state facts establishing probable cause to believe that the defendant has not complied with the order. At the defendant's next court appearance, the court must proceed in accordance with this rule's requirements and A.R.S. § 13-3967(F)(4).

(f) Revocation of Release: 10-print Fingerprinting. If a defendant fails to timely present a completed mandatory fingerprint compliance form or if the court has not received the process control number, the court may remand the defendant into custody for 10-print fingerprinting. If otherwise eligible for release, the defendant must be released from custody after being 10-print fingerprinted.

Rule 7.6. Transfer and Disposition of Bond

(a) Transfer upon Supervening Indictment. An appearance bond or release order issued following the filing of a felony complaint in justice court will automatically be transferred to a criminal case in superior court after an indictment is filed that alleges the same charges.

(b) Filing and Custody of Appearance Bonds and Security. A defendant must file an appearance bond and security, if ordered, with the clerk of the court in which a case is pending or the court in which the initial appearance is held. If the case is transferred to another court, the transferring court also must transfer any appearance bond and security.

(c) Forfeiture Procedure.

(1) *Arrest Warrant and Notice to Surety.* If the court is informed that the defendant has violated a condition of an appearance bond, it may issue a warrant for the defendant's arrest. No later than 10 days after the warrant's issuance, the court must notify the surety, in writing or electronically, that the warrant was issued.

(2) *Hearing and Notice.* After issuing the arrest warrant, the court must set a hearing within a reasonable time, no later than 120 days after it issued the warrant, requiring the parties and any surety to show cause why the bond should not be forfeited. The court must notify the parties and, if requested, the victim, and any surety of the hearing in writing or electronically. The forfeiture hearing may be combined with a Rule 7.5(d) hearing.

(3) *Forfeiture.* If the court finds that the violation is not excused, it may enter an order forfeiting all or part of the bond amount, and the State may enforce that order as a civil judgment. The order must comply with Arizona Rule of Civil Procedure 58(a).

(d) Exoneration.

(1) *Generally.* If the court finds before a violation that there is no further need for an appearance bond, it must exonerate the bond and order the return of any security.

(2) *Amount Returned.* When a deposit bond or cash bond is exonerated, the court must order the return of the entire amount deposited unless forfeited under Rule 7.6(c)(3) or the bond depositor authorizes it be applied to a financial obligation.

(3) *If the Defendant Is Surrendered, In-Custody, or Transferred.* The court must exonerate the bond if:

(A) the surety surrenders the defendant to the sheriff of the county in which the prosecution is pending, and:

(i) the surrender is on or before the day and time the defendant is ordered to appear in court; and

(ii) the sheriff informs the court of the defendant's surrender;

(B) the defendant is in the custody of the sheriff of the county in which the prosecution is pending on or before the day and time the defendant is ordered to appear in court under the following conditions:

(i) the surety provides the sheriff with an affidavit of surrender of the appearance bond; and

(ii) the sheriff reports the defendant is in custody and that the surety has provided an affidavit of surrender of the appearance bond; or

(C) before the defendant was released to the custody of the surety, the defendant was released or transferred to the custody of another government agency, preventing the defendant from appearing in court on the scheduled court date and the surety establishes:

(i) the surety did not know and could not have reasonably known of the release or transfer or that a release or transfer was likely to occur; and

(ii) the defendant's failure to appear was a direct result of the release or transfer.

(4) *Conditions When Not Required to Exonerate Bond.* The court is not required to exonerate the bond under (d)(2)(C) if a detainer was placed on the defendant before the bond was posted or the release or transfer to another government agency was for 24 hours or less.

(5) *Other Circumstances.* In all other instances, the decision whether or not to exonerate a bond is within the discretion of the court.

(6) *Post-Forfeiture Notice.* After filing an order of forfeiture, the court must provide:

(A) a copy of the order to the State, the defendant, the defendant's attorney, and the surety; and

(B) a copy of a signed order to the county attorney for collection.

Rule 8.1. Priorities in Scheduling Criminal Cases

(a) Priority of Criminal Trials. A trial of a criminal case has priority over a trial

of a civil case.

(b) Preferences. The trial of a defendant in custody, and the trial of a defendant whose pretrial liberty may present unusual risks, have preference over other criminal cases.

(c) Duty of the Prosecutor. The prosecutor must advise the court of facts relevant to the priority of cases for trial.

(d) Duty of Defense Counsel. Defense counsel must advise the court of an impending expiration of time limits. A court may sanction counsel for failing to do so, and should consider a failure to timely notify the court of an expiring time limit in determining whether to dismiss an action with prejudice under Rule 8.6.

(e) Suspension of Rule 8. No later than 25 days after a superior court arraignment, either party may move for a hearing to establish extraordinary circumstances requiring a suspension of Rule 8. No later than 5 days after the motion is filed, the court must hold a hearing on the motion, permit the victim to be heard, and, after considering the victim's right to a speedy trial, make findings of fact about whether extraordinary circumstances exist that justify the suspension of Rule 8. If the trial court finds that Rule 8 should be suspended, the court must immediately transmit its findings to the Supreme Court Chief Justice. If the Chief Justice approves the findings, the trial court may suspend Rule 8's provisions and reset the trial for a later specified date.

Rule 8.2. Time Limits

(a) Generally. Subject to Rule 8.4, the court must try every defendant against whom an indictment, information, or complaint is filed within the following times:

(1) *Defendants in Custody.* No later than 150 days after arraignment if the defendant is in custody, except as provided in (a)(3).

(2) *Defendants out of Custody.* No later than 180 days after arraignment if the defendant is released under Rule 7, except as provided in (a)(3).

(3) *Defendants in Complex Cases.* No later than 270 days after arraignment if the defendant is charged with any of the following:

(A) first degree murder, except as provided in (a)(4);

(B) offenses that will require the court to consider evidence obtained as the result of an order permitting the interception of wire, electronic, or oral communication; or

(C) any case the court determines by written factual findings to be complex.

(4) *Capital Cases.* No later than 24 months after the date the State files a notice of intent to seek the death penalty under Rule 15.1(i).

(b) Waiver of Appearance at Arraignment. If a defendant waives an appearance at arraignment under Rule 14.3, the date of an arraignment held in the defendant's absence is deemed to be the arraignment date.

(c) New Trial. A trial ordered after a mistrial or the granting of a new trial must begin no later than 60 days after entry of the court's order. A trial ordered upon an appellate court's reversal of a judgment must begin no later than 90 days after the appellate court issues its mandate. A new trial ordered by a state court under Rule 32 or a federal court under collateral review must begin no later than 90 days after entry of the court's order.

(d) Extension of Time Limits. The court may extend the time limits in (a) and (c) under Rule 8.5.

(e) Specific Date for Trial. The superior court must set a specific trial date either at the arraignment or a pretrial conference, unless the court has suspended Rule 8. In setting the date, the court must consider the views of the victim, as well as the rights of both the defendant and the victim to a speedy trial.

Rule 8.5. Continuing a Trial Date

(a) Motion. A party may ask to continue trial by filing a motion stating the specific reasons for the request.

(b) Grounds. A court may continue trial only after considering a victim's and the defendant's right to a speedy trial and on a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice, and only for so long as is necessary to serve the interests of justice. The court must state specific reasons for continuing trial.

Rule 10.2. Change of Judge as a Matter of Right

(a) Entitlement.

(1) *Generally.* Each side in a criminal case is entitled to one change of judge as a matter of right. If two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of right.

(2) *Meaning of "Side."* Each case, including one that is consolidated, is treated as having only two sides.

(3) *Per Party Limit.* A party exercising a change of judge as a matter of right is not entitled to another change of judge as a matter of right.

(4) *Inapplicability to Certain Proceedings.* A party is not entitled to a change of

judge as a matter of right in a proceeding under Rule 32 or a remand for resentencing.

(b) Procedure.

(1) *Generally.* A party may exercise a right to change of judge by filing a “Notice of Change of Judge” signed by counsel or a self-represented defendant, and stating the name of the judge to be changed. The notice also must include an avowal that the party is making the request in good faith and not for an improper purpose. An attorney’s avowal is in the attorney’s capacity as an officer of the court.

(2) *“Improper Purpose.”* “Improper purpose” means:

(A) for the purpose of delay;

(B) to obtain a severance;

(C) to interfere with the judge’s reasonable case management practices;

(D) to remove a judge for reasons of race, gender or religious affiliation;

(E) for the purpose of using the rule against a particular judge in a blanket fashion by a prosecuting agency, defender group, or law firm;

(F) to obtain a more convenient geographical location; or

(G) to obtain an advantage or avoid a disadvantage in connection with a plea bargain or at sentencing, except as permitted under Rule 17.4(g).

(3) *Further Action by the Judge.* If a notice of change of judge is timely filed, the judge should proceed no further in the action, except to enter any necessary temporary orders before the action can be transferred to the presiding judge or the presiding judge’s designee. If the named judge is the presiding judge, that judge may continue to perform the functions of the presiding judge.

(c) Timing.

(1) *Generally.* Except as provided in (c)(2), a party must file a notice of change of judge no later than 10 days after any of the following:

(A) the arraignment, if the case is assigned to a judge and the parties are given actual notice of the assignment at or before the arraignment;

(B) the superior court clerk’s filing of a mandate issued by an appellate court; or

(C) in all other cases, actual notice to the requesting party of the assignment of the case to a judge.

(2) *Exception.* Despite (c)(1), if a new judge is assigned to a case less than 10 days before trial (inclusive of the date of assignment), a notice of change of judge must be filed, with appropriate actual notice to the other party or parties and any counsel for the victim, no later than by 5:00 p.m. on the next business day following actual receipt of a notice of the assignment or by the start of trial, whichever occurs earlier.

(d) Assignment to a New Judge and Effect on Other Defendants.

(1) *On Stipulation.* If a notice of change of judge is timely filed, the notice may inform the court that all the parties have agreed on a judge who is available and willing to accept the assignment. Such an agreement may be honored and, if so, it bars further changes of judge as a matter of right, unless the agreed-on judge later becomes unavailable. If a judge to whom the action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other legal incapacity, the parties may assert any rights under this rule that existed immediately before the assignment of the action to that judge.

(2) *Absent Stipulation.* If a timely notice of judge has been filed and no judge has been agreed on, the presiding judge must immediately reassign the action to another judge.

(3) *Effect on Other Defendants.* If there are multiple defendants, a notice of change of judge filed by one or more defendants does not require a change of judge as to the other defendants, even though the notice of change of judge may result in severance for trial purposes.

(e) Waiver. A party loses the right to a change of judge under this rule if the party participates before that judge in any contested matter in the case, a proceeding under Rule 17, or the beginning of trial.

(f) Following Remand. Unless previously exercised, a party may exercise a change of judge as a matter of right following an appellate court's remand for new trial, and no event connected with the first trial constitutes a waiver. A party may not exercise a change of judge as a matter of right following a remand for resentencing.

Rule 10.3. Changing the Place of Trial

(a) Grounds. A party is entitled to change the place of trial to another county if the party shows that the party cannot have a fair and impartial trial in that place for any reason other than the trial judge's interest or prejudice.

(b) Prejudicial Pretrial Publicity. If the grounds to change the place of trial are based on pretrial publicity, the moving party must prove that the dissemination of the prejudicial material probably will result in the party being deprived of a fair trial.

(c) Procedure. A party seeking to change the place of trial must file a motion seeking that relief. The motion must be filed before trial, and, in superior court, at or before a pretrial conference. The victim has the right to be heard on the matter. The court must consider the victim's right to be present and consider alternatives to moving the trial that will protect the defendant's right to a fair trial while reasonably allowing the victim to exercise the right to be present.

(d) Waiver. A party loses the right to change the place of trial if the party allows a proceeding to begin or continue without raising a timely objection after learning of the cause for challenge.

(e) Renewal on Remand. If an appellate court remands an action for a new trial on one or more offenses charged in an indictment or information, all parties' rights to change the place of trial are renewed, and no event connected with the first trial constitutes a waiver.

Rule 15.1. The State's Disclosures

(a) Initial Disclosures in a Felony Case. Unless a local rule provides or the court orders otherwise:

(1) the State must make available to the defendant all reports containing information identified in (b)(3) and (b)(4) that the charging attorney possessed when the charge was filed; and

(2) the State must make these reports available by the preliminary hearing or, if no preliminary hearing is held, the arraignment.

(b) Supplemental Disclosure. Except as provided in ~~Rule 39(b) (f)(2)~~, the State must make available to the defendant the following material and information within the State's possession or control:

(1) the name and address of each person the State intends to call as a witness in the State's case-in-chief and any relevant written or recorded statement of the witness;

(2) any statement of the defendant and any co-defendant;

(3) all existing original and supplemental reports prepared by a law enforcement agency in connection with the charged offense;

(4) for each expert who has examined a defendant or any evidence in the case, or who the State intends to call at trial:

(A) the expert's name, address, and qualifications;

(B) any report prepared by the expert and the results of any completed physical

- examination, scientific test, experiment, or comparison conducted by the expert; and
- (C) if the expert will testify at trial without preparing a written report, a summary of the general subject matter and opinions on which the expert is expected to testify;
- (5) a list of all documents, photographs, and other tangible objects the State intends to use at trial or that were obtained from or purportedly belong to the defendant;
- (6) a list of the defendant's prior felony convictions the State intends to use at trial;
- (7) a list of the defendant's other acts the State intends to use at trial;
- (8) all existing material or information that tends to mitigate or negate the defendant's guilt or would tend to reduce the defendant's punishment;
- (9) whether there has been any electronic surveillance of any conversations to which the defendant was a party, or of the defendant's business or residence;
- (10) whether a search warrant has been executed in connection with the case; and
- (11) whether the case involved an informant, and, if so, the informant's identity, subject to the restrictions under Rule 15.4(b)(2).

(c) Time for Supplemental Disclosures. Unless the court orders otherwise, the State must disclose the material and information listed in (b) no later than:

- (1) in the superior court, 30 days after arraignment.
- (2) in a limited jurisdiction court, at the first pretrial conference.

(d) Prior Felony Convictions. The State must make available to a defendant a list of prior felony convictions of each witness the State intends to call at trial and a list of the prior felony convictions the State intends to use to impeach a disclosed defense witness at trial:

- (1) in a felony case, no later than 30 days before trial or 30 days after the defendant's request, whichever occurs first; and
- (2) in a misdemeanor case, no later than 10 days before trial.

(e) Disclosures upon Request.

(1) *Generally.* Unless the court orders otherwise, the State must make the following items available to the defendant for examination, testing, and reproduction no later than 30 days after receiving a defendant's written request:

- (A) any of the items specified in the list submitted under (b)(5);
- (B) any 911 calls existing at the time of the request that the record's custodian can

reasonably ascertain are related to the case; and

(C) any completed written report, statement, and examination notes made by an expert listed in (b)(1) and (b)(4) related to the case.

(2) *Conditions.* The State may impose reasonable conditions, including an appropriate stipulation concerning chain of custody to protect physical evidence or to allow time for the examination or testing of any items.

(f) Scope of the State's Disclosure ~~Obligation.~~

(1) Obligation. The State's disclosure obligation extends to material and information in the possession or control of any of the following:

~~(1)~~ (A) the prosecutor, other attorneys in the prosecutor's office, and members of the prosecutor's staff;

~~(2)~~ (B) any law enforcement agency that has participated in the investigation of the case and is under the prosecutor's direction and control; and

~~(3)~~ (C) any other person who is under the prosecutor's direction or control and who participated in the investigation or evaluation of the case.

(i) Limitations. The State is not required to disclose a victim's identifying or locating information unless the court finds that disclosure is required to protect the defendant's constitutional rights. If disclosure of personal identifying or locating information is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not provide the information to the defendant without prior court authorization and after considering the rights and views of the victim.

(ii) Redactions. Rule 15.5(e) applies to information withheld under this rule.

(g) Disclosure by Court Order.

(1) *Disclosure Order.* On the defendant's motion, a court may order any person other than the victim to make available to the defendant material or information not included in this rule if the court finds:

(A) the defendant has a substantial need for the material or information to prepare the defendant's case; and

(B) the defendant cannot obtain the substantial equivalent by other means without undue hardship.

(2) *Modifying or Vacating Order.* On the request of any person affected by an order, the court may modify or vacate the order if the court determines that

compliance would be unreasonable or oppressive.

(h) Disclosure of Rebuttal Evidence. Upon receiving the defendant's notice of defenses under Rule 15.2(b), the State must disclose the name and address of each person the State intends to call as a rebuttal witness, and any relevant written or recorded statement of the witness.

(i) Additional Disclosures in a Capital Case.

(1) Notice of Intent to Seek the Death Penalty.

(A) Generally. No later than 60 days after a defendant's arraignment in superior court on a charge of first-degree murder, the State must provide notice to the defendant of whether the State intends to seek the death penalty.

(B) Time Extensions. The court may extend the State's deadline for providing notice by an additional 60 days if the parties file a written stipulation agreeing to the extension. If the court approves the extension, the case is considered a capital case for all administrative purposes, including, but not limited to, scheduling, appointment of counsel under Rule 6.8, and the assignment of a mitigation specialist. The court may grant additional extensions if the parties file written stipulations agreeing to them.

(C) Victim Notification. If the victim has requested notice under A.R.S. § 13- 4405, the prosecutor must confer with the victim before agreeing to extend the deadline under (i)(1)(B).

(2) Aggravating Circumstances. If the State files a notice of intent to seek the death penalty, the State must, at the same time, provide the defendant with a list of aggravating circumstances that the State intends to prove in the aggravation phase of the trial.

(3) Initial Disclosures.

(A) Generally. No later than 30 days after filing a notice of intent to seek the death penalty, the State must disclose the following to the defendant:

(i) the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness;

(ii) the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

(iii) a list of all documents, photographs, or other tangible objects, or electronically stored information the State intends to use to support each identified aggravating

circumstance at the aggravation hearing; and

(iv) all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(B) Time Extensions. The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures only if the State shows good cause or the parties stipulate to the deadline extension.

(4) *Rebuttal and Penalty Phase Disclosures*. No later than 60 days after receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following to the defendant:

(A) the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness

(B) the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness,

(C) the name and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and

(D) a list of all documents, photographs or other tangible objects the State intends to use during the aggravation and penalty hearings.

(j) Item Prohibited by A.R.S. §§ 13-3551 et seq., or Is the Subject of a Prosecution Under A.R.S. § 13-1425.

(1) *Scope*. This rule applies to an item that cannot be produced or possessed under A.R.S. §§ 13-3551 et seq. or is an image that is the subject of a prosecution under A.R.S. § 13-1425, but is included in the list disclosed under (b)(5).

(2) *Disclosure Obligation*. The State is not required to reproduce the item or release it to the defendant for testing or examination except as provided in (j)(3) and (j)(4). The State must make the item reasonably available for inspection by the defendant, but only under such terms and conditions necessary to protect a victim's rights.

(3) *Court-Ordered Disclosure for Examination or Testing*.

(A) Generally. The court may order the item's reproduction or its release to the defendant for examination or testing if the defendant makes a substantial showing that it is necessary for the effective investigation or presentation of a defense, including an expert's analysis.

(B) Conditions. A court must issue any order necessary to protect a victim's rights, document the chain of custody, or protect physical evidence.

(4) *General Restrictions*. In addition to any court order issued, the following restrictions apply to the reproduction or release of any item to the defendant for examination or testing:

(A) the item must not be further reproduced or distributed except as the court order allows;

(B) the item may be viewed or possessed only by the persons authorized by the court order;

(C) the item must not be possessed or viewed by the defendant outside the direct supervision of defense counsel, advisory counsel, or a defense expert;

(D) the item must be delivered to defense counsel or advisory counsel, or if expressly permitted by court order, to a specified defense expert; and

(E) the item must be returned to the State by a deadline set by the court.

Rule 15.2. The Defendant's Disclosures

(a) Physical Evidence.

(1) *Generally*. At any time after the filing of an indictment, information or complaint, and upon the State's written request, the defendant must, in connection with the particular offense with which the defendant is charged:

(A) appear in a line-up;

(B) speak for identification by one or more witnesses;

(C) be fingerprinted, palm-printed, foot-printed, or voice printed;

(D) pose for photographs not involving a re-enactment of an event;

(E) try on clothing;

(F) permit the taking of samples of hair, blood, saliva, urine, or other specified materials if doing so does not involve an unreasonable intrusion of the defendant's body;

(G) provide handwriting specimens; and

(H) submit to a reasonable physical or medical inspection of the defendant's body, but such an inspection may not include a psychiatric or psychological examination.

(2) *Presence of Counsel*. The defendant is entitled to have counsel present when the

State takes evidence under this rule.

(3) *Other Procedures.* This rule supplements and does not limit any other procedures established by law.

(b) Notice of Defenses.

(1) *Generally.* By the deadline specified in (d), the defendant must provide written notice to the State specifying all defenses the defendant intends to assert at trial, including, but not limited to, alibi, insanity, self-defense, defense of others, entrapment, impotency, marriage, insufficiency of a prior conviction, mistaken identity, and good character.

(2) *Witnesses.* For each listed defense, the notice must specify each person, other than the defendant, that the defendant intends to call as a witness at trial in support of the defense.

(3) *Signature and Filing.* Defense counsel—or if the defendant is self-represented, the defendant—must sign the notice and file it with the court.

(c) Content of Disclosure. At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

(1) the name and address of each person, other than the defendant, the defendant intends to call as a witness at trial, and any written or recorded statement of the witness;

(2) for each expert the defendant intends to call at trial:

(A) the expert's name, address, and qualifications;

(B) any report prepared by the expert and the results of any completed physical examination, scientific test, experiment, or comparison conducted by the expert; and

(C) if the expert will testify at trial without preparing a written report, a summary of the general subject matter on which the expert is expected to testify; and

(3) a list of all documents, photographs, other tangible objects, and electronically stored information the defendant intends to use at trial.

(d) Time for Disclosures. Unless the court orders otherwise, the defendant must disclose the material and information listed in (b) and (c) no later than:

(1) in superior court, 40 days after arraignment, or 10 days after the State's disclosure under Rule 15.1(b), whichever occurs first;

(2) in a limited jurisdiction court, 20 days after the State's disclosure under Rule 15.1(b).

(e) Additional Disclosures upon Request.

(1) *Generally.* Unless the court orders otherwise, the defendant must make the following items available to the State for examination, testing, and reproduction no later than 30 days after receiving the State's written request:

(A) any of the items specified in the list submitted under (c)(3); and

(B) any completed written report, statement, and examination notes made by an expert listed in (c)(2) in connection with the particular case.

(2) *Conditions.* The defendant may impose reasonable conditions, including an appropriate stipulation concerning chain of custody for physical evidence or to allow time for the examination or testing of any items.

(f) Scope of Disclosure. A defendant's disclosure obligation extends to material and information within the possession or control of the defendant, defense counsel, staff, agents, investigators, or any other persons who have participated in the investigation or evaluation of the case and who are under the defendant's direction or control.

(g) Disclosure by Court Order.

(1) *Disclosure Order.* On the State's motion, a court may order any person to make available to the State material or information not included in this rule if the court finds:

(A) the State has a substantial need for the material or information for the preparation of the State's case;

(B) the State cannot obtain the substantial equivalent by other means without undue hardship; and

(C) the disclosure of the material or information would not violate the defendant's constitutional rights.

(2) *Modifying or Vacating Order.* The court may modify or vacate an order if the court determines that compliance would be unreasonable or oppressive.

(h) Additional Disclosures in a Capital Case.

(1) *Initial Disclosures.*

(A) *Generally.* No later than 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

(i) a list of all mitigating circumstances the defendant intends to prove;

(ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;

(iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and

(iv) a list of all documents, photographs, other tangible objects, or electronically stored information the defendant intends to use during the aggravation and penalty hearings.

(B) Time Extensions. The court may extend the deadline for the defendant's initial disclosures under (h)(1) or allow the defendant to amend those disclosures only if the defendant shows good cause or if the parties stipulate to the deadline extension and only after considering the victim's right to a speedy trial.

(2) *Later Disclosures.* No later than 60 days after receiving the State's supplemental disclosure under Rule 15.1(i)(4), the defendant must disclose the following to the State:

(A) the name and address of each person the defendant intends to call as a rebuttal witness, and any written or recorded statement of the witness; and

(B) the name and address of each expert the defendant intends to call as a witness at the penalty hearing, and any report the expert has prepared.

Rule 15.3. Depositions; Victims' Right to Refuse

(a) **Availability.** A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant or a victim that a defendant or someone working on their behalf seeks to examine ~~those excluded by Rule 39(b)~~, by oral deposition under the following circumstances:

(1) a party shows that the person's testimony is material to the case and that there is a substantial likelihood that the person will not be available at trial; or

(2) a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or

(3) a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify at a trial or hearing.

(b) Follow-up Examination. If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:

- (1) the magistrate limited the person's previous testimony under Rule 5.3; and
- (2) the person will not cooperate in granting a personal interview.

(c) Motion for Taking Deposition; Notice; Service.

(1) *Requirements.* A motion to take a deposition must:

- (A) state the name and address of the person to be deposed;
- (B) show that a deposition may be ordered under (a) or (b);
- (C) specify the time and place for taking the deposition; and
- (D) designate any nonprivileged documents, photographs, other tangible objects, or electronically stored information that the person must produce at the deposition.

(2) *Order.* If the court grants the motion, it may modify any of the moving party's proposed terms and specify additional conditions governing how the deposition will be conducted.

(3) *Notice and Subpoena.* If the court grants the motion, the moving party must notice the deposition in the manner provided in Arizona Rule of Civil Procedure 30(b). The notice must specify the terms and conditions in the court's order granting the deposition. The moving party also must serve a subpoena on the deponent in the manner provided in A.R.S. § 13-4072(A)-(E) or as otherwise ordered by the court.

(d) Manner of Taking.

(1) *Generally.* Unless this rule provides or the court orders otherwise, the parties must conduct depositions in the manner provided in Rules 28(a) and 30 of the Arizona Rules of Civil Procedure.

(2) *Deposition by Written Questions.* If the parties consent, the court may order that a deposition be taken on written questions in the manner provided in Rule 31 of the Arizona Rules of Civil Procedure.

(3) *Deponent Statement.* Before the deposition, a party who possesses a statement of a deponent must make it available to any other party who would be entitled to the statement at trial.

(4) *Recording.* A deposition may be recorded by someone other than a certified court reporter. If someone other than a certified court reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording no later than 14 days after the deposition, or no later than 10 days before trial, whichever is earlier.

(5) *Remote Means.* The parties may agree or the court may order that the parties conduct the deposition by telephone or other remote means.

(e) The Defendant's Right to Be Present. A defendant has the right to be present at any deposition ordered under (a)(1) or (a)(3). If a defendant is in custody, the moving party must notify the custodial officer of the deposition's time and place. Unless the defendant waives the right to be present, the officer must produce the defendant for the deposition and remain with the defendant until it is completed.

(f) Use. A party may use a deposition in the same manner as former testimony.

(g) Interviews, Depositions, and Other Discovery Requests of a Victim.

(1) Communication. The defense must communicate the request to interview the victim to the prosecutor or to the victim's attorney if the victim is represented. A victim's response to any request must be communicated through the prosecutor or the victim's attorney if the victim is represented. A defendant, a defendant's attorney, or any person acting on the defendant's behalf may not contact the victim.

(2) Right to Refuse. A victim has the right to refuse a defense request for interview, deposition, or any other discovery. If a victim consents to an interview, the victim has the right to refuse to answer any question and to terminate the interview at any time.

(3) Right to assistance and to set conditions. If a victim consents to a defense interview, the victim has the right to be accompanied by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate unless the testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt. A victim also has the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition including a

requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse.

(4) Jury Instruction if a victim's refusal is commented on at trial. If there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview.

Rule 15.6. Continuing Duty to Disclose; Final Disclosure Deadline; Extension

(a) Continuing Duties. The parties' duties under Rule 15 are continuing duties without awaiting a specific request from any other party.

(b) Additional Disclosures. Any party who anticipates a need to provide additional disclosure no later than 30 days before trial must immediately notify both the court and all other parties of the circumstances and when the party will make the additional disclosure.

(c) Final Deadline for Disclosure. Unless otherwise permitted, all disclosure required by Rule 15 must be completed at least 7 days before trial.

(d) Disclosure After the Final Deadline.

(1) *Motion to Extend Disclosure.* If a party seeks to use material or information that was disclosed less than 7 days before trial, the party must file a motion to extend the disclosure deadline and to use the material or information. The moving party also must file a supporting affidavit setting forth facts justifying an extension.

(2) *Order Granting Motion.* The court must extend the disclosure deadline and allow the use of the material or information if it finds the material or information:

- (A) could not have been discovered or disclosed earlier with due diligence; and
- (B) was disclosed immediately upon its discovery.

(3) *Order Denying Motion or Granting Continuance; Sanctions.* If the court finds that the moving party has failed to establish facts sufficient to justify an extension under (d)(2), it may:

(A) deny the motion to extend the disclosure deadline and deny the use of the material or information; or

(B) extend the disclosure deadline and allow the use of the material or information and, if it extends the deadline, the court may impose any sanction listed in Rule

15.7 except preclusion or dismissal.

(e) Extension of Time for Completion of Testing.

(1) *Motion.* Before the final disclosure deadline in (c), a party may move to extend the deadline to permit the completion of scientific or other testing. The motion must be supported by an affidavit from a crime laboratory representative or other scientific expert stating that additional time is needed to complete the testing or a report based on the testing. The affidavit must specify how much additional time is needed.

(2) *Order.* If a motion is filed under (e)(1), the court must grant reasonable time to complete disclosure unless the court finds that the need for the extension resulted from dilatory conduct or neglect, or that the request is being made for an improper reason by the moving party or a person listed in Rule 15.1(f) or 15.2(f).

(3) *Extending Time.* If the court grants a motion under (e)(2), the court may extend other disclosure deadlines as necessary. In determining new deadlines under this rule, the court must consider the victim's and defendant's right to a speedy trial.

Rule 16.3. Pretrial Conference

(a) Generally. A court may conduct one or more pretrial conferences. The court may establish procedures and requirements that are necessary to accomplish a conference's objectives, including identifying appropriate cases for pretrial conferences, identifying who must attend, and determining sanctions for failing to attend. A superior court must conduct at least one pretrial conference.

(b) Objectives. The objectives of a pretrial conference may include:

- (1) providing a forum and a process for the fair, orderly, and just disposition of cases without trial;
- (2) permitting the parties, without prejudice to their rights to trial, to engage in disclosure and to conduct negotiations for dispositions without trial;
- (3) discussing compliance with discovery requirements set forth in these rules and constitutional law; and
- (4) enabling the court to set a trial date.

(c) Duty to Confer. The court may require the parties to confer and submit memoranda before the conference.

(d) Scope of Proceeding. At the conference, the court may:

- (1) hear motions made at or filed before the conference;

(2) set additional pretrial conferences and evidentiary hearings as appropriate after considering the rights and views of the victim, the victim's right to a speedy trial, and the victim's right to be present at all proceedings;

(3) obtain stipulations to relevant facts; and

(4) discuss and determine any other matters that will promote a fair and expeditious trial, including imposing time limits on trial proceedings, using juror notebooks, giving brief pre-voir dire opening statements and preliminary instructions, and managing documents and exhibits effectively during trial.

(e) Stipulated Evidence. At a pretrial conference or any time before the start of an evidentiary hearing, the parties may submit any issue to the court for decision based on stipulated evidence.

(f) Record of Proceedings. Proceedings at a pretrial conference must be on the record.

Rule 16.4. Dismissal of Prosecution

(a) On the State's Motion. On the State's motion and for good cause, the court, after considering the views of the victim, may order a prosecution dismissed without prejudice if it finds that the dismissal is not to avoid Rule 8 time limits.

(b) On a Defendant's Motion. On a defendant's motion, the court must order a prosecution's dismissal if it finds that the indictment, information, or complaint is insufficient as a matter of law.

(c) Record. If the court grants a motion to dismiss a prosecution, it must state on the record its reasons for ordering dismissal.

(d) Effect of Dismissal. Dismissal of a prosecution is without prejudice to commencing another prosecution, unless the court finds that the interests of justice require that the dismissal to be with prejudice. Before dismissing any case with prejudice, the court must consider a victim's right to justice and due process.

(e) Release of Defendant; Exoneration of Bond. If a court dismisses a prosecution, the court must order the release of the defendant from custody, unless the defendant also is being held on another charge. It also must exonerate any appearance bond.

Rule 17.1. The Defendant's Plea

(a) Jurisdiction; Personal Appearance.

(1) *Jurisdiction.* Only a court having jurisdiction to try the offense may accept a

plea of guilty or no contest.

(2) *Personal Appearance.* Except as provided in these rules, a court may accept a plea only if the defendant makes it personally in open court. If the defendant is a corporation, defense counsel or a corporate officer may enter a plea for the corporation. For purposes of this rule, a defendant who makes an appearance under Rule 1.5 is deemed to personally appear.

(b) Voluntary and Intelligent Plea. A court may accept a plea of guilty or no contest only if the defendant enters the plea voluntarily and intelligently. Courts must use the procedures in Rules 17.2, 17.3, and 17.4 to assure compliance with this rule.

(c) No Contest Plea. A plea of no contest may be accepted only after the court gives due consideration to the parties' views and to the interest of the public in the effective administration of justice.

(d) Record of a Plea. The court must make a complete record of all plea proceedings.

(e) Waiver of Appeal. A defendant who pleads guilty or no contest in a noncapital case, waives the right to file a notice of appeal and to have an appellate court review the proceedings on a direct appeal under Rule 31. A defendant who pleads guilty or no contest may seek relief under Rule 33 by filing a Notice Requesting Post-Conviction Relief and a Petition for Post-Conviction Relief in the trial court.

(f) Limited Jurisdiction Court Alternatives for Entering a Plea.

(1) *Telephonic Pleas.*

(A) Eligibility. A limited jurisdiction court has discretion to accept a telephonic plea of guilty or no contest to an offense if the defendant provides written certification and the court finds the defendant:

(i) resides out-of-state or more than 100 miles from the court in which the plea is taken; or

(ii) has a serious medical condition so that appearing in person would be an undue hardship, regardless of distance to the court.

(B) Procedure. The defendant must submit the plea in writing substantially in the form set forth in Rule 41, Form 28. It must include the following:

(i) a statement by the defendant that the defendant has read and understands the information in the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of offenses in the complaint; and

(ii) a certification from a peace officer in the state in which the defendant resides—or, if the defendant is an Arizona resident, a peace officer in the county in which the defendant resides—that the defendant personally appeared before the officer and signed the certification described in (f)(1)(B)(i), and the officer affixes the defendant’s fingerprint to the form.

(C) *Judicial Findings.* Before accepting a plea, the court must hold a telephonic hearing with the parties, the victim if any, inform the defendant that the offense may be used as a prior conviction, and find:

- (i) it has personally advised the defendant of the items set forth in the form;
- (ii) a factual basis exists for believing the defendant is guilty of the charged offenses; and
- (iii) the defendant’s plea is knowingly, voluntarily, and intelligently entered.

(2) *Plea by Mail.*

(A) *Eligibility.* A limited jurisdiction court has discretion to accept by mail a written plea of guilty or no contest to a misdemeanor or petty offense if the court finds that a personal appearance by the defendant would constitute an undue hardship such as illness, physical incapacity, substantial travel distance, or incarceration. The presiding judge of each court must establish a policy for the State’s participation in pleas submitted by mail.

(B) *When a Plea May Not Be Accepted by Mail.* A court may not accept a plea by mail in a case:

- (i) involving a victim;
- (ii) in which the court may impose a jail term, unless the defendant is sentenced to time served or the defendant is currently incarcerated and the proposed term of incarceration would be served concurrently and not extend the period of incarceration;
- (iii) in which the court may sentence the defendant to a term of probation;
- (iv) involving an offense for which A.R.S. § 13-607 requires the taking of a fingerprint upon sentencing; or
- (v) in which this method of entering a plea would not be in the interests of justice.

(C) *Procedure.* The defendant must submit the plea in writing substantially in the form set forth in Rule 41, Form 28(a). The defendant must sign the plea form, which must include the following:

(i) a statement that the defendant has read and understands the information on the form, waives applicable constitutional rights for a plea, and enters a plea of guilty or no contest to each of the offenses in the complaint and consents to the entry of judgment; and

(ii) a statement for the court to consider when determining the sentence.

(D) Mailing. The court must mail a copy of the judgment to the defendant.

Rule 18.1 Trial by Jury.

(a) By Jury. The number of jurors required to try a case and render a verdict is provided by law.

(b) Waiver.

(1) *Generally.* The defendant may waive the right to a trial by jury if the State and the court consent. If the State and the court agree, a defendant also may waive the right to have a jury determine aggravation or the penalty in a capital case.

(2) *Voluntariness.* Before accepting a defendant's waiver of a jury trial, the court must address the defendant personally, inform the defendant of the defendant's right to a jury trial, and determine that the defendant's waiver is knowing, voluntary, and intelligent.

(3) *Form of Waiver.* A defendant's waiver of a jury trial must be in writing or on the record in open court.

(4) *Withdrawal of Waiver.* With the court's permission, a defendant may withdraw a waiver of jury trial, but a defendant may not withdraw a waiver after the court begins taking evidence.

(c) Victim Participation. Upon request of the victim, the victim must have an opportunity to confer with the prosecutor about trial before the trial begins.

Rule 19.7. Victim's Right to Use of Facility Dog.

(a) Definition. For the purposes of this rule, a "facility dog" means a dog that is a graduate of an assistance dog organization that is a member of an organization or entity whose main purpose is to improve the areas of training, placement and utilization of assistance dogs, staff and volunteer education and to establish and promote standards of excellence in all areas of assistance dog acquisition, training, and partnership.

(b) Mandatory. A court must allow a victim who is under eighteen at the time of testifying to have a facility dog accompany the victim while testifying if a facility dog is available.

(c) Discretionary. A court may permit any victim or witness to use a facility dog.

(d) Notice. A party seeking to use a facility dog must file a notice that includes the certification of the dog, the name of the certifying person or entity, and proof that the dog is insured.

(e) Jury Instruction. The court must take reasonable measures to ensure that the presence of a facility dog does not influence the jury or reflect on the truthfulness of any testimony that is offered during the use of a facility dog including instructing the jury on the role of the facility dog and that the facility dog is a trained animal.

Rule 19.8. Victim Testimony.

(a) A victim has the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera.

Rule 24.3. Modification of Sentence

(a) Generally. No later than 60 days of the entry of judgment and sentence or, if a notice of appeal has already been filed under Rule 31, no later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed, the court may correct any unlawful sentence or one imposed in an unlawful manner.

(b) Mitigation. Unless otherwise provided by law, the court may mitigate a monetary obligation imposed at sentencing. ~~The provisions of Rule 39~~ Victims' rights apply to any criminal proceeding concerning mitigation of a monetary obligation.

(c) Appeal.

(1) *Noncapital Cases.* In noncapital cases, the party appealing a final decision under Rule 24.3 must file a notice of appeal with the trial court clerk no later than 20 days after entry of the decision in superior court cases, or no later than 14 days after entry of the decision in limited jurisdiction court cases.

(2) *Capital Cases*. In capital cases, after denying modification of a sentence of death, the court must order the clerk to file a notice of appeal from the denial.

Rule 26.4. Presentence Report.

(a) When Required. The court must order a presentence report in every case in which it has discretion over the penalty. However, a presentence report is optional if:

- (1) the defendant may only be sentenced to imprisonment for less than one year;
- (2) the court granted a request under Rule 26.3(a)(1)(B); or
- (3) a presentence report concerning the defendant is already available.

(b) When Prepared. A presentence report may not be prepared until after the court makes a determination of guilt or the defendant enters a plea of guilty or no contest.

(c) When Due. Unless the court grants a request under Rule 26.3(a)(1)(B) for an earlier sentencing, the presentence report must be delivered to the sentencing judge and to all counsel at least two days before the date set for sentencing. A victim or victim's attorney has the right to a copy of the presentence report provided to the defendant except those parts that are excised by the court or are confidential by law.

(d) Inadmissibility. Neither a presentence report nor any statement made in connection with its preparation is admissible as evidence in any proceeding bearing on the issue of guilt.

Rule 26.7. Presentencing Hearing; Prehearing Conference

(a) Request for a Presentencing Hearing. If the court has discretion concerning the imposition of a penalty, it may—and, on any party's request, must—hold a presentencing hearing before sentencing.

(b) Timing and Conduct of a Presentencing Hearing.

(1) *Timing.* The court may not hold a presentencing hearing until the parties have had an opportunity to review all reports concerning the defendant prepared under Rules 26.4 and 26.5.

(2) *Presenting Evidence.* At the hearing, the victim must be afforded the right to be heard and any party may introduce any reliable, relevant evidence, including hearsay, to show aggravating or mitigating circumstances, to show why the court should not impose

a particular sentence, or to correct or amplify the presentence, diagnostic, or mental health reports.

(3) *Record.* A presentencing hearing must be held in open court, and the court must make a complete record of the proceedings.

(c) Prehearing Conference.

(1) *Generally.* On motion or on its own, the court may hold a prehearing conference to determine what matters are in dispute, and to limit or otherwise expedite a presentencing hearing.

(2) *Attendance of Probation Officer.* The court may order the probation officer who prepared the presentence report to attend a prehearing conference.

(3) *Postponing Sentencing and Presentencing Hearing.* At the conference, the court may postpone the date of sentencing for no more than 10 days beyond the maximum extension permitted by Rule 26.3(b), and may delay the presentencing hearing accordingly, to allow the probation officer to investigate any matter the court specifies, or to refer the defendant for mental health examinations or diagnostic tests.

Rule 26.10. Pronouncement of judgment and sentence

(a) Judgment. In pronouncing judgment on any noncapital count, the court must indicate whether the defendant's conviction is pursuant to a plea or trial, the offense for which the defendant was convicted, and whether the offense falls in the categories of dangerous, non-dangerous, repetitive, or non-repetitive offenses.

(b) Sentence. When the court pronounces sentence, it must:

(1) give the defendant and the victim an opportunity to address the court;

(2) state that it has considered the time the defendant has spent in custody on the present charge;

(3) explain to the defendant the terms of the sentence or probation;

(4) specify the beginning date for the term of imprisonment and the amount of time to be credited against the sentence as required by law;

(5) For any felony offense or a violation of §§ 13-1802, 13-1805, 28-1381, or 28-1382, permanently affix the defendant's right index fingerprint to the sentencing document or order; and

(6) if the court sentences the defendant to a prison term, the court must send, or direct the clerk to send, to the Department of Corrections the sentencing order and copies of all presentence reports, probation violation reports, and medical and

mental health reports prepared for, or relating to, the defendant.

Rule 26.17. Victim’s Right to Information

(a) Sentencing. After sentencing, the victim has a right to be informed of the disposition of the case.

(b) Restitution. A victim has a right to be informed of the right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking that right.

(c) Post-Conviction Notification. A victim has a right to be informed of the procedures to opt into post-conviction notification.

Rule 27.3. Modification of Conditions or Regulations

(a) By a Probation Officer. A probation officer may modify or clarify any regulation imposed.

(b) By the Court.

(1) *Generally.* Any modification of probation must comply with case law and statutes, due process, and statutory limitations. The court may modify or clarify any condition or regulation of probation after:

(A) Giving notice to the State, the probationer, the probation department, and a victim who has the right to notice under Rule 27.10; ~~and~~

(B) Considering and investigation report, when required by (b)(3) of this rule; and

(C) The Due Process Rights of the Victim. The Due Process Rights of the victim include giving the victim notice of any proceedings involving a probation modification and an opportunity to be heard by the court regarding the modification and of any term of probation that will substantially affect the victim’s safety, the defendant’s contact with the victim, or restitution.

(2) *Who May Request Modification or Clarification.* At any time before the probationer’s absolute discharge, a probationer, probation officer, the State, or any other person the court designates, may ask the court to modify or clarify any condition or regulation.

(3) *Required Investigation Report.* Upon any request for modification from supervised to unsupervised probation, the probation department must prepare and file an investigative report describing the probationer’s compliance with conditions and

regulations and recommending either for or against a request to modify.

(4) *Restitution*. At any time before the probationer's absolute discharge, persons entitled to restitution under a court order may ask the court, based on changed circumstances, to modify or clarify the manner in which restitution is paid.

(5) *Hearing*. The court may hold a hearing on any request for modification or clarification under (c)(2) or (c)(3).

(c) Written Copy and Effect. The probationer and the probation department must be given a written copy of any modification or clarification of a condition or regulation of probation. A modification of a regulation may go into effect immediately. An oral modification may not be the sole basis for revoking probation unless the condition or regulation is in writing and both the probationer and the probation department received a copy before the violation.

Rule 27.4. Early Termination of Probation

(a) Discretionary Probation Termination.

(1) *Generally*. At any time during the term of probation, the court may terminate probation and discharge the probationer as provided by law after:

(A) Giving notice to the State, the probationer, the probation department, and the victim who has the right to notice under Rule 27.10; ~~and~~

(B) Considering an investigation report; and

(C) Considering the rights and views of the victim.

(2) *Who May Request Termination*. At any time before a probationer's discharge from probation, the court may terminate probation and discharge the probationer on motion of the probationer, probation department, the State or the court.

(3) *Required Investigation Report*. Upon any request for termination, the probation department must prepare and file an investigative report describing the probationer's compliance with conditions and regulations recommending either for or against a request to modify.

(4) *Hearing*. The court may hold a hearing on any request for early termination.

(b) Earned Time Credit Probation Termination. The court may reduce the term or duration of supervised probation for earned time credit as provided by law.

(c) Written Copy and Effect. The court must provide probationer and the probation department a copy of the order terminating probation and specifying the effective date.

Rule 27.7. Initial Appearance After Arrest

(a) Probationer Arrested. If a probationer is arrested on a warrant issued under Rule 27.6 or is arrested by the probationer's probation officer under A.R.S. § 13-901(D), the probationer must be taken without unreasonable delay to the court with jurisdiction over the probationer.

(b) Notice. If a probationer is arrested on a warrant issued under Rule 27.6, the court must immediately notify the probationer's probation officer of the initial appearance.

(c) Procedure. At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and make a release determination, after considering the rights and views of the victim.

Rule 27.8. Probation Revocation

(a) Revocation Arraignment.

(1) *Timing.* The court must hold a revocation arraignment no later than 7 days after the summons is served or after the probationer's initial appearance under Rule 27.7.

(2) *Conduct of the Proceeding.* The court must inform the probationer of each alleged probation violation, and the probationer must admit or deny each allegation.

(3) *Setting a Violation Hearing.* If the probationer does not admit to a violation or if the court does not accept an admission, the court must set a violation hearing, unless both parties agree that a violation hearing may proceed immediately after the arraignment.

(b) Violation Hearing.

(1) *Timing.* The court must hold a hearing to determine whether a probationer has violated a written condition or regulation of probation no less than 7 and no more than 20 days after the revocation arraignment, unless the probationer in writing or on the record requests, and the court agrees, to set the hearing for another date.

(2) *Probationer's Right to Be Present.* The probationer and the victim ~~has~~have a right to be present at the violation hearing. If the probationer was previously arraigned under Rule 27.8, the hearing may proceed in the probationer's absence under Rule 9.1.

(3) *Conduct of the Hearing.* A violation must be established by a preponderance of

the evidence. Each party may present evidence and has the right to cross-examine any witness who testifies. The court may receive any reliable evidence, including hearsay, that is not legally privileged.

(4) *Admissions.* An admission by the probationer at any hearing in the same case relating to the probationer's failure to pay a monetary obligation imposed in the case is inadmissible in the probation violation hearing, unless the probationer was represented by counsel at the hearing in which the admission was made.

(5) *Findings and Setting a Disposition Hearing.* If the court finds that the probationer committed a violation of a condition or regulation of probation, it must make specific findings of the facts that establish the violation and then set a disposition hearing.

(c) Disposition Hearing.

(1) *Timing.* The court must hold a disposition hearing no less than 7 nor more than 20 days after making a determination that the probationer has violated a condition or regulation of probation.

(2) *Disposition.* Upon finding that the probationer violated a condition or regulation of probation, the court may revoke, modify, or continue probation. If the court revokes probation, the court must pronounce sentence in accordance with Rule 26. The court may not find a violation of a condition or regulation that the probationer did not receive in writing.

(d) Waiver of Disposition Hearing. If a probationer admits, or the court finds, a violation of a condition or regulation of probation, the probationer may waive a disposition hearing. If the court accepts the waiver, it may proceed immediately to a disposition under (c)(2).

(e) Disposition upon Determination of Guilt for a Later Offense. If a court makes a determination of guilt under Rule 26.1(a) that the probationer committed a later criminal offense, the court need not hold a violation hearing and may set the matter for a disposition hearing at the time set for entry of judgment on the criminal offense.

(f) Record. The court must make a record of the revocation arraignment, violation hearing, and disposition hearing.

Rule 27.10. Victims' Rights in Probation Proceedings.

The court must afford a victim who has requested notice ~~under Rule 39~~ the opportunity to be present and to be heard at any proceeding involving:

- (a) the termination of any type of probation;
- (b) probation revocation dispositions;
- (c) a modification of probation or intensive probation conditions or regulations that would substantially affect the probationer's contact with, or safety of, the victim or that would affect restitution or incarceration status; or
- (d) transfers of probation jurisdiction.

Rule 31.3. Suspension of These Rules; Suspension of an Appeal; Computation of Time; Modifying a Deadline

(a) **Suspension of Rule 31.** For good cause, an appellate court, on motion or on its own, may suspend any provision of this rule in a particular case, and may order such proceedings as the court directs.

(b) **Suspension of an Appeal.**

(1) *Generally.* An appellate court on motion or on its own, after considering the rights of the victim including the right to prompt and final conclusion of the case after conviction and sentence, may suspend an appeal if a motion under Rule 24 or a petition under Rule 32 is pending to permit the superior court to decide those matters.

(2) *Notice.* If an appeal is suspended, the appellate clerk must notify the parties, the superior court clerk, and, if certified transcripts have not yet been filed, the certified reporters or transcribers.

(3) *Later Notification.* No later than 20 days after the superior court's decision on the Rule 24 motion or Rule 32 petition, the appellant must file with the appellate clerk either a notice of reinstatement of the appeal or a motion to dismiss the

appeal under Rule 31.24(b), and must serve a copy of such documents on all persons entitled to notice under (b)(2).

(c) **New Matters.** Other than a petition for post-conviction relief that is not otherwise precluded under Rule 32.2, a party to an appeal may not, without the appellate court's consent, file any new matter in the superior court later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed.

(d) **Computation of Time.** Rule 1.3(a) governs the computation of any time period in Rule 31, an appellate court order, or a statute regarding a criminal appeal, except that 5 calendar days are not added to the time for responding to an electronically served

document.

(e) Modifying a Deadline. A party seeking to modify a deadline in the appellate court must obtain an appellate court order authorizing the modified deadline. For good cause and after considering the rights of the victim, an appellate court may shorten or extend the time for doing any act required by Rule 31, a court order, or an applicable statute.

Rule 32.7. Petition for Post-Conviction Relief

(a) Deadlines for Filing a Petition for Post-Conviction Relief.

(1) Noncapital Cases.

(A) Generally. In every case except those in which the defendant was sentenced to death:

(i) Appointed counsel must file a petition no later than 60 days after the date of appointment.

(ii) A self-represented defendant must file a petition no later than 60 days after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

(B) Time Extensions. For good cause and after considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence, the court may grant a defendant in a noncapital case a 30-day extension to file the petition. The court may grant additional 30-day extensions only on a showing of extraordinary circumstances.

(2) Capital Cases.

(A) Generally. In a capital case, the defendant must file a petition no later than 12 months after the first notice is filed.

(B) Filing Deadline for Any Successive Petition. On a successive notice in a capital case, the defendant must file the petition no later than 30 days after the notice is filed.

(C) Time Extensions. For good cause, the court may grant a capital defendant one 60-day extension in which to file a petition. After considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence, the court may grant additional extensions for good cause.

(b) Form of Petition. A petition for post-conviction relief should contain the information shown in Rule 41, Form 25, and must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities.

(c) Length of Petition.

(1) *Non-Capital Cases.* In noncapital cases, the petition must not exceed 28 pages.

(2) *Capital Cases.* In capital cases, the petition must not exceed 160 pages.

(d) Declaration. A petition by a self-represented defendant must include a declaration stating under penalty of perjury that the information contained in the petition is true to the best of the defendant's knowledge and belief.

(e) Attachments. The defendant must attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the allegations in the petition.

(f) Effect of Non-Compliance. The court will return to the defendant any petition that fails to comply with this rule, with an order specifying how the petition fails to comply. The defendant has 40 days after that order is entered to revise the petition to comply with this rule, and to return it to the court for refiling. If the defendant does not return the petition within 40 days, the court may dismiss the proceeding with prejudice. The State's time to respond to a refiled petition begins on the date of refiling.

Rule 32.9. Response and Reply; Amendments

(a) State's Response.

(1) *Deadlines.* The State must file its response no later than 45 days after the defendant files the petition. The court for good cause may grant the State a 30-day extension to file its response and may grant the State additional extensions only on a showing of extraordinary circumstances and after considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence.

(2) *Contents.* The State's response must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities, and must attach any affidavits, records, or other evidence that contradicts the petition's allegations. The State must plead and prove any ground of preclusion by a preponderance of the evidence.

(b) Defendant's Reply. The defendant may file a reply 15 days after a response is served. The court for good cause may grant one extension of time, and additional extensions only for extraordinary circumstances after considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence.

(c) Length of Response and Reply. (1) Non-Capital Cases. In noncapital cases, the State's response must not exceed 28 pages, and defendant's reply, if any, must not exceed 11 pages.

(2) Capital Cases. In capital cases, the State's response must not exceed 160 pages, and defendant's reply must not exceed 80 pages.

(d) Amending the Petition. After the defendant files a petition for post-conviction relief, the court may permit amendments to the petition only for good cause.

Rule 33.7. Petition for Post-Conviction Relief

(a) Deadlines for Filing a Petition for Post-Conviction Relief.

(1) *Defendant with Counsel.* Appointed counsel must file a petition no later than 60 days after the date of appointment.

(2) *Self-Represented Defendant.* A self-represented defendant must file a petition no later than 60 days after the notice is filed or the court denies the defendant's request for appointed counsel, whichever is later.

(3) *Time Extensions.* For good cause and after considering the rights of the victim, including the right to a prompt and final conclusion after conviction and sentence, the court may grant a defendant a 30-day extension to file the petition. The court may grant additional 30-day extensions only on a showing of extraordinary circumstances.

(b) Form of Petition. A petition for post-conviction relief should contain the information shown in Rule 41, Form 25, and must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities.

(c) Length of Petition. The petition must not exceed 28 pages.

(d) Declaration. A petition by a self-represented defendant must include a declaration stating under penalty of perjury that the information contained in the petition is true to the best of the defendant's knowledge or belief.

(e) Attachments. The defendant must attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the allegations in the petition.

(f) Effects of Non-Compliance. The court will return to the defendant any petition that fails to comply with this rule, with an order specifying how the petition fails to comply. The defendant has 40 days after that order is entered to revise the petition to comply with this rule, and to return it to the court for refiling. If the defendant does not return the petition within 40 days, the court may dismiss the proceeding with prejudice. The State's time to respond to a refiled petition begins on the date of refiling.

Rule 33.9. Response and Reply; Amendments

(a) State's Response.

(1) *Deadlines.* The State must file its response no later than 45 days after the defendant files the petition. The court for good cause may grant the State a 30-day extension to file its response and may grant the State additional extensions only on a showing of extraordinary circumstances and after considering the rights of the victim-, including the right to a prompt and final conclusion after conviction and sentence.

(2) *Contents.* The State's response must include a memorandum that contains citations to relevant portions of the record and to relevant legal authorities, and must attach any affidavits, records, or other evidence that contradicts the petition's allegations. The State must plead and prove any ground of preclusion by a preponderance of the evidence.

(b) Defendant's Reply. The defendant may file a reply 15 days after a response is served. The court for good cause may grant one extension of time, and additional extensions only for extraordinary circumstances.

(c) Length of Response and Reply. The State's response must not exceed 28 pages, and defendant's reply, if any, must not exceed 11 pages.

(d) Amending the Petition. After the defendant files a petition for post-conviction relief, the court may permit amendments to the petition only for good cause.

Rule 39. Victims' Rights

(a) Definitions and Limitations.

(1) *Criminal Proceeding.* As used in this rule, a “criminal proceeding” is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.

(2) *Identifying and Locating Information.* As used in this rule, “identifying and locating information” includes a person's date of birth, social security number, official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.

(3) *Limitations.*

(A) Cessation of Victim Status. A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402, 13-4402.01, and 13-4433.

(B) Legal Entities. The victim's rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.

(C) Conflicts Between Rule Provisions. If any provision of Rule 39 conflicts with a rule provision where a victim’s right is addressed, the individual rule provision where the victim’s right has been integrated shall prevail over Rule 39.

(b) Victims' Rights. These rules must be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule, a victim has and is entitled to assert each of the following rights:

(1) the right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;

(2) the right to notice regarding the rights available to a victim under this rule and any other provision of law, and the court must prominently post or read the statement of rights in accordance with A.R.S. § 13-4438;

(3) upon request, the right to reasonable notice of the date, time, and place of any criminal proceeding in accordance with A.R.S. § 13-4409;

(4) the right to be present at all criminal proceedings;

(5) upon request, the right to be informed of any permanent or temporary release or any proposed release of the defendant;

(6) upon request, the right to confer with the State regarding:

- (A) any decision about the preconviction release of the defendant;
 - (B) any pretrial resolution including any diversion program or plea offer;
 - (C) a decision not to initiate a criminal prosecution or to dismiss charges; and
 - (D) the trial, before the trial begins;
- (7) upon request, the right to notice of and to be heard at any criminal proceeding involving:
- (A) the initial appearance;
 - (B) the accused's post-arrest release or release conditions;
 - (C) a proposed suspension of Rule 8 or a continuance of a trial date;
 - (D) the court's consideration of a negotiated plea resolution;
 - (E) sentencing;
 - (F) the modification of any term of probation that will substantially affect the victim's safety, the defendant's contact with the victim, or restitution;
 - (G) the early termination of probation;
 - (H) a probation revocation disposition; and
 - (I) post-conviction release.
- (8) the right to be accompanied at any interview, deposition, or criminal proceeding by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate, unless testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt;
- (9) if the victim is eligible, the right to the assistance of a facility dog when testifying as provided in A.R.S. § 13-4442;
- (10) the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera;
- (11) the right to require the prosecutor to withhold, during discovery and other proceedings, the victim's identifying and locating information.
- (A) Exception. A court may order disclosure of the victim's identifying and locating information as necessary to protect the defendant's constitutional rights. If disclosure is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not convey the information to the defendant without prior court authorization.
- (B) Redactions. Rule 15.5(e) applies to information withheld under this rule;

(12) the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on the defendant's behalf, and:

(A) the defense must communicate requests to interview a victim to the prosecutor, not the victim;

(B) a victim's response to such requests must be communicated through the prosecutor; and

(C) if there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview;

(13) at any interview or deposition conducted by defense counsel, the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse;

(14) the right to terminate an interview at any time or refuse to answer any question during the interview;

(15) the right to a copy of any presentence report provided to the defendant except those parts that are excised by the court or are confidential by law;

(16) the right to be informed of the disposition of the case;

(17) the right to a speedy trial or disposition and a prompt and final conclusion of the case after conviction and sentence; and

(18) the right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking the right.

(c) Exercising the Right to Be Heard.

(1) *Nature of the Right.* If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the opportunity to explain, support, or refute the victim's statement. This subsection does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).

(2) *Victims in Custody.* If a victim is in custody for an offense, the victim's right to be heard under this rule is satisfied by affording the victim the opportunity to submit a written statement.

(3) *Victims Not in Custody.* A victim who is not in custody may exercise the right to be heard under this rule through an oral statement or by submitting a written or recorded

statement.

(4) *At Sentencing.* The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.

(d) Assistance and Representation.

(1) *Right to Prosecutor's Assistance.* A victim has the right to the prosecutor's assistance in asserting rights enumerated in this rule or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.

(2) *Standing.* The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by this rule or by any other provision of law.

(3) *Conflicts.* If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information for the appropriate state or local bar association.

(4) *Representation by Counsel.* In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. After a victim's counsel files a notice of appearance, all parties must endorse the victim's counsel on all pleadings. When present, the victim's counsel must be included in all bench conferences and in chambers meetings with the trial court that directly involve the victim's constitutional rights. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.

(e) Victim's Duties.

(1) *Generally.* Any victim desiring to claim the notification rights and privileges provided in this rule must provide his or her full name, address, and telephone number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.

(2) *Legal Entities.*

(A) *Designation of a Representative.* If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.

(B) Notice. The prosecutor must notify the defendant and the court if the prosecutor receives notice under (e)(2)(A).

(C) Effect. After notice is provided under (e)(2)(B), only the representative designated under (e)(2)(A) may assert the victim's rights on behalf of the legal entity.

(D) Changes in Designation. The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.

(f) **Waiver.** A victim may waive the rights and privileges enumerated in this rule. A prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under this rule.

(g) Court Enforcement of Victim Notice Requirements.

(1) *Court's Duty to Inquire.* At the beginning of any proceeding that takes place more than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.

(2) *If the Victim Has Been Notified.* If the victim has been notified as requested, the court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must immediately comply with (d)(1).

(3) *If the Victim Has Not Been Notified.* If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.

(h) **Appointment of Victim's Representative.** Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.

A.R.S. § 12-116.08

§ 12-116.08. Penalty assessment; victims' rights; fund deposits

Effective: January 1, 2019

A. In addition to any other penalty assessment provided by law, a penalty assessment shall be levied in an amount of nine dollars on every fine, penalty and forfeiture imposed and collected by the courts for criminal offenses and any civil penalty imposed and collected for a civil traffic violation and fine, penalty or forfeiture for a violation of the motor vehicle statutes, for any local ordinance relating to the stopping, standing or operation of a vehicle or for a violation of the game and fish statutes in title 17.¹

B. The court shall transmit the assessments collected pursuant to this section and a remittance report of the fines, civil penalties and assessments collected to the county treasurer, except that municipal courts shall transmit the assessments and the remittance report of the fines, civil penalties and assessments to the city or town treasurer.

C. The city, town or county treasurer shall transmit the assessments and the remittance report to the state treasurer. The state treasurer shall deposit 62.4 percent of the assessments in the victims' rights fund established by § 41-191.08 and the remaining 37.6 percent of the assessments in the victim compensation and assistance fund established by § 41-2407.

Credits

Added by Laws 2018, Ch. 237, § 4, eff. Jan. 1, 2019.

Footnotes

¹
Section 17-101 et seq.

A. R. S. § 12-116.08, AZ ST § 12-116.08

Current through legislation effective March 27, 2020 of the Second Regular Session of the Fifty-Fourth Legislature (2020).

End of Document

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Mitigation of Penalties, Fines, Surcharges, Assessments and Fees

Changes to Community Restitution

Effective 1-1-19 (Version 11-28-18)

Options for Judges

Mitigation: Includes waiver, suspension or reduction of any penalty, fee, fine, assessment or surcharge.

The following monetary obligations may NOT be mitigated:

- Victim Restitution, (13-603C)
- Mandatory Criminal Fines (13-825A)
- Time Payment Fee (12-116)
- Mandatory DUI Surcharges and Assessments (28-1389)
- Dangerous Crime Against Children and Sexual Assault Assessment (12-116.07)

Surcharges are a percentage of the fine or penalty, surcharges are calculated on the final fine or penalty imposed not the fine or penalty prior to mitigation. If a fine or penalty is mitigated the Clean Elections surcharge is a percentage of the mitigated fine or penalty.

Surcharges on CRIMINAL MANDATORY fines can be mitigated in themselves, except that the Clean Elections portion of the surcharges may not be mitigated. The Clean Elections portion is 10% of the fine in all cases. In CRIMINAL MANDATORY cases the other surcharges may be reduced proportional to each other (13-825C).

Community Restitution (13-824(B)) may be imposed in lieu of any penalty, fee or fine and most surcharges, but not certain assessments, it may NOT be imposed in lieu of:

- Victim Restitution (13-804)
- \$50 Address Confidentiality Assessment (12-116.05)
- \$50 Family Offenses Assessment (12-116.06)
- Dangerous Crime Against Children and Sexual Assault Assessment (12-116.07)
- \$9 Victim Assessment (12-116.08)
- \$2 Victim Assessment (12-116.09)
- 10% Clean Election Surcharge (16-954A)

Monetary obligations may be mitigated or Community Restitution may be used in lieu of monetary obligations with the exception of:

- Victim Restitution,**
- Dangerous Crime against children and Sexual Assault Assessments (12-116.07), and**
- Clean Election Fund Surcharge when attached to a mandatory criminal fine.**

Not all penalties, fines, assessments, fees and surcharges are applied to all case types.

	Available for EITHER Mitigation or Community Restitution	Available for Mitigation Only	Available for Community Restitution Only	Available for NEITHER Community Restitution or Mitigation
Victim Restitution				✓
Monetary base civil penalty (28-1603)	✓			
Monetary base criminal fine (13-825A)	✓			
Monetary base mandatory criminal fine			✓	
68% Consolidated Surcharge (12-116.01 and 12.116.02)	✓			
10% CEF Surcharge (16-954A)		✓		
10% CEF Surcharge on mandatory criminal violation (16-954A)				✓
\$13 Additional Assessment (12-116.04)	✓			
\$9 Victim Assessment (12-116.08)		✓		
\$2 Victim Assessment (12-116.09)		✓		
\$4 Peace Officer Training Equipment Assessment (12-116.10)	✓			
\$20 Probation Assessment (12-114.01)	✓			
\$20 Time Payment Fee (12-116)			✓	
\$50 Address Confidentiality Assessment (12-116.05)		✓		
\$50 Family Offenses Assessment (12-116.06)		✓		
\$500 Dangerous Crime against Children, Sexual Assault Assessment (12-116.07)				✓
Prison Construction Fund Assessment (DUI - 1st 28-1381 I4, 2nd 28-1381 K5, Extreme - 1st 28-1382 D6, 2nd 28-1382 E6, Aggravated [DUI 3rd] - 28-1383 J4, Super Extrm. - 1st 28-1382 D6, 2nd 28-1382 E6)			✓	
Public Safety Equipment Fund Assessment (DUI - 1st 28-1381 I5, 2nd 28-1381 K6, Extreme - 1st 28-1382 D7, 2nd 28-1382 E7, Aggravated [DUI 3rd] - 28-1383 J5, Super Extreme - 1st 28-1382 D7, 2nd 28-1382 E7)			✓	
DUI Abatement Fund Assessment (Extreme - 1st 28-1382 D3, 2nd 28-1382 E3, Aggravated [DUI 3rd] - 28-1383 J2, Super Extrm. - 1st 28-1382 D3, 2nd 28-1382 E3)			✓	
Diversion/DDS Surcharge (12-114)	✓			

Commission on Victims in the Courts

Friday, October 16, 2020; 10:00 a.m.

Virtual Meeting

Phone Access: (408) 792-6300 Access Code: 133 448 4923

[Commission on Victims in the Courts Home Page](#)

Time*	Agenda Items	Presenter
10:00 a.m.	Welcome, Opening Remarks, Thank you for Service, and Introductions	Judge Ron Reinstein, Chair
10:10	Approval of Minutes - June 12, 2020 <input type="checkbox"/> <i>Formal Action/Request</i>	All
10:15	Restitution Court Bench Book - General Jurisdiction	Dan Levey
10:30	Victims' Rights and Restitution Court Bench Book - Limited Jurisdiction	Kirstin Flores
10:35	National Sexual Assault Kit Initiative	Jim Markey
10:50	Intensive Probation Workgroup Proposal RE: Restitution Issues	Judge Reinstein & Rod McKone
11:00	Concussions in Victims of Intimate Partner Violence	Jonathon Lifshitz, PhD; Sean Murphy, PhD; & Hirsch Handmaker, MD
11:25	Rule 39 Restyling Committee	Judge Reinstein
11:35	Update on ARS § 12-116.08; \$9.00 Victims Rights Assessment Waiver/Mitigation	Don Jacobson
11:45	Arizona Caselaw and Court Opinions Update	Randy Udelman & Judge Reinstein
11:55	Good of the Order/Call to the Public	Judge Reinstein
12:00 p.m.	Adjournment	

Next Meeting

Friday, March 12, 2021; 10:00 a.m.
Conference Room 345 A/B
Arizona State Courts Building

2021 Meeting Dates

March 12
June 11
October 15

*All times are approximate and subject to change. The committee 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 *Teri Munn*, COVIC staff, at (602) 452-3815 with any questions concerning this agenda. Any person with a disability may request a reasonable accommodation, such as auxiliary aids or materials in alternative formats, by contacting Sabrina Nash at (602) 452-3849. TDD for hearing impaired or speech disable, please call (602) 452-3545. Requests should be made as early as possible to allow time to arrange the accommodation.

Commission on Victims in the Courts

Friday, June 12, 2020

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

Virtual Meeting

1501 West Washington Street

Phoenix, Arizona 85007

Appearing virtually: Judge Ron Reinstein (chair), Timothy Agan, Michael Breeze, Kimberly Chichester, Colleen Clase, Judge Maria Elena Cruz, Sydney Davis, Judge Ronda Fisk (proxy for Judge Patricia Starr), Kirstin Flores, Vanessa Helm, Delia Hiser (proxy for Christina Spurlock), Leslie James, Judge Kellie Johnson, Sandra Klotz (proxy for Jennifer Runge), Captain John Leavitt, Dan Levey, Sergeant James Markey (ret.), Chief Rod McKone, Jane Nicoletti-Jones, Elizabeth Ortiz, William Owsley, Karen Rasile, Judge Antonio Riojas, Judge Richard Weiss

Absent: Jon Eliason, Judge Evelyn Marez

Presenters/Guests: Justice Bill Montgomery, Elise Kulik, Mark Perkovich, Judge Maria Elena Cruz, Kirstin Flores, Colleen Clase, Rosanna Cortez, Teri Munn, Cathy Clarich

Staff: Theresa Barrett, Sabrina Nash, Jennifer Albright, Administrative Office of the Courts (AOC)

I. REGULAR BUSINESS

- A. **Welcome and Opening Remarks** - With a quorum present, the June 12, 2020, meeting of the Commission on Victims in the Courts (COVIC) was called to order at 10:05 a.m. by Judge Ronald Reinstein, Chair.
- B. **Approval of Minutes** - The draft minutes from the March 13, 2020 meeting of the COVIC were presented for approval.

Motion: To approve the March 13, 2020 minutes. **Moved:** Colleen Clase.

Second: Michael Breeze. **Vote:** Passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Legislative Update

Elise Kulik, AOC Legislative Analyst, stated that in March the legislature passed a skinny budget with no new initiative funding beyond what was funded last year to enable agencies to continue to operate. She stated that the legislature is unsure of what the pandemic's impact will be on state general fund revenue. The legislature went sine die two weeks ago and unfortunately no AJC supported House Bills were approved and will need to be presented again next year. The only bill of interest to COVIC to pass the legislature is SB1441: Protection orders; modification; residence possession. This legislation allows the court to give a party in an order of protection exclusive use of the residence while the order of protection is in effect. If the party awarded exclusive use of the residence moves out, they are required to notify the court that they moved

within five days of the move. The other party, not granted exclusive use of the residence, can petition the court in writing for a hearing to determine possession of the residence. There is discussion that the governor may call for a special session to deal with COVID related legislation or the budget.

B. STRIVE – Sustainable Technology Resources & Interventions for Victim Empowerment

Mark Perkovich, Assistant Director, NAU-Family Violence Institute, provided a brief history. In 2018, the Family Violence Institute received a \$750,000.00 grant from the National Crime Victim Law Institute. Arizona created STRIVE whose purpose is to link crime victims in rural communities via technology. The National Crime Victim Law Institute funded three programs; STRIVE, Montana's Legal Services Association and South Carolina's Victim Assistance Network. STRIVE was set up in the rural communities of Santa Cruz, Cochise and Yuma counties. Our goal is to connect crime victims with low and pro bono representation in criminal court. Mr. Perkovich stated that they are currently applying for a new grant from the Office for Victims of Crime (OVC) of 1.5 million that will allow STRIVE to expand into Pima county and increase access to justice for crime victims throughout the rural communities in Arizona. AZPOINT has been a positive resource for our rural victims. STRIVE currently has a mobile app in beta testing to increase availability of services to victims. Mr. Perkovich briefly outlined the legal services provided and thanked their community partners.

C. Restitution Court Bench Book – General Jurisdiction

Judge Maria Elena Cruz, Court of Appeals, reported that a workgroup was created to develop a restitution court bench book for the general jurisdiction courts. Workgroup members are Judge Patricia Starr, Dan Levey, Kirstin Flores, Chief Rod McKone, Richard Jones and Randall Udelman. Meetings were held in April and May and the next meeting will be on June 26, 2020. The workgroup anticipates having a draft of the bench book completed and ready to share at the October COVIC meeting.

D. Victim's Rights Assessment; Waiver Concerns

Kirstin Flores explained that the AOC removed the Victim's Rights Program and the Arizona Criminal Justice Commission's Victim Compensation was removed from CJEF and a new fine/fee of \$9.00 was created that is assessed to remedy the reductions that were affecting the victim community. It has been recently noticed by the Attorney General's Office that the fee was being waived regularly in Pima. Concern was shared that this waiver of an important fee could be happening in other city/county courts. Two questions were discussed, (a) whether this is a practice statewide, and (b) whether the issue could be addressed so that these funds are not negatively impacted as these funds are a critical need for victim's services.

Discussion: included training judicial officers that the \$9.00 fee is available for mitigation only not community restitution and can be waived. The AOC list of priority fines and fees that can be adjusted to give higher priority to the \$9.00 fee to lessen the chances it will be waived. It was suggested perhaps legislation was needed to amend

the statutory fee to be non-waivable. COVIC members will continue to research this issue and report back at the next meeting.

E. Rule 39 Petition

Colleen Clase, Arizona Voice for Crime Victims (AVCV), reported that AVCV has filed a petition to amend the Arizona Rules of Criminal Procedure by fully integrating the rights guaranteed to victims by the Arizona State Constitution throughout each applicable rule provision. Rule 39 addresses victim's rights but does not adequately provide guidance to judges and criminal law practitioners on how the rules apply to various scenarios in criminal proceedings. AVCV believes that it would be extremely beneficial to judges and criminal law practitioners to know how a decision to continue a motion affects the rights of victims and impacts the duties of the defendant, victim and the courts within the criminal justice process and this could be accomplished by integrating various rights into procedural rules themselves. A clarification to the petition specifically states that victims are not parties in the case, which was a concern voiced in a prior rule petition seeking to make these same changes. The Chair, Judge Reinstein (ret.) sought COVIC's position on the petition to report to the Court for the August Rules Agenda. Ms. Clase made a motion.

Discussion: Whether concerns raised by AVCV are more of a training issue. The risk of unintended consequences if changes are made to the Criminal Rules of Procedure. This petition has been rejected four times in the past.

Motion: To support the petition as amended. **Moved:** Colleen Clase. **Vote:** 11 yes; 13 no.

F. Roundtable Discussion: COVID-19 and Impact on Victims in the Courts

Judge Ronda Fisk reported that Maricopa county superior court is holding weekly criminal justice stakeholder meetings. In addition, they have a criminal department COVID-19 task force that meets regularly to address issues that are brought to the attention of the task force. They are focusing on how to get victims access to hearings, they are currently using GoToMeeting and they are piloting a program with Microsoft and For the Record (FTR) that allow victims to appear in a proceeding virtually. While participating in the meeting there is a component that would allow the victim's right attorney to meet and confer with the victim. They are converting some appearance hearings into non-appearance hearings, unfortunately some pre-trial conferences have been vacated due to COVID-19 restrictions on in courthouse visits.

Kirstin Flores thanked Judge Fisk on ensuring that victim's rights are in the forefront in Maricopa County Superior Court's work. She received positive feedback on victims attending on the court's bridge line. Victim's advocates in Pima county are also expressing positive feedback. Issues that victims are experiencing are with the court calendar being erratic with cases being calendared and then falling off the calendar. Victims are concerned about homicide sentencing hearings; not getting notice of

hearings five days before and the hearings being continued the day before the hearing with little or no notice. This is having an impact on victims, caseload and travel. It was noted a large part of this issue is related to COVID-19 outbreaks in jails and the subsequent inability to transport an in-custody defendant. It was also noted there is a lack of clarity regarding whether advocates can attend hearings in person or virtually.

Rosanna Cortez stated her agency was running into similar experiences with the lack of consistency in superior courts. Some courts will call the victim to testify and others will ask the victim to call in, some judges indicate that only the victim can attend in person hearings and others are indicating that the victim and a support person can attend in person hearings.

Judge Kellie Johnson stated that she will bring the victims, victim advocates and homicide survivors concerns to the attention of Judge Liwski for consideration in the scheduling of hearings and continuances.

Judge Maria Elena Cruz asked if there was a database of all judges around the state assigned to criminal calendar? Judge Cruz proposed:

- The creation of a list of email addresses for criminal presiding judges and judges assigned to criminal cases, which is updated regularly to assist with disseminating information to criminal judges regarding victim's rights.
- COVIC create a letter to the courts on the impact victims are seeing due to the COVID-19 pandemic changes that are being made in the courts.

Judge Fisk thanked COVIC for the information about the impact COVID related changes are having on victims and stated that she would share the information with her court. She noted that judicial officers are also frustrated with the necessary COVID changes and the fluidity of the situation. She noted that every time there is an outbreak in a detention center it impacts the courts ability to hold hearings and therefore affects the court calendar.

Rod McKone stated that the chief probation officers meet weekly to discuss the impact COVID has had on how they operate. Primarily they contact probationers virtually or by phone. They have waived some of the draconian contact standards with good results. They are concerned about addicts on probation getting the support they need.

Bill Owsley stated that when they went to video hearings more juveniles participated in hearings as they are tech savvy and are not in school and easier to communicate with.

Jane Nicoletti-Jones noted that they are maintaining contact with victims via video chat or by phone. There are challenges for victims living in tribal communities who are still in lockdown or who have limited access to the telephone or internet.

John Leavitt stated that law enforcement is limiting the arrest of individuals if it is not a violent crime. Law enforcement is also concerned about substance abusers because the price of methamphetamine has doubled. Many addicts are switching to oxycodone which is really fentanyl, which is resulting in more deaths in Pima county. He noted for the first time in Pima County fentanyl-related deaths outpaced methamphetamine deaths.

III. **Good of the Order:**

Dan Levey noted that bill 1278 (Victim's right to privacy; confidential information) had passed the Senate and the House judiciary and was scheduled to be heard by the full house and is now on hold due to the pandemic. The bill will be resubmitted next year.

Collen Clase mentioned that the third habeas petition for Clarence W. Dixon, the defendant who murdered Leslie James' sister twelve years ago, was denied. He has exhausted all his appellate remedies and has is sitting on death row.

Justice Bill Montgomery, who attended the meeting to learn more about the Commission's work, thanked COVIC for letting him participate and thanked members for the work that they do on COVIC. Judge Reinstein suggested that Justice Montgomery come back and talk about himself in a future meeting.

Call to the Public: None present. Staff reported no emails requesting opportunity to speak were submitted.

Adjournment: Meeting adjourned at 12:09 p.m.

Next Meeting:

Friday, October 16, 2020
10:00 a.m. to 12:00 p.m.
State Courts Building, Room 119
1501 West Washington Street
Phoenix, AZ 85007

COMMISSION ON VICTIMS IN THE COURTS

Meeting Date: October 16, 2020	Type of Action Requested: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: GENERAL JURISDICTION RESTITUTION COURT BENCH BOOK
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From: General Jurisdiction Restitution Court Bench Book Workgroup

Presenter: Dan Levey, Executive Director, Arizona Crime Victim Rights Law Group

Description of Presentation: Overview of the workgroup's composition, research process and final product.

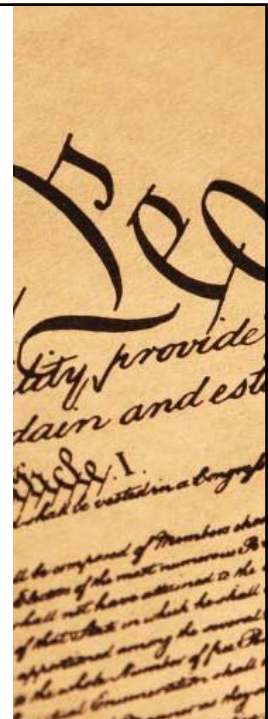
Recommended Motion: N/A

Commission on Victims In the Courts

General Jurisdiction Restitution
Court Bench Book Workgroup

Chair, Judge Maria Elena Cruz, Judge Patricia
Starr, Kirstin Flores, Richard Jones, Rod McKone,
Randy Udelman and Dan Levey

Arizona
Constitution
Article 2
section 2.1
(A)(8) A victim
has a right “to
receive
prompt
restitution”



Importance of Restitution for Victims

- Through predominantly financial restitution, offenders can replace or repair damaged or stolen property, compensate victims for expenses such as medical treatment and psychological counseling, and sometimes compensate for lost income, legal fees, and other costs directly related to the criminal offense.
- Promising restitution through court orders without collecting and disbursing the funds leads to dissatisfaction of victims.
- This study found that closer monitoring of offenders' payments increased their compliance with restitution orders. Further, regular updates to victims about the status of their restitution accounts helps them feel better informed (Davis & Smith, 1993).

General Jurisdiction Restitution Court Bench Book

Born out of Limited Jurisdiction Bench Book –Same Concept

Met several times over the last year- Revised and revised.

General Jurisdiction Restitution Court Bench Book

- Bench Book includes enforcement, definitions, when restitution must be ordered, manner of payment, restitution hearings, liens, priority of payment, CRO's, etc...
- Designed for Restitution Court Judges as quick reference but as noted in the introduction section of this book indicates that this book should be referenced in General Jurisdiction Court any time a restitution matter is in front of the judge.

GENERAL JURISDICTION

RESTITUTION COURT BENCHBOOK

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INTRODUCTION

The name *Restitution Court* reflects the purpose of this specialty court, which is to hold probationers accountable and secure payment of restitution. Restitution Court is not a probation violation court. It is a court that conducts post-sentencing, civil procedure order to show cause (OSC) hearings pursuant to Arizona Revised Statutes (A.R.S.) § 13-810 (C) and (D) to determine whether a probationer is in contempt for willful non-payment of restitution in their criminal case. This process seeks to bring before the court individuals most delinquent in restitution payments and those that have demonstrated long term “willful noncompliance” towards restitution. Restitution Court does not address court ordered financial delinquencies outside of restitution orders.

This bench book informs judicial officers of the statutorily established procedure in a Restitution Court OSC hearing. It includes pertinent victim restitution definitions as well as links to additional resources. This bench book should serve as a reference to judicial officers in general jurisdiction courts any time a restitution matter is before the judge.

ENFORCEMENT

ORDER TO SHOW CAUSE (A.R.S. § 13-810) – When a criminal defendant is in arrears in making restitution payments, the court, prosecutor or victim may petition the court for an OSC. The court shall require the defendant to appear and show cause why the failure to make payment(s) should not be treated as contempt.

In connection with an OSC Petition, the Court should consider Arizona Rule of Criminal Procedure (Rule) 26.12(c)(3), which states in part:

If the defendant fails to timely pay a fine, restitution, or other monetary obligation, or otherwise to comply with a court order, and fails to respond to a court notice informing the defendant of the consequences and resolution options, the court may issue an arrest warrant or a summons and require the defendant to show cause why he or she should not be held in contempt.

The court may consider starting the OSC process with a status conference to inform the defendant of consequences of non-payment and resolution options and following up later with a separate show cause evidentiary hearing. The purpose of an evidentiary hearing is to determine whether the defendant has either willfully failed to pay restitution or intentionally refused to make a good faith effort to obtain monies required to pay restitution. The clerk of the court, on request, shall make the defendant's payment history available to the prosecutor, victim, victim's attorney, probation department and court without cost. A.R.S. § 13-810(H).

A court may not incarcerate a defendant for nonpayment of a court-ordered legal financial obligation unless the court holds a hearing and makes one of two findings:

1. The failure to pay was willful and not due to an inability to pay; or
2. The failure to pay was due to an intentional failure to make bona fide efforts to pay.

At the OSC hearing:

Making the determination of willfulness...

Step 1—Confirm that adequate notice of the hearing was provided.

Notice should include the following information:

- a. Hearing date and time;
- b. Total amount claimed due;
- c. That the court will evaluate the defendant's ability to pay at the hearing;
- d. That the defendant should bring any documentation or information the court should consider in determining ability to pay;
- e. That incarceration may result if the court finds that the defendant had the ability to pay and willfully refused; and
- f. That a defendant unable to pay can request payment alternatives, including, but not limited to, community restitution or a time payment plan.

Step 2—Provide the defendant a meaningful opportunity to explain.

The defendant must have an opportunity to explain:

- a. Whether the amount due is incorrect; and
- b. The reason(s) for any nonpayment (e.g., inability to pay).

Step 3—Provide the victim an opportunity for cross-examination.

The victim, victim's attorney or the prosecutor on the victim's behalf, must have the opportunity to cross-examine the defendant regarding the ability to pay. ARS § 13-810(D).

Step 3—The following are factors the court should consider to determine willfulness:

- a. Whether defendant is receiving income-based public assistance, including, but not limited to, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state based benefits provided through the Arizona Department of Economic Security (DES) (all such benefits are not subject to attachment, garnishment, execution, levy, or other legal process);
- b. Income, including whether income is at or below 130% of the Federal Poverty Level (FPL) 2;
- c. Financial resources, assets, financial obligations, and dependents;
- d. Whether the defendant is homeless, incarcerated, or resides in a mental health facility;
- e. Basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support;
- f. The defendant's efforts to acquire additional resources, including any permanent or temporary limitations to secure paid work due to disability, mental or physical health, homelessness, incarceration, lack of transportation, or driving privileges;
- g. Other Legal Financial Obligation (LFO) owed to the court or other courts;
- h. Whether LFO payment would result in hardship to the defendant or his/her dependents; and
- i. Any other special circumstances that may bear on the defendant's ability to pay.

Step 4—The court should find on the record:

- a. A determination of willfulness or intentional failure to make bona fide efforts to pay.
- b. Any fine payment alternatives imposed in step 5 below.

Step 5—Alternative dispositions available:

I. Sanctions for those who have been found willful of nonpayment or intentionally failed to make a good effort to pay, after a finding of contempt, pursuant to A.R.S. § 13-810(D) & (E):

- a. Order the defendant to perform community restitution;
- b. Enter a criminal restitution order pursuant to A.R.S. § 13-805;
- c. Enter a writ of criminal garnishment pursuant to A.R.S. § 13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid;
- d. Order the defendant incarcerated in the county jail until the LFO or a specified portion of it is paid.
- e. Refer for probation revocation conducted under Rule 27. Probation revocation cannot be determined at a § 13-810 OSC hearing.

II. Dispositions for those who have been found not willful in nonpayment, or have made a good faith effort to pay pursuant to A.R.S. § 13-810(F):

- a. Re-establish any original agreement regarding the payment of the LFO;
- b. Modify the manner in which the amount owed is to be paid. This may include an extension of time to pay, the establishment or the modification of a time payment plan, ordering community restitution or allowing credit for community restitution when permitted by A.R.S. § 13-824;
- c. Enter a criminal restitution order pursuant to A.R.S. § 13-805;
- d. Enter a writ of criminal garnishment pursuant to A.R.S. § 13-812. This does not discharge a defendant who is incarcerated for nonpayment until the amount owed or a portion of the amount owed is paid.

Adapted from Bench Card for A.R.S. § 13-810 Order to Show Cause Hearings. Also available [here](#).

DEFINITIONS

ECONOMIC LOSS

The term “economic loss” means any economic loss incurred by a person as a result of the commission of an offense. It includes lost interest, lost earnings and other losses that would not have been incurred, but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages. A.R.S. § 13-105(16).

Economic loss can include "lost profits," *State v. Young*, 173 Ariz. 287, 289, 842 P.2d 1300, 1302 (Ct. App. 1992); funeral expenses, *State v. Smith*, 171 Ariz. 501, 502 n.1, 831 P.2d 877, 878 n.1 (Ct. App. 1992); *State v. Blanton*, 173 Ariz. 517, 520, 844 P.2d 1167, 1170 (Ct. App. 1992); attorneys' fees incurred to close the victim's estate, travel, and lost wages, *State v. Baltzell*, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 (Ct. App. 1992); moving expenses for the victim, *State v. Brady*, 169 Ariz. 447, 448, 819 P.2d 1033, 1033 (Ct. App. 1991); prepaid education class fees, *In re Andrew C.*, 215 Ariz. 366, 369–70, 160 P.3d 687, 690–91 (Ct. App. 2007); and costs for a security system, *State v. Quijada*, 246 Ariz. 356, 369–70, ¶ 44, 439 P.3d 815, 828–29, ¶ 44 (Ct. App. 2019).

Economic loss includes lost earnings. A.R.S. § 13-105(16). Lost earnings are not limited merely to lost wages. Earnings are something obtained during employment, and thus reasonably can extend to the employer-provided annual leave the brother had earned and used during the investigation, trial, and sentencing phases. *State v. LaPan*, 2020 WL 4592713 (App. Aug. 11, 2020).

Economic loss is the "functional equivalent" of actual damages from the civil arena. *State v. Barrett*, 177 Ariz. 46, 47–48, 864 P.2d 1078, 1079–80 (Ct. App. 1993) (citing *State v. Morris*, 173 Ariz. 14, 17, 839 P.2d 434, 437 (Ct. App. 1992)).

The term economic loss includes reasonably anticipated future economic losses that are not confined to “easily measurable damages” such as future medical care and/or lost wages. *State v. Howard*, 168 Ariz. 458, 460, 815 P.2d 5, 7 (Ct. App. 1991) (quoting *In re Maricopa Cnty. Juv. Action J-96304*, 147 Ariz. 153, 155, 708 P.2d 1344, 1346 (Ct. App. 1985)). Restitution is proper for economic losses “that are the natural consequences of the defendant’s conduct or when the court determines that the losses were foreseeable, considering the nature

and character of [the] defendant's criminal actions." *State v. Morris*, 173 Ariz. 14 17–19, 839 P.2d 434, 437–39 (Ct. App. 1992). Restitution for economic losses to make a victim whole that reflect "the basic necessities of everyday life, such as shelter, food, medical care . . . should be the rule, not the exception." *Id.* at 19, 839 P.2d at 439.

Fair market value "[i]n most cases" realistically reflects a victim's actual loss. See *State v. Ellis*, 172 Ariz. 549, 551, 838 P.2d 1310, 1312 (Ct. App. 1992). However, fair market value will not always be the appropriate standard and the court has broad discretion to ensure the victim is made whole. A victim's economic loss is not limited to fair market value of a vehicle. Authority of trial court was not abused by awarding amount still owed on vehicle that exceeded the value paid by insurance proceeds. *In re William L.*, 211 Ariz. 236, 241, ¶ 17, 119 P.3d 1039, 1044, ¶ 17 (Ct. App. 2005). Fair market value of economic loss, whether for a vehicle or other losses, does not always apply and can instead involve original purchase price or replacement cost. *Ellis*, 172 Ariz. at 551, 838 P.2d at 1312.

If a victim has received reimbursement for the victim's economic loss from an insurance company, a crime victim compensation program funded pursuant to A.R.S. § 41-2407, or any other entity, the court shall order the defendant to pay the restitution to that entity. A.R.S. § 13-804(E); see also *State v. Merrill*, 136 Ariz. 300, 301–02, 665 P.2d 1022, 1023–24 (Ct. App. 1983) (upholding restitution award to insurance company).

Attorney hired by victim acted by assisting the prosecution or "prodding" the State to pursue the case. Court found attorneys' fees constituted consequential damages which were excluded under the definition of economic loss. *State v. Slover*, 220 Ariz. 239, 243, ¶¶ 7–8, 224 P.3d 1088, 1092, ¶¶ 7–8 (Ct. App. 2009). However, the court also left open the question of whether such fees would be appropriate in cases where the victim hires an attorney to assert a concrete right under the Victim's Bill of Rights. *Id.* at 243, ¶ 9, 224 P.3d at 1092, ¶ 9; see also *State v. Leteve*, 237 Ariz. 516, 530, ¶ 58, 354 P.3d 393, 407, ¶ 58 (2015) (without objection, affirming attorney fees incurred to enforce victim rights).

Economic loss does not include potential losses due to reduced insurance coverage, *State v. Sexton*, 176 Ariz. 171, 173, 859 P.2d 794, 796 (Ct. App. 1993); or loss to emotional and mental health, sorrow and neglect, *State v. Carbajal*, 177 Ariz. 461, 464, 868 P.2d 1044, 1047 (Ct. App. 1994).

Victim can include someone partially responsible for his/her own injuries, *State v. Clinton*, 181 Ariz. 299, 300, 890 P.2d 74, 75 (Ct. App. 1995); or a person suffering property damage in a DUI collision, *State ex rel. Romley v. Superior Ct. (Cunningham)*, 184 Ariz. 409, 411, 909 P.2d 476, 478 (Ct. App. 1995). However, restitution is required only where the harm is caused by the criminal conduct for which the defendant was convicted. See *Clinton*, 181 Ariz. at 300, 890 P.2d at 75.

Economic loss can include a variety of expenses including damages to a vehicle or other property belonging to the victim. See, e.g., *State v. Reynolds*, 171 Ariz. 678, 680, 832 P.2d 695, 697 (Ct. App. 1992).

Damages to a victim's vehicle could be considered economic loss. See *In re Stephanie B.*, 204 Ariz. 466, 469, ¶ 10, 65 P.3d 114, 117, ¶ 10 (Ct. App. 2003) (1. Victim must have suffered economic loss; 2. loss would not have occurred "but for" the criminal conduct; and 3. criminal conduct was a direct cause of the economic loss); see also *State v. Wilkinson*, 202 Ariz. 27, 29, ¶ 6, 39 P.3d 1131, 1133, ¶ 6 (2002); *State v. Baltzell*, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 (Ct. App. 1992); *State ex rel. McDougall v. Superior Ct. (Martinez)*, 186 Ariz. 218, 220, 920 P.2d 784, 786 (Ct. App. 1996). Economic losses can include expenses to purchase and install a home security system. *State v. Quijada*, 246 Ariz. 356, 370, ¶ 47, 439 P.3d 815, 829, ¶ 47 (Ct. App. 2019).

Reasonable expenses associated with attendance at trial qualify as an economic loss. *State v. Madrid*, 207 Ariz. 296, 300, ¶ 10, 85 P. 3d 1054, 1058, ¶ 10 (Ct. App. 2004).

The statute mandating recovery for economic loss is broad and contemplates a wide variety of expenses caused by the conduct of persons convicted of crimes. *State v. Lindsley*, 191 Ariz. 195, 198, 953 P.2d 1248, 1251 (Ct. App. 1997) (citing *State v. Baltzell*, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 (Ct. App. 1992)).

RESTITUTION

Restitution is the act of restoring or making the victim whole and rehabilitating the defendant. It is not meant to penalize the defendant. *State v. Iniguez*, 169 Ariz. 533, 536, 821 P.2d 194, 197 (Ct. App. 1991).

VICTIM

A victim is a person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused. A.R.S. § 13-4401(19).

A legal entity victim is defined as:

1. A corporation, partnership, association or other legal entity which, except for its status as an artificial entity, would be included in the definition of victim in section 13-4401. A.R.S. § 13-4404.
2. An insurance company that had been required to pay a claim to the direct victim of an offense. *State v. Whitney*, 151 Ariz. 113, 113, 726 P.2d 210, 210 (Ct. App. 1985); *State v. Steffy*, 173 Ariz. 90, 94–95, 839 P.2d 1135, 1140–41 (Ct. App. 1992).
3. Any person or entity suffering economic loss as a result of the defendant's criminal activity, whether or not they are the direct victim of the crime. *State v. Merrill*, 136 Ariz. 300, 301–02, 665 P.2d 1022, 1023–24 (Ct. App. 1983). This included DES when it paid for psychological evaluation, counseling and a parent aide for a child molestation victim and the child's mother. *State v. Prieto*, 172 Ariz. 298, 299, 836 P.2d 1008, 1009 (Ct. App. 1992); see also *State v. Williams*, 208 Ariz. 48, 51–53, ¶¶ 9–15, 90 P.3d 785, 788–90, ¶¶ 9–15 (Ct. App. 2004) (court determined Arizona Department of Corrections to be a victim and awarded restitution).

WHEN RESTITUTION MUST BE ORDERED

Restitution is required to be ordered in full in all cases where there has been a judgment of guilt and when economic loss has occurred as a result of the commission of a crime defined in or outside Title 13. A.R.S. § 13-603(C).

Restitution for full economic loss is mandatory. *State v. Lindsley*, 191 Ariz. 195, 197, 953 P.2d 1248, 1250 (Ct. App. 1997). Restitution shall be ordered in accordance with this title unless otherwise provided by law. The burden of proof is by a preponderance of the evidence. *State v. Lewis*, 222 Ariz. 321, 324, ¶ 7, 214 P.3d 409, 412, ¶ 7 (Ct. App. 2009).

THE THREE-PART TEST

1. The loss must be ECONOMIC,
 2. The loss must not have occurred BUT FOR the defendant's conduct; and,
 3. The criminal conduct must DIRECTLY CAUSE the economic loss.
- State v. Madrid*, 207 Ariz. 296, 298, ¶ 5, 85 P.3d 1054, 1056, ¶ 5 (Ct. App. 2004); see also *State v. Wilkinson*, 202 Ariz. 27, 29, ¶ 7, 39 P.3d 1131, 1133, ¶ 7 (2002).

A.R.S. § 13-804 does not apply to traffic offenses, except for the following traffic offenses: A.R.S. § 28-661; A.R.S. § 28-662; A.R.S. § 28-693; A.R.S. § 28-1381; A.R.S. § 28-1382; or A.R.S. § 28-1383, or any local ordinance relating to the same subject matter as the above statutes. A.R.S. § 13-809(B). Causing Serious Physical Injury or Death by a moving violation under A.R.S. § 28-661 limits restitution as result of this section not to exceed one hundred thousand dollars. A.R.S. § 28-672(G); *but see State v. Patel*, 247 Ariz. 482, 485, ¶ 15, 452 P.3d 712, 715, ¶ 15 (Ct. App. 2019) (finding statutory cap violates Arizona Constitution), *review granted*.

Per A.R.S. § 13-4437(C), at the request of the victim, the prosecutor may assert any right to which the victim is entitled.

Per A.R.S. § 13-4437(E), the victim has the right to present evidence or information and to make argument to the court, personally or through counsel at any proceeding to determine the amount of restitution. The Arizona Supreme Court has held that including a cap on restitution in a plea agreement without the Victim's consent violates the Victim's right to full restitution. *E.H v. Superior Ct. (Slayton)*, 2020 WL 4459283 (Ariz. Aug. 4, 2020).

THE "BUT FOR" TEST

The state or victim must prove the loss would not have occurred but for the conduct underlying the offense; and,

the causal nexus between the conduct and the loss is not too attenuated (whether factually or temporally). The watchword is reasonableness. A sentencing court should undertake an individualized inquiry; what constitutes sufficient causation can only be determined case by case, in a fact-specific probe.

State v. Williams, 208 Ariz. 48, 53, ¶ 18, 90 P.3d 785, 790, ¶ 18 (Ct. App. 2004) (quoting *United States v. Vaknin*, 112 F.3d 579, 590 (1st Cir. 1997) (*abrogated on other grounds by United States v. Anonymous Defendant*, 629 F.3d 68 (1st Cir. 2010))).

AMOUNT OF RESTITUTION

The Arizona Supreme Court modified *State v. Lukens*, 151 Ariz. 502, 729 P.2d 306 (1986), and *State v. Phillips*, 152 Ariz. 533, 733 P.2d 1116 (1987), to only be applied to vacate the entire plea in those cases in which the amount of restitution was unknown to the defendant and it was a relevant and material factor in the defendant's decision to plead. *State v. Grijalba*, 157 Ariz. 112, 155, 755 P.2d 417, 420 (1988). If the amount of restitution is not a relevant and material factor in the decision to plead, then *Lukens* and *Phillips* are applicable only to the restitution provision. *Id.*; see also *State v. Iniguez*, 169 Ariz. 533, 536, 821 P.2d 194, 197 (Ct. App. 1991) (noting A.R.S. § 13-807 credits the restitution amount paid against any civil damage award, but it does not address the converse); *but see E.H. v. Slayton*, 1 CA-SA 19-0004, 2019 WL 1220746 (Ariz. Ct. App. Mar. 14, 2019) (review granted to determine the plea agreement caps and the constitutionality of *Lukens* and *Phillips* in light of the Victims Bill of Rights), *rev'd*, CR-19-0118-PR (Ariz. Aug. 4, 2020).

“The amount of restitution, assessments, incarceration costs and surcharges is not limited by the maximum fine that may be imposed under section 13-801 or 13-802.” A.R.S. § 13-808(C).

Arizona Supreme Court ruled that “determining a victim’s ‘loss’ requires consideration of any benefits conferred on the victim.” If value is conferred, the restitution amount must reflect the benefits received by the victim. *Town of Gilbert Prosecutor’s Office v. Downie*, 218 Ariz. 466, 472, ¶ 26, 189 P.3d 393, 399, ¶ 26 (2008).

Restitution must “bear[] a reasonable relationship to the victim’s [compensable] loss.” *In re Ryan A.*, 202 Ariz. 19, 20, ¶ 20, 39 P.3d 543, 544, ¶ 20 (Ct. App. 2002); see also *State v. Howard*, 168 Ariz. 458, 459–60, 815 P.2d 5, 6–7 (Ct. App. 1991) (noting purpose of mandatory restitution is to make victim whole, not to punish; amount must reasonably relate to loss and cannot always be easily measured).

Restitution can be awarded for crimes admitted but not charged. *State v. Cummings*, 120 Ariz. 69, 70–71, 583 P.2d 1389, 1390–91 (Ct. App. 1978); but see *State v. Zierden*, 171 Ariz. 44, 45–46, 828 P.2d 180, 181–82 (Ct. App. 1992) (finding restitution improper for uncharged crime allegedly admitted in post-arrest statements to police but not to court). Restitution may exceed amounts alleged in charging document. *State v. Fancher*, 169 Ariz. 266, 268, 818 P.2d 251, 253 (Ct. App. 1991). Restitution must be awarded to make the victim whole for their economic loss. *State v. Iniguez*, 169 Ariz. 533, 536, 821 P.2d 194, 197 (Ct. App. 1991). If the natural consequence of the defendant’s actions takes away the basic necessities of life that are the natural consequences of the defendant’s conduct, restitution must be awarded for those economic losses. *State v. Morris*, 173 Ariz. 14, 17–18, 839 P.2d 434, 437–38 (Ct. App. 1992).

MANNER OF PAYMENT

After determining the amount of the restitution, the court or a staff member designated by the court, including a probation officer, shall determine the manner of payment. In determining the manner of payment, the court shall consider the economic circumstances of the defendant and the views of the victim. A.R.S. § 13-804(E). The court must consider the defendant’s income, including worker’s compensation and social security benefits, assets, education, and obligation to support dependents, employment history, and prospects for future employment. The record must indicate that the decision was a proper discretionary choice and the court must make findings with respect to the defendant’s ability to pay. See A.R.S. § 13-804(H)(I); *State v. Lopez*, 175 Ariz. 79, 82–83, 853 P.2d 1126, 1129–30 (Ct. App. 1993).

If a defendant, state or victim entitled to restitution disagrees with the manner of payment established by the court or its designee, they may file a petition with the court seeking to change the manner of payment and the court shall give notice

and an opportunity to be heard to the victim, state and defendant. A.R.S. §13-804(M).

RESTITUTION HEARING

The court may hold a hearing to determine the total amount of the restitution the defendant owes the victims, the amount owed to each or the manner in which restitution is to be paid. A.R.S. § 13-804(G). Restitution is determined by the court as a part of sentencing. The burden of proof is by a preponderance of the evidence. *State v. Fancher*, 169 Ariz. 266, 268, 818 P.2d 251, 253 (Ct. App. 1991) (“[Restitution] is the act of restoring or making the victim whole and does not require proof beyond a reasonable doubt.”) It is separate from the trial phase in a criminal case and this does not need to be proven beyond a reasonable doubt. *In re Stephanie B.*, 204 Ariz. 466, 470, ¶ 15, 65 P.3d 114, 118, ¶ 15 (Ct. App. 2003) (“The burden of proof applicable to restitution is proof by a preponderance of the evidence.”) (citing *Benton v. State*, 711 A.2d 792, 797 (Del. 1998)).

Per A.R.S. § 13-805(A)(2), the trial court retains jurisdiction “for purposes of ordering, modifying, and enforcing the manner in which payments are made until paid in full.” See *State v. Howard*, 168 Ariz. 458, 460, 815 P.2d 5, 7 (Ct. App. 1991) (noting victim losses “cannot always be confined to easily measurable damages” and that award for future reasonably anticipated wage losses and medical expenses could be adjusted if medical costs or wage losses were different than anticipated (internal quotation omitted)). The court retains jurisdiction to adjust restitution numbers if a victim may have future losses but may also be unsure how to quantify them. See *State v. Unkefer*, 225 Ariz. 431, 433, ¶ 9, 239 P.3d 749, 752, ¶ 9 (Ct. App. 2010), *limited on other grounds by Hoffman v. Chandler*, 231 Ariz. 362, 365, ¶ 14, 295 P.3d 939, 942, ¶ 14 (2012).

As restitution for a victim’s economic loss is mandatory, *State v. Steffy*, 173 Ariz. 90, 93, 839 P.2d 1135, 1138 (Ct. App. 1992), the court in considering a delayed request for restitution, should consider the request in light of *State v. Pinto*, 179 Ariz. 593, 880 P.2d 1139 (Ct. App. 1994), the legislative intent in enacting the statute on restitution and the victim bill of rights. The following factors bear on the reasonableness of the timeliness of the restitution request:

[T]he totality of the circumstances which would include not only the length of the delay, but also the reason for the

delay, the parties responsible for the delay, the effect of the delay, any demonstrated prejudice suffered by the defendant, and . . . whether any prejudice can be mitigated or cured by, for example, shifting the burden of proving offsets to restitution to the State. . . . [T]he court should consider these factors in light of the purpose of restitution and the legislature's intent in enacting A.R.S. § 13-805.

State v. Unkefer, 225 Ariz. 431, 435, ¶ 17, 239 P.3d 749, 754, ¶ 17 (Ct. App 2010); see also *State v. Zaputil*, 220 Ariz. 425, 429, ¶ 16, 207 P.3d 678, 682, ¶ 16 (Ct. App. 2008) (finding three-year delay between guilty plea and restitution hearing not untimely).

A defendant is entitled to counsel at a restitution hearing as it is a proceeding in a criminal case. *State v. Guadagni*, 218 Ariz. 1, 7, ¶ 21, 178 P.3d 473, 479, ¶ 21 (Ct. App. 2008). A defendant is not entitled to counsel in post-conviction contempt proceedings filed pursuant to A.R.S. § 13-810. These matters should be considered civil contempt proceedings designed to assist victims seeking to collect on court ordered restitution rather than commission of a disrespectful act or acts directed at the court itself which obstructs justice and which forms a basis for criminal contempt. See *State v. Verdugo*, 124 Ariz. 91, 93, 602 P.2d 472, 474 (1979).

“[T]he victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution” A.R.S. § 13-4437(E); see also A.R.S. § 13-4426(A) (“The victim may present evidence, information and opinions that concern . . . the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding.”).

RESTITUTION ORDER

“If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime . . . in the full amount of the economic loss” A.R.S. § 13-603(C).

Restitution shall be paid to the clerk of the court for purposes of disbursement to the victim. A.R.S. § 13-603(C).

The court shall enter an order of restitution setting forth the amount of restitution due each person, the total amount of restitution due, and the manner of payment. A.R.S. § 13-804(H)(1)–(3). If a defendant is sentenced to probation, the payment of restitution shall be made a condition of probation. A.R.S. § 13-808(B). The court may order all or a portion of the fine to be paid to the victim as restitution. A.R.S. § 13-804(A).

“If the court has ordered the prisoner to pay restitution pursuant to section 13-603, the director shall withdraw a minimum of twenty percent, or the balance owing on the restitution amount, up to a maximum of fifty percent of the monies available in the prisoner's spendable account each month to pay the court ordered restitution.” A.R.S. § 31-230(C).

RESTITUTION LIEN

Once restitution is ordered by a judicial officer, a restitution lien is created in favor of the victim. A.R.S. § 13-804(L). A restitution lien is perfected against interests in real property by the victim filing the lien with the county recorder of the county in which the real property is located. The lien must comply with the requirements of A.R.S. § 13-806 as to contents and procedure for perfection of the lien. Any monies owed by the state to a defendant including any tax refunds are subject to the lien created in favor of the victim. A.R.S. § 13-804(L).

PRECONVICTION RESTITUTION LIEN

“A prosecutor or a victim in a criminal proceeding in which there was an economic loss may file a request with the court for a preconviction restitution lien after the filing of a misdemeanor complaint or felony information or indictment.” A.R.S. § 13-806(C). “The court shall order the release of any preconviction restitution lien that has been filed or perfected if the defendant is acquitted or the state does not proceed with the prosecution.” A.R.S. § 13-806(K).

CRIMINAL RESTITUTION ORDER

A criminal restitution order (CRO) comes in one of two forms. The first form is a CRO for any unpaid restitution balance to *actual victims*, which MAY BE entered by the court at the time the defendant is ordered to pay restitution, but which MUST BE entered by the court upon the completion of the defendant's probation period or sentence (or if the defendant absconds). A.R.S. § 13-805(B), (C)(2). The second form is a CRO for unpaid balances of fines, fees, costs, incarceration

costs, surcharges or assessments imposed. This type of CRO must be, and can ONLY be, entered upon completion of a probation term, prison sentence, or if defendant absconds. A.R.S. § 13-805(C)(1).

The criminal restitution order is not a civil judgment; it is a criminal order that may be enforced through civil and criminal remedies. See A.R.S. §§ 13-810 to -820. The CRO does not expire until paid in full and may not be discharged in bankruptcy. A.R.S. § 13-805(C). Interest accrues at the rate of 10% per year. A.R.S. § 13-805(E). “The clerk of the court shall notify each person who is entitled to restitution of the criminal restitution order.” A.R.S. § 13-805(D).

MODIFICATION OF THE ORDER

The state, victim, or defendant may petition the court at any time for a modification of the manner of payment. A.R.S. § 13-804(M). A restitution order survives a defendant's death although the defendant's estate may continue any pending appellate challenges to restitution if the defendant dies before appellate review has completed. *In re The Matter of the Estate of Vigliotto*, 178 Ariz. 67, 69, 870 P.2d 1163, 1165 (Ct. App. 1993); see also *State v. Reed*, 246 Ariz. 138, 146, ¶ 31, 435 P.3d 1044, 1052, ¶ 31 (Ct. App. 2019); *vacated* 248 Ariz. 72, 456 P.3d 453 (2020). It is not a dischargeable obligation in a bankruptcy proceeding. A.R.S. § 13-805(I); *State v. West*, 173 Ariz. 602, 608–09, 845 P.2d 1097, 1103–04 (Ct. App. 1992).

PRIORITY OF PAYMENT

Payment and enforcement of restitution must take priority over payment of the fine and other sums due the state. A.R.S. § 13-809(A). Payment and enforcement of restitution take priority over payment to the state. A.R.S. § 13-809(A). Any monies received from the defendant ordered to pay restitution shall first be applied to satisfy the restitution order. A.R.S. § 13-804(L).

PETITION TO REVOKE

Caselaw requires that a hearing be held, and a finding made, that a defendant had the ability to pay but refused to do so before probation can be revoked. *State v. Currie*, 150 Ariz. 59, 61, 721 P.2d 1186, 1188 (Ct. App. 1986); *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983); *State v. Wilson*, 150 Ariz. 602, 605, 724 P.2d 1271, 1274 (Ct. App. 1986); *State v. Hovey*, 175 Ariz. 219, 220, 854 P.2d 1205, 1206 (Ct. App. 1993).

PURSUING GARNISHMENT AS A CIVIL MATTER

The Arizona Supreme Court's Self-Service Center forms webpage contains a section on garnishments. It also contains forms for judicial officer use. See: <https://www.azcourts.gov/selfservicecenter/Self-Service-Forms/Garnishment-of-Earnings>

Garnishment as a criminal matter:

Similar procedures govern garnishment in a criminal case but are guided by A.R.S. §§ 13-812 to -820.

POST-SENTENCE PROCEDURE

A.R.S. § 13-804(D) takes precedence over Arizona Rule of Criminal Procedure 31.6 (now 31.7) regarding staying restitution payments during appeal. The restitution may be paid and held by the court until the appeal is resolved. *State v. Hansen*, 215 Ariz. 287, 288, ¶ 1, 160 P.3d 166, 167, ¶ 1 (2007).

Defendant agreed to pay restitution as a term in a plea agreement. The Court retains jurisdiction to order restitution after conviction even though a set aside under A.R.S. § 13-907 was granted and probation terminated. *State v Zaputil*, 220 Ariz. 425, 429, ¶¶ 15, 18, 207 P.3d 678, 682, ¶¶ 15, 18 (Ct. App. 2008).

If a defendant on probation has not paid restitution for a minimum of four consecutive monthly payments, the probation department shall notify the court having jurisdiction over the case and shall include a reason for arrearages, the expected duration and a recommendation to the Court for further action if any. A copy of the recommendation shall be provided to the state and victim if the victim has requested post-conviction notice pursuant to A.R.S. § 13-4415. A.R.S. § 13-804(N). The State or victim may file an objection to the probation department recommendations and the Court shall hold a review hearing if requested or may hold a review hearing on its own motion. The hearing shall occur within forty-five days of the request. A.R.S. § 13-804(O).

SUPREMACY CLAUSE ISSUE

One issue that comes up surprisingly often in a restitution enforcement context is the issue of defendants who are receiving Social Security benefits. State law commands the court to consider all of a defendant's assets and income, including

Social Security benefits. A.R.S. § 13-804(E). And, for defendants who have sources of income in addition to their Social Security benefits, those other sources of income may be attached or garnished, and a defendant may be jailed for willful failure to pay court-ordered restitution. However, when it comes to the Social Security Benefits themselves, federal law makes this income immune to "execution, levy, attachment, garnishment, or other legal process." 42 U.S.C. § 407(a) (emphasis added). While there is no case law from Arizona directly on point for the criminal system, three other states have considered the issue and held that Social Security benefits may not be taken by a state for nonpayment of restitution or mandatory fines. See *In re Lampart*, 856 N.W.2d 192, 200 (Mich. Ct. App. 2014); *Montana v. Eaton*, 99 P.3d 661, 665–66 (Mont. 2004); *Washington v. Catling*, 438 P.3d 1174, 1180 (Wash. 2019).

This issue may only arise in the context of ordering the manner of payment of restitution and not the amount of restitution. A.R.S. § 13-804(C) ("The court shall not consider the economic circumstances of the defendant in determining the amount of restitution."). Moreover, this issue may only arise when a defendant only receives social security benefits without any other assets or income.

For defendants who have only Social Security benefits, the court may still consider the facts and circumstances of the case, the victim's views on repayment, and "shall make all reasonable efforts to ensure that all persons who are entitled to restitution pursuant to a court order promptly receive full restitution." A.R.S. § 13-804(E). Moreover, the Court "may enter any reasonable order necessary to accomplish this." *Id.* Depending on the facts and circumstances, the court may consider and attribute income to the defendant as courts do in domestic relations matters to comply with the Victim's Bill of Rights constitutional obligation to receive "prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury." Ariz. Const. art. 2, § 2.1(A)(8).

QUICK LINKS

[Victim's Bill of Rights](#)

[Criminal Rule 39](#)

[A.R.S. § 13-4401 series](#)

[ACJA § 4-301 and § 5-204](#)

[AZ Supreme Court – Victim Restitution Resources webpage](#)

COMMISSION ON VICTIMS IN THE COURTS

Meeting Date: October 16, 2020	Type of Action Requested: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: LIMITED JURISDICTION RESTITUTION COURT BENCH BOOK
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From: Kirstin Flores, Director Victims Services, Office of the Arizona Attorney General

Presenter: Kirstin Flores, Director Victims Services, Office of the Arizona Attorney General

Description of Presentation: Update on the limited jurisdiction restitution court bench book.

Recommended Motion: N/A

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WHEN RESTITUTION MUST BE ORDERED

Restitution is required to be ordered in all cases where there has been a judgment of guilt and when economic loss has occurred as a result of the commission of a crime defined in or outside Title 13 ([A.R.S. § 13-603\(C\)](#)) Restitution shall be ordered in accordance with this title unless otherwise provided by law.

[A.R.S. § 13-804](#) does not apply to traffic offenses, except for the following traffic offenses: [A.R.S. § 28-661](#); [A.R.S. § 28-662](#); [A.R.S. § 28-693](#); [A.R.S. § 28-1381](#) or [A.R.S. § 28-1382](#); [A.R.S. § 28-1383](#), or any local ordinance relating to the same subject matter as the above statutes [A.R.S. § 13-809\(B\)](#). Causing Serious Physical Injury or Death, ([A.R.S. § 28-661](#)), by a moving violation limits restitution as result of this section not to exceed one hundred thousand dollars. ([A.R.S. § 28-672\(G\)](#)).

Per [A.R.S. § 13-4437\(C\)](#), at the request of the victim, the prosecutor may assert any right to which the victim is entitled.

VICTIM DEFINED

Victim is defined as:

A person against whom the criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person's spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused ([A.R.S. § 13-4401.19](#)).

A legal entity victim is defined as:

1. A corporation, partnership, association or other legal entity which, except for its status as an artificial entity, would be included in the definition of victim in section 13-4401. ([A.R.S. § 13-4404](#)).
2. An insurance company that had been required to pay a claim to the direct victim of an offense. [State v. Whitney, 151 Ariz. 113, 726 P.2d 210 \(Ct. App., 1985\)](#); [State v. Steffy, 173 Ariz. 90, 839 P.2d 1135 \(Ct. App., 1992\)](#).
3. Any person or entity suffering economic loss as a result of the defendant's criminal activity, whether or not they are the direct victim of the crime. [State v. Merrill, 136 Ariz. 300, 301-02, 665 P.2d 1022, 1023-24 \(App. 1983\)](#). This includes the Department of Economic Security when they paid for psychological evaluation, counseling and a parent aide for a child molestation victim and the child's mother. [State v. Prieto, 172 Ariz. 298, 836 P.2d 1008 \(Ct. App., 1992\)](#); Arizona Department

of Corrections determined to be a victim and awarded restitution. [State v. Guilliams, 208 Ariz. 48, 90 P. 3d 185 \(Ct. App., 2004\)](#).

ECONOMIC LOSS DEFINED

The term “economic loss” means any economic loss incurred by a person as a result of the commission of an offense. It includes lost interest, lost earnings and other losses that would not have been incurred, but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages ([A.R.S. § 13-105\(16\)](#)).

Economic loss can include "lost profits," [State v. Young, supra](#); funeral expenses, [State v. Smith, 171 Ariz. 501, 831 P.2d 877 \(Ct. App., 1992\)](#); [State v. Blanton, 173 Ariz. 517, 844 P.2d 1167 \(Ct. App., 1992\)](#); attorney's fees incurred to close the victim's estate, travel, and lost wages, [State v. Baltzell, 175 Ariz. 437, 857 P.2d 1291 \(Ct. App., 1992\)](#); moving expenses for victim, [State v. Brady, 169 Ariz. 447, 819 P.2d 1033 \(Ct. App., 1991\)](#), prepaid education class, [In re Andrew, 215 Ariz. 366, 160 P.3d 687 \(Ct. App.2007\)](#), costs for a security system, [State v Quijada, 439 P.3d 815 \(App. 2019\)](#).

Victim's economic loss not limited to fair market value of a vehicle. Authority of trial court not abused by awarding amount still owed on vehicle that exceeded the value paid by insurance proceeds. [In re William 211 Ariz. 236, 119 P.3d 1039 \(Ct. App., 2005\)](#). Fair market value of economic loss whether for a vehicle or other losses does not always apply and can instead involve original purchase price or replacement cost. [State v. Ellis 172 Ariz. 549, 551, 838 P. 2d 1310, 1312 \(App. 1992\)](#).

If a victim has received reimbursement for the victim's economic loss from an insurance company, a crime victim compensation program funded pursuant to [A.R.S. § 41-2407](#) or any other entity, the court shall order the defendant to pay the restitution to that entity ([A.R.S. § 13-804\(E\)](#)); see also [State v Merrill, 136 Ariz. 300, 301-02, 665 P.2d 1022, 1023-24 \(App. 1983\)](#) (upholding restitution award to insurance company).

Attorney hired by victim acted by assisting the prosecution or “prodding” the State to pursue the case. Court found attorney fees constituted consequential damages which were excluded under the definition of economic loss, [State v. Slover, 220 Ariz. 239, 224 P.3d 1088 \(Ct. App 2009\)](#). Attorney fees to further victim rights may be proper; fees required to establish probate, conservatorship or possible restitution collection costs may also be appropriate. [State v. Baltzell, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 \(App. 1992\)](#). Economic loss does not include potential losses due to reduced insurance coverage, [State v. Sexton, 176 Ariz. 171, 859 P.2d 794 \(Ct. App., 1993\)](#); or loss to emotional and mental health, sorrow and neglect, [State v. Carbajal, 177 Ariz. 461, 868 P.2d 1044 \(Ct. App., 1994\)](#). Victim can include someone partially responsible for his/her own injuries - [State v. Clinton, 181 Ariz. 299, 890 P.2d 74 \(Ct. App., 1995\)](#), or a person suffering property damage in a DUI collision - [State ex rel. Romley v. Superior Court \(Cunningham\), 184 Ariz. 409, 909 P 2d 476 \(Ct. App., 1995\)](#). However, restitution is required only where the harm is caused by the criminal conduct for which the defendant was convicted.

Economic loss can include a variety of expenses including damages to a vehicle or other property belonging to the victim. See, e.g., [State v. Baltzell, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 \(App. 1992\)](#).

Damages to a victim's vehicle could be considered economic loss - See [In re Stephanie B., 204 Ariz. 466, 469, 65 P.3d 114, 117 \(App. 2003\)](#). (1. Victim must have suffered economic loss, 2. Loss would not have occurred "but for" the criminal conduct and 3. Criminal conduct was a direct cause of the economic loss); see also [State v. Wilkinson, 202 Ariz. 27, 29, 39 P.3d 1131, 1133 \(2002\)](#); see also [State v. Baltzell, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 \(App. 1992\)](#); see also [State ex rel. McDougall v. Superior Court \(Martinez\), 186 Ariz. 218, 920 P. 2d 784 \(Ct. App., 1996\)](#). Economic losses can include expenses to purchase and install a home security system. [State v. Quijada, 439 P.3d 815, 828 \(App. 2019\)](#).

Reasonable expenses associated with attendance at trial qualifies as an economic loss - [State v. Madrid, 207 Ariz. 296, 85 P. 3d 1054 \(Ct. App., 2004\)](#).

AMOUNT OF RESTITUTION

The Arizona Supreme Court modified [Lukens](#) and [supra](#) to only be applied to vacate the entire plea in those cases in which the amount of restitution was unknown to the defendant and it was a relevant and material factor in the defendant's decision to plead. [State v. Grijalba, 157 Ariz. 112, 755 P.2d 417 \(1988\)](#). If the amount of restitution is not a relevant and material factor in the decision to plead, then [Lukens](#) and [Phillips](#) are applicable only to the restitution provision. [State v. Iniguez, 169 Ariz. 533, 821 P.2d 194 \(Ct. App., 1991\)](#). [A.R.S. § 13-807](#) credits the restitution amount paid against any civil damage award, but it does not address the converse.

[A.R.S. § 13-808\(C\)](#) - The amount of restitution, assessments, incarceration costs and surcharges is not limited by the maximum fine that may be imposed under section 13-801 or 13-802.

Arizona Supreme Court ruled that "determining a victim's loss requires consideration of any benefits conferred on the victim." If value is conferred, the restitution amount must reflect the benefits received by the victim. [Town of Gilbert Prosecutor's Office v Downie \(Matykiewicz, real party in interest\) 218 Ariz. 466 \(2008\)](#).

Restitution must "bear a reasonable relationship to the victim's [compensable] loss." [In re Ryan A., 202 Ariz. 19, 20, 39 P.3d 543, 544 \(App. 2002\)](#); see also [State v. Howard, 168 Ariz. 458, 459-60, 815 P.2d 5, 6-7 \(App. 1991\)](#) (purpose of mandatory restitution is to make victim whole, not to punish; amount must reasonably relate to loss and cannot always be easily measured). Restitution can be awarded for crimes admitted but not charged. [State v. Cummings, 120 Ariz. 69, 70-71, 583 P.2d 1389, 1390-91 \(App. 1978\)](#); but see [State v. Zierden, 171 Ariz. 44, 45, 828 P.2d 180, 181 \(App. 1992\)](#) (restitution improper for uncharged crime allegedly admitted in post-arrest statements to police but not to court). Restitution may exceed amounts alleged in charging document. [State v. Fancher, 169 Ariz. 266, 268, 818 P.2d 251, 253 \(App. 1991\)](#).

MANNER OF PAYMENT

After determining the amount of the restitution, the court or a staff member designated by the court, including a probation officer, shall determine the manner of payment. In determining the manner of payment, the court shall consider the economic circumstances of the defendant and the views of the victim ([A.R.S. § 13-804\(E\)](#)). The court must consider the defendant's income, including worker's compensation and social security benefits, assets, education, and obligation to support dependants, employment history, and prospects for future employment. The record must indicate that the decision was a proper discretionary choice and the court must make findings with respect to the defendant's ability to pay.

If a defendant, state or victim entitled to restitution disagrees with the manner of payment established by the court or its designee, they may file a petition with the court seeking to change the manner of payment and the court shall give notice and an opportunity to be heard to the victim, state and defendant. [A.R.S. §13-804\(M\)](#).

RESTITUTION HEARING

The court may hold a hearing to determine the total amount of the restitution the defendant owes the victims, the amount owed to each or the manner in which restitution is to be paid ([A.R.S. § 13-804\(G\)](#)). Restitution is determined by the court as a part of sentencing. The burden of proof is by a preponderance of the evidence. [State v Fancher, 169 Ariz. 266, 268, 818 P.2d 251, 253 \(App. 1991\)](#) (Restitution "is the act of restoring or making the victim whole and does not require proof beyond a reasonable doubt.") It is separate from the trial phase in a criminal case and this does not need to be proven beyond a reasonable doubt. [In re Stephanie B., 204 Ariz. 466, 470, 65 P.3d 114, 118 \(App 2003\)](#) ("The burden of proof applicable to restitution is proof by a preponderance of the evidence.") (citing [Benton v. State, 711 A. 2d 792, 797 \(Del. 1998\)](#)).

Per [A.R.S. § 13-805\(A\)\(2\)](#), the trial court retains jurisdiction "for purposes of ordering, modifying, and enforcing the manner in which payments are made until paid in full." See [State v. Howard, 168 Ariz. 458, 460, 815 P.2d 5, 7 \(App. 1991\)](#) (victim losses "cannot always be confined to 'easily measurable damages.'" Award for future reasonably anticipated wage losses and medical expenses could be adjusted if medical costs or wage losses were different than anticipated). The court retains jurisdiction to adjust restitution numbers if a victim may have future losses but may also be unsure how to quantify them. See [State v. Unkefer, 225 Ariz. 431, 435, 239 P.3d 749, 754 \(App. 2010\)](#), limited on other grounds, [Hoffman v. Chandler, 231 Ariz. 362, 365, 295 P.3d 939, 942 \(2012\)](#).

As restitution for a victim's economic loss is mandatory ([State v. Steffy, 173 Ariz. 90, 93, 839 P.2d 1135, 1138 \(App. 1992\)](#)), the court in considering a delayed request for restitution, should consider the request in light of [State v. Pinto, 179 Ariz. 593, 880 P.2d 1139 \(Ariz. App. 1994\)](#) the legislative intent in enacting the statute on restitution and the victim bill of rights. The following factors bear on the reasonableness of the timeliness of the restitution request:

[T]he totality of the circumstances which would include not only the length of the delay, but also the reason for the delay, the parties responsible for the delay, the effect of the delay, any demonstrated prejudice suffered by the defendant, and, [], whether any prejudice can be mitigated or cured by, for example, shifting the burden of proving offsets to restitution to the State. . . . [T]he court should consider these factors in light of the purpose of restitution and the legislature's intent in enacting [A.R.S. § 13-805](#). *State v. Unkefer*, 225 Ariz. 431, 239 P.3d 749 (Ariz. App 2010). See also *State v. Zaputil*, 220 Ariz. 425, 429, 207 P.3d 678, 682 (App. 2008) (three year delay between guilty plea and restitution hearing not untimely).

A defendant is entitled to counsel at a restitution hearing as it is a proceeding in a criminal case. [State v. Guadagni](#), 218 Ariz. 1, 7, 178 P.3d 473, 479 (App. 2008). A defendant is not entitled to counsel in post-conviction contempt proceedings filed pursuant to [A.R.S. §13-810](#). These matters should be considered civil contempt proceedings designed to assist victims seeking to collect on court ordered restitution rather than commission of a disrespectful act or acts directed at the court itself which obstructs justice and which forms a basis for criminal contempt. [State v. Verdugo](#), 124 Ariz. 91, 93, 602 P.2d 472, 474 (1979).

The victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution ([A.R.S. § 13-4437\(E\)](#)); see also §13-4426(A) (“The victim may present evidence, information and opinions that concern . . . the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding.”).

RESTITUTION ORDER

“If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime... in the full amount of the economic loss” ([A.R.S. § 13-603\(C\)](#)).

Restitution shall be paid to the clerk of the court for purposes of disbursement to the victim ([A.R.S. § 13-603\(C\)](#)).

The court shall enter an order of restitution setting forth the amount of restitution due each person, the total amount of restitution due, and the manner of payment ([A.R.S. § 13-804\(H\)\(1\)-\(3\)](#)). If defendant is sentenced to probation, the payment of restitution shall be made a condition of probation ([A.R.S. § 13-808\(B\)](#)). The court may order that all or a portion of the fine to be paid to the victim as restitution ([A.R.S. § 13-804\(A\)](#)).

RESTITUTION LIEN

Once restitution is ordered by a judicial officer, a restitution lien is created in favor of the victim ([A.R.S. § 13-804\(L\)](#)). A restitution lien is perfected against interests in real property by the victim filing the lien with the county recorder of the county in which the real property is located. The lien must comply with the requirements of [A.R.S. § 13-806](#) as to contents and procedure for perfection of the lien.

PRE-CONVICTION RESTITUTION LIEN

A prosecutor or a victim in a criminal proceeding in which there was an economic loss may file a request with the court for a pre-conviction restitution lien after the filing of a misdemeanor complaint or felony information or indictment ([A.R.S. § 13-806\(C\)](#)). The court shall order the release of any pre-conviction restitution lien that has been filed or perfected if the defendant is acquitted or the state does not proceed with the prosecution ([A.R.S. § 13-806\(K\)](#)).

CRIMINAL RESTITUTION ORDER

A **Criminal Restitution Order (CRO)** is entered by the court after the completion of the defendant's probation period or sentence (or if the defendant absconded) when there is an unpaid balance of any restitution order. [A.R.S. §13-805\(C\)\(1\) & \(2\)](#). The law also allows the court to enter a CRO at the time the defendant is ordered to pay restitution ([A.R.S. § 13-805\(B\) and \(C\)](#)). The criminal restitution order is not a civil judgment; it is a criminal order that may be enforced through civil and criminal remedies. See [A.R.S. §§13-810](#) to -820. Interest accrues at the rate of 10% per year ([A.R.S. § 13-805\(E\)](#)). The clerk of the court shall notify each person who is entitled to restitution of the criminal restitution order ([A.R.S. § 13-805\(D\)](#)).

MODIFICATION OF THE ORDER

The state, victim, or defendant may petition the court at any time for a modification of the manner of payment ([A.R.S. § 13-804\(M\)](#)). A restitution order survives a defendant's death. [In re The Matter of the Estate of Vigliotto, 178 Ariz. 67, 870 P.2d 1163 \(Ct. App., 1993\); see also State v. Reed, 246 Ariz. 138, 146, 435 P.3d 1044, 1052 \(App. 2019\)](#). It is not a dischargeable obligation in a bankruptcy proceeding. [A.R.S. §13-805\(I\); State v. West, 173 Ariz. 602, 845 P.2d 1097 \(Ct. App., 1992\)](#).

PRIORITY OF PAYMENT

Payment and enforcement of restitution must take priority over payment of the fine and other sums due the state ([A.R.S. § 13-809\(A\)](#)). Payment and enforcement of restitution take priority over payment to the state ([A.R.S. § 13-809\(A\)](#)). Any monies received from the defendant ordered to pay restitution shall be applied first to satisfy the restitution order ([A.R.S. § 13-804\(K\)](#)).

ENFORCEMENT

In the criminal case:

ORDER TO SHOW CAUSE ([A.R.S. § 13-810](#)) – When a defendant is in arrears in making restitution payments, the court, prosecutor or victim may move/petition the court for an OSC. The court shall require the defendant to appear and show cause why the failure to make payment(s) should not be treated as contempt.

In connection with an OSC Petition, the Court should consider Rule 26.12((c)(3) which states:

”If the defendant fails to timely pay a fine, restitution, or other monetary obligation and fails to respond to a court notice informing the defendant of the consequences and resolution options, the court may issue an arrest warrant or a summons and require the defendant to show cause why he or she should not be held in contempt for non-payment.”

The court may consider starting the OSC process with a status conference to inform the defendant of consequences of non-payment and resolution options following up later with a separate show cause evidentiary hearing. The purpose for an evidentiary hearing is to determine whether the defendant has either willfully failed to pay restitution or intentionally refused to make a good faith effort to obtain monies required to pay restitution.

At the hearing:

If the court finds the defendant willfully failed to pay restitution or intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find the defendant in contempt and may:

- Order the defendant jailed until the restitution (or part of it) is paid (a purge order)
- Revoke the defendant’s current release status and sentence him/her to prison
- Issue a writ of criminal garnishment ([A.R.S. § 13-812 and § 13-813](#))

If the court finds the defendant’s default is not willful and the defendant cannot pay despite good faith efforts, the court may:

- Modify the manner in which restitution is to be paid
- Enter any reasonable order that would assure compliance with payment
- Issue a writ of criminal garnishment ([A.R.S. § 13-812 and § 13-813](#))

Click [Here](#) for Bench Card for [A.R.S. § 13-810](#) Order to Show Cause Hearings

PETITION TO REVOKE

Caselaw requires that a hearing be held, and a finding made, that a defendant had the ability to pay but refused to do so before probation can be revoked. [State v. Currie, 150 Ariz. 59, 721 P2d 1186 \(Ct. App. 1986\)](#); [Bearden v. Georgia, 461 US 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 \(1983\)](#); [State v. Wilson, 724 P2d 1271, 150 Ariz. 602 \(Ct. of App. 1986\)](#); [State v. Hovey, 175 Ariz. 219, 854 P2d 1205 \(Ct. App. 1993\)](#).

Pursuing Garnishment as a civil matter:

The Arizona Supreme Court's Self-Service Center forms webpage contains a section on Garnishments. It also contains forms for judicial officer use. See:

<https://www.azcourts.gov/selfservicecenter/Self-Service-Forms/Garnishment-of-Earnings>

Garnishment as a criminal matter:

Similar procedures govern garnishment in a criminal case but are guided by [A.R.S. §§13-812](#), et. seq.

POST-SENTENCE PROCEDURE

[A.R.S. § 13-804\(D\)](#) takes precedence over [Arizona Rules of Criminal Procedure, Rule 31.6](#) (now 31.7) regarding staying restitution payments during appeal. The restitution maybe paid and held by the court until the appeal is resolved. [State v Hansen, 215 Ariz. 287, 160 P.3d 166 \(2007\)](#).

Defendant agreed to pay restitution as a term in a plea agreement. The Court retains jurisdiction to order restitution after conviction even though a set aside under [A.R.S. § 13-907](#) was granted and probation terminated. [State v Zaputil, 220 Ariz. 425, 207 P.3d 678 \(Ct App. 2008\)](#).

QUICK LINKS

[Victim's Bill of Rights](#)

[Criminal Rule 39](#)

[A.R.S. § 13-4401 series](#)

[ACJA § 4-301 and § 5-204](#)

[AZ Supreme Court – Victim Restitution Resources webpage](#)

JUDGE'S RESTITUTION GUIDE

Step 1: Establishing **Amount** of Restitution

1) At Sentencing

- If amount has been *determined*, and *uncontested*, include Order in the Judgment and Sentence document.
- If amount is *undetermined*, retain jurisdiction to order restitution up to the cap in plea agreement.
- Avoid Setting Deadlines for Submitting Restitution Claims

2) At Restitution Hearing

- If the amount is contested, set a restitution hearing.
 - Defendant entitled to notice and an opportunity to be heard at hearing, even if in jail or prison.
 - Notice to Victim and defense counsel (if Defendant was represented by counsel at sentencing)
- Prosecutor DOES NOT represent the victim.
 - Prosecutor presents evidence supporting victim's restitution claim. [A.R.S. § 13-804\(G\)](#)
- Court must NOT consider Defendant's economic circumstances in determining **amount** of restitution. [A.R.S. § 13-804\(C\)](#)
- Court can consider any evidence before the Court. [A.R.S. § 13-804\(I\)](#)

3) Co-Defendants - Joint & Several Liability (A.R.S. § 13-804(F))

- Ensure all co-defendants have reciprocal restitution orders as part of their Judgment & Sentence orders.

Step 2: Establishing **Manner** of Payment

1) What the law requires

- Court MUST consider Defendant's economic circumstances in determining the **manner** of payment, i.e, monthly payment.
- Court must make factual findings on the record regarding Defendant's ability to pay without causing a substantial hardship.
(See *Bench Card – Sentencing Ability to Pay*)

- Court staff, Probation Officers or Community Supervision Officers can perform this function. [A.R.S. § 13-804\(E\)](#)

2) Best Practices

- If possible, do not delegate this function to Court Staff/Probation. It is more effective if the Defendant makes a commitment to the Judge
- Encourage Personal Responsibility
 - Emphasize this is about Defendant taking personal responsibility for their actions that caused a financial loss to the victim
 - Help Defendant understand that restitution simply puts the victim back in the financial position they would have been in if the crime had not been committed. Reimbursing a victim is the very least they can do.
- Set Expectations High
 - Restitution needs to be paid in full (or a significant portion) within the probation term.
 - May require Defendant obtain employment or additional employment to pay restitution. Restitution payments must be a priority in their monthly budget.
- Get a Commitment
 - Discuss the amount Defendant can realistically pay each month and have them commit to that. It's a partnership, make them part of the solution.

Step 3: Collecting Restitution

1) Monitoring Payments during Probation

- Review Hearing set by the Court
 - Set 1st Review Hearing w/in 3 to 6 months of Sentencing/Disposition. This lets a Defendant know that collecting victim restitution is a priority for the Court. It also reassures the victim know the Court is actively ensuring restitution is paid.
 - Review Hearings are NOT Evidentiary Hearings. Counsel is not present and no testimony is taken.
 - Explain potential for OSC hearing and possible consequences
 - Set Subsequent Review Hearings every 6 months to a year as needed

- Review Hearing set after Notification by Probation - [A.R.S. § 13-804\(N\)](#)¹
 - Probation Officer shall provide written notification to the Court if Defendant's restitution payments are four months in arrears.
 - Notification must include reasons for the arrearages, the expected duration and a recommendation on appropriate Court action (Take no action or set Review Hearing)
 - State and victim are entitled to notice of any recommendations and can file objections thereto.
 - Court must set Review Hearing within 45 days after notification if requested by State or Victim

2) Enforcing Payment Obligations During Probation - (A.R.S. § 13-810(B))

Rule 26.12(c)(3) requires the Court to provide an initial Notice to Defendant that payments are in arrears. If Defendant does not respond to the Notice, the Court can set an Order to Show Cause (OSC) and have it served by summons or warrant.

- Order to Show Cause (OSC) Hearings
 - Set anytime Court becomes aware of arrearages
(See *Sample OSC - Rule 26.12*)
 - Set on *Petition to Terminate Probation*
(See *Sample OSC – Petition to Discharge*)
 - Best Practice – Follow Bench Card
(See Bench Card *Sentencing: Order to Show Cause*)
 - If Failure to Pay is “willful” - Make a contempt finding and set Purge Review Hearing
 - If Failure to Pay is NOT “willful” – Court can modify payment method after opportunity for input from victim.
 - Unlike fines, fees, surcharges and assessments, Court ***cannot*** waive or reduce (mitigate) victim restitution.
- Purge Review Hearing
 - Court cannot order incarceration (as a sanction for contempt) without giving Defendant an opportunity to remedy or purge the contempt.

¹ Limited Jurisdiction Courts generally do not have Probation Officers so monitoring restitution payments is done by Court staff.

- Rule 26.12(c)(4) requires Court to make certain findings before incarceration.
- Court can extend probation for unpaid restitution.
 - Felony – 5 additional years
 - ✓ Consider unsupervised probation with mandatory Review Hearings to avoid monthly probation service fees
 - Misdemeanor – 2 additional years

3) Ordering Payment in Prison

- At Sentencing or Disposition
 - Pursuant to [A.R.S. § 31-230\(C\)](#), order Department of Corrections (“DOC”) to withhold a minimum of 20% up to 50% of monies available in Defendant’s spendable account to be applied towards victim restitution.
- Upon release, Parole/Community Supervision officer notifies Defendant of outstanding victim restitution, fines & fees owed to the Court.

Step 4: Court’s Continuing Jurisdiction

- Completion of Probation or Prison
 - Court retains jurisdiction to monitor and enforce victim restitution payments even after completion of a sentence, i.e., probation or release from prison. [A.R.S. § 13-805\(A\)\(2\)](#).
 - Does not apply to unpaid fines and fees.

OSC NOTICE – FAILURE TO PAY (SAMPLE)

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF

STATE OF ARIZONA, Plaintiff, -vs- _____, Defendant.	Case No. NOTICE SETTING ORDER TO SHOW CAUSE HEARING (Failure to Pay – Rule 26.12)	<p style="text-align: center;">FILED</p> DATE: _____ _____ O'Clock _____ M. _____, CLERK BY: _____ Deputy
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HONORABLE _____ DIVISION # _____	BY: Jane Doe Judicial Assistant DATE: December 23, 2019
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It has come to the Court's attention that Defendant is in arrears in the payment victim restitution previously ordered by the Court. According to the Clerk of Court, the outstanding balance owed by the Defendant is \$_____.

Pursuant to A.R.S. § 13-810(B), **IT IS ORDERED** setting an Order to Show Cause (OSC) Hearing for [Date] at [Time] in Courtroom _____, [Address] for the purposes of determining Defendant's ability to pay and whether Defendant should be held in contempt for not paying Court ordered financial obligations. At the end of the OSC hearing, the Court may also take any action authorized by A.R.S. § 13-810(E), including incarceration.

IT IS FURTHER ORDERED Defendant shall bring to the hearing documentation or other information showing proof of monthly income and expenses. If a defendant can establish to the Court's satisfaction an inability to pay, the Court can take any action authorized by A.R.S. § 13-810(F), including modifying the manner of payment or issuing a writ of garnishment.

IT IS FURTHER ORDERED Defendant shall appear in person. The [State] [Adult Probation Department] may but are not required to attend.

IT IS FURTHER ORDERED the [State] [Adult Probation Department] shall contact any victims who have "opted-in" and advise them of the hearing.

DATED this ____ day of _____, 2019.

Hon.

cc: County Attorney
 Adult Probation Department
 Victim Services

OSC NOTICE – PETITION TO DISCHARGE (SAMPLE)

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF

STATE OF ARIZONA, <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-vs-</p> <p style="text-align: right;">Defendant.</p>	Case No. _____ <p style="text-align: center;">NOTICE SETTING ORDER TO SHOW CAUSE HEARING (Petition to Discharge)</p>	<p style="text-align: center;">FILED</p> DATE: _____ _____ O’Clock _____ M. _____, CLERK BY: _____ <p style="text-align: center;">Deputy</p>
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HONORABLE: Judge Name	BY: Jane Doe Judicial Assistant
DIVISION No.	DATE: December 23, 2019

This matter came before the Court on a *Petition to Discharge Probation* filed by the [Adult Probation Department] [Probationer]. The Court notes Defendant’s probation will expire on and there is significant unpaid victim restitution. According to the Clerk of Court, the outstanding balance owed by the Defendant is \$ _____.

Pursuant to A.R.S. § 13-810(B) **IT IS ORDERED** setting an Order to Show Cause (OSC) Hearing for [Date] at [Time] in Courtroom _____, [Address] for the purposes of determining Defendant’s ability to pay and whether Defendant should be held in contempt for not paying Court ordered financial obligations. At the end of the OSC hearing, the Court may take any action authorized by A.R.S. § 13-810(E), including incarceration.

IT IS FURTHER ORDERED Defendant shall bring to the hearing documentation or other information showing proof of monthly income and expenses. If a defendant can establish to the Court’s satisfaction an inability to pay, the Court can take any action authorized by A.R.S. § 13-810(F), including modifying the manner of payment or issuing a writ of garnishment.

IT IS FURTHER ORDERED Defendant shall appear in person. The [State] [Adult Probation Department] and the Victim(s) may but are not required to attend.

IT IS FURTHER ORDERED the [State] [Adult Probation Department] shall contact any victims who have “opted-in” and advise them of the hearing.

DATED this _____ day of _____, 2019.

Hon.

cc: County Attorney
 Adult Probation Department
 Victim Services

COMMISSION ON VICTIMS IN THE COURTS

Meeting Date: October 16, 2020	Type of Action Requested: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: UPDATE ON SAKI
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From: Jim Markey

Presenter: Jim Markey

Description of Presentation: Update: The National Sexual Assault Kit Initiative (SAKI)

Recommended Motion: Information Only



Sexual Assault Kit Initiative: National Update

Jim Markey, *Senior Law Enforcement Specialist, RTI International*

This project was supported by Grant No. 2019-MU-BX-K011 and awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the U.S. Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.



History

- BJA solicitation offered in 2015
- Grew out of national inquiry of untested kits
 - NIJ Detroit and Houston Backlog Projects
- 3-year up to 2 million
- Original 20 sites
- Current focus areas

Grant Information

- Eligible
 - State law enforcement agencies
 - Units of local government
 - Federally recognized Indian tribal governments
 - Governmental non-law enforcement agencies acting as their fiscal agents
 - Prosecutor's offices
- Purpose areas
 - Purpose area 1: Comprehensive approach to unsubmitted sexual assault kits
 - Purpose area 2: SAKI for small agencies (including rural and tribal agencies)
 - Purpose area 3: Expansion of DNA databases to assist with sexual assault investigations and prosecutions: collection of lawfully owed DNA from convicted offenders and arrestee DNA collections
 - Purpose area 4: Investigation and prosecution of cold case sexual assaults

The National Sexual Assault Kit Initiative (SAKI)

Leading the Way in Sexual Assault Response Reform

SAKI is a BJA funded national program designed to support sexual assault response reform, reduce violent crime and improve public safety.

- Create a coordinated community response to cold case sexual assault and other violent crimes
- Build jurisdictional capacity to prevent the accumulation of unsubmitted SAKs in the future and address current cases
- Support the investigation and prosecution of sexual assault and violent crime cases
- Develop sustainable, evidence-based TTA resources which facilitate the implementation of national recommendations and best practices
- Visit the SAKI Toolkit: <https://sakitta.org/toolkit/index.cfm>

Fundamental Grantee Responsibilities



INVENTORY ALL
SAK'S



IDENTIFY
TESTING PLAN



IDENTIFY/ASSIGN
RESOURCES



CREATE VICTIM
NOTIFICATION
POLICY



CREATE
INVESTIGATIVE
POLICIES AND
STANDARDS



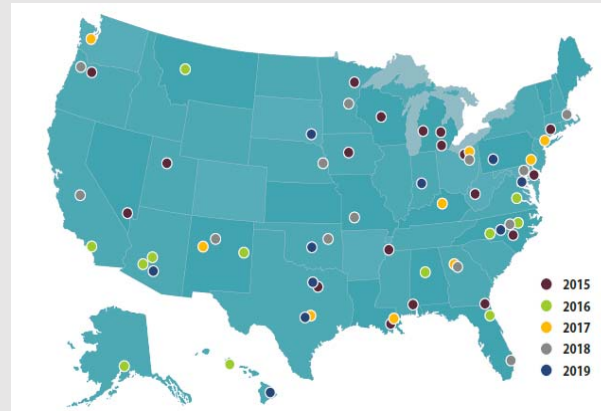
CREATE A
WORKING
GROUP

MANAGE
YOUR
INFORMATION

SAKI National Impact

22 Statewide Sites
 25 Citywide Sites
 12 Countywide Sites
 3 Multi-County Sites
 1 District

63 active SAKI sites plus a
 National Reach



Current Total Investment

SAKI Sites >\$177Million
 SAKI TTA > \$18 Million

SAKI Impact:

State
 Legislative
 Response
 and
 Reforms



One-time inventory/audit



Annual/reoccurring inventory



Mandatory kit submission



Tracking of Kits



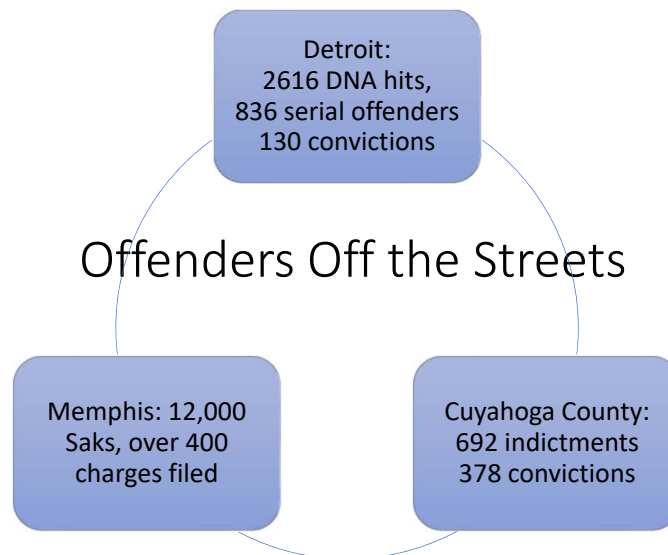
Mandatory training

Why SAKI Matters

From September 2015 to December 2019:

- 111,390 SAKs Inventoried
- 61,994 SAKs Sent for Testing
- 54,700 SAKs Tested to Completion
- 20,005 DNA Profiles Uploaded to CODIS
- 9,892 CODIS Hits (Serial sex offender CODIS hits 1,363)
- 11,398 Investigations
- 1,393 Cases Charged
- 775 Convictions (includes Plea Agreements)

Offenders Off the Streets



State of Arizona

- Grantees:
 - Maricopa County
 - City of Phoenix
 - Pima County
- Total kits inventoried: 4,500
 - 97% have been tested
 - Results: ?

SAKI Research: Detroit

Tested approximately **12,000** previously unsubmitted SAKS.

- About **4 in 10** sexual assault offenders (39%) identified as serial sexual offenders¹
- Both stranger & non-stranger SAKs are valuable to test (**17%** of non-stranger SAKs hit to serial offenders)²
- SAKs past the statute of limitations are valuable to test³

1. Serial sexual offenders through forensic DNA evidence. *Psychology of Violence*.

2. Campbell, R., Pierce, S. J., Sharma, D. B., Feeney, H., & Fehler-Cabral, G. (2016). Should rape kit testing be prioritized by victim-offender relationship? Empirical comparison of forensic testing outcomes for stranger and nonstranger sexual assaults. *Criminology & Public Policy*, 15(2), 555-583.

3. Campbell, R., Pierce, S. J., Sharma, D. B., Feeney, H., & Fehler-Cabral, G. (2016). Developing empirically informed policies for sexual assault kit DNA testing: Is it too late to test kits beyond the statute of limitations? *Criminal Justice Policy Review*.

SAKI Research: Cuyahoga County (Ohio)

Tested approximately **8,000** previously unsubmitted SAKS

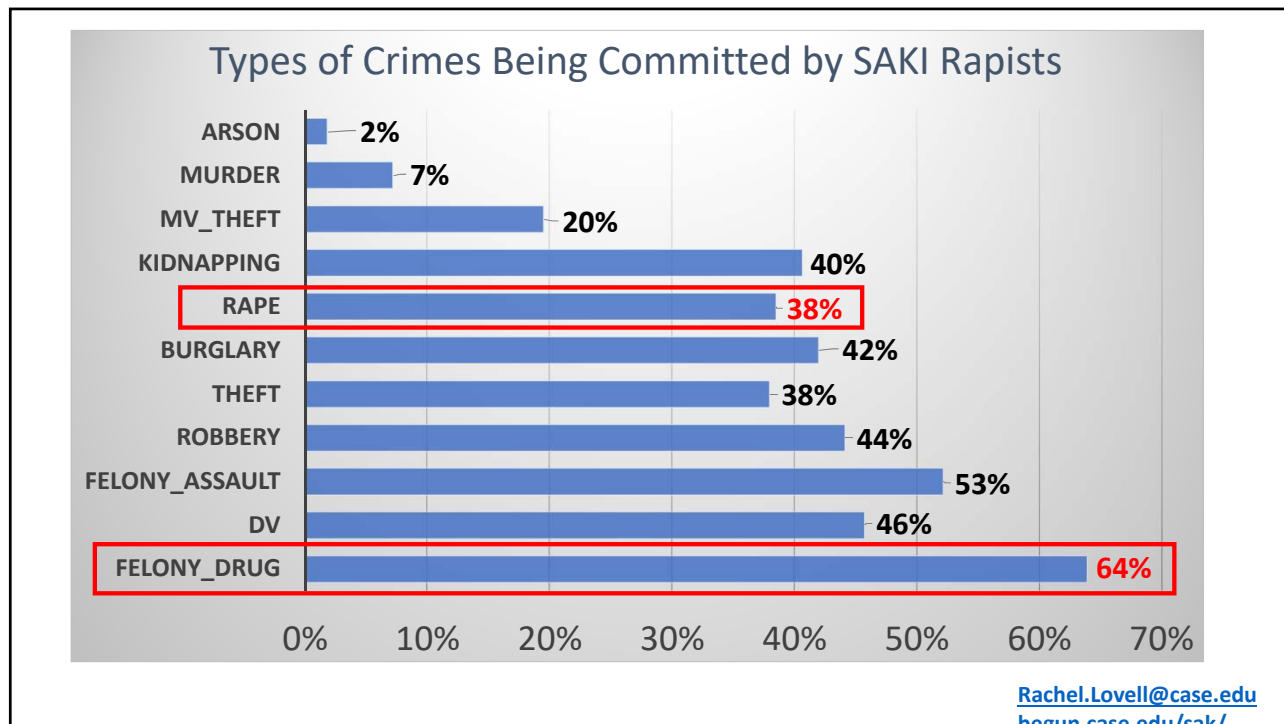
- About **4 in 10** sexual assault offenders (38%) identified as serial sexual offenders¹
- Serial sex assault offenders averaged **9.5 arrests**, which included a variety of violent and non-violent crimes¹
- Over **one-third** of crimes committed by serial sex assault offenders occurred **after** the sexual assault for which a SAK was collected and shelved¹

1. Lovell, R., Luminais, M., Flannery, D. J., Overman, L., Huang, D., Walker, T., & Clark, D. R. (2017). Offending patterns for serial sex offenders identified via the DNA testing of previously unsubmitted sexual assault kits. *Journal of Criminal Justice*, 52, 68-78.

SAKI Research – Crime Prevention?

- Serial sexual assault offenders
 - Commit a high volume of crime (e.g., small % of offenders commit most offenses)
 - Are often “generalists” – rape is one of many crimes they commit (e.g., homicide, domestic violence, theft)
 - Are arrested for more crimes (including rape) on average, than non-serial sexual assault offenders
 - Serial sex offender avg: 9.9 arrests
 - Non serial sex offender avg: 6.6 arrests
- May sexually assault both stranger and non-stranger victims
- Resource: Sexual Assault Response: A Pillar of Law Enforcement Agencies Violent Crime Reduction Strategy
 - <https://sakitta.org/toolkit/index.cfm?fuseaction=tool&tool=143>

Research content on this slide was provided by Wayne County Prosecutor's Office (MI), and Case Western University Begun Center



Initial Pushback



Addressing Areas for Reform



Specialized training
in sexual assault



Victim centered
approach



Properly resource
your SA units



Supervisory
oversight and
investigative
standards



Evidence tracking
and accountability

Questions and Resources

- WWW.SAKITTA.ORG

Det. Sgt. Jim Markey (Retired)

Senior Law Enforcement Specialist

RTI International

(919) 541-8878

jmarkey@rti.org

COMMISSION ON VICTIMS IN THE COURTS

Meeting Date: October 16, 2020	Type of Action Requested: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: CONCUSSIONS IN VICTIMS OF INTIMATE PARTNER VIOLENCE
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From: Jon Eliason, Deputy Attorney, Maricopa County Attorney's Office

Presenter: Jonathon Lifshitz, PhD; Sean Murphy, PhD; and Hirsch Handmaker MD

Description of Presentation: 1) Traumatic brain injury (TBI) from assault;
2) Epidemiology of TBI related to IPV in AZ; and
3) The Maricopa Collaboration on Concussions from Domestic Violence (MC3DV) approach.

Recommended Motion: Information Only

COMMISSION ON VICTIMS IN THE COURTS

Meeting Date: October 16, 2020	Type of Action Requested: <input type="checkbox"/> Formal Action/Request <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Other	Subject: IMPOSITION AND MITIGATION OF THE VICTIM RIGHTS ASSESSMENT
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From: Don Jacobson, Sr. Special Project Consultant, Court Services Division

Presenter: Don Jacobson, Sr. Special Project Consultant, Court Services Division

Description of Presentation: Update on the imposition and mitigation of the \$9.00 Victim Rights Assessment (ARS § 12-116.08).

Recommended Motion: Information Only



Supreme Court of Arizona
Administrative Office of the Courts
Court Services Division
1501 West Washington, Suite 410
Phoenix, AZ. 85007

MEMORANDUM

To: Superior Court Presiding Judges
Presiding Limited Jurisdiction Judges
Superior Court Administrators
Limited Jurisdiction Court Administrators
Superior Court Clerks
Limited Jurisdiction Chief Clerks
Field Trainers
Caseflow Managers

From: Marcus W. Reinkensmeyer, Director, Court Services Division

Date: September 9, 2020

Re: Imposition and Mitigation of the Victim Rights Assessment

This memo is to clarify the imposition of and the authority to mitigate the Victim's Rights Assessment in ARS §12-116.08. Please keep the following in mind as your work with defendants in relation to this assessment.

If any monetary obligation including an assessment, such as the probation assessment pursuant to ARS §12-114.01 and the various assessments listed in ARS §12-116 et seq., is imposed and collected the court should also impose the Victim's Rights Penalty Assessment of \$9 pursuant to ARS §12-116.08. The assessment cannot be waived or mitigated.

We hope this helps in the clarification of the application of this Assessment. Should you have further questions, please contact Donald Jacobson at djacobso@courts.az.gov.

Thank you.

Marcus W. Reinkensmeyer
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602.452.3334

602.452.3480 (fax)

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