

Committee on Criminal Rules Regarding Victims

Meeting Agenda

Wednesday, April 27, 2022

10:00 a.m. to 4:00 p.m.

Room 119 * State Courts Building * Phoenix, AZ

Telephone number: 1 602 753 0140

Zoom link: [click here](#) Passcode: 848337

Item no. 1	Call to Order	<i>Hon. John R. Lopez IV Chair</i>
Item no. 2	Approval of the March 25, 2022 draft meeting minutes	<i>Justice Lopez</i>
Item no. 3	Continuing discussion of the proposed section (v) rule amendments	<i>All</i>
Item no. 4	Discussion of the Committee's report and recommendations	<i>All</i>
Item no. 5	Roadmap Next meeting date: To be determined Deadline for submitting a report and recommendations: <ul style="list-style-type: none">• Friday, July 1, 2022 (per A.O. No. 2021-182)	<i>Justice Lopez</i>
Item no. 6	Call to the Public Adjourn	<i>Justice Lopez</i>

The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Angela Pennington at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.

Committee on Criminal Rules Regarding Victims

State Courts Building, Phoenix

Meeting Minutes: March 25, 2022

Members attending: Hon. John R. Lopez IV (Chair), Hon. Ronald Reinstein (Vice Chair), Tim Agan, Colleen Clase, Hon. Maria Elena Cruz by her proxy Hon. Kent Cattani, *Ryan Green, Hon. Kellie Johnson, *Hon. Patti Starr, *Rick Unklesbay, Hon. Maria Del Mar Verdin, *Cathryn Whalen

Guests: Theresa Rassas, Desiree Kerfoot

AOC Staff: Mark Meltzer, Sabrina Nash

*indicates virtual attendance

1. Call to order; introductory remarks; approval of meeting minutes. The Chair called the eleventh meeting of the Committee on Criminal Rules Regarding Victims (“CRV”) to order at 10:04 a.m. The Chair introduced Ms. Sabrina Nash, who will now provide administrative support to the Committee. The Chair briefly reviewed materials in today’s meeting packet; one document included hyperlinks to two pending bills in the Legislature that could impact the victims’ rights provisions of Rules 15 and 26.

The Chair outlined his aspiration for completing the CRV’s review of the section (v) provisions at the April meeting. The Chair then requested members to review draft minutes of the January 20, 2022 meeting. Members had no corrections or comments to the draft.

Motion: A member moved to approve the draft January 20, 2022 meeting minutes. The motion received a second and it passed unanimously. **CRV-012**

2. Rule-by-rule review. Members then continued their rule-by-rule review of the section (v) provisions. They concluded the January 20 meeting with a discussion of Rule 4.1 (“procedure upon arrest”). They will begin today by revisiting Rule 1.3, and then proceeding to Rule 4.2. As noted in the January 20 minutes, a rule is not mentioned in the minutes if there was no proposed modification to the rule. Furthermore, members approved the provisions and modifications discussed below unless otherwise noted.

Rule 1.3 (now, “computation of time,” and as proposed, “victim participation”). New Rule 1.3 locates the first mention of victims’ rights in a prominent place at the beginning of the Criminal Rules and displaces current Rule 1.3 on computation of time, which will be relocated as Rule 1.10.

At the January 20 meeting, members discussed the desirability of adding a provision to new Rule 1.3 regarding “opting in.” In response, Ms. Rassas and staff drafted

a second paragraph of the comment to Rule 1.3. Ms. Rassas explained that this new paragraph clarifies for victims that they have certain rights enumerated by law, however, they must request those rights (i.e., “opt in”) to receive them. The new provision is provided as a comment rather than in the body of the rule because the provision is informational only. That is, other than mentioning that the prosecutor will provide information about opting in for post-conviction rights, the new provision does not direct the court or the parties to do anything. Members agreed with the language of the new provision.

Notwithstanding, one member noted a concern of the Commission on Victims in the Courts (“COVIC”), specifically, that victims are required to opt-in before conviction, and then a second time to obtain post-conviction rights. COVIC members believe that a single opt-in at the inception of a case should be sufficient. CRV members, however, concluded that a separate post-conviction opt-in is required by statute, and they had no authority to modify the requirement by a rule amendment.

Rule 4.2 (“initial appearance”). Rule 4.2(v) has two subparts. During their discussion of the first subpart, members considered A.R.S. § 13-4421 (“initial appearance”), which expressly provides for a victim’s right to be heard at the initial appearance. Members expressed their views on whether the victim’s right to be heard is implicit in the court’s consideration of the victim’s comments. To clarify a victim’s right to be heard at the initial appearance and to further distinguish that right from the magistrate’s duty to consider the victim’s comments, members agreed to modify the draft of subpart (v)(1) as follows:

At the defendant’s initial appearance, ~~a magistrate must permit, and the magistrate must consider, oral or written comments from any~~ a victim has the right to be heard concerning the defendant’s possible release and the conditions of release.

Members also modified subpart (v)(2) by using the passive voice concerning who must provide notice to the victim. Accordingly, members made this change to the second sentence of the subpart:

If a magistrate delays an arraignment under section (c), ~~the court must provide~~ sufficient notice must be provided to the victim of the date for the continued arraignment.

Members considered the 5-day reference in A.R.S. § 13-4409 (“notice of criminal proceedings”) when making the change to subpart (v)(2), but they agreed the reference did not need to be included in this subpart if someone other than the court was providing notice.

Rule 5.1 (“right to a preliminary hearing; waiver; continuance”). Rule 5.1(v) has three subparts. The second subpart, shown here, was the subject of extensive discussion:

Before continuing a preliminary hearing on motion or on its own initiative under section (c), a magistrate must also consider the victim’s views and right to a speedy disposition. If the magistrate orders a continuance of the preliminary hearing, the victim, if requested, must be notified of the magistrate’s order and the new hearing date pursuant to A.R.S. § 13-4409.

A member suggested adding the underlined words (“views and”) in the first sentence. Another member proposed removing the first sentence of this provision. The member contended that considering the abbreviated time for conducting a preliminary hearing, the process of obtaining the views of a victim -- who might not be present for a variety of reasons, including a lack of proper notice -- would act as a “speed bump” and delay the proceeding pending an inquiry into those views. The member contended that the essence of subpart (v)(2) is the second sentence, which requires notice to the victim if the magistrate continues the hearing.

A judge member noted that the Rule 8 right to a speedy disposition begins at the arraignment, which is after the preliminary hearing, so there cannot be a right to a speedy preliminary hearing under Rule 8. On the other hand, A.R.S. § 13-4435(A), a provision that ensures a speedy trial for the victim, refers to “any proceeding,” which would seemingly include a preliminary hearing; except that the definition of “criminal proceeding” in A.R.S. § 13-4401(7) refers to matters “before a trial court,” which might exclude preliminary hearings conducted in a justice court. Members also considered the Arizona Constitution, Article 2.1, section (A)(10), which provides the victim a right “to a speedy trial or disposition...” “Disposition” would arguably include the right to a prompt preliminary hearing.

Members continued to discuss alternative phrasing of this subpart, and whether the provision should include a statutory reference. Ultimately, the members kept the words “views and” in the draft provision set out above. They also agreed that the CRV’s recommendations should provide two alternatives to the Court. Some members prefer an alternative that strikes the first sentence of subpart (v)(2). Doing so would focus the provision on notice to the victim but eliminate consideration of the victim’s views. Other members preferred an alternative that would retain the first sentence and add a reference to A.R.S. § 13-4435(A). These members believed that a magistrate should consider the victim’s views and proceed to rule on a motion to continue without hearing the victim’s views only when the victim received proper notice yet failed to appear, or when the prosecutor had made reasonable efforts to provide notice to the victim. The Committee’s report will reflect those alternatives.

Rule 5.4 (“determining probable cause”). The draft text of Rule 5.4(v) provides:

The victim has a right to be heard whenever the defendant under section (a) requests a magistrate to reconsider the conditions of the defendant’s release.

The members’ discussion of this provision included consideration of the Arizona Constitution, Article 2.1, section (A)(4) (the victim’s right “to be heard at any proceeding involving a post-arrest release decision,”), Rule 7, and Rule 39(b). Staff noted rule petition number R-21-0051, which could impact this provision. However, because the rule petition is still pending, it did not induce members to modify their draft. Members make no changes to the text shown above.

Rule 5.8 (“notice if an arraignment is not held”). Members had a few comments concerning the draft of section (v), which provided (the following shows subsequent editorial markup):

Pursuant to A.R.S. § 13-4409, a victim has a right to receive ~~written~~ notice from the prosecutor, on request, of dates for further proceedings, ~~and other important deadlines that the magistrate sets under section (a).~~

A member found the phrase “important deadlines” to be ambiguous and suggested removing it. Members considered adding at the end of the provision the words “and any changes in the schedule.” They noted, however, that Rule 5.8 currently makes no reference to victims, and after further discussion, they deleted all the text after the words “further proceedings,” as shown above. They also deleted the word “written” (a phone call could be sufficient) and added the words “on request” after the word “prosecutor,” as also shown above. They approved the provision with these modifications.

Rule 6.3 (“duties of counsel; withdrawal”). Section (v) has two titled subparts. The title of the first subpart is “court consideration of the victim’s rights under section (c).” Members discussed whether the first subpart should include a reference to A.R.S. § 13-4435(F) (“before ruling on a motion for continuance, the court shall consider the victim’s views and the victim’s right to a speedy trial.”) Members decided to not include the reference, however, because the draft already requires the court to “consider the victim’s right to a speedy disposition;” and because this subpart does not govern Rule 8 speedy trial issues but instead concerns defense counsel’s motion to withdraw.

The title of the second subpart is “appearance and withdrawal of the victim’s attorney.” Ms. Rassas, citing to A.R.S. § 13-4401, suggested this change: “Before representing a victim in ~~court~~ a criminal proceeding, a victim’s attorney must file a notice of appearance.” Members agreed to make this change. They believed it would help assure that victim’s counsel is entered in the case management system and that it would facilitate the clerk providing notices to the victim’s counsel.

Rule 7.2 (“right to release”). Staff’s draft had proposed five new subparts in Rule 7.2(v). Those subparts were intended to relocate, add, and clarify victims’ rights provisions in subparts (a)(2), (b)(3)(F), (c)(1)(C), and (c)(2)(C), and add a fifth subpart concerning notice. Staff’s subpart (v)(1) would have added a victims’ right pertinent to a defendant’s release on a bailable offense before conviction because the current rule does not clearly contain such a right. Members found these five subparts to be unduly complex. They struck them all and replaced them with the following simplified text for Rule 7.2(v). This text is based in part on the Arizona Constitution, Article 2.1, section (A)(4) and on A.R.S. § 13-4422 (“post-arrest custody decisions”):

If requested, a victim has ~~a right~~ the rights to be notified of, present at, and heard at any proceeding involving a post-arrest release decision, and to be informed if a defendant is released from custody. [Note: Staff made the changes shown here after the March 25 meeting.]

Rule 7.3 (“conditions of release”). Members rejected staff’s proposed Rule 7.3(v) because it was redundant to other provisions in Rule 7.3. They retained Rule 7.3(b) (“victim protection”), a section that the members had previously added during a discussion of R-20-0031. They made no other changes to Rule 7.3.

Rule 7.4 (“procedure”). Staff’s draft of Rule 7.4(v) included four subparts. For reasons similar to those contained in the discussion of Rule 7.2, members struck those subparts and replaced them with a provision that is identical to the one they added to Rule 7.2, as recited above.

Rule 7.5 (“review of conditions; revocation of release”). As they did in Rules 7.2 and 7.4, members struck staff’s proposed draft of Rule 7.5(v) and replaced it with the same language they had approved for Rules 7.2 and 7.4.

3. Roadmap. Although today’s meeting materials included a substantially revised draft report, members were unable to discuss it because the meeting had already run past the announced time. The Chair encouraged members to be familiar with the report for the next meeting. Ms. Nash will send an inquiry to the members regarding their availability for the next meeting date. The next meeting will be for a full day, beginning at 10:00 a.m.

4. Call to the public; concluding remarks; adjourn. There was no response to a call to the public.

The meeting adjourned at 2:28 p.m.

CRV: section (v)

First draft: ~~[rev.]~~~~[Member edits. 01.20.2022]~~~~[03.25.2022 meeting version]~~

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PART I. GENERAL PROVISIONS

RULE 1. SCOPE, PURPOSE AND CONSTRUCTION, AND OTHER GENERAL PROVISIONS

Rule 1.1. Scope. [no change]

Rule 1.2. Purpose and Construction. [no change]

[**Staff Note:** This rule requires “courts, parties, and crime victims” to construe the rules in the specified manner. Notwithstanding that reference to victims, staff submits that a section (v) is unnecessary because the rule confers no rights on victims; rather, Rule 2 is a general rule of construction that applies to all stakeholders.]

Rule 1.3. ~~Computation of Time~~ Victim Participation

Although a victim is not a party in a criminal proceeding, a victim has a right to participate in the proceeding pursuant to the rights provided by law, including rights detailed in Rule 39 and in section (v) provisions (“victims’ rights”) of these rules.

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COMMENT TO THE 2022 AMENDMENT

The Court adopted Rule 1.3 and section (v) provisions of these rules to give victims’ rights more prominence in the Criminal Rules. Integrating victims’ rights contained in Rule 39 into these rules is an attempt to assure that victims, judges, and attorneys are aware of those rights, and that victims’ rights are not overlooked. Rule 1.3 and the section (v) provisions are not intended to conflict with victims’ rights provided in Rule 39.

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Some of these rules refer to a victim requesting rights. See AZ Const. art. II, § 2.1(A)(2) & (3); and A.R.S. § 13-4401, et seq. Before conviction, a victim requests rights by completing and submitting a form to the agency or the investigating law enforcement agency that is responsible for providing notice to the victim. The form must include the victim’s current telephone number and address. If the victim fails to keep that telephone number and address current, the request for notice is deemed withdrawn. See A.R.S. § 13-4417. ~~[The victim may request notice for the initial court proceeding or for subsequent proceedings.]~~ After conviction, the prosecutor provides the victim with information about requesting notice of post-conviction and appellate proceedings. See A.R.S. § 13-4411. Requesting pre-conviction and post-conviction notice is optional, and a victim who does not request notice still has a right to be present and to be heard for all criminal proceedings at which the defendant has a right to be present.

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

[**Staff Note:** The above version of Rule 1.3 replaces staff’s former, and longer, version of Rule 1.3. The new version (1) introduces victims as “participants” in the criminal process, and (2) does so in a prominent place at the beginning of the rules. New Rule 1.3 also alerts readers that victims’ rights are included in Rule 39 and section (v) of other rules. Current Rule 1.3 (“computation of time”) has been relocated as Rule 1.10.]

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Commented [LIJR1]: I like this new abbreviated version of Rule 1.3, particularly as it signals the inclusion of the new sections (v).

Rule 1.4. Definitions

(a) through (g). [no change]

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

~~(v) Victims’ Rights.~~ “Victim” means a person as defined in A.R.S. § 13-4401.

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(v) Victims’ Rights [staff’s recommended version]: “Victim” means a person **or entity** against whom the criminal offense has been committed **or a representative who is designated or appointed to act on their behalf.** **If the person against whom the offense was committed** was killed or incapacitated, “victim” includes the person’s spouse, parent, child, grandparent, or sibling, or another individual specified in A.R.S. § 13-4401, **unless that person is in custody or is the accused.**

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[**Staff Note:** The definition of “victim” in section (h) was re-lettered as “Section (v). Victims’ Rights.”

[Consider modifying the definition to be more direct and not require a review of the statute in all instances by using the alternate (“staff’s recommended version”) shown above. Note that the alternative version includes this sentence: If there is more than one victim in a case, the word “victim” means each victim.]

Rule 1.5. Interactive Audiovisual System

(a) **Generally.** [no change]

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

(1) [no change]

(2) [no change]

(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;~~

CRV: section (v)

First draft: [rev.][Member edits. 01.20.2022][03.25.2022 meeting version]

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(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.* [no change]

(2) *Generally Not Permitted.* [no change]

(3) *By Stipulation.* [no change]

(4) *Change in the 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 and require the defendant's personal appearance. [No change but the subpart is shown to provide context for new subpart (v)(2).]

(v) Victims' Rights.

(1) An interactive audiovisual system must allow a victim a means to view and participate in the proceeding and ensure compliance with all victims' rights laws.

(2) If the court reschedules a hearing under subpart (c)(4), the victim if requested must be notified of the rescheduled court date.

[Staff Note: The first sentence of section (v) contains a provision now located in subpart (b)(3)(B). The second sentence contains a provision approved by the CRV, with modifications.]

Rule 1.6. Form of Documents [no change]

Rule 1.7. Filing and Service of Documents

(a) **"Filing with the Court" Defined.** [no change]

(b) **Effective Date of Filing.** [no change]

(c) **Service of All Documents Required; Manner of Service.** [no change]

(v) Victims' Rights. When the victim is represented by an attorney, the certificate of

CRV: section (v)

First draft: ~~[rev.]~~~~[Member edits. 01.20.2022]~~~~[03.25.2022 meeting version]~~

~~service required by subpart (c)(3) must show that a copy of the filed document was provided to the victim’s attorney.~~

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[Staff Note: The AVCV requested a somewhat different amendment to Rule 1.7(c). The AVCV’s proposed amendment and staff’s version both derive from Rule 39(d)(4).]

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

(a) **Generally.** [no change]

(b) **Electronic Distribution.** [no change]

(v) **Victims’ Rights.** ~~The clerk must include every victim’s attorney who has filed a notice of appearance under Rule 6.3(v)(2) in the clerk’s distributions of minute entries and other documents under sections (a) and (b).~~

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[Staff Note: The AVCV requested the substance of what is shown in section (v). The AVCV’s version, however, requested changes to both section (a) and section (b). Section (v) combines the AVCV’s requested changes.]

Rule 1.9. Motions, Oral Argument, and Proposed Orders

(a) **Content.** [no change]

(b) **Service of Motion; Response; Reply.** [no change]

(c) **Length.** [no change]

(d) **Waiver of Requirements.** [no change]

(e) **Oral Argument.** [no change]

(f) **Proposed Orders.** [no change]

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(v) **Victims’ Rights.**

~~(1) *In the Trial Court.* A victim has standing to file motions that request the court to enforce any right guaranteed to victims, or that challenge an order denying any such right. A victim may file a reply concerning that motion. A victim may also file a response to a party’s motion if the party’s motion impacts a victim’s right.~~

~~(2) *Special Action.* Under Rule 2(a)(2) of the Rules of Procedure for Special Actions, a victim may file a petition for special action seeking relief from an order affecting any victim’s right guaranteed by law.~~

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[Staff Note: The AVCV initially proposed an amendment to section (b) that said, “When addressing matters that impact any victims’ rights, a victim may file motions, responses, and replies that comply with these rules.” The AVCV then deleted that amendment and substituted another amendment that said, “The victim has standing to seek an order, to

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

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PART II. PRELIMINARY PROCEEDINGS

RULE 2. COMMENCEMENT OF CRIMINAL PROCEEDINGS

Rule 2.1. Misdemeanors

Rule 2.2. Felonies.

Rule 2.3. Content of Complaint.

- (a) Complaint, Generally.**
- (b) Electronic Oath or Signature.**
- (c) Notice to Clerk.**

[**Staff Note:** Rule 2.3(c) (“notice to clerk”) requires the prosecuting agency to advise the clerk at the time of filing a complaint, indictment, or information charging any offense listed in A.R.S. §§ 13-1401 et seq., 13-3101 et seq., 13-3501 et seq., or 13-3551 et seq., or an offense in which the victim was a juvenile at the time of the offense, that the case is subject to Supreme Court Rule 123(g)(1)(D)(ii)(h). This provision, however, does not implicate a victims’ right, so it remains in section (c).

Deleted: (v) Victims’ Rights. If a prosecutor declines to proceed with a prosecution after a law enforcement agency has concluded its investigation, but before the prosecutor’s decision not to proceed becomes final, the prosecutor must notify the victim and provide the victim with the reasons for declining to proceed. The notice must inform the victim of the victim’s right on request to confer with the prosecutor before the decision not to proceed is final. This notice applies only to violations of a state criminal statute.¶

[Rule 2.3(v) is new. It derives from A.R.S. § 13-4408(B) and adding it could be helpful. But caveat: a decision not to file does not involve a court proceeding, so is inclusion of this rule provision appropriate? Staff believes it is appropriate because it is included in Rule 39(b)(6)(C).]

RULE 3. ARREST WARRANT OR SUMMONS UPON COMMENCEMENT OF CRIMINAL PROCEEDINGS [no change]

[**Staff Note:** Rule 3.2(a)(1)(C) requires a warrant to state whether the offense is one to which victims’ rights provisions apply. This provision, however, does not seem to require a section (v) provision. However, and if deemed appropriate, a section (v) could easily be added to Rule 3.]

Commented [LJR2]: I don’t think a new section (v) is necessary here.

RULE 4. INITIAL APPEARANCE

Rule 4.1. Procedure upon Arrest

- (a) Prompt Appearance Before a Magistrate.** [no change]
- (b) On Arrest Without a Warrant.** [no change]
- (c) On Arrest with a Warrant.** [no change]

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

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(d) **Assurance of Availability of Magistrate and the Setting of a Time for Initial Appearance.** [no change]

(e) **Sample for DNA Testing; Proof of Compliance.** [no change]

~~(v) **Victims' Rights.** Upon request, the victim must be informed of the date, time, and place for the defendant's initial appearance in accordance with A.R.S. § 13-4406. The victim upon request must be notified of the defendant's release from custody at or after the initial appearance.~~

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[**Staff Note:** CRV previously approved the text of section (v). Staff made minor modifications to that text.]

Rule 4.2. Initial Appearance

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

(1) through (5) [no change]

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

(7) through (11) [no change, except the subparts are renumbered following the deletion of subpart (a)(6)]

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(b) **Felonies Charged by Complaint.** [no change]

(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, 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 must set a date for the continued arraignment must provide sufficient notice to victims under Rule 39(b)(2).~~

(v) Victims' Rights.

(1) At the defendant's initial appearance, ~~a victim has a right to be heard, oral or written comments from any victim~~ concerning the defendant's possible release and the conditions of release.

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(2) If a magistrate combines an initial appearance and an arraignment under section (c), the victim must be given sufficient notice and an opportunity to be

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present and to be heard. If a magistrate delays an arraignment under section (c), sufficient notice **must be provided** to the victim of the date for the continued arraignment.

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[**Staff Note:** Subpart (v)(1) derives from current Rule 4.2(a)(6). The first sentence of subpart (v)(2) derives from an amendment to section (c) previously approved by CRV. The second sentence of subpart (v)(2) derives from current section (c). A reference in current Rule 4.2(c) to Rule 39(b)(2) has been omitted.]

Rule 4.3. Initial Appearance Masters [no change]

RULE 5. PRELIMINARY HEARING

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

(a) **Right to a Preliminary Hearing.** [no change]

(b) **Waiver.** [no change]

(c) **Continuance.** [no change]

(d) **Hearing Demand.** [no change] [nit note: “(d)” in the rule book should be bolded.]

(v) **Victims’ Rights.**

(1) Upon request by the victim, the State must notify the victim of a preliminary hearing.

(2) Before continuing a preliminary hearing on motion or on its own initiative under section (c), a magistrate must also consider the victim’s **views and** right to a speedy disposition. If the magistrate orders a continuance of the preliminary hearing, the victim, if requested, must be notified of the magistrate’s order and the new hearing date pursuant to A.R.S. § 13-4409.

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(3) If an in-custody defendant demands a preliminary hearing under section (d), the hearing date set by the magistrate must allow **for** sufficient notice to the victim pursuant to A.R.S. § 13-4409.

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[**Staff Note:** Current Rule 5 contains no provisions regarding victims. The CRV added to Rule 5.1 the content contained in section (v), which has been modestly modified.]

Rule 5.2. Summoning Witnesses; Record of Proceedings [no change]

Rule 5.3. Nature of the Preliminary Hearing [no change]

Rule 5.4. Determining Probable Cause [no change]

CRV: section (v)

First draft: ~~[rev.]~~~~[Member edits. 01.20.2022]~~~~[03.25.2022 meeting version]~~

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(a) **Holding a Defendant to Answer.** [no change]

(b) **Amending the Complaint.** [no change]

(c) **Evidence.** [no change]

(d) **Lack of Probable Cause.** [no change]

(v) Victims' Rights. The victim has a right to be heard whenever the defendant under section (a) requests a magistrate to reconsider the conditions of the defendant's release.

[Staff Note: The CRV version in section (a) says, "Upon request, the magistrate may reconsider the conditions of release, after giving the victim the right to be heard." The words "upon request" do not specify whether the reference is to the victim's right to be heard, or whether it refers to a request to reconsider conditions of release. However, the words "upon request" are in the current rule, which does not mention victims, so a reasonable conclusion is that it refers to the defendant's request to reconsider conditions. Section (v) clarifies this point.]

Rule 5.5. Review of a Magistrate's Probable Cause Determination. [no change]

Rule 5.6. Transmittal and Transcription of the Record. [no change]

Rule 5.7. Preservation of Recording. [no change]

Rule 5.8. Notice if an Arraignment is not Held.

(a) **Notice.** [no change]

(b) **Notice Form.** [no change]

(v) Victims' Rights. Pursuant to A.R.S. § 13-4409, a victim has a right to receive written notice from the prosecutor, on request, of dates for further proceedings, and other important deadlines that the magistrate sets under section (a), and any changes in that schedules

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[Staff Note: Section (v) is adapted from a CRV amendment to Rule 5.8(a)(3).]

PART III. RIGHTS OF PARTIES.

RULE 6. RIGHT TO COUNSEL; DUTIES OF COUNSEL; COURT-APPOINTED ATTORNEYS, INVESTIGATORS, AND EXPERTS

Rule 6.1. Right to Counsel; Right to a Court-Appointed Attorney; Waiver of the Right to Counsel. [no change]

CRV: section (v)

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Rule 6.2. Appointment of Counsel for Indigent Defendants.

Rule 6.3. Duties of Counsel; Withdrawal.

- (a) **Notice of Appearance.** [no change]
- (b) **Duty of Continuing Representation.** [no change]
- (c) **Withdrawal.** [no change]
- (d) **Duty of Defense Counsel to Preserve the File.** [no change]
- (e) **Duty of Successor Counsel to Collect the File in a Capital Case.** [no change]

(v) Victims' Rights.

(1) Court Consideration of the Victim's Rights Under Section (c). If a motion to withdraw under section (c) could result in a continuance of the trial date, the court in deciding the motion must consider the victim's right to a speedy disposition.

(2) Appearance and Withdrawal of the Victim's Attorney. Before representing a victim in a criminal proceeding [see ARS § 13-4401], a victim's attorney must file a notice of appearance. Unless the court orders otherwise, a victim's attorney may file a notice of withdrawal at any time.

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[Staff Note: The CRV approved the text of subpart (v)(1), which previously was located in section (c). Staff has modified subpart (v)(1) by changing "before granting the motion" to "in deciding the motion," and by changing "may result" to "could result."

[The first sentence of subpart (v)(2) also was approved by CRV, albeit it used the word "counsel" rather than "attorney." Staff added the second sentence because CRV had not previously considered whether the victim's attorney, after filing a notice of appearance, could later withdraw.]

Rule 6.4. Determining Whether a Defendant is Indigent. [no change]

Rule 6.5. Manner of Appointment. [no change]

Rule 6.6. Compensation of Appointed Counsel. [no change]

Rule 6.7. Appointment of Investigators and Expert Witnesses for Indigent Defendants. [no change]

Rule 6.8. Standards for Appointment and Performance of Counsel in Capital Cases. [no change]

CRV: section (v)

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RULE 7. RELEASE

Rule 7.1. Definitions. [no change]

Rule 7.2. Right to Release. [Nit Note: Section (a) uses a semicolon in the title; section (b) uses a colon. Both section titles should use the same punctuation.]

Commented [LIJR3]: I agree, of course, that the punctuation should be consistent. Beyond that, I leave it to your discretion whether a semicolon or colon is more consistent with the rules stylistic convention.

(a) Before Conviction; Bailable Offenses.

(1) *Presumption of Innocence.* [no change]

(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).

[Staff Note: "This rule" shown above is ambiguous. Does it refer to Rule 7.2(a)(2) or to Rule 7.3(a)? Staff believes it refers to 7.2(a)(2), but the provision could be clearer.

[There is a bigger question. A victim has a right to be heard under the CRV's contemplated amendment to Rule 7.2(b) on bail eligibility hearings. The CRV's addition to Rule 7.2(c)(1)(B) ("after a sentence involving imprisonment") also provides that "the victim has the right to be heard regarding the defendant's release." There is not, however, an equivalent provision on a victim's right to be heard in Rule 7.2(a). The omission of a victim's right to be heard in Rule 7.2(a) should be addressed. I.e., would it not be helpful for the court in making determinations under Rule 7.2(a)(2) to hear from the victim? Doesn't the victim have a right to be heard on the defendant's release? See A.R.S. § 13-4438, which indicates that this right exists. See further section (v) below.]

Commented [LIJR4]: I agree that a victim has a right to be heard under Rule 7.2(a).

(3) *Determining Method of Release.* [no change]

(b) Before Conviction: Defendants Charged with an Offense Not Eligible for Bail. [no change, but see the nit note at the beginning of Rule 7.2.]

(c) After Conviction. [no change]

(d) Burden of Proof. [no change]

CRV: section (v)

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(v) Victims' Rights. ~~If requested, a victim has the rights to be notified of, present at, and heard at any proceeding involving a post-arrest release decision, and to be informed if a defendant is released from custody. The victim has a right to be heard in the following circumstances, or before the court makes any of these determinations:~~

~~(1) Under subpart (a)(2) ("before conviction; bailable offenses; right to release"). On whether the defendant's release or conditions of release will protect the victim from harm.~~

~~(2) Under subpart (b)(3)(F) ("before conviction; defendants charged with an offense not eligible for bail; bail eligibility considerations"). The victim has a right to make a statement concerning the offense and the defendant's release on bail, including but not limited to whether any condition of release or combination of conditions will reasonably assure the victim's safety under subpart (b)(2)(C), and whether the defendant poses a substantial danger to the victim under subpart (b)(3)(B).~~

~~(3) Under subpart (c)(1)(C) ("after conviction; superior court; protecting safety"). On whether the defendant's release or release conditions will protect the victim.~~

~~(4) Under subpart (c)(2)(C) ("after conviction; limited jurisdiction courts; motion to amend conditions of release"). On whether there is a substantial risk that the defendant presents a danger to the victim under subpart (c)(2)(C)(i), and whether the defendant's release would present a risk of harm to the victim under subpart (c)(2)(C)(iii).~~

~~(5) Notice. Upon the victim's request, the law enforcement agency, custodial agency, or the prosecutor, as applicable, must notify the victim of any pre-conviction hearing or proceeding involving the defendant's release or release conditions, and the right to be heard as specified above.~~

[Staff Note: Current Rule 7.2 contains nine references to "victim," but only a single reference—in subpart (b)(3)(F)—to a victim's right to be heard. New section (v) identifies the four Rule 7.2 circumstances when the court must consider the victim's safety or risk of harm and provides for each circumstance a victim's right to be heard. See further A.R.S. § 13-3967 ("release on bailable offenses before trial"): "In determining the method of release or the amount of bail, the judicial officer, on the basis of available information, shall take into account all of the following: 1. The views of the

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victim.” A.R.S. § 13-3967(E) (“offenses not bailable, etc.”) affords a victim the right to be heard at a bail eligibility hearing.

[Subpart (v)(1) has no analog in current Rule 7.2; see the staff note under Rule 7.2(a). Subparts (v)(2), (v)(3), and (v)(4) derive from the referenced portions of the current rule. Subpart (v)(5) derives in part from a proposed CRV amendment to Rule 7.2(b)(4), which would have required notice to the victim, upon request, of a bail eligibility hearing. Proposed subpart (v)(5), however, is broader and would require notice to the victim, upon request, of any proceeding involving the defendant’s release or release conditions.

[Note that the Court’s Order in R-21-0022 made the following change to Rule 7.2(a)(2). The rule amendment becomes effective January 1, 2022.

[“(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 unless the court determines that additional conditions are reasonably necessary~~ to 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).”

[The word “victim” appears in both the current and amended provisions. Both provisions involve court considerations. Neither provision confers a right on the victim, and even if they do, new subpart (v)(1) provides that right. According, staff made no changes to the text of Rule 7.2(a).]

Rule 7.3. Conditions of Release.

- (a) **Mandatory Conditions.** [no change]
- (b) **Victim Protection.** 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.

[Staff Note: The CRV approved the text of new section (b). The remaining sections of Rule 7.3 would accordingly be re-lettered. CRV agreed, as a result of new section (b), that the first sentence of current section (c) (now section (d)) should be deleted, as shown below. Staff did not relocate section (b) to section (v) because it is a matter for the court to consider, albeit an important consideration. The provision, however, implicates no right belonging to the victim, or action that the victim might take. The victim’s rights

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Commented [LIJR5]: I agree with your approach.

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and actions concerning the defendant's release are detailed in Rules 7.2(v) and 7.4(v), i.e., those provisions still allow the victim to be heard on the defendant's release and conditions of release.]

(c) **Mandatory Condition if Charged with an Offense Listed in A.R.S. § 13-610(O)(3).** [no change]

(d) **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 agency's lethality assessment.

(1) *Non-Monetary Conditions.* [no change]

(2) *Monetary Conditions.* [no change]

~~(v) **Victims' Rights.** In setting monetary conditions under subpart (d)(2), the court also must consider the risk of harm to the victim. Although the court may impose the least onerous condition, the condition must be sufficient to protect the victim.~~

~~[Staff Note: Section (v) derives in part from the CRV's proposed amendments to Rule 7.3(d)(2)(A) and (B). Section (d)(2) of the current rule otherwise contains no references to "victim."]~~

Rule 7.4. Procedure

(a) **Initial Appearance.** [no change]

(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. [no change]

(2) *Victims.* ~~Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g).~~

(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

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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. [no change]

(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.~~

(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.

(e) Defendant's Bail Status

(f) Review of Conditions of Release for Misdemeanors. [no change]

(g) Appointment of Counsel.

(v) Victims' Rights. ~~If requested, a victim has the rights to be notified of, present at, and heard at any proceeding involving a post-arrest release decision, and to be informed if a defendant is released from custody.~~

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~~(1) In determining the method of release or the amount of bail, the judicial officer, on the basis of available information, must consider the views of the victim.~~

~~(2) At an initial appearance hearing conducted under section (a), a victim has the rights specified in Rules 4.1(v), 4.2(v)(1), and 39(b)(7).~~

~~(3) At a bail eligibility hearing conducted under section (b), a victim has the rights specified in Rule 7.2(v)(2) and Rule 39(b)(7). Notwithstanding the time limits of Rule 39(g)(1), a victim must be afforded the rights provided in Rule 39(g), including the right to notice of the hearing.~~

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~~(4) A victim upon request has the right to notice of, and to be heard at, every later proceeding to determine the defendant's eligibility for release, actual release, or conditions of release, as provided in Rule 39(b)(7).~~

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[Staff Note: Subpart (v)(1) derives from the statutory authorities cited in staff notes to Rule 7.2.

[Subpart (v)(2) helps to assure that judicial officers and others are aware of victims' rights at initial appearances, because current Rule 7.4(a) does not mention "victims."

[Current Rule 7.4(b) returns to the subject of a bail eligibility hearing, but the current section refers only to Rule 39(g). That reference has been deleted and has been replaced with broader cross-references to victims' rights in subpart (v)(3).

[Current Rule 7.4(c) concerns a "later review of conditions," but there is no mention of victims' rights in the current section. Subpart (v)(4) addresses this omission.]

Rule 7.5. Review of Conditions; Revocation of Release

(a) **On State's Petition.** [no change]

(b) **On Pretrial Services Report.** [no change]

(c) **On Victim's Petition.** If the prosecutor decides not to file a petition under section (a), the victim may petition the court to revoke the defendant's bond or own recognizance release, or otherwise modify the defendant's conditions of 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, or intimidation by the defendant, or on the defendant's behalf, against the victim or the victim's immediate family.

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(d) **Hearing; Modification of Conditions; Revocation.** [no change]

(e) **Revocation of Release; DNA Testing.** [no change]

(f) **Revocation of Release: 10-print Fingerprinting.** [no change]

(v) **Victims' Rights.** If requested, a victim has the rights to be notified of, present at, and heard at any proceeding involving a post-arrest release decision, and to be informed if a defendant is released from custody.

Deleted: If requested, a victim has a right to be notified of, present at, and heard at any proceeding involving a post arrest release decision, and informed if a defendant is released from custody.

Deleted: If the prosecutor decides not to file a petition under section (a), then the victim may petition the court to revoke the defendant's bond or own recognizance release, or to otherwise modify the defendant's conditions of release. Before filing a petition, the victim must consult with the prosecutor about the requested relief. The victim's 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.

[Staff Note: Current section (c) was relocated to section (v) with only minor stylistic modifications. Consistent with the CRV's proposed amendment to section (c), section (v) includes the word "abuse.""]

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Rule 7.6. Transfer and Disposition of Bond [no change]

RULE 8. SPEEDY TRIAL

Rule 8.1. Priorities in Scheduling Criminal Cases

- (a) **Priority of Criminal Trials.** [no change]
- (b) **Preferences.** [no change]
- (c) **Duty of the Prosecutor.** [no change]
- (d) **Duty of Defense Counsel.** [no change]
- (e) **Suspension of Rule 8.** [no change]

(v) **Victims' Rights.** When presented with a motion to suspend Rule 8, the court must permit the victim to be heard and must consider the victim's **views and the victim's** right to a speedy disposition.

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[**Staff Note:** Section (v) includes the substance of the CRV's proposed amendment to section (e).]

Rule 8.2. Time Limits [no change]

Rule 8.3. Prisoner's Right to a Speedy Trial. [no change]

Rule 8.4. Excluded Periods. [no change]

Rule 8.5. Continuing a Trial Date

- (a) **Motion.** [no change]
- (b) **Grounds.** A court may continue trial only 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 consider the rights of the defendant ~~and any victim~~ to a speedy disposition of the case. The court must state specific reasons for continuing trial.

(v) **Victims' Rights.** In deciding a motion to continue a trial date, the court must also consider the victim's views and the right of the victim to a speedy disposition of the case.

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[Staff Note: Current section (b) requires the court to consider the victims’ rights to a speedy disposition. The words “and any victim” are shown as deleted from the current section. Similar to the CRV’s proposed amendment to current section (b), section (v) reiterates that requirement and adds a requirement that the court consider the victims’ views, as provided by A.R.S. § 13-4435(F).]

Rule 8.6. Denial of Speedy Trial [no change]

Rule 8.7. Accelerating Trial [no change]

RULE 9. PRESENCE OF THE DEFENDANT, WITNESSES, AND SPECTATORS

Rule 9.1. The Defendant’s Waiver of the Right to Be Present

Rule 9.2. Defendant’s Forfeiture of the Right to be Present Due to Disruptive Conduct

Rule 9.3. Exclusion of Witnesses and Spectators

(a) Witnesses.

(1) *Generally.* [no change]

~~(2) *Exceptions: Investigator.*~~

~~(A) *Victim.* A victim has a right to be present at all proceedings at which the defendant has that right.~~

~~(B) *Investigator.* If the court enters an exclusion order, both the defendant and the State are nevertheless entitled to the presence of one investigator at counsel table.~~

(3) *Instruction.* [no change]

(4) *After Testifying.* [no change]

(b) Spectators. [no change]

(c) Protection of a Witness. [no change]

(v) Victims’ Rights. A victim has a right to be present at all proceedings at which the defendant has that right.

[Staff Note: The right of a victim to be present, which is contained in current subpart (a)(2)(A), has been relocated to section (v). The title of subpart (a)(2) has been modified accordingly. Note also that the victim is not always a witness.]

RULE 10. CHANGE OF JUDGE OR PLACE OF TRIAL

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Rule 10.1. Change of Judge for Cause [no change]

Rule 10.2. Change of Judge as a Matter of Right

(a) **Entitlement.** [no change]

(b) **Procedure.** [no change]

(c) **Timing.** [no change]

(1) *Generally.* [no change]

(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, 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.
[no change, but shown to provide context for section (v)]

(d) **Assignment to a New Judge and Effect on Other Defendants.** [no change]

(e) **Waiver.** [no change]

(f) **Following Remand.** [no change]

(v) **Victims' Rights.** A party filing a notice of change of judge under subpart (c)(2) must also provide appropriate actual notice to the attorney for the victim within the time specified in subpart (c)(2).

[**Staff Note:** Section (v) derives from a change the CRV made to subpart (c)(2).]

Rule 10.3. Changing the Place of Trial [no change]

Rule 10.4. Transfer to Another County [no change]

RULE 11. INCOMPETENCE AND MENTAL EXAMINATIONS [no change]

CRV: section (v)

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PART III. PRETRIAL PROCEDURES

RULE 12. THE GRAND JURY

[Staff Note: Rule 12.2(c) (“Grounds to Disqualify a Grand Juror”) contains this reference to a victim: “A grand juror is disqualified from serving in any particular matter if the juror is: (c) related within the fourth degree by either consanguinity or affinity to a person under investigation, a victim, or a witness; ...” This provision does not implicate a victims’ right, and consequently, there is no section (v) for Rule 12.

RULE 13. INDICTMENT AND INFORMATION [no change]

RULE 14. ARRAIGNMENT

Rule 14.1. General Provisions [no change]

Rule 14.2. When an Arraignment is Held [no change]

Rule 14.3. The Defendant’s Presence [no change]

Rule 14.4. Proceedings at Arraignment

At an arraignment, the court must: **[Staff Note:** there is no change to section (b), but it is included below to provide context for staff’s proposed new section (v).]

(a) [no change]

(b) decide motions concerning release conditions under Rule 7 if:

- (1) the arraignment is held with the defendant's initial appearance under Rule 4.2;
- (2) the moving party provides 5 days' notice of a contested release motion: or
- (3) all parties agree; ...

(c) through (g). [no change]

(v) Victims’ Rights. If the court pursuant to section (b) decides a release motion at the defendant’s arraignment, a victim has the rights provided under Rules 4.1(v), 4.2(v)(1), and Rule 7.2(v)(1).

[Staff Note: The CRV did not adopt, nor did R-20-0031 propose, an amendment to Rule 14. Nonetheless, because a judicial officer can determine release issues at an arraignment, staff believes section (v) would be an appropriate addition to Rule 14.4.]

Commented [LIJR6]: I agree.

Rule 14.5. Proceedings in Counties Where No Arraignment Is Held [no change]

RULE 15. DISCLOSURE

Rule 15.1. The State’s Disclosures

(a) Initial Disclosures in a Felony Case. [no change]

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- (b) **Supplemental Disclosure.** [no change]
- (c) **Time for Supplemental Disclosures.** [no change]
- (d) **Prior Felony Convictions.** [no change]
- (e) **Disclosure Upon Request.** [no change]
- (f) **Scope of the State's Disclosure Obligation.** [no change]
- (g) **Disclosure by Court Order.** [no change]
- (h) **Disclosure of Rebuttal Evidence.** [no change]
- (i) **Additional Disclosures in a Capital Case.**

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

(A) **Generally.** [no change]

(B) **Time Extensions.** The court may extend the State's deadline for providing notice by an additional 60 days if (i) the prosecutor has complied with the victims' rights provisions of subpart (v)(2), and (ii) 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) *through (4).* [no change]

- (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.* [no change]

(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), and (v)(3).~~ 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.*

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(A) Generally. [no change]

(B) Conditions. A court must issue any order necessary to ~~protect a victim's rights,~~ document the chain of custody, or protect physical evidence. The court may issue an order under subpart (v)(3) to protect a victim's rights.

(v) Victims' Rights.

(1) Victim's Identifying or Locating Information. The State is not required to disclose a victim's identifying or locating information unless the court finds, after considering the rights of the victim, that disclosure is required to protect the defendant's constitutional rights. If disclosure of personal identifying or locating information is made to the defendant's attorney, the defendant's attorney must not disclose the information to any person other than the defendant's attorney's staff and designated investigator. The defendant's attorney must not provide the information to the defendant without prior court authorization. Rule 15.5(e) applies to information withheld under this rule.

(2) Extension of Time in a Capital Case. If the victim has requested notice under A.R.S. § 13-4405, then the prosecutor must confer with the victim before agreeing to extend the deadline under subpart (i)(1)(B).

(3) Disclosure of Items Under Section (j); Court Orders. Disclosure by the State to a defendant of any item described in section (j) must be accompanied by terms and conditions that are necessary to protect a victim's rights. A court also may issue an order necessary to protect a victim's rights regarding disclosure of any such item.

[Staff Note: The CRV's proposed amendment to section (f) has been relocated to subpart (v)(1). A provision regarding notification to the victim in current subpart (i)(1)(C) has been relocated to subpart (v)(2). An amendment to the first sentence of (i)(1)(B) cross-references subpart (v)(2). Similarly, provisions concerning victims in section (j) have been relocated to subpart (v)(3), but cross-references to this new provision have been added to section (j).]

Rule 15.2. The Defendant's Disclosures [no change]

Rule 15.3. Depositions

(a) **Availability.** A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant ~~{and those excluded by Rule 39(b)}~~, by oral deposition under the following circumstances:

CRV: section (v)

First draft: [rev.][Member edits. 01.20.2022][03.25.2022 meeting version]

(1) through (3). [no change]

(b) through (f). [no change]

(v) Victims' Rights.

(1) Generally. As used in section (v), “defendant” includes the defendant, the defendant’s attorney, or anyone working on the defendant behalf; and as used in subparts (v)(2) through (v)(5), the word “interview” includes “deposition.” A defendant may not obtain an order under Rule 15.3 to interview a victim or a person working on the victim’s behalf.

(2) Communication. The defendant’s attorney must communicate a request to interview the victim to the prosecutor, and the prosecutor must communicate the victim’s response to that request to the defense attorney. A defendant, a defendant’s attorney, or any person acting on the defendant’s behalf may not contact the victim.

(3) Right to Refuse. A victim has the right to refuse a defendant’s request for an interview or any other discovery. If a victim consents to a defense interview, the victim has the right to refuse to answer any question and to terminate the interview at any time. [Staff Note: Why is a request for “any other discovery” mentioned in a rule on depositions? Staff suggests that provision should be relocated, if it is a correct statement of law, or removed.]

(4) Right to Assistance and To Set Conditions. A victim who consents to a defense interview has the right during the interview to be accompanied by a parent or other relative, or by an appropriate support person named by a victim—including but not limited to 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 support person is a prospective witness was not made in good faith, it may impose sanctions on the party, including holding the party’s attorney in contempt. A victim also has the right to condition the defense interview by specifying 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.

(5) Jury Instruction Concerning the Victim’s Refusal. If there is any comment or evidence at trial about a victim refusing a defendant’s interview request, the court must instruct the jury that a victim has a right under the Arizona Constitution to refuse a defense interview.

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Commented [LIJR7]: It does seem curious to include a request for “any other discovery.” Perhaps it’s in contemplation of the routine practice of requiring disclosure of relevant discovery in conjunction with a deposition or interview?

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

[**Staff Note:** Because Rule 39(b) will remain intact, a modification to section (a), although approved by the Task Force, is not necessary. However, as an alternative, staff prepared a subpart (v)(1); this subpart is predicated on removing the Rule 39 reference in section (a) shown above in brackets with strikethrough. See further *E.L. vs. Carman* (COA-1, 10/5/2021) which clarifies that a victim cannot refuse the State’s interview request.]

[Subparts (v)(2) through (v)(5) derive from a new Rule 15.3(g) that had been proposed by the CRV. Portions of those subparts have been stylistically modified. Regarding subpart (v)(3), the AVCV proposed adding text that would permit a request to interview a victim to be made to the victim’s attorney, in addition to or in lieu of making the request to the prosecutor. Although some members believed this would be a useful change, the CRV declined to adopt it because A.R.S. § 13-4433(B) provides that “the defendant shall only initiate contact with the victim through the prosecutor’s office.”]

Rule 15.4. Disclosure Standards [no change]

Rule 15.5. Excision and Protective Orders [no change]

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

(a) through (e). [no change]

(v) Victims’ Rights. Before the court enters an order under section (e) that extends the time to permit the completion of scientific or other testing, it must consider the victim’s right to a speedy disposition of the case.

[**Staff Note:** Current section (e), subpart (3) (“extending time”), says, “If the court grants a motion under (e)(2), the court may extend other disclosure deadlines as necessary.” The CRV added a new sentence that says, “In determining new deadlines under this rule, the court must consider the victim’s and the defendant’s right to a speedy disposition.” Staff relocated the substance of the victim’s portion of that sentence to section (v), but it would not have been appropriate to include in section (v) the corresponding right of a defendant to a speedy disposition. Staff believes that the entire sentence, and section (v), are unnecessary because (e)(3) talks in terms of extending disclosure deadlines, but not continuing the trial date. A motion to continue the trial date already requires consideration of the victim’s right to a speedy disposition. See Rule 8.5(v).]

Rule 15.7. Disclosure Violations and Sanctions [no change]

Rule 15.8. Disclosure Before a Plea Agreement Expires or Is Withdrawn; Sanctions [no change]

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Commented [LIJR8]: I think striking the reference to Rule 39(b) in section (a) and including Rule 39(b)’s relevant substance in subpart (v)(1) is more consistent with the “section (v)” approach.

Commented [LIJR9]: I recall the committee discussion on this issue. I agree with you that this issue is subsumed within the rule governing trial date continuances.

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RULE 16. PRETRIAL MOTIONS AND HEARINGS

Rule 16.1. General Provisions. [no change]

Rule 16.2. Procedures on Pretrial Motions to Suppress Evidence. [no change]

Rule 16.3. Pretrial Conference. [no change]

Rule 16.4. Dismissal of Prosecution

(a) **On the State's Motion.** [no change]

(b) **On a Defendant's Motion.** [no change]

(c) **Record.** [no change]

(d) **Effect of Dismissal.** [no change]

(e) **Release of Defendant; Exoneration of Bond.** [no change]

(v) **Victims' Rights.** On the victim's request, the victim must have an opportunity to confer with the prosecutor before the prosecutor moves to dismiss under section (a).

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[Staff Note: The CRV added to section (a) a sentence that has now been relocated to section (v).] The word "pending" in this sentence is intended to mean that the victim has a right to confer before dismissal.]

CRV: section (v)

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PART V. PLEAS OF GUILTY AND NO CONTEST

RULE 17. PLEAS OF GUILTY AND NO CONTEST; SUBMITTING A CASE ON THE RECORD

Rule 17.1. The Defendant's Plea

(a) through (e). [no change]

(f). Limited Jurisdiction Court Alternatives for Entering a Plea and Sentencing. The parts of Rule 17 and Rule 26.9 requiring a defendant to be present are met by the defendant complying with this rule's requirements.

(1) *Telephonic Pleas.* "Telephonic" includes voice only and audio-video communications between the court and the parties. This rule's provisions concerning telephonic pleas also apply to pleas submitted through an online dispute resolution ("ODR") system approved by the Administrative Office of the Courts.

(A) through (E). [no change]

~~(F) Victim's Rights. In a telephonic plea proceeding, a victim has the same rights under Rule 39 to notice and participation as if the defendant physically appeared in the courtroom.~~

(2) *Plea by Mail.* [no change; provisions show below are for context]

(A) *Eligibility.*

(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) through (v)

(C) *Procedure.* [no change]

(D) *Mailing.* [no change]

(v) Victims' Rights. In a telephonic plea proceeding, a victim has the same rights under Rule 39 to notice and participation as if the defendant physically appeared in the courtroom. The court may not accept a plea by mail in a case involving a victim.

[Staff Note: Subpart (f)(1)(F), a victim's rights in a telephonic plea proceeding, was relocated to section (v). This provision was recently adopted by the Court in R-20-0005,

CRV: section (v)

First draft: ~~[rev.]~~~~[Member edits. 01.20.2022]~~~~[03.25.2022 meeting version]~~

effective January 1, 2021, and staff did not modify what the Court adopted. The CRV, however, adopted a slight modified version, as follows: “In a telephonic plea proceeding, a victim has the same rights ~~under Rule 39~~ to notice upon request and ~~participation~~ the right to be heard as if the defendant physically appeared in the courtroom.” That is an agreeable alternative.

[Section (v) also reiterates that the court may not take a plea by mail in a case involving a victim.]

Rule 17.2. Advising of Rights and Consequences of a Guilty or No Contest Plea [no change]

Rule 17.3. A Court’s Duty to Determine Whether a Plea is Entered Voluntarily and Intelligently [no change]

Rule 17.4 Plea Negotiations and Agreements

(a) Plea Negotiations.

(1) Generally.

(2) Judicial Participation.

~~*(3) Victim Participation.* The victim must have an opportunity to confer with the prosecutor, if they have not already conferred, before any case resolution. The prosecutor or the victim's representative must inform the court and defense counsel of the victim's position. If the defendant is present during settlement discussions, the victim also must have the opportunity to be present and to be heard regarding settlement.~~

(b) Plea Agreement. [no change]

(c) Determining Accuracy, Voluntariness, and Intelligent Acceptance of the Agreement. [no change]

(d) Accepting the Plea. After making the determinations required by ~~this rule and after considering any comments expressed by the victim~~ section (c) and considering the victim’s comments under section (v)(2), the court must either accept or reject the submitted plea. The court is not bound by any provision in the plea agreement regarding the sentence or probation terms and conditions if, after accepting the agreement and reviewing a presentence report, the court rejects the provision as inappropriate.

(e) Rejecting the Plea. [no change]

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Commented [LIJR10]: I prefer your proposed language, in part, because it is unnecessary to strike the reference to Rule 39.

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(f) **Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements.** [no change]

(g) **Change of Judge if Plea Withdrawn.** [no change]

(v) **Victims' Rights.**

(1) Victim Participation During Plea Discussions. The victim must have an opportunity to confer with the prosecutor, if they have not already conferred, before any case resolution. The prosecutor or the victim's representative must inform the court and defense counsel of the victim's position. If the defendant is present during settlement discussions, the victim also must have the opportunity to be present and to be heard regarding settlement.

(2) Before the Court Accepts or Rejects a Plea Agreement. Before the court makes the determinations required by section (c) and accepts or rejects the plea agreement, it must first consider any comments expressed by the victim.

[**Staff Note:** Current provisions in sections (a) and (d) have been relocated to section (v). The text of section (d) has been modified. The two subparts in section (v) have titles.]

Rule 17.5. Withdrawal of a Plea [no change]

Rule 17.6. Admitting a Prior Conviction [no change]

Rule 17.8. Submitting a Case on the Record [no change]

(a) **Submission: Advising of Rights and Consequences of a Submission on the Record.** [no change]

(b) **Accepting the Submission.** [no change]

(v) **Victims' Rights.** Before the State agrees with the defendant to submit a case on the record, the victim must have an opportunity to confer with the prosecutor.

[**Staff Note:** Section (v) of this rule is new. Under Rule 17.4(v), a victim has a right to confer with the prosecutor concerning case resolution. A victim also has a right to confer with a prosecutor before trial. Whether submitting a case on the record is more akin to a plea or a trial, it is nonetheless a form of case resolution, and the victim should have a corresponding right to confer with the prosecutor under this rule.]

Commented [LIJR11]: I agree. Excellent point.

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PART VI. TRIAL

RULE 18. TRIAL BY JURY; WAIVER; SELECTION AND PREPARATION OF JURORS [no change]

RULE 19. TRIAL

Rule 19.1. Conduct of Trial

(a) through (e). [no change]

(f) Use of a Facility Dog by a Party or Witness. The court can allow the assistance of a facility dog for a defendant or a witness as provided in A.R.S. § 13-4442.

(v) Victims' Rights.

(1) Victim's Opportunity to Confer with the Prosecutor. Upon the victim's request, the victim must have an opportunity to confer with the prosecutor about trial before the trial begins.

(2) Identifying and Locating Information. 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.

(3) Representative of a Minor or Incapacitated Victim. If a representative of a minor victim or an incapacitated victim requests to be recognized during trial, the representative must notify the prosecutor, who must then inform the court of the request outside the presence of the jury. Any communications between the representative and the court during trial must be conducted in the presence of the parties or their counsel, and outside the jury's presence. Any substantive communications must be on the record.

(4) Use of a Facility Dog by a Victim. The court can allow the assistance of a facility dog for a victim, as provided in A.R.S. § 13-4442.

[Staff Note: The CRV added what is now subpart (v)(1) as a new subpart (a)(3).

[To make Rule 19.1(v) more comprehensive, staff relocated other provisions from Rule 19.

[Subpart (v)(2) derives from what the CRV proposed as a new Rule 19.8. But staff's version of (v)(2) does not include what the CRV had at the end of its proposed rule: "... and any proceeding on any motion to require such testimony must be in camera." What does that mean? What is the intent?

Commented [LIJR12]: I understand the omitted language to mean that any proceeding in which the court considers ordering disclosure of "any identifying or locating information," which presumably is private or protected information, must be conducted in camera or in a sealed proceeding so as to protect the victim's privacy.

CRV: section (v)

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[Subpart (v)(3) contains the content of current Rule 19.5. Rule 19.5 is shown below with strikethrough. The word “wishes [to be recognized]” has been changed to “requests.” There are other stylistic modifications.

[Subpart (v)(4) derives from the CRV’s proposed Rule 19.7, with the title “Victim’s Right to Use of Facility Dog.” The content of that proposed rule (“The court must allow the assistance of a facility dog for a victim, witness, or party, as provided in A.R.S. § 13-4442”) was inconsistent with that title. Consequently, (v)(4) is applicable to victims, and a new Rule 19.1(f) applies to a witness or party. But if the only parties are the State, which won’t need a facility dog, and the defendant, staff changed “party” to “defendant.”] After reviewing the statute, staff also changed “must allow” in the CRV’s draft to “can allow,” in section (f) as well as in subpart (v)(4).]

Rule 19.2. Presence of the Defendant at Trial [no change]

Rule 19.3. Admonitions [no change]

Rule 19.4. A Judge’s Death, Illness, or Other Incapacity [no change]

~~Rule 19.5. Presence of a Representative of a Minor or Incapacitated Victim~~

~~If a representative of a minor victim or an incapacitated victim wishes to be recognized during trial, the representative must notify the prosecutor, who must then inform the court out of the presence of the jury. Any communications between the representative and the court during trial must be conducted in the presence of the parties or their counsel, and outside the jury's presence. Any substantive communications must be on the record.~~

[**Staff Note:** Rule 19.5 has been relocated to Rule 19.1(v)(2).]

~~Rule 19.6~~ 19.5. Sequestration [change to the rule number but no change to the content]

[**Staff Note:** Rule 19.6 was renumbered as Rule 19.5 because Rule 19.5 is deleted.]

RULE 20. JUDGMENT OF ACQUITTAL OR UNPROVEN AGGRAVATOR [no change]

RULE 21. JURY INSTRUCTIONS AND VERDICT FORMS [no change]

RULE 22. DELIBERATIONS [no change]

RULE 23. VERDICT [no change]

CRV: section (v)

First draft: ~~[rev.]~~~~[Member edits. 01.20.2022]~~~~[03.25.2022 meeting version]~~

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PART VII. POST-VERDICT PROCEEDINGS

RULE 24. POST-TRIAL MOTIONS

Rule 24.1. Motion for New Trial [no change]

Rule 24.2. Motion to Vacate Judgment [no change]

Rule 24.3 Modification of Sentence

(a) **Generally.** [no change]

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

(c) **Appeal.** [no change]

(v) **Victims' Rights.** The provisions of Rule 39 apply to any criminal proceeding concerning mitigation of a monetary obligation, including mitigation under section (b).

[Staff Note: Staff struck the second sentence of current section (b) and relocated it to section (v), with the addition of the words “including mitigation under section (b).” The CRV also struck the second sentence of section (b), but instead replaced it with a sentence that says, “Before modifying an order pertaining to the manner in which restitution is paid, the court must give notice and an opportunity to be heard to the defendant, the state, and, on request, persons entitled to restitution pursuant to a court order.” The CRV based this new sentence on A.R.S. § 13-804(M), with modifications. This sentence could easily be substituted for the sentence that now appears in section (v) above.]

Commented [LJR13]: I think the CRV's language is preferable because it is more descriptive.

Rule 24.4. Clerical Error [no change]

RULE 25. PROCEDURE AFTER A VERDICT OR FINDING OF GUILTY EXCEPT INSANE [no change]

RULE 26. JUDGMENT, PRESENTENCE REPORT, PRESENTENCING HEARING, SENTENCE

Rule 26.1. Definitions; Scope [no change]

Rule 26.2. Time to Render Judgment [no change]

Rule 26.3. Sentencing Date and Time Extensions [no change]

Rule 26.4. Presentence Report

CRV: section (v)

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- (a) **When Required.** [no change]
- (b) **When Prepared.** [no change]
- (c) **When Due.** [no change]
- (d) **Inadmissibility.** [no change]

[**Staff Note:** The CRV proposed adding this new second sentence to section (c): “A victim or a 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.”

However, staff believes this amendment is unnecessary because the requested provision is already contained in current Rule 26.7(b). Therefore, the CRV’s proposed amendment to section (c) has not been added to this draft.]

Rule 26.5. Diagnostic Evaluation and Mental Health Examination [no change]

Rule 26.6. Court Disclosure of Reports Before Sentencing

(a) **Disclosure to the Parties.** The court must permit the State, defense counsel, and a self-represented defendant to review all presentence, diagnostic, and mental health reports concerning the defendant. If the court makes a portion of any report unavailable to one party, it must not make that portion available to any other party. [no change]

~~(b) **Disclosure to a Victim.** The court must permit the victim to review the presentence report after it makes the report available to the defendant, excluding any portions the court excises or that are confidential by law.~~

~~(e) (b) **Date of Disclosure.** A report prepared under Rule 26.7(c) must be available to the parties no later than two days after it is delivered to the court and no less than two days before a presentencing hearing, unless the parties agree otherwise.~~

~~(d) (c) **Excision.**~~

(1) *Generally.* The court may excise from copies of presentence, diagnostic and mental health reports disclosed to the parties:

- (A) diagnostic opinions that might seriously disrupt a program of rehabilitation;
- (B) sources of information obtained on a promise of confidentiality; and
- (C) information that would disrupt an ongoing law enforcement investigation.

(2) *Disclosure.* The court must inform the parties if a portion of a report is not disclosed, and must state on the record its reasons for not disclosing it.

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(e) (d) Court Disclosure of Reports After Sentencing.

(1) *Disclosure to Personnel Responsible for the Defendant.* After sentencing, the court must furnish to persons having direct responsibility for the defendant's custody, rehabilitation, treatment, or release all diagnostic, mental health, and presentence reports, except for portions excised under (d)(1)(B) and (C).

(2) *Disclosure to Courts.* The court must make an unexcised version of any report listed in (e)(1) available to:

- (A) a reviewing court when a relevant issue has been raised; and
- (B) a court sentencing the defendant after a later conviction.

(f) (e) Public Disclosure of Reports. A report prepared under Rules 26.4, 26.5, or 26.7(c) is a public record unless the court orders otherwise or it is confidential by law.

(v) Victims' Rights. The court must permit the victim to read the presentence report, excluding any portions the court excises or that are confidential by law, after it makes the report available to the defendant. If the victim requests, the prosecutor must provide the victim with an excised copy of the report.

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[Staff Note: The content of section (b) has been relocated to section (v). Subsequent sections are re-lettered, but the content of those other sections is unchanged. The content of those sections appears above only to provide context.]

Rule 26.7. Presentencing Hearing; Prehearing Conference

(a) Request for a Presentencing Hearing. [no change]

(b) Timing and Conduct of a Presentencing Hearing. [no change]

(c) Prehearing Conference. [no change]

(v) Victims' Rights. The victim has a right to be heard at a presentencing hearing under section (b).

[Staff Note: The CRV had proposed adding to subpart (b)(2) ("presenting evidence") the following underlined words: "At the hearing, the victim must be afforded the right to be heard and any party may introduce any reliable, relevant evidence, ..." Section (v) derives from that proposed amendment.]

Rule 26.8. The State's Disclosure Duty; Objections and Corrections to a Presentence Report [no change]

Rule 26.9. The Defendant's Presence [no change]

Rule 26.10. Pronouncement of Judgment and Sentence

CRV: section (v)

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(a) **Judgment.** [no change]

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

(1) give the defendant an opportunity to address the court; [no change]

(2) through (6) [no change]

(v) Victims' Rights.

(1) Victim's Opportunity to Address the Court. Before the court pronounces sentence, it also must give the victim an opportunity to address the court.

(2) Information from the Prosecutor. A victim has a right to be informed by the prosecutor of:

(A) the disposition of the case.

(B) the right to restitution, the items of loss within the scope of restitution, and the procedures for invoking that right, and

(C) the procedures for opting-in to post-conviction notification.

[Staff Note: The CRV proposed adding to subpart (b)(1) the following words: "Give the defendant and the victim ... etc." The intended substance was relocated to section (v)(1). The current rule uses the word "when [the court pronounces sentence]," but section (v) uses the word "before."

[The CRV proposed a new Rule 26.17 entitled "Victim's Right to Sentencing Information." The proposed rule had three subparts; those subparts have been relocated to Rule 26.10, subpart (v)(2)(A) through (C), making new Rule 26.17 unnecessary.]

Rule 26.11. A Court's Duty After Pronouncing Sentence [no change]

Rule 26.12, Defendant's Compliance with Monetary and Non-Monetary Terms of a Sentence [no change]

Rule 26.13. Consecutive Sentences [no change]

Rule 26.14. Resentencing [no change]

Rule 26.15. Special Procedures Upon Imposing a Death Sentence [no change]

Rule 26.12. Entry of Judgment and Sentence; Warrant of Authority to Execute Sentence [no change]

RULE 27. PROBATION AND PROBATION REVOCATION

CRV: section (v)

First draft: ~~[rev.]~~*[Member edits. 01.20.2022]*~~[03.25.2022 meeting version]~~

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Rule 27.1. Conditions and Regulations of Probation [no change]

[**Staff Note:** Rule 27.1(b) (“Authority of the Court and the Probation Officer”) says in part: “The sentencing court may impose conditions on a probationer that promote rehabilitation and protect any victim.” This sentence, however, does not by itself implicate a victim’s right or require an amendment to this rule.]

Commented [LIJR14]: I agree.

Rule 27.2. Intercounty Transfers

(a) **Definitions.** [no change]

(b) **Courtesy Transfer of Probation Supervision.** [no change]

(c) **Transfer of Probation Jurisdiction.**

(1) *Authorizing Transfer.*

~~(A) Generally.~~ The superior court in the sending county may order the transfer of probation jurisdiction to another Arizona county upon agreement of the original prosecuting agency, the probationer, the sending and receiving county probation departments, and the superior court in the receiving county.

~~(B) Victim’s Rights. A victim of the offense may request an opportunity to be heard concerning a transfer. The court in the sending county must give the victim notice of a proposed transfer and any hearing.~~

(2) *through (8).* [no change]

(v) **Victims’ Rights.** A victim of the offense may request an opportunity to be heard concerning a transfer. The court in the sending county must (1) give the victim notice of a proposed transfer and any hearing, and (2) allow the victim to be heard at the transfer proceeding.

[**Staff Note:** Current subpart (c)(1)(B) has been relocated to section (v). Section (v) also incorporates a right to be heard that is now contained in Rule 27.10(d). Rule 27.10 indicates that a victim must request notice; that requirement is not included in section (v) but it can easily be added. Staff recommends deleting the redundant provision in Rule 27.10.]

Commented [LIJR15]: I agree.

Rule 27.3. Modification of Conditions or Regulations

(a) **By a Probation Officer.** [no change]

(b) **By the Court.**

CRV: section (v)

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(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, and the probation department, ~~and a victim who has the right to notice under Rule 27.10 and~~

(B) Considering an investigation report, when required by (b)(3) of this rule.

(2) – (5). [no change]

(e) Written Copy and Effect. [no change]

(v) Victims' Rights. 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 modification of conditions or regulations of probation or intensive probation that would substantially affect the probationer's contact with, or safety of, the victim or that would affect restitution or incarceration status.

[Staff Note: Current subpart (b)(1)(A), as well as the CRV's proposed modification to that subpart, include a cross-reference to Rule 27.10. Section (v) includes the verbatim content of the pertinent portion of Rule 27.10(c) in lieu of cross-referencing that rule.]

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, and the probation department, ~~and the victim who has the right to notice under Rule 27.10;~~ and

(B) Considering an investigation report.

(2) *through (4).* [no change]

(b) Earned Time Credit Probation Termination. [no change]

(c) Written Copy and Effect. [no change]

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

(v) Victims' Rights. 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 the termination of any type of probation.

[Staff Note: Current subpart (a)(1)(A) includes a cross-reference to Rule 27.10. Section (v) includes the verbatim content of the pertinent portion of Rule 27.10(a) in lieu of cross-referencing that rule. Although Rule 27.4 refers to "early termination" and the Rule 27.10(a) provision refers to "termination of any type of probation," is there any scenario where the court would hold a hearing on termination of probation if the probation was not terminated early? The CRV proposed no change to Rule 27.4.]

Rule 27.5. Order and Notice of Discharge [no change]

Rule 27.6. Petition to Revoke Probation and Securing the Petitioner's Release [no change]

Rule 27.7. Initial Appearance After Arrest

(a) **Probationer Arrested.**

(b) **Notice.**

(c) **Procedure.**

(v) Victims' Rights.

(1) Notice of Arrest. A victim upon request has the right to be notified of a probationer's arrest under section (a).

(2) Notice of Hearing; Right to be Heard. A victim upon request has the right to be notified of the probationer's initial appearance under section (c), and to be heard at that hearing regarding the probationer's release.

[Staff Note: The CRV had added the substance of subparts (v)(1) and (v)(2) to, respectively, sections (b) and (c). Concerns were raised about the authority supporting the CRV's amendment to section (b) [now (v)(1)].

Rule 27.8. Probation Revocation

(a) **Revocation Arraignment.**

(b) **Violation Hearing.**

(c) **Disposition Hearing.**

(d) **Waiver of Disposition Hearing.**

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Commented [LJR16]: I suppose this scenario could arise if, for example, there was a dispute about whether a defendant had satisfied a term of probation like paying restitution which was a precondition for terminating probation.

Commented [LJR17]: As I recall, didn't this concern center on the practicality of implicitly conditioning the timing of an IA on providing a victim notice of a probationer's arrest? If so, it seems (v)(1) is functionally an aspirational rule because in many instances notice to a victim will be untimely.

CRV: section (v)

First draft: ~~[rev.]~~~~[Member edits. 01.20.2022]~~~~[03.25.2022 meeting version]~~

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(e) **Disposition upon Determination of Guilt for a Later Offense.**

(f) **Record.**

(v) Victims' Rights.

(1) At the Violation Hearing. The victim has a right to be present at a violation hearing under section (b).

(2) At a Disposition Hearing. The court must afford a victim who has requested notice under Rule 39 the opportunity to be present and to be heard at a probation revocation disposition.

[Staff Note: The CRV had proposed this amendment to subpart (b)(2) (“probationer’s right to be present”): “The probationer and the victim have a right to be present at the violation hearing.” (The CRV, however, had not proposed an amendment to the subpart title to reflect this change in content.) The CRV’s proposed amendment is the basis for subpart (v)(1).]

[Subpart (v)(2) derives from Rule 27.10(b).]

Rule 27.9. Admissions by the Probationer [no change]

~~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.~~

[Staff Note: Staff proposes abrogation of Rule 27.10 because its provisions have been relocated to the pertinent rule. Rule 27.10(a) is now in Rule 27.4(v); Rule 27.10(b) is now in Rule 27.8(v)(2); Rule 27.10(c) is now in Rule 27.3(v); and Rule 27.10(d) is now in Rule 27.2(v).]

Commented [LIJR18]: Makes sense.

Rule ~~27.11~~ 27.10. Probation Review Hearing Regarding Sex Offender Registration

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

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- (a) **Right to a Hearing** [no change]
- (b) **Notice of Right to Hearing.** [no change]
- (c) **Request for Hearing and Timing.** [no change]
- (d) **Setting a Hearing and Providing Notice.** [no change]

(1) *Timing.* The court must hold a hearing no later than 30 days after a timely request is filed.

(2) *Notice.*

~~(A) Generally.~~ The court must notify the following of the hearing date:

~~(A) the State, which in turn must notify any victim or victim's attorney entitled to be present and heard under the Arizona Constitution, statute, or court rule and in any case involving a victim, the court must give the State at least 7 calendar days' notice of the hearing date to allow the State to give notice to the victim under section (v);~~

~~(B) the probationer's attorney, if any; and~~

~~(C) the probation officer.~~

~~(B) Notice to the State. In any case involving a victim, the court must give the State at least 7 calendar days' notice of the hearing date.~~

(e) **Prehearing Conference.** [no change]

(f) **Probation Review Report.** [no change]

(g) **Scope of Hearing.** [no change]

(v) **Victims' Rights.** The State must notify any victim or victim's attorney who is entitled to be present and heard under the Arizona Constitution, statute, or court rule, of the hearing date the court sets under section (d).

[Staff Note. The number of this rule has been changed to accommodate the abrogation of Rule 27.10. A portion of current subpart (d)(2)(A)(i) has been relocated to section (v), and that subpart has been modified accordingly.]

Rule 27.12. Abrogated

RULE 28. RETENTION AND DESTRUCTION OF RECORDS AND EVIDENCE

[no change]

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

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RULE 29. SETTING ASIDE A CONVICTION

Rule 29.1. Grounds; Notice; Sex Trafficking Victims.

(a) **Generally.** A person who has completed probation or a sentence may apply in writing to the court to set aside a conviction under A.R.S. § 13-905. The court must provide a person with written notice of this opportunity at the time of sentencing.

~~(b)~~ (v) Sex Trafficking Victims.

(1) Generally. Under A.R.S. 13-909, a sex trafficking victim may apply in writing to the court to vacate the victim's conviction under A.R.S. § 13-3214, or a city or town ordinance that has the same or substantially similar elements, if the offense was committed before July 24, 2014.

(2) Confidentiality. If a court grants an application submitted by a sex trafficking victim, all paper and electronic records of the vacated conviction become confidential. The record may be disclosed upon request to the sex trafficking victim but otherwise may be disclosed only by court order for good cause. The court must order that the pertinent law enforcement agencies and prosecuting agencies make notations in their records that the conviction was vacated, and the applicant was a crime victim.

(3) Order. The clerk must transmit the order vacating the conviction of a sex trafficking victim to the arresting agency, the prosecuting agency, the Department of Public Safety, and the applicant.

[Staff Note: The words “sex trafficking victims” have been added to the title of Rule 29. Rule 29.1(b) is currently titled “sex trafficking victims.” That section has been reformatted as Rule 29.1(v)(1). Subparts (v)(2) and (v)(3) are provisions that were relocated from current Rule 29.7. Rule 29.7 would be vacated.]

Rule 29.2. Application

(a) **Contents.**

(b) **Place of Filing and Filing Fee.**

(c) **Processing of Application.**

~~(d)~~ (v). ~~Victim Notification~~ Victims' Rights. The victim has the right to be present and be heard at any proceeding in which the defendant has filed an application to have a judgment of conviction set aside. If the victim requested postconviction notice, the prosecuting agency must provide the victim with notice of the defendant's application,

CRV: section (v)

First draft: ~~[rev.]~~ [Member edits. 01.20.2022] [03.25.2022 meeting version]

whether the defendant is eligible for a certificate of second chance, and of the rights provided to the victim. The prosecuting agency must provide notice to the victim of the opportunity to be heard if the victim requested post-conviction notification.

[Staff Note: Current section (d) (“victim notification”) has been retitled as section (v) (“victims’ rights”), but the content of the section is unchanged.]

Rule 29.3. State’s Response

Rule 29.4. Reply

Rule 29.5. Hearing

(a) **Generally.** On either party's request or on its own motion, the court may set a hearing. The hearing must be held no later than 120 days after the application's filing unless the court finds good cause for an extension.

(v) **Victims’ Rights.** ~~If the victim requested post-conviction notification, The the~~ prosecuting agency must provide ~~post-conviction the~~ victim notice of the hearing date and the right to be heard ~~at the hearing; if the victim requested post-conviction notification.~~

[Staff Note: Current Rule 29.5 contains three sentences. The first two sentences have become section (a), with the title “generally.” The third sentence has become section (v), with the title “victims’ rights.”]

Rule 29.6. Disposition

(a) **Considerations.** In determining whether to grant an application, the court must consider the following factors:

- (1) the nature and circumstances of the offense the conviction is based on;
- (2) the applicant's compliance with the conditions of probation, the sentence imposed, and the Department of Corrections' rules or regulations, if applicable;
- (3) any earlier or later convictions;
- (4) ~~the victim's input and~~ the status of victim restitution, if any;
- (5) the time that has elapsed since the completion of the applicant's sentence;
- (6) the applicant's age at the time of conviction; and
- (7) any other factor relevant to the application.

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Commented [LIJR19]: Shouldn't we leave "the victim's input" in (a)(4) since it is one of the enumerated factors the court *must* consider under Rule 29.6(a)? It seems that moving it to new subsection (v) renders it susceptible to the interpretation that the court doesn't have to consider it. See my proposed edit to section (v). Please take the liberty to rework this if you share my concern.

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

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(b) Denial. [no change]

(c) Subsequent Application. [no change]

(d) Order. [no change]

(v) Victims' Rights. In addition to the right to be heard at a hearing under Rule 29.5(v), the victim has the right to provide input to the court, which the court must consider pursuant to subsection (a), on the application by other means, including but not limited to information concerning the status of restitution.

[Staff Note: A portion of subpart (a)(4) has been relocated to section (v). Persons other than the victim, such as the clerk or a probation officer, may provide restitution information, so that portion of subpart (a)(4) remains in its current location.]

Rule 29.7. Special Provisions for Sex Trafficking Victims

~~(a) Confidentiality.~~ If a court grants an application submitted by a sex trafficking victim, all paper and electronic records of the vacated conviction become confidential. The record may be disclosed upon request to the sex trafficking victim but otherwise may be disclosed only by court order for good cause. The court must order that the pertinent law enforcement agencies and prosecuting agencies make notations in their records that the conviction was vacated and the applicant was a crime victim.

~~(b) Order.~~ The clerk must transmit the order vacating the conviction of a sex trafficking victim to the arresting agency, the prosecuting agency, the Department of Public Safety, and the applicant.

[Staff Note: Rule 29.7(a) and (b) have been relocated as Rule 29.1(v)(2) and (3). Rule 29.7 may therefore be abrogated.]

RULE 30. RESTORING CIVIL RIGHTS [no change]

Rule 30.1. Grounds.

[Staff Note: Section (a) (“automatic restoration for first offense”) contains two requirements for restoration. The second requirement is the defendant “pays any victim restitution imposed.” Staff did not create a section (v) in Rule 30.1 concerning this requirement, but for a first offense, restoration is “automatic” if the defendant shows that restoration was fully paid. Under Rule 30.2, section (a), a person entitled to automatic restoration is not even required to file an application under this rule.] Note, however that staff added a mention of restitution to Rule 30.2(v).]

Rule 30.2. Application

CRV: section (v)

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(a) **Persons Entitled to Automatic Restoration.** [no change]

(b) **Contents.** [no change]

(c) **Place of Filing and Filing Fee.** [no change]

(d) **Processing of Application.** [no change]

~~(e) **Victim Notification.**~~ **(v) Victims' Rights.**

(1) Generally. The victim has the right to be present and be heard at any proceeding in which the defendant has filed an application to have civil rights restored.

(2) Prosecutor's Notice to the Victim. If the victim in a state court matter has requested post-conviction notice, the prosecuting agency must provide the victim with notice of the defendant's application and the rights provided to the victim. ~~The prosecuting agency must provide notice to the victim of, including the victim's opportunity to~~ **provide the victim's view** ~~on the application and the status of restitution, if the victim requested post-conviction notification.~~ **on the application and the status of restitution.**

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[Staff Note: The letter designation and title of current section (e) have been changed to reflect the section (v) approach. The content of the section has been stylistically modified. The "status of restitution" has been added to the second sentence. To reduce redundancy in the first and second sentences, they have been reorganized into two subparts, each with a subpart **title.**]

Commented [LIJR20]: Nicely done.

Rule 30.3. State's Response.

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(a) **Setting a Hearing.** On either party's request or on its own, the court may set a hearing. A hearing must be held no later than 120 days after the application's filing, unless the court finds good cause for an extension.

(v) **Prosecutor's Notice to the Victim.** If the victim requested post-conviction notification, ~~The the~~ prosecuting agency must provide the post-conviction victim notice of the hearing date and the right to be present and heard ~~if the victim requested post-conviction notification.~~

[Staff Note: The content of current Rule 30.2 has been broken down into two sections, each of which has a new title. The content of section (a) consists of the first two sentences of the current rule. The content of section (v) derives from the third sentence of the current rule, with stylistic modifications.]

Rule 30.4. Reply [no change]

Rule 30.5. Hearing [no change]

CRV: section (v)

First draft: ~~[rev.]~~~~[Member edits. 01.20.2022]~~~~[03.25.2022 meeting version]~~

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Rule 30.6. Disposition [no change]

PART VIII. APPEALS AND OTHER POST-CONVICTION RELIEF

RULE 31. APPEALS

Section One. General Provisions

Rule 31.1. Scope, Procedure, Definitions, Victims' Rights

- (a) **Scope.**
- (b) **Precedence of Criminal Appeals.**
- (c) **Definitions.**

(v) Victims' Rights. ~~Before granting a request to extend a deadline under Rules 31.3, 31.9, 31.13, 31.14, or any other rule, or before granting a suspension of all or any portion of an appellate proceeding,~~ the court must consider the victim's right to a prompt and final conclusion of the case.

[Staff note: New section (v) addresses consideration of a victim's right to a prompt and final conclusion of the case whenever the appellate court must rule on a motion to extend a deadline under the four specified rules. Including this consideration in one location eliminates the need to repeat it in those subsequent rules. The title of Rule 31.1 has been modified by adding "victims' rights."**]**

Commented [LIJR21]: Good point.

Rule 31.2. Notice of Appeal or Notice of Cross-Appeal

- (a) **Notice of Appeal or Cross-Appeal.** [no change]
- (b) **Automatic Appeal for a Defendant Sentenced to Death.** [no change]
- (c) **Content of the Notice of Appeal or Cross-Appeal.**

(1) *The Appeal's Subject.* [no change]

(2) *Victim's Rights Certification.* If the State's notice of appeal or cross appeal is based in whole or in part on a victims' rights violation, the State must certify in the notice of appeal or opening brief that the victim requested the appeal or cross appeal.

(3) (2) *Other Requirement.* [no change]

CRV: section (v)

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(d) through (h). [no change]

(v) Victims' Rights. If the State's notice of appeal or cross-appeal is based in whole or in part on a victims' rights violation, the State must certify in the notice of appeal or opening brief that the victim requested the appeal or cross-appeal.

[Staff Note: The content of current subpart (c)(2) was relocated to section (v).]

Rule 31.3. Suspension of These Rules; Suspension of an Appeal; Computation of Time; Modifying a Deadline

(a) through (d). [no change]

(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.

[Staff Note: The eight words above were deleted from Rule 31.3(e) because they are no longer necessary after the addition of Rule 31.1(v).]

Commented [LIJR22]: I agree.

Rule 31.4. Consolidation of Appeals [no change]

Rule 31.5. Appointment of Counsel on Appeal; Waiver of the Right to Appellate Counsel [no change]

Rule 31.6. Filing Documents with an Appellate Court; Document Format; Service and Proof of Service; Motions [no change]

Rule 31.7. Stay of Proceedings [no change]

Section Two. The Record on Appeal; Briefs and Argument

[Staff Note: There are no changes to the rules in Section Two (Rules 31.8 through 31.17), with the exception of Rule 31.14 shown below.]

Rule 31.14. Provisions Applicable Only to Briefs in Capital Cases

(a) **Length of Briefs.**

(b) **Time for Filing.**

(c) **Request for Extension of Time to File a Brief; Defendant's Rights.** ~~(1) Factors a Court Must Consider.~~ In ruling on any request for an extension of a time limit to file a brief, the court must consider the rights of the defendant ~~and the rights of the victim~~ to a prompt and final conclusion of the case.

CRV: section (v)

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(v) Victims' Rights

(1) Request for Extension of Time to File a Brief: Victims' Rights. In ruling on any request for an extension of a time limit to file a brief, the court also must consider ~~the rights of the defendant and~~ the right of the victim to a prompt and final conclusion of the case.

(2) Notice to the Victim.

(A) Generally. If the victim in a capital case has filed a notice of appearance as provided in A.R.S. § 13-4042, a party requesting an extension of time to file a brief must provide notice of the request to the victim.

(B) Who Must Receive Notice.

(i) The victim may specify in the notice of appearance whether notification should be provided directly to the victim or to another person, including the prosecutor.

(ii) Unless the victim specifies a different method in the notice of appearance, notice must be provided through the prosecutor's office handling the appeal.

(C) Timing.

(i) If the victim has requested direct notification, the party requesting an extension of time must provide notice to the victim no later than 24 hours after filing the request.

(ii) If the prosecutor has the duty to notify the victim on behalf of the defendant, the prosecutor must provide notice to the victim no later than 24 hours after receiving the request.

(D) Manner of Providing Notice.

(i) The victim's notice of appearance may specify whether notice must be provided electronically, by telephone, or by regular mail.

(ii) Notice must be provided in the manner specified in the victim's notice of appearance. If no method is specified, notice must be provided by regular mail.

CRV: section (v)

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[Staff Note: When a party requests an extension of time to file a brief in a capital case, current (c) requires the court to consider the rights of the victim and the defendant to a prompt conclusion of the case. Those rights have been separated. The defendant’s right remains in section (c), but the victim’s right is now contained in section (v), subpart (1) (“the court also must consider the right of the victim [etc.]”) Subpart (v)(2) is a verbatim restatement of current subpart (c)(2).]

Rule 31.15. Amicus Curiae [no change]

Rule 31.16. Supplemental Citation of Legal Authority [no change]

Rule 31.17. Oral Argument in the Court of Appeals [no change]

Section Three. Appellate Court Procedures and Decisions

Rules 31.18 through 31.24 [no change]

RULE 32. POST-CONVICTION RELIEF FOR DEFENDANTS SENTENCED FOLLOWING A TRIAL OR CONTESTED PROBATION VIOLATION HEARING

Rule 32.1. Scope of Remedy

Rule 32.2. Preclusion of Remedy

Rule 32.3. Nature of a Post-Conviction Proceeding and Relation to Other Remedies

Rule 32.4 Filing a Notice Requesting Post-Conviction Relief

(a) Generally. [no change]

(b) Notice Requesting Post-Conviction Relief.

(1) Where to File; Forms. [no change]

(2) Content of the Notice. [no change]

(3) Time for Filing. [no change]

(4) Duty of the Clerk Upon Receiving a Notice. [no change]

~~*(5) Duty of the State Upon Receiving a Notice.* Upon receiving a copy of a notice, the State must notify any victim who has requested notification of a post-conviction proceeding.~~

CRV: section (v)

First draft: ~~[rev.]~~*[Member edits. 01.20.2022]**[03.25.2022 meeting version]*

(v) Victims' Rights. Upon receiving a notice requesting post-conviction relief from the clerk, the State must notify any victim who has requested notification of a post-conviction proceeding.

[Staff Note: The content of subpart (b)(5) was relocated to section (v), with two modifications (deleting the words “a copy of,” and adding the words, “requesting post-conviction relief from the clerk”).]

Rule 32.5. Appointment of Counsel [no change]

Rule 32.6. Duty of Counsel; Self-Represented Defendant's Petition; Waiver of Attorney-Client Privilege [no change]

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,~~ 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.

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CRV: section (v)

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(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, the~~ The court may grant additional extensions for good cause.

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(b) through (f). [no change]

(v) Victims' Rights. The court must consider the victim's right to a prompt and final conclusion of the case:

(1) In a noncapital case, before granting a first request for an extension of time to file a petition, and

(2) In a capital case, and subject to the provisions of Rule 32.20, before granting additional extensions of time to file a petition,

[**Staff Note:** References to consideration of the victims' rights in section (a) have been relocated to section (v). Subpart (v)(2), which concerns capital cases, includes a cross-reference to Rule 32.20.]

Rule 32.8. Transcript Preparation [no change]

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.~~

(2) *Contents.* [no change]

(b) Defendant's Reply. [no change]

(c) Length of Response and Reply. [no change]

(d) Amending the Petition. [no change]

(v) Victims' Rights. Before granting a second request by the State for an extension of time to file a response, or a request by the defendant for an extension of time to file a reply, the court must consider the victim's right to a prompt and final conclusion of the case.

[**Staff Note:** Section (v) incorporates a consideration of the victim's right specified in current section (a). Section (v) also adds a new right under this rule that was proposed by

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CRV: section (v)

First draft: ~~[rev.]~~*[Member edits. 01.20.2022]*~~[03.25.2022 meeting version]~~

the CRV, which would also require the court to consider the victim's rights on the defendant's request to extend the time for filing a reply.

Rule 32.10. Assignment of a Judge [no change]

Rule 32.11. Court Review of the Petition, Response, and Reply; Further Proceedings

(a) **Summary Disposition.** [no change]

(b) **Setting a Hearing.** [no change]

~~(c) **Notice to Victim.** If the court sets a hearing, the State must notify any victim of the time and place of the hearing if the victim has requested such notice under a statute or court rule relating to victims' rights.~~

~~(c) **Defendant's Competence.** [no change other than the letter designation]~~

(v) **Victims' Rights.** If the court sets a hearing under section (b) and if the victim has requested such notice under a statute or court rule relating to victims' rights, the State must notify the victim of the time and place of the hearing.

[**Staff Note:** The substance of section (c), with modifications, was relocated to section (v).]

Rule 32.12. Informal Conference [no change]

Rule 32.13. Evidentiary Hearing [no change]

Rule 32.14. Motion for Rehearing

(a) **Timing and Content.** [no change]

(b) **Response and Reply.** [no change]

(c) **Stay.** [no change]

(d) **Effect on Appellate Rights.** [no change]

(e) **Disposition if Motion Granted.** If the court grants the motion for rehearing, it may either amend its previous ruling without a hearing or grant a new hearing and then either amend or reaffirm its previous ruling. The court must state its reasons for amending a previous ruling. ~~The State must notify the victim of any action taken by the court if the victim has requested notification.~~

(v) **Victims' Rights.** If the victim has requested notification, the State must notify the victim of any action taken by the court.

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Commented [LIJR23]: Do you agree that this is really nothing more than application of victims' existing right to be heard when a party seeks to delay a prompt and final conclusion of the case?

CRV: section (v)

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[Staff Note: The right to notice under section (e) was relocated to section (v). Note, however, that while the current provision requires notice to the victim of action taken by the court under Rule 32.14, there is no provision in Rule 32.13 requiring notification when the court enters a decision under Rule 31.13(d) after an evidentiary hearing. Should one be added?]

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Commented [LIJR24]: Although I can't think of a principled reason why a victim also would not be entitled to notice of a decision under Rule 32.13, is the notice right under Rule 32.14 specifically traceable to a statute? If the notice right in 32.14 is traced to a general right, it seems the right would also apply under 32.13.

Rule 32.15. Notification to the Appellate Court [no change]

Rule 32.16. Petition and Cross-Petition for Review

(a) through (m). [no change]

~~**(n) Notice to the Victim.** Upon the victim's request, the State must notify the victim of any action taken by the appellate court.~~

(v) Victims' Rights. Upon the victims' request, the State must notify the victim of any action taken by the appellate court.

[Staff Note: Section (n) has been relocated to section (v).]

Rule 32.17. Post-Conviction Deoxyribonucleic Acid Testing

(a) through (f). [no change]

(g) Unfavorable Test Results. If the results of the post-conviction DNA testing are not favorable to the defendant, the court must dismiss without a hearing any DNA-related claims asserted under Rule 32.1. The court may make further orders as it deems appropriate, including orders:

- (1) notifying the Board of Executive Clemency or a probation department;
- (2) requesting to add the defendant's sample to the federal combined DNA index system offender database; ~~or,~~
- ~~(3) notifying the victim or the victim's family.~~

(h) Favorable Test Results. Notwithstanding any other provision of law that would bar a hearing as untimely, the court must order a hearing and make any further orders that are required by statute or the Arizona Rules of Criminal Procedure if the results of the post-conviction DNA testing are favorable to the defendant. If there are no material issues of fact, the hearing need not be an evidentiary hearing, but the court must give the parties an opportunity to argue why the defendant should or should not be entitled to relief under Rule 32.1 as a matter of law. ~~If requested, a victim must be given notice of this hearing.~~

(v) Victims' Rights.

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

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(1) Unfavorable Test Results. The court may order the State to notify the victim or the victim's family if the test results are unfavorable to the defendant.

(2) Favorable Test Results. If the test results are favorable to the defendant, and if requested by the victim, the State must give the victim notice of a hearing set under section (h).

[**Staff Note:** Provisions in sections (g) and (h) have been relocated to section (v).]

Rule 32.18. Stay of Execution of a Death Sentence on a Successive Petition [no change]

Rule 32.19. Review of an Intellectual Disability Determination in Capital Cases [no change]

Rule 32.20. Extensions of Time in a Capital Case; Victim Notice and Service

(a) Notice to the Victim. If the victim in a capital case has filed a notice of appearance under A.R.S. § 13-4234.01, a party requesting an extension of time to file a brief must serve or otherwise provide notice of the request to the victim.

(b) Manner and Timing of Service or Notice.

(1) *Victim's Choice of the Manner of Service.* The victim may specify in the notice of appearance whether service of the request should be to the victim or whether it should go to another person, including the prosecutor, and whether service of the notice should be electronic, by telephone, or by regular mail. Service must be made in the manner specified in the victim's notice of appearance or, if no manner is specified, by regular mail. If the victim has requested direct notification, the party requesting an extension of time must serve the victim with notice no later than 24 hours after filing the request.

(2) *Service Through the Prosecutor.* If the victim has not specified a method of service or if the victim has requested service through the prosecutor, the party requesting the extension of time must serve the prosecutor's office handling the post-conviction proceeding. If the prosecutor has the duty to notify the victim on behalf of the defendant, the prosecutor must do so no later than 24 hours after receiving the request.

(c) Victim's Response. A victim may file a response to the request no later than 10 days after it is served.

(d) Factors. In ruling on any request for an extension of time to file a brief, the court must consider the rights of the defendant and the victim to a prompt and final conclusion of the case.

CRV: section (v)

First draft: ~~[rev.]~~*[Member edits. 01.20.2022]**[03.25.2022 meeting version]*

[Staff Note: This complete rule is included to provide context for the time extension provisions of Rule 32.7. Staff made no changes to Rule 32.20. Rule 32.20 does not contain a section (v) because the entire rule would be contained in section (v), that is, the entire rule concerns the victim’s rights in a capital case.]

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Commented [LJR25]: I agree.

RULE 33. POST-CONVICTION RELIEF FOR DEFENDANTS WHO PLED GUILTY OR NO CONTEST, WHO ADMITTED A PROBATION VIOLATION, OR WHO HAD AN AUTOMATIC PROBATION VIOLATION

[Staff Note: Rule 33 provisions parallels many provisions located in Rule 32. Rule 33 therefore shows below only Rule 33 provisions that would require amendment. Those amendments for the most part are identical to the corresponding Rule 32 amendments, except there is no reference in Rule 33.7 to capital cases.]

Rule 33.4 Filing a Notice Requesting Post-Conviction Relief

(c) **Generally.** [no change]

(d) **Notice Requesting Post-Conviction Relief.**

(6) *Where to File; Forms.* [no change]

(7) *Content of the Notice.* [no change]

(8) *Time for Filing.* [no change]

(9) *Duty of the Clerk Upon Receiving a Notice.* [no change]

~~(10) *Duty of the State Upon Receiving a Notice.* Upon receiving a copy of a notice, the State must notify any victim who has requested notification of a post conviction proceeding.~~

(v) Victims’ Rights. Upon receiving a notice from the clerk, the State must notify any victim who has requested notification of a post-conviction proceeding.

[Staff Note: The content of subpart (b)(5) was relocated to section (v), with two modifications (deleting the words “a copy of,” and adding the words, “from the clerk”).]

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.

CRV: section (v)

First draft: ~~[rev.]~~~~[Member edits. 01.20.2022]~~~~[03.25.2022 meeting version]~~

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(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,~~ 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) through (f). [no change]

(v) Victims' Rights. The court must consider the victim's right to a prompt and final conclusion of the case before granting a first request for an extension of time to file a petition.

[Staff Note: References to consideration of the victims' rights in section (a) have been relocated to section (v).]

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.~~

(2) *Contents.* [no change]

(b) Defendant's Reply. [no change]

(c) Length of Response and Reply. [no change]

(d) Amending the Petition. [no change]

(v) Victims' Rights. Before granting a second request by the State for an extension of time to file a response, or a request by the defendant for an extension of time to file a reply, the court must consider the victim's right to a prompt and final conclusion of the case.

[Staff Note: Section (v) incorporates a consideration of the victim's right specified in current section (a). Section (v) also adds a new right under this rule that was proposed by the CRV, which would also require the court to consider the victim's rights on the defendant's request to extend the time for filing a reply.]

Commented [LIJR26]: See comment to Rule 32.9.

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

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Rule 33.11. Court Review of the Petition, Response, and Reply; Further Proceedings

- (a) **Summary Disposition.** [no change]
- (b) **Setting a Hearing.** [no change]
- ~~(e) **Notice to Victim.** If the court sets a hearing, the State must notify any victim of the time and place of the hearing if the victim has requested such notice under a statute or court rule relating to victims' rights.~~
- ~~(d) (c) **Defendant's Competence.** [no change other than the letter designation]~~
- (v) **Victims' Rights.** If the court sets a hearing under section (b) and if the victim has requested such notice under a statute or court rule relating to victims' rights, the State must notify the victim of the time and place of the hearing.

[**Staff Note:** The substance of section (c), with modifications, was relocated to section (v).]

Rule 33.14. Motion for Rehearing

- (a) **Timing and Content.** [no change]
- (b) **Response and Reply.** [no change]
- (c) **Stay.** [no change]
- (d) **Effect on Appellate Rights.** [no change]
- (e) **Disposition if Motion Granted.** If the court grants the motion for rehearing, it may either amend its previous ruling without a hearing or grant a new hearing and then either amend or reaffirm its previous ruling. The court must state its reasons for amending a previous ruling. ~~The State must notify the victim of any action taken by the court if the victim has requested notification.~~
- (v) **Victims' Rights.** If the victim has requested notification, the State must notify the victim of any action taken by the court.

[**Staff Note:** The right to notice under section (e) was relocated to section (v). Note, however, that while the current provision requires notice to the victim of action taken by the court under Rule 32.14, there is no provision in Rule 32.13 requiring notification when the court enters a decision under Rule 31.13(d) after an evidentiary hearing. Should one be added?]

Commented [LIJR27]: See comment to Rule 32.14.

Rule 33.16. Petition and Cross-Petition for Review

- (a) through (m). [no change]

CRV: section (v)

First draft: ~~[rev.]~~[Member edits. 01.20.2022][03.25.2022 meeting version]

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(n) Notice to the Victim. Upon the victim's request, the State must notify the victim of any action taken by the appellate court.

(v) Victims' Rights. Upon the victims' request, the State must notify the victim of any action taken by the appellate court.

[Staff Note: Section (n) has been relocated to section (v).]

Rule 33.17. Post-Conviction Deoxyribonucleic Acid Testing

(a) through (f). [no change]

(g) Unfavorable Test Results. If the results of the post-conviction DNA testing are not favorable to the defendant, the court must dismiss without a hearing any DNA-related claims asserted under Rule 32.1. The court may make further orders as it deems appropriate, including orders:

(1) notifying the Board of Executive Clemency or a probation department;

(2) requesting to add the defendant's sample to the federal combined DNA index system offender database;~~or,~~

~~(3) notifying the victim or the victim's family.~~

(h) Favorable Test Results. Notwithstanding any other provision of law that would bar a hearing as untimely, the court must order a hearing and make any further orders that are required by statute or the Arizona Rules of Criminal Procedure if the results of the post-conviction DNA testing are favorable to the defendant. If there are no material issues of fact, the hearing need not be an evidentiary hearing, but the court must give the parties an opportunity to argue why the defendant should or should not be entitled to relief under Rule 32.1 as a matter of law. ~~If requested, a victim must be given notice of this hearing.~~

(v) Victims' Rights.

(1) Unfavorable Test Results. The court may order the State to notify the victim or the victim's family if the test results are unfavorable to the defendant.

(2) Favorable Test Results. If the test results are favorable to the defendant, and if requested by the victim, the State must give the victim notice of a hearing set under section (h).

[Staff Note: Provisions in sections (g) and (h) have been relocated to section (v).]

CRV: section (v)

First draft: [rev.][Member edits. 01.20.2022][03.25.2022 meeting version]

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PART IX. MISCELLANEOUS

RULE 34. SUBPOENAS [no change]

RULE 35. CRIMINAL CONTEMPT [no change]

RULE 36. [RESERVED] [no change]

RULE 37. REPORT OF COURT DISPOSITIONS [no change]

RULE 38. SUSPENSION OF PROSECUTION FOR A DEFERRED PROSECUTION PROGRAM [no change]

RULE 39. VICTIMS' RIGHTS [no change]

[**Staff Note:** This draft contemplates retaining current Rule 39. There are no proposed edits to Rule 39 at this time.]

RULE 40. TRANSFER FOR JUVENILE PROSECUTION [no change]

RULE 41. FORMS [no change]

John R. Lopez IV, Chair
Committee on Criminal Rules Regarding Victims
1501 W. Washington St.
Phoenix, AZ 85007

IN THE SUPREME COURT
STATE OF ARIZONA

IN THE MATTER OF:) No. R-20-0031
)
PETITION TO AMEND THE) **Report of the Committee on Criminal**
ARIZONA RULES OF) **Rules Regarding Victims**
CRIMINAL PROCEDURE)
)
_____)

I. Introduction. The Committee on Criminal Rules Regarding Victims by its undersigned chair submits this report pursuant to Administrative Order No. 2020-183.¹ The Committee’s report recommends the adoption of amendments to the Criminal Rules that are collectively referred to as the section (v) amendments and that are colloquially described as the section (v) approach. The proposed text of the section (v) amendments is shown in Appendix A. Appendix B contains an explanation of each amendment. Each of the proposed amendments concerns victims’ rights.

¹ The Court subsequently extended the deadline set by A.O. No. 2020-183 for the Committee to file this report.

II. **Background.** The impetus for this Committee was rule petition number R-20-0031, a petition filed by the Arizona Voice for Crime Victims (“AVCV”). The Supreme Court considered R-20-00031 at its August 2020 rules agenda. The AVCV’s petition sought to integrate the provisions of Rule 39 of the Arizona Rules of Criminal Procedure (“Victims’ Rights”) within the other criminal rules.² To achieve integration, an appendix to that petition proposed amendments to 51 Criminal Rules.³

The Supreme Court thereafter entered [Administrative Order No. 2020-183](#) and established this Committee on Criminal Rules Regarding Victims. The Order directed the Committee to

... review the amendments proposed by rule petition no. R-20-0031. The Committee shall determine which provisions of Rule 39 might be logically relocated, as proposed by that petition, and whether relocating a provision would help safeguard victims’ rights. The Committee may accept or reject any amendments that were proposed in rule petition no. R-20-0031. The Committee may also modify or restyle any provision regarding victims that was proposed by that petition, and it may recommend adding provisions other than those the petition proposed, but it cannot make substantive changes to the current victims’ rules.

² “Integration” as used in this report means relocating victims’ rights from Rule 39 to other criminal rules.

³ There are actually 41 Criminal Rules, but the majority of rules have numbers to the right of a decimal point, which divide the primary rule into secondary rules dealing with the same subject matter, e.g., Rules 4.1, 4.2, 4.3, etc. This numbering scheme results in more than a hundred individual rules. With the exclusion of Rule 39, there are currently 64 criminal rule provisions that include a reference to “victim.”

The Order also appointed the Committee’s 11 members, who include prosecutors, defense counsel, victim advocates, superior court judges, and a judge on the Court of Appeals. The Court appointed a Supreme Court justice as Committee chair.⁴

III. Early comments and presentations. Victims’ rights are well-established in Arizona law, as provided by the Arizona Constitution, Article 2, § 2.1 (also known as the Victims’ Bill of Rights, or “VBOR”), and Arizona Revised Statutes §§ 13-4401, *et seq.* Criminal Rule 39 is a complementary rule of procedure that implements these rights in court proceedings. Every member of the Committee acknowledges and supports the rights of victims in criminal proceedings.

During a roundtable discussion at the first meeting, a Committee member employed by the AVCV acknowledged that the AVCV had filed two similar rule petitions in recent years but said that R-20-0031 is different from the previous petitions because it addressed concerns raised by stakeholders in their comments to the earlier filings.⁵ The member believed that victims’ rights should be fully

⁴ Justice Andrew Gould served as Chair for the Committee’s first three meetings. Justice John R. Lopez IV became Chair upon Justice Gould’s retirement from the Supreme Court.

⁵ Materials for the first committee meeting included excerpts from meeting minutes of two prior Supreme Court Task Forces, one on Criminal Rules (2016-2017) and the other on Rule 32/Post-conviction Relief (2018- 2019). These excerpts contained discussions by members of those Task Forces concerning the AVCV’s previously proposed amendments to criminal rules concerning victims.

integrated, and accordingly requested that the Court adopt all of R-20-0031’s proposed amendments rather than just some of them.⁶

Some Committee members disagreed with integration at the first meeting. They contended that it is easier for judges to locate provisions concerning victims if the provisions are in a single location, i.e., in Rule 39. They also believed that Rule 39 better informs victims, especially those who are not represented by counsel, that they have rights and what those rights are. A couple members emphasized that having victims’ rights comprehensively enumerated in Rule 39 facilitates the training of new attorneys because one focused criminal rule is more effective for training purposes than provisions dispersed throughout multiple rules.⁷

At their second Committee meeting, five learned individuals—Paul Cassell, Meg Garvin, Mikel Steinfeld, Theresa Rassas, and Steven Twist—presented their views on integrating victims’ rights.

Mr. Cassell is a professor at the University of Utah School of Law and a

⁶ The adoption of some but not all of the amendments is known as “partial integration.”

⁷ One member expressed concerns that changing the victims’ rights rules could undermine existing case law or create new legal issues and have unintended consequences. Another member observed that while some judges might need additional education on complying with victims’ rights provisions, that is a training issue and does not implicate a problem with the rules.

former federal prosecutor and a federal judge. He noted that other states look to Arizona as a leader in codifying statutorily established victims' rights within court rules. He believed that even victims with no legal training should be able to find, read, and comprehend integrated rule amendments, which would facilitate victim participation in the criminal process as anticipated by the Arizona Constitution. He also opined that a judge would be more inclined to look for a victims' right in a specific rule rather than Rule 39 because the judge would be dealing with a proceeding governed by a specific rule.

Ms. Garvin is on the faculty at Lewis and Clark Law School and supervises a victims' rights clinic. She supported Professor Cassell's views. She believed that integration is a more holistic approach to victims' rights, and that it facilitates the timely consideration of victim issues as opposed to remediating glitches after they occur. She anticipates that integrating the rules would heighten stakeholder compliance with pertinent victims' rights provisions. Like Professor Cassell, she believes that fully integrated rules could serve as a national model.

Mr. Steinfeld is in the appeals unit of the Maricopa County Public Defender's Office. He did not support the AVCV's rule petition. His duties include training new attorneys on victims' rights; he said that the aggregation of those rights in Rule 39 makes that training more focused and effective. He also noted that Arizona has a body of case law concerning victims' rights and suggested that integration could

disturb that case law, create confusion, reduce compliance, and result in more litigation. He concluded that Arizona has relatively good compliance with victims' rights requirements and that the status quo is working well now.

Ms. Rassas was a former county attorney and federal prosecutor who is now in the Office of the Arizona Attorney General. She was previously in the Attorney General's victims' services unit, which has duties under A.R.S. § 41-191.06 to monitor compliance with victims' rights. She said that most victims' rights violations are unintentional. The primary goal of the unit is not punitive but rather is instructional, that is, for judges to learn from their errors and be compliant in the future.⁸

Mr. Twist is recognized in Arizona and nationally for his decades of work on behalf of crime victims. He characterized Article 2, § 2.1 of the Arizona Constitution as an integral part the criminal justice system and a promise to crime victims that secures their rights to justice, fairness, and due process. He believes that combining those rights into a single rule detracts from their effectiveness. He prefers integrated criminal rules, which he believes would further the objectives of the VBOR at each separate step of the criminal justice process. He also believes that integrating the

⁸ At a later meeting, Ms. Rassas provided five years of data showing the number of victims' rights violations sustained by her office. The annual number ranged from 28 violations in 2016 to 82 violations in 2020, although she noted that some sustained violations involved more than one finding.

rules would reduce the likelihood of mistakes involving victims' rights and promote uniformity in court procedures.

IV. The Committee's consideration of R-20-0031. As is apparent from the early comments and presentations, individual Committee members and presenters had differing views on integration. One view opposed integrating Rule 39, as proposed by R-20-0031. Those members believe that Rule 39 in its current form is a useful resource and training tool, and that there was no systemic problem with the use or application of Rule 39 that requires its provisions to be integrated with other rules. Proponents of integration, on the other hand, believe that integration would help assure that victims' rights aren't overlooked at court hearings. Participants who reviewed a rule concerning a hearing in which they are about to participate would immediately see the rights of the victim in the fully integrated rule.

Committee members nonetheless agreed that they had a duty to discuss each of the amendments proposed by R-20-0031 and to determine if any of those amendments met the criteria specified in A.O. No. 2020-183, i.e., whether provisions of Rule 39 might be logically relocated to other rules and whether relocating those provisions would further safeguard victims' rights. Members then began an in-depth review of each proposed amendment, a process that took several months to complete. Some of the proposed rule amendments in the appendix to R-

20-0031, were awkwardly phrased, incorrectly formatted, or duplicative of other provisions. Members considered ways to improve the proposed language. They also assured that each proposed amendment was authorized by the Arizona Constitution or a statute.⁹

Rule 39 was included in the R-20-0031 appendix as a proposed rule, yet it was not initially clear whether the AVCV intended to eliminate Rule 39 or retain it, either in whole or in part. At the August 19, 2021 Committee meeting, after members completed their review of the other rule amendments proposed by R-20-0031, the AVCV expressly stated its preference for abrogating Rule 39.

Members met on September 2, 2021 to consider their recommendations to the Court. Members discussed several alternative recommendations and voted on each one. A majority of members rejected integration as proposed by R-20-0031. Notwithstanding a significant investment of time and effort in their review of R-20-0031, the Committee at that point would have recommended no changes to the Criminal Rules.

V. The section (v) approach. In late September 2021, the Chair and staff informed the Court that the Committee had decided to recommend no changes to the Criminal Rules. The Court acknowledged the members' efforts and the votes at the September 2, 2021 meeting, but indicated that it was not satisfied with the

⁹ Ms. Rassas was instrumental in this process.

Committee’s recommendation to do nothing. Instead, the Court iterated the value of integrating victims’ rights into the Criminal Rules.

The discussion with the Court laid the foundation for Committee staff’s revised set of provisions known as the section (v) amendments. The section (v) amendments integrate victims’ rights into the other criminal rules by relocating those rights within new section (v)’s of the respective rules. Each section (v) has the uniform title “victims’ rights.” The section (v) approach has multiple benefits:

- (a) *Victims’ rights appear in a uniform location.*** The most apparent feature of the section (v) approach is that it places all applicable victims’ rights in a distinct and uniform location, i.e., section (v). Victims’ rights that apply to a proceeding under any rule can therefore be easily located. This feature would be particularly beneficial to self-represented victims, who are the majority of victims and who would see their rights in a self-contained section of a rule, rather than having to search within a rule for pertinent words or phrases.
- (b) *Victims’ rights provisions are separate from provisions that apply only to defendants.*** Not all criminal cases involve victims. The section (v) approach sets the text of victims’ rights apart, so a judge need not consider them in cases where they do not apply.
- (c) *The section (v) provisions incorporate features of R-20-0031.*** During their months of reviewing the AVCV draft rules, members recognized the desirability of many of the AVCV’s suggested changes. The section (v) amendments accordingly include a number of changes that the AVCV’s draft had proposed.
- (d) *Victims’ rights have been restyled.*** The section (v) approach also avoids many of the stylistic pitfalls embedded in the AVCV’s draft. The section (v) provisions are stylized consistently with restyling conventions used in the Court’s other recent rule restyling projects. The section (v) provisions use simplified and easier to understand language. Where appropriate, the section (v) provisions are organized into subparts. The subparts frequently have titles, allowing readers to readily locate the provisions they are seeking.

(e) The section (v) amendments include substantive new provisions that safeguard victims' rights. The section (v) approach includes new provisions that are not expressly contained in the current Criminal Rules and that were not proposed by R-20-0031. An example is proposed Rule 17.8(v), which provides a victim with a right to confer with the prosecutor on a decision to submit a case on the record. Other such changes are more fully described in Appendix B, These changes, although possibly substantive, are designed to further safeguard victims' rights and are warranted by existing law.

(f) The section (v) approach retains Rule 39. The section (v) approach retains Rule 39 ("Victims' Rights") without any modifications to the text of that rule, thereby addressing stakeholder concerns with the version offered by the AVCV, which would have abrogated Rule 39. Retaining Rule 39 should address stakeholder concerns about keeping the rule intact for judicial education and attorney training. Careful drafting of section (v) provisions has avoided conflicts with corresponding victims' rights provisions in Rule 39.

(g) The section (v) approach meets the underlying objectives. The section (v) approach fulfills the Committee's objectives, as noted by the Chair at the first meeting, of adding clarity to the rules on victims' rights, improving the organization of those rules, and assuring that these rules safeguard victims' rights to justice, fairness, and due process.

(h) The section (v) approach achieves full integration. Finally, the section (v) approach achieves full integration, i.e., every rule that contains victims' rights will have a clear and concise statement of those rights within section (v) of that rule.

VI. The section (v) amendments. The proposed section (v) amendments are shown Appendix A to this report. This report proposes amendments to ## rules. An amendment to Rule 5.1(v)(2) is presented in alternative forms. Appendix B contains a concise explanation for each of the recommended amendments.

VII. Conclusion. The members appreciated the opportunity to serve on this Committee and to assist in furthering the rights of victims in criminal justice

proceedings. Committee members worked diligently to achieve the consensus (unanimous?) recommendations concerning section (v) that are described in this report and presented in the appendices; almost every meeting was attended by the full complement of members. Theresa Rassas, who was present at virtually every meeting, and the members' proxies (Judge Kent Cattani, Judge Michael Butler, and Kevin Heade) made commendable contributions.

Although the Committee's membership included a variety of stakeholder perspectives, additional input from other individuals and organizations concerning the section (v) amendments proposed by this report would be illuminating. Accordingly, the Committee requests that the Court open the section (v) amendments shown in the appendix for public comment. The Committee further requests that the Committee have an opportunity to file a reply to the public comments, and that the Court consider the proposed amended rules at a future Rules Agenda.

Respectfully submitted this ____ day of June 2022.

John R. Lopez IV
Committee Chair

Members of the Committee on
Criminal Rules Regarding Victims:

Justice John R. Lopez IV, Chair

Judge Ronald Reinstein (ret.), Vice Chair

Tim Agan

Colleen Clase

Judge Maria Elena Cruz

Ryan Green

Judge Kellie Johnson

Judge Patti Starr

Rick Unklesbay

Judge Maria Del Mar Verdin

Cathryn Whalen

Appendix B: Explanation of Proposed Criminal Rule Amendments

Rule 1.3 (“victim participation”). Proposed Rule 1.3 is an entirely new rule and replaces current Rule 1.3 (“computation of time”), which has been relocated as a new Rule 1.10. New Rule 1.3, which does not include a section (v), is significant because it introduces at the beginning of the Criminal Rules the role of victims in the criminal justice process, thereby fulfilling petition number R-20-0031’s request to have a rule on victims’ rights in a “more prominent location.” This single sentence new rule cross-references Rule 39 and the section (v) provisions in other rules, thereby serving as a road sign that directs readers to those other pertinent provisions. New Rule 1.3 provides:

Although a victim is not a party in a criminal proceeding, a victim has a right to participate in the proceeding pursuant to the rights provided by law, including rights detailed in Rule 39 and in section (v) provisions (‘victims’ rights’) of these rules.

A comment to the 2022 Amendment to this rule elaborates on the purpose of Rule 1.3 and contains basic information for victims on how to “opt in” for victims’ rights that are available “on request.”

Rule 1.4 (“definitions”). The definition of “victim” in current Rule 1.4(h) simply refers to “a person as defined in A.R.S. § 13-4401,” which requires the reader to refer to the statute. By comparison, proposed Rule 1.4(v) paraphrases the statutory definition, thereby eliminating that extra step. Rule 1.4(v) provides:

‘Victim’ means a person or entity against whom the criminal offense has been committed or a representative who is designated or appointed to act on their behalf. If the person against whom the offense was committed was killed or incapacitated, ‘victim’ includes the person’s spouse, parent, child, grandparent, or sibling, or another individual specified in A.R.S. § 13-4401, unless that person is in custody or is the accused.

Rule 1.5 (“Interactive Audiovisual System”). New section (v) has two subparts. Subpart (v)(1), which concerns a victims’ right to view and participate in a proceeding conducted under Rule 1.5, is derived from current subpart (b)(3)(B); the current subpart would be deleted. Subpart (v)(2) is new; it requires that the victim be provided notice, if requested, of a new date in the event the audiovisual hearing is continued.

Rule 1.7 (“Filing and Service of Documents”). New section (v) provides:

When the victim is represented by an attorney, the certificate of service required by subpart (c)(3) must show that a copy of the filed document was provided to the victim’s attorney.

An analogous provision is in Rule 39(d)(4), but it is more prominent -- and more sensibly located -- in Rule 1.7, which governs service of documents on the parties’ attorneys.

Rule 1.8 (“Clerk’s Distribution of Minute Entries and Other Documents”).

Section (v) would require the clerk to “include every victim’s attorney who has filed a notice of appearance under Rule 6.3(v)(2) in the clerk’s distributions of minute entries and other documents.” Current Rule 1.8 requires the clerk to distribute documents to parties, but a victim is not a party and the current rule does not mention

victim's counsel. This new provision would clarify that victim's counsel also has a right to receive the clerk's minute entries and other document distributions.

Rule 1.9 (“Motions, Oral Argument, and Proposed Orders”). New Rule 1.9(v) describes a victim's right to file motions to enforce victims' rights, and to file a petition for special action relief “seeking relief from an order affecting any victim's right guaranteed by law.” The provisions of section (v) are more detailed and informative than any corresponding provisions in Rule 39.

Rule 1.10 (“Computation of Time”). Rule 1.10 is a newly numbered rule. It contains the relocated substance of current Rule 1.3. Rule 1.10 also includes a section (v) that simply provides, “The time computation provisions of section (a) [‘general computation of time’] also apply to victims.”

Rule 4.1 (“Procedure Upon Arrest”). Current Rule 39(b)(7)(A) refers to the victim's right, upon request, to notice of and to be heard at an initial appearance. However, these rights are not mentioned in current Rule 4.1. Accordingly, new Rule 4.1(v) would provide:

Upon request, the victim must be informed of the date, time, and place for the defendant's initial appearance in accordance with A.R.S. § 13-4406. The victim upon request must be notified of the defendant's release from custody at or after the initial appearance.

The proposed text of this provision also refers to the victim's right to notice of the defendant's release from custody, which is a separately enumerated right in Rule 39(b)(3).

Rule 4.2 (“initial appearance”). Current Rule 4.2(a)(6) provides that a magistrate must “permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release.” Proposed Rule 4.2(v)(1) embodies this requirement more directly by providing that “a victim has the right to be heard concerning the defendant’s possible release ...” The proposed language attempts to track the text of A.R.S. §§ 13-4421 and 13-4422.

Current Rule 4.2(c) allows a magistrate to combine an initial appearance with an arraignment. If the magistrate continues the combined proceeding, the current rule requires the court to provide notice to the victim of the continued date. Proposed Rule 4.2(v)(2), by using the passive voice, allows the prosecutor rather than the court to furnish notice to the victim.

Rule 5.1 (“right to a preliminary hearing; waiver; continuance”). Proposed subpart (v)(2) would add a victim’s right whenever the court is presented with a motion to continue the preliminary hearing. There is no corresponding provision in current Rule 5.1 concerning a victim’s right in this situation.

The Committee’s initial draft of subpart (v)(2) provided:

Before continuing a preliminary hearing on motion or on its own initiative under section (c), a magistrate must also consider the victim’s [views and] right to a speedy disposition. If the magistrate orders a continuance of the preliminary hearing, the victim, if requested, must be notified of the magistrate’s order and the new hearing date pursuant to A.R.S. § 13-4409.

The two words in brackets (“views and”) were added during the members’ discussion. Thereafter, members reached an irreconcilable difference. Some members believed that obtaining the victim’s views might delay the proceeding -- which is by its nature an expedited proceeding -- particularly when the victim failed to appear at the hearing and is unable to express a view. (See further Rule 39(g)(3), which suggests that a magistrate may not proceed if the victim has not been notified of the proceeding.) These members believe the essence of subpart (v)(2) is to assure that the victim has notice of a continued proceeding, as the second sentence of the subpart provides, and they would therefore strike the first sentence of draft subpart (v)(2). Other members would retain the first sentence and add a cross reference to A.R.S. § 13-4435(A). This statutory provision requires a magistrate to consider a victim’s right to a speedy trial when ruling on a motion to continue “in any criminal proceeding.”¹ Because of a lack of consensus, the members offer both alternatives for the Court’s consideration.

Rule 5.4 (“determining probable cause”). Current Rule 5.4(a) provides that “upon request, the magistrate may reconsider the conditions of release.” The current

¹ The definition of “criminal proceeding” in A.R.S. § 13-4401(7) refers to matters “before a trial court,” which might exclude preliminary hearings conducted in a justice court. Members also considered the Arizona Constitution, Article 2.1, section (A)(10), which provides the victim a right “to a speedy trial or disposition...” “Disposition” would arguably include the right to a prompt preliminary hearing. The speedy trial rights in Criminal Rule 8 do not apply because those deadlines are calculated from the arraignment, which occurs after the preliminary hearing.

provision, however, omits mention of a victim's right concerning the defendant's request. The Committee accordingly added a section (v) that provides:

The victim has a right to be heard whenever the defendant under section (a) requests a magistrate to reconsider the conditions of the defendant's release.²

The new provision is consistent with current Rule 39(b)(6)(A).

Rule 5.8 (“notice if an arraignment is not held”). Current Rule 5.8, which applies only in counties that do not hold an arraignment after a preliminary hearing, is another rule that makes no mention of victims' rights. Members accordingly added a section (v) that provides:

Pursuant to A.R.S. § 13-4409, a victim has a right to receive notice from the prosecutor, on request, of dates for further proceedings.

Rule 6.3 (“duties of counsel; withdrawal”). Current Rule 6.3 governs an attorney's withdrawal, but the rule is silent on whether the court should consider the victim's right to a speedy trial if counsel's withdrawal would require a continuance of the trial date. Proposed subpart (v)(1) would require the court to consider the victim's right to a speedy disposition in this circumstance.

Proposed subpart (v)(2), which is also new, expressly requires a victim's attorney to file a notice of appearance. This requirement is implied in current Rule 39(d)(4) but it is not explicitly clear. Members believe that subpart (v)(2) will help assure that information regarding victim's counsel is entered into the case

² See further pending Rule Petition No. R-21-0051.

management system and help the clerk provide notices to victim's counsel. See further the proposed amendment to Rule 1.8 described above.

Rule 7 (“release”). Rule 7 is unquestioningly one of the most pertinent rules for a crime victim. The current rule, however, presents a jumble of victims' rights provisions and is not a model of clarity.

One of the most significant provisions in Rule 7 is Rule 7.2 (“right to release”), section (a) (“before conviction; bailable offenses”), which applies in most cases. Rule 7.2(a), however, omits any reference to a victim or a victim's right in circumstances involving an eligible defendant's pretrial release. After consideration and discussion, the Committee recommends adding a new and identical section (v) to **Rule 7.2, supra, Rule 7.4** (“procedure”), and **Rule 7.5** (“review of conditions; revocation of release”). The proposed provision is simple yet straightforward:

If requested, a victim has the rights to be notified of, present at, and heard at any proceeding involving a post-arrest release decision, and to be informed if a defendant is released from custody.

Members also agreed to retain a new provision in Rule 7.3 (“conditions of release”) that they drafted during their consideration of petition number R-20-0031.

New Rule 7.3(b) titled “victim protection” would provide:

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 new provision would replace the following first sentence of current section (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.~~

While the two provisions are identical, the Committee believes that “victim protection” should be located closer to the “mandatory conditions” of section (a). Current sections (b) and (c) would be renumbered as sections (c) and (d), as shown in Appendix A.