

Committee on Criminal Rules Regarding Victims

Meeting Agenda

Friday, July 1, 2022

Noon. to 12:30 p.m.

This meeting is virtual only.

Telephone number: 1 602 753 0140 Webinar ID: 924 9665 9017

Zoom link: [click here](#) Passcode: 914735

Item no. 1	Call to Order	<i>Hon. John R. Lopez IV Chair</i>
Item no. 2	Approval of the June 27, 2022, draft meeting minutes	<i>Justice Lopez</i>
Item no. 3	Review and approval of the Committee's revised report	<i>All</i>
Item no. 4	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. 5	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 Sabrina Nash at (602) 452-3849. 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: June 27, 2022

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

AOC Staff: Mark Meltzer, Sabrina Nash

1. Call to order; introductory remarks; approval of meeting minutes. The Chair called the fourteenth meeting of the Committee on Criminal Rules Regarding Victims (“CRV”) to order at 12:17 p.m. The meeting was virtual. The Chair informed members that he presented the section (v) amendments to the presiding judges on June 20, 2022. The presiding judges deferred acting on the Committee’s proposed amendments because their draft of the Committee’s rules concluded with Rule 27, i.e., their draft included amendments only through the Committee’s April 27, 2022, meeting, and the Committee’s report to the Court had not been finalized. The Chair then requested members to review draft minutes of the June 6, 2022, CRV meeting. There were no corrections to the draft.

Motion: A motion to approve the draft June 6, 2022, meeting minutes received a second and it passed unanimously. **CRV-015**

2. Review of the Committee’s report. Members concluded their review of the draft rules at the June 6, 2022, meeting. The Chair noted staff’s June 22 email, however, which reminded members that they had agreed on June 6 that the text of Rule 27.3 should conform to the text of Rule 27.8, and that staff had made that change after the meeting; but because of the unique language of Rule 27.3, the revised text differs from the text of 27.8. Staff requested that members review revised Rule 27.3(v). Staff also asked them to review Rules 27.4(v) and 27.7(v)(2); staff had modified the text of these provisions so they would also be conforming. Members had no objections to these recent revisions.

Today’s meeting focused on a review of the Committee’s draft report and recommendations to the Court. The Chair invited the members’ comments on the draft report and Appendices A and B. Ms. Clase requested a revision in Part IV of the report to clarify that R-20-0031 included Rule 39 to honor the AVCV’s commitment to the Arizona Prosecuting Attorneys Advisory Council to retain that rule. Members had no objection to Ms. Clase’s request and they suggested various revisions. Staff and others

were experiencing audio issues during today's Zoom meeting, and staff expressed reservations about making a revision in real time.

A judge member then asked whether the Committee today would formalize its position on integration of the rules, and whether the report would reflect the outcome of that formal determination. The Chair answered both questions affirmatively. He asked staff if any suggested edits to the report could be made in real time during the meeting. Staff replied that doing so would not be feasible, although he could make those edits later today. Staff added that members would need to give someone, such as the Chair, their authority to finalize those edits, or they otherwise would need to reconvene to approve the edits. Members discussed whether, given the technical issues at today's meeting, any revisions to the draft report could be memorialized in the chat feature of Zoom, but this too had practical limitations.

Members continued with a discussion of their consensus recommendations. The principal issue was whether the Committee should recommend amendments to the Criminal Rules, and members had a preliminary discussion of that issue. Staff noted the Court's interest at its September 2021 meeting with the Chair and staff in having an integrated set of rules for the Court's consideration. A majority of members responded that they were appointed because of their expertise in this area, and they should provide the Court—and the Court would expect—their authentic recommendations concerning integration. The Court ultimately will decide the merits of the recommendations. The Chair confirmed that regardless of the substance of today's draft report, the final report will reflect the members' recommendations. The two questions before the Committee now are whether to integrate victims' rights more fully into the criminal rules, and whether the section (v) approach is a rational and effective way of achieving integration.

3. Recommendations. The members proceeded to vote by a show of hands. The Committee's rules require a vote, if not unanimous, to reflect the numerical split.

Question #1: Should victims' rights be more fully integrated into the criminal rules?

Yes: 2

No: 8

Pursuant to the Committee's rules, the Chair did not vote. **CRV-016**

The Committee did not take a formal vote on the second question. However, the members recognized that the Court might determine that integration is nonetheless appropriate. Accordingly, they unanimously agreed during the ensuing discussion that

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the section (v) approach was a rational and effective way to integrate the rules if the Court deems that integration is ++preferable.

4. Roadmap. The members agreed to reconvene to consider a revised version of the Committee's report. The meeting will be held virtually on Friday, July 1, beginning at noon. (July 1 is the filing deadline.) Staff noted the desirability of changing the tone of the report to reflect today's discussion. The Chair authorized staff to revise the draft and circulate it to members tomorrow.

5. Call to the public; concluding remarks; adjourn. There was no response to a call to the public. The Chair thanked the members for their participation and today's earnest discussion.

The meeting adjourned at 1:29 p.m.

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 previously recommended that the Arizona Supreme Court decline to adopt the amendments to the Arizona Rules of Criminal Procedure proposed by rule petition no. R-20-0031 that would integrate victims’ rights provisions currently found in Rule 39 into other criminal rules. Although a majority of the committee continues to believe that a standalone Rule 39 is a simpler approach

¹ The Court subsequently extended the deadline set by A.O. No. 2020-183 for the committee to file this report. A.O. No. 2021-182 specifies a July 1, 2022, deadline.

that better serves the interests of crime victims, the committee recognizes the concerns underlying the contrary position, and it therefore agreed to provide an alternative recommendation that preserves Rule 39 while also incorporating many of its provisions into other criminal rules. This alternative recommendation proposes to insert a new section (v) into 40 criminal rules, as shown in Appendix A. Appendix B contains an explanation of each amendment.

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

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:

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 100 individual rules. With the exclusion of Rule 39, there are currently 64 criminal rule provisions that include a reference to “victim,” and to that extent, the rules are already partially integrated.

... 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.

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.⁴ The Court appointed a Supreme Court justice as committee chair.⁵

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.

During a roundtable discussion at the first meeting, a committee member who serves as AVCV's chief counsel acknowledged that in recent years, the AVCV had filed two similar rule petitions that were not adopted. Counsel said, however, that R-20-0031 was different from the previous petitions because it addressed

⁴ The last page of this report includes a list of committee members.

⁵ Justice Andrew Gould served as Chair for the first three committee meetings. Justice John R. Lopez IV became Chair upon Justice Gould's retirement from the Supreme Court.

concerns raised by stakeholders in their comments to the earlier filings.⁶ R-20-0031 also contained anecdotal examples of victims' rights abuses. The rule petition included a citation to the VBOR, Section 2.1(A)(11), which provides that "a victim of a crime has a right: ...

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

AVCV's chief counsel believed that victims' rights should be fully integrated and recommended the adoption of all of R-20-0031's proposed amendments rather than just some of them.⁷

Several committee members during the first meeting disagreed with integration. 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, particularly those who are not represented by counsel, that they have rights and what those rights are. These

⁶ 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.

⁷ The adoption of some but not all of the amendments is known as "partial integration."

members emphasized that having victims' rights comprehensively enumerated in Rule 39 facilitates attorney training because one focused criminal rule is a more effective tool than provisions dispersed throughout multiple rules.⁸

At the second committee meeting, five 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 former federal prosecutor and federal judge. He believes that victims with no legal training should be able to find, read, and comprehend rules concerning victims' rights and that integrated rules would do this and facilitate victim participation in the criminal process, as envisioned by the Arizona Constitution. He also opined that a judge would be more inclined to look for victims' rights in a specific rule rather than Rule 39 because the judge would be dealing with a proceeding governed by the specific rule. He noted that other states look to Arizona as a leader in codifying statutorily established victims' rights within court rules.

⁸ 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.

Ms. Garvin is on the faculty at Lewis and Clark Law School and supervises a victims' rights clinic. She agreed with Professor Cassell's views. She stated her opinion 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 a supervisor in the appeals unit of the Maricopa County Public Defender's Office, whose duties include training new attorneys on victims' rights. Mr. Steinfeld opposed R-20-0031 and stated that the aggregation of victims' rights in Rule 39 makes training more focused and effective. He also noted that Arizona has a body of case law concerning victims' rights, and he 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.

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 of the criminal justice system and a promise to crime victims that secures their rights to justice, fairness, and due process during criminal proceedings. 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 rules would reduce the likelihood of mistakes involving victims' rights and promote uniformity in court procedures.

Ms. Rassas is a former county attorney and federal prosecutor who is now an assistant 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. Ms. Rassas noted that most victims' rights violations appear to be unintentional, and the primary goal of Attorney General's victims' services unit is instructional, that is, to help judges learn from their errors and to ensure compliance with victims' rights mandates in the future.⁹

IV. The committee's consideration of R-20-0031. Individual committee members had differing positions on integration. One view opposed integrating Rule 39 as proposed by R-20-0031. These members believe that Rule 39 in its current form is a useful resource and training tool and that there is no systemic problem with the use or application of Rule 39 requiring integration of its provisions with other rules. Proponents of integration, on the other hand, believe

⁹ 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.

that integration would help assure that victims' rights are not overlooked at court hearings. Participants in a court proceeding who reviewed a rule concerning a hearing in which they are about to participate would immediately see the rights of the victim spelled out in the fully integrated rule.

Committee members agreed 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 any or all of the 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 and attempted to ensure that each proposed amendment was consistent with the Arizona Constitution or Arizona statutes.¹⁰

Rule 39 was included in the R-20-0031 appendix as a proposed rule, but it was not clear whether the AVCV sought to eliminate Rule 39 or retain it, in whole or in part. The AVCV's chief counsel explained that the petition included Rule 39 in its entirety because during pre-filing vetting, the Arizona Prosecuting Attorneys Advisory Council ("APAAC") favored that approach. At the August 19, 2021,

¹⁰ Ms. Rassas was instrumental in this process.

committee meeting, the AVCV's chief counsel stated the AVCV's initial preference for abrogating Rule 39 while also noting its willingness to adopt APAAC's recommended approach of retaining that rule.

Members met on September 2, 2021, to consider proposed recommendations to the Court. Members discussed several alternative recommendations and voted on each one. By a vote of 8 to 2, members rejected integration of the criminal rules, including their modifications to the R-20-0031 amendments. Notwithstanding a significant investment of time and effort in their review of R-20-0031, the committee 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 against recommending changes to the criminal rules. The Court acknowledged the members' efforts and the votes at the September 2, 2021, meeting, but indicated the Court's preference that the committee consider some type of modified approach to integrate victims' rights into the criminal rules.

The discussion with the Court laid the foundation for committee staff's revised draft proposing the "section (v)" amendments for the committee's consideration. The section (v) amendments integrate victims' rights into other rules by locating the applicable provision within a new section (v) of every criminal rule

that impacts those rights. Each section (v) has the title “victims’ rights.” The section (v) approach is perceived to be beneficial for several reasons.

- (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. Although self-represented victims, who are the majority of victims, might rarely review the criminal rules, those that do 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.*** Members acknowledged that the AVCV’s suggested text was feasible in some instances. 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 stylistic pitfalls in the AVCV’s original 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 new provisions that safeguard victims’ rights.*** The section (v) approach includes new provisions that are not expressly contained in the current criminal rules and were not proposed by R-20-0031. An example is proposed Rule 17.8(v), which provides that a prosecutor should confer with a victim before deciding to submit a case on the record. Other such changes are more fully described in Appendix B. These suggested changes are not intended to create new substantive rights, and the

committee believes they are consistent with the letter and intent of existing law and current practice.

(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 initial proposal to abrogate Rule 39. The retention of Rule 39 keeps the rule intact for, among other purposes, judicial education, attorney training, and legal research. Careful drafting of section (v) provisions has attempted to avoid conflicts with corresponding victims’ rights provisions in Rule 39.

(g) *The section (v) approach is consistent with the committee’s underlying objectives.* The section (v) approach fulfills the committee’s objectives—as the Chair noted 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’ constitutional rights to justice, fairness, and due process.

(h) *The section (v) approach achieves fuller integration.* Finally, the section (v) approach achieves fuller integration, i.e., rules that contain victims’ rights will have a clear and concise statement of those rights within section (v) of that rule.

VI. The section (v) amendments. The section (v) amendments to 40 rules are shown in Appendix A to this report. Appendix B lists those rules and contains a concise explanation for each of the amendments. Appendix B also suggests consideration of additional issues that are arguably separate from the question of integration.

Not every reference to a “victim” in the criminal rules required a section (v) amendment. For example, Rule 1.2 (“purpose and construction”) requires “courts, parties, and crime victims” to construe the rules in the specified manner. This is a general rule of construction, and it confers no right on victims. Rule 2.3 (“content

of complaint”) requires the prosecutor to notify the clerk if a charged offense involves a juvenile victim. Once again, this does not give rise to a victim’s right. Several provisions in Rule 31 (“appeals”) require the appellate court to consider the rights of the victim to a prompt and final conclusion of the case, but similarly, these provisions do not confer a specific right on a victim. Accordingly, some provisions that refer to “victim” have not been relocated to a new section (v). The approach distinguishes between rights that a victim can personally exercise, which are in the section (v) amendments, and duties and obligations of others with regard to victims, which are retained within the current body of the rules.

Several of the rule amendments described in Appendix B would require the Court’s further consideration to address potential changes to substantive victims’ rights under the following rules:

- Rule 5.1, and whether a magistrate needs to consider a victim’s views on a motion to continue a preliminary hearing.
- Rule 8.5, to confirm that the trial court does not need to set a hearing for the sole purpose of considering the victim’s views on a motion to continue a trial date.
- Rule 15.1, and the committee’s proposal to amend current subpart (i)(1)(C) by eliminating the prosecutor’s duty to confer with the victim before

stipulating to extend the deadline for filing a notice of intent to seek the death penalty.

- Rule 27.4, to confirm that the court does not need to set a hearing for the sole purpose of considering the victim's views on a petition for early termination of probation.

VII. Conclusion. By a formal 8-2 vote of the members at their June 27, 2022, meeting, the committee once again rejected further integration of victims' rights into the Rules of Criminal Procedure. (Every committee member participated in the vote except the Chair, who by committee rules votes only to break a tie.) The 8-2 vote against fuller integration on June 27, 2022, is identical to the numerical vote count against integration at the September 2, 2021, meeting. (See Part IV of this report.) Although a majority of the committee voted against integration, however, the committee unanimously agreed to provide the section (v) amendments to assist the Court in the event it deems integration to be preferable.

The members appreciated the opportunity to serve on this committee. Almost every meeting was attended by the full complement of members. Ms. Rassas, who was present at virtually every meeting, and the members' proxies (Judge Kent Cattani, Judge Michael Butler, and Kevin Heade) made commendable contributions.

Committee members are cognizant that their primary recommendation—to make no changes to the criminal rules—might be unexpected. This report

emphasizes that members gave considerable thought to integration. Members worked diligently and collaboratively and discussed the text of the amendments proposed initially by R-20-0031, as well as the proposed section (v) amendments, at more than a dozen lengthy meetings. Each member of the committee is an experienced judicial officer or attorney, and every member without question acknowledges and supports the rights of victims in criminal proceedings.

Although the committee's membership included a variety of stakeholder perspectives, if the Court proceeds with the section (v) alternative, additional input should be sought from other individuals and organizations concerning those amendments. Accordingly, if the Court chooses that alternative, it should open the section (v) amendments for public comment. The committee further requests, if the Court proceeds with this alternative, that the committee have an opportunity to file a reply to the public comments.

Respectfully submitted this 1st day of July 2022.

/s/

John R. Lopez IV
Committee Chair

**Members of the Committee on
Criminal Rules Regarding Victims:**

Hon. John R. Lopez IV, Chair
Justice, Arizona Supreme Court

Hon. Ronald Reinstein, Vice Chair
Judge of the Superior Court in Maricopa County (ret.)

Tim Agan
Maricopa County Office of the Legal Advocate

Colleen Clase
Arizona Voice for Crime Victims

Hon. Maria Elena Cruz
Arizona Court of Appeals, Division One

Ryan Green
Office of the Maricopa County Attorney

Hon. Kellie Johnson
Judge of the Superior Court in Pima County

Hon. Patti Starr
Judge of the Superior Court in Maricopa County

Rick Unklesbay
Office of the Pima County Attorney (ret.)

Hon. Maria Del Mar Verdin
Judge of the Superior Court in Maricopa County (ret.)

Cathryn Whalen
Pinal County Public Defense Services

Committee Staff:

Mark Meltzer
Sabrina Nash
Administrative Office of the Courts
Court Services Division

Appendix A: Proposed Amendments to the Criminal Rules

Deletions are shown with ~~strikethrough~~. Additions are shown with underline

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]

Rule 1.3. Computation of Time

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

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

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

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

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

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

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

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

Rule 1.3. 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.

COMMENT TO THE 2023 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.

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. 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 at all criminal proceedings at which the defendant has a right to be present.

Rule 1.4. Definitions

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

(v) Victims’ Rights. “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

(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;~~
 - (B) allow the public a means to view the proceedings consistent with applicable law; and
 - (C) 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. [no change]

(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.

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 service required by subpart (c)(3) must show that a copy of the filed document was

provided to the victim's attorney.

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).

Rule 1.9. Motions, Oral Argument, and Proposed Orders

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

(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.

Rule 1.10. Computation of Time

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

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

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

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

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

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

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

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

(v) Victims' Rights. The time computation provisions of section (a) also apply to victims.

PART II. PRELIMINARY PROCEEDINGS

RULE 2. COMMENCEMENT OF CRIMINAL PROCEEDINGS [no change]

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

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]

(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.

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)]

(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 concerning the defendant's possible release and the conditions of release.

(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 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.

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.

(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.

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

(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.

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 notice from the prosecutor, on request, of dates for further proceedings.

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]

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, 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.

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]

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.]

(a) Before Conviction; Bailable Offenses.

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

(2) *Right to Release.* [no change]

(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]

(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.

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.

(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]

Rule 7.4. Procedure

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

(b) **Bail Eligibility Hearing.**

(1) *Right to Secure Witnesses, Cross-Examine, and Review Witness Statements.*
[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.* [no change]

(c) **Later Review of Conditions.**

(1) *Generally.* [no change]

(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.* [no change]

(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.

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

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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.

(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.

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 right to a speedy disposition.

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.

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 [no change]

Rule 9.2. Defendant's Forfeiture of the Right to be Present Due to Disruptive Conduct [no change]

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.

RULE 10. CHANGE OF JUDGE OR PLACE OF TRIAL [no change]

RULE 11. INCOMPETENCE AND MENTAL EXAMINATIONS [no change]

PART IV. PRETRIAL PROCEDURES

RULE 12. THE GRAND JURY

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:

(a) 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 Rule 7.2(v).

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]

(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.

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

(B) **Time Extensions.** [no change]

~~(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)(2).~~ The State must make the item reasonably available for inspection by the defendant, but only under such terms and conditions necessary to protect a victim's rights.

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

(A) *Generally.* [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.

(4) *General Restrictions.* [no change]

(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 information provided to the defendant's attorney must not be conveyed to the defendant without prior court authorization. Rule 15.5(e) applies to information withheld under this rule.

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(2) 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.

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:

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

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

(v) **Victims' Rights.** A victim has the right to refuse a deposition by the defendant, defendant's attorney, or other person acting on behalf of the defendant.

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 [no change]

Rule 15.7. Disclosure Violations and Sanctions [no change]

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

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).

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.

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]

(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.

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(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 afford the victim the opportunity to be heard and consider any comments expressed by the victim.

Rule 17.5. Withdrawal of a Plea [no change]

Rule 17.6. Admitting a Prior Conviction [no change]

Rule 17.7. 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 to submit a case on the record, the victim must have an opportunity to confer with the prosecutor.

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. The court can allow the assistance of a facility dog as provided in A.R.S. § 13-4442.

(v) Victims' Rights.

(1) Victim's Opportunity to Confer with the Prosecutor. 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

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disclosure after finding a compelling need for the information. The court must conduct a proceeding on a motion to require such testimony *in camera*.

(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.

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.~~

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

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]

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]

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(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).

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 [no change]

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. [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
- (a) (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.

~~(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.

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).

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

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

(b) **Sentence.** [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.

(3) Restitution. A victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution pursuant to A.R.S 13-804.

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

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

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 of probation jurisdiction. The court in the sending county must give the victim notice of a proposed transfer and any hearing.

Rule 27.3. Modification of Conditions or Regulations

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

(b) By the Court.

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

(A) Giving notice to the State, the probationer, 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]

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

(v) **Victims' Rights.** Upon request, a victim has the right to notice of a hearing under subpart (b)(5). The victim has the right to be present at that hearing, and to be heard on 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.

Rule 27.4. Early Termination of Probation

(a) Discretionary Probation Termination.

06.30.2022

(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]

(v) Victims' Rights. A victim has the right upon request to notice of any criminal proceeding involving the early termination of probation. A victim has a right to be present and to be heard at the hearing.

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 pursuant to a warrant issued for a violation of supervised probation, as provided by ARS 13-4415 (A)(3).

(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). A victim has the right to be present and to be heard at that hearing regarding the probationer's release.

Rule 27.8. Probation Revocation

(a) Revocation Arraignment.

- (b) **Violation Hearing.**
- (c) **Disposition Hearing.**
- (d) **Waiver of Disposition Hearing.**
- (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. Upon request a victim has the right to notice of a disposition hearing. A victim has the rights to be present and to be heard at a disposition hearing.

ule 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.~~

Rule ~~27.11~~ 27.10. Probation Review Hearing Regarding Sex Offender Registration [no change except for the rule number]

Rule 27.12. Abrogated

RULE 28. RETENTION AND DESTRUCTION OF RECORDS AND EVIDENCE [no change]

RULE 29. SETTING ASIDE A CONVICTION

Rule 29.1. Grounds; Notice. [no change]

Rule 29.2. Application [no change]

Rule 29.3. State's Response [no change]

Rule 29.4. Reply [no change]

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. ~~The prosecution must provide post-conviction victim notice of the hearing date and the right to be heard, if the victim requested post-conviction notification.~~

(v) Victims' Rights. If the victim requested post-conviction notification, the prosecuting agency must provide the victim notice of the hearing date. The victim has the right to be present and to be heard at the hearing.

Rule 29.6. Disposition [no change]

Rule 29.7. Certificate of Second Chance [no change]

Rule 29.8. Special Provisions for Sex Trafficking Victims [no change]

RULE 30. RESTORING CIVIL RIGHTS [no change]

Rule 30.1. Grounds. [no change]

Rule 30.2. Application

(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.** 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. 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 the opportunity to be heard if the victim requested post-conviction notification.~~

(v) Victims' Rights.

06.30.2022

(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, including the victim's opportunity to be heard on the application and the status of restitution.

Rule 30.3. State's Response. [no change]

Rule 30.4. Reply [no change]

Rule 30.5. Hearing [no change]

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, the court must consider the victim's right to a prompt and final conclusion of the case.

Rule 31.2. Notice of Appeal or Notice of Cross-Appeal [no change]

Rule 31.3. Suspension of These Rules; Suspension of an Appeal; Computation of Time; Modifying a Deadline [no change]

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

[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. ~~(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.

~~(3) Notice to the Victim.~~

(v) Victims' Rights

~~(A) (1)~~ 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) (2)~~ Who Must Receive Notice.

~~(i) (A)~~ 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) (B)~~ 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) (3)~~ Timing.

~~(i) (A)~~ 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) (B)~~ 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)~~(4) Manner of Providing Notice.

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

(ii) (B) 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.

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 [no change]

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. [no change]

(B) Time Extensions. For good cause and after considering the rights of the victim to a prompt and final conclusion of the case, 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. [no change]

(B) Filing Deadline for Any Successive Petition. [no change]

(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 to a prompt and final conclusion of the case, the court may grant additional extensions for good cause.

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

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 to a prompt and final conclusion of the case.

(2) *Contents*. [no change]

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

Rule 32.10. Assignment of a Judge [no change]

Rule 32.11. Court Review of the Petition, Response, and Reply; Further Proceedings
[no change]

Rule 32.12. Informal Conference [no change]

Rule 32.13. Evidentiary Hearing [no change]

Rule 32.14. Motion for Rehearing [no change]

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

Rule 32.16. Petition and Cross-Petition for Review [no change]

Rule 32.17. Post-Conviction Deoxyribonucleic Acid Testing [no change]

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 [no change]

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

[Note: Similar to the above changes to Rule 32, the only changes to Rule 33 concern Rules 33.7 and 33.9]

Rule 33.7. Petition for Post-Conviction Relief

(a) Deadlines for Filing a Petition for Post-Conviction Relief.

(1) *Defendant with Counsel.* [no change]

(2) *Self-Represented Defendant.* [no change]

(3) *Time Extensions.* For good cause and after considering the rights of the victim to a prompt and final conclusion of the case, 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]

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 to a prompt and final conclusion of the case.

(2) *Contents.* [no change]

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

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]

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

RULE 40. TRANSFER FOR JUVENILE PROSECUTION [no change]

RULE 41. FORMS [no change]

Appendix B: Explanation of the proposed Criminal Rule amendments

Criminal Rules with proposed section (v) amendments

Rule #	Rule Title	Rule #	Rule Title
1.4	Definitions	1.5	Interactive audiovisual systems
1.7	Filing and service of documents	1.8	Clerk's distribution of minute entries and other documents
1.9	Motions, oral argument, and proposed orders	1.10	Computation of time
4.1	Procedure upon arrest	4.2	Initial appearance
5.1	Right to preliminary hearing; waiver; continuance	5.4	Determining probable cause
5.8	Notice if an arraignment is not held	6.3	Duties of counsel; withdrawal
7.2	Right to release	7.3	Conditions of release
7.4	Procedure	7.5	Review of conditions; revocation of release
8.1	Priorities in scheduling criminal cases	8.5	Continuing a trial date
9.3	Exclusion of witnesses and spectators	14.4	Proceedings at arraignment
15.1	The state's disclosures	15.3	Depositions
16.4	Dismissal of prosecution	17.1	The defendant's plea
17.4	Plea negotiations and agreements	17.7	Submitting a case on the record
19.1	Conduct of trial	24.3	Modification of sentence
26.6	Court disclosure of reports before sentencing	26.7	Presentencing hearing; prehearing conference
26.10	Pronouncement of judgment and sentence	27.2	Intercounty transfers
27.3	Modification of conditions or regulations	27.4	Early termination of probation
27.7	Initial appearance after arrest	27.8	Probation revocation
29.5	Hearing	30.2	Application
31.1	Scope; precedence; definitions	31.14	Provisions applicable only to briefs in capital case appeals

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. Rule 1.3 does not include a section (v). Rule 1.3 is significant, however, 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 place.” (See R-20-0031 at pages 8, 12, and 15.) 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.

This single sentence new rule, with cross-references to Rule 39 and the section (v) provisions in other rules, serves as a road sign that guides readers to those other pertinent provisions. A comment to the 2023 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 readers to consult 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 court 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 contained 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”). 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. A new section (v) would clarify that victim’s counsel also has a right to receive the clerk’s minute entries and other document distributions. 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.”

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 “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 provision 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) provides:

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 text of this provision referring to the victim's right to notice of the defendant's release from custody 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.” 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 ...” This 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. 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”). Subpart (v)(2) adds a victim's right that arises when 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) provides:

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 of this amendment. Thereafter, members had an irreconcilable difference. Some members believed that obtaining the victim’s views might delay the hearing - - which by its nature is an expedited proceeding -- particularly when the victim failed to appear at the preliminary 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 provision, however, omits mention of a victim’s right when the defendant makes this 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).

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.

² See further a pending rule petition, no. R-21-0051, which proposes this amendment to Rule 5.4(c): “A magistrate may, subject to Rule 39, review the conditions of release for a defendant at the preliminary hearing.”

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. Subpart (v)(1) would require the court to consider the victim’s right to a speedy disposition in this circumstance.

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. The Committee believes that subpart (v)(2) will help assure that information regarding victim’s counsel is entered into the case management system and help the clerk provide notices to victim’s counsel. See further the amendment to Rule 1.8 described above.

Rule 7 (“release”). Rule 7 is 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.

The Committee also retained a new provision in Rule 7.3 (“conditions of release”) it had drafted during its consideration of petition number R-20-0031. New Rule 7.3(b), which is titled “victim protection,” provides:

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 an identical first sentence of current section (c). Although 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.

Rule 8.1 (“priorities in scheduling criminal cases”). Current Rule 39(b)(7)(C) provides for a victim’s right to notice of, and to be heard at, “a proposed suspension of Rule 8 or a continuance of the trial date.” Current Rule 8.1(e) (“suspension of Rule 8”), however, does not mention victims. The Committee therefore added a new section (v) that provides:

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 right to a speedy disposition.

Rule 8.5 (“continuing a trial date”). Current Rule 8.5(b) (“grounds”) requires the court on a motion to continue a trial date to “consider the rights of the defendant and any victim to a speedy disposition of the case.” The Committee believed this provision, although correct, was incomplete because it did not provide for the victim’s input. It accordingly added a new section (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.

This provision is substantially similar to A.R.S. § 13-4435(F) and it includes the phrase “consider the victim’s views,” which is also in the statute. Motions to continue a trial date are occasionally decided without a court hearing, and the

Committee did not intend that proposed Rule 8.5(v) require trial courts to alter that practice.

Rule 9.3 (“exclusion of witnesses and spectators”). The Committee simply relocated the current language of section (a)(2)(A) to new section (v). The language is:

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

The remaining provisions in current section (a) were renumbered accordingly.

Rule 14.4 (“determining probable cause”). The AVCV’s rule petition No. R-20-0031 did not propose an amendment to Rule 14. Nonetheless, because a judicial officer can determine release issues at arraignment, the Committee added a new section (v) to Rule 14.4. The section provides:

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 Rule 7.2(v).

The Committee believes this proposed section is consistent with the VBOR, section 2.1(A)(4), and A.R.S. § 13-4423. The new section should also assist judicial officers who conduct arraignments, particularly in limited jurisdiction courts.

Rule 15.1 (the State’s disclosure”). Section (i) is titled “additional disclosures in a capital case.” Current subpart (i)(1)(B) (“notice of intent to seek the death penalty: time extensions”) permits the parties to stipulate to extensions of time for the State to file a death notice. The underlying concept is that an extension would allow the defense to gather and provide mitigation evidence that could obviate the filing of a notice.

Current subpart (i)(1)(C) further provides, “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).” The Committee determined that this requirement to confer is not contained in the VBOR or in the victims’ rights statutes, and it is not in Rule 39. It originated in a rule petition, number R-07-0019, which

was filed by the Capital Case Task Force 15 years ago. That petition did not include an authoritative basis for including the provision regarding victims in Rule 15.1(i)(1)(C), and the rule provision does not implicate other victims' rights. Members therefore recommend deleting the requirement in the current rule, although doing so might exceed the Committee's authority provided in Administrative Order Number 2020-183. It should be noted that the prosecutor as a matter of course will confer with the victim in these circumstances.

New Rule 15.1, section (v) has two subparts. Subpart (v)(1) ("victim's identifying or locating information") derived from an amendment proposed by petition number R-20-0031. The Committee modified that draft subpart by the following edits:

The information provided to the defendant's attorney must not ~~provide the information~~ be conveyed to the defendant without prior court authorization.

A reference to "protect a victim's rights" in current Rule 15.1(j) ("item prohibited by A.R.S. §§ 13-3551 et seq. or is the subject of a prosecution under A.R.S. § 13-1425"), subpart (3)(B) ("court-ordered disclosure for examination or testing: conditions"), was deleted because the substance is reiterated in new subpart (v)(2) ("disclosure of items under section (j): court orders").

Rule 15.3 ("depositions"). Section (v) contains a provision titled "victim's right to refuse." Interviews are more common than depositions, but interviews and depositions are frequently referenced together. See the VBOR, Section 2.1(A)(5), and Rule 39(b)(8), (12), and (13). Rule 39(b)(14), however, is different; this subpart provides the victim a right "to terminate an interview at any time or refuse to answer any question during an interview." The Committee discussed whether subpart 39(b)(14) implied that a victim could not terminate a deposition or refuse to answer a question during a deposition. The Committee determined that such a conclusion would require an interpretation of the VBOR, which the Committee declined to do.

During the course of their discussion, members noted that the VBOR and rule provisions refer only to interviews and depositions requested by the defendant. They agreed that a victim has no right to refuse a deposition that's requested by a

prosecutor, for example, to preserve testimony, although this principle is not expressly codified.

Rule 15.6 (“continuing duty to disclose; final disclosure deadline; extension”). 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.” During its consideration of R-20-0031, the Committee 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.” The substance of the victim’s portion of that sentence was relocated to a proposed section (v) (although the sentence excluded the corresponding right of a defendant to a speedy disposition because section (v) pertains solely to victims’ rights.) Members discussed whether section (v) was unnecessary because subpart (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 under Rule 8.5(v).

Some members preferred retaining draft section (v). One judge member referred to the section as a “light bulb moment” for the judge to be mindful of the victim’s right to a speedy disposition. Section (e) refers to “scientific or other testing.” Members generally recognized that a variety of factors bear on an extension for evidence testing, such as the length of the requested extension and the significance of the evidence. Members also acknowledged that the timeline of private laboratories to conduct a test is often beyond the control of the court or the parties. The Chair requested a straw vote on whether to retain draft Rule 15.6(v). A majority (5 to 4) did not want to retain section (v), and it is not included in Appendix A.

Rule 16.4 (“dismissal of prosecution”). Current Rule 16.4 does not mention victims. The Committee added a section (v) to address that omission, as follows:

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).

The provision is in accord with the VBOR, section 2.1(A)(6), A.R.S. § 13-4419(A), and Rule 39(b)(6)(C).

Rule 17.1 (“the defendant’s plea”). Rule 17.1(v) provides:

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.

The first sentence of section (v) is a verbatim repetition of current Rule 17.1(f)(1)(F). The second sentence derives from current Rule 17.1(f)(2)(B)(i). The current provisions have been deleted from their existing locations because they would be located in new section (v).

Rule 17.4 (“plea negotiations and agreements”). The substance of current Rule 17.4(a) (“plea negotiations”), subpart (3) (“victim participation”) has been relocated to new section (v), subpart (1) (“victim participation during plea discussions”). New subpart (v)(2) (“before the court accepts or rejects a plea agreement”) is derived from current section (d) (“accepting the plea”). Current section (d) requires the court when accepting a plea to consider “any comments expressed by the victim.” The VBOR, section 2.1(A)(4), refers to a victim’s right “to be heard” at any proceeding involving a negotiated plea. Subpart (v)(2) incorporates both concepts by providing:

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 afford the victim the opportunity to be heard and consider any comments expressed by the victim.

Rule 17.7 (“submitting a case on the record”). A case might be submitted on the record when, for example, the defendant has a mental health issue or to preserve appellate rights that might otherwise be waived in a plea agreement. Whether submission of 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 under this rule to confer with the prosecutor. Proposed section (v), which also has support in A.R.S. § 13-4419, therefore provides:

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

The Committee discussed including the words “on request,” which are contained in A.R.S. § 13-4419, but the corresponding provision in the VBOR, section 2.1(A)(6), does not require a “request,” and accordingly, the Committee declined to include that qualification in Rule 17.7(v).

Rule 19.1 (“conduct of trial”). Rule 19.1 includes a new section (f) (“use of a facility dog by a party or witness”) and a new section (v). Section (f) provides:

Use of a Facility Dog. The court can allow the assistance of a facility dog as provided in A.R.S. § 13-4442.

The use of a facility dog is allowed as provided in the referenced statute. (The statute uses the words “shall” and “may” in the circumstances described in sections (A) and (B). The rule uses the word “can” to encompass both circumstances.) The Committee’s initial draft of a provision regarding facility dogs applied only to use of a facility dog by a victim. The statute is broader, and draft section (f) reflects that broader application.

New section (v) has three subparts. Subpart (v)(1) (“victim’s opportunity to confer with the prosecutor”) corresponds with Rule 39(b)(6)(D), the right of a victim to confer with the prosecutor before a trial begins. Subpart (v)(2) (“identifying and locating information”) is analogous to current Rule 39(b)(10). Subpart (v)(3) (“representative of a minor or incapacitated victim”) contains the content of current Rule 19.5 (“presence of a representative of a minor or incapacitated victim”). However, the word “wishes [to be recognized]” has been changed to “requests,” and there are other stylistic modifications. Because Rule 19.5 would be deleted, Rule 19.6 (“sequestration”) would be renumbered as Rule 19.5.

Rule 24.3 (“modification of sentence”). A new section (v) incorporates the

substance of the second sentence of current section (b) (“mitigation”), and that sentence would accordingly be deleted.

Rule 26.6 (“court disclosure of reports before sentencing”). Section (v) provides:

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.

The VBOR, section 2.1(A)(7), provides that the victim has a right “to read presentence reports,” whereas A.R.S. § 13-4425 permits the victim “to inspect” the report. Rule 39(b)(15) provides the victim “the right to a copy of any presentence report provided to the defendant ...” The Committee believes that the substance of these directives has been incorporated in new section (v).

Rule 26.7 (“presentencing hearing; prehearing conference”). Section (v) was derived from the Committee’s previously proposed amendment to section (b) (“timing and conduct of a presentencing hearing”). New section (v) provides:

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

Rule 39(b)(7)(E) provides a right to be heard at sentencing “upon request,” whereas the VBOR, section 2.1(A)(4) does not include those words. Section (v) accordingly omits “upon request.”

Neither the current provision nor the proposed one, however, allows the victim to present evidence, notably evidence regarding restitution, at a presentencing hearing. Restitution is compensatory rather than punitive in nature, and the court frequently considers restitution after sentencing. To address this issue, the Committee is proposing a new provision in Rule 26.10, as explained below.

Rule 26.10 (“pronouncement of judgment and sentence”). The Committee

had previously proposed adding to subpart (b)(1) the following words: “Give the defendant and the victim an opportunity to address the court.” The substance pertaining to victims was relocated to section (v)(1). Current section (b) uses the word “when [the court pronounces sentence],” but subpart (v)(1) uses the word “before.”

In 2021, the Committee had 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(v)(2) (“information from the prosecutor”), subparts (A) through (C), making a new Rule 26.17 unnecessary.

Subpart (v)(3) is the new provision on restitution discussed above. The new provision, which derives from A.R.S. § 13-4437(E), provides:

Restitution. A victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution pursuant to A.R.S 13-804.

The cross-reference in this provision to A.R.S. § 13-804 provides further information on restitution for economic loss.

Rule 27.2 (“intercounty transfers”). Rule 27.2 provides for two distinct types of transfers. Section (b) concerns a courtesy transfer of probation supervision; with a section (b) courtesy transfer, the sending county expressly retains jurisdiction over the probationer. By comparison, section (c) transfers probation jurisdiction to the receiving county. Current Rule 27(c)(1)(B) provides the victim an opportunity to be heard only on a transfer of jurisdiction. The Committee therefore substituted in section (v) the language of current subpart (c)(1)(B), which then would be stricken, and with an additional clarification that the new provision applies only to transfers of jurisdiction. New section (v) therefore provides:

Victims’ Rights. A victim of the offense may request an opportunity to be heard concerning a transfer of probation jurisdiction. The court in the sending county must give the victim notice of a proposed transfer and any hearing.

Rule 27.3 (“modification of conditions or regulations”). Current subpart (b)(1)(A) contains a cross-reference to Rule 27.10. In lieu of cross-referencing that rule, proposed Rule 27.3(v) includes the verbatim content of the pertinent portion of Rule 27.10(c). The new section, which derives from A.R.S 13-4427(B) and Rule 39(b)(7)(F), provides:

Victims’ Rights. Upon request, a victim has the right to notice of a hearing under subpart (b)(5). The victim has the right to be present at that hearing, and to be heard on 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.

Rule 27.4 (“early termination of probation”). The initial draft of section (v) of this rule provided:

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.

This draft provision appears to have support in A.R.S 13-4427(A) and Rule 39(b)(b)(7)(G).

The definition of “criminal proceeding” in A.R.S 13-4401(7) is “...any hearing, argument or other matter that is scheduled by and held before a trial court” As a practical matter, however, judges often consider written requests for early termination of probation without a court hearing. The initial draft would require the court to unnecessarily schedule additional hearings to afford the opportunity for the victim to be present. Accordingly, members modified section (v) to provide:

Victims’ Rights. A victim has the right upon request to notice of any criminal proceeding involving the early termination of probation. A victim has a right to be present and to be heard at the hearing.

The Committee believes that if the court does not set a hearing, i.e., a “criminal

proceeding,” on a request for early termination, the victim will not, and need not, receive notice. The Committee believes that this modification is consistent with the statutory and rule provisions cited above. The Committee nonetheless notes the anomaly for the Court’s consider.

Rule 27.7 (“initial appearance after arrest”). Rule 27.7(v) has two subparts: subpart (v)(1) concerning notice of arrest and subpart (v)(2) concerning a notice of hearing and a right to be heard. The initial draft of subpart (v)(1) required victims upon request to be notified of a probationer’s arrest. This right, however, is not engrained in Rule 39. Rather, it derives from A.R.S. § 13-4415(A)(3) and it is considerably more limited. The Committee modified the provision in accord with the statute as follows:

(1) Notice of Arrest. A victim upon request has the right to be notified of a probationer’s arrest pursuant to a warrant issued for a violation of supervised probation, as provided by A.R.S. § 13-4415(A)(3).

The Committee was mindful that a significant portion of arrests of probationers are not pursuant to a probation violation warrant but rather are arrests that result from the probationer’s commission of a new offense. Subpart (v)(2) follows the model used in other rules that separates a victim’s right to notice of the hearing, which is upon request, and a victim’s right to be present and to be heard at the hearing, which does not require a request.

Rule 27.8 (“probation revocation”). Draft section 27.8(v) also has two subparts. Subpart (1) is titled “at the violation hearing” and subpart (2) has the title “at a disposition hearing.” Subpart (v)(1) advises that the victim has a right to be present at a violation hearing under section (b). After a review of A.R.S. § 13-4427 and Rule 39(b)(7), the Committee revised its initial draft of subpart (v)(2) to separately state the victims’ right to notice, which arises upon request, and the victims’ right to be present and to be heard, which does not require a request. Revised subpart (v)(2) provides:

(2) At a Disposition Hearing. Upon request, a victim has the right to notice of a disposition hearing. A victim has the right to be present and to be heard

at a disposition hearing.

Rule 27.10 [deleted] (currently, “victims’ rights in probation proceedings”).

The Committee proposes the abrogation of current Rule 27.10 because its provisions have been relocated to other rules. 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).

Rule 27.10 [formerly 27.11] (“probation review hearing regarding sex offender registration”). Rule 27.11 was renumbered as Rule 27.10 because of the foregoing deletion. There are no changes to the text of this rule.

Rule 29 (“setting aside a conviction”). The title of Rule 29 is “setting aside a conviction.” The rule allows a person who has completed probation to apply to set the conviction aside. It consists of Rules 29.1 through 29.8. Rule 29.1(b) pertains specifically to set asides for sex trafficking victims. Staff had initially proposed renumbering section (b) as section (v) and including in this new section (v) the content of current Rule 27.7 (“special provisions for sex trafficking victims”). The Committee discussed how the word “victim” in the phrase “sex trafficking victim” is anomalous because the victim in that context is also a criminal defendant. After discussion, the Committee concluded that staff’s proposed revisions would confound this distinction and they agreed to retain current Rule 29 without changes, with the exception of Rule 29.5, which is discussed below.

Rule 29.5 (“hearing”). Current Rule 29.5 contains three sentences. Staff proposed that the first two sentences become section (a), with the new title “generally,” and that the third sentence become section (v), with the title “victims’ rights.” Committee members agreed with staff’s proposal, with additional modifications to section (v). They concurred with staff’s introductory clause (“if the victim requested post-conviction notification...”), which was relocated from the current rule. This clause conveys that a victim who has not opted in for post-conviction notice does not receive notice under this rule. Members then revised the remainder of the section, as they had done in Rule 27, to distinguish the various victims’ rights. As modified, Rule 29.5(v) provides:

Victims' Rights. If the victim requested post-conviction notification, the prosecuting agency must provide the victim notice of the hearing date. The victim has the right to be present and to be heard at the hearing.

Rule 30.2 (“application”). Rule 30 concerns restoration of a defendant’s civil rights. Rule 30.1 concerns “grounds” for the application. Rule 30.1(a) (“automatic restoration for first offense”) contains a requirement that the defendant “pays any victim restitution imposed.” The Committee did not create a section (v) in Rule 30.1 concerning this requirement because for a first offense, restoration is “automatic” if the defendant shows that restoration was fully paid. Rule 30.2(a) provides that a person who is entitled to automatic restoration is not even required to file an application under this rule.

Current Rule 30.2(e) is titled “victim notification.” The Committee retitled section (e) as a new section (v). The first sentence of current section (e) has become subpart (v)(1), and the remainder of current section (e) has become subpart (v)(2), with modifications. Subpart (v)(2) mentions restitution (current Rule 30.2(e) does not) and provides:

(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, including the victim’s opportunity to be heard on the application and the status of restitution.

The Committee recognizes that victims have a separate right under A.R.S. § 13-4441; that right is a right to be present and to be heard at a proceeding on a defendant’s petition under A.R.S. § 13-925 to restore the right to possess a firearm. This right, however, is not included in current Rule 30 and the Committee did not include it in its revised version of this rule. The defendant’s right to possession of a firearm, however, is mentioned in current Rule 30.1(c) and in Rule 41, Forms 31(a), 31(b), 32(a), and 32(b). Members made no changes to Rules 30.3 through 30.6.

Rule 31.1 (“scope, procedure, definitions,” and as proposed, “scope, procedure, definitions, victims’ rights”) and other Rule 31 provisions. Rule 31 is

a lengthy rule on “appeals” divided into three sections and composed of Rules 31.1 through 31.23. These provisions include several references to victims’ rights, but to give those rights more prominence, the Committee added a new section (v) to Rule 31.1 that provides:

(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, the court must consider the victim’s right to a prompt and final conclusion of the case.

The Committee was mindful that this change might result in some minor redundancy with other Rule 31 provisions concerning extensions of time. The Committee modified the title of Rule 31.1 by adding the words “victims’ rights.”

Staff had proposed relocating to a new section (v) the provisions (1) in Rule 31.2(c)(2) that required a prosecutor’s certification in a notice of appeal concerning a victims’ right violation, and (2) in other rules that required the court to consider the victims’ right to a prompt and final conclusion of the case. Members declined these proposed changes on the basis that requiring the prosecutor or the court to perform these duties were their individual official duties rather than rights that could be personally exercised by victims.

An exception is Rule 31.14 (“provisions applicable only to briefs in capital case appeals”). The Committee retained the content of current subpart (c)(2) (“notice to the victim”) in a new section (v). The text remains the same, but the provisions were renumbered accordingly.

Rule 32 (“post-conviction relief for defendants sentenced following a trial or contested probation violation hearing”). Staff had proposed adding a new section (v) to Rule 32.4 (“filing a notice requesting post-conviction relief”), Rule 32.7 (“petition for post-conviction relief”), Rule 32.9 (“response and reply; amendments”), Rule 32.11 (“court review of the petition, response, and reply; further proceedings”), Rule 32.14 (“motion for rehearing”), Rule 32.16 (“petition and cross-petition for review”), and Rule 32.17 (“post-conviction deoxyribonucleic testing”). The Committee declined these proposed section (v) additions because, as in the earlier discussion of Rule 31, these provisions concern duties and obligations

of others rather than rights a victim can personally exercise. During the discussion, however, staff noted that current Rules 32.7 (“petition for post-conviction relief”) and 32.9 (“response and reply; amendments”) require the court to consider “the rights of the victim,” without specifying what those rights are. Members agreed to add in current Rule 32.7(a) (in two places) and in Rule 32.9(a), after the word “victim,” the words “to a prompt and final conclusion of the case.”

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”). Members agreed to conform Rule 33 to the corresponding changes in Rule 32 discussed above.

Rule 39 (“victims’ rights”). The Committee does not propose any changes to Rule 39.

Rule 41 (“forms”). The Committee does not propose any changes to the forms in Rule 41.