

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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|----------------------------------|---|---------------------------|
| In the Matter of: |) | |
| |) | |
| AMENDING ARIZONA CODE OF |) | Administrative Order |
| JUDICIAL ADMINISTRATION § 6-103: |) | <u>No. 2008- 32</u> |
| VICTIMS' RIGHTS REQUIREMENTS |) | (Affecting Administrative |
| FOR PROBATION PERSONNEL |) | Order No. 2004-94) |
| <hr/> |) | |

An amendment to the above captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on December 5, 2007, and having been approved and recommended for adoption,

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

IT IS ORDERED that Arizona Code of Judicial Administration § 6-103 is amended as indicated on the attached document. All other provisions of § 6-103 as adopted, remain unchanged and in effect.

Dated this 3rd day of April, 2008.

RUTH V. McGREGOR
Chief Justice

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

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

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

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

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

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

“Delinquent” means “a child who is adjudicated to have committed a delinquent act” as provided by A.R.S. § 8-382.

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

B. Applicability. Pursuant to ~~Article II, §2.1, Article VI, §3 of the Arizona Constitution~~ Az. Const. Art. 2, § 2.1 and Art. 6, § 3 and A.R.S. §§13-603, 13-804, 13-4401 et seq., and A.R.S. §§8-381 through 8-420, the following requirements shall govern the administration of victims’ rights by adult and juvenile probation departments.

C. Purpose. To define the role and responsibility of probation personnel in preserving and protecting victims’ rights to justice and due process.

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

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

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

1. Pursuant to A.R.S. § 13-4415, ~~Develop~~ a process to furnish victims who request notice with timely notification of the following: ~~as provided in A.R.S. § 13-4415:~~

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

A1. A probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.

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

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

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

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

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

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

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

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

~~b. Proceeding in which the court is asked to terminate probation or intensive probation;~~

~~c. Modification of the terms of probation or intensive probation which will substantially affect the probationer's contact with or safety of the victim;~~

~~d. Modification of restitution;~~

~~e. Modification of the probationer's incarceration status; and~~

~~f. Arrest of the probationers pursuant to a warrant issued for a probation violation;~~

2. Develop a standardized presentence report format, in conjunction with the superior court, which addresses the emotional, economic and physical losses of victims;
3. Monitor the payment of restitution by working with the clerk of the court to establish a process by which supervising probation officers are provided with accurate and timely information concerning the collection of court-ordered restitution;
4. Require probation staff to:
 - a. Utilize all available means to contact victims telephonically, electronically, personally, or in writing to ascertain, pursuant to A.R.S. § 13-4424(B), “... the economic, physical and psychological impact that the criminal offense has had on the victim and the victim’s immediate family pursuant to ~~A.R.S.~~ § 12-253;”;
 - b. Take into consideration the impact of the criminal offense on the victim, the victim’s thoughts concerning sentencing alternatives, and the circumstances surrounding victim and community protection when making a sentencing recommendation to the court;
 - c. ~~Notify the victim of the date, time and place of the following proceedings and the victim’s right to be present and be heard p~~Pursuant to A.R.S. § 13-4426 and 13-4427:
 - ~~(1) Aggravation, mitigation, presentencing or sentencing proceeding;~~
 - A. The victim may present evidence, information and opinions that concern the criminal offense, the defendant, the sentence or the need for restitution at any aggravation, mitigation, presentencing or sentencing proceeding.
 - ~~(2) Probation revocation~~
 - B. At any disposition proceeding; the victim has the right to be present and to address the court.
 - ~~(3) Proceeding in which the court is asked to terminate probation or intensive probation;~~
 - ~~(4) Modification of terms of probation or intensive probation will substantially affect the probationer’s contact with or the safety of the victim;~~
 - ~~(5) Modification of restitution; and~~
 - ~~(6) Modification of the probationer’s incarceration status.~~
 - d. Pursuant to A.R.S. § 13-4427:
 - A. The victim has the right to be present and be heard at any probation revocation disposition proceeding or any proceeding in which the court is requested to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.
 - B. The victim has the right to be heard at any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person if the modification will substantially affect

the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.

- ed. Document all victim notifications and attempts to notify the victim;
- fe. Respond to all queries by victims, providing accurate information in accordance with supreme court rules governing public access to judicial records;
- gf. Within the scope of their duties, minimize contact between victims and victims' family and the probationer and probationer's family;
- hg. Emphasize and address the probationer's responsibility to satisfy any court-ordered restitution at each scheduled visit and immediately address any arrearage in court-ordered restitution with the probationer;
- ih. Notify the court having jurisdiction upon finding that the probationer has become in arrears in an amount totaling two full court-ordered monthly payments of restitution. This notification shall consist of a petition to modify, petition to revoke, or memorandum to the court outlining the reasons for the delinquencies and expected duration thereof. A copy of the memorandum shall be provided to the victim, if the victim has requested notice of restitution modifications; and
- ji. Request court extension of probation pursuant to A.R.S. §13-902(C):
 - When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:
 1. For a felony, not more than five years.
 2. For a misdemeanor, not more than two years. ~~if restitution is not satisfied at the time of expiration of probation. The supervising probation officer shall file a criminal restitution order if restitution has not been satisfied at the time of expiration of the probation extension.~~

F. Duties of Juvenile Probation. Juvenile probation departments shall require probation staff to:

1. Utilize all available means to contact victims and, where appropriate, the victim's family telephonically, electronically, personally or in writing to ascertain the emotional, economic and physical impact the delinquent offense has had on the victim;
2. Advise the victim that, pursuant to A.R.S. § 8-400, ~~he or she~~ the victim "...has the right to be present throughout all court hearings in which the accused or delinquent has the right to be present";

3. ~~When making a recommendation to the court, p~~Pursuant to A.R.S. § 8-404(B); “In preparing the predisposition or transfer report, the probation officer shall ---consider the economic, physical and psychological impact that the delinquent act has had on the victim and the victim’s immediate family”;
4. Respond to all queries by victims, providing accurate information in accordance with supreme court rules governing public access to judicial records;
5. Within the scope of their duties, minimize contact between victims and victims’ family and the probationer and probationer’s family; and
6. Emphasize and address the probationer’s responsibility to satisfy any court-ordered restitution at each scheduled visit and immediately address any arrearage in court-ordered restitution with the probationer.

G. Duties of Juvenile Court. Each juvenile court shall:

1. Give victims notice if an accused is accepted into a diversion program, pursuant to A.R.S. § 8-388:

If an accused is accepted into a diversion program pursuant to §8-321, the court administering the program shall give the victim notice of the conditions that the accused must comply with in order for the complaint or citation to be adjusted or dismissed. The notice shall state whether restitution was required and that, on request of the victim, the victim has the right to be notified of the accused’s completion of or termination from the program.

2. Provide the victim with information from the predisposition report pursuant to A.R.S. § 8-404(C):

On the request, the court shall provide the victim with the following information from the predisposition report:

- 1.The referral history.
- 2.The probation officer’s assessment of the case.
- 3.The disposition and treatment recommendations.
- 4.The probation officer’s recommendations for treatment and disposition.
- 5.The detention history.

3. Notify the victim in the circumstances as required by A.R.S. § 8-396(A-C):

~~A. On request of the victim, the court shall notify the victim of any probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive~~

~~probation of the delinquent who committed the delinquent act against the victim.~~

~~B. If the victim has requested postadjudication notice and probation is revoked, the court shall provide a copy of the victim's request for postadjudication notice to the department of juvenile corrections.~~

~~C. On request of the victim, the court shall notify the victim of any of the following:~~

~~1. A modification of the terms of probation or intensive probation of a delinquent only if the modification will substantially affect the delinquent's contact with or the safety of the victim or if the modification affects restitution or incarceration status.~~

~~2. The arrest of a delinquent pursuant to a warrant issued for a probation violation.~~

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

1. A probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of the delinquent who committed the delinquent act against the victim.

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

3. The arrest of a delinquent pursuant to a warrant issued for a probation violation.

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

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

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

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

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

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

C. If a victim has requested post adjudication notice and probation is revoked and the juvenile is committed to the department of juvenile corrections, the court shall notify the department of juvenile corrections of the victim's request.