

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ARIZONA CODE OF JUDICIAL)
ADMINISTRATION § 6-103: VICTIMS')
RIGHTS REQUIREMENTS FOR)
PROBATION PERSONNEL)
_____)

Administrative Order
No. 2015 - 124
(Affecting Administrative
Order No. 2012-66)

An amendment to the above-captioned section of the Arizona Code of Judicial Administration having come before the Arizona Judicial Council on December 10, 2015, and having been approved and recommended for adoption,

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 originally adopted, remain unchanged and in effect.

Dated this 23rd day of December, 2015.

SCOTT BALES
Chief Justice

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

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

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

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

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

“Victim” means a person against whom the criminal offense or delinquent act has been committed, including a minor, or if the person is killed or incapacitated, the person’s spouse, parent, child, grandparent or sibling, any other person related to the person by consanguinity or affinity to the second degree or any other lawful representative of the person, except if the person or the person’s spouse, parent, child, grandparent, sibling, other person related to the person by consanguinity or affinity to the second degree or other lawful representative is in custody for an offense or is the accused.

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

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

C. [No changes]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hf. Emphasize and address the probationer's responsibility to satisfy any court-ordered restitution at each scheduled visit and immediately address any arrearage in court-ordered restitution with the probationer;

ig. Notify the court having jurisdiction upon finding that the probationer has become in arrears in an amount totaling two full court-ordered monthly payments of restitution. This notification shall consist of a petition to modify, petition to revoke, or memorandum to the court outlining the reasons for the delinquencies and expected duration thereof. A copy of the memorandum shall be provided to the victim, if the victim has requested notice of restitution modifications; and

jh. Request court extension of probation pursuant to A.R.S. §13-902(C):

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

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

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

(1) If the probationer is on standard probation supervision and is not located within 90 days, the supervising probation officer shall file a petition to revoke probation, seek a criminal restitution order pursuant to A.R.S. § 13-805(AC)(1)(2) for a probationer who is an absconder as defined in A.R.S. § 13-105(1), and request that the court issue a warrant. The supervising officer shall file the petition to revoke sooner, when required by local departmental policies, the circumstances surrounding the case or the need for community protection.

(2) **[No changes]**

(3) When a petition to revoke is filed prior to the expiration of 90 days, the probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(AC)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).

F. through G. [No changes]