

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	)	<u>No. 2012 - 66</u>
§ 6-103: VICTIMS' RIGHTS	)	(Affecting Administrative
REQUIREMENTS FOR PROBATION	)	Order No. 2008-32)
PERSONNEL	)	
_____	)	

Pursuant to the Arizona Code of Judicial Administration § 1-201(E), the Chief Justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council.

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 15th day of August, 2012.

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REBECCA WHITE BERCH  
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.

“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, 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 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 child who is adjudicated to have committed a delinquent act” as provided by A.R.S. §§ 8-381 and -382.

“Victim” means “a person against whom the criminal offense ~~crime~~, 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,” as provided by Az. Const. Art. 2, § 2.1, A.R.S. § 13-4401 and A.R.S. § 8-382.

**Sections B through D – No changes**

**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:
  - 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. 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 probation officer shall consider the economic, physical and psychological impact that the criminal offense has had on the victim and the victim’s immediate family pursuant to § 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. 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.

e. Document all victim notifications and attempts to notify the victim;

f. Respond to all queries by victims, providing accurate information in accordance with supreme court rules governing public access to judicial records;

g. Within the scope of their duties, minimize contact between victims and victims' family and the probationer and probationer's family;

h. 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;

i. 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

j. 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.

k. 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(A)(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) If the probationer is on intensive probation supervision and is not located within 72 hours, the intensive probation officer shall file a petition to revoke probation no later than the next business day 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.
- (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(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).

**Sections F and G – No changes**