

FILED

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NOEL K. DESSAINT
CLERK SUPREME COURT
BY *[Signature]*

SUPREME COURT OF ARIZONA

VICTIMS' RIGHTS IMPLEMENTATION PROCEDURES
FOR USE BY THE SUPERIOR COURT
JUSTICE COURTS AND MUNICIPAL COURTS

ADMINISTRATIVE ORDER NO.

91-35

In accordance with Administrative Order No. 91-24, the Victims' Rights Implementation Committee developed procedures for the administration of restitution, penalty assessments, notice requirements, victim statements, victim's right to privacy, minimizing contact between victims and defendants, presentence reports, and probation for the superior court and courts inferior to the superior court as provided in the Victims' Rights Implementation Act (A.R.S. 13-4401 et seq) and Rules of Court. Now, therefore,

IT IS ORDERED THAT, the attached procedures for implementation of victims' rights are adopted for use by the superior court and courts inferior to the superior court. The guidelines shall be in full force and effect from and after December 31, 1991.

Dated 14 day of November, 1991, at the Supreme Court in Phoenix, Arizona.

FRANK X. GORDON, JR.
Chief Justice

Implementation Procedures for Victims' Rights

1. Prompt Restitution

Monies received from the defendant each month for each case shall be applied first to satisfy any ordered periodic restitution payment and any restitution payments in arrears in that case. Any remaining balance paid each month for each case may be applied to satisfy penalty assessments, fees and fines in that case. If the order does not indicate a specific periodic restitution payment, the entire amount of any payment received for each case shall be applied to satisfy the restitution obligation until that obligation is paid in full.

All monies collected for restitution payments shall be processed by the court within fifteen days unless the amount of any single disbursement is less than \$10. In those instances where a single disbursement is less than \$10, restitution may be held by the court until a minimum of \$10 is collected, but in no event, beyond 90 days following receipt of payment.

A probation office or the agency monitoring payment, upon finding that the defendant has become in arrears in an amount totaling two full court-ordered monthly payments of restitution, shall notify the supervising court. This notification may consist of either a petition to modify, a petition to revoke or a memorandum to the court outlining the reasons for the delinquencies.

Each court in conjunction with the probation office or other agency monitoring payments shall develop a system by which the court will receive timely notice of delinquencies in restitution payments.

2. Misdemeanor Penalty Assessment

A \$25 penalty assessment shall be assessed for each misdemeanor count for which a person is convicted. Class 6 undesignated offenses shall be assessed the mandatory felony fee. If an undesignated offense is later designated a misdemeanor, no refund is available. This fee applies to all misdemeanor city ordinances. This fee does not apply to traffic cases (i.e., Title 28). This fee applies to all misdemeanor offenses committed at and after midnight September 30, 1991.

3. Notice to Prosecutor

Criminal proceedings with the exception of initial appearances and arraignments shall be scheduled at least five days in advance of the date of the proceeding unless it is unreasonable to do so and the court states the basis of this determination on the record.

Notice to the prosecutor may be by any written document, telephonic transmission followed up with a written confirmation, facsimile transmission, or any other electronically transmitted message or document containing the following minimum information: the transmittal date; case number; defendant's name; type of hearing; and the date, time and place of next hearing. The court may agree to provide additional information. If notice is initially given by telephonic transmission, the name of the person receiving notice shall be recorded and noted on the confirming written notice.

4. Change of Plea/Victim Statements

The changing of plea minute entry shall state whether the victim was given the opportunity to address the court and whether any statements submitted by the victim have been reviewed by the court prior to accepting the plea.

5. Sentencing/Victim Statements

The sentencing minute entry shall state whether the victim was given the opportunity to address the court and whether any statements submitted by the victim have been reviewed by the court prior to sentencing.

6. Victim's Statements

Victim statements may be submitted in writing, orally, or on audiotape or videotape where legally permissible and in the discretion of the court. Any statements submitted to the court shall be treated in such a manner to preserve the victim's right to privacy pursuant to A.R.S. 13-4434.

7. Receipt of Victim's Statements

Court agencies shall make reasonable efforts to forward victim requests and victim statements to the appropriate court or agency.

8. Inspection of Presentence Report

Each court in conjunction with the prosecutor shall develop a plan and procedures to comply with A.R.S. 13-4425 (i.e., to allow the victim to inspect the presentence report, if the presentence report is available to the defendant).

9. Criminal History Information - Presentence Reports

All criminal history information obtained during the presentence investigation will be handled as an addendum to the presentence report and distributed only to the court, the prosecutor, the defense and other authorized criminal justice agencies. Such information will not be made available for review to the victim. The copy provided to the victim by the prosecutor will not include this addendum.

The court upon filing this document will maintain this information as confidential. The public record will not include this addendum. The clerk's office will maintain a filing system which will insure that none of the confidential criminal history information will become part of the public record and that it will be made available only to authorized criminal justice agencies.

10. Victim Notice Regarding Probation Modifications, Terminations, and Discharges

Upon a request to modify, revoke, discharge or terminate probation, the court shall provide notice to the prosecutor and to those victims who have requested notice of such a matter. The court shall provide victims who appear at probation hearings an opportunity to be heard. If the victim has received notice and does not appear, the court may proceed with the matter.

Victims who requested notice shall be notified of any order modifying probation or intensive probation if that modification order impacts the victim. Each court in conjunction with the probation office or other agency providing notice shall develop a system by which the victim is notified of probation hearings and modification orders.

11. Minimize Contact between Victim and Defendant

The court shall work closely with law enforcement officials, prosecutors, and defense attorneys to assist with separation of defendant(s) and defendant's family and victims and victim's family or representative. Before any court proceedings, the court and court staff shall, to the extent possible, maintain separate waiting areas for the victims and victim's family or representative and the defendant(s) and defendant's family. Court personnel shall not show particular deference to any of the parties.

When new court facilities are constructed or renovated, provisions shall be made for separation of the victim and victim's family from the defendant and the defendant's family.

Each court shall develop a plan to minimize contact between the victims and victim's family or representative and defendant(s) and defendant's family.