

## ARIZONA VICTIMS' RIGHTS LAWS<sup>1</sup>

### Constitution

#### Article 2, § 2.1

- A) To preserve and protect victims' rights to justice and due process, a victim of crime has a right:
1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
  2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
  3. To be present at, and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
  4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
  5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
  6. To confer with the prosecution, after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
  7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
  8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
  9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
  10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

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<sup>1</sup> Not intended to be exhaustive.

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.
  12. To be informed of victims' constitutional rights.
- (B) A victims' exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
  - (C) "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative except if the person is in custody for an offense or is the accused.
  - (D) The legislature, or the people by initiative or referendum, have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.
  - (E) The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the legislature or retained by victims.

## **Statutes**

### **Title 13, Criminal Code; Chapter 40, Crime Victims' Rights**

#### **§ 13-4401 – Definitions.**

In this chapter, unless the context otherwise requires:

1. "Accused" means a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial.
2. "Appellate proceeding" means a contested oral argument that is held in open court before the state court of appeals, the state supreme court, a federal court of appeals or the United States supreme court.
3. "Arrest" means the actual custodial restraint of a person or the person's submission to custody.
4. "Court" means all state, county and municipal courts in this state.
5. "Crime victim advocate" means a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims.

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.
7. "Criminal proceeding" means any hearing, argument or other matter that is scheduled by and held before a trial court but does not include any deposition, lineup, grand jury proceeding or other matter that is not held in the presence of the court.
8. "Custodial agency" means any law enforcement officer or agency, a sheriff or municipal jailer, the state department of corrections or a secure mental health facility that has custody of a person who is arrested or in custody for a criminal offense.
9. "Defendant" means a person or entity that is formally charged by complaint, indictment or information of committing a criminal offense.
10. "Final disposition" means the ultimate termination of the criminal prosecution of a defendant by a trial court, including dismissal, acquittal or imposition of a sentence.
11. "Immediate family" means a victim's spouse, parent, child, sibling, grandparent or lawful guardian.
12. "Lawful representative" means a person who is designated by the victim or appointed by the court and who acts in the best interests of the victim.
13. "Post-arrest release" means the discharge of the accused from confinement on recognizance, bond or other condition.
14. "Post-conviction release" means parole, work furlough, community supervision, probation if the court waived community supervision pursuant to § 13-603, home arrest or any other permanent, conditional or temporary discharge from confinement in the custody of the state department of corrections or a sheriff or from confinement in a municipal jail or a secure mental health facility.
15. "Post-conviction relief proceeding" means a contested argument or evidentiary hearing that is held in open court and that involves a request for relief from a conviction or sentence.
16. "Prisoner" means a person who has been convicted of a criminal offense against a victim and who has been sentenced to the custody of the sheriff, the state department of corrections, a municipal jail or a secure mental health facility.
17. "Release" means no longer in the custody of a custodial agency and includes transfer from one custodial agency to another custodial agency.
18. "Rights" means any right that is granted to the victim by the laws of this state.

19. "Victim" means a person against whom the criminal offense 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 any other lawful representative of the person, except if the 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.

**§ 13-4401.01 – Victims' rights for neighborhood associations.**

- A. A neighborhood association may register with the city, town or county in which the neighborhood association is located to invoke the rights that are afforded pursuant to this article. The city, town or county shall establish procedures for the registration of neighborhood associations pursuant to this section. The procedures shall require the neighborhood association to provide to the city, town or county the name and telephone number of one person who shall act on behalf of the neighborhood association and who may receive notice or invoke rights pursuant to this section. The neighborhood association shall notify the city, town or county of any changes to this information. If the neighborhood association fails to keep this information current, the neighborhood association is deemed to have waived its rights under this section.
- B. Notwithstanding any law to the contrary, if a person commits an act in violation of section 13-1602, subsection A, paragraph 5, § 13-3102, subsection A, paragraph 9, section 13-3201 or 13-3204, § 13-3208, subsection B or § 13-3209, 13-3405, 13-3407, 13-3408, 13-3409, 13-3421 or 13-4702, a neighborhood association that is registered with a city, town or county pursuant to subsection A of this section may receive notice or may invoke rights pursuant to the following sections:
1. Section 13-4409.
  2. Section 13-4420.
  3. Section 13-4426.
- C. Sections 13-4428, 13-4434 and 13-4436 apply to all matters in which a neighborhood association invokes rights under this section.
- D. If the neighborhood association wishes to invoke victims' rights for a crime as prescribed in subsection B of this section that resulted in an arrest, the person who is registered with the city, town or county pursuant to subsection A of this section shall contact the law enforcement agency responsible for the arrest. The law enforcement agency shall fill out the form prescribed by § 13-4405. Thereafter the neighborhood association, through the contact person, shall be afforded all of the rights listed under subsection B of this section.

**§ 13-4402 – Implementation of rights and duties.**

- A. Except as provided in §§ 13-4404 and 13-4405, the rights and duties that are established by this chapter arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this chapter until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a criminal restitution order is entered in favor of the victim pursuant to § 13-805.
- B. If a defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceeding
- C. After the final termination of a criminal prosecution by dismissal with prejudice or acquittal, a person who has received notice and the right to be present and heard pursuant to the victims' rights act, article II, § 2.1, Constitution of Arizona, any implementing legislation or court rule is no longer entitled to such rights.

**§ 13-4403 – Inability to exercise rights; lawful representatives; notice; definition.**

- A. If a victim is physically or emotionally unable to exercise any right but is able to designate a lawful representative who is not a bona fide witness, the designated representative may exercise the same rights that the victim is entitled to exercise. The victim may revoke this designation at any time and exercise the victim's rights.
- B. If a victim is incompetent, deceased or otherwise incapable of designating a representative to act in the victim's place, the court may appoint a lawful representative who is not a witness. If at any time the victim is no longer incompetent, incapacitated or otherwise incapable of acting, the victim may personally exercise the victim's rights.
- C. If the victim is a minor or vulnerable adult the victim's parent, child or other immediate family member may exercise all of the victim's rights on behalf of the victim. If the criminal offense is alleged against a member of the minor's or vulnerable adult's immediate family, the victim's rights may not be exercised by that person but may be exercised by another member of the immediate family unless, after considering the guidelines in subsection D of this section, the court finds that another person would better represent the interests of the minor or vulnerable adult for purposes of this chapter.
- D. The court shall consider the following guidelines in appointing a representative for a minor or vulnerable adult victim:
  - 1. Whether there is a relative who would not be so substantially affected or adversely impacted by the conflict occasioned by the allegation of criminal conduct against a member of the immediate family of the minor or vulnerable adult that the relative could not represent the victim.

2. The representative's willingness and ability to do all of the following:
    - (a) Undertake working with and accompanying the minor or vulnerable adult victim through all proceedings, including criminal, civil and dependency proceedings.
    - (b) Communicate with the minor or vulnerable adult victim.
    - (c) Express the concerns of the minor or vulnerable adult victim to those authorized to come in contact with the minor or vulnerable adult as a result of the proceedings.
  3. The representative's training, if any, to serve as a minor or vulnerable adult victim's representative.
  4. The likelihood of the representative being called as a witness in the case.
- E. The minor or vulnerable adult victim's representative shall accompany the minor or vulnerable adult through all proceedings, including delinquency, criminal, dependency and civil proceedings, and, before the minor's or vulnerable adult's courtroom appearance, shall explain to the minor or vulnerable adult the nature of the proceedings and what the minor or vulnerable adult will be asked to do, including telling the minor or vulnerable adult that the minor or vulnerable adult is expected to tell the truth. The representative shall be available to observe the minor or vulnerable adult in all aspects of the case in order to consult with the court as to any special needs of the minor or vulnerable adult. Those consultations shall take place before the minor or vulnerable adult testifies. The court may recognize the minor or vulnerable adult victim's representative when the representative indicates a need to address the court. A minor or vulnerable adult victim's representative shall not discuss the facts and circumstances of the case with the minor or vulnerable adult witness, unless the court orders otherwise upon a showing that it is in the best interests of the minor or vulnerable adult.
- F. Any notices that are to be provided to a victim pursuant to this chapter shall be sent only to the victim or the victim's lawful representative.
- G. For the purposes of this section, "vulnerable adult" has the same meaning prescribed in § 13-3623.

#### **§ 13-4404 – Limited rights of a legal entity.**

A corporation, partnership, association or other legal entity which, except for its status as an artificial entity, would be included in the definition of victim in § 13-4401, shall be afforded the following rights:

1. The prosecutor shall, within a reasonable time after arrest, notify the legal entity of the right to appear and be heard at any proceeding relating to restitution or sentencing of the person convicted of committing the criminal offense against the legal entity.
2. The prosecutor shall notify the legal entity of the right to submit to the court a written statement containing information and opinions on restitution and sentencing in its case.

3. On request, the prosecutor shall notify the legal entity in a timely manner of the date, time and place of any proceeding relating to restitution or sentencing of the person convicted of committing the criminal offense against the legal entity.
4. A lawful representative of the legal entity shall have the right, if present, to be heard at any proceeding relating to the sentencing or restitution of the person convicted of committing the criminal offense against the legal entity.

**§ 13-4405 – Information provided to victim by law enforcement agencies.**

- A. As soon after the detection of a criminal offense as the victim may be contacted without interfering with an investigation or arrest, the law enforcement agency that has responsibility for investigating the criminal offense shall provide the victim with a multicopy form:
  1. That allows the victim to request or waive applicable rights to which the victim is entitled, on request, under this article.
  2. That provides the victim a method to designate a lawful representative if the victim chooses pursuant to § 13-4403, subsection A or § 13-4404.
  3. That provides notice to the victim of all of the following information:
    - (a) The victim's right under the victims' bill of rights, article II, § 2.1, Constitution of Arizona, to be treated with fairness, respect and dignity and to be free of intimidation, harassment or abuse throughout the criminal or juvenile justice process.
    - (b) The availability, if any, of crisis intervention services and emergency and medical services and, where applicable, that medical expenses arising out of the need to secure evidence may be reimbursed pursuant to § 13-1414.
    - (c) In cases of domestic violence, the procedures and resources available for the protection of the victim pursuant to § 13-3601.
    - (d) The names and telephone numbers of public and private victim assistance programs, including the county victim compensation program and programs that provide counseling, treatment and other support services.
    - (e) The police report number, if available, other identifying case information and the following statement: If within thirty days you are not notified of an arrest in your case, you may call (the law enforcement agency's telephone number) for the status of the case.
    - (f) Whether the suspect is an adult or juvenile, a statement that the victim will be notified by the law enforcement agency at the earliest opportunity after the arrest of a suspect.
    - (g) If the suspect is an adult and has been arrested, the victim's right, on request, to be informed of the suspect's release, of the next regularly scheduled time, place and date for initial appearances in the jurisdiction and of the victim's right to be heard at the initial appearance and that, to exercise these rights, the victim is advised to contact the custodial agency regarding the suspect's

release and to contact the court regarding any changes to the initial appearance schedule.

(h) If the victim chooses to exercise the right to be heard through a written statement, how that statement may be submitted to the court.

- B. If at the time of contact with a law enforcement agency the victim is physically or emotionally unable to request or waive applicable rights, the law enforcement agency shall designate this on the multicopy form and the entities that may be subsequently affected shall presume that the victim invoked the victim's right to request applicable rights to which the victim is entitled, on request, unless the victim later waives those rights.
- C. The law enforcement agency shall submit a copy of the victim's request or waiver of preconviction rights form to the custodial agency and a copy to the prosecutor if a suspect is arrested, at the time the suspect is taken into custody. If there is no arrest, the form copies shall be submitted to the prosecutor at the time the case is otherwise presented to the prosecutor for review. The prosecutor shall submit a copy of the victim's request or waiver of preconviction rights form to the departments or sections of the prosecutor's office, if applicable, that are mandated by this article to provide victims' rights services on request.
- D. If the suspected offender is cited and released, the law enforcement agency responsible for investigating the offense shall inform the victim of the court date and how to obtain additional information about the subsequent criminal proceedings.
- E. Law enforcement agencies within a county may establish different procedures designed to efficiently and effectively provide notice of the victim's rights pursuant to this section and notice to affected entities of the victim request or waiver information. If different procedures are established, the procedures shall:
  - 1. Be reported to the entities within a county affected by the procedures and reported to the attorney general.
  - 2. Be designed so that custodial agencies and prosecutors within a county receive notice of the victim's request or waiver of the victim's preconviction rights at the same time that an adult suspect is arrested.
  - 3. Be designed so that prosecutors within a county receive notice of the victim's request or waiver of the victim's preconviction rights, if there is no arrest, at the same time that the case is otherwise presented to the prosecutor for review.
  - 4. Provide that the notice to affected entities of a victim's request or waiver of the victim's preconviction rights includes information that affords the affected entity the ability to contact the victim.
  - 5. Be supported by use of brochures, forms or other written materials that are developed by the law enforcement agencies within a county and reviewed by the attorney general pursuant to § 13-4417, subsection B.
- F. If a suspect has not been arrested at the time of contact with the victim pursuant to subsection A of this section, the law enforcement agency that is responsible for

investigating the offense shall notify the victim of the arrest of a suspect at the earliest opportunity after the arrest and of the time, place and date for the initial appearance.

**§ 13-4405.01 – Issuance and execution of arrest warrants.**

- A. Beginning on the effective date of this section, on the issuance of an arrest warrant, the court issuing the warrant shall state in the warrant whether the person named in the warrant is to be arrested for or is to be charged with committing a criminal offense as defined in § 13-4401 or is materially related to a criminal offense as defined in § 13-4401.
- B. On receipt of notice of an arrest or an impending arrest of a suspect and if applicable pursuant to subsection A of this section, the agency that is responsible for holding the original warrant shall notify the law enforcement agency that was responsible for the original investigation of the offense of the impending incarceration of a suspect who is arrested on the law enforcement agency's warrant.
- C. On receiving notice that the warrant was executed pursuant to subsection B of this section, the law enforcement agency that was responsible for the original investigation of the offense shall do all of the following if the victim has requested notice pursuant to § 13-4405:
  - 1. Notify the victim of the arrest and of the time, place and date for the initial appearance.
  - 2. Inform the victim of the telephone number of the custodial agency in which the arrested person is held.
  - 3. Provide the custodial agency with the victim information pursuant to § 13-4405 so that the custodial agency may notify the victim of the release of the suspect pursuant to § 13-4412, if applicable.
- D. A law enforcement agency is not required to provide victim information pursuant to § 13-4405, subsections C and E to the custodial agency at the time a suspect is taken into custody unless the law enforcement agency that performs that warrant arrest is also the law enforcement agency that was responsible for the original investigation of the offense.
- E. The victim's right to be informed of an arrest or a release after a suspect is arrested pursuant to a warrant applies to warrants that are issued on or after September 1, 1996.
- F. Law enforcement, courts and custodial agencies are not liable pursuant to § 13-4437 for the failure to inform a victim of the arrest or release of a suspect on warrants that were issued before September 1, 1996.

**§ 13-4406 – Notice of initial appearance.**

On becoming aware of the date, time and place of the initial appearance of the accused, the law enforcement agency shall inform the victim of such information unless the accused appeared in response to a summons. In that case, the prosecutor's office shall, on receiving such information, provide the notice to the victim.

**§ 13-4407 – Notice of terms and conditions of release.**

Upon the request of the victim, the custodial agency shall provide a copy of the terms and conditions of release to the victim unless the accused appeared in response to a summons. In that case, upon request of the victim, the prosecutor's office shall, on receiving such information, provide a copy of the terms and conditions of release to the victim.

**§ 13-4408 – Pretrial notice.**

- A. Within seven days after the prosecutor charges a criminal offense by complaint, information or indictment and the accused is in custody or has been served a summons, the prosecutor's office shall give the victim notice of the following:
  - 1. The victim's rights under the victims' bill of rights, article II, § 2.1, Constitution of Arizona, any implementing legislation and court rule.
  - 2. The charge or charges against the defendant and a clear and concise statement of the procedural steps involved in a criminal prosecution.
  - 3. The procedures a victim shall follow to invoke his right to confer with the prosecuting attorney pursuant to § 13-4419.
  - 4. The person within the prosecutor's office to contact for more information.
- B. Notwithstanding the provisions of subsection A of this section, if a prosecutor declines to proceed with a prosecution after the final submission of a case by a law enforcement agency at the end of an investigation, the prosecutor shall, before the decision not to proceed is final, notify the victim and provide the victim with the reasons for declining to proceed with the case. The notice shall inform the victim of his right on request to confer with the prosecutor before the decision not to proceed is final. Such notice applies only to violations of a state criminal statute.

**§ 13-4409 – Notice of criminal proceedings.**

- A. Except as provided in subsection B, the court shall provide notice of criminal proceedings, for criminal offenses filed by information, complaint or indictment, except initial appearances and arraignments, to the prosecutor's office at least five days before a scheduled proceeding to allow the prosecutor's office to provide notice to the victim.
- B. If the court finds that it is not reasonable to provide the five days' notice to the prosecutor's office under subsection A, the court shall state in the record why it was not reasonable to provide five days' notice.

- C. On receiving the notice from the court, the prosecutor's office shall, on request, give notice to the victim in a timely manner of scheduled proceedings and any changes in that schedule.

**§ 13-4410 – Notice of conviction, acquittal or dismissal; impact statement.**

- A. The prosecutor's office shall, on request, give to the victim within fifteen days after the conviction or acquittal or dismissal of the charges against the defendant notice of the criminal offense for which the defendant was convicted or acquitted or the dismissal of the charges against the defendant.
- B. If the defendant is convicted and the victim has requested notice, the victim shall be notified, if applicable, of:
  - 1. The function of the presentence report.
  - 2. The name and telephone number of the probation department that is preparing the presentence report.
  - 3. The right to make a victim impact statement under § 13-4424.
  - 4. The defendant's right to view the presentence report.
  - 5. The victim's right to view the presentence report except those parts excised by the court or made confidential by law and, on request, to receive a copy from the prosecutor.
  - 6. The right to be present and be heard at any presentence or sentencing proceeding pursuant to § 13-4426.
  - 7. The time, place and date of the sentencing proceeding.
  - 8. If the court orders restitution, the right to file a restitution lien pursuant to § 13-806.
- C. The victim shall be informed that the victim's impact statement may include the following:
  - 1. An explanation of the nature and extent of any physical, psychological or emotional harm or trauma suffered by the victim.
  - 2. An explanation of the extent of any economic loss or property damage suffered by the victim.
  - 3. An opinion of the need for and extent of restitution.
  - 4. Whether the victim has applied for or received any compensation for the loss or damage.
- D. Notice provided pursuant to this section does not remove the probation department's responsibility pursuant to § 12-253 to initiate the contact between the victim and the probation department concerning the victim's economic, physical, psychological or emotional harm. At the time of contact, the probation department shall advise the victim of the date, time and place of sentencing and of the victim's right to be present and be heard at that proceeding.

**§ 13-4411 – Notice of post-conviction review and appellate proceedings.**

- A. Within fifteen days after sentencing the prosecutor's office shall, on request, notify the victim of the sentence imposed on the defendant.
- B. The prosecutor's office shall provide the victim with a form that allows the victim to request post-conviction notice of all post-conviction review and appellate proceedings, all post-conviction release proceedings, all probation modification proceedings that impact the victim, all probation revocation or termination proceedings, any decisions that arise out of these proceedings, all releases and all escapes.
- C. The prosecutor's office shall advise the victim on how the completed request form may be filed with the appropriate agencies and departments.
- D. On request of the victim, the prosecutor's office that is responsible for handling any post-conviction or appellate proceedings shall notify the victim of the proceedings and any decisions that arise out of the proceedings.

**§ 13-4411.01 – Notice of right to request not to receive inmate mail.**

- A. Within fifteen days after a defendant is sentenced to the state department of corrections, the prosecutor's office shall notify the victim of the right of the victim, any member of the victim's family or any member of the victim's household, to request not to receive mail from the inmate who was convicted of committing a criminal offense against the victim. The notice shall:
  - 1. Be made on the postconviction notice request form provided by the prosecutor to the victim pursuant to § 13-4411.
  - 2. Inform the victim of the right of the victim, or any member of the victim's family or household who is denoted by the victim on the form, to request not to receive mail from the inmate.
  - 3. Instruct the victim how to file the completed request form with the state department of corrections.
  - 4. Include the following statement: "If the defendant is incarcerated in the state department of corrections, you have the right to request that the defendant not send you, members of your family or members of the victim's household mail. If the defendant sends you or your family or household members mail after you have made this request, you or the members of your family or household have the right to report the incident to the state department of corrections for sanctions against the defendant."
- B. On receipt of a postconviction notice request form in which a request not to receive inmate mail is indicated, the state department of corrections shall notify the inmate of the request and that sending mail to the victim, or the family or household members who are

denoted by the victim, will result in appropriate sanctions, including reduction or denial of earned release credits and review of all outgoing mail.

- C. The department shall not knowingly forward mail addressed to any person who requests not to receive mail, pursuant to this section, is not to receive mail.

**§ 13-4412 – Notice of release or escape.**

- A. The sheriff or municipal jailer shall, on request, notify the victim of the release of the accused.
- B. The custodial agency shall immediately give notice to a victim and the prosecutor's office of an escape by, and again upon the subsequent rearrest of, an incarcerated person who is accused or convicted of committing a criminal offense against the victim. The custodial agency shall give notice by any reasonable means.

**§ 13-4413 – Notice of prisoner's status.**

- A. If the victim has made a request for post-conviction notice, the director of the state department of corrections shall mail to the victim the following information about a prisoner in the custody of the department of corrections.
  - 1. Within thirty days after the request, notice of the earliest release date of the prisoner if his sentence exceeds six months.
  - 2. At least fifteen days before the prisoner's release, notice of the release.
  - 3. Within fifteen days after the prisoner's death, notice of the death.
- B. If the victim has made a request for post-conviction notice, the sheriff having custody of the prisoner shall mail to the victim notice of release at least fifteen days before the prisoner's release or notice of death within fifteen days after the prisoner's death.

**§ 13-4414 – Notice of post-conviction release; right to be heard; hearing; final decision.**

- A. The victim has the right to be present and be heard at any proceeding in which post-conviction release from confinement is being considered pursuant to § 31-233, § 31-326 (fn 1) or § 31-411.
- B. If the victim has made a request for post-conviction notice, the board of pardons and paroles shall, at least fifteen days before the hearing, give to the victim written notice of the hearing and of the victim's right to be present and be heard at the hearing.
- C. If the victim has made a request for post-conviction notice, the board of pardons and paroles shall give to the victim notice of the decision reached by the board. The notice shall be mailed within fifteen days after the board reaches its decision.

(fn 1: So in original. Probably should be § 31-236).

**§ 13-4415 – Notice of probation modification, termination or revocation disposition matters; notice of arrest.**

- 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 a person who is convicted of committing a criminal offense against the victim.
- B. On request of the victim, the court shall notify the victim of a modification of the terms of probation or intensive probation of a person only if the modification will substantially affect the person's contact with or safety of the victim or if the modification affects restitution or incarceration status.
- C. On request of the victim, the court shall notify the victim of the arrest of a person who is on supervised probation and who is arrested pursuant to a warrant issued for a probation violation.

**§ 13-4416 – Notice of release, discharge or escape from a mental health treatment agency.**

- A. If the victim has made a request for notice, a mental health treatment agency shall mail to the victim at least ten days before the release or discharge of the person accused or convicted of committing a criminal offense against the victim, notice of the release or discharge of the person who is placed by court order in a mental health treatment agency pursuant to § 13- 3994, 31-226, 31-226.01, 36-540.01, 36-541. 01 or 36-3707.
- B. A mental health treatment agency shall mail to the victim immediately after the escape or subsequent readmission of the person accused or convicted of committing a criminal offense against the victim, notice of the escape or subsequent readmission of the person who is placed by court order in a mental health treatment agency pursuant to § 13-3994, 31-226, 31-226.01, 36-540.01, 36-541.01 or 36-3707.

**§ 13-4417 – Request for notice; forms; notice system.**

- A. The victim shall provide to and maintain with the agency that is responsible for providing notice to the victim a request for notice on a form that is provided by that agency. The form shall include a telephone number and address. If the victim fails to keep the victim's telephone number and address current, the victim's request for notice is withdrawn. At any time the victim may request notice of subsequent proceedings by filing on a request form provided by the agency the victim's current telephone number and address.

- B. All notices provided to a victim pursuant to this chapter shall be on forms developed or reviewed by the attorney general.
- C. The court and all agencies that are responsible for providing notice to the victim shall establish and maintain a system for the receipt of victim requests for notice.

**§ 13-4418 – Construction of chapter.**

This chapter shall be liberally construed to preserve and protect the rights to which victims are entitled.

**§ 13-4419 – Victim conference with prosecuting attorney.**

- A. On request of the victim, the prosecuting attorney shall confer with the victim about the disposition of a criminal offense, including the victim's views about a decision not to proceed with a criminal prosecution, dismissal, plea or sentence negotiations and pretrial diversion programs.
- B. On request of the victim, the prosecuting attorney shall confer with the victim before the commencement of the trial.
- C. The right of the victim to confer with the prosecuting attorney does not include the authority to direct the prosecution of the case.

**§ 13-4420 – Criminal proceedings; right to be present.**

The victim has the right to be present throughout all criminal proceedings in which the defendant has the right to be present.

**§ 13-4421 – Initial appearance.**

The victim has the right to be heard at the initial appearance of the person suspected of committing the criminal offense against the victim.

**§ 13-4422 – Post-arrest custody decisions.**

The victim has the right to be heard at any proceeding in which the court considers the post-arrest release of the person accused of committing a criminal offense against the victim or the conditions of that release.

**§ 13-4423. Plea negotiation proceedings.**

- A. On request of the victim, the victim has the right to be present and be heard at any proceeding in which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court.
- B. The court shall not accept a plea agreement unless:
  - 1. The prosecuting attorney advises the court that before requesting the negotiated plea reasonable efforts were made to confer with the victim pursuant to § 13-4419.
  - 2. Reasonable efforts are made to give the victim notice of the plea proceeding pursuant to § 13-4409 and to inform the victim that the victim has the right to be present and, if present, to be heard.
  - 3. The prosecuting attorney advises the court that to the best of the prosecutor's knowledge notice requirements of this chapter have been complied with and the prosecutor informs the court of the victim's position, if known, regarding the negotiated plea.

**§ 13-4424 – Impact statement; presentence report.**

- A. The victim may submit a written impact statement or make an oral impact statement to the probation officer for the officer's use in preparing a presentence report.
- 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.

**§ 13-4425 - Inspection of presentence report**

If the presentence report is available to the defendant, the court shall permit the victim to inspect the presentence report, except those parts excised by the court or made confidential by law. If the court excises any portion of the presentence report, it shall inform the parties and the victim of its decision and shall state on the record its reasons for the excision. On request of the victim, the prosecutor's office shall provide to the victim a copy of the presentence report.

**§ 13-4426 – Sentencing.**

- 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.

### **§ 13-4426 – Sentencing.**

Notwithstanding any other law or rule, as an exercise of the victim's constitutional right to be heard at sentencing, before the imposition of sentence the victim in any case may address the sentencing authority and present any information or opinions that concern the victim or the victim's family, including the impact of the crime on the victim, the harm caused by the crime, the criminal offense, the defendant, the need for restitution or the sentence to be imposed at every sentencing or disposition proceeding.

#### **§ 13-4426.01 – Sentencing; victims' right to be heard.**

In any proceeding in which the victim has the right to be heard pursuant to article II, § 2.1, Constitution of Arizona, or this chapter, the victim's right to be heard is exercised not as a witness, the victim's statement is not subject to disclosure to the state or the defendant or submission to the court and the victim is not subject to cross-examination. The state and the defense shall be afforded the opportunity to explain, support or deny the victim's statement.

#### **§ 13-4427 – Probation modification, revocation disposition or termination proceedings.**

- 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.

#### **§ 13-4428 – Victim's discretion; form of statement.**

- A. It is at the victim's discretion to exercise his rights under this chapter to be present and heard at a court proceeding, and the absence of the victim at the court proceeding does not preclude the court from going forth with the proceeding.
- B. Except as provided in subsection C, a victim's right to be heard may be exercised, at the victim's discretion, through an oral statement, submission of a written statement or submission of a statement through audiotape or videotape.
- C. If a person against whom a criminal offense has been committed is in custody for an offense, the person may be heard by submitting a written statement to the court.

**§ 13-4429 – Return of victim's property; release of evidence.**

- A. On request of the victim and after consultation with the prosecuting attorney, the law enforcement agency responsible for investigating the criminal offense shall return to the victim any property belonging to the victim that was taken during the course of the investigation or shall inform the victim of the reasons why the property will not be returned. The law enforcement agency shall make reasonable efforts to return the property to the victim as soon as possible.
- B. If the victim's property has been admitted as evidence during a trial or hearing, the court may order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the defendant's attorney or investigator may inspect and independently photograph the evidence before it is released.

**§ 13-4430 – Consultation between crime victim advocate and victim; privileged information; exception.**

- A. A crime victim advocate shall not disclose as a witness or otherwise any communication except compensation or restitution information between himself and the victim unless the victim consents in writing to the disclosure.
- B. Unless the victim consents in writing to the disclosure, a crime victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda, except compensation or restitution information, that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on the communication between the victim and the advocate.
- C. The communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory material.
- D. A defendant may make a motion for disclosure of privileged information. If the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in camera. Material that the court finds is exculpatory shall be disclosed to the defendant.
- E. If, with the consent of the victim, the crime victim advocate discloses to the prosecutor or a law enforcement agency any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports or memoranda, the prosecutor or law enforcement agent shall disclose such material to the defendant's attorney only if such information is otherwise discoverable.

- F. Notwithstanding the provisions of subsections A and B, if a crime victim advocate is employed or authorized by a prosecutor's office, the advocate may disclose information to the prosecutor with the oral consent of the victim.

**§ 13-4431 – Minimizing victim's contacts.**

Before, during and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that occurs between the victim, the victim's immediate family and the victim's witnesses and the defendant, the defendant's immediate family and defense witnesses.

**§ 13-4432 – Motion to revoke bond or personal recognizance.**

If the prosecutor decides not to move to revoke the bond or personal recognizance of the defendant, the prosecutor shall inform the victim that the victim may petition the court to revoke the bond or personal recognizance of the defendant based on the victim's notarized statement asserting that harassment, threats, physical violence or intimidation against the victim or the victim's immediate family by the defendant or on behalf of the defendant has occurred.

**§ 13-4433 – Victim's right to refuse an interview.**

- A. Unless the victim consents, the victim shall not be compelled to submit to an interview on any matter, including any charged criminal offense witnessed by the victim and that occurred on the same occasion as the offense against the victim, or filed in the same indictment or information or consolidated for trial, that is conducted by the defendant, the defendant's attorney or an agent of the defendant.
- B. The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the prosecutor's office. The prosecutor's office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview.
- C. The prosecutor shall not be required to forward any correspondence from the defendant, the defendant's attorney or an agent of the defendant to the victim or the victim's representative.
- D. If the victim consents to an interview, the prosecutor's office shall inform the defendant, the defendant's attorney or an agent of the defendant of the time and place the victim has selected for the interview. If the victim wishes to impose other conditions on the interview, the prosecutor's office shall inform the defendant, the defendant's attorney or an agent of the defendant of the conditions. The victim has the right to terminate the interview at any time or to refuse to answer any question during the interview. The prosecutor has standing at the request of the victim to protect the victim from harassment,

intimidation or abuse and, pursuant to that standing, may seek any appropriate protective court order.

- E. Unless otherwise directed by the victim, the prosecutor may attend all interviews. If a transcript or tape recording of the interview is made and on request of the prosecutor, the prosecutor shall receive a copy of the transcript or tape recording at the prosecutor's expense.
- F. If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Arizona Constitution.
- G. For the purposes of this section, a peace officer shall not be considered a victim if the act that would have made the officer a victim occurs while the peace officer is acting in the scope of the officer's official duties.

#### **§ 13-4434 – Victim's right to privacy.**

Beginning January 1, 1992 the victim has the right at any court proceeding not to testify regarding the victim's addresses, telephone numbers, place of employment or other locating information unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.

#### **§ 13-4435 – Speedy trial.**

- A. In any criminal proceeding, the court, prosecutor and law enforcement officials shall take appropriate action to ensure a speedy trial for the victim.
- B. In any criminal proceeding in which a continuance is requested, the court shall consider the victim's views and the victim's right to a speedy trial. If a continuance is granted, the court shall state on the record the reason for the continuance.

#### **§ 13-4436 – Effect of failure to comply.**

- A. The failure to use reasonable efforts to perform a duty or provide a right is not cause to seek to set aside a conviction or sentence.
- B. Unless the prisoner is discharged from his sentence, the failure to use reasonable efforts to provide notice and a right to be present or be heard pursuant to this chapter at a proceeding that involves a post-conviction release is a ground for the victim to seek to set aside the post-conviction release until the victim is afforded the opportunity to be present or be heard.

- C. If the victim seeks to have a post-conviction release set aside pursuant to subsection B, the court, board of executive clemency or state department of corrections shall afford the victim a reexamination proceeding after the parties are given notice.
- D. A reexamination proceeding conducted pursuant to this section or any other proceeding that is based on the failure to perform a duty or provide a right shall commence not more than thirty days after the appropriate parties have been given notice that the victim is exercising his right to a reexamination proceeding pursuant to this section or to another proceeding based on the failure to perform a duty or provide a right.

**§ 13-4437 – Standing to invoke rights; recovery of damages.**

- A. The victim has standing to seek an order or to bring a special action mandating that the victim be afforded any right or to challenge an order denying any right guaranteed to victims under the victims' bill of rights, article II, § 2.1, Constitution of Arizona, any implementing legislation or court rules. In asserting any right, the victim has the right to be represented by personal counsel at the victim's expense.
- B. A victim has the right to recover damages from a governmental entity responsible for the intentional, knowing or grossly negligent violation of the victim's rights under the victims' bill of rights, article II, § 2.1, Constitution of Arizona, any implementing legislation or court rules. Nothing in this section alters or abrogates any provision for immunity provided for under common law or statute.
- C. At the request of the victim, the prosecutor may assert any right to which the victim is entitled.

**§ 13-4438 – Statement of rights.**

In order to assure that any victim who comes before the court has been advised of the victim's constitutional rights, at the daily commencement of the regular criminal docket at which accused persons are arraigned, appear for a status conference, make a change of plea or are sentenced, a judge of the superior court shall make the following statement:

If you are the victim of a crime with a case pending before this court, you are advised that you have rights under Arizona law that, among others, include the right to be treated with fairness, respect and dignity, to a speedy trial, to be present at court proceedings, to choose whether or not to be interviewed by the defendant or the defendant's attorney, to be heard before the court makes a decision on release, negotiation of a plea, scheduling and sentencing and to receive restitution from a person who is convicted of causing your loss. If you have not already been provided with a written statement of all victims' rights, please contact the victim services division of the prosecutor's office.

**§ 13-4439 – Right to leave work; scheduled proceedings; counseling; employment rights; nondiscrimination; confidentiality; definition.**

- A. An employer who has fifty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of that employer, shall allow an employee who is a victim of a crime to leave work to exercise the employee's right to be present at a proceeding pursuant to §§ 13-4414, 13-4420, 13-4421, 13-4422, 13-4423, 13-4426, 13-4427 and 13-4436.
- B. An employer may not dismiss an employee who is a victim of a crime because the employee exercises the right to leave work pursuant to subsection A of this section.
- C. An employer is not required to compensate an employee who is a victim of a crime when the employee leaves work pursuant to subsection A of this section.
- D. If an employee leaves work pursuant to subsection A of this section, the employee may elect to use or an employer may require the employee to use the employee's accrued paid vacation, personal leave or sick leave.
- E. An employee who is a victim of a crime shall not lose seniority or precedence while absent from employment pursuant to subsection A of this section.
- F. Before an employee may leave work pursuant to subsection A of this section, the employee shall do all of the following:
  - 1. Provide the employer with a copy of the form provided to the employee by the law enforcement agency pursuant to § 13-4405, subsection A or a copy of the information the law enforcement agency provides to the employee pursuant to § 13-4405, subsection E.
  - 2. If applicable, give the employer a copy of the notice of each scheduled proceeding that is provided to the victim by the agency that is responsible for providing notice to the victim.
- G. It is unlawful for an employer or an employer's agent to refuse to hire or employ, to bar or to discharge from employment or to discriminate against an individual in compensation or other terms, conditions or privileges of employment because the individual leaves work pursuant to subsection A of this section.
- H. Employers shall keep confidential records regarding the employee's leave pursuant to this section.
- I. An employer may limit the leave provided under this section if the employee's leave creates an undue hardship to the employer's business.
- J. The prosecutor shall inform the victim of the victim's rights pursuant to this section. A victim may notify the prosecutor if exercising the victim's right to leave under this section would create an undue hardship for the victim's employer. The prosecutor shall

communicate the notice to the court during the scheduling of proceedings where the victim has the right to be present. The court shall continue to take the victim's schedule into consideration when scheduling a proceeding pursuant to subsection A of this section.

- K. For purposes of this section, "undue hardship" means a significant difficulty and expense to a business and includes the consideration of the size of the employer's business and the employer's critical need of the employee.