

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of:	)	
	)	
ARIZONA CODE OF JUDICIAL	)	
ADMINISTRATION §5-204:	)	Administrative Order
ADMINISTRATION OF VICTIMS'	)	<u>No. 2004 - 94</u>
RIGHTS; AND §6-103:	)	(Replacing Administrative
VICTIMS' RIGHTS REQUIREMENTS	)	Order No. 94-16)
FOR PROBATION PERSONNEL	)	
_____	)	

The above captioned provisions having come before the Arizona Judicial Council on October 14, 2004, and having been approved and recommended for adoption,

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

IT IS ORDERED that the above captioned provisions, attached hereto, are adopted as sections of the Arizona Code of Judicial Administration replacing Administrative Order No. 94-16.

Dated this 10th day of November, 2004.

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CHARLES E. JONES  
Chief Justice

**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 5: Court Operations**  
**Chapter 2: Programs and Standards**  
**Section 5-204: Administration of Victims' Rights**

**A. Definitions.** In this section the following definitions apply:

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

“Criminal history record information” means those records of arrests, convictions, sentences, dismissals and other dispositions of charges against individuals that have been provided to the court by the National Crime Information Center, Arizona Crime Information Center, or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.

“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.

“Victim”, except as otherwise specified, means a person against whom the criminal offense or delinquent act has been committed, or if the person is killed or incapacitated, the person's immediate family or other lawful representative, except if the person is in custody for an offense or is the accused as provided in Article II, §2.1 of the Arizona Constitution, A.R.S. §§8-382 and 13-4401.

**B. Purpose.** To define the role and responsibility of courts in preserving and protecting victims’ rights to justice and due process.

**C. Applicability.** Pursuant to Article II, §2.1, Article VI, §3 of the Arizona Constitution and A.R.S. §§ 13-603, -804, and -4401 et seq., the following requirements shall govern the administration of victims’ rights.

**D. Notice of Criminal Proceedings.** The court shall provide notice to the prosecutor, as required by A.R.S. §13-4409, by written document, telephonic transmission followed up with a written confirmation, facsimile transmission, or any other electronically transmitted message or document which includes the transmittal date, case number, defendant's name, type of hearing, and the date, time and place of next hearing. The court may provide additional information. If notice is initially given by telephonic transmission, the court shall record the name of the person contacted on a confirming written notice.

**E. Reading of Victim Rights.** At the commencement of the criminal docket in superior court at which accused persons are arraigned, appear for a status conference, or a change of plea or are sentenced, superior court judges shall read the victims bill of rights out loud in court, as required by A.R.S. §13-4438.

**F. Victim Statements.** Any victim requests and victim statements received by court offices shall be forwarded to the appropriate court or prosecuting agency.

**G. Inspection of Pre-sentence Report.** Each court in conjunction with the prosecutor shall develop a plan and procedures to allow the victim to inspect the presentence report, as provided in A.R.S. §13-4425.

**H. Criminal History Record Information.** Pursuant to Rule 123, Rules of the Supreme Court, all criminal history record information obtained during the presentence investigation shall be handled as an addendum to the presentence report and shall not be made available for review by the victim. The clerk's office will maintain a filing system that will insure that confidential criminal history information does not become part of the public record and that criminal history and other confidential information is made available only to authorized criminal justice agencies.

**I. Minimizing Victim Contacts.**

1. The court shall work closely with law enforcement officials, prosecutors, and defense attorneys to assist with separation of defendant and defendant's family from the victim and victim's family or representative, as provided in A.R.S. §13-4431.
2. When new court facilities are constructed or renovated, provisions shall be made for separation of the victim and victim's family or representative from the defendant and the defendant's family or representative.

**J. Victim Right to Privacy.** The court shall adopt procedures to ensure that victim information is not improperly disclosed, as provided in A.R.S. §13-4434.

**K. Restitution Payment Processing.**

1. Any amounts received shall first be applied to satisfy court ordered restitution until the obligation is paid in full. If the provisions of any restitution order specify a periodic payment plan, then payments shall be applied according to the order until the specified obligations are paid in full. Any remaining balance paid for each case may then be applied to satisfy penalty assessments, fees and fines in that case, as provided by administrative order or this code.
2. The clerk of court or other court entity responsible for receipting and disbursing restitution shall send all restitution payments made by cash, cashier's check, credit card or money order to victims within ten days, unless the amount of any single disbursement is less than ten dollars. The court, clerk of court, or other court agency responsible for receipting and disbursing restitution shall disburse all personal check payments within 21 calendar days of receipt. Where a single disbursement is less than ten dollars the court may develop a clearly defined business system routine to hold funds received for individual victims until the aggregate total in an account reaches a minimum of ten dollars.

3. Notwithstanding any court policies designed to hold amounts that are less than ten dollars, courts receiving restitution payments shall, not less than once each calendar year, remit all amounts collected over one dollar to victims. In cases where victims cannot be located then courts, clerks of court or other agencies responsible for restitution payments shall follow state unclaimed property provisions.
4. For purposes of this subsection (K), "victim" also means any person, including the surviving dependent of a person, who has suffered physical injury or pecuniary loss resulting from the crime or delinquent act of the accused or a corporation, partnership, association or other legal entity, as provided in A.R.S. §§8-382, 13-4201 and 13-4404.

**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 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 or delinquent act 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, as provided by Article II, §2.1 of the Arizona Constitution, 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 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. Develop a process to furnish victims who request notice with timely notification of the following, as provided in A.R.S. §13-4415:
  - a. Probation revocation disposition proceeding;

- 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 probationer 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. Work 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, "the economic, physical and psychological impact that the criminal offense has had on the victim and the victim's 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 pursuant to A.R.S. §§13-4426 and 13-4427:
      - (1) Aggravation, mitigation, presentencing or sentencing proceeding;
      - (2) Probation revocation disposition proceeding;
      - (3) Proceeding in which the court is asked to terminate probation or intensive probation;
      - (4) Modification of terms of probation or intensive probation which 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. Document all victim notifications and attempts to notify the victim;

- e. Respond to all queries by victims, providing accurate information in accordance with supreme court rules governing public access to judicial records;
- f. Within the scope of their duties, minimize contact between victims and victims' family and the probationer and probationer's family;
- g. 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;
- h. 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
- i. Request court extension of probation pursuant to A.R.S. §13-902 (C) 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 "...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, pursuant to A.R.S. §8-404(B), "...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):

C. On 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 following circumstances as required by A.R.S. §8-396(A)(B)(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 a 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.

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