

VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates



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The Victims' Rights Brief is published by the Arizona Attorney General's Office of Victim Services, which remains wholly responsible for its content.

The goal in generating the Brief is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system.

For more information about Victims' Rights, visit us at www.azag.gov/victim-services

Have an idea for an article in the Victims' Rights Brief?

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Victims' Rights Compliance - Common Trends

Background

Since 1992, the Attorney General's Office, as administrator of the Victims' Rights Program (VRP), has awarded millions of dollars to justice agencies for use in implementing victims' rights laws. The purpose of the VRP is to further uniformity, efficiency, and compliance by entities responsible for ensuring crime victims' access to justice.

Recipients of VRP funding include law enforcement, prosecutorial offices, correctional agencies, and courts. These state and local entities annually report expenditures, performance, and statistics to the Attorney General. Subsequently, the Office of Victim Services (OVS) began conducting compliance audits in 1998. Generally, audits are comprised of a review of systems and approaches to delivering victims' rights, financial data, and evaluation tools used to assess the quality of service to victims.

OVS perceives the compliance audit as an opportunity for state officials to assist agencies and justice practitioners in improving forms and documents. The audits may also help enhance systems to comply with victims' rights laws; identify gaps in rights provision; and, offer suggestions and mechanisms for the agency's method of incorporating victims into the justice process.

Audits

OVS performs a desk audit of each VRP-funded agency on an annual basis. The audit involves a review of the Annual Report submitted by each agency that includes: a summary of VRP and non-VRP expenditures; financial information; the number of victims served; the number of mandated victims' rights services; and, a performance review including victim satisfaction level.

In FY 2013, 17 VRP-funded agencies had an on-site audit for compliance pertaining to victims' rights laws and individual funding agreements. Below we have identified common issues found during the on-site audits. While this issue of the Victims' Rights Brief focus is on deficiencies, OVS would like to acknowledge the most common theme noted by the auditors: the dedication of staff, supervisors, and agency leaders who demonstrate commitment in serving victims of crime.

Initial Appearances (IA)

Most Common Errors:

- No IA information on the Victims' Rights Request/Waiver Form provided to the victim
- Inability to evidence compliance that victims were provided the date, time, and location of the IA, despite of having clear policies and procedures
- Failure to provide victim information on IA in cases where the accused appears in response to a summons or writ of habeas corpus

Barriers to Compliance:

- Law enforcement agencies not aware of set schedules for IAs in different Justice Courts
- Training issues; staff not being provided training on the statutory requirements
- Prosecutorial agencies not obtaining or not being provided necessary information from the courts to notify the victim of the IA where the accused appears in response to a summons or writ of habeas corpus

Remedies:

- Incorporate statutory requirements into policy and procedures with regard to notice of IAs
- Develop a plan in conjunction with each Justice Court to ensure that law enforcement is aware of the IA schedule
- Develop procedures for the courts to notify prosecutorial agencies of the date, time, and place of the IA where the accused appears in response to a summons or writ of habeas corpus
- Provide or attend training on statutory requirements associated with the IA

It should be noted that the OVS is working with the Administrative Office of the Courts (AOC) to bring awareness and seek resolution for issues related to the IA.

The importance of notifying victims of the IA cannot be overstated. Failure to do so can result in several victims' rights violations, especially in misdemeanor cases where a defendant can plead guilty and be sentenced within the same proceeding.

Notice of Rights Associated with Conviction (A.R.S. §§ 13-4410 (A-C) and 8-391 (A-C))

Depending on the type of case (felony, misdemeanor, or juvenile) victims have rights associated with the notice of conviction. When a defendant is convicted, *the prosecutor's office is required to notify the victim of the following:*

Felony Cases

- 1) A conviction
- 2) The function of the presentence report
- 3) The probation department name and number preparing the report
- 4) The victim's right to make an impact statement and what it can include
- 5) The defendant's right to view the presentence report
- 6) The victim's right to view the presentence report and receive a copy on request
- 7) The right to be present and heard at any presentence or sentencing proceeding
- 8) The right to file a restitution lien
- 9) The time, place and date of the sentencing proceeding

Juvenile Cases

- 1) A delinquent adjudication
- 2) The function of the predisposition report
- 3) The juvenile probation department name and number preparing the report
- 4) The victim's right to make an impact statement and what it may include
- 5) The right to receive portions of the predisposition report
- 6) The right to be present and heard at any predisposition or disposition proceeding
- 7) The right to file a restitution lien
- 8) The time, place and date of the disposition proceeding

Misdemeanor Cases

- 1) A conviction
- 2) The victim's right to make an impact statement and what it can include
- 3) The right to be present and heard at any pre-sentence or sentencing proceeding
- 4) The right to file a restitution lien
- 5) The time, place and date of the sentencing proceeding



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Most Common Errors:

- Prosecutorial agency notification letters were not capturing all rights associated with convictions; specifically the right to file a restitution lien if the court orders restitution
- Failure to notify the victim of associate rights related to misdemeanor conviction

Barriers to Compliance:

- In misdemeanor cases, several court proceedings may occur simultaneously (i.e. acceptance of plea and sentencing)

Remedies:

- Inform victim in the pretrial letter of rights associated with a misdemeanor conviction
- Ensure notification letters include all rights associated with the statute
- In the event there is a conviction and sentencing proceeding scheduled, a separate conviction letter outlining the five associated rights is warranted

Policies and Procedures

As of FY 2012, agencies that receive VRP funding are **required** to have policies and procedures. This is to provide guidance ensuring programs are carried out as statutorily mandated and in accordance with the VRP Funding Agreement. The agency policies and procedures are reviewed as part of the audit process.

The most common error found in reviewing agency policy and procedures, notification letters, and pamphlets provided to the victims is the agency's failure to make appropriate updates when a statutory change was made through legislation or case law.

Below is a list of additional common errors and omissions in policy and procedures, notification letters, and other information provided to the victim:

- Definition of criminal offense not updated – State v. Klein (2007) and amended definition in 2012 includes all misdemeanors, petty offenses, or violations of local criminal ordinances (Delinquent act was amended in 2013 legislative session.) [A.R.S. §§ 13-4401, 8-382, 8-381]
- Not including prosecutorial responsibility to notify the victim of an Initial Appearance in response to a writ of habeas corpus [A.R.S. § 13-4406]
- Not informing the prosecutor's office of the release of the accused (pre-conviction), of an escape, and subsequent re-arrest [A.R.S. § 13-4412]
- Not notifying the victim of the right to petition the court to revoke bond or to revoke release [A.R.S. §§ 13-4432 and 8-411]
- Rights associated with a conviction for felony, misdemeanor, and juvenile cases [A.R.S. §§ 13-4410 (A-C) and 8-391 (A-C)]
- Not informing the victim of the right to leave work to obtain an order of protection, injunction against harassment, or any other injunctive relief [A.R.S. §§ 13-4439]
- Not addressing all requirements with regard to issuance of execution of arrest warrants [A.R.S. §§ 13-4405.01 and 8-386.01]
- Not including timelines associated with notice of release, discharge or escape from a mental health treatment agency or residential treatment [A.R.S. § 8-397(A) (B)]

Barriers to Compliance:

- Staff time constraints
- Staff members are excessively familiar in serving victims, but not always aware of all statutory requirements

Remedies:

Regardless if you are an agency who receives VRP funding, the development of policies and procedures will guide decisions and direction, identify daily practices, and evidence compliance of victim services. Overall, procedure should include the following:

- Statutory requirements and associated timelines
- Daily practices
- The responsible party (by title) to carry out the provision of mandated services
- Attend the Basic Victims' Rights and Advanced Victims' Rights Training provided by the OVS on an annual basis to receive legislative updates and information on case law

To locate training near you, or to request a training, please visit our website at:

<https://www.azag.gov/victim-services/victims-rights-training>