

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. To learn more about victims' rights visit us at www.azag.gov.

Have an idea for an article in the Victims' Rights Brief? Contact Colette Chapman at 602-542-8848 or colette.chapman@azag.gov

2012 Legislative Updates

This issue of the Victims' Rights Brief is a summary of laws passed in the 2012 Arizona Legislative session affecting the criminal justice system and victims' rights. Unless otherwise specified, the effective date for implementation was August 2, 2012. Because the information below provides a brief synopsis and is not inclusive of all provisions of the statute, we encourage you to visit the Arizona State Legislature website at <http://www.azleg.gov> for a complete reading of the statute.

HB 2550 (victims' rights, criminal offense; interviews) Amended A.R.S. §§ 13-4401 and 8-412

The statute provides that a peace officer shall be considered a victim, even if the criminal act against him/her occurs while the officer is acting in the scope of the officer's official duties. As such, Arizona peace officers retain the same victims' rights as any other victim in Arizona, including the right to refuse an interview pursuant to A.R.S. § 13-4433. HB2550 removed the provision that exempted peace officers from receiving victims' rights while the peace officers were working in their official capacities. HB2550 amended both adult and juvenile victims' rights statutes.

HB 2550 also amended the definition of "criminal offense" to include all misdemeanors, petty offenses, or violations of local criminal ordinances.

Before HB 2550, the term criminal offense had the same meaning as a "delinquent act" in the juvenile victim rights statutes. In *State v. Klein*, 214 Ariz. 205, 150 P.3d 778 (App. 2007), the Arizona Court of Appeals held that the definition of "criminal offense" unconstitutionally limited the categories of victims protected by the Victims' Bill of Rights. Therefore, all victims of crime, including victims of crimes not involving physical injury, the threat of physical injury, or a sexual offense (the prior definition of "criminal offense"), must be afforded the same constitutional rights.

HB 2556 (criminal restitution order) Amended A.R.S. § 13-805

The statute permits the superior court to enter a criminal restitution order (restitution lien) at the time the defendant is ordered to pay restitution. If a criminal restitution order is not issued at the time the defendant is ordered to pay restitution and the defendant has completed his/her period of probation or the sentence, the court is required to issue the restitution order. The statute also requires the court to retain jurisdiction over the case for purposes of ordering, enforcing, and modifying restitution, including the manner in which restitution payments are made, until paid in full or until the defendant's sentence expires.

Effective April 1, 2013.

HB 2558 (victim restitution; civil actions)

Amended A.R.S. § 13-807

The statute states that a defendant who is convicted in a criminal proceeding is thereafter prohibited from denying the essential allegations of the criminal convictions in a subsequent civil proceeding. The statute further provides that a victim may bring a civil action for damages in excess of the amount of the restitution order actually paid by the defendant.

HB 2559 (victims' statement of rights; court)

Amended A.R.S. § 13-4438

The statute requires that the Victims' Rights Statement must be posted in each superior, justice of the peace, and municipal court and read out loud by the judge of the superior court at the daily commencement of the regular criminal docket.

SB 1369 (crime victim advocates; privileged communication)

Amended A.R.S. §§ 13-4401 and 8-382, A.R.S. §§ 13-4430 and 8-409

Senate Bill 1369 broadened the definition of "crime victim advocate" to any person, employed by a public or private entity, who provides counseling, treatment, or other supportive assistance to crime victims. SB 1369 removed the condition that the public or private entity providing victims' services must receive public funding as a prerequisite for the statute to apply.

In addition, the amended statute prevents a crime victim advocate from disclosing any communications made with a victim, including issues related to compensation and restitution. The victim advocate may disclose any communication with the victim to others only with the written consent of the victim, even if the conversation is made in the presence of others.

A.R.S. § 13-4430(F), however, permits victim advocates to provide information to other professionals and administrative support persons (i.e., prosecutors and court personnel) for the purpose of providing victim's rights, provided the victim advocate obtains the victim's written or verbal consent. The corollary juvenile statute, A.R.S. § 8-409(F), likewise states that the victim advocate who is employed or authorized by a prosecutor's office may disclose information to the prosecutor with the verbal consent of the victim.

A.R.S. § 13-4430 and 8-409 are clear that, unless the victim provides written consent, the crime victim advocate is *prohibited* from disclosing any communication made by or with the victim, including any communication made to or in the presence of others (third party). Thus, pursuant to sections (A) and (B), the conversations between advocates and victims remain protected, even if the conversation is made in the presence of, or heard by, others. The conversations are not privileged, however, if the communication contains exculpatory information, or the advocate is aware that the victim has given or will give perjured testimony.

Attorney General's Distinguished Service Award Recipients

April 22-28, 2012 was the National Crime Victims' Rights Week (NCVRW), sponsored by the Office for Victims of Crime (OVC). The theme for this year's event was, "*Extending the Vision: Reaching Every Victim.*" Attorney General Tom Horne presented the Attorney General's Distinguished Service Awards to honor individuals and organizations dedicated to serving victims of crime. This year's recipients of this prestigious award were:

- **Distinguished Service Award for Advocacy/Direct Service:** *Ms. Greta Mang*, Victim Advocate; and *Ms. Keli Luther*, Victims' Rights Attorney
- **Distinguished Service Award for Innovative Practices:** *Arizona Coalition Against Domestic Violence Legal Advocacy Hotline*
- **Distinguished Service Award for Public Policy:** *Jan Blaser-Upchurch*, Administrator, Office of Victim Services, Arizona Department of Corrections
- **Distinguished Service Award for Service Coordination:** *Victim/Witness Services for Coconino County*
- **Distinguished Service Award for Leadership:** *Beya Thayer*, Coordinator of the Coconino County Response Team to Domestic Violence and Sexual Assault