

OFFICE OF THE CITY ATTORNEY'S CITY OF NOGALES



Arizona Constitution, Article II Section 2.1

Victims' Bill of Rights

As the victim of a crime you have the right:

- To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
- To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
- To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
- To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
- 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.
- 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.
- To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
- To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
- To be heard at any proceeding when any post-conviction release from confinement is being considered.
- To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
- 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.
- To be informed of victims' constitutional rights.

STEPS IN THE CRIMINAL JUSTICE PROCESS

Your case will likely go through the stages of the criminal justice system described below. Each case is different, however, so if you have questions about a specific state, ask the prosecutor or your victim advocate.

Initial Appearance: Held within 24 hours of arrest. The judge may appoint a lawyer for the defendant if he/she cannot afford one and decide if the defendant will be released on bond or remain in custody pending trial. Most defendants are released and ordered to have no contact with the victim(s). Any contact by the defendant should be reported immediately to the detective, prosecutor or victim advocate. The victim need not appear at the initial appearance.

Arraignment: The defendant is informed of the formal charges and enters a plea, usually "not guilty". A pre-trial conference will be scheduled for approximately 30 days from the arraignment. A trial date will be set at the arraignment, usually 60-90 days from the arraignment. The victim need not appear at the arraignment.

Pre-Trial Hearing: The defendant and/or defendant's lawyer and the prosecutor meet to discuss the case and possible plea offers by the State. Neither the victim nor the defendant (if represented) need attend the pre-trial hearing.

Change of Plea: The defendant's lawyer and the prosecutor may reach a "plea agreement", whereby the defendant pleads guilty, usually in exchange for a lesser charge or a reduced sentence. If the victim has requested it, he/she will be consulted by the prosecutor before a plea agreement is entered into. The victim has a right to be present at the change of plea hearing, but is not required to attend.

Trial: The victim and other witnesses are subpoenaed (summoned) to testify. The judge & jury will decide whether there is enough evidence to prove the defendant guilty beyond a reasonable doubt. The defendant and the victim each have the right to be present.

Sentencing: If the defendant pleads guilty or is found guilty after a trial, the judge will schedule a sentencing within approximately 30 days. The victim has the right to make a victim impact statement to the judge describing how the crime affected them, how it continues to affect them, how they feel, and what they think the sentence should be.

Delays: At every stage of the process, there may be (and very often are) postponements, called continuances, for legal or other reasons.

ARIZONA REVISED STATUTES

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 section 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 section 13-4426.
7. The time, place and date of the sentencing proceeding.
8. If the court orders restitution, the right to:
 - (a) File a restitution lien pursuant to section 13-806.
 - (b) Request a copy of the defendant's restitution payment history from the clerk of the court pursuant to section 13-810 or 31-412.

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 section 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.

13-4432. 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; applicability

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. This section applies to the parent or legal guardian of a minor child who exercises victims' rights on behalf of the minor child. Notwithstanding subsection E of this section, the defendant, the defendant's attorney or an agent of the defendant may not interview a minor child who has agreed to an interview, even if the minor child's parent or legal guardian initiates contact with the defendant, the defendant's attorney or an agent of the defendant, unless the prosecutor is actually notified at least five days in advance and the minor is informed that the prosecutor may be present at the interview.

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:

1. Exercise the employee's right to be present at a proceeding pursuant to sections 13-4414, 13-4420, 13-4421, 13-4422, 13-4423, 13-4426, 13-4427 and 13-4436.
2. Obtain or attempt to obtain an order of protection, an injunction against harassment or any other injunctive relief to help ensure the health, safety or welfare of the victim or the victim's child.

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 section 13-4405, subsection A, the information the law enforcement agency provides to the employee pursuant to section 13-4405, subsection E, a court order the employee is subject to or any other proper documentation.
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 exercises the right to leave 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 the 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.