

# VICTIMS' RIGHTS BRIEF

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for Arizona's Justice System Administrators, Practitioners, and Advocates

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## Conferring with Victims about Pleas

Among several things that Arizona law requires prosecutors to confer with victims about are plea negotiations. But, just because victims possess this conferring right does not give them the right (literally) to "direct the prosecution" (also per statute). Not a problem -- victims' calling the shots has never been an issue with this very important right. What has been though, is the meaningful involvement of victims in the plea negotiation process.

*At what point do victims learn about a plea and does it matter? What or how much do they learn? How do prosecutors comply with this mandate to confer?*

This issue of the *Victims' Rights Brief*, raises these questions in the context of plea negotiations, settlement conferences, and plea agreements. The realities of the justice process in this regard are featured, victims' perspectives are highlighted, and "tips" are offered for increasing victim satisfaction and prosecutorial compliance with the spirit and letter of the law.

The statute, which requires prosecutors to confer with victims about plea or sentence negotiations, is as simple as it is broad. It sounds good, but without language on the purpose for conferring, when or how the conferring must occur, and what constitutes conferring (i.e., how much, or how little, the prosecutor tells victims) -- it's little wonder that the level and quality of victim involvement may be lacking.

### THE REALITIES

The realities, which those who work in the justice system know, but victims may not, are that:

- The vast majority of cases (more than 95%) are resolved through plea agreements.
- Reaching a plea agreement is a process of negotiation, a process which in many cases involves a series of offers and counter-offers.
- When the State and defense seem unable to reach an agreement, judges may urge the parties to try harder and will move to accept an agreement as quickly as possible, once one is reached.
- Prosecutors -- not obliged to confer with victims at any particular time, and concerned that informing of a plea offer before it is firm (i.e., accepted by defendant) will "do more harm than good" -- may avoid revealing information about pleas early in the process.

### Conferring-about-Pleas Tool Box

*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 ...plea or sentence negotiations..."*

--A.R.S. §§13-4419(A)/8-399(A)

*"...the victim has the right to be present and be heard at any proceeding in which a negotiated plea ...will be presented to the court."*

--A.R.S. §§13-4423(A)/8-403(A)

*"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...; 2) reasonable efforts are made to give the victim notice of the plea proceeding ... 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."*

--A.R.S. §§13-4423 (B)/8-403(B)

*"Before [settlement] discussions take place, the prosecutor shall afford the victim an opportunity to confer with the prosecutor concerning a non-trial ...resolution, if they have not already conferred, and shall inform the court and counsel of any statement of position by the victim. If the defendant is to be present at any such settlement discussions, the victim shall also be afforded the opportunity to be present and to state his or her position with respect to a non-trial or non-jury trial settlement."*

--Rule 17.4, AZ Rules of Criminal Procedure



The *Victims' Rights Brief* is published every other month by the Arizona Attorney General's Office of Victim Services, who remains wholly responsible for its content. The goal in distributing it is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system. Questions regarding content can be directed to Teena Olszewski at (602) 542-8502 or 1-800-458-4911. To learn more about victims' rights via the internet, visit us at [www.ag.state.az.us](http://www.ag.state.az.us)

→ When a defendant indicates a willingness to enter into an agreement, prosecutors are motivated to move quickly to get the proposal before the Court.

### VICTIMS' PERSPECTIVE

Victims are typically uninformed of these realities, and encounter a justice system that, from their perspective, can be foreign, confusing and unreceptive to victim involvement. Victims ask:

- When conferring is afforded *after* a plea offer is firm, and comes across as FYI only (for example, as presented in standard notification letters), what's the point of "conferring?"
- Without knowledge of the weaknesses of the case and the risks of going to trial (i.e., information that only the prosecutor can provide), why should victims -- indeed, how can victims, be expected to appreciate the plea or its terms?

### KEY PLAYERS

Prosecutors, victim advocates, settlement judges, and trial judges

are key to facilitating the victim's right to confer in the plea negotiation process, in a manner that is meaningful, effective, and respectful of the victim's role. (See statutes in box on reverse, identifying mandated duties of various parties in the justice system).

### TIPS

To ensure compliance and minimize victim confusion, dissatisfaction and complaints, *prosecutors and victim advocates* can do the following:

- **Be honest.** As in all areas of life, honesty is the best policy. Telling victims, up front, that the case will most likely be resolved with a plea agreement is helpful and respectful.
- **Be open.** Explaining charging decisions, weaknesses in evidence, and the truth about what is (and is not) being 'given up' by a proposed plea will go far in enlisting victims' support for pleas, and contribute to their sense of justice served. For example, if prosecutors explained Arizona's mandatory sentencing structure, victims could

readily understand how the end result of a trial or a probation-available plea, could be the same -- i.e., probation.

- **Be timely.** To embrace the realities of justice system processes, victims must be informed early in cases, about their right to confer, how to exercise it, and "forewarned" that pleas could be entered at any court proceeding.

The role that *judges* can play in ensuring compliance and increasing victim satisfaction with the courts, is especially key because, so obviously, their job serves as a "check" on the process:

- As required by statute and rule (see box on reverse), judges should not accept plea agreements or proceed with settlement discussions, unless prosecutors avow that victims have been given the opportunity to confer prior to the hearing, and been given notice of the change of plea or settlement proceeding.

The intent of victims' rights is to afford victims the opportunity to participate in the justice process. With attention paid in the ways suggested above, victims' meaningful involvement in plea negotiation processes can, too, become one of the realities of the justice system. ♦

HAVE AN IDEA FOR AN ARTICLE? GIVE THE VICTIMS' RIGHTS BRIEF A CALL! CONTACT BARBARA SOBY AT (602) 542-8456.

### VICTIMS' RIGHTS BRIEF

⊙ A 3-minute update.

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