

VICTIMS' RIGHTS BRIEF

For Arizona's Criminal and Juvenile Justice Administrators, Practitioners, and Advocates

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Victims' Views on "Prompt and Speedy"

"Why so many postponements in this trial?"

"I can't understand why there were so many continuances in this case..."

"I am disappointed with the length of time it took to convict these criminals..."

"...this case has gone on and on..."

"To let this case drag on forever (it seems) is unbelievable."

"The legal system is a joke. Constant postponements..."

"...too many re-schedulings..."

"It is apparent that judges do not view the defendant's criminal actions as serious, i.e., continuances, delays..."

"This case was mishandled by the judges...involved postponement after postponement...As far as we are concerned, the system is corrupt."

"We're not sure why the trial was postponed so many times..."

Statements from victim evaluations, 1999

It's a common complaint. One which most of us 'in the system' perceive there is little we can do about, and one that is made all the more disappointing by the fact that victims possess a constitutional right to the very *opposite* - the right to a speedy trial or disposition.

Indeed, the slow pace of the criminal justice process is one of the two greatest sources of dissatisfaction for crime victims when asked about their experiences (restitution wins the other major disapproval rating - a topic for another *Victims' Rights Brief*).

What is the impact of case continuances and delays on crime victims? How is the implementation of the victim's right to a speedy trial supposed to, at minimum, ameliorate the harsh realities and weaknesses of the system, and why isn't it working? What might it look like if it was working? These are the questions that this issue of the *Brief* addresses.

The Impact

We've all experienced the frustrations of everyday-life events like canceled appointments, re-scheduled meetings, and calendaring conflicts. We all know the anger and disappointment we feel when we rearrange our lives and juggle our home and work commitments to accommodate a repairman's schedule or to pick up our car from the mechanic at a pre-arranged time, only to have the repairman show up late, or to find the car is not ready.

Any one of these pale, though, in comparison to the frustrations that accompany the pre-trial experience of many crime victims.

Unlike the misgivings created by a missed appointment, the resolution of a criminal case is not a one-time, one-shot event. Victims instead endure prolonged, seemingly never-ending regular occurrences of having their time wasted and their pain rekindled.

Implementation Tools

The laws enacted, and the rules promulgated to implement victims' constitutional rights, impose certain requirements on justice professionals. They also empower us to take specific actions to ensure a speedy trial or case disposition. As justice professionals, we can view these rules and victims' rights laws as powerful tools for preventing

unnecessary continuances, decreasing the duration of delays in the justice process and, when delays are unavoidable, reducing the negative impact of them on the victim.


A.R.S. § 13-4435(A) and A.R.S. § 8-414(A) empower the court, prosecutor and law enforcement officials in any criminal/delinquency proceeding to take appropriate action to ensure a speedy trial/adjudication for the victim. In addition, A.R.S. § 13-4435(B) and A.R.S. § 8-414(B) require the court to consider the victim's views and the victim's right to a speedy trial/adjudication whenever a continuance is requested.

Rule 8.5(b) of the Arizona Rules of Criminal Procedure is another tool empowering courts to deny continuances of any trial dates unless "extraordinary circumstances exist" and a showing is made that the delay is "indispensable to the interests of justice."

We know that with the sheer volume of cases and the need to ensure the due process rights of the accused, the reality of the system is that continuances and delays cannot be entirely eliminated. Even so, much of the frustration experienced by victims related to not understanding the reason(s) for the delays and continuances can be reduced: If a continuance is granted, A.R.S. § 13-4435(B) and A.R.S. § 8-414(B) require the court to state on the record the reason for the continuance.

Finally, where special circumstances relating to the victim would warrant it, such as when a victim's health is failing, Rule 8.7(b) empowers courts to accelerate the trial to the earliest possible date that is consistent with the defendant's right to a fair trial.

In concert, these tools are designed to prevent unnecessary continuances, decrease the duration of delays, and when delay is unavoidable, ensure that victims are provided some understanding of the reasons why.



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 (520) 628-6454. To learn more about victims' rights via the internet, visit us at www.ag.state.az.us

The Problem

With all these tools available to ensure the right to a speedy trial, why isn't it working? As justice professionals, we may have felt there was little we could do about the problem. Considering the tools at our disposal to 'repair' it, we can each ask ourselves: Within our jurisdictions are victims' views being solicited? Are they being considered? Are circumstances so often "extraordinary" and delays so often "indispensable to the interests of justice" that continuances cannot be avoided, or are they being granted merely for everyone's (except the victim's) 'convenience?' Does the record reflect that continuances are granted simply "for good cause" or "in the interest of justice?" (What does this really tell the victim?) If we ask ourselves these questions, and don't like the answers, is it because they reveal our failure to make full use of the tools available to us and to comply with the laws and rules enacted to ensure the right to a speedy trial?

The Ideal

Let's look at a real life courtroom scene in which the implementation tools described above were employed to afford one victim her rights:

Sentencing is set in a case for 30 days following the Change of Plea. The victim is provided timely notice of the proceeding, of her right to attend and to make a victim impact statement, and to have input into, and receive a copy of, the pre-sentence report. Two days prior to the hearing, the victim advocate verifies with the prosecutor and the court that the sentencing is expected to proceed as scheduled, then arranges to accompany the victim who is looking forward to making a

Victim Impact Statement. At the hearing, the prosecutor announces his presence for the State and notes for the record that the victim is in the courtroom. The defendant's attorney announces his presence and requests a continuance to allow him more time to prepare. The prosecutor objects, arguing that the defense has had sufficient time to prepare. The judge then turns to the victim and asks her views about the continuance. With the support of the advocate, the victim explains how she rearranged her schedule to get the morning off work (unpaid) and rode the bus, involving two transfers, to attend that day. She explains that to do so again would be a hardship. She explains that she wanted not only to exercise her right to make an Impact Statement, but she also wanted to be present when the sentence is imposed. The judge then, having heard from all parties, denies the defense's request.

Recognizing that victims have a desire - and a right - to participate in the justice process, this judge utilized the authority granted to him under the law to guarantee the victim in this case the right to a speedy disposition.

In contrast, had the victim's views not been solicited and considered, and had the continuance been granted, this victim, like so many others who have lives to live, jobs to go to, and responsibilities to attend to, would have found it increasingly difficult to exercise her rights and to participate in the justice process in any meaningful way.

The true case example above shows how the participants in the justice system - judges, prosecutors, and victim advocates - can do all within their respective powers to ensure that the victims' right to a speedy disposition is taken into account when continuances are being considered.

Our example is not intended to imply that continuances will never be granted.

However, when continuances are requested, it is incumbent on the Court, with the assistance of the prosecutor and victim advocate, as needed, to consider the victim's view and to state on the record the specific reason for granting the continuance.

Striking a Balance

Commendably, efforts have been underway for some time to expedite case processing. Justice professionals must be careful that efforts to address one barrier to victims' participation in the justice process do not raise new ones. Thoughtful consideration and implementation are essential to the success of these efforts.

Current efforts to expedite the process include, *inter alia*, resolution of cases through 'upon demand' and pre-indictment-plea agreements. These efforts would seem to address victims' frustration over the slow pace of the justice system. However, as such proposals are considered in the courtroom, victims' rights should not be forgotten in the desire for a swift resolution. Assurances are still required that victims have been notified of the terms of the proposed plea, provided the opportunity to confer with the prosecutor, informed of the date, time and place of the proceeding at which the negotiated plea is being considered, and afforded the opportunity to be present and heard at the proceeding.

When the justice system precludes victim participation, by moving either too slowly or too quickly, victim dissatisfaction is guaranteed. Victim satisfaction will increase, however, when we ensure victims the right to participate by affording them the opportunity to do so. ♦

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