

VICTIMS' RIGHTS BRIEF

For Arizona's Criminal and Juvenile Justice Administrators, Practitioners, and Advocates
Published by the Arizona Attorney General's Office of Victim Services

A Victims' Rights Check-Up... Test Your Knowledge

Arizona's victims' rights legislation took effect on January 1, 1992 -- eight years ago last month. Like any relatively new law with such broad scope, consistency in application and overall compliance statewide is improving with time, as awareness and knowledge of the statutes grow and more agencies and courts establish, institutionalize, and refine their victim-service policies and procedures.

Chances are, if you are reading this newsletter, your agency is counting on you in some way to help ensure its compliance with victims' rights. If so, just how comfortable are you in your knowledge of the statutes? The scenarios that follow will challenge your knowledge of the law and perhaps change the way you do business. On the reverse side you will find responses to the question posed at the end of each scenario.

① The Town of Saguaro's Presiding Justice of the Peace, Tim Harmon, presides over all Initial Appearances (IAs) held for suspects arrested by local Sheriff's deputies and detained at the adjoining jail facility. Currently, IAs are conducted as the Judge's time permits (within 24 hours of booking, of course). Recently, Lt. Roger Russell, the sheriff's district commander for Saguaro, relayed concerns voiced by his patrol officers and investigators, that because of the sporadic nature of Saguaro's IAs, they are having difficulty meeting their statutory duty to inform victims of the date and time of them. *How should this problem be resolved?*

If you have questions about these scenarios or implementation of victims' rights laws in general, we encourage you to contact the Attorney General's Office of Victim Services.

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② Paula Parker, Arapahoe County's chief juvenile probation officer, is on call one night when Sgt. Joe Travis of the Sheriff's office calls to inform her that one of his officers has detained 15-year old Beth Iver. Though Iver's only offense was a curfew violation, Parker quickly recognizes the reason for the call and confirms Sgt. Travis' suspicions: Iver is on probation for a late-night assault committed against another teen three months earlier at the same park. Her late-night re-appearance at the park is a violation of the terms and conditions of her probation. *What, if any, victim notifications are due in this case?*

③ Assistant city prosecutor Carmen Ramirez is handling Desert City's Tuesday afternoon court docket before Judge Arthur Lance. The first order of business is presentation of a plea agreement for 39-year old defendant Harold Amos, who has agreed to plead guilty to a Threatening and Intimidating misdemeanor in exchange for dismissal of an assault charge. The

victim in the case, a 37-year old neighbor, is not present in court. At the prodding of Judge Lance, Ramirez finds that the victim invoked rights and was sent an initial contact packet by her office, but also finds no evidence that the victim was informed of the plea agreement or the date, time and place of the proceeding; nor has she (or anyone from her office) conferred with the victim about the plea. *What should happen?*

④ Firebird City patrol officers Michelle Jones and James Myron respond to a domestic violence call at the home of John and Kelly Nichols. After gaining control of the situation, the officers conduct separate interviews. John, who stands 6' 2" and weighs 230 pounds, calmly shows the officers scratch marks on his arms and claims that Kelly instigated the fight by threatening to kill him. A visibly shaken Kelly, who is much smaller than John, admits to the verbal abuse, but the officers can't help but notice her more serious injuries (black eye, bloodied face and bruises) and her destroyed glasses. Also, Officer Myron confirms Kelly's statement that John is on probation for a domestic violence/assault conviction. As the officers wrap up their interviews, John begins loudly insisting on the arrest of Kelly for the verbal threat on his life and the injuries he suffered. The officers, however, ultimately decide that John is the primary aggressor in the case and, accordingly, arrest him. *How are victims' rights applicable in this case?*

AG Begins Compliance Auditing

Attorney General Grant Woods recently announced the hiring of former Arizona Senator Patti Noland as Victims' Rights Compliance Auditor for his office and the State. Each recipient of monies under the Victims' Rights Implementation Assistance (VRIA) Program is scheduled to be audited in current calendar year. The scope of agency auditing includes both VRIA expenditures and compliance with victims' rights laws.

Agencies will be notified five weeks prior to their scheduled audit, and will be asked to complete a "Pre-Audit Packet" as part of the audit notification process.

Victims' Rights Check-Up: Answer Key

❶ Judge Harmon should adhere to *Arizona Rules of Criminal Procedure* (Rule 4.1d), which requires each presiding judge to "assure that a magistrate is available every day of the week to hold initial appearances" and to "assure that at least one fixed time is set each day for conducting initial appearances and that local law enforcement agencies have been notified of the fixed time(s)..."

❷ If the teen that was assaulted by Iver (i.e. his/her lawful representative) has requested post-adjudication notification, that victim has the right to be informed, by the court, of the probation arrest (A.R.S. § 8-290.06(C)), as well as the subsequent release of the juvenile from custody (A.R.S. § 8-290.03(A)) and the terms and conditions of that release (A.R.S. § 8-287). As soon as possible, Parker must determine if a Post-Adjudication Notification Request (PANR) form is on file in this case and provide the required notifications.

❸ A.R.S. § 13-4423(B) prohibits the court from accepting a plea agreement, unless the prosecuting attorney advises the court of the victim's views, if known, regarding the plea, and that reasonable efforts were made to (1) inform the victim of the date, time and place of the plea proceeding; (2) inform the victim of the right to be present and heard at the plea proceeding; and (3) confer with the victim regarding the negotiated plea. Therefore, in this case, Judge Lance may refuse to accept the plea until the Desert City Prosecutor complies with these requirements.

❹ Officers Jones and Myron were guided in their arrest of John Nichols by the county Family Violence Protocol. In this case, which appears to be a "mutual combat situation," there is sufficient evidence to conclude that John Nichols is the **primary aggressor** and therefore, the one who should be arrested. Consequently, Kelly Nichols is a victim in this case, entitled to her rights under the law because the police have probable cause to believe that a felony or misdemeanor involving physical injury occurred. Even though John Nichols incurred physical injury (and a verbal threat against his life), John cannot "mutually" be a victim because, per A.R.S. § 13-4401, victims' rights do not apply to the accused.

HAVE AN IDEA FOR AN ARTICLE? GIVE THE VICTIMS' RIGHTS BRIEF A CALL! CONTACT STEPHEN HART AT (602) 542-8463.

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⊙ A 3-minute update.

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✂ _____
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