

VICTIMS' RIGHTS BRIEF

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

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Victims' Rights and the Appeals Process How Does It Work?

THE CASE IS OVER. The prosecution was a success and as the advocate for the victims, you prepared them for trial and then helped them through it, especially the tough spots. Do you wonder what will happen next, now that conviction and sentencing are complete -- will there be someone who notifies and prepares the victims if the defendant **appeals**, and then someone to help them through that process, especially the difficult times to come? That 'someone,' might well be you or another advocate in your office, or an advocate in the Attorney General's Office. It depends on many factors. Let's see how this works.*



In Arizona, every person convicted of a felony has the right to appeal. Defendants sentenced to death automatically have an appeal filed on their behalf.



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 Stephen Hart at (602) 542-8463 or 1-800-458-4911. To learn more about victims' rights via the internet, visit us at www.ag.state.az.us

VICTIMS' RIGHTS THAT APPLY DURING THE APPEALS PROCESS:

- ★ The right to receive a form, within 15 days of sentencing, that facilitates postconviction notice from the appropriate justice agencies.
A.R.S. § 13-4411(A)(B)(C)
- ★ Notification of appellate proceedings and any decisions that arise out of those proceedings.
A.R.S. § 13-4411(D)
- ★ The right to be present throughout all criminal proceedings in which the defendant has the right to be present.
A.R.S. § 13-4421

Likewise, victims of crime who have requested post-conviction notice are entitled to be advised of case status while it is on appeal and of the outcome of the appeal.

The right to receipt of a post-conviction notification request (PCNR) form and subsequent notice exists, regardless of whether convictions are on misdemeanor charges, felony charges or a combination.

Prosecutor-based victim advocates probably already know that their offices complete the upper portion of the PCNR form and enclose it with sentencing notifications to victims.

Individuals completing the upper portion of this form must fill it out as legibly, accurately and completely as possible -- other entities are depending on this information to help them do their job.

Appeals may come through one or more avenues -- direct, postconviction relief (PCR) and habeas corpus -- and, depending on which avenue(s) -- will be handled (defended) by either the original prosecuting agency, the Attorney General's office, or both.

This is particularly important to prosecutor-based victim advocates, because victims have rights during the appeals process that prosecuting agencies are obliged to provide, in cases where victims return the PCNR form.

Defendants whose convictions are the result of plea agreements are precluded, by law, from filing direct appeals. They may, however, file PCR petitions, seeking relief from their conviction and/or sentence on very specific grounds as spelled out in Arizona's Rules of Criminal Procedure.

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*For purposes of reader-ease and space limitations, this highlight on victims' rights during appeals assumes a *criminal* justice system perspective with a *felony-offense* focus. Readers should remain mindful of a concomitant application of victims' rights and appeals to *misdemeanor* and *juvenile* justice processes.

PCR's are handled by the original prosecuting agency and court.

This is particularly important to prosecutor-based victim advocates, because the vast majority of convictions, of course, are a result of plea agreements, and the PCR is thus a common avenue of appeal for defendants, one which keeps the case at home, in a manner of speaking.

Almost all appeals filed by defendants in Arizona who are convicted of a felony after a jury trial are handled by an Assistant Attorney General in Arizona's appellate courts. In capital cases, such appeals are automatic and often involve federal jurisdictions as well. Naturally, this creates an extremely large appeals caseload for the AG's Office -- the number of new appeals cases opened, last year alone, was 1,833.

This is particularly important to county attorney-based victim advocates, because it means that the victims you've assisted through trial and have come to know well will be assigned an advocate in the AG's Office of Victim Services (provided that

they request notice by mailing-in the PCNR form-copy).

The appeals process differs from the trial process in many significant ways:

- ◆ The majority of the arguments presented are made in writing rather than in open court;
- ◆ A panel of judges, rather than a judge and jury, consider and decide the case;
- ◆ The issues relate to the defendant's rights during the prosecution of the case, rather than the crime and what happened to the victim;
- ◆ Few, if any, hearings are scheduled

The Court hearing an appeal will issue a written decision regarding the case any time from a month to a year or more later, depending on the complexity of the issues. The court may affirm, modify, remand and/or reverse the outcome of the lower court.



Advocacy for crime victims in appeals cases is vital to promoting justice and healing, and that is why it continues throughout the entire process. The process is lengthy and often confusing. It is fraught with "legalese" and legal maneuvering. Therefore, advocates in the Attorney General's Office take every opportunity to provide continued support and services to crime victims, including notification of all appellate proceedings, provision of copies of appellate briefs, accompaniment to court proceedings, and accompaniment to executions. Based on feedback we have received from crime victims and family members, continued service at the appellate level has a powerful impact on them.

SEEKING MORE INFORMATION ON THE APPEALS PROCESS? CONTACT THE OFFICE OF VICTIM SERVICES TO REQUEST A BROCHURE ON ARIZONA'S APPELLATE PROCESS AND PROCEDURES.

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

VICTIMS' RIGHTS BRIEF
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