



# Victims' Rights Brief

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

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## Victims' Right to Confer

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Conferring with a prosecutor is one of the most impactful ways to include a victim in the case. Many victims want the prosecutor to hear what they have to say. Taking the time to speak to the victim, while managing the victim's expectations, is well worth the effort.

This edition of the Victims' Rights Brief delves into the victims' right to confer with the prosecutor. Here we will examine what the law requires and offer best practices for specific issues that have come up in the Attorney General's Office of Victim Services Compliance Program. Our intent is to ensure consistent practices throughout Arizona's prosecuting agencies that meet the requirements of the law.

To begin with, let's observe a tension between the AZ Constitution, art. II, § 2.1(A)(6), Victim' Bill of Rights (VBR), and A.R.S. § 13-4419. When these two are read together, it creates difficulty, in that, the VBR does not specify that the right to confer with the prosecution is "upon request" as does A.R.S. § 13-4419.

What does this mean for prosecuting agencies? In short, because the VBR prevails, the victim does not have to opt-in for victims' rights in order to exercise their right to confer. This is not to say that prosecuting agencies have to use every tool available to them and exhaustively search for victims if they haven't received victim information pursuant to A.R.S. § 13-4405. However, the agency must make reasonable efforts to confer with a victim.

Another important fact to remember is that conferring with the victim has to occur *prior* to the disposition whether it is for a declination, dismissal, plea or sentence negotiations, or offering a pretrial diversion program.

*"The right to confer allows a victim both to gather and provide information about the crime to the prosecutor. The right to confer is not a right to control the prosecution, but it does require the prosecutor to hear the victim's concerns. The right to confer is protected by federal statute and in a number of states, by constitution and statute."*

*-Primer on the Right to Confer  
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If you have questions, suggestions, or an idea for an article, please contact  
Colette Chapman  
at (602) 542-8848  
or by email at  
[Colette.Chapman@azag.gov](mailto:Colette.Chapman@azag.gov)



**\*True or False?**  
The prosecuting agency's decision to decline a case is never truly final until the statute of limitations has run out. Therefore, a prosecutor can confer with the victim at any time before the statute of limitations expires and still be in compliance.

\*True or False Answers on Page 4.

## Declination and Dismissal

### Declination

The victims' rights requirement for conferring with a victim prior to a declination is detailed in A.R.S. § 13-4408(B). The prosecutor is required to notify the victim before the decision not to proceed is final, provide a reason for declination and offer the victim an opportunity to confer.

### Dismissal

For a dismissal, the victims' rights requirement is to provide an opportunity to confer prior to the dismissal. However, a common error made by prosecuting agencies is dismissing cases unbeknownst to the victim. Several victims report learning on his/her own, through Public Access, that the case has been dismissed. Despite the reason for the dismissal, even if the dismissal is inevitable, the prosecuting agency is required to offer an opportunity to confer. Once the court has granted a dismissal, the agency has 15 days to inform the victim of the dismissal. [A.R.S. § 13-4410(A)]

"It is critical that the conferral right remain meaningful throughout the trial. Significant research shows that the experiences of victims in the criminal justice system are shaped by the extent to which they feel heard and may have a direct impact on their willingness to participate at trial."

-Primer on the Right to Confer

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Some agencies have a specific letter for a dismissal that resembles a declination letter. Providing the victim a letter or email notifying of the intent to dismiss and offering an opportunity to confer, will decrease the likelihood that cases are dismissed without the victims' knowledge.

### ***\*True or False?***

A declination and a dismissal are the same thing and the terms can be used interchangeably.

\*True or False Answers on Page 4.

## Change of Plea and Diversion

Many victims are deflated when they find out that a plea has already been offered to the defendant and signed by all parties before they are even informed about the plea. *"What's the point? What difference does it make? They've already made their decision."* These are often comments made by a victim, even if the victim is informed that the change in plea proceeding has yet to occur and the plea has not been accepted. We know that a plea can be pulled and changed prior to the acceptance of the plea, but really, how common is that? It is best practice to make a good faith effort to include the victim in plea discussions prior to the offering of a plea. Additionally, if the case is set for Early Disposition Court, it's all the more important to include the victim as early as possible.

### ***\*True or False?***

It is okay to offer a plea to a defendant and have it signed before informing the victim that a plea will be offered.

\*True or False Answers on Page 4.

## Avowing to the Court

When the courts ask whether victims' rights have been complied with at a change of plea proceeding, the prosecutor is avowing to the courts that, "...before requesting the negotiated plea reasonable efforts were made to confer with the victim pursuant to section 13-4419." [A.R.S. 13-4423(B)(1)]

Please note! Prosecutors are required to confer with victims *prior* to signing a pre-trial diversion agreement as the successful completion of said agreement is a dismissal.

## Conclusion

Conferring provides an opportunity to build rapport, inform and educate the victim about the criminal justice system and to get his/her views and opinions about the case. At times, it means having difficult conversations and requires an honest and compassionate understanding of the victim, who is in a position not of their own volition.

## OVS Outreach and Education



### Additional Webinar FY22 Dates Available

The OVS Outreach Team presentations (including the VOCA required Basic and Advanced Victims' Rights) are offered as webinars through BigMarker.com. Participants must have video capabilities to receive attendance credit. The webinars are highly interactive and maintain the quality presentations you have all come to expect from OVS. For more details, including current webinar dates and registration, please visit:

<https://www.azag.gov/criminal/victim-services/training>

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COJET Certified

### VOCA Requirements

- ➔ All governmental and nonprofit sub-recipient VOCA and match staff, along with their first line supervisor(s), must attend the BASIC training at least once every five years.
- ➔ All governmental sub-recipient VOCA and match staff, along with their first line supervisor(s), must attend the ADVANCED class each year. Advanced training is optional for nonprofit sub-recipients.

### 2022 National Crime Victims' Rights Week



2022 National Crime Victims' Rights Week will be commemorated April 24<sup>th</sup>-30<sup>th</sup>, 2022. This year's theme is *Rights, Access, and Equity for All Victims*. This week is a time when communities across the Nation honor victims and the professionals who support them. For more information, please visit:

[The Department of Justice's Office for Victims of Crime's website](https://www.dhs.gov/department-of-justice-office-for-victims-of-crime)

\*For True or False question answer key, go to page 4.

The Arizona Attorney General's Office is dedicated to a system of justice that is inclusive of crime victims and will remain vigilant in striving to provide the most efficient and effective service to the people of Arizona. The services provided to crime victims and the technical assistance and support provided to criminal justice agencies and other service providers is the responsibility of the Office of Victim Services.



Phoenix: 602-542-4911  
Fax: 602-542-8453  
2005 N. Central Avenue  
Phoenix, AZ, 85004

Tucson: 520-628-6459  
Fax: 520-628-6566  
400 W Congress, S-315,  
Tucson, AZ, 85701



### **\*True or False Answer Key:**

**True or False?: The prosecuting agency's decision to decline a case is never truly final until the statute of limitations has run out. Therefore, a prosecutor can confer with the victim at any time before the statute of limitations expires and still be in compliance.**

**False** - Although a popular view on declinations, the answer is false. Declinations are based on the information the prosecuting agency has reviewed "after the final submission of a case by a law enforcement agency, at the end of an investigation." [A.R.S. § 13-4408(B)] If this has occurred and the decision is to decline the case, then the decision is final *based off the information reviewed*. If new information is received, of course law enforcement and prosecuting agency may reopen the case, review information, confer with the victim and make a decision on whether or not to charge based on the new information.

**True or False?: It is okay to offer a plea to a defendant and have it signed before informing the victim that a plea will be offered.**

**True** – Although not at all optimal, the law requires that the victim has the opportunity to confer prior to a disposition; meaning, if the change of plea hasn't occurred and been accepted by the courts, the prosecuting agency has not violated victims' rights. In circumstances where the defendant has been offered a plea prior to the victims' knowledge, it is best practice for the prosecuting attorney to inform defense counsel that the plea is pending compliance with victims' rights.

**True or False?: A declination and a dismissal are the same thing and the terms can be used interchangeably.**

**False** – Although the outcome is the same with a dismissal and declination, in that the case will not be moving forward, there are differences. First, a dismissal indicates that charges have already been filed. A declination means that after reviewing the case, charges will not be filed. Remember, providing an opportunity to confer prior to a dismissal or a declination is required by law.

