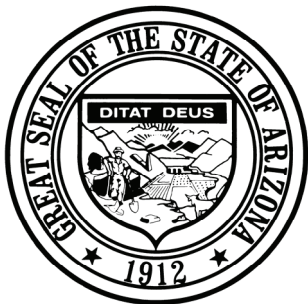


VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners and Advocates

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The following article is being reprinted from the Dec 2002/Jan 2003 (Vol V11, #3) Victims' Rights Brief



The Victims' Rights Brief is published by the Arizona Attorney General's Office of Victim Services, which remains wholly responsible for its content. The goal in generating the Brief is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system. To learn more about victims' rights visit us at www.azag.gov.

VICTIMS' RIGHTS IN MUTUAL COMBAT/DUAL ARREST SITUATIONS

A victim is "a person against whom the criminal offense has been committed, or if the person is killed or incapacitated, the person's immediate family or other lawful representative, except if the person is in custody for an offense or is the accused." A.R.S. § 13-4401(19).

While the statutory definition of victim may seem clear, ten years of experience with the implementation of victims' rights in Arizona has shown quite the opposite. Confusion and differing interpretations exist regarding the applicability of victims' rights, particularly in dual arrest or mutual combat situations.

Differing opinions about the applicability of victims' rights in dual arrest/mutual combat situations have been expressed by attorneys from different agencies, and even among attorneys from the same agency.

It is par for the course that when two attorneys are involved in expressing their opinions, there is likely to

be dispute. The mutual combat issue is no exception. In this issue of the *Victims' Rights Brief*, we present an analysis by (previous) OVS Director, Assistant Attorney General Laura Reckart, and her interpretation of the applicability of victims' rights in these situations. Whether this interpretation is correct will remain unresolved until the appellate courts issue an opinion on this matter. All are therefore urged to confer with the legal advisor (city attorney, county counsel, assistant A.G., etc) for their respective agencies to perform their own legal analysis and to develop and implement policy and procedures for these situations.

The Mutual Combat Situation

Assume a peace officer responds to a call concerning a fight between A and B. The rights of A and B, have, and the officer's duties to A and B, will depend upon the officer's charging decisions made at the scene. In this situation, the responding officer can:

1. Cite or arrest *only one*

of the combatants;

2. Determine there is *insufficient information to arrest or cite either* combatant; or
3. Cite or arrest *both* parties.

There is little disagreement regarding the applicability of victims' rights in Scenarios 1 and 2. Differences in opinion arise frequently, however, in Scenario 3.

Scenario 1

If the officer cites or arrests *only one* of the combatants (eg: "A" is cited as the primary aggressor), and the other person (eg: "B") is not cited or arrested, then "B" qualifies for victim status.

Scenario 2

If the officer determines that he/she has insufficient information to arrest or cite either combatant, then neither party is a victim. This is because victim status is triggered by the existence of a criminal offense, which (as a result of *State vs. Klein*) is defined as "*conduct which gives a peace officer or prosecutor probable cause*

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MUTUAL COMBAT/DUAL ARREST CONT.

misdemeanor has occurred." If the officer does not believe he/she has probable cause, then, by definition there is no criminal offense and, thus, no victim.

Scenario 3

If the officer determines both persons are to be arrested and/or cited, then which person, if any, is a victim? The answer is dependent on a variety of circumstances.

Is the Victim in Custody for "An Offense"?

If one or both of the individuals is taken into custody (i.e. incarcerated) and he/she remains in custody, then that person is not entitled to victims' rights. That is because "the only victims excluded from the protection of the Victims' Bill of Rights (VBR) are those 'in custody for an offense'..." See *Knapp v. Martone*, 170 Ariz. 237, 239, 823, P.2d 685, 687 (1992). By law, a person is not entitled to Victims' Rights protection if they are in custody for **any** offense—not just the mutual combat offense. For example, an officer is called out to a mutual combat situation involving Subject C and Subject D. C is arrested and taken into custody, while D is cited and released. When the officer books C into jail, it is learned that C has outstanding warrants and charges. C remains in jail solely because of the prior and unrelated outstanding warrants and charges. Subsequent to the prosecutor's review, D is charged with assault on C and the charges against C for assaulting D are declined. C is now the victim of the crime committed by D. However, because C is in custody, C is not entitled to victims' rights even though C is in custody for crimes not

related to the mutual combat incident. See e.g., *Stapleford v. Houghton*, 185 Ariz. 560, 917, P.2d 703 (App. 1991). Of course, if C is released from custody while the charges against D are still pending, the C will, thereafter, be entitled to rights as a victim.

If Both Persons are Charged but Neither is in Custody. Are Either, Neither, or Both Entitled to VBR Protection?

If Subjects A and B are both charged for committing offenses against the other and they are not in custody for an or any offense, our analysis leads us to conclude that both parties are entitled to victims' rights. This opinion is first based on the words "an" and "the" as used in the Constitution's definition of "victim." As explained above, a person is not entitled to victims' rights if that person is in custody for "an" (or any) offense and it is irrelevant that the person is in custody for an offense that is entirely unrelated to the mutual combat situation. If the person is in custody, s/he is not a "victim." Our Constitution, however, also precludes a person from being classified as a "victim" if that person is "the accused." The operative term is "the." Unlike those situations with persons in custody for "an offense," the Constitution specifically states that a person is not a victim if that person is "the accused." The most common real-life situation where "the accused" cannot be a victim (or victim's representative) is when a parent is accused of committing an offense against his/her own child. However, if another individual is charged with committing a different crime upon C's child while C's abused charges are still pending, assuming C is not in custody, C can assert the child's rights as a victim because C is not "the accused" in that second case. (Another ex-

ample would be spousal murders). See e.g. *Knapp v. Martone*, 170 Ariz. 237, 239, 823 P.2d 685, 687 (1992).

A Final, Clarifying Example

Single Mom and her 16 year old son get into a fight. The police are called. Mom is subsequently charged in municipal court with assault against son and son is charged in juvenile court with assault against Mom. Neither are in custody for an offense.

Is Mom entitled to victims' rights in the case against son in juvenile court?

→ **Yes.** She is not "the accused" in this case.

Is the son entitled to rights as a victim in the case where Mom is charged in municipal court?

→ **Yes.** He is not "the accused" in that case.

Can Mom, as son's legal guardian, assert her son's rights as a victim in the municipal court case that is filed against her?

→ **No.** She is "the accused" in that case. Son will assert his own rights, designate someone to assert his right for him or have a lawful representative appointed for him.

The Short Answer

In mutual combat cases, where both parties are cited for an offense against the other, and neither party is in custody, both parties are entitled to the protections granted to them under the VBR. ♦

Have an idea for an article? Give the Victims' Rights Brief a call! Contact Kirstin Flores at 602-542-8451