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# PRESERVING VICTIM RIGHTS IN CAPITAL LITIGATION



RANDALL UDELMAN, VICTIM RIGHTS ATTORNEY  
ARIZONA CRIME VICTIM RIGHTS LAW GROUP

DIFFERENCES IN VICTIM RIGHTS WHEN PUNISHMENT  
INVOLVES THE DEATH PENALTY

A VICTIM RIGHTS ATTORNEY PERSPECTIVE

# WHAT IS A CAPITAL CRIME?



- ▶ First-degree murder.
- ▶ Defendant at least age 18 at the time of the offense.
- ▶ Aggravating circumstances (especially cruel or heinous or other factors).
- ▶ Three-part trial: guilt, aggravation, and penalty (with a jury trial right for each phase).

# WHAT ARE VICTIM RIGHTS AND WHEN DO THEY ATTACH?



- What are victim rights?
  - Victim Bill of Rights, Ariz. Const. Art. 2, §2.1(A)(1)-(12).
  - Crime Victim Rights Act (CVRA) 18 U.S.C. §3771(a)(1)-(8).
- When do they attach?
  - After a defendant has been formally charged (A.R.S. §13-4402[A]).

# VICTIM RIGHTS IN NON-CAPITAL CASES



- Differences in discovery in cases that do not involve the death penalty (victim interviews and medical record subpoenas).
- Sentencing differences after guilt and aggravation phase of trial:
  - A judge, rather than a jury, imposes the sentence.
  - Victims' opinions on the sentence are considered.
  - Victims may present evidence, information, and opinions on the sentencing (A.R.S. §13-4426).
  - Victims can rely on written statements, videos, and photographs.
  - Victims' statements are not subject to disclosure and victims are not subject to cross-examination (A.R.S. §13-4426.01).
  - The state and defense have an opportunity to explain, support, or deny a victim's statement (A.R.S. §13-4426.01).

# VICTIM RIGHTS IN CAPITAL CASES



- Differences in trial:
  - Three phases all typically involve a jury.
  - Guilt, aggravation/mitigation, and penalty.
- Discovery involving efforts to secure victim information is analyzed differently (pending litigation on interview requests).
- Impact statements at sentencing:
  - Impact statements may rebut mitigation evidence during the aggravation phase.
  - Impact statements are relevant to the penalty phase.
  - Victims cannot make recommendations about the sentence.
- Be careful not to push the limits.
- If victim impact evidence is unduly prejudicial, the trial will be considered fundamentally unfair.

# CAN A VICTIM REQUEST DISCOVERY?

## ARGUMENTS FOR EXPERT DISCLOSURE TO VICTIMS



- Defense mitigation expert witness reports.
- Advocate for production arguing.
  - Crime victims have a right to justice and due process (Arizona Const. Art. 2, §2.1[A]).
  - The process that is due in Arizona includes the right to “confer with the prosecution . . . before trial” (Ariz. Const. Art. 2, §2.1[A][6]).
  - How can crime victims know what questions to ask prosecutors, what they may see at trial, and what steps they should take to further their rights without knowing what expert mitigation reports say?
  - Urge disclosure or else victim rights become illusory.

# VICTIM RIGHTS ATTORNEY SUGGESTIONS



Representing crime victims as counsel of record throughout prosecution and post-conviction.

- Rights attach on indictment.
- If the death penalty might apply, meet with prosecutors as soon as possible to discuss the following:
  - Length of time to impose the sentence.
  - Procedural differences (guilt, aggravation, and penalty trial phases).
  - Post-judgment direct appeals and collateral appeals.
  - Victim views on capital punishment.
  - Differences in allocution at sentencing; impact statements from survivors about deceased characteristics and impact on victim's family but NOT on recommended sentence. (ARIZ. R. CRIM P. 19.1[e][3]; see *also* A.R.S. §13-752[R]; *Lynn v. Reinstein*, 205 Ariz. 186, 191, 68 P.3d 412, 418 [2003]) (victim recommendations about sentencing “are not constitutionally relevant” in death penalty cases).
  - Restitution for economic loss (pre-conviction restitution liens, property release orders, and exoneration of bond and other tools).



# ABOUT US



- Arizona Crime Victim Rights Law Group, (480) 946-0832
- [www.azvictimrights.org](http://www.azvictimrights.org)
- Randall Udelman, Program Attorney
- [info@azvictimrights.org](mailto:info@azvictimrights.org)
- Our mission is to help crime victims navigate through all facets of the criminal justice system at both state and federal levels appearing as attorney of record to exercise victims' constitutional and statutory protected rights. We seek enforcement of victim rights as counsel of record throughout the prosecution process and after conviction. Our goal is to provide victims with an understanding of their rights in a respectful and dignified manner.