

**Appendix B: Explanation of the proposed Criminal Rule amendments**

**Criminal Rules with proposed section (v) amendments**

<b>Rule #</b>	<b>Rule Title</b>	<b>Rule #</b>	<b>Rule Title</b>
1.4	Definitions	1.5	Interactive audiovisual systems
1.7	Filing and service of documents	1.8	Clerk's distribution of minute entries and other documents
1.9	Motions, oral argument, and proposed orders	1.10	Computation of time
4.1	Procedure upon arrest	4.2	Initial appearance
5.1	Right to preliminary hearing; waiver; continuance	5.4	Determining probable cause
5.8	Notice if an arraignment is not held	6.3	Duties of counsel; withdrawal
7.2	Right to release	7.3	Conditions of release
7.4	Procedure	7.5	Review of conditions; revocation of release
8.1	Priorities in scheduling criminal cases	8.5	Continuing a trial date
9.3	Exclusion of witnesses and spectators	14.4	Proceedings at arraignment
15.1	The state's disclosures	15.3	Depositions
16.4	Dismissal of prosecution	17.1	The defendant's plea
17.4	Plea negotiations and agreements	17.7	Submitting a case on the record
19.1	Conduct of trial	24.3	Modification of sentence
26.6	Court disclosure of reports before sentencing	26.7	Presentencing hearing; prehearing conference
26.10	Pronouncement of judgment and sentence	27.2	Intercounty transfers
27.3	Modification of conditions or regulations	27.4	Early termination of probation
27.7	Initial appearance after arrest	27.8	Probation revocation
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**Rule 1.3 (“victim participation”).** Proposed Rule 1.3 is an entirely new rule and replaces current Rule 1.3 (“computation of time”), which has been relocated as a new Rule 1.10. Rule 1.3 does not include a section (v). Rule 1.3 is significant, however, because it introduces at the beginning of the Criminal Rules the role of victims in the criminal justice process, thereby fulfilling petition number R-20-0031’s request to have a rule on victims’ rights in a “more prominent place.” (See R-20-0031 at pages 8, 12, and 15.) New Rule 1.3 provides:

Although a victim is not a party in a criminal proceeding, a victim has a right to participate in the proceeding pursuant to the rights provided by law, including rights detailed in Rule 39 and in section (v) provisions (‘victims’ rights’) of these rules.

This single sentence new rule, with cross-references to Rule 39 and the section (v) provisions in other rules, serves as a road sign that guides readers to those other pertinent provisions. A comment to the 2023 Amendment to this rule elaborates on the purpose of Rule 1.3 and contains basic information for victims on how to “opt in” for victims’ rights that are available “on request.”

**Rule 1.4 (“definitions”).** The definition of “victim” in current Rule 1.4(h) simply refers to “a person as defined in A.R.S. § 13-4401,” which requires readers to consult the statute. By comparison, proposed Rule 1.4(v) paraphrases the statutory definition, thereby eliminating that extra step. Rule 1.4(v) provides:

‘Victim’ means a person or entity against whom the criminal offense has been committed or a representative who is designated or appointed to act on their behalf. If the person against whom the offense was committed was killed or incapacitated, ‘victim’ includes the person’s spouse, parent, child, grandparent, or sibling, or another individual specified in A.R.S. § 13-4401, unless that person is in custody or is the accused.

**Rule 1.5 (“Interactive Audiovisual System”).** New section (v) has two subparts. Subpart (v)(1), which concerns a victims’ right to view and participate in a proceeding conducted under Rule 1.5, is derived from current subpart (b)(3)(B); the current subpart would be deleted. Subpart (v)(2) is new; it requires that the

victim be provided notice, if requested, of a new court date in the event the audiovisual hearing is continued.

***Rule 1.7 (“Filing and Service of Documents”).*** New section (v) provides:

When the victim is represented by an attorney, the certificate of service required by subpart (c)(3) must show that a copy of the filed document was provided to the victim’s attorney.

An analogous provision is contained in Rule 39(d)(4), but it is more prominent -- and more sensibly located -- in Rule 1.7, which governs service of documents on the parties’ attorneys.

***Rule 1.8 (“Clerk’s Distribution of Minute Entries and Other Documents”).*** Current Rule 1.8 requires the clerk to distribute documents to parties, but a victim is not a party and the current rule does not mention victim’s counsel. A new section (v) would clarify that victim’s counsel also has a right to receive the clerk’s minute entries and other document distributions. Section (v) would require the clerk to “include every victim’s attorney who has filed a notice of appearance under Rule 6.3(v)(2) in the clerk’s distributions of minute entries and other documents.”

***Rule 1.9 (“Motions, Oral Argument, and Proposed Orders”).*** New Rule 1.9(v) describes a victim’s right to file motions to enforce victims’ rights, and to file a petition for special action “seeking relief from an order affecting any victim’s right guaranteed by law.” The provisions of section (v) are more detailed and informative than any corresponding provision in Rule 39.

***Rule 1.10 (“Computation of Time”).*** Rule 1.10 is a newly numbered rule. It contains the relocated substance of current Rule 1.3. Rule 1.10 also includes a section (v) that simply provides, “The time computation provisions of section (a) [‘general computation of time’] also apply to victims.”

***Rule 4.1 (“Procedure Upon Arrest”).*** Current Rule 39(b)(7)(A) refers to the victim’s right, upon request, to notice of and to be heard at an initial appearance. However, these rights are not mentioned in current Rule 4.1. Accordingly, new Rule

4.1(v) provides:

Upon request, the victim must be informed of the date, time, and place for the defendant's initial appearance in accordance with A.R.S. § 13-4406. The victim upon request must be notified of the defendant's release from custody at or after the initial appearance.

The text of this provision referring to the victim's right to notice of the defendant's release from custody is a separately enumerated right in Rule 39(b)(3).

**Rule 4.2 (“initial appearance”).** Current Rule 4.2(a)(6) provides that a magistrate must “permit and consider any victim's oral or written comments concerning the defendant's possible release and conditions of release.” Rule 4.2(v)(1) embodies this requirement more directly by providing that “a victim has the right to be heard concerning the defendant's possible release ...” This language attempts to track the text of A.R.S. §§ 13-4421 and 13-4422.

Current Rule 4.2(c) allows a magistrate to combine an initial appearance with an arraignment. If the magistrate continues the combined proceeding, the current rule requires the court to provide notice to the victim of the continued date. Rule 4.2(v)(2), by using the passive voice, allows the prosecutor rather than the court to furnish notice to the victim.

**Rule 5.1 (“right to a preliminary hearing; waiver; continuance”).** Subpart (v)(2) adds a victim's right that arises when the court is presented with a motion to continue the preliminary hearing. There is no corresponding provision in current Rule 5.1 concerning a victim's right in this situation.

The Committee's initial draft of subpart (v)(2) provides:

Before continuing a preliminary hearing on motion or on its own initiative under section (c), a magistrate must also consider the victim's [views and] right to a speedy disposition. If the magistrate orders a continuance of the preliminary hearing, the victim, if requested, must be notified of the magistrate's order and the new hearing date pursuant to A.R.S. § 13-4409.

The two words in brackets (“views and”) were added during the members’ discussion of this amendment. Thereafter, members had an irreconcilable difference. Some members believed that obtaining the victim’s views might delay the hearing - - which by its nature is an expedited proceeding -- particularly when the victim failed to appear at the preliminary hearing and is unable to express a view. (See further Rule 39(g)(3), which suggests that a magistrate may not proceed if the victim has not been notified of the proceeding.) These members believe the essence of subpart (v)(2) is to assure that the victim has notice of a continued proceeding, as the second sentence of the subpart provides, and they would therefore strike the first sentence of draft subpart (v)(2). Other members would retain the first sentence and add a cross reference to A.R.S. § 13-4435(A). This statutory provision requires a magistrate to consider a victim’s right to a speedy trial when ruling on a motion to continue “in any criminal proceeding.”<sup>1</sup> Because of a lack of consensus, the members offer both alternatives for the Court’s consideration.

***Rule 5.4 (“determining probable cause”).*** Current Rule 5.4(a) provides that “upon request, the magistrate may reconsider the conditions of release.” The current provision, however, omits mention of a victim’s right when the defendant makes this request. The Committee accordingly added a section (v) that provides:

The victim has a right to be heard whenever the defendant under section (a) requests a magistrate to reconsider the conditions of the defendant’s release.<sup>2</sup>

The new provision is consistent with current Rule 39(b)(6)(A).

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<sup>1</sup> The definition of “criminal proceeding” in A.R.S. § 13-4401(7) refers to matters “before a trial court,” which might exclude preliminary hearings conducted in a justice court. Members also considered the Arizona Constitution, Article 2.1, section (A)(10), which provides the victim a right “to a speedy trial or disposition...” “Disposition” would arguably include the right to a prompt preliminary hearing. The speedy trial rights in Criminal Rule 8 do not apply because those deadlines are calculated from the arraignment, which occurs after the preliminary hearing.

<sup>2</sup> See further a pending rule petition, no. R-21-0051, which proposes this amendment to Rule 5.4(c): “A magistrate may, subject to Rule 39, review the conditions of release for a defendant at the preliminary hearing.”

**Rule 5.8 (“notice if an arraignment is not held”).** Current Rule 5.8, which applies only in counties that do not hold an arraignment after a preliminary hearing, is another rule that makes no mention of victims’ rights. Members accordingly added a section (v) that provides:

Pursuant to A.R.S. § 13-4409, a victim has a right to receive notice from the prosecutor, on request, of dates for further proceedings.

**Rule 6.3 (“duties of counsel; withdrawal”).** Current Rule 6.3 governs an attorney’s withdrawal, but the rule is silent on whether the court should consider the victim’s right to a speedy trial if counsel’s withdrawal would require a continuance of the trial date. Subpart (v)(1) would require the court to consider the victim’s right to a speedy disposition in this circumstance.

Subpart (v)(2), which is also new, expressly requires a victim’s attorney to file a notice of appearance. This requirement is implied in current Rule 39(d)(4) but it is not explicitly clear. The Committee believes that subpart (v)(2) will help assure that information regarding victim’s counsel is entered into the case management system and help the clerk provide notices to victim’s counsel. See further the amendment to Rule 1.8 described above.

**Rule 7 (“release”).** Rule 7 is one of the most pertinent rules for a crime victim. The current rule, however, presents a jumble of victims’ rights provisions and is not a model of clarity.

One of the most significant provisions in Rule 7 is Rule 7.2 (“right to release”), section (a) (“before conviction; bailable offenses”), which applies in most cases. Rule 7.2(a), however, omits any reference to a victim or a victim’s right in circumstances involving an eligible defendant’s pretrial release. After consideration and discussion, the Committee recommends adding a new and identical section (v) to **Rule 7.2**, *supra*, **Rule 7.4** (“procedure”), and **Rule 7.5** (“review of conditions; revocation of release”). The proposed provision is simple yet straightforward:

If requested, a victim has the rights to be notified of, present at, and heard at any proceeding involving a post-arrest release decision, and to be informed if a defendant is released from custody.

The Committee also retained a new provision in Rule 7.3 (“conditions of release”) it had drafted during its consideration of petition number R-20-0031. New Rule 7.3(b), which is titled “victim protection,” provides:

The court must order the defendant not to contact a victim if such an order is reasonable and necessary to protect a victim from physical harm, harassment, intimidation, or abuse.

The new provision would replace an identical first sentence of current section (c). Although the two provisions are identical, the Committee believes that “victim protection” should be located closer to the “mandatory conditions” of section (a). Current sections (b) and (c) would be renumbered as sections (c) and (d), as shown in Appendix A.

***Rule 8.1 (“priorities in scheduling criminal cases”).*** Current Rule 39(b)(7)(C) provides for a victim’s right to notice of, and to be heard at, “a proposed suspension of Rule 8 or a continuance of the trial date.” Current Rule 8.1(e) (“suspension of Rule 8”), however, does not mention victims. The Committee therefore added a new section (v) that provides:

**Victims’ Rights.** When presented with a motion to suspend Rule 8, the court must permit the victim to be heard and must consider the victim’s right to a speedy disposition.

***Rule 8.5 (“continuing a trial date”).*** Current Rule 8.5(b) (“grounds”) requires the court on a motion to continue a trial date to “consider the rights of the defendant and any victim to a speedy disposition of the case.” The Committee believed this provision, although correct, was incomplete because it did not provide for the victim’s input. It accordingly added a new section (v):

**Victims’ Rights.** In deciding a motion to continue a trial date, the court must also consider the victim’s views and the right of the victim to a speedy disposition of the case.

This provision is substantially similar to A.R.S. § 13-4435(F) and it includes the phrase “consider the victim’s views,” which is also in the statute. Motions to continue a trial date are occasionally decided without a court hearing, and the

Committee did not intend that proposed Rule 8.5(v) require trial courts to alter that practice.

**Rule 9.3 (“exclusion of witnesses and spectators”).** The Committee simply relocated the current language of section (a)(2)(A) to new section (v). The language is:

**Victims’ Rights.** A victim has a right to be present at all proceedings at which the defendant has that right.

The remaining provisions in current section (a) were renumbered accordingly.

**Rule 14.4 (“determining probable cause”).** The AVCV’s rule petition No. R-20-0031 did not propose an amendment to Rule 14. Nonetheless, because a judicial officer can determine release issues at arraignment, the Committee added a new section (v) to Rule 14.4. The section provides:

**Victims’ Rights.** If the court pursuant to section (b) decides a release motion at the defendant’s arraignment, a victim has the rights provided under Rule 7.2(v).

The Committee believes this proposed section is consistent with the VBOR, section 2.1(A)(4), and A.R.S. § 13-4423. The new section should also assist judicial officers who conduct arraignments, particularly in limited jurisdiction courts.

**Rule 15.1 (the State’s disclosure”).** Section (i) is titled “additional disclosures in a capital case.” Current subpart (i)(1)(B) (“notice of intent to seek the death penalty: time extensions”) permits the parties to stipulate to extensions of time for the State to file a death notice. The underlying concept is that an extension would allow the defense to gather and provide mitigation evidence that could obviate the filing of a notice.

Current subpart (i)(1)(C) further provides, “if the victim has requested notice under A.R.S. § 13-4405, the prosecutor must confer with the victim before agreeing to extend the deadline under (i)(1)(B).” The Committee determined that this requirement to confer is not contained in the VBOR or in the victims’ rights statutes, and it is not in Rule 39. It originated in a rule petition, number R-07-0019, which

was filed by the Capital Case Task Force 15 years ago. That petition did not include an authoritative basis for including the provision regarding victims in Rule 15.1(i)(1)(C), and the rule provision does not implicate other victims' rights. Members therefore recommend deleting the requirement in the current rule, although doing so might exceed the Committee's authority provided in Administrative Order Number 2020-183. It should be noted that the prosecutor as a matter of course will confer with the victim in these circumstances.

New Rule 15.1, section (v) has two subparts. Subpart (v)(1) ("victim's identifying or locating information") derived from an amendment proposed by petition number R-20-0031. The Committee modified that draft subpart by the following edits:

The information provided to the defendant's attorney must not ~~provide the information~~ be conveyed to the defendant without prior court authorization.

A reference to "protect a victim's rights" in current Rule 15.1(j) ("item prohibited by A.R.S. §§ 13-3551 et seq. or is the subject of a prosecution under A.R.S. § 13-1425"), subpart (3)(B) ("court-ordered disclosure for examination or testing: conditions"), was deleted because the substance is reiterated in new subpart (v)(2) ("disclosure of items under section (j): court orders").

**Rule 15.3 ("depositions").** Section (v) contains a provision titled "victim's right to refuse." Interviews are more common than depositions, but interviews and depositions are frequently referenced together. See the VBOR, Section 2.1(A)(5), and Rule 39(b)(8), (12), and (13). Rule 39(b)(14), however, is different; this subpart provides the victim a right "to terminate an interview at any time or refuse to answer any question during an interview." The Committee discussed whether subpart 39(b)(14) implied that a victim could not terminate a deposition or refuse to answer a question during a deposition. The Committee determined that such a conclusion would require an interpretation of the VBOR, which the Committee declined to do.

During the course of their discussion, members noted that the VBOR and rule provisions refer only to interviews and depositions requested by the defendant. They agreed that a victim has no right to refuse a deposition that's requested by a

prosecutor, for example, to preserve testimony, although this principle is not expressly codified.

**Rule 15.6 (“continuing duty to disclose; final disclosure deadline; extension”).** Current section (e), subpart (3) (“extending time”), says, “If the court grants a motion under (e)(2), the court may extend other disclosure deadlines as necessary.” During its consideration of R-20-0031, the Committee added a new sentence that says, “In determining new deadlines under this rule, the court must consider the victim’s and the defendant’s right to a speedy disposition.” The substance of the victim’s portion of that sentence was relocated to a proposed section (v) (although the sentence excluded the corresponding right of a defendant to a speedy disposition because section (v) pertains solely to victims’ rights.) Members discussed whether section (v) was unnecessary because subpart (e)(3) talks in terms of extending disclosure deadlines, but not continuing the trial date. A motion to continue the trial date already requires consideration of the victim’s right to a speedy disposition under Rule 8.5(v).

Some members preferred retaining draft section (v). One judge member referred to the section as a “light bulb moment” for the judge to be mindful of the victim’s right to a speedy disposition. Section (e) refers to “scientific or other testing.” Members generally recognized that a variety of factors bear on an extension for evidence testing, such as the length of the requested extension and the significance of the evidence. Members also acknowledged that the timeline of private laboratories to conduct a test is often beyond the control of the court or the parties. The Chair requested a straw vote on whether to retain draft Rule 15.6(v). A majority (5 to 4) did not want to retain section (v), and it is not included in Appendix A.

**Rule 16.4 (“dismissal of prosecution”).** Current Rule 16.4 does not mention victims. The Committee added a section (v) to address that omission, as follows:

**Victims’ Rights.** On the victim’s request, the victim must have an opportunity to confer with the prosecutor before the prosecutor moves to dismiss under section (a).

The provision is in accord with the VBOR, section 2.1(A)(6), A.R.S. § 13-4419(A), and Rule 39(b)(6)(C).

***Rule 17.1 (“the defendant’s plea”).*** Rule 17.1(v) provides:

**Victims’ Rights.** In a telephonic plea proceeding, a victim has the same rights under Rule 39 to notice and participation as if the defendant physically appeared in the courtroom. The court may not accept a plea by mail in a case involving a victim.

The first sentence of section (v) is a verbatim repetition of current Rule 17.1(f)(1)(F). The second sentence derives from current Rule 17.1(f)(2)(B)(i). The current provisions have been deleted from their existing locations because they would be located in new section (v).

***Rule 17.4 (“plea negotiations and agreements”).*** The substance of current Rule 17.4(a) (“plea negotiations”), subpart (3) (“victim participation”) has been relocated to new section (v), subpart (1) (“victim participation during plea discussions”). New subpart (v)(2) (“before the court accepts or rejects a plea agreement”) is derived from current section (d) (“accepting the plea”). Current section (d) requires the court when accepting a plea to consider “any comments expressed by the victim.” The VBOR, section 2.1(A)(4), refers to a victim’s right “to be heard” at any proceeding involving a negotiated plea. Subpart (v)(2) incorporates both concepts by providing:

**Before the Court Accepts or Rejects a Plea Agreement.** Before the court makes the determinations required by section (c) and accepts or rejects the plea agreement, it must afford the victim the opportunity to be heard and consider any comments expressed by the victim.

***Rule 17.7 (“submitting a case on the record”).*** A case might be submitted on the record when, for example, the defendant has a mental health issue or to preserve appellate rights that might otherwise be waived in a plea agreement. Whether submission of a case on the record is more akin to a plea or a trial, it is nonetheless a form of case resolution and the victim should have a corresponding

right under this rule to confer with the prosecutor. Proposed section (v), which also has support in A.R.S. § 13-4419, therefore provides:

**Victims' Rights.** Before the State agrees to submit a case on the record, the victim must have an opportunity to confer with the prosecutor.

The Committee discussed including the words “on request,” which are contained in A.R.S. § 13-4419, but the corresponding provision in the VBOR, section 2.1(A)(6), does not require a “request,” and accordingly, the Committee declined to include that qualification in Rule 17.7(v).

***Rule 19.1 (“conduct of trial”).*** Rule 19.1 includes a new section (f) (“use of a facility dog by a party or witness”) and a new section (v). Section (f) provides:

**Use of a Facility Dog.** The court can allow the assistance of a facility dog as provided in A.R.S. § 13-4442.

The use of a facility dog is allowed as provided in the referenced statute. (The statute uses the words “shall” and “may” in the circumstances described in sections (A) and (B). The rule uses the word “can” to encompass both circumstances.) The Committee’s initial draft of a provision regarding facility dogs applied only to use of a facility dog by a victim. The statute is broader, and draft section (f) reflects that broader application.

New section (v) has three subparts. Subpart (v)(1) (“victim’s opportunity to confer with the prosecutor”) corresponds with Rule 39(b)(6)(D), the right of a victim to confer with the prosecutor before a trial begins. Subpart (v)(2) (“identifying and locating information”) is analogous to current Rule 39(b)(10). Subpart (v)(3) (“representative of a minor or incapacitated victim”) contains the content of current Rule 19.5 (“presence of a representative of a minor or incapacitated victim”). However, the word “wishes [to be recognized]” has been changed to “requests,” and there are other stylistic modifications. Because Rule 19.5 would be deleted, Rule 19.6 (“sequestration”) would be renumbered as Rule 19.5.

***Rule 24.3 (“modification of sentence”).*** A new section (v) incorporates the

substance of the second sentence of current section (b) (“mitigation”), and that sentence would accordingly be deleted.

***Rule 26.6 (“court disclosure of reports before sentencing”).*** Section (v) provides:

**Victims’ Rights.** The court must permit the victim to read the presentence report, excluding any portions the court excises or that are confidential by law, after it makes the report available to the defendant. If the victim requests, the prosecutor must provide the victim with an excised copy of the report.

The VBOR, section 2.1(A)(7), provides that the victim has a right “to read presentence reports,” whereas A.R.S. § 13-4425 permits the victim “to inspect” the report. Rule 39(b)(15) provides the victim “the right to a copy of any presentence report provided to the defendant ...” The Committee believes that the substance of these directives has been incorporated in new section (v).

***Rule 26.7 (“presentencing hearing; prehearing conference”).*** Section (v) was derived from the Committee’s previously proposed amendment to section (b) (“timing and conduct of a presentencing hearing”). New section (v) provides:

**Victims’ Rights.** The victim has a right to be heard at a presentencing hearing under section (b).

Rule 39(b)(7)(E) provides a right to be heard at sentencing “upon request,” whereas the VBOR, section 2.1(A)(4) does not include those words. Section (v) accordingly omits “upon request.”

Neither the current provision nor the proposed one, however, allows the victim to present evidence, notably evidence regarding restitution, at a presentencing hearing. Restitution is compensatory rather than punitive in nature, and the court frequently considers restitution after sentencing. To address this issue, the Committee is proposing a new provision in Rule 26.10, as explained below.

***Rule 26.10 (“pronouncement of judgment and sentence”).*** The Committee

had previously proposed adding to subpart (b)(1) the following words: “Give the defendant and the victim an opportunity to address the court.” The substance pertaining to victims was relocated to section (v)(1). Current section (b) uses the word “when [the court pronounces sentence],” but subpart (v)(1) uses the word “before.”

In 2021, the Committee had proposed a new Rule 26.17 entitled “Victim’s Right to Sentencing Information.” The proposed rule had three subparts. Those subparts have been relocated to Rule 26.10(v)(2) (“information from the prosecutor”), subparts (A) through (C), making a new Rule 26.17 unnecessary.

Subpart (v)(3) is the new provision on restitution discussed above. The new provision, which derives from A.R.S. § 13-4437(E), provides:

*Restitution. A victim has the right to present evidence or information and to make an argument to the court, personally or through counsel, at any proceeding to determine the amount of restitution pursuant to A.R.S 13-804.*

The cross-reference in this provision to A.R.S. § 13-804 provides further information on restitution for economic loss.

***Rule 27.2 (“intercounty transfers”).*** Rule 27.2 provides for two distinct types of transfers. Section (b) concerns a courtesy transfer of probation supervision; with a section (b) courtesy transfer, the sending county expressly retains jurisdiction over the probationer. By comparison, section (c) transfers probation jurisdiction to the receiving county. Current Rule 27(c)(1)(B) provides the victim an opportunity to be heard only on a transfer of jurisdiction. The Committee therefore substituted in section (v) the language of current subpart (c)(1)(B), which then would be stricken, and with an additional clarification that the new provision applies only to transfers of jurisdiction. New section (v) therefore provides:

**Victims’ Rights.** A victim of the offense may request an opportunity to be heard concerning a transfer of probation jurisdiction. The court in the sending county must give the victim notice of a proposed transfer and any hearing.

**Rule 27.3 (“modification of conditions or regulations”).** Current subpart (b)(1)(A) contains a cross-reference to Rule 27.10. In lieu of cross-referencing that rule, proposed Rule 27.3(v) includes the verbatim content of the pertinent portion of Rule 27.10(c). The new section, which derives from A.R.S 13-4427(B) and Rule 39(b)(7)(F), provides:

**Victims’ Rights.** Upon request, a victim has the right to notice of a hearing under subpart (b)(5). The victim has the right to be present at that hearing, and to be heard on a modification of conditions or regulations of probation or intensive probation that would substantially affect the probationer's contact with, or safety of, the victim or that would affect restitution or incarceration status.

**Rule 27.4 (“early termination of probation”).** The initial draft of section (v) of this rule provided:

**Victims’ Rights.** The court must afford a victim who has requested notice under Rule 39 the opportunity to be present and to be heard at any proceeding involving the termination of any type of probation.

This draft provision appears to have support in A.R.S 13-4427(A) and Rule 39(b)(b)(7)(G).

The definition of “criminal proceeding” in A.R.S 13-4401(7) is “...any hearing, argument or other matter that is scheduled by and held before a trial court ....” As a practical matter, however, judges often consider written requests for early termination of probation without a court hearing. The initial draft would require the court to unnecessarily schedule additional hearings to afford the opportunity for the victim to be present. Accordingly, members modified section (v) to provide:

**Victims’ Rights.** A victim has the right upon request to notice of any criminal proceeding involving the early termination of probation. A victim has a right to be present and to be heard at the hearing.

The Committee believes that if the court does not set a hearing, i.e., a “criminal

proceeding,” on a request for early termination, the victim will not, and need not, receive notice. The Committee believes that this modification is consistent with the statutory and rule provisions cited above. The Committee nonetheless notes the anomaly for the Court’s consideration.

**Rule 27.7 (“initial appearance after arrest”).** Rule 27.7(v) has two subparts: subpart (v)(1) concerning notice of arrest and subpart (v)(2) concerning a notice of hearing and a right to be heard. The initial draft of subpart (v)(1) required victims upon request to be notified of a probationer’s arrest. This right, however, is not engrained in Rule 39. Rather, it derives from A.R.S. § 13-4415(A)(3) and it is considerably more limited. The Committee modified the provision in accord with the statute as follows:

*(1) Notice of Arrest.* A victim upon request has the right to be notified of a probationer’s arrest pursuant to a warrant issued for a violation of supervised probation, as provided by A.R.S. § 13-4415(A)(3).

The Committee was mindful that a significant portion of arrests of probationers are not pursuant to a probation violation warrant but rather are arrests that result from the probationer’s commission of a new offense. Subpart (v)(2) follows the model used in other rules that separates a victim’s right to notice of the hearing, which is upon request, and a victim’s right to be present and to be heard at the hearing, which does not require a request.

**Rule 27.8 (“probation revocation”).** Draft section 27.8(v) also has two subparts. Subpart (1) is titled “at the violation hearing” and subpart (2) has the title “at a disposition hearing.” Subpart (v)(1) advises that the victim has a right to be present at a violation hearing under section (b). After a review of A.R.S. § 13-4427 and Rule 39(b)(7), the Committee revised its initial draft of subpart (v)(2) to separately state the victims’ right to notice, which arises upon request, and the victims’ right to be present and to be heard, which does not require a request. Revised subpart (v)(2) provides:

*(2) At a Disposition Hearing.* Upon request, a victim has the right to notice of a disposition hearing. A victim has the right to be present and to be heard

at a disposition hearing.

***Rule 27.10 [deleted] (currently, “victims’ rights in probation proceedings”).*** The Committee proposes the abrogation of current Rule 27.10 because its provisions have been relocated to other rules. Rule 27.10(a) is now in Rule 27.4(v); Rule 27.10(b) is now in Rule 27.8(v)(2); Rule 27.10(c) is now in Rule 27.3(v); and Rule 27.10(d) is now in Rule 27.2(v).

***Rule 27.10 [formerly 27.11] (“probation review hearing regarding sex offender registration”).*** Rule 27.11 was renumbered as Rule 27.10 because of the foregoing deletion. There are no changes to the text of this rule.

***Rule 29 (“setting aside a conviction”).*** The title of Rule 29 is “setting aside a conviction.” The rule allows a person who has completed probation to apply to set the conviction aside. It consists of Rules 29.1 through 29.8. Rule 29.1(b) pertains specifically to set asides for sex trafficking victims. Staff had initially proposed renumbering section (b) as section (v) and including in this new section (v) the content of current Rule 27.7 (“special provisions for sex trafficking victims”). The Committee discussed how the word “victim” in the phrase “sex trafficking victim” is anomalous because the victim in that context is also a criminal defendant. After discussion, the Committee concluded that staff’s proposed revisions would confound this distinction and they agreed to retain current Rule 29 without changes, with the exception of Rule 29.5, which is discussed below.

***Rule 29.5 (“hearing”).*** Current Rule 29.5 contains three sentences. Staff proposed that the first two sentences become section (a), with the new title “generally,” and that the third sentence become section (v), with the title “victims’ rights.” Committee members agreed with staff’s proposal, with additional modifications to section (v). They concurred with staff’s introductory clause (“if the victim requested post-conviction notification...”), which was relocated from the current rule. This clause conveys that a victim who has not opted in for post-conviction notice does not receive notice under this rule. Members then revised the remainder of the section, as they had done in Rule 27, to distinguish the various victims’ rights. As modified, Rule 29.5(v) provides:

**Victims' Rights.** If the victim requested post-conviction notification, the prosecuting agency must provide the victim notice of the hearing date. The victim has the right to be present and to be heard at the hearing.

***Rule 30.2 (“application”).*** Rule 30 concerns restoration of a defendant’s civil rights. Rule 30.1 concerns “grounds” for the application. Rule 30.1(a) (“automatic restoration for first offense”) contains a requirement that the defendant “pays any victim restitution imposed.” The Committee did not create a section (v) in Rule 30.1 concerning this requirement because for a first offense, restoration is “automatic” if the defendant shows that restoration was fully paid. Rule 30.2(a) provides that a person who is entitled to automatic restoration is not even required to file an application under this rule.

Current Rule 30.2(e) is titled “victim notification.” The Committee retitled section (e) as a new section (v). The first sentence of current section (e) has become subpart (v)(1), and the remainder of current section (e) has become subpart (v)(2), with modifications. Subpart (v)(2) mentions restitution (current Rule 30.2(e) does not) and provides:

***(2) Prosecutor’s Notice to the Victim.*** If the victim in a state court matter has requested post-conviction notice, the prosecuting agency must provide the victim with notice of the defendant's application and the rights provided to the victim, including the victim’s opportunity to be heard on the application and the status of restitution.

The Committee recognizes that victims have a separate right under A.R.S. § 13-4441; that right is a right to be present and to be heard at a proceeding on a defendant’s petition under A.R.S. § 13-925 to restore the right to possess a firearm. This right, however, is not included in current Rule 30 and the Committee did not include it in its revised version of this rule. The defendant’s right to possession of a firearm, however, is mentioned in current Rule 30.1(c) and in Rule 41, Forms 31(a), 31(b), 32(a), and 32(b). Members made no changes to Rules 30.3 through 30.6.

***Rule 31.1 (“scope, procedure, definitions,” and as proposed, “scope, procedure, definitions, victims’ rights”) and other Rule 31 provisions.*** Rule 31 is

a lengthy rule on “appeals” divided into three sections and composed of Rules 31.1 through 31.23. These provisions include several references to victims’ rights, but to give those rights more prominence, the Committee added a new section (v) to Rule 31.1 that provides:

**(v) Victims’ Rights.** Before granting a request to extend a deadline under Rules 31.3, 31.9, 31.13, 31.14, or any other rule, the court must consider the victim’s right to a prompt and final conclusion of the case.

The Committee was mindful that this change might result in some minor redundancy with other Rule 31 provisions concerning extensions of time. The Committee modified the title of Rule 31.1 by adding the words “victims’ rights.”

Staff had proposed relocating to a new section (v) the provisions (1) in Rule 31.2(c)(2) that required a prosecutor’s certification in a notice of appeal concerning a victims’ right violation, and (2) in other rules that required the court to consider the victims’ right to a prompt and final conclusion of the case. Members declined these proposed changes on the basis that requiring the prosecutor or the court to perform these duties were their individual official duties rather than rights that could be personally exercised by victims.

An exception is Rule 31.14 (“provisions applicable only to briefs in capital case appeals”). The Committee retained the content of current subpart (c)(2) (“notice to the victim”) in a new section (v). The text remains the same, but the provisions were renumbered accordingly.

***Rule 32 (“post-conviction relief for defendants sentenced following a trial or contested probation violation hearing”).*** Staff had proposed adding a new section (v) to Rule 32.4 (“filing a notice requesting post-conviction relief”), Rule 32.7 (“petition for post-conviction relief”), Rule 32.9 (“response and reply; amendments”), Rule 32.11 (“court review of the petition, response, and reply; further proceedings”), Rule 32.14 (“motion for rehearing”), Rule 32.16 (“petition and cross-petition for review”), and Rule 32.17 (“post-conviction deoxyribonucleic testing”). The Committee declined these proposed section (v) additions because, as in the earlier discussion of Rule 31, these provisions concern duties and obligations

of others rather than rights a victim can personally exercise. During the discussion, however, staff noted that current Rules 32.7 (“petition for post-conviction relief”) and 32.9 (“response and reply; amendments”) require the court to consider “the rights of the victim,” without specifying what those rights are. Members agreed to add in current Rule 32.7(a) (in two places) and in Rule 32.9(a), after the word “victim,” the words “to a prompt and final conclusion of the case.”

***Rule 33 (“post-conviction relief for defendants who pled guilty or no contest, who admitted a probation violation, or who had an automatic probation violation”).*** Members agreed to conform Rule 33 to the corresponding changes in Rule 32 discussed above.

***Rule 39 (“victims’ rights”).*** The Committee does not propose any changes to Rule 39.

***Rule 41 (“forms”).*** The Committee does not propose any changes to the forms in Rule 41.