

### **Rule 26.10. Pronouncing Judgment and Sentence**

(a) **Judgment.** In pronouncing judgment on any noncapital count, the court must indicate whether the defendant's conviction is pursuant to a plea or trial, the offense for which the defendant was convicted, and whether the offense falls in the categories of dangerous, non-dangerous, repetitive, or non-repetitive offenses.

(b) **Sentence.** When the court pronounces sentence, it must:

- (1) give the defendant **and the victim** an opportunity to address the court;
- (2) state that it has considered the time the defendant has spent in custody on the present charge;
- (3) explain to the defendant the terms of the sentence or probation;
- (4) specify the beginning date for the term of imprisonment and the amount of time to be credited against the sentence as required by law;
- (5) permanently affix the defendant's right index fingerprint to the sentencing document or order in accordance with A.R.S. § 13-607(A); and
- (6) if the court sentences the defendant to a prison term, the court must send, or direct the clerk to send, to the Department of Corrections the sentencing order and copies of all presentence reports, probation violation reports, and medical and mental health reports prepared for, or relating to, the defendant.

### **Rule 26.17. Victim's Right to Information**

(a) **Sentencing.** **After sentencing, the victim has a right to be informed of the disposition of the case.**

(b) **Restitution.** **A victim has a right to be informed of the right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking that right.**

### **Rule 27.3. Modification of Conditions or Regulations**

(a) **Definitions.**

(1) **Condition.** "Condition" means any court-ordered term of probation.

(2) **Regulation.** "Regulation" means any term imposed by the probation department, or by any other person the court designates to implement a court-imposed condition of probation.

(b) **By a Probation Officer.** A probation officer or any other person the court

designates may modify or clarify any regulation imposed.

**(c) By the Court.**

**(1) Generally.** After giving notice to the State, the probationer, and a victim who has the right to notice under Rule 27.10, the court may modify or clarify any term, condition, or regulation of probation. The court's authority to modify probation must comply with due process, **the rights of the victim**, statutory limitations, and party agreement.

**(2) Who May Request Modification or Clarification.** At any time before the probationer's absolute discharge, a probationer, probation officer, the State, or any other person the court designates, may ask the court to modify or clarify any condition or regulation.

**(3) Restitution.** At any time before the probationer's absolute discharge, persons entitled to restitution under a court order may ask the court, based on changed circumstances, to modify or clarify the manner in which restitution is paid.

**(4) Hearing.** The court may hold a hearing on any request for modification or clarification under (c)(2) or (c)(3).

**(d) Written Copy and Effect.** The probationer must be given a written copy of any modification or clarification of a condition or regulation of probation. A modification of a regulation may go into effect immediately. An oral modification may not be the sole basis for revoking probation unless the condition or regulation is in writing and the probationer received a copy before the violation.

**Rule 27.7. Initial Appearance After Arrest**

**(a) Probationer Arrested.** If a probationer is arrested on a warrant issued under Rule 27.6 or is arrested by the probationer's probation officer under A.R.S. § 13-901(D), the probationer must be taken without unreasonable delay to the court with jurisdiction over the probationer.

**(b) Notice.** If a probationer is arrested on a warrant issued under Rule 27.6, the court must immediately notify the probationer's probation officer of the initial appearance.

**(c) Procedure.** At the initial appearance, the court must advise the probationer of the probationer's right to counsel under Rule 6, inform the probationer that any statement the probationer makes before the hearing may be used against the probationer, set the date of the revocation arraignment, and make a release determination, **after considering the rights and views of the victim.**

## **Rule 27.8. Probation Revocation**

### **(a) Revocation Arraignment.**

(1) *Timing.* The court must hold a revocation arraignment no later than 7 days after the summons is served or after the probationer's initial appearance under Rule 27.7.

(2) *Conduct of the Proceeding.* The court must inform the probationer of each alleged probation violation, and the probationer must admit or deny each allegation.

(3) *Setting a Violation Hearing.* If the probationer does not admit to a violation or if the court does not accept an admission, the court must set a violation hearing, unless both parties agree that a violation hearing may proceed immediately after the arraignment.

### **(b) Violation Hearing.**

(1) *Timing.* The court must hold a hearing to determine whether a probationer has violated a written condition or regulation of probation no less than 7 and no more than 20 days after the revocation arraignment, unless the probationer in writing or on the record requests, and the court agrees, to set the hearing for another date.

(2) *Probationer's Right to Be Present.* The probationer **and the victim has-have** a right to be present at the violation hearing. If the probationer was previously arraigned under Rule 27.8, the hearing may proceed in the probationer's absence under Rule 9.1.

(3) *Conduct of the Hearing.* A violation must be established by a preponderance of the evidence. Each party may present evidence and has the right to cross-examine any witness who testifies. The court may receive any reliable evidence, including hearsay, that is not legally privileged.

(4) *Admissions.* An admission by the probationer at any hearing in the same case relating to the probationer's failure to pay a monetary obligation imposed in the case is inadmissible in the probation violation hearing, unless the probationer was represented by counsel at the hearing in which the admission was made.

(5) *Findings and Setting a Disposition Hearing.* If the court finds that the probationer committed a violation of a condition or regulation of probation, it must make specific findings of the facts that establish the violation and then set a disposition hearing.

### **(c) Disposition Hearing.**

(1) *Timing.* The court must hold a disposition hearing no less than 7 nor more than 20 days after making a determination that the probationer has violated a condition or

regulation of probation.

**(2) Disposition.** Upon finding that the probationer violated a condition or regulation of probation, the court may revoke, modify, or continue probation. If the court revokes probation, the court must pronounce sentence in accordance with Rule 26. The court may not find a violation of a condition or regulation that the probationer did not receive in writing.

**(d) Waiver of Disposition Hearing.** If a probationer admits, or the court finds, a violation of a condition or regulation of probation, the probationer may waive a disposition hearing. If the court accepts the waiver, it may proceed immediately to a disposition under (c)(2).

**(e) Disposition upon Determination of Guilt for a Later Offense.** If a court makes a determination of guilt under Rule 26.1(a) that the probationer committed a later criminal offense, the court need not hold a violation hearing and may set the matter for a disposition hearing at the time set for entry of judgment on the criminal offense.

**(f) Record.** The court must make a record of the revocation arraignment, violation hearing, and disposition hearing.

#### **Rule 27.10. Victims' Rights in Probation Proceedings.**

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:

**(a)** the termination of any type of probation;

**(b)** probation revocation dispositions;

**(c)** a modification of probation or intensive probation conditions or regulations that would substantially affect the probationer's contact with, or safety of, the victim or that would affect restitution or incarceration status; or

**(d)** transfers of probation jurisdiction.

#### **Rule 31.3. Suspension of These Rules; Suspension of an Appeal; Computation of Time; Modifying a Deadline**

**(a) Suspension of Rule 31.** For good cause, an appellate court, on motion or on its own, may suspend any provision of this rule in a particular case, and may order such proceedings as the court directs.

**(b) Suspension of an Appeal.**

(1) *Generally.* An appellate court on motion or on its own, **after considering the rights of the victim**, may suspend an appeal if a motion under Rule 24 or a petition under Rule 32 is pending to permit the superior court to decide those matters.

(2) *Notice.* If an appeal is suspended, the appellate clerk must notify the parties, the superior court clerk, and, if certified transcripts have not yet been filed, the certified reporters or transcribers.

(3) *Later Notification.* No later than 20 days after the superior court's decision on the Rule 24 motion or Rule 32 petition, the appellant must file with the appellate clerk either a notice of reinstatement of the appeal or a motion to dismiss the

appeal under Rule 31.24(b), and must serve a copy of such documents on all persons entitled to notice under (b)(2).

(c) *New Matters.* Other than a petition for post-conviction relief that is not otherwise precluded under Rule 32.2, a party to an appeal may not, without the appellate court's consent, file any new matter in the superior court later than 15 days after the appellate clerk distributes a notice under Rule 31.9(c) that the record on appeal has been filed.

(d) *Computation of Time.* Rule 1.3(a) governs the computation of any time period in Rule 31, an appellate court order, or a statute regarding a criminal appeal, except that 5 calendar days are not added to the time for responding to an electronically served document.

(e) *Modifying a Deadline.* A party seeking to modify a deadline in the appellate court must obtain an appellate court order authorizing the modified deadline. For good cause and after considering the rights of the victim, an appellate court may shorten or extend the time for doing any act required by Rule 31, a court order, or an applicable statute.

### **Rule 39. ~~Victims' Rights~~**

#### **~~(a) Definitions and Limitations.~~**

~~(1) *Criminal Proceeding.* As used in this rule, a "criminal proceeding" is any matter scheduled and held before a trial court, telephonically or in person, at which the defendant has the right to be present, including any post-conviction matter.~~

~~(2) *Identifying and Locating Information.* As used in this rule, "identifying and locating information" includes a person's date of birth, social security number,~~

~~official state or government issued driver license or identification number, the person's address, telephone number, email addresses, and place of employment.~~

~~(3) Limitations.~~

~~(A) Cessation of Victim Status. A victim retains the rights provided in these rules until the rights are no longer enforceable under A.R.S. §§ 13-4402 and 13-4402.01.~~

~~(B) Legal Entities. The victim's rights of any corporation, partnership, association, or other similar legal entity are limited as provided in statute.~~

~~(f) Victims' Rights. These rules must be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other rule, a victim has and is entitled to assert each of the following rights:~~

~~(1) the right to be treated with fairness, respect and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process;~~

~~(2) the right to notice regarding the rights available to a victim under this rule and any other provision of law, and the court must prominently post or read the statement of rights in accordance with A.R.S. § 13-4438;~~

~~(3) upon request, the right to reasonable notice of the date, time, and place of any criminal proceeding in accordance with A.R.S. § 13-4409;~~

~~(4) the right to be present at all criminal proceedings;~~

~~(5) upon request, the right to be informed of any permanent or temporary release or any proposed release of the defendant;~~

~~(6) upon request, the right to confer with the State regarding;~~

~~(A) any decision about the preconviction release of the defendant;~~

~~(B) any pretrial resolution including any diversion program or plea offer;~~

~~(C) a decision not to initiate a criminal prosecution or to dismiss charges; and~~

~~(D) the trial, before the trial begins;~~

~~(7) upon request, the right to be heard at any court proceeding involving;~~

~~(A) the initial appearance;~~

- ~~(B) the accused's post-arrest release or release conditions;~~
  - ~~(C) a proposed suspension of Rule 8 or a continuance of a trial date;~~
  - ~~(D) the court's consideration of a negotiated plea resolution;~~
  - ~~(E) sentencing;~~
  - ~~(F) the modification of any term of probation that will substantially affect the victim's safety, the defendant's contact with the victim, or restitution;~~
  - ~~(G) the early termination of probation;~~
  - ~~(H) a probation revocation disposition; and~~
  - ~~(I) post-conviction release.~~
- ~~(8) the right to be accompanied at any interview, deposition, or criminal proceeding by a parent or other relative, or by an appropriate support person named by a victim, including a victim's caseworker or advocate, unless testimony of the person accompanying the victim is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose sanctions, including holding counsel in contempt;~~
- ~~(9) if the victim is eligible, the right to the assistance of a facility dog when testifying as provided in A.R.S. § 13-4442;~~
- ~~(10) the right to refuse to testify regarding any identifying or locating information unless the court orders disclosure after finding a compelling need for the information, and any proceeding on any motion to require such testimony must be in camera;~~
- ~~(11) the right to require the prosecutor to withhold, during discovery and other proceedings, the victim's identifying and locating information.~~
- ~~(A) *Exception.* A court may order disclosure of the victim's identifying and locating information as necessary to protect the defendant's constitutional rights. If disclosure is made to defense counsel, counsel must not disclose the information to any person other than counsel's staff and designated investigator, and must not convey the information to the defendant without prior court authorization.~~
- ~~(B) *Redactions.* Rule 15.5(e) applies to information withheld under this rule;~~
- ~~(12) the right to refuse an interview, deposition, or other discovery request by the~~

~~defendant, the defendant's attorney, or other person acting on the defendant's behalf, and:~~

~~(12) the right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorneys, or other person acting on the defendant's behalf, and:~~

~~(A) the defense must communicate requests to interview a victim to the prosecutor, not the victim;~~

~~(B) a victim's response to such requests must be communicated through the prosecutor; and~~

~~(C) if there is any comment or evidence at trial regarding a victim's refusal to be interviewed, the court must instruct the jury that a victim has the right under the Arizona Constitution to refuse an interview;~~

~~(13) at any interview or deposition conducted by defense counsel, the right to condition the interview or deposition on specification of a reasonable date, time, duration, and location of the interview or deposition, including a requirement that it be held at the victim's home, at the prosecutor's office, or at an appropriate location in the courthouse;~~

~~(14) the right to terminate an interview at any time or refuse to answer any question during the interview;~~

~~(15) the right to a copy of any presentence report provided to the defendant except those parts that are excised by the court or are confidential by law;~~

~~(16) the right to be informed of the disposition of the case;~~

~~(17) the right to a speedy trial or disposition and a prompt and final conclusion of the case after conviction and sentence; and~~

~~(18) the right to be informed of a victim's right to restitution upon conviction of the defendant, of the items of loss included within the scope of restitution, and of the procedures for invoking the right.~~

~~(g) **Exercising the Right to Be Heard.**~~

~~(1) *Nature of the Right.* If a victim exercises the right to be heard, the victim does not do so as a witness and the victim is not subject to cross-examination. A victim is not required to disclose any statement to any party and is not required to submit any written statement to the court. The court must give any party the~~

~~opportunity to explain, support, or refute the victim's statement. This rule does not apply to victim impact statements made in a capital case under A.R.S. § 13-752(R).~~

~~(2) *Victims in Custody.* If a victim is in custody for an offense, the victim's right to be heard under this rule is satisfied by affording the victim the opportunity to submit a written statement.~~

~~(3) *Victims Not in Custody.* A victim who is not in custody may exercise the right to be heard under this rule through an oral statement or by submitting a written or recorded statement.~~

~~(4) *At Sentencing.* The right to be heard at sentencing allows the victim to present evidence, information, and opinions about the criminal offense, the defendant, the sentence, or restitution. The victim also may submit a written or oral impact statement to the probation officer for use in any presentence report.~~

~~(h) *Assistance and Representation.*~~

~~(5) *Right to Prosecutor's Assistance.* A victim has the right to the prosecutor's assistance in asserting rights enumerated in this rule or otherwise provided by law. The prosecutor must inform a victim of these rights and provide a victim with notices and information that a victim is entitled to receive from the prosecutor by these rules and by law.~~

~~(6) *Standing.* The prosecutor has standing in any criminal proceeding, upon the victim's request, to assert any of the rights to which a victim is entitled by this rule or by any other provision of law.~~

~~(7) *Conflicts.* If any conflict arises between the prosecutor and a victim in asserting the victim's rights, the prosecutor must advise the victim of the right to seek independent legal counsel and provide contact information to the appropriate state or local bar association for referral to a lawyer.~~

~~(8) *Representation by Counsel.* In asserting any of the rights enumerated in this rule or provided by any other provision of law, a victim has the right to be represented by personal counsel of the victim's choice. At any proceeding to determine restitution, the victim has the right to present information and make argument to the court personally or through counsel.~~

~~(i) *Victim's Duties.*~~

~~(9) *Generally.* Any victim desiring to claim the notification rights and privileges provided in this rule must provide his or her full name, address, and telephone~~

number to the entity prosecuting the case and to any other entity from which the victim requests notice, and to keep this information current.

~~(10) Legal Entities.~~

~~(A) Designation of a Representative.~~ If a victim is a corporation, partnership, association, or other legal entity that has requested notice of the hearings to which it is entitled by law, that legal entity must promptly designate a representative by giving notice to the prosecutor and to any other entity from which the victim requests notice. The notice must include the representative's address and telephone number.

~~(B) Notice.~~ The prosecutor must notify the defendant and the court if the prosecutor receives notice under (e)(2)(A).

~~(C) Effect.~~ After notice is provided under (e)(2)(B), only the representative designated under (e)(2)(A) may assert the victim's rights on behalf of the legal entity.

~~(D) Changes in Designation.~~ The legal entity must provide any change in designation in writing to the prosecutor and to any other entity from which the victim requests notice. The prosecutor must notify the defendant and court of any change in designation.

~~(j) Waiver.~~ A victim may waive the rights and privileges enumerated in this rule.

~~A~~  
prosecutor or a court may consider a victim's failure to provide a current address and telephone number, or a legal entity's failure to designate a representative, to be a waiver of notification rights under this rule.

~~(g) Court Enforcement of Victim Notice Requirements.~~

~~(11) Court's Duty to Inquire.~~ At the beginning of any proceeding that takes place more than 7 days after the filing of charges by the State and at which the victim has a right to be heard, the court must inquire of the State or otherwise determine whether the victim has requested notice and has been notified of the proceeding.

~~(12) If the Victim Has Been Notified.~~ If the victim has been notified as requested, the court must further inquire of the State whether the victim is present. If the victim is present and the State advises the court that the victim wishes the court to address the victim, the court must inquire whether the State has advised the victim of their rights. If not, the court must recess the hearing and the State must

~~immediately comply with (d)(1).~~

~~(13) *If the Victim Has Not Been Notified.* If the victim has not been notified as requested, the court may not proceed unless public policy, the specific provisions of a statute, or the interests of due process require otherwise. In the absence of such considerations, the court may reconsider any ruling made at a proceeding at which the victim did not receive notice as requested.~~

~~(h) *Appointment of Victim's Representative.* Upon request, the court must appoint a representative for a minor victim or for an incapacitated victim, as provided in A.R.S. § 13-4403. The court must notify the parties if it appoints a representative.~~