

Victim Law Day: Seeking Justice for Victims and Enforcing their Rights

Friday, November 15, 2019
APAAC Training Room
1951 W Camelback Rd., Unit 202,
Phoenix, Arizona



Victim Compensation & Other Financial Remedies for the Modern Prosecutor

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VICTIM COMPENSATION & OTHER FINANCIAL REMEDIES FOR THE MODERN PROSECUTOR

November 15, 2019

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Criminal Case Restitution Liens and Orders

VICTIM'S RIGHTS

- ❖ Be informed of:
 - ❖ Right to restitution.
 - ❖ What restitution includes.
 - ❖ Procedures for invoking restitution.
- ❖ Prosecutor's Assistance in assertion of rights
 - ❖ Prompt Restitution.
 - ❖ Prompt Return of Property.

Court's Jurisdiction

Until sentence expires
or paid in full.

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What "Restitution" is Enforced

- ❖ All losses caused by the criminal offense or offenses for which the defendant has been convicted.
- ❖ State's fines and costs of investigation and prosecution.

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Before Conviction

- ❖ State and victim may file request with court for pre-conviction Restitution Lien anytime after misdemeanor complaint or felony information or indictment.
- ❖ State and victim may file Restitution Lien after restitution is determined and judgment and sentencing are entered.
- ❖ File Restitution Lien and record it in public records.

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Remedies After Sentencing and After Sentence Expires

- ❖ Revocation of Probation/Community Supervision proceedings or extension of probation.
- ❖ Order to Show Cause if restitution not being paid.
- ❖ Garnishment of wages (including prison wages).
- ❖ Tax intercepts.
- ❖ Seek conversion of Defendant property to pay restitution.
- ❖ Parallel right to enforce restitution through other civil action.

Civil Remedies: Racketeering/Forfeiture Case and Other Financial Remedies

ORGANIZED CRIME, FRAUD AND TERRORISM

A.R.S. § 13-2301 *et seq.*

- ❖ Crimes committed for financial gain ("white collar" crimes). At least 34 types of offenses.
- ❖ Established after and independently of federal "R.I.C.O." laws.
- ❖ Apply to all felony levels of criminal enterprise and racketeering crimes, not just to "kingpins."

ORGANIZED CRIME, FRAUD AND TERRORISM

A.R.S. § 13-2301 et seq.

Two Types Of Forfeiture Actions

- ❖ In rem: an action against property acquired through ("proceeds") or used or intended to be used in ("facilitation") the commission of crime. 13-2314(G), 13-3413, 13-4309-11.
❖ In personam: an action to obtain a judgment for the amount of harm caused by and/or the gain derived from the commission of crime. 13-2314, 13-4312.

Two Theories Of Forfeiture

- ❖ Proceeds-based forfeiture.
❖ Facilitation-based forfeiture.

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Arizona's Court of Appeals stated in State ex rel. Napolitano v. Gravano, 204 Ariz. 106, 60 P.3d 246 (App. 2002), the purpose of these statutes is "removing the economic incentive to engage in racketeering, reducing the financial ability of racketeers to continue to engage in crime, preventing unfair business competition by persons with access to crime proceeds, compensating victims of racketeering, and reimbursing the State for the costs of prosecution."

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Horizontal lines for notes.

ORGANIZED CRIME, FRAUD AND TERRORISM

A.R.S. § 13-2301 et seq.

How Do We Get To Victim Compensation?

13-2314. Racketeering; civil remedies by this state; definitions
A. The attorney general or a county attorney may file an action in superior court on behalf of a person who sustains injury to his person, business or property by racketeering as defined by section 13-2301, subsection D, paragraph 4 or by a violation of section 13-2312 for the recovery of treble damages and the costs of the suit, including reasonable attorney fees, or to prevent, restrain or remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312.

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Horizontal lines for notes.

ORGANIZED CRIME, FRAUD AND TERRORISM
 A.R.S. § 13-2301 *et seq.*
 Court Jurisdiction and Protection of Victims

13-2314. Racketeering; civil remedies by this state; definitions

B. The superior court has jurisdiction to prevent, restrain and remedy racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 **after making provision for the rights of any person who sustained injury to his person, business or property by the racketeering** conduct and after a hearing or trial, as appropriate, by issuing appropriate orders.

ORGANIZED CRIME, FRAUD AND TERRORISM
 A.R.S. § 13-2301 *et seq.*
 Available Court Orders

Before Determination of Liability

13-2314(C). Issue seizure warrants, enter restraining orders or prohibitions, take other actions and enter other remedies or restrains the court deems proper.

After Determination of Liability

13-2314(D)(4). Ordering the payment of treble damages to those persons injured by racketeering as defined by section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312.

13-2314(D)(6). *In personam* forfeiture to the extent not inconsistent with protecting the rights of injured persons.

13-2314(G). *In rem* forfeiture to the extent not inconsistent with protecting the rights of injured persons.

ORGANIZED CRIME, FRAUD AND TERRORISM
 A.R.S. § 13-2301 *et seq.*
 Authority for Private Cause of Action by Victim

13-2314.04. Racketeering unlawful activity; civil remedies by private cause of action; definitions

A person who sustains reasonably foreseeable injury to his person, business or property by a pattern of racketeering activity may file an action for the recovery of up to treble damages and costs, including attorney fees.

FORFEITURE

A.R.S. § 13-4301 et seq.

How Do We Get To Victim Compensation?

Arizona's Forfeiture Procedures Statutes

- ❖ These statutes provide the procedures for seizing, litigating, and disposing of property ordered forfeited by the court.
- ❖ Seizing property for evidence versus seizing property for forfeiture is an important distinction.

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FORFEITURE

A.R.S. § 13-4301 et seq.

"Injured Person"

13-4301. Definitions

In this chapter, unless the context otherwise requires:

3. "Injured person" means a person who has sustained economic loss, including medical loss, as a result of injury to his person, business or property by the conduct giving rise to the forfeiture of property, and who is not an owner of or an interest holder in the property. Injured person does not include a person who is responsible for the conduct giving rise to forfeiture or a person whose interest would not be exempt from forfeiture if the person were an owner of or interest holder in the property.

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FORFEITURE

A.R.S. § 13-4301 et seq.

Protections When Case Stayed for Criminal Case

13-4310. Judicial forfeiture proceedings; general

1. If an indictment or information is filed alleging the same conduct as the conduct giving rise to forfeiture in a civil forfeiture proceeding, the court in the civil proceeding may stay civil discovery against the criminal defendant and against the state in the civil proceeding until the defendant's criminal trial is completed. Before staying civil discovery, the court shall make adequate provision to prevent any loss or expense to any victim or party resulting from the delay, including loss or expense due to maintenance, management, insurance, storage or preservation of the availability of the property or due to depreciation in the value of the property.

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FORFEITURE

A.R.S. § 13-4301 *et seq.*

Protections When Property May Disappear or Waste

13-4310. Judicial forfeiture proceedings; general

C. On the motion of a party and after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. The court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value...

❖ Proceeds from any sale are allocated, in order, as follows: (1) to pay the sale costs, (2) to satisfy exempt interests in order of priority, and (3) any remaining proceeds are maintained pending further orders.

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FORFEITURE

A.R.S. § 13-4301 *et seq.*

How to Enter the Case

13-4311. Judicial in rem forfeiture proceedings

I. An injured person may submit a request for compensation from forfeited property to the court at any time before the earlier of the entry of a final judgment or an application for an order of the forfeiture of the property, or if a hearing pursuant to subsections K, L and M of this section is held, not less than thirty days before the hearing. The request shall be signed by the requestor under penalty of perjury and shall set forth all of the following:

1. The caption of the proceeding as set forth on the notice of pending forfeiture or complaint and the name of the requestor.
2. The address at which the requestor will accept future mailings from the court or parties to the action.
3. The property subject to forfeiture from which the requestor seeks compensation.
4. The nature of the economic loss sustained by the requestor.
5. All facts supporting each such assertion.
6. Any additional facts supporting the request.
7. The amount of economic loss for which the requestor seeks compensation.

J. If a proper request for compensation from forfeited property is timely filed, the court shall hold a hearing to establish whether there is a factual basis for the request. The requestor has the burden of establishing by a preponderance of the evidence that the requestor is an injured person who sustained economic loss.

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FORFEITURE

A.R.S. § 13-4301 *et seq.*

Court Findings - Injured Persons Are Paid First

13-4311. Judicial in rem forfeiture proceedings

N. In accordance with its findings at the hearing:

3. If the court finds that a requestor is an injured person the court shall determine the amount of the injured person's economic loss caused by the conduct giving rise to the forfeiture of the designated property and shall require the following:

- (a) If the designated property is not contraband and is not altered or designed for use in conduct giving rise to forfeiture, the attorney for the state shall sell the property as provided in section 13-4315, subsection A, paragraph 2 and shall apply the resulting balance to compensate the injured person's economic loss in the amount found by the court.
- (b) If the balance is insufficient to compensate the economic loss of all injured persons the attorney for the state shall distribute the balance among the injured persons according to a method determined by the court.
- (c) After compensation of all injured persons, the attorney for the state shall transmit ten percent of the remaining balance, if any, to the Arizona criminal justice commission for deposit in the victim compensation and assistance fund established by section 41-2407.
- (d) The attorney for the state shall deposit the remainder of the balance, if any, in an appropriate anti-racketeering revolving fund established by section 13-2314.01 or 13-2314.03.

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FORFEITURE

A.R.S. § 13-4301 *et seq.*

Authority to Pay Compensation

13-4315. Allocation of forfeited property

C. Monies in any anti-racketeering fund established pursuant to this title may be used, in addition to any other lawful use, for:

- 3. The payment of compensation from forfeited property to injured persons as provided in section 13-4311, subsection N, paragraph 3.

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SEARCH WARRANTS

- ❖ An investigation may trace victim funds to a bank account. Account funds are evanescent. With time of the essence, a seizure warrant or restitution lien may not be an available remedy to secure such funds.
- ❖ Remember that search warrants allow law enforcement agencies not only to look for but to TAKE/SEIZE things that are evidence of criminal activity and/or fruits and instrumentalities of criminal activity.
- ❖ A search warrant for an account can be an effective mechanism to secure victim funds traceable to an account. Particular language is necessary.

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FORFEITURE

SEARCH WARRANTS

- ❖ The Affidavit content must establish the account currently holds funds that are evidence and/or fruits/instrumentalities of the crimes being investigated.
- ❖ The Affidavit and request for the search warrant specifically describe the account and funds therein and their location and state there is reason to believe they are presently at the location.
- ❖ The Affidavit and request list the account and funds therein as a type of evidence the search is seeking.
- ❖ The Affidavit and request state the Affidavit supports that the account and funds therein are evidence and/or fruits/instrumentalities of the crimes being investigated.
- ❖ The warrant itself must authorize the agency to search the account and the funds therein and authorize the agency to seize the account and funds as evidence and/or fruits/instrumentalities of the crimes being investigated.

Using this language will help defend against a motion to controvert the search warrant under A.R.S. § 13-3922.

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APPLICATION

How Do We Obtain Victim Compensation?

- ❖ Criminal Case Restitution Liens and Orders.
- ❖ Civil Racketeering/Forfeiture Case.
- ❖ Hybrid - Employ civil mechanisms (seizure warrants, forfeiture liens, file actions subject to later dismissal) in addition to or until criminal mechanisms (restitution liens and orders) can take over.

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CAUTIONARY TALES

- ❖ Cautionary Point for both Restitution Orders and Asset Forfeiture Orders.
- ❖ If a conviction is later reversed and the case dismissed the included restitution order is void and the defendant will be entitled to reimbursement for any restitution already paid.
- ❖ Such a reversal and dismissal could also give rise to a request for a set aside of a forfeiture order based on the same conduct and a request for return of the property or compensation for such property if no longer available, particularly where the resolution of the criminal case and the forfeiture case were made dependent upon each other.

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PERSONAL FINANCE

Financial Apps Aim to Safeguard Elderly

By Lisa Brown



As the number of elderly Americans grows, so does the risk of financial fraud. Financial apps are being developed to help protect them. These apps can monitor spending, detect unusual activity, and alert users to potential threats. Some apps also offer educational resources and support for managing finances.

Seniors Targeted
 A recent survey found that 60% of seniors have been targeted by financial fraud. The most common types of fraud include phishing, identity theft, and investment scams. Financial apps can help seniors identify and avoid these risks.

Financial Apps
 There are several financial apps available for seniors. Some focus on budgeting and expense tracking, while others offer more comprehensive financial management tools. It's important to choose an app that is easy to use and has strong security features.

Security Features
 Financial apps should have robust security measures in place, including two-factor authentication and encryption. Users should also be encouraged to use strong passwords and to keep their devices updated with the latest software.

Education and Support
 Many financial apps provide educational content and support services for seniors. This can include articles, videos, and live chat assistance. These resources can help seniors make informed financial decisions and stay safe from fraud.

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\$4,100 RECOVERED FOR VICTIM OF FRAUD

The victim then realized he had been defrauded of \$4,100. The victim then called the Yavapai County Sheriff's Department and made a report.

A Detective at the Yavapai County Sheriff's Office immediately began to investigate the report and obtained a search warrant for the bank account where the victim deposited the \$4,100. The funds in the account where the deposit was made were then seized for evidence. The Detective was able to locate and communicate with the bank account holder. The bank account holder explained that he was a bitcoin proprietor. The bitcoin proprietor acknowledged receipt of the funds from the victim, but claimed the funds were for a bitcoin sale to another individual, presumably the fraudster. The bitcoin proprietor continued to cooperate with the investigation and as the investigation progressed, the bitcoin proprietor offered to refund the \$4,100 to the victim.

Because of the prompt action of law enforcement at the Yavapai County Sheriff's Office, the \$4,100 was returned to the victim.

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MONEY RECOVERED FOR ELDERLY VICTIM OF FRAUD



Press Release from January 9, 2019:

Using Arizona's civil asset forfeiture laws, the Yavapai County Sheriff's Office and the Yavapai County Attorney's Office quickly seized and froze \$2,783.04 from a fraud scheme and returned funds to the victim.

The fraud began when a senior citizen in Cordes Lakes received two letters in the mail from what appeared to be Publisher's Clearing House. Later, the woman received a call from a person identifying himself as "David Washington" advising her that she won \$5.5 million and a Mercedes. The man gave her the "winning numbers" that matched the numbers on one of the letters she had received. The victim was instructed to go to Western Union to pay \$175.00 to obtain the funds. The victim willingly paid the fee, including additional charges totaling \$185.50, and transferred the money as requested.

The victim received a follow up call from "Edward Bartley," who claimed to be David Washington's supervisor. This man requested that she make an additional payment of \$700 to the IRS before she could get her money. The victim became apprehensive and called Publisher's Clearing House who advised her that she had been scammed. Publisher's Clearing House explained the fraudulent activity and that the letters were sent by the scammers themselves and that is how they know the "winning numbers." The victim then called law enforcement.

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MONEY RECOVERED FOR ELDERLY VICTIM OF FRAUD

The Yavapai County Attorney's Office quickly filed in court a civil forfeiture action and successfully obtained a court order to forfeit \$2,783.04 of funds in the account before the suspects could transfer the funds to another account. \$185.50 that was owed to the senior citizen was delivered by the County Attorney's Office back to the victim. The victim was very grateful for the return of her funds stating, "This money helps me keep the heat on for another month. I want to share this information to help prevent someone else from being a victim of a similar scam."

\$259.75 of the funds were paid to the Arizona Criminal Justice Commission Victim Compensation and Assistance Fund and \$2,337.79 of the funds were deposited into the Yavapai County Anti-Racketeering Fund.

Yavapai County Attorney Sheila Polk stated: "We are all very thankful for the quick actions of the Sheriff's Office in freezing the fraudster's bank account to stop this scam. This case illustrates what an important tool Arizona's civil asset forfeiture laws are in the fight against financial fraud, especially in cases involving our senior citizens. Asset forfeiture laws allow us to pursue the recovery of funds even when the wrongdoer is beyond our jurisdiction for criminal charges."

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\$15,500 RECOVERED FOR ELDERLY COUPLE OF FRAUD



Press Release from September 15, 2017:

Using Arizona's civil asset forfeiture laws, the Cottonwood Police Department and Yavapai County Attorney's Office quickly seized \$15,500 from a fraud scheme and returned it through court action to an elderly couple.

The incident involves a Camp Verde elderly couple who was defrauded of \$15,500 by a "computer company" that offered to provide lifetime maintenance of the couples' home computers. After making a "sale" of services to the victims, the company later contacted the victims and offered to wire a refund of \$1,000 to the victims' bank account. Through an elaborate scam, the "company" was able to gain access to the elderly couple's bank account and mimic deposits by transferring a large amount of the couple's own money from their savings account to their checking account. The scammers then convinced the victims to return this "overpayment" by depositing the funds into an account controlled by the scammers.

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\$15,500 RECOVERED FOR ELDERLY COUPLE OF FRAUD

The victims were subsequently notified their bank account had been flagged for possible fraudulent activity. The victims' bank account and the bank accounts of "Samairur Rhaman Talaukder" and "A Kahn" were all frozen. The victims reported the incident to the Cottonwood Police Department which was able to seize \$15,500 from the scammers' accounts before the scammers had an opportunity to transfer the money out of the reach of law enforcement. The couple was defrauded of almost \$18,000, of which \$15,500 was recovered through the efforts of the banks and law enforcement.

The Yavapai County Attorney's Office filed a civil forfeiture action and obtained a court order for forfeiting the \$15,500. The funds were returned to the victims this week.

Yavapai County Attorney Sheila Polk stated, "We are all very thankful for the quick actions of the Cottonwood Police Department to recover this elderly couple's money. This is another case that illustrates what an important tool Arizona's civil asset forfeiture laws are in the fight against financial fraud, especially in cases involving our senior citizens. Asset forfeiture laws allow us to pursue the recovery of funds even when the wrongdoer is beyond our jurisdiction for criminal charges."

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\$30,000 RECOVERED FOR ELDERLY VICTIM OF FRAUD



Press Release from August 8, 2017:

Using Arizona's civil asset forfeiture laws, the Yavapai County Sheriff's Office and Yavapai County Attorney's Office quickly seized \$30,000 from a fraud scheme and returned it through court action to an elderly victim.

The fraud began when a person going by the name of "Jonh Caldwell" contacted a Prescott widow, age 89, through e-mail and social media. "Jonh" claimed to be an American military general who needed money to leave the war zone in Syria and/or Iran. Over a period of time, the widow was misled into believing she was assisting "Jonh" to escape the war and return to the United States. "Jonh" expressed his concerns about the war escalating, professed his love to the widow, and convinced her that she was the only one who could help him. He also promised to repay the funds to her when they could be together. "Jonh Caldwell" and another person by the name of "Mills," who claimed to be associated with the United Nations, defrauded the widow of over \$60,000 in several transactions.

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\$30,000 RECOVERED FOR ELDERLY VICTIM OF FRAUD

The widow's son reported the fraud to the Yavapai County Sheriff's Office after learning that his mother had just transferred \$30,000 to the fraudster's bank account. Upon review of the e-mails, Google chat and Facebook correspondence between the widow and the fraudsters, the detectives noticed numerous grammar and spelling errors in the emails from "Jonh Caldwell" and "Mills" which is often consistent with fraudulent schemes. The Yavapai County Sheriff's Office responded quickly using the asset forfeiture laws to freeze \$30,000 in funds in the fraudster's bank account before "Jonh" could transfer the money beyond the reach of law enforcement.

The Yavapai County Attorney's Office then filed in court a civil forfeiture action and successfully obtained a court order to forfeit the \$30,000. That money was delivered yesterday to the widow by the County Attorney's Office.

Yavapai County Attorney Sheila Polk stated: "We are all very thankful for the quick actions of the Sheriff's Office in freezing the fraudster's bank account to save at least some of the widow's money. This case illustrates what an important tool Arizona's civil asset forfeiture laws are in the fight against financial fraud, especially in cases involving our senior citizens. Asset forfeiture laws allow us to pursue the recovery of funds even when the wrongdoer is beyond our jurisdiction for criminal charges."

The Yavapai County Sheriff's Office has referred the case for criminal investigation to Massachusetts, the last known location of the suspects.




