

REFERENCE TITLE: **crime victim advocates; privileged communications**

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SB 1369

Introduced by
Senator Shooter; Representative Jones; Senators Allen, Melvin, Nelson,
Smith

AN ACT

AMENDING SECTIONS 8-382, 8-409, 13-4401 AND 13-4430, ARIZONA REVISED
STATUTES; RELATING TO VICTIMS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-382, Arizona Revised Statutes, is amended to
3 read:

4 8-382. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Accused" means a juvenile who is referred to juvenile court for
7 committing a delinquent act.

8 2. "Appellate proceeding" means any contested matter before the state
9 court of appeals, the state supreme court, a federal court of appeals or the
10 United States supreme court.

11 3. "Arrest" means the actual custodial restraint or temporary custody
12 of a person.

13 4. "Court" means the juvenile division of the superior court when
14 exercising its jurisdiction over children in any proceeding relating to
15 delinquency.

16 5. "Crime victim advocate" means a person who is employed or
17 authorized by a public ~~entity~~ or a private entity ~~that receives public~~
18 ~~funding primarily~~ to provide counseling, treatment or other supportive
19 assistance to crime victims.

20 6. "Custodial agency" means any law enforcement officer or agency, a
21 sheriff, a county juvenile detention center, the department of juvenile
22 corrections or a secure mental health facility that has custody of a person
23 who is arrested or in custody for a delinquent or incorrigible offense.

24 7. "Delinquency proceeding" means any hearing, argument or other
25 matter that is scheduled or held by a juvenile court judge, commissioner or
26 hearing officer and that relates to an alleged or adjudicated delinquent
27 offense.

28 8. "Delinquent" means a child who is adjudicated to have committed a
29 delinquent act.

30 9. "Delinquent act" means an act to which this article applies
31 pursuant to section 8-381.

32 10. "Detention hearing" means the accused's initial appearance before
33 the court to determine release before adjudication.

34 11. "Final disposition" means the ultimate termination of the
35 delinquency proceeding by a court, including dismissal, acquittal, transfer
36 to adult court or imposition of a disposition after an adjudication for a
37 delinquent offense.

38 12. "Immediate family" means a victim's spouse, parent, child, sibling,
39 grandparent or lawful guardian.

40 13. "Juvenile defendant" means a juvenile against whom a petition is
41 filed seeking to have the juvenile adjudicated delinquent.

42 14. "Lawful representative" means a person who is designated by the
43 victim or appointed by the court and who will act in the best interests of
44 the victim.

1 15. "Postadjudication release" means release on probation, intensive
2 probation, work furlough, community supervision or home detention, release on
3 conditional liberty pursuant to section 41-2818 by the department of juvenile
4 corrections or any other permanent, conditional or temporary release from
5 confinement, discharge or completion of commitment by the department of
6 juvenile corrections, a sheriff, a municipal jail, a juvenile detention
7 center, a residential treatment facility or a secure mental health facility.

8 16. "Postadjudication review hearing" means a hearing that is held in
9 open court and that involves a request by the juvenile for review of a
10 disposition.

11 17. "Postarrest release" means the discharge of the accused from
12 confinement.

13 18. "Release" means no longer in the custody of the custodial agency
14 and includes transfer from one custodial agency to another custodial agency.

15 19. "Rights" means any right granted to the victim by the laws of this
16 state.

17 20. "Victim" means a person against whom the delinquent act was
18 committed, or if the person is killed or incapacitated, the person's spouse,
19 parent, child, grandparent or sibling, any other person related to the person
20 by consanguinity or affinity to the second degree or any other lawful
21 representative of the person, except if the person or the person's spouse,
22 parent, child, grandparent, sibling, other person related to the person by
23 consanguinity or affinity to the second degree or other lawful representative
24 is in custody for an offense or is the accused.

25 Sec. 2. Section 8-409, Arizona Revised Statutes, is amended to read:

26 8-409. Consultation between crime victim advocate and victim;
27 privileged information; exception

28 A. A crime victim advocate shall not disclose as a witness or
29 otherwise any communication ~~except compensation or restitution information~~
30 ~~between the advocate and~~ MADE BY OR WITH the victim, INCLUDING ANY
31 COMMUNICATION MADE TO OR IN THE PRESENCE OF OTHERS, unless the victim
32 consents in writing to the disclosure.

33 B. Unless the victim consents in writing to the disclosure, a crime
34 victim advocate shall not disclose records, notes, documents, correspondence,
35 reports or memoranda, ~~except compensation or restitution information,~~ that
36 contain opinions, theories or other information made while advising,
37 counseling or assisting the victim or that are based on ~~the communication~~
38 ~~between~~ COMMUNICATIONS MADE BY OR WITH the victim ~~and the advocate,~~ INCLUDING
39 COMMUNICATIONS MADE TO OR IN THE PRESENCE OF OTHERS.

40 C. The communication is not privileged if the crime victim advocate
41 knows that the victim will give or has given perjured testimony or if the
42 communication contains exculpatory material.

43 D. An accused may make a motion for disclosure of privileged
44 information. If the court finds there is reasonable cause to believe the

1 material is exculpatory, the court shall hold a hearing in camera. Material
2 that the court finds is exculpatory shall be disclosed to the accused.

3 E. If, with the WRITTEN OR VERBAL consent of the victim, the crime
4 victim advocate discloses to the prosecutor or a law enforcement agency any
5 communication between the victim and the crime victim advocate or any
6 records, notes, documents, correspondence, reports or memoranda, the
7 prosecutor or law enforcement agent shall disclose the material to the
8 accused's attorney only if the information is otherwise discoverable
9 EXCULPABLE.

10 F. Notwithstanding subsections A and B, if a crime victim advocate is
11 employed or authorized by a prosecutor's office, the advocate may disclose
12 information to the prosecutor with the oral consent of the victim.

13 Sec. 3. Section 13-4401, Arizona Revised Statutes, is amended to read:

14 13-4401. Definitions

15 In this chapter, unless the context otherwise requires:

16 1. "Accused" means a person who has been arrested for committing a
17 criminal offense and who is held for an initial appearance or other
18 proceeding before trial.

19 2. "Appellate proceeding" means any contested matter before the state
20 court of appeals, the state supreme court, a federal court of appeals or the
21 United States supreme court.

22 3. "Arrest" means the actual custodial restraint of a person or the
23 person's submission to custody.

24 4. "Court" means all state, county and municipal courts in this state.

25 5. "Crime victim advocate" means a person who is employed or
26 authorized by a public entity or a private entity ~~that receives public~~
27 ~~funding primarily~~ to provide counseling, treatment or other supportive
28 assistance to crime victims.

29 6. "Criminal offense" means conduct that gives a peace officer or
30 prosecutor probable cause to believe that one of the following has occurred:

31 (a) A felony.

32 (b) A misdemeanor involving physical injury, the threat of physical
33 injury or a sexual offense.

34 7. "Criminal proceeding" means any hearing, argument or other matter
35 that is scheduled by and held before a trial court but does not include any
36 deposition, lineup, grand jury proceeding or other matter that is not held in
37 the presence of the court.

38 8. "Custodial agency" means any law enforcement officer or agency, a
39 sheriff or municipal jailer, the state department of corrections or a secure
40 mental health facility that has custody of a person who is arrested or in
41 custody for a criminal offense.

42 9. "Defendant" means a person or entity that is formally charged by
43 complaint, indictment or information of committing a criminal offense.

1 10. "Final disposition" means the ultimate termination of the criminal
2 prosecution of a defendant by a trial court, including dismissal, acquittal
3 or imposition of a sentence.

4 11. "Immediate family" means a victim's spouse, parent, child, sibling,
5 grandparent or lawful guardian.

6 12. "Lawful representative" means a person who is designated by the
7 victim or appointed by the court and who acts in the best interests of the
8 victim.

9 13. "Post-arrest release" means the discharge of the accused from
10 confinement on recognizance, bond or other condition.

11 14. "Post-conviction release" means parole, work furlough, community
12 supervision, probation if the court waived community supervision pursuant to
13 section 13-603, home arrest or any other permanent, conditional or temporary
14 discharge from confinement in the custody of the state department of
15 corrections or a sheriff or from confinement in a municipal jail or a secure
16 mental health facility.

17 15. "Post-conviction relief proceeding" means a contested argument or
18 evidentiary hearing that is held in open court and that involves a request
19 for relief from a conviction or sentence.

20 16. "Prisoner" means a person who has been convicted of a criminal
21 offense against a victim and who has been sentenced to the custody of the
22 sheriff, the state department of corrections, a municipal jail or a secure
23 mental health facility.

24 17. "Release" means no longer in the custody of a custodial agency and
25 includes transfer from one custodial agency to another custodial agency.

26 18. "Rights" means any right that is granted to the victim by the laws
27 of this state.

28 19. "Victim" means a person against whom the criminal offense has been
29 committed, including a minor, or if the person is killed or incapacitated,
30 the person's spouse, parent, child, grandparent or sibling, any other person
31 related to the person by consanguinity or affinity to the second degree or
32 any other lawful representative of the person, except if the person or the
33 person's spouse, parent, child, grandparent, sibling, other person related to
34 the person by consanguinity or affinity to the second degree or other lawful
35 representative is in custody for an offense or is the accused.

36 Sec. 4. Section 13-4430, Arizona Revised Statutes, is amended to read:

37 13-4430. Consultation between crime victim advocate and victim;
38 privileged information; exception

39 A. A crime victim advocate shall not disclose as a witness or
40 otherwise any communication ~~except compensation or restitution information~~
41 ~~between himself and~~ MADE BY OR WITH the victim, INCLUDING ANY COMMUNICATION
42 MADE TO OR IN THE PRESENCE OF OTHERS, unless the victim consents in writing
43 to the disclosure.

44 B. Unless the victim consents in writing to the disclosure, a crime
45 victim advocate shall not disclose records, notes, documents, correspondence,

1 reports or memoranda, ~~except compensation or restitution information,~~ that
2 contain opinions, theories or other information made while advising,
3 counseling or assisting the victim or that are based on ~~the communication~~
4 ~~between~~ COMMUNICATIONS MADE BY OR WITH the victim ~~and the advocate,~~ INCLUDING
5 COMMUNICATIONS MADE TO OR IN THE PRESENCE OF OTHERS.

6 C. The communication is not privileged if the crime victim advocate
7 knows that the victim will give or has given perjured testimony or if the
8 communication contains exculpatory evidence.

9 D. A defendant may make a motion for disclosure of privileged
10 information. If the court finds there is reasonable cause to believe the
11 material is exculpatory, the court shall hold a hearing in camera. Material
12 that the court finds is exculpatory shall be disclosed to the defendant.

13 E. If, with the WRITTEN OR VERBAL consent of the victim, the crime
14 victim advocate discloses to the prosecutor or a law enforcement agency any
15 communication between the victim and the crime victim advocate or any
16 records, notes, documents, correspondence, reports or memoranda, the
17 prosecutor or law enforcement agent shall disclose such material to the
18 defendant's attorney only if such information is otherwise ~~discoverable~~
19 EXCULPATORY.

20 F. Notwithstanding subsections A and B, if a crime victim consents
21 either verbally or in writing, a crime victim advocate may disclose
22 information to other professionals and administrative support persons that
23 the advocate works with for the purpose of assisting the advocate in
24 providing services to the victim and to the court in furtherance of any
25 victim's right pursuant to this chapter.