

REFERENCE TITLE: sexual assault survivors; rights

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HB 2836

Introduced by
Representatives Villegas: Aguilar, Cavero, Connolly, Contreras P, Crews,
Gutierrez, Luna-Nájera, Mathis, Stahl Hamilton

AN ACT

AMENDING SECTION 12-2240, ARIZONA REVISED STATUTES, AMENDING TITLE 13,
CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4444; RELATING
TO CRIME 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 12-2240, Arizona Revised Statutes, is amended to
3 read:

4 12-2240. Sexual assault victim advocate; privilege;
5 exception; training; supervision; definition

6 A. In a civil action, a sexual assault victim advocate shall not be
7 examined as to any communication made by the sexual assault victim to the
8 sexual assault victim advocate.

9 B. This section does not apply to:

10 1. A civil action brought pursuant to title 36, chapter 37,
11 relating to the civil commitment of sexually violent persons.

12 2. A sexual assault victim advocate's duty to report pursuant to
13 section 13-3620.

14 C. Unless the sexual assault program or service provider has
15 immunity under other provisions of law, the communication is not
16 privileged if the sexual assault victim advocate knows or should have
17 known that the victim will give or has given perjurious statements or
18 statements that would tend to disprove the existence of sexual assault.

19 D. A party to an action may make a motion for disclosure of
20 privileged information under this section and, if the court finds
21 reasonable cause, the court shall hold a hearing in camera as to whether
22 the privilege should apply.

23 E. To qualify for the privilege prescribed in this section, a
24 sexual assault victim advocate must have at least thirty hours of training
25 in assisting victims of sexual assault. A portion of this training must
26 include an explanation of privileged communication and the reporting
27 requirements prescribed in section 13-3620. The training may be provided
28 by the sexual assault program or service provider or by an outside agency
29 that issues a certificate of completion. The records custodian of the
30 sexual assault program or service provider must maintain the training
31 documents.

32 F. A sexual assault victim advocate who is a volunteer shall
33 perform all activities under qualified supervision.

34 G. COMMUNICATIONS BETWEEN A SEXUAL ASSAULT SURVIVOR AND A SEXUAL
35 ASSAULT VICTIM ADVOCATE ARE CONFIDENTIAL AND PRIVILEGED, INCLUDING
36 INFORMATION THAT IS DISCLOSED IN THE PRESENCE OF THIRD PERSONS DURING A
37 MEDICAL EVIDENTIARY OR PHYSICAL EXAMINATION OR DURING A LAW ENFORCEMENT
38 INTERVIEW. THE PRESENCE OF A SEXUAL ASSAULT VICTIM ADVOCATE DOES NOT
39 DEFEAT ANY EXISTING PRIVILEGE OTHERWISE GUARANTEED BY LAW.

40 H. IF A SEXUAL ASSAULT SURVIVOR WAIVES THE RIGHT TO A SEXUAL
41 ASSAULT VICTIM ADVOCATE, THE WAIVER IS PRIVILEGED.

42 ~~G.~~ I. For the purposes of this section, "sexual assault victim
43 advocate" means a person who is an employee of or volunteer at a sexual
44 assault program or service provider for victims of sexual assault and who
45 meets the training requirements of this section.

1 Sec. 2. Title 13, chapter 40, Arizona Revised Statutes, is amended
2 by adding section 13-4444, to read:

3 13-4444. Sexual assault survivor rights; definitions

4 A. IN ADDITION TO THE RIGHTS ENUMERATED IN THE VICTIMS' BILL OF
5 RIGHTS, ARTICLE II, SECTION 2.1, CONSTITUTION OF ARIZONA, A SEXUAL ASSAULT
6 SURVIVOR HAS THE FOLLOWING RIGHTS:

7 1. TO CONSULT WITH A SEXUAL ASSAULT VICTIM ADVOCATE DURING ANY
8 MEDICAL EVIDENTIARY OR PHYSICAL EXAMINATION AND DURING ANY INTERVIEW BY A
9 PEACE OFFICER, PROSECUTOR OR DEFENSE ATTORNEY. A SEXUAL ASSAULT SURVIVOR
10 RETAINS THIS RIGHT EVEN IF THE SEXUAL ASSAULT SURVIVOR HAS WAIVED THIS
11 RIGHT IN A PREVIOUS EXAMINATION OR INTERVIEW.

12 2. TO NOT BE CHARGED DIRECTLY OR INDIRECTLY FOR ANY COSTS INCURRED
13 BY A QUALIFIED HEALTH CARE PROFESSIONAL, HOSPITAL OR OTHER EMERGENCY
14 MEDICAL FACILITY FOR THE MEDICAL EVIDENTIARY EXAMINATION OF A SEXUAL
15 ASSAULT SURVIVOR.

16 3. TO BE ABLE TO OBTAIN A SEXUAL ASSAULT FORENSIC MEDICAL
17 EXAMINATION AT ANY QUALIFIED HEALTH CARE PROVIDER OR ADVOCACY CENTER
18 WITHIN THIS STATE.

19 4. BEFORE A FACILITY COMMENCES A MEDICAL EVIDENTIARY OR PHYSICAL
20 EXAMINATION OF A SEXUAL ASSAULT SURVIVOR, TO BE INFORMED OF THE FOLLOWING:

21 (a) THE SEXUAL ASSAULT SURVIVOR'S RIGHTS PURSUANT TO THIS SECTION
22 AND OTHER RELEVANT LAWS IN A DOCUMENT THAT IS DEVELOPED BY THE ATTORNEY
23 GENERAL AND THAT IS SIGNED BY THE SEXUAL ASSAULT SURVIVOR TO CONFIRM
24 RECEIPT.

25 (b) THE SEXUAL ASSAULT SURVIVOR'S RIGHT TO CONSULT WITH A SEXUAL
26 ASSAULT VICTIM ADVOCATE WHO IS SUMMONED BY THE MEDICAL FACILITY BEFORE THE
27 MEDICAL EVIDENTIARY OR PHYSICAL EXAMINATION COMMENCES UNLESS A SEXUAL
28 ASSAULT VICTIM ADVOCATE CANNOT BE SUMMONED IN A REASONABLY TIMELY MANNER.

29 (c) IF A SEXUAL ASSAULT VICTIM ADVOCATE CANNOT BE SUMMONED IN A
30 REASONABLY TIMELY MANNER, THE RAMIFICATIONS OF DELAYING THE MEDICAL
31 EVIDENTIARY OR PHYSICAL EXAMINATION.

32 (d) AFTER THE MEDICAL EVIDENTIARY OR PHYSICAL EXAMINATION, THE
33 SEXUAL ASSAULT SURVIVOR'S RIGHT TO SHOWER AT NO COST UNLESS SHOWERING
34 FACILITIES ARE NOT AVAILABLE.

35 5. BEFORE COMMENCING AN INTERVIEW, TO HAVE A PEACE OFFICER OR
36 PROSECUTOR INFORM THE SEXUAL ASSAULT SURVIVOR OF THE FOLLOWING RIGHTS:

37 (a) THE SEXUAL ASSAULT SURVIVOR'S RIGHTS PURSUANT TO THIS SECTION
38 AND OTHER RELEVANT LAWS IN A DOCUMENT THAT IS DEVELOPED BY THE ATTORNEY
39 GENERAL AND THAT IS SIGNED BY THE SEXUAL ASSAULT SURVIVOR TO CONFIRM
40 RECEIPT.

41 (b) THE SEXUAL ASSAULT SURVIVOR'S RIGHT TO CONSULT WITH A SEXUAL
42 ASSAULT VICTIM ADVOCATE DURING AN INTERVIEW BY A PEACE OFFICER, PROSECUTOR
43 OR DEFENSE ATTORNEY. THE INTERVIEWER MUST SUMMON THE SEXUAL ASSAULT
44 VICTIM ADVOCATE BEFORE COMMENCING THE INTERVIEW UNLESS A SEXUAL ASSAULT
45 VICTIM ADVOCATE CANNOT BE SUMMONED IN A REASONABLY TIMELY MANNER.

(c) THE SEXUAL ASSAULT SURVIVOR'S RIGHT TO BE INTERVIEWED BY A PEACE OFFICER OR PROSECUTOR OF THE SAME GENDER OR OPPOSITE GENDER AS THE SEXUAL ASSAULT SURVIVOR PREFERS UNLESS A PEACE OFFICER OR PROSECUTOR OF THE SAME GENDER OR OPPOSITE GENDER IS NOT REASONABLY AVAILABLE.

6. TO HAVE COUNSEL PRESENT DURING ALL STAGES OF ANY MEDICAL EXAMINATION, INVESTIGATION OR OTHER INTERACTION WITH REPRESENTATIVES FROM THE LEGAL AND CRIMINAL JUSTICE SYSTEMS. TREATMENT OF THE SEXUAL ASSAULT SURVIVOR SHOULD NOT BE AFFECTED OR ALTERED IN ANY WAY AS A RESULT OF THE SEXUAL ASSAULT SURVIVOR'S DECISION TO EXERCISE THE RIGHT TO HAVE COUNSEL PRESENT DURING ANY INTERACTION WITH THE LEGAL AND CRIMINAL JUSTICE SYSTEMS.

7. TO HAVE A PROMPT ANALYSIS OF SEXUAL ASSAULT KIT EVIDENCE AS PROVIDED BY SECTION 13-1426.

8. TO HAVE A MEDICAL PROVIDER, WHEN CONDUCTING A MEDICAL EVIDENTIARY EXAMINATION TO COLLECT SEXUAL ASSAULT KIT EVIDENCE, INFORM THE SEXUAL ASSAULT SURVIVOR OF THE FOLLOWING:

(a) THAT THE SEXUAL ASSAULT KIT EVIDENCE WILL BE TRANSPORTED TO THE CRIME LABORATORY AND ANALYZED AS SOON AS PRACTICABLE UNLESS THE SEXUAL ASSAULT SURVIVOR REQUESTS IN WRITING THAT THE CRIME LABORATORY DEFER ANALYSIS OF THE SEXUAL ASSAULT KIT EVIDENCE.

(b) THAT THE CRIME LABORATORY WILL RETAIN THE SEXUAL ASSAULT KIT EVIDENCE IN ACCORDANCE WITH SECTION 13-4221.

(c) THAT THE SEXUAL ASSAULT SURVIVOR MAY REQUEST THAT THE CRIME LABORATORY ANALYZE THE SEXUAL ASSAULT KIT EVIDENCE AT ANY LATER DATE THAT IS BEFORE THE EXPIRATION OF THE RETENTION PERIOD PRESCRIBED IN SECTION 13-4221.

9. TO HAVE A MEDICAL PROVIDER, WITHIN FORTY-EIGHT HOURS AFTER COLLECTING SEXUAL ASSAULT KIT EVIDENCE, NOTIFY THE LAW ENFORCEMENT AGENCY THAT HAS JURISDICTION OVER THE ALLEGED ASSAULT AS PRESCRIBED IN SECTION 13-1426.

10. TO NOT HAVE SEXUAL ASSAULT KIT EVIDENCE USED FOR ANY OF THE FOLLOWING:

(a) TO PROSECUTE A SEXUAL ASSAULT SURVIVOR FOR A MISDEMEANOR OFFENSE OR ANY OFFENSE INCLUDED IN CHAPTER 34 OF THIS TITLE.

(b) AS A BASIS TO SEARCH FOR FURTHER EVIDENCE OF ANY UNRELATED MISDEMEANOR OFFENSE OR ANY OFFENSE INCLUDED IN CHAPTER 34 OF THIS TITLE THAT MAY HAVE BEEN COMMITTED BY THE SEXUAL ASSAULT SURVIVOR.

11. ON THE REQUEST OF THE SEXUAL ASSAULT SURVIVOR, TO HAVE THE COURT CLEAR THE COURTROOM OF ALL PERSONS WHEN THE SEXUAL ASSAULT SURVIVOR IS TESTIFYING REGARDING THE SEXUAL ASSAULT IN ANY CIVIL OR CRIMINAL TRIAL, EXCEPT THAT PARTIES TO THE ACTION AND THEIR IMMEDIATE FAMILIES OR GUARDIANS, ATTORNEYS AND THEIR SECRETARIES, OFFICERS OF THE COURT, JURORS, COURT REPORTERS AND, AT THE REQUEST OF THE SEXUAL ASSAULT SURVIVOR, WITNESSES DESIGNATED BY THE PROSECUTOR MAY REMAIN IN THE COURTROOM.

1 12. TO NOT BE REQUIRED TO SUBMIT TO A POLYGRAPH EXAMINATION AS A
2 PREREQUISITE TO FILING AN ACCUSATORY PLEADING OR TO PARTICIPATING IN ANY
3 PART OF THE CRIMINAL JUSTICE SYSTEM.

4 13. TO BE HEARD THROUGH A SURVIVOR IMPACT STATEMENT AT ANY
5 PROCEEDING INVOLVING A POSTARREST RELEASE DECISION, A PLEA, SENTENCING, A
6 POSTCONVICTION RELEASE DECISION OR ANY OTHER PROCEEDING IN WHICH A RIGHT
7 OF THE SEXUAL ASSAULT SURVIVOR IS AT ISSUE AND THE RIGHT TO PROVIDE A
8 SENTENCING RECOMMENDATION TO THE PROBATION DEPARTMENT EMPLOYEE WHO
9 CONDUCTS A PRESENTENCE INVESTIGATION.

10 B. ON INITIAL INTERACTION WITH A SEXUAL ASSAULT SURVIVOR, A PEACE
11 OFFICER OR MEDICAL PROVIDER SHALL PROVIDE THE SEXUAL ASSAULT SURVIVOR WITH
12 A DOCUMENT, IN ADDITION TO THE INFORMATION THAT IS REQUIRED UNDER SECTION
13 13-4405, THAT PROVIDES THE FOLLOWING:

14 1. A CLEAR STATEMENT THAT A SEXUAL ASSAULT SURVIVOR IS NOT REQUIRED
15 TO PARTICIPATE IN THE CRIMINAL JUSTICE SYSTEM OR TO RECEIVE A MEDICAL
16 EVIDENTIARY OR PHYSICAL EXAMINATION IN ORDER TO RETAIN THE RIGHTS PROVIDED
17 BY THIS SECTION AND OTHER RELEVANT LAWS.

18 2. TELEPHONE AND INTERNET MEANS OF CONTACTING NEARBY SEXUAL ASSAULT
19 CRISIS CENTERS AND SEXUAL ASSAULT VICTIM ADVOCATES.

20 3. FORMS OF LAW ENFORCEMENT PROTECTION AVAILABLE TO THE SEXUAL
21 ASSAULT SURVIVOR, INCLUDING TEMPORARY PROTECTION ORDERS AND THE PROCESS TO
22 OBTAIN AN ORDER OF PROTECTION.

23 4. INSTRUCTIONS FOR TRACKING THE RESULTS OF THE ANALYSIS OF THE
24 SEXUAL ASSAULT SURVIVOR'S FORENSIC EVIDENCE.

25 5. STATE AND FEDERAL COMPENSATION MONIES AVAILABLE FOR MEDICAL AND
26 OTHER COSTS ASSOCIATED WITH THE SEXUAL ASSAULT AND INFORMATION ON ANY
27 MUNICIPAL, STATE OR FEDERAL RIGHTS TO RESTITUTION FOR SEXUAL ASSAULT
28 SURVIVORS.

29 C. ON WRITTEN REQUEST BY A SEXUAL ASSAULT SURVIVOR, A PEACE OFFICER
30 SHALL FURNISH A FREE, COMPLETE AND UNALTERED COPY OF ALL LAW ENFORCEMENT
31 REPORTS CONCERNING THE SEXUAL ASSAULT, REGARDLESS OF WHETHER THE REPORT
32 HAS BEEN CLOSED BY THE LAW ENFORCEMENT AGENCY.

33 D. ON WRITTEN REQUEST BY A SEXUAL ASSAULT SURVIVOR, A PROSECUTOR
34 SHALL PROVIDE THE FOLLOWING:

35 1. TIMELY NOTICE OF ANY PRETRIAL DISPOSITION OF THE CASE AS
36 REQUIRED BY THIS CHAPTER.

37 2. TIMELY NOTICE OF THE FINAL DISPOSITION OF THE CASE, INCLUDING
38 THE CONVICTION, SENTENCE AND PLACE AND TIME OF INCARCERATION, AS REQUIRED
39 BY THIS CHAPTER.

40 3. TIMELY NOTICE OF A CONVICTED DEFENDANT'S LOCATION, INCLUDING
41 WHENEVER THE DEFENDANT RECEIVES A TEMPORARY, PROVISIONAL OR FINAL RELEASE
42 FROM CUSTODY, ESCAPES FROM CUSTODY, IS MOVED FROM A SECURE FACILITY TO A
43 LESS SECURE FACILITY OR REENTERS CUSTODY, AS REQUIRED BY THIS CHAPTER.

44 4. A CONVICTED DEFENDANT'S INFORMATION ON A SEX OFFENDER REGISTRY,
45 IF ANY.

1 E. FOR THE PURPOSES OF THIS SECTION:

2 1. "CRIME LABORATORY" MEANS A LABORATORY THAT IS OPERATED BY A
3 POLITICAL SUBDIVISION, THAT HAS AT LEAST ONE REGULARLY EMPLOYED FORENSIC
4 SCIENTIST WHO HOLDS A MINIMUM OF A BACHELOR'S DEGREE IN A PHYSICAL OR
5 NATURAL SCIENCE AND THAT IS REGISTERED AS AN ANALYTICAL LABORATORY WITH
6 THE DRUG ENFORCEMENT ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF
7 JUSTICE FOR THE POSSESSION OF ALL SCHEDULED CONTROLLED SUBSTANCES.

8 2. "SEXUAL ASSAULT KIT EVIDENCE" OR "KIT" MEANS ANY HUMAN
9 BIOLOGICAL SPECIMEN THAT IS COLLECTED BY A MEDICAL PROVIDER DURING A
10 FORENSIC MEDICAL EXAMINATION FROM AN ALLEGED SEXUAL ASSAULT SURVIVOR,
11 INCLUDING, WHEN CIRCUMSTANCES INDICATE THE NEED, A TOXICOLOGY KIT.

12 3. "SEXUAL ASSAULT SURVIVOR" OR "SURVIVOR":

13 (a) MEANS A PERSON WHO IS A VICTIM OF SEXUAL ASSAULT PURSUANT TO
14 SECTION 13-1406.

15 (b) INCLUDES THE PARENT, THE GUARDIAN, THE SPOUSE, ANOTHER PERSON
16 RELATED TO THE SEXUAL ASSAULT SURVIVOR BY CONSANGUINITY OR AFFINITY TO THE
17 SECOND DEGREE OR A LAWFUL REPRESENTATIVE OF THE SEXUAL ASSAULT SURVIVOR IF
18 THE SEXUAL ASSAULT SURVIVOR IS INCOMPETENT, DECEASED OR A MINOR WHO IS
19 UNABLE TO CONSENT TO COUNSELING SERVICES UNLESS THE LAWFUL REPRESENTATIVE
20 IS THE ALLEGED ASSAILANT.

21 4. "SEXUAL ASSAULT VICTIM ADVOCATE" HAS THE SAME MEANING PRESCRIBED
22 IN SECTION 12-2240.