

REFERENCE TITLE: sexual assault survivor rights

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **HB 2358**

Introduced by  
Representatives Biasiucci: Burges, Carter, Cobb, Martinez, Parker,  
Pingerelli

AN ACT

AMENDING TITLE 13, CHAPTER 40, ARIZONA REVISED STATUTES, BY ADDING SECTION  
13-4444; RELATING TO SEXUAL ASSAULT KITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 13-4444. Sexual assault survivor rights; definitions

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

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

13 2. IN ADDITION TO THE PRIVILEGE PRESCRIBED IN SECTION 12-2240, TO  
14 HAVE THE COMMUNICATIONS BETWEEN A SEXUAL ASSAULT SURVIVOR AND A SEXUAL  
15 ASSAULT VICTIM ADVOCATE BE CONFIDENTIAL AND PRIVILEGED, INCLUDING  
16 INFORMATION DISCLOSED IN THE PRESENCE OF THIRD PERSONS CONDUCTING A  
17 MEDICAL EVIDENTIARY OR PHYSICAL EXAMINATION OR A LAW ENFORCEMENT  
18 INTERVIEW. THE PRESENCE OF A SEXUAL ASSAULT VICTIM ADVOCATE DOES NOT  
19 DEFEAT ANY EXISTING PRIVILEGE OTHERWISE GUARANTEED BY LAW.

20 3. TO HAVE A WAIVER OF THE RIGHT TO A SEXUAL ASSAULT VICTIM  
21 ADVOCATE BE PRIVILEGED.

22 4. TO NOT BE CHARGED DIRECTLY OR INDIRECTLY FOR ANY COSTS INCURRED  
23 BY A QUALIFIED HEALTH CARE PROFESSIONAL, HOSPITAL OR OTHER EMERGENCY  
24 MEDICAL FACILITY FOR THE MEDICAL EVIDENTIARY EXAMINATION OF A SEXUAL  
25 ASSAULT SURVIVOR.

26 5. BEFORE A MEDICAL FACILITY COMMENCES A MEDICAL EVIDENTIARY OR  
27 PHYSICAL EXAMINATION OF A SEXUAL ASSAULT SURVIVOR, TO BE INFORMED BY THE  
28 MEDICAL FACILITY OF THE FOLLOWING:

29 (a) THE SURVIVOR'S RIGHTS PURSUANT TO THIS SECTION AND OTHER  
30 RELEVANT LAWS IN A DOCUMENT THAT IS DEVELOPED BY THE ATTORNEY GENERAL AND  
31 THAT IS SIGNED BY THE SURVIVOR TO CONFIRM RECEIPT.

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

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

39 (d) AFTER THE MEDICAL EVIDENTIARY OR PHYSICAL EXAMINATION, THE  
40 SURVIVOR'S RIGHT TO SHOWER AT NO COST UNLESS SHOWERING FACILITIES ARE NOT  
41 AVAILABLE.

1           6. BEFORE COMMENCING AN INTERVIEW, TO HAVE A PEACE OFFICER OR  
2 PROSECUTOR INFORM THE SEXUAL ASSAULT SURVIVOR OF THE FOLLOWING RIGHTS:

3           (a) THE SURVIVOR'S RIGHTS PURSUANT TO THIS SECTION AND OTHER  
4 RELEVANT LAWS IN A DOCUMENT THAT IS DEVELOPED BY THE ATTORNEY GENERAL AND  
5 THAT IS SIGNED BY THE SURVIVOR TO CONFIRM RECEIPT.

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

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

15           (d) THE RIGHT TO RECEIVE INFORMATION REGARDING A SEXUAL ASSAULT KIT  
16 PURSUANT TO PARAGRAPHS 13 AND 14 OF THIS SUBSECTION AND TO REQUEST THE  
17 PRESERVATION OF ANY SEXUAL ASSAULT KIT EVIDENCE PURSUANT TO PARAGRAPH 15  
18 OF THIS SUBSECTION.

19           7. TO NOT BE DISCOURAGED BY A PEACE OFFICER, FOR ANY REASON, FROM  
20 RECEIVING A MEDICAL EVIDENTIARY OR PHYSICAL EXAMINATION.

21           8. TO HAVE COUNSEL PRESENT DURING ALL STAGES OF ANY MEDICAL  
22 EXAMINATION, INVESTIGATION OR OTHER INTERACTION WITH REPRESENTATIVES FROM  
23 THE LEGAL AND CRIMINAL JUSTICE SYSTEMS AS PRESCRIBED BY THIS SECTION.  
24 TREATMENT OF THE SURVIVOR SHOULD NOT BE AFFECTED OR ALTERED IN ANY WAY AS  
25 A RESULT OF THE SURVIVOR'S DECISION TO EXERCISE THE RIGHT TO HAVE COUNSEL  
26 PRESENT DURING ANY INTERACTION WITH THE LEGAL AND CRIMINAL JUSTICE  
27 SYSTEMS.

28           9. TO A PROMPT ANALYSIS OF SEXUAL ASSAULT KIT EVIDENCE AS PROVIDED  
29 BY SECTION 13-1426.

30           10. TO HAVE A MEDICAL PROVIDER, ON CONDUCTING A MEDICAL EVIDENTIARY  
31 EXAMINATION TO COLLECT SEXUAL ASSAULT KIT EVIDENCE, INFORM THE SEXUAL  
32 ASSAULT SURVIVOR THAT:

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

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

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

42           (d) THE SURVIVOR HAS THE RIGHT TO RECEIVE INFORMATION ON A SEXUAL  
43 ASSAULT KIT PURSUANT TO PARAGRAPHS 13 AND 14 OF THIS SUBSECTION AND TO  
44 REQUEST THE PRESERVATION OF SEXUAL ASSAULT KIT EVIDENCE PURSUANT TO  
45 PARAGRAPH 15 OF THIS SUBSECTION.

1           11. TO HAVE A MEDICAL PROVIDER, WITHIN FORTY-EIGHT HOURS AFTER  
2 COLLECTING SEXUAL ASSAULT KIT EVIDENCE, NOTIFY THE LAW ENFORCEMENT AGENCY  
3 THAT HAS JURISDICTION OVER THE ALLEGED ASSAULT AS PRESCRIBED IN SECTION  
4 13-1426.

5           12. TO HAVE A LAW ENFORCEMENT AGENCY THAT RECEIVES NOTICE UNDER  
6 PARAGRAPH 11 OF THIS SUBSECTION TAKE POSSESSION OF THE SEXUAL ASSAULT KIT  
7 EVIDENCE FROM THE MEDICAL PROVIDER AND SUBMIT IT TO THE CRIME LABORATORY  
8 WITHIN FIFTEEN BUSINESS DAYS AFTER RECEIVING THE NOTICE AND, IF THE  
9 SURVIVOR HAS GIVEN WRITTEN CONSENT TO FILE A CRIMINAL COMPLAINT, ASSIGN A  
10 CRIMINAL COMPLAINT NUMBER TO THAT EVIDENCE WITHIN FIVE DAYS AFTER  
11 RECEIVING THE NOTICE. IF A LAW ENFORCEMENT AGENCY DETERMINES THAT IT DOES  
12 NOT HAVE JURISDICTION, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE LAW  
13 ENFORCEMENT AGENCY THAT HAS PROPER JURISDICTION OF THAT FACT WITHIN FIVE  
14 DAYS AFTER TAKING POSSESSION OF THE SEXUAL ASSAULT KIT EVIDENCE. THE LAW  
15 ENFORCEMENT AGENCY THAT HAS PROPER JURISDICTION SHALL TAKE POSSESSION OF  
16 THE SEXUAL ASSAULT KIT EVIDENCE FROM THE LAW ENFORCEMENT AGENCY THAT DOES  
17 NOT HAVE JURISDICTION AND SUBMIT IT TO THE CRIME LABORATORY WITHIN FIVE  
18 DAYS AFTER RECEIVING THE NOTICE.

19           13. TO ANONYMOUSLY ACCESS THROUGH A WEBSITE PORTAL THE FOLLOWING  
20 INFORMATION FOR THE SURVIVOR'S SEXUAL ASSAULT KIT:

- 21           (a) THE LOCATION OF THE KIT.
- 22           (b) THE DATE OF TESTING.
- 23           (c) THE RESULTS OF THE TESTING.
- 24           (d) WHETHER A DNA PROFILE WAS OBTAINED FROM THE KIT.
- 25           (e) WHETHER THE DNA PROFILE MATCHED A PROFILE IN A STATE OR FEDERAL  
26 DATABASE.
- 27           (f) THE ESTIMATED DESTRUCTION DATE FOR THE KIT.

28           14. TO RECEIVE A NOTIFICATION, IF REQUESTED, WITH THE DATE THAT THE  
29 SEXUAL ASSAULT KIT WILL BE DESTROYED AT LEAST SIXTY DAYS BEFORE THE  
30 DESTRUCTION DATE OR WITHIN FIVE DAYS AFTER MAKING THE REQUEST TO THE  
31 ENTITY THAT IS IN POSSESSION OF THE KIT.

32           15. TO REQUEST THAT A SEXUAL ASSAULT KIT OR THE KIT'S PROBATIVE  
33 EVIDENCE IS PRESERVED FOR A SPECIFIC LENGTH OF TIME.

34           16. TO NOT HAVE SEXUAL ASSAULT KIT EVIDENCE USED:

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

40           17. TO BE REASONABLY PROTECTED FROM THE DEFENDANT AND PERSONS  
41 ACTING ON BEHALF OF THE DEFENDANT AS PROVIDED BY THIS CHAPTER.

42           18. TO BE FREE FROM INTIMIDATION, HARASSMENT AND ABUSE FROM THE  
43 DEFENDANT. A COURT SHALL MAKE REASONABLE EFFORTS TO PROVIDE THE SURVIVOR  
44 AND THE SURVIVOR'S FAMILY MEMBERS, FRIENDS AND WITNESSES WITH A SECURE  
45 WAITING AREA OR ROOM THAT IS SEPARATE FROM THE WAITING AREA OF THE

1 DEFENDANT AND THE DEFENDANT'S FAMILY MEMBERS, FRIENDS, WITNESSES AND  
2 ATTORNEYS AND SEPARATE FROM THE PROSECUTOR'S OFFICE.

3 19. TO BE TREATED WITH FAIRNESS AND RESPECT FOR THE SURVIVOR'S  
4 PRIVACY AND DIGNITY. ON THE REQUEST OF THE SURVIVOR, THE COURT SHALL  
5 CLEAR THE COURTROOM OF ALL PERSONS WHEN THE SURVIVOR IS TESTIFYING  
6 REGARDING THE SEXUAL ASSAULT IN ANY CIVIL OR CRIMINAL TRIAL, EXCEPT THAT  
7 PARTIES TO THE ACTION AND THEIR IMMEDIATE FAMILIES OR GUARDIANS, ATTORNEYS  
8 AND THEIR SECRETARIES, OFFICERS OF THE COURT, JURORS, NEWSPAPER REPORTERS  
9 OR BROADCASTERS, COURT REPORTERS AND, AT THE REQUEST OF THE SURVIVOR,  
10 WITNESSES DESIGNATED BY THE PROSECUTOR MAY REMAIN IN THE COURTROOM.

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

14 21. TO BE HEARD THROUGH A SURVIVOR IMPACT STATEMENT AT ANY  
15 PROCEEDING INVOLVING A POSTARREST RELEASE DECISION, A PLEA, SENTENCING, A  
16 POSTCONVICTION RELEASE DECISION OR ANY OTHER PROCEEDING IN WHICH A RIGHT  
17 OF THE SURVIVOR IS AT ISSUE, AS PROVIDED UNDER THIS CHAPTER, AND THE RIGHT  
18 TO PROVIDE A SENTENCING RECOMMENDATION TO THE PROBATION DEPARTMENT  
19 OFFICIAL CONDUCTING A PRESENTENCE INVESTIGATION UNDER THIS CHAPTER.

20 B. ON INITIAL INTERACTION WITH A SEXUAL ASSAULT SURVIVOR, A PEACE  
21 OFFICER OR MEDICAL PROVIDER SHALL PROVIDE THE SURVIVOR WITH A DOCUMENT  
22 THAT IS DEVELOPED BY THE ATTORNEY GENERAL AND THAT EXPLAINS THE RIGHTS OF  
23 SEXUAL ASSAULT SURVIVORS PURSUANT TO THIS SECTION AND OTHER RELEVANT LAWS  
24 IN CLEAR LANGUAGE THAT IS COMPREHENSIBLE TO A PERSON PROFICIENT IN ENGLISH  
25 AT THE FIFTH GRADE LEVEL, ACCESSIBLE TO PERSONS WITH VISUAL DISABILITIES  
26 AND AVAILABLE IN ALL MAJOR LANGUAGES OF THIS STATE. THIS DOCUMENT MUST  
27 INCLUDE:

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

32 2. TELEPHONE AND INTERNET MEANS OF CONTACTING NEARBY SEXUAL ASSAULT  
33 CRISIS CENTERS AND SEXUAL ASSAULT VICTIM ADVOCATES.

34 3. FORMS OF LAW ENFORCEMENT PROTECTION AVAILABLE TO THE SEXUAL  
35 ASSAULT SURVIVOR, INCLUDING TEMPORARY PROTECTION ORDERS AND THE PROCESS TO  
36 OBTAIN AN ORDER OF PROTECTION.

37 4. INSTRUCTIONS FOR REQUESTING THE RESULTS OF THE ANALYSIS OF THE  
38 SEXUAL ASSAULT SURVIVOR'S FORENSIC EVIDENCE.

39 5. STATE AND FEDERAL COMPENSATION MONIES AVAILABLE FOR MEDICAL AND  
40 OTHER COSTS ASSOCIATED WITH THE SEXUAL ASSAULT AND INFORMATION ON ANY  
41 MUNICIPAL, STATE OR FEDERAL RIGHTS TO RESTITUTION FOR SEXUAL ASSAULT  
42 SURVIVORS.

43 C. ON WRITTEN REQUEST BY A SEXUAL ASSAULT SURVIVOR, A PEACE OFFICER  
44 SHALL FURNISH A FREE, COMPLETE AND UNALTERED COPY OF ALL LAW ENFORCEMENT

1 REPORTS CONCERNING THE SEXUAL ASSAULT, REGARDLESS OF WHETHER THE REPORT  
2 HAS BEEN CLOSED BY THE LAW ENFORCEMENT AGENCY.

3 D. ON WRITTEN REQUEST BY A SEXUAL ASSAULT SURVIVOR, A PROSECUTOR  
4 SHALL PROVIDE:

5 1. TIMELY NOTICE OF ANY PRETRIAL DISPOSITION OF THE CASE AS  
6 REQUIRED BY THIS CHAPTER.

7 2. TIMELY NOTICE OF THE FINAL DISPOSITION OF THE CASE, INCLUDING  
8 THE CONVICTION, SENTENCE AND PLACE AND TIME OF INCARCERATION, AS REQUIRED  
9 BY THIS CHAPTER.

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

14 4. A CONVICTED DEFENDANT'S INFORMATION ON A SEX OFFENDER REGISTRY,  
15 IF ANY.

16 E. FOR THE PURPOSES OF THIS SECTION:

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

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

27 3. "SEXUAL ASSAULT SURVIVOR" OR "SURVIVOR" MEANS A PERSON WHO IS A  
28 VICTIM OF SEXUAL ASSAULT PURSUANT TO SECTION 13-1406 AND INCLUDES THE  
29 PARENT, THE GUARDIAN, THE SPOUSE, ANOTHER PERSON RELATED TO THE SURVIVOR  
30 BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE OR A LAWFUL  
31 REPRESENTATIVE OF THE SURVIVOR IF THE SURVIVOR IS INCOMPETENT, DECEASED OR  
32 A MINOR WHO IS UNABLE TO CONSENT TO COUNSELING SERVICES UNLESS THE LAWFUL  
33 REPRESENTATIVE IS THE ALLEGED ASSAILANT.

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