

REFERENCE TITLE: sexual assault survivors; rights.

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2713

Introduced by
Representatives Hernandez M: Aguilar, Austin, Cano, Contreras L, De Los Santos, Hernandez A, Hernandez C, Hernandez L, Longdon, Ortiz, Quiñonez, Sandoval, Stahl Hamilton, Travers

AN ACT

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

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

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

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

26 10. TO HAVE A MEDICAL PROVIDER, ON CONDUCTING A MEDICAL EVIDENTIARY
27 EXAMINATION TO COLLECT SEXUAL ASSAULT KIT EVIDENCE, INFORM THE SEXUAL
28 ASSAULT SURVIVOR THAT:

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

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

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

38 11. TO HAVE A MEDICAL PROVIDER, WITHIN FORTY-EIGHT HOURS AFTER
39 COLLECTING SEXUAL ASSAULT KIT EVIDENCE, NOTIFY THE LAW ENFORCEMENT AGENCY
40 THAT HAS JURISDICTION OVER THE ALLEGED ASSAULT AS PRESCRIBED IN SECTION
41 13-1426.

42 12. TO HAVE A LAW ENFORCEMENT AGENCY THAT RECEIVES NOTICE UNDER
43 PARAGRAPH 11 OF THIS SUBSECTION TAKE POSSESSION OF THE SEXUAL ASSAULT KIT
44 EVIDENCE FROM THE MEDICAL PROVIDER AND SUBMIT IT TO THE CRIME LABORATORY
45 WITHIN FIFTEEN BUSINESS DAYS AFTER RECEIVING THE NOTICE AND, IF THE

1 SURVIVOR HAS GIVEN WRITTEN CONSENT TO FILE A CRIMINAL COMPLAINT, ASSIGN A
2 CRIMINAL COMPLAINT NUMBER TO THAT EVIDENCE WITHIN FIVE DAYS AFTER
3 RECEIVING THE NOTICE. IF A LAW ENFORCEMENT AGENCY DETERMINES THAT IT DOES
4 NOT HAVE JURISDICTION, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE LAW
5 ENFORCEMENT AGENCY THAT HAS PROPER JURISDICTION OF THAT FACT WITHIN FIVE
6 DAYS AFTER TAKING POSSESSION OF THE SEXUAL ASSAULT KIT EVIDENCE. THE LAW
7 ENFORCEMENT AGENCY THAT HAS PROPER JURISDICTION SHALL TAKE POSSESSION OF
8 THE SEXUAL ASSAULT KIT EVIDENCE FROM THE LAW ENFORCEMENT AGENCY THAT DOES
9 NOT HAVE JURISDICTION AND SUBMIT IT TO THE CRIME LABORATORY WITHIN FIVE
10 DAYS AFTER RECEIVING THE NOTICE.

11 13. TO NOT HAVE SEXUAL ASSAULT KIT EVIDENCE USED:

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

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

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

19 15. TO BE FREE FROM INTIMIDATION, HARASSMENT AND ABUSE FROM THE
20 DEFENDANT. A COURT SHALL MAKE REASONABLE EFFORTS TO PROVIDE THE SURVIVOR
21 AND THE SURVIVOR'S FAMILY MEMBERS, FRIENDS AND WITNESSES WITH A SECURE
22 WAITING AREA OR ROOM THAT IS SEPARATE FROM THE WAITING AREA OF THE
23 DEFENDANT AND THE DEFENDANT'S FAMILY MEMBERS, FRIENDS, WITNESSES AND
24 ATTORNEYS AND SEPARATE FROM THE PROSECUTOR'S OFFICE.

25 16. TO BE TREATED WITH FAIRNESS AND RESPECT FOR THE SURVIVOR'S
26 PRIVACY AND DIGNITY. ON THE REQUEST OF THE SURVIVOR, THE COURT SHALL
27 CLEAR THE COURTROOM OF ALL PERSONS WHEN THE SURVIVOR IS TESTIFYING
28 REGARDING THE SEXUAL ASSAULT IN ANY CIVIL OR CRIMINAL TRIAL, EXCEPT THAT
29 PARTIES TO THE ACTION AND THEIR IMMEDIATE FAMILIES OR GUARDIANS, ATTORNEYS
30 AND THEIR SECRETARIES, OFFICERS OF THE COURT, JURORS, NEWSPAPER REPORTERS
31 OR BROADCASTERS, COURT REPORTERS AND, AT THE REQUEST OF THE SURVIVOR,
32 WITNESSES DESIGNATED BY THE PROSECUTOR MAY REMAIN IN THE COURTROOM.

33 17. TO NOT BE REQUIRED TO SUBMIT TO A POLYGRAPH EXAMINATION AS A
34 PREREQUISITE TO FILING AN ACCUSATORY PLEADING OR TO PARTICIPATING IN ANY
35 PART OF THE CRIMINAL JUSTICE SYSTEM.

36 18. TO BE HEARD THROUGH A SURVIVOR IMPACT STATEMENT AT ANY
37 PROCEEDING INVOLVING A POSTARREST RELEASE DECISION, A PLEA, SENTENCING, A
38 POSTCONVICTION RELEASE DECISION OR ANY OTHER PROCEEDING IN WHICH A RIGHT
39 OF THE SURVIVOR IS AT ISSUE, AS PROVIDED UNDER THIS CHAPTER, AND THE RIGHT
40 TO PROVIDE A SENTENCING RECOMMENDATION TO THE PROBATION DEPARTMENT
41 OFFICIAL CONDUCTING A PRESENTENCE INVESTIGATION UNDER THIS CHAPTER.

42 B. ON INITIAL INTERACTION WITH A SEXUAL ASSAULT SURVIVOR, A PEACE
43 OFFICER OR MEDICAL PROVIDER SHALL PROVIDE THE SURVIVOR WITH A DOCUMENT
44 THAT IS DEVELOPED BY THE ATTORNEY GENERAL AND THAT EXPLAINS THE RIGHTS OF
45 SEXUAL ASSAULT SURVIVORS PURSUANT TO THIS SECTION AND OTHER RELEVANT LAWS

1 IN CLEAR LANGUAGE THAT IS COMPREHENSIBLE TO A PERSON PROFICIENT IN ENGLISH
2 AT THE FIFTH GRADE LEVEL, ACCESSIBLE TO PERSONS WITH VISUAL DISABILITIES
3 AND AVAILABLE IN ALL MAJOR LANGUAGES OF THIS STATE. THIS DOCUMENT MUST
4 INCLUDE:

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

9 2. TELEPHONE AND INTERNET MEANS OF CONTACTING NEARBY SEXUAL ASSAULT
10 CRISIS CENTERS AND SEXUAL ASSAULT VICTIM ADVOCATES.

11 3. FORMS OF LAW ENFORCEMENT PROTECTION AVAILABLE TO THE SEXUAL
12 ASSAULT SURVIVOR, INCLUDING TEMPORARY PROTECTION ORDERS AND THE PROCESS TO
13 OBTAIN AN ORDER OF PROTECTION.

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

16 5. STATE AND FEDERAL COMPENSATION MONIES AVAILABLE FOR MEDICAL AND
17 OTHER COSTS ASSOCIATED WITH THE SEXUAL ASSAULT AND INFORMATION ON ANY
18 MUNICIPAL, STATE OR FEDERAL RIGHTS TO RESTITUTION FOR SEXUAL ASSAULT
19 SURVIVORS.

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

24 D. ON WRITTEN REQUEST BY A SEXUAL ASSAULT SURVIVOR, A PROSECUTOR
25 SHALL PROVIDE:

26 1. TIMELY NOTICE OF ANY PRETRIAL DISPOSITION OF THE CASE AS
27 REQUIRED BY THIS CHAPTER.

28 2. TIMELY NOTICE OF THE FINAL DISPOSITION OF THE CASE, INCLUDING
29 THE CONVICTION, SENTENCE AND PLACE AND TIME OF INCARCERATION, AS REQUIRED
30 BY THIS CHAPTER.

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

35 4. A CONVICTED DEFENDANT'S INFORMATION ON A SEX OFFENDER REGISTRY,
36 IF ANY.

37 E. FOR THE PURPOSES OF THIS SECTION:

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

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

5 3. "SEXUAL ASSAULT SURVIVOR" OR "SURVIVOR" MEANS A PERSON WHO IS A
6 VICTIM OF SEXUAL ASSAULT PURSUANT TO SECTION 13-1406 AND INCLUDES THE
7 PARENT, THE GUARDIAN, THE SPOUSE, ANOTHER PERSON RELATED TO THE SURVIVOR
8 BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE OR A LAWFUL
9 REPRESENTATIVE OF THE SURVIVOR IF THE SURVIVOR IS INCOMPETENT, DECEASED OR
10 A MINOR WHO IS UNABLE TO CONSENT TO COUNSELING SERVICES UNLESS THE LAWFUL
11 REPRESENTATIVE IS THE ALLEGED ASSAILANT.

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