

REFERENCE TITLE: sexual assault survivors; rights...

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House of Representatives
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HB 2870

Introduced by

Representatives Villegas: Austin, Blattman, Contreras L, Contreras P,
Crews, De Los Santos, Gutierrez, Hernandez A, Hernandez C, Hernandez L,
Hernandez M, Mathis, Ortiz, Pawlik, Peshlakai, Quiñonez, Sandoval,
Schwiebert, Seaman, Stahl Hamilton, Terech

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 SEXUAL ASSAULT SURVIVOR HAS WAIVED THIS
12 RIGHT IN A 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 SEXUAL ASSAULT SURVIVOR'S RIGHTS PURSUANT TO THIS SECTION
30 AND OTHER RELEVANT LAWS IN A DOCUMENT THAT IS DEVELOPED BY THE ATTORNEY
31 GENERAL AND THAT IS SIGNED BY THE SEXUAL ASSAULT SURVIVOR TO CONFIRM
32 RECEIPT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ASSAULT SURVIVOR HAS GIVEN WRITTEN CONSENT TO FILE A CRIMINAL COMPLAINT,
2 ASSIGN A 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 SEXUAL
21 ASSAULT SURVIVOR AND THE SEXUAL ASSAULT SURVIVOR'S FAMILY MEMBERS, FRIENDS
22 AND WITNESSES WITH A SECURE WAITING AREA OR ROOM THAT IS SEPARATE FROM THE
23 WAITING AREA OF THE DEFENDANT AND THE DEFENDANT'S FAMILY MEMBERS, FRIENDS,
24 WITNESSES AND ATTORNEYS AND SEPARATE FROM THE PROSECUTOR'S OFFICE.

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

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

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

44 B. ON INITIAL INTERACTION WITH A SEXUAL ASSAULT SURVIVOR, A PEACE
45 OFFICER OR MEDICAL PROVIDER SHALL PROVIDE THE SEXUAL ASSAULT SURVIVOR WITH

1 A DOCUMENT THAT IS DEVELOPED BY THE ATTORNEY GENERAL AND THAT EXPLAINS THE
2 RIGHTS OF SEXUAL ASSAULT SURVIVORS PURSUANT TO THIS SECTION AND OTHER
3 RELEVANT LAWS IN CLEAR LANGUAGE THAT IS COMPREHENSIBLE TO A PERSON
4 PROFICIENT IN ENGLISH AT THE FIFTH GRADE LEVEL, ACCESSIBLE TO PERSONS WITH
5 VISUAL DISABILITIES AND AVAILABLE IN ALL MAJOR LANGUAGES OF THIS
6 STATE. THIS DOCUMENT MUST INCLUDE:

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

11 2. TELEPHONE AND INTERNET MEANS OF CONTACTING NEARBY SEXUAL ASSAULT
12 CRISIS CENTERS AND SEXUAL ASSAULT VICTIM ADVOCATES.

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

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

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

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

26 D. ON WRITTEN REQUEST BY A SEXUAL ASSAULT SURVIVOR, A PROSECUTOR
27 SHALL PROVIDE:

28 1. TIMELY NOTICE OF ANY PRETRIAL DISPOSITION OF THE CASE AS
29 REQUIRED BY THIS CHAPTER.

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

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

37 4. A CONVICTED DEFENDANT'S INFORMATION ON A SEX OFFENDER REGISTRY,
38 IF ANY.

39 E. FOR THE PURPOSES OF THIS SECTION:

40 1. "CRIME LABORATORY" MEANS A LABORATORY THAT IS OPERATED BY A
41 POLITICAL SUBDIVISION, THAT HAS AT LEAST ONE REGULARLY EMPLOYED FORENSIC
42 SCIENTIST WHO HOLDS A MINIMUM OF A BACHELOR'S DEGREE IN A PHYSICAL OR
43 NATURAL SCIENCE AND THAT IS REGISTERED AS AN ANALYTICAL LABORATORY WITH
44 THE DRUG ENFORCEMENT ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF
45 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" MEANS A PERSON WHO IS A VICTIM OF
6 SEXUAL ASSAULT PURSUANT TO SECTION 13-1406 AND INCLUDES THE PARENT, THE
7 GUARDIAN, THE SPOUSE, ANOTHER PERSON RELATED TO THE SEXUAL ASSAULT
8 SURVIVOR BY CONSANGUINITY OR AFFINITY TO THE SECOND DEGREE OR A LAWFUL
9 REPRESENTATIVE OF THE SEXUAL ASSAULT SURVIVOR IF THE SEXUAL ASSAULT
10 SURVIVOR IS INCOMPETENT, DECEASED OR A MINOR WHO IS UNABLE TO CONSENT TO
11 COUNSELING SERVICES UNLESS THE LAWFUL REPRESENTATIVE IS THE ALLEGED
12 ASSAILANT.

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