Senate Engrossed

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 50

SENATE BILL 1126

AN ACT

AMENDING SECTIONS 8-382, 8-412, 13-4401 AND 13-4433, ARIZONA REVISED STATUTES; RELATING TO VICTIMS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

8-382. Definitions

In this article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. Section 8-412, Arizona Revised Statutes, is amended to read:

8-412. <u>Victim's right to refuse an interview</u>

A. Unless the victim consents, the victim shall not be compelled to submit to an interview on any matter, including any alleged delinquent act witnessed by the victim and that occurred on the same occasion as the delinquent act against the victim, or filed in the same petition or consolidated for an adjudication hearing, that is conducted by the juvenile defendant, the attorney for the juvenile defendant or an agent of the juvenile defendant.

B. The juvenile defendant, the attorney for the juvenile defendant or an agent of the juvenile defendant shall only initiate contact with the victim through the prosecutor's office. The prosecutor's office shall inform the victim of the juvenile defendant's request for an interview within ten days after the request and shall advise the victim of the victim's right to refuse the interview.

C. The prosecutor shall not be required to forward any correspondence from the juvenile defendant, the juvenile defendant's attorney or an agent of the juvenile defendant to the victim or the victim's representative.

D. If the victim consents to an interview, the prosecutor's office shall inform the juvenile defendant, the attorney for the juvenile defendant or an agent of the juvenile defendant of the time and place the victim has

selected for the interview. If the victim wishes to impose other conditions on the interview, the prosecutor's office shall inform the juvenile defendant, the attorney for the juvenile defendant or an agent of the juvenile defendant of the conditions. The victim has the right to terminate the interview at any time or to refuse to answer any question during the interview. The prosecutor has standing at the request of the victim to protect the victim from harassment, intimidation or abuse and, pursuant to that standing, may seek any appropriate protective court order.

E. Unless otherwise directed by the victim, the prosecutor may attend all interviews. If a transcript or tape recording of the interview is made and on request of the prosecutor, the prosecutor shall receive a copy of the transcript or tape recording at the prosecutor's expense.

F. For the purposes of this section, a peace officer shall not be considered a victim if the act that would have made the officer a victim occurs while the peace officer is acting in the scope of the officer's official duties.

G. THIS SECTION APPLIES TO THE PARENT OR LEGAL GUARDIAN OF A MINOR CHILD WHO EXERCISES VICTIMS' RIGHTS ON BEHALF OF THE MINOR CHILD.

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

13-4401. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

(a) A felony.

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

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

8. "Custodial agency" means any law enforcement officer or agency, a sheriff or municipal jailer, the state department of corrections or a secure

1 mental health facility that has custody of a person who is arrested or in
2 custody for a criminal offense.
3 9. "Defendant" means a person or entity that is formally charged by
4 complaint, indictment or information of committing a criminal offense.
5 10. "Final disposition" means the ultimate termination of the criminal
6 prosecution of a defendant by a trial court, including dismissal, acquittal
7 or imposition of a sentence.
8 11. "Immediate family" means a victim's spouse, parent, child, sibling,
9 grandparent or lawful guardian.
10 12. "Lawful representative" means a person who is designated by the
11 victim or appointed by the court and who acts in the best interests of the
12 victim.
13 13. "Post-arrest release" means the discharge of the accused from
14 confinement on recognizance, bond or other condition.
15 14. "Post-conviction release" means parole, work furlough, community
16 supervision, probation if the court waived community supervision pursuant to
17 section 13-603, home arrest or any other permanent, conditional or temporary
18 discharge from confinement in the custody of the state department of
19 corrections or a sheriff or from confinement in a municipal jail or a secure
20 mental health facility.
21 15. "Post-conviction relief proceeding" means a contested argument or
22 evidentiary hearing that is held in open court and that involves a request
23 for relief from a conviction or sentence.
24 16. "Prisoner" means a person who has been convicted of a criminal
25 offense against a victim and who has been sentenced to the custody of the
26 sheriff, the state department of corrections, a municipal jail or a secure
27 mental health facility.
28 17. "Release" means no longer in the custody of a custodial agency and
29 includes transfer from one custodial agency to another custodial agency.
30 18. "Rights" means any right that is granted to the victim by the laws
31 of this state.
32 19. "Victim" means a person against whom the criminal offense has been
33 committed, including a minor, or if the person is killed or incapacitated,
34 the person's spouse, parent, child, grandparent or sibling, any other person
35 related to the person by consanguinity or affinity to the second degree or
36 any other lawful representative of the person, except if the PERSON OR THE
37 PERSON'S spouse, parent, child, grandparent, sibling, other person related to
38 the person by consanguinity or affinity to the second degree or other lawful
39 representative is in custody for an offense or is the accused.
40 Sec. 4. Section 13-4433, Arizona Revised Statutes, is amended to read:
41 13-4433. <u>Victim's right to refuse an interview; applicability</u>
42 A. Unless the victim consents, the victim shall not be compelled to
43 submit to an interview on any matter, including any charged criminal offense
44 witnessed by the victim and that occurred on the same occasion as the offense
45 against the victim, or filed in the same indictment or information or

consolidated for trial, that is conducted by the defendant, the defendant's attorney or an agent of the defendant.

B. The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the prosecutor's office. The prosecutor's office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview.

C. The prosecutor shall not be required to forward any correspondence from the defendant, the defendant's attorney or an agent of the defendant to the victim or the victim's representative.

D. If the victim consents to an interview, the prosecutor's office shall inform the defendant, the defendant's attorney or an agent of the defendant of the time and place the victim has selected for the interview. If the victim wishes to impose other conditions on the interview, the prosecutor's office shall inform the defendant, the defendant's attorney or an agent of the defendant of the conditions. The victim has the right to terminate the interview at any time or to refuse to answer any question during the interview. The prosecutor has standing at the request of the victim to protect the victim from harassment, intimidation or abuse and, pursuant to that standing, may seek any appropriate protective court order.

E. Unless otherwise directed by the victim, the prosecutor may attend all interviews. If a transcript or tape recording of the interview is made and on request of the prosecutor, the prosecutor shall receive a copy of the transcript or tape recording at the prosecutor's expense.

F. If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Arizona Constitution.

G. For the purposes of this section, a peace officer shall not be considered a victim if the act that would have made the officer a victim occurs while the peace officer is acting in the scope of the officer's official duties.

H. THIS SECTION APPLIES TO THE PARENT OR LEGAL GUARDIAN OF A MINOR CHILD WHO EXERCISES VICTIMS' RIGHTS ON BEHALF OF THE MINOR CHILD.

APPROVED BY THE GOVERNOR APRIL 6, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2006.