

REFERENCE TITLE: subpoena; grand jury; issuance

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## HB 2546

Introduced by  
Representatives Sinema, Ableser, Lujan: Brown, Campbell CH, DeSimone,  
Farley, Gallardo, Lopes, Prezelski, Schapira

AN ACT

AMENDING SECTION 13-4071, ARIZONA REVISED STATUTES; AMENDING TITLE 13,  
CHAPTER 38, ARTICLE 21, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-4076;  
RELATING TO SUBPOENAS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-4071, Arizona Revised Statutes, is amended to  
3 read:

4 13-4071. Subpoena; issuance; duty of clerk

5 A. The process by which attendance of a witness before a court or  
6 magistrate is required is a subpoena.

7 B. The subpoena may be signed and issued:

8 1. By a magistrate before whom a complaint is laid for witnesses,  
9 either on behalf of the state or the defendant.

10 2. By the county attorney, attorney general, municipal prosecutor or  
11 city prosecutor for witnesses to appear before the grand jury, or for  
12 witnesses on a complaint, indictment or information to appear before the  
13 court in which the complaint, indictment or information is to be heard or  
14 tried or by the county attorney, attorney general, municipal prosecutor or  
15 city prosecutor for witnesses requested by a grand jury.

16 3. By the clerk of the court in which an indictment or information is  
17 to be tried, ~~or by the clerk as authorized in subsection C.~~

18 ~~C. The clerk of the court or the clerk's designee, on request of the~~  
19 ~~county attorney or attorney general, shall issue a subpoena for witnesses to~~  
20 ~~appear before the grand jury, without prior authorization by a grand jury, if~~  
21 ~~all of the following occur:~~

22 ~~1. A duly impaneled grand jury is sworn and is in existence at the~~  
23 ~~time of the issuance of the subpoena.~~

24 ~~2. The county attorney or attorney general designates the subpoena~~  
25 ~~with the standard identifying grand jury number.~~

26 ~~3. The county attorney or attorney general reports to the foreman of~~  
27 ~~the grand jury, or in the foreman's absence the acting foreman, the fact of~~  
28 ~~the issuance of the subpoena within ten days following its issuance or, if~~  
29 ~~the grand jury is in recess, at the first succeeding session of the grand~~  
30 ~~jury after the expiration of the ten day period.~~

31 ~~4. The county attorney or attorney general reports to the presiding~~  
32 ~~judge of the superior court the fact of the issuance of the subpoena within~~  
33 ~~ten days following its issuance.~~

34 ~~D.~~ C. The clerk, at any time, on application of the defendant, and  
35 without charge, shall issue as many blank subpoenas, subscribed by the clerk  
36 as clerk, for witnesses as the defendant requires. Blank subpoenas shall not  
37 be used to procure discovery in a criminal case, including to access the  
38 records of a victim. Records relating to recovered memories or disassociated  
39 memories may be subject to subpoena only if the state seeks to introduce  
40 evidence of the victim's recovered or disassociated memory, the records are  
41 not otherwise privileged and the court approves the subpoena after a  
42 hearing. The victim shall be given notice of and the right to be heard at  
43 any proceeding involving a subpoena for records of the victim from a third  
44 party.

1           Sec. 2. Title 13, chapter 38, article 21, Arizona Revised Statutes, is  
2 amended by adding section 13-4076, to read:

3           13-4076. Subpoena duces tecum; issuance; objection

4           A. THE COUNTY ATTORNEY, ATTORNEY GENERAL, MUNICIPAL PROSECUTOR OR CITY  
5 PROSECUTOR MAY ISSUE A SUBPOENA DUCES TECUM TO A PERSON OR ENTITY FOR RECORDS  
6 IN CONNECTION WITH A CRIMINAL INVESTIGATION ONLY AFTER RECEIVING PRIOR  
7 AUTHORIZATION BY A GRAND JURY.

8           B. THE SUBPOENA DUCES TECUM SHALL BE ISSUED IN THE SAME MANNER  
9 PRESCRIBED IN SECTION 13-4071.

10          C. IF GROUNDS FOR OBJECTION EXIST UNDER RULE 45, ARIZONA RULES OF  
11 CIVIL PROCEDURE, A PERSON MAY FILE WITH THE COURT AN OBJECTION TO THE  
12 INSPECTION OR COPYING OF ANY OR ALL OF THE RECORDS.