

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SENATE BILL 1425

AN ACT

AMENDING TITLE 12, CHAPTER 13, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-2240; AMENDING SECTION 13-3620, ARIZONA REVISED STATUTES; RELATING TO SEXUAL ASSAULT VICTIM ADVOCATES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 12, chapter 13, article 4, Arizona Revised Statutes,
3 is amended by adding section 12-2240, to read:

4 12-2240. Sexual assault victim advocate: privilege: training:
5 exception: definition

6 A. IN A CIVIL ACTION, A SEXUAL ASSAULT VICTIM ADVOCATE SHALL NOT BE
7 EXAMINED AS TO ANY COMMUNICATION MADE BY THE SEXUAL ASSAULT VICTIM TO THE
8 SEXUAL ASSAULT VICTIM ADVOCATE.

9 B. THIS SECTION DOES NOT APPLY TO:

10 1. A CIVIL ACTION BROUGHT PURSUANT TO TITLE 36, CHAPTER 37, RELATING
11 TO THE CIVIL COMMITMENT OF SEXUALLY VIOLENT PERSONS.

12 2. A SEXUAL ASSAULT VICTIM ADVOCATE'S DUTY TO REPORT PURSUANT TO
13 SECTION 13-3620.

14 C. UNLESS THE SEXUAL ASSAULT PROGRAM OR SERVICE PROVIDER HAS IMMUNITY
15 UNDER OTHER PROVISIONS OF LAW, THE COMMUNICATION IS NOT PRIVILEGED IF THE
16 VICTIM ADVOCATE KNOWS OR SHOULD HAVE KNOWN THAT THE VICTIM WILL GIVE OR HAS
17 GIVEN PERJURIOUS STATEMENTS OR STATEMENTS THAT WOULD TEND TO DISPROVE THE
18 EXISTENCE OF SEXUAL ASSAULT.

19 D. A PARTY TO AN ACTION MAY MAKE A MOTION FOR DISCLOSURE OF PRIVILEGED
20 INFORMATION UNDER THIS SECTION AND, IF THE COURT FINDS REASONABLE CAUSE, THE
21 COURT SHALL HOLD A HEARING IN CAMERA AS TO WHETHER THE PRIVILEGE SHOULD
22 APPLY.

23 E. TO QUALIFY FOR THE PRIVILEGE PRESCRIBED IN THIS SECTION, A SEXUAL
24 ASSAULT VICTIM ADVOCATE MUST HAVE AT LEAST THIRTY HOURS OF TRAINING IN
25 ASSISTING VICTIMS OF SEXUAL ASSAULT. A PORTION OF THIS TRAINING MUST INCLUDE
26 AN EXPLANATION OF PRIVILEGED COMMUNICATION AND THE REPORTING REQUIREMENTS
27 PRESCRIBED IN SECTION 13-3620.

28 F. A SEXUAL ASSAULT VICTIM ADVOCATE WHO IS A VOLUNTEER SHALL PERFORM
29 ALL ACTIVITIES UNDER QUALIFIED SUPERVISION.

30 G. THE TRAINING PRESCRIBED IN SUBSECTION E OF THIS SECTION MAY BE
31 PROVIDED BY THE SEXUAL ASSAULT PROGRAM OR SERVICE PROVIDER OR BY AN OUTSIDE
32 AGENCY THAT ISSUES A CERTIFICATE OF COMPLETION. THE RECORDS CUSTODIAN OF THE
33 SEXUAL ASSAULT PROGRAM OR SERVICE PROVIDER MUST MAINTAIN THE TRAINING
34 DOCUMENTS.

35 H. FOR THE PURPOSES OF THIS SECTION, "SEXUAL ASSAULT VICTIM ADVOCATE"
36 MEANS A PERSON WHO IS AN EMPLOYEE OR VOLUNTEER AT A SEXUAL ASSAULT PROGRAM OR
37 SERVICE PROVIDER FOR VICTIMS OF SEXUAL ASSAULT AND WHO MEETS THE TRAINING
38 REQUIREMENTS OF THIS SECTION.

39 Sec. 2. Section 13-3620, Arizona Revised Statutes, is amended to read:

40 13-3620. Duty to report abuse, physical injury, neglect and
41 denial or deprivation of medical or surgical care or
42 nourishment of minors; medical records; exception;
43 violation; classification; definitions

44 A. Any person who reasonably believes that a minor is or has been the
45 victim of physical injury, abuse, child abuse, a reportable offense or

1 neglect that appears to have been inflicted on the minor by other than
2 accidental means or that is not explained by the available medical history as
3 being accidental in nature or who reasonably believes there has been a denial
4 or deprivation of necessary medical treatment or surgical care or nourishment
5 with the intent to cause or allow the death of an infant who is protected
6 under section 36-2281 shall immediately report or cause reports to be made of
7 this information to a peace officer or to the department of child safety,
8 except if the report concerns a person who does not have care, custody or
9 control of the minor, the report shall be made to a peace officer only. A
10 member of the clergy, a christian science practitioner or a priest who has
11 received a confidential communication or a confession in that person's role
12 as a member of the clergy, as a christian science practitioner or as a priest
13 in the course of the discipline enjoined by the church to which the member of
14 the clergy, the christian science practitioner or the priest belongs may
15 withhold reporting of the communication or confession if the member of the
16 clergy, the christian science practitioner or the priest determines that it
17 is reasonable and necessary within the concepts of the religion. This
18 exemption applies only to the communication or confession and not to personal
19 observations the member of the clergy, the christian science practitioner or
20 the priest may otherwise make of the minor. For the purposes of this
21 subsection, "person" means:

22 1. Any physician, physician's assistant, optometrist, dentist,
23 osteopath, chiropractor, podiatrist, behavioral health professional, nurse,
24 psychologist, counselor or social worker who develops the reasonable belief
25 in the course of treating a patient.

26 2. Any peace officer, child welfare investigator, child safety worker,
27 member of the clergy, priest or christian science practitioner.

28 3. The parent, stepparent or guardian of the minor.

29 4. School personnel, ~~or~~ domestic violence victim advocates OR SEXUAL
30 ASSAULT VICTIM ADVOCATES who develop the reasonable belief in the course of
31 their employment.

32 5. Any other person who has responsibility for the care or treatment
33 of the minor.

34 B. A report is not required under this section either:

35 1. For conduct prescribed by sections 13-1404 and 13-1405 if the
36 conduct involves only minors who are fourteen, fifteen, sixteen or seventeen
37 years of age and there is nothing to indicate that the conduct is other than
38 consensual.

39 2. If a minor is of elementary school age, the physical injury occurs
40 accidentally in the course of typical playground activity during a school
41 day, occurs on the premises of the school that the minor attends and is
42 reported to the legal parent or guardian of the minor and the school
43 maintains a written record of the incident.

44 C. If a physician, psychologist or behavioral health professional
45 receives a statement from a person other than a parent, stepparent, guardian

1 or custodian of the minor during the course of providing sex offender
2 treatment that is not court ordered or that does not occur while the offender
3 is incarcerated in the state department of corrections or the department of
4 juvenile corrections, the physician, psychologist or behavioral health
5 professional may withhold the reporting of that statement if the physician,
6 psychologist or behavioral health professional determines it is reasonable
7 and necessary to accomplish the purposes of the treatment.

8 D. Reports shall be made immediately either electronically or by
9 telephone. The reports shall contain the following information, if known:

10 1. The names and addresses of the minor and the minor's parents or the
11 person or persons having custody of the minor.

12 2. The minor's age and the nature and extent of the minor's abuse,
13 child abuse, physical injury or neglect, including any evidence of previous
14 abuse, child abuse, physical injury or neglect.

15 3. Any other information that the person believes might be helpful in
16 establishing the cause of the abuse, child abuse, physical injury or neglect.

17 E. A health care professional who is regulated pursuant to title 32
18 and who, after a routine newborn physical assessment of a newborn infant's
19 health status or following notification of positive toxicology screens of a
20 newborn infant, reasonably believes that the newborn infant may be affected
21 by the presence of alcohol or a drug listed in section 13-3401 shall
22 immediately report this information, or cause a report to be made, to the
23 department of child safety. For the purposes of this subsection, "newborn
24 infant" means a newborn infant who is under thirty days of age.

25 F. Any person other than one required to report or cause reports to be
26 made under subsection A of this section who reasonably believes that a minor
27 is or has been a victim of abuse, child abuse, physical injury, a reportable
28 offense or neglect may report the information to a peace officer or to the
29 department of child safety, except if the report concerns a person who does
30 not have care, custody or control of the minor, the report shall be made to a
31 peace officer only.

32 G. A person who has custody or control of medical records of a minor
33 for whom a report is required or authorized under this section shall make the
34 records, or a copy of the records, available to a peace officer, child
35 welfare investigator or child safety worker investigating the minor's
36 neglect, child abuse, physical injury or abuse on written request for the
37 records signed by the peace officer, child welfare investigator or child
38 safety worker. Records disclosed pursuant to this subsection are
39 confidential and may be used only in a judicial or administrative proceeding
40 or investigation resulting from a report required or authorized under this
41 section.

42 H. When reports are received by a peace officer, the officer shall
43 immediately notify the department of child safety. Notwithstanding any other
44 statute, when the department receives these reports, it shall immediately
45 notify a peace officer in the appropriate jurisdiction.

1 I. Any person who is required to receive reports pursuant to
2 subsection A of this section may take or cause to be taken photographs of the
3 minor and the vicinity involved. Medical examinations of the involved minor
4 may be performed.

5 J. A person who furnishes a report, information or records required or
6 authorized under this section, or a person who participates in a judicial or
7 administrative proceeding or investigation resulting from a report,
8 information or records required or authorized under this section, is immune
9 from any civil or criminal liability by reason of that action unless the
10 person acted with malice or unless the person has been charged with or is
11 suspected of abusing or neglecting the child or children in question.

12 K. Except for the attorney client privilege or the privilege under
13 subsection L of this section, no privilege applies to any:

14 1. Civil or criminal litigation or administrative proceeding in which
15 a minor's neglect, dependency, abuse, child abuse, physical injury or
16 abandonment is an issue.

17 2. Judicial or administrative proceeding resulting from a report,
18 information or records submitted pursuant to this section.

19 3. Investigation of a minor's child abuse, physical injury, neglect or
20 abuse conducted by a peace officer or the department of child safety.

21 L. In any civil or criminal litigation in which a child's neglect,
22 dependency, physical injury, abuse, child abuse or abandonment is an issue, a
23 member of the clergy, a christian science practitioner or a priest shall not,
24 without his consent, be examined as a witness concerning any confession made
25 to him in his role as a member of the clergy, a christian science
26 practitioner or a priest in the course of the discipline enjoined by the
27 church to which he belongs. This subsection does not discharge a member of
28 the clergy, a christian science practitioner or a priest from the duty to
29 report pursuant to subsection A of this section.

30 M. If psychiatric records are requested pursuant to subsection G of
31 this section, the custodian of the records shall notify the attending
32 psychiatrist, who may excise from the records, before they are made
33 available:

34 1. Personal information about individuals other than the patient.

35 2. Information regarding specific diagnosis or treatment of a
36 psychiatric condition, if the attending psychiatrist certifies in writing
37 that release of the information would be detrimental to the patient's health
38 or treatment.

39 N. If any portion of a psychiatric record is excised pursuant to
40 subsection M of this section, a court, on application of a peace officer,
41 child welfare investigator or child safety worker, may order that the entire
42 record or any portion of the record that contains information relevant to the
43 reported abuse, child abuse, physical injury or neglect be made available to
44 the peace officer, child welfare investigator or child safety worker
45 investigating the abuse, child abuse, physical injury or neglect.

1 0. A person who violates this section is guilty of a class 1
2 misdemeanor, except if the failure to report involves a reportable offense,
3 the person is guilty of a class 6 felony.

4 P. For the purposes of this section:

5 1. "Abuse" has the same meaning prescribed in section 8-201.

6 2. "Child abuse" means child abuse pursuant to section 13-3623.

7 3. "Neglect" has the same meaning prescribed in section 8-201.

8 4. "Reportable offense" means any of the following:

9 (a) Any offense listed in chapters 14 and 35.1 of this title or
10 section 13-3506.01.

11 (b) Surreptitious photographing, videotaping, filming or digitally
12 recording or viewing a minor pursuant to section 13-3019.

13 (c) Child prostitution pursuant to section 13-3212.

14 (d) Incest pursuant to section 13-3608.

15 (e) Unlawful mutilation pursuant to section 13-1214.