

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 266
HOUSE BILL 2283

AN ACT

AMENDING SECTIONS 13-1401, 13-1407 AND 13-3560, ARIZONA REVISED STATUTES;
RELATING TO SEXUAL OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-1401, Arizona Revised Statutes, is amended to
3 read:

4 13-1401. Definitions: factors

5 A. In this chapter, unless the context otherwise requires:

6 1. "Oral sexual contact" means oral contact with the penis, vulva
7 or anus.

8 2. "Position of trust" means a person who is or was any of the
9 following:

10 (a) The minor's parent, stepparent, adoptive parent, legal guardian
11 or foster parent.

12 (b) The minor's teacher.

13 (c) The minor's coach or instructor, whether the coach or
14 instructor is an employee or volunteer.

15 (d) The minor's clergyman or priest.

16 (e) Engaged in a sexual or romantic relationship with the minor's
17 parent, adoptive parent, legal guardian, foster parent or stepparent.

18 3. "Sexual contact":

19 (a) Means any direct or indirect touching, fondling or manipulating
20 of any part of the genitals, anus or female breast by any part of the body
21 or by any object or causing a person to engage in such contact.

22 (b) DOES NOT INCLUDE DIRECT OR INDIRECT TOUCHING OR MANIPULATING
23 DURING CARETAKING RESPONSIBILITIES, OR INTERACTIONS WITH A MINOR OR
24 VULNERABLE ADULT THAT AN OBJECTIVE, REASONABLE PERSON WOULD RECOGNIZE AS
25 NORMAL AND REASONABLE UNDER THE CIRCUMSTANCES.

26 4. "Sexual intercourse" means penetration into the penis, vulva or
27 anus by any part of the body or by any object or masturbatory contact with
28 the penis or vulva.

29 5. "Spouse" means a person who is legally married and cohabiting.

30 6. "Teacher" means a certificated teacher as defined in section
31 15-501 or any other person who provides instruction to pupils in any
32 school district, charter school or accommodation school, the Arizona state
33 schools for the deaf and the blind or a private school in this state.

34 7. "Without consent" includes any of the following:

35 (a) The victim is coerced by the immediate use or threatened use of
36 force against a person or property.

37 (b) The victim is incapable of consent by reason of mental
38 disorder, mental defect, drugs, alcohol, sleep or any other similar
39 impairment of cognition and such condition is known or should have
40 reasonably been known to the defendant. For the purposes of this
41 subdivision, "mental defect" means the victim is unable to comprehend the
42 distinctively sexual nature of the conduct or is incapable of
43 understanding or exercising the right to refuse to engage in the conduct
44 with another.

1 (c) The victim is intentionally deceived as to the nature of the
2 act.

3 (d) The victim is intentionally deceived to erroneously believe
4 that the person is the victim's spouse.

5 B. The following factors may be considered in determining whether a
6 relationship is currently or was previously a sexual or romantic
7 relationship pursuant to subsection A, paragraph 2, subdivision (e) of
8 this section:

- 9 1. The type of relationship.
- 10 2. The length of the relationship.
- 11 3. The frequency of the interaction between the two persons.
- 12 4. If the relationship has terminated, the length of time since the
13 termination.

14 Sec. 2. Section 13-1407, Arizona Revised Statutes, is amended to
15 read:

16 13-1407. Defenses

17 A. It is a defense to a prosecution pursuant to sections 13-1404
18 and 13-1405 involving a minor if the act was done in furtherance of lawful
19 medical practice.

20 B. It is a defense to a prosecution pursuant to sections 13-1404
21 and 13-1405 in which the victim's lack of consent is based on incapacity
22 to consent because the victim was fifteen, sixteen or seventeen years of
23 age if at the time the defendant engaged in the conduct constituting the
24 offense the defendant did not know and could not reasonably have known the
25 age of the victim.

26 C. It is a defense to a prosecution pursuant to section 13-1402,
27 13-1404, 13-1405 or 13-1406 if the act was done by a duly licensed
28 physician or registered nurse or a person acting under the physician's or
29 nurse's direction, or any other person who renders emergency care at the
30 scene of an emergency occurrence, the act consisted of administering a
31 recognized and lawful form of treatment that was reasonably adapted to
32 promoting the physical or mental health of the patient and the treatment
33 was administered in an emergency when the duly licensed physician or
34 registered nurse or a person acting under the physician's or nurse's
35 direction, or any other person rendering emergency care at the scene of an
36 emergency occurrence, reasonably believed that no one competent to consent
37 could be consulted and that a reasonable person, wishing to safeguard the
38 welfare of the patient, would consent.

39 D. It is a defense to a prosecution pursuant to section 13-1404 or
40 13-1405 that the person was the spouse of the other person at the time of
41 commission of the act. It is not a defense to a prosecution pursuant to
42 section 13-1406 that the defendant was the spouse of the victim at the
43 time of commission of the act.

~~E. It is a defense to a prosecution pursuant to section 13-1404 or 13-1410 that the defendant was not motivated by a sexual interest. It is a defense to a prosecution pursuant to section 13-1404 involving a victim under fifteen years of age that the defendant was not motivated by a sexual interest.~~

~~F.~~ E. It is a defense to a prosecution pursuant to sections 13-1405 and 13-3560 if the victim is fifteen, sixteen or seventeen years of age, the defendant is under nineteen years of age or attending high school and is no more than twenty-four months older than the victim and the conduct is consensual.

Sec. 3. Section 13-3560, Arizona Revised Statutes, is amended to read:

13-3560. Aggravated luring a minor for sexual exploitation; classification; definitions

A. A person commits aggravated luring a minor for sexual exploitation if the person does both of the following:

1. Knowing the character and content of the depiction, uses an electronic communication device to transmit at least one visual depiction of material that is harmful to minors for the purpose of initiating or engaging in communication with a recipient who the person knows or has reason to know is a minor.

2. By means of the communication, offers or solicits sexual conduct with the minor. The offer or solicitation may occur before, contemporaneously with, after or as an integrated part of the transmission of the visual depiction.

B. It is not a defense to a prosecution for a violation of this section that the other person is not a minor or that the other person is a peace officer posing as a minor.

C. Aggravated luring a minor for sexual exploitation is a class 2 felony, and if the minor is under fifteen years of age it is punishable pursuant to section 13-705, subsection D.

D. The defense prescribed in section 13-1407, subsection ~~F~~ E applies to a prosecution pursuant to this section.

E. For the purposes of this section:

1. "Electronic communication device" means any electronic device that is capable of transmitting visual depictions and includes any of the following:

(a) A computer, computer system or network as defined in section 13-2301.

(b) A cellular or wireless telephone as defined in section 13-4801.

2. "Harmful to minors" has the same meaning prescribed in section 13-3501.

H.B. 2283

APPROVED BY THE GOVERNOR APRIL 25, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2018.