

REFERENCE TITLE: **unjustified actions; parental rights**

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1005

Introduced by
Senator Kavanagh

AN ACT

AMENDING SECTION 1-602, ARIZONA REVISED STATUTES; RELATING TO PARENTS' RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 1-602, Arizona Revised Statutes, is amended to
3 read:

4 1-602. Parents' bill of rights; governmental interference
5 restricted; burden of proof; definition

6 A. All parental rights are exclusively reserved to a parent of a
7 minor child without obstruction or interference from this state, any
8 political subdivision of this state, any other governmental entity or any
9 other institution, including:

10 1. The right to direct the education of the minor child.

11 2. All rights of parents identified in title 15, including the
12 right to access and review all records relating to the minor child.

13 3. The right to direct the upbringing of the minor child.

14 4. The right to direct the moral or religious training of the minor
15 child.

16 5. The right to make all health care decisions for the minor child,
17 including rights pursuant to sections 15-873, 36-2271 and 36-2272, unless
18 otherwise prohibited by law.

19 6. The right to request, access and review all written and
20 electronic medical records of the minor child unless otherwise prohibited
21 by law or unless the parent is the subject of an investigation of a crime
22 committed against the minor child and a law enforcement official requests
23 that the information not be released.

24 7. The right to consent in writing before a biometric scan of the
25 minor child is made pursuant to section 15-109.

26 8. The right to consent in writing before any record of the minor
27 child's blood or deoxyribonucleic acid is created, stored or shared,
28 except as required by section 36-694, or before any genetic testing is
29 conducted on the minor child pursuant to section 12-2803 unless authorized
30 pursuant to section 13-610 or a court order.

31 9. The right to consent in writing before this state or any of its
32 political subdivisions makes a video or voice recording of the minor
33 child, unless the video or voice recording is made during or as a part of
34 a court proceeding, by law enforcement officers during or as part of a law
35 enforcement investigation, during or as part of an interview in a criminal
36 or child safety services investigation or to be used solely for any of the
37 following:

38 (a) Safety demonstrations, including the maintenance of order and
39 discipline in the common areas of a school or on pupil transportation
40 vehicles.

41 (b) A purpose related to a legitimate academic or extracurricular
42 activity.

43 (c) A purpose related to regular classroom instruction.

44 (d) Security or surveillance of buildings or grounds.

45 (e) A photo identification card.

1 10. The right to be notified promptly if an employee of this state,
2 any political subdivision of this state, any other governmental entity or
3 any other institution suspects that a criminal offense has been committed
4 against the minor child by someone other than a parent, unless the
5 incident has first been reported to law enforcement and notifying the
6 parent would impede a law enforcement or child safety services
7 investigation. This paragraph does not create any new obligation for
8 school districts and charter schools to report misconduct between students
9 at school, such as fighting or aggressive play, that is routinely
10 addressed as a student disciplinary matter by the school.

11 11. The right to obtain information about a child safety services
12 investigation involving the parent pursuant to section 8-807.

13 B. This section does not authorize or allow a parent to engage in
14 conduct that is unlawful or to abuse or neglect a child in violation of
15 the laws of this state. This section does not prohibit courts, law
16 enforcement officers or employees of a government agency responsible for
17 child welfare from acting in their official capacity within the scope of
18 their authority. This section does not prohibit a court from issuing an
19 order that is otherwise allowed by law.

20 C. Any attempt to encourage or coerce a minor child to withhold
21 information from the child's parent is grounds for discipline of an
22 employee of this state, any political subdivision of this state, any other
23 governmental entity or any other institution, except for law enforcement
24 personnel.

25 D. Unless those rights have been legally waived or legally
26 terminated, parents have inalienable rights that are more comprehensive
27 than those listed in this section. This chapter does not prescribe all
28 rights of parents or preempt or foreclose claims or remedies in support of
29 parental rights that are available under the constitution, statutes or
30 common law of this state. Unless otherwise required by law, the rights of
31 parents of minor children shall not be limited or denied.

32 E. Except as prescribed in subsections F and G of this section,
33 this state, a political subdivision of this state or any other
34 governmental entity, or any official of this state, a political
35 subdivision of this state or any other governmental entity acting under
36 color of law, shall not interfere with or usurp the fundamental right of
37 parents to direct the upbringing, education, health care and mental health
38 of their children. A parent may bring suit against a governmental entity
39 or official described in this subsection based on any violation of the
40 statutory rights set forth in this chapter or any other action that
41 interferes with or usurps the fundamental right of parents to direct the
42 upbringing, education, health care and mental health of their children in
43 the superior court in the county in which the violation or other action
44 occurs or in federal court, if authorized by federal law, or before an

1 administrative tribunal of appropriate jurisdiction. A parent may raise a
2 violation of this chapter as a claim or a defense.

3 F. In any action under subsection E of this section, the
4 governmental entity or official described in subsection E of this section
5 has the burden of proof to demonstrate both of the following:

6 1. That the interference or usurpation is essential to accomplish a
7 compelling government interest of the highest order, as long recognized in
8 the history and traditions of this state in the operation of its
9 regulatory powers.

10 2. That the method of interference or usurpation used by the
11 government is narrowly tailored and is not otherwise served by a less
12 restrictive means.

13 G. A governmental entity or official described in subsection E of
14 this section may interfere with or usurp the fundamental right of parents
15 to direct the upbringing, education, health care and mental health of
16 their children only if the governmental entity or official successfully
17 demonstrates both elements described in subsection F of this section. If
18 the governmental entity or official is unsuccessful, the court shall grant
19 appropriate relief, such as declaratory or injunctive relief, compensatory
20 damages and attorney fees, based on the facts of the case and the law as
21 applied to the facts. EXCEPT AS PROVIDED BY SECTION 12-349, THE COURT MAY
22 NOT GRANT ATTORNEY FEES, EXPENSES OR DAMAGES TO A GOVERNMENTAL ENTITY OR
23 OFFICIAL FOR A CLAIM OR DEFENSE ASSERTED UNDER SUBSECTION E OF THIS
24 SECTION.

25 H. For the purposes of this section, "parent" means the natural or
26 adoptive parent or legal guardian of a minor child.