

REFERENCE TITLE: mandatory reporting; school employees; investigations

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SB 1437

Introduced by
Senators Werner: Angius, Bolick, Shamp, Shope; Representatives Bliss,
Gress

AN ACT

AMENDING SECTIONS 13-3620 AND 15-514, ARIZONA REVISED STATUTES; RELATING
TO MANDATORY REPORTING REQUIREMENTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3620, Arizona Revised Statutes, is amended to
3 read:

4 **13-3620. Duty to report abuse, physical injury, neglect and**
5 **denial or deprivation of medical or surgical care**
6 **or nourishment of minors; medical records;**
7 **exception; violation; classification; definitions**

8 A. Any person who reasonably believes that a minor is or has been
9 the victim of physical injury, abuse, child abuse, a reportable offense or
10 denial or deprivation of necessary medical treatment or surgical care or
11 nourishment with the intent to cause or allow the death of an infant who
12 is protected under section 36-2281 shall immediately report or cause
13 reports to be made of this information to a peace officer, to the
14 department of child safety or to a tribal law enforcement or social
15 services agency for any Indian minor who resides on an Indian reservation,
16 except if the report concerns a person who does not have care, custody or
17 control of the minor, the report shall be made to a peace officer only. A
18 member of the clergy, a Christian Science practitioner or a priest who has
19 received a confidential communication or a confession in that person's
20 role as a member of the clergy, as a Christian Science practitioner or as
21 a priest in the course of the discipline enjoined by the church to which
22 the member of the clergy, the Christian Science practitioner or the priest
23 belongs may withhold reporting of the communication or confession if the
24 member of the clergy, the Christian Science practitioner or the priest
25 determines that it is reasonable and necessary within the concepts of the
26 religion. This exemption applies only to the communication or confession
27 and not to personal observations the member of the clergy, the Christian
28 Science practitioner or the priest may otherwise make of the minor. For
29 the purposes of this subsection, "person" means:

30 1. Any physician, physician's assistant, optometrist, dentist,
31 osteopathic physician, chiropractor, podiatrist, behavioral health
32 professional, nurse, psychologist, counselor or social worker who develops
33 the reasonable belief in the course of treating a patient.

34 2. Any peace officer, child welfare investigator, child safety
35 worker, member of the clergy, priest or Christian Science practitioner.

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

37 4. School personnel, **INCLUDING SUBSTITUTE TEACHERS**, domestic
38 violence victim advocates or sexual assault victim advocates who develop
39 the reasonable belief in the course of their employment.

40 5. Any other person who has responsibility for the care or
41 treatment of the minor.

1 6. Any person who is employed as the immediate or next higher level
2 supervisor to or administrator of a person who is listed in paragraph 1,
3 2, 4 or 5 of this subsection and who develops the reasonable belief in the
4 course of the supervisor's or administrator's employment, except that if
5 the supervisor or administrator reasonably believes that the report has
6 been made by a person who is required to report pursuant to paragraph 1,
7 2, 4 or 5 of this subsection, the supervisor or administrator is not
8 required to report pursuant to this paragraph.

9 **7. ANY MEMBER OF A SCHOOL DISTRICT GOVERNING BOARD OR CHARTER
10 SCHOOL GOVERNING BODY.**

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

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

16 2. If a minor is of elementary school age, the physical injury
17 occurs accidentally in the course of typical playground activity during a
18 school day, occurs on the premises of the school that the minor attends
19 and is reported to the legal parent or guardian of the minor and the
20 school maintains a written record of the incident.

21 C. If a physician, psychologist or behavioral health professional
22 receives a statement from a person other than a parent, stepparent,
23 guardian or custodian of the minor during the course of providing sex
24 offender treatment that is not court ordered or that does not occur while
25 the offender is incarcerated in the state department of corrections or the
26 department of juvenile corrections, the physician, psychologist or
27 behavioral health professional may withhold the reporting of that
28 statement if the physician, psychologist or behavioral health professional
29 determines it is reasonable and necessary to accomplish the purposes of
30 the treatment.

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

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

35 2. The minor's age and the nature and extent of the minor's abuse,
36 child abuse, physical injury or neglect, including any evidence of
37 previous abuse, child abuse, physical injury or neglect.

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

41 E. A health care professional who is regulated pursuant to title 32
42 and who, after a routine newborn physical assessment of a newborn infant's
43 health status or following notification of positive toxicology screens of
44 a newborn infant, reasonably believes that the newborn infant may be

1 affected by the presence of alcohol or a drug listed in section 13-3401
2 shall immediately report this information, or cause a report to be made,
3 to the department of child safety. For the purposes of this subsection,
4 "newborn infant" means a newborn infant who is under thirty days of age.

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

12 G. A person who has custody or control of medical records of a
13 minor for whom a report is required or authorized under this section shall
14 make the records, or a copy of the records, available to a peace officer,
15 child welfare investigator or child safety worker investigating the
16 minor's neglect, child abuse, physical injury or abuse on written request
17 for the records signed by the peace officer, child welfare investigator or
18 child safety worker. Records disclosed pursuant to this subsection are
19 confidential and may be used only in a judicial or administrative
20 proceeding or investigation resulting from a report required or authorized
21 under this section.

22 H. When reports are received by a peace officer, the officer shall
23 immediately notify the department of child safety. Notwithstanding any
24 other statute, when the department receives these reports, it shall
25 immediately notify a peace officer in the appropriate jurisdiction.

26 I. Any person who is required to receive reports pursuant to
27 subsection A of this section may take or cause to be taken photographs of
28 the minor and the vicinity involved. Forensic interviews or medical
29 examinations, or both, of the involved minor may be performed.

30 J. A person who furnishes a report, information or records required
31 or authorized under this section, or a person who participates in a
32 judicial or administrative proceeding or investigation resulting from a
33 report, information or records required or authorized under this section,
34 is immune from any civil or criminal liability by reason of that action
35 unless the person acted with malice or unless the person has been charged
36 with or is suspected of abusing or neglecting the child or children in
37 question.

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

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

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

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

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

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

1. Personal information about individuals other than the patient.

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

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

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

P. For the purposes of this section:

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

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

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

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

(a) Any offense listed in chapters 14 and 35.1 of this title or section 13-3506.

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

(c) Child sex trafficking pursuant to section 13-3212.

(d) Incest pursuant to section 13-3608.

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

1 Sec. 2. Section 15-514, Arizona Revised Statutes, is amended to
2 read:

3 15-514. ~~Immoral or unprofessional conduct; duty to report;~~
4 immunity; definition

5 A. Any certificated PERSONNEL, ~~or~~ A noncertificated person or
6 ~~governing board~~ A member OF A SCHOOL DISTRICT GOVERNING BOARD OR CHARTER
7 SCHOOL GOVERNING BODY who reasonably ~~suspects~~ BELIEVES or receives a
8 reasonable allegation that a ~~person certificated by the state board of~~
9 ~~education or a noncertificated person~~ PUBLIC SCHOOL EMPLOYEE, INCLUDING
10 EMPLOYMENT THROUGH A THIRD-PARTY CONTRACTOR, has engaged in conduct
11 involving minors that would be subject to the reporting requirements of
12 section 13-3620 shall IMMEDIATELY report or cause reports to be made to A
13 LOCAL LAW ENFORCEMENT AGENCY. IF THE EMPLOYEE WHO IS THE SUBJECT OF THE
14 BELIEF OR ALLEGATION IS CERTIFICATED BY THE STATE BOARD OF EDUCATION OR IS
15 A NONCERTIFICATED PERSON, THE PERSON SHALL ALSO REPORT THE BELIEF OR
16 ALLEGATION TO the state board of education in writing as soon as is
17 reasonably practicable but not later than three business days after the
18 person first ~~suspects~~ BELIEVES or receives an allegation of the conduct.
19 A REPORT TO A SCHOOL RESOURCE OFFICER OR A SCHOOL SAFETY OFFICER DOES NOT
20 SATISFY THE REPORTING REQUIREMENT PRESCRIBED BY THIS SUBSECTION.

21 B. The superintendent of a school district or the chief
22 administrator of a charter school who reasonably ~~suspects~~ BELIEVES or
23 receives a reasonable allegation that an act of immoral or unprofessional
24 conduct that would constitute grounds for dismissal or criminal charges by
25 a certificated or noncertificated person has occurred shall report the
26 conduct to the state board of education.

27 C. A person who in good faith reports or provides information
28 pursuant to this section regarding the immoral or unprofessional conduct
29 of a certificated or noncertificated person is not subject to an action
30 for civil damages as a result.

31 D. A governing board or school or school district employee who has
32 control over personnel decisions shall not take unlawful reprisal against
33 an employee because the employee reports in good faith information as
34 required by this section. For the purposes of this subsection, "unlawful
35 reprisal" means an action that is taken by a governing board OR SCHOOL OR
36 SCHOOL DISTRICT EMPLOYEE WHO HAS CONTROL OVER PERSONNEL DECISIONS as a
37 direct result of a lawful report pursuant to this section and, with
38 respect to the REPORTING employee, results in one or more of the
39 following:

40 1. Disciplinary action.
41 2. Transfer or reassignment.
42 3. Suspension, demotion or dismissal.
43 4. An unfavorable performance evaluation.

1 5. Other significant changes in duties or responsibilities that are
2 inconsistent with the employee's salary or employment classification.

3 E. Failure to report information as required by this section by a
4 certificated or noncertificated person constitutes grounds for
5 disciplinary action by the state board of education.

6 F. A governing board or school district employee who has control
7 over personnel decisions and who reasonably ~~suspects~~ BELIEVES or receives
8 a reasonable allegation that a person certificated by the state board of
9 education or a noncertificated person has engaged in conduct involving
10 minors that would be subject to the reporting requirements of section
11 13-3620 and this article shall not accept the resignation of the
12 certificate holder or noncertificated person until these ~~suspicions~~
13 BELIEFS or allegations have been reported to the state board of education.

14 G. IF THE CONDUCT THAT IS THE SUBJECT OF THE BELIEFS OR ALLEGATIONS
15 REPORTED PURSUANT TO THIS SECTION ARE SEXUAL IN NATURE, ANY INVESTIGATION
16 RELATED TO THE BELIEFS, ALLEGATIONS OR REPORT IS SUBJECT TO THE FOLLOWING:

17 1. IF A SCHOOL RESOURCE OFFICER, SCHOOL SAFETY OFFICER OR SCHOOL
18 ADMINISTRATOR RECEIVES A REPORT REGARDING BELIEFS OR ALLEGATIONS THAT ARE
19 SEXUAL IN NATURE, THE SCHOOL RESOURCE OFFICER, SCHOOL SAFETY OFFICER OR
20 SCHOOL ADMINISTRATOR SHALL SUBMIT TO A LOCAL LAW ENFORCEMENT AGENCY ALL
21 INFORMATION RELATING TO THE REPORT FOR THE PURPOSES OF CONDUCTING AN
22 INVESTIGATION OF THE REPORTED CONDUCT.

23 2. ONLY A FORENSIC INTERVIEWER WHO HAS COMPLETED THE TRAINING
24 REQUIRED BY SECTION 8-817, SUBSECTION B, PARAGRAPH 6 MAY INTERVIEW A
25 STUDENT WHO IS IDENTIFIED AS A POTENTIAL VICTIM OF THE ALLEGED
26 CONDUCT. THIS PARAGRAPH DOES NOT PREVENT A SCHOOL EMPLOYEE OR SCHOOL
27 RESOURCE OFFICER FROM RECEIVING A VOLUNTARY REPORT OF SEXUAL CONDUCT BY A
28 SCHOOL EMPLOYEE FROM A STUDENT WHO IS AN ALLEGED VICTIM.

29 H. For the purposes of this section. ,

30 1. "Noncertificated person" has the same meaning prescribed in
31 section 15-505.

32 2. "SCHOOL SAFETY OFFICER" MEANS A SCHOOL RESOURCE OFFICER WHO IS
33 WORKING IN AN OFF-DUTY CAPACITY.