

HOUSE FLOOR AMENDMENT EXPLANATION



Bill Number: **SB 1437**

Gutierrez Floor Amendment

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1. Specifies that *school personnel* includes personnel employed by district, charter and private schools and schools that receive funding from the Empowerment Scholarship Account program.

GUTIERREZ FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1437
(Reference to Senate engrossed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[~~GREEN STRIKEOUT IN BRACKETS~~] indicates new text removed from statute or previously enacted session law.

[~~Green strikeout in brackets~~] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<~~Green strikeout in carets~~>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

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 neglect that appears to have been inflicted on the minor by other than
11 accidental means or that is not explained by the available medical history
12 as being accidental in nature or who reasonably believes there has been a
13 denial or deprivation of necessary medical treatment or surgical care or
14 nourishment with the intent to cause or allow the death of an infant who
15 is protected under section 36-2281 shall immediately report or cause
16 reports to be made of this information to a peace officer, to the
17 department of child safety or to a tribal law enforcement or social
18 services agency for any Indian minor who resides on an Indian reservation,
19 except if the report concerns a person who does not have care, custody or
20 control of the minor, the report shall be made to a peace officer only. A
21 member of the clergy, a Christian Science practitioner or a priest who has
22 received a confidential communication or a confession in that person's
23 role as a member of the clergy, as a Christian Science practitioner or as
24 a priest in the course of the discipline enjoined by the church to which
25 the member of the clergy, the Christian Science practitioner or the priest
26 belongs may withhold reporting of the communication or confession if the
27 member of the clergy, the Christian Science practitioner or the priest
28 determines that it is reasonable and necessary within the concepts of the

1 religion. This exemption applies only to the communication or confession
2 and not to personal observations the member of the clergy, the Christian
3 Science practitioner or the priest may otherwise make of the minor. For
4 the purposes of this subsection, "person" means:

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

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

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

12 4. School personnel, **INCLUDING SUBSTITUTE TEACHERS**, domestic
13 violence victim advocates or sexual assault victim advocates who develop
14 the reasonable belief in the course of their employment. [FOR THE
15 PURPOSES OF THIS PARAGRAPH, "SCHOOL PERSONNEL" INCLUDES THE PERSONNEL OF A
16 SCHOOL OPERATED BY A SCHOOL DISTRICT, A CHARTER SCHOOL, A PRIVATE SCHOOL
17 OR A SCHOOL THAT RECEIVES FUNDS FROM THE EMPOWERMENT SCHOLARSHIP ACCOUNT
18 PROGRAM.]

19 5. Any other person who has responsibility for the care or
20 treatment of the minor.

21 6. Any person who is employed as the immediate or next higher level
22 supervisor to or administrator of a person who is listed in paragraph 1,
23 2, 4 or 5 of this subsection and who develops the reasonable belief in the
24 course of the supervisor's or administrator's employment, except that if
25 the supervisor or administrator reasonably believes that the report has
26 been made by a person who is required to report pursuant to paragraph 1,
27 2, 4 or 5 of this subsection, the supervisor or administrator is not
28 required to report pursuant to this paragraph.

29 **7. ANY MEMBER OF A SCHOOL DISTRICT GOVERNING BOARD OR CHARTER**
30 **SCHOOL GOVERNING BODY.**

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

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

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

41 C. If a physician, psychologist or behavioral health professional
42 receives a statement from a person other than a parent, stepparent,
43 guardian or custodian of the minor during the course of providing sex
44 offender treatment that is not court ordered or that does not occur while

1 the offender is incarcerated in the state department of corrections or the
2 department of juvenile corrections, the physician, psychologist or
3 behavioral health professional may withhold the reporting of that
4 statement if the physician, psychologist or behavioral health professional
5 determines it is reasonable and necessary to accomplish the purposes of
6 the treatment.

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

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

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

14 3. Any other information that the person believes might be helpful
15 in establishing the cause of the abuse, child abuse, physical injury or
16 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
20 a newborn infant, reasonably believes that the newborn infant may be
21 affected by the presence of alcohol or a drug listed in section 13-3401
22 shall immediately report this information, or cause a report to be made,
23 to the department of child safety. For the purposes of this subsection,
24 "newborn 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
26 be made under subsection A of this section who reasonably believes that a
27 minor is or has been a victim of abuse, child abuse, physical injury, a
28 reportable offense or neglect may report the information to a peace
29 officer or to the department of child safety, except if the report
30 concerns a person who does not have care, custody or control of the minor,
31 the report shall be made to a peace officer only.

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

42 H. When reports are received by a peace officer, the officer shall
43 immediately notify the department of child safety. Notwithstanding any

1 other statute, when the department receives these reports, it shall
2 immediately notify a peace officer in the appropriate jurisdiction.

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

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

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

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

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

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

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

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

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

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

42 N. If any portion of a psychiatric record is excised pursuant to
43 subsection M of this section, a court, on application of a peace officer,
44 child welfare investigator or child safety worker, may order that the

1 entire record or any portion of the record that contains information
2 relevant to the reported abuse, child abuse, physical injury or neglect be
3 made available to the peace officer, child welfare investigator or child
4 safety worker investigating the abuse, child abuse, physical injury or
5 neglect.

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

9 P. For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

23 15-514. Immoral or unprofessional conduct; duty to report;
24 immunity; definition

25 A. Any certificated PERSONNEL, ~~or~~ A noncertificated person or
26 ~~governing board~~ A member OF A SCHOOL DISTRICT GOVERNING BOARD OR CHARTER
27 SCHOOL GOVERNING BODY who reasonably suspects or receives a reasonable
28 allegation that a ~~person certificated by the state board of education or a~~
29 ~~noncertificated person~~ PUBLIC SCHOOL EMPLOYEE, INCLUDING EMPLOYMENT
30 THROUGH A THIRD-PARTY CONTRACTOR, has engaged in conduct involving minors
31 that would be subject to the reporting requirements of section 13-3620
32 shall IMMEDIATELY report or cause reports to be made to A LOCAL LAW
33 ENFORCEMENT AGENCY. IF THE EMPLOYEE WHO IS THE SUBJECT OF THE SUSPICION
34 OR ALLEGATION IS CERTIFICATED BY THE STATE BOARD OF EDUCATION OR IS A
35 NONCERTIFICATED PERSON, THE PERSON SHALL ALSO REPORT THE SUSPICION OR
36 ALLEGATION TO the state board of education in writing as soon as is
37 reasonably practicable but not later than three business days after the
38 person first suspects or receives an allegation of the conduct. A REPORT
39 TO A SCHOOL RESOURCE OFFICER OR A SCHOOL SAFETY OFFICER DOES NOT SATISFY
40 THE REPORTING REQUIREMENT PRESCRIBED BY THIS SUBSECTION.

41 B. The superintendent of a school district or the chief
42 administrator of a charter school who reasonably suspects or receives a
43 reasonable allegation that an act of immoral or unprofessional conduct
44 that would constitute grounds for dismissal or criminal charges by a

1 certificated or noncertificated person has occurred shall report the
2 conduct to the state board of education.

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

7 D. A governing board or school or school district employee who has
8 control over personnel decisions shall not take unlawful reprisal against
9 an employee because the employee reports in good faith information as
10 required by this section. For the purposes of this subsection, "unlawful
11 reprisal" means an action that is taken by a governing board OR SCHOOL OR
12 SCHOOL DISTRICT EMPLOYEE WHO HAS CONTROL OVER PERSONNEL DECISIONS as a
13 direct result of a lawful report pursuant to this section and, with
14 respect to the REPORTING employee, results in one or more of the
15 following:

- 16 1. Disciplinary action.
- 17 2. Transfer or reassignment.
- 18 3. Suspension, demotion or dismissal.
- 19 4. An unfavorable performance evaluation.
- 20 5. Other significant changes in duties or responsibilities that are
21 inconsistent with the employee's salary or employment classification.

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

25 F. A governing board or school district employee who has control
26 over personnel decisions and who reasonably suspects or receives a
27 reasonable allegation that a person certificated by the state board of
28 education or a noncertificated person has engaged in conduct involving
29 minors that would be subject to the reporting requirements of section
30 13-3620 and this article shall not accept the resignation of the
31 certificate holder or noncertificated person until these suspicions or
32 allegations have been reported to the state board of education.

33 G. IF THE CONDUCT THAT IS THE SUBJECT OF THE SUSPICIONS OR
34 ALLEGATIONS REPORTED PURSUANT TO THIS SECTION ARE SEXUAL IN NATURE, ANY
35 INVESTIGATION RELATED TO THE SUSPICIONS, ALLEGATIONS OR REPORT IS SUBJECT
36 TO THE FOLLOWING:

37 1. IF A SCHOOL RESOURCE OFFICER, SCHOOL SAFETY OFFICER OR SCHOOL
38 ADMINISTRATOR RECEIVES A REPORT REGARDING SUSPICIONS OR ALLEGATIONS THAT
39 ARE SEXUAL IN NATURE, THE SCHOOL RESOURCE OFFICER, SCHOOL SAFETY OFFICER
40 OR SCHOOL ADMINISTRATOR SHALL SUBMIT TO A LOCAL LAW ENFORCEMENT AGENCY ALL
41 INFORMATION RELATING TO THE REPORT FOR THE PURPOSES OF CONDUCTING AN
42 INVESTIGATION OF THE REPORTED CONDUCT.

43 2. ONLY A FORENSIC INTERVIEWER WHO HAS COMPLETED THE TRAINING
44 REQUIRED BY SECTION 8-817, SUBSECTION B, PARAGRAPH 6 MAY INTERVIEW A

1 STUDENT WHO IS IDENTIFIED AS A POTENTIAL VICTIM OF THE ALLEGED CONDUCT.
2 THIS PARAGRAPH DOES NOT PREVENT A SCHOOL EMPLOYEE, SCHOOL SAFETY OFFICER
3 OR SCHOOL RESOURCE OFFICER FROM RECEIVING A VOLUNTARY REPORT OF SEXUAL
4 CONDUCT BY A SCHOOL EMPLOYEE FROM A STUDENT WHO IS AN ALLEGED VICTIM.

5 ~~G.~~ H. For the purposes of this section. ~~,~~

6 1. "Noncertificated person" has the same meaning prescribed in
7 section 15-505.

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

10 Enroll and engross to conform

11 Amend title to conform

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