

**Minor Consent, Confidentiality, and Child Abuse Reporting  
in Title X Funded Family Planning Settings**

**Arizona Law**

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## Contents

<b><u>I. MINOR CONSENT</u></b> .....	
<u>What is the age of majority/minority?</u> .....	1
<u>What is the age of consent for sexual activity?</u> .....	1
<u>Who generally consents for health care for minors?</u> .....	1
<u>What exceptions allow minors or others to consent for health care?</u> .....	1
<b><u>II. CONFIDENTIALITY</u></b> .....	
<u>Who controls access to medical information?</u> .....	5
<u>What other laws limit parent access to medical information about minors?</u> .....	5
<u>What exceptions give others access to medical information about minors?</u> .....	7
<u>Can individuals be held liable for revealing confidential information outside the exceptions specifically listed in federal or state law?</u> .....	8
<b><u>III. CHILD ABUSE REPORTING REQUIREMENTS</u></b> .....	<b>9</b>
<b><u>A. Am I a Mandated Reporter?</u></b> .....	<b>9</b>
<u>Who is a mandated reporter?</u> .....	9
<u>Who is not a mandated reporter? (exceptions)</u> .....	9
<b><u>B. When is a Report Required from a Mandated Reporter?</u></b> .....	<b>10</b>
<u>When must you report abuse?</u> .....	10
<u>What if I am not sure that abuse has occurred?</u> .....	10
<b><u>C. Is this a Type of Activity that Must Be Reported?</u></b> .....	<b>10</b>
<u>What constitutes abuse or neglect?</u> .....	10
<u>What are some indications of abuse or neglect?</u> .....	10
<b><u>D. What Sexual Activity am I Mandated to Report?</u></b> .....	<b>11</b>
<u>What sexual activity am I mandated to report?</u> .....	11
<u>Am I ever required to report a minor’s consensual sexual activity as child abuse?</u> .	11
<u>What consensual sexual activity by a minor <i>does not</i> require reporting?</u> .....	12
<u>For the purposes of child abuse reporting, does a mandated reporter have a duty to try to ascertain the ages of the minor’s partners?</u> .....	12
<u>What types of non-consensual sexual activities must be reported?</u> .....	13
<b><u>E. How Does Reporting Work?</u></b> .....	<b>13</b>
<u>To whom should reports be made?</u> .....	13
<u>How do I make a report?</u> .....	13

**F. What are the Consequences of My Reporting Decision?..... 13**

What will the police or Child Protective Services do after I make my report? ..... 13

Can individuals be held liable for making reports?..... 13

Can individuals be held liable for not making reports?..... 14

**G. Do Medical Records Remain Confidential in Cases of Alleged Abuse?..... 14**

Is information in the medical chart confidential?..... 14

What about provider notes or other communications?..... 14

How should a subpoena or other legal request for confidential information be handled?..... 15

**H. Potential Criminal Charges Arising out of Abuse Reports..... 15**

In addition to being used as indicators of abuse or neglect in welfare proceedings, will evidence of sexual activity uncovered during an abuse/neglect investigation be used as a basis for a criminal prosecution?..... 15

In a case involving consensual sexual activity that meets the definition of sexual assault, who, if anyone, might be prosecuted?..... 15

## I. MINOR CONSENT

### **What is the age of majority/minority?**

The age of majority in Arizona is eighteen years. Ariz. Rev. Stat. 1-215.

### **What is the age of consent for sexual activity?**

While no statute specifically establishes an age at which a minor may legally consent to sexual activity, there can be criminal penalties for consensual sexual activity with a minor 18 years of age or younger. Ariz. Rev. Stat. 13-1406.

### **Who generally consents for health care for minors?**

Generally, a parent, guardian or other person *in loco parentis* must consent for health care on behalf of a minor. Arizona law explicitly requires parental consent for surgery performed on a minor except in specific circumstances, such as an emergency or as otherwise provided by law. Ariz. Rev. Stat. § 36-2271.

### **What exceptions allow minors or others to consent for health care?**

#### Emancipated/Married/Homeless Minors:

“(a) Notwithstanding any other provision of law except as provided in 36-2151 et seq., and without limiting cases in which consent may otherwise be obtained or is not required, any emancipated minor, any minor who has contracted a lawful marriage or any homeless minor may give consent to the furnishing of hospital, medical and surgical care to such minor, and such consent shall not be subject to disaffirmance because of minority. The consent of the parent, or parents, of such a person is not necessary in order to authorize hospital, medical and surgical care. For the purposes of this section only, subsequent judgment of annulment of such marriage or judgment of divorce shall not deprive such person of his adult status once attained.

“(b) A health care provider acting in reliance on the consent of a minor who has authority or apparent authority pursuant to this section to consent to health care is not subject to criminal and civil liability and professional disciplinary action on the grounds that he or she failed to obtain consent of the minor’s parent,…”

“(c) For purposes of this section, a homeless minor is an individual under the age of eighteen years living apart from his parents and who lacks a fixed and regular nighttime residence or whose primary residence is either a supervised shelter designed to provide temporary accommodations, a halfway house or a place not designed for or ordinarily used for sleeping by humans.” Ariz. Rev. Stat. 44-132.

#### Sexually Transmitted Diseases:

“Notwithstanding any other provision of the law, a minor who may have contracted a venereal disease may give consent to the furnishing of hospital or medical care related to

the diagnosis or treatment of such disease and such consent shall not be subject to disaffirmance because of minority. The consent of the parent,...shall not be necessary in order to authorize hospital or medical care.” Ariz. Rev. Stat. 44-132.01.

*HIV Testing:*

Minors of any age deemed to have the capacity to consent may consent for HIV testing. Ariz. Rev. Stat. 36-663. Capacity to consent for the purposes of this chapter means a person’s ability, determined without regard to the person’s age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure and to make an informed decision concerning that service, treatment or procedure. Ariz. Rev. Stat. 36-661.

In general, providers “cannot perform an HIV related test within a hospital...without receiving specific written informed consent for the subject who has capacity to consent... Before ordering the performance of an HIV-related test as a part of a patient examination or consultation conducted outside a hospital..., a health care provider..., nurse practitioner..., or physician assistant... shall obtain specific oral or written informed consent of the subject of the test who has capacity to consent. Other health care providers licensed pursuant to title 32 who are allowed to provide HIV-related tests within their scope of practice shall obtain specific written informed consent...” Ariz. Rev. Stat. 36-663.

*Abortion (judicial bypass/serious risk/sexual conduct with relative):*

For unemancipated minors, abortion usually requires written consent of at least one parent, but there are three situations in which parental consent is not necessary for abortion.

*Judicial Bypass*

“A judge of the superior court shall, on petition or motion, and after an appropriate hearing, authorize a physician to perform the abortion *if the judge determines that the pregnant minor is mature and capable of giving informed consent to the proposed abortion*. If the judge determines that the pregnant minor is not mature or if the pregnant minor does not claim to be mature, the judge *shall determine whether the performance of an abortion on her without the consent from one of her parents...would be in her best interests* and shall authorize a physician to perform the abortion without consent if the judge concludes that the pregnant minor’s best interests would be served.” “The court shall hold the hearing and shall issue a ruling within 48 hours, excluding weekends and holidays, after the petition is filed. If the court fails to issue a ruling within this time period, the petition is deemed to have been granted...” Ariz. Rev. Stat. 36-2152(B), (E).

*Serious Risk*

“Parental consent or judicial authorization is not required under this section if:

1. The attending physician certifies in the pregnant minor’s medical record that, on the basis of the physician’s good faith clinical judgment, the pregnant

minor has a condition that so complicates her medical condition as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.” Ariz. Rev. Stat. 36-2152(G).

*Pregnancy caused by Sexual Conduct with Relative*

“Parental consent or judicial authorization is not required under this section if:

2. The pregnant minor certifies to the attending physician that the pregnancy resulted from sexual conduct with a minor by the minor’s parent, stepparent, uncle, grandparent, sibling adoptive parent, legal guardian or foster parent or by a person who lives in the same household with the minor and the minor’s mother. The physician performing the abortion shall report the sexual conduct...to the proper law enforcement officials...” Ariz. Rev. Stat. 36-2152(G).

“Abortion does not include birth control devices or oral contraceptives that inhibit or prevent ovulation, fertilization or the implantation of a fertilized ovum within the uterus.” Ariz. Rev. Stat. 36-2152(I).

*Family Planning/Pregnancy Testing/Contraception:*

Federal regulations establish special access rules for family planning services funded through Title X. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

Federal law requires that Title X funded services be available to all adolescents, regardless of their age, without the need for parental consent. 42 C.F.R. § 59.5(a)(4)(services must be made available without regard to age); see Does 1-4 v. Utah Dept. of Health, 776 F.2d 253 (10<sup>th</sup> Cir. 1985).

The Arizona Attorney General has ruled that agencies or providers delivering family planning services funded in full or part by Titles V, X, XIX or XX must provide these services based on the minor’s consent. Ariz. Op.Atty.Gen. No. 77-37, p. 131, 1976-77.

*Sexual Assault:*

“Notwithstanding any other provision of the law, when it is not possible to contact the parents or legal guardian within the short time span in which the examination should be conducted, a minor twelve years of age or older alleged to be the victim of a violation of 13-1406 may give consent to hospital, medical and surgical examination, diagnosis and care in connection with such violation. Such consent shall not be subject to incapacity because of the victim’s age. The consent of the parent, parents or legal guardian of such minor shall not be necessary to authorize such hospital, medical and surgical examination, diagnosis and care, and such parent, ...shall not be liable for payment for any services rendered pursuant to this section.” Ariz. Rev. Stat. 13-1413.

Drug/Alcohol Abuse Treatment:

“Any minor twelve years of age or older who is found, upon diagnosis of a licensed physician, to be under the influence of a dangerous drug or narcotic, which includes withdrawal symptoms, may be considered an emergency case and such minor is to be regarded as having consented to hospital or medical care needed for treatment for such. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents or legal guardian of such minor is not necessary to authorize hospital or medical care, except that such consent shall be equally valid if obtained.” Ariz. Rev. Stat. 44-133.01.

Emergency:

“Notwithstanding any other provision of the law, in cases of emergency in which a minor is in need of immediate hospitalization, medical attention or surgery and after reasonable efforts made under the circumstance, the parents of such minor cannot be located for the purpose of consenting thereto, consent for said emergency attention may be given by any person standing *in loco parentis* to said minor.” Ariz. Rev. Stat. 44-133.

“(a) Except as otherwise provided by law, no person, corporation, association, organization, state-supported institution, or individual employed by any of same may procure, solicit to perform, arrange for the performance of, or perform surgical procedures upon a minor without first obtaining a written consent of a parent or legal guardian. (c) The provisions of this section shall not apply when it has been determined by a physician that an emergency exists and that it is necessary to perform such surgical procedures for the treatment of a serious disease, injury or drug abuse, or to save the life of the patient, or when such parent or legal guardian cannot be located or contacted after reasonably diligent effort.” Ariz. Rev. Stat. 36-2271.

Foster Parents/Other Placement:

Foster parents or others in whose care a child is placed are allowed to consent to routine medical and dental treatment and emergency care. Foster parents cannot consent to surgery, anesthesia, HIV testing, blood transfusions, or abortions. Ariz. Rev. Stat. 8-514.05(C).

Diagnosis or Treatment of Suspected Child Abuse:

“Any person who is required to receive [child abuse] reports...may take or cause to be taken photographs of the minor and the vicinity involved. Medical examinations of the involved minor may be performed.” Ariz. Rev. Stat. 13-3620(I).

## II. CONFIDENTIALITY

### **Who controls access to medical information?**

Under Arizona law, “unless otherwise provided by law, all medical records and the information contained in medical records are privileged and confidential. A health care provider may only disclose that part or all of a patient’s medical record that is authorized pursuant to law or the patient’s written authorization.” Ariz. Rev. Stat. 12-2292(A).

One exception that is “authorized pursuant to law” allows a parent to request medical records when the parent consents for a minor’s health treatment. However, even in this situation, the minor has the right to limit parent access. “On written request of a patient’s health care decision maker for access to or copies of the patient’s medical records, the medical records shall be provided to the health care decision maker or the person designated in writing by the health care decision maker *unless the access is limited by the patient.*” Ariz. Rev. Stat. 12-2293(B)(emphasis added).

(“Health care decision maker means an individual who is authorized to make health care treatment decisions for the patient, including a parent of a minor...” Ariz. Rev. Stat. 12-2291(2).)

When minors consent for their own medical services, this exception does not apply. Only the minor may authorize release of “minor consent” records.

### **What other laws limit parent access to medical information about minors?**

In addition to Arizona’s general confidentiality law, several federal and state regulations limit parent access to specific medical records.

#### Risk of domestic violence/abuse/neglect:

Health care providers who are covered under the HIPAA Privacy Rule may refuse to provide parents access to a minor’s medical records if:

- (1) The providers have a “reasonable belief” that:
  - (A) The minor has been or may be subjected to domestic violence, abuse or neglect by the parent, guardian or other giving consent; or
  - (B) Treating such person as the personal representative could endanger the minor;

And:

- (2) The provider, in the exercise of professional judgment, decides that it is not in the best interest of the minor to give the parent, guardian or other such access.

45 C.F.R. § 164.502(g)(5).

#### Mental Health:

“[I]f the patient receives treatment for a mental disorder as defined in 36-501, on written request of a health care decision maker for access to or copies of the patient’s medical

records, the health care provider may refuse to provide records which indicate confidential information between the patient and the health care professional. If the attending physician determines that the health care decision maker should not have access to that part of the patient's medical record, the attending physician shall note this determination in the patient's medical record and shall provide...a written explanation of the reason for such denial. The health care provider shall release medical record information to the health care decision maker which includes the patient's therapy treatment plan and medication information." Ariz. Rev. Stat. 12-2293.

Ariz. Rev. Stat. 36-501 defines "Mental disorder" as "a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:

- (a) Conditions which are primarily those of drug abuse, alcoholism or mental retardation, unless, in addition to one or more of these conditions, the person has a mental disorder.
- (b) The declining mental abilities that directly accompany impending death.
- (c) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute unless the behavior results from a mental disorder." ARS 36-501.

*Abortion and Judicial Bypass:*

When a minor seeks a judicial bypass, "[p]roceedings in the court... are confidential .... Members of the public shall not inspect, obtain copies of or otherwise have access to records of court proceedings.... The minor may file the petition using a fictitious name..." Ariz. Rev. Stat. 36-2152

*Family Planning:*

Federal regulations establish special protections for family planning information and records. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

For agencies delivering services funded by Title X, federal law mandates that "[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality." 42 C.F.R. 59.11.

*Drug/Alcohol Abuse Treatment:*

Federal regulations establish special protections for substance abuse treatment records. Providers that meet certain criteria must follow the federal rule.

Federal confidentiality law applies to any individual, program, or facility that meets the following two criteria:

1. The individual, program, or facility is federally assisted. (Federally assisted means authorized, certified, licensed or funded in whole or in part by any department of the federal government. Examples include programs that are: tax exempt; receiving tax-deductible donations; receiving any federal operating funds; or registered with Medicare.) 42 C.F.R. §2.12;

And

2. The individual or program:
  - 1) Is an individual or program that holds itself out as providing alcohol or drug abuse diagnosis, treatment, or referral; OR
  - 2) Is a staff member at a general medical facility whose primary function is, and who is identified as, a provider of alcohol or drug abuse diagnosis, treatment or referral; OR
  - 3) Is a unit at a general medical facility that holds itself out as providing alcohol or drug abuse diagnosis, treatment or referral. 42 C.F.R. §2.11; 42 C.F.R. §2.12.

For individuals or programs meeting these criteria, federal law prohibits disclosing any information to parents without a minor’s written consent, if the minor patient “acting alone has the legal capacity under the applicable State law to apply for and obtain alcohol or drug abuse treatment.” One exception, however, is that an individual or program may share with parents if the individual or program director determines the following three conditions are met: (1) that the minor’s situation poses a substantial threat to the life or physical well-being of the minor or another; (2) that this threat may be reduced by communicating relevant facts to the minor’s parents; and (3) that the minor lacks the capacity because of extreme youth or a mental or physical condition to make a rational decision on whether to disclose to her parents. 42 U.S.C. 290dd-3(b), 290ee-3(b); 42 C.F.R. §2.14.

### **What exceptions give others access to medical information about minors?**

Examples include:

#### Access to Foster Parents/State:

If child is in out of home placement, health plans and providers must provide access to records and information on medical and behavioral health to person or agency in whose care the child is placed. If the department has custody and control of child, must provide to department employees. Ariz. Rev. Stat. 8-514.05

#### Treatment/Billing:

“A health care provider may disclose medical records or the information contained in medical records without patient’s written authorization as follows or as otherwise authorized by law:” (1) to other health care providers for the purpose of diagnosis or treatment (2) to former health care providers to extent records pertain to provided treatment (3) to ambulance attendant for purpose of care (4) to agency that accredits

health care providers (5) to providers for purpose of conducting utilization review (6) to billing claims management etc. (8) to personal representative of deceased patient.  
Ariz. Rev. State. 12-2294

*Child Abuse Reporting*

“A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer or child protective services worker investigating the minor’s neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer or child protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.” Ariz. Rev. Stat. 13-3620(G).

“If psychiatric records are requested pursuant to [a child abuse investigation], 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.” Ariz. Rev. Stat. 13-3620(M); See also Ariz. Rev. Stat. 13-3620(N).

**Can individuals be held liable for revealing confidential information outside the exceptions specifically listed in federal or state law?**

If no exception applies that would allow a provider to share information, providers who reveal confidential information violate both Arizona statute and federal regulations. See ARS 12-2292. The HIPAA regulations give the Department of Health and Human Services the authority to enforce HIPAA confidentiality regulations and to impose sanctions. 45 CFR Part 160.

### III. CHILD ABUSE REPORTING REQUIREMENTS

#### A. Am I a Mandated Reporter?

##### Who is a mandated reporter?

“Any person who reasonably believes that a minor is or has been the victim of . . . child abuse . . .” Ariz. Rev. Stat. 13-3620(A).

This includes:

- Any physician, physician’s assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable believe in the course of treating a patient.
- Any peace officer, member of the clergy, priest or Christian Science practitioner.
- The parent, stepparent or guardian of the minor.
- School personnel or domestic violence victim advocate who develop the reasonable belief in the course of their employment.
- Any other person who has responsibility for the care or treatment of the minor.”

Ariz. Rev. Stat. 13-3620(A)

##### Who is not a mandated reporter? (exceptions)

“A member of the clergy, Christian science practitioner or priest who has received a confidential communication or a confession in that person’s role as a member of the clergy in the course of the discipline . . . may withhold reporting . . . if the member . . . determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations . . .” Ariz. Rev. Stat. 13-3620(A)

“If a physician, psychologist or behavioral health professional receives a statement from a person other than a parent, stepparent, guardian or custodian of the minor during the courts of providing sex offender treatment that is not court ordered or that does not occur while the offender is incarcerated in the state department of corrections or the department of juvenile corrections, the physician, psychologist or behavioral health professional may withhold the reporting of that statement if the physician, psychologist or behavioral health professional determines it is reasonable and necessary to accomplish the purposes of the treatment.” Ariz. Rev. Stat. 13-3620(C)

## **B. When is a Report Required from a Mandated Reporter?**

### **When must you report abuse?**

Reporters must report any “reasonable belief” that “a minor is or has been the victim of ...child abuse....” Ariz. Rev. Stat. 13-3620(A).

### **What if I am not sure that abuse has occurred?**

Confirmation of abuse is not required. Reporters must report whenever they have a reasonable belief that abuse has occurred.

The Arizona Supreme Court has stated that reasonable belief means reporters must report “if there are any facts from which one could reasonably conclude that a child had been abused."Reasonable grounds" is a low standard.” The Court went on to say that the policy behind reporting is to “encourage[e] people to report child abuse” and that “[t]he statute does not contemplate that a person must fully investigate the suspected abuse before making a report. All the person must do is make the report.” LAR v. Ludwig 821 P.2d 291 (Ariz. S.C. 1991).

## **C. Is this a Type of Activity that Must Be Reported?**

### **What constitutes abuse or neglect?**

- Physical injury
- Abuse
- Child abuse
- A reportable offense
- Neglect that appears to have been inflicted by other than accidental means or that is not explained by the available medical history
- A denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under Ariz. Rev. Stat. 36-2281

Ariz. Rev. Stat. 13-3620(A).

### **What are some indications of abuse or neglect?**

Arizona Rev. Stat. 13-3620 defines the terms “abuse,” “neglect,” “child abuse” and “reportable offenses.”

Child Abuse includes:

- (a) *Inflicting or allowing* physical injury,
- (b) Impairment of bodily function or disfigurement

- (c) The infliction of or allowing another person to cause serious emotional damage
- (d) *Inflicting or allowing* sexual abuse, sexual conduct with a minor, sexual assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, incest, or child prostitution.

"Neglect" includes "The inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare, except if the inability of a parent or guardian to provide services to meet the needs of a child with a disability or chronic illness is solely the result of the unavailability of reasonable services."

"Abuse" includes sexual abuse and other sexual offenses. See "What sexual activity am I mandated to report?" below.

Ariz. Rev. Stat. §§ 8-201, 13-3623, 13-3620(P).

## **D. What Sexual Activity am I Mandated to Report?**

### **What sexual activity am I mandated to report?**

Sexual activity that must be reported includes *inflicting or allowing*:

- Sexual abuse (defined at 13-1404)
- Sexual conduct with a minor (defined at 13-1405)
- Nonconsensual sexual assault (defined at 13-1406)
- Molestation of a child (defined at 13-1410)
- Commercial sexual exploitation of a minor (defined at 13-3552)
- Sexual exploitation of a minor (defined at 13-3553)
- Incest (defined at 13-3608), or
- Child prostitution (defined at 13-3212).

Ariz. Rev. Stat. 13-3620.

However, "[a] report is not required under this section for conduct prescribed by 13-1404 and 13-1405 if the conduct involves only minors who are fourteen, fifteen, sixteen or seventeen years of age and there is nothing to indicate that the conduct is other than consensual." Ariz. Rev. Stat. 13-3620(B).

### **Am I ever required to report a minor's consensual sexual activity as child abuse?**

Consensual acts that must be reported as sexual abuse include:

- Consensual sexual intercourse with any person under age 14 (13-1405)
- Consensual sexual intercourse with a minor under age 18 if the partner is 18 or over, or 13 or younger (13-1405)

- Consensual oral sexual contact with any person under age 14 (13-1405)
- Consensual oral sexual contact with a minor under age 18 if the partner is 18 or over, or 13 or younger (13-1405)
- Consensual sexual contact with the breast of a female under age 15 if the partner is 18 or over, or 13 or younger (13-1404)
- Consensual sexual contact, except contact with the female breast, with a minor under 15 – no matter the age of her partner (13-1410)

For the purposes of reporting,

“Sexual contact” means any direct or indirect touching, fondling or manipulating of any part of the body or by any object or masturbatory contact with the penis or vulva.” Ariz. Rev. Stat. 13-1401.

“Sexual intercourse” means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.” Ariz. Rev. Stat. 13-1401.

*Note:* For persons charged with a violation of 13-1405 (sexual intercourse or oral sexual contact with someone under age 18), it is a defense to prosecution if the activity was consensual, the victim is age 15, 16 or 17 and the defendant is less than 19 years of age or attending high school and is no more than 24 months older than the victim. Ariz. Rev. Stat. 13-1407(F).

For persons charged with a violation of 13-1404 or 13-1405 (sexual contact with breast of female under 15 or sexual intercourse or oral sexual contact with someone under age 18), it is a defense that the defendant was the spouse of the minor at the time of the commission of the act. Ariz. Rev. Stat. 13-1407(D).

### **What consensual sexual activity by a minor *does not* require reporting?**

- Consensual sexual intercourse with a minor if both partners are between 14 and 17 years old.
- Consensual oral sexual contact with a minor if both partners are between 14 and 17 years old.
- Consensual sexual contact with the breast of a female who is 14, if the partner is between 14 and 17 years old.
- Consensual sexual contact with the breast of a female who is 15 or older.
- Consensual sexual contact, except contact with the female breast, with a minor who is 15 or older.

**For the purposes of child abuse reporting, does a mandated reporter have a duty to try to ascertain the ages of the minor’s partners?**

No statute or case obligates providers to ask their minor patients about the age of the minors' sexual partners.

### **What types of non-consensual sexual activities must be reported?**

Any non-consensual sexual activity must be reported, including sexual assault, molestation of a child, commercial sexual exploitation of a minor, incest, and child prostitution.

## **E. How Does Reporting Work?**

### **To whom should reports be made?**

When the perpetrator of the alleged abuse is someone with the care, custody or control of the minor, the reporter “shall immediately report or cause reports to be made...to a peace officer or to child protective services in the department of economic security.”

When the “report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only.” Ariz. Rev. Stat. 13-3620(A).

Peace officers and child protective services must cross report. Ariz. Rev. Stat. 13-3620(H).

### **How do I make a report?**

“Reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours.” Ariz. Rev. Stat. 13-3620(D).

Arizona Revised Statute 13-3620 lists the information that a report must contain.

## **F. What are the Consequences of My Reporting Decision?**

### **What will the police or Child Protective Services do after I make my report?**

According to Arizona Department of Economic Security's website, the type of abuse occurring and the level of risk to the child determine how CPS responds to a report.

### **Can individuals be held liable for making reports?**

Sometimes. “A person acting with malice who knowingly and intentionally makes a false report of child abuse or neglect or a person acting with malice who coerces another person to make a false report of child abuse or neglect is guilty of a class 1 misdemeanor.” Ariz. Rev. Stat. 13-3620.01(A).

However, “Any person making a complaint, or providing information or otherwise participating in the program authorized by this article shall be immune from any civil or criminal liability by reason of such action, unless such person acted with malice or unless such person has been charged with or is suspected of abusing, abandoning or neglecting the child or children in question.” Ariz. Rev. Stat. 8-805(A).

A person who provides medical records in relation to a child abuse report is immune from civil or criminal liability. Ariz. Rev. Stat. 13-3620(J).

### **Can individuals be held liable for not making reports?**

Yes. A mandated reporter who fails to report “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.” Ariz. Rev. Stat. 13-3620(O). Reportable offenses include sexual offenses.

## **G. Do Medical Records Remain Confidential in Cases of Alleged Abuse?**

### **Is information in the medical chart confidential?**

Arizona law allows mandated reporters to make medical records available to persons investigating abuse or neglect. “A person who has custody or control of medical records of a minor for whom a report is required or authorized under this section shall make the records, or a copy of the records, available to a peace officer or child protective services worker investigating the minor’s neglect, child abuse, physical injury or abuse on written request for the records signed by the peace officer or child protective services worker.” Ariz. Rev. Stat. 13-3620(G).

However, any records provided in this context remain confidential. “Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.” Ariz. Rev. Stat. 13-3620(G).

### **What about provider notes or other communications?**

Protected medical records include “all communications that are recorded in any form or medium and that are maintained for purposes of patient treatment...Medical records do not include materials that are prepared in connection with utilization review, peer review or quality assurance activities...Medical records do not include recorded telephone and radio calls to and from publicly operated emergency dispatch office relating to request for emergency services or reports of suspected criminal activity but shall include communications between emergency medical personnel and medical personnel concerning the treatment of a person.” Ariz. Rev. Stat. 12-2291.

“Records that are not in written form shall be released only if the patient or patient’s health care decision maker specifically requests and identifies in writing the type of record desired.” ARS 12-2293(C).

### **How should a subpoena or other legal request for confidential information be handled?**

For other records, federal privacy regulations provide guidance. The HIPAA Privacy Rule states that a provider may release confidential information:

- (1) In response to an order of a court or administrative tribunal, provided that the covered entity disclose only the protected health information expressly authorized by such order; or
- (2) In response to a subpoena, discovery request or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if: (A) The covered entity receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the protected health information has been given notice of the request; or (B) the covered entity receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order.

For the purposes of this section, the party seeking the information must provide a written statement and accompanying documentation demonstrating, among other things, that the patient had notice of this request, or the party tried to make a request, and that the time for the individual to raise objections has elapsed.  
45 CFR 164.512(e)(1).

## **H. Potential Criminal Charges Arising out of Abuse Reports**

### **In addition to being used as indicators of abuse or neglect in welfare proceedings, will evidence of sexual activity uncovered during an abuse/neglect investigation be used as a basis for a criminal prosecution?**

It might. Child Protective Services is required to inform the police department when it receives a report of child abuse or neglect. The police and prosecutor then will decide how best to investigate and possibly prosecute criminal incidents.

### **In a case involving consensual sexual activity that meets the definition of sexual assault, who, if anyone, might be prosecuted?**

The caretaker may be prosecuted for abuse or neglect for allowing the sexual activity to occur. In at least one case, a parent was prosecuted as an accomplice to child abuse as well as for neglect for allowing her 13-year-old daughter to have a sexual relationship with an adult partner.

In addition, the minor's partner may be prosecuted for the criminal act. In some cases, if both partners are minors, both minors may be prosecuted if they each can be charged with sexual assault against the other, although this is probably rare. However, for persons charged with a violation of 13-1405 (sexual intercourse or oral sexual contact with someone under age 18), it is a defense to prosecution if the activity was consensual, the victim is age 15, 16 or 17 and the defendant is less than 19 years of age or attending high school and is no more than 24 months older than the victim. Ariz. Rev. Stat. 13-1407(F). And for persons charged with a violation of 13-1404 or 13-1405 (sexual contact with breast of female under 15 or sexual intercourse or oral sexual contact with someone under age 18), it is a defense that the defendant was the spouse of the minor at the time of the commission of the act. Ariz. Rev. Stat. 13-1407(D).

The police and prosecutor's office will decide whom to charge and with what crime. Because the prosecutor has some discretion, if you have questions about how such charges are handled in your jurisdiction, it is best to speak to your local police and prosecutor's office.