House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
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CHAPTER 252

SENATE BILL 1427

AN ACT

AMENDING SECTIONS 13-3623 AND 13-3623.01, ARIZONA REVISED STATUTES; RELATING TO FAMILY OFFENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 13-3623, Arizona Revised Statutes, is amended to read:

13-3623. Child or vulnerable adult abuse; emotional abuse; classification; exception; definitions

A. Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to section 13-604.01.

2. If done recklessly, the offense is a class 3 felony.

3. If done with criminal negligence, the offense is a class 4 felony.

B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 4 felony.

2. If done recklessly, the offense is a class 5 felony.

3. If done with criminal negligence, the offense is a class 6 felony.

C. For the purposes of subsections A and B of this section, the terms endangered and abuse include but are not limited to circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of section 13-3407, subsection A, ~~paragraph~~ PARAGRAPHS 3 OR 4. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A VIOLATION COMMITTED UNDER THE CIRCUMSTANCES DESCRIBED IN THIS SUBSECTION DOES NOT REQUIRE THAT A PERSON HAVE CARE OR CUSTODY OF THE CHILD OR VULNERABLE ADULT.

D. A person who intentionally or knowingly engages in emotional abuse of a vulnerable adult who is a patient or resident in any setting in which health care, health-related services or assistance with one or more of the activities of daily living is provided or, having the care or custody of a vulnerable adult, who intentionally or knowingly subjects or permits the

vulnerable adult to be subjected to emotional abuse is guilty of a class 6 felony.

E. This section does not apply to:

1. A health care provider as defined in section 36-3201 who permits a patient to die or the patient's condition to deteriorate by not providing health care if that patient refuses that care directly or indirectly through a health care directive as defined in section 36-3201, through a surrogate pursuant to section 36-3231 or through a court appointed guardian as provided for in title 14, chapter 5, article 3.

2. A vulnerable adult who is being furnished spiritual treatment through prayer alone and who would not otherwise be considered to be abused, neglected or endangered if medical treatment were being furnished.

F. For the purposes of this section:

1. "Abuse", when used in reference to a child, means abuse as defined in section 8-201, except for those acts in the definition that are declared unlawful by another statute of this title and, when used in reference to a vulnerable adult, means:

(a) Intentional infliction of physical harm.

(b) Injury caused by criminally negligent acts or omissions.

(c) Unlawful imprisonment, as described in section 13-1303.

(d) Sexual abuse or sexual assault.

2. "Child" means an individual who is under eighteen years of age.

3. "Emotional abuse" means a pattern of ridiculing or demeaning a vulnerable adult, making derogatory remarks to a vulnerable adult, verbally harassing a vulnerable adult or threatening to inflict physical or emotional harm on a vulnerable adult.

4. "Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition that imperils health or welfare.

5. "Serious physical injury" means physical injury that creates a reasonable risk of death or that causes serious or permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

6. "Vulnerable adult" means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.

Sec. 2. Section 13-3623.01, Arizona Revised Statutes, is amended to read:

13-3623.01. <u>Safe haven for newborn infants; definitions</u>

A. A person is not guilty of abuse of a child pursuant to section 13-3623, Subsection B solely for leaving an unharmed newborn infant with a safe haven provider.

B. If a parent or agent of a parent voluntarily delivers the parent's newborn infant to a safe haven provider, the safe haven provider shall take custody of the newborn infant if both of the following are true:

1. The parent did not express an intent to return for the newborn infant.

2. The safe haven provider reasonably believes that the child is a newborn infant.

C. The safe haven provider shall report THE receipt of a newborn infant to child protective services of the department of economic security as soon as practicable after taking custody of the newborn infant. Child protective services shall ~~include~~ REPORT the number of newborn infants delivered to safe haven providers pursuant to section 8-526.

D. A parent or agent of a parent who leaves a newborn infant with a safe haven provider may remain anonymous, and the safe haven provider shall not require the parent or agent to answer any questions. A safe haven provider shall offer written information about information and referral organizations.

E. A safe haven provider who receives a newborn infant pursuant to this section is not liable for any civil or other damages for any act or omission by the safe haven provider in maintaining custody of the newborn infant if the safe haven provider acts in good faith without gross negligence.

F. This section does not preclude the prosecution of the person for any offense based on any act not covered by this section.

G. For the purposes of this section:

1. "Newborn infant" means an infant who is seventy-two hours old or younger.

2. "Safe haven provider" means any of the following:

(a) A firefighter who is on duty.

(b) An emergency medical technician who is on duty.

(c) A staff member at a health care institution that is classified by the department of health services pursuant to section 36-405 as a hospital or an outpatient treatment center.

(d) A staff member OR VOLUNTEER at any of the following that posts a public notice that it is willing to accept a newborn infant pursuant to this section:

(i) A private child welfare agency licensed pursuant to title 8, chapter 5, article 1.

(ii) An adoption agency licensed pursuant to section 8-126.

(iii) A church. For THE purposes of this item, "church" means a building that is erected or converted for use as a church, where services are regularly convened, that is used primarily for religious worship and schooling and that a reasonable person would conclude is a church by reason of design, signs or architectural or other features.

APPROVED BY THE GOVERNOR MAY 1, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2006.