STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL April 9, 2007	No. I07-006 (R06-012) Re: Reporting Requirements Under the Child Abuse Reporting Statute, A.R.S. § 13-3620

To: The Honorable Linda Lopez
Arizona House of Representatives

Questions Presented

Arizona Revised Statutes ("A.R.S.") Section 13-3620 ("the Reporting Statute") imposes a duty on certain persons to report suspected child abuse, including "physical injury," to governmental authorities. You have asked the following questions concerning the Reporting Statute:

1. What is the meaning of "physical injury"?

2. Does a caregiver have a duty to report a non-accidental physical injury that is a cut, bruise, or scratch?

3. Must a teacher report a non-accidental physical injury inflicted on a minor by another student, such as an injury from horseplay or a fight at school?

4. Does a parent have a duty to report a non-accidental physical injury caused by one sibling to another?

5. Must a caregiver to children with disabilities report a non-accidental physical injury to a minor caused by another minor who lacks the cognitive ability to control his or her behavior or understand right from wrong?

6. May a caregiver consider the statutory defenses available under A.R.S. § 13-1407 in determining whether to report the offenses defined in A.R.S. §§ 13-1404 (sexual abuse), 13-1405 (sexual conduct with a minor), or 13-1410 (child molestation)?

7. If a school employee forms a reasonable belief that a child has been abused early in the school day, does the employee satisfy the duty to "immediately" report the abuse if he or she makes a report before the end of the school day?

8. Does a caregiver's duty to report an incident of child abuse end if he or she has a reasonable belief or knows that another caregiver has previously reported the incident?

Summary Answer

"Physical injury" is "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." A.R.S. § 13-3623(F).

An injury need not be serious or life threatening to trigger the reporting obligation. All that is necessary is that the injury meet the statutory definition and that a person covered by the Reporting Statute have a reasonable belief that the infliction of the injury was non-accidental. In addition, the Reporting Statute does not excuse reporting in situations where particular classes of persons inflict non-accidental physical injury on children, be they other minors, students, siblings, or minors who lack the cognitive ability to control their behavior. The obligation to

report may be removed if the covered person reasonably believes that facts exist that would negate the offense.

Finally, covered persons must report suspected abuse "immediately." This requires that the person make or cause the required report to be made without delay as soon as he or she forms a reasonable belief that the child has been abused. Specific knowledge that the incident has been reported by another caregiver satisfies this obligation.

Background

All fifty states have child abuse reporting legislation modeled after federal guidelines. *See* Ariz. Att'y Gen. Op. I05-007.[1] Arizona's Reporting Statute, A.R.S. § 13-3620(A), provides, in part, that:

> Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature . . . shall immediately report or cause reports to be made of this information to a peace officer or to child protective services in the department of economic security, except if 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.

The persons upon whom the Reporting Statute imposes a duty to report ("covered persons") are (1) "[a]ny physician, physician's assistant, optometrist, dentist, osteopath, chiropractor, podiatrist, behavioral health professional, nurse, psychologist, counselor or social worker who develops the reasonable belief in the course of treating a patient"; (2) "[a]ny peace officer, member of the clergy, priest or christian science practitioner"; (3) "[t]he parent, stepparent or guardian of the minor"; (4) "[s]chool personnel or domestic violence victim advocate who

[1] Arizona passed its first reporting statute in 1964. *See* 1964 Ariz. Sess. Laws, Ch. 76, § 2 (codified at A.R.S. § 13-842.01). In 1976, the Legislature amended the Reporting Statute to abrogate various evidentiary privileges, including the physician-patient privilege, the husband-wife privilege or any privilege except the attorney-client privilege. *See Church of Jesus Christ of Latter-Day Saints v. Superior Court*, 159 Ariz. 24, 764 P.2d 759 (1988). In 2003, the Legislature made a number of additional revisions, including changes to the Reporting Statute's list of covered persons and triggering offenses. *See* 2003 Ariz. Sess. Laws, Ch. 222, § 2.

develop the reasonable belief in the course of their employment"; and (5) "Any other person who has responsibility for the care or treatment of the minor." A.R.S. § 13-3620(A)(1)-(5).

A covered person who violates the Reporting Statute is guilty of a class 1 misdemeanor, except if the failure to report involves certain sexually related offenses, the person is guilty of a class 6 felony. *Id.* § 13-3620(O).

Analysis

I. The Definition of "Physical Injury" Under the Reporting Statute.

The Reporting Statute imposes an obligation to report whenever a covered person reasonably believes that a child has been the victim of "physical injury, abuse, child abuse, a reportable offense or neglect." A.R.S. § 13-3620(A). Although the Reporting Statute itself does not define "physical injury," each of its other triggering terms is defined with regard to statutory offenses against children. *See* A.R.S. § 13-3620(P)(1)-(4). "Child abuse" is defined with reference to A.R.S. § 13-3623 (the "Criminal Abuse Statute"), which establishes the criminal offense of child abuse or vulnerable adult abuse. "Abuse" and "neglect" take on the definitions in A.R.S. § 8-201, which trigger the State's jurisdiction to take custody of a child and terminate the parent-child relationship. *See* A.R.S. §§ 8-533(B)(2), 8-800. "Reportable offense" refers to numerous sexually-related offenses against children, many of which are incorporated into the definition of "abuse." *See* A.R.S. § 8-201(2)(a).

In defining "abuse" and "child abuse," the statutes referenced in the Reporting Statute each use the term "physical injury." The Criminal Abuse Statute applies in part to "any person who causes a child or vulnerable adult to suffer physical injury or abuse." A.R.S. § 13-3623(B). Section 8-201(2) provides that "'abuse' means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to

cause serious emotional damage." The definition of "physical injury" in the above statutes is set forth in A.R.S. § 13-3623(F)(4), which provides that: "'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."[2]

The Reporting Statute's reference to A.R.S. §§ 8-201 and 13-3623 to define "abuse" and "child abuse" ensures consistency among statutes prohibiting child abuse and the Reporting Statute, which imposes a duty on covered persons to report the same offenses. The same purpose and logic is served by using the above-referenced definition of "physical injury." *See State v. Sweet*, 143 Ariz. 266, 270 693 P.2d 921, 925 (1985) ("It is an accepted rule of statutory construction that when 'determining the intent of the legislature, the court may consider both prior and subsequent statutes in pari materia.'") (quoting *Automatic Registering Mach. Co. v. Pima County*, 36 Ariz. 367, 373-74, 285 P. 1034, 1036 (1930)); *People's Choice TV Corp. v. City of Tucson*, 202 Ariz. 401, 403, 46 P.3d 412, 414 (2002) (noting that in ascertaining the meaning of an undefined term, courts "look to statutes on the same subject matter to determine legislative intent and to maintain statutory harmony"). For these reasons, the term "physical injury" in A.R.S. § 13-3620 has the same meaning as the term "physical injury" set forth in A.R.S. § 13-3623(F)(4).

[2] Similar definitions of "physical injury" may be found in the statutes of various other states directed at child abuse. *See e.g.*, Nev. Rev. Stat. § 432B.090; Utah Code Ann. § 76-5-109; V.I. Code Ann. Tit. 14, § 505; N.M. Stat. Ann. § 32A-4-2; Idaho Code Ann. § 16-1602(1)(a); Colo. Rev. Stat. § 19-1-103(1)(a)(I); Guam Code Ann. Tit. 9, § 31.30; Wy. Stat. §14-3-202(a)(ii). Statutes prohibiting "physical injury" to children have been upheld even when no further definition is provided. *See Turner v. Jackson*, 417 S.E.2d 881, 888 (Virg. App. 1992) ("[T]his language puts the average person on notice that conduct that creates or inflicts physical harm upon the child falls within the statute's proscription.").

II. Covered Persons Must Report Non-Accidental Cuts, Bruises, and Scratches.

In the context of child abuse, an injury need not be serious or life threatening to constitute "physical injury."[3] A cut or a scratch accompanied by "bleeding" both fall within the definition of "physical injury," as does "any skin bruising." *See* A.R.S. § 13-3623(F)(4). However, to trigger a duty to report, the physical injury must also be accompanied by the covered person's reasonable belief that the injury derived from non-accidental conduct. In other words, even where "physical injury" is present, the duty to report exists only where the covered person "reasonably believes" that the injury has been "inflicted on the minor by other than accidental means or that is not explained by available medical history as being accidental in nature." A.R.S. § 13-3620(A).[4]

Whether a reasonable belief triggering the reporting obligation exists necessarily depends on the circumstances, such the child's age, vulnerability, the location and nature of the injury, the seriousness of the injury, whether the injury is isolated or repeated, previous incidents of abuse,

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[3] A.R.S. § 13-3623 distinguishes between causing "physical injury" and "serious physical injury," both of which are criminal offenses under paragraphs (F)(4) and (5). Serious physical injury is defined as "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." The only difference between "physical injury" and "serious physical injury" is in the classification of the crime and the resulting penalty.

[4] As explained by the Court in *L.A.R. v. Ludwig*, 170 Ariz. 24, 821 P.2d 291 (1991), the standard for what constitutes "reasonable grounds" is low:

> We agree with appellees that "reasonable grounds" as used in [the Reporting Statute] means that if there are any facts from which one could reasonably conclude that a child had been abused, the person knowing those facts is required to report those facts to the appropriate authorities. "Reasonable grounds" is a low standard. While this appeal may present a close case of when reasonable minds may disagree as to whether reasonable grounds to report alleged abuse exists, we believe that the policy of encouraging people to report child abuse mandates a determination that the trial court did not err in reporting that Ludwig had reasonable grounds to suspect abuse and therefore to report it.
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> The 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.

Id. at 27, 821 P.2d at 294.

or knowledge of extenuating circumstances. A bruise on an older child known to play football, for example, may signify nothing, whereas the same injury on an infant or a toddler may sound an alarm.

III. Teachers and School Personnel Must Report Non-Accidental Physical Injuries Inflicted on Minors By Other Students.

The policy reflected by the Reporting Statute is to protect children from abuse no matter who inflicts it. The same policy is reflected in the Criminal Abuse Statute, which applies to "any person who causes a child . . . to suffer physical injury or abuse" where the injury was inflicted intentionally, knowingly, recklessly, or with criminal negligence. *See* A.R.S. § 13-3623(B). Neither statute excludes intentional injury inflicted by minors, whether at school or elsewhere. Minors are capable of inflicting serious physical injury or even death. They are also capable of perpetrating other offenses listed in the Reporting Statute, including incest, sexual assault, and sexual molestation.

Although applying the Reporting Statute to minors in the school environment sometimes may lead to difficult interpretive situations, there is no indication that the Legislature intended to exempt teachers from reporting triggering offenses, including "physical injury," inflicted by students. In this regard, the age of the perpetrator and the age or vulnerability of victim may be relevant factors in determining whether a reasonable belief triggering the reporting obligation exists. *See* Section II, *supra*. The same may be true of the circumstances in which the injury arises. For example, a cut inflicted by an adult on a young child may be viewed differently than a minor cut inflicted during an isolated school yard tussle among 12-year-old boys. However, labels such as "horseplay" or school yard "fights" are imprecise and cannot be used as a litmus test to dismiss the reporting obligation where the conduct fairly falls within the statute. When in doubt, teachers and school personnel should report the offense.

IV. The Reporting Statute Does Not Exempt Parents from the Duty to Report Non-Accidental Physical Injury Caused by a Sibling.

The Reporting Statute does not expressly or impliedly exclude physical injuries inflicted by siblings, or any other family member. Infants and small children can be mistreated (physically, sexually, or both) by older siblings, and if not reported, such injuries may go unabated. There is no indication that the Legislature intended to exclude sibling-inflicted injuries as triggering offenses, or to excuse parents or other covered persons from the duty to report. Indeed, the Reporting Statute specifically imposes a reporting obligation on "the parent, stepparent or guardian of the minor" and "any other person who has responsibility for the care or treatment of the minor." A.R.S. § 13-3620(A)(3)&(5).

V. The Reporting Statute Makes No Exception for Situations in Which a Non-Accidental Physical Injury to a Minor Is Caused by a Child Who Lacks the Cognitive Ability to Control His or Her Behavior.

The statutory language does not exclude the reporting requirement for caregivers to children with disabilities where the perpetrator lacks the cognitive ability to control his or her behavior or understand right from wrong. From the injured child's point of view, it makes little difference whether a perpetrator has the cognitive ability to control or appreciate his conduct. Indeed, such lack of control or understanding may make the situation more likely to recur. The primary purpose of the Reporting Statute is not to punish the wrongdoer, but is, rather, to protect the child.

VI. Covered Persons May Take Into Consideration Statutory Defenses In Determining Whether to Report.

The Reporting Statute imposes a reporting obligation if a covered person reasonably believes that a minor has been the victim of a "reportable offense," which encompasses several sexually-related offenses, including A.R.S. § 13-1404, sexual conduct with a minor under A.R.S.

§ 13-1405, and molestation of a child under A.R.S. § 13-1410.[5] A.R.S. §§ 13-3620(A), -3620(P)(4). Failure to report a "reportable offense" is a class 6 felony. *See* A.R.S. § 13-3620.

Section 13-1407, A.R.S., sets forth various statutory defenses to some of the listed criminal offenses which, if found, may negate the existence of an offense. For example, in the case of "sexual abuse" under A.R.S. § 13-1404 (which includes "intentionally or knowingly engaging in sexual contact with [a minor]") or sexual conduct with a minor under A.R.S. § 13-1405 ("intentionally or knowingly engaging in sexual intercourse or oral sexual contact"), there is a defense if done in furtherance of a lawful medical practice, A.R.S. §13-1407(A), or during the course of recognized and lawful emergency care, A.R.S. §13-1407(C), if the defendant is the spouse of the minor, A.R.S. § 13-1407(D), or if the victim's lack of consent was based on incapacity to consent because he or she was fifteen, sixteen or seventeen years of age if the defendant did not know and could not have reasonably known the age of the victim, A.R.S. § 13-1407(B). There is also a defense to sexual conduct with a minor, A.R.S. § 13-1405, if the victim is fifteen, sixteen or seventeen, the defendant is under nineteen or attending high school and is no more than twenty-four months older than the victim and the conduct is consensual, A.R.S. § 13-1407(F).

Although the Reporting Statute does not address the effect of such statutory defenses on the duty to report, such defenses may be considered in the determination whether a "reportable offense" has occurred. *See Lowry v. Indus. Comm'n of Ariz.*, 195 Ariz. 398, 400, 989 P.2d 152, 154 (1999) (noting that ambiguous statutes must be interpreted with regard to their intended purposes). The purpose of the Reporting Statute is to protect children against "reportable

[5] "Reportable offense" in the Reporting Statute is defined to include (1) "any offense listed in chapters 14 ["sexual offenses"] and 35.1 ["sexual exploitation of children"] of this title," (2) "surreptitious photographing, videotaping, filming or digitally recording of a minor pursuant to § 13-3019," (3) "child prostitution pursuant to § 13-3212," and (4) "incest pursuant to § 13-3608." A.R.S. § 13-3620(P)(4).

offenses." Thus, where the facts would lead a reasonable person to conclude that no offense has been committed (*i.e.*, where the defense negates the existence of an offense), there is no reporting obligation.[6]

VII. Absent Extenuating Circumstances, a School Employee Who Reasonably Believes that a Child Has Been Abused Must Report, or Cause a Report to Be Made, Immediately.

The Reporting Statute provides that "any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means . . . shall immediately report or cause reports to be made of this information ." A.R.S. § 13-3620(A). The Reporting Statute further provides that "reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours." *Id.* at § 13-3620(D). The term "immediately" is not defined in the Reporting Statute or elsewhere in Title 13.

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[6] Subsection B of the Reporting Statute specifies that "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" but it does not address the additional scenario presented in § 13-1407(F), where the consensual conduct involves a defendant who is "under nineteen years of age or attending high school and is no more than twenty-four months older than the victim." This does not, however, establish that the Legislature considered and rejected a similar exclusion there. Although the five provisions contained in § 13-1407(A)-(E) have been in existence since 1985, the statutory defenses did not address knowing consensual sex among minors until 1990, *the same date that the Legislature enacted the consensual sexual conduct exception to the Reporting Statute*. The original (1990) version of § 13-1407(F), which was added by Laws 1990, Ch. 384, § 3, was virtually identical to the Reporting Statute's consensual sex exception in that it did not allow for any defense where the defendant was over seventeen years of age. (The 1990 version of A.R.S. § 13-1407(F) provided: "It is a defense to prosecution pursuant to §§ 13-1404 and 13-1410 if both the defendant and the victim are of the age of fourteen, fifteen, sixteen or seventeen and the conduct is consensual."). Subsection F did not take its current form until 1993, when the provision was revised to read: "It is a defense to a prosecution pursuant to § 13-1405 if the victim is of the age of fifteen, sixteen or seventeen, the defendant is less than 19 years of age or attending high school and is no more than twenty-four months older than the victim and the conduct is consensual." 1993 Ariz. Sess. Laws, Ch. 255, § 28. The lack of a parallel revision to the Reporting Statute does not mean that the Legislature intended to mandate a duty to report "non-offenses." In fact, the 2003 legislative history for S.B. 1352 reflects that at least two Senators expressed concern that parents not be charged as felons for not reporting sexual relationships. *Hearing on S.B. 1352 Before the S. Comm. on Family Servs.*, 46th Leg., 1st Reg. Sess. (2003) at 4. Legislators were informed by the Maricopa County Attorney's Office that: "The duty to report is based on the violation of the criminal law and sometimes there is a defense due to the relative ages of the individuals being under 18. If there is a defense there is no crime and therefore no duty to report." *Id.*, at 3. The Legislature's failure to amend the Reporting Statute cannot be seen as imposing a duty to report even if a statutory defense exists.

In interpreting statutes, "we give words their usual and commonly understood meaning unless the legislature clearly intended a different meaning." *State v. Korzep*, 165 Ariz. 490, 493, 799 P.2d 831, 834 (1990). "Immediately" is defined in Webster's New International Dictionary, as "without interval of time" or "in direct connection or relation." Webster's New Int'l. Dict. (3d ed. 1976). Moreover, as indicated by the Legislature's use of the word "immediately," in the realm of child abuse, time is often of the essence. This sense of urgency is reinforced in subsection D of the Statute, which provides that that "reports shall be made immediately by telephone or in person and shall be followed by a written report within seventy-two hours."[7]

If a school employee forms a reasonable belief early in the school day that a child has been abused, the statute would require the teacher to make a report, or cause the report to be made, as soon as possible. If injuries are being inflicted by family members or other custodial caregivers, failure to act before the end of the school day may put the child at further risk. By requiring immediate reporting, the statute makes it more likely that child protective services will be able to respond to the report before the end of the school day when the child is scheduled to return home. In short, to comply with the Reporting Statute, a covered person should make the required report immediately and without delay as soon as the person forms a reasonable belief that a child has been abused.

VIII. A Caregiver's Obligation to Report Is Satisfied Through Specific Knowledge that the Incident Has Been Reported by Another Caregiver.

As explained in Attorney General Opinion I05-007, the Reporting Statute's language explicitly mandates that a person subject to the statute who "reasonably believes" that abuse has occurred "'immediately report or cause reports to be made of this information to a peace officer

[7] The word "immediately" is also used in subsection H, which requires that upon receipt of the report, a peace officer shall "immediately" notify child protective services, and that when child protective services receives a report, it must "immediately" notify a peace officer in the appropriate jurisdiction.

or to child protective services in the department of economic security.'" *Id*. at 4 (quoting A.R.S. § 13-3620(A)). A caregiver satisfies this obligation either by directly reporting the incident or ensuring that the information is conveyed to the proper authorities. *Id.* Specific knowledge that the incident has been reported by another caregiver satisfies this obligation. Mere belief without verification is insufficient.

Conclusion

The Reporting Statute imposes a reporting obligation if a covered person reasonably believes that a minor has been the victim of "physical injury, abuse, child abuse, a reportable offense or neglect." In this context, "physical injury" is defined as "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." A.R.S. § 13-3623(F).

The Reporting Statute does not require an injury to be serious or life threatening to trigger the reporting obligation. All that is necessary is that the injury meet the statutory definition and that the covered person have a reasonable belief that the injury was inflicted by non-accidental means. Nor does the Reporting Statute excuse reporting in situations where particular classes of persons inflict non-accidental physical injury on children, be they minors, other students, siblings, or minors who lack the cognitive ability to control their behavior. In certain cases, the obligation to report may be lifted if the covered person reasonably believes that facts exist that would constitute a statutory defense and, thus, negate the offense.

Finally, the Reporting Statute is clear that covered persons must report immediately. This requires that the covered individual make the report, or cause the required report to be made, without delay as soon as the person forms a reasonable belief that the child has been

abused. Specific knowledge that the incident has been reported by another caregiver satisfies this obligation.

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