



# Arizona State Senate Issue Paper

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## Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

## ARIZONA DEPARTMENT OF CHILD SAFETY

### INTRODUCTION

Prior to 2014, child welfare functions in Arizona were conducted by Child Protective Services (CPS), which was part of the Department of Economic Security (DES) Division of Children, Youth and Families (DCYF). In November of 2013, DES discovered thousands of allegations of child abuse and neglect that were classified by CPS as *not investigated* (NI). Between 2009 and 2013, approximately 6,595 reports of child abuse were dispositioned as NI.

On January 13, 2014, the Governor signed an executive order that abolished DCYF and established the Division of Child Safety and Family Services (Division). The order required the Director of the Division to oversee and direct all functions of the state child welfare program, including CPS, foster care and adoption, and to work with stakeholders in developing a permanent separate agency for child welfare programs and services. Subsequently, the Legislature statutorily established the new Department of Child Safety (DCS) and codified the transfer of responsibilities from CPS to DCS<sup>1</sup>. The legislation, enacted on May 29, 2014, also enumerates requirements for DCS and its Director.

The statutory purpose of DCS is to protect children. To do so, DCS must focus equally on: 1) investigating reports of abuse and neglect; 2) assessing, promoting and supporting the child's safety in a safe and stable family or placement in response to abuse or neglect allegations; 3) working cooperatively with law enforcement on reports that include criminal conduct allegations; and 4) coordinating services, without compromising child safety, to achieve permanency, strengthen the family and provide prevention and treatment.

DCS is governed by several federal laws. Federal law specifies that child safety is paramount to other concerns, requires reasonable efforts to be made toward reunification of a family and sets timeframes to move children toward a permanent home (permanency).

<sup>1</sup> DCS is currently operating under DES administrative rules and orders while developing new rules. The legislation establishing DCS provided related public notice and comment requirements.

**REPORTS OF ABUSE OR NEGLECT**

Communication of suspected child abuse is referred to DCS through a statewide, toll-free, 24-hour child abuse hotline. Anyone who suspects child abuse or neglect may report it through the hotline; however, certain individuals who have responsibility for minors have a statutory duty to report suspected abuse or neglect, including physicians and other health professionals, peace officers, clergy, parents or guardians, and school personnel (mandatory reporters).

When a communication is received, hotline personnel use a risk assessment to determine the proper initial priority level of investigation and direct a report for investigation to the appropriate part of DCS based on that determination. The protocols for this initial screening were developed in consultation with the Attorney General, county attorneys and other law enforcement, medical experts, victims' rights advocates and mandatory reporters. The screening tool is in the process of being updated to include the following criteria: 1) other adult household members as perpetrators; 2) if the abuse occurred in Arizona but the family does not live here; and 3) if the victim is a resident of Arizona, but not present in Arizona when the report is received. The priority classification system is summarized in the following table:

<b>Child Abuse Report Priority Classification System</b>		
<b>Priority Level</b>	<b>Risk</b>	<b>Standard Response Time</b>
1	High	Within 2 hours
2	Moderate	Within 48 hours
3	Low	Within 72 hours
4	Potential	Within 7 days

The hotline worker prepares a report for investigation if: 1) the suspected conduct would constitute abuse or neglect; 2) the victim is under 18 years of age; 3) the victim is a resident of or present in Arizona, or any act involved in the suspected abuse or neglect occurred in Arizona; and 4) the suspect is the victim's parent, guardian or custodian or an adult member of the victim's household. A report for

investigation must be prepared in these circumstances, even if the identity or location of the suspect or victim is not known.

Additionally, the hotline worker must immediately take steps necessary to identify and locate related prior communications and reports for investigation. Furthermore, if a communication provides a reason to believe a criminal offense has been committed, the hotline worker must provide the information to the Office of Child Welfare Investigations (OCWI) within DCS and the appropriate law enforcement agency.

**DCS INVESTIGATIONS**

DCS is statutorily required to investigate 100 percent of the reports it receives that meet the criteria for investigation. A DCS investigation of a report generally includes interviewing the alleged victim(s), perpetrator(s) and other sources to help assess the risk of harm to the child(ren) involved and evaluate and determine the nature, extent and cause of any condition created by the parent, guardian or custodian or adult member of the victim's household that would tend to support or refute the allegation that the child is a victim of abuse or neglect. Reports are further classified as substantiated, unsubstantiated or unable to locate. DCS maintains a central registry of substantiated reports and the outcomes of the investigation of these reports.

Upon initial contact with a person who is under investigation for child abuse or neglect, the child safety worker must inform the person that the family is under investigation by DCS, that the child safety worker has no legal authority to compel the family to cooperate and that the family has the right to file complaints or appeal DCS determinations. This information, as well as information outlining parental rights under Arizona law, must be provided in writing, and the child safety worker is required to make reasonable efforts to receive written acknowledgment from the person that the information was received. The child safety worker must also inform the person of his or her right to respond to allegations of abuse or neglect and that anything the person says or

writes in response can be used in a court proceeding.

**OFFICE OF CHILD WELFARE  
INVESTIGATIONS**

In each county, the county attorney, the sheriff, the chief law enforcement officer for each municipality in the county and DCS have developed and implemented protocols to cooperate in investigations of criminal conduct. Criminal conduct allegations include conduct by a parent, guardian or custodian or an adult member of the child's household that constitutes: 1) domestic violence involving a felony, a minor victim or a minor who was in imminent danger; 2) sexual offenses such as child sexual abuse, sexual assault or molestation; or 3) felony or criminal child abuse.

OCWI is the unit within DCS that performs investigations related to criminal conduct allegations of child abuse with the appropriate local law enforcement agency. OCWI investigators have similar authority and requirements as child safety workers, but must have additional training regarding law enforcement's role in criminal child abuse or neglect, relevant law enforcement procedures, forensic interviewing, child physical and sexual abuse investigation, joint investigation protocols, and a child's rights as a victim. OCWI's response times are classified as: 1) emergent, in which case the investigator initiates an immediate response; or 2) non-emergent, in which case the investigator initiates a response within 24 hours. OCWI investigators are civilian, non-sworn personnel and cannot make arrests, but may remove a child from the home in some cases. Child safety investigators are then responsible for all subsequent child welfare functions, including placement, court requirements and facilitation of services.

**ACTIONS FOLLOWING AN  
INVESTIGATION**

DCS must statutorily provide and coordinate programs and services that protect children and that effect permanency, strengthen families and provide prevention, intervention and treatment for abused and neglected children. Based on the

investigation and risk assessment results, DCS determines whether to close the case, offer voluntary child protective services or open a case for ongoing services.

If DCS determines there are no risk factors severe enough to warrant ongoing involvement to ensure the safety of a child, it may close the case without providing further services. In cases in which DCS determines that there are minimal risk factors and no safety concerns, it may offer the family in-home services such as counseling or parent skills training that could allow the child to live safely at home. Families participate in in-home services voluntarily, and if the family refuses offered services in a case where risks to the child's safety do not warrant legal action, the case may be closed. If there are high risk factors or safety concerns and the services are declined, DCS evaluates the case to determine the best course of action to ensure the safety and well-being of the child(ren) involved.

When DCS determines that the child is currently safe but at risk of abuse or neglect, that safeguards can be established to ensure the child's continued safety in the home, and that voluntary services are not an option, DCS may file a dependency petition requesting in-home intervention. An in-home intervention petition may be filed if: 1) the child is at a moderate or high level of risk and short-term services are required to resolve the risk factors; 2) there is reason to believe that the parent or guardian will only follow through with services with court oversight; and 3) the child has not been taken into temporary custody. Alternatively, in-home dependencies make the child a ward of the court but keep the child in the physical custody of the parent or guardian.

**Removing A Child From The Home**

If, after an investigation, DCS determines that a child is in imminent danger of abuse or neglect, the child may be removed from the home. When determining if a child should be taken into temporary custody, the child safety worker must take into consideration as a paramount concern the child's health and safety. When a child is removed, the parent or guardian must be notified immediately both verbally and

in written format if the parent or guardian is present when the child is taken, or within six hours in written format if not present. If the parent lives out of state, the deadline for written notification is extended to 24 hours, and if the parent's location is unknown, reasonable efforts must be made to locate and notify the parent as soon as possible.

### ***Preliminary Protective Hearing***

The court must review the removal of a child five to seven days after the child is taken into custody, excluding weekends and holidays. This is done at a preliminary protective hearing (PPH). At least one day before the PPH, DCS must submit a written report to the court and the parties involved stating the reasons the child was removed, the services provided for the parent or the child, the need for continued custody and a proposed case plan for services to the family. The PPH must include: 1) the parents, unless they cannot be located or fail to appear; 2) counsel for the parents, if requested or retained; 3) the child's guardian ad litem or attorney; 4) the child safety worker and additional DCS representatives if so requested; and 5) counsel for the child safety worker.

At the PPH, the court must advise the parent of his or her rights and the parent must state whether he or she admits or denies the allegations. If the parent admits or does not contest the allegations, the court determines that the parent understands his or her rights and knowingly, intelligently and voluntarily waives those rights. The state has the burden of presenting evidence as to whether there is probable cause to believe that continued temporary custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition. If the court finds that the state has not met the burden of evidence, the child is returned pending the dependency hearing. If the court finds that the state has met the burden, the child is declared a temporary ward of the court pending the dependency hearing.

The court also determines at the PPH whether reasonable efforts were made to prevent or eliminate the need for removal of the child,

and if services are available that would eliminate the need for continued removal. The court enters orders regarding the placement of the child pending the dependency petition, and orders visitation if the child is not returned to the parent. The court also determines if the tasks and services in the case plan are reasonable and necessary to carry out the case plan.

### ***Dependency***

A child is adjudicated dependent if the court finds that: 1) the child is in need of parental care and control and there is no parent or guardian willing to or capable of exercising that care and control; 2) the child is destitute or not provided with adequate food, clothing, shelter or medical care; 3) the child's home is unfit due to abuse, neglect, cruelty or depravity by a parent, guardian or custodian; 4) the child is under eight years of age and has committed an act that would result in adjudication as a juvenile delinquent if committed by an older child; 5) the child is incompetent and is alleged to have committed a serious offense such as murder, manslaughter, sexual assault or armed robbery.

Any interested party may file a petition alleging that a child is dependent. In cases where a child has been removed from the home, DCS must file dependency petitions within 72 hours of the child's removal, excluding weekends and holidays, or return the child to the home. A dependency petition and a notice must be served on the child's parent or guardian, the child's guardian ad litem or attorney, and anyone who has physical custody of the child such as a foster parent. An initial dependency hearing must be set within 21 days after the petition is filed.

At any dependency hearing, the court's primary consideration must be the protection of a child from abuse or neglect. At the initial dependency hearing, the court must advise the parent of his or her rights and the parent must state whether he or she admits or denies the allegations. If the parent admits or does not contest the allegations, the court determines that the parent understands his or her rights and knowingly, intelligently and voluntarily waives those rights. If the parent or guardian contests

the allegations, the court holds a settlement conference or orders mediation for all parties involved. The court determines if reasonable efforts were made to prevent or eliminate the need for removal from the home and if services are available that would do so.

The court must order DCS to make reasonable efforts to provide services to the child and the parent or guardian that would allow reunification. However, reunification services are not required if the court finds, by clear and convincing evidence, that: 1) aggravating circumstances exist, such as a parent who does not want reunification, is suffering from mental illness under certain circumstances or the child was removed and adjudicated dependent in the previous 18 months due to physical or sexual abuse; or 2) the parent or guardian has been convicted of a dangerous crime against children, murder or manslaughter of a child, or of aiding, abetting, attempting, conspiring or soliciting to commit such a crime.

The basis for dependency must be found by a preponderance of the evidence. If a child is adjudicated dependent, the court enters orders awarding placement of the child. The court also reviews the child's case plan and must seek reunification of the family if possible. If the court determines reunification is not in the child's best interests, the court orders a case plan of termination of parental rights and adoption or another permanent placement such as permanent guardianship. Periodic review hearings are held at least once every six months to reconsider the child's case plan.

### ***Child Placement***

Children who have been removed from home by DCS are placed in temporary out-of-home care, with a case plan goal of permanency for that child. The federal Adoption Assistance and Child Welfare Act (AACWA) requires the child's health and safety to be the paramount concern when making decisions about out-of-home placement and permanency planning. AACWA also requires a child to be placed in the least restrictive, or most family-like, setting possible. Arizona statute requires DCS to place a child in the least restrictive type of placement

available, consistent with the needs of the child. The order of preference for placement is as follows: with a parent, with a grandparent, with another relative, in family foster care, in therapeutic foster care, in a group home and in a residential treatment facility.

If the child is not placed with a grandparent or other relative within 60 days after the child is removed, the court must determine why such placement is not in the child's best interests. The state has the burden of presenting evidence that such placement is not in the child's best interests, and the court must make specific written findings in support of a decision that such placement is not in the best interests of the child.

### ***Termination Of Parental Rights***

Any person or agency with a legitimate interest in the welfare of a child, including relatives, foster parents, DCS or a private child welfare agency, may file a petition for termination of parental rights (TPR) with the juvenile court. Grounds for TPR include: abuse or neglect; abandonment; inability to discharge parental responsibilities due to mental illness or chronic substance abuse; conviction of a felony proving the unfitness of that parent to have custody of a child; proof that the parent has had parental rights to another child terminated within the past two years for the same cause; or demonstration that the child has been in out-of-home placement for longer than nine months, or if the child is under three years of age, longer than six months and the parent neglected or refused to remedy the problems. The court must also consider the best interests of the child when considering grounds for TPR.

An order terminating parental rights removes all legal rights, privileges, duties and obligations the parent and the child have with respect to each other, except the right of the child to inherit and receive support from the parent. Rights of inheritance and support are only terminated by a final order of adoption. If a petition for TPR is contested, the court holds a termination adjudication hearing to determine whether there is clear and convincing evidence of grounds for TPR. [Note: For a period, Laws

2003, Second Special Session, Chapter 6, allowed a parent, guardian or custodian to request a jury trial for a TPR hearing. However, this jury trial option sunset (ended) on January 1, 2007.]

### **CONFIDENTIALITY OF DCS INFORMATION**

Federal law requires states to develop methods for preserving confidential information regarding children and parents involved with DCS. Arizona statute requires DCS to maintain information as required by federal law and also requires all exceptions for the public release of DCS information to be construed as openly as possible under federal law.

All information gathered by DCS during the course of an investigation, from the time a file is opened until it is closed, is considered confidential and may only be disclosed under certain circumstances or to persons listed in statute. Anyone who discloses confidential information to unauthorized persons or further discloses information received pursuant to statute is guilty of a class 2 misdemeanor.

DCS must provide information to law enforcement, local, state and federal agencies and to a prosecutor, an attorney or guardian ad litem representing a child victim of crime, a school and a community or contract service provider for the following purposes: 1) to meet its duties to provide for the safety, permanency and well-being of a child or to provide services to a parent or family members to strengthen the family; 2) to enforce or prosecute any violation involving child abuse or neglect; or 3) to provide information to a defendant after a criminal charge has been filed as required by an order of the criminal court. DCS must also provide information to the court and, in certain circumstances, to government agencies and citizen review boards that are required to periodically review DCS cases. Finally, DCS may release information if a DCS employee has a reasonable belief that exigent circumstances exist, such as a situation in which a child is likely to suffer serious injury in the near future without immediate intervention.

Statute allows DCS to provide access to DCS information to the parent, guardian or custodian of a child if the information is “reasonably necessary to promote the safety, permanency and well-being of the child.” Anyone who is not specifically authorized by statute to obtain DCS information may petition the court to order DCS to release that information. The court is required to balance the rights of the parties entitled to confidentiality against the rights of the parties seeking release of the information. However, the court must take reasonable steps to prevent any clearly unwarranted invasions of privacy and protect the privacy and dignity of crime victims.

A legislator may review confidential DCS information by submitting a written request for the information to the President of the Senate or the Speaker of the House of Representatives, who must sign it and forward it to DCS within five working days. The legislator must sign a form that outlines confidentiality laws and may not disclose the information further except to discuss it with another legislator who has also signed the form, unless a court has ordered the disclosure of the information or the information has been otherwise disclosed, as specified. Within 10 working days, DCS must make arrangements for the legislator to review the information.

Statute requires DCS to promptly provide preliminary information to the public of a DCS case of child abuse, abandonment or neglect that resulted in a fatality or near fatality, including the identity of the child who has died and the alleged perpetrator, information on past reports and actions taken by DCS, and foster home licensing information if appropriate. The DCS summary report may also include changes and recommendations for changes in policies or statutes to address related issues. On request by any person, DCS must also promptly provide additional information to the person, but DCS must notify the county attorney of any decision to release the information; DCS is not required to disclose the additional information if the county attorney demonstrates that disclosure would cause a specific, material harm to a criminal investigation.

On request, DCS must continue to provide information promptly to the public about a fatality or near fatality unless: 1) the county attorney demonstrates that release of particular DCS information would cause a specific, material harm to a criminal investigation; 2) the release would violate state law requiring protection of the identity or safety of any person; or 3) releasing the information would violate federal law or the privacy of crime victims. A person who is denied DCS information regarding a fatality or near fatality may bring a special action in superior court to order DCS to release the information.

Before releasing any confidential information, DCS and law enforcement agencies must take precautions reasonably necessary to protect the identity of any person who may be endangered as a result of the release of information. DCS is not required to disclose information if DCS demonstrates that disclosure would cause a specific, material harm to a DCS investigation.

#### **LEGISLATIVE OVERSIGHT OF DCS**

The Child Safety Oversight Committee (Committee) identifies the responsibilities and scope of DCS, its statutory mandates, policies and procedures. The Committee also identifies areas for statutory improvement and administrative changes, monitors DCS program effectiveness and reviews DCS semiannual reports on program outcomes. The Committee consists of members of the House of Representatives and Senate, two of whom serve as co-chairpersons, and various parties involved or interested in the child safety system.

An audit team from the Office of the Auditor General is statutorily established within DCS to perform reviews and analyses of DCS as determined by the Joint Legislative Audit Committee. The audit team has access to DCS records and produces audits of DCS, as well as information briefs about DCS programs.

#### **ASSISTANCE FOR FAMILIES INVOLVED WITH DCS**

Several programs and offices are in place to assist families with issues and complaints

relating to DCS. Internally, DCS has a client grievance process that involves management within DCS. DCS also has a Family Advocacy Office to handle inquiries and complaints and to work with DCS and the family to resolve problems.

External assistance may be received through several different state agencies. The Administrative Office of the Courts operates a Parent Assistance Program, which includes a toll-free hotline where parents may obtain information about legal assistance, the juvenile court system and their legal rights and responsibilities. Finally, the Arizona Ombudsman-Citizen's Aide is also available to handle inquiries and complaints about DCS actions.

#### **ADDITIONAL RESOURCES**

- Child Safety Statutes: Arizona Revised Statutes, Title 8
- DCS Enabling Legislation  
[http://www.azleg.gov/DocumentsForBill.asp?Bill\\_Number=1001&Session\\_Id=113](http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1001&Session_Id=113)
- Department of Child Safety  
<https://dcs.az.gov/>
- Annual Appropriations Report, Joint Legislative Budget Committee  
[www.azleg.gov/jlbc.htm](http://www.azleg.gov/jlbc.htm)
- Office of the Auditor General Reports  
<http://www.azauditor.gov/>
- Administrative Office of the Courts Parent Assistance Program  
Toll-free: 1-800-732-8193  
Phoenix area: 602-452-3580
- Arizona Ombudsman-Citizen's Aide  
<http://www.azoca.gov/>  
Toll-free: 1-800-872-2879  
Phoenix area: 602-277-7292
- DCS Family Advocate's Office  
Toll-free: 1-877-527-0765  
Phoenix area: 602-364-0777