

REFERENCE TITLE: child protective services; omnibus

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1244

Introduced by
Senator Paton

AN ACT

AMENDING SECTIONS 8-503, 8-800, 8-803, 8-819, 8-821, 8-822, 8-823 AND 8-846,
ARIZONA REVISED STATUTES; RELATING TO DEPENDENT CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-503, Arizona Revised Statutes, is amended to
3 read:
4 8-503. Powers and duties
5 A. The division shall:
6 1. Exercise supervision over all child welfare agencies.
7 2. Advise and cooperate with the governing boards of all child welfare
8 agencies.
9 3. Assist the staffs of all child welfare agencies by giving advice on
10 ~~progressive~~ methods and procedures of child care and improvement of services.
11 4. ~~Establish~~ ADOPT rules, ~~regulations~~, and standards for:
12 (a) Licensing of child welfare agencies.
13 (b) Licensing of foster homes.
14 (c) Classifications of foster homes as:
15 (i) Receiving foster homes.
16 (ii) Regular foster homes.
17 (iii) Special classes of foster homes as are needed according to the
18 types of problems involved.
19 (iv) Group foster homes.
20 (d) Certifying each foster home according to one or more of the
21 categories ~~defined~~ PRESCRIBED in subdivision (c) of this paragraph.
22 (e) Initial and ongoing foster parent training programs.
23 (f) The method of approving foster parent training programs.
24 (g) Uniform amounts of payment for all foster homes according to
25 certification. However, variations in uniform amounts of payments may be
26 allowed for foster homes based on consideration of geographical location or
27 age or mental or physical condition of a foster child.
28 (h) Annual renewal of licenses of child welfare agencies and foster
29 homes.
30 (i) Form and content of investigations, reports and studies concerning
31 disposition of children and foster home placement.
32 5. Establish a program of counseling and rehabilitation of parents
33 whose children have been placed in foster homes.
34 6. Establish foster parent training programs or contract with other
35 agencies, institutions or groups for the provision of such programs to foster
36 parents. Foster parent training programs shall be established in at least
37 the following areas:
38 (a) Initial and ongoing training as a foster parent for a regular or
39 group foster home.
40 (b) Initial and ongoing training as a foster parent for a special
41 foster home.
42 7. Regulate the importation and exportation of children.
43 8. In conjunction with the department of education and the department
44 of JUVENILE corrections, develop and implement a uniform budget format to be
45 submitted by licensed child welfare agencies. The budget format shall be

1 developed in such a manner that, at a minimum, residential and educational
2 instructional costs are separate and distinct budgetary items.

3 9. Beginning October 1, 1983, establish as a goal that, at any given
4 time, not more than fifty per cent of the total number of children whose
5 maintenance is subsidized by title IV, part E of the social security act, as
6 amended, shall be in foster care in excess of twenty-four consecutive months.
7 The division shall establish through ~~regulations~~ RULES appropriate procedures
8 to achieve the goal.

9 B. Except as provided in section 8-514.01, large group settings for
10 children, group homes for children and child developmental foster homes ~~which~~
11 THAT have one or more residents who are developmentally disabled clients of
12 the department shall be licensed pursuant to title 36, chapter 5.1, article
13 3. Rules, ~~regulations~~ and standards adopted pursuant to subsection A,
14 paragraph 4 of this section shall not apply to group homes for children or
15 child developmental foster homes licensed pursuant to title 36, chapter 5.1,
16 article 3.

17 Sec. 2. Section 8-800, Arizona Revised Statutes, is amended to read:
18 8-800. Purpose of child protective services

19 A. The primary ~~purposes~~ PURPOSE of child protective services ~~are IS~~ to
20 protect children ~~by investigating allegations of abuse and neglect, promoting~~
21 ~~the well-being of the child in a permanent home and coordinating services to~~
22 ~~strengthen the family and prevent, intervene in and treat abuse and neglect~~
23 ~~of children.~~ IF THERE IS PROBABLE CAUSE TO BELIEVE THAT A CHILD HAS BEEN THE
24 VICTIM OF CRIMINAL CONDUCT, THE DEPARTMENT OF ECONOMIC SECURITY:

25 1. SHALL COMPLY WITH THE DIRECTIONS OF THE APPROPRIATE PROSECUTOR AND
26 APPROPRIATE LAW ENFORCEMENT AGENCY THROUGHOUT THE CRIMINAL JUSTICE PROCESS.

27 2. SHALL PRESERVE AND PROTECT THE RIGHTS OF THE CHILD AS A VICTIM OF A
28 CRIME.

29 3. SHALL NOT REUNITE A CHILD WITH THE PERSON OR PERSONS WHO ARE
30 ALLEGED TO BE RESPONSIBLE FOR THE CRIMINAL CONDUCT UNLESS AND UNTIL THERE IS
31 CLEAR AND CONVINCING EVIDENCE THAT THE CHILD WILL BE SAFE AND WILL NOT BE AT
32 RISK OF BEING THE VICTIM OF CRIMINAL CONDUCT.

33 B. TO PROTECT THE CONSTITUTIONAL RIGHTS OF THE CHILD AS A CRIME
34 VICTIM, RELEASE CONDITIONS THAT ARE IMPOSED IN ANY CRIMINAL CASE INVOLVING A
35 CHILD VICTIM SUPERSEDE ANY OTHER COURT ORDERS.

36 Sec. 3. Section 8-803, Arizona Revised Statutes, is amended to read:
37 8-803. Limitation of authority; duty to inform

38 A. On initial contact with a parent, guardian or custodian under
39 investigation pursuant to this article, a child protective services worker
40 shall inform the family, both verbally and in writing, making reasonable
41 efforts to receive written acknowledgement from the parent, guardian, or
42 custodian, of receipt of all of the following information:

43 1. That the family is under investigation by the department.

44 2. The specific complaint or allegation made against that person.

1 3. That the worker has no legal authority to compel the family to
2 cooperate with the investigation or to receive protective services offered
3 pursuant to the investigation.

4 4. The worker's authority to petition the juvenile court for a
5 determination that a child is dependent.

6 5. The person's right to participate in a mediation program in the
7 attorney general's office. The worker shall provide the telephone number of
8 the attorney general's office mediation program.

9 6. The person's right to file a complaint with the ~~ombudsman-citizen~~
10 ~~OMBUDSMAN-CITIZENS~~ aide pursuant to section 41-1376. The worker shall
11 provide the telephone number of the ~~ombudsman-citizen~~ ~~OMBUDSMAN-CITIZENS~~
12 aide.

13 7. The person's right to appeal determinations made by child
14 protective services.

15 8. Information outlining parental rights under the laws of the state.

16 B. The child protective services worker shall also inform the person
17 about whom the report was made about that person's right to respond to the
18 allegations either verbally or in writing, including any documentation, and
19 to have this information considered in determining if the child is in need of
20 protective services. The worker shall tell the person that anything the
21 person says or writes can be used in a court proceeding. If the person makes
22 a verbal response, the worker shall include the response in the written
23 report of the investigation. If the person makes a written response,
24 including any documentation, the worker shall include this response and the
25 documentation in the case file. Information provided in response to the
26 allegations shall be considered during the investigation by the worker. The
27 worker shall maintain the response and documentation in the case file and
28 provide this information to the court before a hearing or trial relating to
29 the dependency petition.

30 C. If the family declines to cooperate with the investigation or to
31 accept or to participate in the offered services, or if the worker otherwise
32 believes that the child should be adjudicated dependent, the worker may file
33 with the juvenile court a petition requesting that the child in need of
34 protective services be adjudicated dependent.

35 D. Refusal to cooperate in the investigation or to participate in the
36 offered services does not constitute grounds for temporary custody of a child
37 except if there is a clear necessity for temporary custody as provided in
38 section 8-821.

39 E. AN ACQUITTAL OF A PARENT, GUARDIAN OR CUSTODIAN OF CHARGES ARISING
40 OUT OF OR RELATING TO AN INVESTIGATION CONDUCTED BY THE DEPARTMENT DOES NOT
41 PREVENT A CHILD PROTECTIVE SERVICES WORKER FROM PURSUING AN ACTION AUTHORIZED
42 PURSUANT TO THIS TITLE.

1 Sec. 4. Section 8-819, Arizona Revised Statutes, is amended to read:

2 8-819. Determination of neglect; protection plan

3 A. In determining if a child is neglected, consideration shall be
4 given to:

5 1. The drug or alcohol abuse of the child's parent, guardian or
6 custodian.

7 2. The use by the mother of a dangerous drug, a narcotic drug or
8 alcohol during pregnancy if the child, at birth or within a year after birth,
9 is demonstrably adversely affected by this use. For the purposes of this
10 paragraph, "dangerous drug" and "narcotic drug" have the same ~~meaning~~
11 MEANINGS prescribed in section 13-3401.

12 B. IF THERE IS EVIDENCE OF NEGLECT PURSUANT TO THIS SECTION, THE
13 DEPARTMENT, AS ITS HIGHEST PRIORITY AND IN A MANNER THAT IS CONSISTENT WITH
14 THE PROTOCOLS ESTABLISHED PURSUANT TO SECTION 8-817, SHALL PREPARE AND
15 IMPLEMENT A PLAN TO PROTECT THE SAFETY OF THE CHILD.

16 Sec. 5. Section 8-821, Arizona Revised Statutes, is amended to read:

17 8-821. Taking into temporary custody; medical examination;
18 placement; interference; violation; classification

19 A. A child shall be taken into temporary custody in proceedings to
20 declare a child a temporary ward of the court to protect the child, pursuant
21 to an order of the juvenile court on a petition by an interested person, a
22 peace officer or a child protective services worker under oath that
23 reasonable grounds exist to believe that temporary custody is clearly
24 necessary to protect the child from suffering abuse or neglect. If a child
25 is taken into temporary custody pursuant to this section, the child's sibling
26 shall also be taken into temporary custody only if reasonable grounds
27 independently exist to believe that temporary custody is clearly necessary to
28 protect the child from suffering abuse or neglect.

29 B. A child may be taken into temporary custody by a peace officer or a
30 child protective services worker if temporary custody is clearly necessary to
31 protect the child because probable cause exists to believe that the child is
32 either:

33 1. A victim or will imminently become a victim of **CRIMINAL CONDUCT OR**
34 abuse or neglect.

35 2. Suffering serious physical or emotional injury that can only be
36 diagnosed by a medical doctor or psychologist.

37 3. Physically injured as a result of living on premises where
38 dangerous drugs or narcotic drugs are being manufactured. For the purposes
39 of this paragraph, "dangerous drugs" and "narcotic drugs" have the same
40 ~~meaning~~ MEANINGS prescribed in section 13-3401.

41 4. Reported by child protective services to be a missing child at risk
42 of serious harm.

43 C. In determining if a child should be taken into temporary custody,
44 the interested person, peace officer or child protective services worker
45 shall take into consideration:

1 1. As a paramount concern the child's health and safety.
2 2. Whether the parent is willing to participate in any services that
3 are offered to ~~them~~ THE PARENT.

4 3. WHETHER IT IS NECESSARY TO PROTECT THE CHILD FROM ABUSE OR NEGLECT
5 IF THERE ARE REASONABLE GROUNDS TO BELIEVE THAT A CHILD IS THE VICTIM OF
6 CRIMINAL CONDUCT.

7 D. A person who takes a child into custody pursuant to subsection B,
8 paragraph 2 of this section shall immediately have the child examined by a
9 medical doctor or psychologist. After the examination the person shall
10 release the child to the custody of the parent or guardian of the child
11 unless the examination reveals abuse or neglect. Temporary custody of a
12 child taken into custody pursuant to subsection B, paragraph 2 of this
13 section shall not exceed twelve hours.

14 E. IF THERE ARE REASONABLE GROUNDS TO BELIEVE THE CHILD IS A VICTIM
15 OF CRIMINAL CONDUCT BUT NO CHARGES HAVE YET BEEN FILED, A CHILD SHALL NOT BE
16 ASKED TO MAKE A STATEMENT OR OTHERWISE GIVE INFORMATION RELATING TO THE
17 CIRCUMSTANCES OF THE INCIDENT FOLLOWING A FORENSIC INTERVIEW CONDUCTED
18 PURSUANT TO THE PROTOCOLS ESTABLISHED PURSUANT TO SECTION 8-817 UNLESS:

19 1. THE STATEMENT OR INFORMATION IS NECESSARY TO RENDER MEDICAL
20 TREATMENT, INCLUDING MENTAL HEALTH SERVICES.

21 2. A GUARDIAN AD LITEM HAS BEEN APPOINTED AND THERE IS NO OBJECTION
22 FROM THE COUNTY ATTORNEY. IF THE COUNTY ATTORNEY OBJECTS, A CHILD IS NOT
23 REQUIRED TO MAKE A STATEMENT OR OTHERWISE GIVE INFORMATION UNLESS THE COURT
24 FINDS ON THE RECORD THAT THERE IS A COMPELLING NEED FOR THE CHILD TO MAKE A
25 STATEMENT OR OTHERWISE GIVE INFORMATION.

26 ~~F.~~ F. A child who is taken into temporary custody pursuant to this
27 article shall not be detained in a police station, jail or lockup where
28 adults charged with or convicted of a crime are detained.

29 ~~F.~~ G. A child shall not remain in temporary custody for more than
30 seventy-two hours excluding Saturdays, Sundays and holidays unless a
31 dependency petition is filed.

32 ~~G.~~ H. A person who knowingly interferes with the taking of a child
33 into temporary custody under this section is guilty of a class 2 misdemeanor.

34 Sec. 6. Section 8-822, Arizona Revised Statutes, is amended to read:
35 8-822. Removal of child from home; review; review teams

36 A. The department shall adopt rules and establish clear policies and
37 procedures, where appropriate, to:

38 1. Determine the circumstances under which it is appropriate to remove
39 a child from the custody of the child's parents, guardian or custodian.

40 2. Ensure the immediate notification of the child's parents, guardian
41 or custodian regarding the removal of the child from home, school or child
42 care and the timely interview of the child and the child's parent, guardian
43 or custodian.

44 3. Review each removal of a child that is expected to result in a
45 dependency petition to assess options other than continued out-of-home

1 placement including in-home services to the family. Such reviews shall be
 2 conducted before the dependency petition is filed. The review team shall
 3 consist of a protective services worker, a worker's supervisor, **A GUARDIAN AD**
 4 **LITEM APPOINTED FOR THE CHILD** and two members of the local foster care review
 5 board. If the child has a medical need or a chronic illness, the review team
 6 shall include the child's physician or registered nurse practitioner. If all
 7 reasonable efforts to reach the child's physician or registered nurse
 8 practitioner have been made and the physician or registered nurse
 9 practitioner is not available, the team shall include a physician who is
 10 licensed pursuant to title 32, chapter 13 or 17 or a registered nurse
 11 practitioner who is licensed pursuant to title 32, chapter 15 and who is
 12 familiar with children's health care. If the child suffers from a chronic
 13 illness, at least one member of the team shall be a physician licensed
 14 pursuant to title 32, chapter 13 or 17. A child shall not be removed unless
 15 a majority of the members of the review team agree that removal is
 16 necessary. If a majority of the members of the review team do not agree that
 17 removal is necessary, the child shall not be removed or, if the child has
 18 already been removed, the child shall be returned to the home.

19 **B. IF THERE ARE REASONABLE GROUNDS TO BELIEVE THE CHILD IS A VICTIM**
 20 **OF CRIMINAL CONDUCT BUT NO CHARGES HAVE YET BEEN FILED, A CHILD SHALL NOT BE**
 21 **ASKED TO MAKE A STATEMENT OR OTHERWISE GIVE INFORMATION RELATING TO THE**
 22 **CIRCUMSTANCES OF THE INCIDENT FOLLOWING A FORENSIC INTERVIEW CONDUCTED**
 23 **PURSUANT TO THE PROTOCOLS ESTABLISHED PURSUANT TO SECTION 8-817 UNLESS:**

24 1. THE STATEMENT OR INFORMATION IS NECESSARY TO RENDER MEDICAL
 25 TREATMENT, INCLUDING MENTAL HEALTH SERVICES.

26 2. A GUARDIAN AD LITEM HAS BEEN APPOINTED AND THERE IS NO OBJECTION
 27 FROM THE COUNTY ATTORNEY. IF THE COUNTY ATTORNEY OBJECTS, A CHILD IS NOT
 28 REQUIRED TO MAKE A STATEMENT OR OTHERWISE GIVE INFORMATION UNLESS THE COURT
 29 FINDS ON THE RECORD THAT THERE IS A COMPELLING NEED FOR THE CHILD TO MAKE A
 30 STATEMENT OR OTHERWISE GIVE INFORMATION.

31 Sec. 7. Section 8-823, Arizona Revised Statutes, is amended to read:

32 **8-823. Notice of taking into temporary custody**

33 A. If a child is taken into temporary custody pursuant to this
 34 article, the interested person, peace officer or child protective services
 35 worker taking the child into custody shall provide written notice within six
 36 hours to the parent or guardian of the child, unless:

37 1. The parent or guardian is present when the child is taken into
 38 custody, then written and verbal notice shall be provided immediately.

39 2. The residence of the parent or guardian is outside this state and
 40 notice cannot be provided within six hours, then written notice shall be
 41 provided within twenty-four hours.

42 3. The residence of the parent or guardian is not ascertainable, then
 43 reasonable efforts shall be made to locate and notify the parent or guardian
 44 of the child as soon as possible.

1 4. THERE ARE REASONABLE GROUNDS TO BELIEVE THAT THE CHILD IS A VICTIM
2 OF CRIMINAL CONDUCT PERPETRATED BY THE PARENT OR GUARDIAN.

3 B. The written notice shall contain a signature line for the parent or
4 guardian to acknowledge receipt of both written and verbal notices. The
5 written and verbal notices shall contain the name of the person and agency
6 taking the child into custody, the location from which the child was taken
7 and all of the following information:

8 1. Specific reasons as to why the child is being removed. The notice
9 shall list the specific factors that caused the determination of imminent
10 danger.

11 2. Services that are available to the parent or guardian, including a
12 statement of parental rights and information on how to contact the
13 ombudsman-citizen's aide office and an explanation of the services that
14 office offers.

15 3. The date and time of the taking into custody.

16 4. The name and telephone number of the agency responsible for the
17 child.

18 5. A statement of the reasons for temporary custody of the child.

19 6. A statement that the child must be returned within seventy-two
20 hours excluding Saturdays, Sundays and holidays unless a dependency petition
21 is filed and a statement that a child in temporary custody for examination
22 pursuant to section 8-821, subsection B, paragraph 2 must be returned within
23 twelve hours unless THERE ARE REASONABLE GROUNDS TO BELIEVE THAT A CHILD HAS
24 BEEN THE VICTIM OF CRIMINAL CONDUCT PERPETRATED BY THE PARENT OR GUARDIAN OR
25 abuse or neglect is diagnosed.

26 7. One of the following:

27 (a) If a dependency petition has not been filed or if the information
28 prescribed in subdivision (b) is not available, a statement that if a
29 dependency petition is filed, the parent or guardian will be provided a
30 written notice no later than twenty-four hours after the petition is filed
31 that contains the information prescribed in subdivision (b).

32 (b) In all other cases, the date, time and place of the preliminary
33 protective hearing to be held pursuant to section 8-824 and the requirements
34 of subsection D of this section.

35 8. A statement of the right of the parent or guardian to counsel and
36 that counsel will be appointed pursuant to section 8-221 through the juvenile
37 court if a dependency petition is filed and the person is indigent.

38 9. Information regarding the ability of the person about whom the
39 report was made to provide a verbal, telephonic or written response to the
40 allegations. A verbal response shall be included in the written report of
41 the investigation. A written response, including any documentation, shall be
42 included in the case file. The response shall be provided to the removal
43 review team if the response is made before the team considers the removal.

44 10. A statement that the hearing may result in further proceedings to
45 terminate parental rights.

1 C. The protective services worker shall provide the parent or guardian
2 with the notice even if the parent or guardian refuses to sign the
3 acknowledgment.

4 D. Immediately before the time of the preliminary protective hearing,
5 the persons described in section 8-824, subsection B shall meet and attempt
6 to reach an agreement about placement of the child, services to be provided
7 to the child, parent or guardian and visitation of the child. The parties
8 shall meet with their counsel, if any, before this meeting. Consideration
9 shall be given to the availability of reasonable services to the parent or
10 guardian and the child's health and safety shall be a paramount concern. The
11 persons described in section 8-824, subsection C may attend the meeting to
12 reach an agreement.

13 E. If a dependency petition is filed by the department, the child
14 protective services worker is responsible for delivering the notice of the
15 preliminary protective hearing prescribed in subsection B, paragraph 7 of
16 this section to the parent or guardian. In all other cases, the person who
17 files the dependency petition is responsible for delivery of this notice to
18 the parent or guardian. If the location of the parent or guardian is
19 unknown, the person who is responsible for serving this notice shall make
20 reasonable efforts to locate and notify the parent or guardian.

21 Sec. 8. Section 8-846, Arizona Revised Statutes, is amended to read:

22 8-846. Services provided to the child and family

23 A. Except as provided in subsections B, ~~and~~ C and D of this section,
24 if the child has been removed from the home, the court shall order the
25 department to make reasonable efforts to provide services to the child and
26 the child's parent **THAT ARE CONSISTENT WITH THE PROTOCOLS ESTABLISHED**
27 **PURSUANT TO SECTION 8-817.**

28 B. The court shall consider the following factors and reunification
29 services are not required to be provided if the court finds by clear and
30 convincing evidence that:

31 1. One or more of the following aggravating circumstances exist:

32 (a) A party to the action provides a verified affidavit that states
33 that a reasonably diligent search has failed to identify and locate the
34 parent within three months after the filing of the dependency petition or the
35 parent has expressed no interest in reunification with the child for at least
36 three months after the filing of the dependency petition.

37 (b) The parent or guardian is suffering from a mental illness or
38 mental deficiency of such magnitude that it renders the parent or guardian
39 incapable of benefitting from the reunification services. This finding shall
40 be based on competent evidence from a psychologist or physician that
41 establishes that, even with the provision of reunification services, the
42 parent or guardian is unlikely to be capable of adequately caring for the
43 child within twelve months after the date of the child's removal from the
44 home.

1 (c) The child previously has been removed and adjudicated dependent
2 due to physical or sexual abuse. After the adjudication the child was
3 returned to the custody of the parent or guardian and then subsequently
4 removed within eighteen months due to additional physical or sexual abuse.

5 (d) A child is the victim of ~~serious physical or emotional injury~~
6 **CRIMINAL CONDUCT** by the parent or guardian or by any person known by the
7 parent or guardian, if the parent or guardian knew or reasonably should have
8 known that the person was abusing the child.

9 (e) The parent's rights to another child have been terminated, the
10 parent has not successfully addressed the issues that led to the termination
11 and the parent is unable to discharge parental responsibilities.

12 (f) After a finding that a child is dependent, all of the following
13 are true:

14 (i) A child has been removed from the parent or guardian on at least
15 two previous occasions.

16 (ii) Reunification services were offered or provided to the parent or
17 guardian after the removal.

18 (iii) The parent or guardian is unable to discharge parental
19 responsibilities.

20 2. The parent or guardian of a child has been convicted of murder or
21 manslaughter of a child, or of sexual abuse of a child, sexual assault of a
22 child, sexual conduct with a minor, molestation of a child, commercial sexual
23 exploitation of a minor, sexual exploitation of a minor, ~~or~~ or luring a minor
24 for sexual exploitation.

25 3. The parent or guardian of a child has been convicted of aiding or
26 abetting or attempting, conspiring or soliciting to commit any of the crimes
27 listed in paragraph 2 of this subsection.

28 C. The court shall consider any criminal prosecution relating to the
29 offenses which led to the child's removal from the home and any orders of the
30 criminal court. Information may be provided by law enforcement or the county
31 attorney.

32 D. If a dependency petition was filed pursuant to section 8-874,
33 subsection J, the court may direct the division not to provide reunification
34 services to the child's parents unless the court finds by clear and
35 convincing evidence that these services would be in the child's best
36 interests.