

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

**CHAPTER 320**  
**HOUSE BILL 2794**

AN ACT

AMENDING SECTIONS 8-515.05, 8-801, 8-807, 8-813, 8-817, 8-822, 8-823 AND 8-824, ARIZONA REVISED STATUTES; REPEALING SECTION 8-828, ARIZONA REVISED STATUTES; AMENDING SECTION 13-3601, ARIZONA REVISED STATUTES; RELATING TO CHILD PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-515.05, Arizona Revised Statutes, is amended to  
3 read:

4 8-515.05. Removal of child from foster parent's home:  
5 requirements; notification; review

6 A. Unless a child is removed from a licensed foster parent, excluding  
7 a shelter care provider and receiving foster parent, to protect the child  
8 from harm or risk of harm, to place a child in a permanent placement, to  
9 reunite siblings, to place a child in a kinship foster home, to place a child  
10 in the least restrictive setting, to place a child in a therapeutic setting  
11 or to place a child in accordance with the Indian child welfare act (~~title~~ 25  
12 United States Code ~~subsection~~ SECTION 1915), the department shall inform the  
13 licensed foster parent of the department's intent to remove a child and place  
14 the child in another foster care placement. The department shall inform the  
15 licensed foster parent of the specific reason for the child's planned removal  
16 from the licensed foster parent.

17 B. If the licensed foster parent disagrees with the removal, the  
18 licensed foster parent shall ~~inform~~ NOTIFY the department within twenty-four  
19 hours of being informed. If the licensed foster parent disagrees with the  
20 plan to remove the child and place the child in another foster home  
21 placement, the department shall convene a case conference to review the  
22 reasons for the removal. The licensed foster parent and two members of the  
23 foster care review board ~~who participate in a removal review team~~ shall  
24 participate in the case conference. A child shall not be removed unless a  
25 majority of the members ~~of the review team~~ WHO PARTICIPATE IN THE CASE  
26 CONFERENCE agree that removal is necessary.

27 C. The department shall inform the licensed foster parent and the  
28 foster care review board of the time, date and location of the case  
29 conference to review the planned removal. The case conference shall be held  
30 within seventy-two hours ~~of~~ AFTER the licensed foster parent ~~informing~~  
31 NOTIFIES the department that the licensed foster parent disagrees with the  
32 planned removal, excluding weekends and holidays. The child shall remain in  
33 the current placement pending the outcome of the case conference.

34 D. If, as a result of the case conference, it is the department's  
35 continued intent to move the child pursuant to subsection A and the licensed  
36 foster parent continues to disagree and the child:

37 1. Is in the court ordered physical custody of the licensed foster  
38 parent, a foster care review board member shall provide a recommendation to  
39 the court regarding the removal of the child before the change of physical  
40 custody. The child shall remain in the current placement pending a court  
41 order for removal.

42 2. Is not in the physical custody of the licensed foster parent, the  
43 licensed foster parent shall be advised of the department's conflict  
44 resolution process. The department shall expedite the conflict resolution  
45 process. The child shall remain in the current placement pending the outcome  
46 of the conflict resolution process.

1           Sec. 2. Section 8-801, Arizona Revised Statutes, is amended to read:

2           8-801. Definitions

3           In this chapter, unless the context otherwise requires:

4           1. "Child protective services worker" or "worker" means a person who  
5 has been selected by and trained under the requirements prescribed by the  
6 department and who assists in carrying out the provisions of this article.

7           2. "Criminal conduct allegation" means an allegation of conduct by a  
8 parent, guardian or custodian of a child that, if true, would constitute any  
9 of the following:

10           (a) A violation of section 13-3623 involving child abuse.

11           (b) A felony offense that constitutes domestic violence as defined in  
12 section 13-3601.

13           (c) A violation of section 13-1404 or 13-1406 involving a minor.

14           (d) A violation of section 13-1405, 13-1410 or 13-1417.

15           (e) Any other act of abuse that is classified as a felony.

16           (f) AN OFFENSE THAT CONSTITUTES DOMESTIC VIOLENCE AS DEFINED IN  
17 SECTION 13-3601 AND THAT INVOLVES A MINOR WHO IS A VICTIM OF OR WAS IN  
18 IMMINENT DANGER DURING THE DOMESTIC VIOLENCE.

19           3. "In-home intervention" means a program of services provided  
20 pursuant to article 7 of this chapter while the child is still in the custody  
21 of the parent, guardian or custodian.

22           4. "Protective services" means a specialized child welfare program  
23 that is administered by the department as provided in this chapter and that  
24 investigates allegations of and seeks to prevent, intervene in and treat  
25 abuse and neglect, to promote the well-being of the child in a permanent home  
26 and to coordinate services to strengthen the family.

27           5. "Relative" has the same meaning prescribed in section 8-501.

28           Sec. 3. Section 8-807, Arizona Revised Statutes, is amended to read:

29           8-807. CPS information; public record; use; confidentiality;  
30 violation; classification; definitions

31           A. CPS information shall be maintained by the department as required  
32 by federal law as a condition of the allocation of federal monies to this  
33 state. All exceptions for the public release of CPS information shall be  
34 construed as openly as possible under federal law.

35           B. The department, or a person who receives CPS information pursuant  
36 to this subsection, shall provide CPS information to a federal agency, a  
37 state agency, a tribal agency, a county or municipal agency, a law  
38 enforcement agency, a prosecutor, an attorney or a guardian ad litem  
39 representing a child victim of crime pursuant to article II, section 2.1,  
40 Constitution of Arizona, a school, a community service provider, a contract  
41 service provider or any other person that is providing services pursuant to  
42 this chapter:

43           1. To meet its duties to provide for the safety, permanency and  
44 well-being of a child, provide services to a parent, guardian or custodian or  
45 provide services to family members to strengthen the family pursuant to this  
46 chapter.

1           2. To enforce or prosecute any violation involving child abuse or  
2 neglect.

3           3. To provide information to a defendant after a criminal charge has  
4 been filed as required by an order of the criminal court.

5           C. The department shall disclose CPS information to a court, a party  
6 in a dependency or termination of parental rights proceeding or the party's  
7 attorney, the foster care review board or a court appointed special advocate  
8 for the purposes of and as prescribed in this title.

9           D. The department shall disclose CPS information to a domestic  
10 relations, family or conciliation court if the CPS information is necessary  
11 to promote the safety and well-being of children. The court shall notify the  
12 parties that it has received the CPS information.

13           E. A person or agent of a person who is the subject of CPS information  
14 shall have access to CPS information concerning that person.

15           F. The department:

16           1. May provide CPS information to confirm, clarify or correct  
17 information concerning an allegation or actual instance of child abuse or  
18 neglect that has been made public by sources outside the department.

19           2. Shall promptly provide CPS information to the public regarding a  
20 case of child abuse, abandonment or neglect that has resulted in a fatality  
21 or near fatality as follows:

22           (a) The department shall provide preliminary information including:

23           (i) The name, age and city, town or general location of residence of  
24 the child who has suffered a near fatality or fatality.

25           (ii) The fact that a child suffered a near fatality or fatality as the  
26 result of abuse, abandonment or neglect.

27           (iii) The name, age and city, town or general location of residence of  
28 the alleged perpetrator, if available.

29           (iv) Whether there have been reports, or any current or past cases, of  
30 abuse, abandonment or neglect involving the child and the current alleged  
31 abusive or neglectful parent, guardian or custodian.

32           (v) Actions taken by child protective services in response to the  
33 fatality or near fatality of the child.

34           (b) On request by any person, the department shall promptly provide  
35 additional CPS information to the requestor. Before releasing additional CPS  
36 information, the department shall promptly notify the county attorney of any  
37 decision to release that information, and the county attorney shall promptly  
38 inform the department if it believes the release would cause a specific,  
39 material harm to a criminal investigation. After consulting with the county  
40 attorney, pursuant to subdivision (c) of this paragraph, the department shall  
41 produce to the requestor as much additional CPS information as promptly as  
42 possible about a case of child abuse, abandonment or neglect that resulted in  
43 a fatality or near fatality.

44           (c) On request, the department shall continue to provide CPS  
45 information promptly to the public about a fatality or near fatality unless:

1 (i) After consultation with the county attorney, the county attorney  
2 demonstrates that release of particular CPS information would cause a  
3 specific, material harm to a criminal investigation.

4 (ii) The release would violate subsection A or K of this section or  
5 the privacy of victims of crime pursuant to article II, section 2.1,  
6 subsection C, Constitution of Arizona.

7 (d) If any person believes that the county attorney has failed to  
8 demonstrate that release would cause a specific, material harm to a criminal  
9 investigation, that person may file an action in superior court pursuant to  
10 title 39, chapter 1, article 2 and subsection I of this section and request  
11 the court to review the CPS information in camera and order disclosure.

12 3. May provide CPS information to a person who is conducting bona fide  
13 research, the results of which might provide CPS information that is  
14 beneficial in improving child protective services.

15 4. May provide access to CPS information to the parent, guardian or  
16 custodian of a child if the CPS information is reasonably necessary to  
17 promote the safety, permanency and well-being of the child.

18 G. Access to CPS information in the central registry shall be provided  
19 as prescribed in section 8-804.

20 H. To provide oversight of child protective services, the department  
21 shall provide access to CPS information to the following persons, if the CPS  
22 information is reasonably necessary for the person to perform the person's  
23 official duties:

24 1. Federal or state auditors.

25 2. Persons conducting any accreditation deemed necessary by the  
26 department.

27 3. A standing committee of the legislature or a committee appointed by  
28 the president of the senate or the speaker of the house of representatives  
29 for purposes of conducting investigations related to the legislative  
30 oversight of the department of economic security. This information shall not  
31 be further disclosed unless a court has ordered the disclosure of this  
32 information, the information has been disclosed in a public or court record,  
33 or the information has been disclosed in the course of a public meeting or  
34 court proceeding.

35 4. A legislator who requests CPS information in the regular course of  
36 the legislator's duties. This information shall not be further disclosed  
37 unless a court has ordered the disclosure of this information, the  
38 information has been disclosed in a public or court record, or the  
39 information has been disclosed in the course of a public meeting or court  
40 proceeding. To request a file pursuant to this paragraph:

41 (a) The legislator shall submit a written request for CPS information  
42 to the presiding officer of the body of which the state legislator is a  
43 member. The request shall state the name of the person whose case file is to  
44 be reviewed and any other information that will assist the department in  
45 locating the file.

1 (b) The presiding officer shall forward the request to the department  
2 within five working days of the receipt of the request.

3 (c) The department shall make the necessary arrangements for the  
4 legislator to review the file at an office of the department, chosen by the  
5 legislator, within ten working days.

6 (d) The legislator shall sign a form, consistent with the requirements  
7 of this paragraph and paragraph 3 of this subsection, before reviewing the  
8 file, that outlines the confidentiality laws governing child protective  
9 services files and penalties for further release of the information.

10 5. A citizen review panel as prescribed by federal law, a child  
11 fatality review team as provided in title 36, chapter 35 and the office of  
12 ombudsman-citizens aide.

13 I. A person who has been denied CPS information regarding a fatality  
14 or near fatality caused by abuse, abandonment or neglect pursuant to  
15 subsection F, paragraph 2 or subsection K of this section may bring a special  
16 action pursuant to section 39-121.02 in the superior court to order the  
17 department to release that CPS information. A legislator has standing to  
18 bring or to join a special action regarding the release of CPS information or  
19 to challenge the redaction of released CPS information. The plaintiff shall  
20 provide notice to the county attorney, who has standing and may participate  
21 in the action. The court shall review the requested records in camera and  
22 order disclosure consistent with subsection A, subsection F, paragraph 2 and  
23 subsection K of this section. The court shall take reasonable steps to  
24 prevent any clearly unwarranted invasions of privacy and protect the privacy  
25 and dignity of victims of crime pursuant to article II, section 2.1,  
26 subsection C, Constitution of Arizona.

27 J. The department or a person who is not specifically authorized by  
28 this section to obtain CPS information may petition a judge of the superior  
29 court to order the department to release CPS information. The plaintiff  
30 shall provide notice to the county attorney, who has standing and may  
31 participate in the action. The court shall review the requested records in  
32 camera and shall balance the rights of the parties who are entitled to  
33 confidentiality pursuant to this section against the rights of the parties  
34 who are seeking the release of the CPS information. The court may release  
35 otherwise confidential CPS information only if the rights of the parties  
36 seeking the CPS information and any benefits from releasing the CPS  
37 information outweigh the rights of the parties who are entitled to  
38 confidentiality and any harm that may result from releasing the CPS  
39 information. The court shall take reasonable steps to prevent any clearly  
40 unwarranted invasions of privacy and protect the privacy and dignity of  
41 victims of crime pursuant to article II, section 2.1, subsection C,  
42 Constitution of Arizona.

43 K. Except as provided in subsection L of this section, before it  
44 releases records under this section, the department shall take whatever  
45 precautions it determines are reasonably necessary to protect the identity  
46 and safety of a person who reports child abuse or neglect and to protect any

1 other person if the department believes that disclosure of the CPS  
2 information would be likely to endanger the life or safety of any person.  
3 The department is not required by this section to disclose CPS information if  
4 the department demonstrates that disclosure would cause a specific, material  
5 harm to a child protective services investigation. The department is not  
6 required by this section to disclose CPS information if, in consultation with  
7 the county attorney, the county attorney demonstrates that disclosure would  
8 cause a specific, material harm to a criminal investigation.

9 L. A person who is the subject of an unfounded report or complaint  
10 made pursuant to this chapter and who believes that the report or complaint  
11 was made in bad faith or with malicious intent may petition a judge of the  
12 superior court to order the department to release the CPS information. The  
13 petition shall specifically set forth reasons supporting the person's belief  
14 that the report or complaint was made in bad faith or with malicious intent.  
15 The court shall review the CPS information in camera and the person filing  
16 the petition shall be allowed to present evidence in support of the petition.  
17 If the court determines that there is a reasonable question of fact as to  
18 whether the report or complaint was made in bad faith or with malicious  
19 intent and that disclosure of the identity of the person making the report or  
20 complaint would not be likely to endanger the life or safety of the person  
21 making the report or complaint, it shall provide a copy of the CPS  
22 information to the person filing the petition and the original CPS  
23 information is subject to discovery in a subsequent civil action regarding  
24 the making of the report or complaint.

25 M. The department shall provide the person who conducts a forensic  
26 medical evaluation with any records the person requests, including social  
27 history and family history regarding the child, the child's siblings and the  
28 child's parents or guardians.

29 N. The department shall provide CPS information on request to a  
30 prospective adoptive parent, foster parent or guardian, if the information  
31 concerns a child the prospective adoptive parent, foster parent or guardian  
32 seeks to adopt or provide care for.

33 O. If the department receives information that is confidential by law,  
34 the department shall maintain the confidentiality of the information as  
35 prescribed in the applicable law.

36 P. A person may authorize the release of CPS information about the  
37 person but may not waive the confidentiality of CPS information concerning  
38 any other person.

39 Q. The department may provide a summary of the outcome of a child  
40 protective services investigation to the person who reported the suspected  
41 child abuse or neglect.

42 R. The department shall adopt rules to facilitate the accessibility of  
43 CPS information.

44 S. The department may charge a fee for copying costs required to  
45 prepare CPS information for release pursuant to this section.

1 T. A person who violates this section is guilty of a class 2  
2 misdemeanor.

3 U. For the purposes of this section:

4 1. "CPS information" includes all information the department gathers  
5 during the course of a child protective services investigation conducted  
6 under this chapter from the time a file is opened and until it is closed.  
7 CPS information does not include information that is contained in child  
8 welfare agency licensing records.

9 2. "Near fatality" means an act that, as certified by a physician,  
10 **INCLUDING THE CHILD'S TREATING PHYSICIAN**, places a child in serious or  
11 critical condition.

12 Sec. 4. Section 8-813, Arizona Revised Statutes, is amended to read:

13 **8-813. Preplacement investigation; medical examination;**  
14 **disposition**

15 A. On the initial out-of-home placement of a child:

16 1. The division or a licensed child welfare agency shall conduct an  
17 investigation of the child designed to establish an appropriate plan for  
18 placement of the child.

19 2. The child shall receive a complete medical examination.

20 3. The child may receive such further diagnosis and evaluation as are  
21 necessary.

22 B. The department shall develop policies and procedures with public  
23 input to allow the child to maintain contact by telephone, mail or visits  
24 with the child's parents, family members, friends, ~~AND~~ other relatives and  
25 any former foster parent, unless the court determines that the contact is not  
26 in the child's best interests. **BEFORE THE DEPARTMENT ALLOWS CONTACT IT MUST**  
27 **DETERMINE THAT THERE ARE NO COURT ORDERS RELATING TO ANY SUPERIOR COURT**  
28 **CRIMINAL CASE THAT PROHIBIT THE PARENT OR GUARDIAN FROM CONTACT WITH THE**  
29 **CHILD.**

30 C. Notwithstanding any law to the contrary, before a court orders  
31 counseling, testing or other treatment services, it shall first determine  
32 that the proposed services are necessary and appropriate.

33 D. Subsequent to initial placement, the child placed in a setting  
34 other than the child's parent's home shall have a medical examination at  
35 periodic intervals, not less than once each year.

36 E. Contagious and infectious diseases shall be treated immediately at  
37 the county hospital or other appropriate medical facility.

38 F. If the investigation and medical examination disclose no physical,  
39 mental or emotional reasons for special care, and the child is not found  
40 delinquent, the child may be placed in a regular foster home. If special  
41 care is required, or the child has been found delinquent, the child may be  
42 placed only in foster homes that are certified as special foster homes or  
43 such other appropriate facilities where children may be treated.

44 Sec. 5. Section 8-817, Arizona Revised Statutes, is amended to read:

45 **8-817. Initial screening and safety assessment and**  
46 **investigation protocols**

1           A. The department shall develop, establish and implement initial  
2 screening and safety assessment protocols in consultation with the attorney  
3 general and statewide with county attorneys, chiefs of police, sheriffs,  
4 medical experts, victims' rights advocates, domestic violence victim  
5 advocates and mandatory reporters. Any initial screening and safety  
6 assessment tools shall be based on sound methodology and shall ensure valid  
7 and reliable responses. The department shall establish written policies and  
8 procedures to implement the use of the initial screening and safety  
9 assessment protocols.

10           B. To ensure thorough investigations of those accused of crimes  
11 against children, in each county, the county attorney, in cooperation with  
12 the sheriff, the chief law enforcement officer for each municipality in the  
13 county and the department shall develop, adopt and implement protocols to  
14 guide the conduct of investigations of allegations involving criminal  
15 conduct. The protocols shall include:

16           1. The process for notification of receipt of criminal conduct  
17 allegations.

18           2. The standards for interdisciplinary investigations of specific  
19 types of abuse and neglect, including timely forensic medical evaluations.

20           3. The standards for interdisciplinary investigations involving native  
21 American children in compliance with the Indian child welfare act.

22           4. Procedures for sharing information and standards for the timely  
23 disclosure of information.

24           5. Procedures for coordination of screening, response and  
25 investigation with other involved professional disciplines and notification  
26 of case status and standards for the timely disclosure of related  
27 information.

28           6. The training required for the involved child protective services  
29 workers, law enforcement officers and prosecutors to execute the  
30 investigation protocols, including forensic interviewing skills.

31           7. The process to ensure review of and compliance with the  
32 investigation protocols and the reporting of activity under the protocols.

33           8. Procedures for ~~an~~ annual ~~report~~ **REPORTS** to be transmitted within  
34 forty-five days after the end of each fiscal year independently from child  
35 protective services and each county attorney to the governor, the speaker of  
36 the house of representatives and the president of the senate and a copy of  
37 this report to be provided to the secretary of state. **EACH AGENCY MUST  
38 SUBMIT A SEPARATE REPORT. EACH REPORT MADE PURSUANT TO THIS PARAGRAPH MUST  
39 BE INDEPENDENTLY PREPARED AND SUBMITTED WITHOUT ANY INPUT FROM OR  
40 COMMUNICATION WITH THE OTHER REPORTING ENTITIES. This EACH report shall be  
41 IS** a public document and shall include:

42           (a) The number of criminal conduct allegations investigated and how  
43 many of these investigations were conducted jointly pursuant to the  
44 investigation protocols established in this subsection.

1 (b) Information from each county attorney regarding the number of  
2 cases presented for review, the number of persons charged in those cases, the  
3 reasons why charges were not pursued and the disposition of these cases.

4 (c) The reasons why a joint investigation did not take place.

5 9. Procedures for dispute resolution.

6 C. The department shall cooperate with the county attorney and the  
7 appropriate law enforcement agency pursuant to the investigation protocols  
8 adopted in this section. In instances of criminal conduct against a child,  
9 the department shall protect the victim's rights of the children in its  
10 custody against harassment, intimidation and abuse, as applicable, pursuant  
11 to article II, section 2.1, Constitution of Arizona.

12 D. The county attorney and the law enforcement agency shall cooperate  
13 with the department pursuant to the investigation protocols adopted in this  
14 section.

15 Sec. 6. Section 8-822, Arizona Revised Statutes, is amended to read:  
16 8-822. Removal of child from home; review

17 The department shall adopt rules and establish clear policies and  
18 procedures, where appropriate, to:

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

21 2. Ensure the immediate notification of the child's parents, guardian  
22 or custodian regarding the removal of the child from home, school or child  
23 care and the timely interview of the child and the child's parent, guardian  
24 or custodian.

25 ~~3. Review each removal of a child that is expected to result in a  
26 dependency petition to assess options other than continued out of home  
27 placement including in home services to the family. Such reviews shall be  
28 conducted before the dependency petition is filed. The review team shall  
29 consist of a protective services worker, a worker's supervisor and two  
30 members of the local foster care review board. If the child has a medical  
31 need or a chronic illness, the review team shall include the child's  
32 physician or registered nurse practitioner. If all reasonable efforts to  
33 reach the child's physician or registered nurse practitioner have been made  
34 and the physician or registered nurse practitioner is not available, the team  
35 shall include a physician who is licensed pursuant to title 32, chapter 13 or  
36 17 or a registered nurse practitioner who is licensed pursuant to title 32,  
37 chapter 15 and who is familiar with children's health care. If the child  
38 suffers from a chronic illness, at least one member of the team shall be a  
39 physician licensed pursuant to title 32, chapter 13 or 17. A child shall not  
40 be removed unless a majority of the members of the review team agree that  
41 removal is necessary. If a majority of the members of the review team do not  
42 agree that removal is necessary, the child shall not be removed or, if the  
43 child has already been removed, the child shall be returned to the home.~~

44 Sec. 7. Section 8-823, Arizona Revised Statutes, is amended to read:  
45 8-823. Notice of taking into temporary custody

1           A. If a child is taken into temporary custody pursuant to this  
2 article, the interested person, peace officer or child protective services  
3 worker taking the child into custody shall provide written notice within six  
4 hours to the parent or guardian of the child, unless:  
5           1. The parent or guardian is present when the child is taken into  
6 custody, then written and verbal notice shall be provided immediately.  
7           2. The residence of the parent or guardian is outside this state and  
8 notice cannot be provided within six hours, then written notice shall be  
9 provided within twenty-four hours.  
10          3. The residence of the parent or guardian is not ascertainable, then  
11 reasonable efforts shall be made to locate and notify the parent or guardian  
12 of the child as soon as possible.  
13          B. The written notice shall contain a signature line for the parent or  
14 guardian to acknowledge receipt of both written and verbal notices. The  
15 written and verbal notices shall contain the name of the person and agency  
16 taking the child into custody, the location from which the child was taken  
17 and all of the following information:  
18          1. Specific reasons as to why the child is being removed. The notice  
19 shall list the specific factors that caused the determination of imminent  
20 danger.  
21          2. Services that are available to the parent or guardian, including a  
22 statement of parental rights and information on how to contact the  
23 ~~ombudsman-citizen's aide~~ OMBUDSMAN-CITIZENS AIDE'S office and an explanation  
24 of the services that office offers.  
25          3. The date and time of the taking into custody.  
26          4. The name and telephone number of the agency responsible for the  
27 child.  
28          5. A statement of the reasons for temporary custody of the child.  
29          6. A statement that the child must be returned within seventy-two  
30 hours excluding Saturdays, Sundays and holidays unless a dependency petition  
31 is filed and a statement that a child in temporary custody for examination  
32 pursuant to section 8-821, subsection B, paragraph 2 must be returned within  
33 twelve hours unless abuse or neglect is diagnosed.  
34          7. One of the following:  
35           (a) If a dependency petition has not been filed or if the information  
36 prescribed in subdivision (b) is not available, a statement that if a  
37 dependency petition is filed, the parent or guardian will be provided a  
38 written notice no later than twenty-four hours after the petition is filed  
39 that contains the information prescribed in subdivision (b).  
40           (b) In all other cases, the date, time and place of the preliminary  
41 protective hearing to be held pursuant to section 8-824 and the requirements  
42 of subsection D of this section.  
43          8. A statement of the right of the parent or guardian to counsel and  
44 that counsel will be appointed pursuant to section 8-221 through the juvenile  
45 court if a dependency petition is filed and the person is indigent.

1           9. Information regarding the ability of the person about whom the  
2 report was made to provide a verbal, telephonic or written response to the  
3 allegations. A verbal response shall be included in the written report of  
4 the investigation. A written response, including any documentation, shall be  
5 included in the case file. ~~The response shall be provided to the removal  
6 review team if the response is made before the team considers the removal.~~

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

9           11. A statement that the parent or guardian must immediately provide to  
10 the department the names, THE type of relationship and all available  
11 information necessary to locate persons WHO ARE related to the child or who  
12 have a significant relationship with the child. If there is not sufficient  
13 information available to locate a relative or person with a significant  
14 relationship with the child, the parent shall inform the department of this  
15 fact. If the parent or guardian obtains information regarding the existence  
16 or location of a relative or person with a significant relationship with the  
17 child, the parent or guardian shall immediately provide that information to  
18 the department.

19           12. A statement that the parent or guardian must be prepared to provide  
20 to the court at the preliminary protective hearing the names, THE type of  
21 relationship and all available information necessary to locate persons WHO  
22 ARE related to the child or who have a significant relationship with the  
23 child.

24           C. The protective services worker shall provide the parent or guardian  
25 with the notice even if the parent or guardian refuses to sign the  
26 acknowledgment.

27           D. Immediately before the time of the preliminary protective hearing,  
28 the persons described in section 8-824, subsection B shall meet and attempt  
29 to reach an agreement about placement of the child, services to be provided  
30 to the child, parent or guardian and visitation of the child. The parties  
31 shall meet with their counsel, if any, before this meeting. Consideration  
32 shall be given to the availability of reasonable services to the parent or  
33 guardian and the child's health and safety shall be a paramount concern. The  
34 persons described in section 8-824, subsection C may attend the meeting to  
35 reach an agreement.

36           E. If a dependency petition is filed by the department, the child  
37 protective services worker is responsible for delivering the notice of the  
38 preliminary protective hearing prescribed in subsection B, paragraph 7 of  
39 this section to the parent or guardian. In all other cases, the person who  
40 files the dependency petition is responsible for delivery of this notice to  
41 the parent or guardian. If the location of the parent or guardian is  
42 unknown, the person who is responsible for serving this notice shall make  
43 reasonable efforts to locate and notify the parent or guardian.

44           Sec. 8. Section 8-824, Arizona Revised Statutes, is amended to read:

45           8-824. Preliminary protective hearing; probable cause;  
46                           appointment of counsel

1           A. The court shall hold a preliminary protective hearing to review the  
2 taking into temporary custody of a child pursuant to section 8-821 not fewer  
3 than five days nor more than seven days after the child is taken into  
4 custody, excluding Saturdays, Sundays and holidays. If clearly necessary to  
5 prevent abuse or neglect, to preserve the rights of a party or for other good  
6 cause shown, the court may grant one continuance that does not exceed five  
7 days.

8           B. The following persons shall be present at the preliminary  
9 protective hearing:

- 10           1. The child's parents or guardian, unless they cannot be located or  
11 they fail to appear in response to the notice.  
12           2. Counsel for the parents if one has been requested or retained.  
13           3. The child's guardian ad litem or attorney.  
14           4. The protective services worker.  
15           5. Counsel for the protective services worker.

16           C. If the court finds that it is in the best interests of the child,  
17 the court may allow the following to be present at the preliminary protective  
18 hearing:

- 19           1. The child.  
20           2. Any relative or other interested person with whom the child is or  
21 might be placed as described in section 8-845, subsection A.  
22           3. Witnesses called by the parties.  
23           4. An advocate or interested person as requested by the parent or  
24 guardian.  
25           5. Other persons who have knowledge of or an interest in the welfare  
26 of the child.

27           D. At the hearing, the court shall advise the parent or guardian of  
28 the following rights:

- 29           1. The right to counsel, including appointed counsel if the parent or  
30 guardian is indigent.  
31           2. The right to cross-examine all witnesses who are called to testify  
32 against the parent or guardian.  
33           3. The right to trial by court on the allegations in the petition.  
34           4. The right to use the process of the court to compel the attendance  
35 of witnesses.

36           E. At the hearing, the court:

- 37           1. Shall receive a report of any agreement reached pursuant to section  
38 8-823, subsection D. The report may be made orally.  
39           2. Shall provide an opportunity for the child's parent or guardian, if  
40 present, and any other person who has relevant knowledge, to provide relevant  
41 testimony.  
42           3. May limit testimony and evidence that is beyond the scope of the  
43 removal of the child, the child's need for continued protection, placement,  
44 visitation and services to be provided to the child and family.

1           4. May take into consideration as a mitigating factor the  
2 participation of the parent or guardian in the healthy families program  
3 established by section 8-701.

4           5. Shall take into consideration as a mitigating factor the  
5 availability of reasonable services to the parent or guardian to prevent or  
6 eliminate the need for removal of the child and the effort of the parent or  
7 guardian to obtain and participate in these services.

8           6. Shall inform the child's parent or guardian that the hearing may  
9 result in further proceedings to terminate parental rights.

10          7. Shall order the parent or guardian to provide the court with the  
11 names, the type of relationship and all available information necessary to  
12 locate persons who are related to the child or who have a significant  
13 relationship with the child. If there is not sufficient information  
14 available to locate a relative or person with a significant relationship with  
15 the child, the parent or guardian shall inform the court of this fact. The  
16 court shall further order the parent or guardian to inform the department  
17 immediately if the parent or guardian becomes aware of information related to  
18 the existence or location of a relative or person with a significant  
19 relationship to the child.

20          8. Shall inform the parent that substantially neglecting or wilfully  
21 refusing to remedy the circumstances that cause the child to be in an  
22 out-of-home placement, including refusing to participate in reunification  
23 services, is grounds for termination of parental rights to a child.

24          9. Shall give paramount consideration to the health and safety of the  
25 child.

26          10. Shall determine whether the department is attempting to identify  
27 and assess placement of the child with a grandparent or another member of the  
28 child's extended family including a person who has a significant relationship  
29 with the child.

30          11. Shall inform a foster parent, a preadoptive parent or a member of  
31 the child's extended family with whom the department has placed the child of  
32 the right to be heard in any proceeding to be held with respect to the child.

33          F. The petitioner has the burden of presenting evidence as to whether  
34 there is probable cause to believe that continued temporary custody is  
35 clearly necessary to prevent abuse or neglect pending the hearing on the  
36 dependency petition.

37          G. The department must make reasonable efforts to place a child with  
38 siblings and, if that is not possible, to maintain frequent visitation or  
39 other ongoing contact between all siblings.

40          H. If the child is in the temporary custody of the department, the  
41 department shall submit not later than the day before the hearing a written  
42 report to the court and the parties that states:

43            1. The reasons the child was removed from the parent's or guardian's  
44 custody.

45            2. Any services that have been provided to the child or the child's  
46 parent or guardian to prevent removal.

- 1           3. The need, if any, for continued temporary custody.
- 2           4. The types of service needed to facilitate the return of the child  
3 to the custody of the child's parents or guardian.
- 4           5. If the child is not placed with a grandparent, whether the child  
5 has any relatives or other interested parties as described in section 8-845,  
6 subsection A who may be able and willing to take temporary custody.
- 7           6. Any services that are requested by the parent or guardian but that  
8 are not provided and the reasons the services were not provided.
- 9           7. What efforts the department has made to place siblings together,  
10 and if they are not placed together, the specific reasons why this did not  
11 occur.
- 12           8. If the placement of siblings together was not possible for all or  
13 any of the siblings, efforts the department has made to facilitate  
14 communications among siblings and a proposal for frequent visitation or  
15 contact pursuant to subsection G of this section. If frequent visitation or  
16 contact with siblings is not recommended, the department shall state the  
17 reasons why this would be contrary to the child's or a sibling's safety or  
18 well-being.
- 19           9. A proposal for visitation with the child's parents or guardian and  
20 the results of any visitation that has occurred since the child was removed.  
21 **THE REQUIREMENTS OF THIS PARAGRAPH DO NOT APPLY TO A SPECIFIC PARENT OR**  
22 **GUARDIAN IF THERE IS A COURT ORDER RELATING TO A CRIMINAL CASE THAT PROHIBITS**  
23 **THAT PARENT OR GUARDIAN FROM CONTACT WITH THE CHILD. BEFORE THE DEPARTMENT**  
24 **ALLOWS VISITATION IT MUST FIRST DETERMINE THAT THERE ARE NO COURT ORDERS**  
25 **RELATING TO ANY SUPERIOR COURT CRIMINAL CASE THAT PROHIBIT THE PARENT OR**  
26 **GUARDIAN FROM CONTACT WITH THE CHILD.**
- 27           10. A proposed case plan for services to the family.
- 28           I. The parent or guardian shall state whether the parent or guardian  
29 admits or denies the allegations in the petition filed pursuant to section  
30 8-841. If the parent or guardian admits or does not contest the allegations  
31 in the petition, the court shall determine that the parent or guardian  
32 understands the rights described in subsection D of this section and that the  
33 parent or guardian knowingly, intelligently and voluntarily waives these  
34 rights.
- 35           J. At the hearing, if the child is not returned to the parent or  
36 guardian, the court shall:
- 37           1. Enter orders regarding the placement of the child pending the  
38 determination of the dependency petition and visitation, if any.
- 39           2. If a relative is identified as a possible placement for the child,  
40 notify the relative of the right to be heard in any proceeding to be held  
41 with respect to the child.
- 42           3. Determine if the tasks and services set forth in the case plan are  
43 reasonable and necessary to carry out the case plan.
- 44           Sec. 9. Repeal
- 45           Section 8-828, Arizona Revised Statutes, is repealed.

1           Sec. 10. Section 13-3601, Arizona Revised Statutes, is amended to  
2 read:

3           13-3601. Domestic violence; definition; classification;  
4           sentencing option; arrest and procedure for  
5           violation; weapon seizure

6           A. "Domestic violence" means any act that is a dangerous crime against  
7 children as defined in section 13-705 or an offense prescribed in section  
8 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204,  
9 13-1302, 13-1303, 13-1304, 13-1406, 13-1502, 13-1503, 13-1504, 13-1602 or  
10 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section  
11 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A,  
12 paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019,  
13 13-3601.02 or 13-3623, if any of the following applies:

14           1. The relationship between the victim and the defendant is one of  
15 marriage or former marriage or of persons residing or having resided in the  
16 same household.

17           2. The victim and the defendant have a child in common.

18           3. The victim or the defendant is pregnant by the other party.

19           4. The victim is related to the defendant or the defendant's spouse by  
20 blood or court order as a parent, grandparent, child, grandchild, brother or  
21 sister or by marriage as a parent-in-law, grandparent-in-law, stepparent,  
22 step-grandparent, stepchild, step-grandchild, brother-in-law or  
23 sister-in-law.

24           5. The victim is a child who resides or has resided in the same  
25 household as the defendant and is related by blood to a former spouse of the  
26 defendant or to a person who resides or who has resided in the same household  
27 as the defendant.

28           6. The relationship between the victim and the defendant is currently  
29 or was previously a romantic or sexual relationship. The following factors  
30 may be considered in determining whether the relationship between the victim  
31 and the defendant is currently or was previously a romantic or sexual  
32 relationship:

33           (a) The type of relationship.

34           (b) The length of the relationship.

35           (c) The frequency of the interaction between the victim and the  
36 defendant.

37           (d) If the relationship has terminated, the length of time since the  
38 termination.

39           B. A peace officer, with or without a warrant, may arrest a person if  
40 the officer has probable cause to believe that domestic violence has been  
41 committed and the officer has probable cause to believe that the person to be  
42 arrested has committed the offense, whether the offense is a felony or a  
43 misdemeanor and whether the offense was committed within or without the  
44 presence of the peace officer. In cases of domestic violence involving the  
45 infliction of physical injury or involving the discharge, use or threatening  
46 exhibition of a deadly weapon or dangerous instrument, the peace officer

1 shall arrest a person, with or without a warrant, if the officer has probable  
2 cause to believe that the offense has been committed and the officer has  
3 probable cause to believe that the person to be arrested has committed the  
4 offense, whether the offense was committed within or without the presence of  
5 the peace officer, unless the officer has reasonable grounds to believe that  
6 the circumstances at the time are such that the victim will be protected from  
7 further injury. Failure to make an arrest does not give rise to civil  
8 liability except pursuant to section 12-820.02. In order to arrest both  
9 parties, the peace officer shall have probable cause to believe that both  
10 parties independently have committed an act of domestic violence. An act of  
11 self-defense that is justified under chapter 4 of this title is not deemed to  
12 be an act of domestic violence. The release procedures available under  
13 section 13-3883, subsection A, paragraph 4 and section 13-3903 are not  
14 applicable to arrests made pursuant to this subsection.

15 C. A peace officer may question the persons who are present to  
16 determine if a firearm is present on the premises. On learning or observing  
17 that a firearm is present on the premises, the peace officer may temporarily  
18 seize the firearm if the firearm is in plain view or was found pursuant to a  
19 consent to search and if the officer reasonably believes that the firearm  
20 would expose the victim or another person in the household to a risk of  
21 serious bodily injury or death. A firearm that is owned or possessed by the  
22 victim shall not be seized unless there is probable cause to believe that  
23 both parties independently have committed an act of domestic violence.

24 D. If a firearm is seized pursuant to subsection C of this section,  
25 the peace officer shall give the owner or possessor of the firearm a receipt  
26 for each seized firearm. The receipt shall indicate the identification or  
27 serial number or other identifying characteristic of each seized firearm.  
28 Each seized firearm shall be held for at least seventy-two hours by the law  
29 enforcement agency that seized the firearm.

30 E. If a firearm is seized pursuant to subsection C of this section,  
31 the victim shall be notified by a peace officer before the firearm is  
32 released from temporary custody.

33 F. If there is reasonable cause to believe that returning a firearm to  
34 the owner or possessor may endanger the victim, the person who reported the  
35 assault or threat or another person in the household, the prosecutor shall  
36 file a notice of intent to retain the firearm in the appropriate superior,  
37 justice or municipal court. The prosecutor shall serve notice on the owner  
38 or possessor of the firearm by certified mail. The notice shall state that  
39 the firearm will be retained for not more than six months following the date  
40 of seizure. On receipt of the notice, the owner or possessor may request a  
41 hearing for the return of the firearm, to dispute the grounds for seizure or  
42 to request an earlier return date. The court shall hold the hearing within  
43 ten days after receiving the owner's or possessor's request for a hearing.  
44 At the hearing, unless the court determines that the return of the firearm  
45 may endanger the victim, the person who reported the assault or threat or

1 another person in the household, the court shall order the return of the  
2 firearm to the owner or possessor.

3 G. A peace officer is not liable for any act or omission in the good  
4 faith exercise of the officer's duties under subsections C, D, E and F of  
5 this section.

6 H. Each indictment, information, complaint, summons or warrant that is  
7 issued and that involves domestic violence shall state that the offense  
8 involved domestic violence and shall be designated by the letters DV. A  
9 domestic violence charge shall not be dismissed or a domestic violence  
10 conviction shall not be set aside for failure to comply with this subsection.

11 I. A person who is arrested pursuant to subsection B of this section  
12 may be released from custody in accordance with the Arizona rules of criminal  
13 procedure or any other applicable statute. Any order for release, with or  
14 without an appearance bond, shall include pretrial release conditions that  
15 are necessary to provide for the protection of the alleged victim and other  
16 specifically designated persons and may provide for additional conditions  
17 that the court deems appropriate, including participation in any counseling  
18 programs available to the defendant.

19 J. When a peace officer responds to a call alleging that domestic  
20 violence has been or may be committed, the officer shall inform in writing  
21 any alleged or potential victim of the procedures and resources available for  
22 the protection of the victim including:

23 1. An order of protection pursuant to section 13-3602, an injunction  
24 pursuant to section 25-315 and an injunction against harassment pursuant to  
25 section 12-1809.

26 2. The emergency telephone number for the local police agency.

27 3. Telephone numbers for emergency services in the local community.

28 K. A peace officer is not civilly liable for noncompliance with  
29 subsection J of this section.

30 L. If a person is convicted of an offense involving domestic violence  
31 and the victim was pregnant at the time of the commission of the offense, at  
32 the time of sentencing the court shall take into consideration the fact that  
33 the victim was pregnant and may increase the sentence.

34 M. An offense that is included in domestic violence carries the  
35 classification prescribed in the section of this title in which the offense  
36 is classified. If the defendant committed a felony offense listed in  
37 subsection A of this section against a pregnant victim and knew that the  
38 victim was pregnant or if the defendant committed a felony offense causing  
39 physical injury to a pregnant victim and knew that the victim was pregnant,  
40 the maximum sentence otherwise authorized for that violation shall be  
41 increased by up to two years.

42 N. WHEN A PEACE OFFICER RESPONDS TO A CALL ALLEGING THAT DOMESTIC  
43 VIOLENCE HAS BEEN OR MAY BE COMMITTED, THE OFFICER MUST DETERMINE IF A MINOR  
44 IS PRESENT. IF A MINOR IS PRESENT, THE PEACE OFFICER MUST CONDUCT A CHILD  
45 WELFARE CHECK TO DETERMINE IF THE CHILD IS SAFE AND IF THE CHILD MIGHT BE A  
46 VICTIM OF DOMESTIC VIOLENCE OR CHILD ABUSE.

APPROVED BY THE GOVERNOR MAY 9, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2012.