

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HOUSE BILL 2571

AN ACT

AMENDING SECTION 8-807, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT
OF CHILD SAFETY INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-807, Arizona Revised Statutes, is amended to
3 read:

4 8-807. DCS information; public record; use; confidentiality;
5 violation; classification; definitions

6 A. DCS information shall be maintained by the department as required
7 by federal law as a condition of the allocation of federal monies to this
8 state. All exceptions for the public release of DCS information shall be
9 construed as openly as possible under federal law.

10 B. The department, or a person who receives DCS information pursuant
11 to this subsection, shall provide DCS information to a federal agency, a
12 state agency, a tribal agency, a county or municipal agency, a law
13 enforcement agency, a prosecutor, an attorney or a guardian ad litem
14 representing a child victim of crime pursuant to article II, section 2.1,
15 Constitution of Arizona, a school, a community service provider, a contract
16 service provider or any other person that is providing services pursuant to
17 this article or article 9, 10, 11, 12, 13 or 14 of this chapter:

18 1. To meet its duties to provide for the safety, permanency and
19 well-being of a child, provide services to a parent, guardian or custodian or
20 provide services to family members to strengthen the family pursuant to this
21 article or article 9, 10, 11, 12, 13 or 14 of this chapter.

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

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

26 4. To help investigate and prosecute any violation involving domestic
27 violence as defined in section 13-3601 or violent sexual assault as
28 prescribed in section 13-1423.

29 C. The department shall disclose DCS information to a court, a party
30 in a dependency or termination of parental rights proceeding or the party's
31 attorney, the foster care review board or a court appointed special advocate
32 for the purposes of and as prescribed in this title.

33 D. The department shall disclose DCS information to a domestic
34 relations, family or conciliation court if the DCS information is necessary
35 to promote the safety and well-being of children. The court shall notify the
36 parties that it has received the DCS information.

37 E. A person or agent of a person who is the subject of DCS information
38 shall have access to DCS information concerning that person.

39 F. The department:

40 1. May provide DCS information to confirm, clarify or correct
41 information concerning an allegation or actual instance of child abuse or
42 neglect that has been made public by sources outside the department.

43 2. Shall promptly provide DCS information to the public regarding a
44 case of child abuse, abandonment or neglect that has resulted in a fatality
45 or near fatality as follows:

1 (a) The department shall provide preliminary information including at
2 a minimum:

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

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

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

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

12 (v) Actions taken by the department in response to the fatality or
13 near fatality of the child.

14 (vi) A detailed synopsis of prior reports or cases of abuse,
15 abandonment or neglect involving the child and the current alleged abusive or
16 neglectful parent, guardian or custodian and of the actions taken or
17 determinations made by the department in response to these reports or cases.

18 (b) On request by any person, the department shall promptly provide
19 additional DCS information to the requestor. Before releasing additional DCS
20 information, the department shall promptly notify the county attorney of any
21 decision to release that information, and the county attorney shall promptly
22 inform the department if it believes the release would cause a specific,
23 material harm to a criminal investigation. After consulting with the county
24 attorney, pursuant to subdivision (c) of this paragraph, the department shall
25 produce to the requestor as much additional DCS information as promptly as
26 possible about a case of child abuse, abandonment or neglect that resulted in
27 a fatality or near fatality.

28 (c) On request, the department shall continue to provide DCS
29 information promptly to the public about a fatality or near fatality unless:

30 (i) After consultation with the county attorney, the county attorney
31 demonstrates that release of particular DCS information would cause a
32 specific, material harm to a criminal investigation.

33 (ii) The release would violate subsection A or L of this section or
34 the privacy of victims of crime pursuant to article II, section 2.1,
35 subsection C, Constitution of Arizona.

36 (d) If any person believes that the county attorney has failed to
37 demonstrate that release would cause a specific, material harm to a criminal
38 investigation, that person may file an action in superior court pursuant to
39 title 39, chapter 1, article 2 and subsection J of this section and request
40 the court to review the DCS information in camera and order disclosure.

41 3. May provide DCS information to a person who is conducting bona fide
42 research, the results of which might provide DCS information that is
43 beneficial in improving the department.

44 4. May provide access to DCS information to the parent, guardian or
45 custodian of a child if the DCS information is reasonably necessary to
46 promote the safety, permanency and well-being of the child.

1 G. The department shall disclose DCS information to a county medical
2 examiner or an alternate medical examiner directing an investigation into the
3 circumstances surrounding a death pursuant to section 11-593.

4 H. Access to DCS information in the central registry shall be provided
5 as prescribed in section 8-804.

6 I. To provide oversight of the department, the department shall
7 provide access to DCS information to the following persons, if the DCS
8 information is reasonably necessary for the person to perform the person's
9 official duties:

10 1. Federal or state auditors.

11 2. Persons conducting any accreditation deemed necessary by the
12 department.

13 3. A standing committee of the legislature or a committee appointed by
14 the president of the senate or the speaker of the house of representatives
15 for purposes of conducting investigations related to the legislative
16 oversight of the department. This information shall not be further disclosed
17 unless a court has ordered the disclosure of this information, the
18 information has been disclosed in a public or court record, or the
19 information has been disclosed in the course of a public meeting or court
20 proceeding.

21 4. A legislator who requests DCS information in the regular course of
22 the legislator's duties. **A LEGISLATOR MAY DISCUSS THIS INFORMATION WITH**
23 **ANOTHER LEGISLATOR IF THE OTHER LEGISLATOR HAS SIGNED THE FORM PRESCRIBED IN**
24 **SUBDIVISION (d) OF THIS PARAGRAPH IN REGARD TO THE SPECIFIC FILE THAT WILL BE**
25 **DISCUSSED.** This information shall not be further disclosed unless a court
26 has ordered the disclosure of this information, the information has been
27 disclosed in a public or court record, or the information has been disclosed
28 in the course of a public meeting or court proceeding. To request a file
29 pursuant to this paragraph:

30 (a) The legislator shall submit a written request for DCS information
31 to the presiding officer of the body of which the state legislator is a
32 member. The request shall state the name of the person whose case file is to
33 be reviewed and any other information that will assist the department in
34 locating the file.

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

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

40 (d) The legislator shall sign a form, consistent with the requirements
41 of this paragraph and paragraph 3 of this subsection, before reviewing the
42 file, that outlines the confidentiality laws governing department files and
43 penalties for further release of the information.

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

1 J. A person who has been denied DCS information regarding a fatality
2 or near fatality caused by abuse, abandonment or neglect pursuant to
3 subsection F, paragraph 2 or subsection L of this section may bring a special
4 action pursuant to section 39-121.02 in the superior court to order the
5 department to release that DCS information. A legislator has standing to
6 bring or to join a special action regarding the release of DCS information or
7 to challenge the redaction of released DCS information. The plaintiff shall
8 provide notice to the county attorney, who has standing and may participate
9 in the action. The court shall review the requested records in camera and
10 order disclosure consistent with subsection A, subsection F, paragraph 2 and
11 subsection L of this section. The court shall take reasonable steps to
12 prevent any clearly unwarranted invasions of privacy and protect the privacy
13 and dignity of victims of crime pursuant to article II, section 2.1,
14 subsection C, Constitution of Arizona.

15 K. The department or a person who is not specifically authorized by
16 this section to obtain DCS information may petition a judge of the superior
17 court to order the department to release DCS information. The plaintiff
18 shall provide notice to the county attorney, who has standing and may
19 participate in the action. The court shall review the requested records in
20 camera and shall balance the rights of the parties who are entitled to
21 confidentiality pursuant to this section against the rights of the parties
22 who are seeking the release of the DCS information. The court may release
23 otherwise confidential DCS information only if the rights of the parties
24 seeking the DCS information and any benefits from releasing the DCS
25 information outweigh the rights of the parties who are entitled to
26 confidentiality and any harm that may result from releasing the DCS
27 information. The court shall take reasonable steps to prevent any clearly
28 unwarranted invasions of privacy and protect the privacy and dignity of
29 victims of crime pursuant to article II, section 2.1, subsection C,
30 Constitution of Arizona.

31 L. Except as provided in subsection M of this section, before it
32 releases records under this section, the department shall take whatever
33 precautions it determines are reasonably necessary to protect the identity
34 and safety of a person who reports child abuse or neglect and to protect any
35 other person if the department believes that disclosure of the DCS
36 information would be likely to endanger the life or safety of any person.
37 The department is not required by this section to disclose DCS information if
38 the department demonstrates that disclosure would cause a specific, material
39 harm to a department investigation. The department is not required by this
40 section to disclose DCS information if, in consultation with the county
41 attorney, the county attorney demonstrates that disclosure would cause a
42 specific, material harm to a criminal investigation.

43 M. A person who is the subject of an unfounded report or complaint
44 made pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this
45 chapter and who believes that the report or complaint was made in bad faith
46 or with malicious intent may petition a judge of the superior court to order

1 the department to release the DCS information. The petition shall
2 specifically set forth reasons supporting the person's belief that the report
3 or complaint was made in bad faith or with malicious intent. The court shall
4 review the DCS information in camera and the person filing the petition shall
5 be allowed to present evidence in support of the petition. If the court
6 determines that there is a reasonable question of fact as to whether the
7 report or complaint was made in bad faith or with malicious intent and that
8 disclosure of the identity of the person making the report or complaint would
9 not be likely to endanger the life or safety of the person making the report
10 or complaint, it shall provide a copy of the DCS information to the person
11 filing the petition and the original DCS information is subject to discovery
12 in a subsequent civil action regarding the making of the report or complaint.

13 N. The department shall provide the person who conducts a forensic
14 medical evaluation with any records the person requests, including social
15 history and family history regarding the child, the child's siblings and the
16 child's parents or guardians.

17 O. The department shall provide DCS information on request to a
18 prospective adoptive parent, foster parent or guardian, if the information
19 concerns a child the prospective adoptive parent, foster parent or guardian
20 seeks to adopt or provide care for.

21 P. If the department receives information that is confidential by law,
22 the department shall maintain the confidentiality of the information as
23 prescribed in the applicable law.

24 Q. A person may authorize the release of DCS information about the
25 person but may not waive the confidentiality of DCS information concerning
26 any other person.

27 R. The department may provide a summary of the outcome of a department
28 investigation to the person who reported the suspected child abuse or
29 neglect.

30 S. The department shall adopt rules to facilitate the accessibility of
31 DCS information.

32 T. The department may charge a fee for copying costs required to
33 prepare DCS information for release pursuant to this section.

34 U. A person who violates this section is guilty of a class 2
35 misdemeanor.

36 V. For the purposes of this section:

37 1. "DCS information" includes all information the department gathers
38 during the course of an investigation conducted under this chapter from the
39 time a file is opened and until it is closed. DCS information does not
40 include information that is contained in child welfare agency licensing
41 records.

42 2. "Near fatality" means an act that, as certified by a physician,
43 including the child's treating physician, places a child in serious or
44 critical condition.