

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

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

1 process. The child shall remain in the current placement pending the outcome
2 of the conflict resolution process.

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

4 8-801. Definitions

5 In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

31 8-807. CPS information; public record; use; confidentiality;
32 violation; classification; definitions

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

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

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

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

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

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

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

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

19 F. The department:

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

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

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

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

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

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

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

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

38 (b) On request by any person, the department shall promptly provide
39 additional CPS information to the requestor. Before releasing additional CPS
40 information, the department shall promptly notify the county attorney of any
41 decision to release that information, and the county attorney shall promptly
42 inform the department if it believes the release would cause a specific,
43 material harm to a criminal investigation. After consulting with the county
44 attorney, pursuant to subdivision (c) of this paragraph, the department shall
45 produce to the requestor as much additional CPS information as promptly as

1 possible about a case of child abuse, abandonment or neglect that resulted in
2 a fatality or near fatality.

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

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

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

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

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

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

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

24 H. To provide oversight of child protective services, the department
25 shall provide access to CPS information to the following persons, if the CPS
26 information is reasonably necessary for the person to perform the person's
27 official duties:

28 1. Federal or state auditors.

29 2. Persons conducting any accreditation deemed necessary by the
30 department.

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

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

1 (a) The legislator shall submit a written request for CPS information
2 to the presiding officer of the body of which the state legislator is a
3 member. The request shall state the name of the person whose case file is to
4 be reviewed and any other information that will assist the department in
5 locating the file.

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

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

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

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

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

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

1 victims of crime pursuant to article II, section 2.1, subsection C,
2 Constitution of Arizona.

3 K. Except as provided in subsection L of this section, before it
4 releases records under this section, the department shall take whatever
5 precautions it determines are reasonably necessary to protect the identity
6 and safety of a person who reports child abuse or neglect and to protect any
7 other person if the department believes that disclosure of the CPS
8 information would be likely to endanger the life or safety of any person.
9 The department is not required by this section to disclose CPS information if
10 the department demonstrates that disclosure would cause a specific, material
11 harm to a child protective services investigation. The department is not
12 required by this section to disclose CPS information if, in consultation with
13 the county attorney, the county attorney demonstrates that disclosure would
14 cause a specific, material harm to a criminal investigation.

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

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

35 N. The department shall provide CPS information on request to a
36 prospective adoptive parent, foster parent or guardian, if the information
37 concerns a child the prospective adoptive parent, foster parent or guardian
38 seeks to adopt or provide care for.

39 O. If the department receives information that is confidential by law,
40 the department shall maintain the confidentiality of the information as
41 prescribed in the applicable law.

42 P. A person may authorize the release of CPS information about the
43 person but may not waive the confidentiality of CPS information concerning
44 any other person.

1 Q. The department may provide a summary of the outcome of a child
2 protective services investigation to the person who reported the suspected
3 child abuse or neglect.

4 R. The department shall adopt rules to facilitate the accessibility of
5 CPS information.

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

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

10 U. For the purposes of this section:

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

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

19 Sec. 4. Section 8-813, Arizona Revised Statutes, is amended to read:
20 **8-813. Preplacement investigation; medical examination;**
21 **disposition**

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

23 1. The division or a licensed child welfare agency shall conduct an
24 investigation of the child designed to establish an appropriate plan for
25 placement of the child.

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

27 3. The child may receive such further diagnosis and evaluation as are
28 necessary.

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

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

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

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

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

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

8 8-817. Initial screening and safety assessment and
9 investigation protocols

10 A. The department shall develop, establish and implement initial
11 screening and safety assessment protocols in consultation with the attorney
12 general and statewide with county attorneys, chiefs of police, sheriffs,
13 medical experts, victims' rights advocates, domestic violence victim
14 advocates and mandatory reporters. Any initial screening and safety
15 assessment tools shall be based on sound methodology and shall ensure valid
16 and reliable responses. The department shall establish written policies and
17 procedures to implement the use of the initial screening and safety
18 assessment protocols.

19 B. To ensure thorough investigations of those accused of crimes
20 against children, in each county, the county attorney, in cooperation with
21 the sheriff, the chief law enforcement officer for each municipality in the
22 county and the department shall develop, adopt and implement protocols to
23 guide the conduct of investigations of allegations involving criminal
24 conduct. The protocols shall include:

25 1. The process for notification of receipt of criminal conduct
26 allegations.

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

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

31 4. Procedures for sharing information and standards for the timely
32 disclosure of information.

33 5. Procedures for coordination of screening, response and
34 investigation with other involved professional disciplines and notification
35 of case status and standards for the timely disclosure of related
36 information.

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

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

42 8. Procedures for ~~an~~ annual ~~report~~ **REPORTS** to be transmitted within
43 forty-five days after the end of each fiscal year independently from child
44 protective services and each county attorney to the governor, the speaker of
45 the house of representatives and the president of the senate and a copy of

1 this report to be provided to the secretary of state. EACH AGENCY MUST
2 SUBMIT A SEPARATE REPORT. EACH REPORT MADE PURSUANT TO THIS PARAGRAPH MUST
3 BE INDEPENDENTLY PREPARED AND SUBMITTED WITHOUT ANY INPUT FROM OR
4 COMMUNICATION WITH THE OTHER REPORTING ENTITIES. ~~This~~ EACH report ~~shall be~~
5 IS a public document and shall include:

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

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

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

13 9. Procedures for dispute resolution.

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

20 D. The county attorney and the law enforcement agency shall cooperate
21 with the department pursuant to the investigation protocols adopted in this
22 section.

23 Sec. 6. Section 8-822, Arizona Revised Statutes, is amended to read:
24 8-822. Removal of child from home; review

25 The department shall adopt rules and establish clear policies and
26 procedures, where appropriate, to:

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

29 2. Ensure the immediate notification of the child's parents, guardian
30 or custodian regarding the removal of the child from home, school or child
31 care and the timely interview of the child and the child's parent, guardian
32 or custodian.

33 ~~3. Review each removal of a child that is expected to result in a~~
34 ~~dependency petition to assess options other than continued out of home~~
35 ~~placement including in-home services to the family. Such reviews shall be~~
36 ~~conducted before the dependency petition is filed. The review team shall~~
37 ~~consist of a protective services worker, a worker's supervisor and two~~
38 ~~members of the local foster care review board. If the child has a medical~~
39 ~~need or a chronic illness, the review team shall include the child's~~
40 ~~physician or registered nurse practitioner. If all reasonable efforts to~~
41 ~~reach the child's physician or registered nurse practitioner have been made~~
42 ~~and the physician or registered nurse practitioner is not available, the team~~
43 ~~shall include a physician who is licensed pursuant to title 32, chapter 13 or~~
44 ~~17 or a registered nurse practitioner who is licensed pursuant to title 32,~~
45 ~~chapter 15 and who is familiar with children's health care. If the child~~

1 ~~suffers from a chronic illness, at least one member of the team shall be a~~
2 ~~physician licensed pursuant to title 32, chapter 13 or 17. A child shall not~~
3 ~~be removed unless a majority of the members of the review team agree that~~
4 ~~removal is necessary. If a majority of the members of the review team do not~~
5 ~~agree that removal is necessary, the child shall not be removed or, if the~~
6 ~~child has already been removed, the child shall be returned to the home.~~

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

8 8-823. Notice of taking into temporary custody

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

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

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

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

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

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

29 2. Services that are available to the parent or guardian, including a
30 statement of parental rights and information on how to contact the
31 ~~ombudsman-citizen's aide~~ OMBUDSMAN-CITIZENS AIDE'S office and an explanation
32 of the services that office offers.

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

34 4. The name and telephone number of the agency responsible for the
35 child.

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

37 6. A statement that the child must be returned within seventy-two
38 hours excluding Saturdays, Sundays and holidays unless a dependency petition
39 is filed and a statement that a child in temporary custody for examination
40 pursuant to section 8-821, subsection B, paragraph 2 must be returned within
41 twelve hours unless abuse or neglect is diagnosed.

42 7. One of the following:

43 (a) If a dependency petition has not been filed or if the information
44 prescribed in subdivision (b) is not available, a statement that if a
45 dependency petition is filed, the parent or guardian will be provided a

1 written notice no later than twenty-four hours after the petition is filed
2 that contains the information prescribed in subdivision (b).

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

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

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

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

17 11. A statement that the parent or guardian must immediately provide to
18 the department the names, THE type of relationship and all available
19 information necessary to locate persons WHO ARE related to the child or who
20 have a significant relationship with the child. If there is not sufficient
21 information available to locate a relative or person with a significant
22 relationship with the child, the parent shall inform the department of this
23 fact. If the parent or guardian obtains information regarding the existence
24 or location of a relative or person with a significant relationship with the
25 child, the parent or guardian shall immediately provide that information to
26 the department.

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

32 C. The protective services worker shall provide the parent or guardian
33 with the notice even if the parent or guardian refuses to sign the
34 acknowledgment.

35 D. Immediately before the time of the preliminary protective hearing,
36 the persons described in section 8-824, subsection B shall meet and attempt
37 to reach an agreement about placement of the child, services to be provided
38 to the child, parent or guardian and visitation of the child. The parties
39 shall meet with their counsel, if any, before this meeting. Consideration
40 shall be given to the availability of reasonable services to the parent or
41 guardian and the child's health and safety shall be a paramount concern. The
42 persons described in section 8-824, subsection C may attend the meeting to
43 reach an agreement.

44 E. If a dependency petition is filed by the department, the child
45 protective services worker is responsible for delivering the notice of the

1 preliminary protective hearing prescribed in subsection B, paragraph 7 of
2 this section to the parent or guardian. In all other cases, the person who
3 files the dependency petition is responsible for delivery of this notice to
4 the parent or guardian. If the location of the parent or guardian is
5 unknown, the person who is responsible for serving this notice shall make
6 reasonable efforts to locate and notify the parent or guardian.

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

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

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

17 B. The following persons shall be present at the preliminary
18 protective hearing:

19 1. The child's parents or guardian, unless they cannot be located or
20 they fail to appear in response to the notice.

21 2. Counsel for the parents if one has been requested or retained.

22 3. The child's guardian ad litem or attorney.

23 4. The protective services worker.

24 5. Counsel for the protective services worker.

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

28 1. The child.

29 2. Any relative or other interested person with whom the child is or
30 might be placed as described in section 8-845, subsection A.

31 3. Witnesses called by the parties.

32 4. An advocate or interested person as requested by the parent or
33 guardian.

34 5. Other persons who have knowledge of or an interest in the welfare
35 of the child.

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

38 1. The right to counsel, including appointed counsel if the parent or
39 guardian is indigent.

40 2. The right to cross-examine all witnesses who are called to testify
41 against the parent or guardian.

42 3. The right to trial by court on the allegations in the petition.

43 4. The right to use the process of the court to compel the attendance
44 of witnesses.

1 E. At the hearing, the court:
2 1. Shall receive a report of any agreement reached pursuant to section
3 8-823, subsection D. The report may be made orally.
4 2. Shall provide an opportunity for the child's parent or guardian, if
5 present, and any other person who has relevant knowledge, to provide relevant
6 testimony.
7 3. May limit testimony and evidence that is beyond the scope of the
8 removal of the child, the child's need for continued protection, placement,
9 visitation and services to be provided to the child and family.
10 4. May take into consideration as a mitigating factor the
11 participation of the parent or guardian in the healthy families program
12 established by section 8-701.
13 5. Shall take into consideration as a mitigating factor the
14 availability of reasonable services to the parent or guardian to prevent or
15 eliminate the need for removal of the child and the effort of the parent or
16 guardian to obtain and participate in these services.
17 6. Shall inform the child's parent or guardian that the hearing may
18 result in further proceedings to terminate parental rights.
19 7. Shall order the parent or guardian to provide the court with the
20 names, the type of relationship and all available information necessary to
21 locate persons who are related to the child or who have a significant
22 relationship with the child. If there is not sufficient information
23 available to locate a relative or person with a significant relationship with
24 the child, the parent or guardian shall inform the court of this fact. The
25 court shall further order the parent or guardian to inform the department
26 immediately if the parent or guardian becomes aware of information related to
27 the existence or location of a relative or person with a significant
28 relationship to the child.
29 8. Shall inform the parent that substantially neglecting or wilfully
30 refusing to remedy the circumstances that cause the child to be in an
31 out-of-home placement, including refusing to participate in reunification
32 services, is grounds for termination of parental rights to a child.
33 9. Shall give paramount consideration to the health and safety of the
34 child.
35 10. Shall determine whether the department is attempting to identify
36 and assess placement of the child with a grandparent or another member of the
37 child's extended family including a person who has a significant relationship
38 with the child.
39 11. Shall inform a foster parent, a preadoptive parent or a member of
40 the child's extended family with whom the department has placed the child of
41 the right to be heard in any proceeding to be held with respect to the child.
42 F. The petitioner has the burden of presenting evidence as to whether
43 there is probable cause to believe that continued temporary custody is
44 clearly necessary to prevent abuse or neglect pending the hearing on the
45 dependency petition.

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

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

7 1. The reasons the child was removed from the parent's or guardian's
8 custody.

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

11 3. The need, if any, for continued temporary custody.

12 4. The types of service needed to facilitate the return of the child
13 to the custody of the child's parents or guardian.

14 5. If the child is not placed with a grandparent, whether the child
15 has any relatives or other interested parties as described in section 8-845,
16 subsection A who may be able and willing to take temporary custody.

17 6. Any services that are requested by the parent or guardian but that
18 are not provided and the reasons the services were not provided.

19 7. What efforts the department has made to place siblings together,
20 and if they are not placed together, the specific reasons why this did not
21 occur.

22 8. If the placement of siblings together was not possible for all or
23 any of the siblings, efforts the department has made to facilitate
24 communications among siblings and a proposal for frequent visitation or
25 contact pursuant to subsection G of this section. If frequent visitation or
26 contact with siblings is not recommended, the department shall state the
27 reasons why this would be contrary to the child's or a sibling's safety or
28 well-being.

29 9. A proposal for visitation with the child's parents or guardian and
30 the results of any visitation that has occurred since the child was removed.
31 THE REQUIREMENTS OF THIS PARAGRAPH DO NOT APPLY TO A SPECIFIC PARENT OR
32 GUARDIAN IF THERE IS A COURT ORDER RELATING TO A CRIMINAL CASE THAT PROHIBITS
33 THAT PARENT OR GUARDIAN FROM CONTACT WITH THE CHILD. BEFORE THE DEPARTMENT
34 ALLOWS VISITATION IT MUST FIRST DETERMINE THAT THERE ARE NO COURT ORDERS
35 RELATING TO ANY SUPERIOR COURT CRIMINAL CASE THAT PROHIBIT THE PARENT OR
36 GUARDIAN FROM CONTACT WITH THE CHILD.

37 10. A proposed case plan for services to the family.

38 I. The parent or guardian shall state whether the parent or guardian
39 admits or denies the allegations in the petition filed pursuant to section
40 8-841. If the parent or guardian admits or does not contest the allegations
41 in the petition, the court shall determine that the parent or guardian
42 understands the rights described in subsection D of this section and that the
43 parent or guardian knowingly, intelligently and voluntarily waives these
44 rights.

1 J. At the hearing, if the child is not returned to the parent or
2 guardian, the court shall:

3 1. Enter orders regarding the placement of the child pending the
4 determination of the dependency petition and visitation, if any.

5 2. If a relative is identified as a possible placement for the child,
6 notify the relative of the right to be heard in any proceeding to be held
7 with respect to the child.

8 3. Determine if the tasks and services set forth in the case plan are
9 reasonable and necessary to carry out the case plan.

10 Sec. 9. Repeal

11 Section 8-828, Arizona Revised Statutes, is repealed.

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

14 13-3601. Domestic violence; definition; classification;
15 sentencing option; arrest and procedure for
16 violation; weapon seizure

17 A. "Domestic violence" means any act that is a dangerous crime against
18 children as defined in section 13-705 or an offense prescribed in section
19 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204,
20 13-1302, 13-1303, 13-1304, 13-1406, 13-1502, 13-1503, 13-1504, 13-1602 or
21 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section
22 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A,
23 paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019,
24 13-3601.02 or 13-3623, if any of the following applies:

25 1. The relationship between the victim and the defendant is one of
26 marriage or former marriage or of persons residing or having resided in the
27 same household.

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

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

30 4. The victim is related to the defendant or the defendant's spouse by
31 blood or court order as a parent, grandparent, child, grandchild, brother or
32 sister or by marriage as a parent-in-law, grandparent-in-law, stepparent,
33 step-grandparent, stepchild, step-grandchild, brother-in-law or
34 sister-in-law.

35 5. The victim is a child who resides or has resided in the same
36 household as the defendant and is related by blood to a former spouse of the
37 defendant or to a person who resides or who has resided in the same household
38 as the defendant.

39 6. The relationship between the victim and the defendant is currently
40 or was previously a romantic or sexual relationship. The following factors
41 may be considered in determining whether the relationship between the victim
42 and the defendant is currently or was previously a romantic or sexual
43 relationship:

44 (a) The type of relationship.

45 (b) The length of the relationship.

1 (c) The frequency of the interaction between the victim and the
2 defendant.

3 (d) If the relationship has terminated, the length of time since the
4 termination.

5 B. A peace officer, with or without a warrant, may arrest a person if
6 the officer has probable cause to believe that domestic violence has been
7 committed and the officer has probable cause to believe that the person to be
8 arrested has committed the offense, whether the offense is a felony or a
9 misdemeanor and whether the offense was committed within or without the
10 presence of the peace officer. In cases of domestic violence involving the
11 infliction of physical injury or involving the discharge, use or threatening
12 exhibition of a deadly weapon or dangerous instrument, the peace officer
13 shall arrest a person, with or without a warrant, if the officer has probable
14 cause to believe that the offense has been committed and the officer has
15 probable cause to believe that the person to be arrested has committed the
16 offense, whether the offense was committed within or without the presence of
17 the peace officer, unless the officer has reasonable grounds to believe that
18 the circumstances at the time are such that the victim will be protected from
19 further injury. Failure to make an arrest does not give rise to civil
20 liability except pursuant to section 12-820.02. In order to arrest both
21 parties, the peace officer shall have probable cause to believe that both
22 parties independently have committed an act of domestic violence. An act of
23 self-defense that is justified under chapter 4 of this title is not deemed to
24 be an act of domestic violence. The release procedures available under
25 section 13-3883, subsection A, paragraph 4 and section 13-3903 are not
26 applicable to arrests made pursuant to this subsection.

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

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

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

1 F. If there is reasonable cause to believe that returning a firearm to
2 the owner or possessor may endanger the victim, the person who reported the
3 assault or threat or another person in the household, the prosecutor shall
4 file a notice of intent to retain the firearm in the appropriate superior,
5 justice or municipal court. The prosecutor shall serve notice on the owner
6 or possessor of the firearm by certified mail. The notice shall state that
7 the firearm will be retained for not more than six months following the date
8 of seizure. On receipt of the notice, the owner or possessor may request a
9 hearing for the return of the firearm, to dispute the grounds for seizure or
10 to request an earlier return date. The court shall hold the hearing within
11 ten days after receiving the owner's or possessor's request for a hearing.
12 At the hearing, unless the court determines that the return of the firearm
13 may endanger the victim, the person who reported the assault or threat or
14 another person in the household, the court shall order the return of the
15 firearm to the owner or possessor.

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

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

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

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

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

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

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

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

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

5 M. An offense that is included in domestic violence carries the
6 classification prescribed in the section of this title in which the offense
7 is classified. If the defendant committed a felony offense listed in
8 subsection A of this section against a pregnant victim and knew that the
9 victim was pregnant or if the defendant committed a felony offense causing
10 physical injury to a pregnant victim and knew that the victim was pregnant,
11 the maximum sentence otherwise authorized for that violation shall be
12 increased by up to two years.

13 N. WHEN A PEACE OFFICER RESPONDS TO A CALL ALLEGING THAT DOMESTIC
14 VIOLENCE HAS BEEN OR MAY BE COMMITTED, THE OFFICER MUST DETERMINE IF A MINOR
15 IS PRESENT. IF A MINOR IS PRESENT, THE PEACE OFFICER MUST CONDUCT A CHILD
16 WELFARE CHECK TO DETERMINE IF THE CHILD IS SAFE AND IF THE CHILD MIGHT BE A
17 VICTIM OF DOMESTIC VIOLENCE OR CHILD ABUSE.