

REFERENCE TITLE: **residential care institutions; children**

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

SB 1247

Introduced by
Senators Brophy McGee: Carter

AN ACT

AMENDING SECTIONS 8-804, 36-424 AND 41-619.57, ARIZONA REVISED STATUTES;
RELATING TO CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-804, Arizona Revised Statutes, is amended to
3 read:

4 **8-804. Central registry: notification**

5 A. The department shall maintain a central registry of reports of
6 child abuse and neglect that are substantiated and the outcome of the
7 investigation of these reports made under this article. A finding made by
8 a court pursuant to section 8-844, subsection C that a child is dependent
9 based on an allegation of abuse or neglect shall be recorded as a
10 substantiated finding of abuse or neglect. The department shall
11 incorporate duplicate reports on the same incident in the original report
12 and shall not classify duplicate reports as new reports.

13 B. The department shall conduct central registry background checks
14 and shall use the information contained in the central registry only for
15 the following purposes:

16 1. As a factor to determine qualifications for foster home
17 licensing, adoptive parent certification, individuals who apply for child
18 welfare agency licensing, child care home certification, registration of
19 unregulated child care homes with the child care resource and referral
20 system, and home and community based services certification for services
21 to children or vulnerable adults.

22 2. As a factor to determine qualifications for persons who are
23 employed or who are applying for employment with this state in positions
24 that provide direct service to children or vulnerable adults.

25 3. As a factor to determine qualifications for individuals who are
26 employed or who are applying for employment with a child welfare agency in
27 positions that provide direct service to children or vulnerable adults.

28 4. As a factor to determine qualifications for positions that
29 provide direct service to children or vulnerable adults for:

30 (a) Any person who applies for a contract with this state and that
31 person's employees.

32 (b) All employees of a contractor.

33 (c) A subcontractor of a contractor and the subcontractor's
34 employees.

35 (d) Prospective employees of the contractor or subcontractor at the
36 request of the prospective employer.

37 5. ~~Beginning August 1, 2013,~~ To provide information to licensees
38 that do not contract with this state regarding persons who are employed or
39 seeking employment to provide direct services to children pursuant to
40 title 36, chapter 7.1.

41 6. To identify and review reports concerning individual children
42 and families, in order to facilitate the assessment of safety and risk.

43 7. To determine the nature and scope of child abuse and neglect in
44 this state and to provide statewide statistical and demographic
45 information concerning trends in child abuse and neglect.

1 8. To allow comparisons of this state's statistical data with
2 national data.

3 9. To comply with section 8-804.01, subsection B.

4 10. TO PROVIDE INFORMATION TO LICENSEES THAT DO NOT CONTRACT WITH
5 THIS STATE REGARDING PERSONS WHO ARE EMPLOYED OR SEEKING EMPLOYMENT TO
6 PROVIDE DIRECT SERVICES TO CHILDREN IN A LICENSED RESIDENTIAL CARE
7 INSTITUTION.

8 C. ~~Beginning August 1, 2013~~, Licensees that do not contract with
9 the state and that employ persons who provide direct services to children
10 pursuant to title 36, chapter 7.1 must submit to the department of child
11 safety in a manner prescribed by the department of child safety
12 information necessary to conduct central registry background checks. The
13 department of health services shall verify whether licensees, pursuant to
14 title 36, chapter 7.1, have complied with the requirements of this
15 subsection and any rules adopted by the department of health services to
16 implement this subsection.

17 D. BEGINNING ON THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS
18 SECTION, LICENSEES THAT DO NOT CONTRACT WITH THIS STATE AND THAT EMPLOY
19 PERSONS WHO PROVIDE DIRECT SERVICES TO CHILDREN PURSUANT TO TITLE 36,
20 CHAPTER 4 MUST SUBMIT TO THE DEPARTMENT OF CHILD SAFETY IN A MANNER
21 PRESCRIBED BY THE DEPARTMENT OF CHILD SAFETY INFORMATION NECESSARY TO
22 CONDUCT CENTRAL REGISTRY BACKGROUND CHECKS. THE DEPARTMENT OF HEALTH
23 SERVICES SHALL VERIFY WHETHER THE LICENSEES, PURSUANT TO TITLE 36,
24 CHAPTER 4, HAVE COMPLIED WITH THE REQUIREMENTS OF THIS SUBSECTION AND ANY
25 RULES ADOPTED BY THE DEPARTMENT OF HEALTH SERVICES TO IMPLEMENT THIS
26 SUBSECTION.

27 E. If the department of economic security received a report
28 before September 1, 1999 and determined that the report was substantiated,
29 the department of child safety shall maintain the report in the central
30 registry until eighteen years from the child victim's date of birth.

31 F. If the department of economic security or the department of
32 child safety received a report on or after September 1, 1999 and
33 determined that the report was substantiated, the department of child
34 safety shall maintain the report in the central registry for a maximum of
35 twenty-five years after the date of the report. If the department of
36 child safety maintains reports in the central registry for less than
37 twenty-five years, the department shall adopt rules to designate the
38 length of time it must maintain those reports in the central registry.

39 G. The department shall annually purge reports and
40 investigative outcomes received pursuant to the time frames prescribed in
41 subsections E and F of this section.

42 H. Any person who was the subject of a department investigation
43 may request confirmation that the department has purged information about
44 the person pursuant to subsection G of this section. On receipt of
45 this request, the department shall provide the person with written

1 confirmation that the department has no record containing identifying
2 information about that person.

3 ~~H.~~ I. The department shall notify a person, contractor or licensee
4 identified in subsection B, paragraph 4, subdivisions (a), (b) and (c) and
5 subsection B, ~~paragraph~~ PARAGRAPHS 5 AND 10 of this section who is
6 disqualified because of a central registry check conducted pursuant to
7 subsection B of this section that the person may apply to the board of
8 fingerprinting for a central registry exception pursuant to section
9 41-619.57.

10 ~~I.~~ J. Before being employed in a position that provides direct
11 services to children or vulnerable adults pursuant to subsection B,
12 paragraphs 4, ~~and~~ 5 AND 10 or ~~subsection~~ SUBSECTIONS C AND D of this
13 section, employees shall certify, under penalty of perjury, on forms that
14 are provided by the department whether an allegation of abuse or neglect
15 was made against them and was substantiated. The forms are
16 confidential. If this certification does not indicate a current
17 investigation or a substantiated report of abuse or neglect, the employee
18 may provide direct services pending the findings of the central registry
19 check.

20 ~~J.~~ K. A person who is granted a central registry exception
21 pursuant to section 41-619.57 is not entitled to a contract, employment,
22 licensure, certification or other benefit because the person has been
23 granted a central registry exception.

24 ~~K.~~ L. An agency of this state that conducts central registry
25 background checks as a factor to determine qualifications for positions
26 that provide direct services to children or vulnerable adults shall
27 publish a list of disqualifying acts of substantiated abuse or neglect.

28 ~~L.~~ M. An agency of this state that conducts central registry
29 background checks may provide information contained in the central
30 registry on all reports of child abuse and neglect that are substantiated
31 and the outcomes of the investigations of the reports to carry out ~~the~~
32 ~~provisions of~~ this section. Identifying information regarding any person
33 other than the perpetrator may not be released. Information received
34 pursuant to this section may not be further disseminated unless authorized
35 by law or court order.

36 Sec. 2. Section 36-424, Arizona Revised Statutes, is amended to
37 read:

38 36-424. Inspections; suspension or revocation of license;
39 report to board of examiners of nursing care
40 institution administrators

41 A. Subject to the ~~limitation~~ LIMIT prescribed by subsection B of
42 this section, the director shall inspect the premises of the health care
43 institution and investigate the character and other qualifications of the
44 applicant to ascertain whether the applicant and the health care
45 institution are in substantial compliance with the requirements of this

1 chapter and the rules established pursuant to this chapter. The director
2 may prescribe rules regarding department background investigations into an
3 applicant's character and qualifications.

4 B. The director shall accept proof that a health care institution
5 is an accredited hospital or is an accredited health care institution in
6 lieu of all compliance inspections required by this chapter if the
7 director receives a copy of the institution's accreditation report for the
8 licensure period. If the health care institution's accreditation report
9 is not valid for the entire licensure period, the department may conduct a
10 compliance inspection of the health care institution during the time
11 period the department does not have a valid accreditation report for the
12 health care institution. **THE DIRECTOR MAY NOT ACCEPT AN ACCREDITATION**
REPORT IN LIEU OF ANY LICENSURE OR COMPLIANCE INSPECTION OF A RESIDENTIAL
FACILITY PROVIDING BEHAVIORAL HEALTH SERVICES TO CHILDREN.

15 C. On a determination by the director that there is reasonable
16 cause to believe a health care institution is not adhering to the
17 licensing requirements of this chapter, the director and any duly
18 designated employee or agent of the director, including county health
19 representatives and county or municipal fire inspectors, consistent with
20 standard medical practices, may enter on and into the premises of any
21 health care institution that is licensed or required to be licensed
22 pursuant to this chapter at any reasonable time for the purpose of
23 determining the state of compliance with this chapter, the rules adopted
24 pursuant to this chapter and local fire ordinances or rules. Any
25 application for licensure under this chapter constitutes permission for
26 and complete acquiescence in any entry or inspection of the premises
27 during the pendency of the application and, if licensed, during the term
28 of the license. If an inspection reveals that the health care institution
29 is not adhering to the licensing requirements established pursuant to this
30 chapter, the director may take action authorized by this chapter. Any
31 health care institution, including an accredited hospital, whose license
32 has been suspended or revoked in accordance with this section is subject
33 to inspection on application for relicensure or reinstatement of license.

34 D. The director shall immediately report to the board of examiners
35 of nursing care institution administrators information identifying that a
36 nursing care institution administrator's conduct may be grounds for
37 disciplinary action pursuant to section 36-446.07.

38 Sec. 3. Section 41-619.57, Arizona Revised Statutes, is amended to
39 read:

40 41-619.57. Central registry exceptions: expedited review; hearing

41 A. The board shall determine central registry exceptions for each
42 substantiated report pursuant to section 8-804. The board shall determine
43 a central registry exception after an expedited review or after a central
44 registry exception hearing. The board shall conduct an expedited review

1 within twenty days after receiving an application for a central registry
2 exception.

3 B. Within forty-five days after conducting an expedited review, the
4 board shall hold a central registry exception hearing if the board
5 determines that the applicant does not qualify for a central registry
6 exception under an expedited review but is qualified to apply for a
7 central registry exception and the applicant submits an application for a
8 central registry exception within the time limits prescribed by rule.

9 C. When determining whether a person is eligible to receive a
10 central registry exception pursuant to section 8-804, the board shall
11 consider whether the person has shown to the board's satisfaction that the
12 person is successfully rehabilitated and is not a recidivist. Before
13 granting a central registry exception under expedited review, the board
14 shall consider all of the criteria listed in subsection E of this section.

15 D. The following persons shall be present during central registry
16 exception hearings:

- 17 1. The board or its hearing officer.
- 18 2. The person who requested the central registry exception hearing.
- 19 The person may be accompanied by a representative at the hearing.

20 E. The board may grant a central registry exception at a hearing if
21 the person shows to the board's satisfaction that the person is
22 successfully rehabilitated and is not a recidivist. The board may
23 consider the person's criminal record in determining if a person has been
24 successfully rehabilitated. If the applicant fails to appear at the
25 hearing without good cause, the board may deny a central registry
26 exception. The board shall grant or deny a central registry exception
27 within eighty days after the central registry exception hearing. Before
28 granting a central registry exception at a hearing the board shall
29 consider all of the following in accordance with board rule:

- 30 1. The extent of the person's central registry records.
- 31 2. The length of time that has elapsed since the abuse or neglect
32 occurred.

- 33 3. The nature of the abuse or neglect.
- 34 4. Any applicable mitigating circumstances.
- 35 5. The degree to which the person participated in the abuse or
36 neglect.

- 37 6. The extent of the person's rehabilitation, including:
 - 38 (a) Evidence of positive action to change the person's behavior,
39 such as completion of counseling or a drug treatment, domestic violence or
40 parenting program.

- 41 (b) Personal references attesting to the person's rehabilitation.

42 F. If the board grants a central registry exception to a person,
43 the board shall notify the department of child safety, the department of
44 economic security or the department of health services, as appropriate, in
45 writing.

1 G. A person who is granted a central registry exception is not
2 entitled to have the person's report and investigation outcome purged from
3 the central registry except as required pursuant to section 8-804,
4 subsections ~~F and~~ G AND H.

5 H. Pending the outcome of a central registry exception
6 determination, a central registry exception applicant may not provide
7 direct services to children pursuant to title 36, chapter 7.1.

8 I. The board is exempt from chapter 6, article 10 of this title.

9 Sec. 4. Rulemaking; department of health services

10 The department of health services shall adopt rules requiring
11 employees and personnel of residential facilities providing behavioral
12 health services to children to report any abuse or neglect pursuant to
13 section 13-3620, Arizona Revised Statutes.