

House Engrossed Senate Bill

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

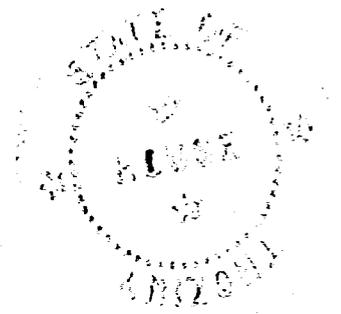
CHAPTER 191

SENATE BILL 1022

AN ACT

AMENDING SECTIONS 8-807 AND 8-811, 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 8-807, Arizona Revised Statutes, is amended to
3 read:

4 8-807. Right of privacy; records and reports; confidentiality;
5 exceptions; access; violation; classification;
6 definitions

7 A. A person who is the subject of an investigation under this article,
8 the alleged victim and the alleged victim's siblings, parents or guardians
9 have a right of privacy that is established to protect the interests of the
10 family and its individual members and that may not be directly or indirectly
11 waived by another person who is a subject of the investigation.

12 B. Department records on specific cases of child abuse and neglect are
13 confidential. Except as prescribed by this section, all files, records,
14 reports and other papers compiled in accordance with this article, whether
15 filed in or in possession of the court, the division or a child placement
16 agency or any other agency or association, are confidential and are not
17 available for public inspection.

18 C. The following persons and entities may obtain confidential records
19 pursuant to the requirements of this section:

20 1. Department employees who require this information to perform their
21 official duties.

22 2. Employees of the department of law, a court or a law enforcement
23 agency and a foster care review board if this information is necessary to
24 perform official duties.

25 3. A multidisciplinary case consultation team that the department of
26 economic security uses to review or examine a case of known or suspected
27 child abuse or neglect or to provide services to a child or the child's
28 family.

29 4. A physician or person designated by the physician who:

30 (a) Reviews or examines a known or suspected case of child abuse or
31 neglect or provides services to a child.

32 (b) Has as a patient a child who the physician reasonably suspects is
33 the victim of child abuse or neglect and the physician requires this
34 information to provide a diagnosis, prognosis or treatment for the child.

35 5. A foster parent under contract with this state, a child welfare
36 agency or a custodian with whom a child is placed to permit the foster
37 parent, child welfare agency or custodian to care for a particular child.

38 6. A grand jury.

39 7. The department of education or a particular school district to
40 allow the department of education or a school district to provide services
41 to a particular child.

42 8. Subject to any additional limitations imposed under chapter 1,
43 article 1 of this title, adoptive parents.

1 9. A child who is named in department of economic security records as
2 the victim of child abuse or neglect or that child's guardian ad litem, court
3 appointed special advocate or attorney.

4 10. A person, agency or organization engaged in a bona fide research
5 or evaluation project, but without information identifying individuals named
6 in a record or file, unless all of the following apply:

7 (a) Having that information open for review is essential to the
8 research or evaluation.

9 (b) The director of the department of economic security gives prior
10 written approval.

11 (c) The child named in the record, through the child's representative,
12 gives permission to release the information.

13 11. Federal, state or local government agencies or agencies of a tribal
14 government for official purposes. All information received by a government
15 agency pursuant to this paragraph shall be maintained as confidential, unless
16 the information is pertinent to a criminal prosecution.

17 12. A standing committee of the legislature or a committee appointed
18 by the president of the senate or the speaker of the house of representatives
19 for purposes of conducting investigations related to the legislative
20 oversight of the department of economic security. This information shall not
21 be further disclosed.

22 13. A court, on request of a party, after a finding by a superior court
23 judge that the information is necessary for a determination of an issue
24 before the court. On production of this information, the court shall conduct
25 an in camera review, determine the relevance and necessity of the disclosure
26 and limit the disclosure to legally relevant information under an appropriate
27 order. The department shall provide the information to the court in the
28 manner prescribed in subsection I of this section.

29 14. A person or agency required to perform a preadoption certification
30 investigation pursuant to section 8-105 if the information is needed for that
31 investigation.

32 15. An appropriate state official responsible for administration of
33 child protective services in carrying out that official's functions.

34 16. A legislator who is responsible for oversight of the enabling or
35 appropriating legislation in carrying out these functions. To request a file
36 pursuant to this paragraph:

37 (a) The legislator shall submit a written request for child protective
38 services records to the presiding officer of the body of which the state
39 legislator is a member. The request shall state the name of the person whose
40 case file is to be reviewed and any other information that will assist the
41 department in locating the file. The request shall also include the
42 department's office at which the state legislator wants to review the file.

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

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

4 (d) The state legislator shall sign a form, before reviewing the file,
5 that outlines the confidentiality laws governing child protective services
6 files and penalties for further release of the information.

7 D. A person who is a party in a dependency or termination of parental
8 rights proceeding or the party's attorney may obtain a copy of the child
9 protective services case file. The department is not required to disclose
10 the location of the subject's spouse and children, the identity of the
11 reporting person or the identity of any person providing information and any
12 other person if the department believes that disclosure of the information
13 would be likely to endanger the life or safety of the person. This
14 subsection does not require the department to release records that have
15 previously been released to the person or the person's attorney in the normal
16 course of records distribution in the juvenile court proceeding unless the
17 person demonstrates the necessity of the release. On reasonable notice, the
18 department shall prepare a copy of the case file within a time that allows
19 the person who requests the file time to review it before a juvenile court
20 proceeding.

21 E. A person who is not a party in a dependency or termination of
22 parental rights proceeding and about whom a report has been made may obtain
23 a copy of the child protective services report. The department shall not
24 disclose the identity of the reporting person and the identity of any person
25 providing information.

26 F. A person or entity that is not specifically authorized in
27 subsection C, D or E of this section to obtain information from records may
28 petition a judge of the superior court to order the department to release
29 that information. The court shall balance the rights of the parties entitled
30 to confidentiality pursuant to this section against the rights of the parties
31 seeking release of the information. The potential benefit or harm from
32 releasing the information sought shall be considered. The court may release
33 otherwise confidential information only if the rights of the parties seeking
34 the information and any benefits from releasing the information sought
35 outweigh the rights of the parties entitled to confidentiality and any harm
36 that may result from releasing the information sought. The court may receive
37 evidence and shall make written findings in support of its decision. The
38 court may require the department to submit the requested information to the
39 court for an in camera inspection. If an order for release is deemed proper,
40 the court may restrict the use, disclosure or dissemination of the
41 information sought to protect or minimize harm to any person involved. If
42 the court orders the release of information pursuant to this subsection, it
43 may order the department to release the requested information after the
44 department takes any precautionary measures required under this section. The
45 court shall not authorize the release of initial reports of abuse or neglect

1 or information that compromises the integrity of a department investigation,
2 a judicial proceeding or a civil or criminal investigation.

3 G. Before it releases records under this section, the department shall
4 take whatever precautions it determines are reasonably necessary to protect
5 the identity or safety of a person who reports child abuse or neglect and any
6 other person if the department believes that disclosure of the information
7 would be likely to endanger the life or safety of the person. These measures
8 may include withholding or editing portions of the information contained in
9 the records. The department is not required by this section to disclose
10 information if the disclosure would do any of the following:

11 1. Be likely to endanger the life, safety or physical or emotional
12 well-being of a child.

13 2. Be likely to endanger the life or safety of any other person.

14 3. Compromise the integrity of a protective services or criminal
15 investigation or a judicial proceeding.

16 4. Release information that is protected by the attorney-client
17 privilege.

18 H. The department may charge a reasonable fee for copying costs
19 required to prepare a record for release pursuant to this section. If a
20 person requests records pursuant to subsection C, paragraph 13 or subsection
21 F of this section, the fee is determined by multiplying the department's
22 prevailing rate for copying a page times the sum of the number of pages in
23 the complete unredacted record necessary for the court's in camera review
24 plus the number of pages in the redacted record that is provided to the court
25 for in camera review that contain redactions plus the number of pages
26 released by the court to the person who made the request. If a subsequent
27 person requests a record that has already been redacted, the person may
28 review the record without charge and the department may charge the prevailing
29 rate for copying a page for each page requested by the person.

30 I. If records are requested pursuant to subsection C, paragraph 13 or
31 subsection F of this section, the department shall provide the party who
32 requests the records an index to the categories of information in the
33 records. The department shall only provide to the court records concerning
34 the categories of information from the index as specified by the person who
35 requests the information. The department shall provide the court a redacted
36 and an unredacted copy of the requested portions of the records. The court
37 may order production of any additional portions of the records it deems
38 necessary. The department shall redact all personally identifiable
39 information, attorney-client communications and information as prescribed in
40 subsection K of this section related to the following persons in addition to
41 any other redactions ordered by the court:

42 1. Children.

43 2. Parents.

44 3. Relatives.

45 4. Foster parents.

1 5. Persons or entities with whom children reside.

2 6. Reporting sources.

3 7. Any other person whose life or safety may be endangered by the
4 disclosure.

5 J. The department may publicly disclose findings or information about
6 a case of child abuse or neglect that has resulted in a child fatality or
7 near fatality. Records released pursuant to this subsection shall be
8 redacted as prescribed in subsections I and K of this section, except that
9 the name of the dead child shall be released.

10 K. Except as this information applies to the cause of the abuse or
11 neglect of the child and any actions taken by the department in response to
12 reports of abuse or neglect of the child, this section does not require the
13 disclosure of the substance or content of any psychological, psychiatric,
14 therapeutic, clinical or medical reports or evaluations, or similar
15 materials, pertaining to the child or the child's family.

16 L. Consistent with the requirements of federal law, the department may
17 summarize and disclose information regarding the abuse and neglect of a child
18 or the investigation of and any services related to the abuse and neglect if
19 the department determines that disclosure is not contrary to the best
20 interests of the child, the child's siblings or other children in the
21 household and any of the following factors exists:

22 1. The subject of the report has been charged in an accusatory
23 instrument with committing a crime related to a report maintained by the
24 department in the central registry.

25 2. The department's investigation of the abuse or neglect of the child
26 or the provision of services by the department has been publicly disclosed
27 in a report that is required to be disclosed in the course of the official
28 duties of a law enforcement official, a prosecuting attorney, any other state
29 or local investigative official or a judge of the superior court.

30 3. There has been a prior knowing voluntary public disclosure by an
31 individual concerning a report of child abuse or neglect in which the
32 individual is named as the subject of the report.

33 M. Requests for information made pursuant to subsection L of this
34 section shall specifically identify the case about which information is
35 sought and the facts that support a determination that one of the three
36 factors prescribed in subsection L of this section exists. For requests made
37 pursuant to subsection L of this section only, the following information may
38 be disclosed:

39 1. The determination made by the department on the reports, if any,
40 of abuse or neglect.

41 2. Identification of child protective or other services provided to
42 or any actions taken regarding the child named in the report and the child's
43 family as a result of any report.

44 3. Any actions taken by the department in response to reports of abuse
45 or neglect of the child.

1 N. A person who is the subject of an investigation under this article
2 may request that a hearing or trial relating to the dependency proceeding be
3 open to the public. The court shall order the hearing to be open to the
4 public unless the court determines for good cause that all or part of the
5 hearing or trial should be closed. The court may receive evidence and shall
6 make written findings in support of its decision.

7 O. A person who appeals a finding of abuse or neglect pursuant to
8 section 8-811 may obtain a copy of records that are prepared by the
9 department and that are sent to the office of administrative hearings in
10 connection with the appeal. Before the department sends these records, it
11 shall redact the identity of, or any personally identifiable information
12 related to, the reporting source, the identity of any person whose life may
13 be endangered by the disclosure and any other information related to
14 individuals who are not the subject of the appeal.

15 P. This section does not prevent the department from summarizing the
16 outcome of a child protective services investigation to the person who
17 reported the suspected child abuse or neglect. THE DEPARTMENT SHALL
18 SUMMARIZE THE OUTCOME OF THE INVESTIGATION FOR THE PERSON WHO REPORTED THE
19 SUSPECTED CHILD ABUSE OR NEGLECT IF THAT PERSON IS THE CHILD'S PARENT,
20 GUARDIAN OR CUSTODIAN.

21 Q. The department shall deposit, pursuant to sections 35-146 and
22 35-147, monies collected under this section in the children and family
23 services training program fund established by section 8-503.01.

24 R. A person who is entitled to receive records under this section
25 shall request this information in a manner that shall be prescribed by the
26 department by rule. The rules shall not hinder or delay disclosure and shall
27 be consistent with the requirements of this section.

28 S. If the department receives a request that complies with this
29 section and department rules, it shall provide the requested information
30 after it takes the precautionary measures and collects all fees as prescribed
31 in this section.

32 T. Identifying information released pursuant to this section is
33 confidential and shall not be further released or disclosed to persons or
34 entities that are not entitled to this information under this section and
35 rules adopted under this section.

36 U. Before it adopts a rule under this section the department shall
37 forward a copy of a proposed rule to the appropriate senate and house
38 committees at least thirty days before the department is scheduled to adopt
39 the rule. Each committee shall forward the committee's suggested changes to
40 the director who shall adopt the rule after considering these comments.

41 V. A person shall not disclose, receive, make use of, authorize the
42 use of, knowingly permit the use of or participate or acquiesce in the use
43 of any identifying information that relates to a proceeding brought under
44 this article if that information is taken directly or indirectly from records
45 and files that are compiled under this article unless these items have been

1 released under this section and are used only for those purposes permitted
2 by court order or this section.

3 W. This section does not prohibit persons employed by the court, the
4 division or any agency from conducting the AN investigation or performing
5 other duties pursuant to this title done within the normal course of their
6 employment.

7 X. Before it releases child protective services reports contained in
8 a child welfare agency licensing record, the department shall edit those
9 reports of abuse and neglect within the record by removing personally
10 identifying IDENTIFIABLE information relating to the identity of the person
11 who made the child protective services report of abuse or neglect, the
12 victim, the victim's parents, the person who is the subject of an
13 investigation and a person whose life is endangered by the disclosure.

14 Y. If any part of this section is found to be in conflict with federal
15 requirements prescribed as a condition to the allocation of federal monies
16 to this state, the conflicting part of this section is inoperative solely to
17 the extent of the conflict and the finding does not affect the operation of
18 the remainder of this section.

19 Z. A person who violates this section is guilty of a class 2
20 misdemeanor.

21 AA. For the purposes of this section:

22 ~~1. "Health professional" means a person who is certified or licensed~~
23 ~~pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19,~~
24 ~~19.1, 25, 28 or 29, title 36, chapter 6, article 7 or title 36, chapter 17.~~

25 ~~2. 1. "Near fatality" means an act that as certified by a physician~~
26 ~~places a child in serious or critical condition.~~

27 ~~3. 2. "Personally identifiable information" includes name, address,~~
28 ~~date of birth, social security number, tribal enrollment number, telephone~~
29 ~~or telefacsimile number, driver license number, places of employment or~~
30 ~~school identification or military identification number or any other~~
31 ~~distinguishing characteristic that tends to identify a particular person.~~

32 ~~4. 3. "Records" includes all information the department gathers~~
33 ~~during the course of a child protective services investigation conducted~~
34 ~~under this article from the time a file is opened and until it is closed.~~
35 ~~Records do not include information that is contained in child welfare agency~~
36 ~~licensing records.~~

37 Sec. 2. Section 8-811, Arizona Revised Statutes, is amended to read:
38 8-811. Hearing process; definitions

39 A. The department shall notify a person who is alleged to have abused
40 or neglected a child that the department intends to substantiate the
41 allegation in the central registry pursuant to section 8-804 and of that
42 person's right:

43 1. To receive a copy of the report containing the allegation.

44 2. To a hearing before the entry into the central registry pursuant
45 to section 8-802, subsection C, paragraph 7, subdivision (a).

1 B. The department shall send the notice prescribed in subsection A of
2 this section by first class mail no more than fourteen days after completion
3 of the investigation.

4 C. A request for a hearing on the proposed finding must be received
5 by the department within fourteen days after receipt of the notice.

6 D. The department shall not disclose any information related to the
7 investigation of the allegation except as provided in sections 8-802, 8-807
8 and 13-3620.

9 E. If a request for a hearing is made pursuant to subsection C of this
10 section, the department shall conduct a review before the hearing. The
11 department shall provide an opportunity for the accused person to provide
12 written or verbal information to support the position that the department
13 should not substantiate the allegation. If the department determines that
14 there is no probable cause that the accused person engaged in the alleged
15 conduct, the department shall amend the information or finding in the report
16 and shall notify the person and a hearing shall not be held.

17 F. Notwithstanding section 41-1092.03, the notification prescribed in
18 subsection A of this section shall also state that if the department does not
19 amend the information or finding in the report as prescribed in subsection
20 E of this section within sixty days after it receives the request for a
21 hearing the person has a right to a hearing unless:

22 1. The person is a party in a civil, criminal or administrative
23 proceeding in which the allegations of abuse or neglect are at issue.

24 2. A court or administrative law judge has made findings as to the
25 alleged abuse or neglect.

26 G. If the department does not amend the information or finding in the
27 report as prescribed in subsection E of this section, the department shall
28 notify the office of administrative hearings of the request for a hearing no
29 later than five days after completion of the review. The department shall
30 forward all records, reports and other relevant information with the request
31 for hearing within ten days. The department shall redact the identity of the
32 reporting source before transmitting the information to the office of
33 administrative hearings.

34 H. The office of administrative hearings shall hold a hearing pursuant
35 to title 41, chapter 6, article 10, with the following exceptions:

36 1. A child who is the victim of or a witness to abuse or neglect is
37 not required to testify at the hearing.

38 2. A child's hearsay statement is admissible if the time, content and
39 circumstances of that statement are sufficiently indicative of its
40 reliability.

41 3. The identity of the reporting source of the abuse or neglect shall
42 not be disclosed without the permission of the reporting source.

43 4. The reporting source is not required to testify.

1 5. A written statement from the reporting source may be admitted if
2 the time, content and circumstances of that statement are sufficiently
3 indicative of its reliability.

4 I. On completion of the presentation of evidence the administrative
5 law judge shall determine if probable cause exists to sustain the
6 department's finding that the accused engaged in the alleged conduct. If the
7 administrative law judge determines that probable cause does not exist to
8 sustain the department's finding, the administrative law judge shall order
9 the department to amend the information or finding in the report.

10 J. When the department is requested to verify pursuant to section
11 8-807, if the child protective services central registry contains a
12 substantiated report about a specific person, the department shall determine
13 if the report was taken after January 1, 1998. If the report was taken after
14 January 1, 1998, the department shall notify the requestor of the
15 substantiated finding. If the child protective services report was taken
16 before January 1, 1998, the department shall notify the person of the
17 person's right to request an administrative hearing. The department shall
18 not send this notification if the person was a party in a civil, criminal or
19 administrative proceeding in which the allegations of abuse or neglect were
20 at issue. The provisions of this section shall apply to the person's appeal.

21 K. THE DEPARTMENT SHALL PROVIDE THE PARENT, GUARDIAN OR CUSTODIAN WHO
22 IS THE SUBJECT OF THE INVESTIGATION AND THE PERSON WHO REPORTED THE SUSPECTED
23 CHILD ABUSE OR NEGLECT IF THAT PERSON IS THE CHILD'S PARENT, GUARDIAN OR
24 CUSTODIAN WITH A COPY OF THE OUTCOME OF THE INVESTIGATION AT ONE OF THE
25 FOLLOWING TIMES:

26 1. WHEN THE REPORT IS UNSUBSTANTIATED.

27 2. AFTER THE TIME TO REQUEST A HEARING HAS LAPSED PURSUANT TO
28 SUBSECTION C OF THIS SECTION WITHOUT THE DEPARTMENT RECEIVING A REQUEST FOR
29 A HEARING.

30 3. AFTER A FINAL ADMINISTRATIVE DECISION HAS BEEN MADE PURSUANT TO
31 SECTION 41-1092.08.

32 K. L. For purposes of this section:

33 1. "Amend the finding" means to change the finding from substantiated
34 to unsubstantiated.

35 2. "Amend the information" means to change information identifying the
36 accused of having abused or neglected a child.

37 Sec. 3. Effective date

38 This act is effective from and after September 30, 2002.

~~APPROVED BY THE GOVERNOR MAY 9, 2002.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2002.~~

Passed the House April 29, 20 02

by the following vote: 55 Ayes,

1 Nays, 4 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate January 28, 20 02

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1022

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 7, 2002,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Randall Smart
President of the Senate

Charmine Bell-Dingler
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

7 day of May, 2002,

at 4:30 o'clock P M.

Sandra Gamisey
Secretary to the Governor

Approved this 9 day of

May, 2002,

at 1:37 o'clock P M.

Janice DeHull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of May, 2002

at 3:27 o'clock P M.

Betsy Boylen
Secretary of State