Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 279

HOUSE BILL 2454

AN ACT

AMENDING SECTION 8-807, ARIZONA REVISED STATUTES; RELATING TO CHILD PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

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

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

B. ~~If there is a reasonable need for the CPS information,~~ The department, or a person who receives CPS information pursuant to this subsection, shall provide CPS information to a federal agency, a state agency, a tribal agency, a county or municipal agency, a ~~county attorney~~ LAW ENFORCEMENT AGENCY, A PROSECUTOR, AN ATTORNEY OR A GUARDIAN AD LITEM REPRESENTING A CHILD VICTIM OF CRIME PURSUANT TO ARTICLE II, SECTION 2.1, CONSTITUTION OF ARIZONA, a school, a community service provider, a contract service provider or any other person that is providing services pursuant to this chapter:

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

2. To enforce or prosecute any violation involving child abuse or neglect~~, including provision of the CPS information to a defendant after a criminal charge has been filed~~.

3. TO PROVIDE INFORMATION TO A DEFENDANT AFTER A CRIMINAL CHARGE HAS BEEN FILED AS REQUIRED BY AN ORDER OF THE CRIMINAL COURT.

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

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

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

F. The department:

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

~~2. May provide and, on request, shall provide summary information regarding a fatality or near fatality caused by abuse or neglect.~~

2. SHALL PROMPTLY PROVIDE CPS INFORMATION TO THE PUBLIC REGARDING A CASE OF CHILD ABUSE, ABANDONMENT OR NEGLECT THAT HAS RESULTED IN A FATALITY OR NEAR FATALITY AS FOLLOWS:

(a) THE DEPARTMENT SHALL PROVIDE PRELIMINARY INFORMATION INCLUDING:

(i) THE NAME, AGE AND CITY, TOWN OR GENERAL LOCATION OF RESIDENCE OF THE CHILD WHO HAS SUFFERED A NEAR FATALITY OR FATALITY.

(ii) THE FACT THAT A CHILD SUFFERED A NEAR FATALITY OR FATALITY AS THE RESULT OF ABUSE, ABANDONMENT OR NEGLECT.

(iii) THE NAME, AGE AND CITY, TOWN OR GENERAL LOCATION OF RESIDENCE OF THE ALLEGED PERPETRATOR, IF AVAILABLE.

(iv) WHETHER THERE HAVE BEEN REPORTS, OR ANY CURRENT OR PAST CASES, OF CHILD ABUSE, ABANDONMENT OR NEGLECT INVOLVING THE CHILD AND THE CURRENT ALLEGED ABUSIVE OR NEGLECTFUL PARENT, GUARDIAN OR CUSTODIAN.

(v) ACTIONS TAKEN BY CHILD PROTECTIVE SERVICES IN RESPONSE TO THE FATALITY OR NEAR FATALITY OF THE CHILD.

(b) ON REQUEST BY ANY PERSON, THE DEPARTMENT SHALL PROMPTLY PROVIDE ADDITIONAL CPS INFORMATION TO THE REQUESTOR. BEFORE RELEASING ADDITIONAL CPS INFORMATION, THE DEPARTMENT SHALL PROMPTLY NOTIFY THE COUNTY ATTORNEY OF ANY DECISION TO RELEASE THAT INFORMATION, AND THE COUNTY ATTORNEY SHALL PROMPTLY INFORM THE DEPARTMENT IF IT BELIEVES THE RELEASE WOULD CAUSE A SPECIFIC, MATERIAL HARM TO A CRIMINAL INVESTIGATION. AFTER CONSULTING WITH THE COUNTY ATTORNEY, PURSUANT TO SUBDIVISION (c) OF THIS PARAGRAPH, THE DEPARTMENT SHALL PRODUCE TO THE REQUESTOR AS MUCH ADDITIONAL CPS INFORMATION AS PROMPTLY AS POSSIBLE ABOUT A CASE OF CHILD ABUSE, ABANDONMENT OR NEGLECT THAT RESULTED IN A FATALITY OR NEAR FATALITY.

(c) ON REQUEST, THE DEPARTMENT SHALL CONTINUE TO PROVIDE CPS INFORMATION PROMPTLY TO THE PUBLIC ABOUT A FATALITY OR NEAR FATALITY UNLESS:

(i) AFTER CONSULTATION WITH THE COUNTY ATTORNEY, THE COUNTY ATTORNEY DEMONSTRATES THAT RELEASE OF PARTICULAR CPS INFORMATION WOULD CAUSE A SPECIFIC, MATERIAL HARM TO A CRIMINAL INVESTIGATION.

(ii) THE RELEASE WOULD VIOLATE SUBSECTION A OR K OF THIS SECTION OR THE PRIVACY OF VICTIMS OF CRIME PURSUANT TO ARTICLE II, SECTION 2.1, SUBSECTION C, CONSTITUTION OF ARIZONA.

(d) IF ANY PERSON BELIEVES THAT THE COUNTY ATTORNEY HAS FAILED TO DEMONSTRATE THAT RELEASE WOULD CAUSE A SPECIFIC, MATERIAL HARM TO A CRIMINAL INVESTIGATION, THAT PERSON MAY FILE AN ACTION IN SUPERIOR COURT PURSUANT TO TITLE 39, ARTICLE 2, AND SUBSECTION I OF THIS SECTION AND REQUEST THE COURT TO REVIEW THE CPS INFORMATION IN CAMERA AND ORDER DISCLOSURE.

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

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

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

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

1. Federal or state auditors.

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

3. A standing committee of the legislature or a committee appointed by the president of the senate or the speaker of the house of representatives for purposes of conducting investigations related to the legislative oversight of the department of economic security. This information shall not be further disclosed UNLESS A COURT HAS ORDERED THE DISCLOSURE OF THIS INFORMATION, THE INFORMATION HAS BEEN DISCLOSED IN A PUBLIC OR COURT RECORD, OR THE INFORMATION HAS BEEN DISCLOSED IN THE COURSE OF A PUBLIC MEETING OR COURT PROCEEDING.

4. A legislator who ~~is responsible for oversight of the enabling or appropriating legislation to carry out these functions~~ REQUESTS CPS INFORMATION IN THE REGULAR COURSE OF THE LEGISLATOR'S DUTIES. This information shall not be further disclosed UNLESS A COURT HAS ORDERED THE DISCLOSURE OF THIS INFORMATION, THE INFORMATION HAS BEEN DISCLOSED IN A PUBLIC OR COURT RECORD, OR THE INFORMATION HAS BEEN DISCLOSED IN THE COURSE OF A PUBLIC MEETING OR COURT PROCEEDING. To request a file pursuant to this paragraph:

(a) The legislator shall submit a written request for CPS information to the presiding officer of the body of which the state legislator is a member. The request shall state the name of the person whose case file is to be reviewed and any other information that will assist the department in locating the file. ~~The request shall also include the office of the department at which the legislator wants to review the file.~~

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

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

(d) The legislator shall sign a form, CONSISTENT WITH THE REQUIREMENTS OF THIS PARAGRAPH AND PARAGRAPH 3 OF THIS SUBSECTION, before reviewing the file, that outlines the confidentiality laws governing child protective services files and penalties for further release of the information.

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

~~I. A person who is not specifically authorized by this section to obtain CPS information may petition a judge of the superior court to order~~

~~the department to release that CPS information. The court shall balance the rights of the parties entitled to confidentiality pursuant to this section against the rights of the parties seeking release of the CPS information. The court may release otherwise confidential CPS information only if the rights of the parties seeking the CPS information and any benefits from releasing the CPS information sought outweigh the rights of the parties entitled to confidentiality and any harm that may result from releasing the CPS information sought.~~

I. A PERSON WHO HAS BEEN DENIED CPS INFORMATION REGARDING A FATALITY OR NEAR FATALITY CAUSED BY ABUSE, ABANDONMENT OR NEGLECT PURSUANT TO SUBSECTION F, PARAGRAPH 2 OR SUBSECTION K OF THIS SECTION MAY BRING A SPECIAL ACTION PURSUANT TO SECTION 39-121.02 IN THE SUPERIOR COURT TO ORDER THE DEPARTMENT TO RELEASE THAT CPS INFORMATION. THE PLAINTIFF SHALL PROVIDE NOTICE TO THE COUNTY ATTORNEY, WHO HAS STANDING AND MAY PARTICIPATE IN THE ACTION. THE COURT SHALL REVIEW THE REQUESTED RECORDS IN CAMERA AND ORDER DISCLOSURE CONSISTENT WITH SUBSECTION A, SUBSECTION F, PARAGRAPH 2 AND SUBSECTION K OF THIS SECTION. THE COURT SHALL TAKE REASONABLE STEPS TO PREVENT ANY CLEARLY UNWARRANTED INVASIONS OF PRIVACY AND PROTECT THE PRIVACY AND DIGNITY OF VICTIMS OF CRIME PURSUANT TO ARTICLE II, SECTION 2.1, SUBSECTION C, CONSTITUTION OF ARIZONA.

J. THE DEPARTMENT OR A PERSON WHO IS NOT SPECIFICALLY AUTHORIZED BY THIS SECTION TO OBTAIN CPS INFORMATION MAY PETITION A JUDGE OF THE SUPERIOR COURT TO ORDER THE DEPARTMENT TO RELEASE CPS INFORMATION. THE PLAINTIFF SHALL PROVIDE NOTICE TO THE COUNTY ATTORNEY, WHO HAS STANDING AND MAY PARTICIPATE IN THE ACTION. THE COURT SHALL REVIEW THE REQUESTED RECORDS IN CAMERA AND SHALL BALANCE THE RIGHTS OF THE PARTIES WHO ARE ENTITLED TO CONFIDENTIALITY PURSUANT TO THIS SECTION AGAINST THE RIGHTS OF THE PARTIES WHO ARE SEEKING THE RELEASE OF THE CPS INFORMATION. THE COURT MAY RELEASE OTHERWISE CONFIDENTIAL CPS INFORMATION ONLY IF THE RIGHTS OF THE PARTIES SEEKING THE CPS INFORMATION AND ANY BENEFITS FROM RELEASING THE CPS INFORMATION OUTWEIGH THE RIGHTS OF THE PARTIES WHO ARE ENTITLED TO CONFIDENTIALITY AND ANY HARM THAT MAY RESULT FROM RELEASING THE CPS INFORMATION. THE COURT SHALL TAKE REASONABLE STEPS TO PREVENT ANY CLEARLY UNWARRANTED INVASIONS OF PRIVACY AND PROTECT THE PRIVACY AND DIGNITY OF VICTIMS OF CRIME PURSUANT TO ARTICLE II, SECTION 2.1, SUBSECTION C, CONSTITUTION OF ARIZONA.

~~J.~~ K. Except as provided in subsection ~~K~~ L of this section, before it releases records under this section, the department shall take whatever precautions it determines are reasonably necessary to protect the identity and safety of a person who reports child abuse or neglect and to protect any other person if the department believes that disclosure of the CPS information would be likely to endanger the life or safety of ~~the~~ ANY person. The department is not required by this section to disclose CPS information if the DEPARTMENT DEMONSTRATES THAT disclosure would ~~compromise the integrity of~~ CAUSE A SPECIFIC, MATERIAL HARM TO a child protective services ~~or criminal~~

investigation. THE DEPARTMENT IS NOT REQUIRED BY THIS SECTION TO DISCLOSE CPS INFORMATION IF, IN CONSULTATION WITH THE COUNTY ATTORNEY, THE COUNTY ATTORNEY DEMONSTRATES THAT DISCLOSURE WOULD CAUSE A SPECIFIC, MATERIAL HARM TO A CRIMINAL INVESTIGATION.

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

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

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

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

~~O.~~ P. A person may authorize the release of CPS information about the person but may not waive the confidentiality of CPS information concerning any other person.

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

~~Q.~~ R. The department shall adopt rules to facilitate the accessibility of CPS information.

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

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

~~T.~~ U. For the purposes of this section:

1 1. "CPS information" includes all information the department gathers
2 during the course of a child protective services investigation conducted
3 under this chapter from the time a file is opened and until it is closed.
4 CPS information does not include information that is contained in child
5 welfare agency licensing records.
6 2. "Near fatality" means an act that, as certified by a physician,
7 places a child in serious or critical condition.

APPROVED BY THE GOVERNOR JUNE 24, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 24, 2008.