Senate Engrossed House Bill

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CHAPTER 320

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)

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

Section 1. Section 8-515.05, Arizona Revised Statutes, is amended to read:

8-515.05. Removal of child from foster parent's home; requirements; notification; review

A. Unless a child is removed from a licensed foster parent, excluding a shelter care provider and receiving foster parent, to protect the child from harm or risk of harm, to place a child in a permanent placement, to reunite siblings, to place a child in a kinship foster home, to place a child in the least restrictive setting, to place a child in a therapeutic setting or to place a child in accordance with the Indian child welfare act (~~title~~ 25 United States Code ~~subsection~~ SECTION 1915), the department shall inform the licensed foster parent of the department's intent to remove a child and place the child in another foster care placement. The department shall inform the licensed foster parent of the specific reason for the child's planned removal from the licensed foster parent.

B. If the licensed foster parent disagrees with the removal, the licensed foster parent shall ~~inform~~ NOTIFY the department within twenty-four hours of being informed. If the licensed foster parent disagrees with the plan to remove the child and place the child in another foster home placement, the department shall convene a case conference to review the reasons for the removal. The licensed foster parent and two members of the foster care review board ~~who participate in a removal review team~~ shall participate in the case conference. A child shall not be removed unless a majority of the members ~~of the review team~~ WHO PARTICIPATE IN THE CASE CONFERENCE agree that removal is necessary.

C. The department shall inform the licensed foster parent and the foster care review board of the time, date and location of the case conference to review the planned removal. The case conference shall be held within seventy-two hours ~~of~~ AFTER the licensed foster parent ~~informing~~ NOTIFIES the department that the licensed foster parent disagrees with the planned removal, excluding weekends and holidays. The child shall remain in the current placement pending the outcome of the case conference.

D. If, as a result of the case conference, it is the department's continued intent to move the child pursuant to subsection A and the licensed foster parent continues to disagree and the child:

1. Is in the court ordered physical custody of the licensed foster parent, a foster care review board member shall provide a recommendation to the court regarding the removal of the child before the change of physical custody. The child shall remain in the current placement pending a court order for removal.

2. Is not in the physical custody of the licensed foster parent, the licensed foster parent shall be advised of the department's conflict resolution process. The department shall expedite the conflict resolution

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

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

8-801. Definitions

In this chapter, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. 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. 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 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.

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. 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 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, chapter 1, 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 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.

(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-citizens aide.

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. A legislator has standing to bring or to join a special action regarding the release of CPS information or to challenge the redaction of released 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.

K. Except as provided in subsection 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 any person. The department is not required by this section to disclose CPS information if the department demonstrates that disclosure would cause a specific, material harm to a child protective services 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.

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.

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.

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.

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.

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.

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.

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

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

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

U. For the purposes of this section:

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

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

Sec. 4. Section 8-813, Arizona Revised Statutes, is amended to read:

8-813. Preplacement investigation; medical examination; disposition

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

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

2. The child shall receive a complete medical examination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Procedures for dispute resolution.

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

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

Sec. 6. Section 8-822, Arizona Revised Statutes, is amended to read:

8-822. Removal of child from home; review

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

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

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

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

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

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

8-823. Notice of taking into temporary custody

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

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

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

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

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

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

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

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

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

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

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

7. One of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The child's parents or guardian, unless they cannot be located or they fail to appear in response to the notice.
2. Counsel for the parents if one has been requested or retained.
3. The child's guardian ad litem or attorney.
4. The protective services worker.
5. Counsel for the protective services worker.

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

1. The child.
2. Any relative or other interested person with whom the child is or might be placed as described in section 8-845, subsection A.
3. Witnesses called by the parties.
4. An advocate or interested person as requested by the parent or guardian.
5. Other persons who have knowledge of or an interest in the welfare of the child.

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

1. The right to counsel, including appointed counsel if the parent or guardian is indigent.
2. The right to cross-examine all witnesses who are called to testify against the parent or guardian.
3. The right to trial by court on the allegations in the petition.
4. The right to use the process of the court to compel the attendance of witnesses.

E. At the hearing, the court:

1. Shall receive a report of any agreement reached pursuant to section 8-823, subsection D. The report may be made orally.

2. Shall provide an opportunity for the child's parent or guardian, if present, and any other person who has relevant knowledge, to provide relevant testimony.

3. May limit testimony and evidence that is beyond the scope of the removal of the child, the child's need for continued protection, placement, visitation and services to be provided to the child and family.

4. May take into consideration as a mitigating factor the participation of the parent or guardian in the healthy families program established by section 8-701.

5. Shall take into consideration as a mitigating factor the availability of reasonable services to the parent or guardian to prevent or eliminate the need for removal of the child and the effort of the parent or guardian to obtain and participate in these services.

6. Shall inform the child's parent or guardian that the hearing may result in further proceedings to terminate parental rights.

7. Shall order the parent or guardian to provide the court with the names, the type of relationship and all available information necessary to locate persons who are related to the child or who have a significant relationship with the child. If there is not sufficient information available to locate a relative or person with a significant relationship with the child, the parent or guardian shall inform the court of this fact. The court shall further order the parent or guardian to inform the department immediately if the parent or guardian becomes aware of information related to the existence or location of a relative or person with a significant relationship to the child.

8. Shall inform the parent that substantially neglecting or wilfully refusing to remedy the circumstances that cause the child to be in an out-of-home placement, including refusing to participate in reunification services, is grounds for termination of parental rights to a child.

9. Shall give paramount consideration to the health and safety of the child.

10. Shall determine whether the department is attempting to identify and assess placement of the child with a grandparent or another member of the child's extended family including a person who has a significant relationship with the child.

11. Shall inform a foster parent, a preadoptive parent or a member of the child's extended family with whom the department has placed the child of the right to be heard in any proceeding to be held with respect to the child.

F. The petitioner has the burden of presenting evidence as to whether there is probable cause to believe that continued temporary custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 9. Repeal

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

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

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

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

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

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

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

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

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

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

(a) The type of relationship.

(b) The length of the relationship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED BY THE GOVERNOR MAY 9, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2012.

Passed the House March 6, 2012

by the following vote: 48 Ayes,

9 Nays, 3 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate April 5, 2012

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

_____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary to the Governor

Approved this _____day of

_____

at _____o'clock _____M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this _____ day of _____, 20_____

at _____ o'clock _____M.

_____
Secretary of State

HOUSE CONCURS IN SENATE AMENDMENTS AND FINAL PASSAGE

May 1, 2012,

by the following vote: 58 Ayes,

2 Nays, 0 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

2nd day of May, 2012,

at 8:13 o'clock A M.

Secretary to the Governor

Approved this 9th day of

May, 2012;

at 4:09 o'clock P. M.

Governor of Arizona

H.B. 2794

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 10th day of May, 2012,

at 8:27 o'clock a M.

Secretary of State