

House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-first Legislature
First Regular Session
2013

CHAPTER 4

HOUSE BILL 2067

AN ACT

AMENDING SECTION 8-807, 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. CPS information; public record; use; confidentiality;
5 violation; classification; definitions

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

10 B. The department, or a person who receives CPS information pursuant
11 to this subsection, shall provide CPS information to a federal agency, a
12 state agency, a tribal agency, a county or municipal agency, a law
13 enforcement agency, a prosecutor, an attorney or a guardian ad litem
14 representing a child victim of crime pursuant to article II, section 2.1,
15 Constitution of Arizona, a school, a community service provider, a contract
16 service provider or any other person that is providing services pursuant to
17 this chapter:

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

22 2. To enforce or prosecute any violation involving child abuse or
23 neglect.

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

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

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

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

36 F. The department:

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

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

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

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

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

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

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

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

13 (b) On request by any person, the department shall promptly provide
14 additional CPS information to the requestor. Before releasing additional CPS
15 information, the department shall promptly notify the county attorney of any
16 decision to release that information, and the county attorney shall promptly
17 inform the department if it believes the release would cause a specific,
18 material harm to a criminal investigation. After consulting with the county
19 attorney, pursuant to subdivision (c) of this paragraph, the department shall
20 produce to the requestor as much additional CPS information as promptly as
21 possible about a case of child abuse, abandonment or neglect that resulted in
22 a fatality or near fatality.

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

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

28 (ii) The release would violate subsection A or ~~L~~ of this section or
29 the privacy of victims of crime pursuant to article II, section 2.1,
30 subsection C, Constitution of Arizona.

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

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

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

43 G. THE DEPARTMENT SHALL DISCLOSE CPS INFORMATION TO A COUNTY MEDICAL
44 EXAMINER OR AN ALTERNATE MEDICAL EXAMINER DIRECTING AN INVESTIGATION INTO THE
45 CIRCUMSTANCES SURROUNDING A DEATH PURSUANT TO SECTION 11-593.

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

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

7 1. Federal or state auditors.

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

10 3. A standing committee of the legislature or a committee appointed by
11 the president of the senate or the speaker of the house of representatives
12 for purposes of conducting investigations related to the legislative
13 oversight of the department of economic security. This information shall not
14 be further disclosed unless a court has ordered the disclosure of this
15 information, the information has been disclosed in a public or court record,
16 or the information has been disclosed in the course of a public meeting or
17 court proceeding.

18 4. A legislator who requests CPS information in the regular course of
19 the legislator's duties. This information shall not be further disclosed
20 unless a court has ordered the disclosure of this information, the
21 information has been disclosed in a public or court record, or the
22 information has been disclosed in the course of a public meeting or court
23 proceeding. To request a file pursuant to this paragraph:

24 (a) The legislator shall submit a written request for CPS information
25 to the presiding officer of the body of which the state legislator is a
26 member. The request shall state the name of the person whose case file is to
27 be reviewed and any other information that will assist the department in
28 locating the file.

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

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

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

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

41 ~~I.~~ J. A person who has been denied CPS information regarding a
42 fatality or near fatality caused by abuse, abandonment or neglect pursuant to
43 subsection F, paragraph 2 or subsection ~~K.~~ L of this section may bring a
44 special action pursuant to section 39-121.02 in the superior court to order
45 the department to release that CPS information. A legislator has standing to

1 bring or to join a special action regarding the release of CPS information or
2 to challenge the redaction of released CPS information. The plaintiff shall
3 provide notice to the county attorney, who has standing and may participate
4 in the action. The court shall review the requested records in camera and
5 order disclosure consistent with subsection A, subsection F, paragraph 2 and
6 subsection ~~K~~- L of this section. The court shall take reasonable steps to
7 prevent any clearly unwarranted invasions of privacy and protect the privacy
8 and dignity of victims of crime pursuant to article II, section 2.1,
9 subsection C, Constitution of Arizona.

10 ~~J~~. K. The department or a person who is not specifically authorized
11 by this section to obtain CPS information may petition a judge of the
12 superior court to order the department to release CPS information. The
13 plaintiff shall provide notice to the county attorney, who has standing and
14 may participate in the action. The court shall review the requested records
15 in camera and shall balance the rights of the parties who are entitled to
16 confidentiality pursuant to this section against the rights of the parties
17 who are seeking the release of the CPS information. The court may release
18 otherwise confidential CPS information only if the rights of the parties
19 seeking the CPS information and any benefits from releasing the CPS
20 information outweigh the rights of the parties who are entitled to
21 confidentiality and any harm that may result from releasing the CPS
22 information. The court shall take reasonable steps to prevent any clearly
23 unwarranted invasions of privacy and protect the privacy and dignity of
24 victims of crime pursuant to article II, section 2.1, subsection C,
25 Constitution of Arizona.

26 ~~K~~. L. Except as provided in subsection ~~L~~- M of this section, before
27 it releases records under this section, the department shall take whatever
28 precautions it determines are reasonably necessary to protect the identity
29 and safety of a person who reports child abuse or neglect and to protect any
30 other person if the department believes that disclosure of the CPS
31 information would be likely to endanger the life or safety of any person.
32 The department is not required by this section to disclose CPS information if
33 the department demonstrates that disclosure would cause a specific, material
34 harm to a child protective services investigation. The department is not
35 required by this section to disclose CPS information if, in consultation with
36 the county attorney, the county attorney demonstrates that disclosure would
37 cause a specific, material harm to a criminal investigation.

38 ~~L~~. M. A person who is the subject of an unfounded report or complaint
39 made pursuant to this chapter and who believes that the report or complaint
40 was made in bad faith or with malicious intent may petition a judge of the
41 superior court to order the department to release the CPS information. The
42 petition shall specifically set forth reasons supporting the person's belief
43 that the report or complaint was made in bad faith or with malicious intent.
44 The court shall review the CPS information in camera and the person filing
45 the petition shall be allowed to present evidence in support of the petition.

1 If the court determines that there is a reasonable question of fact as to
2 whether the report or complaint was made in bad faith or with malicious
3 intent and that disclosure of the identity of the person making the report or
4 complaint would not be likely to endanger the life or safety of the person
5 making the report or complaint, it shall provide a copy of the CPS
6 information to the person filing the petition and the original CPS
7 information is subject to discovery in a subsequent civil action regarding
8 the making of the report or complaint.

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

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

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

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

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

26 ~~R.~~ S. The department shall adopt rules to facilitate the
27 accessibility of CPS information.

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

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

32 ~~U.~~ V. For the purposes of this section:

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

38 2. "Near fatality" means an act that, as certified by a physician,
39 including the child's treating physician, places a child in serious or
40 critical condition.

~~APPROVED BY THE GOVERNOR MARCH 21, 2013.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 21, 2013.~~

Passed the House February 11, 2013

Passed the Senate March 11, 2013

by the following vote: 59 Ayes,

by the following vote: 38 Ayes,

0 Nays, 1 Not Voting

0 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

18 day of March, 2013

at 3:00 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 21~~st~~ day of

March

at 3:37 o'clock P M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 21 day of March, 2013

at 4:53 o'clock P M.

[Signature]
Secretary of State