Senate Engrossed House Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

CHAPTER 261

HOUSE BILL 2166

AN ACT

AMENDING SECTIONS 8-471, 8-525, 8-541 AND 8-807, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 4, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-807.01; AMENDING SECTIONS 8-811 AND 13-4434, ARIZONA REVISED STATUTES; RELATING TO DEPARTMENT OF CHILD SAFETY INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-471, Arizona Revised Statutes, is amended to read:

8-471. Office of child welfare investigations; training; responsibilities; annual report

A. The director shall establish the office of child welfare investigations within the department. The director is responsible for the direction, operation and control of the office.

B. The duties of the office include investigating criminal conduct allegations, coordinating with other parts of the department and law enforcement, establishing task forces for the investigation of criminal conduct and other duties as may be assigned by the director.

C. The office shall employ child welfare investigators who have received training to understand law enforcement's role in cases of criminal child abuse or neglect and in social services offered by the department. The office may employ research analysts and peace officers for the purpose of obtaining an originating agency identification number to have direct access to criminal history report information. Each person hired by the office is an employee of the department, is subject to title 41, chapter 4, article 4 and shall comply with the fingerprint requirements of section 8-802.

D. The department, in coordination with the Arizona peace officer standards and training board, shall provide child welfare investigators with training. The training shall be, at a minimum, in the following areas:

1. First responder training on responding to reports of child abuse.

2. Forensic interviewing and processes.

3. Child physical and sexual abuse investigation.

4. The protocols established pursuant to section 8-817.

5. Relevant law enforcement procedures, including the collection and preservation of evidence.

6. A child's constitutional rights as a victim of a crime pursuant to article II, section 2.1, Constitution of Arizona.

7. Impact and intervention practices related to adverse childhood experiences, culturally and linguistically appropriate service delivery, domestic violence, family engagement, communication with special populations and trauma informed responses.

8. Any other training as directed by the director.

E. A child welfare investigator shall:

1. Protect children.

2. Assess, respond to or investigate all criminal conduct allegations, which shall be a priority, but not otherwise exercise the authority of a peace officer.

3. Not interview a child without the prior written consent of the parent, guardian or custodian of the child unless either:

(a) The child initiates contact with the investigator.

(b) The child who is interviewed is the subject of, is the sibling of or is living with the child who is the subject of an abuse or abandonment investigation pursuant to paragraph 4, subdivision (b) of this subsection.

(c) The interview is conducted pursuant to the terms of the protocols established pursuant to section 8-817.

4. After the receipt of any report or information pursuant to paragraph 2 of this subsection, immediately do both of the following:

(a) Notify the appropriate municipal or county law enforcement agency if they have not already been notified.

(b) Make a prompt and thorough investigation of the nature, extent and cause of any condition that would tend to support or refute the report of child abuse or neglect when investigating allegations pursuant to paragraph 2 of this subsection. A criminal conduct allegation shall be investigated with the appropriate municipal or county law enforcement agency according to the protocols established pursuant to section 8-817.

5. Take a child into temporary custody as provided in section 8-821. Law enforcement officers shall cooperate with the department to remove a child from the custody of the child's parents, guardian or custodian pursuant to section 8-821. A child welfare investigator who is responding to or investigating a report containing a criminal conduct allegation shall have the primary responsibility for making the decision whether to take a child into temporary custody.

6. Evaluate conditions created by the parents, guardian or custodian that would support or refute the allegation that the child should be adjudicated dependent. The investigator shall then determine whether any child is in need of child safety services.

7. Identify, promptly obtain and abide by court orders that restrict or deny custody, visitation or contact by a parent or other person in the home with the child and notify appropriate personnel within the department to preclude violations of a court order in the provision of any services.

8. On initial contact with the parent, guardian or custodian of a child who is the subject of an investigation pursuant to this section, provide the parent, guardian or custodian with the allegation received by the department. This paragraph does not require the department to disclose details or information that would compromise an ongoing criminal investigation.

9. Have access to all records and information of the department necessary to carry out this section.

F. Unless a dependency petition is filed, a child shall not remain in temporary custody for a period exceeding seventy-two hours, excluding Saturdays, Sundays and holidays. If a petition is not filed, the child shall be released to the child's parent, guardian or custodian.

G. In conducting an investigation pursuant to this section, if the investigator is made aware that an allegation of abuse or neglect may also have been made in another state, the investigator shall contact the appropriate agency in that state to attempt to determine the outcome of any investigation of that allegation.

H. The office of child welfare investigations shall submit a report by August 15 each year to the governor, the speaker of the house of representatives, the president of the senate and the secretary of state that includes the following information for the most recently completed fiscal year:

1. The number of reports for investigation that involve criminal conduct allegations.

2. The number of joint investigations conducted pursuant to section 8-817.

3. For each case in which a joint investigation did not occur pursuant to section 8-817, the reasons why the joint investigation did not occur.

I. All records gathered or created by the department during an investigation conducted under this section are confidential and shall be protected and released as prescribed in ~~section~~ SECTIONS 8-807 AND 8-807.01, except the department shall not release records if the department determines that the release of these records may compromise an ongoing investigation.

J. Notwithstanding any other law, the office of child welfare investigations is not responsible for conducting the criminal investigation of a criminal conduct allegation.

Sec. 2. Section 8-525, Arizona Revised Statutes, is amended to read:

8-525. Open court proceedings; closure; records

A. Except as otherwise provided pursuant to this section, court proceedings relating to dependent children, permanent guardianship and termination of parental rights are open to the public.

B. At the first hearing in any dependency, permanent guardianship or termination of parental rights proceeding, the court shall ask the parties if there are any reasons the proceeding should be closed. For good cause shown, the court may order any proceeding to be closed to the public. In considering whether to close the proceeding to the public, the court shall consider:

1. Whether doing so is in the child's best interests.

2. Whether an open proceeding would endanger the child's physical or emotional well-being or the safety of any other person.

3. The privacy rights of the child, the child's siblings, parents, guardians and caregivers and any other person whose privacy rights the court determines need protection.

4. Whether all parties have agreed to allow the proceeding to be open.

5. If the child is at least twelve years of age and a party to the proceeding, the child's wishes.

6. Whether an open proceeding could cause specific material harm to a criminal investigation OR PROSECUTION.

C. Subject to the requirements of subsection B of this section and section ~~8-807, subsection F, paragraph 2~~ 8-807.01, a court proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality is open to the public.

D. At the beginning of a hearing that is open to the public, the court shall do the following:

1. Admonish all attendees that they are prohibited from disclosing any information that may identify the child and the child's siblings, parents, guardians and caregivers, and any other person whose identity will be disclosed during the proceeding.

2. Explain contempt of court to all attendees and the possible consequences of violating an order of the court.

E. A person who remains in the court after the admonition pursuant to subsection D of this section must abide by the court's order prohibiting disclosure of that information. The court may find a person who fails to do so in contempt of court.

F. The court may close an open proceeding at any time for good cause shown and after considering the factors prescribed in subsection B of this section.

G. If a proceeding relating to child abuse, abandonment or neglect that has resulted in a fatality or near fatality has been closed by the court, any person may subsequently request that the court reopen a proceeding or a specific hearing to the public or request a transcript be made of any previously closed proceeding. In ruling on this request, the court shall consider the factors prescribed in subsection B of this section. The person who requested the transcript shall pay the cost of the transcript. If the court grants a request for a transcript of any closed proceeding, the court shall redact from a transcript any information that:

1. ~~Is essential to protect~~ PROTECTS the privacy, well-being or safety interests prescribed in subsection B of this section.

2. Protects the identity and safety of a person who reports child abuse or neglect and any other person if the court believes that disclosure of the DCS information would be likely to endanger the life or safety of any person.

3. The court has received that is confidential by law. The court shall maintain the confidentiality of the information as prescribed in the applicable law.

H. Any person may request to inspect court records of a proceeding involving the disclosure of DCS information regarding a case of child abuse, abandonment or neglect that has resulted in a fatality or near fatality. In ruling on this request, the court shall consider the factors prescribed in subsection B of this section. If the court grants the request, the court

shall redact any information subject to the requirements of subsections B and G of this section and section ~~8-807, subsection F, paragraph 2~~ 8-807.01.

Sec. 3. Section 8-541, Arizona Revised Statutes, is amended to read:

8-541. Records; disclosure; exception

A. All files, records, reports and other papers compiled in accord with this article, whether filed in or in possession of the court, a child placement agency or other agency or association, are subject to disclosure pursuant to ~~section~~ SECTIONS 8-807 and 8-807.01.

B. This section does not prohibit persons employed by the court, the division or a licensed child welfare agency from conducting the investigations or performing other duties pursuant to this article and done within the normal course of their employment.

Sec. 4. Section 8-807, Arizona Revised Statutes, is amended to read:

8-807. DCS information; public record; use; confidentiality; violation; classification; definition

A. DCS 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 DCS information shall be construed as openly as possible under federal law.

B. The department, or a person who receives DCS information pursuant to this subsection, shall provide DCS 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 article or article 9, 10, 11, 12, 13 or 14 of this chapter:

1. To meet its duties to provide for the safety~~,~~ AND 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 article or article 9, 10, 11, 12, 13 or 14 of this chapter.

2. To enforce or prosecute any violation involving child abuse or neglect OR TO ASSERT THE RIGHTS OF THE CHILD AS A VICTIM OF A CRIME.

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

4. To help investigate and prosecute any violation involving domestic violence as defined in section 13-3601 or violent sexual assault as prescribed in section 13-1423.

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

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

F. The department MAY PROVIDE:

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

~~2. Shall promptly provide DCS 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 at a minimum:~~

~~(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 the department in response to the fatality, or near fatality of the child.~~

~~(vi) A detailed synopsis of prior reports or cases of abuse, abandonment or neglect involving the child and the current alleged abusive or neglectful parent, guardian or custodian and of the actions taken or determinations made by the department in response to these reports or cases.~~

~~(b) On request by any person, the department shall promptly provide additional DCS information to the requestor. Before releasing additional DCS 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 DCS 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 DCS 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 DCS information would cause a specific, material harm to a criminal investigation.~~

~~(ii) The release would violate subsection A or L 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 J of this section and request the court to review the DCS information in camera and order disclosure.~~

~~3.~~ 2. ~~May provide~~ DCS information to a person who is conducting bona fide research, the results of which might provide DCS information that is beneficial in improving the department.

~~4.~~ 3. ~~May provide~~ Access to DCS information to the parent, guardian or custodian of a child if the DCS information is reasonably necessary to promote the safety, permanency and well-being of the child.

4. DCS INFORMATION IF AN EMPLOYEE OF THE DEPARTMENT HAS A REASONABLE BELIEF THAT EXIGENT CIRCUMSTANCES EXIST. FOR THE PURPOSES OF THIS PARAGRAPH, "EXIGENT CIRCUMSTANCES" MEANS A CONDITION OR SITUATION IN WHICH THE DEATH OF OR SERIOUS INJURY TO A CHILD WILL LIKELY RESULT IN THE NEAR FUTURE WITHOUT IMMEDIATE INTERVENTION.

G. The department shall disclose DCS information to a county medical examiner or an alternate medical examiner directing an investigation into the circumstances surrounding a death pursuant to section 11-593.

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

I. To provide oversight of the department, the department shall provide access to DCS information to the following persons, if the DCS 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. 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 DCS 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 DCS 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 department 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.

6. A HUMAN RIGHTS COMMITTEE ESTABLISHED PURSUANT TO SECTION 41-3801.

J. A person who has been denied DCS information regarding a fatality or near fatality caused by abuse, abandonment or neglect pursuant to ~~subsection F, paragraph 2 or~~ subsection L of this section OR SECTION 8-807.01 may bring a special action pursuant to section 39-121.02 in the superior court to order the department to release that DCS information. A legislator has standing to bring or to join a special action regarding the release of DCS information or to challenge the redaction of released DCS 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~~ SUBSECTIONS A~~, subsection F, paragraph 2~~ and ~~subsection~~ L of this section AND SECTION 8-807.01. 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. The department or a person who is not specifically authorized by this section to obtain DCS information may petition a judge of the superior court to order the department to release DCS information. The plaintiff shall provide notice to the county attorney AND TO THE ATTORNEY AND GUARDIAN AD LITEM FOR THE CHILD, who ~~has~~ HAVE 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 DCS information. The court may release otherwise

1 confidential DCS information only if the rights of the parties seeking the
2 DCS information and any benefits from releasing the DCS information outweigh
3 the rights of the parties who are entitled to confidentiality and any harm
4 that may result from releasing the DCS information. The court shall take
5 reasonable steps to prevent any clearly unwarranted invasions of privacy and
6 protect the privacy and dignity of victims of crime pursuant to article II,
7 section 2.1, subsection C, Constitution of Arizona.
8 L. Except as provided in subsection M of this section, before it
9 releases records under this section OR SECTION 8-807.01, the department shall
10 take whatever precautions it determines are reasonably necessary to protect
11 the identity and safety of a person who reports child abuse or neglect and to
12 protect any other person if the department believes that disclosure of the
13 DCS information would be likely to endanger the life or safety of any person.
14 The department is not required by this section to disclose DCS information if
15 the department demonstrates that disclosure would cause a specific, material
16 harm to a department investigation. The department is not required by this
17 section to disclose DCS information if, in consultation with the county
18 attorney, the county attorney demonstrates that disclosure would cause a
19 specific, material harm to a criminal investigation OR PROSECUTION.
20 M. A person who is the subject of an unfounded report or complaint
21 made pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this
22 chapter and who believes that the report or complaint was made in bad faith
23 or with malicious intent may petition a judge of the superior court to order
24 the department to release the DCS information. The petition shall
25 specifically set forth reasons supporting the person's belief that the report
26 or complaint was made in bad faith or with malicious intent. The court shall
27 review the DCS information in camera and the person filing the petition shall
28 be allowed to present evidence in support of the petition. If the court
29 determines that there is a reasonable question of fact as to whether the
30 report or complaint was made in bad faith or with malicious intent and that
31 disclosure of the identity of the person making the report or complaint would
32 not be likely to endanger the life or safety of the person making the report
33 or complaint, it shall provide a copy of the DCS information to the person
34 filing the petition and the original DCS information is subject to discovery
35 in a subsequent civil action regarding the making of the report or complaint.
36 N. The department shall provide the person who conducts a forensic
37 medical evaluation with any records the person requests, including social
38 history and family history regarding the child, the child's siblings and the
39 child's parents or guardians.
40 O. The department shall provide DCS information on request to a
41 prospective adoptive parent, foster parent or guardian, if the information
42 concerns a child the prospective adoptive parent, foster parent or guardian
43 seeks to adopt or provide care for.

P. 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.

Q. A person may authorize the release of DCS information about the person but may not waive the confidentiality of DCS information concerning any other person.

R. The department may provide a summary of the outcome of a department investigation to the person who reported the suspected child abuse or neglect.

S. The department shall adopt rules to facilitate the accessibility of DCS information.

T. The department may charge a fee for copying costs required to prepare DCS information for release pursuant to this section OR SECTION 8-807.01.

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

V. For the purposes of this section, ~~:~~

~~1.~~ "DCS information" includes all information the department gathers during the course of an investigation conducted under this chapter from the time a file is opened and until it is closed. DCS 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. 5. Title 8, chapter 4, article 8, Arizona Revised Statutes, is amended by adding section 8-807.01, to read:

8-807.01. Incidents involving fatality or near fatality; definition

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

1. THE DEPARTMENT SHALL PROVIDE PRELIMINARY INFORMATION INCLUDING AT A MINIMUM:

(a) IN THE CASE OF A FATALITY, THE NAME OF THE CHILD WHO HAS DIED.

(b) THE AGE, GENDER, COUNTY AND GENERAL LOCATION OF THE RESIDENCE OF THE CHILD WHO HAS SUFFERED A FATALITY OR A NEAR FATALITY.

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

(d) THE NAME, AGE AND CITY, TOWN OR GENERAL LOCATION OF THE RESIDENCE OF THE ALLEGED PERPETRATOR, IF AVAILABLE, UNLESS THE DISCLOSURE WOULD VIOLATE THE PRIVACY OF VICTIMS OF CRIME PURSUANT TO ARTICLE II, SECTION 2.1, CONSTITUTION OF ARIZONA.

(e) WHETHER THERE HAVE BEEN REPORTS, OR ANY CURRENT OR PAST CASES, OF ABUSE, ABANDONMENT OR NEGLECT INVOLVING THE CHILD OR THE ALLEGED PERPETRATOR.

(f) ACTIONS TAKEN BY THE DEPARTMENT IN RESPONSE TO THE FATALITY OR NEAR FATALITY OF THE CHILD.

(g) A DETAILED SYNOPSIS OF PRIOR REPORTS OR CASES OF ABUSE, ABANDONMENT OR NEGLECT INVOLVING THE CHILD OR THE ALLEGED PERPETRATOR AND OF THE ACTIONS TAKEN OR DETERMINATIONS MADE BY THE DEPARTMENT IN RESPONSE TO THESE REPORTS OR CASES.

2. ON REQUEST BY ANY PERSON, THE DEPARTMENT SHALL PROMPTLY PROVIDE ADDITIONAL DCS INFORMATION TO THE REQUESTOR IN A CASE OF CHILD ABUSE, ABANDONMENT OR NEGLECT THAT HAS RESULTED IN A FATALITY OR A NEAR FATALITY. BEFORE RELEASING ADDITIONAL DCS 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 OR PROSECUTION. AFTER CONSULTING WITH THE COUNTY ATTORNEY, PURSUANT TO PARAGRAPH 3 OF THIS SUBSECTION, THE DEPARTMENT SHALL PRODUCE TO THE REQUESTOR AS MUCH ADDITIONAL DCS INFORMATION AS PROMPTLY AS POSSIBLE ABOUT A CASE OF CHILD ABUSE, ABANDONMENT OR NEGLECT THAT RESULTED IN A FATALITY OR NEAR FATALITY.

3. ON REQUEST, THE DEPARTMENT SHALL CONTINUE TO PROVIDE DCS INFORMATION PROMPTLY TO THE PUBLIC ABOUT A FATALITY OR NEAR FATALITY UNLESS:

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

(b) THE RELEASE WOULD VIOLATE SECTION 8-807, SUBSECTION A OR L OR THE PRIVACY OF VICTIMS OF CRIME PURSUANT TO ARTICLE II, SECTION 2.1, CONSTITUTION OF ARIZONA.

4. IF ANY PERSON BELIEVES THAT THE COUNTY ATTORNEY HAS FAILED TO DEMONSTRATE THAT RELEASE WOULD CAUSE A SPECIFIC, MATERIAL HARM TO A CRIMINAL INVESTIGATION OR PROSECUTION, THAT PERSON MAY FILE AN ACTION IN SUPERIOR COURT PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2 AND SECTION 8-807, SUBSECTION J AND REQUEST THE COURT TO REVIEW THE DCS INFORMATION IN CAMERA TO DETERMINE IF DISCLOSURE SHOULD BE ORDERED.

5. WITHIN NINETY DAYS AFTER THE DATE OF THE REPORT FOR INVESTIGATION FOR A CASE INVOLVING A FATALITY OR A NEAR FATALITY, THE DEPARTMENT SHALL PROVIDE TO THE PUBLIC A SUMMARY REPORT THAT:

(a) MAY INCLUDE ANY ACTIONS TAKEN BY THE DEPARTMENT IN RESPONSE TO THE CASE, ANY CHANGES IN POLICIES OR PRACTICES THAT HAVE BEEN MADE TO ADDRESS ANY ISSUES RAISED IN THE REVIEW OF THE CASE AND ANY RECOMMENDATIONS FOR FURTHER CHANGES IN POLICIES, PRACTICES, RULES OR STATUTES TO ADDRESS THOSE ISSUES.

(b) SHALL INCLUDE THE INFORMATION PRESCRIBED IN SUBSECTION B OF THIS SECTION IF THE CHILD WAS RESIDING IN THE CHILD'S HOME AND IN SUBSECTION C OF THIS SECTION IF THE CHILD WAS PLACED IN AN OUT-OF-HOME PLACEMENT.

B. IF THE SUMMARY REPORT PRESCRIBED IN SUBSECTION A, PARAGRAPH 5 OF THIS SECTION INVOLVES A CHILD WHO WAS RESIDING IN THE CHILD'S HOME, THE SUMMARY REPORT SHALL CONTAIN A SUMMARY OF ALL OF THE FOLLOWING:

1. WHETHER SERVICES PURSUANT TO THIS CHAPTER WERE BEING PROVIDED TO THE CHILD, A MEMBER OF THE CHILD'S FAMILY OR THE PERSON SUSPECTED OF THE ABUSE OR NEGLECT AT THE TIME OF THE INCIDENT AND THE DATE OF THE LAST CONTACT BEFORE THE INCIDENT BETWEEN THE ENTITY PROVIDING THE SERVICES AND THE PERSON RECEIVING THE SERVICES.

2. WHETHER THE CHILD, A MEMBER OF THE CHILD'S FAMILY OR THE PERSON SUSPECTED OF THE ABUSE OR NEGLECT WAS THE SUBJECT OF A REPORT FOR INVESTIGATION AT THE TIME OF THE INCIDENT.

3. ALL INVOLVEMENT OF THE CHILD'S PARENTS AND OF THE PERSON SUSPECTED OF THE ABUSE OR NEGLECT IN A SITUATION FOR WHICH A REPORT FOR INVESTIGATION WAS MADE OR IN SERVICES PROVIDED PURSUANT TO THIS CHAPTER IN THE FIVE YEARS PRECEDING THE INCIDENT INVOLVING A FATALITY OR A NEAR FATALITY.

4. ANY INVESTIGATION PURSUANT TO A REPORT FOR INVESTIGATION CONCERNING THE CHILD, A MEMBER OF THE CHILD'S FAMILY OR THE PERSON SUSPECTED OF THE ABUSE OR NEGLECT OR SERVICES PROVIDED TO THE CHILD OR THE CHILD'S FAMILY SINCE THE DATE OF THE INCIDENT INVOLVING A FATALITY OR A NEAR FATALITY.

C. IF THE SUMMARY REPORT PRESCRIBED IN SUBSECTION A, PARAGRAPH 5 OF THIS SECTION INVOLVES A CHILD WHO WAS IN OUT-OF-HOME PLACEMENT, THE SUMMARY REPORT SHALL INCLUDE THE NAME OF ANY AGENCY THE LICENSEE WAS LICENSED BY, THE LICENSING HISTORY OF THE OUT-OF-HOME PLACEMENT, INCLUDING THE TYPE OF LICENSE HELD BY THE OPERATOR OF THE PLACEMENT, THE PERIOD FOR WHICH THE PLACEMENT HAS BEEN LICENSED AND A SUMMARY OF ALL VIOLATIONS BY THE LICENSEE AND ANY OTHER ACTIONS BY THE LICENSEE OR AN EMPLOYEE OF THE LICENSEE THAT CONSTITUTE A SUBSTANTIAL FAILURE TO PROTECT AND PROMOTE THE HEALTH, SAFETY AND WELFARE OF A CHILD.

D. FOR THE PURPOSES OF THIS SECTION, "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. 6. Section 8-811, Arizona Revised Statutes, is amended to read:

8-811. <u>Hearing process; definitions</u>

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

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

2. To a hearing before the entry into the central registry pursuant to section 8-456, subsection D, paragraph 3, subdivision (a).

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

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

D. The department shall not disclose any information related to the investigation of the allegation except as provided in sections 8-456, 8-807, 8-807.01 and 13-3620.

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

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

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

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

3. A finding has been made by a court pursuant to section 8-844, subsection C that a child is dependent based upon an allegation of abuse or neglect.

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

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

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

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

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

4. The reporting source is not required to testify.

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

6. If the person requesting the hearing fails to appear, the hearing shall be vacated and a substantiated finding of abuse or neglect shall be entered. On good cause shown, the hearing may be rescheduled if the request

is made within fifteen calendar days after the date of the notice vacating the hearing for failure to appear.

I. On completion of the presentation of evidence, the administrative law judge shall determine if probable cause exists to sustain the department's finding that the parent, guardian or custodian abused or neglected the child. If the administrative law judge determines that probable cause does not exist to sustain the department's finding, the administrative law judge shall order the department to amend the information or finding in the report.

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

K. The department shall provide the parent, guardian or custodian who is the subject of the investigation and the person who reported the suspected child abuse or neglect if that person is the child's parent, guardian or custodian with a copy of the outcome of the investigation at one of the following times:

1. If the report is unsubstantiated.

2. If probable cause exists that abuse or neglect has occurred but a specific person is not identified as having abused or neglected the child.

3. After the time to request a hearing has lapsed pursuant to subsection C of this section without the department receiving a request for a hearing.

4. After a final administrative decision has been made pursuant to section 41-1092.08.

L. For the purposes of this section:

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

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

Sec. 7. Section 13-4434, Arizona Revised Statutes, is amended to read:

13-4434. <u>Victim's right to privacy; exception; definitions</u>

A. The victim has the right at any court proceeding not to testify regarding any identifying or locating information unless the victim consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on the motion shall be in camera.

1 B. A victim's identifying and locating information that is obtained,
2 compiled or reported by a law enforcement agency or prosecution agency shall
3 be redacted by the originating agency and prosecution agencies from records
4 pertaining to the criminal case involving the victim, including discovery
5 disclosed to the defendant.
6 C. Subsection B OF THIS SECTION does not apply to:
7 1. The victim's name EXCEPT, IF THE VICTIM IS A MINOR, THE VICTIM'S
8 NAME MAY BE REDACTED FROM PUBLIC RECORDS PERTAINING TO THE CRIME IF THE
9 COUNTERVAILING INTERESTS OF CONFIDENTIALITY, PRIVACY, THE RIGHTS OF THE MINOR
10 OR THE BEST INTERESTS OF THIS STATE OUTWEIGH THE PUBLIC INTEREST IN
11 DISCLOSURE.
12 2. Any records that are transmitted between law enforcement and
13 prosecution agencies or a court.
14 3. Any records if the victim OR, IF THE VICTIM IS A MINOR, THE
15 VICTIM'S REPRESENTATIVE AS DESIGNATED UNDER SECTION 13-4403 has consented to
16 the release of the information.
17 4. The general location at which the reported crime occurred.
18 D. For the purposes of this section:
19 1. "Identifying information" includes a victim's date of birth, social
20 security number and official state or government issued driver license or
21 identification number.
22 2. "Locating information" includes the victim's address, telephone
23 number, e-mail address and place of employment.

APPROVED BY THE GOVERNOR APRIL 10, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2015.

Passed the House March 12, 20 15

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

☐ Pro Tempore

Jim Drake

Chief Clerk of the House

Passed the Senate April 2, 20 15

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

H.B. 2166

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 2, 2015,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Jim Drake
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

10th day of April, 2015,

at 9:13 o'clock A. M.

Secretary to the Governor

Approved this 10th day of

April, 2015,

at 4:37 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 13th day of April, 2015,

at 8:30 o'clock A M.

Michele Reagan
Secretary of State

H.B. 2166