



Arizona State Senate Issue Paper

August 19, 2008

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

ARIZONA CHILD PROTECTIVE SERVICES

INTRODUCTION

Child Protective Services (CPS) is part of the Arizona Department of Economic Security (DES) Division of Children, Youth and Families. The statutory purposes of CPS are: 1) to protect children by investigating allegations of abuse and neglect, promoting the well-being of the child in a permanent home and coordinating services to strengthen the family, and 2) to prevent, intervene in and treat abuse and neglect of children. CPS is governed by several federal laws. Major provisions of federal law specify that child safety is paramount to other concerns, require reasonable efforts to be made toward reunification of a family and set timeframes to move children toward a permanent home (permanency).

REPORTS OF ABUSE OR NEGLECT

Reports of suspected child abuse are referred to CPS through a statewide, toll-free, 24-hour child abuse hotline. Anyone who suspects child abuse or neglect may report it through the hotline; however, certain individuals who have responsibility for minors have a statutory duty to report suspected abuse or neglect, including physicians and other health professionals, peace officers, clergy, parents or guardians, and school personnel.

When a report is received, hotline personnel use a screening process to determine whether the situation warrants an investigation and prioritize the reports based on the severity of the allegations. The protocols for this initial screening were developed in consultation with the Attorney General, county attorneys and other law enforcement, medical experts, victims' rights advocates and mandatory reporters. The priority classification system is summarized in the following table:

Child Abuse Report Priority Classification System		
Priority Level	Risk	Standard Response Time
1	High	Within 2 hours
2	Moderate	Within 48 hours
3	Low	Within 72 hours
4	Potential	Within 7 days

CPS INVESTIGATIONS

CPS is statutorily required to investigate 100 percent of the reports it receives that meet the criteria for investigation. A CPS investigation of a report generally includes interviewing the alleged victim(s), perpetrator(s) and other sources to help assess the risk of harm to the child(ren) involved and evaluate the conditions that support or refute the alleged abuse or neglect. Reports are further classified as substantiated, unsubstantiated or unable to locate. CPS maintains a central registry of substantiated reports and the outcomes of the investigation of these reports.

Upon initial contact with a person who is under investigation for child abuse or neglect, the CPS worker must inform the person that the family is under investigation by DES, that the CPS worker has no legal authority to compel the family to cooperate and that the family has the right to file complaints or appeal CPS determinations. This information, as well as information outlining parental rights under Arizona law, must be provided in writing, and the CPS worker is required to make reasonable efforts to receive written acknowledgment from the person that the information was received. The CPS worker must also inform the person of his or her right to respond to allegations of abuse or neglect and that anything the person says or writes in response can be used in a court proceeding.

In each county, the county attorney, the sheriff, the chief law enforcement officer for each municipality in the county and CPS have developed and implemented protocols to cooperate in investigations of allegations involving criminal conduct. Allegations of criminal conduct include felony offenses such as sexual abuse, assault, child molestation and abuse that is likely to produce death or serious injury.

ACTIONS FOLLOWING AN INVESTIGATION

If CPS determines there are no risk factors severe enough to warrant ongoing involvement to ensure the safety of a child, it may close the

case without providing further services. In cases where CPS determines that a child is at risk for abuse or neglect, it may offer the family in-home services such as counseling or parent skills training that could allow the child to live safely at home. Families participate in in-home services voluntarily, and if the family refuses offered services in a case where risks to the child's safety do not warrant legal action, the case may be closed.

When CPS determines that the child is currently safe but is at a high risk of abuse or neglect, and that safeguards can be established to ensure the child's continued safety in the home, CPS may file an in-home dependency. This would make the child a ward of the court but keeps the child in the physical custody of the parent or guardian.

Removing A Child From The Home And Removal Review

If, after an investigation, CPS determines that a child is in imminent danger of abuse or neglect, the child may be removed from the home. When determining if a child should be taken into temporary custody, the CPS worker must take into consideration as a paramount concern the child's health and safety. When a child is removed, the parent or guardian must be notified immediately both verbally and in written format if the parent or guardian is present when the child is taken, or within six hours in written format if not present. If the parent lives out of state, the deadline for written notification is extended to 24 hours, and if the parent's location is unknown, reasonable efforts to locate and notify the parent as soon as possible must be made.

If a child is removed from the home, CPS is required to review the removal within 72 hours. A removal review team (RRT), which consists of a CPS worker, a CPS supervisor and two members of the local Foster Care Review Board, conducts the review. If the child has a medical need or a chronic illness, the RRT also includes the child's physician. If a majority of the RRT members do not agree that removal of the child is necessary, the child must be returned home or cannot be removed.

Preliminary Protective Hearing

When the RRT agrees that removal is necessary and CPS keeps the child in custody, the court must review the removal of a child five to seven days after the child is taken into custody, excluding weekends and holidays. This is done at a preliminary protective hearing (PPH). At least one day before the PPH, CPS must submit a written report to the court and the parties involved stating the reasons the child was removed, the services provided for the parent or the child, the need for continued custody and a proposed case plan for services to the family. The PPH must include: 1) the parents, unless they cannot be located or fail to appear; 2) counsel for the parents, if requested or retained; 3) the child's guardian ad litem or attorney; 4) the CPS worker; and 5) counsel for the CPS worker.

At the PPH, the court must advise the parent of his or her rights and the parent must state whether he or she admits or denies the allegations. If the parent admits or does not contest the allegations, the court determines that the parent understands his or her rights and knowingly, intelligently and voluntarily waives those rights. The state 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. If the court finds that the state has not met the burden of evidence, the child is returned pending the dependency hearing. If the court finds that the state has met the burden, the child is declared a temporary ward of the court pending the dependency hearing.

The court also determines at the PPH whether reasonable efforts were made to prevent or eliminate the need for removal of the child, and if services are available that would eliminate the need for continued removal. The court enters orders regarding the placement of the child pending the dependency petition, and visitation if the child is not returned to the parent. The court also determines if the tasks and services in the case plan are reasonable and necessary to carry out the case plan.

Dependency

A child is adjudicated dependent if the court finds that: 1) the child is in need of parental care and control and there is no parent or guardian willing to or capable of exercising that care and control; 2) the child is destitute or not provided with adequate food, clothing, shelter or medical care; 3) the child's home is unfit due to abuse, neglect, cruelty or depravity by a parent, guardian or custodian; 4) the child is under eight years of age and has committed an act that would result in adjudication as a juvenile delinquent if committed by an older child; 5) the child is incompetent and is alleged to have committed a serious offense such as murder, manslaughter, sexual assault or armed robbery.

Any interested party may file a petition alleging that a child is dependent. In cases where a child has been removed from the home, CPS must file dependency petitions within 72 hours of the child's removal, excluding weekends and holidays, or return the child to the home. A dependency petition and a notice must be served on the child's parent or guardian, the child's guardian ad litem or attorney, and anyone who has physical custody of the child such as a foster parent. An initial dependency hearing must be set within 21 days after the petition is filed.

At any dependency hearing, the court's primary consideration must be the protection of a child from abuse or neglect. At the initial dependency hearing, the court must advise the parent of his or her rights and the parent must state whether he or she admits or denies the allegations. If the parent admits or does not contest the allegations, the court determines that the parent understands his or her rights and knowingly, intelligently and voluntarily waives those rights. If the parent or guardian contests the allegations, the court holds a settlement conference or orders mediation for all parties involved. The court determines if reasonable efforts were made to prevent or eliminate the need for removal from the home and if services are available that would do so.

Unless the court finds that aggravating circumstances exist, the court must order CPS to

make reasonable efforts to provide services to the child and the parent or guardian that would allow reunification. Aggravating circumstances include cases where the parent has been convicted of murder, manslaughter, sexual abuse, molestation or sexual exploitation where the victim was a minor; the child was previously removed and adjudicated dependent due to abuse; the child is a victim of serious physical or emotional injury; the parent's rights to another child have been terminated for the same cause; the parent cannot be located; or the parent is mentally ill to the degree that he or she is incapable of benefiting from reunification services.

The basis for dependency must be found by a preponderance of the evidence. If a child is adjudicated dependent, the court enters orders awarding placement of the child. The court also reviews the child's case plan and must seek reunification of the family if possible. If the court determines reunification is not in the child's best interests, the court orders a case plan of termination of parental rights and adoption or another permanent placement such as permanent guardianship. Periodic review hearings are held at least once every six months to reconsider the child's case plan.

Child Placement

Children who have been removed from home by CPS are placed in temporary out-of-home care, with a case plan goal of permanency for that child. The federal Adoption Assistance and Child Welfare Act (AACWA) requires the child's health and safety to be the paramount concern when making decisions about out-of-home placement and permanency planning. AACWA also requires a child to be placed in the least restrictive, or most family-like, setting possible. Arizona statute requires CPS to place a child in the least restrictive type of placement available, consistent with the needs of the child. The order of preference for placement is as follows: with a parent, with a grandparent, with another relative, in family foster care, in therapeutic foster care, in a group home and in a residential treatment facility.

If the child is not placed with a grandparent or other relative within 60 days after the child is removed, the court must determine why such placement is not in the child's best interests. The state has the burden of presenting evidence that such placement is not in the child's best interests, and the court must make specific written findings in support of a decision that such placement is not in the best interests of the child.

Termination Of Parental Rights

Any person or agency with a legitimate interest in the welfare of a child, including relatives, foster parents, DES or a private child welfare agency, may file a petition for termination of parental rights (TPR) with the juvenile court. Grounds for TPR include: abuse or neglect; abandonment; inability to discharge parental responsibilities due to mental illness or chronic substance abuse; conviction of a felony proving the unfitness of that parent to have custody of a child; proof that the parent has had parental rights to another child terminated within the past two years for the same cause; or demonstration that the child has been in out-of-home placement for longer than nine months, or if the child is under three years of age, longer than six months and the parent neglected or refused to remedy the problems. The court must also consider the best interests of the child when considering grounds for TPR.

An order terminating parental rights removes all legal rights, privileges, duties and obligations the parent and the child have with respect to each other, except the right of the child to inherit and receive support from the parent. Rights of inheritance and support are only terminated by a final order of adoption. If a petition for TPR is contested, the court holds a termination adjudication hearing to determine whether there is clear and convincing evidence of grounds for TPR. [Note: For a period, Laws 2003, Second Special Session, Chapter 6, allowed a parent, guardian or custodian to request a jury trial for a TPR hearing. However, this jury trial option sunset (ended) on January 1, 2007.]

**CONFIDENTIALITY OF CPS
INFORMATION**

Federal law requires states to develop methods for preserving confidential information regarding children and parents involved with CPS. Arizona statute requires CPS to maintain information as required by federal law and also requires all exceptions for the public release of CPS information to be construed as openly as possible under federal law.

All information gathered by CPS during the course of an investigation, from the time a file is opened until it is closed, is considered confidential and may only be disclosed under certain circumstances or to persons listed in statute. Anyone who discloses confidential information to unauthorized persons or further discloses information received pursuant to statute is guilty of a class 2 misdemeanor.

CPS must provide information to law enforcement, local, state and federal agencies and to a prosecutor, an attorney or guardian ad litem representing a child victim of crime, a school and a community or contract service provider for the following purposes: 1) to meet its duties to provide for the safety, permanency and well-being of a child or to provide services to a parent or family members to strengthen the family; 2) to enforce or prosecute any violation involving child abuse or neglect; or 3) to provide information to a defendant after a criminal charge has been filed as required by an order of the criminal court. CPS must also provide information to the court and, in certain circumstances, to government agencies and citizen review boards that are required to periodically review CPS cases.

Statute allows CPS to provide access to CPS information to the parent, guardian or custodian of a child if the information is “reasonably necessary to promote the safety, permanency and well-being of the child.” Anyone who is not specifically authorized by statute to obtain CPS information may petition the court to order CPS to release that information. The court is required to balance the rights of the parties entitled to confidentiality against the rights of the parties seeking release of the information. However,

the court must take reasonable steps to prevent any clearly unwarranted invasions of privacy and protect the privacy and dignity of crime victims.

A legislator may review confidential CPS information by submitting a written request for the information to the President of the Senate or the Speaker of the House of Representatives, who must sign it and forward it to CPS within five working days. The legislator must sign a form that outlines confidentiality laws and may not disclose the information further, unless a court has ordered the disclosure of the information or the information has been disclosed in a public or court record or in the course of a public meeting or court proceeding. Within ten working days, CPS must make arrangements for the legislator to review the information.

Statute requires CPS to promptly provide preliminary information to the public of a CPS case of child abuse, abandonment or neglect that resulted in a fatality or near fatality, including the identity of the child and alleged perpetrator and information on past reports and actions taken by CPS. On request by any person, CPS must also promptly provide additional information to the person, but CPS must notify the county attorney of any decision to release the information; CPS is not required to disclose the additional information if the county attorney demonstrates that disclosure would cause a specific, material harm to a criminal investigation.

On request, CPS must continue to provide information promptly to the public about a fatality or near fatality unless: 1) after further 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; or 2) the release would violate federal law, the privacy of victims of crime or state statute regarding the protection of the identity or safety of a person who reports child abuse or neglect or the protection of any other person. A person who is denied CPS information regarding a fatality or near fatality may bring a special

action in superior court to order CPS to release the information.

Before releasing any confidential information, CPS and law enforcement agencies are required to take whatever precautions that are reasonably necessary to protect the identity of any person who may be endangered as a result of the release of information. CPS is not required to disclose information if CPS demonstrates that disclosure would cause a specific, material harm to a CPS investigation.

LEGISLATIVE OVERSIGHT OF CPS

The Joint Legislative Committee on Children and Family Services (Committee) reviews reports of child abuse, neglect and dependency and actions taken by CPS. The Committee has access to confidential CPS records and has the ability to meet in executive session to review confidential information. This information may not be further disclosed by Committee members or staff. Additionally, the Committee is required to meet at least annually to review child fatalities relating to abuse or neglect.

The Committee consists of five members of the Senate appointed by the President of the Senate and five members of the House of Representatives appointed by the Speaker of the House of Representatives. No more than three members from each chamber may be from the same political party. One member from each chamber is designated as cochair.

An audit team from the Office of the Auditor General is statutorily established within DES to perform reviews and analyses of CPS as determined by the Joint Legislative Audit Committee. The audit team has access to CPS records and produces audits of CPS as well as information briefs about CPS programs.

ASSISTANCE FOR FAMILIES INVOLVED WITH CPS

Several programs and offices are in place to assist families with issues and complaints relating to CPS. Internally, CPS has a client grievance process that involves management within the DES Division of Children, Youth and

Families. DES also has a Family Advocacy Office separate from CPS to handle inquiries and complaints and to work with CPS and the family to resolve problems.

External assistance may be received through several different state agencies. The Office of Family Advocacy (OFA) was established within the Legislature in 2006. OFA assists all legislators with their constituent calls regarding CPS, including researching, documenting and monitoring all aspects of each case on an ongoing basis by dealing directly with families, and advocating for the best interests of the child(ren). The Administrative Office of the Courts operates a Parent Assistance Program, which includes a toll-free hotline where parents may obtain information about legal assistance, the juvenile court system and their legal rights and responsibilities. The Attorney General's Office operates a Child Welfare Mediation Program to mediate certain disputes between families and CPS upon request. Finally, the Arizona Ombudsman-Citizen's Aide is also available to handle inquiries and complaints about CPS actions. There is an Assistant Ombudsman assigned specifically to CPS who handles these complaints.

ADDITIONAL RESOURCES

- Child Welfare and Dependent Children Statutes: Arizona Revised Statutes, Title 8, Chapters 5 and 10
- DES CPS
www.azdes.gov/dcyf/cmdps/cps/default.asp
- Annual Appropriations Report, Joint Legislative Budget Committee
www.azleg.gov/jlbc.htm
- Office of the Auditor General Reports
www.auditorgen.state.az.us
- "Department of Economic Security Division of Children, Youth and Families – Child Protective Services – CHILDS Data Integrity Process," Office of the Auditor General, May 2005, Report No. CPS-0501
- "Department of Economic Security Division of Children, Youth and Families – Child Protective Services – Timeliness and

- Thoroughness of Investigations,” Office of the Auditor General, December 2005, Report No. CPS-0502
- “Department of Economic Security Division of Children, Youth and Families – Child Protective Services – On the Job Training and Continuing Education,” Office of the Auditor General, April 2006, Report No. CPS-0601
 - “Department of Economic Security Division of Children, Youth and Families – Child Protective Services – Substance-Exposed Newborns,” Office of the Auditor General, October 2006, Report No. QA-0601
 - “Department of Economic Security Division of Children, Youth and Families – Child Protective Services – In-Home Services Program,” Office of the Auditor General, November 2006, Report No. IB-0601
 - “Department of Economic Security Division of Children, Youth and Families – Child Protective Services – Federal Deficit Reduction Act of 2005,” Office of the Auditor General, January 2007, Report No. IB-0701
 - “Department of Economic Security Division of Children, Youth and Families – Child Protective Services – Prevention Programs,” Office of the Auditor General, July 2007, Report No. CPS-0701
 - Administrative Office of the Courts
Parent Assistance Program
Toll-free: 1-800-732-8193
 - Arizona Ombudsman-Citizen’s Aide
Toll-free: 1-800-872-2879
Phoenix area: 602-277-7292
 - Attorney General’s Office
Child Welfare Mediation Program
Phoenix area: 602-542-5263
Tucson area: 520-628-6500
Flagstaff area: 928-526-8028
 - DES Family Advocate’s Office
Toll-free: 1-877-527-0765
Phoenix area: 602-364-0777
 - Legislative Office of Family Advocacy
Office: 602-926-3280
Fax: 602-417-3232
mhoffman@azleg.gov