

REFERENCE TITLE: CPS information; public records

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

HB 2454

Introduced by
Representatives Paton, Adams, Murphy: Burges

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. If there is a reasonable need for the CPS information, the
11 department, or a person who receives CPS information pursuant to this
12 subsection, shall provide CPS information to a federal agency, a state
13 agency, a tribal agency, a county or municipal agency, a county attorney, a
14 school, a community service provider, a contract service provider or any
15 other person that is providing services pursuant to this chapter:

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

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

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

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

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

33 F. The department:

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

37 2. EXCEPT AS PROVIDED PURSUANT TO SUBSECTION J OF THIS SECTION, may
38 provide and, on request BY ANY PERSON, shall PROMPTLY provide ~~summary~~ CPS
39 information regarding a fatality or near fatality caused by abuse,
40 ABANDONMENT or neglect.

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

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

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

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

10 1. Federal or state auditors.

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

13 3. A standing committee of the legislature or a committee appointed by
14 the president of the senate or the speaker of the house of representatives
15 for purposes of conducting investigations related to the legislative
16 oversight of the department of economic security. This information shall not
17 be further disclosed.

18 4. A legislator who is responsible for oversight of the enabling or
19 appropriating legislation to carry out these functions. This information
20 shall not be further disclosed. To request a file pursuant to this paragraph:

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

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

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

32 (d) The legislator shall sign a form, before reviewing the file, that
33 outlines the confidentiality laws governing child protective services files
34 and penalties for further release of the information.

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

38 I. A person who is not specifically authorized by this section to
39 obtain CPS information may ~~petition a judge of the~~ BRING A SPECIAL ACTION
40 PURSUANT TO SECTION 39-121.02, SUBSECTION A IN THE superior court to order
41 the department to release that CPS information. The court shall balance the
42 rights of the parties entitled to confidentiality pursuant to this section
43 against the rights of the parties seeking release of the CPS information.
44 The court may release otherwise confidential CPS information only if the
45 rights of the parties seeking the CPS information and any benefits from

1 releasing the CPS information sought outweigh the rights of the parties
2 entitled to confidentiality and any harm that may result from releasing the
3 CPS information sought.

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

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

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

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

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

41 O. A person may authorize the release of CPS information about the
42 person but may not waive the confidentiality of CPS information concerning
43 any other person.

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

4 Q. The department shall adopt rules to facilitate the accessibility of
5 CPS information.

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

8 S. A person who violates this section is guilty of a class 2
9 misdemeanor.

10 T. For the purposes of this section:

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

16 2. "Near fatality" means an act that, as certified by a physician,
17 places a child in serious or critical condition.