

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HOUSE BILL 2558

AN ACT

AMENDING SECTION 46-457, ARIZONA REVISED STATUTES; AMENDING TITLE 46, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 46-458 AND 46-459; RELATING TO ADULT 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 46-457, Arizona Revised Statutes, is amended to
3 read:

4 46-457. Elder abuse central registry; mandatory reporting;
5 release of information

6 A. A person who files an action under this article shall serve notice
7 and one copy of the pleading with the attorney general within thirty days
8 after the action is filed in the superior court. The notice shall identify
9 the action, the person against whom the civil complaint has been filed and
10 ~~the~~ THAT person's attorney. The person WHO FILES AN ACTION is responsible
11 for submitting a report on the final disposition of the case within thirty
12 days after the final action is taken.

13 B. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, a state agency
14 that renders an administrative decision that substantiates the allegation of
15 abuse or that files a civil action that alleges abuse, neglect or financial
16 exploitation pursuant to this article or title 36 shall serve notice and one
17 copy of the administrative decision or pleading with the attorney general
18 within thirty days after the administrative decision is rendered or within
19 thirty days after the action is filed in the superior court. The agency is
20 responsible for submitting a report on the final disposition of the case
21 within thirty days after the final action is taken. THE DEPARTMENT OF
22 ECONOMIC SECURITY SHALL NOT PROVIDE THE NOTICE PRESCRIBED IN THIS SUBSECTION
23 FOR INFORMATION MAINTAINED IN THE ADULT PROTECTIVE SERVICES REGISTRY PURSUANT
24 TO SECTION 46-459.

25 C. If the victim of the offense is an incapacitated or vulnerable
26 adult, a person who files a criminal complaint or indictment involving a
27 violation of this article or section 13-1102, 13-1103, 13-1104, 13-1105,
28 13-1201, 13-1203, 13-1204, 13-1303, 13-1304, 13-1403, 13-1404, 13-1406,
29 13-1802, 13-1807, 13-2002, 13-2310 or 13-3623 shall submit a copy of the
30 criminal complaint or indictment to the attorney general within thirty days
31 after arraignment. Within thirty days of the date of issuance of the minute
32 entry the court shall endorse to the attorney general a copy of the
33 sentencing minute entry or the minute entry reflecting the case has been
34 dismissed or a judgment of acquittal has been entered. The attorney general
35 shall develop guidelines to implement this subsection.

36 D. The attorney general shall maintain a registry containing the names
37 of persons pursuant to subsection A, B or C of this section with the date the
38 action was filed with the superior court or the date the administrative
39 decision was rendered, the dates of the conduct set forth in the complaint,
40 the indictment or decision, the general nature of the complaint, indictment
41 or decision and the disposition of the complaint, indictment or decision, if
42 known.

43 E. The information maintained pursuant to subsection D of this section
44 is available to the public on written request to the custodian of the
45 registry.

1 F. A person may submit a written statement on that person's own behalf
2 to the custodian of the registry. The statement is part of the records for
3 distribution in response to all inquiries concerning that person.

4 G. A person or agency that distributes information in the registry in
5 good faith is not subject to civil or criminal liability.

6 Sec. 2. Title 46, chapter 4, article 1, Arizona Revised Statutes, is
7 amended by adding sections 46-458 and 46-459, to read:

8 46-458. Hearing process; definitions

9 A. AFTER COMPLETING ITS INVESTIGATION, THE DEPARTMENT SHALL NOTIFY A
10 PERSON WHO IS ALLEGED TO HAVE ABUSED, NEGLECTED OR EXPLOITED A VULNERABLE
11 ADULT THAT THE DEPARTMENT INTENDS TO ENTER A SUBSTANTIATED FINDING OF ABUSE,
12 NEGLECT OR EXPLOITATION IN THE REGISTRY AND OF THAT PERSON'S RIGHT:

13 1. TO RECEIVE A COPY OF THE REPORT CONTAINING THE ALLEGATION AND
14 FINDINGS.

15 2. TO A HEARING BEFORE ENTRY INTO THE REGISTRY PURSUANT TO SECTION
16 46-459.

17 B. THE DEPARTMENT SHALL SEND THE NOTICE PRESCRIBED IN SUBSECTION A OF
18 THIS SECTION BY FIRST CLASS MAIL NO MORE THAN FIFTEEN CALENDAR DAYS AFTER
19 COMPLETION OF THE INVESTIGATION.

20 C. A REQUEST FOR A HEARING ON THE PROPOSED FINDING MUST BE RECEIVED BY
21 THE DEPARTMENT WITHIN FIFTEEN CALENDAR DAYS OF THE NOTICE DATE.

22 D. IF A REQUEST FOR A HEARING IS MADE PURSUANT TO SUBSECTION C OF THIS
23 SECTION, THE DEPARTMENT SHALL CONDUCT A REVIEW BEFORE THE HEARING. THE
24 DEPARTMENT SHALL PROVIDE AN OPPORTUNITY FOR THE ACCUSED PERSON TO PROVIDE
25 WRITTEN OR VERBAL INFORMATION TO SUPPORT THE POSITION THAT THE DEPARTMENT
26 SHOULD NOT SUBSTANTIATE THE ALLEGATION. IF THE DEPARTMENT DETERMINES THAT
27 THE ACCUSED PERSON DID NOT ENGAGE IN THE ALLEGED CONDUCT BY A PREPONDERANCE
28 OF THE EVIDENCE, THE DEPARTMENT SHALL AMEND THE INFORMATION OR FINDING IN THE
29 REPORT AND SHALL NOTIFY THE PERSON, AND A HEARING SHALL NOT BE HELD.

30 E. NOTWITHSTANDING SECTION 41-1061, SUBSECTION B, THE NOTIFICATION
31 PRESCRIBED IN SUBSECTION A OF THIS SECTION SHALL ALSO STATE THAT IF THE
32 DEPARTMENT DOES NOT AMEND THE INFORMATION OR FINDING IN THE REPORT AS
33 PRESCRIBED IN SUBSECTION D OF THIS SECTION WITHIN SIXTY DAYS AFTER IT
34 RECEIVES THE REQUEST FOR A HEARING THE PERSON HAS A RIGHT TO A HEARING UNLESS
35 EITHER:

36 1. THE PERSON IS A PARTY IN A CIVIL, CRIMINAL OR ADMINISTRATIVE
37 PROCEEDING IN WHICH THE ALLEGATIONS OF ABUSE, NEGLECT OR EXPLOITATION ARE AT
38 ISSUE.

39 2. A COURT OR HEARING OFFICER HAS MADE FINDINGS AS TO THE ALLEGED
40 ABUSE, NEGLECT OR EXPLOITATION.

41 F. IF THE DEPARTMENT DOES NOT AMEND THE INFORMATION OR FINDING IN THE
42 REPORT AS PRESCRIBED IN SUBSECTION D OF THIS SECTION, THE DEPARTMENT SHALL
43 NOTIFY THE DEPARTMENT'S OFFICE OF APPEALS OF THE REQUEST FOR A HEARING NO
44 LATER THAN FIVE DAYS AFTER COMPLETION OF THE REVIEW. THE DEPARTMENT SHALL
45 FORWARD ALL RECORDS, REPORTS AND OTHER RELEVANT INFORMATION WITH THE REQUEST

1 FOR HEARING WITHIN TEN DAYS AFTER THE REQUEST IS MADE. THE DEPARTMENT SHALL
2 REDACT THE IDENTITY OF THE REPORTING SOURCE BEFORE TRANSMITTING THE
3 INFORMATION TO THE DEPARTMENT'S OFFICE OF APPEALS.

4 G. THE DEPARTMENT'S OFFICE OF APPEALS SHALL HOLD A HEARING PURSUANT TO
5 TITLE 41, CHAPTER 6, ARTICLE 6, WITH THE FOLLOWING EXCEPTIONS:

6 1. A VULNERABLE ADULT WHO IS THE VICTIM OF OR A WITNESS TO ABUSE,
7 NEGLECT OR EXPLOITATION IS NOT REQUIRED TO TESTIFY AT THE HEARING.

8 2. THE IDENTITY OF THE REPORTING SOURCE OF THE ABUSE, NEGLECT OR
9 EXPLOITATION SHALL NOT BE DISCLOSED WITHOUT THE PERMISSION OF THE REPORTING
10 SOURCE.

11 3. THE REPORTING SOURCE IS NOT REQUIRED TO TESTIFY.

12 4. A WRITTEN STATEMENT FROM THE REPORTING SOURCE MAY BE ADMITTED IF
13 THE TIME, CONTENT AND CIRCUMSTANCES OF THAT STATEMENT ARE SUFFICIENTLY
14 INDICATIVE OF ITS RELIABILITY.

15 5. IF THE PERSON REQUESTING THE HEARING FAILS TO APPEAR, THE HEARING
16 SHALL BE VACATED AND A SUBSTANTIATED FINDING OF ABUSE, NEGLECT OR
17 EXPLOITATION SHALL BE ENTERED. ON GOOD CAUSE SHOWN, THE HEARING MAY BE
18 RESCHEDULED IF THE REQUEST IS MADE WITHIN FIFTEEN CALENDAR DAYS AFTER THE
19 DATE OF THE NOTICE VACATING THE HEARING FOR FAILURE TO APPEAR.

20 H. ON COMPLETION OF THE PRESENTATION OF EVIDENCE, THE HEARING OFFICER
21 SHALL DETERMINE WHETHER THE DEPARTMENT'S FINDING THAT THE ACCUSED ENGAGED IN
22 THE ALLEGED CONDUCT IS SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE. IF THE
23 HEARING OFFICER DETERMINES THERE IS INSUFFICIENT EVIDENCE TO SUSTAIN THE
24 DEPARTMENT'S BURDEN OF PROOF, THE HEARING OFFICER SHALL ORDER THE DEPARTMENT
25 TO AMEND THE INFORMATION OR FINDING IN THE REPORT.

26 I. NOTWITHSTANDING SECTION 41-1959, THE DEPARTMENT SHALL NOTIFY THE
27 PERSON WHO IS THE SUBJECT OF THE INVESTIGATION AND THE PERSON WHO REPORTED
28 THE ALLEGATIONS OF ABUSE, NEGLECT OR EXPLOITATION OF THE OUTCOME OF THE
29 INVESTIGATION AT ONE OF THE FOLLOWING TIMES:

30 1. AT THE CONCLUSION OF THE INVESTIGATION IF THE REPORT IS
31 UNSUBSTANTIATED OR IF, BY A PREPONDERANCE OF THE EVIDENCE, THERE IS REASON TO
32 BELIEVE THE ALLEGATION DID OCCUR BUT NO PERPETRATOR HAS BEEN IDENTIFIED.

33 2. AFTER THE TIME TO REQUEST A HEARING HAS LAPSED PURSUANT TO
34 SUBSECTION C OF THIS SECTION WITHOUT THE DEPARTMENT RECEIVING A REQUEST FOR A
35 HEARING.

36 3. AFTER A FINAL ADMINISTRATIVE DECISION HAS BEEN MADE.

37 J. ALL FINAL DECISIONS SUBSTANTIATING AN ALLEGATION OF ABUSE, NEGLECT
38 OR EXPLOITATION SHALL BE REPORTED TO THE ADULT PROTECTIVE SERVICES REGISTRY,
39 PURSUANT TO SECTION 46-459, WITHIN THIRTY DAYS AFTER THE DECISION IS
40 RENDERED.

41 K. ANY PERSON RECEIVING INFORMATION PURSUANT TO THIS SECTION SHALL
42 MAINTAIN ITS CONFIDENTIALITY AS PROVIDED BY SECTION 41-1959, SUBSECTION A.

43 L. THIS SECTION APPLIES ONLY TO THOSE ALLEGATIONS OF ABUSE, NEGLECT OR
44 EXPLOITATION RECEIVED BY THE DEPARTMENT ON OR AFTER JULY 1, 2007.

1 M. THE DEPARTMENT IS EXEMPT FROM THE RULE MAKING REQUIREMENTS OF TITLE
2 41, CHAPTER 6 FOR THE PURPOSES OF IMPLEMENTING THIS SECTION.
3 N. FOR THE PURPOSES OF THIS SECTION:
4 1. "AMEND THE FINDING" MEANS TO CHANGE THE FINDING FROM SUBSTANTIATED
5 TO UNSUBSTANTIATED.
6 2. "AMEND THE INFORMATION" MEANS TO CHANGE INFORMATION IDENTIFYING THE
7 ACCUSED OF HAVING ABUSED, NEGLECTED OR EXPLOITED A VULNERABLE ADULT.
8 3. "FINAL DECISION" MEANS A DECISION FOR WHICH THE TIME TO APPEAL HAS
9 EXPIRED OR FROM WHICH NO FURTHER APPEAL IS AVAILABLE.
10 46-459. Adult protective services registry
11 A. THE DEPARTMENT OF ECONOMIC SECURITY SHALL MAINTAIN A REGISTRY OF
12 SUBSTANTIATED REPORTS OF ABUSE, NEGLECT AND EXPLOITATION OF VULNERABLE ADULTS
13 MADE PURSUANT TO SECTION 46-458. THE DEPARTMENT SHALL INCORPORATE DUPLICATE
14 REPORTS ON THE SAME INCIDENT IN THE ORIGINAL REPORT AND SHALL NOT CLASSIFY
15 DUPLICATE REPORTS AS NEW REPORTS.
16 B. THE REGISTRY SHALL CONTAIN THE NAME AND DATE OF BIRTH OF THE PERSON
17 DETERMINED TO HAVE ABUSED, NEGLECTED OR EXPLOITED A VULNERABLE ADULT, THE
18 NATURE OF THE ALLEGATION MADE AND THE DATE AND DESCRIPTION OF THE DISPOSITION
19 OF THE ALLEGATION. THE NAMES OF THE VULNERABLE ADULT AND REPORTING SOURCE
20 SHALL NOT BE REPORTED TO THE REGISTRY.
21 C. THE DEPARTMENT SHALL MAINTAIN A REPORT IN THE REGISTRY FOR TEN
22 YEARS AFTER THE DATE OF ENTRY.
23 D. THE DEPARTMENT SHALL ANNUALLY PURGE REPORTS AND INVESTIGATIVE
24 OUTCOMES RECEIVED PURSUANT TO THE TIME FRAMES PRESCRIBED IN SUBSECTION C OF
25 THIS SECTION.
26 E. ANY PERSON WHO WAS THE SUBJECT OF AN ADULT PROTECTIVE SERVICES
27 INVESTIGATION MAY REQUEST CONFIRMATION THAT THE DEPARTMENT HAS PURGED
28 INFORMATION ABOUT THE PERSON PURSUANT TO SUBSECTION D OF THIS SECTION. ON
29 RECEIPT OF THIS REQUEST, THE DEPARTMENT SHALL PROVIDE THE PERSON WITH WRITTEN
30 CONFIRMATION THAT THE DEPARTMENT HAS NO RECORD CONTAINING IDENTIFYING
31 INFORMATION ABOUT THAT PERSON.
32 F. INFORMATION MAINTAINED PURSUANT TO SUBSECTION B OF THIS SECTION
33 SHALL BE MADE AVAILABLE TO THE PUBLIC ON WRITTEN REQUEST. THE DEPARTMENT MAY
34 CHARGE A FEE FOR PROCESSING THESE REQUESTS.