

REFERENCE TITLE: DCS; misconduct; temporary custody; removal

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1604

Introduced by
Senator Townsend: Representative Burges

AN ACT

AMENDING TITLE 8, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 8-468; AMENDING SECTIONS 8-821, 8-822 AND 8-823, ARIZONA
REVISED STATUTES; RELATING TO THE DEPARTMENT OF CHILD SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 8, chapter 4, article 1, Arizona Revised Statutes,
3 is amended by adding section 8-468, to read:

4 8-468. Employee misconduct; violation; classification

5 A. A DEPARTMENT EMPLOYEE MAY NOT KNOWINGLY DO ANY OF THE FOLLOWING
6 IN REGARD TO THE EMPLOYEE'S OFFICIAL DUTIES ON A MATTER BEFORE THE
7 DEPARTMENT OR THE JUVENILE COURT PURSUANT TO THIS CHAPTER TO INFLUENCE THE
8 OUTCOME OF THE MATTER:

- 9 1. LIE ABOUT THE MATTER.
- 10 2. WITHHOLD MATERIAL INFORMATION IN REGARD TO THE MATTER.
- 11 3. FABRICATE EVIDENCE.

12 B. AN EMPLOYEE WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 6
13 FELONY.

14 Sec. 2. Section 8-821, Arizona Revised Statutes, is amended to
15 read:

16 8-821. Taking into temporary custody; medical examination;
17 placement; interference; violation; classification;
18 definition

19 A. A child shall be taken into temporary custody only pursuant to
20 one of the following:

- 21 1. An order of the superior court.
- 22 2. Subsection D of this section.
- 23 3. The consent of the child's parent or guardian.

24 B. The superior court, on a dependency petition filed by an
25 interested person, a peace officer, a child welfare investigator or a
26 child safety worker under oath or on a sworn statement or testimony by a
27 peace officer, a child welfare investigator or a child safety worker, may
28 issue an order authorizing the department to take temporary custody of a
29 child on finding that probable cause exists to believe that temporary
30 custody is clearly necessary to protect the child from suffering abuse or
31 neglect and it is contrary to the child's welfare to remain in the home.

32 C. If a child is taken into temporary custody pursuant to this
33 section, the child's sibling shall also be taken into temporary custody
34 only if independent probable cause exists to believe that temporary
35 custody is clearly necessary to protect the child from suffering abuse or
36 neglect.

37 D. A child may be taken into temporary custody without a court
38 order by a peace officer, a child welfare investigator or a child safety
39 worker if temporary custody is clearly necessary to protect the child
40 because exigent circumstances exist.

41 E. In determining if a child should be taken into temporary
42 custody, the court, peace officer, child welfare investigator or child
43 safety worker shall take into consideration as a paramount concern the
44 child's health and safety.

1 F. IN ADDITION TO THE CONSIDERATIONS PRESCRIBED IN SUBSECTION E OF
2 THIS SECTION, BEFORE THE DEPARTMENT REMOVES A CHILD FROM THE HOME WITHOUT
3 THE CONSENT OF THE PARENT OR GUARDIAN OF THE CHILD, THE DEPARTMENT SHALL
4 CONSIDER WHETHER THE FAMILY CAN BE PROVIDED EMERGENCY ASSISTANCE OR AN
5 OPPORTUNITY TO RECTIFY THE NONLIFE-THREATENING ISSUES OF NEGLECT IN A
6 REASONABLE AMOUNT OF TIME TO ALLOW THE CHILD TO REMAIN SAFELY AT HOME.
7 NONLIFE-THREATENING ISSUES OF NEGLECT INCLUDE PRESENCE OF FECES,
8 UNDISPOSED GARBAGE OR EXPOSED WIRING AND ACCESS TO DANGEROUS OBJECTS OR
9 HARMFUL SUBSTANCES THAT PRESENT A SUBSTANTIAL RISK OF HARM. IF THE
10 DEPARTMENT DETERMINES THAT THE CHILD CANNOT BE LEFT SAFELY AT HOME UNDER
11 CURRENT CONDITIONS, THE DEPARTMENT SHALL CONSIDER WHETHER THE FAMILY CAN
12 BE PROVIDED EMERGENCY ASSISTANCE TO:

13 1. ALLOW THE PERSON ALLEGED TO HAVE CREATED THE CONDITIONS OF
14 NEGLECT TO LEAVE THE HOME SO OTHER FAMILY MEMBERS MAY PROVIDE THE CHILD
15 PROTECTION.

16 2. PLACE THE CHILD WITH ANOTHER RELATIVE OR FRIEND WHO CAN PROVIDE
17 TEMPORARY CARE SO THAT THE COURT INTERVENTION IS NOT NECESSARY.

18 3. ALLOW THE CHILD AND CAREGIVER TO LEAVE THE RESIDENCE OF THE
19 PERSON ALLEGED TO HAVE CREATED THE CONDITIONS OF NEGLECT.

20 4. FACILITATE VOLUNTARY FOSTER CARE PLACEMENT.

21 ~~F.~~ G. A person who takes a child into custody because an exigent
22 circumstance described in subsection ~~K~~ L , paragraph 2 of this section
23 exists shall immediately have the child examined by a physician who is
24 licensed pursuant to title 32, chapter 13 or 17 or a health care provider
25 who is licensed pursuant to title 32 and who has specific training in
26 evaluations of child abuse. After the examination the person shall
27 release the child to the custody of the parent or guardian of the child
28 unless the examination reveals abuse. Temporary custody of a child taken
29 into custody because an exigent circumstance described in subsection ~~K~~ L,
30 paragraph 2 of this section exists shall not exceed twelve hours.

31 ~~G.~~ H. A child who is taken into temporary custody pursuant to this
32 article shall not be held in a police station, jail or lockup where adults
33 or juveniles who are charged with or convicted of a crime are detained.

34 ~~H.~~ I. A child shall not remain in temporary custody for more than
35 seventy-two hours excluding Saturdays, Sundays and holidays unless a
36 dependency petition is filed.

37 ~~I.~~ J. To execute an order authorizing temporary custody, a peace
38 officer may use reasonable force to enter any building in which the person
39 named in the removal authorization is or is reasonably believed to be.

40 ~~J.~~ K. A person who knowingly interferes with the taking of a child
41 into temporary custody under this section is guilty of a class 2
42 misdemeanor.

1 E. For the purposes of this section, "supervisor" includes the
2 permanent supervisor of a child safety worker and a temporary supervisor
3 assigned to the child safety worker in the absence of the permanent
4 supervisor.

5 Sec. 4. Section 8-823, Arizona Revised Statutes, is amended to
6 read:

7 8-823. Notice of taking into temporary custody

8 A. If a child is taken into temporary custody pursuant to this
9 article, the interested person, peace officer or child safety worker
10 taking the child into custody shall provide written notice within six
11 hours to the parent or guardian of the child, unless:

12 1. The parent or guardian is present when the child is taken into
13 custody, then written and verbal notice shall be provided immediately.

14 2. The residence of the parent or guardian is outside this state
15 and notice cannot be provided within six hours, then written notice shall
16 be provided within twenty-four hours.

17 3. The residence of the parent or guardian is not ascertainable,
18 then reasonable efforts shall be made to locate and notify the parent or
19 guardian of the child as soon as possible.

20 B. The written notice shall contain a signature line for the parent
21 or guardian to acknowledge receipt of both written and verbal notices.
22 The written and verbal notices shall contain the name of the person and
23 agency taking the child into custody, the location from which the child
24 was taken and all of the following information:

25 1. Specific reasons as to why the child is being removed. The
26 notice shall list the specific factors that caused the determination of
27 imminent danger.

28 2. Services that are available to the parent or guardian, including
29 a statement of parental rights and information on how to contact the
30 ombudsman-citizens aide's office and an explanation of the services that
31 office offers.

32 3. The date and time of the taking into custody.

33 4. The name and telephone number of the agency responsible for the
34 child.

35 5. A statement of the reasons for temporary custody of the child.

36 6. A statement that the child must be returned within seventy-two
37 hours excluding Saturdays, Sundays and holidays unless a dependency
38 petition is filed and a statement that a child in temporary custody for
39 examination ~~pursuant to~~ BECAUSE AN EXIGENT CIRCUMSTANCE DESCRIBED IN
40 section 8-821, subsection ~~D~~ K, paragraph 2 EXISTS must be returned within
41 twelve hours unless abuse or neglect is diagnosed.

42 7. One of the following:

43 (a) If a dependency petition has not been filed or if the
44 information prescribed in subdivision (b) is not available, a statement
45 that if a dependency petition is filed, the parent or guardian will be

1 provided a written notice ~~to~~ NOT later than twenty-four hours after the
2 petition is filed that contains the information prescribed in
3 subdivision (b).

4 (b) In all other cases, the date, time and place of the preliminary
5 protective hearing to be held pursuant to section 8-824 and the
6 requirements of subsection D of this section.

7 8. A statement of the right of the parent or guardian to counsel
8 and that counsel will be appointed pursuant to section 8-221 through the
9 juvenile court if a dependency petition is filed and the person is
10 indigent.

11 9. Information regarding the ability of the person about whom the
12 report was made to provide a verbal, telephonic or written response to the
13 allegations. A verbal response shall be included in the written report of
14 the investigation. A written response, including any documentation, shall
15 be included in the case file.

16 10. A statement that the hearing may result in further proceedings
17 to terminate parental rights.

18 11. A statement that the parent or guardian must immediately
19 provide to the department the names, the type of relationship and all
20 available information necessary to locate persons who are related to the
21 child or who have a significant relationship with the child. If there is
22 not sufficient information available to locate a relative or person with a
23 significant relationship with the child, the parent shall inform the
24 department of this fact. If the parent or guardian obtains information
25 regarding the existence or location of a relative or person with a
26 significant relationship with the child, the parent or guardian shall
27 immediately provide that information to the department.

28 12. A statement that the parent or guardian must be prepared to
29 provide to the court at the preliminary protective hearing the names, the
30 type of relationship and all available information necessary to locate
31 persons who are related to the child or who have a significant
32 relationship with the child.

33 C. The child safety worker shall provide the parent or guardian
34 with the notice even if the parent or guardian refuses to sign the
35 acknowledgment.

36 D. Immediately before the time of the preliminary protective
37 hearing, the persons described in section 8-824, subsection B shall meet
38 and attempt to reach an agreement about placement of the child, services
39 to be provided to the child, parent or guardian and visitation of the
40 child. The parties shall meet with their counsel, if any, before this
41 meeting. Consideration shall be given to the availability of reasonable
42 services to the parent or guardian and the child's health and safety shall
43 be a paramount concern. The persons described in section 8-824,
44 subsection C may attend the meeting to reach an agreement.

1 E. If a dependency petition is filed by the department, the child
2 safety worker is responsible for delivering the notice of the preliminary
3 protective hearing prescribed in subsection B, paragraph 7 of this section
4 to the parent or guardian. In all other cases, the person who files the
5 dependency petition is responsible for delivery of this notice to the
6 parent or guardian. If the location of the parent or guardian is unknown,
7 the person who is responsible for serving this notice shall make
8 reasonable efforts to locate and notify the parent or guardian.