

REFERENCE TITLE: DCS; specialty medical evaluations

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **HB 2323**

Introduced by  
Representative Payne

AN ACT

AMENDING SECTIONS 8-821, 8-824 AND 8-825, ARIZONA REVISED STATUTES;  
AMENDING TITLE 8, CHAPTER 4, ARTICLE 9, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 8-828; RELATING TO CHILD WELFARE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-821, Arizona Revised Statutes, is amended to  
3 read:

4 8-821. Taking into temporary custody; medical examination;  
5 forensic interview; placement; interference;  
6 violation; classification; definition

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

- 9 1. An order of the superior court.
- 10 2. Subsection E of this section.
- 11 3. The consent of the child's parent or guardian.

12 B. The superior court, on a dependency petition filed by an  
13 interested person, a peace officer, a child welfare investigator or a  
14 child safety worker under oath or on a sworn statement or testimony by a  
15 peace officer, a child welfare investigator or a child safety worker, may  
16 issue an order authorizing the department to take temporary custody of a  
17 child on finding that probable cause exists to believe that temporary  
18 custody is clearly necessary to protect the child from suffering abuse or  
19 neglect and it is contrary to the child's welfare to remain in the home.  
20 THE SUPERIOR COURT MAY NOT ISSUE AN ORDER AUTHORIZING THE DEPARTMENT TO  
21 TAKE TEMPORARY CUSTODY OF A CHILD BASED ON A SWORN STATEMENT OR TESTIMONY  
22 THAT RELIES SOLELY ON THE OPINION OF A PHYSICIAN WHO IS LICENSED PURSUANT  
23 TO TITLE 32, CHAPTER 13 OR 17 OR A HEALTH CARE PROVIDER WHO IS LICENSED  
24 PURSUANT TO TITLE 32 WHO PERFORMS EVALUATIONS FOR THE DEPARTMENT OR WHO  
25 HAS NOT CONDUCTED A PHYSICAL EXAMINATION OF THE CHILD.

26 C. If a child is taken into temporary custody pursuant to this  
27 section, the child's sibling shall also be taken into temporary custody  
28 only if independent probable cause exists to believe that temporary  
29 custody is clearly necessary to protect the child from suffering abuse or  
30 neglect.

31 D. If a child is taken into temporary custody pursuant to this  
32 section, the court shall order the department to initiate a due diligence  
33 search pursuant to section 8-514.07.

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

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

42 G. A person who takes a child into custody because an exigent  
43 circumstance described in subsection L, paragraph 2 of this section exists  
44 shall immediately have the child forensically interviewed by a person who  
45 is trained in forensic interviewing pursuant to a protocol established

1 pursuant to section 8-817 and may have the child examined by a physician  
2 who is licensed pursuant to title 32, chapter 13 or 17 or a health care  
3 provider who is licensed pursuant to title 32 and who has specific  
4 training in evaluations of child abuse. After the interview or  
5 examination, or both, the person shall release the child to the custody of  
6 the parent or guardian of the child unless the interview or examination  
7 reveals abuse. A DETERMINATION OF EXIGENT CIRCUMSTANCES DESCRIBED IN  
8 SUBSECTION L, PARAGRAPH 2 OF THIS SECTION MAY NOT BE BASED SOLELY ON THE  
9 OPINION OF A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13 OR  
10 17 OR A HEALTH CARE PROVIDER WHO IS LICENSED PURSUANT TO TITLE 32 WHO  
11 PERFORMS EVALUATIONS FOR THE DEPARTMENT OR WHO DID NOT CONDUCT A PHYSICAL  
12 EXAMINATION OF THE CHILD. Temporary custody of a child taken into custody  
13 because an exigent circumstance described in subsection L, paragraph 2 of  
14 this section exists shall not exceed twelve hours.

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

18 I. A child shall not remain in temporary custody for more than  
19 seventy-two hours excluding Saturdays, Sundays and holidays unless a  
20 dependency petition is filed.

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

24 K. A person who knowingly interferes with the taking of a child  
25 into temporary custody under this section is guilty of a class 2  
26 misdemeanor.

27 L. For the purposes of this section, "exigent circumstances" means  
28 there is probable cause to believe that the child is likely to suffer  
29 serious harm in the time it would take to obtain a court order for removal  
30 and either of the following is true:

31 1. There is no less intrusive alternative to taking temporary  
32 custody of the child that would reasonably and sufficiently protect the  
33 child's health or safety.

34 2. Probable cause exists to believe that the child is a victim of  
35 sexual abuse or abuse involving serious physical injury that can be  
36 diagnosed only by a physician who is licensed pursuant to title 32,  
37 chapter 13 or 17 or a health care provider who is licensed pursuant to  
38 title 32 and who has specific training in evaluations of child abuse.

39 Sec. 2. Section 8-824, Arizona Revised Statutes, is amended to  
40 read:

41 8-824. Preliminary protective hearing; probable cause;  
42 appointment of counsel

43 A. The court shall hold a preliminary protective hearing to review  
44 the taking into temporary custody of a child pursuant to section 8-821 not  
45 fewer than five days nor more than seven days after the child is taken

1 into custody, excluding Saturdays, Sundays and holidays. If clearly  
2 necessary to prevent abuse or neglect, to preserve the rights of a party  
3 or for other good cause shown, the court may grant one continuance that  
4 does not exceed five days.

5 B. The following persons shall be present at the preliminary  
6 protective hearing:

7 1. The child's parents or guardian, unless they cannot be located  
8 or they fail to appear in response to the notice.

9 2. Counsel for the parents if one has been requested or retained.

10 3. The child's guardian ad litem or attorney.

11 4. The child safety worker and additional representatives of the  
12 department if requested by the department.

13 5. Counsel for the child safety worker.

14 C. If the court finds that it is in the best interests of the  
15 child, the court may allow the following to be present at the preliminary  
16 protective hearing:

17 1. The child.

18 2. Any relative or other interested person with whom the child is  
19 or might be placed as described in section 8-845, subsection A.

20 3. Witnesses called by the parties.

21 4. An advocate or interested person as requested by the parent or  
22 guardian.

23 5. Other persons who have knowledge of or an interest in the  
24 welfare of the child.

25 D. At the hearing, the court shall advise the parent or guardian of  
26 the following rights:

27 1. The right to counsel, including appointed counsel if the parent  
28 or guardian is indigent.

29 2. The right to cross-examine all witnesses who are called to  
30 testify against the parent or guardian.

31 3. The right to trial by court on the allegations in the petition.

32 4. The right to use the process of the court to compel the  
33 attendance of witnesses.

34 E. At the hearing, the court:

35 1. Shall receive a report of any agreement reached pursuant to  
36 section 8-823, subsection D. The report may be made orally.

37 2. Shall provide an opportunity for the child's parent or guardian,  
38 if present, and any other person who has relevant knowledge, to provide  
39 relevant testimony.

40 3. May limit testimony and evidence that is beyond the scope of the  
41 removal of the child, the child's need for continued protection,  
42 placement, visitation and services to be provided to the child and family.

43 4. May take into consideration as a mitigating factor the  
44 participation of the parent or guardian in the healthy families program  
45 established by section 8-481.

1           5. Shall take into consideration as a mitigating factor the  
2 availability of reasonable services to the parent or guardian to prevent  
3 or eliminate the need for removal of the child and the effort of the  
4 parent or guardian to obtain and participate in these services.

5           6. Shall inform the child's parent or guardian that the hearing may  
6 result in further proceedings to terminate parental rights.

7           7. Shall order the parent or guardian to provide the court with the  
8 names, the type of relationship and all available information necessary to  
9 locate persons who are related to the child or who have a significant  
10 relationship with the child. If there is not sufficient information  
11 available to locate a relative or person with a significant relationship  
12 with the child, the parent or guardian shall inform the court of this  
13 fact. The court shall further order the parent or guardian to inform the  
14 department immediately if the parent or guardian becomes aware of  
15 information related to the existence or location of a relative or person  
16 with a significant relationship to the child.

17           8. Shall inform the parent that substantially neglecting or  
18 wilfully refusing to remedy the circumstances that cause the child to be  
19 in an out-of-home placement, including refusing to participate in  
20 reunification services, is grounds for termination of parental rights to a  
21 child.

22           9. Shall give paramount consideration to the health and safety of  
23 the child.

24           10. Shall determine whether the department is attempting to  
25 identify and assess placement of the child with a grandparent or another  
26 member of the child's extended family including a person who has a  
27 significant relationship with the child.

28           11. Shall inform a foster parent, a preadoptive parent or a member  
29 of the child's extended family with whom the department has placed the  
30 child of the right to be heard in any proceeding to be held with respect  
31 to the child.

32           12. SHALL CONSIDER THE OPINION OF A PHYSICIAN WHO IS LICENSED  
33 PURSUANT TO TITLE 32, CHAPTER 13 OR 17 OR A HEALTH CARE PROVIDER WHO IS  
34 LICENSED PURSUANT TO TITLE 32 WHO IS OBTAINED BY THE PERSON AGAINST WHOM  
35 THE ALLEGATION OF SUSPECTED ABUSE OR NEGLECT IS BEING MADE.

36           F. The petitioner has the burden of presenting evidence as to  
37 whether there is probable cause to believe that continued temporary  
38 custody is clearly necessary to prevent abuse or neglect pending the  
39 hearing on the dependency petition.

40           G. The department must make reasonable efforts to place a child  
41 with siblings and, if that is not possible, to maintain frequent  
42 visitation or other ongoing contact between all siblings.

43           H. If the child is in the temporary custody of the department, the  
44 department shall submit not later than the day before the hearing a  
45 written report to the court and the parties that states:

- 1           1. The reasons the child was removed from the parent's or  
2 guardian's custody.
- 3           2. Any services that have been provided to the child or the child's  
4 parent or guardian to prevent removal.
- 5           3. The need, if any, for continued temporary custody.
- 6           4. The types of service needed to facilitate the return of the  
7 child to the custody of the child's parents or guardian.
- 8           5. If the child is not placed with a grandparent, whether the child  
9 has any relatives or other interested parties as described in section  
10 8-845, subsection A who may be able and willing to take temporary custody.
- 11           6. Any services that are requested by the parent or guardian but  
12 that are not provided and the reasons the services were not provided.
- 13           7. What efforts the department has made to place siblings together,  
14 and if they are not placed together, the specific reasons why this did not  
15 occur.
- 16           8. If the placement of siblings together was not possible for all  
17 or any of the siblings, efforts the department has made to facilitate  
18 communications among siblings and a proposal for frequent visitation or  
19 contact pursuant to subsection G of this section. If frequent visitation  
20 or contact with siblings is not recommended, the department shall state  
21 the reasons why this would be contrary to the child's or a sibling's  
22 safety or well-being.
- 23           9. A proposal for visitation with the child's parents or guardian  
24 and the results of any visitation that has occurred since the child was  
25 removed. The requirements of this paragraph do not apply to a specific  
26 parent or guardian if there is a court order relating to a criminal case  
27 that prohibits that parent or guardian from contact with the child.  
28 Before the department allows visitation it must first determine that there  
29 are no court orders relating to any superior court criminal case that  
30 prohibit the parent or guardian from contact with the child.
- 31           10. A proposed case plan for services to the family.
- 32           11. The department's efforts to identify, notify and assess adult  
33 relatives of the child and persons with a significant relationship with  
34 the child pursuant to section 8-514.07.
- 35           I. The parent or guardian shall state whether the parent or  
36 guardian admits or denies the allegations in the petition filed pursuant  
37 to section 8-841. If the parent or guardian admits or does not contest  
38 the allegations in the petition, the court shall determine that the parent  
39 or guardian understands the rights described in subsection D of this  
40 section and that the parent or guardian knowingly, intelligently and  
41 voluntarily waives these rights.
- 42           J. At the hearing, if the child is not returned to the parent or  
43 guardian, the court shall:
  - 44           1. Enter orders regarding the placement of the child pending the  
45 determination of the dependency petition and visitation, if any.

1           2. If a relative is identified as a possible placement for the  
2 child, notify the relative of the right to be heard in any proceeding to  
3 be held with respect to the child.

4           3. Determine if the tasks and services set forth in the case plan  
5 are reasonable and necessary to carry out the case plan.

6           Sec. 3. Section 8-825, Arizona Revised Statutes, is amended to  
7 read:

8           8-825. Court determinations in preliminary protective hearing

9           A. The court's determination in the preliminary protective hearing  
10 may be based on evidence that is hearsay, in whole or in part, in the  
11 following forms:

12           1. The allegations of the petition.

13           2. An affidavit.

14           3. Sworn testimony.

15           4. The written reports of expert witnesses.

16           5. The department's written reports if the child safety worker is  
17 present and available for cross-examination.

18           6. Documentary evidence without foundation if there is a  
19 substantial basis for believing the foundation will be available at the  
20 dependency hearing and the document is otherwise admissible.

21           7. The testimony of a witness concerning the declarations of  
22 another person if the evidence is cumulative or there is a reasonable  
23 ground to believe that the other person will be personally available for  
24 trial.

25           8. THE OPINION OF A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32,  
26 CHAPTER 13 OR 17 OR A HEALTH CARE PROVIDER WHO IS LICENSED PURSUANT TO  
27 TITLE 32 WHO IS OBTAINED BY THE PERSON AGAINST WHOM THE ALLEGATION OF  
28 SUSPECTED ABUSE OR NEGLECT IS BEING MADE.

29           B. Evidence considered by the court pursuant to subsection A of  
30 this section shall also include any available evidence of substantiated  
31 allegations of abuse or neglect committed in another jurisdiction.

32           C. The court shall determine whether temporary custody of the child  
33 is clearly necessary to prevent abuse or neglect pending the hearing on  
34 the dependency petition. The court:

35           1. On finding that the petitioner has not met the burden prescribed  
36 in section 8-824, subsection F, shall return the child to the child's  
37 parent, guardian or custodian pending the dependency hearing.

38           2. On finding that the petitioner has met the burden prescribed in  
39 section 8-824, subsection F, may declare the child a temporary ward of the  
40 court pending the dependency hearing.

41           D. The court shall also determine if reasonable efforts were made  
42 to prevent or eliminate the need for removal of a child from the child's  
43 home and if services are available that would eliminate the need for  
44 continued removal. If the child is:

1           1. In the custody of the department, the court shall order the  
2 department to make reasonable efforts to provide services to the child and  
3 parent to facilitate the reunification of the family, except as provided  
4 in section 8-846.

5           2. Not in the custody of the department and the department is not a  
6 party, the court may direct the parties to participate in reasonable  
7 services that will facilitate reunification of the family or another  
8 permanent plan for the child. The court shall not require the department  
9 to provide services pursuant to this paragraph.

10          Sec. 4. Title 8, chapter 4, article 9, Arizona Revised Statutes, is  
11 amended by adding section 8-828, to read:

12           8-828. Specialty medical evaluations; alternative opinion

13           A. DURING THE COURSE OF AN INVESTIGATION OF SUSPECTED ABUSE OR  
14 NEGLECT, THE DEPARTMENT SHALL REFER A CHILD WHO IS TAKEN INTO TEMPORARY  
15 CUSTODY PURSUANT TO THIS ARTICLE FOR A SPECIALTY MEDICAL EVALUATION FOR  
16 ANY OF THE FOLLOWING REASONS:

17           1. THE DEPARTMENT DETERMINES THAT THE CHILD REQUIRES A SPECIALTY  
18 MEDICAL EVALUATION WITH A PHYSICIAN.

19           2. THE CHILD'S PRIMARY CARE PHYSICIAN OR OTHER PRIMARY HEALTH CARE  
20 PROVIDER WHO PROVIDED HEALTH CARE OR TREATMENT TO OR OTHERWISE EVALUATED  
21 THE CHILD RECOMMENDS A SPECIALTY MEDICAL EVALUATION.

22           3. THE CHILD'S PARENT OR LEGAL GUARDIAN OR THE ATTORNEY FOR THE  
23 CHILD OR THE CHILD'S PARENT OR LEGAL GUARDIAN REQUESTS A SPECIALTY MEDICAL  
24 EVALUATION.

25           B. IF A CHILD IS REFERRED FOR A SPECIALTY MEDICAL EVALUATION, THE  
26 DEPARTMENT SHALL REFER THE CHILD TO A PHYSICIAN OR HEALTH CARE PROVIDER  
27 WHO MEETS ALL OF THE FOLLOWING:

28           1. IS A PHYSICIAN WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 13  
29 OR 17 OR A HEALTH CARE PROVIDER WHO IS LICENSED PURSUANT TO TITLE 32.

30           2. IS BOARD CERTIFIED IN THE FIELD OR SPECIALTY THAT IS RELEVANT TO  
31 DIAGNOSING AND TREATING THE CONDITION THAT REQUIRED THE SPECIALTY MEDICAL  
32 EVALUATION.

33           3. DID NOT REPORT THE SUSPECTED ABUSE OR NEGLECT OF THE CHILD. A  
34 PHYSICIAN OR HEALTH CARE PROVIDER WHO REPORTS SUSPECTED ABUSE OR NEGLECT  
35 OF THE CHILD MAY NOT PARTICIPATE IN THE SPECIALTY MEDICAL EVALUATION.

36           C. BEFORE REFERRING A CHILD FOR A SPECIALTY MEDICAL EVALUATION, THE  
37 DEPARTMENT SHALL PROVIDE THE CHILD'S PARENT OR LEGAL GUARDIAN OR THE  
38 ATTORNEY OF THE CHILD OR THE CHILD'S PARENT OR LEGAL GUARDIAN WITH WRITTEN  
39 NOTICE OF THE NAME, CONTACT INFORMATION AND CREDENTIALS OF THE SPECIALIST.  
40 THE CHILD'S PARENT OR LEGAL GUARDIAN OR THE ATTORNEY OF THE CHILD OR THE  
41 CHILD'S PARENT OR LEGAL GUARDIAN MAY OBJECT TO THE PROPOSED REFERRAL AND  
42 REQUEST A REFERRAL TO ANOTHER SPECIALIST. THE DEPARTMENT AND THE PARENT,  
43 LEGAL GUARDIAN OR ATTORNEY SHALL COLLABORATE IN GOOD FAITH TO SELECT AN  
44 ACCEPTABLE SPECIALIST. THE DEPARTMENT MAY REFER THE CHILD TO A SPECIALIST



1 OVER THE OBJECTION OF THE CHILD'S PARENT OR LEGAL GUARDIAN OR THE ATTORNEY  
2 FOR THE CHILD OR THE CHILD'S PARENT OR LEGAL GUARDIAN.

3 D. THE DEPARTMENT MAY OBTAIN CONSULTATIONS WITH PHYSICIANS OR  
4 HEALTH CARE PROVIDERS WITH THE ABILITY TO DIAGNOSE AND TREAT UNIQUE HEALTH  
5 CONDITIONS THAT MIMIC CHILD MALTREATMENT OR THAT INCREASE THE RISK OF  
6 MISDIAGNOSIS OF CHILD MALTREATMENT.

7 E. THIS SECTION DOES NOT PROHIBIT A CHILD'S PARENT OR LEGAL  
8 GUARDIAN OR THE ATTORNEY OF THE CHILD OR THE CHILD'S PARENT OR LEGAL  
9 GUARDIAN FROM OBTAINING AN ALTERNATIVE OPINION. THE CHILD'S PARENT OR  
10 LEGAL GUARDIAN OR THE ATTORNEY FOR THE CHILD OR THE CHILD'S PARENT OR  
11 LEGAL GUARDIAN IS RESPONSIBLE FOR THE COST OF THE ALTERNATIVE  
12 OPINION. THE DEPARTMENT SHALL ACCEPT AND CONSIDER AN ALTERNATIVE OPINION  
13 OBTAINED PURSUANT TO THIS SUBSECTION.