

REFERENCE TITLE: DCS; removal of children

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

HB 2361

Introduced by
Representatives Diaz: Parker B

AN ACT

AMENDING SECTIONS 8-809.01, 8-821 AND 8-882, 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 8-809.01, Arizona Revised Statutes, is amended
3 to read:

4 8-809.01. Parent, guardian or custodian; rights

5 A. On initial contact with a child safety worker, a parent,
6 guardian or custodian under investigation for an allegation of abuse or
7 neglect has the following rights:

8 1. To be informed of the specific complaint or allegation against
9 that person and that any responses to the complaint or allegation may be
10 used in a subsequent court proceeding.

11 2. To refuse to cooperate with the investigation or receive child
12 safety services offered pursuant to the investigation. A child may not be
13 temporarily removed based solely on a parent's, guardian's or custodian's
14 refusal to cooperate with the investigation.

15 3. Unless otherwise ordered by the court, to deny the worker entry
16 into the parent's, guardian's or custodian's home.

17 4. To respond to allegations either verbally or in writing and to
18 have this information considered in determining if the child requires
19 child safety services.

20 5. To report a violation of the rights specified in this section
21 without fear of punishment, interference, coercion or retaliation.

22 6. To appeal determinations made by the department.

23 7. To seek the advice of an attorney and to have an attorney
24 present when questioned by a worker.

25 8. Unless otherwise ordered by the court, to refuse to do any of
26 the following:

27 (a) Sign a release of information document.

28 (b) Consent to take a drug or alcohol test.

29 (c) Submit to a mental health evaluation.

30 9. To receive information about the investigation and the
31 department's decision-making process.

32 10. To be informed both verbally and in writing of these rights and
33 any parental rights under state law and to provide written acknowledgement
34 of receipt of these rights.

35 ~~B. If a child safety worker has probable cause to believe that
36 exigent circumstances exist that present an imminent danger to the child,
37 the worker shall take all lawful measures to protect the child pursuant to
38 sections 8-821 and 8-822 before providing the notice of rights pursuant to
39 subsection A of this section.~~

40 ~~C.~~ B. Unless parental rights have been terminated, ~~OR~~ exigent
41 circumstances exist or as otherwise ordered by the court, a parent,
42 guardian or custodian whose child is placed in the department's custody
43 has the following rights:

- 1 1. To not have the child taken into department custody without the
2 department providing the reasons for removal and information supporting
3 the removal.
- 4 2. To the extent practicable, ~~T~~O be immediately notified verbally
5 or in writing that the child was taken into custody.
- 6 3. To receive information on the services available to the child,
7 parent, guardian or custodian and the dependency process and timelines.
- 8 4. To have an attorney present or an attorney appointed by the
9 court at all court proceedings.
- 10 5. To be timely notified of the date, time and location of all
11 hearings and to participate in all hearings.
- 12 6. Whenever possible, to participate in the development of a case
13 plan.
- 14 7. To receive services if the child has been removed from the home,
15 including services that facilitate reunification of the family.
- 16 8. To maintain contact with the child unless it is determined by
17 the department or court to be harmful to the child's safety or well-being.
- 18 9. To be consulted about the child's medical care, education and
19 grooming.
- 20 10. To request that the child be returned if the court finds by a
21 preponderance of the evidence that the return of the child would not
22 create a substantial risk of harm to the child's physical, mental or
23 emotional health or safety.
- 24 ~~C.~~ C. The department shall provide information regarding a
25 parent's, guardian's or custodian's rights pursuant to this section and
26 assistance in understanding and enforcing these rights to each parent,
27 guardian and custodian on initial contact with a child safety worker or
28 when there is a change in the child's case plan. The information shall
29 include the telephone number and email address of the department, the
30 department's office of the ombudsman and the ombudsman-citizen aide.
- 31 ~~E.~~ D. If a parent guardian or custodian believes that the person's
32 rights under this section have been violated, the parent, guardian or
33 custodian or the person's representative may:
 - 34 1. File a complaint with the department, the department's office of
35 the ombudsman or the ombudsman-citizens aide pursuant to section 41-1376.
36 A formal grievance may be initiated with the ombudsman at any time.
 - 37 2. Notify the juvenile court in the child's ongoing dependency or
38 severance proceeding, either orally or in writing, that the parent's,
39 guardian's or custodian's rights are being violated and request
40 appropriate equitable relief. The court shall act on the notification as
41 necessary within its discretion to promote the best interest of the child.
- 42 ~~F.~~ E. The rights provided in this section do not establish an
43 independent cause of action.

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

3 8-821. Taking into temporary custody; medical examination;
4 forensic interview; placement; interference;
5 violation; classification; definition

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

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

11 B. The superior court, on a dependency petition filed by an
12 interested person, a peace officer, a child welfare investigator or a
13 child safety worker under oath or on a sworn statement or testimony by a
14 peace officer, a child welfare investigator or a child safety worker, may
15 issue an order authorizing the department to take temporary custody of a
16 child on finding that probable cause exists to believe that temporary
17 custody is clearly necessary to protect the child from suffering abuse or
18 neglect and it is contrary to the child's welfare to remain in the home.

19 C. If a child is taken into temporary custody pursuant to this
20 section, the child's sibling shall also be taken into temporary custody
21 only if independent probable cause exists to believe that temporary
22 custody is clearly necessary to protect the child from suffering abuse or
23 neglect.

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

27 E. A child may be taken into temporary custody without a court
28 order by a peace officer, ~~a child welfare investigator or a child safety~~
29 ~~worker~~ if temporary custody is clearly necessary to protect the child
30 because exigent circumstances exist.

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

35 G. A person who takes a child into custody because an exigent
36 circumstance described in subsection L, paragraph 2 of this section exists
37 shall immediately have the child forensically interviewed by a person who
38 is trained in forensic interviewing pursuant to a protocol established
39 pursuant to section 8-817 and may have the child examined by a physician
40 who is licensed pursuant to title 32, chapter 13 or 17 or a health care
41 provider who is licensed pursuant to title 32 and who has specific
42 training in evaluations of child abuse. After the interview or
43 examination, or both, the person shall release the child to the custody of
44 the parent or guardian of the child unless the interview or examination
45 reveals abuse. Temporary custody of a child taken into custody because an

1 exigent circumstance described in subsection L, paragraph 2 of this
2 section exists shall not exceed twelve hours.

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

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

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

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

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

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

22 2. Probable cause exists to believe that the child is a victim of
23 **TRAFFICKING OF PERSONS FOR FORCED LABOR OR SERVICES, CHILD SEX**
24 **TRAFFICKING**, sexual abuse or abuse involving serious physical injury that
25 can be diagnosed only by 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 and who has specific training in evaluations of child abuse.

28 Sec. 3. Section 8-822, Arizona Revised Statutes, is amended to
29 read:

30 **8-822. Removal of child from home; rules and policies**

31 A. The department shall adopt rules and establish clear policies
32 and procedures, where appropriate, to:

33 1. Determine the circumstances under which it is appropriate to
34 remove a child from the custody of the child's parents, guardian or
35 custodian.

36 2. Ensure the immediate notification of the child's parents,
37 guardian or custodian regarding the removal of the child from home, school
38 or child care and the timely interview of the child and the child's
39 parent, guardian or custodian.

40 B. The department shall apply its rules, policies and
41 **EVIDENCE-INFORMED** safety assessment model prescribed in section 8-456
42 uniformly across this state.

43 ~~C. Except as provided in subsection D of this section, the~~
44 ~~department may not remove a child from the custody of the child's parents,~~

1 ~~guardian or custodian unless both of the following occur before the~~
2 ~~removal:~~

3 ~~1. The child safety worker who is recommending the removal submits~~
4 ~~the reasons for removal and supporting information to the worker's~~
5 ~~supervisor.~~

6 ~~2. The worker's supervisor reviews the reasons and supporting~~
7 ~~information and approves the removal.~~

8 ~~D. If an emergency exists affecting the health or safety of a~~
9 ~~child, a child safety worker may remove the child before notifying the~~
10 ~~worker's supervisor. The child safety worker shall submit the reasons for~~
11 ~~removal and supporting information to the worker's supervisor for the~~
12 ~~supervisor's review and approval within two hours after the removal of the~~
13 ~~child or, if the removal occurs after regular working hours, by 8:30 a.m.~~
14 ~~the next day.~~

15 ~~E. For the purposes of this section, "supervisor" includes the~~
16 ~~permanent supervisor of a child safety worker and a temporary supervisor~~
17 ~~assigned to the child safety worker in the absence of the permanent~~
18 ~~supervisor.~~

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

21 8-828. Temporary out-of-home care; alternatives

22 A. NOTWITHSTANDING ANY OTHER LAW, A COURT MAY ORDER AN ALTERNATIVE
23 TO TEMPORARY OUT-OF-HOME CARE BEFORE THE PRELIMINARY PROTECTIVE HEARING
24 HELD PURSUANT TO SECTION 8-824. AN ORDER FOR AN ALTERNATIVE TO TEMPORARY
25 OUT-OF-HOME CARE MAY INCLUDE ONE OR MORE OF THE FOLLOWING:

26 1. A VOLUNTARY AGREEMENT BETWEEN THE CHILD'S PARENT, GUARDIAN OR
27 CUSTODIAN AND THE DEPARTMENT FOR THE CHILD TO REMAIN IN THE HOME BEFORE
28 THE PRELIMINARY PROTECTIVE HEARING.

29 2. A TEMPORARY PROTECTIVE ORDER THE IMPOSES CONDITIONS OR
30 LIMITATIONS ON THE CONDUCT OF THE PARENT, GUARDIAN OR CUSTODIAN AND THAT
31 MAY REQUIRE THE PARENT, GUARDIAN OR CUSTODIAN TO DO ANY OF THE FOLLOWING:

32 (a) PROHIBIT ACCESS TO THE CHILD BY A SPECIFIC INDIVIDUAL.

33 (b) REFRAIN FROM OFFENSIVE CONDUCT AGAINST A CHILD.

34 (c) PROVIDE PROPER CARE AND MAINTENANCE OF THE HOME IN WHICH THE
35 CHILD RESIDES.

36 (d) COOPERATE IN GOOD FAITH WITH THE DEPARTMENT.

37 (e) REFRAIN FROM BEHAVIOR OR THE OMISSION OF BEHAVIOR THAT MAY
38 RENDER THE HOME IN WHICH THE CHILD RESIDES UNFIT.

39 (f) ENSURE THE CHILD ATTENDS SCHOOL REGULARLY.

40 3. A REQUIREMENT THAT THE DEPARTMENT PROVIDE SERVICES THAT ARE
41 DESIGNED TO ALLOW THE CHILD TO REMAIN IN THE CHILD'S HOME.

42 4. A TEMPORARY AGREEMENT BETWEEN THE PARENT, GUARDIAN OR CUSTODIAN
43 OF THE CHILD AND THE DEPARTMENT THAT THE CHILD BE PLACED WITH A RELATIVE
44 BEFORE THE PRELIMINARY PROTECTIVE HEARING. THE COURT SHALL AUTHORIZE A
45 TEMPORARY AGREEMENT IF THE COURT FINDS THAT IT WOULD NOT BE IN THE BEST

1 INTEREST OF THE CHILD TO REMAIN IN THE CHILD'S HOME. IF THE COURT
2 AUTHORIZES A TEMPORARY AGREEMENT, THE COURT SHALL MAKE ALL FINDINGS
3 REGARDING THE BEST INTERESTS OF THE CHILD IN WRITING AND SHALL ORDER THE
4 DEPARTMENT TO PROVIDE A PRELIMINARY ASSESSMENT OF THE RELATIVE WHO WILL
5 PROVIDE TEMPORARY CARE FOR THE CHILD. THE ASSESSMENT SHALL INCLUDE ALL OF
6 THE FOLLOWING:

7 (a) A VISIT TO THE RELATIVE'S HOME WHERE THE CHILD WILL TEMPORARILY
8 LIVE.

9 (b) AN IN-STATE CRIMINAL BACKGROUND CHECK OF THE RELATIVE AND ANY
10 OTHER ADULTS LIVING IN THE HOME WHERE THE CHILD WILL TEMPORARILY LIVE.

11 (c) A SEARCH OF THE INTERNET SEX OFFENDER WEBSITE ESTABLISHED
12 PURSUANT TO SECTION 13-3827 FOR THE RELATIVE THE CHILD WILL TEMPORARILY
13 LIVE WITH AND ANY OTHER ADULT LIVING IN THE HOME.

14 (d) A SEARCH OF THE STATE DEPARTMENT OF CORRECTIONS INMATE
15 DATABASE.

16 B. AN ALTERNATIVE TO TEMPORARY OUT-OF-HOME CARE ORDER ENTERED
17 PURSUANT TO THIS SECTION SHALL REMAIN IN EFFECT UNTIL MODIFIED BY THE
18 COURT OR UNTIL THE COURT HOLDS THE PRELIMINARY PROTECTIVE HEARING. THE
19 COURT MAY CONTINUE TO ENFORCE THE ALTERNATIVE TO TEMPORARY OUT-OF-HOME
20 CARE ORDER AFTER THE PRELIMINARY PROTECTIVE HEARING.