

PROPOSED

SENATE AMENDMENTS TO S.B. 1257

(Reference to printed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 8-807, Arizona Revised Statutes, is amended to
3 read:

4 8-807. DCS information; public record; use; confidentiality;
5 violation; classification

6 A. DCS 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 DCS information shall be
9 construed as openly as possible under federal law.

10 B. The department, or a person who receives DCS information pursuant
11 to this subsection, shall provide DCS information to a federal agency, a
12 state agency, a tribal agency, a county or municipal agency, a law
13 enforcement agency, a prosecutor, an attorney or a guardian ad litem
14 representing a child victim of crime pursuant to article II, section 2.1,
15 Constitution of Arizona, a school, a community service provider, a contract
16 service provider or any other person that is providing services pursuant to
17 this article or article 9, 10, 11, 12, 13 or 14 of this chapter:

18 1. To meet its duties to provide for the safety and permanency of a
19 child, provide services to a parent, guardian or custodian or provide
20 services to family members to strengthen the family pursuant to this
21 article or article 9, 10, 11, 12, 13 or 14 of this chapter.

22 2. To enforce or prosecute any violation involving child abuse or
23 neglect or to assert the rights of the child as a victim of a crime.

24 3. To provide information to a defendant after a criminal charge has
25 been filed as required by an order of the criminal court.

1 4. To help investigate and prosecute any violation involving
2 domestic violence as defined in section 13-3601 or violent sexual assault
3 as prescribed in section 13-1423.

4 C. The department shall disclose DCS information to a court, a party
5 in a dependency or termination of parental rights proceeding or the party's
6 attorney, the foster care review board or a court appointed special
7 advocate for the purposes of and as prescribed in this title.

8 D. The department shall disclose DCS information to a domestic
9 relations, family or conciliation court if the DCS information is necessary
10 to promote the safety and well-being of children. The court shall notify
11 the parties that it has received the DCS information.

12 E. A person or agent of a person who is the subject of DCS
13 information shall have access to DCS information concerning that person.

14 F. The department may provide:

15 1. DCS information to confirm, clarify, correct or supplement
16 information concerning an allegation or actual instance of child abuse or
17 neglect that has been made public by a source or sources outside the
18 department.

19 2. DCS information to a person who is conducting bona fide research,
20 the results of which might provide DCS information that is beneficial in
21 improving the department.

22 3. Access to DCS information to the parent, guardian or custodian of
23 a child if the DCS information is reasonably necessary to promote the
24 safety, permanency and well-being of the child.

25 4. DCS information if an employee of the department has a reasonable
26 belief that exigent circumstances exist. For the purposes of this
27 paragraph, "exigent circumstances" means a condition or situation in which
28 the death of or serious injury to a child will likely result in the near
29 future without immediate intervention.

30 G. The department shall disclose DCS information to a county medical
31 examiner or an alternate medical examiner directing an investigation into
32 the circumstances surrounding a death pursuant to section 11-593.

1 H. Access to DCS information in the central registry shall be
2 provided as prescribed in section 8-804.

3 I. To provide oversight of the department, the department shall
4 provide access to DCS information to the following persons, if the DCS
5 information is reasonably necessary for the person to perform the person's
6 official duties:

7 1. Federal or state auditors.

8 2. Persons conducting any accreditation deemed necessary by the
9 department.

10 3. A standing committee of the legislature or a committee appointed
11 by the president of the senate or the speaker of the house of
12 representatives for purposes of conducting investigations related to the
13 legislative oversight of the department. This information shall not be
14 further disclosed unless a court has ordered the disclosure of this
15 information, the information has been disclosed in a public or court
16 record, or the information has been disclosed in the course of a public
17 meeting or court proceeding.

18 4. A legislator who requests DCS information in the regular course
19 of the legislator's duties. A legislator may discuss this information with
20 another legislator ~~if the other legislator has signed the form prescribed~~
21 ~~in subdivision (d) of this paragraph in regard to the specific file that~~
22 ~~will be discussed~~. This information shall not be further disclosed unless
23 a court has ordered the disclosure of this information, the information has
24 been disclosed in a public or court record, or the information has been
25 disclosed in the course of a public meeting or court proceeding. To
26 request a file pursuant to this paragraph:

27 (a) The legislator shall submit a written request for DCS
28 information to the presiding officer of the body of which the state
29 legislator is a member. The request shall state the name of the person
30 whose case file is to be reviewed and any other information that will
31 assist the department in locating the file. The presiding officer may

1 authorize a legislative staff member to attend with the legislator any
2 meeting to review the file.

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

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

8 ~~(d) The legislator and staff member shall sign a form, consistent~~
9 ~~with the requirements of this paragraph and paragraph 3 of this subsection,~~
10 ~~before reviewing the file, that outlines the confidentiality laws governing~~
11 ~~department files and penalties for further release of the information.~~

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

15 6. An independent oversight committee established pursuant to
16 section 41-3801.

17 7. The governor who shall not disclose any information unless a
18 court has ordered the disclosure of the information, the information has
19 been disclosed in a public or court record or the information has been
20 disclosed in the course of a public meeting or court proceeding.

21 J. A person who has been denied DCS information regarding a fatality
22 or near fatality caused by abuse, abandonment or neglect pursuant to
23 subsection L of this section or section 8-807.01 may bring a special action
24 pursuant to section 39-121.02 in the superior court to order the department
25 to release that DCS information. A legislator has standing to bring or to
26 join a special action regarding the release of DCS information or to
27 challenge the redaction of released DCS information. The plaintiff shall
28 provide notice to the county attorney, who has standing and may participate
29 in the action. The court shall review the requested records in camera and
30 order disclosure consistent with subsections A and L of this section and
31 section 8-807.01. The court shall take reasonable steps to prevent any
32 clearly unwarranted invasions of privacy and protect the privacy and

1 dignity of victims of crime pursuant to article II, section 2.1, subsection
2 C, Constitution of Arizona.

3 K. The department or a person who is not specifically authorized by
4 this section to obtain DCS information may petition a judge of the superior
5 court to order the department to release DCS information. The plaintiff
6 shall provide notice to the county attorney and to the attorney and
7 guardian ad litem for the child, who have standing and may participate in
8 the action. The court shall review the requested records in camera and
9 shall balance the rights of the parties who are entitled to confidentiality
10 pursuant to this section against the rights of the parties who are seeking
11 the release of the DCS information. The court may release otherwise
12 confidential DCS information only if the rights of the parties seeking the
13 DCS information and any benefits from releasing the DCS information
14 outweigh the rights of the parties who are entitled to confidentiality and
15 any harm that may result from releasing the DCS information. The court
16 shall take reasonable steps to prevent any clearly unwarranted invasions of
17 privacy and protect the privacy and dignity of victims of crime pursuant to
18 article II, section 2.1, subsection C, Constitution of Arizona.

19 L. Except as provided in subsection M of this section, before it
20 releases records under this section or section 8-807.01, the department
21 shall take whatever precautions it determines are reasonably necessary to
22 protect the identity and safety of a person who reports child abuse or
23 neglect and to protect any other person if the department believes that
24 disclosure of the DCS information would be likely to endanger the life or
25 safety of any person. The department is not required by this section to
26 disclose DCS information if the department demonstrates that disclosure
27 would cause a specific, material harm to a department investigation. The
28 department is not required by this section to disclose DCS information if,
29 in consultation with the county attorney, the county attorney demonstrates
30 that disclosure would cause a specific, material harm to a criminal
31 investigation or prosecution.

1 M. A person who is the subject of an unfounded report or complaint
2 made pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this
3 chapter and who believes that the report or complaint was made in bad faith
4 or with malicious intent may petition a judge of the superior court to
5 order the department to release the DCS information. The petition shall
6 specifically set forth reasons supporting the person's belief that the
7 report or complaint was made in bad faith or with malicious intent. The
8 court shall review the DCS information in camera and the person filing the
9 petition shall be allowed to present evidence in support of the
10 petition. If the court determines that there is a reasonable question of
11 fact as to whether the report or complaint was made in bad faith or with
12 malicious intent and that disclosure of the identity of the person making
13 the report or complaint would not be likely to endanger the life or safety
14 of the person making the report or complaint, it shall provide a copy of
15 the DCS information to the person filing the petition and the original DCS
16 information is subject to discovery in a subsequent civil action regarding
17 the making of the report or complaint.

18 N. The department shall provide the person who conducts a forensic
19 medical evaluation with any records the person requests, including social
20 history and family history regarding the child, the child's siblings and
21 the child's parents or guardians.

22 O. The department shall provide DCS information on request to a
23 prospective adoptive parent, foster parent or guardian, if the information
24 concerns a child the prospective adoptive parent, foster parent or guardian
25 seeks to adopt or provide care for.

26 P. If the department receives information that is confidential by
27 law, the department shall maintain the confidentiality of the information
28 as prescribed in the applicable law.

29 Q. A person may authorize the release of DCS information about the
30 person but may not waive the confidentiality of DCS information concerning
31 any other person.

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

4 S. The department shall adopt rules to facilitate the accessibility
5 of DCS information.

6 T. The department or a person who receives DCS information pursuant
7 to subsection B of this section shall provide DCS information to law
8 enforcement and a court to protect the safety of any employee of the
9 department or the office of the attorney general or to protect a family
10 member of such an employee.

11 U. A person who receives DCS information shall maintain the
12 confidentiality of the information and shall not further disclose the
13 information unless the disclosure is authorized by law or a court order.

14 V. The department may charge a fee for copying costs required to
15 prepare DCS information for release pursuant to this section or section
16 8-807.01.

17 W. Unless explicitly prohibited by law, it is the public policy of
18 this state that the department shall provide both of the following:

19 1. All DCS information and direct remote access to the department's
20 automated case management system to the office of the ombudsman-citizen's
21 aide and the auditor general.

22 2. Direct remote access to the department's automated case
23 management system and any DCS information that is necessary to perform the
24 foster care review board's statutory duties to the supreme court.

25 X. A person who violates this section is guilty of a class 2
26 misdemeanor."

27 Renumber to conform

28 Amend title to conform

JUSTINE WADSACK

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