

DEPARTMENT OF CHILD SAFETY

8-803. Limitation of authority; duty to inform

A. On initial contact with a parent, guardian or custodian under investigation pursuant to this article, a child safety worker shall inform the family, both verbally and in writing, making reasonable efforts to receive written acknowledgement from the parent, guardian, or custodian, of receipt of all of the following information:

1. That the family is under investigation by the department.
2. The specific complaint or allegation made against that person.
3. That the worker has no legal authority to compel the family to cooperate with the investigation or to receive child safety services offered pursuant to the investigation.
4. The worker's authority to petition the juvenile court for a determination that a child is dependent.
5. The person's right to file a complaint with the **ombudsman-citizens aide** pursuant to section 41-1376. The worker shall provide the telephone number of the **ombudsman-citizens aide**.
6. The person's right to appeal determinations made by the department.
7. Information outlining parental rights under the laws of the state.

B. The child safety worker shall also inform the person about whom the report was made about that person's right to respond to the allegations either verbally or in writing, including any documentation, and to have this information considered in determining if the child is in need of child safety services. The worker shall tell the person that anything the person says or writes can be used in a court proceeding. If the person makes a verbal response, the worker shall include the response in the written report of the investigation. If the person makes a written response, including any documentation, the worker shall include this response and the documentation in the case file. Information provided in response to the allegations shall be considered during the investigation by the worker. The worker shall maintain the response and documentation in the case file and provide this information to the court before a hearing or trial relating to the dependency petition.

C. If the family declines to cooperate with the investigation or to accept or to participate in the offered services, or if the worker otherwise believes that the child should be adjudicated dependent, the worker may file with the juvenile court a petition requesting that the child in need of child safety services be adjudicated dependent.

D. Refusal to cooperate in the investigation or to participate in the offered services does not constitute grounds for temporary custody of a child except if there is a clear necessity for temporary custody as provided in section 8-821.

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

A. DCS information shall be maintained by the department as required by federal law as a condition of the allocation of federal monies to this state. All exceptions for the public release of DCS information shall be construed as openly as possible under federal law.

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

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

2. To enforce or prosecute any violation involving child abuse or neglect.

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

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

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

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

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

F. The department:

1. May provide DCS information to confirm, clarify or correct information concerning an allegation or actual instance of child abuse or neglect that has been made public by sources outside the department.

2. Shall promptly provide DCS information to the public regarding a case of child abuse, abandonment or neglect that has resulted in a fatality or near fatality as follows:

(a) The department shall provide preliminary information including at a minimum:

(i) The name, age and city, town or general location of residence of the child who has suffered a near fatality or fatality.

(ii) The fact that a child suffered a near fatality or fatality as the result of abuse, abandonment or neglect.

(iii) The name, age and city, town or general location of residence of the alleged perpetrator, if available.

(iv) Whether there have been reports, or any current or past cases, of abuse, abandonment or neglect involving the child and the current alleged abusive or neglectful parent, guardian or custodian.

(v) Actions taken by the department in response to the fatality or near fatality of the child.

(vi) A detailed synopsis of prior reports or cases of abuse, abandonment or neglect involving the child and the current alleged abusive or neglectful parent, guardian or custodian and of the actions taken or determinations made by the department in response to these reports or cases.

(b) On request by any person, the department shall promptly provide additional DCS information to the requestor. Before releasing additional DCS information, the department shall promptly notify the county attorney of any decision to release that information, and the county attorney shall promptly inform the department if it believes the release would cause a specific, material harm to a criminal investigation. After consulting with the county attorney, pursuant to subdivision (c) of this paragraph, the department shall produce to the requestor as much additional DCS information as promptly as possible about a case of child abuse, abandonment or neglect that resulted in a fatality or near fatality.

(c) On request, the department shall continue to provide DCS information promptly to the public about a fatality or near fatality unless:

(i) After consultation with the county attorney, the county attorney demonstrates that release of particular DCS information would cause a specific, material harm to a criminal investigation.

(ii) The release would violate subsection A or L of this section or the privacy of victims of crime pursuant to article II, section 2.1, subsection C, Constitution of Arizona.

(d) If any person believes that the county attorney has failed to demonstrate that release would cause a specific, material harm to a criminal investigation, that person may file an action in superior court pursuant to title 39, chapter 1, article 2 and subsection J of this section and request the court to review the DCS information in camera and order disclosure.

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

4. May provide access to DCS information to the parent, guardian or custodian of a child if the DCS information is reasonably necessary to promote the safety, permanency and well-being of the child.

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

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

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

1. Federal or state auditors.

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

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

4. A legislator who requests DCS information in the regular course of the legislator's duties. This information shall not be further disclosed unless a court has ordered the disclosure of this information, the information has been disclosed in a public or court record, or the information has been disclosed in the course of a public meeting or court proceeding. To request a file pursuant to this paragraph:

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

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

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

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

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

J. A person who has been denied DCS information regarding a fatality or near fatality caused by abuse, abandonment or neglect pursuant to subsection F, paragraph 2 or subsection L of this section may bring a special action pursuant to section 39-121.02 in the superior court to order the department to release that DCS information. A legislator has standing to bring or to join a special action regarding the release of DCS information or to challenge the redaction of released DCS information. The plaintiff shall provide notice to the county attorney, who has standing and may participate in the action. The court shall review the requested records in camera and order disclosure consistent with subsection A, subsection F, paragraph 2 and subsection L of this section. The court shall take reasonable steps to prevent any clearly unwarranted invasions of privacy and protect the privacy and dignity of victims of crime pursuant to article II, section 2.1, subsection C, Constitution of Arizona.

K. The department or a person who is not specifically authorized by this section to obtain DCS information may petition a judge of the superior court to order the department to release DCS information. The plaintiff shall provide notice to the county attorney, who has standing and may participate in the action. The court shall review the requested records in camera and shall balance the rights of the parties who are entitled to confidentiality pursuant to this section against the rights of the parties who are seeking the release of the DCS information. The court may release otherwise confidential DCS information only if the rights of the parties seeking the DCS information and any benefits from releasing the DCS information outweigh the rights of the parties who are entitled to confidentiality and any harm that may result from releasing the DCS information. The court shall take reasonable steps to prevent any clearly unwarranted invasions of privacy and protect the privacy and dignity of victims of crime pursuant to article II, section 2.1, subsection C, Constitution of Arizona.

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

M. A person who is the subject of an unfounded report or complaint made pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this chapter and who believes that the report or complaint was made in bad faith or with malicious intent may petition a judge of the superior court to order the department to release the DCS information. The petition shall specifically set forth reasons supporting the person's belief that the report or complaint was made in bad faith or with malicious intent. The court shall review the DCS information in camera and the person filing the petition shall be allowed to present evidence in support of the petition. If the court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad

faith or with malicious intent and that disclosure of the identity of the person making the report or complaint would not be likely to endanger the life or safety of the person making the report or complaint, it shall provide a copy of the DCS information to the person filing the petition and the original DCS information is subject to discovery in a subsequent civil action regarding the making of the report or complaint.

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

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

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

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

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

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

T. The department may charge a fee for copying costs required to prepare DCS information for release pursuant to this section.

U. A person who violates this section is guilty of a class 2 misdemeanor.

V. For the purposes of this section:

1. "DCS information" includes all information the department gathers during the course of an investigation conducted under this chapter from the time a file is opened and until it is closed. DCS information does not include information that is contained in child welfare agency licensing records.

2. "Near fatality" means an act that, as certified by a physician, including the child's treating physician, places a child in serious or critical condition.

8-823. Notice of taking into temporary custody

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

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

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

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

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

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

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

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

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

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

6. A statement that the child must be returned within seventy-two hours excluding Saturdays, Sundays and holidays unless a dependency petition is filed and a statement that a child in temporary custody for examination pursuant to section 8-821, subsection B, paragraph 2 must be returned within twelve hours unless abuse or neglect is diagnosed.

7. One of the following:

(a) If a dependency petition has not been filed or if the information prescribed in subdivision (b) is not available, a statement that if a dependency petition is filed, the parent or guardian will be provided a written notice no later than twenty-four hours after the petition is filed that contains the information prescribed in subdivision (b).

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

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

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

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

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

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

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

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

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