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REFERENCE TITLE: jury trial; CPS cases

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

HB 2262

Introduced by
Representatives Johnson, Pearce, Farnsworth, Brimhall, Senator Petersen:
Representatives Anderson, Flake, Graf, Gray, Nelson, Pierce, Robson,
Senator Jarrett

AN ACT

AMENDING SECTIONS 8-532 AND 8-811, ARIZONA REVISED STATUTES; RELATING TO
PROTECTIVE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-532, Arizona Revised Statutes, is amended to
3 read:

4 8-532. Jurisdiction; dependency based termination; jury trials

5 A. The juvenile court shall have exclusive original jurisdiction over
6 petitions to terminate the parent-child relationship when the child involved
7 is present in the state.

8 B. The juvenile court shall continue to have exclusive original
9 jurisdiction when the juvenile is in the legal custody of the juvenile court
10 although the physical placement of the child is in another state pursuant to
11 court order.

12 C. This article does not apply to termination proceedings conducted
13 pursuant to chapter 10, article 4 of this title except to the extent
14 prescribed in section 8-863.

15 D. AT THE REQUEST OF A PARENT WHO IS THE SUBJECT OF A MOTION TO
16 TERMINATE, THE COURT SHALL TRANSFER THE CASE TO THE SUPERIOR COURT FOR A JURY
17 TRIAL.

18 Sec. 2. Section 8-811, Arizona Revised Statutes, is amended to read:

19 8-811. Hearing process; definitions

20 A. The department shall notify a person who is alleged to have abused
21 or neglected a child that the department intends to substantiate the
22 allegation in the central registry pursuant to section 8-804 and of that
23 person's right:

24 1. To receive a copy of the report containing the allegation.

25 2. To a hearing before the entry into the central registry pursuant to
26 section 8-802, subsection C, paragraph 7, subdivision (a).

27 3. TO A JURY TRIAL IN SUPERIOR COURT INSTEAD OF A HEARING IF THE
28 PERSON MAKES THIS REQUEST KNOWN IN WRITING TO THE DEPARTMENT AS PRESCRIBED BY
29 THE DEPARTMENT IN THE NOTIFICATION.

30 B. The department shall send the notice prescribed in subsection A of
31 this section by first class mail no more than fourteen days after completion
32 of the investigation.

33 C. A request for a hearing on the proposed finding must be received by
34 the department within fourteen days after receipt of the notice.

35 D. The department shall not disclose any information related to the
36 investigation of the allegation except as provided in sections 8-802, 8-807
37 and 13-3620.

38 E. If a request for a hearing is made pursuant to subsection C of this
39 section, the department shall conduct a review before the hearing. The
40 department shall provide an opportunity for the accused person to provide
41 written or verbal information to support the position that the department
42 should not substantiate the allegation. If the department determines that
43 there is no probable cause that the accused person engaged in the alleged
44 conduct, the department shall amend the information or finding in the report
45 and shall notify the person and a hearing shall not be held.

1 F. Notwithstanding section 41-1092.03, the notification prescribed in
2 subsection A of this section shall also state that if the department does not
3 amend the information or finding in the report as prescribed in subsection E
4 of this section within sixty days after it receives the request for a hearing
5 the person has a right to a hearing unless:

6 1. The person is a party in a civil, criminal or administrative
7 proceeding in which the allegations of abuse or neglect are at issue.

8 2. A court or administrative law judge has made findings as to the
9 alleged abuse or neglect.

10 G. If the department does not amend the information or finding in the
11 report as prescribed in subsection E of this section, the department shall
12 notify the office of administrative hearings of the request for a hearing no
13 later than five days after completion of the review. The department shall
14 forward all records, reports and other relevant information with the request
15 for hearing within ten days. The department shall redact the identity of the
16 reporting source before transmitting the information to the office of
17 administrative hearings.

18 H. The office of administrative hearings shall hold a hearing pursuant
19 to title 41, chapter 6, article 10, with the following exceptions:

20 1. A child who is the victim of or a witness to abuse or neglect is
21 not required to testify at the hearing.

22 2. A child's hearsay statement is admissible if the time, content and
23 circumstances of that statement are sufficiently indicative of its
24 reliability.

25 3. The identity of the reporting source of the abuse or neglect shall
26 not be disclosed without the permission of the reporting source.

27 4. The reporting source is not required to testify.

28 5. A written statement from the reporting source may be admitted if
29 the time, content and circumstances of that statement are sufficiently
30 indicative of its reliability.

31 I. On completion of the presentation of evidence the administrative
32 law judge shall determine if probable cause exists to sustain the
33 department's finding that the accused engaged in the alleged conduct. If the
34 administrative law judge determines that probable cause does not exist to
35 sustain the department's finding, the administrative law judge shall order
36 the department to amend the information or finding in the report.

37 J. When the department is requested to verify pursuant to section
38 8-807, if the child protective services central registry contains a
39 substantiated report about a specific person, the department shall determine
40 if the report was taken after January 1, 1998. If the report was taken after
41 January 1, 1998, the department shall notify the requestor of the
42 substantiated finding. If the child protective services report was taken
43 before January 1, 1998, the department shall notify the person of the
44 person's right to request an administrative hearing. The department shall
45 not send this notification if the person was a party in a civil, criminal or

1 administrative proceeding in which the allegations of abuse or neglect were
2 at issue. The provisions of this section shall apply to the person's appeal.

3 K. For THE purposes of this section:

4 1. "Amend the finding" means to change the finding from substantiated
5 to unsubstantiated.

6 2. "Amend the information" means to change information identifying the
7 accused of having abused or neglected a child.