



# ARIZONA DEPARTMENT OF CHILD SAFETY

## Court Authorized Removal Report

### January 2018

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#### Overview of Implementation

##### *Current Process*

Under current law, and until June 30, 2018, A.R.S. § 8-821 allows for the Department to take temporary custody of a child “pursuant to an order of the juvenile court on a petition by... a child safety worker under oath that reasonable grounds exist to believe that temporary custody is clearly necessary to protect the child from suffering abuse or neglect.” The Department also has statutory authority to take temporary custody of a child without a prior court order if temporary custody is clearly necessary to protect the child because probable cause exists to believe that the child is either:

1. A victim or will imminently become a victim of abuse or neglect.
2. Suffering serious physical or emotional injury that can only be diagnosed by a medical doctor or psychologist.
3. Physically injured as a result of living on premises where dangerous drugs or narcotic drugs are being manufactured. For the purposes of this paragraph, "dangerous drugs" and "narcotic drugs" have the same meanings prescribed in section 13-3401.

A.R.S. § 8-821(D).

Under the current law, in order for a child safety worker to obtain an order of the juvenile court authorizing the taking of temporary custody, the worker must simultaneously file a petition for an out of home dependency pursuant to A.R.S. § 8-841. (See, A.R.S. § 8-821, “pursuant to an order of the juvenile court *on a petition*” (emphasis added)). The filing of a petition for an out of home dependency requires that the courts are open and accepting filings, and also that an Assistant Attorney General is available to draft and file the petition. Juvenile courts are not open on evenings, weekends, or state holidays. Therefore it is not possible for the Department to request temporary custody orders during those times. Further, the requirement of a full out of home dependency

petition requires legal assistance from the Attorney General's Office and lengthens the process between the removal decision and the judge's order to several days.

During the 2017 legislative session, A.R.S. § 8-821 was amended to allow a child safety worker to directly petition the superior court for a temporary custody order, without simultaneously filing an out of home dependency petition.<sup>1</sup> Although the Department will have the legal authority to seek court orders authorizing the taking of temporary custody on June 30, 2018, there is currently no mechanism by which a child safety worker, without the legal assistance of the Attorney General's Office, can petition a judge for a temporary custody order. There is also no mechanism by which the Department, even with legal assistance, can petition a judge, twenty-four hours, seven days a week, for a temporary custody order. Some of the smaller counties in Arizona have a limited number of judges, and issuance of a temporary custody order by a judge could impact that judge's ability to make substantive rulings in a case. Limiting which judges can hear a case, particularly when there are already a limited number of judges, could adversely impact a parent's due process rights to timely court hearings.

To address these issues, and as required by Laws 2017, First Regular Session, Chapter 282, Section 7, the Department and the Administrative Office of the Courts, among others, met on several occasions to ensure that both parties would be able to implement this new process on the effective date of the legislation.

#### *New Process*

Throughout the summer and fall of 2017, the Department, the Administrative Office of the Courts, Maricopa County court staff, Presiding Juvenile Court Judges, and Initial Appearance Judges addressed technological and legal issues surrounding the process. The work group addressed the proposed court rules, the process itself, including technological issues, and the contents of the application and order for temporary custody order.

The Arizona Supreme Court adopted rules governing this process, with an effective date of July 1, 2018. Juvenile court rule 47.3 permits a juvenile court to issue a

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<sup>1</sup> The law still requires that an out of home dependency petition be filed within 72 hours of the taking of temporary custody of the child, unless the child is returned to his or her parent, guardian, or custodian during that time.

pre-petition order, on request of a child safety worker that authorizes the Department to take temporary custody of a child. The rules detail the requirements of the application and order and are attached to this report as ATTACHMENT A. Prior to the adoption of the rules, the Department submitted comments during the public comment period.

Due to logistical issues, such as the unavailability of on-call judges in smaller counties, the decision was made to run all the requests through the Maricopa County twenty-four hour Initial Appearance court. The Maricopa County Superior Court is developing an online portal that child safety workers from around the state will access. Each worker will have a unique login to access the system, which will verify the identity of the worker. The worker will identify the child, or children, subject to the proposed order and give the probable cause statement for each child, as to why the judge should authorize the Department to take temporary custody of each child. The request must also state why remaining in the child's home is contrary to the child's welfare. The request will be submitted to a queue that the judges can access.

The judge will have the child safety worker's contact information in case additional information is necessary. The judge will then grant or deny the petition as to each child. Once the judge makes his or her ruling, the worker will receive the information and be able to download the order authorizing the taking of temporary custody of the child.

This new process, allowing for a pre-petition request for an order authorizing the taking of temporary custody will not eliminate the Department's ability to take temporary custody of a child without prior court approval when circumstances require it. The Department intends to seek court approval before taking temporary custody of a child in all circumstances in which time allows. However, if a child cannot be made safe while judicial approval is sought, the Department still has legal authority to take temporary custody of a child, and seek temporary orders after the removal from the parent's custody.

The Department is exploring additional legislation to further define when a child safety worker will request an order authorizing temporary custody.

**Technological and Staffing Needs of the Department of Child Safety and the Judicial System**

*Department Costs*

The Department’s costs associated with the implementation of the court authorized removal process will mostly be related to the preparation and implementation of training for staff, potentially to include the development of a computer based training. The Department may also incur costs to have a staff person who submits requests to the court to grant and terminate access to the portal for the 1700 staff that would need to access this system.

Although the Department intends to use current resources for the start of the process, practice may indicate the need for mobile printers for child safety specialists, to allow for printing of the orders to give to a parent or legal guardian upon taking of temporary custody of a child. Should this need arise, the Department currently has 758 cars. These cars are not designated for use based on job classification. Assuming a mobile printer is a \$200 one time cost and \$100 annual on-going cost (for things like ink and paper) then with 758 cars, the total cost to outfit each vehicle with mobile printing capabilities is \$227,000 with an on-going annual cost of \$75,000. There would also be an on-going annual cost to replace old or broken printers.

*Judiciary Costs*

The judicial system has been able to absorb the cost of technological implementation within existing funds. The courts were given funds to hire one and a half court commissioners and one court clerk for the fourth quarter of fiscal year 2018. Those funds will become ongoing to continue to support the process and are as follows:

<b>1 Court Commissioner</b>		
<b>Annual Salary</b>		<b>\$132,457.00</b>
Fixed Benefit	\$11,400.00	
Variable Benefit*	\$33,048.02	
<b>Total ERE (fixed + variable)</b>		<b>\$44,448.02</b>
<b>Total</b>		<b>\$176,905.02</b>

\*variable benefit rate is based on participation in the Elected Officials Retirement Plan

<b>.5 Court Commissioner</b>		
<b>Annual Salary</b>		<b>\$66,228.50</b>
Fixed Benefit	\$11,400.00	
Variable Benefit*	\$16,524.01	
<b>Total ERE (fixed + variable)</b>		<b>\$27,924.01</b>
<b>Total</b>		<b>\$94,152.51</b>

\*variable benefit rate is based on participation in the Elected Officials Retirement Plan

<b>Judicial Clerk (IA)</b>		
<b>Annual Salary</b>		<b>\$27,979.20</b>
Fixed Benefit	\$11,400.00	
Variable Benefit**	\$5,352.42	
<b>Total ERE (fixed + variable)</b>		<b>\$16,752.42</b>
<b>Total</b>		<b>\$44,731.62</b>

\*\*variable benefit rate is based upon participation in ASRS

TOTAL	<u><u>\$315,789.15</u></u>
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1.5 Commissioners	\$271,057.53
Judicial Clerk	<u>\$44,731.62</u>
Total Request	<u><u>\$315,789.15</u></u>