

**NOTICE OF PROPOSED RULEMAKING**  
**TITLE 21. CHILD SAFETY**  
**CHAPTER 1. DEPARTMENT OF CHILD SAFETY - ADMINISTRATION**

**PREAMBLE**

- | <b><u>1. Article, Part, or Section Affected (as applicable)</u></b> | <b><u>Rulemaking Action</u></b> |
|---|---------------------------------|
| R21-1-501   | Amend                           |
| R21-1-504   | Amend                           |
| R21-1-507   | Amend                           |
| R21-1-508   | Amend                           |
- 2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 8-453(A)(5)  
Implementing statute: A.R.S. §§ 8-804 and 8-811
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
- Notice of Rulemaking Docket Opening: (volume #) A.A.R. (page #)
- 4. The agency’s contact person who can answer questions about the rulemaking:**
- Name: Angie Trevino, Rules Development Specialist  
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Phoenix, Arizona 85012  
Telephone: (602) 619-3163  
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Web site: <https://dcs.az.gov/about/dcs-rules-rulemaking>
- 5. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The rules under 21 A.A.C. 1, Article 5 pertain to actions taken when the Department of Child Safety (Department) is proposing to substantiate and substantiating findings of abuse or neglect against an alleged perpetrator and includes information on the process for appeals and hearings. The purpose of the rules includes notifying those affected by a proposed substantiation of abuse or neglect and informing them of their due process rights. There are a few reasons for proposing amending the rules in 21 A.A.C. 1, Article 5. First, to make necessary updates identified in the Five-Year-Review Report approved by the Governor's Regulatory Review Council on June 6, 2023. It was identified in the Five-Year-Review that references to statute required updates as a result of statute being amended. It was identified that the rules in R21-1-501(17)(c) incorrectly refers to subsection (11) and should correctly refer to subsection (10). Secondly, to amend a few Sections (R21-1-501(17), R21-1-507, and R21-1-508) of this Article to allow the Director of the Department of Child Safety to place a perpetrator on the Central Registry in situations where an Administrative Law Judge (ALJ) finds that there is no probable cause to substantiate an allegation of abuse or neglect, but the Director, upon independent review of the evidence admitted at the administrative hearing found to be true by a probable cause standard of proof and substantiates an allegation of abuse or neglect.

The Department is required to maintain a Central Registry of reports of child abuse and neglect that are substantiated. A.R.S. § 8-804 details how the information in the Central Registry can be utilized.

**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department of Child Safety (DCS) did not review or rely on any study relevant to the proposed amended rules.

**7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

**8. The preliminary summary of the economic, small business, and consumer impact:**

The rules under 21 A.A.C. 1, Article 5 pertain to actions taken when the Department of Child Safety (Department) is proposing to substantiate findings of abuse or neglect against an alleged perpetrator and upon final determination of a substantiation of abuse or neglect, that person's name is entered into

the State's Central Registry. These rules also provide information of how a person (alleged perpetrator) can appeal and request a hearing contesting the proposed substantiated findings. The Department's Protective Services Review Team (PSRT) administers reviews and appeals related to the proposed substantiated findings of child abuse or neglect. The proposed amendments will allow the Department Director to reject the administrative law judge's decision and enter a person's information and a substantiated finding onto the Central Registry. There is no fee or out-of-pocket cost to an alleged perpetrator for requesting a hearing. The alleged perpetrator would incur out-of-pocket expenses if the alleged perpetrator requests an appeal or hearing and retains private legal counsel. The proposed amendments, as summarized under #5 of this Preamble, do not add a fee.

**9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**

Name: Angie Trevino, Rules Development Specialist  
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3003 N. Central Avenue  
Phoenix, Arizona 85012  
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Web site: <https://dcs.az.gov/about/dcs-rules-rulemaking>

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Close of record: April 29, 2024

The Department does not intend to hold oral proceedings on these rules unless a written request for an oral proceeding is requested by the close of record. Written request for an oral proceeding and written comments may be submitted via:

Email: [DCSrulemaking@azdcs.gov](mailto:DCSrulemaking@azdcs.gov)

Mail: Department of Child Safety, Policy Unit  
P.O. Box 6030  
Phoenix, AZ 85005

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rules pertain to actions taken when the Department of Child Safety is proposing to substantiate findings of abuse or neglect against an alleged perpetrator and the appeal and hearing process. A general permit is not used.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

42 U.S.C. 5106 and 34 U.S.C. Ch. 209. The rules are not more stringent than federal law.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:  
(Editor's Note: If the answer is "yes" to Preamble item (11)(c), then the analysis should be filed with the rulemaking package)**

No analysis was submitted.

**12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

Not applicable

**13. The full text of the rules follows:**

**TITLE 21. CHILD SAFETY**  
**CHAPTER 1. DEPARTMENT OF CHILD SAFETY – ADMINISTRATION**  
**ARTICLE 5. SUBSTANTIATION OF REPORT FINDINGS**

Section

R21-1-501. Definitions

R21-1-504. PSRT Review

R21-1-507. ~~Director Review and Further Appeal After the Administrative Hearing~~ Final  
Administrative Decision and Review

R21-1-508. ~~Entry into the~~ Central Registry

## ARTICLE 5. SUBSTANTIATION OF REPORT FINDINGS

### R21-1-501. Definitions

The following definitions apply to this Article.

1. No change
2. “Amend the finding” means the same as A.R.S. § 8-811(~~L~~)(4).
3. ~~“Case Record”~~ “Case record” means the Report of child abuse and neglect and related records the Department intends to submit at the hearing, including information from internal and external sources.
4. No change
5. No change
6. No change
7. No change
8. No change
9. “Initial Notification Letter” means a notice sent from the Department via first class mail to an alleged perpetrator informing the person of the proposed substantiated finding of child abuse or neglect to be entered in the Central Registry and describing appeal rights to challenge the proposed finding.
10. No change
  - a. No change
  - b. No change
11. “Neglect” or “neglected” means the same as A.R.S. § 8-201(~~24~~).
12. No change
13. No change
14. No change
15. No change
16. “Report For Investigation” means the same as DCS Report in ~~A.R.S. § 8-201(30)~~ A.R.S. § 8-201.

17. “Substantiated Finding” means ~~a proposed substantiated finding~~ an allegation of abuse or neglect that:

- a. An administrative law judge found to be true by a probable cause standard of proof after notice and an administrative hearing and the ~~Department~~ Director accepted the decision;
- b. The Director upon independent review of the evidence admitted at the administrative hearing has found to be true by a probable cause standard of proof and either rejected or modified the administrative law judge's recommendation in which case the Director's decision is the final administrative decision;
- ~~b.c.~~ The alleged perpetrator did not make a timely appeal request for an administrative hearing; ~~or~~
- ~~e.d.~~ The alleged perpetrator was not entitled to an administrative hearing because the alleged perpetrator was legally excluded as defined in subsection ~~(11)~~; (10); or
- e. The alleged perpetrator failed to respond.

**R21-1-504. PSRT Review**

- A. Upon receiving a timely request for an administrative hearing, the PSRT shall within 60 days review the ~~Case Record~~ case record and shall:
  - 1. Determine there is no probable cause that the alleged perpetrator committed child abuse or neglect and amend the proposed substantiated finding to unsubstantiated; or
  - 2. Determine there is probable cause and send the alleged perpetrator a hearing notice.
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change

**R21-1-507. ~~Director Review and Further Appeal After the Administrative Hearing~~ Final Administrative Decision and Review**

- A. An administrative law judge's decision is not the final administrative decision until the ~~Department~~ Director reviews the decision.
  - 1. The Director has 30 days to review the administrative decision.
  - 2. The Director may accept, reject or modify ~~an~~ the administrative law judge's decision under A.R.S. § 41-1092.08.
- B. If the Director rejects or modifies the administrative law judge's decision, the Director's decision is the final administrative decision and PSRT shall enter the perpetrator's name and substantiated finding in the Central Registry as specified in R21-1-508(B).
- ~~B.C.~~A perpetrator may appeal the final administrative decision under A.R.S. Title 12, Chapter 7, Article 6.

**R21-1-508. ~~Entry into the Central Registry~~**

- A. No change
- B. ~~If the administrative decision upholds the substantiation and the Department Director accepts the decision,~~ PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry no later than 20 days after the date of the final administrative decision-, if that decision is to substantiate the allegation of abuse or neglect.
- C. ~~The Department shall not enter the person's name or the finding in the Central Registry if the:~~
  - 1. ~~Final administrative decision holds that the allegations of abuse or neglect are not substantiated; or~~
  - 2. ~~A court ruling described in R21-1-505(C) finds no abuse or neglect by the alleged perpetrator.~~If the court ruling described in R21-1-505(C) finds abuse or neglect by the perpetrator, PSRT shall enter the person's name and the substantiated finding in the Central Registry.
- D. ~~If the court ruling described in R21-1-505(C) finds abuse or neglect by the perpetrator, the PSRT shall enter the person's name and the substantiated finding in the Central Registry.~~

PSRT shall not enter the person's name or the finding in the Central Registry if the:

  - 1. Administrative law judge's recommended decision finds that the allegation of abuse or neglect is not substantiated and the Director accepts the administrative recommendation; or



2. Court or administrative law judge in a proceeding described in R21-1-505(C) finds no abuse or neglect by the alleged perpetrator.