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OFFICE OF THE
AUDITOR GENERAL

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Members of the Arizona Legislature

The Honorable Janet Napolitano, Governor

Ms. Tracy Wareing, Director
Department of Economic Security

Transmitted herewith is a report of the Auditor General, an Information Brief on the Department of Economic Security, Division of Children, Youth and Families—Child Protective Services—Child Removal Process. This information brief was prepared pursuant to and under the authority vested in the Auditor General by Arizona Revised Statutes §41-1966.

Our information briefs were created at the request of key stakeholders who indicated a need for information on specific issues, but did not want a full audit. We hope that these information briefs will fill a need and provide you with timely and useful information on topics of particular interest.

My staff and I will be pleased to discuss or clarify items in the information brief.

This information brief will be released to the public on March 12, 2008.

Sincerely,

Debbie Davenport
Auditor General

Attachment

INFORMATION BRIEF

Summary

One of CPS' most critical responsibilities is determining whether it is necessary to protect a child by temporarily removing the child from his/her caregiver's custody. State law allows CPS to remove a child from his/her home under certain conditions, such as when a child is a victim or will imminently become a victim of abuse or neglect. When CPS takes temporary custody of a child, it must provide immediate notification to the child's caregiver, and must file a dependency petition with the Juvenile Court, or return the child, within 72 hours. The decision to remove a child from his/her home and place the child in the State's temporary custody is subject to reviews involving various entities. When a dependency petition is filed, a juvenile court judge makes the ultimate decision on whether the child remains in the State's custody or is returned to his/her home.



2008

Child Removal Process

One of Child Protective Services' (CPS) most critical responsibilities is determining whether it is necessary to protect children by temporarily removing them from their caregivers' custody. According to the Department's *Child Welfare Reporting Requirements Semi-Annual Report*, between April 2006 and March 2007, CPS staff were assigned to investigate 33,041 reports alleging child abuse, neglect, or abandonment. Nearly 12 percent (3,778) of those reports resulted in the removal of at least one child.

State law allows CPS to remove children from their homes under certain conditions—Arizona Revised Statutes (A.R.S.) §8-821 allows CPS to take a child into temporary custody when there is probable cause to believe the child:

- Is a victim or will imminently become a victim of abuse or neglect;
- Is suffering serious physical or emotional injury that can only be diagnosed by a doctor or psychologist; or
- Is physically injured as a result of living on premises where dangerous drugs are manufactured.

Arizona Administrative Code (Code) describes situations indicating imminent harm that require CPS intervention (see textbox). In situations not specifically listed in the Code, the CPS specialist will determine risk of imminent harm and need for removal by 1) conducting a family assessment to identify strength and risk factors; and 2) evaluating all facts and circumstances surrounding the child and family situation, including whether there has been a pattern of maltreatment, particularly of increasing severity, and the

availability of a parent or other adult in the household who is willing and able to protect the child.

Before removing a child from the home without the consent of his/her caregiver, CPS must first consider alternative actions. These alternative actions may

Situations Indicating Imminent Harm

- No caregiver is present and the child cannot care for himself/herself or other children in the home.
- Child has severe or serious non-accidental injuries requiring immediate medical treatment.
- Child has a medical condition requiring immediate medical treatment or a condition likely to result in impairment or disfigurement and caregiver is unwilling or unable to obtain medical treatment.
- Doctor or psychologist has determined caregiver is unable or unwilling to provide minimally adequate care.
- Physical or mental condition of caregiver endangers the child.
- Home environment endangers the child.
- Doctor or psychologist has determined the child's caregiver has emotionally damaged the child, the child exhibits signs of emotional damage, and the caregiver is unwilling or unable to seek treatment for the child.
- CPS specialist has probable cause to believe caregiver has engaged in sexual conduct with the child.

Source: Arizona Administrative Code R6-5-5512(B).

only be used if they will eliminate the risk of imminent harm to the child and can include:

- Assisting the family in obtaining resources such as emergency food, shelter, clothing, or utilities, so that the child can remain safely at home.
- Entering into an agreement with the child's caregiver requiring the alleged abuser to leave the home and for the remaining family members to protect the child.
- Identifying a relative or friend who can temporarily care for the child without court intervention.
- Helping the protective caregiver and child leave the home of the alleged child abuser.
- Placing the child in voluntary foster care.¹

State law requires CPS to notify caregivers when it takes custody of their children—A.R.S. §8-823

requires that when CPS takes a child into temporary custody and the caregiver is present, CPS must provide immediate verbal and written notification to the caregiver. If the child's caregiver is not present at the time of removal, CPS must provide the caregiver with written notification within 6 hours if he/she lives in Arizona or within 24 hours if out-of-state, unless the location of the caregiver cannot be determined. If a caregiver is not readily located, CPS staff are required to conduct an extensive, documented search to find him/her.

The CPS specialist notifies the caregiver by providing him/her with a Temporary Custody Notice form that includes information on the reason for removal and the circumstances that placed the child at imminent risk of harm. The Notice explains that the child must be returned to his/her home within 72 hours (not including weekends and holidays) unless CPS files a dependency petition with the Juvenile Court or that the child be returned home within 12 hours if he/she was removed to be examined by a medical doctor or psychologist, unless abuse or neglect is diagnosed.² The Notice also includes the steps that will occur if a dependency petition is filed, caregivers' rights and responsibilities, available services for the family, and agencies to contact for assistance. Along with the notice, CPS provides the caregiver with a pamphlet titled *Guide to Child Protective Services*, containing additional information on CPS and the removal process. Caregivers and others may also obtain information and assistance about CPS and

the child removal process from various other sources, such as the Arizona Supreme Court (see textbox on page 3).

In some cases, such as when there is an immediate need for a medical or psychological examination, immediate threat of harm to the child, or when the identity or whereabouts of the caregiver is unknown, the child may be removed without the caregiver's knowledge. If a child is removed from a setting other than the home, a Notice of Removal form is given to an appropriate person at the place of removal.

Various entities are involved in reviewing the decision to remove a child—

The decision to remove a child from his/her home and place the child in the temporary custody of the State is subject to various reviews through the following entities (see flowchart on page 4):

- **Removal Review Team—**In 1990, the Legislature added A.R.S. §8-546.08, which requires a mandatory review before a dependency petition is filed with the Juvenile Court.³ The purpose of the review is to assess whether there are options other than continued out-of-home placement. The review is conducted by a removal review team which, by law, must include a CPS specialist, a CPS unit supervisor, two members of the local Foster Care Review Board, and a physician or registered nurse practitioner if the child has a medical need or chronic illness.⁴ The dependency petition must be filed within 72 hours of the child's removal or the child must be returned home.

In Maricopa and Pima Counties, Team Decision-Making (TDM) has been incorporated into the removal review process. A TDM meeting is a collaborative process, separate from the removal review team, involving the family, supports such as relatives and friends, CPS, and staff from partnering agencies such as behavioral health providers. Issues discussed during the meeting include what brought the child to the attention of CPS, risk and safety concerns, strengths of the family and child, and possible placement options. The results of the TDM meeting are taken into consideration by the removal review team. According to division personnel, TDM is in the process of being implemented state-wide.

¹ Voluntary foster care is used when, within a 90-day period, the Division can provide the services likely to remedy the circumstances that brought the child into care and 1) the Division plans to return the child to the caregiver who signed the child into voluntary placement; or 2) while the child is in voluntary placement, the caregiver arranges a safe alternative placement for the child.

² A dependency petition asks the court to award temporary custody of the child to the State.

³ Renumbered as A.R.S. §8-822 in 1997.

⁴ Foster Care Review Boards assist the Juvenile Courts by reviewing the CPS cases of children who have been placed in out-of-home care. These boards are composed of court-appointed volunteers and there is at least one board in each county.

- **Family Advocacy Office**—Caregivers can also request an administrative review by the Department's Family Advocacy Office. According to division management, the request must be made before a dependency petition is filed, or it cannot be honored. In reviewing a child removal, the Division assigns a family advocacy specialist, who is not part of the CPS program, to examine whether imminent harm existed during the removal, whether options other than removal were considered, and whether continued out-of-home placement is needed. The specialist participates in the removal review team meeting. According to division personnel, there were 136 requests for reviews by family advocacy specialists in state fiscal year 2007.

- **Juvenile Court**—Once a dependency petition is filed, the Juvenile Court holds various reviews, conferences, and hearings that will ultimately result in a judge deciding whether or not to order the child dependent and place him/her in the custody of the State.

Initially, a juvenile court judge immediately reviews the petition and may issue a temporary order to return the child to the home if he/she determines that the child will be safe there.¹ If the judge determines that continued out-of-home placement is necessary, a preliminary protective hearing is held within 5 to 7 days of the child's removal to determine whether temporary custody is clearly necessary to prevent abuse or neglect. At this hearing, the judge takes into account the results of a prior meeting attended by the caregiver; CPS specialist; attorneys for the caregiver, CPS, and the child; and other interested parties, in deciding the child's placement, services to be provided, and child visitation. The Juvenile Court also determines if reasonable efforts were made to prevent or eliminate the need for the removal, and if services are available to eliminate the need for continued removal.

If the caregiver fails to appear at the preliminary protective hearing, it still takes place, but failure to appear requires that another hearing called the initial dependency hearing be set within 21 days of the filing of the dependency petition. In the initial dependency hearing, the judge can declare the child dependent if the caregiver agrees to or does not contest the allegations.

If at the preliminary protective hearing the caregiver disagrees with CPS regarding the need for temporary custody, the Juvenile Court holds a review of temporary custody. This review

Information and Assistance Resources

Arizona Department of Economic Security
Web site

www.azdes.gov/dcyf/cmdps/cps/guide.asp

- This site provides answers to "Frequently Asked Questions" regarding CPS and the child removal process, including how to obtain a lawyer, visitation, and available services.

Arizona Department of Economic Security,
Family Advocacy Office
(877) 527-0765

- Upon timely request by a caregiver, this Office reviews the removal of a child by CPS before a dependency petition is filed. It also addresses inquiries, concerns, and grievances about CPS.

Arizona Supreme Court Web site

www.supreme.state.az.us

- Available through this site are documents titled *A Handbook for Parents and Guardians in Dependency Cases* and *Getting from Here to There: A Guide to the Dependency Court for Children and Youth in Foster Care*.

Arizona Supreme Court, Parent Assistance
Hotline

(800) 732-8193

- This toll-free hotline assists parents with questions and concerns about CPS and provides information about legal assistance, the juvenile court system, and parents' legal rights and responsibilities.

Arizona Ombudsman-Citizens' Aide

Phoenix: (602) 277-7292

Toll-Free: (800) 872-2879

- This Office addresses questions, concerns, and complaints about state agencies' actions.

includes evidence presented by CPS and the caregiver. The review is part of the preliminary protective hearing and is generally conducted on the same day. If an agreement is still not reached, a mediation or settlement conference is scheduled, in which a mediator, the caregiver, a CPS specialist, and the child's attorney try to come to an agreement regarding custody. If the case is not settled, the caregiver has the right to an adjudication hearing.

During the adjudication hearing, the judge determines whether sufficient evidence exists to support that the allegations in the petition are true. If the judge finds the allegations to be true, he/she will declare the child dependent. If the caregiver

¹ A judge may dismiss the petition and return the child home, or agree with the petition and determine placement, services, and child visitation at any hearing subsequent to the filing of the petition. More than one of the various hearings related to a case may be held on the same day, so that issues are settled as soon as possible, for the good of the child.

does not appear at this hearing, or conferences held prior to this hearing, the judge may determine that the caregiver has admitted to the allegations and may declare the child dependent. If

the judge declares the child dependent, the Court holds various hearings to establish and review the specifics of child placement, service provision, and a case plan goal of family reunification or alternate permanent placement.

