

REFERENCE TITLE: foster care; expedited permanency

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1441

Introduced by
Senator Landrum Taylor

AN ACT

AMENDING SECTIONS 8-113, 8-533, 8-829, 8-847 AND 8-862, ARIZONA REVISED
STATUTES; RELATING TO DEPENDENT CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-113, Arizona Revised Statutes, is amended to
3 read:

4 8-113. Removal from home; expedited hearings; probationary
5 period

6 A. A child who has been placed in a certified adoptive home by any
7 agency or the division shall not be removed from the home except on order of
8 the juvenile court. The agency or the division may request a hearing for
9 removal before the juvenile court, and in those cases, a hearing shall be
10 held not less than ten days after notice has been given to the certified
11 prospective adoptive parent or parents.

12 B. This section does not prohibit prospective adoptive parents from
13 voluntarily returning any child to the placing agency or the division or does
14 not prevent the removal of a child pursuant to section 8-821 or 8-802.

15 C. Pending the final adoption hearing, the child is subject to further
16 investigation by the division, an officer of the court or an agency that is
17 required to do the social study pursuant to section 8-105.

18 D. The court shall hold the hearing on the petition:

19 1. Within sixty days if the child has resided in the home of the
20 prospective adoptive parent or parents for at least one year immediately
21 preceding the filing of the petition for adoption. If the prospective
22 adoptive parent is the stepparent of the child, this requirement applies only
23 if the stepparent has been married to the birth or legal parent of the child
24 for at least one year.

25 2. Within ~~ninety~~ THIRTY days if the child is under ~~six months~~ ONE YEAR
26 of age or has resided in the home of the prospective adoptive parent or
27 parents for at least six months preceding the filing of the petition for
28 adoption. If the prospective adoptive parent is the stepparent of the child,
29 this requirement applies only if the stepparent has been married to the birth
30 or legal parent of the child for at least one year.

31 3. In all other cases, within six months after the filing of the
32 petition for adoption.

33 E. If subsection D, paragraph 1 or 2 of this section applies, the
34 petitioner shall file a notification of that fact with the petition to adopt.

35 F. The court shall postpone a hearing scheduled to be held pursuant to
36 subsection D of this section if the court has not received the results of the
37 criminal records check at least forty-eight hours before the final hearing.
38 The court shall reschedule the hearing within twenty-one days after receiving
39 the results.

40 G. The court or the petitioner may postpone the final hearing up to
41 sixty days in order to give notice to any interested party or for other good
42 cause.

43 H. The court shall hold an expedited hearing on a motion that is
44 supported by a sworn affidavit that the expedited hearing is in the child's
45 best interests and that any of the following is true:

1 1. The child is suffering from a chronically debilitating, progressive
2 or fatal disease as diagnosed by a licensed physician.

3 2. A prospective adoptive parent, ~~natural~~ BIRTH parent or legal parent
4 is terminally ill, as diagnosed by a licensed physician.

5 3. The court finds other compelling reasons relating to the special
6 needs and welfare of the child to expedite the hearing.

7 I. During the probationary period or any extension, prospective
8 adoptive parents who have complied with the provisions of this chapter have
9 the following rights and responsibilities with respect to the child:

10 1. The right to physical custody of the child unless the child is
11 removed by order of the juvenile court after notice and a hearing.

12 2. The right to consent to necessary medical procedures for the child.

13 3. The right to consent to participation in social and athletic
14 activities for the child.

15 4. The responsibility to provide proper care and support for the child
16 in addition to that already provided by the placing agency or division.

17 Sec. 2. Section 8-533, Arizona Revised Statutes, is amended to read:
18 8-533. Petition; who may file; grounds

19 A. Any person or agency that has a legitimate interest in the welfare
20 of a child, including, but not limited to, a relative, a foster parent, a
21 physician, the department of economic security or a private licensed child
22 welfare agency, may file a petition for the termination of the parent-child
23 relationship alleging grounds contained in subsection B of this section.

24 B. Evidence sufficient to justify the termination of the parent-child
25 relationship shall include any one of the following, and in considering any
26 of the following grounds, the court shall also consider the best interests of
27 the child:

28 1. That the parent has abandoned the child.

29 2. That the parent has neglected or wilfully abused a child. This
30 abuse includes serious physical or emotional injury or situations in which
31 the parent knew or reasonably should have known that a person was abusing or
32 neglecting a child.

33 3. That the parent is unable to discharge parental responsibilities
34 because of mental illness, mental deficiency or a history of chronic abuse of
35 dangerous drugs, controlled substances or alcohol and there are reasonable
36 grounds to believe that the condition will continue for a prolonged
37 indeterminate period.

38 4. That the parent is deprived of civil liberties due to the
39 conviction of a felony if the felony of which that parent was convicted is of
40 such nature as to prove the unfitness of that parent to have future custody
41 and control of the child, including murder of another child of the parent,
42 manslaughter of another child of the parent or aiding or abetting or
43 attempting, conspiring or soliciting to commit murder or manslaughter of
44 another child of the parent, or if the sentence of that parent is of such

1 length that the child will be deprived of a normal home for a period of
2 years.

3 5. That the potential father failed to file a paternity action within
4 thirty days of completion of service of notice as prescribed in section
5 8-106, subsection G.

6 6. That the putative father failed to file a notice of claim of
7 paternity as prescribed in section 8-106.01.

8 7. That the parents have relinquished their rights to a child to an
9 agency or have consented to the adoption.

10 8. That the child is being cared for in an out-of-home placement under
11 the supervision of the juvenile court, the division or a licensed child
12 welfare agency, that the agency responsible for the care of the child has
13 made a diligent effort to provide appropriate reunification services and that
14 ~~either~~ ONE of the following circumstances exists:

15 (a) The child has been in an out-of-home placement for a cumulative
16 total period of nine months or longer pursuant to court order or voluntary
17 placement pursuant to section 8-806 and the parent has substantially
18 neglected or wilfully refused to remedy the circumstances that cause the
19 child to be in an out-of-home placement.

20 (b) THE CHILD WHO IS UNDER ONE YEAR OF AGE HAS BEEN IN AN OUT-OF-HOME
21 PLACEMENT FOR A CUMULATIVE TOTAL PERIOD OF SIX MONTHS OR LONGER PURSUANT TO
22 COURT ORDER AND THE PARENT HAS SUBSTANTIALLY NEGLECTED OR WILFULLY REFUSED TO
23 REMEDY THE CIRCUMSTANCES THAT CAUSE THE CHILD TO BE IN AN OUT-OF-HOME
24 PLACEMENT, INCLUDING REFUSAL TO PARTICIPATE IN REUNIFICATION SERVICES OFFERED
25 BY THE DEPARTMENT.

26 ~~(b)~~ (c) The child has been in an out-of-home placement for a
27 cumulative total period of fifteen months or longer pursuant to court order
28 or voluntary placement pursuant to section 8-806, the parent has been unable
29 to remedy the circumstances that cause the child to be in an out-of-home
30 placement and there is a substantial likelihood that the parent will not be
31 capable of exercising proper and effective parental care and control in the
32 near future.

33 9. That the identity of the parent is unknown and continues to be
34 unknown following three months of diligent efforts to identify and locate the
35 parent.

36 10. That the parent has had parental rights to another child terminated
37 within the preceding two years for the same cause and is currently unable to
38 discharge parental responsibilities due to the same cause.

39 11. That all of the following are true:

40 (a) The child was cared for in an out-of-home placement pursuant to
41 court order.

42 (b) The agency responsible for the care of the child made diligent
43 efforts to provide appropriate reunification services.

44 (c) The child, pursuant to court order, was returned to the legal
45 custody of the parent from whom the child had been removed.

1 (d) Within eighteen months after the child was returned, pursuant to
2 court order, the child was removed from that parent's legal custody, the
3 child is being cared for in an out-of-home placement under the supervision of
4 the juvenile court, the division or a licensed child welfare agency and the
5 parent is currently unable to discharge parental responsibilities.

6 C. Evidence considered by the court pursuant to subsection B of this
7 section shall include any substantiated allegations of abuse or neglect
8 committed in another jurisdiction.

9 D. In considering the grounds for termination prescribed in subsection
10 B, paragraph 8 or 11 of this section, the court shall consider the
11 availability of reunification services to the parent and the participation of
12 the parent in these services.

13 E. In considering the grounds for termination prescribed in subsection
14 B, paragraph 8 of this section, the court shall not consider the first sixty
15 days of the initial out-of-home placement pursuant to section 8-806 in the
16 cumulative total period.

17 Sec. 3. Section 8-829, Arizona Revised Statutes, is amended to read:
18 8-829. Judicial determinations; timing; documentation

19 A. If a child has been removed from the child's home, the court shall
20 make protecting the child from abuse or neglect the first priority and shall
21 make the following determinations within the following time periods:

22 1. In the court's first order that sanctions the removal, whether
23 continuation of the child's residence in the home would be contrary to the
24 welfare of the child. This order may be the temporary order that the court
25 issues on the filing of a dependency petition.

26 2. At the preliminary protective hearing, whether the department made
27 attempts to identify and assess placement with the child's grandparent or
28 another member of the child's extended family including a person who has a
29 significant relationship with the child.

30 3. Within sixty days after the child is removed from the child's home,
31 whether reasonable efforts have been made to prevent removal of the child or
32 whether it was reasonable to make no efforts to prevent removal of the child.

33 4. If the child is not placed with a grandparent or another member of
34 the child's extended family including a person who has a significant
35 relationship with the child within sixty days after the child is removed from
36 the child's home, why such placement is not in the best interests of the
37 child. The petitioner has the burden of presenting evidence that such
38 placement is not in the child's best interests at the first court hearing
39 thereafter.

40 5. Within twelve months after the child is removed from the child's
41 home and once every twelve months thereafter, whether reasonable efforts have
42 been made to finalize the existing permanency plan.

43 6. IF THE CHILD IS UNDER ONE YEAR OF AGE, WITHIN SIX MONTHS AFTER THE
44 CHILD IS REMOVED FROM THE CHILD'S HOME, WHETHER REASONABLE EFFORTS HAVE BEEN
45 MADE TO PROVIDE REUNIFICATION SERVICES TO THE PARENT.

1 B. The court shall make each determination described in subsection A
2 on a case-by-case basis and shall set forth in its written order the specific
3 factual basis for each determination. In making its determination, the court
4 shall consider documentation that is reasonably available at the time of the
5 determination.

6 Sec. 4. Section 8-847, Arizona Revised Statutes, is amended to read:
7 8-847. Periodic review hearings

8 A. After the disposition hearing, the court shall hold periodic review
9 hearings at least once every six months as required by federal law.

10 B. At a proceeding to review the disposition orders of the court, the
11 court shall provide the following persons notice of the review and the right
12 to participate in the proceeding:

13 1. The authorized agency charged with the child's care and custody.

14 2. Any foster parents in whose home the child resided within the last
15 six months or resides at present, except for those foster parents who
16 maintain a receiving foster home where the child has resided for thirty days
17 or less. The petitioner shall provide the court with the names and addresses
18 of all foster parents who are entitled to notice pursuant to statute.

19 3. A shelter care facility or receiving foster home where the child
20 resides or has resided within the last six months for more than thirty days.
21 The petitioner shall provide the court with the names and addresses of all
22 shelter care facilities and receiving foster homes that are entitled to
23 notice pursuant to this paragraph.

24 4. The child's parent or guardian unless the parental rights of that
25 parent or guardian have been terminated by court action or unless the parent
26 has relinquished rights to the child to an agency or has consented to the
27 adoption of the child as provided in section 8-107.

28 5. The child, if twelve years of age or older.

29 6. The child's relative, as defined in section 8-501, if that relative
30 files a written notice of right of participation with the court.

31 7. A person permitted by the court to intervene as a party in the
32 dependency proceeding.

33 8. A physical custodian of the child within the preceding six months.

34 9. Any person who has filed a petition to adopt or who has physical
35 custody pursuant to a court order in a foster-adoptive placement.

36 10. Any other person as the court may direct.

37 C. AT THE FIRST PERIODIC REVIEW HEARING, THE COURT SHALL CONSIDER
38 WHETHER A PARENT OF A CHILD WHO IS UNDER ONE YEAR OF AGE HAS SUBSTANTIALLY
39 NEGLECTED OR WILFULLY REFUSED TO PARTICIPATE IN REUNIFICATION SERVICES
40 OFFERED BY THE DEPARTMENT. THE COURT SHALL INFORM THE PARENT THAT
41 SUBSTANTIALLY NEGLECTING OR WILFULLY REFUSING TO REMEDY THE CIRCUMSTANCES
42 THAT CAUSE THE CHILD TO BE IN AN OUT-OF-HOME PLACEMENT, INCLUDING REFUSING TO
43 PARTICIPATE IN REUNIFICATION SERVICES, IS GROUNDS FOR TERMINATION OF PARENTAL
44 RIGHTS TO A CHILD WHO IS UNDER ONE YEAR OF AGE.

1 ~~C~~. D. At any periodic review hearing, the court shall consider the
2 health and safety of the child as a paramount concern.

3 ~~D~~. E. If the court finds that a child is no longer dependent, before
4 it dismisses the proceeding the court shall provide notice of the sibling
5 information exchange program established pursuant to section 8-543 to the
6 following:

7 1. An adult who is the former dependent child in the proceeding for
8 whom the periodic review hearing is held.

9 2. A parent or guardian with legal custody of the former dependent
10 child for whom the periodic review hearing is held.

11 Sec. 5. Section 8-862, Arizona Revised Statutes, is amended to read:

12 ~~8-862~~. Permanency hearing

13 A. The court shall hold a permanency hearing to determine the future
14 permanent legal status of the child:

15 1. Within thirty days after the disposition hearing if the court does
16 not order reunification services.

17 2. ~~WITHIN SIX MONTHS AFTER A CHILD WHO IS UNDER ONE YEAR OF AGE IS~~
18 ~~REMOVED FROM THE CHILD'S HOME. THE COURT SHALL NOT CONTINUE THAT PERMANENCY~~
19 ~~HEARING BEYOND SIX MONTHS AFTER THE CHILD WHO IS UNDER ONE YEAR OF AGE IS~~
20 ~~REMOVED FROM THE CHILD'S HOME UNLESS THE PARTY WHO IS SEEKING THE CONTINUANCE~~
21 ~~SHOWS THAT THE DETERMINATION PRESCRIBED IN SECTION 8-829, SUBSECTION A,~~
22 ~~PARAGRAPH 6 HAS BEEN MADE OR WILL BE MADE WITHIN THE TIME PRESCRIBED IN THAT~~
23 ~~PARAGRAPH.~~

24 ~~2~~. 3. In all other cases, within twelve months after the child is
25 removed from the child's home. The court shall not continue the permanency
26 hearing beyond twelve months after the child is removed from the child's home
27 unless the party who is seeking the continuance shows that the determination
28 prescribed in section 8-829, subsection A, paragraph 5 has been made or will
29 be made within the time prescribed in that paragraph.

30 B. At the permanency hearing, the court shall determine:

31 1. Whether termination of parental rights, adoption, permanent
32 guardianship pursuant to section 8-872 or some other permanent legal status
33 is the most appropriate plan for the child and shall order the plan to be
34 accomplished within a specified period of time.

35 2. Whether reasonable efforts have been made to finalize the
36 permanency plan in effect.

37 C. If the court determines that the child should remain in out-of-home
38 placement longer than eighteen months from the date of the permanency order,
39 the court shall conduct a review of the order at least once each year. After
40 reviewing the order, the court may reaffirm the order or direct other
41 disposition of the child.

42 D. If the court determines that the termination of parental rights is
43 clearly in the best interests of the child, the court shall:

44 1. Order the department or the child's attorney or guardian ad litem
45 to file within ten days after the permanency hearing a motion alleging one or

1 more of the grounds prescribed in section 8-533 for termination of parental
2 rights. The party who files the motion has the burden of presenting evidence
3 at the termination hearing to prove the allegations in the motion.

4 2. Set a date for an initial hearing on the motion for termination of
5 parental rights within thirty days after the permanency hearing. If the
6 termination is contested at the initial hearing, the court shall set a date
7 for the trial on termination of parental rights within ninety days after the
8 permanency hearing.

9 3. ORDER THE DEPARTMENT TO PLACE THE CHILD IN A PROSPECTIVE ADOPTIVE
10 HOME WITHIN THIRTY DAYS UNLESS THE CHILD IS ALREADY PLACED WITH A PROSPECTIVE
11 ADOPTIVE PARENT.

12 E. If the court determines that permanent guardianship is clearly in
13 the best interests of the child, the court shall:

14 1. Order the department or the child's attorney or guardian ad litem
15 to file within ten days after the permanency hearing a motion alleging the
16 grounds prescribed in section 8-871 for permanent guardianship. The party
17 who files the motion has the burden of presenting evidence at the hearing to
18 prove the allegations in the motion.

19 2. Set a date for an initial hearing on the motion for permanent
20 guardianship within thirty days after the permanency hearing. If the
21 permanent guardianship is contested at the initial hearing, the court shall
22 set a date for the trial on the permanent guardianship within ninety days
23 after the permanency hearing.

24 F. Evidence considered by the court in making a decision pursuant to
25 this section also shall include any substantiated allegations of abuse or
26 neglect committed in another jurisdiction.