

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

# SENATE BILL 1442

AN ACT

AMENDING SECTION 8-824, 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 8-824, Arizona Revised Statutes, is amended to  
3 read:

4 8-824. Preliminary protective hearing; probable cause;  
5 appointment of counsel

6 A. The court shall hold a preliminary protective hearing to review the  
7 taking into temporary custody of a child pursuant to section 8-821 not fewer  
8 than five days nor more than seven days after the child is taken into  
9 custody, excluding Saturdays, Sundays and holidays. If clearly necessary to  
10 prevent abuse or neglect, to preserve the rights of a party or for other good  
11 cause shown, the court may grant one continuance that does not exceed five  
12 days.

13 B. The following persons shall be present at the preliminary  
14 protective hearing:

15 1. The child's parents or guardian, unless they cannot be located or  
16 they fail to appear in response to the notice.

17 2. Counsel for the parents if one has been requested or retained.

18 3. The child's guardian ad litem or attorney.

19 4. The protective services worker.

20 5. Counsel for the protective services worker.

21 C. If the court finds that it is in the best interests of the child,  
22 the court may allow the following to be present at the preliminary protective  
23 hearing:

24 1. The child.

25 2. Any relative or other interested person with whom the child is or  
26 might be placed as described in section 8-845, subsection A.

27 3. Witnesses called by the parties.

28 4. An advocate or interested person as requested by the parent or  
29 guardian.

30 5. Other persons who have knowledge of or an interest in the welfare  
31 of the child.

32 D. At the hearing, the court shall advise the parent or guardian of  
33 the following rights:

34 1. The right to counsel, including appointed counsel if the parent or  
35 guardian is indigent.

36 2. The right to cross-examine all witnesses who are called to testify  
37 against the parent or guardian.

38 3. The right to trial by court on the allegations in the petition.

39 4. The right to use the process of the court to compel the attendance  
40 of witnesses.

41 E. At the hearing, the court:

42 1. Shall receive a report of any agreement reached pursuant to section  
43 8-823, subsection D. The report may be made orally.

1           2. Shall provide an opportunity for the child's parent or guardian, if  
2 present, and any other person who has relevant knowledge, to provide relevant  
3 testimony.

4           3. May limit testimony and evidence that is beyond the scope of the  
5 removal of the child, the child's need for continued protection, placement,  
6 visitation and services to be provided to the child and family.

7           4. May take into consideration as a mitigating factor the  
8 participation of the parent or guardian in the healthy families program  
9 established by section 8-701.

10          5. Shall take into consideration as a mitigating factor the  
11 availability of reasonable services to the parent or guardian to prevent or  
12 eliminate the need for removal of the child and the effort of the parent or  
13 guardian to obtain and participate in these services.

14          6. Shall inform the child's parent or guardian that the hearing may  
15 result in further proceedings to terminate parental rights.

16          7. Shall give paramount consideration to the health and safety of the  
17 child.

18          8. Shall review evidence that the department is attempting to identify  
19 and assess placement of the child with a grandparent or another member of the  
20 child's extended family including a person who has a significant relationship  
21 with the child.

22          9. SHALL INFORM A FOSTER PARENT, PRE-ADOPTIVE PARENT OR GRANDPARENT OR  
23 ANOTHER MEMBER OF THE CHILD'S EXTENDED FAMILY WITH WHOM THE DEPARTMENT HAS  
24 PLACED THE CHILD OF THE RIGHT TO BE HEARD IN ANY PROCEEDING TO BE HELD WITH  
25 RESPECT TO THE CHILD.

26          F. The petitioner has the burden of presenting evidence as to whether  
27 there is probable cause to believe that continued temporary custody is  
28 clearly necessary to prevent abuse or neglect pending the hearing on the  
29 dependency petition.

30          G. If the child is in the temporary custody of the department, the  
31 department shall submit not later than the day before the hearing a written  
32 report to the court and the parties that states:

33           1. The reasons the child was removed from the parent's or guardian's  
34 custody.

35           2. Any services that have been provided to the child or the child's  
36 parent or guardian to prevent removal.

37           3. The need, if any, for continued temporary custody.

38           4. The types of service needed to facilitate the return of the child  
39 to the custody of the child's parents or guardian.

40           5. If the child is not placed with a grandparent, whether the child  
41 has any relatives or other interested parties as described in section 8-845,  
42 subsection A who may be able and willing to take temporary custody.

43           6. Any services that are requested by the parent or guardian but that  
44 are not provided and the reasons the services were not provided.

- 1           7. Any efforts made to place siblings together, and if they are not  
2 placed together, the reasons why.
- 3           8. Any efforts made to facilitate communications among siblings.
- 4           9. A proposal for visitation and the results of any visitation that  
5 has occurred since the child was removed.
- 6           10. A proposed case plan for services to the family.
- 7           H. The parent or guardian shall state whether the parent or guardian  
8 admits or denies the allegations in the petition filed pursuant to section  
9 8-841. If the parent or guardian admits or does not contest the allegations  
10 in the petition, the court shall determine that the parent or guardian  
11 understands the rights described in subsection D of this section and that the  
12 parent or guardian knowingly, intelligently and voluntarily waives these  
13 rights.
- 14           I. At the hearing, if the child is not returned to the parent or  
15 guardian, the court shall:
- 16           1. Enter orders regarding the placement of the child pending the  
17 determination of the dependency petition and visitation, if any. ~~The court~~  
18 ~~shall also~~
- 19           2. IF A RELATIVE IS IDENTIFIED AS A POSSIBLE PLACEMENT FOR THE CHILD,  
20 NOTIFY THE RELATIVE OF THE RIGHT TO BE HEARD IN ANY PROCEEDING TO BE HELD  
21 WITH RESPECT TO THE CHILD.
- 22           3. Determine if the tasks and services set forth in the case plan are  
23 reasonable and necessary to carry out the case plan.