

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

# SENATE BILL 1119

AN ACT

AMENDING SECTIONS 8-534, 8-536, 8-538, 8-821, 8-824, 8-825 AND 8-845, ARIZONA  
REVISED STATUTES; RELATING TO CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-534, Arizona Revised Statutes, is amended to  
3 read:

4 8-534. Contents of petition

5 A. The petition for the termination of the parent-child relationship  
6 filed pursuant to this article shall include, to the best information or  
7 belief of the petitioner:

8 1. The name and place of residence of the petitioner.

9 2. The name, sex, date and place of birth and residence of the child.

10 3. The basis for the court's jurisdiction.

11 4. The relationship of the petitioner to the child or the fact that no  
12 relationship exists.

13 5. The names, addresses and dates of birth of the parents, if known.

14 6. The names and addresses of the person having legal custody or  
15 guardianship of the person or acting in loco parentis to the child or the  
16 organization or authorized agency having legal custody or providing care for  
17 the child.

18 7. The grounds on which termination of the parent-child relationship  
19 is sought.

20 8. The names and addresses of the persons or authorized agency or  
21 officer ~~thereof~~ to whom or to which legal custody or guardianship ~~of the~~  
22 ~~person~~ of the child might be transferred. **IF THE NAME AND ADDRESS OF A**  
23 **GRANDPARENT IS NOT INCLUDED, THE PETITION MUST INCLUDE SUFFICIENT EVIDENCE**  
24 **FOR THE COURT TO DETERMINE IF PLACEMENT WITH A GRANDPARENT IS IN THE CHILD'S**  
25 **BEST INTERESTS.**

26 B. Beginning January 1, 1993, whenever possible the court ~~upon~~ **ON**  
27 terminating the parental rights of a birth parent in a termination of  
28 parental rights proceeding shall obtain from the birth parent a notarized  
29 statement granting or withholding consent for the person who is the subject  
30 of the termination of parental rights proceeding to review adoption records,  
31 if the person is subsequently adopted, when such person is twenty-one years  
32 of age or older.

33 C. A copy of any relinquishment or consent and the notarized consent  
34 pursuant to section 8-106, subsection F, if any, previously executed by the  
35 parent shall be attached to the petition.

36 Sec. 2. Section 8-536, Arizona Revised Statutes, is amended to read:

37 8-536. Social study before disposition; contents

38 A. ~~Upon~~ **ON** the filing of a petition, the court shall order that the  
39 department, an agency or another person selected by the court conduct or  
40 cause to be conducted a complete social study and that a report in writing of  
41 such study be submitted to the court ~~prior to~~ **BEFORE** a hearing. The court  
42 may order any additional social study it deems necessary. The social study  
43 shall include the circumstances of the petition, the social history, the  
44 present condition of the child and parent, proposed plans for the child, ~~and~~  
45 ~~such~~ other facts ~~as may be~~ pertinent to the parent-child relationship. The

1 report submitted shall include a specific recommendation and the reasons  
2 ~~therefor~~ as to whether or not the parent-child relationship should be  
3 terminated.

4 B. IF THE PROPOSED PLANS FOR THE CHILD DO NOT INCLUDE PLACING THE  
5 CHILD WITH A GRANDPARENT, THE REPORT SHALL INCLUDE SUFFICIENT EVIDENCE FOR  
6 THE COURT TO DETERMINE IF PLACEMENT WITH A GRANDPARENT IS IN THE CHILD'S BEST  
7 INTERESTS.

8 ~~B.~~ C. The court may waive the requirement of the social study ~~when~~ IF  
9 the court finds that to do so is in the best interest of the child.

10 Sec. 3. Section 8-538, Arizona Revised Statutes, is amended to read:  
11 8-538. Court order; form; contents

12 A. Every order of the court terminating the parent-child relationship  
13 or transferring legal custody or guardianship of the person of the child or  
14 providing for protective supervision of the child shall be in writing and  
15 shall recite the findings ~~upon~~ ON which ~~such~~ THE order is based, including  
16 findings pertaining to PLACEMENT OF THE CHILD AND the court's jurisdiction.  
17 ~~Such~~ THE order ~~shall be~~ IS conclusive and binding on all persons from the  
18 date of entry.

19 B. If the court finds grounds for the termination of the parent-child  
20 relationship it shall terminate ~~such~~ THE relationship and take one of the  
21 following courses of action:

22 ~~1. Appoint an individual as guardian of the child's person.~~

23 1. APPOINT A GRANDPARENT AS THE CHILD'S GUARDIAN. IF THE COURT FINDS  
24 THAT PLACEMENT WITH A GRANDPARENT IS NOT IN THE CHILD'S BEST INTERESTS, THE  
25 COURT SHALL APPOINT ANOTHER INDIVIDUAL AS THE CHILD'S GUARDIAN.

26 2. Appoint ~~an~~ A GRANDPARENT AS THE CHILD'S GUARDIAN AND VEST LEGAL  
27 CUSTODY IN ANOTHER INDIVIDUAL OR IN AN AUTHORIZED AGENCY. IF THE COURT  
28 DETERMINES THAT PLACEMENT WITH A GRANDPARENT IS NOT IN THE CHILD'S BEST  
29 INTERESTS, THE COURT SHALL APPOINT ANOTHER individual as THE CHILD'S guardian  
30 ~~of the child's person~~ and vest legal custody in another individual or in an  
31 authorized agency.

32 C. IF THE COURT FINDS THAT PLACEMENT WITH A GRANDPARENT IS NOT IN THE  
33 CHILD'S BEST INTERESTS, THE COURT SHALL MAKE SPECIFIC WRITTEN FINDINGS IN  
34 SUPPORT OF ITS DECISION.

35 ~~C.~~ D. The court shall also make an order fixing responsibility for  
36 the child's support. The parent-child relationship may be terminated with  
37 respect to one parent without affecting the relationship between the child  
38 and the other parent.

39 ~~D.~~ E. ~~Where~~ IF the court does not order termination of the  
40 parent-child relationship, it shall dismiss the petition, provided that ~~where~~  
41 IF the court finds that the best interests of the child require substitution  
42 or supplementation of parental care and supervision, the court shall make  
43 such orders as it deems necessary.

1 Sec. 4. Section 8-821, Arizona Revised Statutes, is amended to read:

2 8-821. Taking into temporary custody; medical examination;  
3 placement; interference; classification

4 A. A child shall be taken into temporary custody in proceedings to  
5 declare a child a temporary ward of the court to protect the child, pursuant  
6 to an order of the juvenile court on a petition by an interested person, a  
7 peace officer or a child protective services worker under oath that  
8 reasonable grounds exist to believe that temporary custody is clearly  
9 necessary to protect the child from suffering abuse or neglect. If a child  
10 is taken into temporary custody pursuant to this section, the child's sibling  
11 shall also be taken into temporary custody only if reasonable grounds  
12 independently exist to believe that temporary custody is clearly necessary to  
13 protect the child from suffering abuse or neglect.

14 B. A child may be taken into temporary custody by a peace officer or a  
15 child protective services worker if temporary custody is clearly necessary to  
16 protect the child because probable cause exists to believe that the child is  
17 either:

18 1. A victim or will imminently become a victim of abuse or neglect.

19 2. Suffering serious physical or emotional injury that can only be  
20 diagnosed by a medical doctor or psychologist.

21 3. Physically injured as a result of living on premises where  
22 dangerous drugs or narcotic drugs are being manufactured. For the purposes  
23 of this paragraph, "dangerous drugs" and "narcotic drugs" have the same  
24 ~~meaning~~ MEANINGS prescribed in section 13-3401.

25 C. In determining if a child should be taken into temporary custody,  
26 the interested person, peace officer or child protective services worker may  
27 take into consideration as a mitigating factor the participation of the  
28 parent or guardian in the healthy families program established by section  
29 8-701.

30 D. In determining if a child should be taken into temporary custody,  
31 the interested person, peace officer or child protective services worker  
32 shall take into consideration:

33 1. As a paramount concern the child's health and safety and shall  
34 consider as a mitigating factor the availability of reasonable services to  
35 the parent or guardian to prevent or eliminate the need for removal of the  
36 child and the effort of the parent or guardian to obtain and participate in  
37 these services.

38 2. Whether the parent is willing to participate in services provided  
39 pursuant to section 8-830.

40 E. A person who takes a child into custody pursuant to subsection B,  
41 paragraph 2 of this section shall immediately have the child examined by a  
42 medical doctor or psychologist. After the examination the person shall  
43 release the child to the custody of the parent or guardian of the child  
44 unless the examination reveals abuse or neglect. Temporary custody of a

1 child taken into custody pursuant to subsection B, paragraph 2 of this  
2 section shall not exceed twelve hours.

3 F. A CHILD WHO IS TAKEN INTO TEMPORARY CUSTODY PURSUANT TO THIS  
4 ARTICLE SHALL BE PLACED WITH A GRANDPARENT UNLESS THAT PLACEMENT IS NOT IN  
5 THE CHILD'S BEST INTERESTS.

6 ~~F.~~ G. A child who is taken into temporary custody pursuant to this  
7 article shall not be detained in a police station, jail or lockup where  
8 adults charged with or convicted of a crime are detained.

9 ~~G.~~ H. A child shall not remain in temporary custody for more than  
10 seventy-two hours, excluding Saturdays, Sundays and holidays, unless a  
11 dependency petition is filed.

12 ~~H.~~ I. A person who knowingly interferes with the taking of a child  
13 into temporary custody under this section is guilty of a class 2 misdemeanor.

14 Sec. 5. Section 8-824, Arizona Revised Statutes, is amended to read:

15 8-824. Preliminary protective hearing; probable cause;  
16 appointment of counsel

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

24 B. The following persons shall be present at the preliminary  
25 protective hearing:

- 26 1. The child's parents or guardian, unless they cannot be located or  
27 they fail to appear in response to the notice.
- 28 2. Counsel for the parents if one has been requested or retained.
- 29 3. The child's guardian ad litem or attorney.
- 30 4. The protective services worker.
- 31 5. Counsel for the protective services worker.

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

- 35 1. The child.
- 36 2. Any relative or other interested person with whom the child IS OR  
37 might be placed as described in section 8-845, subsection A.
- 38 3. Witnesses called by the parties.
- 39 4. An advocate or interested person as requested by the parent or  
40 guardian.
- 41 5. Other persons who have knowledge of or an interest in the welfare  
42 of the child.

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

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

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

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

6           4. The right to use the process of the court to compel the attendance  
7 of witnesses.

8           E. At the hearing, the court:

9           1. Shall receive a report of any agreement reached pursuant to section  
10 8-823, subsection D. The report may be made orally.

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

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

17           4. May take into consideration as a mitigating factor the  
18 participation of the parent or guardian in the healthy families ~~pilot~~ program  
19 established by section 8-701.

20           5. Shall take into consideration as a mitigating factor the  
21 availability of reasonable services to the parent or guardian to prevent or  
22 eliminate the need for removal of the child and the effort of the parent or  
23 guardian to obtain and participate in these services.

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

26           7. Shall give paramount consideration to the health and safety of the  
27 child.

28           8. SHALL REVIEW EVIDENCE THAT PLACEMENT OF THE CHILD WITH A  
29 GRANDPARENT IS NOT IN THE CHILD'S BEST INTEREST.

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

34           G. IF THE CHILD IS NOT PLACED WITH A GRANDPARENT, THE PETITIONER HAS  
35 THE BURDEN OF PRESENTING EVIDENCE AS TO WHETHER THERE IS PROBABLE CAUSE TO  
36 BELIEVE THAT PLACEMENT WITH A GRANDPARENT IS NOT IN THE CHILD'S BEST  
37 INTERESTS.

38           ~~G.~~ H. If the child is in the temporary custody of the department, the  
39 department shall submit not later than the day before the hearing a written  
40 report to the court and the parties that states:

41           1. The reasons the child was removed from the parent's or guardian's  
42 custody.

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

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

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

3           5. **IF THE CHILD IS NOT PLACED WITH A GRANDPARENT**, whether the child  
4 has any relatives or other interested parties as described in section 8-845,  
5 subsection A who may be able and willing to take temporary custody.

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

8           7. Any efforts made to place siblings together, and if they are not  
9 placed together, the reasons why.

10          8. Any efforts made to facilitate communications among siblings.

11          9. A proposal for visitation and the results of any visitation that  
12 has occurred since the child was removed.

13          10. A proposed case plan for services to the family.

14          ~~H.~~ **I.** The parent or guardian shall state whether the parent or  
15 guardian admits or denies the allegations in the petition filed pursuant to  
16 section 8-841. If the parent or guardian admits or does not contest the  
17 allegations in the petition, the court shall determine that the parent or  
18 guardian understands the rights described in subsection D of this section and  
19 that the parent or guardian knowingly, intelligently and voluntarily waives  
20 these rights.

21          ~~I.~~ **J.** At the hearing, **IF THE CHILD IS NOT RETURNED TO THE PARENT OR**  
22 **GUARDIAN**, the court shall enter orders regarding the placement of the child  
23 pending the determination of the dependency petition and visitation, if  
24 any, ~~if the child is not returned to the parent or guardian~~. The court shall  
25 also determine if the tasks and services set forth in the case plan are  
26 reasonable and necessary to carry out the case plan.

27          Sec. 6. Section 8-825, Arizona Revised Statutes, is amended to read:

28          **8-825. Court determinations in preliminary protective hearing**

29          A. The court's determination in the preliminary protective hearing may  
30 be based on evidence that is hearsay, in whole or in part, in the following  
31 forms:

32           1. The allegations of the petition.

33           2. An affidavit.

34           3. Sworn testimony.

35           4. The written reports of expert witnesses.

36           5. The department's written reports if the protective services worker  
37 is present and available for cross-examination.

38           6. Documentary evidence without foundation if there is a substantial  
39 basis for believing the foundation will be available at the dependency  
40 hearing and the document is otherwise admissible.

41           7. The testimony of a witness concerning the declarations of another  
42 person if the evidence is cumulative or there is a reasonable ground to  
43 believe that the other person will be personally available for trial.

1 B. The court shall determine whether temporary custody of the child is  
2 clearly necessary to prevent abuse or neglect pending the hearing on the  
3 dependency petition. The court:

4 1. On finding that the petitioner has not met the burden prescribed in  
5 section 8-824, subsection F, shall return the child to the child's parent,  
6 guardian or custodian pending the dependency hearing.

7 2. On finding that the petitioner has met the burden prescribed in  
8 section 8-824, subsection F, may declare the child a temporary ward of the  
9 court pending the dependency hearing.

10 C. The court shall also determine if reasonable efforts were made to  
11 prevent or eliminate the need for removal of a child from the child's home  
12 and if services are available that would eliminate the need for continued  
13 removal. If the child is:

14 1. In the custody of the department, the court shall order the  
15 department to make reasonable efforts to provide services to the child and  
16 parent to facilitate the reunification of the family, except as provided in  
17 section 8-846.

18 2. Not in the custody of the department and the department is not a  
19 party, the court may direct the parties to participate in reasonable services  
20 that will facilitate reunification of the family or another permanent plan  
21 for the child. The court shall not require the department to provide  
22 services pursuant to this paragraph.

23 D. IF THE CHILD IS NOT PLACED WITH A GRANDPARENT, THE COURT SHALL:

24 1. DETERMINE IF PLACEMENT WITH A GRANDPARENT IS NOT IN THE CHILD'S  
25 BEST INTERESTS.

26 2. MAKE SPECIFIC WRITTEN FINDINGS IN SUPPORT OF ITS DECISION.

27 Sec. 7. Section 8-845, Arizona Revised Statutes, is amended to read:  
28 8-845. Disposition hearing

29 A. After receiving and considering the evidence on the proper  
30 disposition of the case, the court may enter orders awarding a dependent  
31 child as follows:

32 1. To the care of the child's parents, subject to the supervision of  
33 the department of economic security.

34 2. TO A GRANDPARENT, UNLESS THE COURT HAS DETERMINED THAT PLACEMENT  
35 WITH A GRANDPARENT IS NOT IN THE CHILD'S BEST INTERESTS.

36 3. TO A MATERNAL OR PATERNAL RELATIVE WHO IS WILLING AND ABLE TO CARE  
37 FOR THE CHILD.

38 ~~2.~~ 4. To a suitable institution.

39 ~~3.~~ 5. To an association willing to receive the child.

40 ~~4.~~ 6. To a reputable citizen of good moral character.

41 ~~5.~~ 7. To an appropriate public or private agency licensed to care for  
42 children.

43 ~~6.~~ 8. To a suitable school.

44 ~~7. To maternal or paternal relatives, if they are physically and~~  
45 ~~financially able to provide proper care.~~

1           ~~8.~~ 9. To supervision under the independent living program established  
2 pursuant to section 8-521.  
3           ~~9.~~ 10. To any adult as a permanent guardian pursuant to article 5 of  
4 this chapter.  
5           B. In reviewing the status of the child and in determining its order  
6 of disposition, the court shall consider the health and safety of the child  
7 as a paramount concern and the following criteria:  
8           1. The goals of the placement and the appropriateness of the case  
9 plan.  
10           2. The services that have been offered to reunite the family.  
11           3. If returning the child home is not likely, the efforts that have  
12 been or should be made to evaluate or plan for other permanent placement  
13 plans.  
14           C. The court shall review the permanent plan that has been established  
15 for the child. In reviewing the status of the child, the court, insofar as  
16 possible, shall seek to reunite the family. If the court does not order  
17 reunification of the family, the court shall order a plan of adoption or  
18 another permanent plan that is in the child's best interest.  
19           D. Notwithstanding subsection C of this section, reasonable efforts to  
20 place a child for adoption may be made concurrently with reasonable efforts  
21 to reunify the family.