

REFERENCE TITLE: sibling information exchange program

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2212

Introduced by
Representative Hershberger, Senator Gray L: Representatives DeSimone,
Konopnicki, Senator Johnson

AN ACT

AMENDING SECTIONS 8-116, 8-135, 8-501, 8-847 AND 8-872, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-543; 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 8-116, Arizona Revised Statutes, is amended to
3 read:

4 8-116. Court order; contents; form

5 A. If, after the hearing and consideration of all the evidence, the
6 court is satisfied that the requirements of this article have been met and
7 that the adoption is in the best interests of the child, the court shall
8 order the adoption. The order may change the name of the child to that of
9 the adoptive parent or parents. The written order of the court shall include
10 the findings of fact on which it based its order, including the court's
11 jurisdiction and the date and place of birth of the child being adopted based
12 on the best available evidence.

13 B. If the exact place of birth is unknown, the order shall include the
14 information that is known and designate a place of birth according to the
15 best information known as to the country of origin.

16 C. If the exact date of birth is unknown, the order shall establish a
17 date of birth based on the medical evidence as to the probable age of the
18 child and other evidence the court considers appropriate.

19 D. The order is conclusive and binding on all persons from the date of
20 its entry subject to appeal as provided in section 8-235.

21 E. THE COURT SHALL PROVIDE THE ADOPTIVE PARENT OR PARENTS WITH WRITTEN
22 NOTICE OF THE SIBLING INFORMATION EXCHANGE PROGRAM ESTABLISHED PURSUANT TO
23 SECTION 8-543.

24 Sec. 2. Section 8-135, Arizona Revised Statutes, is amended to read:

25 8-135. Confidential intermediary and fiduciary fund

26 A. The confidential intermediary and fiduciary fund is established
27 consisting of the monies received pursuant to section 12-284.03, subsection
28 A, paragraph 8, section ~~36-342~~ 36-341, subsection B, section 14-5651,
29 subsection A, legislative appropriations, donations, fees, grants and
30 contracts ~~for the purposes of implementing~~ TO IMPLEMENT the confidential
31 intermediary program established by section 8-134 AND THE SIBLING INFORMATION
32 EXCHANGE PROGRAM ESTABLISHED PURSUANT TO SECTION 8-543 and ~~performing~~ TO
33 PERFORM the duties related to fiduciaries pursuant to section 14-5651. The
34 supreme court shall administer the fund subject to legislative
35 appropriation. On notice from the supreme court, the state treasurer shall
36 invest and divest monies in the fund as provided by section 35-313, and
37 monies earned from investment shall be credited to the fund. The fund is
38 exempt from the provisions of section 35-190 relating to lapsing of
39 appropriations.

40 B. The appropriated funds shall only be used for the designated
41 purposes specified in statute.

42 Sec. 3. Section 8-501, Arizona Revised Statutes, is amended to read:

43 8-501. Definitions

44 A. In this article, unless the context otherwise requires:

45 1. "Child welfare agency" or "agency":

1 (a) Means:

2 (i) Any agency or institution maintained by a person, firm,
3 corporation, association or organization to receive children for care and
4 maintenance or for twenty-four hour social, emotional or educational
5 supervised care or who have been adjudicated as a delinquent or dependent
6 child.

7 (ii) Any institution that provides care for unmarried mothers and
8 their children.

9 (iii) Any agency maintained by the state, or a political subdivision
10 thereof, person, firm, corporation, association or organization to place
11 children or unmarried mothers in a foster home.

12 (b) Does not include state operated institutions or facilities,
13 detention facilities for children established by law, health care
14 institutions that are licensed by the department of health services pursuant
15 to title 36, chapter 4 or private agencies that exclusively provide children
16 with social enrichment or recreational opportunities and that do not use
17 restrictive behavior management techniques.

18 2. "Division" or "department" means the department of economic
19 security.

20 3. "FORMER DEPENDENT CHILD" MEANS A PERSON WHO WAS PREVIOUSLY
21 ADJUDICATED A DEPENDENT CHILD IN A DEPENDENCY PROCEEDING THAT HAS BEEN
22 DISMISSED BY ORDER OF THE JUVENILE COURT.

23 ~~3-~~ 4. "Foster child" means a child placed in a foster home or child
24 welfare agency.

25 ~~4-~~ 5. "Foster home" means a home maintained by any individual or
26 individuals having the care or control of minor children, other than those
27 related to each other by blood or marriage, or related to such individuals,
28 or who are legal wards of such individuals.

29 ~~5-~~ 6. "Foster parent" means any individual or individuals maintaining
30 a foster home.

31 ~~6-~~ 7. "Group foster home" means a licensed regular or special foster
32 home suitable for placement of more than five minor children but not more
33 than ten minor children.

34 ~~7-~~ 8. "Out-of-home placement" means the placing of a child in the
35 custody of an individual or agency other than with the child's parent or
36 legal guardian and includes placement in temporary custody pursuant to
37 section 8-821, subsection A or B, voluntary placement pursuant to section
38 8-806 or placement due to dependency actions.

39 ~~8-~~ 9. "Parent" means the natural or adoptive mother or father of a
40 child.

41 ~~9-~~ 10. "Reason for leaving care" means one of the following:

42 (a) Reunification with parent or primary caretaker.

43 (b) Living with other relative.

44 (c) Adoption by relative.

45 (d) Adoption by foster parent.

- 1 (e) Adoption by another person.
- 2 (f) Age of majority.
- 3 (g) Guardianship by relative.
- 4 (h) Guardianship by another person.
- 5 (i) Transfer to another agency.
- 6 (j) Runaway.
- 7 (k) Death.

8 ~~10.~~ 11. "Receiving foster home" means a licensed foster home suitable
9 for immediate placement of children when taken into custody or pending
10 medical examination and court disposition.

11 ~~11.~~ 12. "Regular foster home" means a licensed foster home suitable
12 for placement of not more than five minor children.

13 ~~12.~~ 13. "Relative" means a grandparent, great grandparent, brother or
14 sister of whole or half blood, aunt, uncle or first cousin.

15 ~~13.~~ 14. "Restrictive behavior management" means an intervention or
16 procedure that attempts to guide, redirect, modify or manage behavior through
17 the use of any of the following:

18 (a) Physical force to cause a child to comply with a directive.
19 Physical force does not include physical escort. For the purposes of this
20 subdivision, "physical escort" means temporarily touching or holding a
21 child's hand, wrist, arm, shoulder or back to induce the child to walk to a
22 safe location.

23 (b) A device, action or medication to restrict the movement or normal
24 function of a child in order to control or change the child's behavior and
25 that includes:

26 (i) Chemical restraint. For the purposes of this item, "chemical
27 restraint" means the use of any psychoactive medication as a restraint to
28 control the child's behavior or to restrict the child's freedom of movement
29 and that is not a standard treatment for the child's medical or psychiatric
30 condition.

31 (ii) Mechanical restraint. For the purposes of this item, "mechanical
32 restraint" means the use of any physical device to limit a child's movement
33 and to prevent the child from causing harm to self or to others. Mechanical
34 restraint does not include devices such as orthopedically prescribed devices,
35 surgical dressings or bandages, protective helmets or any other method that
36 involves the physical holding of a child to conduct a routine physical
37 examination or test or to protect the child from falling out of bed or to
38 permit the child to participate in activities in order to reduce the risk of
39 physical harm to the child.

40 (iii) Physical restraint. For the purposes of this item, "physical
41 restraint" means applying physical force to reduce or restrict a child's
42 ability to freely move the child's arms, legs or head. Physical restraint
43 does not include temporarily holding a child to permit the child to
44 participate in activities of daily living if this holding does not involve
45 the risk of physical harm to the child.

1 (iv) Seclusion. For the purposes of this item, "seclusion" means
2 placing a child against the child's will in a room in which the child is
3 unable to open the door in order to prevent the child from doing harm to self
4 or others.

5 ~~14.~~ 15. "Special foster home" means a licensed foster home capable of
6 handling not more than five minor children who require special care for
7 physical, mental or emotional reasons or who have been adjudicated
8 delinquent. Special foster home includes any home handling foster children
9 aged twelve through seventeen.

10 B. A foster home or any classification of foster home defined in
11 subsection A of this section includes a home having the care of persons who
12 are under twenty-one years of age and the cost of whose care is provided
13 pursuant to section 46-134, subsection A, paragraph 14.

14 Sec. 4. Title 8, chapter 5, article 2, Arizona Revised Statutes, is
15 amended by adding section 8-543, to read:

16 8-543. Sibling information exchange program; definition

17 A. THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL ESTABLISH A SIBLING
18 INFORMATION EXCHANGE PROGRAM TO FACILITATE CONTACT BETWEEN A FORMER DEPENDENT
19 CHILD AND THE CHILD'S SIBLING OR SIBLINGS.

20 B. THE FOLLOWING PERSONS MAY PARTICIPATE IN THE PROGRAM:

21 1. AN ADULT WHO IS A FORMER DEPENDENT CHILD.

22 2. A JUVENILE WHO IS A FORMER DEPENDENT CHILD, THROUGH ANY OF THE
23 FOLLOWING:

24 (a) THE JUVENILE'S ADOPTIVE PARENT.

25 (b) THE JUVENILE'S GUARDIAN.

26 (c) THE JUVENILE'S BIOLOGICAL PARENT IF THAT PERSON HAS LEGAL CUSTODY
27 OF THE CHILD AND IS NOT A PARTY TO A PENDING DEPENDENCY PROCEEDING.

28 3. THE ADULT SIBLING OF A FORMER DEPENDENT CHILD.

29 C. A PERSON PARTICIPATING IN THE PROGRAM MAY USE A CONFIDENTIAL
30 INTERMEDIARY WHO IS CERTIFIED PURSUANT TO SECTION 8-134. THE CONFIDENTIAL
31 INTERMEDIARY MAY ACCESS COURT, DIVISION AND AGENCY RECORDS. THE CONFIDENTIAL
32 INTERMEDIARY MUST KEEP CONFIDENTIAL ALL INFORMATION THE INTERMEDIARY OBTAINS
33 DURING THE COURSE OF THE INVESTIGATION AND MAY USE THIS INFORMATION ONLY TO
34 ARRANGE A CONTACT OR TO SHARE INFORMATION BETWEEN THE PERSON WHO INITIATES
35 THE SEARCH AND THE PERSON WHO IS THE SUBJECT OF THE SEARCH. THE CONFIDENTIAL
36 INTERMEDIARY SHALL NOT CONTACT ANY PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE.

37 D. THE SUPREME COURT SHALL ADOPT RULES NECESSARY TO IMPLEMENT THE
38 SIBLING INFORMATION EXCHANGE PROGRAM.

39 E. FOR THE PURPOSES OF THIS SECTION, "SIBLING" INCLUDES A PERSON WHO
40 SHARES A COMMON BIOLOGICAL PARENT OR STEPPARENT.

41 Sec. 5. Section 8-847, Arizona Revised Statutes, is amended to read:

42 8-847. Periodic review hearings

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

1 B. At a proceeding to review the disposition orders of the court, the
2 court shall provide the following persons notice of the review and the right
3 to participate in the proceeding:

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

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

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

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

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

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

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

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

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

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

28 C. At any periodic review hearing, the court shall consider the health
29 and safety of the child as a paramount concern.

30 D. IF THE COURT FINDS THAT A CHILD IS NO LONGER DEPENDENT, BEFORE IT
31 DISMISSES THE PROCEEDING THE COURT SHALL PROVIDE NOTICE OF THE SIBLING
32 INFORMATION EXCHANGE PROGRAM ESTABLISHED PURSUANT TO SECTION 8-543 TO THE
33 FOLLOWING:

34 1. AN ADULT WHO WAS ONCE ADJUDICATED TO BE A DEPENDENT CHILD.

35 2. A PARENT OR GUARDIAN OF A JUVENILE WHO WAS ONCE ADJUDICATED TO BE A
36 DEPENDENT CHILD.

37 Sec. 6. Section 8-872, Arizona Revised Statutes, is amended to read:
38 8-872. Permanent guardianship; procedure

39 A. Any party to a dependency proceeding may file a motion for
40 permanent guardianship. The motion shall be verified by the person who files
41 the motion and shall include the following:

42 1. The name, sex, residence and date and place of birth of the child.

43 2. The facts and circumstances supporting the grounds for permanent
44 guardianship.

- 1 3. The name and address of the prospective guardian and a statement
2 that the prospective guardian agrees to accept the duties and
3 responsibilities of guardianship.
- 4 4. The basis for the court's jurisdiction.
- 5 5. The relationship of the child to the prospective guardian.
- 6 6. Whether the child is subject to the federal Indian child welfare
7 act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901
8 through 1963) and if so:
 - 9 (a) The tribal affiliations of the child's parents.
 - 10 (b) The specific actions the person who files the motion has taken to
11 notify the parents' tribes and the results of those contacts, including the
12 names, addresses, titles and telephone numbers of the persons contacted. The
13 person shall attach to the motion as exhibits any correspondence with the
14 tribes.
 - 15 (c) The specific efforts that were made to comply with the placement
16 preferences under the federal Indian child welfare act of 1978 or the
17 placement preferences of the appropriate Indian tribes.
- 18 7. The name, address, marital status and date of birth of the birth
19 parents, if known.
 - 20 B. The person who files the motion shall serve notice of the hearing
21 and a copy of the motion on all parties as prescribed in rule 5(c) of the
22 Arizona rules of civil procedure, including any person who has filed a
23 petition to adopt or who has physical custody pursuant to a court order in a
24 foster-adoptive placement. In addition to the requirements of rule 5(c) of
25 the Arizona rules of civil procedure, the notice shall be sent by registered
26 mail, return receipt requested, to any parent, Indian custodian and tribe of
27 an Indian child as defined by the federal Indian child welfare act of 1978
28 (25 United States Code section 1903).
 - 29 C. The person who files the motion shall provide a copy of the notice
30 of hearing to the following persons if the person has not been served
31 pursuant to subsection B of this section:
 - 32 1. The child's current physical custodian.
 - 33 2. Any foster parent with whom the child has resided within six months
34 before the date of the hearing.
 - 35 3. The prospective guardian if the guardian is not the current
36 physical custodian.
 - 37 4. Any other person the court orders to be provided notice.
 - 38 D. In a proceeding for permanent guardianship, on the request of a
39 parent, the court shall appoint counsel for any parent found to be indigent
40 if the parent is not already represented by counsel. The court may also
41 appoint one for the child if a guardian ad litem has not already been
42 appointed.

1 E. Before a final hearing, the division, the agency or a person
2 designated as an officer of the court shall conduct an investigation
3 addressing the factors set forth in section 8-871, whether the prospective
4 permanent guardian or guardians are fit and proper persons to become
5 permanent guardians and whether the best interests of the child would be
6 served by granting the permanent guardianship. The findings of this
7 investigation shall be set forth in a written report provided to the court
8 and all parties before the hearing. The court may require additional
9 investigation if it finds that the welfare of the child will be served or if
10 additional information is necessary to make an appropriate decision regarding
11 the permanent guardianship. The court may charge a reasonable fee for this
12 investigation pursuant to section 8-133, if performed by an officer of the
13 court.

14 F. The person who files the motion has the burden of proof by clear
15 and convincing evidence. In any proceeding involving a child who is subject
16 to the federal Indian child welfare act of 1978, the person who files the
17 motion has the burden of proof by beyond a reasonable doubt.

18 G. A court order vesting permanent guardianship with an individual
19 divests the birth or adoptive parent of legal custody of or guardianship for
20 the child but does not terminate the parent's rights. A court order for
21 permanent guardianship does not affect the child's inheritance rights from
22 and through the child's birth or adoptive parents.

23 H. On finding that grounds exist for a permanent guardianship, the
24 court may incorporate into the final order provisions for visitation with the
25 natural parents, siblings or other relatives of the child if this order would
26 be in the child's best interests and any other provision that is necessary to
27 rehabilitate the child or to provide for the child's continuing safety and
28 well-being. The court may order a parent to contribute to the support of the
29 child to the extent it finds the parent is able.

30 I. On the entry of the order establishing a permanent guardianship,
31 the dependency action shall be dismissed. If the child was in the legal
32 custody of the division during the dependency, the court may order the
33 division to conduct the investigation and prepare the report for the first
34 report and review hearing. The court shall retain jurisdiction to enforce
35 its final order of permanent guardianship. The court shall cause a report
36 and review to be held within one year following the entry of the final order
37 and may set such other and further proceedings as may be in the best
38 interests of the child. Before a report and review hearing, the court may
39 cause an investigation to be conducted of the facts and circumstances
40 surrounding the welfare and best interests of the child and a written report
41 to be filed with the court. The court may charge a reasonable fee for this
42 investigation pursuant to section 8-133, if performed by an officer of the
43 court.

1 J. The division or agency shall not be responsible for the
2 requirements pursuant to subsections E, H and I of this section for a motion
3 concerning a child not in the care, custody and control of the division or
4 agency.

5 K. THE COURT SHALL PROVIDE THE GUARDIAN WITH WRITTEN NOTICE OF THE
6 SIBLING INFORMATION EXCHANGE PROGRAM ESTABLISHED PURSUANT TO SECTION 8-543.

7 Sec. 7. Effective date

8 This act is effective from and after December 31, 2007.