

REFERENCE TITLE: dependent children; proceedings

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Senate
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SB 1303

Introduced by
Senators Lopez, Bradley, Gallardo: Jackson Jr., Landrum Taylor, Tovar

AN ACT

AMENDING SECTIONS 8-533, 8-824, 8-829, 8-843, 8-845, 8-846, 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 8-533, Arizona Revised Statutes, is amended to
3 read:

4 8-533. Petition; who may file; grounds

5 A. Any person or agency that has a legitimate interest in the welfare
6 of a child, including, ~~but not limited to~~ FOR EXAMPLE, a relative, a foster
7 parent, a physician, the department of economic security or a private
8 licensed child welfare agency, may file a petition for the termination of the
9 parent-child relationship alleging grounds contained in subsection B of this
10 section.

11 B. Evidence sufficient to justify the termination of the parent-child
12 relationship shall include any one of the following, and in considering any
13 of the following grounds, the court shall also consider the best interests of
14 the child:

15 1. That the parent has abandoned the child.

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

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

25 4. That the parent is deprived of civil liberties due to the
26 conviction of a felony if the felony of which that parent was convicted is of
27 such nature as to prove the unfitness of that parent to have future custody
28 and control of the child, including murder of another child of the parent,
29 manslaughter of another child of the parent or aiding or abetting or
30 attempting, conspiring or soliciting to commit murder or manslaughter of
31 another child of the parent, or if the sentence of that parent is of such
32 length that the child will be deprived of a normal home for a period of
33 years.

34 5. That the potential father failed to file a paternity action within
35 thirty days of completion of service of notice as prescribed in section
36 8-106, subsection G.

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

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

41 8. That the child is being cared for in an out-of-home placement under
42 the supervision of the juvenile court, the division or a licensed child
43 welfare agency, that the agency responsible for the care of the child has
44 made a diligent effort to provide appropriate reunification services and that
45 one of the following circumstances exists:

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

6 (b) The child who is under three years of age has been in an
7 out-of-home placement for a cumulative total period of six months or longer
8 pursuant to court order and the parent has substantially neglected or
9 wilfully refused to remedy the circumstances that cause the child to be in an
10 out-of-home placement, including refusal to participate in reunification
11 services offered by the department.

12 (c) The child has been in an out-of-home placement for a cumulative
13 total period of fifteen months or longer pursuant to court order or voluntary
14 placement pursuant to section 8-806, the parent has been unable to remedy the
15 circumstances that cause the child to be in an out-of-home placement and
16 there is a substantial likelihood that the parent will not be capable of
17 exercising proper and effective parental care and control in the near future.

18 9. That the identity of the parent is unknown and continues to be
19 unknown following three months of diligent efforts to identify and locate the
20 parent. DILIGENT EFFORTS SHALL BE SHOWN BY DOCUMENTING ATTEMPTS TO LOCATE A
21 PARENT IN A COUNTY JAIL, CORRECTIONAL FACILITY OR UNITED STATES DEPARTMENT OF
22 HOMELAND SECURITY AUTHORIZED DETENTION FACILITY OR IN ANOTHER COUNTRY BY A
23 DEPORTATION ORDER.

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

27 11. That all of the following are true:

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

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

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

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

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

42 D. In considering the grounds for termination prescribed in subsection
43 B, paragraph 8 or 11 of this section, the court shall consider the
44 availability of reunification services to the parent and the participation of
45 the parent in these services. IN DETERMINING WHETHER THE PARENT HAS

1 SUBSTANTIALLY NEGLECTED OR WILFULLY REFUSED TO PARTICIPATE IN REUNIFICATION
2 SERVICES, THE COURT SHALL CONSIDER MITIGATING FACTORS THAT INCLUDE THE
3 PARENT'S INCARCERATION, DETENTION BY THE UNITED STATES DEPARTMENT OF HOMELAND
4 SECURITY, DEPORTATION TO ANOTHER COUNTRY OR PARTICIPATION IN A RESIDENTIAL
5 SUBSTANCE ABUSE TREATMENT PROGRAM AND THE TIMELINESS OF DILIGENT EFFORTS MADE
6 BY THE DEPARTMENT OF ECONOMIC SECURITY TO LOCATE THE PARENT AND PROVIDE
7 APPROPRIATE REUNIFICATION SERVICES.

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

12 F. The failure of an alleged parent who is not the child's legal
13 parent to take a test requested by the department or ordered by the court to
14 determine if the person is the child's natural parent is prima facie evidence
15 of abandonment unless good cause is shown by the alleged parent for that
16 failure.

17 G. EXCEPT IN CIRCUMSTANCES PRESCRIBED IN SECTION 8-846, THE COURT MAY
18 EXTEND COURT ORDERED REUNIFICATION SERVICES FOR NOT MORE THAN SIX MONTHS
19 AFTER THE TIME PERIODS PRESCRIBED IN SUBSECTION B, PARAGRAPH 8 OF THIS
20 SECTION. THE COURT SHALL EXTEND THE TIME PERIOD ONLY IF REASONABLE SERVICES
21 HAVE NOT BEEN PROVIDED TO THE CHILD'S PARENT. THE COURT MUST SPECIFY THE
22 FACTUAL BASIS FOR MAKING THIS DETERMINATION. IN DETERMINING WHETHER COURT
23 ORDERED REUNIFICATION SERVICES MAY BE EXTENDED, THE COURT SHALL CONSIDER THE
24 FOLLOWING:

25 1. THE TIMELINESS OF THE DILIGENT EFFORTS MADE BY THE DEPARTMENT TO
26 LOCATE THE PARENT AND PROVIDE APPROPRIATE REUNIFICATION SERVICES.

27 2. GOOD FAITH EFFORTS THE PARENT HAS MADE TO MAINTAIN CONTACT WITH THE
28 CHILD.

29 3. SPECIAL CIRCUMSTANCES, INCLUDING BARRIERS TO THE PARENT'S ACCESS TO
30 SERVICES AND ABILITY TO MAINTAIN CONTACT WITH THE CHILD BECAUSE THE PARENT:

31 (a) IS INCARCERATED EXCEPT UNDER CIRCUMSTANCES PRESCRIBED IN
32 SUBSECTION B, PARAGRAPH 4 OF THIS SECTION.

33 (b) IS IN A RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM.

34 (c) HAS BEEN ARRESTED AND ISSUED AN IMMIGRATION HOLD, DETAINED BY THE
35 UNITED STATES DEPARTMENT OF HOMELAND SECURITY OR DEPORTED TO ANOTHER COUNTRY.

36 Sec. 2. Section 8-824, Arizona Revised Statutes, is amended to read:

37 8-824. Preliminary protective hearing; probable cause;
38 appointment of counsel

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

1 B. The following persons shall be present at the preliminary
2 protective hearing:
3 1. The child's parents or guardian, unless they cannot be located or
4 they fail to appear in response to the notice.
5 2. Counsel for the parents if one has been requested or retained.
6 3. The child's guardian ad litem or attorney.
7 4. The protective services worker.
8 5. Counsel for the protective services worker.
9 C. If the court finds that it is in the best interests of the child,
10 the court may allow the following to be present at the preliminary protective
11 hearing:
12 1. The child.
13 2. Any relative or other interested person with whom the child is or
14 might be placed as described in section 8-845, subsection A.
15 3. Witnesses called by the parties.
16 4. An advocate or interested person as requested by the parent or
17 guardian.
18 5. Other persons who have knowledge of or an interest in the welfare
19 of the child.
20 D. At the hearing, the court shall advise the parent or guardian of
21 the following rights:
22 1. The right to counsel, including appointed counsel if the parent or
23 guardian is indigent.
24 2. The right to cross-examine all witnesses who are called to testify
25 against the parent or guardian.
26 3. The right to trial by court on the allegations in the petition.
27 4. The right to use the process of the court to compel the attendance
28 of witnesses.
29 E. At the hearing, the court:
30 1. Shall receive a report of any agreement reached pursuant to section
31 8-823, subsection D. The report may be made orally.
32 2. Shall provide an opportunity for the child's parent or guardian, if
33 present, and any other person who has relevant knowledge, to provide relevant
34 testimony.
35 3. May limit testimony and evidence that is beyond the scope of the
36 removal of the child, the child's need for continued protection, placement,
37 visitation and services to be provided to the child and family.
38 4. May take into consideration as a mitigating factor the
39 participation of the parent or guardian in the healthy families program
40 established by section 8-701.
41 5. Shall take into consideration as a mitigating factor the
42 availability of reasonable services to the parent or guardian to prevent or
43 eliminate the need for removal of the child and the effort of the parent or
44 guardian to obtain and participate in these services.

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

3 7. Shall order the parent or guardian to provide the court with the
4 names, the type of relationship and all available information necessary to
5 locate persons who are related to the child or who have a significant
6 relationship with the child. If there is not sufficient information
7 available to locate a relative or person with a significant relationship with
8 the child, the parent or guardian shall inform the court of this fact. The
9 court shall further order the parent or guardian to inform the department
10 immediately if the parent or guardian becomes aware of information related to
11 the existence or location of a relative or person with a significant
12 relationship to the child.

13 8. Shall inform the parent that substantially neglecting or wilfully
14 refusing to remedy the circumstances that cause the child to be in an
15 out-of-home placement, including refusing to participate in reunification
16 services, is grounds for termination of parental rights to a child.

17 9. Shall give paramount consideration to the health and safety of the
18 child.

19 10. Shall determine whether the department is attempting to identify
20 and assess placement of the child with a grandparent or another member of the
21 child's extended family including a person who has a significant relationship
22 with the child.

23 11. Shall inform a foster parent, a preadoptive parent or a member of
24 the child's extended family with whom the department has placed the child of
25 the right to be heard in any proceeding to be held with 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. The department must make reasonable efforts to place a child with
31 siblings and, if that is not possible, to maintain frequent visitation or
32 other ongoing contact between all siblings.

33 H. If the child is in the temporary custody of the department, the
34 department shall submit not later than the day before the hearing a written
35 report to the court and the parties that states:

36 1. The reasons the child was removed from the parent's or guardian's
37 custody.

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

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

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

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

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

3 7. What efforts the department has made to place siblings together,
4 and if they are not placed together, the specific reasons why this did not
5 occur.

6 8. IF A PARENT HAS NOT BEEN LOCATED, WHAT EFFORTS THE DEPARTMENT HAS
7 MADE TO LOCATE THE PARENT IN A COUNTY JAIL, A CORRECTION FACILITY OR A UNITED
8 STATES DEPARTMENT OF HOMELAND SECURITY AUTHORIZED DETENTION FACILITY OR IN
9 ANOTHER COUNTRY BY A DEPORTATION ORDER.

10 ~~8.~~ 9. If the placement of siblings together was not possible for all
11 or any of the siblings, efforts the department has made to facilitate
12 communications among siblings and a proposal for frequent visitation or
13 contact pursuant to subsection G of this section. If frequent visitation or
14 contact with siblings is not recommended, the department shall state the
15 reasons why this would be contrary to the child's or a sibling's safety or
16 well-being.

17 ~~9.~~ 10. A proposal for visitation with the child's parents or guardian
18 and the results of any visitation that has occurred since the child was
19 removed. The requirements of this paragraph do not apply to a specific parent
20 or guardian if there is a court order relating to a criminal case that
21 prohibits that parent or guardian from contact with the child. Before the
22 department allows visitation it must first determine that there are no court
23 orders relating to any superior court criminal case that prohibit the parent
24 or guardian from contact with the child.

25 ~~10.~~ 11. A proposed case plan for services to the family. THE CASE
26 PLAN SHALL INCLUDE INFORMATION, TO THE EXTENT POSSIBLE, ABOUT A PARENT'S
27 INCARCERATION IN A COUNTY JAIL OR CORRECTIONAL FACILITY, DETENTION BY THE
28 UNITED STATES DEPARTMENT OF HOMELAND SECURITY OR DEPORTATION TO ANOTHER
29 COUNTRY DURING THE TIME THAT A CHILD OF THAT PARENT IS IN OUT-OF-HOME CARE
30 PURSUANT TO AN ORDER OF THE JUVENILE COURT.

31 I. The parent or guardian shall state whether the parent or guardian
32 admits or denies the allegations in the petition filed pursuant to section
33 8-841. If the parent or guardian admits or does not contest the allegations
34 in the petition, the court shall determine that the parent or guardian
35 understands the rights described in subsection D of this section and that the
36 parent or guardian knowingly, intelligently and voluntarily waives these
37 rights.

38 J. At the hearing, if the child is not returned to the parent or
39 guardian, the court shall:

40 1. Enter orders regarding the placement of the child pending the
41 determination of the dependency petition and visitation, if any.

42 2. If a relative is identified as a possible placement for the child,
43 notify the relative of the right to be heard in any proceeding to be held
44 with respect to the child.

1 3. Determine if the tasks and services set forth in the case plan are
2 reasonable and necessary to carry out the case plan.

3 Sec. 3. Section 8-829, Arizona Revised Statutes, is amended to read:
4 8-829. Judicial determinations; timing; documentation

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

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

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

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

19 4. If the child is not placed with a grandparent or another member of
20 the child's extended family including a person who has a significant
21 relationship with the child within sixty days after the child is removed from
22 the child's home, why such placement is not in the best interests of the
23 child. The petitioner has the burden of presenting evidence that such
24 placement is not in the child's best interests at the first court hearing
25 thereafter.

26 5. Within twelve months after the child is removed from the child's
27 home and once every twelve months thereafter, whether reasonable efforts have
28 been made to finalize the existing permanency plan. THE PERMANENCY PLAN
29 SHALL INCLUDE INFORMATION, TO THE EXTENT POSSIBLE, ABOUT A PARENT'S
30 INCARCERATION IN A COUNTY JAIL OR CORRECTIONAL FACILITY, DETENTION BY THE
31 UNITED STATES DEPARTMENT OF HOMELAND SECURITY OR DEPORTATION TO ANOTHER
32 COUNTRY DURING THE TIME THAT A CHILD OF THAT PARENT IS IN OUT-OF-HOME CARE
33 PURSUANT TO AN ORDER OF THE JUVENILE COURT.

34 6. If the child is under three years of age, within six months after
35 the child is removed from the child's home, whether reasonable efforts have
36 been made to provide reunification services to the parent and whether a
37 parent of a child who is under three years of age has substantially neglected
38 or wilfully refused to participate in reunification services offered by the
39 department. IN DETERMINING WHETHER THE PARENT HAS SUBSTANTIALLY NEGLECTED OR
40 WILFULLY REFUSED TO PARTICIPATE IN REUNIFICATION SERVICES, THE COURT SHALL
41 CONSIDER MITIGATING FACTORS THAT INCLUDE THE PARENT'S INCARCERATION,
42 DETENTION BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, DEPORTATION
43 TO ANOTHER COUNTRY OR PARTICIPATION IN A RESIDENTIAL SUBSTANCE ABUSE
44 TREATMENT PROGRAM AND THE TIMELINESS OF DILIGENT EFFORTS MADE BY THE

1 DEPARTMENT TO LOCATE THE PARENT AND PROVIDE APPROPRIATE REUNIFICATION
2 SERVICES.

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

8 Sec. 4. Section 8-843, Arizona Revised Statutes, is amended to read:
9 8-843. Initial dependency hearing; rights

10 A. At any dependency hearing, the court's primary consideration shall
11 be the protection of a child from abuse or neglect.

12 B. At the initial dependency hearing, the court shall ensure that the
13 parent or guardian has been advised of the following rights:

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

16 2. The right to trial by the court on the allegations in the petition.

17 3. The right to cross-examine all witnesses that are called to testify
18 against the parent or guardian.

19 4. The right to use the process of the court to compel the attendance
20 of witnesses.

21 C. If the parent or guardian admits or does not contest the
22 allegations in the petition, the court shall determine that the parent or
23 guardian understands the rights described in subsection ~~A~~ B of this section
24 and that the parent or guardian knowingly, intelligently and voluntarily
25 waives these rights.

26 D. If the parent or guardian denies the allegations in the petition,
27 the court shall set the settlement conference, pretrial conference or
28 mediation prescribed in section 8-844.

29 E. The court shall also determine if reasonable efforts were made to
30 prevent or eliminate the need for removal of a child from the child's home
31 and if services are available that would eliminate the need for continued
32 removal. If the child is:

33 1. In the custody of the department, the court shall order the
34 department to make reasonable efforts to provide services to the child and
35 parent to facilitate the reunification of the family, except as provided in
36 section 8-846. **THESE EFFORTS MUST INCLUDE PROVIDING SERVICES TO ANY PARENT
37 WHO IS INCARCERATED IN A COUNTY JAIL OR CORRECTIONAL FACILITY, DETAINED BY
38 THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, DEPORTED TO ANOTHER
39 COUNTRY OR PARTICIPATING IN A RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM.**

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

1 F. Notwithstanding any other provision of this section, the court may
2 stay the proceedings and order in-home intervention as provided in article 7
3 of this chapter.

4 Sec. 5. Section 8-845, Arizona Revised Statutes, is amended to read:
5 8-845. Disposition hearing

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

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

11 2. To a grandparent or another member of the child's extended family
12 including a person who has a significant relationship with the child, unless
13 the court has determined that such placement is not in the child's best
14 interests.

15 3. To a suitable institution.

16 4. To an association willing to receive the child.

17 5. To a reputable citizen of good moral character.

18 6. To an appropriate public or private agency licensed to care for
19 children.

20 7. To a suitable school.

21 8. To supervision under the independent living program established
22 pursuant to section 8-521.

23 9. To any adult as a permanent guardian pursuant to article 5 of this
24 chapter.

25 B. In reviewing the status of the child and in determining its order
26 of disposition, the court shall consider the health and safety of the child
27 as a paramount concern and the following criteria:

28 1. The goals of the placement and the appropriateness of the case
29 plan.

30 2. The services that have been offered to reunite the family.

31 3. If returning the child home is not likely, the efforts that have
32 been or should be made to evaluate or plan for other permanent placement
33 plans.

34 4. The efforts that have been made or should be made to place the
35 child with the child's siblings or to provide frequent visitation or contact
36 when placement with siblings has not been possible.

37 C. The court shall review the permanent plan that has been established
38 for the child. In reviewing the status of the child, the court, insofar as
39 possible, shall seek to reunite the family. **THE STATUS OF A PARENT WHO IS
40 INCARCERATED IN A COUNTY JAIL OR CORRECTIONAL FACILITY, PARTICIPATING IN A
41 RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM, DETAINED BY THE UNITED STATES
42 DEPARTMENT OF HOMELAND SECURITY OR DEPORTED TO ANOTHER COUNTRY SHALL NOT, BY
43 ITSELF, PREVENT THE COURT FROM SEEKING TO REUNITE THE FAMILY.** If the court
44 does not order reunification of the family, the court shall order a plan of
45 adoption or another permanent plan that is in the child's best interest and

1 that takes into consideration the placement of the child with siblings or
2 that provides for frequent visitation or contact ~~amongst~~ BETWEEN siblings
3 unless the court determines that either the placement with the siblings or
4 the visitation or contact would be contrary to the child's or a sibling's
5 safety or well-being.

6 D. Notwithstanding subsection C of this section, reasonable efforts to
7 place a child for adoption may be made concurrently with reasonable efforts
8 to reunify the family.

9 Sec. 6. Section 8-846, Arizona Revised Statutes, is amended to read:

10 8-846. Services provided to the child and family

11 A. Except as provided in subsections B, ~~and~~ C and D of this section,
12 if the child has been removed from the home, the court shall order the
13 department to make reasonable efforts to provide services to the child and
14 the child's parent— **INCLUDING, TO A PARENT WHO IS INCARCERATED IN A COUNTY
15 JAIL OR CORRECTIONAL FACILITY, DETAINED BY THE UNITED STATES DEPARTMENT OF
16 HOMELAND SECURITY OR DEPORTED TO ANOTHER COUNTRY.**

17 B. The court shall consider the following factors and reunification
18 services are not required to be provided if the court finds by clear and
19 convincing evidence that:

20 1. One or more of the following aggravating circumstances exist:

21 (a) A party to the action provides a verified affidavit that states
22 that a reasonably diligent search has failed to identify and locate the
23 parent within three months after the filing of the dependency petition or the
24 parent has expressed no interest in reunification with the child for at least
25 three months after the filing of the dependency petition.

26 (b) The parent or guardian is suffering from a mental illness or
27 mental deficiency of such magnitude that it renders the parent or guardian
28 incapable of benefitting from the reunification services. This finding shall
29 be based on competent evidence from a psychologist or physician that
30 establishes that, even with the provision of reunification services, the
31 parent or guardian is unlikely to be capable of adequately caring for the
32 child within twelve months after the date of the child's removal from the
33 home.

34 (c) The child previously has been removed and adjudicated dependent
35 due to physical or sexual abuse. After the adjudication the child was
36 returned to the custody of the parent or guardian and then subsequently
37 removed within eighteen months due to additional physical or sexual abuse.

38 (d) A child is the victim of serious physical or emotional injury by
39 the parent or guardian or by any person known by the parent or guardian, if
40 the parent or guardian knew or reasonably should have known that the person
41 was abusing the child.

42 (e) The parent's rights to another child have been terminated, the
43 parent has not successfully addressed the issues that led to the termination
44 and the parent is unable to discharge parental responsibilities.

1 (f) After a finding that a child is dependent, all of the following
2 are true:

3 (i) A child has been removed from the parent or guardian on at least
4 two previous occasions.

5 (ii) Reunification services were offered or provided to the parent or
6 guardian after the removal.

7 (iii) The parent or guardian is unable to discharge parental
8 responsibilities.

9 2. The parent or guardian of a child has been convicted of murder or
10 manslaughter of a child, or of sexual abuse of a child, sexual assault of a
11 child, sexual conduct with a minor, molestation of a child, commercial sexual
12 exploitation of a minor, sexual exploitation of a minor, ~~or~~ or luring a minor
13 for sexual exploitation.

14 3. The parent or guardian of a child has been convicted of aiding or
15 abetting or attempting, conspiring or soliciting to commit any of the crimes
16 listed in paragraph 2 of this subsection.

17 C. The court shall consider any criminal prosecution relating to the
18 offenses ~~which~~ THAT led to the child's removal from the home and any orders
19 of the criminal court. Information may be provided by law enforcement or the
20 county attorney.

21 D. If a dependency petition was filed pursuant to section 8-874,
22 subsection J, the court may direct the division not to provide reunification
23 services to the child's parents unless the court finds by clear and
24 convincing evidence that these services would be in the child's best
25 interests.

26 Sec. 7. Section 8-847, Arizona Revised Statutes, is amended to read:
27 8-847. Periodic review hearings

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

30 B. At a proceeding to review the disposition orders of the court, the
31 court shall provide the following persons notice of the review and the right
32 to participate in the proceeding:

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

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

39 3. A shelter care facility or receiving foster home where the child
40 resides or has resided within the last six months for more than ten days.
41 The petitioner shall provide the court with the names and addresses of all
42 shelter care facilities and receiving foster homes that are entitled to
43 notice pursuant to this paragraph.

44 4. The child's parent or guardian unless the parental rights of that
45 parent or guardian have been terminated by court action or unless the parent

1 has relinquished rights to the child to an agency or has consented to the
2 adoption of the child as provided in section 8-107.

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

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

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

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

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

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

12 C. At the first periodic review hearing, the court shall consider
13 whether a parent of a child who is under three years of age has substantially
14 neglected or wilfully refused to participate in reunification services
15 offered by the department. **IN DETERMINING WHETHER THE PARENT HAS**
16 **SUBSTANTIALLY NEGLECTED OR WILFULLY REFUSED TO PARTICIPATE IN REUNIFICATION**
17 **SERVICES, THE COURT SHALL CONSIDER MITIGATING FACTORS THAT INCLUDE THE**
18 **PARENT'S INCARCERATION, DETENTION BY THE UNITED STATES DEPARTMENT OF HOMELAND**
19 **SECURITY, DEPORTATION TO ANOTHER COUNTRY OR PARTICIPATION IN A RESIDENTIAL**
20 **SUBSTANCE ABUSE TREATMENT PROGRAM.**

21 D. At any periodic review hearing, the court shall consider the health
22 and safety of the child as a paramount concern.

23 E. At any periodic review hearing the court shall determine:

24 1. Whether the department has identified and assessed placement of the
25 child with a relative or person who has a significant relationship with the
26 child.

27 2. Whether the parent or guardian has complied with the court order
28 pursuant to section 8-824, subsection ~~D~~ E, paragraph ~~6~~ 7 or section 8-842,
29 subsection B, paragraph 1.

30 F. 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 is the former dependent child in the proceeding for
35 whom the periodic review hearing is held.

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

38 Sec. 8. Section 8-862, Arizona Revised Statutes, is amended to read:
39 **8-862. Permanency hearing**

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

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

44 2. Within six months after a child who is under three years of age is
45 removed from the child's home. The court shall not continue that permanency

1 hearing beyond six months after the child who is under three years of age is
2 removed from the child's home unless the party who is seeking the continuance
3 shows that the determination prescribed in section 8-829, subsection A,
4 paragraph 6 has been made or will be made within the time prescribed in that
5 paragraph.

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

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

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

17 2. Whether reasonable efforts have been made to finalize the
18 permanency plan in effect.

19 3. What efforts have been made in the permanency plan to place the
20 child with the child's siblings or to provide frequent visitation or contact,
21 unless the court had already determined that placement with all or any
22 siblings or visitation or contact is not possible or would be contrary to the
23 child's or a sibling's safety or well-being.

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

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

31 1. Order the department or the child's attorney or guardian ad litem
32 to file within ten days after the permanency hearing a motion alleging one or
33 more of the grounds prescribed in section 8-533 for termination of parental
34 rights. The party who files the motion has the burden of presenting evidence
35 at the termination hearing to prove the allegations in the motion.

36 2. Set a date for an initial hearing on the motion for termination of
37 parental rights within thirty days after the permanency hearing. If the
38 termination is contested at the initial hearing, the court shall set a date
39 for the trial on termination of parental rights within ninety days after the
40 permanency hearing.

41 E. The department shall make reasonable efforts to place the child in
42 a timely manner in accordance with the permanency plan and to complete
43 whatever steps are necessary to finalize the permanent placement of the
44 child.

1 F. THE COURT MAY CONTINUE THE HEARING AS PRESCRIBED IN SUBSECTION A OF
2 THIS SECTION FOR NOT MORE THAN SIX MONTHS ONLY IF REASONABLE SERVICES HAVE
3 NOT BEEN PROVIDED TO THE CHILD'S PARENT. THE COURT MUST SPECIFY THE FACTUAL
4 BASIS FOR MAKING THIS DETERMINATION. THE COURT SHALL CONSIDER THE FOLLOWING:

5 1. THE TIMELINESS OF THE DILIGENT EFFORTS MADE BY THE DEPARTMENT TO
6 LOCATE THE PARENT AND PROVIDE APPROPRIATE REUNIFICATION SERVICES.

7 2. GOOD FAITH EFFORTS THE PARENT HAS MADE TO MAINTAIN CONTACT WITH THE
8 CHILD.

9 3. SPECIAL CIRCUMSTANCES, INCLUDING BARRIERS TO THE PARENT'S ACCESS TO
10 SERVICES AND ABILITY TO MAINTAIN CONTACT WITH THE CHILD BECAUSE THE PARENT:

11 (a) IS INCARCERATED EXCEPT UNDER CIRCUMSTANCES PRESCRIBED IN SECTION
12 8-533, SUBSECTION B, PARAGRAPH 4.

13 (b) IS IN A RESIDENTIAL SUBSTANCE ABUSE TREATMENT PROGRAM.

14 (c) HAS BEEN ARRESTED AND ISSUED AN IMMIGRATION HOLD, DETAINED BY THE
15 UNITED STATES DEPARTMENT OF HOMELAND SECURITY OR DEPORTED TO ANOTHER COUNTRY.

16 ~~F.~~ G. If the court determines that permanent guardianship is clearly
17 in the best interests of the child, the court shall:

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

23 2. Set a date for an initial hearing on the motion for permanent
24 guardianship within thirty days after the permanency hearing. If the
25 permanent guardianship is contested at the initial hearing, the court shall
26 set a date for the trial on the permanent guardianship within ninety days
27 after the permanency hearing.

28 ~~G.~~ H. Evidence considered by the court in making a decision pursuant
29 to this section also shall include any substantiated allegations of abuse or
30 neglect committed in another jurisdiction.

31 ~~H.~~ I. If the court determines that termination of parental rights or
32 permanent guardianship is clearly in the best interest of the child and the
33 child has been placed in a prospective permanent placement, unless the action
34 is required by federal law, state law or regulation, any action that is
35 inconsistent with the case plan of severance and adoption, including removal
36 of the child from that placement, may occur only by court order or if the
37 prospective permanent placement requests the child's removal. If a motion to
38 change the case plan or for removal of a child is filed, a copy of the motion
39 must be provided to the prospective permanent placement at least fifteen days
40 before a hearing on the motion. If the prospective permanent placement does
41 not appear at a hearing on a motion for removal, the court may not take any
42 action on the motion unless the court finds that good faith efforts were made
43 to provide a copy of the motion to the prospective permanent placement. The
44 prospective permanent placement has the right to be heard in the proceeding.
45 This right does not require that the prospective permanent placement be made

1 a party to the proceeding solely on the basis of that right. This subsection
2 does not apply to any removal pursuant to section 8-802 or 8-821. If the
3 child is an Indian child as defined pursuant to the Indian child welfare act
4 (25 United States Code section 1903), the court and the parties must comply
5 with all applicable requirements of that act. For the purposes of this
6 subsection, a prospective permanent placement includes:
7 1. A grandparent or another member of the child's extended family
8 including a person who has a significant relationship with the child.
9 2. A person or persons with an expressed interest in being the
10 permanent placement for the child in a certified adoptive home where the
11 child resides, a home that is a permanent placement for a sibling of the
12 child or a licensed family foster home where the child resides.
13 ~~I.~~ J. This section does not prevent the department from presenting
14 for the court's consideration a grandparent or another member of the child's
15 extended family including a person who has a significant relationship with
16 the child and who has not been identified as a prospective permanent
17 placement for the child before the child's placement with a prospective
18 permanent placement.