

REFERENCE TITLE: parental rights; termination; determinations

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SB 1406

Introduced by
Senators Murphy, Hobbs, Landrum Taylor: Barto, Crandall; Representatives
Boyer, Brophy McGee, Carter

AN ACT

AMENDING SECTIONS 8-533, 8-829 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, a relative, a foster parent, a
7 physician, the department of economic security or a private licensed child
8 welfare agency, may file a petition for the termination of the parent-child
9 relationship alleging grounds contained in subsection B of this section.

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

14 1. That the parent has abandoned the child.

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

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

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

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

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

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

40 8. That the child is being cared for in an out-of-home placement under
41 the supervision of the juvenile court, the division or a licensed child
42 welfare agency, that the agency responsible for the care of the child has
43 made a diligent effort to provide appropriate reunification services and that
44 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~~ WAS under ~~three~~ FIVE years of age AT THE TIME THE
7 DEPENDENCY PETITION WAS FILED AND has been in an out-of-home placement for a
8 cumulative total period of six months or longer pursuant to court order and
9 the parent has substantially neglected or wilfully refused to remedy the
10 circumstances that cause the child to be in an out-of-home placement,
11 including refusal to participate in reunification services offered by the
12 department.

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

19 9. That the identity of the parent is unknown and continues to be
20 unknown following three months of diligent efforts to identify and locate the
21 parent.

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

25 11. That all of the following are true:

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

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

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

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

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

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

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

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

10 Sec. 2. Section 8-829, Arizona Revised Statutes, is amended to read:
11 8-829. Judicial determinations; timing; documentation

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

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

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

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

26 4. If the child is not placed with a grandparent or another member of
27 the child's extended family including a person who has a significant
28 relationship with the child within sixty days after the child is removed from
29 the child's home, why such placement is not in the best interests of the
30 child. The petitioner has the burden of presenting evidence that such
31 placement is not in the child's best interests at the first court hearing
32 thereafter.

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

36 6. If the child ~~is~~ WAS under ~~three~~ FIVE years of age AT THE TIME THE
37 DEPENDENCY PETITION WAS FILED, within six months after the child is removed
38 from the child's home, whether reasonable efforts have been made to provide
39 reunification services to the parent and whether a parent of a child who is
40 under ~~three~~ FIVE years of age has substantially neglected or wilfully refused
41 to participate in reunification services offered by the department. THE
42 COURT MAY APPLY THE PROVISIONS OF THIS PARAGRAPH TO A CHILD WHO IS FIVE YEARS
43 OF AGE OR OLDER, IS REMOVED FROM THE HOME AND IS A SIBLING OF A CHILD SUBJECT
44 TO THIS PARAGRAPH IF THE COURT FINDS IT IS IN THE BEST INTERESTS OF THE
45 SIBLING.

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. 3. Section 8-862, Arizona Revised Statutes, is amended to read:
7 8-862. Permanency hearing

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

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

12 2. Within six months after a child who ~~is~~ WAS under ~~three~~ FIVE years
13 of age AT THE TIME THE DEPENDENCY PETITION WAS FILED is removed from the
14 child's home. The court shall not continue that permanency hearing beyond
15 six months after the child who ~~is~~ WAS under ~~three~~ FIVE years of age AT THE
16 TIME THE DEPENDENCY PETITION WAS FILED is removed from the child's home
17 unless the party who is seeking the continuance shows that the determination
18 prescribed in section 8-829, subsection A, paragraph 6 has been made or will
19 be made within the time prescribed in that paragraph.

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

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

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

31 2. Whether reasonable efforts have been made to finalize the
32 permanency plan in effect.

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

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

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

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

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

11 E. The department shall make reasonable efforts to place the child in
12 a timely manner in accordance with the permanency plan and to complete
13 whatever steps are necessary to finalize the permanent placement of the
14 child.

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

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

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

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

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

1 does not apply to any removal pursuant to section 8-802 or 8-821. If the
2 child is an Indian child as defined pursuant to the Indian child welfare act
3 (25 United States Code section 1903), the court and the parties must comply
4 with all applicable requirements of that act. For the purposes of this
5 subsection, a prospective permanent placement includes:

6 1. A grandparent or another member of the child's extended family
7 including a person who has a significant relationship with the child.

8 2. A person or persons with an expressed interest in being the
9 permanent placement for the child in a certified adoptive home where the
10 child resides, a home that is a permanent placement for a sibling of the
11 child or a licensed family foster home where the child resides.

12 I. This section does not prevent the department from presenting for
13 the court's consideration a grandparent or another member of the child's
14 extended family including a person who has a significant relationship with
15 the child and who has not been identified as a prospective permanent
16 placement for the child before the child's placement with a prospective
17 permanent placement.

18 Sec. 4. Emergency

19 This act is an emergency measure that is necessary to preserve the
20 public peace, health or safety and is operative immediately as provided by
21 law.