

State of Arizona  
Senate  
Fifty-first Legislature  
First Regular Session  
2013

# SENATE BILL 1406

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. THE COURT MAY APPLY THE PROVISIONS OF THIS SUBDIVISION TO A  
13 CHILD WHO IS FIVE YEARS OF AGE OR OLDER, IS REMOVED FROM THE HOME AND IS A  
14 SIBLING OF A CHILD WHO IS SUBJECT TO THIS SUBDIVISION IF THE COURT FINDS IT  
15 IS IN THE BEST INTERESTS OF THE SIBLING.

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

22 9. That the identity of the parent is unknown and continues to be  
23 unknown following three months of diligent efforts to identify and locate the  
24 parent.

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

28 11. That all of the following are true:

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

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

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

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

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

1 D. In considering the grounds for termination prescribed in subsection  
2 B, paragraph 8 or 11 of this section, the court shall consider the  
3 availability of reunification services to the parent and the participation of  
4 the parent in these services.

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

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

14 Sec. 2. Section 8-829, Arizona Revised Statutes, is amended to read:  
15 8-829. Judicial determinations; timing; documentation

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

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

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

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

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

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

40 6. If the child ~~is~~ WAS under ~~three~~ FIVE years of age AT THE TIME THE  
41 DEPENDENCY PETITION WAS FILED, within six months after the child is removed  
42 from the child's home, whether reasonable efforts have been made to provide  
43 reunification services to the parent and whether a parent of a child who is  
44 under ~~three~~ FIVE years of age has substantially neglected or wilfully refused  
45 to participate in reunification services offered by the department. THE

1 COURT MAY APPLY THE PROVISIONS OF THIS PARAGRAPH TO A CHILD WHO IS FIVE YEARS  
2 OF AGE OR OLDER, IS REMOVED FROM THE HOME AND IS A SIBLING OF A CHILD WHO IS  
3 SUBJECT TO THIS PARAGRAPH IF THE COURT FINDS IT IS IN THE BEST INTERESTS OF  
4 THE SIBLING.

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

10 Sec. 3. Section 8-862, Arizona Revised Statutes, is amended to read:

11 8-862. Permanency hearing

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

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

16 2. Within six months after a child who ~~is~~ WAS under ~~three~~ FIVE years  
17 of age AT THE TIME THE DEPENDENCY PETITION WAS FILED is removed from the  
18 child's home. The court shall not continue that permanency hearing beyond  
19 six months after the child who ~~is~~ WAS under ~~three~~ FIVE years of age AT THE  
20 TIME THE DEPENDENCY PETITION WAS FILED is removed from the child's home  
21 unless the party who is seeking the continuance shows that the determination  
22 prescribed in section 8-829, subsection A, paragraph 6 has been made or will  
23 be made within the time prescribed in that paragraph. THE COURT MAY APPLY  
24 THE PROVISIONS OF THIS PARAGRAPH TO A CHILD WHO IS FIVE YEARS OF AGE OR  
25 OLDER, IS REMOVED FROM THE HOME AND IS A SIBLING OF A CHILD WHO IS SUBJECT TO  
26 THIS PARAGRAPH IF THE COURT FINDS IT IS IN THE BEST INTERESTS OF THE SIBLING.

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

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

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

38 2. Whether reasonable efforts have been made to finalize the  
39 permanency plan in effect.

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

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

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

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

13 2. Set a date for an initial hearing on the motion for termination of  
14 parental rights within thirty days after the permanency hearing. If the  
15 termination is contested at the initial hearing, the court shall set a date  
16 for the trial on termination of parental rights within ninety days after the  
17 permanency hearing.

18 E. The department shall make reasonable efforts to place the child in  
19 a timely manner in accordance with the permanency plan and to complete  
20 whatever steps are necessary to finalize the permanent placement of the  
21 child.

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

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

29 2. Set a date for an initial hearing on the motion for permanent  
30 guardianship within thirty days after the permanency hearing. If the  
31 permanent guardianship is contested at the initial hearing, the court shall  
32 set a date for the trial on the permanent guardianship within ninety days  
33 after the permanency hearing.

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

37 H. If the court determines that termination of parental rights or  
38 permanent guardianship is clearly in the best interest of the child and the  
39 child has been placed in a prospective permanent placement, unless the action  
40 is required by federal law, state law or regulation, any action that is  
41 inconsistent with the case plan of severance and adoption, including removal  
42 of the child from that placement, may occur only by court order or if the  
43 prospective permanent placement requests the child's removal. If a motion to  
44 change the case plan or for removal of a child is filed, a copy of the motion  
45 must be provided to the prospective permanent placement at least fifteen days

1 before a hearing on the motion. If the prospective permanent placement does  
2 not appear at a hearing on a motion for removal, the court may not take any  
3 action on the motion unless the court finds that good faith efforts were made  
4 to provide a copy of the motion to the prospective permanent placement. The  
5 prospective permanent placement has the right to be heard in the proceeding.  
6 This right does not require that the prospective permanent placement be made  
7 a party to the proceeding solely on the basis of that right. This subsection  
8 does not apply to any removal pursuant to section 8-802 or 8-821. If the  
9 child is an Indian child as defined pursuant to the Indian child welfare act  
10 (25 United States Code section 1903), the court and the parties must comply  
11 with all applicable requirements of that act. For the purposes of this  
12 subsection, a prospective permanent placement includes:

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

15 2. A person or persons with an expressed interest in being the  
16 permanent placement for the child in a certified adoptive home where the  
17 child resides, a home that is a permanent placement for a sibling of the  
18 child or a licensed family foster home where the child resides.

19 I. This section does not prevent the department from presenting for  
20 the court's consideration a grandparent or another member of the child's  
21 extended family including a person who has a significant relationship with  
22 the child and who has not been identified as a prospective permanent  
23 placement for the child before the child's placement with a prospective  
24 permanent placement.

25 Sec. 4. Emergency

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