

REFERENCE TITLE: **paternity.**

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SB 1061

Introduced by
Senators Barto, Bradley: Murphy

AN ACT

**AMENDING SECTIONS 8-106, 8-106.01, 25-804 AND 25-806, ARIZONA REVISED
STATUTES; RELATING TO PATERNITY.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-106, Arizona Revised Statutes, is amended to
3 read:

4 8-106. Consent to adoption; waiver; consent to the release of
5 information; notification to potential fathers

6 A. The court shall not grant an adoption of a child unless consent to
7 adopt has been obtained and filed with the court from the following:

8 1. The child's birth or adoptive mother, if living.

9 2. The child's father if any of the following is true:

10 (a) The father was married to the child's mother at the time of
11 conception or at any time between conception and the child's birth unless his
12 paternity is excluded or another man's paternity is established pursuant to
13 title 25, chapter 6, article 1.

14 (b) The father has adopted the child.

15 (c) The father's paternity is established under title 25, chapter 6,
16 article 1 or section 36-334.

17 3. A child who is twelve years of age or older and who gives consent
18 in open court.

19 4. Any guardian of the person of the child who is appointed by a court
20 and who is given authority by it to consent to the child's adoption.

21 5. An agency that has been given consent to place the child for
22 adoption by the parent or parents whose consent would be necessary under
23 paragraph 1 or 2 of this subsection, or that has been given authority in
24 other legal proceedings to place the child for adoption.

25 6. The guardian of any adult parent for whom a guardian is currently
26 appointed.

27 7. The division if it has been given consent to place the child for
28 adoption by the parent or parents whose consent would otherwise be necessary
29 pursuant to paragraph 1 or 2 of this subsection or if it has been given
30 authority in other legal proceedings to place the child for adoption. The
31 court may waive the requirement for consent if the court determines, after a
32 hearing on actual notice to all persons who may be adversely affected, that
33 waiving the requirement is clearly in the child's best interest.

34 B. It is not necessary for a person to obtain consent to adopt from
35 the following:

36 1. An adult parent for whom a guardian is currently appointed.

37 2. A parent whose parental rights have been terminated by court order.

38 3. A parent who has previously consented to an agency's or the
39 division's placement of the child for adoption.

40 4. A person whose consent is not required under subsection A of this
41 section.

42 C. The minority of the child or parent does not affect the child's or
43 parent's competency to give consent in the instances set forth in this
44 section.

1 D. A consent to adopt is irrevocable unless obtained by fraud, duress
2 or undue influence.

3 E. An agency, the division or an attorney participating or assisting
4 in a direct placement adoption pursuant to section 8-130 shall obtain from a
5 birth parent, at the time consent for adoption is obtained, a notarized
6 statement granting permission or withholding permission for the child being
7 adopted, when the child reaches eighteen years of age, to obtain identifying
8 and nonidentifying information about the child and the consenting birth
9 parent. The agency, division or attorney shall inform the birth parent at
10 the time of obtaining the notarized statement that the decision to grant
11 permission or withhold permission may be changed at any time by filing a
12 notarized statement with the court. The most recent notarized statement
13 shall operate as consent for the court to grant or withhold identifying and
14 nonidentifying information.

15 F. A notarized affidavit signed by the mother listing all potential
16 fathers shall be filed with the court. The affidavit shall attest that all
17 of the information contained in the affidavit is complete and accurate.

18 G. Notice shall be served on each potential father as provided for the
19 service of process in civil actions. The notice shall be substantially in
20 the form prescribed in subsection I of this section and shall inform the
21 potential father of all of the following:

22 1. That adoption is planned.

23 2. The potential father's right to consent or withhold consent to the
24 adoption.

25 3. The potential father's responsibility to initiate paternity
26 proceedings under title 25, chapter 6, article 1, and to serve the mother
27 within thirty days of completion of service.

28 4. The potential father's responsibility to proceed to judgment in the
29 paternity action.

30 5. The potential father's right to seek custody.

31 6. The potential father's responsibility to begin to provide financial
32 support for the child if paternity is established.

33 7. That the potential father's failure to file a paternity action
34 pursuant to title 25, chapter 6, article 1, and to serve the mother and
35 proceed to judgment in the paternity action as prescribed by this section,
36 bars the potential father from bringing or maintaining any action to assert
37 any interest in the child.

38 ~~H. A mother may apply to the court for permission to omit her address~~
39 ~~from the affidavit and from the notice to potential fathers. The court shall~~
40 ~~grant this request if the mother shows to the court's satisfaction this is~~
41 ~~necessary to protect her safety.~~

42 H. SERVICE ON A MOTHER OF A TITLE 25, CHAPTER 6, ARTICLE 1 PATERNITY
43 ACTION PURSUANT TO THIS SECTION MAY BE ACCEPTED BY AN ATTORNEY OR AGENCY THAT
44 IS LICENSED IN THIS STATE AND THAT IS REPRESENTING THE MOTHER. A MOTHER MAY
45 OMIT HER ADDRESS FROM THE AFFIDAVIT AND NOTICE TO POTENTIAL FATHERS IF THE

1 ADDRESS OF HER ATTORNEY OR THE AGENCY IS PROVIDED IN THE AFFIDAVIT. SERVICE
2 ON AN ATTORNEY OR AGENCY PURSUANT TO THIS SUBSECTION IS LIMITED TO SERVICE OF
3 THE INITIAL VERIFIED PETITION AND SUMMONS IN THE PATERNITY ACTION. SERVICE
4 ON THE ATTORNEY DOES NOT MAKE THE ATTORNEY THE ATTORNEY OF RECORD FOR THE
5 MOTHER IN THE PATERNITY ACTION AND DOES NOT MAKE THE AGENCY THE AGENT FOR THE
6 MOTHER IN THE PATERNITY ACTION.

7 I. The notice required pursuant to subsection G of this section shall
8 be in substantially the following form:

9 Notice:

10 Notice is given to _____ that you have been identified
11 by _____, the natural mother, ~~residing at~~
12 _____, as a potential father of a child to be
13 born or, born on _____, in _____.

14 You are informed of the following:

15 1. _____, the natural mother, plans to place the
16 child for adoption.

17 2. Under sections 8-106 and 8-107, Arizona Revised
18 Statutes, you have the right to consent or withhold consent to
19 the adoption.

20 3. Your written consent to the adoption is irrevocable
21 once you give it.

22 4. If you withhold consent to the adoption, you must
23 initiate paternity proceedings under title 25, chapter 6,
24 article 1, Arizona Revised Statutes, and serve the mother within
25 thirty days after completion of service of this notice.

26 5. You have the obligation to proceed to judgment in the
27 paternity action.

28 6. You have the right to seek custody.

29 7. If you are established as the child's father, you must
30 begin to provide financial support for the child.

31 8. If you do not file a paternity action under title 25,
32 chapter 6, article 1, Arizona Revised Statutes, and do not serve
33 the mother within thirty days after completion of the service of
34 this notice and pursue the action to judgment, you cannot bring
35 or maintain any action to assert any interest in the child.

36 9. The Indian child welfare act may supersede the Arizona
37 Revised Statutes regarding adoption and paternity.

38 10. FOR THE PURPOSES OF SERVICE OF A PATERNITY ACTION
39 UNDER TITLE 25, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES,
40 SERVICE MAY BE MADE ON THE MOTHER AT _____ OR HER AGENCY
41 OR ATTORNEY AT _____.

42 ~~10.~~ 11. You may wish to consult with an attorney to
43 assist you in responding to this notice.

1 J. A potential father who fails to file a paternity action and who
2 does not ~~comply with all applicable service requirements~~ SERVE THE MOTHER
3 within thirty days after completion of service ON THE POTENTIAL FATHER as
4 prescribed in subsection G of this section waives his right to be notified of
5 any judicial hearing regarding the child's adoption or the termination of
6 parental rights and his consent to the adoption or termination is not
7 required. THE POTENTIAL FATHER IS PROHIBITED FROM BRINGING OR MAINTAINING
8 ANY LEGAL PROCEEDING TO ASSERT ANY INTEREST IN THE CHILD, INCLUDING A
9 PATERNITY ACTION PURSUANT TO TITLE 25, CHAPTER 6, ARTICLE 1.

10 Sec. 2. Section 8-106.01, Arizona Revised Statutes, is amended to
11 read:

12 8-106.01. Putative fathers registry; claim of paternity;
13 adoptive interest

14 A. A person who is seeking paternity, who wants to receive notice of
15 adoption proceedings and who is the father or claims to be the father of a
16 child shall file notice of a claim of paternity and of his willingness and
17 intent to support the child to the best of his ability with the state
18 registrar of vital statistics in the department of health services. The
19 department of health services shall provide forms for the purpose of filing
20 the notice of a claim of paternity. Forms shall be made available in the
21 department of health services, the office of the clerk of the board of
22 supervisors in each county, every hospital, every licensed child placement
23 agency, the department of economic security, sheriff's offices, jails,
24 prisons, state department of corrections facilities and department of
25 juvenile corrections facilities.

26 B. The notice of a claim of paternity may be filed before the birth of
27 the child but shall be filed within thirty days after the birth of the
28 child. The notice of a claim of paternity shall be signed by the putative
29 father and shall include his name and address, the name and last known
30 address of the birth mother and either the birth date of the child or the
31 probable month and year of the expected birth of the child. The putative
32 father who files a notice of a claim of paternity under this section shall
33 notify the registrar of vital statistics of any change of his address. The
34 department of health services shall maintain a confidential registry for this
35 purpose. The department shall only respond to written inquiries of the
36 confidential registry that are received from the court, the division, a
37 licensed adoption agency or a licensed attorney participating or assisting in
38 a direct placement adoption. The department shall provide a certificate
39 signed by the state registrar of vital statistics stating that a diligent
40 search has been made of the registry of notices of claims of paternity from
41 putative fathers listing all filings found or stating that no filing has been
42 found pertaining to the father of the child in question.

43 C. If the court determines the claimant is not the child's father it
44 shall notify the department of health services and shall order the department
45 to remove that person's name from the putative fathers registry.

1 D. If the mother denies that the putative father filing the notice of
2 a claim of paternity is the father, the department of health services shall
3 notify the putative father of his responsibility to establish paternity.

4 E. A putative father who does not file a notice of a claim of
5 paternity as required under this section waives his right to be notified of
6 any judicial hearing regarding the child's adoption and ~~his~~ IS PROHIBITED
7 FROM BRINGING OR MAINTAINING AN ACTION TO ASSERT AN INTEREST IN THE CHILD,
8 INCLUDING A PATERNITY ACTION PURSUANT TO TITLE 25, CHAPTER 6, ARTICLE 1. THE
9 PUTATIVE FATHER'S consent to the adoption is not required, unless he proves,
10 by clear and convincing evidence, both of the following:

11 1. It was not possible for him to file a notice of a claim of
12 paternity within the period of time specified in subsection B of this
13 section.

14 2. He filed a notice of a claim of paternity within thirty days after
15 it became possible for him to file.

16 F. Lack of knowledge of the pregnancy is not an acceptable reason for
17 failure to file. The fact that the putative father had sexual intercourse
18 with the mother is deemed to be notice to the putative father of the
19 pregnancy.

20 G. When a certificate provided pursuant to subsection B of this
21 section is received by the court, the division, a licensed adoption agency or
22 a licensed attorney participating or assisting in a direct placement adoption
23 from the department that lists filings of a putative father or fathers, the
24 putative father or fathers who filed timely notices of claims of paternity
25 and who have not previously been served shall be served with the notice
26 prescribed in section 8-106, subsection G. A putative father who fails to
27 file a paternity action pursuant to title 25, chapter 6, article 1 within
28 thirty days of completion of service of the notice prescribed in section
29 8-106 is barred from bringing or maintaining any action to assert any
30 interest in the child.

31 H. If in any adoption proceeding there is not a showing that a
32 putative father has consented to the adoption or has waived his rights
33 regarding the proposed adoption, the petitioner shall file with the court,
34 before the court enters a final decree of adoption, a certificate from the
35 department of health services signed by the state registrar of vital
36 statistics stating that a diligent search has been made of the registry of
37 notices of claims of paternity from putative fathers and that no filing has
38 been found pertaining to the father of the child in question.

39 Sec. 3. Section 25-804, Arizona Revised Statutes, is amended to read:
40 25-804. Time for instituting proceedings

41 Proceedings to establish the paternity of the child may be instituted
42 during the pregnancy of the mother or after the birth of the child. ~~THE~~
43 ~~COURT SHALL DISMISS ANY PROCEEDING THAT IS BARRED PURSUANT TO SECTION 8-106,~~
44 ~~SUBSECTION J.~~ For THE purposes of establishing a duty to pay support or

1 past support, the proceedings must be instituted before the child's
2 eighteenth birthday.

3 Sec. 4. Section 25-806, Arizona Revised Statutes, is amended to read:
4 25-806. Petition

5 A. Paternity proceedings are commenced by the filing of a verified
6 petition that alleges that a woman is delivered of a child or children born
7 out of lawful wedlock or pregnant with a child conceived out of wedlock and
8 that the respondent is the father of the child or children.

9 B. Maternity proceedings are commenced by the filing of a verified
10 petition that alleges that a woman is delivered of a child or children born
11 out of lawful wedlock and that the woman as respondent is the mother of the
12 child or children.

13 C. The procedure on the filing of the petition shall be as in other
14 civil cases, EXCEPT THAT A PARTY WHO HAS BEEN SERVED PURSUANT TO SECTION
15 8-106, SUBSECTION G MUST SERVE THE MOTHER WITH A COPY OF THE VERIFIED
16 PETITION AND SUMMONS WITHIN THIRTY DAYS AFTER COMPLETION OF SERVICE OF NOTICE
17 AS PRESCRIBED BY THAT SUBSECTION.

18 D. If the respondent does not file a response or if the respondent
19 files a written response admitting paternity or maternity, the court may
20 immediately enter a judgment of paternity or maternity. If other relevant
21 issues are raised in the petition or response or in a separate petition filed
22 after entry of a paternity or maternity judgment, the court shall proceed to
23 resolve all relevant issues in the case pursuant to the rules of procedure
24 applicable to family law cases.

25 E. A trial held pursuant to this section shall be made to the court.