

REFERENCE TITLE: delegation of powers; parent; custodian

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

SB 1115

Introduced by
Senators Ward: Allen

AN ACT

AMENDING SECTIONS 8-457 AND 14-5104, ARIZONA REVISED STATUTES; AMENDING TITLE 14, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 9; RELATING TO DELEGATION OF AUTHORITY OVER CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-457, Arizona Revised Statutes, is amended to
3 read:

4 8-457. Service coordination function

5 A. The department may arrange, provide and coordinate programs and
6 services that protect children and may provide programs and services that
7 achieve and maintain permanency on behalf of the child, strengthen the family
8 and provide prevention, intervention and treatment for abused and neglected
9 children.

10 B. If a child and the child's family require assistance from the
11 department, all of the following apply:

12 1. The health and safety of the child is the primary concern.

13 2. Reasonable efforts must be made to provide the assistance in the
14 method that is least intrusive and least restrictive to the family and that
15 is consistent with the needs of the child.

16 3. Reasonable efforts must be made to deliver the assistance in a
17 culturally appropriate manner and as close as possible to the home community
18 of the child or family requiring assistance.

19 C. In addition to the requirements of federal law, the case plan
20 shall:

21 1. Set appropriate time limits on the services provided.

22 2. Clearly describe the actions the department might pursue if the
23 family:

24 (a) Participates in the services outlined in the case plan and does
25 what is required for the child to be safe in the home.

26 (b) Does not participate in the services outlined in the case plan and
27 does not make the changes required for the child to be safe in the home.

28 D. The department shall establish procedures to ensure that
29 appropriate services have been initiated as scheduled.

30 E. In determining if a case should be open for ongoing services, the
31 department shall consider as the primary factors if there exists a present or
32 future risk of harm to any child in the family and if services can mitigate
33 the identified risks. Based on the investigation of the case and the results
34 of the risk assessment, the department shall determine whether to close the
35 case, offer voluntary child safety services or open a case for ongoing
36 services.

37 F. If a case will be open for ongoing services, the department shall
38 determine if the services are to be provided in one of the following ways:

39 1. Through a voluntary agreement with the department.

40 2. Pursuant to a petition for in-home intervention.

41 3. Pursuant to a petition for in-home or out-of-home dependence.

42 G. IF AN INVESTIGATION DOES NOT RESULT IN AN OUT-OF-HOME PLACEMENT,
43 THE DEPARTMENT SHALL PROVIDE INFORMATION TO THE PARENT OR GUARDIAN ABOUT
44 COMMUNITY SERVICE PROGRAMS THAT PROVIDE RESPITE CARE, VOLUNTARY GUARDIANSHIP
45 OR OTHER SUPPORT SERVICES FOR FAMILIES IN CRISIS.

Sec. 2. Sec. 14-5104, Arizona Revised Statutes, is amended to read:

14-5104. Delegation of powers by guardian

A ~~parent or a~~ guardian of ~~a minor or~~ AN incapacitated ~~person~~ ADULT, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any powers ~~he~~ THE GUARDIAN may have regarding care, custody or property of the ~~minor child or~~ ward, ~~except power to consent to marriage or adoption of the minor.~~

Sec. 3. Title 14, chapter 5, Arizona Revised Statutes, is amended by adding article 9, to read:

ARTICLE 9. DELEGATION OF PARENTAL OR CUSTODIAL AUTHORITY

14-5721. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ATTORNEY-IN-FACT" MEANS A PERSON TO WHOM ANY POWERS REGARDING THE CARE OR CUSTODY OF A CHILD ARE TRANSFERRED PURSUANT TO THIS ARTICLE.

2. "CUSTODIAN" MEANS A PERSON OTHER THAN A PARENT TO WHOM CUSTODY OF A CHILD HAS BEEN GIVEN BY ORDER OF A COURT OF COMPETENT JURISDICTION.

3. "POWER OF ATTORNEY" MEANS A DOCUMENT EXECUTED PURSUANT TO SECTION 14-5723.

4. "SERVING PARENT" MEANS A PARENT WHO IS ANY OF THE FOLLOWING:

(a) A MEMBER OF THE UNITED STATES ARMED FORCES, INCLUDING ANY RESERVE COMPONENT OF THE ARMED FORCES.

(b) A MEMBER OF THE COMMISSIONED CORPS OF THE UNITED STATES PUBLIC HEALTH SERVICE OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES OR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND WHO IS DETAILED BY THE PROPER AUTHORITY FOR DUTY WITH THE UNITED STATES ARMED FORCES.

(c) REQUIRED TO ENTER OR SERVE IN THE ACTIVE MILITARY SERVICE OF THE UNITED STATES UNDER A CALL OR ORDER OF THE PRESIDENT OF THE UNITED STATES OR TO SERVE ON STATE ACTIVE DUTY.

14-5722. Delegation of care and custody of a child; term: serving parent

A. A PARENT OR CUSTODIAN OF A CHILD, BY A PROPERLY EXECUTED POWER OF ATTORNEY, MAY DELEGATE TO AN ATTORNEY-IN-FACT ANY OF THE POWERS REGARDING THE CARE AND CUSTODY OF THE CHILD, EXCEPT THE POWER TO CONSENT TO MARRIAGE OR ADOPTION OF THE CHILD, THE PERFORMANCE OR INDUCEMENT OF AN ABORTION ON OR FOR THE CHILD OR THE TERMINATION OF PARENTAL RIGHTS TO THE CHILD. A DELEGATION OF POWERS UNDER THIS SECTION:

1. DOES NOT MODIFY ANY PARENTAL OR LEGAL RIGHTS, OBLIGATIONS OR AUTHORITY ESTABLISHED BY AN EXISTING COURT ORDER OR DEPRIVE THE PARENT OR CUSTODIAN OF ANY PARENTAL OR LEGAL RIGHTS, OBLIGATIONS OR AUTHORITY REGARDING THE CUSTODY, VISITATION OR SUPPORT OF THE CHILD.

2. MAY NOT BE EFFECTIVE FOR A PERIOD IN EXCESS OF ONE YEAR, EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION.

B. THE PARENT OR CUSTODIAN OF THE CHILD MAY REVOKE OR WITHDRAW THE POWER OF ATTORNEY AT ANY TIME. EXCEPT AS PROVIDED IN SUBSECTION F OF THIS SECTION, THE PARENT OR CUSTODIAN OF THE CHILD MUST EXECUTE A NEW POWER OF

ATTORNEY FOR EACH ADDITIONAL YEAR THAT THE PARENT OR CUSTODIAN WANTS TO EXTEND THE DELEGATION. IF A PARENT OR CUSTODIAN REVOKES OR WITHDRAWS THE POWER OF ATTORNEY OR THE POWER OF ATTORNEY EXPIRES, THE CHILD SHALL BE RETURNED TO THE CUSTODY OF THE PARENT OR CUSTODIAN AS SOON AS REASONABLY POSSIBLE.

C. UNLESS THE POWER OF ATTORNEY IS REVOKED, WITHDRAWN OR EXPIRES, THE ATTORNEY-IN-FACT SHALL EXERCISE PARENTAL OR LEGAL AUTHORITY ON A CONTINUOUS BASIS WITHOUT COMPENSATION FOR THE DURATION OF THE POWER OF ATTORNEY.

D. EXCEPT AS OTHERWISE PROVIDED IN STATUTE, THE EXECUTION OF A POWER OF ATTORNEY BY A PARENT OR CUSTODIAN DOES NOT CONSTITUTE ABANDONMENT, ABUSE OR NEGLECT, UNLESS THE PARENT OR CUSTODIAN FAILS TO TAKE CUSTODY OF THE CHILD OR EXECUTE A NEW POWER OF ATTORNEY AFTER THE EXPIRATION OF A POWER OF ATTORNEY.

E. IN THE EXERCISE OF AUTHORITY PURSUANT TO A POWER OF ATTORNEY:

1. THE ATTORNEY-IN-FACT IS NOT SUBJECT TO REGULATION OR LICENSING AS A CHILD WELFARE AGENCY OR FOSTER HOME AS DEFINED IN SECTION 8-501.

2. A PRIVATE, NONPROFIT ORGANIZATION THAT DOES NOT ACCEPT PUBLIC MONIES AND THAT ASSISTS PARENTS WITH THE PROCESS OF DELEGATING PARENTAL AND LEGAL CUSTODIAL POWERS OF THEIR CHILDREN AS PROVIDED IN THIS SECTION, INCLUDING ASSISTANCE WITH IDENTIFYING APPROPRIATE PLACEMENTS FOR THEIR CHILDREN, OR THAT PROVIDES SERVICES AND RESOURCES TO SUPPORT CHILDREN, PARENTS, LEGAL GUARDIANS AND PERSONS DESIGNATED AS ATTORNEY-IN-FACT IS NOT SUBJECT TO REGULATION OR LICENSING AS A CHILD WELFARE AGENCY AS DEFINED IN SECTION 8-501.

3. THE CHILD WHO IS THE SUBJECT TO THE POWER OF ATTORNEY IS NOT IN AN OUT-OF-HOME PLACEMENT AS DEFINED IN SECTION 8-501.

F. A SERVING PARENT MAY EXECUTE A POWER OF ATTORNEY FOR A TERM LONGER THAN ONE YEAR IF THE SERVING PARENT IS ON ACTIVE DUTY SERVICE. THE TERM OF A POWER OF ATTORNEY EXECUTED FOR MORE THAN ONE YEAR MAY NOT EXCEED THE TERM OF THE ACTIVE DUTY SERVICE PLUS THIRTY DAYS.

14-5723. Power of attorney

A. THE FOLLOWING FORM OF POWER OF ATTORNEY IS LEGALLY SUFFICIENT FOR A PARENT OR CUSTODIAN TO DELEGATE POWERS REGARDING THE CARE AND CUSTODY OF A CHILD PURSUANT TO THIS ARTICLE:

DELEGATION OF PARENTAL OR CUSTODIAL POWERS

1. I CERTIFY THAT I AM THE PARENT OR CUSTODIAN OF THE FOLLOWING MINOR CHILD/CHILDREN:

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

(FULL NAME OF MINOR CHILD)

(DATE OF BIRTH)

2. I DESIGNATE _____ (FULL NAME OF ATTORNEY-IN-FACT),

(STREET ADDRESS, CITY, STATE AND ZIP CODE OF
ATTORNEY-IN-FACT)

(HOME AND WORK PHONE NUMBERS OF ATTORNEY-IN-FACT)
AS THE ATTORNEY-IN-FACT OF EACH MINOR CHILD NAMED ABOVE.

3. I DELEGATE TO THE ATTORNEY-IN-FACT ALL OF MY POWER AND
AUTHORITY REGARDING THE CARE AND CUSTODY OF EACH MINOR CHILD
NAMED ABOVE, INCLUDING THE RIGHT TO ENROLL THE CHILD IN SCHOOL,
TO INSPECT AND OBTAIN COPIES OF EDUCATION RECORDS AND OTHER
RECORDS CONCERNING THE CHILD, TO ATTEND SCHOOL ACTIVITIES AND
OTHER FUNCTIONS CONCERNING THE CHILD AND TO GIVE OR WITHHOLD ANY
CONSENT OR WAIVER WITH RESPECT TO SCHOOL ACTIVITIES, MEDICAL AND
DENTAL TREATMENT AND ANY OTHER ACTIVITY, FUNCTION OR TREATMENT
THAT MAY CONCERN THE CHILD. THIS DELEGATION DOES NOT INCLUDE
THE POWER OR AUTHORITY TO CONSENT TO MARRIAGE OR ADOPTION OF THE
CHILD, THE PERFORMANCE OR INDUCEMENT OF AN ABORTION ON OR FOR
THE CHILD OR THE TERMINATION OF PARENTAL RIGHTS TO THE CHILD.

OR

3. I DELEGATE TO THE ATTORNEY-IN-FACT THE FOLLOWING
SPECIFIC POWERS AND RESPONSIBILITIES:

(WRITE IN SPECIFIC POWERS AND RESPONSIBILITIES)
THIS DELEGATION DOES NOT INCLUDE THE POWER OR AUTHORITY TO
CONSENT TO MARRIAGE OR ADOPTION OF THE CHILD, THE PERFORMANCE OR
INDUCEMENT OF AN ABORTION ON OR FOR THE CHILD OR THE TERMINATION
OF PARENTAL RIGHTS TO THE CHILD.

4. THIS POWER OF ATTORNEY IS EFFECTIVE FOR A PERIOD NOT
TO EXCEED ONE YEAR, BEGINNING _____, 20____ AND ENDING
_____, 20____. I RESERVE THE RIGHT TO REVOKE THIS AUTHORITY
AT ANY TIME.

OR

4. I AM A SERVING PARENT AS DEFINED IN SECTION 14-5721
ARIZONA REVISED STATUTES. MY ACTIVE DUTY SERVICE IS SCHEDULED
TO BEGIN ON _____, 20____ AND IS ESTIMATED TO END ON
_____, 20____. I ACKNOWLEDGE THAT THIS DELEGATION OF
POWER MAY NOT LAST MORE THAN ONE YEAR OR THE TERM OF MY ACTIVE
DUTY PLUS THIRTY DAYS, WHICHEVER IS LONGER.

PARENT OR CUSTODIAN

5. I HEREBY ACCEPT MY DESIGNATION AS ATTORNEY-IN-FACT FOR
THE MINOR CHILD/CHILDREN SPECIFIED IN THIS POWER OF ATTORNEY.

ATTORNEY-IN-FACT
THE STATE OF _____

1 COUNTY OF _____
2 ACKNOWLEDGEMENT
3 SUBSCRIBED, SWORN TO AND ACKNOWLEDGED BEFORE ME BY
4 _____, THE PARENT OR CUSTODIAN AND _____, THE
5 ATTORNEY-IN-FACT, THIS _____ DAY OF _____.
6 (SEAL)
7 (SIGNED) _____
8 _____
9 (NOTARY PUBLIC)
10 B. A POWER OF ATTORNEY IS LEGALLY SUFFICIENT PURSUANT TO THIS ARTICLE
11 IF THE WORDING OF THE FORM COMPLIES SUBSTANTIALLY WITH SUBSECTION A OF THIS
12 SECTION, THE FORM IS PROPERLY COMPLETED AND THE SIGNATURES OF THE PARTIES ARE
13 ACKNOWLEDGED.