

Senate Engrossed

juvenile proceedings; appointment of attorney

State of Arizona  
Senate  
Fifty-fifth Legislature  
First Regular Session  
2021

## CHAPTER 228

# SENATE BILL 1391

AN ACT

AMENDING SECTIONS 8-221 AND 8-522, ARIZONA REVISED STATUTES; RELATING TO JUVENILES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-221, Arizona Revised Statutes, is amended to  
3 read:

4 8-221. Counsel right of juvenile, parent or guardian;  
5 appointment; reimbursement; guardian ad litem

6 A. THE COURT SHALL APPOINT AN ATTORNEY FOR A CHILD in all  
7 ~~proceedings involving offenses;~~ DELINQUENCY, dependency or termination of  
8 parental rights PROCEEDINGS that are conducted pursuant to this title ~~and~~  
9 ~~that may result in detention, a juvenile has the right to be represented~~  
10 ~~by counsel~~. THE COURT SHALL APPOINT THE ATTORNEY BEFORE THE FIRST  
11 HEARING. THE ATTORNEY SHALL REPRESENT THE CHILD AT ALL STAGES OF THE  
12 PROCEEDINGS AND, IN A DEPENDENCY PROCEEDING, THROUGH PERMANENCY.

13 B. If a juvenile, parent or guardian is found to be indigent and  
14 entitled to counsel, the juvenile court shall appoint an attorney to  
15 represent the person or persons unless THE PERSON KNOWINGLY, INTELLIGENTLY  
16 AND VOLUNTARILY WAIVES counsel ~~for the juvenile is waived by both the~~  
17 ~~juvenile and the parent or guardian.~~

18 C. Before any court appearance ~~which~~ THAT may result in  
19 institutionalization or mental health hospitalization of a juvenile, the  
20 court shall appoint counsel for the juvenile if counsel has not been  
21 PREVIOUSLY APPOINTED OR retained by or for the juvenile, ~~unless counsel is~~  
22 ~~waived by both the juvenile and a parent or guardian with whom the~~  
23 ~~juvenile resides or resided prior to the filing of a petition. The~~  
24 ~~juvenile, parent or guardian may withdraw the waiver of counsel at any~~  
25 ~~time.~~

26 ~~D. Waiver of counsel pursuant to this section is subject to the~~  
27 ~~provisions of rule 6, subsection (c) of the Arizona rules of procedure for~~  
28 ~~the juvenile court.~~

29 ~~E. If a juvenile is entitled to counsel and there appears to be a~~  
30 ~~conflict of interest between a juvenile and the juvenile's parent or~~  
31 ~~guardian including a conflict of interest arising from payment of the fee~~  
32 ~~for appointed counsel under subsection 6 of this section, the juvenile~~  
33 ~~court may appoint an attorney for the juvenile in addition to the attorney~~  
34 ~~appointed for the parent or guardian or employed by the parent or~~  
35 ~~guardian.~~

36 ~~F.~~ D. The county board of supervisors may fix a reasonable sum to  
37 be paid by the county for the services of an appointed attorney.

38 ~~G.~~ E. If the court finds that the ~~juvenile or the~~ parent or  
39 guardian of a juvenile has sufficient financial resources to reimburse, at  
40 least in part, the costs of the services of an attorney appointed pursuant  
41 to this section, the court shall order the ~~juvenile or the~~ parent or  
42 guardian to pay to the appointed attorney or the county, through the clerk  
43 of the court, an amount that the parent or guardian is able to pay without  
44 incurring substantial hardship to the family. Failure to obey an order  
45 under this subsection is not grounds for contempt or grounds for

1 withdrawal by the appointed attorney. An order under this section may be  
2 enforced in the manner of a civil judgment.

3 ~~F.~~ F. In a county where there is a public defender, the public  
4 defender may act as attorney in either:

5 1. A delinquency or incorrigibility proceeding when requested by  
6 the juvenile court.

7 2. Any other juvenile proceeding that is conducted pursuant to this  
8 title if the board of supervisors authorizes the appointment of the public  
9 defender.

10 ~~F.~~ G. In all juvenile court proceedings in which the dependency  
11 petition includes an allegation that the juvenile is abused or neglected,  
12 the court ~~shall~~ MAY appoint a guardian ad litem to protect the juvenile's  
13 best interests. This guardian AD LITEM ~~may~~ SHALL be an attorney ~~or a~~  
14 ~~court appointed special advocate.~~ THE GUARDIAN AD LITEM IS NOT THE  
15 CHILD'S ATTORNEY.

16 ~~F.~~ H. ~~The~~ ANY guardian ad litem or attorney APPOINTED for a  
17 juvenile shall meet with the juvenile before the preliminary protective  
18 hearing, if possible, or within fourteen days after the preliminary  
19 protective hearing. The guardian ad litem or attorney APPOINTED for the  
20 juvenile also shall meet with the juvenile before all substantive  
21 hearings. ~~Upon~~ ON a showing of extraordinary circumstances, the judge may  
22 modify this requirement for any substantive hearing.

23 Sec. 2. Section 8-522, Arizona Revised Statutes, is amended to  
24 read:

25 8-522. Dependency actions; special advocate; appointment;  
26 duties; immunity

27 A. The presiding judge of the juvenile court in each county may  
28 appoint an adult as a special advocate ~~to be the guardian ad litem~~ for a  
29 child who is the subject of a dependency action. The court shall make  
30 this appointment at the earliest possible stage in the proceedings. A  
31 child, through the child's SPECIAL ADVOCATE, guardian ad litem or  
32 attorney, has the right to be informed of, to be present at and to be  
33 heard in any proceeding involving dependency or termination of parental  
34 rights.

35 B. The supreme court shall certify special advocates pursuant to  
36 rules adopted by the court. Court rules for certification shall include  
37 compliance with qualification standards prescribed by the court.

38 C. The appointment of the special advocate continues until the  
39 court relieves the advocate of the advocate's responsibilities or until  
40 the court dismisses the action before it.

41 D. A special advocate serves without compensation but is entitled  
42 to reimbursement of expenses pursuant to guidelines prescribed by the  
43 supreme court by rule.

- 1           E. A special advocate shall:  
2           1. Meet with the child.  
3           2. Advocate for the child's safety as the first priority.  
4           3. Gather and provide independent, factual information to aid the  
5 court in making its decision regarding what is in the child's best  
6 interest and in determining if reasonable efforts have been made to  
7 prevent removal of the child from the child's home or to reunite the child  
8 with the child's family.  
9           4. Provide advocacy to ensure that appropriate case planning and  
10 services are provided for the child.  
11           5. Perform other duties prescribed by the supreme court by rule.  
12           F. A special advocate shall have access to all documents and  
13 information regarding the child and the child's family without obtaining  
14 prior approval of the child, the child's family or the court. All records  
15 and information the special advocate acquires, reviews or produces may  
16 only be disclosed as provided for in section 41-1959.  
17           G. The special advocate shall receive notice of all hearings,  
18 staffings, investigations and other matters concerning the child. The  
19 special advocate shall have a right to participate in the formulation of  
20 any agreement, stipulation or case plan entered into regarding the child.  
21           H. A special advocate is immune from civil or criminal liability  
22 for the advocate's acts or omissions in connection with the authorized  
23 responsibilities the special advocate performs in good faith.

APPROVED BY THE GOVERNOR APRIL 14, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2021.