

REFERENCE TITLE: DCS; investigation; permanent guardianship

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HB 2194

Introduced by
Representative Willoughby

AN ACT

AMENDING SECTION 8-872, ARIZONA REVISED STATUTES; RELATING TO PERMANENT
GUARDIANSHIP.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-872, Arizona Revised Statutes, is amended to
3 read:

4 8-872. Permanent guardianship; procedure

5 A. Any party to a dependency proceeding or a pending dependency
6 proceeding may file a motion for permanent guardianship. The motion shall
7 be verified by the person who files the motion and shall include the
8 following:

9 1. The name, sex, residence and date and place of birth of the
10 child.

11 2. The facts and circumstances supporting the grounds for permanent
12 guardianship.

13 3. The name and address of the prospective guardian and a statement
14 that the prospective guardian agrees to accept the duties and
15 responsibilities of guardianship.

16 4. The basis for the court's jurisdiction.

17 5. The relationship of the child to the prospective guardian.

18 6. Whether the child is subject to the Indian child welfare act of
19 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901
20 through 1963) and if so:

21 (a) The tribal affiliations of the child's parents.

22 (b) The specific actions the person who files the motion has taken
23 to notify the parents' tribes and the results of those contacts, including
24 the names, addresses, titles and telephone numbers of the persons
25 contacted. The person shall attach to the motion as exhibits any
26 correspondence with the tribes.

27 (c) The specific efforts that were made to comply with the
28 placement preferences under the Indian child welfare act of 1978 or the
29 placement preferences of the appropriate Indian tribes.

30 7. The name, address, marital status and date of birth of the birth
31 parents, if known.

32 B. The person who files the motion shall serve notice of the
33 hearing and a copy of the motion on all parties as prescribed in rule 5(c)
34 of the Arizona rules of civil procedure, including any person who has
35 filed a petition to adopt or who has physical custody pursuant to a court
36 order in a foster-adoptive placement. In addition to the requirements of
37 rule 5(c) of the Arizona rules of civil procedure, the notice shall be
38 sent by certified or registered mail, return receipt requested, to any
39 parent, Indian custodian and tribe of an Indian child as defined in the
40 Indian child welfare act of 1978 (25 United States Code section 1903).

41 C. The person who files the motion shall provide a copy of the
42 notice of hearing to the following persons if the person has not been
43 served pursuant to subsection B of this section:

1 1. The child's current physical custodian.

2 2. Any foster parent with whom the child has resided within six
3 months before the date of the hearing.

4 3. The prospective guardian if the guardian is not the current
5 physical custodian.

6 4. Any other person the court orders to be provided notice.

7 D. The court shall hold the guardianship adjudication hearing
8 within ninety days after the initial guardianship hearing.

9 E. In a proceeding for permanent guardianship, on the request of a
10 parent, the court shall appoint counsel for any parent found to be
11 indigent if the parent is not already represented by counsel. The court
12 may also appoint one for the child if a guardian ad litem has not already
13 been appointed.

14 F. Before a final hearing, the department, the agency or a person
15 designated as an officer of the court shall conduct an investigation
16 addressing the factors set forth in section 8-871, whether the prospective
17 permanent guardian or guardians are fit and proper persons to become
18 permanent guardians and whether the best interests of the child would be
19 served by granting the permanent guardianship. The findings of this
20 investigation shall be set forth in a written report provided to the court
21 and all parties before the hearing. The court may require additional
22 investigation if it finds that the welfare of the child will be served or
23 if additional information is necessary to make an appropriate decision
24 regarding the permanent guardianship. The court may charge a reasonable
25 fee for this investigation pursuant to section 8-133, if performed by an
26 officer of the court. The court may waive the requirements of this
27 subsection for good cause.

28 G. IN ADDITION TO THE FACTORS SET FORTH IN SECTION 8-871, THE
29 INVESTIGATION CONDUCTED PURSUANT TO SUBSECTION F OF THIS SECTION SHALL
30 INCLUDE DETERMINATIONS OF ALL OF THE FOLLOWING:

31 1. IF THE REUNIFICATION OF THE PARENT AND CHILD IS NOT IN THE
32 CHILD'S BEST INTEREST BECAUSE THE PARENT IS UNWILLING OR UNABLE TO
33 PROPERLY CARE FOR THE CHILD.

34 2. IF THE CHILD DEMONSTRATES A STRONG ATTACHMENT TO THE PROSPECTIVE
35 GUARDIAN AND IF THE GUARDIAN HAS A STRONG COMMITMENT TO PERMANENTLY CARING
36 FOR THE CHILD.

37 3. IF THE CHILD IS THE SUBJECT OF A PENDING DEPENDENCY PETITION AND
38 THERE HAS BEEN NO ADJUDICATION OF THE DEPENDENCY.

39 4. IF IT IS NOT LIKELY THAT THE CHILD WILL BE ADOPTED.

40 5. IF THE TERMINATION OF PARENTAL RIGHTS IS NOT IN THE BEST
41 INTERESTS OF THE CHILD.

1 ~~G.~~ H. Before the court may appoint a guardian, the court shall
2 require the prospective guardian to furnish either a valid fingerprint
3 clearance card or a full set of fingerprints to enable the court to
4 determine the applicant's suitability as guardian. If the prospective
5 guardian does not submit a valid fingerprint clearance card, the
6 prospective guardian shall submit a full set of fingerprints to the court
7 for the purpose of obtaining a state and federal criminal records check
8 pursuant to section 41-1750 and Public Law 92-544. The department of
9 public safety may exchange this fingerprint data with the federal bureau
10 of investigation.

11 ~~H.~~ I. The person who files the motion has the burden of proof by
12 clear and convincing evidence. In any proceeding involving a child who is
13 subject to the Indian child welfare act of 1978, the person who files the
14 motion has the burden of proof by beyond a reasonable doubt.

15 ~~I.~~ J. A court order vesting permanent guardianship with an
16 individual divests the birth or adoptive parent of legal custody of or
17 guardianship for the child but does not terminate the parent's rights. A
18 court order for permanent guardianship does not affect the child's
19 inheritance rights from and through the child's birth or adoptive parents.

20 ~~J.~~ K. On finding that grounds exist for a permanent guardianship,
21 the court may incorporate into the final order provisions for visitation
22 with the natural parents, siblings or other relatives of the child if this
23 order would be in the child's best interests and any other provision that
24 is necessary to rehabilitate the child or to provide for the child's
25 continuing safety and well-being. The court may order a parent to
26 contribute to the support of the child to the extent it finds the parent
27 is able.

28 ~~K.~~ L. On the entry of the order establishing a permanent
29 guardianship, the dependency action shall be dismissed. If the child was
30 in the legal custody of the department during the dependency, the court
31 may order the department to conduct the investigation and prepare the
32 report for the first report and review hearing. If the child was not in
33 the legal custody of the department, the court may order the child's
34 attorney or guardian ad litem to file a report for the report and review
35 hearing. The court shall retain jurisdiction to enforce its final order
36 of permanent guardianship. The court may order a report and shall set a
37 review to be held within one year following the entry of the final order
38 and may set such other and further proceedings as may be in the best
39 interests of the child. Before a report and review hearing, the court may
40 cause an investigation to be conducted of the facts and circumstances
41 surrounding the welfare and best interests of the child and a written
42 report to be filed with the court. The court may charge a reasonable fee
43 for this investigation pursuant to section 8-133, if performed by an
44 officer of the court.

1 ~~L.~~ M. The department or agency shall not be responsible for the
2 requirements pursuant to subsections F, ~~J-and~~ K AND L of this section for
3 a motion concerning a child not in the care, custody and control of the
4 department or agency.
5 ~~M.~~ N. The court shall provide the guardian with written notice of
6 the sibling information exchange program established pursuant to section
7 8-543.