

REFERENCE TITLE: permanent guardianship

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

SB 1107

Introduced by
Senator Brophy McGee

AN ACT

AMENDING SECTIONS 8-871, 8-872 AND 8-873, 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 8-871, Arizona Revised Statutes, is amended to
3 read:

4 8-871. Permanent guardianship of a child

5 A. The court may establish a permanent guardianship between a child
6 and the guardian if the prospective guardianship is in the child's
7 best interests and all of the following apply:

8 1. The child has been adjudicated a dependent child ~~OR IS THE~~
9 ~~SUBJECT OF A PENDING DEPENDENCY PETITION. IF THE CHILD HAS NOT BEEN~~
10 ~~ADJUDICATED DEPENDENT AND ANY PARTY OBJECTS TO A MOTION FOR PERMANENT~~
11 ~~GUARDIANSHIP, THE COURT MAY SCHEDULE A SETTLEMENT CONFERENCE OR MEDIATION~~
12 ~~OR MAY STRIKE THE MOTION AND PROCEED WITH THE DEPENDENCY PETITION.~~

13 2. The child has been in the custody of the prospective permanent
14 guardian for at least nine months ~~as a dependent child~~. The court may
15 waive this requirement for good cause.

16 3. If the child is in the custody of the ~~division~~ DEPARTMENT or
17 agency, the ~~division~~ DEPARTMENT or agency has made reasonable efforts to
18 reunite the parent and child and further efforts would be
19 unproductive. The court may waive this requirement if it finds ~~that~~ ONE
20 OR MORE OF THE FOLLOWING:

21 (a) Reunification efforts are not required by law. ~~or if~~

22 (b) Reunification of the parent and child is not in the child's
23 best interests because the parent is unwilling or unable to properly care
24 for the child.

25 (c) THE CHILD IS THE SUBJECT OF A PENDING DEPENDENCY PETITION AND
26 THERE HAS BEEN NO ADJUDICATION OF DEPENDENCY.

27 4. The likelihood that the child would be adopted is remote or
28 termination of parental rights would not be in the child's best interests.

29 B. The court may consider any adult, including a relative or foster
30 parent, as a permanent guardian. An agency or institution may not be a
31 permanent guardian. The court ~~shall~~ MAY appoint a person nominated by the
32 child if the child is at least twelve years of age, unless the court finds
33 that the appointment would not be in the child's best interests. The
34 court shall consider the child's objection to the appointment of the
35 person nominated as permanent guardian.

36 C. In proceedings for permanent guardianship, the court shall give
37 primary consideration to the physical, mental and emotional needs AND
38 SAFETY of the child.

39 D. Unless otherwise set forth in the final order of permanent
40 guardianship, a permanent guardian is vested with all of the rights and
41 responsibilities set forth in section 14-5209 relating to the powers and
42 duties of a guardian of a minor, other than those rights and
43 responsibilities of the birth or adoptive parent, if any, that are set
44 forth in the decree of permanent guardianship.

1 E. At the guardianship hearing, or by notice filed after the
2 appointment of a permanent guardian or a successor permanent guardian
3 pursuant to section 8-874, the guardian may advise the court as to the
4 identity and contact information of potential successor permanent
5 guardians.

6 F. The ~~division~~ DEPARTMENT or agency shall not be responsible for
7 the requirements pursuant to subsection A, paragraph 3 of this section for
8 a petition concerning a child WHO IS not in the care, custody and control
9 of the ~~division~~ DEPARTMENT or agency.

10 Sec. 2. Section 8-872, Arizona Revised Statutes, is amended to
11 read:

12 8-872. Permanent guardianship; procedure

13 A. Any party to a dependency proceeding OR A PENDING DEPENDENCY
14 PROCEEDING may file a motion for permanent guardianship. The motion shall
15 be verified by the person who files the motion and shall include the
16 following:

17 1. The name, sex, residence and date and place of birth of the
18 child.

19 2. The facts and circumstances supporting the grounds for permanent
20 guardianship.

21 3. The name and address of the prospective guardian and a statement
22 that the prospective guardian agrees to accept the duties and
23 responsibilities of guardianship.

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

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

26 6. Whether the child is subject to the ~~federal~~ Indian child welfare
27 act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections
28 1901 through 1963) and if so:

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

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

35 (c) The specific efforts that were made to comply with the
36 placement preferences under the ~~federal~~ Indian child welfare act of 1978
37 or the placement preferences of the appropriate Indian tribes.

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

40 B. The person who files the motion shall serve notice of the
41 hearing and a copy of the motion on all parties as prescribed in rule 5(c)
42 of the Arizona rules of civil procedure, including any person who has
43 filed a petition to adopt or who has physical custody pursuant to a court
44 order in a foster-adoptive placement. In addition to the requirements of
45 rule 5(c) of the Arizona rules of civil procedure, the notice shall be

1 sent by registered mail, return receipt requested, to any parent, Indian
2 custodian and tribe of an Indian child as defined by the federal Indian
3 child welfare act of 1978 (25 United States Code section 1903).

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

7 1. The child's current physical custodian.

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

10 3. The prospective guardian if the guardian is not the current
11 physical custodian.

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

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

18 E. Before a final hearing, the ~~division~~ DEPARTMENT, the agency or a
19 person designated as an officer of the court shall conduct an
20 investigation addressing the factors set forth in section 8-871, whether
21 the prospective permanent guardian or guardians are fit and proper persons
22 to become permanent guardians and whether the best interests of the child
23 would be served by granting the permanent guardianship. The findings of
24 this investigation shall be set forth in a written report provided to the
25 court and all parties before the hearing. The court may require
26 additional investigation if it finds that the welfare of the child will be
27 served or if additional information is necessary to make an appropriate
28 decision regarding the permanent guardianship. The court may charge a
29 reasonable fee for this investigation pursuant to section 8-133, if
30 performed by an officer of the court. THE COURT MAY WAIVE THE
31 REQUIREMENTS OF THIS SUBSECTION FOR GOOD CAUSE.

32 F. BEFORE THE COURT MAY APPOINT AS GUARDIAN A PERSON UNRELATED TO A
33 CHILD WHO HAS NOT BEEN ADJUDICATED DEPENDENT, THE COURT SHALL REQUIRE THE
34 PROSPECTIVE GUARDIAN TO FURNISH EITHER A VALID FINGERPRINT CLEARANCE CARD
35 OR A FULL SET OF FINGERPRINTS TO ENABLE THE COURT TO DETERMINE THE
36 APPLICANT'S SUITABILITY AS GUARDIAN. IF THE PROSPECTIVE GUARDIAN DOES NOT
37 SUBMIT A VALID FINGERPRINT CLEARANCE CARD, THE PROSPECTIVE GUARDIAN SHALL
38 SUBMIT A FULL SET OF FINGERPRINTS TO THE COURT FOR THE PURPOSE OF
39 OBTAINING A STATE AND FEDERAL CRIMINAL RECORDS CHECK PURSUANT TO SECTION
40 41-1750 AND PUBLIC LAW 92-544. THE DEPARTMENT OF PUBLIC SAFETY MAY
41 EXCHANGE THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION.

42 ~~F.~~ G. The person who files the motion has the burden of proof by
43 clear and convincing evidence. In any proceeding involving a child who is
44 subject to the ~~federal~~ Indian child welfare act of 1978, the person who
45 files the motion has the burden of proof by beyond a reasonable doubt.

1 ~~H.~~ H. A court order vesting permanent guardianship with an
2 individual divests the birth or adoptive parent of legal custody of or
3 guardianship for the child but does not terminate the parent's rights. A
4 court order for permanent guardianship does not affect the child's
5 inheritance rights from and through the child's birth or adoptive parents.

6 ~~H.~~ I. On finding that grounds exist for a permanent guardianship,
7 the court may incorporate into the final order provisions for visitation
8 with the natural parents, siblings or other relatives of the child if this
9 order would be in the child's best interests and any other provision that
10 is necessary to rehabilitate the child or to provide for the child's
11 continuing safety and well-being. The court may order a parent to
12 contribute to the support of the child to the extent it finds the parent
13 is able.

14 ~~I.~~ J. On the entry of the order establishing a permanent
15 guardianship, the dependency action shall be dismissed. If the child was
16 in the legal custody of the ~~division~~ DEPARTMENT during the dependency, the
17 court may order the ~~division~~ DEPARTMENT to conduct the investigation and
18 prepare the report for the first report and review hearing. IF THE CHILD
19 WAS NOT IN THE LEGAL CUSTODY OF THE DEPARTMENT, THE COURT MAY ORDER THE
20 CHILD'S ATTORNEY OR GUARDIAN AD LITEM TO FILE A REPORT FOR THE REPORT AND
21 REVIEW HEARING. The court shall retain jurisdiction to enforce its final
22 order of permanent guardianship. The court ~~shall cause~~ MAY ORDER a report
23 and SHALL SET A review to be held within one year following the entry of
24 the final order and may set such other and further proceedings as may be
25 in the best interests of the child. Before a report and review hearing,
26 the court may cause an investigation to be conducted of the facts and
27 circumstances surrounding the welfare and best interests of the child and
28 a written report to be filed with the court. The court may charge a
29 reasonable fee for this investigation pursuant to section 8-133, if
30 performed by an officer of the court.

31 ~~J.~~ K. The ~~division~~ DEPARTMENT or agency shall not be responsible
32 for the requirements pursuant to subsections E, ~~H and~~ I AND J of this
33 section for a motion concerning a child not in the care, custody and
34 control of the ~~division~~ DEPARTMENT or agency.

35 ~~K.~~ L. The court shall provide the guardian with written notice of
36 the sibling information exchange program established pursuant to section
37 8-543.

38 Sec. 3. Section 8-873, Arizona Revised Statutes, is amended to
39 read:

40 8-873. Revocation of permanent guardianship

41 A. The child, a parent of the child, THE GUARDIAN or any party to
42 the dependency proceeding may file a petition for the revocation of an
43 order granting permanent guardianship if there is a significant change of
44 circumstances, including:

- 1 1. The child's parent is able and willing to properly care for the
2 child.
- 3 2. The child's permanent guardian is unable to properly care for
4 the child.
- 5 B. The court shall appoint a guardian ad litem for the child in any
6 proceeding for the revocation of permanent guardianship.
- 7 C. The court may revoke the order granting permanent guardianship
8 OF A CHILD WHO PREVIOUSLY HAS BEEN ADJUDICATED A DEPENDENT CHILD if the
9 party petitioning for revocation proves a change of circumstances by clear
10 and convincing evidence and the revocation is in the child's best
11 interest.
- 12 D. THE COURT MAY REVOKE THE ORDER GRANTING PERMANENT GUARDIANSHIP
13 OF A CHILD WHO HAS BEEN THE SUBJECT OF A DEPENDENCY PETITION BUT WHO HAS
14 BEEN NOT ADJUDICATED A DEPENDENT CHILD AND ORDER THAT THE CHILD BE
15 RETURNED TO THE CHILD'S PARENT IF ALL OF THE FOLLOWING ARE TRUE:
- 16 1. THE CHILD, PARENT OF THE CHILD, PARTY TO THE DEPENDENCY PETITION
17 OR GUARDIAN PETITIONS THE COURT FOR REVOCATION.
- 18 2. THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE
19 PARENT HAS REMEDIED THE GROUNDS ALLEGED IN THE GUARDIANSHIP PETITION.
- 20 3. THE COURT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE
21 RETURN OF THE CHILD WOULD NOT CREATE A SUBSTANTIAL RISK OF HARM TO THE
22 CHILD'S PHYSICAL, MENTAL OR EMOTIONAL HEALTH OR SAFETY. WHEN MAKING THIS
23 DETERMINATION, THE COURT SHALL CONSIDER ALL OF THE FOLLOWING:
- 24 (a) THE CHILD'S POSITION ON THE REVOCATION OF THE GUARDIANSHIP IF
25 THE CHILD IS AT LEAST TWELVE YEARS OF AGE.
- 26 (b) THE DURATION OF THE GUARDIANSHIP AND THE LEVEL OF CONTACT
27 BETWEEN THE PARENT AND THE CHILD DURING THE GUARDIANSHIP.
- 28 (c) ANY OTHER RELEVANT FACTOR.