

REFERENCE TITLE: juvenile dependency; child placement

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1069

Introduced by
Senator Barto

AN ACT

AMENDING SECTIONS 8-115, 8-221, 8-237, 8-525, 8-535, 8-871 AND 8-872,
ARIZONA REVISED STATUTES; RELATING TO CHILD SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-115, Arizona Revised Statutes, is amended to
3 read:

4 8-115. Hearing; procedure; record; evidence

5 A. The court shall hold a hearing on a petition filed pursuant to
6 this article in as informal a manner as the requirements of due process
7 and fairness permit. The prospective adoptive parent, the spouse of a
8 prospective adoptive parent and the child to be adopted shall attend
9 unless the court orders otherwise. The court shall ~~only~~ allow persons who
10 have a direct interest in the case, **INCLUDING INVITED GUESTS OF THE**
11 **ADOPTIVE FAMILY**, to attend the hearing. ~~A person who attends a hearing~~
12 ~~shall not disclose any information about the hearing.~~ The court may
13 require the presence of ~~such~~ other witnesses as it deems necessary.

14 B. The court shall make its findings based on a preponderance of
15 the evidence. The court may consider any and all reports required by this
16 article or ordered by the court pursuant to this article.

17 Sec. 2. Section 8-221, Arizona Revised Statutes, is amended to
18 read:

19 8-221. Counsel right of juvenile, parent or guardian;
20 appointment; reimbursement; guardian ad litem

21 A. The court shall appoint an attorney for a child in all
22 delinquency **PROCEEDINGS THAT COMMENCE WITH A PETITION OR THAT MAY INVOLVE**
23 **DETENTION**, dependency **PROCEEDINGS** or termination of parental rights
24 proceedings that are conducted pursuant to this title. The court shall
25 appoint the attorney before the first hearing. The attorney shall
26 represent the child at all stages of the proceedings and, in a dependency
27 proceeding, through ~~permanency~~ **DISMISSAL**.

28 B. If a ~~juvenile~~, parent or guardian is found to be indigent and
29 entitled to counsel, the juvenile court shall appoint an attorney to
30 represent the person or persons unless the person knowingly, intelligently
31 and voluntarily waives counsel.

32 C. Before any court appearance that may result in
33 institutionalization or mental health hospitalization of a juvenile, the
34 court shall appoint counsel for the juvenile if counsel has not been
35 previously appointed or retained by or for the juvenile.

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

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

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

3 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 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 may appoint a guardian ad litem to protect the juvenile's best
13 interests. This guardian ad litem shall be an attorney. The guardian ad
14 litem is not the child's attorney.

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

22 Sec. 3. Section 8-237, Arizona Revised Statutes, is amended to
23 read:

24 8-237. Statement or conduct of child; hearsay exception

25 The ~~out of court~~ OUT-OF-COURT statements or nonverbal conduct of a
26 minor regarding acts of abuse or neglect perpetrated on ~~him~~ THE MINOR are
27 admissible for all purposes in any adoption, dependency, ~~or~~ termination of
28 parental rights OR GUARDIANSHIP proceeding under this title if the time,
29 content and circumstances of such a statement or nonverbal conduct provide
30 sufficient indication of its reliability.

31 Sec. 4. Section 8-525, Arizona Revised Statutes, is amended to
32 read:

33 8-525. Open court proceedings; closure; records

34 A. Except as otherwise provided pursuant to this section AND
35 SECTION 8-537, court proceedings relating to dependent children, permanent
36 guardianship and termination of parental rights are open to the public.

37 B. At the first hearing in any dependency, permanent guardianship
38 or termination of parental rights proceeding, the court shall ask the
39 parties if there are any reasons the proceeding should be closed. For
40 good cause shown, the court may order any proceeding to be closed to the
41 public EXCEPT AS PROVIDED IN SECTION 8-537. In considering whether to
42 close the proceeding to the public, the court shall consider:

43 1. Whether doing so is in the child's best interests.

44 2. Whether an open proceeding would endanger the child's physical
45 or emotional well-being or the safety of any other person.

1 3. The privacy rights of the child, the child's siblings, parents,
2 guardians and caregivers and any other person whose privacy rights the
3 court determines need protection.

4 4. Whether all parties have agreed to allow the proceeding to be
5 open.

6 5. If the child is at least twelve years of age and a party to the
7 proceeding, the child's wishes.

8 6. Whether an open proceeding could cause specific material harm to
9 a criminal investigation or prosecution.

10 C. Subject to the requirements of subsection B of this section and
11 section 8-807.01, a court proceeding relating to child abuse, abandonment
12 or neglect that has resulted in a fatality or near fatality is open to the
13 public.

14 D. At the beginning of a hearing that is open to the public, the
15 court shall do the following:

16 1. Admonish all attendees that they are prohibited from disclosing
17 any information that may identify the child and the child's siblings,
18 parents, guardians and caregivers, and any other person whose identity
19 will be disclosed during the proceeding.

20 2. Explain contempt of court to all attendees and the possible
21 consequences of violating an order of the court.

22 E. A person who remains in the court after the admonition pursuant
23 to subsection D of this section must abide by the court's order
24 prohibiting disclosure of that information. The court may find a person
25 who fails to do so in contempt of court.

26 F. The court may close an open proceeding at any time for good
27 cause shown and after considering the factors prescribed in subsection B
28 of this section.

29 G. If **THE COURT CLOSES** a proceeding relating to child abuse,
30 abandonment or neglect that has resulted in a fatality or near fatality
31 ~~has been closed by the court~~, any person may subsequently request that the
32 court reopen a proceeding or a specific hearing to the public or request a
33 transcript be made of any previously closed proceeding. In ruling on this
34 request, the court shall consider the factors prescribed in subsection B
35 of this section. The person who requested the transcript shall pay the
36 cost of the transcript. If the court grants a request for a transcript of
37 any closed proceeding, the court shall redact from a transcript any
38 information that:

39 1. Protects the privacy, well-being or safety interests prescribed
40 in subsection B of this section.

41 2. Protects the identity and safety of a person who reports child
42 abuse or neglect and any other person if the court believes that
43 disclosure of the DCS information would be likely to endanger the life or
44 safety of any person.

1 3. The court has received that is confidential by law. The court
2 shall maintain the confidentiality of the information as prescribed in the
3 applicable law.

4 H. Any person may request to inspect court records of a proceeding
5 involving the disclosure of DCS information regarding a case of child
6 abuse, abandonment or neglect that has resulted in a fatality or near
7 fatality. In ruling on this request, the court shall consider the factors
8 prescribed in subsection B of this section. If the court grants the
9 request, the court shall redact any information subject to the
10 requirements of subsections B and G of this section and section 8-807.01.

11 Sec. 5. Section 8-535, Arizona Revised Statutes, is amended to
12 read:

13 8-535. Notice of initial hearing; waiver; guardian ad litem

14 A. After the petition has been filed, the clerk of the superior
15 court shall set a time and place for the initial hearing. Notice of the
16 initial hearing and a copy of the petition shall be given to the parents
17 of the child, the guardian of the person of the child, the person having
18 legal custody of the child, any individual standing in loco parentis to
19 the child, the tribe of any Indian child as defined by the federal Indian
20 child welfare act of 1978 (25 United States Code section 1903) and the
21 guardian ad litem of any party as provided for service of process in civil
22 actions. In addition to the service of process requirements in civil
23 actions, any parent, any Indian custodian and the tribe of an Indian child
24 shall be notified of the initial hearing by **CERTIFIED OR** registered mail,
25 return receipt requested, as required by the federal Indian child welfare
26 act of 1978 (25 United States Code section 1912). The notice required by
27 this subsection shall include the following statement:

28 You have a right to appear as a party in this proceeding. The
29 failure of a parent to appear at the initial hearing, the
30 pretrial conference, the status conference or the termination
31 adjudication hearing may result in an adjudication terminating
32 the parent-child relationship of that parent.

33 B. The initial hearing shall take place ~~no~~ **NOT** sooner than ten days
34 after the completion of service of notice.

35 C. Notice and appearance may be waived by a parent before the court
36 or in writing and attested to by two or more credible witnesses who are
37 eighteen or more years of age subscribing their names thereto in the
38 presence of the person executing the waiver or shall be duly acknowledged
39 before an officer authorized to take acknowledgements by the person
40 signing the waiver of notice and appearance. The face of the waiver shall
41 contain language explaining the meaning and consequences of the waiver and
42 the termination of parental rights. The parent who has executed such a
43 waiver shall not be required to appear.

44 D. If a parent does not appear at the initial hearing, the court,
45 after determining that the parent has been served with proper legal

1 notice, may find that the parent has waived the parent's legal rights and
2 is deemed to have admitted the allegations of the petition by the failure
3 to appear. The court may terminate the parent-child relationship as to a
4 parent who does not appear based on the record and evidence presented as
5 provided in rules prescribed by the supreme court.

6 E. At the initial hearing, the court shall:

7 1. Schedule a pretrial conference or status conference.

8 2. Schedule the termination adjudication hearing.

9 3. Instruct the parent that the failure to appear at the pretrial
10 conference, status conference or termination adjudication hearing may
11 result in an adjudication terminating the parent-child relationship as to
12 a parent who does not appear.

13 F. On the motion of any party or on its own motion, the court shall
14 appoint a guardian ad litem if it determines that there are reasonable
15 grounds to believe that a party to the proceeding is mentally incompetent
16 or is otherwise in need of a guardian ad litem.

17 G. The county attorney, on the request of the court or a
18 governmental agency or on the county attorney's own motion, may intervene
19 in any proceedings under this article to represent the interest of the
20 child.

21 H. A potential father who fails to file a paternity action within
22 thirty days after completion of service of the notice prescribed in
23 section 8-106, subsection G waives his right to be notified regarding the
24 termination of parental rights and his consent to the termination of
25 parental rights is not required.

26 Sec. 6. Section 8-871, Arizona Revised Statutes, is amended to
27 read:

28 8-871. Permanent guardianship of a child

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

32 1. The child has been adjudicated a dependent child or is the
33 subject of a pending dependency petition ~~filed by the department~~. If the
34 child has not been adjudicated dependent, all parties ~~must consent to the~~
35 ~~HAVE BEEN SERVED PURSUANT TO SECTION 8-872, SUBSECTION B AND NO PARTY~~
36 ~~OBJECTS, THE COURT MAY GRANT A~~ permanent guardianship. If the child has
37 not been adjudicated dependent and any party objects to a motion for
38 permanent guardianship, the court may schedule a settlement conference or
39 mediation or may strike the motion and proceed with the dependency
40 petition.

41 2. The child has been in the custody of the prospective permanent
42 guardian for at least nine months. The court may waive this requirement
43 for good cause.

44 3. If the child is in the custody of the department or agency, the
45 department or agency has made reasonable efforts to reunite the parent and

1 child and further efforts would be unproductive. The court may waive this
2 requirement if it finds one or more of the following:

3 (a) Reunification efforts are not required by law.

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

7 (c) The child is the subject of a pending dependency petition and
8 there has been no adjudication of dependency.

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

11 ~~B.~~ B. IF THE CHILD IS THE SUBJECT OF A PENDING DEPENDENCY PETITION NOT
12 FILED BY THE DEPARTMENT, THE COURT SHALL NOTIFY THE DEPARTMENT OF THE
13 MOTION FOR PERMANENT GUARDIANSHIP NOT LATER THAN FOURTEEN COURT DAYS AFTER
14 THE MOTION IS FILED, AND THE DEPARTMENT MAY CONDUCT AN INVESTIGATION INTO
15 THE ALLEGATIONS CONTAINED IN THE DEPENDENCY PETITION. THE DEPARTMENT
16 SHALL HAVE TEN COURT DAYS FROM THE COURT'S NOTIFICATION TO INFORM THE
17 COURT AND PARTIES OF ITS POSITION ON THE GUARDIANSHIP. IF THE DEPARTMENT
18 OBJECTS TO THE MOTION, THE DEPARTMENT MAY TAKE ACTION NECESSARY TO PROTECT
19 THE HEALTH AND SAFETY OF THE CHILD WHO IS THE SUBJECT OF THE GUARDIANSHIP
20 MOTION, INCLUDING MOVING TO INTERVENE IN THE DEPENDENCY ACTION OR FILING A
21 SEPARATE DEPENDENCY PETITION. THE DEPARTMENT, THE AGENCY OR A PERSON
22 DESIGNATED AS AN OFFICER OF THE COURT SHALL PROVIDE A GUARDIANSHIP REPORT
23 PURSUANT TO SECTION 8-872, SUBSECTION E TO THE COURT NOT LATER THAN TEN
24 DAYS FOLLOWING THE COURT'S ORDER TO PROVIDE THE REPORT.

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

32 ~~C.~~ D. In proceedings for permanent guardianship, the court shall
33 give primary consideration to the physical, mental and emotional needs and
34 safety of the child.

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

41 ~~E.~~ F. At the guardianship hearing, or by notice filed after the
42 appointment of a permanent guardian or a successor permanent guardian
43 pursuant to section 8-874, the guardian may advise the court as to the
44 identity and contact information of potential successor permanent
45 guardians.

1 ~~F.~~ G. The department or agency shall not be responsible for the
2 requirements pursuant to subsection A, paragraph 3 of this section for a
3 petition concerning a child who is not in the care, custody and control of
4 the department or agency.

5 Sec. 7. Section 8-872, Arizona Revised Statutes, is amended to
6 read:

7 8-872. Permanent guardianship; procedure

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

12 1. The name, sex, residence and date and place of birth of the
13 child.

14 2. The facts and circumstances supporting the grounds for permanent
15 guardianship.

16 3. The name and address of the prospective guardian and a statement
17 that the prospective guardian agrees to accept the duties and
18 responsibilities of guardianship.

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

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

21 6. Whether the child is subject to the Indian child welfare act of
22 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901
23 through 1963) and if so:

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

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

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

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

35 B. The person who files the motion shall serve notice of the
36 hearing and a copy of the motion on all parties as prescribed in rule 5(c)
37 of the Arizona rules of civil procedure, including any person who has
38 filed a petition to adopt or who has physical custody pursuant to a court
39 order in a foster-adoptive placement. In addition to the requirements of
40 rule 5(c) of the Arizona rules of civil procedure, the notice shall be
41 sent by **CERTIFIED OR** registered mail, return receipt requested, to any
42 parent, Indian custodian and tribe of an Indian child as defined ~~by~~ **IN** the
43 ~~federal~~ Indian child welfare act of 1978 (25 United States Code section
44 1903).

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

4 1. The child's current physical custodian.

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

7 3. The prospective guardian if the guardian is not the current
8 physical custodian.

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

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

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

29 F. Before the court may appoint a guardian, the court shall require
30 the prospective guardian to furnish either a valid fingerprint clearance
31 card or a full set of fingerprints to enable the court to determine the
32 applicant's suitability as guardian. If the prospective guardian does not
33 submit a valid fingerprint clearance card, the prospective guardian shall
34 submit a full set of fingerprints to the court for the purpose of
35 obtaining a state and federal criminal records check pursuant to section
36 41-1750 and Public Law 92-544. The department of public safety may
37 exchange this fingerprint data with the federal bureau of investigation.

38 G. The person who files the motion has the burden of proof by clear
39 and convincing evidence. In any proceeding involving a child who is
40 subject to the Indian child welfare act of 1978, the person who files the
41 motion has the burden of proof by beyond a reasonable doubt.

42 H. A court order vesting permanent guardianship with an individual
43 divests the birth or adoptive parent of legal custody of or guardianship
44 for the child but does not terminate the parent's rights. A court order

1 for permanent guardianship does not affect the child's inheritance rights
2 from and through the child's birth or adoptive parents.

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

11 J. On the entry of the order establishing a permanent guardianship,
12 the dependency action shall be dismissed. If the child was in the legal
13 custody of the department during the dependency, the court may order the
14 department to conduct the investigation and prepare the report for the
15 first report and review hearing. If the child was not in the legal
16 custody of the department, the court may order the child's attorney or
17 guardian ad litem to file a report for the report and review hearing. The
18 court shall retain jurisdiction to enforce its final order of permanent
19 guardianship. The court may order a report and shall set a review to be
20 held within one year following the entry of the final order and may set
21 such other and further proceedings as may be in the best interests of the
22 child. Before a report and review hearing, the court may cause an
23 investigation to be conducted of the facts and circumstances surrounding
24 the welfare and best interests of the child and a written report to be
25 filed with the court. The court may charge a reasonable fee for this
26 investigation pursuant to section 8-133, if performed by an officer of the
27 court.

28 K. The department or agency shall not be responsible for the
29 requirements pursuant to subsections E, I and J of this section for a
30 motion concerning a child not in the care, custody and control of the
31 department or agency.

32 L. The court shall provide the guardian with written notice of the
33 sibling information exchange program established pursuant to section
34 8-543.