

REFERENCE TITLE: **child placement; procedural time limits**

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

SB 1079

Introduced by
Senator Barto

AN ACT

**AMENDING TITLE 8, CHAPTER 4, ARTICLE 4, ARIZONA REVISED STATUTES, BY
ADDING SECTION 8-530.03; AMENDING SECTIONS 8-537, 8-842 AND 8-872, ARIZONA
REVISED STATUTES; RELATING TO THE DEPARTMENT OF CHILD SAFETY.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 8, chapter 4, article 4, Arizona Revised Statutes,
3 is amended by adding section 8-530.03, to read:

4 8-530.03. Child placement; time limits

5 A. ALL PARTIES, COUNSEL AND THE COURT SHALL ADHERE TO THE
6 PROCEDURAL TIME LIMITS ESTABLISHED PURSUANT TO THIS CHAPTER.

7 B. PROCEDURAL TIME LIMITS ESTABLISHED PURSUANT TO THIS CHAPTER MAY
8 NOT BE WAIVED, EXTENDED OR CONTINUED EXCEPT FOR ONE OF THE FOLLOWING
9 REASONS:

10 1. SUBSTANTIAL EVIDENCE EXISTS THAT EXTENDING THE PROCEDURAL TIME
11 LIMITS IS IN THE BEST INTEREST OF THE CHILD.

12 2. EVIDENCE THAT IS MATERIAL TO THE CASE IS UNAVAILABLE. THE
13 MOVING PARTY MUST SHOW THAT THE MOVING PARTY HAS EXERCISED DUE DILIGENCE
14 TO OBTAIN THE EVIDENCE AND THAT THERE ARE SUBSTANTIAL GROUNDS TO BELIEVE
15 THAT THE EVIDENCE WILL BE AVAILABLE WITHIN THIRTY DAYS.

16 3. THE EXTENSION IS NECESSARY TO PRESERVE THE CONSTITUTIONAL RIGHTS
17 OF A PARTY.

18 4. ADDITIONAL TIME IS NECESSARY TO PREPARE A CASE DUE TO
19 EXTRAORDINARY CIRCUMSTANCES. A COURT FINDING OF EXTRAORDINARY
20 CIRCUMSTANCES SHALL BE SET FORTH IN WRITING AND SHALL STATE THE FACTUAL
21 BASIS FOR THE EXTRAORDINARY CIRCUMSTANCES.

22 C. IF A COURT FINDS THAT EXTENDING THE PROCEDURAL TIME LIMITS IS
23 NECESSARY, THE COURT SHALL LIMIT THE EXTENSION TO THE PERIOD OF TIME
24 NECESSARY FOR THE MOVING PARTY TO COMPLETE NECESSARY TASKS. THE COURT MAY
25 NOT EXTEND THE PROCEDURAL TIME LIMITS, INCLUDING EXTENSIONS ORDERED BY A
26 COURT ON THE COURT'S OWN MOTION, MORE THAN A TOTAL OF SIXTY DAYS WITHIN
27 ANY TWELVE-MONTH PERIOD, UNLESS THE COURT FINDS IN WRITING THAT
28 SUBSTANTIAL EVIDENCE EXISTS THAT ADDITIONAL TIME IS IN THE BEST INTEREST
29 OF THE CHILD.

30 D. ON MOTION OF A PARTY OR THE COURT, IF IT IS DETERMINED THAT AN
31 EXTENSION OF PROCEDURAL TIME LIMITS WAS DUE TO A PARTY'S DISCLOSURE
32 VIOLATION OR LACK OF DUE DILIGENCE, THE COURT MAY IMPOSE SANCTIONS ON THAT
33 PARTY.

34 Sec. 2. Section 8-537, Arizona Revised Statutes, is amended to
35 read:

36 8-537. Termination adjudication hearing

37 A. If a petition for terminating the parent-child relationship is
38 contested, the court shall hold a termination adjudication hearing **WITHIN**
39 **NINETY DAYS AFTER THE PETITION IS SERVED ON ALL PARTIES.** The general
40 public shall be excluded and only such persons admitted whose presence the
41 judge finds to have a direct interest in the case or the work of the
42 court, provided that such person so admitted shall not disclose any
43 information secured at the hearing. The court may require the presence of
44 any parties and witnesses it deems necessary to the disposition of the
45 petition, except that a parent who has executed a waiver pursuant to

1 section 8-535, or WHO has relinquished the parent's rights to the child
2 shall not be required to appear at the hearing.

3 B. The court's findings with respect to grounds for termination
4 shall be based upon ON clear and convincing evidence under the rules
5 applicable and adhering to the trial of civil causes. The court may
6 consider any and all reports required by this article or ordered by the
7 court pursuant to this article and such reports are admissible in evidence
8 without objection.

9 C. If a parent does not appear at the pretrial conference, status
10 conference or termination adjudication hearing, the court, after
11 determining that the parent has been instructed as provided in section
12 8-535, may find that the parent has waived the parent's legal rights and
13 is deemed to have admitted the allegations of the petition by the failure
14 to appear. The court may terminate the parent-child relationship as to a
15 parent who does not appear based on the record and evidence presented as
16 provided in rules prescribed by the supreme court.

17 Sec. 3. Section 8-842, Arizona Revised Statutes, is amended to
18 read:

19 8-842. Initial dependency hearing; deadlines

20 A. Except as provided in section 8-826, the court shall set the
21 initial dependency hearing within twenty-one days after the petition is
22 filed. If service by publication is required, the court may set an
23 initial dependency hearing within a time period to allow for publication
24 pursuant to the rules of procedure for the juvenile court.

25 B. At the initial dependency hearing, the court shall:

26 1. Order the parent or guardian to provide the court with the
27 names, the type of relationship and all available information necessary to
28 locate persons who are related to the child or who have a significant
29 relationship with the child. If there is not sufficient information
30 available to locate a relative or person with a significant relationship
31 with the child, the parent or guardian shall inform the court of this
32 fact. The court shall order the parent or guardian to inform the
33 department immediately if the parent or guardian becomes aware of
34 information related to the existence or location of a relative or person
35 with a significant relationship with the child.

36 2. Determine that the department is attempting to identify and
37 assess placement of the child with a grandparent or another member of the
38 child's extended family including a person who has a significant
39 relationship with the child.

40 3. If the child has siblings, determine that the department is
41 attempting to identify and assess placement of the child with the child's
42 siblings if this is possible and is in the child's best interests.

43 ~~C. The court may continue the initial dependency hearing for good
44 cause, but, unless the court has ordered in-home intervention, the
45 dependency adjudication hearing shall be completed within ninety days~~

~~1 after service of the dependency petition. The time limit for completing
2 the dependency adjudication hearing may be extended for up to thirty days
3 if the court finds good cause or in extraordinary cases as prescribed by
4 the supreme court by rule.~~

5 Sec. 4. 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 registered mail, return receipt requested, to any parent, Indian
42 custodian and tribe of an Indian child as defined by the ~~federal~~ Indian
43 child welfare act of 1978 (25 United States Code section 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. THE COURT SHALL HOLD THE TERMINATION ADJUDICATION HEARING WITHIN
11 NINETY DAYS AFTER THE MOTION TO TERMINATE IS SERVED ON ALL PARTIES.

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

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

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

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

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

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

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