

Senate Engrossed

child placement; procedural time limits

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

SENATE BILL 1079

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 UNLESS IT IS NECESSARY FOR THE FULL,
9 FAIR AND PROPER PRESENTATION OF EVIDENCE. A CONTINUANCE OF A PROCEDURAL
10 TIME LIMIT MAY NOT BE GRANTED IF THE DELAY IS NOT IN THE BEST INTEREST OF
11 THE CHILD.

12 C. A CONTINUANCE BEYOND THIRTY DAYS SHALL BE GRANTED ONLY ON A
13 FINDING OF EXTRAORDINARY CIRCUMSTANCES. EXTRAORDINARY CIRCUMSTANCES
14 INCLUDE ACTS OR OMISSIONS THAT ARE UNFORESEEN OR UNAVOIDABLE.

15 D. A PARTY REQUESTING A CONTINUANCE OF MORE THAN THIRTY DAYS SHALL
16 FILE A MOTION FOR AN EXTENSION OF TIME SETTING FORTH THE REASONS WHY
17 EXTRAORDINARY CIRCUMSTANCES EXIST. THE MOTION SHALL BE FILED WITHIN FIVE
18 DAYS OF THE DISCOVERY OF THE EXTRAORDINARY CIRCUMSTANCE. THE COURT'S
19 FINDING OF EXTRAORDINARY CIRCUMSTANCES SHALL BE IN WRITING AND SHALL SET
20 FORTH THE FACTUAL BASIS FOR THE CONTINUANCE.

21 E. THE COURT MAY NOT EXTEND THE PROCEDURAL TIME LIMIT PRESCRIBED BY
22 SECTION 8-537 FOR A TOTAL PERIOD OF MORE THAN SIXTY DAYS UNLESS THE COURT
23 MAKES A WRITTEN FINDING THAT SUBSTANTIAL EVIDENCE EXISTS THAT THE
24 ADDITIONAL TIME IS IN THE BEST INTEREST OF THE CHILD.

25 F. ON MOTION OF A PARTY OR THE COURT, IF IT IS DETERMINED THAT AN
26 EXTENSION OF PROCEDURAL TIME LIMITS WAS DUE TO A PARTY'S DISCLOSURE
27 VIOLATION OR LACK OF DUE DILIGENCE, THE COURT MAY IMPOSE SANCTIONS ON THAT
28 PARTY.

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

31 8-537. Termination adjudication hearing

32 A. If a petition for terminating the parent-child relationship is
33 contested, the court shall hold a termination adjudication hearing **WITHIN**
34 **NINETY DAYS AFTER THE INITIAL SEVERANCE HEARING**. The general public shall
35 be excluded and only such persons admitted whose presence the judge finds
36 to have a direct interest in the case or the work of the court, provided
37 that such person so admitted shall not disclose any information secured at
38 the hearing. The court may require the presence of any parties and
39 witnesses it deems necessary to the disposition of the petition, except
40 that a parent who has executed a waiver pursuant to section 8-535, or **WHO**
41 has relinquished the parent's rights to the child shall not be required to
42 appear at the hearing.

43 B. The court's findings with respect to grounds for termination
44 shall be based **उपरोक्त** **ON** clear and convincing evidence under the rules
45 applicable and adhering to the trial of civil causes. The court may

1 consider any and all reports required by this article or ordered by the
2 court pursuant to this article and such reports are admissible in evidence
3 without objection.

4 C. If a parent does not appear at the pretrial conference, status
5 conference or termination adjudication hearing, the court, after
6 determining that the parent has been instructed as provided in section
7 8-535, may find that the parent has waived the parent's legal rights and
8 is deemed to have admitted the allegations of the petition by the failure
9 to appear. The court may terminate the parent-child relationship as to a
10 parent who does not appear based on the record and evidence presented as
11 provided in rules prescribed by the supreme court.

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

14 8-842. Initial dependency hearing; deadlines

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

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

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

31 2. Determine that the department is attempting to identify and
32 assess placement of the child with a grandparent or another member of the
33 child's extended family including a person who has a significant
34 relationship with the child.

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

38 C. ~~The court may continue the initial dependency hearing for good~~
39 ~~cause, but,~~ Unless the court has ordered in-home intervention, the
40 dependency adjudication hearing shall be completed within ninety days
41 after service of the dependency petition. ~~The time limit for completing~~
42 ~~the dependency adjudication hearing may be extended for up to thirty days~~
43 ~~if the court finds good cause or in extraordinary cases as prescribed by~~
44 ~~the supreme court by rule.~~

1 Sec. 4. Section 8-872, Arizona Revised Statutes, is amended to
2 read:

3 8-872. Permanent guardianship; procedure

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

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

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

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

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

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

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

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

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

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

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

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

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

43 1. The child's current physical custodian.

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

1 3. The prospective guardian if the guardian is not the current
2 physical custodian.

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

4 D. THE COURT SHALL HOLD THE GUARDIANSHIP ADJUDICATION HEARING
5 WITHIN NINETY DAYS AFTER THE INITIAL GUARDIANSHIP HEARING.

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

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

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

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

39 ~~H.~~ I. A court order vesting permanent guardianship with an
40 individual divests the birth or adoptive parent of legal custody of or
41 guardianship for the child but does not terminate the parent's rights. A
42 court order for permanent guardianship does not affect the child's
43 inheritance rights from and through the child's birth or adoptive parents.

44 ~~I.~~ J. On finding that grounds exist for a permanent guardianship,
45 the court may incorporate into the final order provisions for visitation

1 with the natural parents, siblings or other relatives of the child if this
2 order would be in the child's best interests and any other provision that
3 is necessary to rehabilitate the child or to provide for the child's
4 continuing safety and well-being. The court may order a parent to
5 contribute to the support of the child to the extent it finds the parent
6 is able.

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

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

28 ~~L~~ M. The court shall provide the guardian with written notice of
29 the sibling information exchange program established pursuant to section
30 8-543.