House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 156

SENATE BILL 1158

AN ACT

AMENDING SECTIONS 8-533, 8-802, 8-825, 8-844 AND 8-862, ARIZONA REVISED STATUTES; RELATING TO DEPENDENT CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-533, Arizona Revised Statutes, is amended to read:

8-533. Petition; who may file; grounds

A. Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to, a relative, a foster parent, a physician, the department of economic security or a private licensed child welfare agency, may file a petition for the termination of the parent-child relationship alleging grounds contained in subsection B of this section.

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any one of the following, and in considering any of the following grounds, the court shall also consider the best interests of the child:

1. That the parent has abandoned the child.

2. That the parent has neglected or wilfully abused a child. This abuse includes serious physical or emotional injury or situations in which the parent knew or reasonably should have known that a person was abusing or neglecting a child.

3. That the parent is unable to discharge ~~the~~ parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.

4. That the parent is deprived of civil liberties due to the conviction of a felony if the felony of which that parent was convicted is of such nature as to prove the unfitness of that parent to have future custody and control of the child, including murder of another child of the parent, manslaughter of another child of the parent or aiding or abetting or attempting, conspiring or soliciting to commit murder or manslaughter of another child of the parent, or if the sentence of that parent is of such length that the child will be deprived of a normal home for a period of years.

5. That the potential father failed to file a paternity action within thirty days of completion of service of notice AS prescribed in section 8-106, subsection G.

6. That the putative father failed to file a notice of claim of paternity as prescribed in section 8-106.01.

7. That the parents have relinquished their rights to a child to an agency or have consented to the adoption.

8. That the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency, that the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services and that either of the following circumstances exists:

(a) The child has been in an out-of-home placement for a cumulative total period of nine months or longer pursuant to court order or voluntary placement pursuant to section 8-806 and the parent has substantially neglected or wilfully refused to remedy the circumstances ~~which~~ THAT cause the child to be in an out-of-home placement.

(b) The child has been in an out-of-home placement for a cumulative total period of fifteen months or longer pursuant to court order or voluntary placement pursuant to section 8-806, the parent has been unable to remedy the circumstances ~~which~~ THAT cause the child to be in an out-of-home placement and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

9. That the identity of the parent is unknown and continues to be unknown following three months of diligent efforts to identify and locate the parent.

10. That the parent has had parental rights to another child terminated within the preceding two years for the same cause and is currently unable to discharge parental responsibilities due to the same cause.

11. That all of the following are true:

(a) The child was cared for in an out-of-home placement pursuant to court order.

(b) The agency responsible for the care of the child made diligent efforts to provide appropriate reunification services.

(c) The child, pursuant to court order, was returned to the legal custody of the parent from whom the child had been removed.

(d) Within eighteen months after the child was returned, pursuant to court order, the child was removed from that parent's legal custody, the child is being cared for in an out-of-home placement under the supervision of the juvenile court, the division or a licensed child welfare agency and the parent is currently unable to discharge parental responsibilities.

C. EVIDENCE CONSIDERED BY THE COURT PURSUANT TO SUBSECTION B OF THIS SECTION SHALL INCLUDE ANY SUBSTANTIATED ALLEGATIONS OF ABUSE OR NEGLECT COMMITTED IN ANOTHER JURISDICTION.

~~C.~~ D. In considering the grounds for termination prescribed in subsection B, paragraph 8 or 11 of this section, the court shall consider the availability of reunification services to the parent and the participation of the parent in these services.

~~D.~~ E. In considering the grounds for termination prescribed in subsection B, paragraph 8 of this section, the court shall not consider the first sixty days of the initial out-of-home placement pursuant to section 8-806 in the cumulative total period.

Sec. 2. Section 8-802, Arizona Revised Statutes, is amended to read:

8-802. Child protective services worker; fingerprint clearance cards; powers and duties; alteration of files; violation; classification

A. The department of economic security shall employ child protective services workers. All persons who are employed as child protective services workers shall have a valid fingerprint clearance card that is issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within seven working days of employment. A child protective services worker shall certify on forms that are provided by the department of economic security and that are notarized whether the worker is awaiting trial on or has ever been convicted of any of the criminal offenses listed in section 41-1758.03, subsections B and C in this state or similar offenses in another state or jurisdiction.

B. The department may cooperate with county agencies and community social services agencies to achieve the purposes of this section.

C. A child protective services worker shall:

1. Promote the safety and protection of children.

2. Accept, screen and assess reports of abuse or neglect pursuant to section 8-817.

3. Receive reports of dependent, abused or abandoned children and be prepared to provide temporary foster care for such children on a twenty-four hour basis.

4. Receive from any source oral or written information regarding a child who may be in need of protective services. A worker shall not interview a child without the prior written consent of the parent, guardian or custodian of the child unless either:

(a) The child initiates contact with the worker.

(b) The child who is interviewed is the subject of or is the sibling of or living with the child who is the subject of an abuse or abandonment investigation pursuant to paragraph 5, subdivision (b) of this subsection.

5. After the receipt of any report or information pursuant to paragraph 2, 3 or 4 of this subsection, immediately do both of the following:

(a) Notify the municipal or county law enforcement agency.

(b) Make a prompt and thorough investigation of the nature, extent and cause of any condition that would tend to support or refute the allegation that the child should be adjudicated dependent and the name, age and condition of other children in the home. An extremely serious conduct allegation shall be investigated according to the protocols established pursuant to section 8-817 with the appropriate municipal or county law enforcement agency as provided in section 8-817.

6. Take a child into temporary custody as provided in section 8-821. Law enforcement officers shall cooperate with the department to remove a child from the custody of the child's parents, guardian or custodian when necessary.

7. After investigation, evaluate conditions created by the parents, guardian or custodian that would support or refute the allegation that the child should be adjudicated dependent. The child protective services worker shall then determine whether any child is in need of protective services.

8. Offer to the family of any child who is found to be a child in need of protective services those services that are designed to correct unresolved problems that would indicate a reason to adjudicate the child dependent.

9. Submit a written report of the worker's investigation to:

(a) The department's case management information system within twenty-one days after receipt of the initial information except as provided in section 8-811. If the investigation involves allegations regarding a child who at the time of the alleged incident was in the custody of a child welfare agency licensed by the department of economic security under this title, a copy of the report and any additional investigative or other related reports shall be provided to the board of directors of the agency or to the administrative head of the agency unless the incident is alleged to have been committed by the person. The department shall excise all information with regard to the identity of the source of the reports.

(b) The appropriate court forty-eight hours before a dependency hearing pursuant to a petition of dependency or within twenty-one days after a petition of dependency is filed, whichever is earlier. On receipt of the report the court shall make the report available to all parties and counsel.

10. Accept a child into voluntary placement pursuant to section 8-806.

D. No child shall remain in temporary custody for a period exceeding seventy-two hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed. If no petition is filed and the child is released to the child's parent, guardian or custodian, the worker shall file a report of removal with the central registry within seventy-two hours of the child's release. The report shall include:

1. The dates of previous referrals, investigations or temporary custody.

2. The dates on which other children in the family have been taken into temporary custody.

E. The department shall provide child protective services workers who investigate allegations of abuse and neglect with training in forensic interviewing and processes, the protocols developed pursuant to section 8-817 and relevant law enforcement procedures. All child protective services workers shall be trained in their duty to protect the legal rights of children and families from the time of the initial contact through treatment. The training for child protective services workers shall also include instruction on the legal rights of parents and the requirements for legal search and seizure by law enforcement officers.

F. IN CONDUCTING AN INVESTIGATION PURSUANT TO THIS SECTION, IF THE WORKER IS MADE AWARE THAT AN ALLEGATION OF ABUSE OR NEGLECT MAY ALSO HAVE BEEN MADE IN ANOTHER STATE, THE WORKER SHALL CONTACT THE APPROPRIATE AGENCY IN THAT STATE TO ATTEMPT TO DETERMINE THE OUTCOME OF ANY INVESTIGATION OF THAT ALLEGATION.

~~F.~~ G. Any person who alters a client file for the purpose of fraud or misrepresentation is guilty of a class 2 misdemeanor.

Sec. 3. Section 8-825, Arizona Revised Statutes, is amended to read:

8-825. Court determinations in preliminary protective hearing

A. The court's determination in the preliminary protective hearing may be based on evidence that is hearsay, in whole or in part, in the following forms:

1. The allegations of the petition.

2. An affidavit.

3. Sworn testimony.

4. The written reports of expert witnesses.

5. The department's written reports if the protective services worker is present and available for cross-examination.

6. Documentary evidence without foundation if there is a substantial basis for believing the foundation will be available at the dependency hearing and the document is otherwise admissible.

7. The testimony of a witness concerning the declarations of another person if the evidence is cumulative or there is a reasonable ground to believe that the other person will be personally available for trial.

B. EVIDENCE CONSIDERED BY THE COURT PURSUANT TO SUBSECTION A OF THIS SECTION SHALL ALSO INCLUDE ANY AVAILABLE EVIDENCE OF SUBSTANTIATED ALLEGATIONS OF ABUSE OR NEGLECT COMMITTED IN ANOTHER JURISDICTION.

~~B.~~ C. The court shall determine whether temporary custody of the child is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition. The court:

1. On finding that the petitioner has not met the burden prescribed in section 8-824, subsection F, shall return the child to the child's parent, guardian or custodian pending the dependency hearing.

2. On finding that the petitioner has met the burden prescribed in section 8-824, subsection F, may declare the child a temporary ward of the court pending the dependency hearing.

~~C.~~ D. The court shall also determine if reasonable efforts were made to prevent or eliminate the need for removal of a child from the child's home and if services are available that would eliminate the need for continued removal. If the child is:

1. In the custody of the department, the court shall order the department to make reasonable efforts to provide services to the child and parent to facilitate the reunification of the family, except as provided in section 8-846.

2. Not in the custody of the department and the department is not a party, the court may direct the parties to participate in reasonable services that will facilitate reunification of the family or another permanent plan for the child. The court shall not require the department to provide services pursuant to this paragraph.

Sec. 4. Section 8-844, Arizona Revised Statutes, is amended to read:

8-844. Dependency adjudication hearing; settlement conference or mediation

A. Before a contested dependency case proceeds to adjudication, the court shall hold a settlement conference or pretrial conference or shall order mediation. All of the parties in the contested action shall participate in the conference or mediation.

B. The court shall take into consideration as a mitigating factor the availability of reasonable services to the parent or guardian to prevent or eliminate the need for removal of the child and the effort of the parent or guardian to obtain and participate in these services.

C. If, at the dependency adjudication hearing, the court:

1. Finds by a preponderance of the evidence that the allegations contained in the petition are true, the court shall:

(a) Make the following findings as to each parent:

(i) That the court has jurisdiction over the subject matter and the person before the court.

(ii) The factual basis for the dependency.

(iii) That the child is dependent.

(b) Conduct a disposition hearing.

2. Does not find by a preponderance of the evidence that the allegations contained in the petition are true, the court shall dismiss the petition.

D. The court may adjudicate a child dependent as to one parent or guardian and proceed with a disposition, review or permanency hearing or any other hearing as to that particular parent or guardian notwithstanding another parent's or guardian's request to contest the allegations in the petition or that another parent or guardian has not been served.

E. The court may hold the disposition hearing on the same date as the dependency adjudication hearing or at a later date that is not more than thirty days after the date of the dependency adjudication hearing.

F. If a parent does not appear at the pretrial conference, settlement conference or dependency adjudication hearing, the court, after determining that the parent has been instructed as provided in section 8-826, may find that the parent has waived the parent's legal rights and is deemed to have admitted the allegations of the petition by the failure to appear. The court may make a determination of dependency and disposition based on the record and evidence presented as provided in rules prescribed by the supreme court.

G. EVIDENCE CONSIDERED BY THE COURT IN MAKING A DECISION PURSUANT TO THIS SECTION SHALL ALSO INCLUDE ANY SUBSTANTIATED ALLEGATIONS OF ABUSE OR NEGLECT COMMITTED IN ANOTHER JURISDICTION.

Sec. 5. Section 8-862, Arizona Revised Statutes, is amended to read:

8-862. Permanency hearing

A. The court shall hold a permanency hearing to determine the future permanent legal status of the child:

1. Within thirty days after the disposition hearing if the court does not order reunification services.

2. In all other cases, within twelve months after the child is removed from the child's home. The court shall not continue the permanency hearing beyond twelve months after the child is removed from the child's home unless the party who is seeking the continuance shows that the determination prescribed in section 8-829, subsection A, paragraph ~~3~~ 5 has been made or will be made within the time prescribed in that paragraph.

B. At the permanency hearing, the court shall determine:

1. Whether termination of parental rights, adoption, permanent guardianship pursuant to section 8-872 or some other permanent legal status is the most appropriate plan for the child and shall order the plan to be accomplished within a specified period of time.

2. Whether reasonable efforts have been made to finalize the permanency plan in effect.

C. If the court determines that the child should remain in out-of-home placement longer than eighteen months from the date of the permanency order, the court shall conduct a review of the order at least once each year. After reviewing the order, the court may reaffirm the order or direct other disposition of the child.

D. If the court determines that the termination of parental rights is clearly in the best interests of the child, the court shall:

1. Order the department or the child's attorney or guardian ad litem to file within ten days after the permanency hearing a motion alleging one or more of the grounds prescribed in section 8-533 for termination of parental rights. The party who files the motion has the burden of presenting evidence at the termination hearing to prove the allegations in the motion.

2. Set a date for an initial hearing on the motion for termination of parental rights within thirty days after the permanency hearing. If the termination is contested at the initial hearing, the court shall set a date for the trial on termination of parental rights within ninety days after the permanency hearing.

E. If the court determines that permanent guardianship is clearly in the best interests of the child, the court shall:

1. Order the department or the child's attorney or guardian ad litem to file within ten days after the permanency hearing a motion alleging the grounds prescribed in section 8-871 for permanent guardianship. The party

1 who files the motion has the burden of presenting evidence at the hearing to
2 prove the allegations in the motion.
3 2. Set a date for an initial hearing on the motion for permanent
4 guardianship within thirty days after the permanency hearing. If the
5 permanent guardianship is contested at the initial hearing, the court shall
6 set a date for the trial on the permanent guardianship within ninety days
7 after the permanency hearing.
8 F. EVIDENCE CONSIDERED BY THE COURT IN MAKING A DECISION PURSUANT TO
9 THIS SECTION ALSO SHALL INCLUDE ANY SUBSTANTIATED ALLEGATIONS OF ABUSE OR
10 NEGLECT COMMITTED IN ANOTHER JURISDICTION.

APPROVED BY THE GOVERNOR MAY 1, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 1, 2007.

Passed the House April 17, 2007,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate February 5, 2007,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Timothy S Bee
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary of State

S.B. 1158

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 26, 20 07

by the following vote: 27 Ayes,

0 Nays, 3 Not Voting

Timothy S Bee
President of the Senate

Cheryl Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

30th day of April, 20 07

at 11:30 o'clock a. M.

Jennifer Ybarra
Secretary to the Governor

Approved this 1 day of

May 2007

at 1st o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 1st day of MAY, 20 07

at 4:30 o'clock P. M.

Janice K. Brewer
Secretary of State

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