House Engrossed

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 72

HOUSE BILL 2212

AN ACT

AMENDING SECTIONS 8-116, 8-135, 8-501, 8-847 AND 8-872, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-543; RELATING TO CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-116, Arizona Revised Statutes, is amended to read:

8-116. Court order; contents; form

A. If, after the hearing and consideration of all the evidence, the court is satisfied that the requirements of this article have been met and that the adoption is in the best interests of the child, the court shall order the adoption. The order may change the name of the child to that of the adoptive parent or parents. The written order of the court shall include the findings of fact on which it based its order, including the court's jurisdiction and the date and place of birth of the child being adopted based on the best available evidence.

B. If the exact place of birth is unknown, the order shall include the information that is known and designate a place of birth according to the best information known as to the country of origin.

C. If the exact date of birth is unknown, the order shall establish a date of birth based on the medical evidence as to the probable age of the child and other evidence the court considers appropriate.

D. The order is conclusive and binding on all persons from the date of its entry subject to appeal as provided in section 8-235.

E. THE COURT SHALL PROVIDE THE ADOPTIVE PARENT OR PARENTS WITH WRITTEN NOTICE OF THE SIBLING INFORMATION EXCHANGE PROGRAM ESTABLISHED PURSUANT TO SECTION 8-543.

Sec. 2. Section 8-135, Arizona Revised Statutes, is amended to read:

8-135. Confidential intermediary and fiduciary fund

A. The confidential intermediary and fiduciary fund is established consisting of the monies received pursuant to section 12-284.03, subsection A, paragraph 8, section ~~36-342~~ 36-341, subsection B, section 14-5651, subsection A, legislative appropriations, donations, fees, grants and contracts ~~for the purposes of implementing~~ TO IMPLEMENT the confidential intermediary program established by section 8-134 AND THE SIBLING INFORMATION EXCHANGE PROGRAM ESTABLISHED PURSUANT TO SECTION 8-543 and ~~performing~~ TO PERFORM the duties related to fiduciaries pursuant to section 14-5651. The supreme court shall administer the fund subject to legislative appropriation. On notice from the supreme court, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. The fund is exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. The appropriated funds shall only be used for the designated purposes specified in statute.

Sec. 3. Section 8-501, Arizona Revised Statutes, is amended to read:

8-501. Definitions

A. In this article, unless the context otherwise requires:

1. "Child welfare agency" or "agency":

(a) Means:

(i) Any agency or institution maintained by a person, firm, corporation, association or organization to receive children for care and maintenance or for twenty-four hour social, emotional or educational supervised care or who have been adjudicated as a delinquent or dependent child.

(ii) Any institution that provides care for unmarried mothers and their children.

(iii) Any agency maintained by the state, or a political subdivision thereof, person, firm, corporation, association or organization to place children or unmarried mothers in a foster home.

(b) Does not include state operated institutions or facilities, detention facilities for children established by law, health care institutions that are licensed by the department of health services pursuant to title 36, chapter 4 or private agencies that exclusively provide children with social enrichment or recreational opportunities and that do not use restrictive behavior management techniques.

2. "Division" or "department" means the department of economic security.

3. "FORMER DEPENDENT CHILD" MEANS A PERSON WHO WAS PREVIOUSLY ADJUDICATED A DEPENDENT CHILD IN A DEPENDENCY PROCEEDING THAT HAS BEEN DISMISSED BY ORDER OF THE JUVENILE COURT.

~~3.~~ 4. "Foster child" means a child placed in a foster home or child welfare agency.

~~4.~~ 5. "Foster home" means a home maintained by any individual or individuals having the care or control of minor children, other than those related to each other by blood or marriage, or related to such individuals, or who are legal wards of such individuals.

~~5.~~ 6. "Foster parent" means any individual or individuals maintaining a foster home.

~~6.~~ 7. "Group foster home" means a licensed regular or special foster home suitable for placement of more than five minor children but not more than ten minor children.

~~7.~~ 8. "Out-of-home placement" means the placing of a child in the custody of an individual or agency other than with the child's parent or legal guardian and includes placement in temporary custody pursuant to section 8-821, subsection A or B, voluntary placement pursuant to section 8-806 or placement due to dependency actions.

~~8.~~ 9. "Parent" means the natural or adoptive mother or father of a child.

~~9.~~ 10. "Reason for leaving care" means one of the following:

(a) Reunification with parent or primary caretaker.

(b) Living with other relative.

(c) Adoption by relative.

(d) Adoption by foster parent.
(e) Adoption by another person.
(f) Age of majority.
(g) Guardianship by relative.
(h) Guardianship by another person.
(i) Transfer to another agency.
(j) Runaway.
(k) Death.

~~10.~~ 11. "Receiving foster home" means a licensed foster home suitable for immediate placement of children when taken into custody or pending medical examination and court disposition.

~~11.~~ 12. "Regular foster home" means a licensed foster home suitable for placement of not more than five minor children.

~~12.~~ 13. "Relative" means a grandparent, great grandparent, brother or sister of whole or half blood, aunt, uncle or first cousin.

~~13.~~ 14. "Restrictive behavior management" means an intervention or procedure that attempts to guide, redirect, modify or manage behavior through the use of any of the following:

(a) Physical force to cause a child to comply with a directive. Physical force does not include physical escort. For the purposes of this subdivision, "physical escort" means temporarily touching or holding a child's hand, wrist, arm, shoulder or back to induce the child to walk to a safe location.

(b) A device, action or medication to restrict the movement or normal function of a child in order to control or change the child's behavior and that includes:

(i) Chemical restraint. For the purposes of this item, "chemical restraint" means the use of any psychoactive medication as a restraint to control the child's behavior or to restrict the child's freedom of movement and that is not a standard treatment for the child's medical or psychiatric condition.

(ii) Mechanical restraint. For the purposes of this item, "mechanical restraint" means the use of any physical device to limit a child's movement and to prevent the child from causing harm to self or to others. Mechanical restraint does not include devices such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets or any other method that involves the physical holding of a child to conduct a routine physical examination or test or to protect the child from falling out of bed or to permit the child to participate in activities in order to reduce the risk of physical harm to the child.

(iii) Physical restraint. For the purposes of this item, "physical restraint" means applying physical force to reduce or restrict a child's ability to freely move the child's arms, legs or head. Physical restraint does not include temporarily holding a child to permit the child to

1 participate in activities of daily living if this holding does not involve
2 the risk of physical harm to the child.
3 (iv) Seclusion. For the purposes of this item, "seclusion" means
4 placing a child against the child's will in a room in which the child is
5 unable to open the door in order to prevent the child from doing harm to self
6 or others.
7 ~~14.~~ 15. "Special foster home" means a licensed foster home capable of
8 handling not more than five minor children who require special care for
9 physical, mental or emotional reasons or who have been adjudicated
10 delinquent. Special foster home includes any home handling foster children
11 aged twelve through seventeen.
12 B. A foster home or any classification of foster home defined in
13 subsection A of this section includes a home having the care of persons who
14 are under twenty-one years of age and the cost of whose care is provided
15 pursuant to section 46-134, subsection A, paragraph 14.
16 Sec. 4. Title 8, chapter 5, article 2, Arizona Revised Statutes, is
17 amended by adding section 8-543, to read:
18 8-543. Sibling information exchange program; definition
19 A. THE ADMINISTRATIVE OFFICE OF THE COURTS SHALL ESTABLISH A SIBLING
20 INFORMATION EXCHANGE PROGRAM TO FACILITATE CONTACT BETWEEN A FORMER DEPENDENT
21 CHILD AND THE CHILD'S SIBLING OR SIBLINGS.
22 B. THE FOLLOWING PERSONS MAY PARTICIPATE IN THE PROGRAM:
23 1. AN ADULT WHO IS A FORMER DEPENDENT CHILD.
24 2. A JUVENILE WHO IS A FORMER DEPENDENT CHILD, THROUGH ANY OF THE
25 FOLLOWING:
26 (a) THE JUVENILE'S ADOPTIVE PARENT.
27 (b) THE JUVENILE'S GUARDIAN.
28 (c) THE JUVENILE'S BIOLOGICAL PARENT IF THAT PERSON HAS LEGAL CUSTODY
29 OF THE CHILD AND IS NOT A PARTY TO A PENDING DEPENDENCY PROCEEDING.
30 3. THE ADULT SIBLING OF A FORMER DEPENDENT CHILD.
31 C. A PERSON PARTICIPATING IN THE PROGRAM SHALL USE A CONFIDENTIAL
32 INTERMEDIARY WHO IS CERTIFIED PURSUANT TO SECTION 8-134. THE CONFIDENTIAL
33 INTERMEDIARY MAY ACCESS COURT, DIVISION AND AGENCY RECORDS. THE CONFIDENTIAL
34 INTERMEDIARY MUST KEEP CONFIDENTIAL ALL INFORMATION THE INTERMEDIARY OBTAINS
35 DURING THE COURSE OF THE INVESTIGATION AND MAY USE THIS INFORMATION ONLY TO
36 ARRANGE A CONTACT OR TO SHARE INFORMATION BETWEEN THE PERSON WHO INITIATES
37 THE SEARCH AND THE PERSON WHO IS THE SUBJECT OF THE SEARCH. THE CONFIDENTIAL
38 INTERMEDIARY SHALL NOT CONTACT ANY PERSON WHO IS UNDER EIGHTEEN YEARS OF AGE.
39 D. IF A FORMER DEPENDENT CHILD DOES NOT WISH TO BE CONTACTED BY THE
40 CHILD'S SIBLING OR SIBLINGS THE FORMER DEPENDENT CHILD MAY FILE AN AFFIDAVIT
41 SO STATING WITH THE COURT. IF AN AFFIDAVIT IS PART OF THE COURT RECORD, THE
42 CONFIDENTIAL INTERMEDIARY SHALL NOT MAKE CONTACT WITH THE FORMER DEPENDENT
43 CHILD UNLESS THE FORMER DEPENDENT CHILD WITHDRAWS THE AFFIDAVIT AND GRANTS
44 PERMISSION IN WRITING OR THE FORMER DEPENDENT CHILD HAS FILED AN AFFIDAVIT

STATING THAT THE FORMER DEPENDENT CHILD KNOWS ABOUT THE SIBLING OR SIBLINGS AND WISHES TO MAKE CONTACT WITH THE SIBLING OR SIBLINGS.

E. THE SUPREME COURT SHALL ADOPT RULES NECESSARY TO IMPLEMENT THE SIBLING INFORMATION EXCHANGE PROGRAM.

F. FOR THE PURPOSES OF THIS SECTION, "SIBLING" INCLUDES A PERSON WHO SHARES A COMMON BIOLOGICAL PARENT, STEPPARENT OR ADOPTIVE PARENT.

Sec. 5. Section 8-847, Arizona Revised Statutes, is amended to read:

8-847. Periodic review hearings

A. After the disposition hearing, the court shall hold periodic review hearings at least once every six months as required by federal law.

B. At a proceeding to review the disposition orders of the court, the court shall provide the following persons notice of the review and the right to participate in the proceeding:

1. The authorized agency charged with the child's care and custody.

2. Any foster parents in whose home the child resided within the last six months or resides at present, except for those foster parents who maintain a receiving foster home where the child has resided for thirty days or less. The petitioner shall provide the court with the names and addresses of all foster parents who are entitled to notice pursuant to statute.

3. A shelter care facility or receiving foster home where the child resides or has resided within the last six months for more than thirty days. The petitioner shall provide the court with the names and addresses of all shelter care facilities and receiving foster homes that are entitled to notice pursuant to this paragraph.

4. The child's parent or guardian unless the parental rights of that parent or guardian have been terminated by court action or unless the parent has relinquished rights to the child to an agency or has consented to the adoption of the child as provided in section 8-107.

5. The child, if twelve years of age or older.

6. The child's relative, as defined in section 8-501, if that relative files a written notice of right of participation with the court.

7. A person permitted by the court to intervene as a party in the dependency proceeding.

8. A physical custodian of the child within the preceding six months.

9. Any person who has filed a petition to adopt or who has physical custody pursuant to a court order in a foster-adoptive placement.

10. Any other person as the court may direct.

C. At any periodic review hearing, the court shall consider the health and safety of the child as a paramount concern.

D. IF THE COURT FINDS THAT A CHILD IS NO LONGER DEPENDENT, BEFORE IT DISMISSES THE PROCEEDING THE COURT SHALL PROVIDE NOTICE OF THE SIBLING INFORMATION EXCHANGE PROGRAM ESTABLISHED PURSUANT TO SECTION 8-543 TO THE FOLLOWING:

1. AN ADULT WHO IS THE FORMER DEPENDENT CHILD IN THE PROCEEDING FOR WHOM THE PERIODIC REVIEW HEARING IS HELD.

2. A PARENT OR GUARDIAN WITH LEGAL CUSTODY OF THE FORMER DEPENDENT CHILD FOR WHOM THE PERIODIC REVIEW HEARING IS HELD.

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

8-872. Permanent guardianship; procedure

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

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

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

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

4. The basis for the court's jurisdiction.

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

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

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

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

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

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

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

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

1. The child's current physical custodian.

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

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

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

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

E. Before a final hearing, the division, the agency or a person designated as an officer of the court shall conduct an investigation addressing the factors set forth in section 8-871, whether the prospective permanent guardian or guardians are fit and proper persons to become permanent guardians and whether the best interests of the child would be served by granting the permanent guardianship. The findings of this investigation shall be set forth in a written report provided to the court and all parties before the hearing. The court may require additional investigation if it finds that the welfare of the child will be served or if additional information is necessary to make an appropriate decision regarding the permanent guardianship. The court may charge a reasonable fee for this investigation pursuant to section 8-133, if performed by an officer of the court.

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

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

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

I. On the entry of the order establishing a permanent guardianship, the dependency action shall be dismissed. If the child was in the legal custody of the division during the dependency, the court may order the division to conduct the investigation and prepare the report for the first report and review hearing. The court shall retain jurisdiction to enforce its final order of permanent guardianship. The court shall cause a report and review to be held within one year following the entry of the final order and may set such other and further proceedings as may be in the best

1 interests of the child. Before a report and review hearing, the court may
2 cause an investigation to be conducted of the facts and circumstances
3 surrounding the welfare and best interests of the child and a written report
4 to be filed with the court. The court may charge a reasonable fee for this
5 investigation pursuant to section 8-133, if performed by an officer of the
6 court.
7 J. The division or agency shall not be responsible for the
8 requirements pursuant to subsections E, H and I of this section for a motion
9 concerning a child not in the care, custody and control of the division or
10 agency.
11 K. THE COURT SHALL PROVIDE THE GUARDIAN WITH WRITTEN NOTICE OF THE
12 SIBLING INFORMATION EXCHANGE PROGRAM ESTABLISHED PURSUANT TO SECTION 8-543.
13 Sec. 7. Effective date
14 This act is effective from and after December 31, 2007.

APPROVED BY THE GOVERNOR ARPIL 16, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2007.

Passed the House February 26, 20 07

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Speaker of the House

Pro Tempore

Herman L. Moore

Chief Clerk of the House

Passed the Senate April 10, 20 07

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Timothy S. Bee

President of the Senate

Christian Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

11th day of April, 20 07

at 11:13 o'clock a. M.

Jennifer Ybarra

Secretary to the Governor

Approved this 3/6 day of

April

at 2:5 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 16 day of April, 20 07

at 4:56 o'clock P. M.

Janice K. Brewer

Secretary of State

H.B. 2212