House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
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CHAPTER 199

SENATE BILL 1442

AN ACT

AMENDING SECTION 8-824, 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 8-824, Arizona Revised Statutes, is amended to read:

8-824. Preliminary protective hearing; probable cause; appointment of counsel

A. The court shall hold a preliminary protective hearing to review the taking into temporary custody of a child pursuant to section 8-821 not fewer than five days nor more than seven days after the child is taken into custody, excluding Saturdays, Sundays and holidays. If clearly necessary to prevent abuse or neglect, to preserve the rights of a party or for other good cause shown, the court may grant one continuance that does not exceed five days.

B. The following persons shall be present at the preliminary protective hearing:

1. The child's parents or guardian, unless they cannot be located or they fail to appear in response to the notice.

2. Counsel for the parents if one has been requested or retained.

3. The child's guardian ad litem or attorney.

4. The protective services worker.

5. Counsel for the protective services worker.

C. If the court finds that it is in the best interests of the child, the court may allow the following to be present at the preliminary protective hearing:

1. The child.

2. Any relative or other interested person with whom the child is or might be placed as described in section 8-845, subsection A.

3. Witnesses called by the parties.

4. An advocate or interested person as requested by the parent or guardian.

5. Other persons who have knowledge of or an interest in the welfare of the child.

D. At the hearing, the court shall advise the parent or guardian of the following rights:

1. The right to counsel, including appointed counsel if the parent or guardian is indigent.

2. The right to cross-examine all witnesses who are called to testify against the parent or guardian.

3. The right to trial by court on the allegations in the petition.

4. The right to use the process of the court to compel the attendance of witnesses.

E. At the hearing, the court:

1. Shall receive a report of any agreement reached pursuant to section 8-823, subsection D. The report may be made orally.

2. Shall provide an opportunity for the child's parent or guardian, if present, and any other person who has relevant knowledge, to provide relevant testimony.

3. May limit testimony and evidence that is beyond the scope of the removal of the child, the child's need for continued protection, placement, visitation and services to be provided to the child and family.

4. May take into consideration as a mitigating factor the participation of the parent or guardian in the healthy families program established by section 8-701.

5. 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.

6. Shall inform the child's parent or guardian that the hearing may result in further proceedings to terminate parental rights.

7. Shall give paramount consideration to the health and safety of the child.

8. Shall review evidence that the department is attempting to identify and assess placement of the child with a grandparent or another member of the child's extended family including a person who has a significant relationship with the child.

9. SHALL INFORM A FOSTER PARENT, PRE-ADOPTIVE PARENT OR A MEMBER OF THE CHILD'S EXTENDED FAMILY WITH WHOM THE DEPARTMENT HAS PLACED THE CHILD OF THE RIGHT TO BE HEARD IN ANY PROCEEDING TO BE HELD WITH RESPECT TO THE CHILD.

F. The petitioner has the burden of presenting evidence as to whether there is probable cause to believe that continued temporary custody is clearly necessary to prevent abuse or neglect pending the hearing on the dependency petition.

G. If the child is in the temporary custody of the department, the department shall submit not later than the day before the hearing a written report to the court and the parties that states:

1. The reasons the child was removed from the parent's or guardian's custody.

2. Any services that have been provided to the child or the child's parent or guardian to prevent removal.

3. The need, if any, for continued temporary custody.

4. The types of service needed to facilitate the return of the child to the custody of the child's parents or guardian.

5. If the child is not placed with a grandparent, whether the child has any relatives or other interested parties as described in section 8-845, subsection A who may be able and willing to take temporary custody.

6. Any services that are requested by the parent or guardian but that are not provided and the reasons the services were not provided.

7. Any efforts made to place siblings together, and if they are not placed together, the reasons why.

8. Any efforts made to facilitate communications among siblings.

9. A proposal for visitation and the results of any visitation that has occurred since the child was removed.

10. A proposed case plan for services to the family.

H. The parent or guardian shall state whether the parent or guardian admits or denies the allegations in the petition filed pursuant to section 8-841. If the parent or guardian admits or does not contest the allegations in the petition, the court shall determine that the parent or guardian understands the rights described in subsection D of this section and that the parent or guardian knowingly, intelligently and voluntarily waives these rights.

I. At the hearing, if the child is not returned to the parent or guardian, the court shall:

1. Enter orders regarding the placement of the child pending the determination of the dependency petition and visitation, if any. ~~The court shall also~~

2. IF A RELATIVE IS IDENTIFIED AS A POSSIBLE PLACEMENT FOR THE CHILD, NOTIFY THE RELATIVE OF THE RIGHT TO BE HEARD IN ANY PROCEEDING TO BE HELD WITH RESPECT TO THE CHILD.

3. Determine if the tasks and services set forth in the case plan are reasonable and necessary to carry out the case plan.

APPROVED BY THE GOVERNOR MAY 12, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2008.