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HB 2486: parent-child relationship; restoration

Sponsor: Representative Bliss, LD 1

Senate Engrossed

Overview

Establishes a process for the restoration of a parent-child relationship that has been terminated.

History

[A.R.S. title 8](#), chapter 4, article 5 governs termination of the parent-child relationship. Any person or agency who has a legitimate interest in the welfare of a child may initiate a termination proceeding by filing a petition for the termination of the parent-child relationship, including a relative, foster parent, physician, the Department of Child Safety (DCS) or a private licensed child welfare agency. In deciding whether to terminate parental rights, the court is required to consider the best interests of the child in addition to any the following grounds which are deemed sufficient to justify termination:

- 1) the parent has abandoned the child;
- 2) the parent has neglected or wilfully abused the child;
- 3) the parent is unfit to discharge parental responsibilities due to mental illness, mental deficiency or chronic substance abuse;
- 4) the parent was convicted of a felony that supported the unfitness of the parent to discharge parental responsibilities, such as the murder of another child;
- 5) the potential father or putative father failed to file paternity claims, pursuant to A.R.S. §§ [8-106](#) and [8-106.01](#), respectively;
- 6) the parents have relinquished their rights or consented to adoption;
- 7) the child is being cared for under the supervision of the juvenile court, an out-of-home placement center or a licensed child welfare agency and specified time and reunification requirements are satisfied;
- 8) the identity of the parent is unknown after three months of diligent effort to locate the parent;
- 9) the parent has had rights to another child terminated within the last two years for the same cause; or
- 10) there is clear and convincing evidence that the child was conceived as a result of sexual assault ([A.R.S. § 8-533](#)).

Therefore, in order terminate parental rights, the court must find that: 1) clear and convincing evidence establishes that one or more of the grounds in [A.R.S. § 8-533](#) exist; and 2) "a preponderance of evidence supports a finding that termination is in the child's best interests." *Timothy B. v. Dep't of Child Safety*, 252 Ariz. 470, 474, ¶ 13 (2022); see also [Ariz. R.P Juv. Ct. 353](#). For these purposes, "[t]he preponderance of the evidence standard requires that the fact-finder determine whether a fact sought proved is more probable than not[.]"

whereas the clear and convincing standard "reflects a heightened standard of proof that indicates that 'the thing to be proved is highly probable or reasonably certain.'" *Kent K. v. Bobby M.*, 210 Ariz. 279, 284-85, ¶ 25 (2005) (quoting Black's Law Dictionary 577 (7th ed. 1999)).

If the court makes the requisite findings and orders termination of the parent-child relationship, the parent and the child are divested of all legal rights, privileges, duties and obligations with respect to each other, except for the right of the child to inherit and support from the parent, which can only be terminated by a final order of adoption ([A.R.S. § 8-539](#)).

Provisions

1. If a child's parent-child relationship has been terminated pursuant to [A.R.S. title 8](#), chapter 4, article 5, allows DCS, the child, an Indian child's tribe, the child's attorney or guardian ad litem or the child's parent to petition for restoration of the parent-child relationship if all of the following apply:
 - a) the child is in the care or custody of DCS;
 - b) the child has not achieved permanency, is unlikely to achieve permanency and is not in a preadoptive placement;
 - c) at least two years have passed since the parent-child relationship was terminated, unless there is a demonstration of good cause for an earlier filing that must be included in the petition; and
 - d) the dependency adjudication finding did not include or the parent-child relationship was not terminated because the parent committed or was found to have failed to protect an act involving any of the following:
 - i) serious physical injury as defined in [A.R.S. § 8-201](#);
 - ii) sexual abuse or sexual conduct with a minor;
 - iii) any conduct that resulted in the near death or death of a minor; or
 - iv) a dangerous crime against children as defined in [A.R.S. § 13-705](#) (Sec. 1)
2. Requires the petition for restoration to include all of the following items:
 - a) a statement explaining why the child is unlikely to obtain a permanent placement unless the child's parent-child relationship is restored;
 - b) the child's position on the restoration;
 - c) the consent of the child's parent or parents to the restoration; and
 - d) a statement explaining how the child's parent or parents have demonstrated the remediation necessary for the restoration, including the ability and willingness to properly care for the child. (Sec. 1)
3. In addition to the above items, if DCS is the petitioner for restoration, requires DCS to include all of the following in the petition:
 - a) a report of a DCS assessment as to whether restoration is in the child's best interests of the child; and
 - b) documentation as to DCS's diligent efforts to locate a permanent placement for the child. (Sec. 1)
4. If a petition for restoration is filed by a party other than DCS, requires the court to order DCS to conduct an assessment and submit a report to the court that includes both of the following:
 - a) whether restoration is in the child's best interests; and

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| <input type="checkbox"/> Prop 105 (45 votes) | <input type="checkbox"/> Prop 108 (40 votes) | <input type="checkbox"/> Emergency (40 votes) | <input type="checkbox"/> Fiscal Note |
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- b) a description of the diligent efforts DCS made to locate a permanent placement for the child. (Sec. 1)
5. Requires DCS to establish policies and procedures for the above court-ordered assessment that assess the home and the parent's or parents' ability to ensure the physical, social, mental and emotional health and safety of the child. (Sec. 1)
6. After completion of a DCS assessment described above, if the court finds by clear and convincing evidence that the restoration of the parent-child relationship is in the best interests of the child, including that the return of the child would not create a substantial risk of harm to the child's physical, social, mental or emotional health or safety, requires the court to order DCS to do the following:
 - a) conduct a trial in-home placement of the child with the child's parent or parents; and
 - b) provide an evaluation of the trial in-home placement to the court within three to six months after the start of the trial in-home placement. (Sec. 1)
7. After receiving DCS's evaluation of the trial in-home placement above, allows the court to grant the restoration petition or order DCS to continue the trial in-home placement. (Sec. 1)
8. If the court orders DCS to continue the trial in-home placement, prohibits the court from granting the restoration petition until DCS has provided the court with an updated evaluation of the trial in-home placement, which may not exceed one year. (Sec. 1)
9. Instructs DCS to establish trial in-home placement policies and procedures that include all of the following:
 - a) adequate supervision of the child and the child's parent or parents in the home;
 - b) frequent communication with the child and the child's parent or parents; and
 - c) an individualized transition plan. (Sec. 1)
10. Mandates that DCS immediately terminate the trial in-home placement if there is a substantiated report of abuse or neglect of the child by the parent or parents or if DCS determines that the child's health, safety or well-being is threatened, and instructs DCS to immediately notify the court and the child's attorney, the child's guardian ad litem or an Indian child's tribe if trial in-home placement is terminated. (Sec. 1)
11. Requires the court to grant the restoration petition after the trial in-home placement if the court finds both of the following by clear and convincing evidence:
 - a) the child's parent or parents have demonstrated the remediation necessary for the restoration of the parent-child relationship, including the ability and willingness to properly care for the child; and
 - b) that the restoration of the parent-child relationship is in the best interests of the child, including consideration of the child's position on the restoration of the parent-child relationship and any other relevant factors. (Sec. 1)
12. Permits the period of time that the child was adopted to be included as part of the two-year time-frame required before filing a restoration petition if the child has been adopted by the adoption has been disrupted and the child has been returned to DCS's legal care. (Sec. 1)
13. Defines the following terms:
 - a) *achieved permanency*;
 - b) *department*;

- c) *parent*; and
- d) *parent-child relationship*. (Sec. 1)