

## **Arizona Foster Care Safety Bill Protects Drug-Exposed Infants and the Best Interests of Children**

Rebecca Masterson • October 9, 2018

### **I. EXECUTIVE SUMMARY**

SB1473, enacted into law on August 3, 2018, amended Arizona's child welfare statutes in important ways. The legislature adopted these changes in an 87:1 vote, demonstrating the strong consensus behind the spirit and letter of the reforms.

This memo outlines the changes in an effort to assist with the uniform application of these new laws in juvenile dependency actions.

Under the law:

- Recognizing that stability and family are critical to a child's well-being, the Department of Child Safety (DCS) must work to find permanent homes for children under three years of age within one year.
- Because family is a priority, DCS must search diligently for relatives when a child is taken into custody;
- The law creates a presumption that foster families who have cared for an infant for nine months or more are kin. If, after nine months, a party wants to move an infant to another relation or placement, the change of placement must be in the infant's best interest;
- Agencies and individuals involved in placement decisions must place the child's best interests at the forefront;
- In all child welfare cases, DCS must check for the presence of "aggravating circumstances" or extreme abuse. When aggravating circumstances exist, the department must present the findings to the judge in the dependency action and petition to terminate parental rights.
- Non-medical, in utero drug-exposure is an aggravated circumstance in certain situations of chronic substance abuse.

## II. CHANGES TO THE LAW

### A. Infants: Permanent Placements in One Year

SB1473 added a goal to DCS' statutorily enumerated duties that infants be placed in a prospective permanent placement within one year from the date a dependency petition is filed.<sup>1</sup> This goal applies to all Arizona dependency actions involving infants.

### B. Kinship Search

The Fostering Families Connections to Success and Increasing Adoptions Act of 2008 requires states to exercise due diligence in identifying and providing notice to adult relatives of the child within thirty days from the State's removal of a child.<sup>2</sup> The new law adopts and applies this federal mandate.

#### 1. Search for Kin

When a child is taken into custody, DCS is now specifically required to make an initial search for adult relatives of the child within thirty days from the date the child is taken into custody.<sup>3</sup> In performing the initial search, DCS must exercise due diligence in identifying and notifying a child's adult kin (including those adults with a significant relationship) within that thirty-day timeframe.

#### 2. Kinship Search Filing

Following the mandatory kinship search, DCS is required to file information about the search with the court in the child's dependency matter.<sup>4</sup> The filing must include information about the attempts made to identify and notify kin pursuant to the new law, or as otherwise directed by the court.

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<sup>1</sup> A.R.S. §8-503(10)

<sup>2</sup> Fostering Families Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, 110<sup>th</sup> Congress, Subpart 1, Sec. 103 (29).

<sup>3</sup> A.R.S. §8-514.07(A)

<sup>4</sup> A.R.S. §8-514.07(B)

## C. The Best Interest of the Child is the Deciding Placement Factor

The amendments to the child placement laws ensure that children's best interests are the priority when determining placements and outlines factors to consider when determining whether a placement is in the best interests of the child.

### 1. Foster Parents Are Kin After Nine Months

The statutory order of determining the least restrictive placement for a child in state care was amended to put long-term foster parents on the same footing as extended family.<sup>5</sup> Foster parents with whom a child under three years of age has resided for nine months or more are now presumed to have a significant relationship with the child. Pursuant to this amended law, parents and grandparents remain first and second choice for placement, respectively, and foster parents now join extended family as the third least restrictive placement at the nine-month mark.

### 2. The Best Interests of the Child Determines Placement, Not the Existence of Kin.

While Arizona's child welfare laws continue to recognize the importance of kin, the law was amended to remove the requirement that placements with relatives be promoted without an analysis of the child's best interests.<sup>6</sup> This unilateral promotion of kinship placements was replaced with the legal requirement that placement for a foster child be decided solely by determining the best interests of that child.<sup>7</sup> Hand in hand with that provision is the amendment that the kinship care program shall promote the best interests of the child.<sup>8</sup>

### 3. The Amended Law Outlines Factors to Consider When Determining Whether a Placement is in the Best Interests of a Child.

The amended laws put the child at the forefront of the placement determination. In that vein, specific considerations were added to the law that must be considered when determining whether a placement is in the best interests of a child.<sup>9</sup>

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<sup>5</sup> A.R.S. §8-514(B)(3)

<sup>6</sup> A.R.S. §8-514.03(A)

<sup>7</sup> Grandparents are still given statutory priority over extended relatives and licensed foster placements.

<sup>8</sup> A.R.S. §8-514.04(A)(5)

<sup>9</sup> A.R.S. §8-514(G)

These factors are:

- (A) The caregiver is interested in providing permanence for the child should reunification efforts fail.
- (B) The expressed wishes of the birth parent(s) and the child (unless contrary to law).
- (C) The relationship of the caregiver with the child and the child's family.
- (D) The proximity of the placement to the parents' home and the child's school.
- (E) The strengths and parenting style of the placement caregiver with respect to the child's behaviors and needs.
- (F) The caregiver's willingness to communicate and interact with the birth family to support visitation and reunification.
- (G) The caregiver's ability and willingness to accept the child and the child's siblings.
- (H) If siblings are placed separately, the caregiver's ability and willingness to assist in maintaining visitation or ongoing contact with the siblings.
- (I) The child's fit with the family regarding age, gender, and sibling relationships.
- (J) If the child has behavioral health needs, whether the child's behavior places other children in the home at risk, and the placement's ability to provide the necessary supervision to prevent harm to the child or others.
- (K) If applicable, whether the placement meets the requirements of the Indian Child Welfare Act.

#### **D. Aggravated Circumstances**

In order for states to be eligible for federal child welfare grant money, states must provide reasonable efforts to reunify the child with parents or guardians and provide services to preserve the family when a child is taken into custody as a result of abuse or neglect.<sup>10</sup> An important exception is that states are not required to make reunification efforts when a court has determined that extreme abuse or "aggravated circumstances" exist.<sup>11</sup> Federal law provides that aggravated circumstances may include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse, but each state ultimately defines aggravated circumstances.<sup>12</sup>

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<sup>10</sup> 42 U.S.C. §671(a)(15).

<sup>11</sup> *Id.* § 671(a)(15)(D)(i).

<sup>12</sup> *Id.*

When aggravated circumstances exist and reunification efforts are not required, federal law requires that efforts “shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.”<sup>13</sup>

The Arizona legislature has defined extreme abuse conditions, but judges, attorneys, and case managers testified that they were never or almost never invoked. The amended law remedies this issue by requiring DCS to comply with the spirit and letter of the law and brings Arizona into compliance with federal law.

### 1. Aggravated Circumstances Check and Corresponding Timelines

The Department of Child Safety, in every dependency petition, must avow to the court whether it believes that an aggravated circumstance exists.<sup>14</sup> This puts a second set of eyes on children in the most egregious circumstances and gives the court the opportunity to expedite those cases.

If the Court determines that an aggravating circumstance is present, the law requires the Department to file for termination of parental rights within ten business days from the court order.<sup>15</sup>

Among the statutory list of aggravating circumstance for which Arizona is not required to provide reunification efforts is committing a dangerous crime against children (such as sexual assault, sexual exploitation, attempted murder, or injuring a child in connection with the manufacturing of meth), allowing a child to be repeatedly sexually or physically abused, and the termination of parental rights to another child when the issues that led to that termination were not resolved or satisfactorily addressed.<sup>16</sup>

### 2. Non-Medical In Utero Substance Exposure

Recognizing that in utero drug exposure to substances like heroin and meth can cause life-long disabilities and death, SB1473 added certain instances of non-medical, in utero drug

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<sup>13</sup> 42 U.S.C. §671(a)(15)(E)(ii).

<sup>14</sup> A.R.S. §8-841(5). The Department is also required to provide notice to the court and parties at least fifteen days prior to the dependency disposition hearing if the Department intends to present evidence of an aggravating circumstance. See A.R.S. §8-841.01.

<sup>15</sup> A.R.S. §8-845(C)

<sup>16</sup> A.R.S. §8-846(D)(1)(a-f)

exposure to the statute.<sup>17</sup> The state should forego reunification efforts if all parts of the three-prong test are met:

- i) An infant was born drug-exposed (non-medical);<sup>18</sup>
- ii) The parent is unable to discharge parental responsibilities due to a history of chronic drug abuse; and
- iii) There are reasonable grounds to believe that the parent's substance abuse will continue for a "prolonged or indeterminate period" based on the opinion of a licensed health care provider<sup>19</sup> with substance abuse disorders experience.

While the state does not have to offer reunification services when extreme abuse has occurred, a parent's due process rights always afford them with counsel, multiple hearings, the opportunity to remedy the circumstances of their own volition, and the opportunity to reunify.

### **III. LAWS ADDED OR AMENDED BY SB1473**

- A.R.S. §8-503 Powers and duties
- A.R.S. §8-514 Placement in Foster Homes, §8-514.03 Kinship Foster Care; requirements; investigation; report, §8-514.04 Kinship care program; requirements, §8-514.06 Kinship foster care; relative identification
- A.R.S. §8-841 Dependency petition; service; preliminary orders
- A.R.S. §8-844.01 Allegation of aggravating circumstance
- A.R.S. §8-845 Disposition hearing
- A.R.S. §8-846 Services provided to the child and family

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<sup>17</sup> A.R.S. §8-846(g)

<sup>18</sup> As defined in A.R.S. §8-201(25)(c)

<sup>19</sup> A "licensed health care provider" is a physician, psychologist or nurse practitioner, licensed pursuant to Title 32, Chapters 13 or 17, 19.1, or 15 (whose patient foci include psychiatric-mental health), respectively, and a licensed independent substance abuse counselor, pursuant to Title 32, chapter 33.