

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007
(602) 452-3301
Projects2@courts.az.gov

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of)
) Supreme Court No. R-19____
PETITION TO AMEND RULES 47.1,)
48, AND 79, RULES OF)
PROCEDURE FOR THE JUVENILE) (Emergency or Expedited Adoption
COURT) Requested)
_____)

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Administrative Director, Administrative Office of the Courts, Arizona Supreme Court, respectfully petitions this Court to adopt the attached proposed rule amendments to the Arizona Rules of Procedure for the Juvenile Court.

I. Background and Purpose of the Proposed Rule Amendments.

In the First Regular Session of the Fifty-fourth Legislature (2019), the Legislature passed Senate Bill 1539 and House Bill 2378. These legislative acts impact the Rules of Procedure for the Juvenile Court.

The governor signed Senate Bill 1539 (enacted as Laws 2019, Chapter 262) on May 27, 2019, with a regular effective date of August 27, 2019. Relevant to

this petition, Senate Bill 1539 amends A.R.S. § 8-202 (Jurisdiction of juvenile court) and A.R.S. § 8-829, (Judicial determinations; timing; documentation). Senate Bill 1539 permits the Arizona Department of Child Safety (DCS) to establish an extended foster care program for qualified young adults, establishes an administrative process for reviewing these cases, and requires the juvenile court to make the initial determination whether participation is in the qualified young adult's best interest.

The governor signed House Bill 2378 (enacted as Laws 2019, Chapter 137) on April 26, 2019. Relevant to this petition, House Bill 2378 amends A.R.S. § 8-113 (Removal from home; expedited hearings; probationary period; rights and responsibilities; visitation limitations.) and requires the court to hold an expedited hearing on a motion that is supported by a sworn affidavit that the expedited hearing is in the child's best interests for a number of reasons. A new reason for expedited hearings has been added in A.R.S. § 8-113(H)(3): "The child is free for adoption, is at least sixteen years of age, consents to the adoption and has lived with the prospective adoptive parent for at least six months."

Contents of the Proposed Rule Amendments.

The proposed new rules include:

Rule 47.1 Mandatory Judicial Determinations

The proposed amendment to this rule adds to the list of required judicial

determinations a new (I) requiring the juvenile court to determine whether the qualified young adult's participation in the extended foster care program is in the qualified young adult's best interest within 120 days after the department submits a signed voluntary agreement.

Rule 48 Petition, temporary orders and findings, notice of hearing, and service of process

We are proposing the creation of a new Section B to describe who may file a petition in general, as well as when delinquency proceedings are pending. We are also proposing amendments to the renumbered Section (C) to specify when temporary orders may be entered both in general dependency cases and cases where delinquency matters are pending.

Rule 79. Petition to Adopt

We are proposing to add a new Section 2, titled, *Expedited Hearing*. This new section will set forth all instances where expedited hearings are required, including the most recent amendments.

III. Pre-Petition Distribution and Comment.

Due to the emergency nature of this petition and the need to have the rule in place prior to August 27, 2019, no official Pre-Petition Distribution and Comment occurred.

IV. Effective Date of the Proposed New Rule.

Petitioner respectfully requests that the proposed new rule be adopted on an expedited basis pursuant to Rule 28(G) effective August 27, 2019 consistent with the effective date of Senate Bill 1539 and House Bill 2378.

RESPECTFULLY SUBMITTED this 27th day of June, 2019.

By /S/ _____
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington Street, Suite 411
Phoenix, AZ 85007
(602) 452- 3301
Projects2@courts.az.gov

Appendix A

Rule 47.1. Mandatory Judicial Determinations

If a child has been removed from the child’s home by the state authority, the court shall make protecting the child from abuse or neglect the first priority. The court shall make the following determinations within the time periods set forth and shall state on the record a factual basis for each determination:

A. through H. [No Change]

I. Within one hundred twenty days after the department submits a qualified young adult’s signed voluntary agreement to participate in an extended foster care program pursuant to section 8-521.02, the juvenile court shall determine whether the participation is in the qualified young adult’s best interest.

Rule 48. Petition, temporary orders and findings, notice of hearing, and service of process

A. [No Change]

B. Who may file.

1. General. The department or any interested party may file a petition to commence proceedings in the juvenile court alleging that a child is dependent, except as provided in B(2).

2. Delinquency Cases. An interested party may not file a dependency petition concerning a child who has been adjudicated delinquent and is under the jurisdiction of the juvenile court, who is awaiting delinquency adjudication or disposition or who has been released from the department of juvenile corrections within the previous six months, unless both of the following occur:

a. The interested party contacts the department pursuant to A.R.S. § 8-455 at least fourteen days before filing the petition and provides the department with notice of the intent to file a petition pursuant to this subsection, the allegations contained in the petition, and the factual bases supporting the allegations.

b. The interested party affirms in the petition that the requirements of paragraph 1 of this subsection have been met.

CB. Temporary orders and findings. When the interests of the child require immediate action, upon the filing of a petition under oath, the court may enter an order making the child a temporary ward of the court pending the hearing, which shall be scheduled at that time.

1. General. Upon the filing of a petition, pursuant to subsection B(1), the court may issue temporary orders necessary to provide for the safety and welfare of the child, shall make determinations required by Rule 47.1 and shall make findings as required by law.

2. Delinquency Cases. Upon the filing of a petition, pursuant to subsection B(2), the court may not issue any temporary orders with respect to the department, including placing the child in the department's legal or physical custody, joining the department as a party, or ordering the department to provide any services to the child or the family, without first conducting a hearing. At the hearing, the court shall take evidence on the request of the department or a party. The court shall provide the department and a party at least seventy-two hours written or electronic notice of the hearing and an opportunity to be heard as to any proposed orders. If the department is provided proper notice and fails to appear, the court may proceed with the hearing.

D.C. [No Change]

E.D. [No Change]

F.E. [No Change]

Rule 79. Petition to Adopt

A. [No Change]

B. Hearing.

1. [No Change]

2. Expedited Hearing. The court shall hold an expedited hearing on a motion that is supported by a sworn affidavit that the expedited hearing is in the child's best interests and that any of the following is true:

- a. The child is suffering from a chronically debilitating, progressive or fatal disease as diagnosed by a licensed physician.
- b. A prospective adoptive parent, birth parent or legal parent is terminally ill, as diagnosed by a licensed physician.
- c. The child is free for adoption, is at least sixteen years of age, consents to the adoption and has lived with the prospective adoptive parent for at least six months.

23. *Notice*. A notice of hearing shall accompany the petition and shall advise the parties as to the date, time and location of the hearing. If the child is an Indian child, in addition to service as required by this rule, the child's parent or Indian custodian and the child's tribe shall be notified pursuant to Rule 76(B) if the parent or Indian custodian did not voluntarily place the child for adoption.

C. [No Change]