

TERMINATION OF PARENT-CHILD RELATIONSHIP

Termination of parental rights may arise through motion or petition. Grounds must be established by clear and convincing evidence and it must be proven by a preponderance of the evidence that termination of parental rights is in the best interests of the child. In cases that involve the Indian Child Welfare Act (ICWA), additional findings and higher burdens of proof apply. [25 U.S.C. §§1901-1963](#), [ARS §8-533\(B\)](#), [ARS §8-863](#), [Az.R.Juv.Ct. 64\(A,B\)](#), [Az.R.Juv.Ct. 66\(C\)](#)

INITIAL APPEARANCE / INITIAL TERMINATION HEARING

Source: [25 USC §1912](#), [25 USC §1913](#), [ARS §8-535](#), [ARS §8-863](#), [Az.R.Juv.Ct. 64-66](#)

Shall be held no sooner than 10 days after service. [Az.R.Juv.Ct. 65\(B\)](#), [ARS §8-535\(B\)](#)

CALL THE CASE:

1. Identify the case number, case name, and nature of the hearing.
2. Inform parties that this is the time and date set for the Initial Termination Hearing. These hearings are presumptively open. They can be closed for good cause shown. By being present you are subjecting yourself to the jurisdiction of the court and you are not to reveal any identifying information concerning this matter, which would include not posting anything on social media regarding the matter.
3. Identify those present.
4. Confirm or determine paternity so you know who needs to be served. If paternity of one or more of the children has not been determined, the Department of Child Safety (DCS) will proceed and publish against John Doe, a fictional name assigned to any male person who could claim parental rights and will always allege abandonment as the ground for termination. [ARS §8-533\(B\)\(1\)](#)
5. Determine whether each party has been properly served or has accepted service and waived any defects as to service. [Az.R.Juv.Ct. 65\(A\)](#)
6. Determine whether ICWA applies.
7. If ICWA applies, determine whether Tribe and BIA have been notified in accordance with federal and state law. [Az.R.Juv.Ct. 65\(C\)\(1\)](#), [ARS §8-535\(A\)](#)
8. If service is not complete, continue hearing only as to those for whom service is not complete and order movant/petitioner to complete service.

IF PARENT(S) APPEARS WITH OR WITHOUT COUNSEL AND CONTESTS:

1. Advise the parent of their rights, provide to them a Form 3, and request that they sign and return to court staff a copy of the form for docketing.
2. Determine financial eligibility for representation.
3. Appoint counsel for the parent, unless already appointed, and assess fees as appropriate. [Az.R.Juv.Ct. 65\(C\)\(2\)](#)
4. Determine whether appointment of a GAL is required for the parent.
5. Appoint attorney/GAL for child unless already appointed. [Az.R.Juv.Ct. 65\(C\)\(3\)](#)
6. For PRIVATE SEVERANCE, order preparation of the social study and assess cost.

NOTE: This may be waived if it is in the best interest of the children. [ARS §8-536\(C\)](#)

7. Schedule a Settlement Conference, Pretrial Conference, or Mediation.
8. Set the Termination Adjudication Hearing within 90 days of the Permanency Hearing. [Az.R.Juv.Ct. 66\(B\)\(6\)\(b\)](#)
9. Admonish the parent that:
 - a. Failure to attend future hearings or other proceedings without good cause shown may result in a finding that the parent has waived legal rights and is deemed to have admitted the allegations in the motion/petition. [Az.R.Juv.Ct. 65\(C\)\(6\)\(c\)](#), [Marianne N. v. Ariz. Dep't of Econ. Sec., 243 Ariz. 53, 401 P.3d 1002 \(2017\)](#)
 - b. The hearings may go forward in their absence and may result in the termination of their parental rights, even if the proceeding for which there was a failure to appear was not noticed for testimony or the taking of evidence. [Adrian E. v. Ariz. Dep't of Econ. Sec., 215 Ariz. 96, 101, ¶ 14, 158 P.3d 225, 230 \(App. 2007\)](#)
10. Make specific finding that parent was advised of consequences of failure to appear. [Az.R.Juv.Ct. 65\(D\)\(3\)](#)
11. Inquire whether DCS has made reasonable efforts to place siblings together or establish a plan for frequent visitation between siblings, unless frequent visitation or ongoing contact between siblings is contrary to the children's safety or well-being.
12. Address the need, if any, for UCCJEA jurisdictional findings.

IF PARENT ADMITS OR DOES NOT CONTEST:

1. Advise parent of trial rights.
2. The Court may read and/or provide a copy of Form 3 to the respondent.

3. Advise parent of consequences of admission or a decision not to contest.
4. Determine whether parent understands their rights and whether their admission/no contest was entered knowingly, intelligently, and voluntarily? [Az.R.Juv.Ct. 66\(D\)\(1\)](#)
5. Take evidence or set an evidentiary hearing regarding grounds for termination: e.g., testimony of movant/petitioner or case manager, admit social study. [ARS §8-533](#),
6. Take testimony and make findings concerning best interests of the children.
7. Determine whether a factual basis exists to support the termination of parental rights and make findings and enter orders. [Az.R.Juv.Ct. 66\(D\)\(1\)](#), [Az.R.Juv.Ct. 66\(F\)](#)

IF PARENT DOES NOT APPEAR:

1. Determine whether the parent was properly served and, by failing to appear without good cause shown, that they have waived their legal rights. The Court may find that the parent is deemed to have admitted the allegations of the motion/petition. [Az.R.Juv.Ct. 65\(C\)\(6\)\(c\)](#)

NOTE: The failure to appear waiver has been interpreted by Divisions One and Two of the Arizona Court of Appeals and the Arizona Supreme Court.

2. If not waived, admit the social study into evidence. Take testimony from the movant/petitioner or case manager (and the qualified expert witness in ICWA cases) or set an evidentiary hearing.
3. Make findings, including the birth date for each child and parent, and enter orders.

FINDINGS (non-ICWA cases) [Az.R.Juv.Ct. 66\(C\),\(F\)](#)

Whether arising from an admission/no contest or a failure to appear, determine the following:

1. The minor was a resident of the State of Arizona at the time the motion/petition was filed, and this Court has jurisdiction.
2. The parent was properly served with notice of these proceedings.
3. The grounds for termination have been proven by clear and convincing evidence.
4. The movant/petitioner has proven by a preponderance of the evidence that the termination is in the minor's best interest.

FINDINGS (ICWA CASES) [Az.R.Juv.Ct. 66\(F\)\(2\)\(e\)](#)

Whether arising from a parent's admission, no contest, or failure to appear:

1. Make findings pursuant to non-ICWA cases above.
2. Determine whether notice to the Tribe has been given and the position of the Tribe.
3. Determine whether the movant/petitioner has proven that:
 - a. By clear and convincing evidence, active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were unsuccessful. [25 USC §1912](#), [Az.R.Juv.Ct. 66\(C\)](#)
 - b. By evidence beyond a reasonable doubt, including testimony from a qualified expert witness, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
 - c. By clear and convincing evidence that the child's placement is in accordance with the placement preferences defined in [25 USC §1915](#) or there is good cause to deviate from the preferences.

ORDERS:

1. Terminate parental rights of parent as to the minor. In the written order, include dates of birth for each child and each parent.
2. Appoint a guardian for the child or appoint a guardian for the child and vest legal custody in another person or authorized agency. Enter orders for financial support of the child. [Az.R.Juv.Ct. 66\(F\)\(2\)](#), [ARS §8-538\(D\)](#), [ARS §8-539](#)
3. Enter other necessary orders in the best interest of the child. [ARS §8-538\(D\)](#)

NOTE: In cases where there is a pending dependency, set or reaffirm the Review Hearing date. [Az.R.Juv.Ct. 66\(F\)\(2\)\(d\)](#)

4. If movant/petitioner fails to establish grounds or best interest, dismiss motion/petition and order that the parties submit a revised case plan. [Az.R.Juv.Ct. 66\(F\)\(3\)](#)

SEVERANCE TRIAL (MOTION OR PETITION)

Source: [25 USC §1912](#), [ARS §8-531](#), [ARS §8-863](#), [Az.R.Juv.Ct. 66\(C\)](#)

CALL THE CASE:

1. Identify the case number, case name, and the nature of the hearing.
2. Inform parties that this is the time and date set for the Initial In-Home Intervention Hearing. These hearings are presumptively open. They can be closed for good cause shown. By being present you are subjecting yourself to the jurisdiction of the court and you are not to reveal any identifying information concerning this matter, which would include not posting anything on social media regarding the matter.
3. Identify those present. If a parent does not appear, refer to the failure to appear section above.

DETERMINE IF PARTIES ARE READY TO PROCEED:

1. Hear any preliminary motions.
2. Determine if a party invokes [Az.R.Ev.615](#):
 - a. Have counsel identify all witnesses to the clerk.
 - b. Have the clerk swear all witnesses.
 - c. Identify those persons who may remain in the courtroom.
 - d. Admonish the witnesses: "The rule excluding witnesses has been invoked. This means that you are to remain outside the courtroom until you are called to testify. It also means that you are not to discuss the case or your testimony with anyone except the attorneys until the proceeding has concluded."

PRESENTATION OF THE CASE:

1. Hear opening statements.
2. Hear the movant/petitioner's case.
3. In ICWA cases, hear qualified expert testimony. [25 USC §1912\(e\)](#)
4. Hear evidence presented on behalf of the child, if any.
5. Hear evidence presented on behalf of the parent.
6. Hear rebuttal testimony, if any.
7. Hear closing arguments.

FINDINGS (non-ICWA cases):

Determine whether movant/petitioner has proven, by clear and convincing evidence, based upon testimony and social study, the following:

1. The minor was a resident of the State of Arizona at the time the motion/petition was filed, and this Court has jurisdiction.
2. The parent was properly served with notice of these proceedings.
3. Grounds for termination have been proven by clear and convincing evidence. You must make specific findings of fact.
4. Determine whether movant/petitioner has proven, by a preponderance of the evidence, based upon testimony and the social study, that termination of parental rights would be in the best interests of the minor. Determine whether movant/petitioner has proven, by a preponderance of the evidence, based upon testimony and social study, that termination of parental rights would be in the best interests of the minor. See “Best Interests” below.
5. Determine whether DCS has made reasonable efforts to place siblings together or establish a plan for frequent visitation between siblings unless frequent visitation or ongoing contact between siblings is contrary to the children’s safety or well-being.
6. Dismiss motion/petition if movant/petitioner failed to establish grounds or best interests. Order that the parties submit a revised case plan. [Az.R.Juv.Ct. 66\(F\)\(3\)](#)

FINDINGS [ICWA CASES]:

1. Determine whether movant/petitioner has proven the alleged grounds, by clear and convincing evidence, based upon testimony and social study, as well as all of the above non-ICWA findings. See “Grounds” below.
2. Determine whether notice to the Tribe has been given.
3. Determine whether movant/petitioner has proven beyond a reasonable doubt, through testimony of a qualified expert witness that:
 - a. Active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts were unsuccessful. [25 USC §1912](#)
 - b. Continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.
4. Determine whether placement is in accordance with placement preferences or whether there is good cause to deviate from placement preferences. [25 USC §1915](#)

5. If movant/petitioner failed to establish grounds, best interests, or the ICWA required findings, dismiss the motion/petition and order that the parties submit a revised case plan. [Az.R.Juv.Ct. 66\(F\)\(3\)](#)

GROUNDINGS:

The motion/petition may allege multiple grounds for termination of rights. The trial court should address each ground, even if the first ground considered for termination is proven. Specific findings of fact are required (critical for appeal purposes).

1. Abandonment [ARS §8-533\(B\)\(1\)](#)
 - a. *Matter of Appeal in Pima County Juvenile Severance Action No. S-114487*, 179 Ariz. 86, 96, 876 P.2d. 1121, 1131(1994)
 - b. *Michael J. v Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 995 P.2d 682 (2000)
 - c. *Kenneth B. v. Tina B.*, 226 Ariz. 33, 37 ¶ 18, 243 P.3d 636, 640 (App. 2010)
 - d. *Calvin B. v. Brittany B.*, 232 Ariz. 292, 304 P.3d 1115 (App. 2013)
2. Abuse or Neglect [ARS §8-533\(B\)\(2\)](#)
 - a. *E.R. v. Dep't of Child Safety*, 237 Ariz. 56, 59 ¶ 11, 344 P.3d 842, 845 (App. 2015)
 - b. *Tina T. v Dep't of Child Safety*, 236 Ariz. 295, 299, 339 P.3d 1040, 1045 (App. 2014)
 - c. *Sandra R. v. Dep't of Child Safety*, 248 Ariz. 224 (2020) (when termination is based on an allegation of a parent's abuse or neglect of a child other than the child at issue, the juvenile court must determine by clear and convincing evidence as part of the ground for termination that the non-abused child is also at risk of harm)
3. Prolonged Substance Abuse [ARS §8-533\(B\)\(3\)](#)
 - a. Relevant Factors
 - i. History of chronic substance abuse
 - ii. Inability to discharge parental responsibilities
 - iii. Reasonable belief that chronic drug abuse will continue
 - iv. The Department made reasonable efforts to reunify the family or such efforts would have been futile
 - b. Relevant Case law
 - i. *Raymond F. v. Ariz. Dep't of Econ. Sec.*, 224 Ariz. 373, 231 P.3d 377 (App. 2010)
 - ii. *Jennifer S. v Dep't of Child Safety*, 240 Ariz. 282, 287, 378 P.3d 725, 730 (App/ 2016)
4. Mental Illness or Deficiency [ARS §8-533\(B\)\(4\)](#)
 - a. *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, 192, 971 P.2d 1046, 1053 (App. 1999)
 - b. *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221 Ariz. 92, 95 ¶ 11, 210 P.3d 1263, 1266 (App. 2009)

- c. *Matter of the Appeal of Maricopa County Juvenile Action No JS-5209 and JS-4963*, 143 Ariz. 178, 184, 692 P.2d 1027, 1033 (App. 1984)
 - d. *Matter of the Appeal in Pima County Juvenile Action No S-111*, 25 Ariz.App. 380, 543 P.2d 809 (1975).
 - e. *Matter of the Appeal of Maricopa County Juvenile Action No JS-5894*, 145 Ariz. 405, 701 P.2d 1213 (App. 1985).
5. Length of Felony Incarceration [ARS §8-533\(B\)\(4\)](#)
- a. *Michael J. v Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 995 P.2d 687 (2000)
 - b. *Christy C. v Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, 450, 153 P.3d 1074, 1079 (App. 2007)
 - c. *Jeffrey P. v Dep' of Child Safety*, 239 Ariz. 212, 368 P.3d 312 (App. 2016)
 - d. *Jesus M. v Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, 281, 53 P.3d 203, 206 (App. 2002)
 - e. *Ariz. Dep't of Econ. Sec. v Rocky J.*, 234 Ariz. 437, 323 P.3d 720 (App. 2014)
6. Nature of Felony – Unfitness [ARS §8-533\(B\)\(4\)](#)
- a. *Michael J. v Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, 995 P.2d 687 (2000)
 - b. *In re Juvenile No. J-2255*, 126 Ariz. 144, 146-47, 613 P.2d 304, 306-07 (App. 1980)
7. Failure to file Paternity Action [ARS §8-533\(B\)\(5\)](#)
8. Failure to File Notice of Paternity Claim [ARS §8-533\(B\)\(6\)](#), [ARS §8-106.01](#)
- a. *Marco C. v Sean C.*, 218 Ariz. 216, 181 P.3d 1137 (App. 2008)
 - b. *David C. v Alexis S.*, 240 Ariz. 53, 375 P.3d 945 (2016)
 - c. *Frank R. v Mother Goose Adoptions*, 243 Ariz. 111, 402 P.3d 996 (2017)
9. Consent [ARS §8-533\(B\)\(7\)](#)
- NOTE: For ICWA cases, consent must be recorded in open court and court must certify that parent understood the consent or that it was explained to the parent in a language that he/she understands. [25 USC §1913\(a\)](#)
10. Out of Home Placement [ARS §8-533\(B\)\(8\)](#)
- a. Based upon parent's substantial neglect or willful refusal to remediate:
 - i. Six-month threshold for out-of-home placement for children under three years of age.
 - ii. Nine-month threshold for out-of-home placement for any aged child.
 - iii. *Marina P. v Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, 329, 152 P.3d 1209, 1212 (App. 2007)
 - iv. *Jordan C. v Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 219 P.3d 296 (App. 2009)
 - v. *Donald W. v. Department of Child Safety*, 247 Ariz. 9, 444 P.3d 258 (App. 2019)

- b. Based upon parent's inability to remediate:
 - i. Fifteen months threshold for out-of-home placement for any aged child
 - ii. *Jordan C. v Ariz. Dep't of Econ. Sec.*, 223 Ariz. 86, 219 P.3d 296 (App. 2009)
 - iii. *Matter of Appeal in Maricopa County Juvenile Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994)
 - iv. *Donald W. v. Department of Child Safety*, 247 Ariz. 9, 444 P.3d 258 (App. 2019)

11. Parent Identity Unknown [ARS §8-533\(B\)\(9\)](#)

12. Prior Termination of Parental Rights [ARS §8-533\(B\)\(10\)](#)

- a. "Same Cause" under *Mary Lou C. v Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, 83 P.3d 43 (App. 2004)
- b. "Within preceding two years" – *Tanya K. v. Dep't of Child Safety*, 240 Ariz. 154 (App. 2016)

13. Recurrent Removal [ARS §8-533\(B\)\(10\)](#), [ARS §8-533\(D\)](#)

BEST INTERESTS FINDING

If grounds for termination have been established, the court must determine whether termination of parental rights is in the best interests of the child. Specific factual findings are required. [ARS §8-533\(A\)](#), [ARS §8-538\(C\)](#)

1. *In re Appeal in Maricopa County Juvenile Action No. JS-500274*, 167 Ariz. 1, 4, 804 P.2d 730, 733 (1990)
2. *Mario G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 282, ¶ 26, 257 P.3d 1162 (App. 2011)
3. *James S. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 351, ¶ 18, 972 P.2d 684 (App. 1998)
4. *Ariz. Dep't of Econ. Sec. v Oscar O.*, 209 Ariz. 332, 334, 100 P.3d 943, 945 (App. 2004)
5. *In re Maricopa County Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988)
6. *In re Maricopa County Juv. Action No. JS-6831*, 155 Ariz. 556, 559, 748 P.2d 785, 788 (App. 1988)
7. *Maricopa County. Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994)

8. *Bennigno R. v. Ariz. Dep't of Econ. Sec.*, 233 Ariz. 345, 350, ¶23, 312 P.3d 861, 866 (App. 2013)
9. *Dominique M. v. Ariz. Dep't of Child Safety*, 240 Ariz. 96, 98 (App. 2016)
10. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146 (2018)
11. *A.R. v. Dep't of Child Safety*, 246 Ariz. 402, 406-07 (App. 2019)

ORDERS:

1. Make at least one specific finding of fact for each conclusion of law.
2. Terminate parental rights of parent as to the child. Alternatively, deny the motion/dismiss the petition.
3. If granted, appoint guardian, vest legal custody and establish financial responsibility for the child. [ARS §8-538\(D\)](#), [ARS §8-539](#), [Az.R.Juv.Ct. 66\(F\)\(2\)](#)
4. If there is a pending dependency case, set or affirm the Review Hearing. [Az.R.Juv.Ct. 66\(F\)\(2\)\(d\)](#)
5. Enter other necessary orders in the best interest of the child. [ARS §8-538](#)

EXTENDED FOSTER CARE

[ARS § 8-521.02](#) authorizes the extended foster care program for qualified young adults who have been in DCS custody when the young adult turned eighteen years of age, who is not twenty-one years of age and who is in school, working or disabled. Within 120 days after DCS submits a young adult's agreement to participate in extended foster care, the court must make a finding whether participation in the extended foster care program is in the young adult's best interest.