

## Permanency

The purpose of this training module is to give advocates a better understanding of the placement options that may be available to children who have been permanently removed from their parents. The training module is intended to be informational and should not be used for case planning, nor should it be used to replace information that can be attained in case planning meetings and discussions with Child Protective Services caseworkers. To learn specific information about the options in your area or for a case you are associated with, contact a CASA coordinator, FCRB program specialist, or CPS caseworker.

### Adoption

According to a report from the Arizona Department of Economic Security (DES)<sup>1</sup> as of September 30, 2007 there were 9,701 children in out-of-home care in Arizona. The number of children placed with relatives equaled 3,030. Two thousand one hundred eighty-six (2,186) children had a case plan goal of adoption. There were 2,186 children placed in an adoptive home with a case plan goal of "adoption" and 4,907 children had a case plan goal to "return to family".

As an advocate for children in out-of-home placement, you may find yourself involved in an adoption process. You may also encounter questions from foster parents who are interested in pursuing adoption of their foster child(ren).

### Criteria

To become either a foster or adoptive parent in the state of Arizona, here are some criteria to know.

- You can be single, married, divorced, or widowed.
- You can rent or own your residence, and children may share bedrooms.
- You must be over the age of 18.
- You do not need to be wealthy! It will cost you little or no money to apply to become a foster or adoptive parent.
- A home inspection and family assessment, including fingerprinting and a physician's statement, must be completed.
- You must be economically stable, but you do not need to have a full time job.

### Adoption Certification

To receive certification for adoption, whether for a specific child or for a child unknown to the applicant, an individual must complete and submit a formal application for adoption, along with a certification investigation and report. The applicant will incur a fee of \$800 (unless waived).

Arizona Revised Statutes 8-105 (A) requires an individual to be certified by the court as acceptable to adopt a child before filing a petition to adopt a child. An adoption certification is the judicial determination that a prospective adoptive parent is a fit and proper person to adopt. This application process includes submission of:

1. A completed Family and Home Application (DES Form ACY-1004AFORNA) which includes a financial statement.
2. A request for licensing/employment information, (DES Form J-709) for each adult member of the household.

3. A physician's report of Foster/Adoptive/Day Care Parent/Adult Caretaker (DES Form FW-009) for each parent (refer to ARS § 8-105).
4. FBI Fingerprint Clearance (DES Form FD-258).
5. Requests for waivers or deferments of certification investigation and report fees must occur prior to the filing of the formal application to adopt. This may be done by completing the "Application for Waiver of Adoption Certification Fee" (DES Form AN-058), or the "Application for Deferment of Adoption Certification Fee"(DES Form AN-060).

Once you have obtained the certification, CPS will review the application and make a recommendation in the case plan and to the court. Court certification remains in effect for 18 months and can be extended for additional one-year periods.

The DES's priorities for accepting and processing certification applicants and for providing services are as follows (in order of priority):

1. Applicants seeking to adopt a particular adoptable child with special needs.
2. Applicants who wish to adopt a child with special needs.
3. Applicants who have indicated they would consider adopting a child with special needs.
4. Applicants for whom the court has ordered the department to do a certification investigation and report.
5. All other applicants

To be considered a special needs child, the child must have one or more of the following factors, which may impede the adoption of the child:

- Physical, mental, or developmental disability
- Emotional disturbance
- High risk of physical or mental disease
- High risk of developmental disability
- Age of six or more years at the time of application for adoption subsidy
- Sibling relationship
- Racial or ethnic factors
- High risk of severe emotional disturbance if removed from the care of foster parents or relatives [ARS § 8-141 (A)(14)]

### **Adoption Placement**

The Department of Economic Security will make efforts to identify and approve an adoptive family for a child upon filing a petition or motion to terminate parental rights. Following are the guidelines that DES must follow in adoption placement.

CPS Policy for order of placement for children who are not Native American:

1. Relatives
2. Significant persons, including foster parents
3. Non-relatives without a prior relationship to the child

For children who are Native American, the order of placement preference is determined in accordance with the requirements of the Indian Child Welfare Act (ICWA):

1. A member of the child's extended family
2. Other members of the child's tribe
3. Other Native American families

The above order of placement preference must be followed, except under the following circumstances:

- The child's parents have relinquished their parental rights and have requested anonymity. In this case, preference shall be given to placement with other Native American families.
- The child's tribe sets a different order of preference.
- The tribe chooses not to intervene in the case and the state court finds that there is good cause to change the order of placement preference.

A child is eligible for foster-adoptive placement if:

1. His or her permanent plan is adoption.
2. No relatives or significant persons can meet his/her needs for an adoptive placement because; they are unwilling or unavailable to do so, they have been denied certification, or they have been assessed as "unable to meet the needs of the child."

### **Adoption Hearing**

The purpose of the adoption hearing is to finalize the adoption, or grant permanent guardianship or permanent custody to the child's new family. This concludes the temporary nature of the prior relationship between the child, the foster family, the relative, the guardian, or the adopting family.

This hearing legally executes closure and concludes the decision-making and monitoring roles of the court. The new parents are assuming the permanent role of parental care, custody, and control of the child. They are making a commitment to the child protection system, the court, and the child that they will provide for the child's safety, health, education, and well being.

If any party should not consent to the final order, the contestant to the adoption hearing order should be filed at least 30 days in advance of the final hearing. If this occurs, the courts prior to the final hearing will schedule settlement conferences.

The CASA and caseworker will submit reports to the court which should confirm that all issues necessary to conclude the case are completed. The caseworker will include a copy of the signed adoption assistance agreement with the report.

After reviewing the reports and questioning the necessary persons, the judge will formalize findings and conclusions that will legally confirm the permanent placement of the child and formalize case closure with the CASA and caseworker.

### **Adoption Subsidies**

For many special needs children, adoption assistance subsidies can make adoption feasible where it might otherwise not be possible. The Federal Adoption Assistance Program, established by the Adoption Assistance and Child Welfare Act of 1980, is an open-ended entitlement program which provides the following:

1. Medical coverage
2. Special Services Payments
3. Maintenance payment
4. Reimbursement of nonrecurring adoption expenses

### **Eligibility**

To be eligible for the Federal IV-E subsidy program, children must meet each of the following characteristics:

- A court has ordered that the child cannot or should not be returned to the birth family.
- The child has special needs, as determined by the state's definition of special needs.
- A "reasonable effort" has been made to place the child without a subsidy.

- The child must have been eligible for Supplemental Security Income (SSI) at the time of the adoption, or the child's birth family must have been receiving - or eligible to receive - Aid to Families with Dependent Children (AFDC).

### **Federal IV-E Program**

All adoption assistance agreements are to be individually negotiated based on the needs of the child and the specific circumstances of the adopting family. State agencies determine the amount of subsidy by the parents' circumstances and the needs of the child. The financial status of the adoptive parents is not a factor in determining the child's eligibility.

If the adoptive parents do not agree with the federally funded subsidy amount, they may appeal the decision by using the State's fair hearing and appeals process. Adoptive parents may also consult the Program Operations Division, U.S. Children's Bureau Administration on Children and Families, PO Box 1182, Washington D.C. 20201 or (202) 205-8671 for advice on an appeal for the IV-E Program.

### **State Subsidy**

The Adoption Subsidy Review Committee (ASRC) reviews requests for adoption subsidy and ensures compliance with federal and state statutes, rules, and regulations.

The ASRC consists of at least three employees of the State of Arizona who have expertise in adoption subsidy policy and procedure. Whenever possible, at least one member represents the Division of Developmental Disabilities. If the ASRC cannot reach consensus, the Administration on Children, Youth and Families (ACYF) Program Administrator shall make the final decision.

### **Foster Parents Applying for Adoption Subsidy**

For specific Arizona state rulings on the application process for adoption subsidy, please refer to the following Arizona Revised Statutes: ARS §§ 8-143 through 8-144.

### **Guardianship**

Title 8 of the Arizona Revised Statutes discusses permanent guardianship for children. A guardian can be appointed for a child if all of the following guidelines have been met and having a permanent guardian is in the child's best interests:

1. The child has been adjudicated a dependent child.
2. The child has been in the custody of the potential permanent guardian for at least nine months. This can be waived by the court.
3. Reasonable efforts to reunite the child and parents have been made by the division or agency which has care of the child. This may be waived if the parent is unwilling or unable to properly care for the child.
4. The chances for the child to be adopted are remote or terminating parental rights would not be in the child's best interests.

Anyone can be considered for appointment as a permanent guardian, including relatives and foster parents. Children 14 or older can even nominate someone they want to be their guardian. The court will give primary consideration to the individual who will best meet the child's physical, mental, and emotional needs. If the child is of Native American descent, the guidelines laid out in the Indian Child Welfare Act must also be followed insuring that tribal concerns are addressed.

It is important to note that permanent guardianship does not sever parental rights; it only removes the parents' legal custody of the child. This also does not affect a child's inheritance rights from the parents. The court may also add provisions to the guardianship requiring visitation for the natural parents, siblings, or other relatives depending on what is in the child's best interests.

A permanent guardianship can be revoked. The child, one of the child's parents, or any party who was involved in the dependency proceeding can file a petition with the court to revoke the permanent guardianship. There must be a significant change in the circumstances of the dependency in order to file such a petition. This can include the parent being able and willing to properly care for the child or the permanent guardian not being able to properly care for the child. Regardless of the circumstances, the court will appoint a guardian ad litem for the child while the revocation petition proceeds in court. The guardianship will be revoked only if there is clear and convincing evidence that circumstances have changed and that the revocation will be in the best interest of the child.

### **Guardian Responsibilities**

The responsibilities of a permanent guardian are similar to those of a custodial parent. A guardian needs to care for the child, make sure the child receives an education, and support the child's development as he or she matures. This also means looking out for the child's possessions and taking an active part in the child's life. The extent of a guardian's responsibilities depends mostly on what the judge writes in the court order appointing the guardian. The responsibilities can vary some, but the items presented in this paragraph will hold for any guardian.

Depending on what the court order states, guardians may also have authority to approve medical treatment for their child. This can include other forms of professional care and special education. The guardian has the authority to enroll the child in school and determine where the child will reside. The guardian can even give consent for the child to be married or adopted. The extent of some of these duties may be limited by the judge, but they are within the power of the court to grant.

If a child commits a crime that damages property or injures a person, the child's guardian is liable for the damages caused. Arizona law sets a limit of \$10,000 additional liability per wrongful act. In the case of shoplifting, the maximum additional liability is only \$100. It does not matter if the guardian had no knowledge of what the child was going to do, the guardian is still held financially responsible.

### **Guardian Subsidy**

Guardians can also be given authority to oversee a child's finances and may be entitled to reasonable compensation for room, board, and the child's clothing from biological parents or the state. The Arizona Department of Economic Security (DES) established an ongoing program of subsidized permanent guardianship. There are several items that a guardian must do to qualify to receive these subsidies.

One of the tasks is to apply for all benefits the child can receive from other state and federal programs first. Then DES will determine what the appropriate subsidy is and reduce that amount by how much is being received from the other programs. DES will conduct annual reviews to determine if the subsidy amount needs to be changed and whether the guardian is still eligible to receive the subsidy.

A permanent guardian who is receiving a DES subsidy must cooperate with DES during the annual reviews. A guardian must also notify DES in writing if other federal or state benefits change, the guardian moves, or something else changes that would discontinue the subsidy. Discontinuation can result from the permanent guardianship being terminated, the child's death, moving out of the guardian's home, or the child turning 18. The subsidy can be extended until the child turns 22 if they have not received a high school diploma or certificate of equivalency.

### **Probate Guardianship (Title 14)**

Title 14 is primarily used for appointing a guardian through a person's will. It can also be used to appoint a guardian for an unmarried child if all parental rights of custody have been terminated or suspended by circumstances or prior court order. Aside from getting to know the child and learning what the needs are, a guardian appointed under Title 14 also keeps track of any assets the child has. The guardian manages these assets, taking care of any support or education the child may need. Excess money is then saved or invested for the child's future needs.

Anyone can petition the court to have a guardian appointed for a child. When the court sets a hearing date, the petitioner must send notice to the child involved in the case, the child's principal caregiver, and any living parent of the child. Prior to the hearing the petition must present proof to the court of sending notice. The court will still consider what is in the best interests of the child before determining if appointing a guardian is necessary. A child who is 14 years of age or older can also tell the court whether he or she wants a guardian and, if so, who would be preferred to be the guardian. A child can also petition the court to have a guardian removed. The court will take into account what is in the child's best interest before revoking a guardianship.

## **Independent Living**

Independent living can be established for children who are in long-term foster care and age 16 or older. The independent living program has four components.

- Independent living skills training
- Mentorship
- Independent living subsidy
- Transitional independent living program

When it has been determined that a child has no other possible permanency options, Child Protective Services will begin the procedure for transitioning a child into an independent life. This begins between the ages of 14 and 15. CPS will assess the child's health, hygiene, housekeeping, and interpersonal and safety skills. Once a child has reached the age of 16 CPS will evaluate the child's skills at education planning, finding and keeping employment, as well as knowledge of transportation, community resources, and dietary awareness. In areas where the child has little knowledge or poor skills, CPS will provide services or direct the child to state and federal programs that will provide the services.

Activities can also be arranged to help the child develop interpersonal relationships, daily living skills, understanding legal rights and responsibilities, and how to use community systems and services. A community advisor may also be provided to help the child make the difficult transition into independent living. The advisor can help with more of the community and life skills development.

In order for a child to take part in the Independent Living Subsidy program, they must meet all of the following requirements.

- In the custody of CPS or a licensed child welfare agency
- Adjudicated dependent or involved in the Transitional Independent Living Program
- At least 17 years old
- Employed or a full-time student

These requirements are only to determine if the child is eligible for the program. It is up to CPS staff to determine if the child should participate in the program. To pass CPS standards a child needs to show the ability to assume responsibility and work toward self-sufficiency. This can be demonstrated by how well the child can set goals and complete tasks, make decisions, managing finances, and demonstrates a willingness to follow program requirements.

If unable demonstrate the ability to be self-sufficient or has great difficulty handling independent living, the child will be returned to an out-of-home placement. The child can also request to be returned to an out-of-home placement after entering the independent living program.

The Transitional Independent Living Program allow youths who came through the foster care system a small extension to help them prepare for adulthood. In order to qualify, the youth must be in an approved placement program on their 18th birthday. The youth must also demonstrate a willingness to achieve self-sufficiency by participating in educational, vocational, employment, or other transitional support services. If approved for the program, the youth will receive the following services in addition to the services listed for the independent living program:

- Cost of care
- Allowance
- Medical and dental services
- Transportation
- Counseling

Participation in the program ends when the youth reaches 21 years of age, voluntarily leaves the program, or does not meet the requirements of the program.

An important note: state agencies cannot sign for a driver's permit or a driver's license. Foster parents, parents, or guardians may sign, but CPS cannot accept responsibility for the youth's actions.

### **Long-term Foster Care**

Long-term foster care is only intended to be an option when adoption and guardianship are not in the best interests of a child under 16 years old, and the child is expected to remain in out-of-home care until they turn 18. To allow long-term foster care, CPS, the potential foster family, and the child need to formalize an agreement to support the continuity and stability of the foster home.

When a long-term foster provider has been selected, CPS must have a compelling reason why the foster family will not consider adoption or guardianship of the child but placement with the family is still in the child's best interest. This also needs to be accompanied by reasons why adoption or guardianship are not in the child's best interest. If the child is over 12 years old and is unwilling to consent to an adoption, be sure that the benefits of adoption and guardianship have been explained to the child.

<sup>1</sup>"Child Welfare Reporting Requirements Semi-Annual Report For the Period of April 1, 2007 Through September 30, 2007", Arizona Department of Economic Security (DES).