

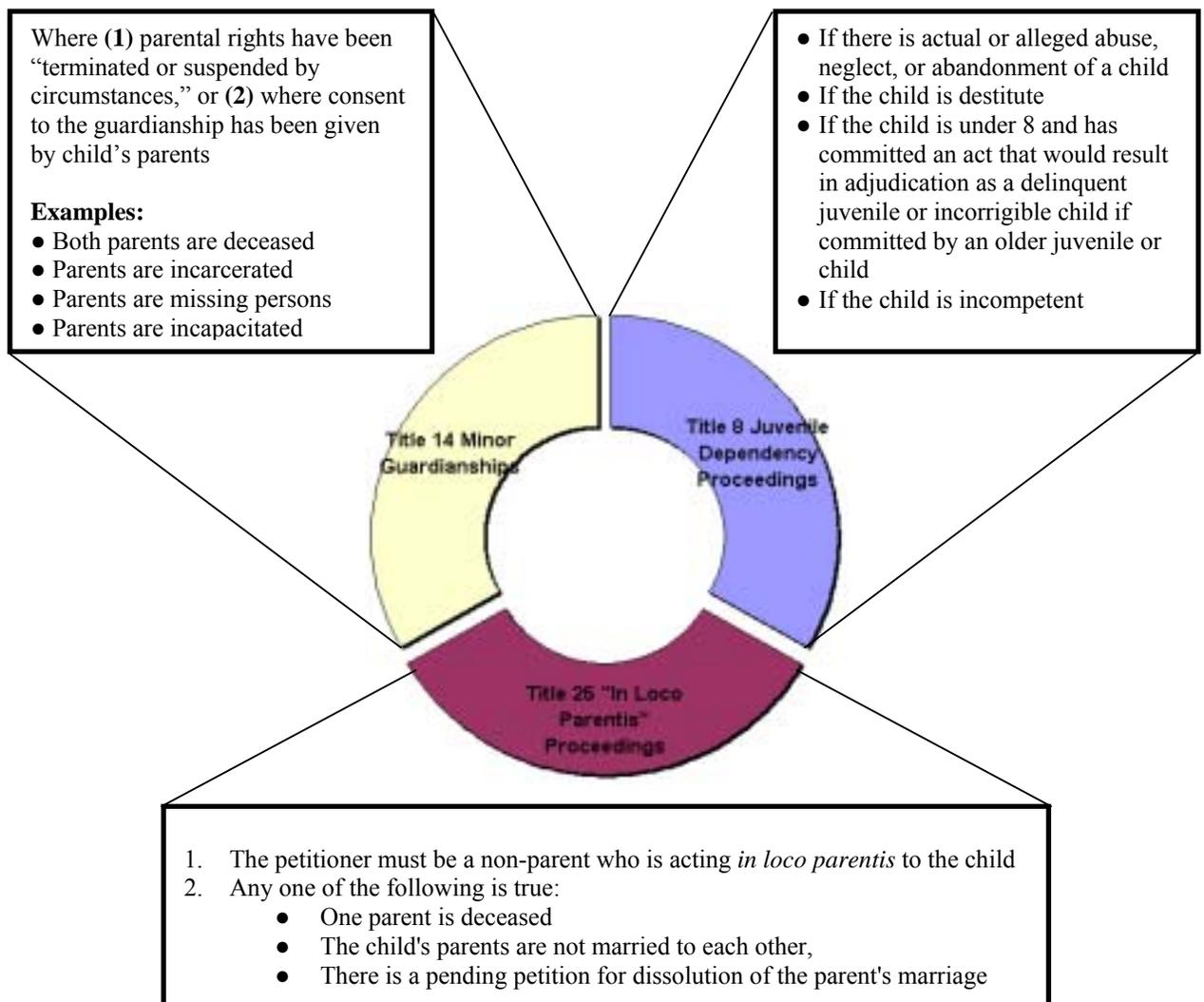
1. Introduction

The court system is here to provide fair, orderly, and peaceable resolutions of disputes. The court does not take sides, nor does it advocate for an individual person. The following information is NOT all you need to know about Minor Guardianships, Juvenile Dependencies, and Non-Parent Custody. If there is a conflict between the information contained in this document and any court rule, statute, or case law, then you must comply with the court rule, statute, or case law.

This booklet provides information about the following:

1. Title 14 Minor Guardianships
2. Title 8 Juvenile Dependency Proceedings
3. Title 25 Non-parent custody Proceedings

Each of these is a legal process in which a non-parent can obtain custody of, and legal authority over, a child. It is very important to understand the differences between these three types of legal processes. The welfare of the child you are seeking to protect may be seriously affected if you fail to follow the law, if you initiate proceedings in the wrong court, or if you fail to act when the law requires you to do so.



a. What this booklet does not address

1. This booklet does not include information about divorce, the visitation rights of grandparents, parental rights to custody, or child support. The following publications d may be helpful:
 - *Self Service Guide for Divorce Cases* (available from the Pima County Law Library Self-Service Center, and online at <http://www.supreme.state.az.us/dr/Pdf/prose/proseman.pdf>)
2. This booklet does not explain the procedural steps you must take to initiate any of these proceedings. The following publications may be helpful:
 - *Representing Yourself as Guardian / Conservator of a Minor* (available for download from the Probate Division of the Superior Court at www.sc.pima.gov).
 - *Important Information You Need to Know When Filing a Dependency* (available from Juvenile Court, \$10).

Rely on this information at your own risk.

If you have questions or concerns about legal issues, hire an attorney.

While there are important differences between Minor Guardianship Proceedings, Juvenile Dependency Proceedings, and Non-Parent Custody Proceedings, there are also a number of things that these proceedings have in common:

1. They are all proceedings that take place in court, and are heard by a Judge, Court Commissioner, or Hearing Officer
2. The orders made by the court are legally binding on every party to the case
3. The court will often look to the child's best interest when making its decision

b. Arizona Law and Children

In Arizona, a child is the legitimate child of his or her natural parents. The rights of custody to a child are shared between a child's mother and a child's father. There is a strong presumption in favor of these rights. Parents also have a duty to support and maintain their children.

If the government wishes to terminate a parent's rights, the government must prove by *clear and convincing evidence* that the grounds for termination exist. To be clear and convincing, it must be highly probable that an event or fact is true. Clear and convincing is a higher standard than that used in ordinary civil cases where the standard of proof must be *more likely than not*, but lower than the *beyond a reasonable doubt* standard applied in criminal cases.

Depending on the type of hearing, certain persons or entities are entitled to notice of upcoming court hearings. If you have petitioned the court for an order, you must provide notice to those persons or entities.

c. Choosing which type of proceeding is appropriate

The court takes the welfare of minors very seriously. Choosing which proceeding to initiate is not a matter of how convenient the proceeding is for you, it is a matter of protecting the child's interests by following the law. For example, if a child is abused or neglected, a Title 14 Minor Guardianship proceeding is not appropriate. Such matters must be brought to the Juvenile Court for a Title 8 Dependency hearing and Child Protective Services must be involved. The fact that the juvenile court encourages reunification of parents and children; or the fact that C.P.S. may be involved, does not permit you to initiate alternative proceedings to obtain custody of a child. Similarly, if you have not acted *in loco parentis* to a child, then you cannot initiate a Title 25 proceeding.

In any situation where there is reason to believe that a child is abused, neglected, or abandoned, the Juvenile Court has exclusive jurisdiction over the case. Cases which begin as Title 14 Guardianships or Title 25 custody proceedings will be transferred to Juvenile Court if they involve abuse, neglect, or abandonment.

d. Considering the long term plan for the child.

Whether a child becomes the subject of a guardianship or a dependency, the parents and guardians/custodians should discuss and be aware of the long-term plans for the child. For example, Title 14 Guardianships that are based on parental consent will terminate (usually immediately) once parental consent is withdrawn by either parent. The length of time that a person has acted as a Title 14 Guardian does not change the fact that, the child will be returned to his or her parents. A Title 14 Guardian should consider more permanent proceedings in Title 8 or Title 25.

e. Temporary or Emergency proceedings

Choosing which proceeding to initiate is particularly important in emergency situations. Both Title 8 and Title 14 provide for emergency situations.

1. Title 14: Temporary Proceedings

A temporary Title 14 guardian may be appointed in certain limited circumstances. Title 14 permits a person to become guardian without giving notice. To become appointed you must file a Petition for Temporary Appointment of Guardian and you must contact the court to set a hearing date and time. The hearing usually occurs within 48 hours of your call to the court.

In order to obtain an emergency (also called temporary) appointment as Guardian or Conservator for a Minor, you **MUST** also petition for appointment of a permanent guardian.

The requirement that parental rights be suspended or terminated, however, does not change just because there is an emergency. For example, if both a child's parents are suddenly deceased, then the situation is an emergency because the child has no living parent, and a guardian must be appointed immediately. If, however, the potential emergency has arisen because of lack of planning or foresight on behalf of the parents or petitioning guardian, then the situation is most likely not an emergency. For example, if a parent takes an extended vacation in another state and wishes to have a relative appointed guardian, this is not an emergency.

Except under extraordinary circumstances, the court will not appoint a non blood-relative as temporary guardian of a minor.

2. **Title 8: Taking a Child into Temporary Custody**

Unlike Title 14 Guardianships, Juvenile “emergency” proceedings do not involve the immediate appointment of a guardian or an immediate award of custody.

The juvenile process is described in on pages 8 and 9.

As part of a juvenile court proceeding, a child may be taken into protective custody if such custody is clearly necessary to protect the child from suffering abuse or neglect. In addition a child may be taken into protective custody by a **peace officer** or **Child Protective Services worker** if either of the following is true:

1. The child is suffering or will imminently suffer abuse or neglect.
2. The child is suffering serious physical or emotional damage that can only be diagnosed by a medical doctor or psychologist.

3. **Title 25: Temporary Custody**

In extraordinary circumstances, an emergency hearing may be requested. Contact the office of the Judge or Commissioner assigned to the case.

2. Title 14 Guardianship proceedings

A Title 14 Guardian of a Minor is a person who is appointed by the probate division of the Superior Court to make decisions about the welfare of a **minor**. A guardian has the same powers and responsibilities of a custodial parent regarding the minor's support, care, and education. A guardian is not personally liable for the minor's expenses, and is not liable to third persons for acts of the minor. The guardian is responsible, however, for investigating and securing possible sources of income to which the minor may be entitled. Such sources may include, for example, social security benefits, inheritance, survivor benefits, or personal injury settlements. If there are such assets, then a **conservator** may need to be appointed.

The appointment of a guardian for a minor in probate court is based on either parental **consent** or the **termination** (or suspension) of parental rights. Such termination (or suspension) can occur either by "circumstances" or by Court Order. "Circumstances" may include, for example, the **death, disappearance, incarceration, military service, serious illness, or incapacity** of a parent or parents.

If you seek to become a guardian by consent, you must provide **parental consents from both parents** if both parents are living. If one parent is deceased, you must provide consent from the living parent. If a parent will not consent you still must provide them with the required notice. If you do not know where the parent lives then you must publish notice).

When consent is withdrawn, termination of the guardianship will occur without an investigation by the court into whether such termination is in the best interests of the child. If you have concerns about the minor's safety you must call Child Protective Services (1 800 SOS-CHILD) to report the matter.

The probate division of the Superior Court does not have jurisdiction to terminate parental rights of custody. Cases involving allegations of abuse, neglect, or unfit parenting against the minor's parents fall under the jurisdiction of the Juvenile Court. If you are attempting to obtain custody of a child in these circumstances, you must file a **Private Dependency Action** in the Juvenile Court. An information packet may be picked up at the Juvenile Court (address below).

Being appointed guardian is a very serious matter, and guardians are, at all times, under the jurisdiction of the court that appointed them. If you are uncertain about the duties and responsibilities of being a guardian, you should consult with an attorney.

The law requires a criminal background investigation prior to the appointment of a non blood-relative as guardian for a minor. The guardian will not be appointed until the results of the investigation have been forwarded to the Court by the Department of Public Safety.

When a parent withdraws consent, the guardianship must terminate. Probate Court does not have authority to terminate parental rights to custody of a minor child. If you object to the termination of the guardianship, you might have to file a Dependency Petition in Juvenile Court.

3. Title 8 Juvenile Dependency Proceedings

Juvenile Dependency Proceedings are proceedings in which the State of Arizona, or a private individual, seeks the assistance of the Juvenile Court to determine if a child is any of the following:

- (i) **In need of proper and effective parental care** and control and who has no parent or guardian, or one who has no parent or guardian willing to exercise or capable of exercising such care and control.
- (ii) **Destitute** or who is not provided with the **necessities or life**, including adequate food, clothing, shelter, or medical care, or whose home is unfit by reason of abuse, neglect, cruelty or depravity by a parent, a guardian, or any other person having custody or care of the child.
- (iii) **Under** the age of **eight** years and who is found to have **committed an action that would result in adjudication as a delinquent juvenile or incorrigible child** if committed by an older juvenile or child.
- (iv) **Incompetent** or not restorable to competency **and** who is alleged to have committed a serious offense as defined in 13-604.

Abandoned means that a parent has failed to provide reasonable support for the child, and has made only minimal efforts to support and communicate with the child.

Abuse means the infliction or allowing of

- a. physical injury, impairment of bodily function, or disfigurement, **or**
- b. serious emotional damage as evidenced by severe anxiety, depression, withdrawal, (or) untoward aggressive behavior

which has been diagnosed by a medical doctor **and** has been caused by the acts or omissions of a person having care and custody of the child.

Neglect or neglected means the inability or unwillingness of a parent, guardian or custodian of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child's health or welfare.

There are a number of stages in dependency proceedings which may include the following:

1. The temporary or permanent removal of a child from his or her home;
2. The temporary placement of a child with foster parents, a relative, or a care home;
3. A determination of the services that should be provided to the family to promote reunification;
4. Settlement conferences or mediation;
5. Court hearings to determine the following:
 - a. Whether the child should be returned to his or her family or placed in the care of a suitable individual or institution
 - b. A "case plan" for the child*
 - c. What permanent orders should be made regarding the child. These include permanent (Title 8) guardianship and adoption.

The steps involved in a dependency action?

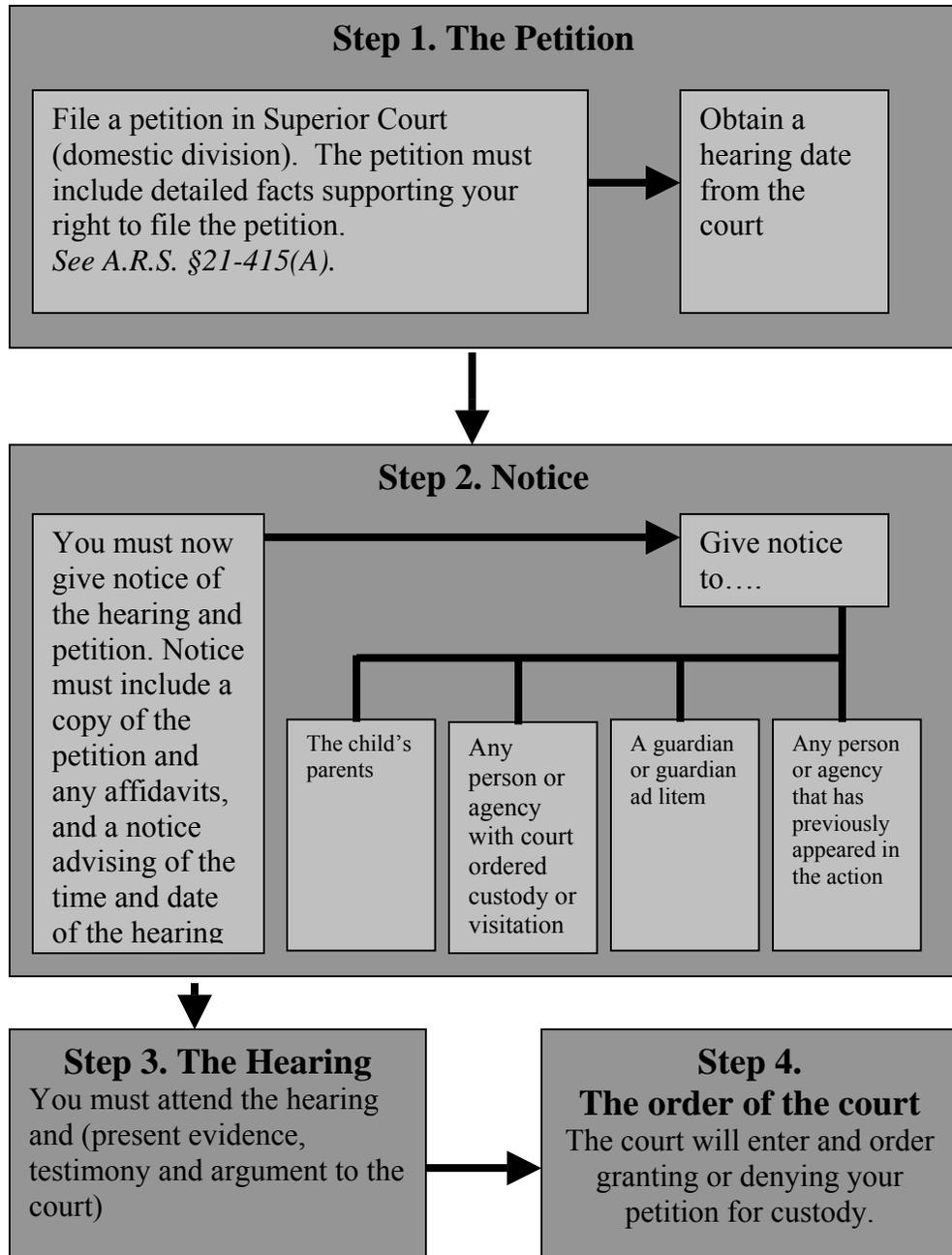
Preliminary Protective Hearing	To determine temporary custody, services and placement. This hearing also ensures that the rights of all parties are protected.
Settlement Conference	All parties to come together and discuss the allegations and try to reach an agreement.
Adjudication Hearing	To determine if any of the allegations in the petition are true and justify continued court intervention.
Disposition Hearing	To review of the long-term plan for the child, which includes placement, services and future reviews.
Review Hearing	To review of any progress in the case. If necessary, the Court will also make changes to the case plan and issue needed orders. These hearings are held every 45 to 180 days.
Permanency Planning Hearing	To determine a permanent plan for the child with respect to placement and parents. This hearing must be held within 12 months of the initial finding of dependency.
Termination of Parental Rights Hearing	To determine if the rights of the parent should be terminated and free the child for adoption.
Adoption Hearing	To place the child with an adoptive family for permanent care.

4. Title 25 Non-Parent Custody proceedings

A Title 25 Non-Parent Custody Proceeding is a proceeding in which a person who is not a parent, but has acted *in loco parentis*, may petition the court for custody of a child. You must allege, and the court must make *all* of the following findings.

- a. Both of the following are true:
 - (i) You have been treated as a parent by the child, **and**
 - (ii) You have formed a meaningful parental relationship with the child for a substantial period of time
- b. It would be significantly detrimental to the child to remain in the custody of either of the child's parents.
- c. Any of the following is true:
 - (i) one of the child's parents is deceased
 - (ii) the child's legal parents are not married to each other at the time the petition is filed, or
 - (iii) At the time the petition is filed, either parent has filed for divorce or legal separation
- d. The court must find *by clear and convincing evidence* that it is not in the child's best interests to award custody to the child's parents.

The steps involved in a Title 25 Non-parent Custody Proceeding



5. Determining which procedure to use

Type of Proceeding	Title 14 Probate Guardianship	Title 8 Juvenile Dependency	Title 25 Non-parent custody
In what court is the action commenced?	Superior Court, Probate Division, 110 W. Congress	Juvenile Court, 2225 E. Ajo Way	Superior Court, Domestic Division, 110 W. Congress
What statutes apply?	A.R.S. §14-5201 - §14-5212	A.R.S. § 8-821 - §8-873	A.R.S. § 25-415
What circumstances may give rise to the proceedings?	The consent of both parents to the appointment of a guardian; or the suspension or termination of parental rights either by circumstances or by court order	Actual or alleged <u>abuse, neglect, or abandonment</u> of a child; if child is <u>destitute</u> ; if the child is under 8 and has committed an act that would result in adjudication as a <u>delinquent</u> juvenile or incorrigible child if committed by an older juvenile or child; or child is incompetent	The petitioner must be a non-parent who is acting <i>in loco parentis</i> to the child; and either (1) one parent is deceased, (2) the child's parents are not married to each other, or (3) there is a pending petition for dissolution of the parent's marriage
Who may bring an action?	Any person interested in the welfare of the minor	Any interested person, or the State of Arizona (Department of Economic Security)	A person who has acted <i>in loco parentis</i> to the child
What does the petitioner need to prove in court in order for the petition to be granted?	Must show that the welfare and best interests of the minor will be served by the appointment, and that they are qualified to serve as guardian	The petitioner must show that the child is dependent	You must show, by <i>clear and convincing evidence</i> , that it is not in the child's best interest to award custody to either one or both of the child's parents
Must there be an existing relationship with the child?	No, non-blood relatives must be fingerprinted and pass background check	No	Yes, the petitioner must stand "in loco parentis" to the child
Is the consent of the parents required?	Yes, unless the parental rights have been terminated or suspended by circumstances	No	No
Is Child Protective Services automatically involved	No, however the judge may order C.P.S. to investigate a matter at any time	Yes	No, however the judge may order C.P.S. to investigate a matter at any time
Will an attorney be appointed for the child?	Not usually, though if the minor's interests are not adequately represented, the court may appoint an attorney to represent the child	Yes	Not usually, though if the minor's interests are not adequately represented, the court may appoint an attorney to represent the child
Will an attorney be appointed for the parents?	No	Yes	No
Who is entitled to notice of the proceedings	The child's parents; the child, if 14 years or older; any person who has had principal care and custody of the minor during the 60 days preceding the date of the petition	The child's parents or guardian	(1) The child's parents; (2) a person or agency that has (or claims to have) custody or visitation rights; (3) the child's guardian or <u>guardian ad litem</u> ; (4) any other person that has appeared in the action
Are there emergency procedures?	Yes	Yes	Yes, in extraordinary circumstances

6. Frequently asked questions

1. **What do I do if I suspect a child is being abused or neglected?** You must call the Child Protective Services Intake hotline at 1-800-330-1822.
2. **How do I gain custody of a child that is in an unhealthy home?** You should make a report with Child Protective Services. You may also file a private petition for custody. You can do this by visiting the Clerk of the Superior Court Juvenile Division at 2225 E. Ajo Way. You must fill out a form and return it to the Clerk's office and you will be notified when a hearing is set.
3. **Can a Title14 guardian be appointed in an emergency?** Yes but only if the emergency involves circumstances which have already terminated or suspended parental rights.

Examples:

- If both the child's parents died suddenly.
- One parent is dead and the other is incarcerated.
- If both parents are willing to **consent** to the appointment and **waive** the right to notice, the court may hear the matter on an expedited basis

The court will not appoint a guardian where the emergency involves the abuse, neglect, or abandonment of a child.

4. **Can I represent myself in court?** You have the right to represent yourself in court. The legal term for a person who represents him or her self is *in propria persona* or *pro se*. Such status is frequently referred to as "Pro Per." This right, however, does not permit you to represent the interests of other people in court if you are not an attorney. If you choose to represent yourself, you do so at your own risk. It is not the Judge's job to protect you from making mistakes; nor can the Judge give you advice about how to proceed with your case.
5. **What's the easiest way of getting custody of a child?** This is not a question that should be on your mind, and it is not a question that is appropriate for this publication to answer. The law requires either procedure depending on the circumstances of the case. In considering this question, the answer is not how convenient is the process is for the parents or petitioners, the answer is which process will protect the child from harm and/or further the interests of the child.