

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/12/15
A Bill

SENATE BILL 775

By: Senator Elliott
By: Representative Broadway

For An Act To Be Entitled

AN ACT TO CLARIFY THE RIGHTS OF PUTATIVE PARENTS IN PROCEEDINGS REGARDING JUVENILES WHO ARE THE SUBJECTS OF PUTATIVE PARENT CLAIMS; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE RIGHTS OF PUTATIVE PARENTS IN PROCEEDINGS REGARDING JUVENILES WHO ARE THE SUBJECTS OF PUTATIVE PARENT CLAIMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 9-27-311(c) and (d), concerning termination of parental rights, are amended to read as follows:

(c)(1) All persons named in subdivisions (a)(1)-(3) of this section ~~and subdivision (a)(6) of this section~~ shall be made defendants and served as required by this subchapter.

(2) However:

~~(A) In all paternity actions, the petitioner shall be required to name as defendants only the mother, the putative father, and the presumed legal father, if any; and~~

~~(B)(A)~~ In dependency-neglect petitions the juvenile shall not be named as a defendant but shall be named in the petition as a respondent and shall be served as a party defendant under § 9-27-312.

(B) In a dependency-neglect and termination of parental rights petition, the putative parent shall not be named as a party unless the



circuit court determines that the putative parent:

(i) Has established paternity and the circuit court enters an order establishing the putative parent as the legal parent and directs that the parent be added to the case as a party defendant; or

(ii) Has established significant contacts with the juvenile and the circuit court enters an order that putative parent rights have attached and the putative parent shall be added to the case as a party defendant.

(C) In a paternity action, the petitioner shall name as defendants only the mother, the putative father or the presumed legal father, if any.

(d)(1)(A) The Department of Human Services shall make diligent efforts identify putative parents in a dependency-neglect proceeding.

(B) Diligent efforts shall include without limitation checking the putative father registry.

(2)(A) The department shall provide a putative parent with notice under Rule 4 of the Arkansas Rules of Civil Procedure of a proceeding as soon as the putative parent is identified.

(B) The notice shall include information about:

(i) The method of establishing paternity;

(ii) The right of the putative parent to prove significant contacts; and

(iii) The right of the putative parent to be heard by the court.

(C) The department shall provide the notice to the court and the parties to the case.

~~(d)(1)~~(e)(1) The petition shall set forth the following in plain and concise words:

(A) The facts that, if proven, would bring the family or juvenile within the court's jurisdiction;

(B) The section of this subchapter upon which jurisdiction for the petition is based;

(C) The relief requested by the petitioner; and

(D) If a petition for delinquency proceedings, any and all sections of the criminal laws allegedly violated.

(2)(A) The petition shall be supported by an affidavit of facts.

(B) A supporting affidavit of facts shall not be required for delinquency, paternity, or termination of parental rights petitions.

SECTION 2. Arkansas Code § 9-27-316(h)(2) – (4), concerning the right to counsel in delinquency and family in need of services cases, are amended to read as follows:

(2) If at the permanency planning hearing or at any time the court establishes the goal of adoption and counsel has not yet been appointed for a parent, the court shall appoint counsel ~~in the permanency planning order~~ to represent the parent as provided by subdivision (h)(1)(D) of this section.

(3) Putative parents do not have a right to appointed counsel in dependency-neglect proceedings, except for termination of parental rights proceedings, and only if the court finds on the record that:

(A) ~~The court makes a finding on the record that~~ the putative parent is indigent;

(B) ~~The court finds that the~~ putative parent has established significant contacts with the juvenile so that putative rights attach;

(C) Due process requires appointment of counsel for a full and fair hearing for the putative parent in the termination hearing; and

(D) The putative parent requested counsel.

~~(4) If at the permanency planning hearing the court establishes the goal of adoption, the court shall determine if the putative parent has established significant contacts with the juvenile in order for the putative parent's rights to attach and shall appoint counsel if eligible as provided in subdivision (h)(3) of this section.~~

(4)(A)(i) A putative parent has the burden to prove significant contacts with the child, so that putative rights attach.

(ii) The putative parent shall request appointed counsel for a termination of parental rights hearing if the goal of the case changes to adoption with a termination of parental rights petition to be filed.

(B) The court shall make the findings required in subdivision (h)(3) of this section to determine whether a putative parent is entitled to appointed counsel at the termination hearing.

(C) If the court determines that the putative parent is entitled to appointed counsel under subdivision (h)(3) of this section, the termination petition shall include the putative parent.

(ii) The court shall appoint counsel subject to § 9-27-316(h)(3) for the putative parent at any time the court establishes adoption as the case goal with a termination of parental rights petition to be filed.

(D) If the putative parent, after notice by the department, has not made an attempt to establish significant contacts with his or her child or the court determines that the putative parent has not established significant contacts, only legal parents shall be included in the termination petition and no further notice is required of the putative parent.

SECTION 3. Arkansas Code § 9-27-325, concerning juvenile court hearings generally, is amended to add an additional subsection to read as follows:

(o)(1)(A) The department shall make diligent efforts to identify putative parents in a dependency-neglect proceeding.

(B) Diligent efforts shall include without limitation checking the putative father registry.

(2)(A) The department shall provide a putative parent with notice under Rule 4 of the Arkansas Rules of Civil Procedure of a proceeding as soon as the putative parent is identified.

(B) The notice shall include information about:

(i) The method of establishing paternity;

(ii) The right of the putative parent to prove significant contacts; and

(iii) The right of the putative parent to be heard by the court.

(C) The department shall provide the notice to the court and the parties to the case.

(3) The court shall provide a putative parent the opportunity to be heard regarding his or her efforts in establishing paternity and his or her significant contacts with regard to his or her children in dependency-neglect proceedings.

(4) A putative parent has the burden to prove significant contacts with the child, so that putative rights attach.

(5) A putative parent shall not be named as a party unless the circuit court determines that the putative parent:

(A) Has established paternity and the circuit court enters an order establishing the putative parent as the legal parent and directs that the parent be added to the case as a party defendant; or

(B) Has established significant contacts with the juvenile and the circuit court enters an order that putative parent rights have attached and the putative parent shall be added to the case as a party defendant.

(6)(A) A circuit court may order a DNA test at any time

(B) A DNA test that establishes the paternity of the putative parent is sufficient evidence to establish that the putative parent is the legal parent and the court shall enter an appropriate order under subsection (o)(5)(A) of this section.

(7) The rights of a putative parent to appointed counsel is subject to § 9-27-316(h)(3).

SECTION 4. Arkansas Code § 9-27-341(c)(2), concerning termination of parental rights, is amended to read as follows:

(2)(A)~~(i)~~ Termination of the relationship between a juvenile and one (1) parent shall not affect the relationship between the juvenile and the other parent if those rights are legally established.

~~(ii) If no legal rights have been established, a putative parent must prove that significant contacts existed with the juvenile in order for the putative parent's rights to attach.~~

~~(iii)(B)~~ A court may terminate the rights of one (1) parent and not the other parent if the court finds that it is in the best interest of the child.

~~(B)(i) When the petitioner has actual knowledge that an individual is claiming to be or is named as the putative parent of the juvenile and the paternity of the juvenile has not been judicially determined, the individual is entitled to notice of the petition to terminate parental rights.~~

~~(ii) The notice shall identify the rights sought to~~

~~be terminated and those that may be terminated.~~

~~(iii) The notice shall further specify that the putative parent must prove that significant contacts existed with the juvenile for the putative parent's rights to attach.~~

/s/Elliott