

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

State of Arkansas
91st General Assembly
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As Engrossed: S3/22/17
A Bill

SENATE BILL 736

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE RIGHT OF A PARENT, CUSTODIAN, AND PUTATIVE PARENT TO HAVE COUNSEL DURING DEPENDENCY-NEGLECT AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE RIGHT OF A PARENT, CUSTODIAN, AND PUTATIVE PARENT TO HAVE COUNSEL DURING DEPENDENCY-NEGLECT AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS.

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

SECTION 1. Arkansas Code § 9-27-316(h), concerning the right of a parent, custodian, and putative parent to appointed counsel, is amended to read as follows:

(h)(1)(A) All parents and custodians have a right to counsel in all dependency-neglect proceedings, including an appeal related to the final adjudication of a dependency-neglect proceeding, regardless of income.

(B)(i) Appointment of counsel is presumed necessary for a parent or custodian from whom custody of a juvenile is removed.

(ii) In all dependency-neglect proceedings that set out to remove legal custody from a parent or custodian, the parent or custodian from whom custody was removed shall have the right to be appointed counsel, regardless of income, and the court shall appoint counsel if ~~the court makes a finding that the parent or custodian from whom custody was~~



~~removed is indigent and~~ counsel is requested by the parent or custodian.

(C) Parents and custodians shall be advised in the dependency-neglect petition or the ex parte emergency order, whichever is sooner, and at the first appearance before the court, of the right to counsel and the right to appointed counsel, ~~if eligible~~ regardless of income.

(D)(i) All parents shall have the right to be appointed counsel in proceedings related to the termination of parental rights hearings, and the including an appeal related to the final adjudication of a petition to terminate parental rights, regardless of income.

(ii) The court shall appoint counsel if ~~the court makes a finding that the parent is indigent and~~ counsel is requested by the parent.

(E) In a dependency-neglect proceeding naming a minor parent as a defendant, the court shall appoint a qualified parent counsel for the minor parent.

(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 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~~ and termination of parental rights proceedings, including an appeal related to the final adjudication of a dependency-neglect proceeding or a petition to terminate parental rights, regardless of income, only if the court finds on the record that:

(A) ~~The putative parent is indigent;~~

~~(B)~~ 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)~~(B) The putative parent ~~requested~~ requests counsel.

(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~~ The court shall appoint counsel to represent the putative parent in 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)(i) 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 subdivision (h)(3) of this section 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.

(5)(A) The court shall order financially able parents or custodians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation after review by the court of an affidavit of financial means completed and verified by the parent or custodian and a determination by the court of an ability to pay.

(B)(i) All moneys collected by the clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the "Juvenile Court Representation Fund".

(ii) The court may direct that money from the fund be used in providing counsel for indigent parents or custodians at the trial level in dependency-neglect proceedings.

(iii) Upon ~~a determination of indigency and~~ a finding by the court that the fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and state funds have been exhausted, the court may order the county to pay these reasonable fees and expenses until the state provides funding for counsel.

(6)(A) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

(B)(i) When the first appearance before the court is an emergency hearing to remove custody under § 9-27-315, ~~parents~~ the parent and custodian shall be notified of the right to appointed counsel if indigent in the emergency ex parte order.

(ii) The name and contact information of the person appointed as counsel for the parent and custodian shall be included in the emergency order.

(7) The attorney for the parent or custodian shall be provided access to all records relevant to the juvenile's case, including without limitation school records, medical records, all court records relating to the juvenile and his or her family, and department records relating to the juvenile and his or her family, including those maintained electronically and in the Children's Reporting and Information System, to which the parent or custodian is entitled under state and federal law.

(8)(A) The court shall notify a parent, custodian, and putative parent of his or her right to be appointed counsel at the initial appearance of the parent, custodian, or putative parent before the court in a proceeding initiated under this chapter.

(B) The court shall notify a parent, custodian, and putative parent of his or her right to be appointed counsel regardless of whether the parent, custodian, or putative parent requested counsel.

/s/A. Clark