

State of Arkansas
92nd General Assembly
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A Bill

HOUSE BILL 1643

By: Representatives Burch, Capp

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING PUTATIVE PARENTS UNDER THE ARKANSAS JUVENILE CODE OF 1989; TO AMEND THE LAW ON THE TERMINATION OF PARENTAL RIGHTS; TO AMEND THE LAW CONCERNING TRIAL HOME PLACEMENTS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING PUTATIVE PARENTS UNDER THE ARKANSAS JUVENILE CODE OF 1989; TO AMEND THE LAW ON THE TERMINATION OF PARENTAL RIGHTS; AND TO AMEND THE LAW CONCERNING TRIAL HOME PLACEMENTS.

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

SECTION 1. The introductory language of Arkansas Code § 9-27-311(c)(2), concerning when a putative parent should be named as a party in a dependency-neglect and termination of parental rights petition, is amended to read as follows:

(2) However:

(A) In dependency-neglect petitions, the juvenile shall have party status and be named in the petition as a respondent and shall be served under § 9-27-312;

(B) ~~In~~ Unless otherwise provided under subdivision (d)(2)(A) of this section, 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 for the purposes of this subchapter 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; and

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

SECTION 2. Arkansas Code § 9-27-311(d)(2), concerning a proceeding notice under Rule 4 of the Arkansas Rules of Civil Procedure that the Department of Human Services must provide to a putative parent when the putative parent is identified, is amended to read as follows:

(2)(A)(i) ~~The department~~ A petitioner may name and serve a putative parent as a party under § 9-27-312 to resolve the party status and rights under § 9-27-325 or terminate the rights of the putative parent under § 9-27-341.

(ii) If the petitioner does not name and serve a putative parent as party in accordance with subdivision (d)(2)(A)(i) of this section, the petitioner 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~~ petitioner shall provide the notice to the court and the parties to the case.

SECTION 3. Arkansas Code § 9-27-316(h)(4), concerning a putative parent's burden to prove significant contacts with the child and the appointment of counsel for a putative parent, is amended to read as follows:

(4)(A)~~(i)~~ A putative parent has the burden to prove paternity and 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)(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 as provided under § 9-27-311(c)(2)(B).

(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.~~

SECTION 4. Arkansas Code § 9-27-325(o)(2)-(6), concerning notice to a putative parent in a dependency-neglect proceeding, a putative parent's burden to prove significant contacts, when a putative parent may be named as a party, and when a court may order a DNA test, is amended to read as follows:

(2)(A)(i) A petitioner may name and serve a putative parent as a party under § 9-27-312 to resolve the party status and rights under § 9-27-325 or terminate the rights of the putative parent under § 9-27-341.

(ii) If the petitioner does not name and serve a

putative parent as a party in accordance with subdivision (o)(2)(A)(i) of this section, the petitioner ~~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~~ petitioner shall provide the notice to the court and the parties to the case.

(3)(A)(i) If the petitioner has named and served a putative parent under §§ 9-27-311 and 9-27-325, the court shall resolve the party status of a putative parent and the rights of the putative parent as a putative father.

(ii) A court may consider the termination of the rights of a putative parent under § 9-27-341 if the court finds that the rights of the putative parent as a putative father under subdivision (o)(5) of this section have attached.

(B) 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.

(C) The court shall order a DNA test of each putative parent who is made a party in a dependency-neglect proceeding.

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

(5)(A) A Except as provided under subdivision (o)(2)(A) of this section and § 9-27-311, a putative parent shall not be named as a party unless the circuit court determines that the putative parent:

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

~~(B)(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.

(B)(i) If the petitioner has named and served a putative parent under §§ 9-27-311 and 9-27-325 and the circuit court finds that the putative parent has established paternity, the court shall:

(a) Enter an order establishing the putative parent as a parent for the purposes of this subchapter; and

(b) Maintain the parent as a party defendant.

(ii) If the petitioner has named and served a putative parent under §§ 9-27-311 and 9-27-325 and the circuit court finds that the putative parent has established significant contacts with the juvenile, the court shall:

(a) Enter an order stating that the rights of the putative parent have attached; and

(b) Maintain the putative parent as a party defendant.

(C) If the circuit court finds that the putative parent has not established paternity and significant contacts, the circuit court shall:

(i) Find that the putative parent is not a parent for the purposes of this subchapter;

(ii) Find that the rights of the putative parent have not attached; and

(iii) Dismiss the putative parent from the case with no further notice to the putative parent required.

(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~~ a parent for purposes of this subchapter and the court shall enter an appropriate order under subdivision ~~(e)(5)(A)~~ (o)(5) of this section.

SECTION 5. Arkansas Code § 9-27-341(a)(2), concerning the use of this section in cases in which the Department of Human Services is attempting to clear a juvenile for permanent placement, is amended to read as follows:

(2)(A) This section shall be used only in cases in which the department is attempting to clear a juvenile for permanent placement by terminating the parental rights of a parent and putative parent based on the definition of "parent" and "putative father" under § 9-27-303.

(B) This section shall not be used to terminate the rights of a putative parent if a court of competent jurisdiction has previously determined under § 9-27-325 that the rights of the putative parent have not attached.

SECTION 6. Arkansas Code § 9-27-341(b)(3)(B), concerning the grounds that operate as a basis for terminating parental rights, is amended to add an additional subdivision to read as follows:

(x) A putative parent has not established paternity or significant contacts with his or her child after:

(a) Being named and served as a party in a dependency-neglect proceeding; or

(b) Receiving notice of a dependency-neglect proceeding under § 9-27-311 or § 9-27-325.

SECTION 7. Arkansas Code § 9-27-341(b)(3)(B)(iii), concerning a presumptive legal father not being the biological father of a juvenile as a ground that operates as a basis for terminating parental rights, is amended to read as follows:

(iii) ~~The presumptive legal father parent~~ parent is not the biological ~~father~~ parent of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the ~~presumptive legal father~~ parent;

SECTION 8. Arkansas Code § 9-27-341(c), concerning the effect of a termination of parental rights, is amended to read as follows:

(c)(1) An order terminating the relationship between parent and juvenile:

(A)(i) ~~divests~~ Divests the parent and the juvenile of all legal rights, powers, and obligations with respect to each other, including the right to withhold consent to adoption, except the right of the juvenile to inherit from the parent, that is terminated only by a final order of

adoption; and

(B)(i) Divests a putative parent and the juvenile of all rights, powers, and obligations with respect to the putative parent and the juvenile if the rights of the putative parent have attached under § 9-27-325(o) before or during the termination proceeding.

(ii) The divesting of all the rights, powers, and obligations of the putative parent and the juvenile shall be based on the same authority, requirements, limitations, and other provisions that apply to the termination of the rights of a parent, including without limitation the provision requiring the dismissal of a putative parent as a party to a case without further notice to the putative parent.

(2)(A) 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.

(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.

(3) An order terminating parental rights under this section:

(A) may ~~may~~ May authorize the department to consent to adoption of the juvenile; and

(B) Dismisses the parent or putative parent subject to the termination of parental rights as a party to the case without further notice to the parent or putative parent required.

SECTION 9. Arkansas Code § 9-27-355(c), concerning trial home placements with a parent of a juvenile or a person from whom custody of the juvenile was removed, is amended to read as follows:

(c)(1)(A) The court may order ~~juveniles who are~~ a juvenile who is in the custody of the department to be placed in a trial home placement with ~~parents~~ a parent of the juvenile or the person from whom custody of the juvenile was removed for a ~~period not to exceed sixty (60) days, except as approved by the department, and in any event, not to exceed six (6) months,~~ a period of:

(i) No longer than sixty (60) days; or

(ii) More than sixty (60) days but no longer than one hundred eighty (180) days with the consent of the department.

(B) The department may place a juvenile who is in its custody in a trial home placement with a parent of the juvenile or the person from whom custody of the juvenile was removed for no longer than one hundred eighty (180) days.

(C) A trial home placement with a parent who did not have custody of the juvenile at the time of the removal of the juvenile and placement into the custody of the department may occur only after the court or the department determines that:

(i) The trial home placement is in the best interest of the juvenile;

(ii) The noncustodial parent does not have a restriction on contact with the juvenile; and

(iii) There is no safety concern with the trial home placement after reviewing:

(a) The criminal background of the noncustodial parent;

(b) The home of the noncustodial parent and each person in the home of the noncustodial parent; and

(c) Other information in the records of the department, including without limitation records concerning foster care, child maltreatment, protective services, and supportive services.

(2)(A) At every stage of the case, the court shall consider the least restrictive placement for the juvenile and assess safety concerns that prevent either a trial home placement or the juvenile from being returned to or placed in the custody of the parent of the juvenile.

(B) The court shall detail the safety concerns in subdivision (c)(2)(A) of this section in its written order.

(C) Failure to complete a case plan is not a sufficient reason ~~in and of itself~~ alone to deny the placement of the juvenile in the home of a parent of the juvenile.

~~(D) Trial home placements~~ A trial home placement may be made with ~~parents~~ a parent of the juvenile or the person from whom custody of the juvenile was removed.

(3) At the end of the trial home placement, ~~the court:~~

(A) The court shall ~~either~~ place custody of the juvenile with the parent of the juvenile or the person from whom custody of the

juvenile was removed,; or

(B) ~~the~~ The department shall return the juvenile to a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined in § 9-28-402.

SECTION 10. Arkansas Code § 9-28-108(d), concerning trial home placements with a parent of a juvenile or a person from whom custody of the juvenile was removed, is amended to read as follows:

~~(d)(1)(A) A juvenile who is in the custody of the department shall be allowed to have a trial placement with the juvenile's parents or the person from whom custody was removed for a time period not to exceed sixty (60) days~~
A court may order a juvenile who is in the custody of the department to be placed in a trial home placement with a parent of the juvenile or the person from whom custody of the juvenile was removed for:

(i) No longer than sixty (60) days; or

(ii) More than sixty (60) days but no longer than one hundred eighty (180) days with the consent of the department.

(B) The department may place a juvenile who is in its custody in a trial home placement with a parent of the juvenile or the person from whom custody of the juvenile was removed for no longer than one hundred eighty (180) days.

(C) A trial home placement with a parent who did not have custody of the juvenile at the time of the juvenile's removal into the custody of the department may be made only after the court or the department determine that:

(i) The trial home placement is in the best interest of the juvenile;

(ii) The noncustodial parent does not have a restriction on contact with the juvenile; and

(iii) There are no safety concerns related to the placement after reviewing:

(a) The criminal background of the noncustodial parent;

(b) The home of the noncustodial parent and each person in the home of the noncustodial parent; and

(c) Other information in the records of the

department, including without limitation records concerning foster care, child maltreatment, protective services, and support services.

(2) ~~After sixty (60) days, the court shall either~~ At the end of the trial home placement the:

(A) ~~Place~~ Court shall place custody of the juvenile with the ~~parents~~ parent or the person from whom custody was removed; or

(B) ~~Remove the juvenile from the parent or person from whom custody was removed and~~ Department shall return the juvenile to ~~the~~ department for placement in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined in § 9-28-402.