

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1813

By: Representative Gazaway

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE RIGHT TO COUNSEL UNDER THE ARKANSAS JUVENILE CODE OF 1989; CONCERNING A PUTATIVE PARENT'S RIGHT TO COUNSEL UNDER THE ARKANSAS JUVENILE CODE OF 1989; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE RIGHT TO COUNSEL UNDER THE ARKANSAS JUVENILE CODE OF 1989; AND CONCERNING A PUTATIVE PARENT'S RIGHT TO COUNSEL UNDER THE ARKANSAS JUVENILE CODE OF 1989.

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

SECTION 1. Arkansas Code § 9-27-316(h)(1)-(3), concerning the right to counsel under the Arkansas Juvenile Code of 1989, are amended to read as follows:

(h)(1)(A) All parents and custodians have a right to counsel in all dependency-neglect proceedings.

(B) In all dependency-neglect proceedings that set out to remove legal custody from a parent or custodian:

(i) the ~~The~~ parent or custodian from whom custody was removed shall have the right to be appointed counsel, ~~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.~~ and



(ii) The court may appoint an attorney to a:

(a)(1) Noncustodial parent if the court determines that the noncustodial parent has demonstrated a significant custodial relationship with the juvenile.

(2) A determination that the noncustodial parent has demonstrated a significant custodial relationship with the juvenile shall be made at the first appearance of the noncustodial parent in the matter; or

(b)(1) Putative parent if the putative parent has demonstrated significant contact with the juvenile and the court finds the rights of the putative parent have attached.

(2) A determination on whether the rights of the putative parent have attached shall be made at the first appearance of the putative parent in the matter.

(3) Counsel shall not be appointed to a putative parent if the:

(A) Court finds that the putative parent has not demonstrated significant contact with juvenile;

(B) Court finds that the rights of the putative parent have not attached; or

(C) The putative parent does not appear in the matter.

(4) If a putative parent fails to demonstrate significant contacts with the juvenile, the court shall inform the putative parent on the following:

(A) How to be considered a parent under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.;

(B) The eligibility requirements for being appointed counsel; and

(C) The process for requesting the appointment of counsel if the putative parent meets the eligibility requirements for being appointed counsel.

(C) Counsel shall not be appointed to a party in a dependency-neglect proceeding unless:

(i) The court finds that the parent, putative parent, or custodian of the juvenile is indigent; and

(ii) Counsel is requested by the parent, putative parent, or custodian of the juvenile after the parent, putative parent, or custodian is informed of his or her right to be appointed counsel.

~~(C)-(i)-(D)(i)~~ Parents, putative 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.

(ii) As required under § 9-27-314, a circuit court shall appoint counsel in an ex parte emergency order and shall determine eligibility at the commencement of the probable cause hearing.

~~(D)-(E)~~ All parents shall have the right to be appointed counsel in termination of parental rights hearings, and the court shall appoint counsel if the court makes a finding that the parent is indigent and counsel is requested by the parent.

~~(E)-(F)~~ 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)~~ subdivision (h)(1)(E) of this section.

(3)(A) Putative Except as otherwise provided by this chapter, putative parents do not have a right to appointed counsel in dependency-neglect proceedings, ~~except for termination of parental rights proceedings, only if the court finds on the record that,~~

(B) A putative parent may be appointed counsel for a termination of parental rights proceeding if the court finds the following on the record:

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

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

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

~~(D)(iv)~~ The putative parent requested counsel.