

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 1815

By: Representative Gazaway

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING DEPENDENCY-NEGLECT PETITIONS, HEARINGS, AND THE TERMINATION OF PARENTAL RIGHTS AS IT RELATES TO A PUTATIVE PARENT UNDER THE ARKANSAS JUVENILE CODE OF 1989; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING DEPENDENCY-NEGLECT PETITIONS, HEARINGS, AND THE TERMINATION OF PARENTAL RIGHTS AS IT RELATES TO A PUTATIVE PARENT UNDER THE ARKANSAS JUVENILE CODE OF 1989.

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

SECTION 1. Arkansas Code § 9-27-311(c)(2), concerning the required contents of a dependency-neglect 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 notice under § 9-27-312;

(B) ~~Unless otherwise provided under subdivision (d)(2)(A) of this section, in~~ In a dependency-neglect and termination of parental rights petition, the putative parent shall ~~not be a party unless the circuit court determines that the putative parent~~ be named as a party if the petitioner alleges that the putative parent:

(i) ~~Has established paternity and the circuit court~~



~~enters an order establishing the putative parent as the parent for the purposes of this subchapter and directs that the parent be added to the case as a party defendant~~ May have a claim of paternity of a juvenile born outside of marriage; or

(ii) Has established significant contacts with the juvenile, which may be demonstrated by a significant custodial, personal, or financial relationship 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 or

(iii) Is listed on the Putative Father Registry;

(C) A putative parent who was not originally named as a party to the dependency-neglect petition shall be added as a party if:

(i) Paternity is established and a court of competent jurisdiction enters an order establishing paternity between the juvenile and the putative parent; or

(ii) The court determines that the putative parent is a parent as defined in § 9-27-303; and

(D) 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)(A), concerning the required contents of a dependency-neglect petition, 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 in order to resolve the ~~party~~ putative parent's 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 (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.

SECTION 3. Arkansas Code § 9-27-311(d)(2), concerning the required contents of a dependency-neglect petition, is amended to add additional subdivisions to read as follows:

(D) After receiving the notice required under subdivision (d)(2)(A)(ii) of this section, the putative parent has the burden of establishing one (1) of the following:

(i) The putative parent has significant contacts with the juvenile, which may be demonstrated by a significant custodial, personal, or financial relationship with the juvenile; or

(ii) The putative parent is a parent as defined in § 9-27-303.

(E) If the putative parent, after receiving the notice required under subdivision (d)(2)(A)(ii) of this section and being given an opportunity to prove significant contacts with the juvenile, fails to demonstrate significant contacts with the juvenile and the court finds that the putative parent was given sufficient notice and an opportunity to be heard, the court may:

(i) Order deoxyribonucleic acid (DNA) testing to determine whether the putative parent is the biological parent of the juvenile;

(ii) Enter an order:

(a) Finding that the putative parent does not have rights to the juvenile;

(b) Dismissing the putative parent from the action; and

(c) Finding that no further notice is due to the putative parent whose rights have not attached with regard to the juvenile, including in the event of a filed petition for adoption; or

(iii) Enter an order providing that only a parent or putative parent whose rights have attached to the juvenile shall be included in a petition to terminate parental rights under § 9-27-341.

SECTION 4. Arkansas Code § 9-27-325(n)(2)-(7), concerning hearings held under the Arkansas Juvenile Code of 1989, are 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 this section 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 (n)(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 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 this section and § 9-27-311, 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 putative parent has established significant contacts and the rights of the putative parent as a putative father ~~under subdivision (n)(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~~ the juvenile involved in the dependency-neglect proceedings.

(C)(i) The court may order deoxyribonucleic acid (DNA) testing at any time.

(ii) A court may establish paternity or determine whether a putative parent is a parent as defined in § 9-27-303 without a deoxyribonucleic acid (DNA) test being ordered by the court or performed.

(D) The If there is more than one (1) putative parent of the juvenile, the court shall order a DNA deoxyribonucleic acid (DNA) test of each identified putative parent who is made a party in a dependency-neglect proceeding to determine the biological parent of the juvenile.

(E) A deoxyribonucleic acid (DNA) test establishing a putative parent as the biological parent of a juvenile is sufficient evidence

on which the court may adjudicate paternity, establish that the putative parent is a parent for the purposes of this subchapter, and enter a decree of paternity.

~~(4)(3)~~ A putative parent has the burden to prove paternity and significant contacts with the ~~child~~ juvenile.

~~(5)(A)(4)(A)~~ Except as provided under ~~subdivision (n)(2)(A) of this section and~~ § 9-27-311, a putative parent shall ~~not~~ be named as a party ~~unless~~ if 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 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.

(B)(i) If the petitioner has named and served a putative parent under this section and § 9-27-311 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 this section and § 9-27-311 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, after being given notice and opportunity to be heard, has not established paternity ~~and~~ or 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~~ and enter an order finding that no further notice, including notice of an adoption petition concerning the juvenile, is required to be provided to the putative parent.

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

~~(7)(5)~~ The rights of a putative parent to appointed counsel are subject to § 9-27-316(h)(3).

SECTION 5. Arkansas Code § 9-27-341(b)(3)(B)(iii), concerning the termination of parental rights, is amended to read as follows:

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

(b) A termination of parental rights under subdivision (b)(3)(B)(iii)(a) of this section shall not be considered an involuntary termination;

SECTION 6. Arkansas Code § 9-27-341(b)(3)(B)(x), concerning the termination of parental rights, is amended to read as follows:

(x)(a) A putative parent ~~has not established paternity or significant contacts~~ who fails to establish or maintain meaningful contacts with his or her ~~child~~ juvenile after:

~~(a)(1)~~ Being named and served as a party in a dependency-neglect proceeding; ~~or~~

~~(b)(2)~~ Receiving notice of a dependency-neglect proceeding under § 9-27-311 or § 9-27-325; and

(3) The court finds that the rights of the putative parent with regard to the juvenile have attached.

(b) To find willful failure to maintain meaningful contact, it shall be shown that the putative parent was not prevented from visiting or having contact with the juvenile by the custodian

of the juvenile or any other person, taking into consideration the distance of the juvenile's placement from the putative parent's home.

(c) A termination of parental rights under subdivision (b)(3)(B)(x)(a) of this section shall not be considered an involuntary termination.

(d)(1) Subdivision (b)(3)(B)(x)(a) of this section does not apply to a putative parent whose rights have not attached to a juvenile.

(2) If a court finds that the rights of the putative parent have not attached to the juvenile, the court shall dismiss the putative parent from the petition to terminate parental rights and enter an order finding that no further notice is due to the putative parent.

SECTION 7. Arkansas Code § 9-27-341(h)(4), concerning the termination of parental rights, is amended to read as follows:

(4) Parent whose parental rights are terminated or a putative parent who after receiving notice is determined by a court to not have rights attached to the juvenile is not entitled to:

(A) Notice of any court proceeding concerning the juvenile, including a petition for adoption concerning the juvenile; and

(B) An opportunity to be heard in any court proceeding concerning the juvenile.