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2 88th General Assembly
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A Bill

HOUSE BILL 1812

4
5 By: Representatives T. Rogers, E. Elliott, Powers, Williams
6 By: Senators S. Harrelson, Madison, R. Thompson, D. Johnson

For An Act To Be Entitled

9 AN ACT CONCERNING THE JUVENILE CODE AND JUVENILE
10 DIVISION COURT PROCEDURES.

Subtitle

14 CONCERNING THE JUVENILE CODE AND JUVENILE
15 COURT PROCEDURES.

16
17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code § 9-27-303(13), regarding the definition of
21 "court-appointed special advocate", is amended to read as follows:

22 (13) "Court-appointed special advocate" means a volunteer appointed by
23 the court to ~~provide services to~~ advocate for the best interest of juveniles
24 in dependency-neglect proceedings;

25
26 SECTION 2. Arkansas Code § 9-27-311(c), regarding the required
27 contents of a petition, is amended to read as follows:

28 (c)(1) All persons named in subdivisions (a)(1)-(3) of this section
29 and subdivision (a)(6) shall be made defendants and served as required by
30 this subchapter, ~~except that all actions filed pursuant to 9-27-310(b)(4)(D)~~
31 ~~shall be required to name as defendants only the mother, the putative father~~
32 ~~and the presumed legal father, if any.~~

33 (2) However:

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



1 (B) In dependency-neglect petitions the juvenile shall not
 2 be named as a defendant, but shall be named in the petition as a respondent
 3 and shall be served as a party defendant under § 9-27-312.
 4

5 SECTION 3. Arkansas Code § 9-27-314(b), regarding an emergency order,
 6 is amended to read as follows:

7 (b) The emergency order shall include:

8 (1) ~~Notice to the juvenile's parents, custodian, or guardian~~ all
 9 defendants and respondents named in the petition of the right to a hearing
 10 and that a hearing will be held within five (5) business days of the issuance
 11 of the ex parte order;

12 (2) ~~Their~~ Notice of their right to be represented by counsel;

13 (3)(A) ~~Their~~ Notice of their right to obtain appointed counsel,
 14 if ~~indigent~~ eligible, and the procedure for obtaining appointed counsel; ~~and.~~

15 (B) A court may appoint counsel for the parent or
 16 custodian from whom legal custody was removed in the ex parte emergency order
 17 and determine eligibility at the probable cause hearing; and

18 (4) ~~The location~~ address and telephone number of the court and
 19 the ~~procedure for obtaining a hearing~~ date and time of the probable cause
 20 hearing, if known.
 21

22 SECTION 4. Arkansas Code § 9-27-316(h), regarding the right to
 23 counsel, is amended to read as follows:

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

26 (B) In all dependency-neglect proceedings that set out to
 27 remove legal custody from a parent or guardian or to terminate parental
 28 rights, the parent or guardian shall be advised in the dependency neglect
 29 petition or the ex parte emergency order and the first appearance before the
 30 court of the right to be represented by counsel at all stages of the court
 31 proceedings and the right to appointed counsel if indigent custodian, the
 32 parent or custodian shall have the right to be appointed counsel, and the
 33 court shall appoint counsel if the court makes a finding that the parent or
 34 custodian is indigent and counsel is requested by the parent or custodian.

35 (C) Parents and custodians shall be advised in the
 36 dependency-neglect petition or the ex parte emergency order, whichever is

1 sooner, and at the first appearance before the court, of the right to counsel
2 and the right to appointed counsel, if eligible.

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

7 ~~(B) A court may appoint counsel for the parent or guardian~~
8 ~~from whom custody was removed in the ex parte emergency order.~~

9 ~~(2)(A) Upon request by a parent or guardian from whom custody~~
10 ~~was removed and a determination by the court of indigence, the court shall~~
11 ~~appoint counsel for the parent or guardian from whom custody was removed in~~
12 ~~all circuit court proceedings to remove custody or terminate parental rights~~
13 ~~of a juvenile.~~

14 ~~(B) If the court terminates parental rights, the court~~
15 ~~shall redetermine if the parent or guardian is indigent and entitled to~~
16 ~~appointed counsel on appeal only upon request by the parent or guardian and~~
17 ~~after a hearing to receive evidence, including a new affidavit of indigence~~

18 ~~(C) No payment of attorney's fees for a court proceeding~~
19 ~~for indigent parents or guardians shall be authorized unless an affidavit of~~
20 ~~indigence is completed and filed with the clerk of the court.~~

21 ~~(D) No payment of attorney's fees for appeals for indigent~~
22 ~~parents or guardians shall be authorized unless a new affidavit of indigence~~
23 ~~is completed and filed with the clerk of the court and a redetermination of~~
24 ~~indigence hearing is held.~~

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

29 (3) Putative parents do not have a right to appointed counsel in
30 dependency-neglect proceedings, except for termination of parental rights
31 proceedings, and only if:

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

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

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

3 (D) The putative parent requested counsel.

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

9 ~~(3)(A)(5)(A)~~ After The court shall order financially able
10 parents or custodians to pay all or part of reasonable attorney's fees and
11 expenses for court-appointed representation after review by the court of an
12 affidavit of financial means completed and verified by the parent or ~~guardian~~
13 custodian and a determination by the court of an ability to pay, ~~the court~~
14 ~~shall order financially able parents or guardians to pay all or a part of~~
15 ~~reasonable attorney's fees and expenses for court-appointed representation of~~
16 ~~the parent or guardian.~~

17 (B)(i) All moneys collected by the clerk under this
18 subsection shall be retained by the clerk and deposited into a special fund
19 to be known as the ~~juvenile representation fund~~ Juvenile Court Representation
20 Fund.

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

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

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

34 (B) When the first appearance before the court is an
35 emergency hearing to remove custody ~~pursuant to~~ under § 9-27-315, parents
36 shall be notified of the right to appointed counsel if indigent in the

1 emergency ex parte order.

2 ~~(5)(7)~~ The ~~parent's or guardian's~~ attorney for the parent or
 3 custodian shall be provided access to all records relevant to the juvenile's
 4 case, ~~including, but not limited to,~~ including without limitation school
 5 records, medical records, all court records relating to the juvenile and his
 6 or her family, and department records to which the parent or ~~guardian~~
 7 custodian is entitled under state and federal law.

8
 9 SECTION 5. Arkansas Code § 9-27-325(h)(2), regarding a juvenile
 10 hearing, is amended to read as follows:

11 (2) The following burdens of proof shall apply:

12 (A) Proof beyond a reasonable doubt in delinquency
 13 hearings;

14 (B) Proof by a preponderance of the evidence in
 15 dependency-neglect proceedings, except if subject to the Indian Child Welfare
 16 Act of 1978, 25 U.S.C. § 1901 et seq., family in need of services, and
 17 probation revocation hearings; and

18 (C) Proof by clear and convincing evidence for hearings to
 19 terminate parental rights, except if subject to the Indian Child Welfare Act
 20 of 1978, 25 U.S.C. § 1901 et seq., ~~and~~ transfer hearings, and in hearings to
 21 determine whether or not reunification services will be provided;

22 (3) If the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et
 23 seq., applies, the following burdens of proof shall apply:

24 (A) Clear and convincing evidence in probable cause,
 25 adjudication, review, and permanency planning hearings; and

26 (B) Beyond a reasonable doubt in termination of parental
 27 rights hearings that are subject to the Indian Child Welfare Act of 1978, 25
 28 U.S.C. § 1901 et seq.

29
 30 SECTION 6. Arkansas Code § 9-27-333(d), regarding the disposition of a
 31 family in need of services hearing, is amended to read as follows:

32 (d)(1) For purposes of this section, the court shall not specify a
 33 particular provider for placement or family services ~~if~~ when the department
 34 is the payor or provider.

35 (2)(A) The court may order a child to remain in a placement if
 36 the court finds the placement is in the best interest of the child after

1 hearing evidence from all parties.

2 (B) A court may also order a child to be placed into a
 3 licensed or approved placement, after a hearing where the court makes a
 4 finding that it is in the best interests of the child based on bona fide
 5 consideration of evidence and recommendations from all the parties.

7 SECTION 7. Arkansas Code § 9-27-335(b), regarding the disposition in a
 8 dependency-neglect hearing, is amended to read as follows:

9 (b)(1) For purposes of this section, the court shall not specify a
 10 particular provider for placement or family services if the department is the
 11 payor or provider.

12 (2)(A) The court may order a child to be placed to remain in a
 13 placement if the court finds the placement is in the best interest of the
 14 child after hearing evidence from all parties.

15 (B) A court may also order a child into a licensed or
 16 approved placement, after a hearing where the court makes a finding that it
 17 is in the best interests of the child based on bona fide consideration of
 18 evidence and recommendations from all the parties.

20 SECTION 8. Arkansas Code § 9-27-338(a)(1)(A), regarding a permanency
 21 planning hearing, is amended to read as follows:

22 (a)(1) A permanency planning hearing shall be held to finalize a
 23 permanency plan for the juvenile:

24 (A) ~~Twelve~~ No later than twelve (12) months after the date
 25 the juvenile enters an out-of-home placement;

27 SECTION 9. Arkansas Code § 9-27-341(c)(2)(A), regarding the
 28 termination of parental rights, is amended to add an additional subdivision
 29 to read as follows:

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

33 SECTION 10. Arkansas Code § 9-27-359(c), regarding the fifteen-month
 34 review hearing, is amended to read as follows:

35 (c) If the court determines the permanency goal to be ~~termination of~~
 36 ~~parental rights~~ adoption, the department shall file ~~the~~ a petition to

1 terminate parental rights no later than the fifteenth month of the child's
2 entry into foster care.

3
4 SECTION 11. Arkansas Code Title 9, Chapter 27, Subchapter 3 is amended
5 to add a new section to read as follows:

6 9-27-367. Court costs, fees, and fines.

7 (a) The juvenile division of the circuit court may order the following
8 court costs, fees, and fines to be paid by adjudicated defendants to the
9 Circuit Court Juvenile Division Fund as provided for in § 16-13-326:

10 (1) The court may assess an adjudicated delinquent court costs
11 not to exceed thirty-five dollars (\$35.00) as provided under § 9-27-
12 330(a)(6);

13 (2) The court may assess an adjudicated family in need of
14 services court costs not to exceed thirty-five dollars (\$35.00) as provided
15 under § 9-27-332(a)(8);

16 (3) The court may order a probation fee for juveniles
17 adjudicated delinquent not to exceed twenty dollars (\$20.00) per month as
18 provided under § 9-27-330(a)(5);

19 (4) The court may order a juvenile service fee for an
20 adjudicated family in need of services not to exceed twenty dollars (\$20.00)
21 per month as provided under § 9-27-332(a)(9);

22 (5) The court may order a fine for adjudicated delinquents of
23 not more than five hundred dollars (\$500) as provided under § 9-27-330(a)(8);

24 (6) The court may order a fine for an adjudicated family in need
25 of services of not more than five hundred dollars (\$500) as provided under §
26 9-27-332(a)(7); and

27 (7) A juvenile intake or probation officer may charge a
28 diversion fee limited to no more than twenty dollars (\$20.00) per month as
29 provided under § 9-27-323.

30 (b) The court shall direct that the juvenile division court costs and
31 fees be collected, maintained, and accounted for in the same manner as
32 juvenile probation and juvenile services fees as provided for in § 16-13-326.

33
34 SECTION 12. Arkansas Code § 9-27-401(d), regarding representation for
35 children and parents, is amended to read as follows:

36 (d)(1) The director is authorized to establish a program to represent

1 indigent parents or ~~guardians~~ legal custodians in dependency-neglect cases.

2 (2) The court shall appoint counsel in compliance with federal
3 law, § 9-27-316(h), and Supreme Court Administrative Order Number 15 ~~in all~~
4 ~~proceedings to remove custody or to terminate parental rights.~~

5 (3)(A) ~~When attorneys are appointed under subdivision (d)(2) of~~
6 ~~this section, court-appointed attorney fees and reasonable expenses shall be~~
7 ~~reimbursable as set forth in the office reimbursement guidelines that shall~~
8 ~~include contracts with attorneys for such fees and reasonable expenses.~~

9 ~~(B)~~ Funding for contracts shall be administered from the
10 state, or funds shall be provided to the judicial district for the county to
11 administer the contracts.

12 ~~(C)~~(B) All contracts shall be paid from funds appropriated
13 for the purpose of this section.

14 (4) ~~When a court orders the payment of funds for the fees and~~
15 ~~expenses authorized by this subsection, the attorney shall transmit a copy of~~
16 ~~the order to the office or county authorized to pay the funds. When a court~~
17 orders payment of funds for parent counsel on behalf of an indigent parent or
18 custodian from a state contract, the court shall make written findings in the
19 appointment order in compliance with § 9-27-316(h).

20 (5) The court may also require the parties to pay all or a
21 portion of the expenses, depending on the ability of the parties to pay.

22 (6) The office shall establish guidelines to provide a maximum
23 amount of expenses and fees per hour and per case that will be paid under
24 this section.

25 (7) In order to ensure that each judicial district will have an
26 appropriate amount of funds to utilize for indigent parent or ~~guardian~~
27 custodian representation in dependency-neglect cases, the funds appropriated
28 shall be apportioned based upon a formula developed by the office and
29 approved by the committee.

30 (8) The office shall not be liable directly to any attorney or
31 indirectly to the Arkansas State Claims Commission for the payment of
32 attorney's fees or expenses except to the extent specific funding is
33 appropriated and available for the purpose of providing indigent parent
34 counsel in dependency-neglect cases.

35
36 SECTION 13. Arkansas Code § 16-13-326 is amended to read as follows:

1 16-13-326. ~~Fee~~ Disposition of funds Circuit Court Juvenile Division
 2 funds.

3 ~~(a)(1) The judge of the juvenile division of circuit court may charge~~
 4 ~~a juvenile a fee, not to exceed twenty dollars (\$20.00) per month, for~~
 5 ~~services provided to juveniles by the court.~~

6 (a)(1) All court costs, fines, and fees assessed by the juvenile
 7 division of circuit court shall be deposited and accounted for by the county
 8 in which they are received.

9 (2) The court shall have the authority to direct that the ~~fee~~
 10 fees, court costs, and fines shall be collected by either the juvenile
 11 officer, the sheriff, or the clerk of the juvenile division of circuit court
 12 or other person designated by the court for the county in which the ~~fee fees,~~
 13 court costs, and fines ~~is~~ are charged.

14 (b)(1) The officer designated by the court to collect juvenile fees,
 15 court costs, and fines shall deposit the ~~fees weekly fee fees,~~ fees, court costs,
 16 and fines into the appropriate fund and monthly deposit the fees, court
 17 costs, and fines into the fund in the county treasury of the county where the
 18 fees are collected ~~in which probation services are provided.~~

19 (2)(A) In a judicial district with multiple judges designated to
 20 hear juvenile cases in the district plan under Supreme Court Administrative
 21 Order Number 14, the majority of the judges shall determine who is to be in
 22 charge of the collection and accounting of fees, court costs, and fines.

23 (B) If there is no majority, the administrative judge is
 24 to determine who shall be in charge of the collection and accounting of fees,
 25 court costs, and fines as provided by this section.

26 ~~(2)(3)(A)~~ However, in judicial districts having more than one
 27 (1) county, the ~~judge(s)~~ majority of the judges or the administrative judge
 28 may designate the treasurer of one (1) of the counties in the district as the
 29 depository of all juvenile and diversion fees, court costs, and fines
 30 collected in the district.

31 (B) The treasurer so designated by the court shall
 32 maintain a separate account of the juvenile ~~and diversion~~ fees, court costs,
 33 and fines collected in each county in the district so that fees, court costs,
 34 and fines collected in a county are spent to support the juveniles and
 35 juvenile division court services and programs in that county.

36 (C) Money remaining at the end of the fiscal year shall not

1 revert to any other fund but shall remain in the Circuit Court Juvenile
 2 Division Fund and carry over to the next fiscal year.

3 (c) The funds derived from the collection of juvenile fees, court
 4 costs, and fines shall be used by agreement of the judge or judges of the
 5 circuit court designated to hear juvenile cases in the district plan under
 6 Supreme Court Administrative Order Number 14, originally issued April 6,
 7 2001, and the quorum court of the county to provide services and supplies to
 8 juveniles and support court programs at the discretion of the juvenile
 9 division of circuit court including without limitation:

- 10 (1) Juvenile drug courts;
- 11 (2) Teen courts;
- 12 (3) Volunteer probation programs;
- 13 (4) Court-appointed special advocates; and
- 14 (5) After-school and community-based programs.

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 17 **APPROVED: 04/04/2011**
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