

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: S3/12/15
A Bill

SENATE BILL 775

5 By: Senator Elliott
6 By: Representative Broadway
7

8 **For An Act To Be Entitled**

9 AN ACT TO CLARIFY THE RIGHTS OF PUTATIVE PARENTS IN
10 PROCEEDINGS REGARDING JUVENILES WHO ARE THE SUBJECTS
11 OF PUTATIVE PARENT CLAIMS; AND FOR OTHER PURPOSES.
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14 **Subtitle**

15 TO CLARIFY THE RIGHTS OF PUTATIVE PARENTS
16 IN PROCEEDINGS REGARDING JUVENILES WHO
17 ARE THE SUBJECTS OF PUTATIVE PARENT
18 CLAIMS.
19

20
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 9-27-311(c) and (d), concerning termination
24 of parental rights, are amended to read as follows:

25 (c)(1) All persons named in subdivisions (a)(1)-(3) of this section
26 ~~and subdivision (a)(6) of this section~~ shall be made defendants and served as
27 required by this subchapter.

28 (2) However:

29 ~~(A) In all paternity actions, the petitioner shall be~~
30 ~~required to name as defendants only the mother, the putative father, and the~~
31 ~~presumed legal father, if any; and~~

32 ~~(B)(A)~~ In dependency-neglect petitions the juvenile shall
33 not be named as a defendant but shall be named in the petition as a
34 respondent and shall be served as a party defendant under § 9-27-312.

35 (B) In a dependency-neglect and termination of parental
36 rights petition, the putative parent shall not be named as a party unless the



1 circuit court determines that the putative parent:

2 (i) Has established paternity and the circuit court
3 enters an order establishing the putative parent as the legal parent and
4 directs that the parent be added to the case as a party defendant; or

5 (ii) Has established significant contacts with the
6 juvenile and the circuit court enters an order that putative parent rights
7 have attached and the putative parent shall be added to the case as a party
8 defendant.

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

12 (d)(1)(A) The Department of Human Services shall make diligent efforts
13 identify putative parents in a dependency-neglect proceeding.

14 (B) Diligent efforts shall include without limitation
15 checking the putative father registry.

16 (2)(A) The department shall provide a putative parent with
17 notice under Rule 4 of the Arkansas Rules of Civil Procedure of a proceeding
18 as soon as the putative parent is identified.

19 (B) The notice shall include information about:

20 (i) The method of establishing paternity;

21 (ii) The right of the putative parent to prove
22 significant contacts; and

23 (iii) The right of the putative parent to be heard
24 by the court.

25 (C) The department shall provide the notice to the court
26 and the parties to the case.

27 ~~(d)(1)~~(e)(1) The petition shall set forth the following in plain and
28 concise words:

29 (A) The facts that, if proven, would bring the family or
30 juvenile within the court's jurisdiction;

31 (B) The section of this subchapter upon which jurisdiction
32 for the petition is based;

33 (C) The relief requested by the petitioner; and

34 (D) If a petition for delinquency proceedings, any and all
35 sections of the criminal laws allegedly violated.

36 (2)(A) The petition shall be supported by an affidavit of facts.

1 (B) A supporting affidavit of facts shall not be required
2 for delinquency, paternity, or termination of parental rights petitions.

3
4 SECTION 2. Arkansas Code § 9-27-316(h)(2) – (4), concerning the right
5 to counsel in delinquency and family in need of services cases, are amended
6 to read as follows:

7 (2) If at the permanency planning hearing or at any time the
8 court establishes the goal of adoption and counsel has not yet been appointed
9 for a parent, the court shall appoint counsel ~~in the permanency planning~~
10 ~~order~~ to represent the parent as provided by subdivision (h)(1)(D) of this
11 section.

12 (3) Putative parents do not have a right to appointed counsel in
13 dependency-neglect proceedings, except for termination of parental rights
14 proceedings, and only if the court finds on the record that:

15 (A) ~~The court makes a finding on the record that~~ the
16 putative parent is indigent;

17 (B) ~~The court finds that the~~ putative parent has
18 established significant contacts with the juvenile so that putative rights
19 attach;

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

22 (D) The putative parent requested counsel.

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

28 (4)(A)(i) A putative parent has the burden to prove significant
29 contacts with the child, so that putative rights attach.

30 (ii) The putative parent shall request appointed
31 counsel for a termination of parental rights hearing if the goal of the case
32 changes to adoption with a termination of parental rights petition to be
33 filed.

34 (B) The court shall make the findings required in
35 subdivision (h)(3) of this section to determine whether a putative parent is
36 entitled to appointed counsel at the termination hearing.

1 (C) If the court determines that the putative parent is
2 entitled to appointed counsel under subdivision (h)(3) of this section, the
3 termination petition shall include the putative parent.

4 (ii) The court shall appoint counsel subject to § 9-
5 27-316(h)(3) for the putative parent at any time the court establishes
6 adoption as the case goal with a termination of parental rights petition to
7 be filed.

8 (D) If the putative parent, after notice by the
9 department, has not made an attempt to establish significant contacts with
10 his or her child or the court determines that the putative parent has not
11 established significant contacts, only legal parents shall be included in the
12 termination petition and no further notice is required of the putative
13 parent.

14
15 SECTION 3. Arkansas Code § 9-27-325, concerning juvenile court
16 hearings generally, is amended to add an additional subsection to read as
17 follows:

18 (o)(1)(A) The department shall make diligent efforts to identify
19 putative parents in a dependency-neglect proceeding.

20 (B) Diligent efforts shall include without limitation
21 checking the putative father registry.

22 (2)(A) The department shall provide a putative parent with
23 notice under Rule 4 of the Arkansas Rules of Civil Procedure of a proceeding
24 as soon as the putative parent is identified.

25 (B) The notice shall include information about:

26 (i) The method of establishing paternity;

27 (ii) The right of the putative parent to prove
28 significant contacts; and

29 (iii) The right of the putative parent to be heard
30 by the court.

31 (C) The department shall provide the notice to the court
32 and the parties to the case.

33 (3) The court shall provide a putative parent the opportunity to
34 be heard regarding his or her efforts in establishing paternity and his or
35 her significant contacts with regard to his or her children in dependency-
36 neglect proceedings.

1 (4) A putative parent has the burden to prove significant
 2 contacts with the child, so that putative rights attach.

3 (5) A putative parent shall not be named as a party unless the
 4 circuit court determines that the putative parent:

5 (A) Has established paternity and the circuit court enters
 6 an order establishing the putative parent as the legal parent and directs
 7 that the parent be added to the case as a party defendant; or

8 (B) Has established significant contacts with the juvenile
 9 and the circuit court enters an order that putative parent rights have
 10 attached and the putative parent shall be added to the case as a party
 11 defendant.

12 (6)(A) A circuit court may order a DNA test at any time

13 (B) A DNA test that establishes the paternity of the
 14 putative parent is sufficient evidence to establish that the putative parent
 15 is the legal parent and the court shall enter an appropriate order under
 16 subsection (o)(5)(A) of this section.

17 (7) The rights of a putative parent to appointed counsel is
 18 subject to § 9-27-316(h)(3).

19
 20 SECTION 4. Arkansas Code § 9-27-341(c)(2), concerning termination of
 21 parental rights, is amended to read as follows:

22 (2)(A)~~(i)~~ Termination of the relationship between a juvenile and one
 23 (1) parent shall not affect the relationship between the juvenile and the
 24 other parent if those rights are legally established.

25 ~~(ii) If no legal rights have been established, a~~
 26 ~~putative parent must prove that significant contacts existed with the~~
 27 ~~juvenile in order for the putative parent's rights to attach.~~

28 ~~(iii)~~(B) A court may terminate the rights of one (1)
 29 parent and not the other parent if the court finds that it is in the best
 30 interest of the child.

31 ~~(B)(i) When the petitioner has actual knowledge that an~~
 32 ~~individual is claiming to be or is named as the putative parent of the~~
 33 ~~juvenile and the paternity of the juvenile has not been judicially~~
 34 ~~determined, the individual is entitled to notice of the petition to terminate~~
 35 ~~parental rights.~~

36 ~~(ii) The notice shall identify the rights sought to~~

1 ~~be terminated and those that may be terminated.~~

2 ~~(iii) The notice shall further specify that the~~
3 ~~putative parent must prove that significant contacts existed with the~~
4 ~~juvenile for the putative parent's rights to attach.~~

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6 */s/Elliott*

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9 **APPROVED: 04/02/2015**

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