

ARKANSAS SENATE
91st General Assembly - Regular Session, 2017
Amendment Form

Subtitle of Senate Bill No. 132

CREATING THE COMMISSION FOR PARENT COUNSEL; CONCERNING DEPENDENCY-NEGLECT REPRESENTATION FOR THE PARENT OF A MINOR CHILD; AND CONCERNING REPRESENTATION IN THE JUVENILE DIVISION OF CIRCUIT COURT.

Amendment No. 2 to Senate Bill No. 132

Amend Senate Bill No. 132 as engrossed, S1/24/17 (version: 01/24/2017 9:00:38 AM):

Delete SECTION 1 in its entirety and substitute the following:

"SECTION 1. Arkansas Code § 9-27-314 is amended to read as follows:
9-27-314. Emergency orders.

(a)(1) In ~~any~~ a case in which there is probable cause to believe that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or to prevent the juvenile's removal from the state, the circuit court shall issue an ex parte order for emergency custody to remove the juvenile from the custody of the parent, guardian, or custodian and shall determine the appropriate plan for placement of the juvenile.

(2)(A) In ~~any~~ a case in which there is probable cause to believe that an emergency order is necessary to protect the health or physical well-being of the juvenile from immediate danger, the court shall issue an ex parte order to provide specific appropriate safeguards for the protection of the juvenile.

(B) Specific appropriate safeguards shall include without limitation the authority of the circuit court to restrict a legal custodian from:

- (i) Having any contact with the ~~child~~ juvenile; or
- (ii) Removing a ~~child~~ juvenile from a placement if

the:

(a) Legal custodian placed or allowed the ~~child~~ juvenile to remain in that home for more than six (6) months; and

(b) Department of Human Services has no immediate health or physical well-being concerns with the placement.

(3) In ~~any~~ a case in which there is probable cause to believe that a juvenile is a dependent juvenile as defined in this subchapter, the court shall issue an ex parte order for emergency custody placing custody of the dependent juvenile with the department.

(b) The emergency order shall include:

- (1) Notice to all defendants and respondents named in the



petition of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order;

(2) Notice of ~~their~~ a defendant's or respondent's right to be represented by counsel;

(3)(A) Notice of ~~their~~ a defendant's or respondent's right to obtain appointed counsel, if eligible, and the procedure for obtaining appointed counsel.

(B) A court ~~may~~ shall:

(i) ~~appoint~~ Appoint counsel for the parent or custodian from whom legal custody was removed in the ex parte emergency order; and

(ii) ~~determine~~ Determine eligibility at the probable cause hearing; and

(4) The address and telephone number of the circuit court and the date and time of the probable cause hearing, if known.

(c)(1) Immediate notice of the emergency order shall be given by the petitioner or by the circuit court to the:

(A) Custodial parent, noncustodial parent, guardian, or custodian of the juvenile; and

(B) Attorney ad litem who represents the juvenile respondent.

(2) The petitioner shall provide copies of any petition, affidavit, or other pleading filed with or provided to the court in conjunction with the emergency order to the provisionally appointed parent counsel under § 9-27-316(h)(6)(B) before the probable cause hearing.

~~(2)~~(3) All defendants shall be served with the emergency order according to Rule 4 or Rule 5 of the Arkansas Rules of Civil Procedure or as otherwise provided by the court.

SECTION 2. Arkansas Code § 9-27-316(h)(1), concerning a parent's and custodian's right to counsel in a dependency neglect hearing, is amended to read as follows:

(h)(1)(A) All parents and custodians have a right to counsel in all dependency-neglect proceedings, commencing at a probable cause hearing.

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

(C)(i) 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 upon the commencement of a dependency-neglect petition or for an ex parte emergency order, whichever is sooner, and determine eligibility at the commencement of the probable cause hearing.

(D) 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) In a dependency-neglect proceeding naming a minor parent as a defendant, the court shall appoint a qualified parent counsel for the minor parent.

SECTION 3. Arkansas Code § 9-27-316(h)(6), concerning the timely appointment of counsel in a dependency-neglect hearing, is amended to read as follows:

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

(B)(i) When the first appearance before the court is an emergency hearing to remove custody under § 9-27-315, parents shall be notified of the right to appointed counsel if indigent in the emergency ex parte order appointed a parent counsel in a timely manner for meaningful representation until eligibility for appointed counsel is determined by the court under subdivision (h)(1)(B) of this section.

(ii) If in the interest of time or availability of qualified parent counsel it becomes necessary for a provisional parent counsel or counsel other than the parent counsel originally appointed under subdivision (h)(1)(B) of this section, a substitute parent counsel shall be appointed.

SECTION 4. Arkansas Code § 9-27-316(h), concerning a parent's or custodian's right to counsel in a dependency-neglect proceeding, is amended to add an additional subdivision to read as follows:

(8)(A) In all cases where a court has determined that appointed counsel for an indigent parent or guardian is necessary under this subsection, the court shall appoint counsel in compliance with federal law and Supreme Court Administrative Order Number 15.

(B) When a court orders payment of funds for parent counsel on behalf of an indigent parent or custodian from a state contract, the court shall make written findings in the appointment order in compliance with this section."

AND

Page 3, delete lines 10 and 11, and substitute the following:
"juvenile division of circuit court."

AND

Page 3, delete lines 19 through 34, and substitute the following:

"(a)(1)(A) There is created a Commission for Parent Counsel consisting of seven (7) members appointed to serve six-year staggered terms, each of whom shall serve until a qualified successor is appointed.

(B) The membership of the commission shall be appointed in the following manner:

- (i) Three (3) members appointed by the Governor;
- (ii) One (1) member appointed by the President Pro Tempore of the Senate;
- (iii) One (1) member appointed by the Speaker of the

House of Representatives; and

(iv) Two (2) members appointed by the Chief Justice of the Supreme Court.

(C) A vacancy shall be filled in the same manner as a regular appointment.

(D) A member of the commission may be reappointed to a successive term or terms or to fill another vacancy on the commission.

(E) A member of the commission shall not be currently active in any position within the child welfare system.

(2) At least two (2) of the members of the commission shall be attorneys with at least ten (10) years of experience in dealing with child welfare legal matters, one (1) of whom shall be a former parent counsel, and at least one (1) member shall be a retired circuit court judge who served in the juvenile division of the circuit court."

AND

Page 4, delete lines 35 and 36

AND

Page 5, delete lines 1 through 36

AND

Page 6, delete lines 1 through 11, and substitute the following:

"(b)(1) The Commission for Parent Counsel may hire or appoint an executive director who shall hire all staff required to implement this subchapter and shall advertise employment and contract opportunities.

(2) The Executive Director of the Commission for Parent Counsel shall report directly to the Commission for Parent Counsel.

(3)(A) The executive director is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings.

(B) An attorney obtaining employment or entering into a contract with the Commission for Parent Counsel shall be designated as the provider for representation of parents in dependency-neglect cases in each judicial district.

(C) An attorney appointed to represent a parent in a dependency-neglect proceeding shall comply with Supreme Court Administrative Order No. 15 concerning standards and qualifications.

(4) The executive director is charged with the authority and responsibility to establish and maintain a program that:

(A) Equitably serves all areas of the state;

(B) Provides quality representation; and

(C) Equitably and prudently makes use of state funding and resources.

(c) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for indigent parent or custodian representation in dependency-neglect cases, the funds appropriated under this subchapter shall be apportioned based upon a formula developed by the executive director and approved by the Commission for Parent Counsel.

(d) Neither the Administrative Office of the Courts nor the Commission for Parent Counsel is liable directly or indirectly to any attorney or to the Arkansas State Claims Commission for the payment of attorney's fees or expenses except to the extent specific funding is appropriated and available for the purpose of providing indigent parent counsel in dependency-neglect cases.

9-27-705. Rulemaking permitted."

AND

Appropriately renumber the sections of the bill.

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. Hutchinson

BPG/TDW - 02-01-2017 15:26:51

BPG215

Secretary