

State of Arkansas
87th General Assembly
Regular Session, 2009

A Bill

HOUSE BILL 2158

By: Representative Harrelson

For An Act To Be Entitled

AN ACT TO CREATE THE DIVISION OF DEPENDENCY-
NEGLECT PARENT COUNSEL REPRESENTATION WITHIN THE
ARKANSAS PUBLIC DEFENDER COMMISSION; AND FOR
OTHER PURPOSES.

Subtitle

TO CREATE THE DIVISION OF DEPENDENCY-
NEGLECT PARENT COUNSEL REPRESENTATION
WITHIN THE ARKANSAS PUBLIC DEFENDER
COMMISSION.

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

SECTION 1. Arkansas Code § 9-27-401 is amended to read as follows:

9-27-401. Creation – Representation for children ~~and parents~~.

(a) There is hereby created a Division of Dependency-Neglect Representation within the Administrative Office of the Courts that will be staffed by a court-appointed special advocate coordinator and an attorney coordinator.

(b)(1) The Director of the Administrative Office of the Courts ~~is~~ ~~authorized to~~ may employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings.

(2)(A) Before employing or entering into a contract or contracts, the office shall consult with the judge or judges of the circuit court designated to hear dependency-neglect cases in their district plan under Supreme Court Administrative Order Number 14, originally issued April



6, 2001, in each judicial district in accordance with the provisions of § 19-11-1001 et seq.

(B) Those obtaining employment or contracts through the office as described in subdivision (b)(3) of this section will be designated as the providers for representation of children in dependency-neglect cases in each judicial district.

(3)(A) The office shall advertise employment and contract opportunities.

(B) The distribution of funds among the judicial districts shall be based on a formula developed by the office and approved by the Juvenile Judges Committee of the Arkansas Judicial Council.

(4) The Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases.

(5)(A)(i) In the transition to a state-funded system of dependency-neglect representation, it is the intent of the General Assembly to provide an appropriate and adequate level of representation to all children in dependency-neglect proceedings as required under federal and state law ~~pursuant to~~ under § 9-27-316.

(ii)(a) It is recognized by the General Assembly that in many areas of the state, resources have not been available to support the requirement of representation for children at the necessary level.

(b) It is also recognized, however, that in other areas a system has been developed that is appropriately and successfully serving children and the courts.

(iii) With the transition to state funding, it is not the intent of the General Assembly to adversely affect these systems that are working well or to put into place a system that is too inflexible to respond to local needs or restrictions.

(B) In its administration of the system, therefore, the office is charged with the authority and responsibility to establish and maintain a system that:

- (i) Equitably serves all areas of the state;
- (ii) Provides quality representation;
- (iii) Makes prudent use of state resources; and
- (iv) Works with those systems now in place to

1 provide an appropriate level of representation of children and courts in
2 dependency-neglect cases.

3 (c) The director is authorized to:

4 (1) Establish a statewide court-appointed special advocate
5 program;

6 (2) Provide grants or contracts to local court-appointed special
7 advocate programs; and

8 (3) Work with judicial districts to establish local programs by
9 which circuit courts may appoint trained volunteers to provide valuable
10 information to the courts concerning the best interests of children in
11 dependency-neglect proceedings.

12 ~~(d)(1) The director is authorized to establish a program to represent~~
13 ~~indigent parents or guardians in dependency neglect cases.~~

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

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

21 ~~(B) Funding for contracts shall be administered from the~~
22 ~~state, or funds shall be provided to the judicial district for the county to~~
23 ~~administer the contracts.~~

24 ~~(C) All contracts shall be paid from funds appropriated~~
25 ~~for the purpose of this section.~~

26 ~~(4) When a court orders the payment of funds for the fees and~~
27 ~~expenses authorized by this subsection, the attorney shall transmit a copy of~~
28 ~~the order to the office or county authorized to pay the funds.~~

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

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

34 ~~(7) In order to ensure that each judicial district will have an~~
35 ~~appropriate amount of funds to utilize indigent parent or guardian~~
36 ~~representation in dependency neglect cases, the funds appropriated shall be~~

1 apportioned based upon a formula developed by the office and approved by the
2 committee.

3 ~~(8) The office shall not be liable directly to any attorney or~~
4 ~~indirectly to the Arkansas State Claims Commission for the payment of~~
5 ~~attorney fees or expenses except to the extent specific funding is~~
6 ~~appropriated and available for the purpose of providing indigent parent~~
7 ~~counsel in dependency neglect cases.~~

8
9 SECTION 2. Arkansas Code Title 9, Chapter 27 is amended to add an
10 additional subchapter to read as follows:

11 Subchapter 7 – Division of Dependency-Neglect Parent Counsel
12 Representation

13 9-27-701. Creation – Representation for parents or guardians.

14 (a) There is hereby created a Division of Dependency-Neglect Parent
15 Counsel Representation within the Arkansas Public Defender Commission that is
16 responsible for the selection, management, and training of all parent counsel
17 in dependency-neglect cases who are appointed to represent an indigent parent
18 or guardian.

19 (b) The circuit courts shall appoint parent counsel in compliance with
20 federal law, § 9-27-316(h), and Supreme Court Administrative Order Number 15
21 in all dependency-neglect proceedings to remove custody or to terminate
22 parental rights.

23 (c)(1) Beginning July 1, 2009, the division is responsible for
24 entering into all contracts for the provision of legal representation under
25 subsections (a) and (b) of this section.

26 (2)(A) The division is responsible for the disbursement of funds
27 appropriated for the purpose of providing parent counsel representation.

28 (B) In order to ensure that each judicial district will have an
29 appropriate amount of funds to use for indigent parent or guardian
30 representation in dependency-neglect cases, the funds appropriated shall be
31 apportioned based on a formula developed by the commission.

32 (3) All contracts shall be paid from funds appropriated for the
33 purpose of this section.

34 (d)(1) In order to defray the costs of the parent counsel office, the
35 court shall assess a user fee of not less than ten dollars (\$10.00) and not
36 more than one hundred dollars (\$100) to be paid at the time of appointment of

1 the parent counsel.

2 (2)(A) The user fee shall be paid to the county office that is
3 responsible for the collection of fines assessed by the circuit court.

4 (B)(i) The county office that is responsible for
5 collecting the user fee shall remit to the commission all fully paid user
6 fees by the 10th day of each month.

7 (ii) The user fee shall be remitted to the account
8 within the State Central Services Fund entitled "Public Defender User Fees".

9 (C) The county office responsible for collecting the user
10 fee shall use forms provided by the commission for reporting the user fees
11 collected and remitted.

12 (3) The fee may be waived if the court finds the assessment to
13 be too burdensome.

14 (4)(A) At any time the circuit court may review and make a
15 determination as to whether the parent or guardian is an indigent person who
16 qualifies for the appointment of an attorney under § 9-27-316(h).

17 (B) The circuit court may make a finding of partial
18 indigence.

19 (C) A finding of indigence or partial indigence may be
20 challenged by the commission or its attorneys.

21 (e)(1) The circuit court may require the parties to pay all or a
22 portion of the legal fees and expenses depending on the ability of the
23 parties to pay under the requirements of § 9-27-316(h)(3).

24 (2) Any funds collected under this subsection shall be remitted
25 by the county to the account within the State Central Services Fund entitled
26 "Public Defender User Fees".

27 (f) The commission shall not be liable directly to an attorney or
28 indirectly to the Arkansas State Claims Commission for payment of attorney
29 fees or expenses except to the extent specific funding is appropriated and
30 available for payment under contracts executed by the commission.

31
32 SECTION 3. Arkansas Code § 16-87-203(a), concerning the powers and
33 duties of the Arkansas Public Defender Commission, is amended to read as
34 follows:

35 (a) The Arkansas Public Defender Commission shall have the following
36 powers and duties:

1 (1) To establish policies and standards for the public defender
2 system throughout the state, including standards for determining who
3 qualifies as an indigent person;

4 (2) To establish policies and standards for the organization and
5 operation of public defenders' offices throughout the state, including
6 funding, compensation, staffing, and standards of experience for attorneys
7 assigned to particular cases;

8 (3) To allocate personnel for each public defender's office
9 throughout the state;

10 (4) To require annual reports regarding expenditures, caseloads,
11 and status of cases from each public defender;

12 (5) To evaluate the performance of the Executive Director of the
13 Arkansas Public Defender Commission, the Capital, Conflicts, and Appellate
14 Office, the Trial Public Defender Office, each public defender, and private
15 attorneys assigned to represent indigent persons;

16 (6) To approve the reassignment of cases from one public
17 defender to another public defender in an adjacent area for the purpose of
18 avoiding conflicts or adjusting caseloads;

19 (7) To approve the purchase, rental, and sharing of office
20 space, equipment, or personnel among public defenders in the event and to the
21 extent such items have been provided through an appropriation of the General
22 Assembly;

23 (8) To establish employee personnel policies for the commission
24 and the public defenders;

25 (9) To accept and to authorize a public defender to accept
26 moneys, gifts, grants, or services from any public or private source;

27 (10) To enter and authorize a public defender to enter into
28 contracts with individuals, educational institutions, nonprofit associations,
29 or state or federal agencies, including contracts for the provision of legal
30 services related to the defense of indigent persons;

31 (11) To maintain for each judicial district a current list of
32 private attorneys who are willing to accept court appointments and who meet
33 any other qualifications established by the commission;

34 (12) To maintain a separate list of private attorneys who are
35 willing to accept court appointments in capital cases and who meet any other
36 qualifications established by the commission;

(13) To oversee the Juvenile Ombudsman Division of the Arkansas Public Defender Commission; ~~and~~

(14) To perform all other functions and duties as authorized by law; and

(15) To oversee the Division of Dependency-Neglect Parent Counsel Representation, § 9-27-701, including without limitation:

(A) Establishing offices within the Division of Dependency-Neglect Parent Counsel Representation to provide dependency-neglect parent counsel for trials and appeals; and

(B) Contracting with attorneys who are qualified to represent parents or guardians under the guidelines established by the Arkansas Supreme Court.

SECTION 4. Arkansas Code § 16-87-204(b), concerning the powers and duties of the executive director of the Arkansas Public Defender Commission, is amended to read as follows:

(b) The executive director shall have the following powers and duties:

(1) To supervise the operations of the Capital, Conflicts, and Appellate Office, and the Trial Public Defender Office;

(2) To maintain records of the operation of the public defender system, ~~including, but not limited to,~~ without limitation the following:

(A) Detailed descriptions of the organization of each public defender's office;

(B) The caseload of each public defender's office, including cases assigned to private attorneys;

(C) Budgets and actual expenditures of the commission and each public defender's office;

(D) Reassignment of cases from one (1) public defender to another public defender in an adjacent area; and

(E) Assignment of cases to private attorneys;

(3) To present to the commission within ninety (90) days after the end of the fiscal year an annual report on the operation of the public defender system which shall include:

(A) An accounting of all funds received and disbursed;

(B) An evaluation of the cost-effectiveness of the public defender system; and

1 (C) Recommendations for improvement;

2 (4) To prepare a budget for the operations of the commission;

3 (5) To allocate and disburse funds appropriated for the
4 operations of the commission and the public defender system pursuant to
5 guidelines established by the commission;

6 (6) To allocate public defender, investigator, and secretary
7 positions to the office of the public defender in each county or judicial
8 district, based upon a formula established by the commission;

9 (7) To establish procedures for evaluating the performance of
10 public defenders and private attorneys participating in the public defender
11 system, pursuant to policies and standards developed by the commission;

12 (8) To appear before and provide assistance to the General
13 Assembly and other relevant bodies regarding matters related to the public
14 defender system;

15 (9) To convene conferences and training seminars related to the
16 public defender system;

17 (10) To compile and disseminate statutes, court opinions, and
18 other information to public defenders and private attorneys participating in
19 the public defender system;

20 (11) To maintain a brief bank for use in connection with
21 appeals;

22 (12) To perform other duties related to the administration of
23 the public defender system as the commission may direct; and

24 (13)~~(A)~~ To supervise the operation of the Juvenile Ombudsman
25 Division of the Arkansas Public Defender Commission; and

26 ~~(B) To maintain records of such operation, including, but~~
27 ~~not limited to:~~

28 ~~(i) The preparation of a budget and record of actual~~
29 ~~expenditures;~~

30 ~~(ii) The assignment of cases and caseload of each~~
31 ~~ombudsman;~~

32 ~~(iii) An evaluation of the performance of each~~
33 ~~ombudsman; and~~

34 ~~(iv) A detailed description of the organization of~~
35 ~~each office of the division.~~

36 (14) To supervise the Division of Dependency-Neglect Parent

1 Counsel Representation of the Arkansas Public Defender Commission, including
 2 without limitation:

3 (A) Establishing offices within the Division of
 4 Dependency-Neglect Parent Counsel Representation to provide dependency-
 5 neglect parent counsel for trials and appeals;

6 (B) Assigning dependency-neglect parent counsel for trials
 7 in the judicial districts throughout the state; and

8 (C) Contracting on behalf of the commission with qualified
 9 attorneys to represent parents or guardians in dependency-neglect trials.

10
 11 SECTION 5. Arkansas Code § 16-87-211(b)(1), concerning submission of
 12 an application for compensation by appointed attorneys, is amended to read as
 13 follows:

14 (b)(1)(A) An application for compensation shall be submitted to the
 15 Arkansas Public Defender Commission accompanied by the affidavit of the
 16 appointed attorney ~~detailing the hours spent on the case and the services~~
 17 ~~rendered and~~ with a detailed explanation of the services rendered, time
 18 spent, and expenses incurred.

19 (B) The commission shall set the amount of
 20 compensation.

21 (C) The affidavit shall also indicate whether
 22 compensation was received or has been applied for from any other source.

23
 24 SECTION 6. Arkansas Code § 16-87-212(a), concerning expenses that the
 25 Arkansas Public Defender Commission is authorized to pay for the defense of
 26 indigents, is amended to read as follows:

27 (a)(1) The Arkansas Public Defender Commission is authorized to pay
 28 for certain expenses regarding the defense of indigents.

29 (2) The expenses shall include, ~~but shall not necessarily be~~
 30 ~~limited to,~~ without limitation fees for appointed counsel, expert witnesses,
 31 ~~temporary~~ investigators, mitigation specialists, testing, and travel of of
 32 appointed counsel, expert witnesses, investigators, or mitigation
 33 specialists.

34 (3)(A) ~~Whenever a judge orders an authorized payment in a case~~
 35 ~~involving an indigent person, a copy of the order accompanied by a detailed~~
 36 ~~explanation of services rendered, time spent, and expenses incurred shall be~~

1 ~~transmitted to the commission, and the commission shall set the amount of~~
 2 ~~compensation.~~

3 ~~(B)~~ Orders as authorized throughout this chapter shall be
 4 paid by the commission provided sufficient funds are available.

5
 6 SECTION 7. Arkansas Code § 16-87-213(a)(2), concerning the
 7 determination by a court that a person qualifies for the appointment of an
 8 attorney under the standards of the Arkansas Public Defender Commission, is
 9 amended to read as follows:

10 (2)(A)(i) If the court in which the person is charged determines
 11 that the person qualifies for the appointment of an attorney under standards
 12 set by the commission, the court, except as otherwise provided by this
 13 subchapter, shall appoint the trial public defender to represent the person
 14 before the court.

15 (ii) The court shall not appoint counsel ~~prior to~~
 16 before review of the submitted affidavit.

17 (iii) The court may make a finding of partial
 18 indigence.

19 (iv) A finding of indigence may be challenged by the
 20 commission or its attorneys.

21 (B)(i)(a) At the time of appointment of ~~counsel~~ a public
 22 defender, the court shall assess a fee of not less than ten dollars (\$10.00)
 23 nor more than one hundred dollars (\$100) to be paid to the commission in
 24 order to defray the costs of the public defender system.

25 (b) The fee may be waived if the court finds
 26 ~~such an~~ the assessment to be too burdensome.

27 (ii)(a) All the user fees shall be collected by the
 28 county or city official, agency, or department designated under § 16-13-709
 29 as primarily responsible for the collection of fines assessed in the circuit
 30 courts and district courts of this state who shall remit to the commission by
 31 the tenth day of each month all of the fees collected on forms provided by
 32 the commission.

33 (b) The commission shall deposit the money
 34 collected into a separate account within the State Central Services Fund
 35 entitled "Public Defender User Fees" for cases involving a risk of loss of
 36 liberty.

1
2 SECTION 8. Arkansas Code § 16-87-303(b), concerning appointment as a
3 public defender, is amended to read as follows:

4 (b)~~(1)~~ Any person interested in being considered for appointment as a
5 public defender in a judicial district shall submit his or her name to the
6 Arkansas Public Defender Commission.

7 ~~(2)(A) The commission shall evaluate and submit up to three (3)~~
8 ~~names to the judges within the judicial district.~~

9 ~~(B) By majority vote, the judges will select one (1) of~~
10 ~~the candidates whose name was submitted by the commission as the public~~
11 ~~defender.~~

12 ~~(C) If one (1) of the candidates submitted does not~~
13 ~~receive a majority vote from the judges, then the commission shall select the~~
14 ~~public defender.~~

15
16 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that it is necessary for the
18 creation of this new division within the Arkansas Public Defender Commission
19 to coincide with the beginning of the fiscal year. Therefore, an emergency
20 is declared to exist and this act being immediately necessary for the
21 preservation of the public peace, health, and safety shall become effective
22 on July 1, 2009.
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