

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

# A Bill

SENATE BILL 775

5 By: Senator Elliott  
6 By: Representative Broadway  
7

## 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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## 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) The Department of Human Services shall make diligent efforts to  
13 identify putative parents in a dependency-neglect proceeding.

14 (2)(A) The department shall provide a putative parent with  
15 notice of a proceeding as soon as the putative parent is identified.

16 (B) The notice shall include information about:

17 (i) The method of establishing paternity;

18 (ii) The right of the putative parent to prove  
19 significant contacts; and

20 (iii) The right of the putative parent to be heard  
21 by the court.

22 (C) The department shall provide the notice to the court  
23 and the parties to the case.

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

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

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

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

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

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

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

36

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

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

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

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

14 (B) ~~The court finds that~~ the putative parent has  
15 established significant contacts with the juvenile so that putative rights  
16 attach;

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

19 (D) The putative parent requested counsel.

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

25 (4)(A)(i) A putative parent has the burden to provide evidence  
26 to the court concerning significant contacts and indigency.

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

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

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

1                   (ii) The court shall appoint counsel subject to § 9-  
2 27-316(h)(3) for the putative parent at any time the court establishes  
3 adoption as the case goal with a termination of parental rights petition to  
4 be filed.

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

11  
12           SECTION 3. Arkansas Code § 9-27-325, concerning juvenile court  
13 hearings generally, is amended to add an additional subsection to read as  
14 follows:

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

17                   (2)(A) The department shall provide a putative parent with  
18 notice of a proceeding 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           (3) The court shall provide a putative parent the opportunity to  
28 be heard regarding his or her efforts in establishing paternity and his or  
29 her significant contacts with regard to his or her children in dependency-  
30 neglect proceedings.

31           (4) A putative parent has the burden to provide evidence to the  
32 court concerning significant contacts.

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

35                   (A) Has established paternity and the circuit court enters  
36 an order establishing the putative parent as the legal parent and directs

1 that the parent be added to the case as a party defendant; or

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

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

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

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

13  
14 SECTION 4. Arkansas Code § 9-27-341(c)(2), concerning termination of  
15 parental rights, is amended to read as follows:

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

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

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

25 ~~(B)(i) When the petitioner has actual knowledge that an~~  
26 ~~individual is claiming to be or is named as the putative parent of the~~  
27 ~~juvenile and the paternity of the juvenile has not been judicially~~  
28 ~~determined, the individual is entitled to notice of the petition to terminate~~  
29 ~~parental rights.~~

30 ~~(ii) The notice shall identify the rights sought to~~  
31 ~~be terminated and those that may be terminated.~~

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