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2 91st General Assembly

A Bill

3 Regular Session, 2017

SENATE BILL 132

4

5 By: Senator J. Hutchinson

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For An Act To Be Entitled

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AN ACT CREATING THE COMMISSION FOR PARENT COUNSEL;

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CONCERNING DEPENDENCY-NEGLECT REPRESENTATION FOR THE

10

PARENT OF A MINOR CHILD; CONCERNING REPRESENTATION IN

11

THE JUVENILE DIVISION OF CIRCUIT COURT; AND FOR OTHER

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PURPOSES.

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Subtitle

16

CREATING THE COMMISSION FOR PARENT

17

COUNSEL; CONCERNING DEPENDENCY-NEGLECT

18

REPRESENTATION FOR THE PARENT OF A MINOR

19

CHILD; AND CONCERNING REPRESENTATION IN

20

THE JUVENILE DIVISION OF CIRCUIT COURT.

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22

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

24

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

26 9-27-314. Emergency orders.

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

34 (2)(A) In ~~any~~ a case in which there is probable cause to believe
35 that an emergency order is necessary to protect the health or physical well-
36 being of the juvenile from immediate danger, the court shall issue an ex



1 parte order to provide specific appropriate safeguards for the protection of
2 the juvenile.

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

6 (i) Having any contact with the ~~child~~ juvenile; or

7 (ii) Removing a ~~child~~ juvenile from a placement if

8 the:

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

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

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

17 (b) The emergency order shall include:

18 (1) Notice to all defendants and respondents named in the
19 petition of the right to a hearing and that a hearing will be held within
20 five (5) business days of the issuance of the ex parte order;

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

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

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

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

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

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

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

36 (A) Custodial parent, noncustodial parent, guardian, or

1 *custodian of the juvenile; and*

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

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

8 ~~*(2)(3)*~~ *All defendants shall be served with the emergency order*
9 *according to Rule 4 or Rule 5 of the Arkansas Rules of Civil Procedure or as*
10 *otherwise provided by the court.*

11
12 *SECTION 2. Arkansas Code § 9-27-316(h)(1), concerning a parent's and*
13 *custodian's right to counsel in a dependency neglect hearing, is amended to*
14 *read as follows:*

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

17 *(B) In all dependency-neglect proceedings that set out to*
18 *remove legal custody from a parent or custodian, the parent or custodian from*
19 *whom custody was removed shall have the right to be appointed counsel, and*
20 *the court shall appoint counsel if the court makes a finding that the parent*
21 *or custodian from whom custody was removed is indigent and counsel is*
22 *requested by the parent or custodian.*

23 *(C)(i) Parents and custodians shall be advised in the*
24 *dependency-neglect petition or the ex parte emergency order, whichever is*
25 *sooner, and at the first appearance before the court, of the right to counsel*
26 *and the right to appointed counsel, if eligible.*

27 *(ii) As required under § 9-27-314, a circuit court*
28 *shall appoint counsel in an ex parte emergency order and shall determine*
29 *eligibility at the commencement of the probable cause hearing.*

30 *(D) All parents shall have the right to be appointed*
31 *counsel in termination of parental rights hearings, and the court shall*
32 *appoint counsel if the court makes a finding that the parent is indigent and*
33 *counsel is requested by the parent.*

34 *(E) In a dependency-neglect proceeding naming a minor*
35 *parent as a defendant, the court shall appoint a qualified parent counsel for*
36 *the minor parent.*

1
2 SECTION 3. Arkansas Code § 9-27-316(h)(6), concerning the timely
3 appointment of counsel in a dependency-neglect hearing, is amended to read as
4 follows:

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

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

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

20
21 SECTION 4. Arkansas Code § 9-27-316(h), concerning a parent's or
22 custodian's right to counsel in a dependency-neglect proceeding, is amended
23 to add an additional subdivision to read as follows:

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

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

32
33 SECTION 5. Arkansas Code § 9-27-401(d), concerning the establishment
34 of a program to represent indigent parents or legal custodians in dependency-
35 neglect cases, is repealed.

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

1 ~~indigent parents or 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.~~

4 ~~(3)(A) Funding for contracts shall be administered from the~~
5 ~~state, or funds shall be provided to the judicial district for the county to~~
6 ~~administer the contracts.~~

7 ~~(B) All contracts shall be paid from funds appropriated~~
8 ~~for the purpose of this section.~~

9 ~~(4) When a court orders payment of funds for parent counsel on~~
10 ~~behalf of an indigent parent or custodian from a state contract, the court~~
11 ~~shall make written findings in the appointment order in compliance with § 9-~~
12 ~~27-316(h).~~

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

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

18 ~~(7) In order to ensure that each judicial district will have an~~
19 ~~appropriate amount of funds to utilize for indigent parent or custodian~~
20 ~~representation in dependency neglect cases, the funds appropriated shall be~~
21 ~~apportioned based upon a formula developed by the office and approved by the~~
22 ~~committee.~~

23 ~~(8) The office shall not be liable directly to any attorney or~~
24 ~~indirectly to the Arkansas State Claims Commission for the payment of~~
25 ~~attorney's fees or expenses except to the extent specific funding is~~
26 ~~appropriated and available for the purpose of providing indigent parent~~
27 ~~counsel in dependency neglect cases.~~

28
29 SECTION 6. Arkansas Code Title 9, Chapter 27, is amended to add an
30 additional subchapter to read as follows:

31 Subchapter 7 - Commission for Parent Counsel

32
33 9-27-701. Legislative intent.

34 It is the intent of the General Assembly to provide for representation
35 for parents of a minor who is the subject of a dependency-neglect case in the
36 juvenile division of circuit court.

1
2 9-27-702. Definitions.

3 As used in this subchapter, "parent" means the same as under § 9-27-
4 303(40), and "parent" also includes a guardian as defined under § 9-27-
5 303(28) and a custodian as defined under § 9-27-303(14).

6
7 9-27-703. Commission for Parent Counsel.

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

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

13 (i) Three (3) members appointed by the Governor;

14 (ii) One (1) member appointed by the President Pro
15 Tempore of the Senate;

16 (iii) One (1) member appointed by the Speaker of the
17 House of Representatives; and

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

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

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

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

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

31 (b) Each year the commission shall elect a chair from its membership.

32 (c) Members of the commission shall not receive pay for their
33 services, but each member may receive expense reimbursement in accordance
34 with § 25-16-901 et seq.

35 (d) A minimum of four (4) members of the commission is necessary for a
36 quorum.

1 (e)(1) Members of the commission may meet or talk with each other,
2 support staff and administrative staff, and attorneys who contract with the
3 commission to provide services concerning the quality and assessment of an
4 attorney's representation of the attorney's clients without being subject to
5 the requirements of the Freedom of Information Act of 1967, § 25-19-101 et
6 seq.

7 (2)(A) Otherwise, all deliberations by the commission shall be
8 open to the public.

9 (B) A deliberation that includes a discussion in whole or
10 in part of an attorney's representation of a specific client may be closed to
11 the public in order to protect the client's privacy.

12 (f)(1) General support staff, facilities, and operating assistance for
13 the Commission for Parent Counsel shall be provided by the Administrative
14 Office of the Courts from funds that are specifically appropriated for that
15 purpose by the General Assembly.

16 (2) However, the office shall not have oversight responsibility
17 or authority over the commission, except when the commission requests that
18 the office facilitate any contract with an attorney who has been approved for
19 contract by the commission.

20
21 9-27-704. Powers and duties of the Commission for Parent Counsel –
22 Funding formula – Liability.

23 (a)(1) The Commission for Parent Counsel shall enter into contracts
24 with attorneys in order to provide counsel required by the circuit court in
25 certain cases in the juvenile division of circuit court for a parent of a
26 minor subject to a juvenile case.

27 (2) The Commission for Parent Counsel may contract with
28 attorneys to represent a parent at the trial court level as well as at the
29 appellate level.

30 (3) The Commission for Parent Counsel shall establish guidelines
31 to provide a maximum amount of expenses and fees per hour and per case that
32 shall be paid under this subchapter.

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

36 (2) The Executive Director of the Commission for Parent Counsel

1 shall report directly to the Commission for Parent Counsel.

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

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

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

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

14 (A) Equitably serves all areas of the state;

15 (B) Provides quality representation; and

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

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

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

29
30 9-27-705. Rulemaking permitted.

31 The Commission for Parent Counsel may establish rules not otherwise
32 addressed by this subchapter for its own governing for the administrative
33 affairs of the commission and to effectuate the intent of this subchapter.

34
35 SECTION 7. DO NOT CODIFY. Temporary legislation.

36 (a) The Commission for Parent Counsel shall hold its first meeting

1 within ninety (90) days of the effective date of this act.

2 (b) At the first meeting of the commission, the members shall draw
3 lots for terms so that two (2) members will serve for a term of four (4)
4 years; three (3) members will serve for a term of five (5) years; and two (2)
5 members will serve for a term of six (6) years.

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/s/J. Hutchinson

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