

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: S3/22/17

A Bill

SENATE BILL 736

5 By: Senator A. Clark
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE RIGHT OF A
9 PARENT, CUSTODIAN, AND PUTATIVE PARENT TO HAVE
10 COUNSEL DURING DEPENDENCY-NEGLECT AND TERMINATION OF
11 PARENTAL RIGHTS PROCEEDINGS; AND FOR OTHER PURPOSES.
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Subtitle

14 TO AMEND THE LAW CONCERNING THE RIGHT OF
15 A PARENT, CUSTODIAN, AND PUTATIVE PARENT
16 TO HAVE COUNSEL DURING DEPENDENCY-NEGLECT
17 AND TERMINATION OF PARENTAL RIGHTS
18 PROCEEDINGS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 *SECTION 1. Arkansas Code § 9-27-316(h), concerning the right of a*
25 *parent, custodian, and putative parent to appointed counsel, is amended to*
26 *read as follows:*

27 *(h)(1)(A) All parents and custodians have a right to counsel in all*
28 *dependency-neglect proceedings, including an appeal related to the final*
29 *adjudication of a dependency-neglect proceeding, regardless of income.*

30 *(B)(i) Appointment of counsel is presumed necessary for a*
31 *parent or custodian from whom custody of a juvenile is removed.*

32 *(ii) In all dependency-neglect proceedings that set*
33 *out to remove legal custody from a parent or custodian, the parent or*
34 *custodian from whom custody was removed shall have the right to be appointed*
35 *counsel, regardless of income, and the court shall appoint counsel if ~~the~~*
36 *~~court makes a finding that the parent or custodian from whom custody was~~*



1 ~~removed is indigent and~~ counsel is requested by the parent or custodian.

2 (C) Parents and custodians shall be advised in the
3 dependency-neglect petition or the ex parte emergency order, whichever is
4 sooner, and at the first appearance before the court, of the right to counsel
5 and the right to appointed counsel, ~~if eligible~~ regardless of income.

6 (D)(i) All parents shall have the right to be appointed
7 counsel in proceedings related to the termination of parental rights
8 hearings, and the including an appeal related to the final adjudication of a
9 petition to terminate parental rights, regardless of income.

10 (ii) The court shall appoint counsel if ~~the court~~
11 ~~makes a finding that the parent is indigent and~~ counsel is requested by the
12 parent.

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

16 (2) If at the permanency planning hearing or at any time the
17 court establishes the goal of adoption and counsel has not yet been appointed
18 for a parent, the court shall appoint counsel to represent the parent as
19 provided by subdivision (h)(1)(D) of this section.

20 (3) Putative parents ~~do not~~ have a right to appointed counsel in
21 dependency-neglect proceedings, ~~except for~~ and termination of parental rights
22 proceedings, including an appeal related to the final adjudication of a
23 dependency-neglect proceeding or a petition to terminate parental rights,
24 regardless of income, only if the court finds on the record that:

25 (A) ~~The putative parent is indigent;~~

26 ~~(B)~~ The putative parent has established significant
27 contacts with the juvenile so that putative rights attach;

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

30 ~~(D)~~(B) The putative parent ~~requested~~ requests counsel.

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

33 (ii) ~~The putative parent shall request appointed~~
34 ~~counsel for~~ The court shall appoint counsel to represent the putative parent
35 in a termination of parental rights hearing if the goal of the case changes
36 to adoption with a termination of parental rights petition to be filed.

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

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

7 (ii) The court shall appoint counsel subject to
8 subdivision (h)(3) of this section for the putative parent at any time the
9 court establishes adoption as the case goal with a termination of parental
10 rights petition to be filed.

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

17 (5)(A) The court shall order financially able parents or
18 custodians to pay all or part of reasonable attorney's fees and expenses for
19 court-appointed representation after review by the court of an affidavit of
20 financial means completed and verified by the parent or custodian and a
21 determination by the court of an ability to pay.

22 (B)(i) All moneys collected by the clerk under this
23 subsection shall be retained by the clerk and deposited into a special fund
24 to be known as the "Juvenile Court Representation Fund".

25 (ii) The court may direct that money from the fund
26 be used in providing counsel for indigent parents or custodians at the trial
27 level in dependency-neglect proceedings.

28 (iii) Upon ~~a determination of indigency and a~~
29 finding by the court that the fund does not have sufficient funds to pay
30 reasonable attorney's fees and expenses incurred at the trial court level and
31 state funds have been exhausted, the court may order the county to pay these
32 reasonable fees and expenses until the state provides funding for counsel.

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

