

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1643

5 By: Representatives Burch, Capp
6 By: Senator A. Clark
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING PUTATIVE PARENTS
10 UNDER THE ARKANSAS JUVENILE CODE OF 1989; TO AMEND
11 THE LAW ON THE TERMINATION OF PARENTAL RIGHTS; TO
12 AMEND THE LAW CONCERNING TRIAL HOME PLACEMENTS; AND
13 FOR OTHER PURPOSES.
14

Subtitle

15
16 TO AMEND THE LAW CONCERNING PUTATIVE
17 PARENTS UNDER THE ARKANSAS JUVENILE CODE
18 OF 1989; TO AMEND THE LAW ON THE
19 TERMINATION OF PARENTAL RIGHTS; AND TO
20 AMEND THE LAW CONCERNING TRIAL HOME
21 PLACEMENTS.
22
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. The introductory language of Arkansas Code § 9-27-
28 311(c)(2), concerning when a putative parent should be named as a party in a
29 dependency-neglect and termination of parental rights petition, is amended to
30 read as follows:

31 (2) However:

32 (A) In dependency-neglect petitions, the juvenile shall
33 have party status and be named in the petition as a respondent and shall be
34 served under § 9-27-312;

35 (B) ~~In~~ Unless otherwise provided under subdivision
36 (d)(2)(A) of this section, in a dependency-neglect and termination of



1 parental rights petition, the putative parent shall not be ~~named as~~ a party
 2 unless the circuit court determines that the putative parent:

3 (i) Has established paternity and the circuit court
 4 enters an order establishing the putative parent as the ~~legal~~ parent for the
 5 purposes of this subchapter and directs that the parent be added to the case
 6 as a party defendant; or

7 (ii) Has established significant contacts with the
 8 juvenile and the circuit court enters an order that putative parent rights
 9 have attached and the putative parent shall be added to the case as a party
 10 defendant; and

11 (C) In a paternity action, the petitioner shall name as
 12 defendants only the mother, the putative father, or the presumed legal
 13 father, if any.
 14

15 SECTION 2. Arkansas Code § 9-27-311(d)(2), concerning a proceeding
 16 notice under Rule 4 of the Arkansas Rules of Civil Procedure that the
 17 Department of Human Services must provide to a putative parent when the
 18 putative parent is identified, is amended to read as follows:

19 (2)(A)(i) ~~The department~~ A petitioner may name and serve a
 20 putative parent as a party under § 9-27-312 to resolve the party status and
 21 rights under § 9-27-325 or terminate the rights of the putative parent under
 22 § 9-27-341.

23 (ii) If the petitioner does not name and serve a
 24 putative parent as party in accordance with subdivision (d)(2)(A)(i) of this
 25 section, the petitioner shall provide a putative parent with notice under
 26 Rule 4 of the Arkansas Rules of Civil Procedure of a proceeding as soon as
 27 the putative parent is identified.

28 (B) The notice shall include information about:

29 (i) The method of establishing paternity;
 30 (ii) The right of the putative parent to prove
 31 significant contacts; and

32 (iii) The right of the putative parent to be heard
 33 by the court.

34 (C) ~~The department~~ petitioner shall provide the notice to
 35 the court and the parties to the case.
 36

1 SECTION 3. Arkansas Code § 9-27-316(h)(4), concerning a putative
 2 parent's burden to prove significant contacts with the child and the
 3 appointment of counsel for a putative parent, is amended to read as follows:

4 (4)(A)~~(i)~~ A putative parent has the burden to prove paternity
 5 and significant contacts with the child ~~so that putative rights attach.~~

6 ~~(ii) The putative parent shall request appointed~~
 7 ~~counsel for a termination of parental rights hearing if the goal of the case~~
 8 ~~changes to adoption with a termination of parental rights petition to be~~
 9 ~~filed.~~

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

13 (C)(i) ~~If the court determines that the putative parent~~
 14 ~~is entitled to appointed counsel under subdivision (h)(3) of this section,~~
 15 ~~the~~ The termination petition shall include the putative parent as provided
 16 under § 9-27-311(c)(2)(B).

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

21 ~~(D) If the putative parent, after notice by the~~
 22 ~~department, has not made an attempt to establish significant contacts with~~
 23 ~~his or her child or the court determines that the putative parent has not~~
 24 ~~established significant contacts, only legal parents shall be included in the~~
 25 ~~termination petition and no further notice is required of the putative~~
 26 ~~parent.~~

27
 28 SECTION 4. Arkansas Code § 9-27-325(o)(2)-(6), concerning notice to a
 29 putative parent in a dependency-neglect proceeding, a putative parent's
 30 burden to prove significant contacts, when a putative parent may be named as
 31 a party, and when a court may order a DNA test, is amended to read as
 32 follows:

33 (2)(A)(i) A petitioner may name and serve a putative parent as a
 34 party under § 9-27-312 to resolve the party status and rights under § 9-27-
 35 325 or terminate the rights of the putative parent under § 9-27-341.

36 (ii) If the petitioner does not name and serve a

1 putative parent as a party in accordance with subdivision (o)(2)(A)(i) of
 2 this section, the petitioner ~~The department~~ shall provide a putative parent
 3 with notice under Rule 4 of the Arkansas Rules of Civil Procedure of a
 4 proceeding as soon as the putative parent is identified.

5 (B) The notice shall include information about:

6 (i) The method of establishing paternity;

7 (ii) The right of the putative parent to prove
 8 significant contacts; and

9 (iii) The right of the putative parent to be heard
 10 by the court.

11 (C) ~~The department~~ petitioner shall provide the notice to
 12 the court and the parties to the case.

13 (3)(A)(i) If the petitioner has named and served a putative
 14 parent under §§ 9-27-311 and 9-27-325, the court shall resolve the party
 15 status of a putative parent and the rights of the putative parent as a
 16 putative father.

17 (ii) A court may consider the termination of the
 18 rights of a putative parent under § 9-27-341 if the court finds that the
 19 rights of the putative parent as a putative father under subdivision (o)(5)
 20 of this section have attached.

21 (B) The court shall provide a putative parent the
 22 opportunity to be heard regarding his or her efforts in establishing
 23 paternity and his or her significant contacts with regard to his or her
 24 children in dependency-neglect proceedings.

25 (C) The court shall order a DNA test of each putative
 26 parent who is made a party in a dependency-neglect proceeding.

27 (4) A putative parent has the burden to prove paternity and
 28 significant contacts with the child ~~so that putative rights attach.~~

29 (5)(A) Except as provided under subdivision (o)(2)(A) of this
 30 section and § 9-27-311, a putative parent shall not be named as a party
 31 unless the circuit court determines that the putative parent:

32 (A)(i) ~~Has established paternity and the circuit court~~
 33 ~~enters an order establishing the putative parent as the legal parent~~ for the
 34 purposes of this subchapter and directs that the parent be added to the case
 35 as a party defendant; or

36 (B)(ii) ~~Has established significant contacts with the~~

1 juvenile and the circuit court enters an order that putative parent rights
 2 have attached and the putative parent shall be added to the case as a party
 3 defendant.

4 (B)(i) If the petitioner has named and served a putative
 5 parent under §§ 9-27-311 and 9-27-325 and the circuit court finds that the
 6 putative parent has established paternity, the court shall:

7 (a) Enter an order establishing the putative
 8 parent as a parent for the purposes of this subchapter; and

9 (b) Maintain the parent as a party defendant.

10 (ii) If the petitioner has named and served a
 11 putative parent under §§ 9-27-311 and 9-27-325 and the circuit court finds
 12 that the putative parent has established significant contacts with the
 13 juvenile, the court shall:

14 (a) Enter an order stating that the rights of
 15 the putative parent have attached; and

16 (b) Maintain the putative parent as a party
 17 defendant.

18 (C) If the circuit court finds that the putative parent
 19 has not established paternity and significant contacts, the circuit court
 20 shall:

21 (i) Find that the putative parent is not a parent
 22 for the purposes of this subchapter;

23 (ii) Find that the rights of the putative parent
 24 have not attached; and

25 (iii) Dismiss the putative parent from the case with
 26 no further notice to the putative parent required.

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

28 (B) A DNA test that establishes the paternity of the
 29 putative parent is sufficient evidence to establish that the putative parent
 30 is ~~the legal~~ a parent for purposes of this subchapter and the court shall
 31 enter an appropriate order under subdivision ~~(e)(5)(A)~~ (o)(5) of this
 32 section.

33
 34 SECTION 5. Arkansas Code § 9-27-341(a)(2), concerning the use of this
 35 section in cases in which the Department of Human Services is attempting to
 36 clear a juvenile for permanent placement, is amended to read as follows:

1 (2)(A) This section shall be used only in cases in which the
 2 department is attempting to clear a juvenile for permanent placement by
 3 terminating the parental rights of a parent and putative parent based on the
 4 definition of "parent" and "putative father" under § 9-27-303.

5 (B) This section shall not be used to terminate the rights
 6 of a putative parent if a court of competent jurisdiction has previously
 7 determined under § 9-27-325 that the rights of the putative parent have not
 8 attached.

9
 10 SECTION 6. Arkansas Code § 9-27-341(b)(3)(B), concerning the grounds
 11 that operate as a basis for terminating parental rights, is amended to add an
 12 additional subdivision to read as follows:

13 (x) A putative parent has not established paternity
 14 or significant contacts with his or her child after:

15 (a) Being named and served as a party in a
 16 dependency-neglect proceeding; or

17 (b) Receiving notice of a dependency-neglect
 18 proceeding under § 9-27-311 or § 9-27-325.

19
 20 SECTION 7. Arkansas Code § 9-27-341(b)(3)(B)(iii), concerning a
 21 presumptive legal father not being the biological father of a juvenile as a
 22 ground that operates as a basis for terminating parental rights, is amended
 23 to read as follows:

24 (iii) The ~~presumptive legal father~~ parent is not the
 25 biological ~~father~~ parent of the juvenile and the welfare of the juvenile can
 26 best be served by terminating the parental rights of the ~~presumptive legal~~
 27 ~~father~~ parent;

28
 29 SECTION 8. Arkansas Code § 9-27-341(c), concerning the effect of a
 30 termination of parental rights, is amended to read as follows:

31 (c)(1) An order terminating the relationship between parent and
 32 juvenile:

33 (A)(i) ~~divests~~ Divests the parent and the juvenile of all
 34 legal rights, powers, and obligations with respect to each other, including
 35 the right to withhold consent to adoption, except the right of the juvenile
 36 to inherit from the parent, that is terminated only by a final order of

1 adoption; and

2 (B)(i) Divests a putative parent and the juvenile of all
 3 rights, powers, and obligations with respect to the putative parent and the
 4 juvenile if the rights of the putative parent have attached under § 9-27-
 5 325(o) before or during the termination proceeding.

6 (ii) The divesting of all the rights, powers, and
 7 obligations of the putative parent and the juvenile shall be based on the
 8 same authority, requirements, limitations, and other provisions that apply to
 9 the termination of the rights of a parent, including without limitation the
 10 provision requiring the dismissal of a putative parent as a party to a case
 11 without further notice to the putative parent.

12 (2)(A) Termination of the relationship between a juvenile and
 13 one ~~(1)~~ parent shall not affect the relationship between the juvenile and the
 14 other parent if those rights are legally established.

15 (B) A court may terminate the rights of one ~~(1)~~ parent and
 16 not the other parent if the court finds that it is in the best interest of
 17 the child.

18 (3) An order terminating parental rights under this section:

19 (A) may May authorize the department to consent to
 20 adoption of the juvenile; and

21 (B) Dismisses the parent or putative parent subject to the
 22 termination of parental rights as a party to the case without further notice
 23 to the parent or putative parent required.

24
 25 SECTION 9. Arkansas Code § 9-27-355(c), concerning trial home
 26 placements with a parent of a juvenile or a person from whom custody of the
 27 juvenile was removed, is amended to read as follows:

28 (c)(1)(A) The court may order ~~juveniles who are~~ a juvenile who is in
 29 the custody of the department to be placed in a trial home placement with
 30 ~~parents~~ a parent of the juvenile or the person from whom custody of the
 31 juvenile was removed for a ~~period not to exceed sixty (60) days, except as~~
 32 ~~approved by the department, and in any event, not to exceed six (6) months, a~~ period of:
 33

34 (i) No longer than sixty (60) days; or

35 (ii) More than sixty (60) days but no longer than
 36 one hundred eighty (180) days with the consent of the department.

1 (B) The department may place a juvenile who is in its
 2 custody in a trial home placement with a parent of the juvenile or the person
 3 from whom custody of the juvenile was removed for no longer than one hundred
 4 eighty (180) days.

5 (C) A trial home placement with a parent who did not have
 6 custody of the juvenile at the time of the removal of the juvenile and
 7 placement into the custody of the department may occur only after the court
 8 or the department determines that:

9 (i) The trial home placement is in the best interest
 10 of the juvenile;

11 (ii) The noncustodial parent does not have a
 12 restriction on contact with the juvenile; and

13 (iii) There is no safety concern with the trial home
 14 placement after reviewing:

15 (a) The criminal background of the
 16 noncustodial parent;

17 (b) The home of the noncustodial parent and
 18 each person in the home of the noncustodial parent; and

19 (c) Other information in the records of the
 20 department, including without limitation records concerning foster care,
 21 child maltreatment, protective services, and supportive services.

22 (2)(A) At every stage of the case, the court shall consider the
 23 least restrictive placement for the juvenile and assess safety concerns that
 24 prevent either a trial home placement or the juvenile from being returned to
 25 or placed in the custody of the parent of the juvenile.

26 (B) The court shall detail the safety concerns in
 27 subdivision (c)(2)(A) of this section in its written order.

28 (C) Failure to complete a case plan is not a sufficient
 29 reason ~~in and of itself~~ alone to deny the placement of the juvenile in the
 30 home of a parent of the juvenile.

31 ~~(D) Trial home placements~~ A trial home placement may be
 32 made with ~~parents~~ a parent of the juvenile or the person from whom custody of of
 33 the juvenile was removed.

34 (3) At the end of the trial home placement, ~~the court:~~

35 (A) The court shall ~~either~~ place custody of the juvenile
 36 with the parent of the juvenile or the person from whom custody of the

1 juvenile was removed,; or

2 (B) ~~the~~ The department shall return the juvenile to a
 3 licensed or approved foster home, shelter, or facility or an exempt child
 4 welfare agency as defined in § 9-28-402.

5
 6 SECTION 10. Arkansas Code § 9-28-108(d), concerning trial home
 7 placements with a parent of a juvenile or a person from whom custody of the
 8 juvenile was removed, is amended to read as follows:

9 (d)(1)~~(A)~~ ~~A juvenile who is in the custody of the department shall be~~
 10 ~~allowed to have a trial placement with the juvenile's parents or the person~~
 11 ~~from whom custody was removed for a time period not to exceed sixty (60) days~~
 12 A court may order a juvenile who is in the custody of the department to be
 13 placed in a trial home placement with a parent of the juvenile or the person
 14 from whom custody of the juvenile was removed for:

15 (i) No longer than sixty (60) days; or

16 (ii) More than sixty (60) days but no longer than
 17 one hundred eighty (180) days with the consent of the department.

18 (B) The department may place a juvenile who is in its
 19 custody in a trial home placement with a parent of the juvenile or the person
 20 from whom custody of the juvenile was removed for no longer than one hundred
 21 eighty (180) days.

22 (C) A trial home placement with a parent who did not have
 23 custody of the juvenile at the time of the juvenile's removal into the
 24 custody of the department may be made only after the court or the department
 25 determine that:

26 (i) The trial home placement is in the best interest
 27 of the juvenile;

28 (ii) The noncustodial parent does not have a
 29 restriction on contact with the juvenile; and

30 (iii) There are no safety concerns related to the
 31 placement after reviewing:

32 (a) The criminal background of the
 33 noncustodial parent;

34 (b) The home of the noncustodial parent and
 35 each person in the home of the noncustodial parent; and

36 (c) Other information in the records of the

1 department, including without limitation records concerning foster care,
2 child maltreatment, protective services, and support services.

3 (2) ~~After sixty (60) days, the court shall either~~ At the end of
4 the trial home placement the:

5 (A) ~~Place~~ Court shall place custody of the juvenile with
6 the ~~parents~~ parent or the person from whom custody was removed; or

7 (B) ~~Remove the juvenile from the parent or person from~~
8 ~~whom custody was removed and~~ Department shall return the juvenile to ~~the~~
9 ~~department for placement in~~ a licensed or approved foster home, shelter, or
10 facility or an exempt child welfare agency as defined in § 9-28-402.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36