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4

As Engrossed: S1/24/17 S2/7/17

A Bill

SENATE BILL 132

5 By: Senator J. Hutchinson
6

For An Act To Be Entitled

8 AN ACT CREATING THE COMMISSION FOR PARENT COUNSEL;
9 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
12 PURPOSES.
13
14

Subtitle

15 CREATING THE COMMISSION FOR PARENT
16 COUNSEL; CONCERNING DEPENDENCY-NEGLECT
17 REPRESENTATION FOR THE PARENT OF A MINOR
18 CHILD; AND CONCERNING REPRESENTATION IN
19 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, commencing at a probable cause hearing.*

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 upon the commencement of a dependency-neglect petition*
29 *or for an ex parte emergency order, whichever is sooner, and determine*
30 *eligibility at the commencement of the probable cause hearing.*

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

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

1 the minor parent.

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

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

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

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

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

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

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

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

1 ~~(d)(1) The director is authorized to establish a program to represent~~
2 ~~indigent parents or legal custodians in dependency neglect cases.~~

3 ~~(2) The court shall appoint counsel in compliance with federal~~
4 ~~law, § 9-27-316(h), and Supreme Court Administrative Order Number 15.~~

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

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

10 ~~(4) When a court orders payment of funds for parent counsel on~~
11 ~~behalf of an indigent parent or custodian from a state contract, the court~~
12 ~~shall make written findings in the appointment order in compliance with § 9-~~
13 ~~27-316(h).~~

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

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

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

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

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

32 Subchapter 7 – Commission for Parent Counsel

33
34 9-27-701. Legislative intent.

35 It is the intent of the General Assembly to provide for representation
36 for parents of a minor who is the subject of a dependency-neglect case in the

1 juvenile division of circuit court.

2
3 9-27-702. Definitions.

4 As used in this subchapter, "parent" means the same as under § 9-27-
5 303(40), and "parent" also includes a guardian as defined under § 9-27-
6 303(28) and a custodian as defined under § 9-27-303(14).

7
8 9-27-703. Commission for Parent Counsel.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 quorum.

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

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

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

13 (f)(1) The Administrative Office of the Courts shall provide funding
14 for the operations and administration of the commission.

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

19
20 9-27-704. Powers and duties of the Commission for Parent Counsel –
21 Funding formula – Liability.

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

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

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

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

35 (2) The Executive Director of the Commission for Parent Counsel
36 shall report directly to the Commission for Parent Counsel.

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

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

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

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

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

14 (B) Provides quality representation; and

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

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

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

28
29 9-27-705. Rulemaking permitted.

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

33
34 SECTION 7. DO NOT CODIFY. Temporary legislation.

35 (a) The Commission for Parent Counsel shall hold its first meeting
36 within ninety (90) days of the effective date of this act.

