

1 HB129
2 189039-1
3 By Representatives Wingo, Ainsworth, Rich, Fincher, Garrett
4 and Mooney
5 RFD: Judiciary
6 First Read: 09-JAN-18

2
3
4
5
6
7
8 SYNOPSIS: Existing law provides that a petitioner or
9 respondent in a juvenile dependency case may
10 receive the services of court appointed counsel if
11 the court makes a finding of indigency.

12 This bill would establish requirements for a
13 finding of indigency in juvenile dependency cases
14 and would establish a limit on the use of court
15 appointed counsel for a petitioner who has already
16 had parental rights terminated.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to juvenile dependency proceedings; to
23 amend Section 12-15-305, Code of Alabama 1975, to provide that
24 an indigent petitioner for juvenile dependency who is a
25 biological parent or former custodial guardian is entitled to
26 appointed counsel the first time a petition for juvenile

1 dependency is made by that petitioner; and to add requirements
2 for a finding of indigency.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 12-15-305, Code of Alabama 1975,
5 is amended to read as follows:

6 "§12-15-305.

7 "(a) Upon request and a finding of indigency, the
8 juvenile court may appoint an attorney to represent the
9 petitioner and may order recoupment of the fees of the
10 attorney to be paid to the State of Alabama. If the petitioner
11 is a biological parent or former custodial guardian for whom
12 the court has previously terminated parental rights and
13 transferred custody to another party, and the court upholds
14 the existing custody arrangement or visitation arrangement or
15 otherwise again denies custody or visitation to that
16 petitioner, that petitioner's eligibility for court appointed
17 counsel and recoupment of attorney fees shall cease at that
18 time.

19 "(b) In dependency and termination of parental
20 rights cases, the respondent parent, legal guardian, or legal
21 custodian shall be informed of his or her right to be
22 represented by counsel and, if the juvenile court determines
23 that he or she is indigent, counsel shall be appointed where
24 the respondent parent, legal guardian, or legal custodian is
25 unable for financial reasons to retain his or her own counsel.

26 "(c) Notwithstanding any other law to the contrary,
27 a petitioner or respondent making a claim of indigency must

1 execute an affidavit of substantial hardship on a form
2 approved by the court. The affidavit must include the total
3 value of all cash, financial assets, real property, and
4 personal property owned by the applicant. To make a finding of
5 indigency, the court must find that a petitioner or respondent
6 is financially unable to pay for his or her representation
7 based on both of the following:

8 "(1) The petitioner or respondent has an income
9 level at or below 125 percent of the United States poverty
10 level as defined by the most recent revised poverty income
11 guidelines published by the United States Department of Health
12 and Human Services.

13 "(2) Except for a homestead and one vehicle having
14 an equity value of five thousand dollars (\$5,000) or less, the
15 petitioner or respondent does not own or have equity in any
16 cash, financial assets, real property, or personal property
17 with a total equity value of two thousand five hundred dollars
18 (\$2,500) or more."

19 Section 2. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.