



SPONSOR: Rep. Griffith & Rep. Dorsey Walker & Sen. Gay
Reps. Baumbach, Chukwuocha, Cooke, K. Johnson,
Lambert, Morrison, Phillips, Romer, Wilson-Anton; Sens.
Hoffner, Sokola

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 86

AN ACT TO AMEND TITLES 13 AND 29 OF THE DELAWARE CODE RELATING TO REPRESENTATION OF
INDIGENT PERSONS IN CIVIL PROCEEDINGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 2504, Title 13 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 2504. Hearing procedure and notice requirements.

4 (a) When a petition is filed under this chapter, the Court shall set a date for a hearing on the petition, and shall
5 cause notice of time, place, and purpose of the hearing to be served as required in this section.

6 (b) Notice of the time, place, and purpose of the hearing shall be served upon ~~the parent or parents, guardian or~~
7 ~~guardians, person or persons, DSCYF, each parent, guardian, or~~ licensed agency holding parental rights at the respondent's
8 last known address or to the address received in the petition. Notice to a parent must include the right to an attorney, if
9 indigent, as provided in subsection (g).

10 (c) If the Court finds that personal service within the State cannot be accomplished upon a party, the petitioner
11 shall cause notice to be published either on a legal notices website established by the Court or in a newspaper of general
12 circulation in the county where the respondent is most likely to be residing.

13 (d) Personal service at any time prior to the hearing shall be sufficient to confer jurisdiction upon the Court.

14 (e) Notice provided pursuant to this section shall constitute conclusive evidence of service and a hearing will then
15 proceed at the time and date set, with or without the appearance of ~~the parent or parents, guardian or guardians, person or~~
16 ~~persons, DSCYF, or licensed agency holding parental rights~~ a party so notified.

17 (f) When a petition is filed under this chapter, the Court shall appoint an attorney authorized to practice law in this
18 State to represent the child. When appointing an attorney, the Court may also appoint a Court Appointed Special Advocate
19 volunteer to work in conjunction with the attorney. The rights, responsibilities and duties in representing the child are set
20 forth in § 9007A of Title 29. For the purposes of the Child Abuse Prevention and Treatment Act (42 U.S.C. § 5106a, et

seq.), the attorney for the child and the Court Appointed Special Advocate volunteer, if one is appointed, shall fulfill the role of guardian ad litem for the child.

(g) A parent against whom a petition is filed under this chapter shall have the right to counsel at all stages of the court proceedings. The Court shall ensure an attorney authorized to practice law in this State is appointed to represent any parent who is indigent. The Court may refer a parent to a legal services entity contracted by the Court or to the Office of Defense Services for an indigency determination and appointment of an attorney. If necessary, the Court may make an indigency determination and directly appoint an attorney who is a member of the private bar. When emergency custody or other emergency relief is sought, the referral must occur contemporaneously with the issuance of the ex parte order pursuant to § 2512 of this title. The attorney shall serve as counsel for the indigent parent for the duration of the case, which includes serving as counsel in any appeal taken to the Supreme Court of Delaware and reinstatement of parental rights. In the event an indigent parent declines appointment of counsel, the Court shall include the waiver of appointment in its order.

Section 2. Amend § 4602, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4602. Appointment; representation of defendants.

(a) The Office of Defense Services shall be headed by the Chief Defender. The Chief Defender shall be a qualified attorney licensed to practice in this State selected by the Governor. The Office of Defense Services shall represent, without charge, each indigent person who is under arrest or charged with a crime, ~~if:~~ under any of the following circumstances:

(1) The defendant requests ~~it; or it.~~

(2) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject ~~of on~~ the record the opportunity to be so represented.

(b) ~~Before arraignment the~~ The determination of indigency ~~may~~ shall be made by the Office of Defense Services. ~~At or after arraignment the determination shall be made by the court.~~ The representation will be without charge to the indigent person.

(c) Any person under the age of 18 arrested or charged with a crime or act of delinquency shall be automatically eligible for representation by the Office of Defense Services.

Section 3. Amend Subchapter I, Chapter 46, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4602A. Representation of indigent parents in DSCYF custody proceedings.

(a) The Office of Defense Services shall represent, without charge, indigent parents under Chapter 25 of Title 13 under any of the following circumstances:

51 (1) The indigent parent requests representation.
52 (2) The court, on its own motion or otherwise, so orders and the indigent parent does not affirmatively reject
53 on the record the opportunity to be so represented.
54 (b) The determination of indigency shall be made by the Office of Defense Services. The representation will be
55 without charge to the indigent parent.
56 Section 4. This Act is effective 6 months after its enactment into law.

SYNOPSIS

This Act establishes a right to counsel for indigent parents in DSCYF custody proceedings. Parent representation will primarily be provided by a legal services entity contracted with the Family Court, but may also be provided by the Office of Defense Services or a private attorney appointed by the Court.