

As Engrossed: 4/7/95

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representatives Malone, Ferrell, and Lynn**

A Bill

ACT 1337 OF 1995
HOUSE BILL 1894

For An Act To Be Entitled

8 "AN ACT TO PROVIDE THAT THE BEST INTERESTS OF THE CHILD
9 SHALL BE THE STANDARD FOR MAKING DHS RECOMMENDATIONS AND
10 JUVENILE COURT DETERMINATIONS REGARDING REUNITING A CHILD
11 WITH HIS OR HER FAMILY OR WHETHER TO REMOVE THE CHILD FROM
12 OR ALLOW THE CHILD TO REMAIN IN AN ABUSIVE HOME; AND FOR
13 OTHER PURPOSES."

Subtitle

14
15
16 "BEST INTERESTS OF CHILD SHALL BE THE
17 STANDARD FOR DHS RECOMMENDATIONS AND
18 JUVENILE COURT DECISIONS REGARDING
19 ABUSED/NEGLECTED CHILDREN."

20
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. The General Assembly recognizes that children are
24 defenseless and that there is no greater moral obligation upon the General
25 Assembly than to provide for the protection of our children and that our child
26 welfare system needs to be strengthened by establishing a clear policy of the
27 State that the best interests of the children must be paramount and shall have
28 precedence at every stage of juvenile court proceedings. The best interests
29 of the child shall be the standard for recommendations made by employees of
30 the Department of Human Services and for juvenile court determinations as to
31 whether a child should be reunited with his or her family or removed from or
32 remain in a home wherein the child has been abused or neglected.

33
34 SECTION 2. *Arkansas Code 9-27-315(c) as amended by Act 533 of 1995 is*
35 *amended to read as follows:*

36 "(c) *If the court determines that the juvenile can safely be returned*

0301951331.jmb260

1 to his or her home pending adjudication and it is in the best interest of the
2 juvenile, the court shall so order."

3

4 SECTION 3. Arkansas Code 9-27-328(a) is amended to read as follows:

5 "(a) Before a juvenile may be removed from the parent, guardian, or
6 custodian of the juvenile by order of a juvenile court, excluding commitments
7 to youth services centers, the court shall order family services appropriate
8 to prevent removal or to reunify the family and, in its orders, make these
9 specific findings:

10 (1) Whether removal of the juvenile is necessary to protect the
11 juvenile, and the reasons therefor;

12 (2) Which family services were made available to the family
13 before removal of the juvenile;

14 (3) What efforts were made to provide those family services
15 relevant to the needs of the family before the removal of the juvenile;

16 (4) Why efforts made to provide the family services described did
17 not prevent removal of the juvenile;

18 (5) Whether efforts made to prevent removal of the juvenile were
19 reasonable, based upon the needs of the family and the juvenile; and

20 (6) Whether the removal would be in the best interest of the
21 juvenile."

22

23 SECTION 4. Arkansas Code 9-27-328(c) is amended to read as follows:

24 "(c) (1) At any hearing to determine whether a juvenile should be
25 removed from the parent, guardian, or custodian of the juvenile or continued
26 in out-of-home placement, the juvenile court may release the juvenile to the
27 parent, guardian, or custodian or may order the juvenile placed in the legal
28 custody of the state agency for placement in a foster care program. The court
29 shall, in its orders, determine whether:

30 (A) It is in the best interest of the juvenile to be
31 removed;

32 (B) The juvenile is in need of the services of the state
33 agency;

34 (C) Out-of-home placement is necessary to protect the
35 juvenile;

1 (D) The juvenile is unlikely to appear before the juvenile
2 court for subsequent proceedings;

3 (E) The juvenile makes a reasonable request not to be
4 released;

5 (F) The parent, guardian, or custodian cannot be located,
6 or is unable or refuses to take custody of the juvenile; or

7 (G) Considerations for the safety of the juvenile preclude
8 the use of family services to prevent removal of the juvenile.

9 (2) Prior to placement of a juvenile in a placement other than
10 the home of the parent, guardian, or custodian from which the juvenile was
11 removed, the juvenile court must make specific findings as to whether
12 reasonable efforts were made to keep the family together and avoid out-of-home
13 placement, whether reasonable efforts to eliminate the need for removal of the
14 juvenile from the home were made by the state and whether the out-of-home
15 placement is in the best interest of the child."
16

17 SECTION 5. Arkansas Code 9-27-330(a) as amended by Act 533 of 1995 is
18 amended to read as follows:

19 "(a) If a juvenile is found to be delinquent, the court may enter an
20 order making any of the following dispositions based upon the best interest of
21 the juvenile:

22 (1)(A) Transfer legal custody of the juvenile to the Department
23 of Human Services, or to another licensed agency responsible for the care of
24 juveniles, or to a relative or other individual;

25 (B) Commit the juvenile to a youth services center operated
26 by the Youth Services Board, using the Risk Assessment System for Arkansas
27 Juvenile Offenders developed by the 1990 Youth Services Center Commitment
28 Criteria Review Committee to be distributed and administered by the
29 Administrative Office of the Courts.

30 (i) In an order of commitment, the court may
31 recommend that a juvenile be placed in a community-based program instead of a
32 youth services center, and shall make specific findings in support of such a
33 placement in the order;

34 (ii) Upon receiving an order of commitment with
35 recommendations for placement in a community-based program, the Youth Services

1 Board shall consider the recommendations of the committing court in making its
2 placement to a youth services center or to a community based alternative.

3 (C) In all cases in which both commitment and transfer of
4 legal custody are ordered by the court in the same order, transfer of custody
5 will be entered only upon compliance with the provisions of Ark. Code Ann. §§
6 9-27-310, 311, 312, 316, 327 and 328.

7 (2) Order the juvenile or members of the juvenile_s family to
8 submit to physical, psychiatric, or psychological evaluations;

9 (3) Grant permanent custody to an individual upon proof that the
10 parent or guardian from whom the juvenile has been removed has not complied
11 with the orders of the court and that no further services or periodic reviews
12 are required;

13 (4) (A) Place the juvenile on probation under those conditions and
14 limitations that the court may prescribe pursuant to § 9-27-339(a).

15 (B) (i) In addition, the court shall have the right, as a
16 term of probation, to require the juvenile to attend high school or make
17 satisfactory progress toward a general education development certificate.

18 (ii) The court shall have the right to revoke
19 probation if the juvenile fails to regularly attend high school classes or if
20 satisfactory progress toward a general education development certificate is
21 not being made;

22 (5) Order a probation fee, not to exceed twenty dollars (\$20.00)
23 per month, as provided in § 16-13-326(a);

24 (6) Assess a court cost of no more than thirty-five dollars
25 (\$35.00) to be paid by the juvenile, his parent, both parents, or his
26 guardian;

27 (7) (A) Order restitution to be paid by the juvenile, a parent,
28 both parents, the guardian, or his custodian.

29 (B) If the custodian is the State of Arkansas, both
30 liability and the amount which may be assessed shall be determined by the
31 Arkansas State Claims Commission;

32 (8) Order a fine of not more than five hundred dollars (\$500) to
33 be paid by the juvenile, a parent, both parents, or the guardian;

34 (9) Order that the juvenile participate in court-approved public
35 service not to exceed one hundred sixty (160) hours;

1 (10) (A) (i) Order that the juvenile remain in a juvenile detention
2 facility for an indeterminate period not to exceed ninety (90) days.

3 (ii) The court may further order that the juvenile be
4 eligible for work release or to attend school or other educational or
5 vocational training.

6 (B) The juvenile detention facility shall afford
7 opportunities for education, recreation, and other rehabilitative services to
8 adjudicated delinquents;

9 (11) Place the juvenile on residential detention with electronic
10 monitoring, either in the juvenile_s home or in another facility as ordered by
11 the court;

12 (12) (A) Order the parent, both parents, or the guardian of any
13 juvenile adjudicated delinquent and committed to a youth services center,
14 detained in a juvenile detention facility, or placed in foster care, to be
15 liable for the cost of the commitment, detention, or foster care.

16 (B) (i) The court shall take into account the financial
17 ability of the parent, both parents, or the guardian to pay for such
18 commitment, detention, or foster care.

19 (ii) The court shall take into account the past
20 efforts of the parent, both parents, or the guardian to correct the delinquent
21 juvenile_s conduct.

22 (iii) The court shall take into account if the parent
23 is a noncustodial parent, the court may take into consideration the
24 opportunity the parent has had to correct the delinquent juvenile_s conduct.

25 (iv) The court shall take into account any other
26 factors the court deems relevant."

27

28 SECTION 6. Arkansas Code 9-27-332 as amended by Act 533 of 1995 is
29 amended to read as follows:

30 "9-27-332. Disposition - Family in need of services - Generally.

31 If a family is found to be in need of services, the court may enter an
32 order making any of the following dispositions:

33 (1) Order family services. In all cases in which family services are
34 ordered, the court shall determine the parent_s, guardian_s or custodian_s
35 ability to pay, in whole or in part, said services. Said determination, and

1 the evidence supporting it, shall be made in writing in the order ordering
2 family services. If the court determines that the parent, guardian or
3 custodian is able to pay, in whole or part, for said services, the court shall
4 enter a written order setting forth the amounts the parent, guardian, or
5 custodian can pay for the family service(s) ordered, and ordering the parent,
6 guardian, or custodian to pay such amount periodically to the provider from
7 whom family services are received. For purposes of this subsection,
8 'periodically' is deemed to be a period of time no greater than once per
9 month; further, that parent, guardian and custodian refers to the individual
10 or individuals from whom custody was removed. In making its determination,
11 the court shall consider the following factors:

12 (A) The financial ability of the parent, both parents, the
13 guardian(s), or custodian(s) to pay for such services;

14 (B) The past efforts of the parent, or both parents, the
15 guardian(s), or the custodian(s) to correct the conditions which resulted in
16 the need for family services; and

17 (C) Any other factors which the court deems relevant.

18 (2) If it is in the best interest of the juvenile, transfer custody of
19 juvenile family members to the Department of Human Services or to another
20 licensed agency responsible for the care of juveniles, or to a relative or
21 other individual.

22 (3) If it is in the best interest of the juvenile, grant permanent
23 custody to an individual upon proof that the parent or guardian from whom the
24 juvenile has been removed has not complied with the orders of the court and
25 that no further services or periodic reviews are required."
26

27 SECTION 7. Arkansas Code 9-27-334(a) as amended by Act 533 of 1995 is
28 amended to read as follows:

29 "(a) If a juvenile is found to be dependent-neglected, the court may
30 enter an order making any of the following dispositions:

31 (1) Order family services;

32 (2) If it is in the best interest of the juvenile, transfer
33 custody of the juvenile to the Department of Human Services or to another
34 licensed agency responsible for the care of juveniles, or to a relative or
35 other individual; or

1 (3) If it is in the best interest of the juvenile, grant
2 permanent custody to an individual upon proof that the parent or guardian from
3 whom the juvenile has been removed has not complied with the orders of the
4 court and that no further services or periodic reviews are required."
5

6 SECTION 8. Arkansas Code 9-27-337(a) as amended by Act 533 of 1995 is
7 amended to read as follows:

8 "(a) The court shall periodically review every case of
9 dependency-neglect or families in need of services or delinquency where
10 out-of-home placement has occurred until there is a permanent order of custody
11 or the juvenile is returned to the parent, guardian, or custodian and the
12 court has discontinued orders for family services. The court shall during
13 each periodic review of the case make determinations based upon the best
14 interest of the juvenile."
15

16 SECTION 9. Arkansas Code 9-27-338(a) is amended to read as follows:

17 "(a) Eighteen (18) months after the date the juvenile enters an
18 out-of-home placement, or earlier if ordered by the court, the court shall
19 hold a hearing in order to enter a new disposition in the case. At the
20 hearing, based upon the facts of the case, the court shall enter one (1) of
21 the following dispositions in accordance with the best interests of the
22 juvenile:

- 23 (1) Return the juvenile to the parent, guardian, or custodian;
- 24 (2) Authorize a plan for the termination of the parent-child
25 relationship, guardianship, or custody;
- 26 (3) Place the juvenile in long-term foster care; or
- 27 (4) Allow the juvenile to continue in an out-of-home placement
28 for a specified, limited period of time."
29

30 SECTION 10. Arkansas Code 9-27-341(b) is amended to read as follows:

31 "(b) The court may consider a petition to terminate parental rights if
32 it finds that the Department of Human Services has physical or legal custody
33 of the juvenile and an appropriate placement plan for the juvenile. An order
34 forever terminating parental rights shall be based upon a finding by clear and
35 convincing evidence that it is in the best interest of the juvenile and that

1 one (1) or more of the following grounds exists:

2 (1) That a juvenile has been adjudicated by the court to be
3 dependent-neglected and has continued out of the home for one (1) year and
4 despite a meaningful effort by the Department of Human Services to
5 rehabilitate the home and correct the conditions which caused removal, those
6 conditions have not been remedied by the parent.

7 (2) The juvenile has lived outside the home of the parent for a
8 period of one (1) year and the parent has willfully failed to provide
9 significant material support in accordance with the parent's means or to
10 maintain meaningful contact with the juvenile. To find willful failure to
11 maintain meaningful contact, it must be shown that the parent was not
12 prevented from visiting or having contact with the juvenile by the juvenile's
13 custodian or any other person, taking into consideration the distance of the
14 juvenile's placement from the parent's home. Material support consists of
15 either financial contributions or food, shelter, clothing, or other
16 necessities where such contribution has been requested by the juvenile's
17 custodian or ordered by a court of competent jurisdiction.

18 (3) The presumptive legal father is not the biological father of
19 the juvenile and the welfare of the juvenile can best be served by terminating
20 the parental rights of such a presumptive legal father.

21 (4) A parent has abandoned the juvenile or has executed consent
22 to termination of parental rights or adoption of the juvenile."
23

24 SECTION 11. All provisions of this act of a general and permanent
25 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
26 Code Revision Commission shall incorporate the same in the Code.
27

28 SECTION 12. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.
33

34 SECTION 13 All laws and parts of laws in conflict with this act are
35 hereby repealed.

1
2
3
4
5
6
7
8
9
10
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

SECTION 14. It is hereby found and determined by the General Assembly that in instances where a determination is to be made as to whether a child should remain in an abusive home, that decision should be made based upon the best interest in the child; that this act so provides; and that this act should go into effect as soon as possible so that the standard is made clear immediately that the best interest of the child should always be the paramount consideration in determining whether a child is to remain in an abusive home. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

/s/Rep. Malone, et al

APPROVED: 4-17-95

- 1
- 2
- 3
- 4
- 5
- 6
- 7