

DEPENDENCY-NEGLECT STATUTORY PROCEEDINGS OVERVIEW

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I. CIRCUIT COURT JURISDICTION

The assignment of juvenile cases to the juvenile division of circuit court shall be described by Supreme Court Administrative Order Number 14. The Circuit Court shall have exclusive original jurisdiction and shall be the sole court for the following proceedings, including but not limited to:

A. Dependent-Neglected Juveniles

1. Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to 18, except a juvenile adjudicated prior to the age of 18 may request the court to continue jurisdiction until the age of 21 as long as the juvenile engages in or has a viable plan for a course of treatment or instruction. **Ark. Code Ann. §9-27-306(a)(1)(B)(i) (Supp. 2005).**
2. If a juvenile was adjudicated dependent or dependent-neglected and was in foster care at 18 years of age and left foster care but decides to return prior to the age of 21 to benefit from independent living services, the juvenile may contact his/her AAL to petition the court to return to the court's jurisdiction to receive independent living services. **Ark. Code Ann. §9-27-306(a)(1)(B)(ii) (Supp. 2005).**

Dependent-neglected juvenile means any juvenile who is at substantial risk of harm as a result of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness to the juvenile, a sibling, or another juvenile; or being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of the parent, guardian or custodian, and includes dependent children. **Ark. Code Ann. §9-27-303(18) (Supp. 2005).**

- a. **Abandonment** means the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact, when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future, and failure to support or maintain regular contact with the juvenile without just cause, or an articulated intent to forego parental responsibility. **Ark. Code Ann. §9-27-303(2) (Supp. 2003).**
- b. **Abandoned Infant** means a juvenile less than nine months of age and whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an

expression of intent by words, actions, or omissions not to return for the infant. **Ark. Code Ann. §9-27-303(1) (Supp. 2005).**

c. **Abuse** means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person 18 or older living in the home with the child or any person entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

- (1) Extreme or repeated cruelty to a juvenile; **Ark. Code Ann. §9-27-303(3)(A)(i) (Supp. 2005).**
- (2) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ; **Ark. Code Ann. §9-27-303(3)(A)(ii) (Supp. 2005).**
- (3) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior; **Ark. Code Ann. §9-27-303(3)(A)(iii) (Supp. 2005).**
- (4) Any injury which is at variance with the history given; **Ark. Code Ann. §9-27-303(3)(A)(iv) (Supp. 2005).**
- (5) Any non-accidental physical injury; **Ark. Code Ann. §9-27-303(3)(A)(v) (Supp. 2005).**
- (6) Any of the following intentional or knowing acts, with physical injury:
 - (A) throwing, kicking, burning, biting or cutting a child;
 - (B) striking a child with a closed fist;
 - (C) shaking a child; or
 - (D) striking a child on the face. **Ark. Code Ann. §9-27-303(3)(A)(vi) (Supp. 2005).**
- (7) Any of the following intentional or knowing acts, with or without physical injury and without justifiable cause:
 - (A) striking a child age six or younger on the face or head;

- (B) shaking a child age three or younger;
 - (C) interfering with a child's breathing;
 - (D) urinating or defecating on a child;
 - (E) pinching, biting or striking a child in the genital area;
 - (F) Giving or permitting a child to consume or inhale a poisonous or noxious substances not prescribed by a doctor that has the capacity to interfere with normal physiological functions;
 - (G) Giving or permitting a child to consume or inhale a substance not prescribed by a doctor that has the capacity to alter the mood including but not limited to: marijuana, alcohol (excluding alcohol recognized religious ceremony or service), narcotics, or over-the-counter drugs purposely administered as an overdose or inappropriately given so the child is detrimentally impacted;
 - (H) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including but not limited to chemicals used during the manufacture of methamphetamine;
 - (I) Subjecting a child to Munchausen Syndrome by Proxy when reported and confirmed by medical personnel or a medical facility; **Ark. Code Ann. §9-27-303(3)(A)(vii) (Supp. 2005).**
- (8) This list is illustrative of unreasonable action and is not intended to be exclusive. No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse. **Ark. Code Ann. §9-27-303(B) (Supp. 2005).**
- (9) **“Abuse” shall not include** physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child. It is not abuse when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

- (A) The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Licensing Act;
 - (B) The agency has policy and procedures regarding restraints;
 - (i) no other alternative exists to control the child except for a restraint;
 - (ii) the child is in danger of hurting himself/herself or others;
 - (iii) the person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and
 - (iv) the restraint is for a reasonable period of time. **Ark. Code Ann. §9-27-303(C)(i-ii) (Supp. 2005).**
- (10) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause, and which does cause, injury more serious than transient pain or minor temporary marks. **Ark. Code Ann. §9-27-303(C)(iii) (Supp. 2005).**
- (11) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate. **Ark. Code Ann. §9-27-303(C)(iv) (Supp. 2005).**
- d. **Neglect** means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare, which constitute:
- (1) Failure or refusal to prevent the abuse of the juvenile when the person knows or has reasonable cause to know the juvenile is or has been abused;

- (2) Failure or refusal to provide the necessary food, clothing, shelter and education required by law, including failure to follow an individualized education program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected.
- (3) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness where the existence of such condition was known or should have been known;
- (4) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide shelter that does not pose a risk of health or safety to the juvenile;
- (5) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;
- (6) Failure, although able, to assume responsibility for the care and custody of the juvenile or to participate in a plan to assume the responsibility; or
- (7) Failure to appropriately supervise the juvenile that results in a juvenile being left alone at an inappropriate age or in inappropriate circumstances, creating a dangerous situation or a situation which puts the juvenile at risk of harm. **Ark. Code Ann. §9-27-303(36)(A) (Supp. 2005).**
- (8) **Neglect** shall also include causing a newborn to be born with:
 - (A) an illegal substance (a drug prohibited to be used or possessed without a prescription under the Ark. Crim. Code §5-1- 101 *et seq.*) present in the newborn's bodily fluids or bodily substances as a result of the pregnant mother knowingly using an illegal substance before the birth of the newborn. A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect pursuant to this subsection.
 - (B) a health problem as a result of the pregnant mother's use before birth of an illegal substance (a drug prohibited to be used or possessed without a prescription under the Ark. Crim. Code §5-1-101 *et seq.*). A test of the child's or

mother's bodily fluids or bodily substances may be used as evidence to establish neglect pursuant to this subsection. **Ark. Code Ann. §9-27-303(36)(B) (Supp. 2005).**

- e. **Sexual abuse** means sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion (including attempted), indecent exposure, or forcing the watching of pornography or live human sexual activity by a person 10 years or older to a person younger than 18. **Ark. Code Ann. § 9-27-303(49)(A) (Supp. 2005).**
- (1) Sexual intercourse, deviate sexual activity or sexual contact (including attempted) by a person 18 years or older to a person not his/ her spouse who is younger than 16. **Ark. Code Ann. §9-27-303(49)(B)(Supp. 2005).**
 - (2) Sexual intercourse, deviate sexual activity or sexual contact (including attempted) by a caretaker to a person younger than 18. **Ark. Code Ann. §9-27-303(49)(C) (Supp. 2005).**
 - (3) Forcing or encouraging the watching of pornography or forcing, permitting or encouraging the watching of live sexual activity by a caretaker to a person younger than 18. **Ark. Code Ann. §9-27-303(49)(D) (Supp. 2005).**
 - (4) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion (including attempted) by a person younger than 10 to a person younger than 18. **Ark. Code Ann. §9-27-303(49)(E) (Supp. 2005).**
 - (A) **Caretaker** means a parent, guardian, custodian, foster parent or any person 10 years or older entrusted with a child's care by a parent, guardian, custodian or foster parent, including but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare. **Ark. Code Ann. §9-27-303(8) (Supp. 2005).**
 - (B) **Forcible compulsion** means physical force, intimidation or threat (express or implied) of death, physical injury to, rape, sexual abuse or kidnapping of any person. If the act was committed against the will of the juvenile, then a forcible compulsion has been used.

- (C) The age, developmental stage, and stature of the victim and the relationship between the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove compulsion. **Ark. Code Ann. §9-27-303(27) (Supp. 2005).**
- (D) **Sexual contact** means any act of sexual gratification involving touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile, or the breast of a female, encouraging the juvenile to touch the offender in a sexual manner, or the requesting the offender to touch the juvenile in a sexual manner. Evidence of **sexual gratification** may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment. Nothing in this section shall permit normal affectionate hugging to be construed as sexual contact. **Ark. Code Ann. §9-27-303(50) (Supp. 2005).**
- (E) **Deviant sexual activity** means any act of sexual gratification involving:
 - (i) penetration, however slight, of the anus or mouth of one person by the penis of another person; or
 - (ii) penetration, however slight, of the labia majora or anus of one person by a body member or foreign instrument manipulated by another person. **Ark. Code Ann. §9-27-303(21) (Supp. 2005).**
- (F) **Sexual exploitation** includes allowing, permitting, or encouraging participation or depiction of the juvenile in prostitution, obscene photographing, filming, or obscenely depicting, obscenely posing or obscenely posturing a juvenile for any use or purpose. **Ark. Code Ann. §9-27-303(51) (Supp. 2005).**

B. Dependent Juveniles

1. A child of a parent who is under 18 and is in DHS custody;
2. A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide for the child;

3. A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile, and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;
4. A child whose custodial parent dies and no stand-by guardian exists;
5. A child who is an infant relinquished to DHS custody for the sole purpose of adoption;
6. A safe haven baby, pursuant to Ark. Code Ann. §9-34-201 *et seq.*, or
7. A child who has disrupted his/her adoption and the adoptive parents has exhausted resources available to them. **Ark. Code Ann. §9-27-303(17) (Supp. 2005).**

C. Emergency Custody/72-Hour Hold

The circuit court shall have jurisdiction in proceedings in which emergency custody or a 72-hour hold has been placed on a juvenile pursuant to Ark. Code Ann. §9-27-313 or Ark. Code Ann. §12-12-516. **Ark. Code Ann. §9-27-306(a)(1)(C) (Supp. 2005).**

D. Termination of Parental Rights

A TPR petition may be filed by DHHS or the attorney ad litem for juveniles under the jurisdiction of the juvenile division court. **Ark. Code Ann. §9-27-306(a)(1)(E) (Supp. 2005); Ark. Code Ann. §9-27-341(a)(1)(A) (Supp. 2005).**

E. DHHS Custody

1. Proceedings where custody of a juvenile is transferred to DHHS or proceedings for which custodial placement proceedings are filed by DHHS. **Ark. Code Ann. §9-27-306(a)(1)(F and H) (Supp. 2005).**
2. When DHHS exercises custody of a juvenile pursuant to Ark. Code Ann. §12-12-516 (72-hour hold) and DHHS files a dependency-neglect petition concerning that juvenile, any party to that proceeding may file a motion to transfer any other legal proceeding concerning the juvenile to the court hearing the dependency-neglect petition. Upon such motion being filed, the other legal proceeding shall be transferred to the court hearing the dependency-neglect case. **Ark. Code Ann. §9-27-306(a)(3) (Supp. 2005).**

F. Adoption

The court shall retain jurisdiction to issue orders of adoption, interlocutory or final, if a juvenile is placed outside of the state of Arkansas. **Ark. Code Ann. §9-27-306(a)(4) (Supp. 2005).**

G. Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

The circuit court shall have jurisdiction to hear proceedings commenced in any part of the state or court of comparable jurisdiction of another state which are transferred pursuant to the UCCJEA Ark. Code Ann. §9-19-101 *et seq.* **Ark. Code Ann. §9-27-306(d) (Supp. 2005).**

1. The court shall retain jurisdiction to issue interlocutory or final adoption orders if a juvenile is placed outside the state of Arkansas. **Ark. Code Ann. §9-27-306(a)(2) (Supp. 2003).**

I. No Jurisdiction

In no event shall a juvenile remain under the court's jurisdiction past 21 years of age. **Ark. Code Ann. §9-27-306(I) (Supp. 2005).**

II. PETITIONERS, PETITIONS, VENUE & TRANSFERS

A. Petitioners

1. Only a law enforcement officer, prosecuting attorney, or DHHS or its designee can file a dependency-neglect petition seeking ex parte emergency relief. **Ark. Code Ann. § 9-27-310(b)(2) (Supp. 2005).**
2. Only DHHS and the attorney ad litem can file petition to terminate parental rights pursuant to the juvenile code. **Ark. Code Ann. § 9-27-341(a)(1)(A) (Supp. 2005).**

B. Defendants

1. All of the following parties named in petition are defendants:
 - a. Juvenile;
 - b. Each of the parents or the surviving parent;
 - c. The person, agency or institution having custody of juvenile;

- d. Putative and presumed legal father in paternity petition; and
- e. Putative parent in dependency-neglect petition. **Ark. Code Ann. § 9-27-311(c) (Repl. 2002).**

C. Contents of Petition

- 1. Petition shall include:
 - a. Name, address, gender, date of birth and social security number of each juvenile subject to the petition. **Ark. Code Ann. § 9-27-311(a)(1)(A) (Repl. 2002).**

A single petition for dependency-neglect shall be filed which includes all siblings who are subjects of the petition. **Ark. Code Ann. § 9-27-311(a)(1)(B) (Repl. 2002).**
 - b. Name and address of each of the juvenile's parents or surviving parent. **Ark. Code Ann. § 9-27-311(a)(2) (Repl. 2002).**
 - c. Name and address of the person, agency or institution having custody of juvenile or having a claim of custody or guardianship of the juvenile. **Ark. Code Ann. § 9-27-311(a)(3-4) (Repl. 2002).**
 - d. Name and address of putative and presumed legal father in petition to establish paternity. **Ark. Code Ann. § 9-27-311(a)(5) (Repl. 2002).**
 - e. The name and address of a putative parent in a dependency-neglect proceeding. **Ark. Code Ann. § 9-27-311(a)(6) (Repl. 2002).**
 - f. Facts which, if proven, would bring juvenile and juvenile's family within court's jurisdiction. **Ark. Code Ann. § 9-27-311(d)(1)(A) (Repl. 2002).**
 - g. Code section upon which jurisdiction is based. **Ark. Code Ann. § 9-27-311(d)(1)(B) (Repl. 2002).**
 - h. Relief requested by petitioner. **Ark. Code Ann. § 9-27-311(d)(1)(C) (Repl. 2002).**
- 2. Except in paternity or TPR petitions, a petition shall be supported by an affidavit of facts. **Ark. Code Ann. § 9-27-311(d)(2) (Repl. 2002).**
- 3. If name or address of anyone listed above cannot be ascertained by petitioner with reasonable diligence, such shall be alleged and petition shall not be dismissed for

insufficiency, but the court shall direct appropriate measures to find and give notice to such persons **Ark. Code Ann. § 9-27-311(b) (Repl. 2002)**.

D. Filing Petition

With the court clerk, or by transfer from another court. **Ark. Code Ann. § 9-27-310(a) (Supp. 2005)**.

E. Notification

1. Any juvenile defendant age 10 and above and any person having care and control of the juvenile and any adult defendants shall be served with:
 - a. Copy of petition;
 - b. Notice of hearing; and
 - c. Order to appear as provided by Arkansas Rules of Civil Procedure **Ark. Code Ann. § 9-27-312 (Repl. 2002)**.
2. Concurrent with the filing of a petition that requests that DHHS take custody or provide services to a juvenile and his/her family, the petitioner shall mail a copy of the petition to the DHHS Director and local OCC attorney. **Ark. Code Ann. § 9-27-310(c) (Supp. 2005)**.

F. Venue

1. Juvenile shall be brought before the circuit court in county in which juvenile resides, except the following proceedings may be commenced in county where alleged act or omission occurred in dependency-neglect proceedings. **Ark. Code Ann. § 9-27-307(a)(1-2) (Supp. 2005)**.
2. No dependency-neglect proceeding shall be dismissed if filed in the incorrect county, but it shall be transferred to the proper county upon discovery of the juvenile's residence. **Ark. Code Ann. § 9-27-307(a)(1)(B) (Supp. 2005)**.
3. Except for probable cause hearings pursuant to Ark. Code Ann. §9-27-315, circuit judges must have agreement of the parties to hear contested cases outside of the county of venue as required by Ark. Code Ann. §16-13-210. **Ark. Code Ann. § 9-27-307(a)(5) (Supp. 2005)**.

G. Case Transfers

1. Following adjudication the court, on its own motion or any party's motion, may transfer the case to the county of the juvenile's residence if the UCCJEA does not apply. **Ark. Code Ann. § 9-27-307(b)(1) (Supp. 2005).**

III. EMERGENCY EX PARTE ORDERS

A. Ex Parte Order

1. Court shall issue an ex parte order to remove the juvenile from the custody of the parent, guardian, or custodian when probable cause exists that immediate emergency custody is necessary to:
 - a. Protect the juvenile's health or physical well-being from immediate danger; or
 - b. Prevent the juvenile's removal from state. **Ark. Code Ann. '9-27-314(a)(1) (Supp. 2005).**
2. Court shall issue an ex parte order to provide specific appropriate safeguards to protect the juvenile from severe maltreatment if the alleged offender has a legal right to custody or visitation with juvenile or a property right allowing access to the home where the juvenile resides. **Ark. Code Ann. '9-27-314(a)(2) (Supp. 2005).**

Severe Maltreatment means sexual abuse, sexual exploitation, acts or omissions which may or do result in death, abuse involving the use of a deadly weapon as defined by the Ark. Criminal Code ' 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive or causing substantial and observable change in the behavior or demeanor of the child. **Ark. Code Ann. '12-12-503(16) (Supp. 2005).**

3. The court shall issue an emergency ex parte order for emergency custody placing the juvenile with DHHS when there is probable cause to believe that a juvenile is dependent. **Ark. Code Ann. '9-27-314(a)(3) (Supp. 2005).**
 - a. **Dependent juvenile** means:
 - (1) A child of a parent under 18 and in DHS custody;

- (2) A child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child;
- (3) A child whose parent or guardian is incapacitated so they cannot care for the juvenile and they have no appropriate relative or friend to care for the child;
- (4) A child whose custodial parent dies and no stand-by guardian exists;
- (5) A child who is an infant relinquished to the custody of DHS for the sole purpose of adoption;
- (6) A safe-haven baby; or
- (7) A child who has disrupted his/her adoption and the adoptive parents have exhausted resources available to them. **A.C.A. '9-27-303(17) (Supp. 2005).**

2. Purpose of ex parte order for emergency custody is to:

- a. Remove the juvenile from custody of parent, guardian and/or to protect the juvenile;
- b. To determine an appropriate plan for the juvenile's placement. **Ark. Code Ann. '9-27-314(a) (Supp. 2005).**

B. Ex Parte Order Notice

1. The order shall include notice to that parent, custodian or guardian of the:

- a. Right to hearing and procedure for obtaining hearing within 5 business days of issuance of ex parte order;
- b. Right to representation by counsel;
- c. Right to appointed counsel if indigent and procedure for obtaining appointed counsel; and
- d. Location and telephone number of court. **Ark. Code Ann. '9-27-314(b) (Supp. 2005).**

2. Immediate notice of order shall be given to juvenile's parents, guardians, or custodian by petitioner or court. **Ark. Code Ann. '9-27-314(c)(1) (Supp. 2005).**
3. All defendants shall be served according to Arkansas Rules of Civil Procedure or as otherwise provided by court. **Ark. Code Ann. '9-27-314(c)(2) (Supp. 2005).**

C. Appointment of Parent Counsel

The court may appoint counsel for the parent or guardian for whom custody was removed in the emergency ex parte order. **Ark. Code Ann. '9-27-316(h)(1)(B) (Supp. 2005).**

D. Appointment of Attorney Ad Litem

The Court shall appoint an attorney ad litem to represent the best interest of the juvenile when an emergency ex parte order is entered in a dependency-neglect case. **Ark. Code Ann. '9-27-316(f)(1) (Supp. 2005).**

E. Federal IV-E Findings Required

1. In the initial order of removal the court must find:
 - a. Whether it is contrary to the welfare of the juvenile to remain at home;
 - b. Whether removal and the reasons for removal is necessary to protect the health and safety of the juvenile; and
 - c. Whether removal is in the best interest of the juvenile. **Ark. Code Ann. '9-27-328(b) (Supp. 2005).**
2. The court shall not transfer any case where a TPR petition has been filed unless the court has taken final action on the petition. **Ark. Code Ann. § 9-27-307(b)(2) (Supp. 2005).**

IV. RIGHT TO COUNSEL

A. Alleged Dependent Neglected Juveniles' Right to Counsel

1. The court shall appoint an attorney ad litem who shall meet standards and qualifications established by the Arkansas Supreme Court to represent the best interest of the juvenile when a dependency-neglect petition is filed or when an emergency ex parte order is entered in a dependency-neglect case, whichever occurs earlier. **Ark. Code Ann. § 9-27-316(f)(1) (Supp. 2005); Supreme Court Administrative Order No. 15.**
2. The court may appoint an attorney ad litem to represent the best interest of a juvenile involved in any case before the court and shall consider the juvenile's best interest in determining whether to appoint an attorney ad litem. **Ark. Code Ann. § 9-27-316(f)(2) (Supp. 2005).**
3. Each attorney ad litem shall:
 - a. File written motions, responses or objections at all stages of the proceedings when necessary to protect the best interest of the juvenile;
 - b. Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and
 - c. Present witnesses and exhibits when necessary to protect the juvenile's best interest. **Ark. Code Ann. § 9-27-316(f)(3) (Supp. 2005).**
4. An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including but not limited to:
 - a. school records,
 - b. medical records,
 - c. juvenile court records, and
 - d. DHHS records, to the extent permitted by federal law. **Ark. Code Ann. § 9-27-316(f)(4) (Supp. 2005).**
5. If the juvenile's wishes differ from the attorney's determination of the juvenile's best interest, the attorney ad litem shall communicate the juvenile's wishes to the court in addition to presenting his determination of the juvenile's best interest. **Ark. Code Ann. § 9-27-316(f)(5) (Supp. 2005).**

B. Court Appointed Special Advocate (CASA)

1. The court may appoint a volunteer CASA from a program which shall meet all state and national CASA standards to advocate for juveniles in dependency-neglect proceedings. **Ark. Code Ann. § 9-27-316(g)(1) (Supp. 2005).**
2. No CASA shall be assigned a case before:
 - a. Completing a training program in compliance with national and state standards; and
 - b. Being approved by the local CASA program which will include appropriate criminal background and child abuse registry checks. **Ark. Code Ann. § 9-27-316(g)(2) (Supp. 2005).**
3. Each CASA shall:
 - a. Investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem or through court testimony and court reports.
 - (1) The CASA may testify if called as a witness.
 - (2) When the CASA prepares a written report for the court, the advocate shall provide all parties with a copy of the written report seven business days prior to the relevant hearing.
 - b. Monitor the case to which he/she is assigned to ensure compliance with the court's orders.
 - c. Assist the attorney ad litem in representing the juvenile's best interest. **Ark. Code Ann. § 9-27-316(g)(3) (Supp. 2005).**
4. Upon presentation of an order of appointment, a CASA shall be provided access to all records relevant to the juvenile's case, including but not limited to:
 - a. school records,
 - b. medical records,
 - c. juvenile court records, and
 - d. DHHS records, to the extent permitted by federal law. **Ark. Code Ann. § 9-27-316(g)(4) (Supp. 2005).**

5. A CASA is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses. **Ark. Code Ann. § 9-27-316(g)(5) (Supp. 2005).**
6. A CASA shall not be liable for damages for personal injury or property damage, pursuant to Ark. Code Ann. §16-6-1010 -105. **Ark. Code Ann. § 9-27-316(g)(6) (Supp. 2005).**
7. Except as provided by this subsection, a CASA shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law. **Ark. Code Ann. § 9-27-316(g)(7) (Supp. 2005).**

C. Parent's and Guardian's Right to Counsel

1. Parents and guardians have a right to counsel in all proceedings to remove custody from a parent or guardian or to terminate parental rights.
 - a. A parent or guardian shall be advised in the dependency-neglect petition or ex parte emergency order and at their first appearance before the court of right to counsel at all stages of the proceedings and the right to appointed counsel if indigent. **Ark. Code Ann. § 9-27-316(h)(1)(A) (Supp. 2005).**
 - b. A court may appoint counsel for the parent or guardian from whom custody was removed in the ex parte emergency order. **Ark. Code Ann. § 9-27-316(h)(1)(B) (Supp. 2005).**
2. Court shall appoint counsel in all proceedings to remove custody or terminate parental rights:
 - a. Upon parent or guardian's request, and
 - c. Court's determination of indigency. **Ark. Code Ann. § 9-27-316(h)(2) (Supp. 2005).**
 - (1) No payment for attorney fees for a court proceeding for indigent parents or guardians shall be authorized unless an affidavit of indigence is completed and filed with the clerk of the court. **Ark. Code Ann. § 9-27-316(h)(2)(C) (Supp. 2005).**
 - (2) If the court terminates parental rights, no payment for attorneys fees for appeals for indigent parents will authorized unless a new affidavit of indigence is completed and filed with the clerk and a re-determination of indigence hearing is held. **Ark. Code Ann. § 9-27-316(h)(2)(B) (Supp. 2005).**

2. Appointment of counsel shall be made sufficiently in advance of court appearance to allow adequate preparation and consultation with client. **Ark. Code Ann. § 9-27-316(h)(4) (Supp. 2005).**
3. Court shall order financially able parents or guardians to pay all or part of reasonable attorney's fees and expenses for court-appointed representation of the parent or guardian:
 - a. Following a review by the court of an affidavit of financial means completed and verified by the parent, and
 - b. Determination by the court of an ability to pay. **Ark. Code Ann. § 9-27-316(h)(3) (Supp. 2005).**
4. The parent or guardian's attorney shall be provided access to all relevant records, including but not limited to:
 - a. school records,
 - b. medical records,
 - c. juvenile court records, and
 - d. DHHS records to which they are entitled under state and federal law. **Ark. Code Ann. § 9-27-316(h)(5) (Supp. 2005).**

D. Juvenile Court Representation Fund

1. All money collected by the clerk for representation in all proceedings to remove custody from a parent or guardian or to terminate parental rights pursuant to Ark. Code Ann. §9-27-316(b)(2) and (h)(3) shall be placed in this fund. **Ark. Code Ann. § 9-27-316(b)(2)(Supp. 2005); Ark. Code Ann. § 9-27-316(h)(3) (Supp. 2005).**
2. Court may direct that money from this fund be used to provide counsel for indigent parents or guardians in dependency-neglect cases as provided in Ark. Code Ann § 9-27-316(h)(Supp. 2005). **Ark. Code Ann. § 9-27-316(b)(4) (Supp. 2005); Ark. Code Ann. § 9-27-316(h)(3)(B)(i) (Supp. 2005).**
3. Money remaining in fund at end of fiscal year shall not revert to any other fund but shall carry over to next fiscal year. **Ark. Code Ann. § 9-27-316(b)(5) (Supp. 2005).**

4. Upon a determination of indigency and a finding by the court that the fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and that state funds have been exhausted, the court may order the county to pay such reasonable fees and expenses, until the state provides funding for such counsel. **Ark. Code Ann. § 9-27-316(h)(3)(iii) (Supp. 2005).**

5. The state only pays for parent counsel for parents or guardians from whom custody is removed and at, or prior to, a termination of parental rights hearing if the parent or guardian qualifies in dependency-neglect proceedings. If the court appoints counsel in the emergency ex parte order, the court shall determine the request for counsel and indigency at the Probable Cause Hearing. Counsel shall be paid contingent on the reimbursement guidelines and an indigency affidavit considered and filed with the court. **Ark. Code Ann. § 9-27-316(h) (Supp. 2005); § 9-27-401(Supp. 2005).**

V. CASE PLANS

A. Development

1. A case plan shall be developed in:
 - a. All dependency-neglect cases; and
 - b. Any case involving an out-of-home placement. **Ark. Code Ann. §9-27-402(a) (Repl. 2002).**
2. DHS shall be responsible for developing case plans in all dependency-neglect cases, and in FINS or delinquency cases when custody is transferred to the agency, pursuant to Ark. Code Ann. §9-27-328. **Ark. Code Ann. §9-27-402(a) (Repl. 2002).**
3. The case plan shall be developed in consultation with the:
 - a. Juvenile's parent, guardian, or custodian;
 - (1) If the parents are unwilling or unable to participate in the development of the case plan, the department shall document that unwillingness or inability and provide this written documentation to the parent, if available.
 - (2) A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan.
 - b. Juvenile, if appropriate;
 - c. Juvenile's foster parents;
 - d. CASA, if appointed to case;
 - e. Juvenile's attorney ad litem; and
 - f. All parties' attorney(s). **Ark. Code Ann. §9-27-402(a)(1)(A) (Repl. 2002).**

B. Filed with Court

1. The case plan shall be developed and filed with the court no later than 30 days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner. **Ark. Code Ann. §9-27-402(a)(2)(A) (Repl. 2002).**

2. If DHS does not have sufficient information prior to the adjudication hearing to complete all of the case plan, it shall complete those parts for which information is available. **Ark. Code Ann. §9-27-402(a)(2)(B) (Repl. 2002).**
3. All parts of the case plan shall be completed and filed with the court 30 days after the adjudication hearing. **Ark. Code Ann. §9-27-402(a)(2)(C) (Repl. 2002).**

C. Signed and Distribution

Case plans shall be signed and distributed to all parties and distributed to the juvenile's attorney ad litem, CASA, if appointed, and foster parents, if available. **Ark. Code Ann. §9-27-402(a)(3) (Repl. 2002).**

D. Modifications

1. Case plans shall be subject to modification based on changing circumstances. **Ark. Code Ann. §9-27-402(a)(4)(A) (Repl. 2002).**
2. All parties to the case plan shall be notified of any substantive change to the case plan. **Ark. Code Ann. §9-27-402(a)(4)(B) (Repl. 2002).**
3. A substantive change to a case plan includes, but is not limited to changes:
 - a. in juvenile's placement;
 - b. in the visitation rights of any party; or
 - c. in the goal of the plan. **Ark. Code Ann. §9-27-402(a)(4)(C) (Repl. 2002).**

E. Case Plan Contents for In-Home Services

1. The case plan shall include at a minimum:
 - a. A description of the problems being addressed;
 - b. A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
 - c. A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to services;

- d. The name of an individual known to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined; and
- e. A description of how the juvenile's health and safety will be addressed.
Ark. Code Ann. §9-27-402(b) (Repl. 2002).

F. Case Plan Contents for Out-of-Home Placement Services

- 1. The case plan must include at a minimum:
 - a. A description of the problems being addressed;
 - b. A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
 - c. A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to services;
 - d. The name of an individual known to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined;
 - e. A description of the permanency goal;
 - f. The specific reasons for the placement of the juvenile in care outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian which necessitated removal of the juvenile, and the remediation of which will determine the return of the juvenile to the home;
 - g. A description of the type of out-of-home placement selected for the juvenile including a discussion of the appropriateness of the placement;
 - h. A plan for addressing the needs of the juvenile while the placement, with an emphasis on the health and safety safeguards in place for the child, including a discussion of the services provided within the last six (6) months;
 - i. The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the period during which the actions are to be taken;

The plan may include any person or agency who shall agree to and be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile.

- j. The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the period the juvenile is in the out-of-home placement;
- k. The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the period the juvenile is in placement and a timetable for the provision of those services;

The purposes of services shall be to promote the availability to the juvenile of a continuous and stable living environment, promote family autonomy, strengthen family life where possible, and promote the reunification of the juvenile with the parent, guardian or custodian.

- l. To the extent available and accessible, the health and education records of the juvenile, pursuant to 42 U.S.C. 675(1);
- m. A description of the financial support obligation to the juvenile, including health insurance of the juvenile's parent, parents, or guardian;
- n. A description of the location of siblings. If siblings have been separated, a statement of the reasons for separation and the efforts that have been and will be made to enable the siblings to maintain regular contact while separated and to be reunited as soon as possible;
- o. When appropriate for a juvenile age sixteen (16) and over, the case plan must also include a written description of the programs and services which will help the juvenile prepare for the transition from foster care to independent living; and
- p. A written notice to the parent(s) that failure of the parent(s) to comply substantially with the case plan may result in the termination of parental rights, and that a material failure to comply substantially may result in the filing of a petition for termination of parental rights sooner than the compliance periods set forth in the case plan itself. **Ark. Code Ann. §9-27-402(c) (Repl. 2002).**

G. Court Approval Required

The case plan is subject to court review and approval. **Ark. Code Ann. §9-27-402(d) (Repl. 2002).**

H. Participation Not Admission

A parent's, guardian's or custodian's participation in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect. **Ark. Code Ann. §9-27-402(e) (Repl. 2002).**

VI. HEARINGS GENERALLY

A. Notice

1. Contents of notice
 - a. Describes the nature of hearing; and
 - b. Indicates time, date and place of hearing; and
 - c. Advises of right to counsel and appointed counsel if indigent. **Ark. Code Ann. § 9-27-303(37)(A) (Supp. 2005).**
2. Notice shall be served in manner provided by the Ark. R. Civ. P. 5. **Ark. Code Ann. § 9-27-303(37)(B) (Supp. 2005).**
3. DHS shall provide notice of any review or hearing to foster parents and pre-adoptive parents of a child in DHS custody. **Ark. Code Ann. § 9-27-325(l)(l) (Supp. 2005).**
4. Relative care givers shall be given notice by the original petitioner in the juvenile matter. **Ark. Code Ann. § 9-27-325(l)(2) (Supp. 2005).**
5. Foster parents adoptive parents, and relative care givers shall not be made parties to the review or hearing solely on the basis of their right to notice and the opportunity to be heard. **Ark. Code Ann. § 9-27-325(l)(3)(B) (Supp. 2005).**
6. A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve months of age or younger when:

- a. The grandchild resides with this grandparent for at least six continuous months prior to his or her first birthday;
 - b. The grandparent was the primary care giver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;
 - c. The continuous custody occurred within one year of the date the child custody proceeding was initiated; and
 - d. Notice to a grandparent under this subsection shall be given by DHS. **Ark. Code Ann. § 9-27-325(1)(3)(B)(m)(1)(A) (Supp. 2005).**
7. A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve months of age or older when the:
- a. Grandchild resides with this grandparent for at least one continuous year regardless of age;
 - b. Grandparent was the primary care giver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and
 - c. Continuous custody occurred within one year of the date the child custody proceeding was initiated. **Ark. Code Ann. § 9-27-325(1)(3)(B)(m)(1)(B) (Supp. 2005).**

For purposes of this subsection, “grandparent” does not mean a parent of a putative father of the child. **Ark. Code Ann. § 9-27-325(1)(3)(B)(m)(2) (Supp. 2005).**

B. Pleadings & Notice of Appearance

1. Defendants not required to file written responsive pleading in order to be heard by court. **Ark. Code Ann. § 9-27-325(b)(1) (Supp. 2005).**
2. In dependency-neglect procedures, retained counsel shall file a notice of appearance upon acceptance of representation and serve a copy to the petitioner. **Ark. Code Ann. § 9-27-325(b)(2) (Supp. 2005).**

C. Defendants & Witnesses

1. At hearing, court may:
 - a. Proceed only if juvenile is present or excused for good cause; or

- b. Continue the case upon determination that presence of an adult defendant is necessary. **Ark. Code Ann. § 9-27-325(c)(2) (Supp. 2005).**
2. After determination that a necessary party is not present, the court may issue:
 - a. Contempt order if juvenile was served with notice to appear, or
 - b. Order to appear with time and place of hearing if juvenile was served with notice of hearing. **Ark. Code Ann. § 9-27-325(c)(2) (Supp. 2005).**
3. All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure. **Ark. Code Ann. § 9-27-325(g) (Supp. 2005).**

D. Court of Record

1. Records of proceedings shall be kept in accordance with rules promulgated by the Arkansas Supreme Court. **Ark. Code Ann. § 9-27-325(d) (Supp. 2005).**
2. Unless waived on the record by the parties, it shall be the duty of any circuit court to require that a verbatim record be made of all proceedings pertaining to any contested matter before it. **Supreme Court Administrative Order Number 4.**

E. Rules

1. Unless otherwise indicated, the Arkansas Rules of Evidence apply. **Ark. Code Ann. § 9-27-325(e) (Supp. 2005).**

Note: Ark. Code Ann. § 9-27-315(e) provide that probable cause hearings are miscellaneous hearings and the Rules of Evidence are not applicable.

2. The Rules of Civil Procedure shall apply to all proceedings. **Ark. Code Ann. § 9-27-325(f) (Supp. 2005).**

F. Burden of Proof

1. Preponderance of the evidence applies to all dependency-neglect hearings except for TPR and No-Reunification Services: **Ark. Code Ann. § 9-27-325(h)(2)(C) (Supp. 2005).**
2. Clear and convincing evidence applies to the following hearings
 - a. Termination of Parental Rights (TPR); **Ark. Code Ann. § 9-27-325(h)(2)(C) (Supp. 2005).**

- b. No Reunification Services; and **Ark. Code Ann. § 9-27-325(h)(2)(C) (Supp. 2005); Ark. Code Ann. § 9-27-303(46)(C) (Supp. 2005); Ark. Code Ann. § 9-27-327(a)(2)(B)(ii) (Supp. 2005); Ark. Code Ann. § 9-27-329(c)(5)(B) (Supp. 2005).**

G. Closed Hearings

1. Court has discretion to conduct closed hearings except:
 - a. Adoption hearings shall be closed as provided in the revised Uniform Adoption Act.
 - b. All hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed. **Ark. Code Ann. § 9-27-325(i) (Supp. 2005).**

H. Foster and Pre-adoptive Parents' Rights

1. DHS shall provide notice of any review or hearing with respect to a child in their care.
2. Court shall allow them the opportunity to be heard at any hearing or review with respect to a child in their care.
3. Foster parents and pre-adoptive parents shall not be made parties solely on the basis of their right to notice and the opportunity to be heard. **Ark. Code Ann. § 9-27-325(l) (Supp. 2005).**

I. 72-Hour Hold

A juvenile division of circuit court judge during juvenile proceedings concerning the child or siblings of the child may take a child into protective custody if:

1. The child is dependent-neglected as defined by **Ark. Code Ann. § 9-27-303(18) (Supp. 2005);**
2. The child is dependent as defined by **Ark. Code Ann. § 9-27-303(17) (Supp. 2005);** or
3. Circumstances or conditions of the child are such that continuing in his/her place of residence or in the care and custody of the parent, guardian or custodian or caretaker presents an immediate danger of severe maltreatment. **Ark. Code Ann. § 12-12-516(a) (Supp. 2005).**

Severe Maltreatment means sexual abuse, sexual exploitation, acts or omissions which may or do result in death, abuse involving the use of a deadly weapon as defined by the Arkansas Criminal Code § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive or causing substantial and observable change in the behavior or demeanor of the child. **Ark. Code Ann. § 12-12-503(16) (Supp. 2005).**

J. Admissibility of Evidence

1. Home Studies

The Court held that the trial court did not abuse its discretion in refusing to admit a Colorado home study into evidence in absence of someone who could be cross-examined as to its contents. Arkansas Dep't of Human Servs. v. Huff, 347 Ark. 553, 655 S.W.3d 880 (2002).

2. Drug Testing

- a. Upon motion of any party the court may order the father, mother or child to submit to scientific testing for drug or alcohol abuse. **Ark. Code Ann. § 9-27-325(e)(2)(A) (Supp. 2005).**
- b. A written report of the test results prepared by the person conducting the test or under whose supervision or direction the test was performed, certified by an affidavit before a notary public may be introduced evidence without calling the witness unless a motion challenging the test procedures or results has been filed within 30 days before the hearing and bond is posted to cover cost of the person's appearance to testify. **Ark. Code Ann. § 9-27-325(e)(2)(B) (Supp. 2005).**
- c. If contested, documentation of the chain of custody of samples taken from test subjects shall be verified by affidavit of one person witnessing the procedure or extraction, packaging and mailing of samples and one person signing for the samples where the samples are subject to testing procedures. Submission of these affidavits with test results shall be competent evidence to establish chain of custody of specimens. **Ark. Code Ann. § 9-27-325(e)(2)(C) (Supp. 2005).**
- d. If a party refuses court ordered scientific testing for drug or alcohol abuse, that refusal shall be disclosed at trial and may be considered civil contempt of court. **Ark. Code Ann. § 9-27-325(e)(2)(D) (Supp. 2005).**

K. Interstate Compact Placement of Children (ICPC)

In response to *Arkansas Dep't of Human Servs. v Huff*, 347 Ark. 553, 655 S.W.3d 880 (2002), Act 1309 of 2003 was amended in Senate Judiciary to amend the ICPC.

1. **Placement** means the arrangement for care of a child in the home of his/her parent, other relative, or non-agency guardian in a receiving state. . . . **Ark. Code Ann. § 9-27-201, Article II (d)(2) (Supp. 2005).**
2. **Priority placement** was added and means whenever a court, upon request or on its own motion or where court approval is required, determines that a proposed priority placement of a child from 1 state into another state is necessary because:
 - a. the child is under two;
 - b. the child is in an emergency shelter;
 - c. or the court finds that the child has spent a substantial time in the home of the proposed placement recipient.

The state agency has 30 days to complete a request for a priority placement. Request for placement shall not be expedited or given priority except as outlined in this subsection. **Ark. Code Ann. § 9-27-201, Article II (f) (Supp. 2005).**

3. **Judicial Review:** It also provides that if the home study is denied, the sending state shall present the study to the judge who shall review the study and make specific findings of fact regarding the concerns outlined in the home study. If the court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement. **Ark. Code Ann. § 9-27-201, Article IV (e) (Supp. 2005).**

L. Mediation

1. The court may order any juvenile case or controversy pending before it to mediation. **Ark. Code Ann. § 16-7-202(b) (Supp. 2005).**
2. If the court orders mediation the parties may:
 - a. choose an appropriate mediator from the Arkansas Alternative Dispute Resolution Commission roster (a mediator who meets the commission's requirements for that type of case); or

- b. select a mediator not on the commission's roster IF approved by the court. **Ark. Code Ann. § 16-7-202(c)(2) (Supp. 2005).**
3. A party may move to dispense with the order to mediate for good cause shown, which may include but is not limited to, a party's inability to pay for the costs of mediation. **Ark. Code Ann. § 16-7-202(d) (Supp. 2005).**
4. A communication relating to the subject matter of any dispute made by a participant in a dispute resolution process, whether before or after the institution of formal judicial proceedings, is confidential and is not subject to disclosure and may not be used as evidence against a participant in any judicial or administrative proceeding except when it conflicts with other legal requirements for disclosure of communications or materials. **Ark. Code Ann. § 16-7-206(a) (Repl. 2002).**

The issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure. **Ark. Code Ann. § 16-7-206(c) (Repl. 2002).**

5. Any record or writing made at a dispute resolution process is confidential, and the participants or third party or parties facilitating the process shall not be required to testify in any proceedings related to or arising out of the matter in dispute or be subject to process requiring disclosure or production of information or data relating to or arising out of the matter in dispute. **Ark. Code Ann. § 16-7-206(b) (Repl. 2002).**
6. Resource – to schedule a dependency-neglect mediation paid for by Court Improvement Program grant funds contact:

Terry A. Harrison, Mediation Office Administrator
Arkansas Dependency & Neglect Mediation Project
U.A.L.R. Bowen School of Law
Phone: (501) 324-9939 Fax: (501) 324-9911
taharrison@ualr.edu

VII. DEPENDENCY-NEGLECT HEARINGS

A. Probable Cause Hearings

1. Purpose

To determine if probable cause to issue an emergency ex parte order continues to exist. **Ark. Code Ann. §9-27-315(a)(1)(A) (Supp. 2005).**

a. Court shall issue an ex parte order to remove the juvenile from the custody of the parent, guardian, or custodian when probable cause exists that immediate emergency custody is necessary to:

(1) Protect the juvenile’s health or physical well-being from immediate danger; or

(2) Prevent juvenile's removal from state; **Ark. Code Ann. §9-27-314(a)(1) (Supp. 2005).**

b. To provide specific appropriate safeguards to protect the juvenile when there is probable cause to believe an emergency order is necessary to protect the juvenile from severe maltreatment, if the alleged offender has a legal right to custody or visitation with the juvenile or has a property right allowing access to the home where the juvenile resides. **A.C.A. §9-27-314(a)(2) (Supp. 2005).**

(1) **Severe maltreatment** means:

(a) sexual abuse,

(b) sexual exploitation,

(c) acts or omissions which may result in death,

(d) abuse involving the use of a deadly weapon,

(e) bone fracture,

(f) internal injuries,

(g) burns,

(h) immersions,

- (i) suffocation,
 - (j) abandonment,
 - (k) medical diagnosis of failure to thrive, or
 - (l) causing a substantial and observable change in behavior or demeanor of the child; or **A.C.A. §12-15-503(16) (Supp. 2005).**
- c. When there is probable cause to believe that a juvenile is dependent, the court shall issue an ex parte order for emergency custody to DHHS. **A.C.A. §9-27-314(a)(2) (Supp. 2005).**
- (1) **Dependent** juvenile means:
 - (a) a child of a parent under 18 and in DHHS custody;
 - (b) a child whose parent or guardian is incarcerated and has no appropriate relative or friend willing or able to provide care for the child;
 - (c) a child whose parent or guardian is incapacitated so they cannot care for the juvenile and they have no appropriate relative or friend to care for the child;
 - (d) a child whose custodial parent dies and no stand-by guardia exists;
 - (e) a child who is an infant relinquished to the custody of DHHS for the sole purpose of adoption;
 - (f) a safe-haven baby; or
 - (g) a child who has disrupted his/her adoption and the adoptive parents have exhausted resources available to them. **A.C.A. § 9-27-503(17) (Supp. 2005).**

2. Notice

- a. The emergency ex parte order shall include notice to that parent, custodian, or guardian of the right to:

- (1) a hearing and procedure for obtaining Probable Cause Hearing within five business days of issuance of ex parte order;
- (2) representation by counsel; and
- (3) to appointed counsel if indigent and procedure for obtaining appointed counsel. **Ark. Code Ann. §9-27-314(b)(1-3) (Supp. 2005).**
- (4) The court may appoint counsel for the parent or guardian for whom custody was removed in the emergency ex parte order. **Ark. Code Ann. §9-27-316(h)(1)(B) (Supp. 2005).**

Note: Best practice is to appoint counsel for the parent or guardian when a child is first removed so they can appear at the first hearing prepared with counsel to provide the court valuable information concerning the needs of the child, family and possible relative placements

- (5) The state only pays for parent counsel for parents or guardians from whom custody is removed and/or prior to a termination of parental rights hearing if the parent or guardian qualify. If the court appoints counsel in the emergency ex parte order, the court shall determine the request for counsel and indigency at the Probable Cause Hearing. Counsel shall be paid contingent on the reimbursement guidelines and an indigency affidavit considered and filed with the court. **Ark. Code Ann. §9-27-316(h) (Supp. 2005); §9-27-401(Supp. 2005).**
- b. Appointment of the attorney ad litem for the child. **Ark. Code Ann. §9-27-316(f)(1) (Supp. 2005).**
 - c. Location and telephone number of court. **Ark. Code Ann. §9-27-314(b) (Supp. 2005).**
 - d. Immediate notice of order shall be given to juvenile's parents, guardians, or custodian by petitioner or court. **Ark. Code Ann. §9-27-314©(1) (Supp. 2005).**
 - e. All defendants shall be served according to ARCP or as otherwise provided by court. **Ark. Code Ann. §9-27-314(c)(2) (Supp. 2005)**

3. Time Constraints

- a. Court shall conduct a Probable Cause Hearing within five business days of issuance of the emergency ex parte order. **Ark. Code Ann. §9-27-315(a)(1)(A) (Supp. 2005); Ark. Code Ann. §9-27-314(b)(I) (Supp. 2005).**
- b. A written order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the Probable Cause Hearing, or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-315(d)(3) (Supp. 2005).**
- c. The court shall set the date and time for the Adjudication Hearing at Probable Cause Hearing. The Adjudication Hearing shall be held within 30 days of the Probable Cause Hearing and may be continued for no more than 30 days for good cause shown. **Ark. Code Ann. §9-27-315(d)(Supp. 2005); Ark. Code Ann. §9-27-327(a)(1) (Supp. 2005)**

4. Hearing Limitations

- a. The hearing shall be limited to determining whether there was probable cause to protect the juvenile and whether probable cause warrants continued protection. **Ark. Code Ann. §9-27-315(a)(1)(B)(I) (Supp. 2005).**
- b. All other issues, with the exception of custody and services, shall be reserved by the court until the adjudication hearing. **Ark. Code Ann. §9-27-315(a)(2)(A) (Supp. 2005).**
- c. All probable cause hearings are miscellaneous hearings. The Arkansas Rules of Evidence do not apply. **Ark. Code Ann. §9-27-315(e) (Supp. 2005); Ark. R. Evid., Rule1101(b)(3).**

5. Burden of Proof

Petitioner has burden of proof by a preponderance of the evidence that probable cause exists for continuation of emergency order. **Ark. Code Ann. §9-27-315(b) (Supp. 2005).**

6. Court Findings

- a. The court shall order that probable cause continues to exist and the juvenile cannot return safely home or order the juvenile to return home pending adjudication if it determines that the juvenile can safely return and it is in the juvenile's best interest. **Ark. Code Ann. §9-27-315(a)(1)(B) (Supp. 2005); Ark. Code Ann. §9-27-315©) (Supp. 2005).**

b. **Federal IV-E Adoption Safe Families Act (ASFA) Findings**

- (1) In the initial order of removal the court must find:
 - (a) Whether it is contrary to the welfare of the juvenile to remain at home;
 - (b) Whether removal and the reasons for removal are necessary to protect the health and safety of the juvenile; and
 - (c) Whether removal is in the best interest of the juvenile. **Ark. Code Ann. §9-27-328(b) (Supp. 2005).**
 - (d) Where the state agency's first contact with the family has occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services provided, the agency is deemed to have made reasonable efforts to prevent or eliminate the need for removal. **Ark. Code Ann. §9-27-328(c) (Supp. 2005).**

B. Dependency-Neglect Adjudication Hearings

1. Purpose

To determine whether the allegations in petition are substantiated by proof. **Ark. Code Ann. §9-27-303(4) (Supp 2005); Ark. Code Ann. §9-27-327(a) (Supp 2005).**

2. Time Constraints

- a. A dependency-neglect adjudication hearing shall be held within 30 days of the probable cause hearing, but may be continued for no more than 30 days for good cause shown. **Ark. Code Ann. §9-27-327(a)(1)(B)(I) (Supp 2005).**
- b. In dependency-neglect cases, a written adjudication order shall be filed by the court or by a party or party's attorney as designated by the court within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-327(f) (Supp 2005).**

3. Burden of Proof

Preponderance of the evidence. **Ark. Code Ann. §9-27-325(h)(2)(B) (Supp 2005).**

4. Hearing Limitations

a. In medical neglect cases involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:

(1) preventing or remedying serious harm to the child; or

(2) preventing the withholding of medically indicated treatment from the child with a life-threatening condition. **Ark. Code Ann. §9-27-325(f) (Supp 2005).**

5. Studies & Reports

a. Court may order studies, evaluations, or predisposition reports, if needed and bear on the disposition, following adjudication. **Ark. Code Ann. §9-27-327(d) (Supp 2005).**

b. Reports shall be written; and be provided to all parties and counsel at least two days prior to disposition hearing. **Ark. Code Ann. §9-27-327(e)(Supp 2005).**

c. All parties shall be given a fair opportunity to controvert any part of reports. **Ark. Code Ann. § 9-27-327(e)(2) (Supp 2005).**

C. Dependency-Neglect Disposition Hearings

1. Purpose

a. To determine what action will be taken following an adjudication to enter orders consistent with the disposition alternatives. **Ark. Code Ann. §9-27-303(22) (Supp 2005); Ark. Code Ann. §9-27-329(a) (Supp 2005).**

b. The court shall consider the disposition alternatives with preference for the least restrictive disposition consistent with best interest and welfare of the juvenile and the public. **Ark. Code Ann. §9-27-329(d) (Supp 2005).**

2. Time Constraints

- a. The disposition hearing may be held immediately following or concurrent with the adjudication hearing, but in any event shall be held no more than 14 days following the adjudication hearing. **Ark. Code Ann. §9-27-329(c)(1) (Supp 2005)**
- b. A written disposition order shall be filed by a party or party's attorney as designated by the court within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-329(e) (Supp 2005).**

3. Evidence

The court may admit into evidence any studies or reports which have been ordered, even if not admissible at adjudication hearing. **Ark. Code Ann. §9-27-329(f) (Supp 2005).**

D. Dependency-Neglect Disposition Alternatives

If the juvenile is found dependent-neglected the circuit court may enter any of the following dispositions:

1. Family Services - Ark. Code Ann. §9-27-334(a)(1) (Supp 2005).

- a. Family services means relevant services provided to the juvenile or his/her family, including but not limited to:

- (1) child care,
- (2) homemaker services,
- (3) crisis counseling,
- (4) cash assistance,

Short term financial assistance, and does not include long-term financial assistance that is the equivalent of a board payment or adoption subsidy. **Ark. Code Ann. §9-27-303(10) (Supp 2005).**

- (5) transportation,
- (6) family therapy,

- (7) physical, psychiatric, or psychological evaluation,
- (8) counseling, or
- (9) treatment. **Ark. Code Ann. §9-27-303(24)(A) (Supp 2005).**

Prior to the court placing a juvenile in a residential placement the court shall comply with the mental health assessments required by Act 1959 of 2005. **Ark. Code Ann. §9-27-602 (Supp. 2005); Ark. Code Ann. §9-27-603 (Supp. 2005);**

- b. Family services are provided to:
 - (1) Prevent a juvenile from being removed from a parent, guardian, or custodian;
 - (2) Reunite a juvenile with a parent, guardian, or custodian from whom he/she was removed; or
 - (3) Implement a permanent plan of adoption, guardianship or rehabilitation of the juvenile. **Ark. Code Ann. §9-27-303(25)(B) (i-iii)(Supp 2005).**
- c. At least five working days prior to ordering DHHS to provide or pay for services, excluding community-based providers, in any case in which DHHS is not a party, the court shall:
 - (1) fax written notice of intent to order services to the DHHS Director and the local OCC attorney; and
 - (2) provide DHHS an opportunity to be heard. **Ark. Code Ann. § 9-27-335(a)(1-2) (Supp 2005).**
- d. Failure to provide five working days notice to DHHS renders any part of the order pertaining to DHHS void. **Ark. Code Ann. § 9-27-335(a)(3) (Supp 2005).**
- e. In all cases in which family services are ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay, in whole or in part, for said services. **Ark. Code Ann. §9-27-335©(1) (Supp 2005).**

- f. The court's finding and supporting evidence shall be made in writing in the order requiring family services. **Ark. Code Ann. §9-27-335©)(2) (Supp 2005).**
- g. If the court determines that the parent, guardian or custodian is able to pay, in whole or part, for said services, the court shall enter a written order setting forth the amounts the parent, guardian, or custodian can pay for the family service(s) ordered, and ordering the parent, guardian or custodian to pay such amount periodically to the provider from whom family services are received. **Ark. Code Ann. §9-27-335©)(3) (Supp 2005).**
- h. The court shall not specify a particular provider for placement or family services when DHHS is the payor or provider. **Ark. Code Ann. §9-27-335(b) (Supp 2005).**

2. Requirements Prior to Removing a Juvenile from Home

- a. Prior to ordering a juvenile to be removed from his/her parent, guardian, or custodian and placed with DHHS, another licensed agency responsible for the care of a juvenile, relative or other individual, the court shall order family services to prevent removal unless the health and safety of the juvenile warrant immediate removal for the juvenile's safety. **Ark. Code Ann. §9-27-328(a) (Supp 2005).**
- b. When the court orders such removal, the court shall make the following specific findings:
 - (1) The initial order shall provide:
 - (a) whether it is contrary to the welfare of the juvenile to remain at home;
 - (b) whether removal and the reasons for removal are necessary to protect the health and safety of the juvenile; and
 - (c) whether removal is in the best interest of the juvenile.
 - (2) Within 60 days of removal the court must find:
 - (a) which family services were made available to family prior to removal;

- (b) what efforts were made to provide family services relevant to the needs of the family prior to removal, taking into consideration whether or not the juvenile could remain safely at home with services;
 - (c) why efforts made to provide family services described did not prevent removal; and
 - (d) whether efforts made to prevent removal of juvenile were reasonable based upon the family's and juvenile's needs. **Ark. Code Ann. §9-27-328(b) (Supp 2005).**
 - (e) The department is deemed to have made reasonable efforts to prevent or eliminate the need for removal when its first contact with family occurred during an emergency in which the juvenile could not remain at home safely, even if reasonable services were provided. **Ark. Code Ann. §9-27-3289(c) (Supp 2005).**
- c. Upon the court's finding that the department's preventative and reunification efforts have not been reasonable, but further efforts could not permit juvenile to remain safely in home, the court may:
- (1) Order family services reasonably calculated to prevent the need for out-of-home placement; **Ark. Code Ann. §9-27-335(e)(2) Supp. 2005).**
 - (2) Authorize or continue removal; **Ark. Code Ann. §9-27-328(d) (Supp 2005).**
 - (a) The court may transfer custody of the juvenile despite the lack of reasonable efforts by the department to prevent the need for out-of-home placement, if such a transfer of custody is necessary:
 - (i) to protect the juvenile's health and safety; or
 - (ii) to prevent the juvenile from being removed from the jurisdiction of the court. **Ark. Code Ann. §9-27-335(e)(2) Supp. 2005).**

- (3) Shall note in the record the department's failure to deliver services, or **Ark. Code Ann. §9-27-328(d) (Supp 2005)**.
 - (4) Dismiss the petition; **Ark. Code Ann. §9-27-335(e)(2) Supp. 2005)**.
- d. Custody can be transferred only after determining that reasonable efforts have been made by DHHS to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists.
 - (1) The juvenile's health and safety shall be the paramount concern for the court in determining whether or not DHHS could have provided reasonable efforts to prevent the juvenile's removal. **Ark. Code Ann. §9-27-335(e)(2) Supp. 2005)**.
- e. In all instances of removal of a juvenile from the home of his/her parent, guardian, or custodian, the court shall set forth in a written order:
 - (1) evidence supporting decision to remove
 - (2) facts regarding the need for removal, and
 - (3) findings required by this section. **Ark. Code Ann. §9-27-328(e)(1) (Supp 2005)**.
- f. The written findings and the order shall be filed:
 - (1) by the court or a party or party's attorney, as designated by the court, and
 - (2) within 30 days of the date of the hearing at which removal is ordered or prior to next hearing, whichever is sooner. **Ark. Code Ann. §9-27-328(e)(2) (Supp 2005)**.

3. Transfer Custody

- a. If in the best interest of the juvenile, transfer custody to DHHS or another licensed agency responsible for care of juveniles, to relatives or to other individuals **Ark. Code Ann. §9-27-334(a)(2)(A) (Supp 2005)**.

- (1) Prior to the court placing a juvenile in a residential placement the court shall comply with the mental health assessments required by Act 1959 of 2005. **Ark. Code Ann. §9-27-602 (Supp. 2005); Ark. Code Ann. §9-27-603 (Supp. 2005);**
- (2) Custody can only be transferred to a relative or other individual after a home study is conducted by DHHS or a licensed certified social worker and submitted to the court in writing and the court determines that the placement is in the juvenile's best interest. **Ark. Code Ann. §9-27-335(d) (Supp 2005).**
- (3) The court shall order parents to pay a reasonable sum for support, maintenance or education of juvenile to any person, agency or institution to whom custody is awarded if it appears at adjudication or disposition hearing that the parents or other person named in petition are required by law to support juvenile and able to contribute to support of juvenile. **Ark. Code Ann. §9-27-346(a) (Supp 2005).**

The court shall order such person to pay a reasonable sum pursuant to the Guidelines for Child Support and the Family Support Chart. **Ark. Code Ann. §9-27-346(a) (Supp 2005); Administrative Order Number 10.**

- (4) If the court grants custody to DHHS, the juvenile shall be placed in a licensed or approved foster home, shelter or facility or exempt child welfare agency as defined by 9-28-402(12). **Ark. Code Ann. §9-27-334(a)(2)(B) (Supp 2005).**
- (5) If the court transfers custody to DHHS the court shall issue orders regarding educational issues of the juvenile including:
 - (a) determining if the parent or guardian shall have access to the juvenile's school records
 - (b) determining if the parent or guardian who has access to school records is entitled to information on the child's placement (name and address of foster parent or provider), and
 - (c) determining if the parent or guardian may participate in school conferences or similar activities. **Ark. Code Ann. §9-27-334(a)(2)(D) (Supp. 2005).**

- (6) If custody transferred to DHHS the circuit court may appoint a person to consent to an initial evaluation and serve as a surrogate parent pursuant to the Individuals with Disabilities Education Act (IDEA). **Ark. Code Ann. §9-27-334(a)(2)(D) (Supp. 2005).**

4. Permanent Custody

If in the best interest of the juvenile, grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court, or upon a finding that no further services or periodic reviews are required to reunify the juvenile with the parent(s). **Ark. Code Ann. §9-27-334(a)(3) (Supp 2005).**

5. Parent Training

- a. Order that the parent(s) or guardian(s) of the juvenile attend a parental responsibility training program, if available.
- b. The court may make reasonable orders requiring proof of completion of such training program within a certain time period and payment of a fee covering the cost of the training program.

6. Contempt Sanctions

- a. The court may provide that any violation of its orders shall subject the parent, both parents, custodian, guardian, or the juvenile to contempt sanctions. **Ark. Code Ann. §9-27-334 (c) (Supp 2005).**
- b. No court may commit a juvenile to DYS solely for criminal contempt. **Ark. Code Ann. §9-27-335 (g) (Supp 2005); Ark. Code Ann. §9-28-208(a)(2) (Supp 2005).**

E. No Reunification Efforts Hearings**1. Purpose**

To determine whether or not DHHS should provide reunification services to reunite a child with his/her family. **Ark. Code Ann. §9-27-327(a)(2)(A)(I)(Supp 2005); Ark. Code Ann. §9-27-329(2)(B)(i)(Supp 2005); Ark. Code Ann. §9-27-337(d) (Supp 2005).**

2. Time Constraints

- a. DHHS, the attorney ad litem, or the court may make a “no reunification efforts” recommendation at any time following the adjudication. **Ark. Code Ann. §9-27-327(a)(2)(A)(i) and (2)(D) (Supp 2005); Ark. Code Ann. §9-27-329(c)(2)(A) (Supp 2005); Ark. Code Ann. §9-27-337(d) (Supp 2005).**
- b. The court shall determine whether the “no reunification” request shall be heard immediately after the adjudication hearing or in a separate disposition hearing. **Ark. Code Ann. §9-27-327(a)(2)(c) (Supp 2005); Ark. Code Ann. §9-27-329(c)(3) (Supp 2005).**
- c. The court shall conduct and complete a hearing on a “no reunification efforts” request within 50 days of the date of written notice to the defendants and shall enter an order determining whether or not reunification services shall be provided. **Ark. Code Ann. §9-27-327(a)(2)(E)(i)(a) (Supp 2005); Ark. Code Ann. §9-27-329(c)(2)(C)(5)(Supp 2005).**
- d. Upon good cause shown, the hearing may be continued for an additional 20 days. **Ark. Code Ann. §9-27-327(a)(2)(E)(i)(b) (Supp 2005).**
- e. Upon determination that no reunification efforts shall be provided, the court shall hold a permanency planning hearing within 30 days after the determination. **Ark. Code Ann. §9-27-327(a)(2)(E)(ii) (Supp 2005); Ark. Code Ann. §9-27-329(c)(5)(C) (Supp 2005).**

3. Notice

- a. Party or court recommending “no reunification efforts” shall provide notice to the defendants. **Ark. Code Ann. §9-27-327(a)(2)(A)(i-ii) (Supp. 2005); Ark. Code Ann. §9-27-329(c)(2)(B) (Supp 2005).**
- b. The notice shall be provided to the parties at least 14 calendar days before the hearing, and identify, in sufficient detail to put the family on notice, the grounds for recommending “no reunification services.” **Ark. Code Ann. §9-27-327(a)(2)(A)(ii-iii) (Supp 2005); Ark. Code Ann. §9-27-329(c)(2)(B-C) (Supp 2005).**

4. Burden of Proof

The burden is on the moving party and is based on clear and convincing evidence. **Ark. Code Ann. §9-27-303(46)(c) (Supp 2005); Ark. Code Ann. §9-27-325(h)(2)(c) (Supp 2005); §9-27-327(a)(2)(B)(ii) (Supp 2005); §9-27-329(c)(5)(c) (Supp 2005).**

5. Court Finding

- a. The court shall enter an order determining whether or not reunification services should be provided.
- b. Reunification efforts shall not be required if court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:
 - (1) Subjected the child to aggravated circumstances which include:
 - (a) a child being abandoned;
 - (b) a child being chronically abused;
 - (c) a child being subjected to extreme or repeated cruelty or sexual abuse;
 - (d) a determination by a judge that there is little likelihood that services to the family will result in successful reunification; or

- (e) a child has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person more than three times in the last fifteen months. **Ark. Code Ann. §9-27-303(46)(C)(i) (Supp 2005); Ark. Code Ann. §9-27-303(6)(Supp 2005).**
- (2) Committed murder of any child; **Ark. Code Ann. §9-27-303(46)(C)(ii) (Supp 2005).**
- (3) Committed voluntary manslaughter of any child; **Ark. Code Ann. §9-27-303(46)(C)(iii) (Supp 2005).**
- (4) Aided, abetted, attempted, conspired or solicited to commit such murder or voluntary manslaughter; **Ark. Code Ann. §9-27-303(46)(C)(iv) (Supp 2005).**
- (5) Committed a felony battery or assault that results in serious bodily injury to any child; **Ark. Code Ann. § 9-27-303(46)(C)(v) (Supp 2005).**
- (6) Had parental rights involuntarily terminated as to a sibling of the child; or **Ark. Code Ann. §9-27-303(46)(C)(vi) (Supp 2005).**
- (7) Abandoned an infant. **Ark. Code Ann. §9-27-303(46)(C)(vii) (Supp 2005).**

Abandoned infant means a juvenile less than nine months of age whose parent, guardian or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant. **Ark. Code Ann. §9-27-303(1) (Supp 2005).**

F. Six-Month Review Hearings**1. Purpose**

- a. To review a dependent-neglected case at least every six months when a juvenile is placed out of his/her home until there is a permanent order of custody, guardianship or other permanent placement or the juvenile is returned to his/her parent, guardian or custodian and the court has discontinued orders for family services. **Ark. Code Ann. §9-27-337(a)(1) (Supp 2005).**
- b. To review the case and determine the future status based on the juvenile's best interest. **Ark. Code Ann. §9-27-337(e)(1)(A) (Supp 2005).**

2. Time Constraints

- a. The Review Hearing shall be held within six months after the original out-of-home placement and every six months thereafter until permanency is achieved. **Ark. Code Ann. §9-27-337(a)(2)(B) (Supp 2005)**
 - (1) The court may require review prior to six month review date and the court shall announce the date, time, and place of the hearing. **Ark. Code Ann. §9-27-337(b)(1)(A) (Supp 2005).**
 - (2) In all other cases it is the duty of petitioner to request court to set review hearing at least 60 days prior to the date of the required six month review and to provide all parties with reasonable notice and service in accordance with ARCP. **Ark. Code Ann. §9-27-337(b)(2)(B) (Supp 2005).**
 - (3) Any party may request the court to review case at any time during pendency of a dependency-neglect case in which an out-of-home placement has occurred. **Ark. Code Ann. §9-27-337(c) (Supp 2005).**
- b. Seven business days prior to a scheduled dependency-neglect review hearing DHHS and the CASA, if appointed, shall file a review report including certificate of service that the report has been distributed to all parties or their attorneys and the CASA, if appointed. **Ark. Code Ann. § 9-27-361(a)(1) (Supp. 2005).**

- c. A written order shall be filed and distributed by the court, by a party, or party's attorney to the parties within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-337(e)(2) (Supp 2005).**

3. Court Reports

- a. The DHHS court report shall include a summary of the parties' compliance with the court orders and case plan, including a description of services and assistance the department has provided, and recommendations to the court. **Ark. Code Ann. § 9-27-361(a)(2)(A) (Supp. 2005).**
- b. If the child has been returned home, the DHHS report shall include a description of any services or requirements of the parents, including, but not limited to a safety plan to ensure the health and safety of the juvenile in the home. **Ark. Code Ann. § 9-27-361(a)(2)(B) (Supp. 2005).**
- c. The CASA report shall include but not be limited to:
 - (1) any independent factual information that he/she feels is relevant to the case;
 - (2) a summary of the parties' compliance with the court orders; and
 - (3) recommendations to the court. **Ark. Code Ann. § 9-27-361(a)(2)(B)(3) (Supp. 2005).**
- d. At the review hearing the court shall determine on the record whether the previously filed reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider as evidence any report or part of a report that was not admitted into evidence. **Ark. Code Ann. § 9-27-361(a)(4)(A-B) (Supp. 2005).**
- e. Nothing shall prevent DHHS or CASA from presenting any subsequent or addendum reports to the court at any hearing. **Ark. Code Ann. § 9-27-361(c)(1) (Supp. 2005).**

4. Court Review Findings

- a. The court shall determine and include in its order whether:
 - (1) the case plan, services, and placement meet the special needs and best interest of the juvenile, with the juvenile's health, safety, and educational needs specifically addressed;
 - (2) the state has made reasonable efforts to provide family services;
 - (3) the case plan is moving towards an appropriate permanency plan pursuant to Ark. Code Ann. §9-27-338; and
 - (4) the visitation plan is appropriate for the children and parents and siblings, if separated. **Ark. Code Ann. §9-27-337(e)(1)(B) (Supp 2005).**

- b. The court's determination must be based on a full and deliberate consideration of the following:
 - (1) the extent of compliance with the case plan including, but not limited to, a review of DHHS' care for the health, safety, and education of the juvenile while in an out-of-home placement;
 - (2) the extent of progress which has been made toward alleviating or mitigating the causes of the out-of-home placement;
 - (3) whether the juvenile should be returned to the parent(s) and whether or not the juvenile's health and safety can be protected by the parent(s) if returned home;
 - (4) whether the juvenile should be continued in an out-of-home placement for a specified period of time; and
 - (5) whether there is an appropriate permanency plan for the juvenile pursuant to Ark. Code Ann. §9-27-338, including concurrent planning. **Ark. Code Ann. §9-27-337(e)(1)(c) (Supp 2005).**

G. Permanency Planning Hearing**1. Purpose**

To finalize a permanency plan for the juvenile. **Ark. Code Ann. §9-27-338(a)(1) (Supp 2005).**

2. Time Constraints

- a. The Permanency Planning Hearing (PPH) shall be held:
 - (1) no later than 12 months after the date the juvenile enters an out-of-home placement;
 - (2) after a juvenile has been in an out-of-home placement for 15 of the previous 22 months, excluding trial placements with parents and time on runaway status; or
 - (3) no later than 30 days after the No Reunification Hearing. **Ark. Code Ann. §9-27-338(a)(1)(A-B) (Supp 2005).**
- b. If a juvenile remains in an out-of-home placement after the initial PPH an annual PPH shall be held to reassess the permanency plan for the juvenile. **Ark. Code Ann. §9-27-338(a)(2) (Supp 2005).**
- c. If the court finds that DHHS failed to provide services, the court should continue the PPH for no longer than six months. **Ark. Code Ann. §9-27-338(c)(2)(C)(ii) (Supp 2005).**
- d. Seven business days prior to a scheduled dependency-neglect PPH, DHHS and the CASA volunteer, if appointed, shall file a Permanency Planning Court Report with the court stating that it has been distributed to all parties and the CASA, if appointed. **Ark. Code Ann. § 9-27-361(b)(1) (Supp. 2005).**
- e. A written order shall be filed and distributed to the parties by the court, or by a party or party's attorney as designated by the court within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-338(e) (Supp 2005).**
- f. Upon the courts determination that the new permanency goal is TPR, DHHS shall file a TPR petition within 30 days of the PPH hearing to establish TPR as the goal. **Ark. Code Ann. §9-27-338(f) (Supp 2005).**

- g. Nothing shall prevent the state or the AAL from filing a petition for termination, guardianship, or permanent custody prior to the PPH. **Ark. Code Ann. §9-27-338(b)(1) (Supp 2005).**

3. Court Reports

- a. The DHS Permanency Planning Court Report shall include but not be limited to the following:
 - (1) a summary of the parties' compliance with the case plan, including the description of the services and assistance the department has provided;
 - (2) a list of all the placements the juvenile has been in;
 - (3) a recommendation and discussion regarding the permanency plan including the appropriateness of the plan, a time line, and the steps and services necessary to achieve the plan including the persons responsible; and
 - (4) the location of any siblings, and if separated, a statement for the reasons for separation and any efforts if appropriate to reunite or maintain contact if appropriate and in their best interest. **Ark. Code Ann. § 9-27-361(b)(2) (Supp. 2005).**
- b. The CASA Report shall include, but is not limited to:
 - (1) any independent factual information that he or she feels is relevant to the case;
 - (2) a summary of the parties' compliance with the court orders; and
 - (3) recommendations to the court. **Ark. Code Ann. § 9-27-361(b)(3)(Supp. 2005).**
- c. At the PPH the court shall determine on the record whether the reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record. **Ark. Code Ann. § 9-27-361(b)(4)(A-B) (Supp. 2005).**

- d. Nothing shall prevent DHHS or CASA from presenting any subsequent or addendum reports to the court at any hearing. **Ark. Code Ann. § 9-27-361(c)(1) (Supp. 2005).**

4. Permanency Plans

- a. At the PPH, based upon the facts of the case, the court shall enter one of the following permanency goals, listed in order of preference, in accordance with the best interest of the juvenile. **Ark. Code Ann. §9-27-338(c) (Supp 2005).**

- (1) Return juvenile to parent, guardian or custodian at the Permanency Planning Hearing if it is in the best interests of the juvenile and the juvenile's health and safety can be adequately safeguarded if returned home; **Ark. Code Ann. §9-27-338(c)(1) (Supp 2005).**

- (2) Authorize plan for termination of parent-child relationship so that the juvenile is available to be adopted unless the:

- (a) Juvenile is being cared for by a relative (including a minor foster child caring for his/her child in foster care) and termination of parental rights is not in the best interest of the juvenile;

- (b) DHHS has documented in the case plan a compelling reason why TPR is not in the juvenile's best interest and the court approves the compelling reason as documented in the case plan; or

- (c) DHHS has not provided services to the family of the juvenile consistent with the time period in the case plan, such services as the department deemed necessary for the safe return of the juvenile to his/her home if reunification services were required to be made to the family. **Ark. Code Ann. §9-27-338(c)(2) (Supp 2005).**

If DHHS fails to provide services in such case, the court shall continue the PPH for no more than six months. **Ark. Code Ann. §9-27-338(c)(2)(ii) (Supp 2005).**

- (3) Authorize a plan to obtain a guardian for the juvenile; **Ark. Code Ann. §9-27-338(c)(3) (Supp 2005).**

- (4) Authorize a plan for a permanent custodian, including relatives; **Ark. Code Ann. §9-27-338(c)(4) (Supp 2005).**
- (5) Continue the goal of reunification only when:
 - (a) the parent is complying with the case plan and court orders;
 - (b) the parent is making significant measurable progress towards achieving the goals in the plan and diligently working toward reunification;
 - (c) the parent can demonstrate genuine sustainable investment in completing the requirements in the case plan and following the orders of the court in order to retain reunification as the permanency goal; and
 - (d) reunification can occur within a time frame consistent with the child's developmental needs. **Ark. Code Ann. §9-27-338(c)(5)(A-C) (Supp 2005).**

A parents' resumption of contact or overtures towards compliance with the case plan and court orders in the months or weeks immediately preceding the Permanency Hearing are insufficient grounds for retaining reunification as the permanency plan. **Ark. Code Ann. §9-27-338(c)(5)(D) (Supp 2005).**

- (6) Authorize a plan for another permanent planned living arrangement (APPLA) which shall include a permanent planned living arrangement and addresses the quality of services, including but not limited to independent living services, if age appropriate and a plan for the supervision and nurturing the juvenile will receive. APPLA shall be selected only if:
 - (a) the juvenile cannot be reunited with his/her family;
 - (b) another permanent plan is not available; and either
 - (i) a compelling reason exists why TPR is not in the juvenile's best interest, or

- (ii) the juvenile is being care for by a relative and TPR is not in the juvenile's best interest. **Ark. Code Ann. § 9-27-338(c)(6) (Supp. 2005).**

5. Required Reasonable Efforts - Adoption Safe Families Act (ASFA) Findings

- a. The court shall make a finding on whether DHHS has made reasonable efforts and shall describe the efforts to finalize the permanency plan for the juvenile. **Ark. Code Ann. § 9-27-338(d) (Supp. 2005).**
- b. If a reasonable efforts to finalize the permanency plan is not made within the 12 months of the date the child comes into care, the child becomes ineligible for IV-E funding from the end of the 12th month following the date the child is considered to have entered foster care, or the end of the month of the most recent judicial determination to finalize permanency was made and remains ineligible until such a determination is made. **45 CFR Sec. 1356.21(b)(2)(i).**

H. Fifteenth-Month Review Hearing

1. Purpose

To determine if DHHS shall file a TPR petition if the juvenile has been out of the home for 15 continuous months, excluding trial placements or run-away status, previous 22 months, and the permanency planning hearing goal was either reunification or APPLA. **A.C.A. §9-27-359(a) (Supp. 2005)**

2. Time Constraints

- a. When the juvenile has been out of the home for 15 continuous months, excluding trial placements and time on run-away status out of the last 22 months, the court should conduct a Fifteen Month Review Hearing. **A.C.A. §9-27-338(a)(1) (Supp. 2005).**
- b. A written order shall be filed and distributed to the parties by the court, or by a party or party’s attorney as designated by the court, within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **A.C.A. §9-27-359(e) (Supp. 2005).**
- c. If court approves permanency goal to terminate, DHHS shall file TPR petition no later than the 15th month of the child’s entry into foster care. **A.C.A. §9-27-359(c) (Supp. 2005).**
- d. If court determines that the child should remain in an out-of-home placement, the court shall review the case every six months with an annual permanency planning hearing until permanency is achieved. **A.C.A. § 9-27-359(d) (Supp. 2005).**

3. Court Findings

- a. The Court shall authorize DHHS to file a TPR petition unless:
 - (1) The juvenile is being cared for by a relative and TPR is not in the juvenile’s best interest;
 - (2) DHHS has documented in the case plan a compelling reason why termination is not in the juvenile’s best interest and the court approves the compelling reasons; or
 - (3) DHHS has failed to provide the family services consistent with the time period in the case plan deemed necessary for the safe return of

the juvenile if such services were required. **A.C.A. § 9-27-359(b) (Supp. 2005).**

I. Termination of Parental Rights (TPR) Hearing

1. Purpose

- a. To be used only when DHHS is attempting to clear a juvenile for permanent placement. **Ark. Code Ann. §9-27-341(a)(2) (Supp 2005).**
- b. To provide permanency in a juvenile's life where a return home is contrary to the juvenile's health, safety or welfare and it appears from the evidence that the return home cannot be accomplished in a reasonable period of time, as viewed from the juvenile's perspective. **Ark. Code Ann. §9-27-341(a)(3) (Supp 2005).**
- c. A parent's resumption of contact or overtures toward participating in the case plan or following the orders of the court following the PPH and preceding the TPR Hearing is an insufficient reason not to terminate. **Ark. Code Ann. §9-27-341(a)(4)(A) (Supp 2005).**

*Termination of parental rights was pursued because a return of the child to the appellant's home would have been contrary to the child's health, safety, or welfare and because it appeared that the return could not be accomplished within a reasonable period of time. **M.T. v. Arkansas Dep't. of Human Servs., 58 Ark. App. 302, 952 S.W.2d 177 (1997).***

*The intent of the TPR statute is to provide permanency in a juvenile's life where return is contrary to the juvenile's health, safety, or welfare, and it appears from the evidence that return to the family home cannot be accomplished within a reasonable time. **Crawford v. Arkansas Dep't. of Human Servs., 330 Ark. 152, 951 S.W. 2d 310 (1997); Thompson v. Arkansas Dep't. of Human Servs., 59 Ark. App. 141, 954 S.W. 2d 292 (1997).***

2. Time Constraints

- a. If the court determines that the permanency goal is TPR at the PPH, DHHS shall file a TPR petition within 30 days of the PPH hearing. **Ark. Code Ann. §9-27-338(f) (Supp 2005).**

- b. If court approves permanency goal to TPR at the Fifteenth-Month Hearing, DHHS shall file TPR petition no later than the 15th month of the child's entry into foster care. **A.C.A. §9-27-359(c) (Supp. 2005).**
- c. Court shall conduct and complete TPR hearing within 90 days from the date TPR petition is filed, unless continued for a good cause as articulated in the written order of the court. **Ark. Code Ann. §9-27-341(d)(1) (Supp 2005).**
- d. A written order shall be filed by the court or by a party or party's counsel as designated by the court within 30 days of the date of the termination hearing or before the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-341(e) (Supp 2005).**
- e. After TPR order is filed, the court shall review the case at least every three months when the goal is adoption and in other cases every six months until permanency is achieved for that juvenile. **Ark. Code Ann. §9-27-341(f) (Supp 2005).**
- f. A Permanency Planning Hearing is not a prerequisite to the filing of a TPR petition or for the court's consideration of a TPR petition. **Ark. Code Ann. §9-27-341(b)(1)(B) (Supp 2005).**
- g. The court shall not transfer any case in which a TPR petition has been filed until the court takes final action on the petition. **Ark. Code Ann. §9-27-307(b)(2) (Supp 2005).**

3. Notice

- a. The petitioner shall provide the parent(s) or putative parent actual or constructive notice of hearing to terminate parental rights. **Ark. Code Ann. §9-27-341(b)(2)(A) (Supp 2005).**
- b. In addition to constructive notice, the petitioner shall check the putative father registry if the name or whereabouts of the putative father are unknown. **Ark. Code Ann. §9-27-341(b)(2)(B) (Supp 2005).**

4. TPR Petition

- a. TPR is a remedy available only to DHHS or the attorney ad litem. **Ark. Code Ann. §9-27-341(a)(1)(A) (Supp 2005).**

- b. The court may consider a TPR petition if there is an appropriate permanency placement plan for the juvenile. **Ark. Code Ann. §9-27-341(b)(1)(A) (Supp 2005).**

5. Burden of Proof

A TPR order shall be based upon a finding by clear and convincing evidence. **Ark. Code Ann. §9-27-341(b)(3) (Supp 2005); Ark. Code Ann. §9-27-325(h)(2)(c) (Supp 2005).**

6. TPR Evidence

- a. It is in the juvenile's best interest, including but not limited to:
 - (1) the likelihood the juvenile will be adopted if the TPR petition is granted; and
 - (2) the potential harm specifically addressing the effect of the health and safety of the juvenile caused by returning the child to the custody of the parents or the putative parent. **Ark. Code Ann. §9-27-341(b)(3)(A) (Supp 2005).**
 - (3) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile's best interest to terminate parental rights. **Ark. Code Ann. §9-27-341(b)(4)(B) (Supp 2005).**
- b. One or more of the following grounds:
 - (1) The juvenile has been adjudicated dependent-neglected and has continued outside of the custody of the parent for 12 months, despite a meaningful effort by DHHS to rehabilitate the home and correct conditions which caused removal, and those conditions have not been remedied by the parent. **Ark. Code Ann. §9-27-341(b)(3)(B)(i)(a) (Supp 2005).**

It is not necessary that the 12-month period referenced in this subdivision immediately precede the filing of the petition for TPR, or that it be for 12 consecutive months. **Ark. Code Ann. §9-27-341(b)(3)(B)(i)(b) (Supp 2005).**

- (2) The juvenile has lived outside the parent's home for a period of 12 months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with juvenile. **Ark. Code Ann. §9-27-341(b)(3)(B)(ii)(a) (Supp 2005).**
- (a) Material support consists of either financial contributions or food, shelter, clothing or other necessities when such contribution has been requested by the juvenile's custodian or ordered by the court. **Ark. Code Ann. §9-27-341(b)(3)(B)(ii)© (Supp 2005).**
 - (b) To find willful failure to maintain meaningful contact, it must be shown that parent was not prevented from visiting or having contact with juvenile by juvenile's custodian or other person, taking into account distance of juvenile's placement from parent's home. **Ark. Code Ann. §9-27-341(b)(3)(B)(ii)(b) (Supp 2005).**
 - (c) It is not necessary that the 12-month period referenced in this subdivision immediately precede the filing of the petition for TPR, or that it be for 12 consecutive months. **Ark. Code Ann. §9-27-341(b)(2)(B)(ii)(d) (Supp 2005).**
- (3) The presumptive legal father is not the biological father of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the presumptive legal father. **Ark. Code Ann. §9-27-341(b)(3)(B)(iii) (Supp 2005).**
- (4) Abandonment by the parent. **Ark. Code Ann. §9-27-341(b)(3)(B)(iv) (Supp 2005).**
- (5) A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval. **Ark. Code Ann. §9-27-341(b)(3)(B)(v) (Supp 2005).**
- (a) A parent may withdraw the consent for termination of parental rights within ten calendar days after it is signed by filing an affidavit with the clerk of the court in the county designated by the consent as the county in which the TPR will take place. **Ark. Code Ann. §9-27-341(g)(1)(A) (Supp 2005).**

(b) No fee shall be charged and if the ten day period ends on a weekend or holiday, it may be filed the next working day. **Ark. Code Ann. §9-27-341(g)(1)(B-C) (Supp 2005).**

(6) The court has found the juvenile victim dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse; or sexual exploitation; and that the abuse or neglect was perpetrated by the juvenile's parent or parents. **Ark. Code Ann. §9-27-341(b)(3)(B)(vi)(a) (Supp 2005).**

Such findings by the court shall constitute grounds for immediate termination of the parental rights of one or both of the parents. **Ark. Code Ann. §9-27-341(b)(3)(B)(vi)(b) (Supp 2005).**

(7) Subsequent to the filing of the original petition for dependency-neglect, other factors or issues arose which demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety or welfare, and that despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances, which prevent return of the juvenile to the custody of the parent. **Ark. Code Ann. §9-27-341(b)(3)(B)(vii)(a) (Supp 2005).**

(a) DHHS shall make reasonable accommodations in accordance with the Americans with Disabilities Act to parents with disabilities to allow them meaningful access to reunification and family preservation services. **Ark. Code Ann. §9-27-341(b)(3)(B)(vii)(b) (Supp 2005).**

(b) For purposes of this subsection, said inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies. **Ark. Code Ann. §9-27-341(b)(3)(B)(vii)(c) (Supp 2005).**

(8) The parent is sentenced in a criminal proceeding for a period of time which would constitute a substantial period of the juvenile's life. **Ark. Code Ann. §9-27-341(b)(3)(B)(viii) (Supp 2005).**

(9) The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to have:

- (a) committed murder or voluntary manslaughter of any child; or **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(1) (Supp 2005)**.
- (b) to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter. **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(1) (Supp 2005)**.
- (c) to have committed a felony battery or assault that results in serious bodily injury to any child or to have aided or abetted, attempted, conspired, or solicited such a felony battery that results in serious bodily injury; **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(2) (Supp 2005)**.

Nothing in this chapter shall be construed to require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed. **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(b) (Supp 2005)**.

- (d) to have subjected the child to aggravated circumstances:
 - (i) a child being abandoned; **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(3)(i) (Supp 2005)**.
 - (ii) a child being chronically abused; **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(3)(i) (Supp 2005)**.
 - (iii) a child being subjected to extreme or repeated cruelty or sexual abuse; **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(3)(i) (Supp 2005)**.
 - (iv) a determination by a judge that there is little likelihood that services to the family will result in successful reunification; or **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(3)(i) (Supp 2005)**.
 - (v) a child has been removed from the custody of the parent or guardian and placed in foster care or the custody of another person more

than three times in the last fifteen months.

Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(3)(ii) (Supp 2005).

- (e) had parental rights involuntarily terminated as to a sibling of the child, or **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(4) (Supp 2005).**
 - (f) abandoned an infant, as defined in Ark. Code Ann. § 9-27-303(1) (Supp 2005). **Ark. Code Ann. §9-27-341(b)(3)(B)(ix)(a)(5) (Supp 2005).**
- c. If the parent has been represented by counsel, the court shall take judicial notice and incorporate by reference into the record all pleadings and testimony in the case incurred before the termination of parental rights hearing. **Ark. Code Ann. §9-27-341(d)(2) (Supp 2005).**

7. Effect of TPR Order

- a. Terminates the parent-child relationship and divests parent and juvenile of all legal rights, powers, and obligations between each other, including the right to withhold consent to adoption. **Ark. Code Ann. §9-27-341(c)(1) (Supp 2005).**
- b. Juvenile's right to inherit from the parent is not terminated until a final order of adoption is entered. **Ark. Code Ann. §9-27-341(c)(1) (Supp 2005).**
- c. Termination of one parental relationship shall not affect the relationship between the other parent and the juvenile, if rights have been legally established.
 - (1) If no legal rights have been established, the putative parent must prove that significant contacts existed with the juvenile in order for such rights to attach. **Ark. Code Ann. §9-27-341(c)(2)(A)(i-ii) (Supp 2005).**
 - (2) When the petitioner has actual knowledge that an individual is claiming to be or is named as the putative parent of the juvenile and the paternity of the juvenile has not been judicially determined, the individual is entitled to notice of the petition to terminate parental rights. **Ark. Code Ann. §9-27-341(c)(2)(B)(i) (Supp 2005).**

- (3) Putative parent notice shall:
 - (a) identify the rights sought to be terminated and those which may be terminated; and
 - (b) specify that the putative parent must prove that significant contacts existed with the juvenile for the putative parent's rights to attach. **Ark. Code Ann. §9-27-341(c)(2)(B)(ii-iii) (Supp 2005).**
- d. TPR order may authorize DHHS to consent to adoption of the juvenile. **Ark. Code Ann. §9-27-341(c)(3) (Supp 2005).**
- e. A TPR order does not preclude adoptive parents from allowing contact between an adopted child and the birth sibling or other birth family members. **Ark. Code Ann. §9-27-341(c)(4) (Supp 2005).**
- f. Sibling visitation shall not terminate if the adopted child was in the custody of DHHS and had a sibling who was not adopted by the same family, and before the adoption the circuit court in the dependency-neglect case or the FINS case determined that it was in the best interest of the siblings to continue visitation and ordered sibling visitation to continue after the adoption. **Ark. Code Ann. §9-9-215(c) (Supp 2005).**

J. Post-Termination of Parental Rights Review Hearings

1. Purpose

- a. Court shall determine if case plan, services, and placement meet the special needs and best interest of the child;
- b. Court shall determine if DHHS has made reasonable efforts to finalize an appropriate permanent placement for the juvenile; and
- c. Court shall determine if the case plan is moving toward an appropriate permanency plan for the juvenile. **Ark. Code Ann. §9-27-360(b) (Supp 2005).**

2. Time Constraints

- a. Hearings shall be held at least three months following an order for termination of parental rights when the goal is adoption and in all other

cases six months until permanency is achieved. **Ark. Code Ann. §9-27-360(a) (Supp 2005).**

- b. DHS and a CASA, if appointed, shall file a court report with the court, including a certificate of service that the report has been submitted to all parties and the CASA volunteer, if appointed, seven business days prior to the scheduled review hearing. **Ark. Code Ann. §9-27-361(a)(1) (Supp 2005).**
- c. A written order shall be filed and distributed to the parties within 30 days of the date of the hearing or prior to the next hearing, whichever is sooner. **Ark. Code Ann. §9-27-360(d) (Supp 2005).**

3. Court Reports

- a. The DHHS court report shall include a summary of the parties' compliance with the court orders and case plan, including a description of services and assistance the department has provided and recommendations to the court. **Ark. Code Ann. § 9-27-361(a)(2)(A) (Supp. 2005).**
- b. The CASA report shall include but not be limited to:
 - (1) any independent factual information that he/she feels is relevant to the case;
 - (2) a summary of the parties' compliance with the court orders; and
 - (3) recommendations to the court. **Ark. Code Ann. § 9-27-361(a)(2)(B)(3) (Supp. 2005).**
- c. At the review hearing the court shall determine on the record whether the previously filed reports shall be admitted into evidence based on any evidentiary objections made by the parties. The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record. **Ark. Code Ann. § 9-27-361(a)(4)(A-B) (Supp. 2005).**

4. Court Findings

- a. At the Post-TPR Hearing the court shall determine and include in its orders the following:
 - (1) Whether the case plan, services, and current placement meet the special needs and best interest of the juvenile, with the

juvenile's health, safety and education specifically addressed; **Ark. Code Ann. § 9-27-360(b)(1) (Supp. 2005).**

(2) Whether DHHS has made reasonable efforts to finalize a permanency plan for the child; and **Ark. Code Ann. § 9-27-360(b)(2) (Supp. 2005).**

(3) Whether the case plan is moving toward and appropriate permanency plan pursuant to A.C.A. §9-27-338. **Ark. Code Ann. § 9-27-360(b)(3) (Supp. 2005).**

b. The court shall consider extent of parties' compliance with case plan and court orders to finalize the permanency plan. **Ark. Code Ann. § 9-27-360(c) (Supp. 2005).**

VIII. APPEALS

A. Generally

1. Appeal shall be made to the Arkansas Supreme Court or Arkansas Court of Appeals in same time and manner as provided for appeals from circuit court. **Ark. Code Ann. §9-27-343(a)(Supp. 2005); Administrative Order Number 14.**

B. Dependency-Neglect Appeals

1. The following orders may be appealed from any dependency-neglect proceeding:
 - a. adjudication order;
 - b. disposition, review, and permanency planning hearings if the court directs entry of a final judgment as to one or more of the issues or parties and upon express determination supported by factual findings that there is no just reason for delay of an appeal, in accordance with Ark. R.Civ. P., Rule 54(b);
 - c. termination of parental rights, and
 - d. denial of the right to appointed counsel pursuant to Ark. Code Ann. 9-27-316(h). **Supreme Court, Rule 6-9(a).**
3. Time Constraints
 - a. Notice of appeal shall be filed within 14 days from the entry of the circuit court order from which the appeal is taken. **Supreme Court, Rule 6-**

- b. Any other party may file a notice of cross-appeal and designation of the record within five days from receipt of the notice of appeal. **Supreme Court, Rule 6-9(b)(2)(E).**
 - c. If appellant alleges indigency for purposes of appeal, the appellant must request an indigency hearing within seven days of the entry of the order from which the appeal is taken. **Supreme Court, Rule 6-9(b)(2)(A).**
 - d. The record for appeal shall be filed with the Clerk of the Supreme Court within 70 days of the notice of appeal. The court reporter shall provide the record to the circuit clerk within 60 days of the notice of appeal and the circuit clerk shall have five days to prepare the record. **Supreme Court, Rule 6-9(d).**
 - e. Appellant shall file a petition for appeal or cross appeal within 20 days after transmission of the record to the Clerk of the Supreme Court. **Supreme Court, Rule 6-9(e)(1).**
 - f. The Appellee may file a response to the petition or cross-appeal within 20 days after the filing of the appellant's petition on appeal. **Supreme Court, Rule 6-9(f).**
 - g. Appellant and appellee have 10 days for reply to the response or cross appeal. **Supreme Court, Rule 6-9(f)(3-4).**
 - h. Petitions for rehearing or review with the Supreme Court shall be filed within five days. **Supreme Court, Rule 6-9(i).**
3. The record for appeal shall be limited to the transcript of the hearing from which the order on appeal arose, any petitions, pleadings, and orders relevant to the hearing and all exhibits entered into evidence at that that hearing. **Supreme Court, Rule 6-9(c)(1).**
4. The petition (Form 2) shall not exceed twenty pages, excluding the abstract and addendum, and shall be bound and include:
- a. A statement of the nature of the case and the relief sought;
 - b. A concise statement of the material facts as they relate to the issues presented in the petition on appeal that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court;

- c. An abstract or abridgment of the transcript that consists of an impartial condensation of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the court for decision;
 - d. A concise statement of the legal issues presented for appeal, including a statement of how the issues arose; and a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised;
 - e. An addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, or letter opinion from which the appeal is taken, a copy of the notice of appeal, and any other relevant pleadings, documents, or exhibits essential to an understanding of the case. .
Supreme Court, Rule 6-9(e).
4. The response (Form 3) to the petition or cross appeal shall be bound and not exceed twenty pages, excluding the abstract and addendum and shall include:
 - a. A concise statement of the material facts as they relate to the issues presented by the appellant, as well as the issues, if any, being raised by the appellee on cross-appeal, that is sufficient to enable the appellate court to understand the nature of the case, the general fact situation, and the action taken by the circuit court;
 - b. A concise response to the legal issues presented on appeal and cross-appeal, if any, including a statement of how the issue arose; a discussion of the legal authority on which the party is relying with citation to supporting statutes, case law, or other legal authority for the issues raised; and
 - c. If the appellee considers the appellant's abstract or addendum to be defective or incomplete, the appellee may provide a supplemental abstract or addendum. The appellee's addendum shall only include an item which the appellant's addendum fails to include. **Supreme Court, Rule 6-9(f).**
6. Trial counsel shall continue to represent his/her client in a dependency-neglect case throughout any appeal, unless permitted by the trial court or appellate court to withdraw. After the notice of the appeal has been filed the appellate court shall have exclusive jurisdiction to relive counsel and appoint new counsel for appeal.
Supreme Court, Rule 6-10(a).

7. Motions for attorney's fees to represent indigent parents in appeals shall be filed within 30 days after the issuance of the mandate and shall contain:
 - a. The date of appointment;
 - b. The court which appointed counsel;
 - c. The number of hours expended by counsel in research and court appearances and preparation of pleadings and petitions for appeals;
 - d. An itemization of the expenses incurred by counsel which are directly attributable to the case; and
 - e. The relative complexity of the case. **Supreme Court, Rule 6-10(a).**

IX. MISCELLANEOUS

A. Educational Rights of Foster Children

1. Foster children shall have continuity in their educational placements. **Ark. Code Ann. §9-27-103(b)(1) (Supp. 2005).**
 - a. DHHS shall consider continuity of educational services and school stability in making foster care placements. **Ark. Code Ann. §9-27-103(b)(2) (Supp. 2005).**
 - b. Local school districts shall allow a foster child to remain in his/her current school and continue his/her education, unless the court finds that the placement is not in the child's best interest and it conflicts with other law, excluding the residency requirements. **Ark. Code Ann. §9-27-103(b)(3) (Supp. 2005).**
 - c. School districts are encouraged to work out plans for transportation to the extent reasonable and practical. **Ark. Code Ann. §9-27-103(b)(4) (Supp. 2005).**
 - d. Except for emergencies, prior to moving a child from his/ her current school, DHHS shall provide a written explanation for the school change to the foster child, the AAL, CASA (if appointed), and the parents, guardians, or any person appointed by the court. **Ark. Code Ann. §9-27-103(b)(5) (Supp. 2005).**

2. Every school district shall identify a foster care liaison, and the liaison's duties shall include: **Ark. Code Ann. §9-27-103(c)(1-2) (Supp. 2005).**
 - a. Ensuring and facilitating the timely school enrollment of foster children. **Ark. Code Ann. §9-27-103(c)(3)(A) (Supp. 2005).**
 - b. Assisting foster children when transferring schools by ensuring the transfer of credits, records, grades, and any other relevant school records. **Ark. Code Ann. §9-27-103(c)(3)(B)(i) (Supp. 2005).**
 - c. Expediting the transfer of school records - liaison in new school must request records within three school days from child's previous school and the liaison from the previous school must provide records within ten school days.
3. If a foster child is subject to a school change, the child's caseworker shall notify the school within two business days and the new school must immediately enroll the foster child even if the foster child is lacking required clothing or records. **Ark. Code Ann. §9-27-103(d)(1) (Supp. 2005).**

DHHS shall provide all known information to the school district that would have an impact on the health and safety of the child being enrolled and others in the school. **Ark. Code Ann. §9-27-103(d)(2) (Supp. 2005).**
4. School districts shall recognize the rights of foster parents pursuant to IDEA. A foster parent may have educational rights to consent to an IEP, if the foster parent is qualified. A foster parent may have educational rights if the court has specifically limited the educational rights of the parent. **Ark. Code Ann. §9-27-103(e)(1-2) (Supp. 2005).**
5. The grades of a foster child may not be lowered due a change in a child's school enrollment, attendance at a dependency-neglect court proceeding or court-ordered counseling or treatment. **Ark. Code Ann. §9-27-103(f)(1-3) (Supp. 2005).**
6. Each school district shall accept for credit course work when the student demonstrates that he/she satisfactorily completed the appropriate education placement assessment. **Ark. Code Ann. §9-27-103(g) (Supp. 2005).**
7. If a child completes the graduation requirements of his/her school district while being detained in a juvenile detention or DYS, the school district that the child last attended shall issue the child a diploma. **Ark. Code Ann. §9-27-103(h) (Supp. 2005).**

8. Nothing in this section shall be interpreted to be in conflict with IDEA. **Ark. Code Ann. §9-27-103(i) (Supp. 2005).**
9. If in the best interest of the foster child may be placed in a non public school as long as no state funding is used for such placement. **Ark. Code Ann. §9-27-103(j) (Supp. 2005).**

B. Foster Care School Notification

1. DHHS shall notify a child's current school by the next business day when DHHS has placed a 72-hour hold on a child or when the court has placed custody with DHHS. **Ark. Code Ann. §9-28-411(b) (Supp. 2005).**
2. DHHS shall notify the child's current school by the next business day when the foster child transfers to a new placement. **Ark. Code Ann. §9-28-411(c) (Supp. 2005).**
3. DHHS may notify the school counselor by the next business day when DHHS has reasonable cause to believe that a foster child has experienced a traumatic event. **Ark. Code Ann. §9-28-411(d) (Supp. 2005).**
4. DHHS may notify the school counselor by the next business day after DHHS knows through an investigation or ongoing protective services case that a foster child has experienced a traumatic event. **Ark. Code Ann. §9-28-411(e) (Supp. 2005).**
5. When appropriate, the school counselor may share information provided by DHHS with the principal and child's teachers. **Ark. Code Ann. §9-28-411(f) (Supp. 2005).**
6. DHHS or its designee, including a foster parent, shall be the decision maker for the child on all general education matters, subject to the court. **Ark. Code Ann. §9-28-411(g) (Supp. 2005).**

C. Foster care placements

1. If a foster parent requests a foster child be removed from his or her home at any time, excluding an emergency that places the child or a family member at risk of harm, then the foster parent shall attend a staffing that shall be arranged by the Division of Children and Family Services of the Department of Health and Human Services within 48 hours to discuss what services or assistance may be needed to stabilize the placement. **Ark. Code Ann. §9-28-410(b)(1) (Supp. 2005).**

- a. The foster child, the child's attorney ad litem, and a court-appointed special advocate, if appointed, shall be notified so that they may attend and participate in the staffing and planning for the child's placement.
 - b. If the placement cannot be stabilized, then the foster parent shall continue to provide for the foster child until an appropriate alternative placement is located, but this shall not be longer than five business days. **Ark. Code Ann. §9-28-410(b)(1) (Supp. 2005).**
2. Other changes in placement shall be made **only** after notification of the, foster child, foster parent or parents, child's attorney ad litem, child's birth parents, and court having jurisdiction over the child.
- a. The notices shall be sent in writing two weeks prior to the proposed change and shall specify the:
 - (1) reasons for the proposed change;
 - (2) convey to the attorney ad litem the address of the proposed new foster home or placement provider; and
 - (3) convey to the child the name and telephone number of his/her attorney ad litem and a statement that if the child objects to the change in placement, the attorney ad litem may be able to assist in challenging the change. **Ark. Code Ann. §9-28-410(c)(1-2) (Supp. 2005).**
 - b. Exceptions to the advance notice requirement shall be made if the child's health or welfare would be endangered by delaying a change in placement.
 - (1) Within 24 hours of the change in placement the department shall notify the birth parent of the change, notify the child's attorney ad litem of the change; and provide the attorney ad litem with the name, address, and telephone number of the new foster care home or placement provider.
 - (2) Within 72 hours of the change in placement, the department shall provide written notice to the attorney ad litem for the specific reasons justifying the change of placement without advance notice. **Ark. Code Ann. §9-28-410(d)(1-3) (Supp. 2005).**

3. If an agent, employee, or contractor of the department fails to comply with this section, then an action for violation of this section may be filed by any party to the action against the person who failed to comply with this section, with the assessment of punishment to be determined by the court. **Ark. Code Ann. §9-28-410(e)(1) (Supp. 2005).**
4. If the court finds that the agent, employee, or contractor of the department failed to comply with this section, then the court may order the department or the agent, employee, or contractor to pay all the costs of the proceedings brought under this section. **Ark. Code Ann. §9-28-410(e)(2) (Supp. 2005).**

D. Juvenile Mental Health Screening/Assessment Requirements

1. When a mental health screening or assessment is provided to the juvenile division of a circuit court, the screening or assessment shall include, but not be limited to, the following:
 - a. The mental health services needed for the juvenile and the juvenile's family; and **Ark. Code Ann. § 9-27-603(a)(3) (Supp 2005).**
 - b. The services that could be provided to enable the juvenile to remain safely in his or her home and the availability of such services. **Ark. Code Ann. § 9-27-603(a)(2) (Supp 2005).**
 - c. If the screening or assessment recommends that the juvenile cannot remain safely in his or her home, then the screening or assessment shall state the recommended type of residential treatment or inpatient treatment that is needed for the juvenile which:
 - (1) Meets the treatment needs of the juvenile;
 - (2) Allows the juvenile to remain as close to his or her home and community as possible so that his or her family can participate in the treatment plan;
 - (3) Provides for the least restrictive placement ensuring the health and safety of the juvenile;
 - (4) Provides an anticipated length of time needed for residential or inpatient treatment; and
 - (5) Provides a plan for the reintegration of the juvenile into his or her community, including coordination with local providers when the juvenile is released from residential or

inpatient treatment. **Ark. Code Ann. § 9-27-603(b) (Supp 2005).**

E. Mental Health Assessments Required for Out-of-State Residential Placements

1. Prior to the circuit court's ordering a juvenile to an out-of-state residential placement, excluding border state placements as defined by Medicaid, the court shall refer a juvenile for an assessment by the DHHS or the department's designee to include, but not be limited to: **Ark. Code Ann. § 9-27-602(a) (Supp 2005).**
 - a. An assessment of the mental health services for the juvenile and the juvenile's family; **Ark. Code Ann. § 9-27-602(a)(1)(A) (Supp 2005).**
 - b. If the assessment recommends that the juvenile cannot remain at home, all appropriate in-state placements currently available that are appropriate to meet the juvenile's mental health needs shall be presented to the court:
 - (1) With a preference for the juvenile to remain as close to his or her home and community as possible so that his or her family can participate in the family treatment plan;
 - (2) That provide for the least restrictive placement ensuring the health and safety of the juvenile;
 - (3) That provide an anticipated length of time needed for residential or inpatient treatment; and
 - (4) That provide a plan for reintegration of the juvenile into his or her community, including coordination with local providers when the juvenile is released from treatment; **Ark. Code Ann. § 9-27-602(a)(1)(B) (Supp 2005).** and
 - c. The services that could be provided to enable the juvenile to remain safely in his or her home and the availability of such services. **Ark. Code Ann. § 9-27-602(a)(2)(A) (Supp 2005).**
 - d. If the assessment recommends that the juvenile cannot be served in the State of Arkansas, the assessment shall:
 - (1) Specify the reasons why the juvenile cannot be served in the state; and

- (2) Recommend what type of placement the child needs out of state and the reasons for such a recommendation. **Ark. Code Ann. § 9-27-602(a)(2)(B) (Supp 2005).**
- e. The department or its designee shall complete the out-of-state mental health assessment within five business days of referral from the court. **Ark. Code Ann. § 9-27-602(b) (Supp 2005).**
- f. The assessment completed by the department or its designee shall be admitted into evidence, and the court shall consider the assessment in making its determination as to what services and placement should be ordered based on the best interest of the juvenile. **Ark. Code Ann. § 9-27-602(c) (Supp 2005).**
- g. The court shall make a determination of the ability of the parent, guardian, or custodian of the juvenile to pay in whole or in part for mental health services. **Ark. Code Ann. §9-27-602(d)(1) (Supp 2005).**
- h. If the court determines an ability to pay, the court shall enter such an order for payment pursuant to Ark. Code Ann. § 9-27-333(e). Ark. Code Ann. §9-27-602(d)(2) (Supp 2005).

C. Emancipation of juveniles

- 1. A petition for emancipation may be filed in a circuit court by the attorney or AAL for a juvenile who is in the custody of the DHHS pursuant to a dependency-neglect, dependency, or family in need of services case. **Ark. Code Ann. § 9-27-362(a) (Supp 2005).**
- 2. The petition shall be served along with a notice of hearing to the juvenile's parent, legal guardian, or legal custodian. **Ark. Code Ann. §9-27-362(b) (Supp 2005).**
- 3. The circuit court has the authority to emancipate a juvenile in a dependency-neglect, dependency, or family in need of services case after a hearing on the petition if the petitioner shows by a preponderance of the evidence that:
 - a. The juvenile is at least seventeen (17) years of age;
 - b. The juvenile is willing to live separate and apart from his or her parent, legal guardian, or legal custodian;
 - c. The juvenile has an appropriate place to live;

- d. The juvenile has been managing or has the ability to manage his or her own financial affairs;
 - e. The juvenile has a legal source of income, such as employment or a trust fund;
 - f. The juvenile has health care coverage or a realistic plan on how to meet his or her health needs;
 - g. The juvenile agrees to comply with the compulsory school attendance laws; and
 - h. Emancipation is in the best interest of the juvenile. **Ark. Code Ann. § 9-27-362(c-d(1) (Supp 2005).**
4. The court shall consider:
- a. the wishes of the parent, legal guardian, or legal custodian in making its decision.
 - b. the recommendation of the attorney ad litem. **Ark. Code Ann. §9-27-362(d)(2-3) (Supp 2005).**
5. Effect of an order of emancipation
- a. The juvenile has the right to obtain and consent to all medical care, including counseling;
 - b. The juvenile has the right to enter into contracts;
 - c. The juvenile has the right to enroll himself or herself in school, college, or other educational programs;
 - d. The juvenile has the right to obtain a driver's license without consent of a parent or other adult so long as the juvenile complies with the remaining requirements of the driver's license law;
 - e. The juvenile's parent, legal guardian, or legal custodian is no longer legally responsible for the juvenile;
 - f. The juvenile may still be charged with a delinquency and prosecuted in juvenile court;

- g. The juvenile may not marry without parental permission pursuant to Ark. Code Ann. § 9-11-102;
- h. The juvenile is not relieved from compulsory school attendance;
- i. DHHS is not relieved from the responsibility of providing independent living services and funding for which the juvenile is eligible upon request by the juvenile;
- j. Child support orders are not terminated but may cease upon entry of an order from the court that issued the order of child support;
- k. Until the juvenile reaches the age of majority, the juvenile remains eligible for federal programs and services as a juvenile;
- l. The juvenile is not permitted to obtain items prohibited for sale to or possession by a minor, such as tobacco or alcohol;
- m. The juvenile remains subject to state and federal laws enacted for the protection of persons under eighteen (18) years of age such as the prohibition against a juvenile's obtaining a tattoo; and
- n. No statute of limitations is affected. **Ark. Code Ann. § 9-27-362(e) (Supp 2005).**