

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Representatives Flanagin, J. Smith, Lynn, *Molinaro, Hunton, Malone, and*  
5 *Bryant*

# A Bill

HOUSE BILL 1653

## For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED 9-27-341 TO  
10 CLARIFY THAT THE INTENT OF THIS SECTION IS TO PROVIDE  
11 PERMANENCY FOR JUVENILES IN ANY AND ALL INSTANCES WHERE  
12 RETURN TO THE JUVENILE\_S HOME IS CONTRARY TO THE HEALTH,  
13 SAFETY OR WELFARE OF THE JUVENILE; TO CLARIFY THE OUT OF  
14 HOME REQUIREMENT; TO ADD ADDITIONAL GROUNDS FOR  
15 TERMINATION OF PARENTAL RIGHTS; TO CLARIFY AGAINST WHOM AN  
16 ACTION OF TERMINATION OF PARENTAL RIGHTS IS EFFECTIVE; AND  
17 FOR OTHER PURPOSES."

## Subtitle

18  
19 "TO AMEND THE ARKANSAS JUVENILE CODE  
20 RELATING TO TERMINATION OF PARENTAL  
21 RIGHTS"  
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23  
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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26 SECTION 1. Arkansas Code Annotated 9-27-341 is amended to read as  
27 follows:

28 "9-27-341. Termination of parental rights.

29 (a) This section shall be a remedy available only to the Department of  
30 Human Services. It shall not be available for private litigants or other  
31 agencies. It shall be used only in such cases when the Department of Human  
32 Services is attempting to clear a juvenile for permanent placement. The  
33 intent of this section is to provide permanency in a juvenile\_s life in all  
34 instances where return of a juvenile to the family home is contrary to the  
35 juvenile\_s health, safety, or welfare, and it appears from the evidence that

1 return to the family home cannot be accomplished in a reasonable period of  
2 time.

3           (b) The court may consider a petition to terminate parental rights if  
4 it finds that the Department of Human Services has physical or legal custody  
5 of the juvenile, an appropriate placement plan for the juvenile and the  
6 parent or parents or putative parent, if the putative parent can be  
7 identified, have received actual or constructive notice of the hearing to  
8 terminate parental rights. An order forever terminating parental rights  
9 shall be based upon a finding by clear and convincing evidence of one (1) or  
10 more of the following grounds:

11                   (1) That a juvenile has been adjudicated by the court to be  
12 dependent-neglected and has continued out of the home for *twelve (12) months*  
13 and despite a meaningful effort by the Department of Human Services to  
14 rehabilitate the home and correct the conditions which caused removal, those  
15 conditions have not been remedied by the parent. It is not necessary that  
16 the *twelve (12) months* period referenced in this subdivision immediately  
17 precede the filing of the petition for termination of parental rights, or  
18 that it be for twelve (12) consecutive months.

19                   (2) The juvenile has lived outside the home of the parent for a  
20 period of *twelve (12) months* and the parent has willfully failed to provide  
21 significant material support in accordance with the parent's means or to  
22 maintain meaningful contact with the juvenile. To find willful failure to  
23 maintain meaningful contact, it must be shown that the parent was not  
24 prevented from visiting or having contact with the juvenile by the juvenile's  
25 custodian or any other person, taking into consideration the distance of the  
26 juvenile's placement from the parent's home. Material support consists of  
27 either financial contributions or food, shelter, clothing, or other  
28 necessities where such contribution has been requested by the juvenile's  
29 custodian or ordered by a court of competent jurisdiction. It is not  
30 necessary that the *twelve (12) months* period referenced in this subdivision  
31 immediately precede the filing of the petition for termination of parental  
32 rights, or that it be for twelve (12) consecutive months.

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

1           (4) A parent has abandoned the juvenile or has executed consent  
2 to termination of parental rights or adoption of the juvenile.

3           (5) That, subsequent to the filing of the original petition for  
4 dependency-neglect, other factors or issues arose which demonstrate that  
5 return of the juvenile to the family home is contrary to the juvenile\_s  
6 health, safety, or welfare and that despite the offer of appropriate family  
7 services, the parent has manifested the incapacity or indifference to remedy  
8 the subsequent issues or factors, or rehabilitate the parent\_s circumstances,  
9 which prevent return of the juvenile to the family home; provided, however,  
10 that the Department of Human Services shall make reasonable accommodations in  
11 accordance with the Americans with Disabilities Act to parents with  
12 disabilities in order to allow them meaningful access to reunification and  
13 family preservation services. For purposes of this subsection, said  
14 inability or incapacity to remedy or rehabilitate includes, but is not  
15 limited to, mental illness, emotional illness, or mental deficiencies.

16           (6) The parent is sentenced in a criminal proceeding for a  
17 period of time which would constitute a substantial period of the juvenile\_s  
18 life and the conditions in subdivision (1) or subdivision (2) have also been  
19 established. For purposes of this subsection, substantial period means a  
20 sentence, and not time actually served, of no less than fifteen (15) years,  
21 *none of which have been suspended.*

22           (c)(1) An order terminating the relationship between parent and  
23 juvenile divests the parent and the juvenile of all legal rights, powers, and  
24 obligations with respect to each other, including the right to withhold  
25 consent to adoption, except the right of the juvenile to inherit from the  
26 parent, which is terminated only by a final order of adoption.

27           (2) Termination of the relationship between a juvenile and one  
28 (1) parent shall not affect the relationship between the juvenile and the  
29 other parent, if those rights are legally established. Provided, however,  
30 that if no legal rights have been established, the termination will act as an  
31 absolute bar to the assertion of any alleged rights by the other parent or  
32 putative parent in any action brought subsequent to the termination,  
33 irrespective of the court in which said action is brought, except the rights  
34 of a putative parent shall not be affected if the putative parent\_s identity  
35 was known at the time of the hearing for termination of parental rights and

1 the putative parent did not receive actual or constructive notice of the  
2 hearing.

3           (3) An order terminating parental rights under this section may  
4 authorize the Department of Human Services to consent to adoption of the  
5 juvenile."

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7           SECTION 2. *The definition of "reasonable efforts" found in Arkansas*  
8 *Code Annotated § 9-27-303(31) is amended to read as follows:*

9           "*(31) 'Reasonable Efforts' means the exercise of reasonable diligence*  
10 *and care by the Department of Human Services or other appropriate agency to*  
11 *utilize all available services relating to meeting the needs of the juvenile*  
12 *and the family. Except that, upon petition of termination of parental rights*  
13 *the juvenile court may deem that reasonable efforts have been made when the*  
14 *juvenile court has found the juvenile victim to be dependent-neglected due to*  
15 *severe maltreatment as defined in Arkansas Code Annotated § 12-12-503(10)*  
16 *which was perpetrated by the juvenile's parent or parents."*

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18           SECTION 3. All provisions of this act of a general and permanent  
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
20 Code Revision Commission shall incorporate the same in the Code.

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22           SECTION 4. If any provision of this act or the application thereof to  
23 any person or circumstance is held invalid, such invalidity shall not affect  
24 other provisions or applications of the act which can be given effect without  
25 the invalid provision or application, and to this end the provisions of this  
26 act are declared to be severable.

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28           SECTION 5. All laws and parts of laws in conflict with this act are  
29 hereby repealed.

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*/s/Rep. Flanagan, et al*

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