

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

A Bill

HOUSE BILL 1894

For An Act To Be Entitled

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

Subtitle

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

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

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

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35 SECTION 2. *Arkansas Code 9-27-315(c) as amended by Act 533 of 1995 is*

1 amended to read as follows:

2 "*(c) If the court determines that the juvenile can safely be returned*
3 *to his or her home pending adjudication and it is in the best interest of the*
4 *juvenile, the court shall so order.*"

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

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

12 *(1) Whether removal of the juvenile is necessary to protect the*
13 *juvenile, and the reasons therefor;*

14 *(2) Which family services were made available to the family*
15 *before removal of the juvenile;*

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

18 *(4) Why efforts made to provide the family services described*
19 *did not prevent removal of the juvenile;*

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

22 *(6) Whether the removal would be in the best interest of the*
23 *juvenile."*

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

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

32 *(A) It is in the best interest of the juvenile to be*
33 *removed;*

34 *(B) The juvenile is in need of the services of the state*
35 *agency;*

1 (C) Out-of-home placement is necessary to protect the
2 juvenile;

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

5 (E) The juvenile makes a reasonable request not to be
6 released;

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

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

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

18

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

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

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

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

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

1 (ii) Upon receiving an order of commitment with
2 recommendations for placement in a community-based program, the Youth
3 Services Board shall consider the recommendations of the committing court in
4 making its placement to a youth services center or to a community based
5 alternative.

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

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

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

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

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

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

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

27 (6) Assess a court cost of no more than thirty-five dollars
28 (\$35.00) to be paid by the juvenile, his parent, both parents, or his
29 guardian;

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

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

35 (8) Order a fine of not more than five hundred dollars (\$500) to

1 be paid by the juvenile, a parent, both parents, or the guardian;

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

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

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

10 (B) The juvenile detention facility shall afford
11 opportunities for education, recreation, and other rehabilitative services to
12 adjudicated delinquents;

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

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

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

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

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

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

31

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

34 "9-27-332. Disposition - Family in need of services - Generally.

35 If a family is found to be in need of services, the court may enter an

1 order making any of the following dispositions:

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

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

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

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

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

26 (3) If it is in the best interest of the juvenile, grant permanent
27 custody to an individual upon proof that the parent or guardian from whom the
28 juvenile has been removed has not complied with the orders of the court and
29 that no further services or periodic reviews are required."
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31 SECTION 7. Arkansas Code 9-27-334(a) as amended by Act 533 of 1995 is
32 amended to read as follows:

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

35 (1) Order family services;

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

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

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

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

19
20 SECTION 9. *Arkansas Code 9-27-338(a) is amended to read as follows:*

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

27 (1) *Return the juvenile to the parent, guardian, or custodian;*

28 (2) *Authorize a plan for the termination of the parent-child*
29 *relationship, guardianship, or custody;*

30 (3) *Place the juvenile in long-term foster care; or*

31 (4) *Allow the juvenile to continue in an out-of-home placement*
32 *for a specified, limited period of time."*

33
34 SECTION 10. *Arkansas Code 9-27-341(b) is amended to read as follows:*

35 "(b) *The court may consider a petition to terminate parental rights if*

1 *it finds that the Department of Human Services has physical or legal custody*
2 *of the juvenile and an appropriate placement plan for the juvenile. An order*
3 *forever terminating parental rights shall be based upon a finding by clear*
4 *and convincing evidence that it is in the best interest of the juvenile and*
5 *that one (1) or more of the following grounds exists:*

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

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

22 (3) *The presumptive legal father is not the biological father of*
23 *the juvenile and the welfare of the juvenile can best be served by*
24 *terminating the parental rights of such a presumptive legal father.*

25 (4) *A parent has abandoned the juvenile or has executed consent*
26 *to termination of parental rights or adoption of the juvenile."*

27

28 SECTION 11. All provisions of this act of a general and permanent
29 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
30 Code Revision Commission shall incorporate the same in the Code.

31

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

1 act are declared to be severable.

2

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

5

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

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/s/Rep. Malone, et al

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