

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Senator Bell

# A Bill

SENATE BILL 166

## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 9-27-306, § 9-27-308, §  
9 9-27-310, § 9-27-314, § 9-27-315, § 9-27-325, § 9-27-326,  
10 § 9-27-328, § 9-27-330, § 9-27-332, § 9-27-334, AND § 9-  
11 27-337 TO CLARIFY THE POWERS, DUTIES AND RESPONSIBILITIES  
12 OF THE JUVENILE COURTS; AND FOR OTHER PURPOSES."

## Subtitle

15 "AN ACT TO AMEND THE ARKANSAS JUVENILE  
16 CODE TO SET FORTH THE POWERS, DUTIES AND  
17 RESPONSIBILITIES OF THE JUVENILE COURT."

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20  
21 *SECTION 1. Arkansas Code Annotated §9-27-306 is amended to read as*  
22 *follows:*

23 *"(a) The juvenile court shall have exclusive original jurisdiction of*  
24 *and shall be the sole court for the following proceedings governed by this*  
25 *subchapter:*

26 *(1) Proceedings in which a juvenile is alleged to be delinquent*  
27 *or dependent-neglected as defined in this subchapter;*

28 *(2) Proceedings in which a family is alleged to be in need of*  
29 *services as defined in this subchapter;*

30 *(3) Proceedings for termination of parental rights for a*  
31 *juvenile who is under the jurisdiction of the juvenile court;*

32 *(4) Proceedings in which custody of a juvenile is transferred to*  
33 *the Department of Human Services.*

34 *(b) The juvenile court shall have exclusive jurisdiction of the*  
35 *following matters governed by other law which arise during pendency of*

1 original proceedings under subsection (a) of this section and involve the  
2 same juvenile:

3           (1) Adoptions under the Revised Uniform Adoption Act, as  
4 amended, § 9-9-201 et seq.;

5           (2) Guardianships under § 28-65-201 et seq.; or

6           (3) UIFSA proceedings, § 9-17-101 et seq.

7           (c) The juvenile court shall have concurrent jurisdiction with probate  
8 court for civil commitment of juveniles.

9           (d) The juvenile court shall have concurrent jurisdiction with the  
10 chancery court for proceedings for the establishment of paternity, custody,  
11 visitation, or support of a juvenile alleged to be illegitimate.

12           (e) The juvenile court shall have jurisdiction to hear proceedings  
13 commenced in any court of this state or court of comparable jurisdiction of  
14 another state which are transferred to it pursuant to UCCJA, § 9-13-201 et  
15 seq."

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17           SECTION 2. Arkansas Code Annotated § 9-27-308(a) is amended to read as  
18 follows:

19           "(a) Intake Officers.

20           (1) The judge of the juvenile court shall designate no less than  
21 one (1) person in his judicial district as "intake officer" for the court.

22           (2)(A) An intake officer shall have the following duties:

23                   (i) To receive and investigate complaints and  
24 charges that a juvenile is delinquent or dependent-neglected, or that a  
25 family is in need of services; in the event that the intake officer has  
26 reasonable cause to suspect that a juvenile has been subjected to child  
27 maltreatment as defined at Arkansas Code Annotated § 12-12-503(3), the intake  
28 officer shall immediately notify the central intake of the Arkansas  
29 Department of Human Services;

30                   (ii) To make appropriate referrals to other public  
31 or private agencies of the community if their assistance appears to be needed  
32 or desired;

33                   (iii) To perform all other functions assigned to him  
34 by this subchapter, by rules promulgated pursuant thereto, or by order of the  
35 court.

1                   (B) Any of the foregoing functions may be performed in  
2 another state if authorized by a court of this state and permitted by the  
3 laws of the other state."  
4

5           SECTION 3. Arkansas Code Annotated § 9-27-310 is amended to read as  
6 follows:

7           "9-27-310. Commencement of proceedings.

8           (a) Proceedings shall be commenced by filing a petition with the clerk  
9 of the chancery court or by transfer by another court.

10           (b)(1) The prosecuting attorney shall have sole authority to file a  
11 delinquency petition or petition for revocation of probation.

12                   (2) Only a law enforcement officer, prosecuting attorney, the  
13 Department of Human Services or its designee may file a dependency-neglect  
14 petition seeking ex parte emergency relief.

15                   (3) Petitions for dependency-neglect or family in need of  
16 services may be filed by:

17                           (A) Any adult; or

18                           (B) Any member ten (10) years or older of the immediate  
19 family alleged to be in need of services.

20                   (4) Petitions for paternity establishment may be filed by:

21                           (A) The biological mother;

22                           (B) A putative father;

23                           (C) A juvenile; or

24                           (D) The Department of Human Services or the Office of  
25 Child Support Enforcement (OCSE).

26           (c) A copy of any petition for dependency-neglect which requests that  
27 the Department of Human Services take custody or provide family services  
28 shall be mailed to the Director of the Department of Human Services by the  
29 petitioner.

30           (d)(1) Any person may submit to the intake officer for investigation a  
31 complaint of acts or omissions which, if substantiated, would constitute  
32 delinquency.

33                   (2) Upon substantiation, the intake officer may refer the matter  
34 to the prosecuting attorney or any appropriate agency.

35           (e) No fees, including but not limited to, fees for filings, summons,

1 or subpoenas, shall be charged or collected by the clerk in cases brought in  
2 the juvenile division of chancery court by a governmental entity or nonprofit  
3 corporation, including but not limited to the prosecuting attorney or the  
4 Department of Human Services."

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6 SECTION 4. Arkansas Code Annotated § 9-27-314(a) is amended to read as  
7 follows:

8 "(a) In any case where there is probable cause to believe that  
9 immediate emergency custody is necessary to protect the health or physical  
10 well-being of the juvenile from immediate danger or to prevent the juvenile\_s  
11 removal from the state, the court shall issue an ex parte order for emergency  
12 custody to remove the juvenile from the custody of the parent, guardian, or  
13 custodian and shall determine the appropriate plan for placement of the  
14 juvenile."

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16 SECTION 5. Arkansas Code Annotated § 9-27-315 is amended to read as  
17 follows:

18 "9-27-315. Emergency hearings.

19 (a) Following the issuance of an emergency order removing the custody  
20 of a juvenile from a parent, guardian, or custodian, the court shall, within  
21 five (5) business days of the issuance of the ex parte order, hold a hearing  
22 to determine if probable cause to issue the emergency order continues to  
23 exist. The hearing shall be limited to the purpose of determining whether  
24 probable cause existed to warrant removal of the juvenile and to determine  
25 whether probable cause still exists to warrant continued removal of the  
26 juvenile; provided, however, that issues as to custody and delivery of  
27 services may be considered by the court, and appropriate orders for same  
28 entered by the court. All other issues, with the exception of custody and  
29 services, shall be reserved for hearing by the court at the adjudication  
30 hearing, which shall be a separate hearing conducted subsequent to the  
31 probable cause hearing. By agreement of the parties, and with the court\_s  
32 approval, the adjudication hearing may be conducted at any time after the  
33 probable cause hearing, subject to the provisions of section (d)(2) herein.

34 (b) The petitioner shall have the burden of proof by a preponderance  
35 of evidence that probable cause exists for continuation of the emergency

1 order.

2 (c) If the court determines that the juvenile can safely be returned  
3 to his home pending adjudication, the court shall so order.

4 (d)(1) At the emergency hearing the court shall set the time and date  
5 for the adjudication hearing.

6 (2) The adjudication hearing shall be held within thirty (30)  
7 days of the emergency hearing, but may be continued for no more than twenty  
8 (20) days following the first thirty (30) days on motion of any party for  
9 good cause shown.

10 (3) All probable cause hearings are miscellaneous hearings as  
11 defined in Rule 1101(b)(3) of the Arkansas Rules of Evidence, and the rules  
12 of evidence, including but not limited to hearsay, are not applicable."  
13

14 SECTION 6. Arkansas Code Annotated § 9-27-325 is amended to read as  
15 follows:

16 "9-27-325. Hearings - Generally.

17 (a) All hearings shall be conducted by the judge without a jury. The  
18 petitioner in all proceedings shall bear the burden of presenting the case at  
19 hearings.

20 (b) The defendant need not file a written responsive pleading in order  
21 to be heard by the court. In dependency-neglect proceedings, retained  
22 counsel shall file a notice of appearance immediately upon acceptance of  
23 representation, with a copy to be served on the petitioner.

24 (c)(1) At the time set for hearing, the court may:

25 (A) Proceed to hear the case only if the juvenile is  
26 present or excused for good cause by the court; or

27 (B) Continue the case upon determination that the presence  
28 of an adult defendant is necessary.

29 (2) Upon determining that a necessary party is not present  
30 before the court, the court may:

31 (A) Issue an order for contempt if the defendant was  
32 served with an order to appear; or

33 (B) Issue an order to appear, with a time and place set by  
34 the court for hearing, if the defendant was served with a notice of hearing.

35 (d) The court shall be a court of record. A record of all proceedings

1 shall be kept in the same manner as other proceedings of chancery court and  
2 in accordance with rules promulgated by the Arkansas Supreme Court.

3 (e) Unless otherwise indicated, the Arkansas Rules of Evidence shall  
4 apply.

5 (f) Except as otherwise provided in this subchapter and until rules of  
6 procedure for juvenile court are developed and in effect, the Arkansas Rules  
7 of Civil Procedure shall apply to all proceedings and the Arkansas Rules of  
8 Criminal Procedure shall apply to delinquency proceedings.

9 (g) All defendants shall have the right to compel attendance of  
10 witnesses in accordance with the Arkansas Rules of Civil Procedure and  
11 Arkansas Rules of Criminal Procedure.

12 (h) The following burdens of proof shall apply:

13 (1) Proof beyond a reasonable doubt in hearings concerning  
14 delinquency and revocation of probation;

15 (2) Proof by a preponderance of the evidence in  
16 dependent-neglect or family in need of services hearings;

17 (3) Proof by clear and convincing evidence for hearings to  
18 terminate parental rights.

19 (i) All hearings may be closed within the discretion of the court,  
20 except, in delinquency cases the juvenile shall have the right to an open  
21 hearing, and, in adoption cases the hearings shall be closed as provided in  
22 the Revised Uniform Adoption Act, as amended, § 9-9-201 et seq."

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24 SECTION 7. Arkansas Code Annotated § 9-27-326(e) is amended to read as  
25 follows:

26 "(e)(1) The court shall release the juvenile when there is a finding  
27 that no probable cause exists that the juvenile committed the offense as  
28 alleged.

29 (2) The court, upon a finding that detention is not necessary,  
30 may release the juvenile:

31 (A) Upon his personal recognizance;

32 (B) Upon an order to appear;

33 (C) To his parent, guardian, or custodian upon written  
34 promise to bring the juvenile before the court when required;

35 (D) To the care of a qualified person or agency agreeing

1 to supervise the juvenile and assist him in appearing in court, provided that  
2 for purposes of this subsection, 'qualified agency' does not include the  
3 Arkansas Department of Human Services or any of its divisions;

4 (E) Under the supervision of the probation officer or  
5 other appropriate public official, provided however, for purposes of this  
6 subsection, 'appropriate public official' does not include the Department of  
7 Human Services.

8 (F) Upon reasonable restrictions on activities, movements,  
9 associations, and residences of the juvenile;

10 (G) On bond to his parent, guardian, or custodian; or

11 (H) Under such other reasonable restrictions to insure the  
12 appearance of the juvenile.

13 (3) If the court determines that only a money bond will insure  
14 the appearance of the juvenile, the court may require:

15 (A) An unsecured bond in an amount set by the judicial  
16 officer;

17 (B) A bond accompanied by a deposit of cash or securities  
18 equal to ten percent (10%) of the face amount set by the court which shall be  
19 returned at the conclusion of the proceedings if the juvenile has not  
20 defaulted in the performance of the conditions of the bond;

21 (C) A bond secured by deposit of the full amount in cash,  
22 or by other property, or by obligation of qualified securities.

23 (4) Orders of conditional release may be modified upon notice,  
24 hearing, and good cause shown.

25 (5) If the court releases a juvenile under (e)(2)(D), the court  
26 may, if necessary for the best interest of the juvenile, request that the  
27 Arkansas Department of Human Services immediately initiate an investigation  
28 as to whether the juvenile is in imminent danger or a situation exists  
29 whereby the juvenile is dependent-neglected."  
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31 SECTION 8. Arkansas Code Annotated § 9-27-328 is amended to add the  
32 following new subsection:

33 "(e) In all instances of removal of a juvenile from the home of his  
34 parent, guardian, or custodian by the court, the court shall set forth in a  
35 written order the evidence supporting the decision to remove, the facts

1 regarding the need for removal, and the findings required by the section.  
2 Said written findings and order shall be prepared by the court, or a party or  
3 party\_s attorney as designated by the court, within thirty (30) days of the  
4 date of the hearing at which removal is ordered or prior to the next hearing,  
5 whichever is sooner."  
6

7 SECTION 9. Arkansas Code Annotated § 9-27-330(a) is amended to read as  
8 follows:

9 "(a) If a juvenile is found to be delinquent, the court may enter an  
10 order making any of the following dispositions:

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

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

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

23 (ii) Upon receiving an order of commitment with  
24 recommendations for placement in a community-based program, the Youth  
25 Services Board shall consider the recommendations of the committing court in  
26 making its placement to a youth services center or to a community based  
27 alternative.

28 (C) In all cases in which both commitment and transfer of  
29 legal custody are ordered by the court in the same order, transfer of custody  
30 will be entered only upon compliance with the provisions of Ark. Code Ann. §§  
31 9-27-310, 311, 312, 316, 327 and 328.

32 (2) Order the juvenile or members of the juvenile\_s family to  
33 submit to physical, psychiatric, or psychological evaluations;

34 (3) Grant permanent custody to an individual upon proof that the  
35 parent or guardian from whom the juvenile has been removed has not complied



1 with the orders of the court and that no further services or periodic reviews  
2 are required;

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

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

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

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

14           (6) Assess a court cost of no more than thirty-five dollars  
15 (\$35.00) to be paid by the juvenile, his parent, both parents, or his  
16 guardian;

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

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

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

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

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

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

32           (B) The juvenile detention facility shall afford  
33 opportunities for education, recreation, and other rehabilitative services to  
34 adjudicated delinquents;

35           (11) Place the juvenile on residential detention with electronic

1 monitoring, either in the juvenile\_s home or in another facility as ordered  
2 by the court;

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

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

10           (ii) The court shall take into account the past  
11 efforts of the parent, both parents, or the guardian to correct the  
12 delinquent juvenile\_s conduct.

13           (iii) The court shall take into account if the  
14 parent is a noncustodial parent, the court may take into consideration the  
15 opportunity the parent has had to correct the delinquent juvenile\_s conduct.

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

18

19           SECTION 10. Arkansas Code Annotated § 9-27-332 is amended to read as  
20 follows:

21           "9-27-332. Disposition - Family in need of services - Generally.

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

24           (1) Order family services. In all cases in which family services are  
25 ordered, the court shall determine the parent\_s, guardian\_s or custodian\_s  
26 ability to pay, in whole or in part, said services. Said determination, and  
27 the evidence supporting it, shall be made in writing in the order ordering  
28 family services. If the court determines that the parent, guardian or  
29 custodian is able to pay, in whole or part, for said services, the court  
30 shall enter a written order setting forth the amounts the parent, guardian,  
31 or custodian can pay for the family service(s) ordered, and ordering the  
32 parent, guardian, or custodian to pay such amount periodically to the  
33 provider from whom family services are received. For purposes of this  
34 subsection, "periodically" is deemed to be a period of time no greater than  
35 once per month; further, that parent, guardian and custodian refers to the

1 individual or individuals from whom custody was removed. In making its  
2 determination, the court shall consider the following factors:

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

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

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

9 (2) Transfer custody of juvenile family members to the Department of  
10 Human Services or to another licensed agency responsible for the care of  
11 juveniles, or to a relative or other individual.

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."

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18 SECTION 11. Arkansas Code Annotated § 9-27-334 is amended to read as  
19 follows:

20 "9-27-334. Disposition - Dependent-neglected - Generally.

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

23 (1) Order family services;

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

27 (3) Grant permanent custody to an individual upon proof that the  
28 parent or guardian from whom the juvenile has been removed has not complied  
29 with the orders of the court and that no further services or periodic reviews  
30 are required.

31 (b) Such order of custody shall supersede an existing court order of  
32 custody and shall remain in full force and effect until a subsequent order of  
33 custody is entered by a court of competent jurisdiction.

34 (c) For purposes of this section, the court shall not specify a  
35 particular provider for placement or family services."

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*SECTION 12. Arkansas Code Annotated § 9-27-337(a) is amended to read as follows:*

*"(a) The court shall periodically review every case of dependency-neglect or families in need of services or delinquency where out-of-home placement has occurred until there is a permanent order of custody or the juvenile is returned to the parent, guardian, or custodian and the court has discontinued orders for family services."*

*SECTION 13. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.*

*SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.*

*SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.*

*/s/Bell*

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