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4

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A Bill

SENATE BILL 489

5 By: Senators Harriman, Argue, Walker, and Todd
6 By: Representatives Lynn, Pollan, and Judy Smith
7

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE JUVENILE CODE TO
10 IMPROVE COURT PRACTICE IN DEPENDENCY-NEGLECT PROCEEDINGS;
11 TO MAKE TECHNICAL CHANGES; TO CREATE A DIVISION OF
12 DEPENDENCY-NEGLECT REPRESENTATION WITHIN THE
13 ADMINISTRATIVE OFFICE OF THE COURTS; TO DECLARE AN
14 EMERGENCY; AND FOR OTHER PURPOSES."
15

Subtitle

16
17 "TO AMEND VARIOUS SECTIONS OF THE
18 JUVENILE CODE"
19

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

22 SECTION 1. Arkansas Code Annotated § 9-27-303 is amended to read as
23 follows:

24 "9-27-303. Definitions.

25 As used in this subchapter, unless the context otherwise requires:

26 (1) Juvenile means an individual who:

27 (A) Is under the age of eighteen (18) years, whether married or
28 single;

29 (B) Is under the age of twenty-one (21) years, whether married or
30 single, who was adjudicated delinquent for an act committed prior to the age
31 of eighteen (18) years and for whom the court retains jurisdiction. In no
32 event shall such person remain within the court's jurisdiction past the age of
33 twenty-one (21) years; or

34 (C) Was adjudicated dependent-neglected before reaching the age
35 of eighteen (18) years and who, while engaged in a course of instruction or
36 treatments, requests the court to retain jurisdiction until the course has

1 been completed. In no event shall such person remain within the court's
2 jurisdiction past the age of twenty-one (21) years.

3 (2) Parent means a biological mother, an adoptive parent, a man to
4 whom the biological mother was married at the time of conception or birth, or
5 who has been found, by a court of competent jurisdiction, to be the biological
6 father of the juvenile.

7 (3) Abandonment means the failure of the parent to provide reasonable
8 support and to maintain regular contact with the juvenile through statement or
9 contact, when the failure is accompanied by an intention on the part of the
10 parent to permit the condition to continue for an indefinite period in the
11 future, and failure to support or maintain regular contact with the juvenile
12 without just cause for a period of one (1) year shall constitute a rebuttable
13 presumption of abandonment.

14 (4)(A) Abuse means any of the following acts or omissions by a parent,
15 guardian, custodian, foster parent, or any person who is entrusted with the
16 juvenile's care by a parent, guardian, custodian, or foster parent, including,
17 but not limited to, an agent or employee of a public or private residential
18 home, child care facility, public or private school, or any person legally
19 responsible for the juvenile's welfare:

20 (i) Extreme and repeated cruelty to a juvenile; or

21 (ii) Physical, psychological, or sexual abuse of any
22 juvenile, which includes, but is not limited to, intentionally, knowingly, or
23 negligently and without justifiable cause:

24 (a) Engaging in conduct creating a substantial
25 possibility of death, permanent or temporary disfigurement, illness,
26 impairment of any bodily organ, or an observable and substantial impairment in
27 the intellectual or psychological capacity of the juvenile to function within
28 his normal range of performance and behavior with due regard to his culture;

29 (b) Any nonaccidental physical injury or mental
30 injury; or

31 (c) Any injury which is at variance with the history
32 given.

33 (B)(i) Abuse shall not include physical discipline of a child
34 when it is reasonable and moderate and is inflicted by a parent or guardian
35 for purposes of restraining or correcting the child.

36 (ii) The following actions are not reasonable or moderate

1 when used to correct or restrain a child:

2 (a) Throwing, kicking, burning, biting, or cutting a
3 child;

4 (b) Striking a child with a closed fist;

5 (c) Shaking a child under age three (3);

6 (d) Striking or other actions which result in any
7 nonaccidental injury to a child under the age of eighteen months;

8 (e) Interfering with a child's breathing;

9 (f) Threatening a child with a deadly weapon;

10 (g) Striking a child on the face; or

11 (h) Doing any other act that is likely to cause
12 bodily harm greater than transient pain or minor temporary marks.

13 (iii) The age, size, and condition of the child, and the
14 location of the injury and the frequency or recurrence of injuries shall be
15 considered when determining whether the bodily harm is reasonable or moderate.

16 (iv) This list is illustrative of unreasonable action and
17 is not intended to be exclusive.

18 (5) Adjudication hearing means a hearing to determine whether the
19 allegations in a petition are substantiated by the proof.

20 (6) Attorney ad litem means an attorney appointed to represent the
21 best interest of a juvenile.

22 (7) Court appointed special advocate (CASA) means a volunteer
23 appointed by the court to provide services to juveniles in dependency-neglect
24 proceedings.

25 ~~_____ (6)(8) Case plan means a document set out in a form prescribed by the~~
26 ~~Department of Human Services, which includes those items required by this~~
27 ~~subchapter. The case plan shall include a description and discussion of the~~
28 ~~following: setting forth the plan for services for a juvenile and his or her~~
29 ~~family, as described in Section 8 of this act.~~

30 ~~_____ (A) The goal of the plan;~~

31 ~~_____ (B) The specific reasons for the placement of the juvenile in~~
32 ~~care outside the home, including a description of the problems or conditions~~
33 ~~in the home of the parent, guardian, or custodian which necessitated removal~~
34 ~~of the juvenile, and the remediation of which will determine the return of the~~
35 ~~juvenile to the home;~~

36 ~~_____ (C) A description of the type of out-of-home placement selected~~

1 ~~for the juvenile including a discussion of the appropriateness of the~~
2 ~~placement;~~

3 ~~_____ (D) A plan for addressing the needs of the juvenile while in the~~
4 ~~placement, including a discussion of the services provided within the last six~~
5 ~~(6) months;~~

6 ~~_____ (E) The specific actions to be taken by the parent, guardian, or~~
7 ~~custodian of the juvenile to eliminate or correct the identified problems or~~
8 ~~conditions and the period during which the actions are to be taken. The plan~~
9 ~~may include any person or agency who shall agree to and be responsible for the~~
10 ~~provision of social and other family services to the juvenile or the parent,~~
11 ~~guardian, or custodian of the juvenile;~~

12 ~~_____ (F) The visitation rights and obligations of the parent,~~
13 ~~guardian, or custodian and the state agency during the period the juvenile is~~
14 ~~in out-of-home placement;~~

15 ~~_____ (G) The social and other family services to be provided to the~~
16 ~~parent, guardian, or custodian of the juvenile, and foster parent, if any,~~
17 ~~during the period the juvenile is in placement and a timetable for the~~
18 ~~provision of those services, the purposes of which shall be to promote the~~
19 ~~availability to the juvenile of a continuous and stable living environment,~~
20 ~~promote family autonomy, strengthen family life where possible, and promote~~
21 ~~the reunification of the juvenile with the parent, guardian, or custodian;~~

22 ~~_____ (H) A statement directed to the parent, custodian, or guardian~~
23 ~~that:~~

24 ~~_____ (i) Failure to remedy the conditions causing the~~
25 ~~out-of-home placement of the juvenile may result in termination of parental~~
26 ~~rights;~~

27 ~~_____ (ii) Termination of parental rights may occur only after~~
28 ~~notice and a hearing on termination;~~

29 ~~_____ (iii) If the parent, guardian, or custodian disagrees with~~
30 ~~the terms in the plan, the party may petition the court for resolution of the~~
31 ~~disagreement; and~~

32 ~~_____ (iv) The parent, guardian, or custodian has a right to~~
33 ~~notice of any modification of the case plan and the right to petition the~~
34 ~~court for a hearing on the modification.~~

35 ~~_____ (7)(9) Commitment means an order of the court which places a juvenile~~
36 ~~in the custody of the Division of Youth Services of the Department of Human~~

1 Services for placement in a youth services facility.

2 ~~_____ (8)~~(10) Court or juvenile court means the juvenile division of
3 chancery court.

4 ~~_____ (9)~~(11) Custodian means a person, other than a parent or legal
5 guardian who stands in loco parentis to the juvenile or a person, agency, or
6 institution to whom a court of competent jurisdiction has given custody of a
7 juvenile by court order.

8 ~~_____ (10)~~(12)(A) Department means the Department of Human Services and its
9 divisions and programs.

10 (B) Unless otherwise stated in this subchapter, any reference to
11 the Department of Human Services shall include all of its divisions and
12 programs.

13 ~~_____ (11)~~(13) Delinquent juvenile means any juvenile ten (10) years or
14 older who has committed an act other than a traffic offense or game and fish
15 violation which, if such act had been committed by an adult, would subject
16 such adult to prosecution for a felony, misdemeanor, or violation under the
17 applicable criminal laws of this state, or who has violated § 5-73-119.

18 ~~_____ (12)~~(14) Dependent-neglected juvenile means any juvenile who as a
19 result of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or
20 parental unfitness is at substantial risk of serious harm.

21 ~~_____ (13)~~(15) Detention means the temporary care of a juvenile in a
22 physically restricting facility, other than a jail or lock-up used for the
23 detention of adults, prior to an adjudication hearing for delinquency or
24 pending commitment pursuant to an adjudication of delinquency.

25 ~~_____ (14)~~(16) Detention hearing means a hearing held to determine whether a
26 juvenile accused or adjudicated of committing a delinquent act or acts should
27 be released or held prior to adjudication or disposition.

28 ~~_____ (15)~~(17) Disposition hearing means a hearing held following an
29 adjudication hearing to determine what action will be taken in delinquency,
30 family in need of services, or dependent-neglect cases.

31 ~~_____ (16)~~(18) Family in need of services means any family whose juvenile
32 evidences behavior which includes, but is not limited to, the following:

33 (A) Being habitually and without justification absent from school
34 while subject to compulsory school attendance;

35 (B) Being habitually disobedient to the reasonable and lawful
36 commands of his parent, guardian, or custodian; or

1 (C) Having absented himself from his home without sufficient
2 cause, permission, or justification.

3 ~~_____~~(17)(19) Family services means relevant services, including, but not
4 limited to: child care; homemaker services; crisis counseling; cash
5 assistance; transportation; family therapy; physical, psychiatric, or
6 psychological evaluation; counseling; or treatment, provided to a juvenile or
7 his family. Family services are provided in order to:

8 (A) Prevent a juvenile from being removed from a parent,
9 guardian, or custodian;

10 (B) Reunite the juvenile with the parent, guardian, or custodian
11 from whom the juvenile has been removed; or

12 (C) Implement a permanent plan of adoption, guardianship, or
13 rehabilitation of the juvenile.

14 ~~_____~~(18)(20) Guardian means any person, agency, or institution, as defined
15 by \S 28-65-201 et seq., whom a court of competent jurisdiction has so
16 appointed.

17 ~~_____~~(19)(21)(A) Home study means a written report obtained after an
18 investigation of a home by the Department of Human Services or other
19 appropriate persons or agencies and which shall conform to regulations
20 established by the department.

21 (B) An in-state home study shall be completed and presented to
22 the requesting court within thirty (30) working days of the receipt of the
23 request for the home study.

24 ~~_____~~(20)(22) Juvenile detention facility means any facility for the
25 temporary care of juveniles alleged to be delinquent, or adjudicated
26 delinquent and awaiting disposition, who require secure custody in a
27 physically restricting facility designed and operated with all entrances and
28 exits under the exclusive control of the facility's staff, so that a juvenile
29 may not leave the facility unsupervised or without permission.

30 ~~_____~~(21)(23) Law enforcement officer means any public servant vested by
31 law with a duty to maintain public order or to make arrests for offenses.

32 ~~_____~~(22)(24) Long-term foster care means the placement of a juvenile in a
33 specified out-of-home placement pursuant to this subchapter in those cases
34 where juveniles are not appropriate for a termination of parental rights and
35 adoption, but cannot have a goal of reunification because it is not in the
36 juvenile's best interest.

1 ~~_____~~(23)(25) Neglect means those acts or omissions of a parent, guardian,
2 custodian, foster parent, or any person who is entrusted with the juvenile's
3 care by a parent, custodian, guardian, or foster parent, including, but not
4 limited to, an agent or employee of a public or private residential home,
5 child care facility, public or private school, or any person legally
6 responsible under state law for the juvenile's welfare, which constitute:

7 (A) Failure or refusal to prevent the abuse of the juvenile when
8 such person knows or has reasonable cause to know the juvenile is or has been
9 abused;

10 (B) Failure or refusal to provide the necessary food, clothing,
11 shelter, and education required by law, or medical treatment necessary for the
12 juvenile's well-being, except when the failure or refusal is caused primarily
13 by the financial inability of the person legally responsible and no services
14 for relief have been offered or rejected;

15 (C) Failure to take reasonable action to protect the juvenile
16 from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or
17 parental unfitness where the existence of such condition was known or should
18 have been known;

19 (D) Failure or irremedial inability to provide for the essential
20 and necessary physical, mental, or emotional needs of the juvenile;

21 (E) Failure to provide for the juvenile's care and maintenance,
22 proper or necessary support, or medical, surgical, or other necessary care; or

23 (F) Failure, although able, to assume responsibility for the care
24 and custody of the juvenile or participate in a plan to assume such
25 responsibility.

26 ~~_____~~(24)(26) Notice of hearing means a notice which describes the nature
27 of the hearing, the time, date, and place of hearing, the right to be present,
28 heard, and represented by counsel, and instructions on how to apply to the
29 court for appointment of counsel if indigent, or a uniform notice as developed
30 and prescribed by the Arkansas Supreme Court. The notice of hearing shall be
31 served in the manner provided for service under the Arkansas Rules of Civil
32 Procedure.

33 ~~_____~~(25)(27) Order to appear means an order issued by the court directing
34 a person who may be subject to the court's jurisdiction to appear before the
35 court at a date and time as set forth in the order.

36 ~~_____~~(26)(28) Out-of-home placement means:

1 (A)(i) Placement in a home or facility other than placement in a
2 youth services center, a detention facility, or the home of the parent or
3 guardian from whose custody the court has removed the juvenile; or

4 (ii) Placement in the home of an individual other than a
5 parent or guardian, unless the court has ordered that said placement be made
6 permanent and that no further reunification services or ~~periodic~~ six (6) month
7 reviews would be required.

8 (B) Out-of-home placement shall not include placement in a youth
9 services center or detention facility as a result of a finding of delinquency.

10 ~~_____ (27)~~ (29) Paternity hearing means a proceeding brought pursuant to
11 bastardy jurisdiction to determine the biological father of a juvenile.

12 ~~_____ (28)~~ (30) Predisposition report means a report concerning the juvenile,
13 the family of the juvenile, all possible disposition alternatives, the
14 location of the school in which the juvenile is or was last enrolled, whether
15 the juvenile has been tested for or has been found to have any handicap, the
16 name of the juvenile's attorney, and, if appointed by the court, the date of
17 the appointment, any participation by the juvenile or his family in counseling
18 services previously or currently being provided in conjunction with
19 adjudication of the juvenile and any other matters relevant to the efforts to
20 provide treatment to the juvenile or the need for treatment of the juvenile or
21 the family. The predisposition report shall include a home study of any
22 out-of-home placement which may be part of the disposition.

23 ~~_____ (29)~~ (31) Prosecuting attorney means an attorney who is elected as
24 district prosecuting attorney, the duly appointed deputy prosecuting attorney,
25 or any city prosecuting attorney.

26 ~~_____ (30)~~ (32) Putative father means any man not deemed or adjudicated under
27 the laws of the jurisdiction of the United States to be the biological father
28 of a juvenile who claims or is alleged to be the biological father of the
29 juvenile.

30 ~~_____ (31)~~ (33) (A) Reasonable efforts means the exercise of reasonable
31 diligence and care by the Department of Human Services or other appropriate
32 agency to utilize all available services relating to meeting the needs of the
33 juvenile and the family.

34 (B) Except that, upon petition of termination of parental rights,
35 the juvenile court may deem that reasonable efforts have been made when the
36 juvenile court has found the juvenile victim to be dependent-neglected due to

1 severe maltreatment, as defined in § 12-12-503(10), which was perpetrated by
2 the juvenile's parent or parents.

3 ~~_____~~ (32)(34) (A) Sexual abuse includes solicitation or participation in
4 sexual activity with a juvenile by an adult or person responsible for the care
5 and maintenance of the juvenile.

6 (B) Sexual abuse also includes any offense relating to sexual
7 activity, abuse, or exploitation, including rape and incest, as set out and
8 defined in the Arkansas Criminal Code and amendments thereto, § 5-1-101 et
9 seq.

10 ~~_____~~ (33)(35) Sexual exploitation includes allowing, permitting, or
11 encouraging participation or depiction of the juvenile in prostitution,
12 obscene photographing, filming, or obscenely depicting a juvenile for any use
13 or purpose.

14 ~~_____~~ (34)(36) Shelter care means the temporary care of a juvenile in
15 physically unrestricting facilities pursuant to an order for placement pending
16 or pursuant to an adjudication of dependency-neglect or family in need of
17 services.

18 ~~_____~~ (35)(37) UCCJA means the Uniform Child Custody Jurisdiction Act as
19 found in § 9-13-201 et seq.

20 ~~_____~~ (36)(38) UIFSA means the Uniform Interstate Family Support Act found
21 in § 9-17-101 et seq.

22 (39) Voluntary relinquishment of custody means a written agreement
23 between a parent and the Department of Human Services for the temporary
24 placement of a child in an out-of-home placement pursuant to § 9-27-340.

25 ~~_____~~ (37)(40) Youth services center means a youth services facility
26 operated by the state.

27 ~~_____~~ (38)(41) Youth services facility means a facility, operated by the
28 state or its designee, for the care of juveniles who have been adjudicated
29 delinquent or convicted of a crime and who require secure custody in either a
30 physically restrictive facility or a staff-secured facility, operated so that
31 a juvenile may not leave the facility unsupervised or without supervision."
32

33 SECTION 2. Arkansas Code Annotated § 9-27-311 is amended to read as
34 follows:

35 "9-27-311. Required contents of petition.

36 (a) The petition shall set forth the following:

1 (1) The name, address, gender, race, ~~and~~ date of birth, and
2 social security number of the juvenile;

3 (2) The name and address of each of the parents or the surviving
4 parent of the juvenile;

5 (3) The name and address of the person, agency, or institution
6 having custody of the juvenile;

7 (4) The name and address of any other person, agency, or
8 institution having a claim to custody or guardianship of the juvenile; ~~and~~

9 (5) In a proceeding to establish paternity, the name and address
10 of both the putative father and the presumed legal father, if any; and

11 (6) In a dependency-neglect proceeding, the name and address of a
12 putative parent, if any.

13 (b) If the name or address of anyone listed in subsection (a) of this
14 section is unknown or cannot be ascertained by the petitioner with reasonable
15 diligence, such shall be alleged in the petition and the petition shall not be
16 dismissed for insufficiency, but the court shall direct appropriate measures
17 to find and give notice to such persons.

18 (c) All persons named in subsection (a) of this section shall be made
19 defendants and served as required by this subchapter, except that all actions
20 filed pursuant to § 9-27-310(b)(4)(D) shall be required to name as defendants
21 only the mother, the putative father, and the presumed legal father, if any.

22 (d)(1) The petition shall set forth the following in plain and concise
23 words:

24 (A) The facts which, if proven, would bring the family or
25 juvenile within the court's jurisdiction;

26 (B) The section of this subchapter upon which jurisdiction
27 for the petition is based;

28 (C) The relief requested by the petitioner; and

29 (D) If a petition for delinquency proceedings, any and all
30 sections of the criminal laws allegedly violated.

31 (2) Except in delinquency or paternity cases, the petition shall
32 be supported by an affidavit of facts. A supporting affidavit of facts shall
33 not be required for delinquency or paternity petitions."
34

35 SECTION 3. Arkansas Code Annotated § 9-27-315 is amended to read as
36 follows:

1 "9-27-315. Emergency hearings.

2 (a)(1)(A) Following the issuance of an emergency order removing the
3 custody of a juvenile from a parent, guardian, or custodian, the court shall,
4 within five (5) business days of the issuance of the ex parte order, hold a
5 hearing to determine if probable cause to issue the emergency order continues
6 to exist.

7 (B)(i) The hearing shall be limited to the purpose of
8 determining whether probable cause existed to warrant removal of the juvenile
9 and to determine whether probable cause still exists to warrant continued
10 removal of the juvenile.

11 (ii) Provided, however, that issues as to custody and
12 delivery of services may be considered by the court, and appropriate orders
13 for same entered by the court.

14 (2)(A) All other issues, with the exception of custody and
15 services, shall be reserved for hearing by the court at the adjudication
16 hearing, which shall be a separate hearing conducted subsequent to the
17 probable cause hearing.

18 (B) By agreement of the parties, and with the court's
19 approval, the adjudication hearing may be conducted at any time after the
20 probable cause hearing, subject to the provisions of subdivision (d) (2) of
21 this section.

22 (b) The petitioner shall have the burden of proof by a preponderance of
23 evidence that probable cause exists for continuation of the emergency order.

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

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

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

33 (3) A written order shall be filed by the court, or by a party or
34 partys attorney as designated by the court, within thirty (30) days of the
35 date of the hearing or prior to the next hearing, whichever is sooner.

36 ~~——(3)(e) All probable cause emergency~~ hearings are miscellaneous hearings

1 as defined in Rule 1101(b)(3) of the Arkansas Rules of Evidence, and the rules
2 of evidence, including, but not limited to, hearsay, are not applicable."

3

4 SECTION 4. Arkansas Code Annotated § 9-27-316 is amended to read as
5 follows:

6 "9-27-316. Right to counsel ~~—Guardian ad litem.~~

7 (a) In delinquency and families in need of services cases (FINS), a
8 juvenile and his parent, guardian, or custodian shall be advised by the law
9 enforcement official taking a juvenile into custody, by the intake officer at
10 the initial intake interview, and by the court at the juvenile's first
11 appearance before the court that the juvenile has the right to be represented
12 at all stages of the proceedings by counsel.

13 (b)(1) The inquiry concerning the ability of the juvenile to retain
14 counsel shall include a consideration of the juvenile's financial resources
15 and the financial resources of his or her family. However, the failure of the
16 juvenile's family to retain counsel for the juvenile shall not deprive the
17 juvenile of the right to appointed counsel if required under this section.

18 (2) The After review by the court of an affidavit of financial
19 means completed and verified by the parent of the juvenile and a determination
20 by the court that the parent or juvenile has the ability to pay, the court may
21 order financially able juveniles, parents, guardians, or custodians to pay all
22 or part of reasonable attorneys' fees and expenses for representation of a
23 juvenile.

24 (3) All moneys collected by the clerk of the court under this
25 subsection shall be retained by the clerk, and deposited into a special fund
26 to be known as the juvenile court representation fund.

27 (4) The court shall direct that money from this fund be used in
28 providing juveniles with representation by counsel appointed under this
29 section in delinquency or FINS cases.

30 (5) Any money remaining in the fund at the end of the fiscal year
31 shall not revert to any other fund but shall carry over into the next fiscal
32 year in the juvenile court representation fund.

33 (c) If counsel is not retained for the juvenile, or it does not appear
34 that counsel will be retained, counsel shall be appointed to represent the
35 juvenile at all appearances before the court, unless the right to counsel is
36 waived in writing as set forth in § 9-27-317.

1 (d) In a proceeding in which the judge determines that there is a
2 reasonable likelihood that the proceeding may result in the juvenile's
3 commitment to an institution in which the freedom of the juvenile would be
4 curtailed, and counsel has not been retained for the juvenile, the court shall
5 appoint counsel for the juvenile.

6 ~~———— (e)(1) In all proceedings involving the custody of juveniles, the court
7 shall appoint a guardian ad litem to represent the best interest of the
8 juvenile and to advocate for the juvenile's articulated wishes.~~

9 ~~———— (2) The guardian ad litem for the juvenile shall be given access
10 to all reports relevant to the case and to any reports of examination of the
11 juvenile's parents or other persons responsible for the care of the juvenile.~~

12 ~~———— (3) The participation of the guardian ad litem may include
13 presentation of evidence, prehearing and posthearing motions, examination and
14 cross examination of witnesses in any hearing involving the represented
15 juvenile, and appeals.~~

16 ~~———— (4) Appointment of the guardian ad litem shall be made at a time
17 sufficiently in advance of the court appearance to allow adequate preparation
18 by the guardian ad litem.~~

19 ~~———— (f)(1) In all proceedings to terminate parental rights or remove
20 custody of a juvenile from a parent or guardian, the parent or guardian shall
21 be advised at his first appearance before the court of the right to be
22 represented by counsel at all stages of the proceedings and the right to
23 appointed counsel if indigent.~~

24 ~~———— (2) Upon request by a parent or guardian and a determination by
25 the court of indigency, the court shall appoint counsel, and if an attorney
26 other than the public defender is appointed, the court shall award a fee and
27 costs from the juvenile court representation fund in an amount not to exceed
28 the amounts provided by law for appointment of counsel for indigent defendants
29 in criminal cases.~~

30 ~~———— (g)(1) The court, after a determination of ability to pay, may order
31 the parent or guardian of the estate of any juvenile for whom an attorney is
32 appointed to pay a user fee of up to one hundred dollars (\$100) for the
33 services of counsel.~~

34 ~~———— (2) All money collected by the clerk of the court under this
35 subsection shall be retained by the clerk, who shall deposit the money into a
36 special fund to be known as the juvenile court representation fund. All moneys~~

1 ~~formerly collected and deposited under the Guardian Ad Litem Fund Act~~
2 ~~[repealed] shall be transferred to and be deposited in the juvenile court~~
3 ~~representation fund.~~

4 ~~_____ (3) The court shall direct that money from this fund be paid for~~
5 ~~use in providing the cost of representation by counsel or guardian ad litem~~
6 ~~appointed under this section.~~

7 ~~_____ (4) Any money remaining in the fund at the end of the fiscal year~~
8 ~~shall not revert to any other fund but carry over into the next fiscal year in~~
9 ~~the juvenile court representation fund.~~

10 ~~_____ (h)(e) Appointment of counsel shall be made at a time sufficiently in~~
11 ~~advance of the court appearance to allow adequate preparation by appointed~~
12 ~~counsel and adequate consultation between the appointed counsel and the~~
13 ~~client.~~

14 (f) Attorney Ad Litem.

15 (1) The court shall appoint an attorney ad litem to represent the
16 best interest of the juvenile when a dependency-neglect petition is filed or
17 when an emergency ex parte order is entered in a dependency-neglect case,
18 whichever occurs earlier.

19 (2) The court may appoint an attorney ad litem to represent the
20 best interest of a juvenile involved in any case before the court and shall
21 consider the juvenile's best interest in determining whether to appoint an
22 attorney ad litem.

23 (3) Each attorney ad litem:

24 (A) may file written motions, responses or objections at all
25 stages of the proceedings when necessary to protect the best interest of the
26 juvenile;

27 (B) shall attend all hearings and participate in all
28 telephone conferences with the court unless excused by the court;

29 (C) shall present witnesses and exhibits when necessary to
30 protect the juvenile's best interest;

31 (4) An attorney ad litem shall be provided access to all records
32 relevant to the juvenile's case, including but not limited to, school records,
33 medical records, juvenile court records, and Department of Human Services
34 records, excluding unfounded reports.

35 (5) An attorney ad litem shall represent the best interest of the
36 juvenile. If the juvenile's wishes differ from the attorney's determination

1 of the juvenile's best interest, the attorney ad litem shall communicate the
2 juvenile's wishes to the court in addition to presenting his determination of
3 the juvenile's best interest.

4 (g) Court-Appointed Special Advocate.

5 (1) The Court may appoint a volunteer court-appointed special
6 advocate (CASA) from a program which shall meet all state and national CASA
7 standards to provide services to juveniles for whom the court determines such
8 services appropriate in dependency-neglect proceedings.

9 (2) No CASA shall be assigned a case before:

10 (A) completing a training program in compliance with
11 National Court Appointed Special Advocate Association and state standards; and

12 (B) being approved by the local CASA program which will
13 include appropriate criminal background and child abuse registry checks.

14 (3) Each CASA shall:

15 (A) investigate the case to which he or she is assigned to
16 provide independent factual information to the court through the attorney ad
17 litem;

18 (B) monitor the case to which he or she is assigned to
19 ensure compliance with the court's orders;

20 (C) assist the attorney ad litem in representing the
21 juvenile's best interest.

22 (4) Upon presentation of an order of appointment, a CASA shall be
23 provided access to all records relevant to the juvenile's case, including but
24 not limited to, school records, medical records, juvenile court records, and
25 Department of Human Services records, excluding unfounded reports.

26 (5) A CASA is not a party to the case to which he or she is
27 assigned and shall not call witnesses or examine witnesses. The CASA may
28 testify if called as a witness.

29 (6) A CASA shall not be liable for damages for personal injury or
30 property damage, pursuant to A.C.A. 16-6-101 through -105.

31 (7) Except as provided by this subsection, a CASA shall not
32 disclose any confidential information or reports to anyone except as ordered
33 by the court or otherwise provided by law.

34 (h) Parents' right to counsel.

35 (1) In all proceedings to remove custody from a parent or guardian
36 or to terminate parental rights, the parent or guardian shall be advised, in

1 the dependency-neglect petition or the ex parte emergency order and the first
2 appearance before the court, of the right to be represented by counsel at all
3 stages of the proceedings and the right to appointed counsel if indigent.

4 (2) Upon request by a parent or guardian and a determination by
5 the court of indigence, the court shall appoint counsel for the parent or
6 guardian in all proceedings to remove custody or terminate parental rights of
7 a juvenile.

8 (3) After review by the court of an affidavit of financial means
9 completed and verified by the parent or guardian and a determination by the
10 court of an ability to pay, the court shall order financially able parents or
11 guardians to pay all or a part of reasonable attorneys' fees and expenses for
12 court-appointed representation of the parent or guardian.

13 (4) Appointment of counsel shall be made at a time sufficiently in
14 advance of the court appearance to allow adequate preparation by appointed
15 counsel and adequate consultation between the appointed counsel and the
16 client. When the first appearance before the court is an emergency hearing to
17 remove custody pursuant to A.C.A. 9-27-315, parents shall be notified of the
18 right to appointed counsel if indigent in the emergency ex parte order.

19 (5) The parent's or guardian's attorney shall be provided access
20 to all records relevant to the juvenile's case, including but not limited to,
21 school records, medical records, juvenile court records, and Department of
22 Human Services records to which they are entitled under state and federal
23 law."

24
25 SECTION 5. Arkansas Code Annotated § 9-27-327 is amended to read as
26 follows:

27 "9-27-327. Adjudication hearing.

28 (a) An adjudication hearing shall be held to determine whether the
29 allegations in a petition are substantiated by the proof.

30 (b) If a juvenile is in detention, an adjudication hearing shall be
31 held not later than fourteen (14) days from the date of the detention hearing
32 unless waived by the juvenile or good cause is shown for a continuance.

33 (c) Following an adjudication in which a juvenile is found to be
34 delinquent, dependent-neglected, or a member of a family in need of services,
35 the court may order any studies or predisposition reports, if needed, that
36 bear on disposition.

1 (d) All such reports shall be provided in writing to all parties and
2 counsel at least two (2) days prior to the disposition hearing. All parties
3 shall be given a fair opportunity to controvert any parts of such reports.

4 (e) In dependency-neglect cases, a written adjudication order shall be
5 filed by the court, or by a party or partys attorney as designated by the
6 court, within thirty (30) days of the date of the hearing or prior to the next
7 hearing, whichever is sooner."

8

9 SECTION 6. Arkansas Code Annotated § 9-27-328 is amended to read as
10 follows:

11 "9-27-328. Removal and placement of juvenile.

12 (a) ~~Before a juvenile may be removed from the parent, guardian, or~~
13 ~~custodian of the juvenile by order of a juvenile court, excluding commitments~~
14 ~~to youth services centers, the court shall order family services appropriate~~
15 ~~to prevent removal or to reunify the family and, in its orders, make these~~
16 ~~specific findings:~~ juvenile court may order any dependent-neglected, FINS, or
17 delinquent juvenile removed from the custody of his or her parent, guardian,
18 or custodian and placed with DHS or other licensed agency responsible for the
19 care of juveniles, or with a relative or other individual, excluding
20 commitments to youth services centers or juvenile detention facilities, the
21 court shall order family services appropriate to prevent removal.

22 (b) When the court orders a juvenile removed from the custody of a
23 parent, guardian, or custodian and placed in the custody of DHS or other
24 licensed agency responsible for the care of juveniles, or with a relative or
25 other individual, excluding commitments to youth services centers or juvenile
26 detention facilities, the court shall make these specific findings in the
27 order:

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

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

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

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

36 (5) Whether efforts made to prevent removal of the juvenile were

1 reasonable, based upon the needs of the family and the juvenile; and

2 (6) Whether the removal ~~would be~~ is in the best interest of the
3 juvenile.

4 ~~_____ (b)(c)~~ Where the state agency's first contact with the family has
5 occurred during an emergency in which the juvenile could not safely remain at
6 home, even with reasonable services being provided, the responsible state
7 agency shall be deemed to have made reasonable efforts to prevent or eliminate
8 the need for removal.

9 ~~_____ (e)(d)~~(1) At any hearing to determine whether a juvenile should be
10 removed from the parent, guardian, or custodian of the juvenile or continued
11 in out-of-home placement, the juvenile court may release the juvenile to the
12 parent, guardian, or custodian or may order the juvenile placed in the legal
13 custody of the state agency for placement in a foster care program. The court
14 shall, in its orders, determine whether:

15 (A) It is in the best interest of the juvenile to be
16 removed;

17 (B) The juvenile is in need of the services of the state
18 agency;

19 (C) Out-of-home placement is necessary to protect the
20 juvenile;

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

23 (E) The juvenile makes a reasonable request not to be
24 released;

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

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

29 (2) Prior to placement of a juvenile in a placement other than
30 the home of the parent, guardian, or custodian from which the juvenile was
31 removed, the juvenile court must make specific findings as to whether
32 reasonable efforts were made to keep the family together and avoid out-of-home
33 placement, whether reasonable efforts to eliminate the need for removal of the
34 juvenile from the home were made by the state, and whether the out-of-home
35 placement is in the best interest of the child.

36 ~~_____ (d)(e)~~ Where the court finds the ~~state agency's~~ department s

1 preventative or reunification efforts have not been reasonable, but further
2 preventative or reunification efforts could not permit the juvenile to safely
3 remain at home, the court may authorize or continue the removal of the
4 juvenile but shall note the failure by the ~~state agency~~ department in the
5 record of the case.

6 ~~——(e)~~(f)(1) In all instances of removal of a juvenile from the home of
7 his parent, guardian, or custodian by the court, the court shall set forth in
8 a written order the evidence supporting the decision to remove, the facts
9 regarding the need for removal, and the findings required by this section.

10 (2) Said written findings and order shall be ~~prepared~~ filed by
11 the court, or a party or party's attorney as designated by the court, within
12 thirty (30) days of the date of the hearing at which removal is ordered or
13 prior to the next hearing, whichever is sooner."
14

15 SECTION 7. Arkansas Code Annotated § 9-27-329 is amended to read as
16 follows:

17 "9-27-329. Disposition hearing.

18 (a) If the court finds that the petition has been substantiated by the
19 proof at the adjudication hearing, a disposition hearing shall be held for the
20 court to enter orders consistent with the disposition alternatives.

21 (b) When a juvenile is held in detention after an adjudication hearing
22 for delinquency pending a disposition hearing, the disposition hearing shall
23 be held no more than fourteen (14) days following the adjudication hearing.

24 (c) In dependency-neglect proceedings, the disposition hearing may be
25 held immediately following the adjudication hearing but in any event shall be
26 held no more than fourteen (14) days following the adjudication hearing.

27 ~~——(e)~~(d) In considering the disposition alternatives, the court shall give
28 preference to the least restrictive disposition consistent with the best
29 interests and welfare of the juvenile and the public.

30 ~~——(d)~~(e) In dependency-neglect cases, a written disposition order shall
31 be filed by the court, or by a party or partys attorney as designated by the
32 court, within thirty (30) days of the date of the hearing or prior to the next
33 hearing, whichever is sooner.

34 ~~——(e)~~(f) At the disposition hearing, the court may admit into evidence
35 any studies or reports which have been ordered, even though they are not
36 admissible at the adjudication hearing."

1

2 SECTION 8. Arkansas Code Annotated, Title 9, Chapter 27, is amended by
3 adding a new section to read as follows:

4 "Case Plans.

5 (a) A case plan shall be developed in all dependency-neglect cases or
6 any case involving an out-of-home placement. The Department of Human Services
7 shall be responsible for developing case plans in all dependency-neglect
8 cases, and in FINS, or delinquency cases when custody is transferred to the
9 Department of Human Services, pursuant to A.C.A. 9-27-328. The case plan shall
10 be:

11 (1) developed in consultation with the juvenile's parent,
12 guardian, or custodian and, if appropriate, the juvenile, the juvenile's
13 foster parents, the court-appointed special advocate (CASA), the juvenile's
14 attorney ad litem, and all parties' attorney(s).

15 (A) If the parents are unwilling or unable to participate
16 in the development of the case plan, the department shall document that
17 unwillingness or inability and provide this written documentation to the
18 parent, if available. The department shall then prepare a case plan
19 conforming as nearly as possible with the requirements set forth in this
20 section.

21 (B) A parent's incarceration, by itself, does not make a
22 parent unavailable to participate in the development of a case plan.

23 (2) developed and filed with the court no later than thirty (30) days
24 after the date the petition was filed or the juvenile was first placed
25 out-of-home, whichever is sooner.

26 (A) If the department does not have sufficient information
27 prior to the adjudication hearing to complete all of the case plan, the
28 department shall complete those parts for which information is available.

29 (B) All parts of the case plan shall be completed and filed
30 with the court thirty (30) days after the adjudication hearing.

31 (3) signed by and distributed to all parties, and distributed to the
32 juvenile's attorney ad litem, court-appointed special advocate (CASA), and
33 foster parents, if available.

34 (4) subject to modification based on changing circumstances;

35 (A) All parties to the case plan shall be notified of any
36 substantive change to the case plan;

1 (B) A substantive change to a case plan includes, but is
2 not limited to, such changes as the placement of the juvenile, the visitation
3 rights of any party, or the goal of the plan;

4 (b) When the juvenile is receiving services in the home of the parent,
5 guardian or custodian, the case plan shall include at a minimum, in addition
6 to the requirements in subsection (a):

7 (1) a description of the problems being addressed;

8 (2) a description of the services to be provided to the family
9 and juvenile specifically addressing the identified problems and time frames
10 for providing services;

11 (3) a description of any reasonable accommodations made to
12 parents in accordance with the Americans with Disabilities Act to assure to
13 all the parents meaningful access to reunification and family preservation
14 services;

15 (4) the name of an individual whom the petitioner, parent,
16 guardian or custodian knows is claiming to be or who is named as the father or
17 possible father of the juvenile and whose paternity of the juvenile has not
18 been judicially determined.

19 (c) When the juvenile is receiving services in an out-of-home
20 placement, the case plan must include at a minimum, in addition to the
21 requirements in subsections (a) and (b):

22 (1) a description of the permanency goal;

23 (2) the specific reasons for the placement of the juvenile in
24 care outside the home, including a description of the problems or conditions
25 in the home of the parent, guardian, or custodian which necessitated removal
26 of the juvenile, and the remediation of which will determine the return of the
27 juvenile to the home;

28 (3) a description of the type of out-of-home placement selected
29 for the juvenile including a discussion of the appropriateness of the
30 placement;

31 (4) a plan for addressing the needs of the juvenile while in the
32 placement, including a discussion of the services provided within the last six
33 (6) months;

34 (5) the specific actions to be taken by the parent, guardian, or
35 custodian of the juvenile to eliminate or correct the identified problems or
36 conditions and the period during which the actions are to be taken. The plan

1 may include any person or agency who shall agree to and be responsible for the
2 provision of social and other family services to the juvenile or the parent,
3 guardian, or custodian of the juvenile;

4 (6) the visitation rights and obligations of the parent,
5 guardian, or custodian and the state agency during the period the juvenile is
6 in the out-of-home placement;

7 (7) the social and other family services to be provided to the
8 parent, guardian, or custodian of the juvenile, and foster parent, if any,
9 during the period the juvenile is in placement and a timetable for the
10 provision of those services, the purposes of which shall be to promote the
11 availability to the juvenile of a continuous and stable living environment,
12 promote family autonomy, strengthen family life where possible, and promote
13 the reunification of the juvenile with the parent, guardian, or custodian;

14 (8) to the extent available and accessible, the health and
15 education records of the juvenile, pursuant to 42 U.S.C. 675(1);

16 (9) a description of the financial support obligation to the
17 juvenile, including health insurance of the juveniles parent, parents, or
18 guardian;

19 (10) a description of the location of siblings. If siblings have
20 been separated, a statement of the reasons for separation and the efforts that
21 have been and will be made to enable the siblings to maintain regular contact
22 while separated and to be reunited as soon as possible;

23 (11) when appropriate for a juvenile age sixteen (16) and over,
24 the case plan must also include a written description of the programs and
25 services which will help the juvenile prepare for the transition from foster
26 care to independent living;

27 (12) a written notice to the parent(s) that failure of the
28 parent(s) to comply substantially with the case plan may result in the
29 termination of parental rights, and that a material failure to comply
30 substantially may result in the filing of a petition for termination of
31 parental rights sooner than the compliance periods set forth in the case plan
32 itself.

33 (d) The case plan is subject to court approval upon review by the
34 court.

35 (e) A parent's, guardian's or custodian's participation in the
36 development or the acceptance of a case plan shall not constitute an admission

1 of dependency-neglect."

2

3 SECTION 9. Arkansas Code Annotated § 9-27-333 is amended to read as
4 follows:

5 "9-27-333. Disposition - Family in need of services - Limitations.

6 ~~—— (a) If custody of a juvenile is transferred by the court to the
7 Department of Human Services or to another licensed agency responsible for the
8 care of juveniles, the department or agency shall prepare a written case plan
9 within thirty (30) days of the date of placement.~~

10 ~~—— (b)~~ Custody of a juvenile may be transferred to a relative or other
11 individual only after a full investigation of the placement is conducted by
12 the Department of Human Services and submitted to the court in writing and the
13 court determines that the placement is in the best interest of the juvenile."
14

15 SECTION 10. Arkansas Code Annotated § 9-27-335 is amended to read as
16 follows:

17 "9-27-335. Disposition - Dependent-neglected - Limitations.

18 ~~—— (a) If custody of a juvenile is transferred by the court to the
19 Department of Human Services or to another licensed agency responsible for the
20 care of juveniles, the department or agency shall prepare a written case plan
21 within thirty (30) days of the date of placement.~~

22 ~~—— (b)~~(a) Custody of a juvenile may be transferred to a relative or other
23 individual only after a full investigation of the placement is conducted by
24 the Department of Human Services and submitted to the court in writing and the
25 court determines that the placement is in the best interest of the juvenile.

26 ~~—— (c)~~(b) The court shall enter orders transferring custody of juveniles
27 in dependency-neglect cases only after determining that reasonable efforts
28 have been made by the Department of Human Services to deliver family services
29 designed to prevent the need for out-of-home placement and that the need for
30 out-of-home placement exists. If the court finds that reasonable efforts to
31 deliver family services have not been made, the court may:

32 (1) Dismiss the petition;

33 (2) Order family services reasonably calculated to prevent the
34 need for out-of-home placement;

35 (3) Transfer custody of the juvenile despite the lack of
36 reasonable efforts by the Department of Human Services to prevent the need for

1 out-of-home placement, if such a transfer of custody is necessary to protect
2 the juvenile from immediate danger or to prevent the juvenile from being
3 removed from the jurisdiction of the court."

4

5 SECTION 11. Arkansas Code Annotated § 9-27-337 is amended to read as
6 follows:

7 "9-27-337. ~~Periodic review required~~ Six-month reviews required.

8 (a)(1) ~~The court shall periodically~~ Every six months, the court shall
9 review every case of dependency-neglect, ~~or families in need of services~~
10 Families in Need of Services (FINS), or delinquency ~~where~~ when an out-of-home
11 placement has occurred, as defined by Arkansas Code Annotated 9-27-303(28),
12 until there is a permanent order of custody or the juvenile is returned to the
13 parent, guardian, or custodian and the court has discontinued orders for
14 family services.

15 (2) ~~The court shall during each periodic review of the case~~
16 During each six-month review the court shall make determinations based upon
17 the best interest of the juvenile.

18 ~~(b) In each case requiring review, a review hearing shall be commenced~~
19 ~~prior to the expiration of six (6) months from the entry of the order to be~~
20 ~~reviewed. Said hearing shall be completed and a ruling announced within an~~
21 ~~additional thirty (30) days. Otherwise, the order to be reviewed shall be~~
22 ~~deemed vacated pending further proceedings. The limitations imposed by this~~
23 ~~subsection are not subject to waiver or extension by any party, or by the~~
24 ~~court.~~

25 (b)(1) In each case in which a juvenile has been placed in an
26 out-of-home placement, within six (6) months after the original out-of-home
27 placement and every six (6) months thereafter while the juvenile continues out
28 of home, the court shall conduct a hearing or shall review the case
29 sufficiently to determine the future status of the juvenile. The court shall
30 determine and shall include in its orders whether the case plan, services, and
31 placement meet the special needs and best interests of the juvenile and
32 whether the State has made reasonable efforts to provide family services. The
33 court shall project a date for the juvenile to return home or, if there is no
34 projected date for a return home, the projected date for other alternatives,
35 and what those alternatives are. This determination must be based on a full
36 and deliberate consideration of all of the following:

- 1 (A) the extent of compliance with the case plan;
- 2 (B) the extent of progress which has been made toward
- 3 alleviating or mitigating the causes of the out-of-home placement;
- 4 (C) whether the juvenile should be returned to the
- 5 parent(s);
- 6 (D) whether the juvenile should be continued in an
- 7 out-of-home placement for a specified period of time;
- 8 (E) whether the juvenile should be placed for adoption; and
- 9 (F) whether the juvenile should be, because of special
- 10 needs or circumstances, continued in an out-of-home placement on a permanent
- 11 or long-term basis.

12 (2) Each six-month review hearing shall be completed and a

13 written order shall be filed by the court, or by a party or party's attorney

14 as designated by the court, within thirty (30) days of the date of the hearing

15 or prior to the next hearing, whichever is sooner. Otherwise, the order to be

16 reviewed shall be deemed vacated pending further proceedings. The limitations

17 imposed by this subsection are not subject to waiver or extension by any party

18 or by the court.

19 (c)(1) The court may require any case of dependency-neglect, ~~or~~ family

20 in need of services (FINS), or delinquency, when an out-of-home placement has

21 occurred, to be reviewed prior to the sixth month. In such a case, ~~it shall be~~

22 ~~the responsibility of the court to~~ shall announce the date, time, and place of

23 hearing.

24 (2) In all other cases, it shall be the duty of the petitioner at

25 least sixty (60) days prior to the date the existing order would be vacated to

26 request the court to set a review hearing as required by this subchapter.

27 ~~Any party may, at~~ At any time during the pendency of any case of

28 dependency-neglect, ~~or~~ family in need of services (FINS), or delinquency in

29 which an out-of-home placement has occurred, any party may request the court

30 to review ~~such~~ the case.

31 (e) It shall be the duty of the petitioner to provide all parties with

32 reasonable notice and serve such notice on all parties in accordance with the

33 Arkansas Rules of Civil Procedure.

34 (f) The Department of Human Services shall provide ~~a court report to~~

35 ~~the court and the opposing parties no less than seven (7) days prior to the~~

36 ~~review hearing.~~ the CASA, the parties and counsel with a copy of a review

1 report no later than seven (7) business days before every scheduled review
2 hearing of each juvenile who is in an out-of-home placement. DHS shall
3 present the report to the Court at the scheduled hearing, subject to
4 evidentiary objections.

5 (g) The review report shall include a summary of the parties
6 compliance with the case plan and court orders, including a description of the
7 services and assistance that the department has provided to the family."

8
9 SECTION 12. Arkansas Code Annotated § 9-27-338 is amended to read as
10 follows:

11 "9-27-338. ~~Eighteen-month review - Reports~~ Permanency Planning Hearing.

12 (a) ~~Eighteen (18)~~ Twelve (12) months after the date the juvenile enters
13 an out-of-home placement as defined by Arkansas Code Annotated § 9-27-303(26),
14 or earlier if ordered by the court, the court shall hold a permanency planning
15 hearing in order to enter a new disposition in the case. At the hearing, based
16 upon the facts of the case, the court shall enter one (1) of the following
17 dispositions in accordance with the best interests of the juvenile:

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

19 (2) Authorize a plan for the termination of the parent-child
20 relationship, guardianship, or custody;

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

22 (4) Allow the juvenile to continue in an out-of-home placement
23 for a specified, limited period of time.

24 (b) If the court finds that the juvenile should remain in an
25 out-of-home placement, either long-term or otherwise, the juvenile's care
26 shall be reviewed every six (6) months.

27 (c) Nothing in this section shall be construed to prevent the state
28 agency from proceeding to terminate parental rights, guardianship, or custody
29 at any time prior to the ~~eighteen-month review~~ permanency planning hearing.

30 ~~----- (d) Before the eighteen-month review, the court shall direct the state~~
31 ~~or other licensed agency to prepare a written report on the progress made in~~
32 ~~implementing the court's original plan, including the progress made in~~
33 ~~rehabilitating the juvenile and the parent, guardian, or custodian of the~~
34 ~~juvenile and reuniting the family.~~

35 ~~----- (e) Any report prepared by the state agency for the court's review or~~
36 ~~hearing shall be made available to the juvenile and the parent, guardian, or~~

1 ~~custodian of the juvenile, guardian ad litem, and attorney at least ten (10)~~
2 ~~working days prior to the hearing.~~

3 (d) The Department of Human Services shall provide the court-appointed
4 special advocate (CASA), if one has been appointed, the parties and counsel
5 with a copy of the permanency planning report no later than seven (7) business
6 days before the scheduled permanency planning hearing. DHS shall present the
7 report to the Court at the scheduled hearing, subject to evidentiary
8 objections.

9 (e) The permanency planning report shall include but not be limited to
10 the following:

11 (1) a list of all placements the juvenile has been in since the
12 last court hearing; and

13 (2) a recommendation and discussion regarding the juvenile's
14 permanency plan and the appropriateness of the plan.

15 (A) If return to the home is recommended, a summary of:

16 (i) the necessary steps to make return possible; and

17 (ii) the reunification services needed including
18 services to minimize any danger when the child returns.

19 (B) If return is not recommended, a recommendation
20 regarding a permanent placement for the child. If adoption placement is
21 recommended, a discussion of the steps necessary to bring a termination of
22 parental rights action and to place the child for adoption and the anticipated
23 time frame.

24 (C) If the recommendation does not include return to home
25 or adoption, a discussion of a permanent placement such as a guardianship,
26 permanent custody, independent living, or a specific foster family, including
27 a timetable, recommendations concerning the terms of the permanent placement
28 and the rights and responsibilities of the parents.

29 (3) The location of the siblings and, if the siblings have been
30 separated, a statement of the reasons for separation and, if it is appropriate
31 to reunite the siblings, the efforts that have been and will be made to
32 reunite the siblings as soon as possible and to enable the siblings to
33 maintain regular contact.

34 (4) A summary of the compliance of the case plan and court orders
35 by the parties, including a description of the services and assistance that
36 the department has provided to the family.

1 (5) A description of any services that the department recommends
2 in the future along with a timetable for delivering the services.

3 (f) A written order shall be filed by the court, or by a party or
4 partys attorney as designated by the court, within thirty (30) days of the
5 date of the hearing or prior to the next hearing, whichever is sooner."
6

7 SECTION 13. Arkansas Code Annotated § 9-27-341 is amended to read as
8 follows:

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

10 (a) This section shall be a remedy available only to the Department of
11 Human Services or a court appointed attorney ad litem. It shall not be
12 available for private litigants or other agencies. It shall be used only in
13 such cases when the Department of Human Services is attempting to clear a
14 juvenile for permanent placement. The intent of this section is to provide
15 permanency in a juvenile's life in all instances where return of a juvenile to
16 the family home is contrary to the juvenile's health, safety, or welfare, and
17 it appears from the evidence that return to the family home cannot be
18 accomplished in a reasonable period of time.

19 (b) ~~The court may consider a petition to terminate parental rights if~~
20 ~~it finds that the Department of Human Services has physical or legal custody~~
21 ~~of the juvenile, an appropriate placement plan for the juvenile and the parent~~
22 ~~or parents, or putative parent, if the putative parent can be identified, have~~
23 ~~received actual or constructive notice of the hearing to terminate parental~~
24 ~~rights. there is an appropriate permanency placement plan for the juvenile.~~
25 The petitioner shall provide the parent, parents, or putative parent(s) actual
26 or constructive notice of a petition to terminate parental rights. An order
27 forever terminating parental rights shall be based upon a finding by clear and
28 convincing evidence:

29 (1) That it is in the best interest of the juvenile, including
30 consideration of the following factors:

31 (A) the likelihood that the juvenile will be adopted if the
32 termination petition is granted, and

33 (B) the potential harm caused by continuing contact with
34 the parent, parents, or putative parent;

35 (2) Of one or more of the following grounds:

36 (A) That a juvenile has been adjudicated by the court to be

1 dependent-neglected and has continued out of the home for twelve (12) months,
2 and, despite a meaningful effort by the Department of Human Services to
3 rehabilitate the home and correct the conditions which caused removal, those
4 conditions have not been remedied by the parent. It is not necessary that the
5 twelve-month period referenced in this subdivision (b)(2)(A) immediately
6 precede the filing of the petition for termination of parental rights, or that
7 it be for twelve (12) consecutive months;

8 (B) The juvenile has lived outside the home of the parent
9 for a period of twelve (12) months, and the parent has willfully failed to
10 provide significant material support in accordance with the parent's means or
11 to maintain meaningful contact with the juvenile. To find willful failure to
12 maintain meaningful contact, it must be shown that the parent was not
13 prevented from visiting or having contact with the juvenile by the juvenile's
14 custodian or any other person, taking into consideration the distance of the
15 juvenile's placement from the parent's home. Material support consists of
16 either financial contributions or food, shelter, clothing, or other
17 necessities where such contribution has been requested by the juvenile's
18 custodian or ordered by a court of competent jurisdiction. It is not necessary
19 that the twelve-month period referenced in this subdivision (b)(2)(B)
20 immediately precede the filing of the petition for termination of parental
21 rights, or that it be for twelve (12) consecutive months;

22 (C) The presumptive legal father is not the biological
23 father of the juvenile, and the welfare of the juvenile can best be served by
24 terminating the parental rights of such presumptive legal father;

25 (D) A parent has abandoned the juvenile; ~~or~~

26 (E) A parent has executed consent to termination of
27 parental rights or adoption of the juvenile, subject to the courts approval,
28 ~~or adoption of the juvenile or;~~

29 (F) ~~the~~ The juvenile court has found the juvenile victim
30 dependent-neglected as a result of neglect or abuse that could endanger the
31 life of the child, sexual abuse, or sexual exploitation, and which was
32 perpetrated by the juvenile's parent or parents. Such findings by the juvenile
33 court shall constitute grounds for immediate termination of the parental
34 rights of one (1) or both of the parents;

35 ~~(E)(G)(i)~~ That, subsequent to the filing of the original
36 petition for dependency-neglect, other factors or issues arose which

1 demonstrate that return of the juvenile to the family home is contrary to the
2 juvenile's health, safety, or welfare, and that, despite the offer of
3 appropriate family services, the parent has manifested the incapacity or
4 indifference to remedy the subsequent issues or factors, or rehabilitate the
5 parent's circumstances, which prevent return of the juvenile to the family
6 home.

7 (ii) Provided, however, that the Department of Human
8 Services shall make reasonable accommodations in accordance with the Americans
9 with Disabilities Act to parents with disabilities in order to allow them
10 meaningful access to reunification and family preservation services.

11 (iii) For purposes of this subsection, said inability
12 or incapacity to remedy or rehabilitate includes, but is not limited to,
13 mental illness, emotional illness, or mental deficiencies;

14 ~~(F)~~(H)(i) The parent is sentenced in a criminal proceeding
15 for a period of time which would constitute a substantial period of the
16 juvenile's life and the conditions in subdivision (b)(2)(A) or (B) of this
17 section have also been established.

18 (ii) For purposes of this subsection, substantial
19 period means a sentence, and not time actually served, of no less than
20 fifteen (15) years, none of which ~~have~~ has been suspended.

21 (I)(i) The parent is found by a court of competent
22 jurisdiction to have committed murder or voluntary manslaughter of another
23 child of such parent, or to have aided or abetted, attempted, conspired, or
24 solicited to commit such murder or voluntary manslaughter; or

25 (ii) The parent is found by a court of competent
26 jurisdiction to have committed a felony assault that results in serious bodily
27 injury to the surviving child or another child of such parent.

28 (iii) Nothing in this chapter shall be construed to
29 require reunification of a surviving child with a parent who has been found
30 guilty of any of the offenses listed in A.C.A. 9-27-341(b)(2)(I).

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

36 (2)(A) Termination of the relationship between a juvenile and one

1 (1) parent shall not affect the relationship between the juvenile and the
2 other parent, if those rights are legally established. If no legal rights
3 have been established, a putative parent must prove that significant contacts
4 existed with the juvenile in order for the putative parents rights to attach.

5 (B) ~~Provided, however, that if no legal rights have been~~
6 ~~established, the termination will act as an absolute bar to the assertion of~~
7 ~~any alleged rights by the other parent or putative parent in any action~~
8 ~~brought subsequent to the termination, irrespective of the court in which said~~
9 ~~action is brought, except the rights of a putative parent shall not be~~
10 ~~affected if the putative parent's identity was known at the time of the~~
11 ~~hearing for termination of parental rights and the putative parent did not~~
12 ~~receive actual or constructive notice of the hearing. When the petitioner has~~
13 ~~actual knowledge that an individual is claiming to be or is named as the~~
14 ~~putative parent of the juvenile and the paternity of the juvenile has not been~~
15 ~~judicially determined, the individual is entitled to notice of the petition to~~
16 ~~terminate parental rights.~~ The notice shall identify the rights sought to be
17 terminated and those which may be terminated. The notice shall further
18 specify that the putative parent must prove that significant contacts existed
19 with the juvenile for the putative parents rights to attach.

20 (3) An order terminating parental rights under this section may
21 authorize the Department of Human Services to consent to adoption of the
22 juvenile.

23 (4) An order terminating parental rights under this section does
24 not preclude adoptive parents from allowing contact between an adopted child
25 and the birth sibling or other birth family members.

26 (d) A written order shall be filed by the court or by a party or
27 partys counsel as designated by the court within thirty (30) days of the date
28 of the termination hearing or before the next hearing, whichever is sooner.

29 (e) After an order of termination of parental rights is filed, the court
30 shall review the case at least every six months until permanency is achieved
31 for that juvenile."

32
33 SECTION 14. (a) There is hereby created a Division of
34 Dependency-Neglect Representation within the Administrative Office of the
35 Courts which will be staffed by a CASA coordinator and an attorney
36 coordinator.

1 (b) Representation for Children.

2 (1) The Director of the Administrative Office of the Courts is
3 authorized to enter into professional service contracts with private
4 individuals or businesses or public agencies to represent all children in
5 dependency-neglect proceedings.

6 (2) Prior to entering into a contract or contracts, the
7 Administrative Office of the Courts shall consult with the juvenile division
8 judge or judges in each judicial circuit. Those obtaining contracts through
9 the Administrative Office of the Courts as described in Section 3(a) will be
10 designated as the provider for representation of children in
11 dependency-neglect cases in each judicial circuit.

12 (3) Creation of Statewide CASA Program. The Director of the
13 Administrative Office of the Courts is authorized to establish a statewide
14 Court Appointed Special Advocate (CASA) program, to provide grants or
15 contracts to local CASA programs, and to work with judicial districts to
16 establish local programs, whereby the Juvenile Divisions of Chancery Court
17 appoint trained volunteers to provide valuable information to the courts
18 concerning the best interests of children in dependency-neglect proceedings.

19 (c) Representation for Parents.

20 (1) The Director of the Administrative Office of the Courts is
21 authorized to award grants to Legal Service Programs which currently receive
22 funding through the federal Legal Services Corporation and which provide
23 services to Arkansas clients including Ozark Legal Services, Legal Services of
24 Northeast Arkansas, East Arkansas Legal Services, Western Arkansas Legal
25 Services, Center for Arkansas Legal Services, and the Texarkana office of East
26 Texas Legal Services, or their successor programs to represent indigent
27 custodial parents involved in dependency-neglect proceedings.

28 (2) The Legal Services programs listed in Section 2(c)(1) will be
29 the designated providers of legal representation for indigent custodial
30 parents in dependency-neglect cases in the state of Arkansas.

31 (3) The allocation of grant funds among the programs specified in
32 Section 2(c)(1) shall be based upon each program's percentage of the statewide
33 poverty population based upon the most recent federal poverty level
34 calculations.

35 (4) A lump sum monthly installment of at least one-twelfth (1/12)
36 of the annual grant level provided for in Section 3(a) of this Act, or so much

1 thereof as may be made available, shall be provided to each grantee to be used
2 exclusively for the provision of legal representation of indigent custodial
3 parents in dependency-neglect cases in each grantee's area of service.

4 (5) The definition and the procedures for the establishment of
5 indigency shall be consistent with A.C.A. 16-87-213.

6 (d) The Director of the Administrative Office of the Courts is
7 authorized to establish attorney ad litem programs to represent children in
8 chancery cases where custody is an issue, should funds become available.

9

10 SECTION 15. Arkansas Code Annotated § 9-9-220(b) is amended to read as
11 follows:

12 "(b) All rights of a parent with reference to a child, including the
13 right to receive notice of a hearing on a petition for adoption, may be
14 relinquished and the relationship of parent and child terminated by a writing,
15 signed by an adult parent, ~~subsequent~~ subject to the court's approval.

16 If the parent is a minor, the writing shall be signed by a guardian ad
17 litem who is appointed to appear on behalf of the minor parent for the purpose
18 of executing such a writing. The signing shall occur in the presence of a
19 representative of an agency taking custody of the child, or in the presence of
20 a notary public, whether the agency is within or without the state, or in the
21 presence and with the approval of a judge of a court of record of this state
22 or any other state in which the minor was present at the time it was signed.
23 The relinquishment shall be executed in the same manner as for a consent to
24 adopt under § 9-9-208.

25 (1)(A) The relinquishment may be withdrawn within ten (10)
26 calendar days after it is signed or the child is born, whichever is later.

27 (i) Notice of withdrawal shall be given by filing an
28 affidavit with the clerk of the probate court in the county designated by the
29 writing as the county in which the guardianship petition will be filed, if
30 there is a guardianship, or where the petition for adoption will be filed, if
31 there is no guardianship. If the ten-day period ends on a weekend or legal
32 holiday, the person may file the affidavit the next working day.

33 (ii) No fee shall be charged for the filing of the
34 affidavit.

35 (B) The relinquishment shall state that the parent has this
36 right of withdrawal, and shall provide the address of the probate court clerk

1 of the county in which the guardianship will be filed, if there is a
2 guardianship, or where the petition for adoption will be filed, if there is no
3 guardianship; or

4 (2) In any other situation, if the petitioner has had custody of
5 the minor for two (2) years, but only if notice of the adoption proceeding has
6 been given to the parent and the court finds, after considering the
7 circumstances of the relinquishment and the long continued custody by the
8 petitioner, that the best interest of the child requires the granting of the
9 adoption."

10

11 SECTION 16. All provisions of this act of a general and permanent
12 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
13 Code Revision Commission shall incorporate the same in the Code.

14

15 SECTION 17. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared to be severable.

20

21 SECTION 18. All laws and parts of laws in conflict with this act are
22 hereby repealed.

23

24 SECTION 19. EMERGENCY. It is found and determined by the General
25 Assembly of the State of Arkansas that there is an important public interest
26 in providing quality representation to juveniles and parents in
27 dependency-neglect proceedings, pursuant to Ark. Code Ann. 9-27-316. It is
28 further determined that children are the state's most treasured future
29 resource and recent studies indicate that children and their parents have not
30 always received quality representation and sometimes have gone without
31 representation in dependency-neglect proceedings in the past because the
32 counties of Arkansas have been unable to provide adequate representation due
33 to lack of funding and uniform application of the law. To insure the best
34 interests of Arkansas' children in achieving a safe and permanent home, to
35 comply with federal law mandating appointment of guardians ad litem in
36 dependency-neglect cases, and to prevent the loss of federal funding, a

1 statewide system for quality dependency-neglect representation must be
2 established. Therefore an emergency is declared to exist and this act being
3 immediately necessary for the preservation of the public peace, health and
4 safety shall become effective on the date of its approval by the Governor. If
5 the bill is neither approved nor vetoed by the Governor, it shall become
6 effective on the expiration of the period of time during which the Governor
7 may veto the bill. If the bill is vetoed by the Governor and the veto is
8 overridden, it shall become effective on the date the last house overrides the
9 veto.

10 /s/Harriman

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