

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/8/99 S3/25/99

A Bill

HOUSE BILL 1735

5 By: Representative Madison
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED SECTIONS 9-
10 27-303(3), (14), (25), (28), (34) and (42), 9-27-310(c)
11 and (e), 9-27-311 (AS AMENDED BY ACTS 1997, NO. 1227),
12 9-27-311(a), (c) & (d)(2), 9-27-313(c)(1), 9-27-
13 316(g)(4), 9-27-328(a), 9-27-330(a)(1)(A), 9-27-
14 330(a)(13)(A), 9-27-331(c), (e)(3), and (h), 9-27-
15 332(a)(1), 9-27-334(a)(1), 9-27-315, and 9-27-314 TO
16 AMEND THE JUVENILE CODE; TO AMEND ARKANSAS CODE
17 ANNOTATED SECTIONS 12-12-503 (5), (6), (8) & (12), 12-
18 12-506(a)(2)(A), 12-12-508, 12-12-510 & 12-12-512(c),
19 12-12-516(a)(1) TO AMEND THE CHILD MALTREATMENT ACT;
20 AND FOR OTHER PURPOSES."
21

Subtitle

22 "AN ACT TO AMEND THE JUVENILE CODE AND TO
23 AMEND THE CHILD MALTREATMENT ACT."
24
25
26

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

28
29 SECTION 1. Arkansas Code Annotated 9-27-303(3) is amended to read as
30 follows:

31 "(3) 'Abandonment' means the failure of the parent to provide
32 reasonable support and to maintain regular contact with the juvenile through
33 statement or contact, when the failure is accompanied by an intention on the
34 part of the parent to permit the condition to continue for an indefinite
35 period in the future, and failure to support or maintain regular contact with
36 the juvenile without just cause ~~for a period of one(1) year shall constitute a~~

1 ~~rebuttable presumption of abandonment, or an articulated intent to forego~~
2 ~~parental responsibility."~~

3
4 SECTION 2. Arkansas Code Annotated Section 9-27-303(14) is amended to
5 read as follows:

6 "(14) 'Dependent-neglected juvenile' means any juvenile who as a result
7 of abandonment, abuse, sexual abuse, sexual exploitation, neglect or parental
8 unfitness is at substantial risk of serious harm. The term includes a child
9 of a parent, who is under the age of eighteen (18) years and is in the custody
10 of the Arkansas Department of Human Services."

11
12 SECTION 3. Arkansas Code Annotated Section 9-27-303(34) is amended to
13 read as follows:

14 ~~"(34)(A) 'Sexual abuse' means: includes solicitation or participation~~
15 ~~in sexual activity with a juvenile by an adult or person responsible for the~~
16 ~~care and maintenance of the juvenile~~

17 ~~(B) 'sexual abuse' also includes any offense relating to sexual~~
18 ~~activity, abuse, or exploitation, including rape and incest, as set out and~~
19 ~~defined in the Arkansas Criminal Code and amendments thereto, 5-1-101 et seq.~~

20 (A) Sexual intercourse, deviate sexual activity or sexual contact
21 by forcible compulsion or attempted sexual intercourse, deviate sexual
22 activity or sexual contact by forcible compulsion by a person ten (10) years
23 of age or older to a person younger than eighteen (18) years of age;

24 (B) Sexual intercourse, deviate sexual activity or sexual contact
25 or solicitation or attempted sexual intercourse, deviate sexual activity or
26 sexual contact that occurs between a person eighteen (18) years of age or
27 older and a person not his spouse who is younger than sixteen (16) years of
28 age; or

29 (C) Sexual intercourse, deviate sexual activity or sexual contact
30 or solicitation or attempted sexual intercourse, deviate sexual activity or
31 sexual contact between a person younger than eighteen (18) years of age and a
32 sibling or caretaker."

33
34 SECTION 4. Arkansas Code Annotated Section 9-27-303(25) is amended to
35 add the following new language:

36 "(G) Failure to appropriately supervise the juvenile which results in

1 the juvenile being left alone at an inappropriate age or inappropriate
2 therefor circumstances which put the juvenile in danger."

3
4 SECTION 5. Arkansas Code Annotated Section 9-27-303 is amended to add
5 the following new language:

6 "(42) 'Caretaker' means a parent, guardian, custodian, foster parent,
7 or any person ten (10) years of age or older who is entrusted with a child's
8 care by a parent, guardian, custodian, or foster parent, including, but not
9 limited to, an agent or employee of a public or private residential home,
10 child care facility, public or private school, or any person responsible for a
11 child's welfare."

12 (43) 'Forcible compulsion' means physical force, intimidation, or a
13 threat, express or implied, of death or physical injury to or kidnapping of
14 any person. If the act was committed against the will of the juvenile, then
15 'forcible compulsion' has been used. The age of the victim and the
16 relationship of the victim to the assailant shall be considered in weighing
17 the sufficiency of the evidence to prove compulsion."

18
19 SECTION 6. Arkansas Code Annotated Section 9-27-303(28)(A) is amended
20 to read as follows:

21 "(28) 'Out of Home placement' means:

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

25 (ii) Placement in the home of an individual other than a
26 parent or guardian, not including any placement where unless the court has
27 ordered that ~~said~~ the placement be made permanent and ordered that no further
28 reunification services or six-month reviews ~~would be~~ are required."

29
30 SECTION 7. Arkansas Code 9-27-303(21) is amended to read as follows:

31 "(21)(A) 'Home study' means a written report obtained after an
32 investigation of a home by the Department of Human Services or other
33 appropriate persons or agencies and which shall conform to regulations
34 established by the department.

35 (B) An in-state home study, excluding the results of criminal
36 records check, shall be completed and presented to the requesting court within

1 thirty (30) working days of the receipt of the request for the home study. The
2 results of the criminal records check shall be provided to the court as soon
3 as they are received."

4
5 SECTION 8. Arkansas Code Annotated 9-27-310(c) is amended to read as
6 follows:

7 "(c) A Concurrent with filing, a copy of any petition ~~for dependency-~~
8 ~~neglect~~ which requests that the Department of Human Services take custody or
9 provide family services shall be mailed to the Director of the Department of
10 Human Services and to the local Office of Chief Counsel attorney by the
11 petitioner."

12
13 SECTION 9. Arkansas Code Annotated Section 9-27-310(e) is amended to
14 add the following language:

15 "(e) No fees, including but not limited to, fees for filings (including
16 petitions for adoption and guardianships), summons, or subpoenas, shall be
17 charged or collected by the clerk in cases brought in the juvenile division of
18 chancery court by a governmental entity or nonprofit corporation, included but
19 not limited to, the prosecuting attorney or the Department of Human Services."

20
21 SECTION 10. Arkansas Code Annotated 9-27-311 (as amended by Act 1227 of
22 1997) is repealed.

23 ~~9-27-311. Required contents of petition. [As amended by Acts 1997, No.~~
24 ~~1227.]~~

25 ~~(a) The petition shall set forth the following:~~

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

28 ~~(2) The name and address of each of the parents or the surviving~~
29 ~~parent of the juvenile;~~

30 ~~(3) The name and address of the person, agency, or institution~~
31 ~~having custody of the juvenile;~~

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

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

36 ~~(6) In a dependency-neglect proceeding, the name and address of a~~

1 putative parent, if any.

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

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

11 (d)(1) ~~The petition shall set forth the following in plain and concise~~
12 ~~words:-~~

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

15 (B) ~~The section of this subchapter upon which jurisdiction~~
16 ~~for the petition is based;~~

17 (C) ~~The relief requested by the petitioner; and~~

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

20 (2) ~~Except in delinquency or paternity cases, the petition shall~~
21 ~~be supported by an affidavit of facts. A supporting affidavit of facts shall~~
22 ~~not be required for delinquency or paternity petitions.~~

23
24 SECTION 11. Arkansas Code Annotated Section 9-27-311 (as amended by Act
25 1085 of 1997) is amended to read as follows:

26 "(a) The petition shall set forth the following:

27 (1) The name, address, gender, social security number, and date
28 *of birth of each juvenile subject of the petition. A single petition for*
29 *dependency-neglect or family in need of services shall be filed which includes*
30 *all siblings who are subjects of the petition:*

31 (2) The name and address of each of the parents or the surviving
32 parent of the juvenile or juveniles;

33 (3) The name and address of the person, agency, or institution
34 having custody of the juvenile or juveniles;

35 (4) The name and address of any other person, agency, or
36 institution having a claim to custody or guardianship of the juvenile or

1 juveniles; ~~and~~

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

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

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

11 (c) All persons named in subsection (a) (1)(2)(3) and (6) of this
12 section shall be made defendants and served as required by this subchapter,
13 except that all actions filed pursuant to § 9-27-310(b)(4)(D) shall be
14 required to name as defendants only the mother, the putative father, and the
15 presumed legal father, if any.

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

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

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

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

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

25 (2) ~~Except in delinquency or paternity cases, the~~ The petition
26 shall be supported by an affidavit of facts. A supporting affidavit of facts
27 shall not be required for delinquency, ~~or paternity petitions,~~ or termination
28 of parental rights petitions."

29

30 SECTION 12. Arkansas Code Annotated Section 9-27-313(c)(1) is amended
31 as follows:

32 "(c) When a law enforcement officer, representative of the Department
33 of Human Services, or other authorized person takes custody of a juvenile
34 alleged to be dependent-neglected or pursuant to the Child Abuse Reporting Act
35 § 12-12-501 et seq., he shall:

36 (1) ~~Take the juvenile to shelter care, notify~~ Notify the

1 Department of Human Services, ~~and the intake officer of the juvenile court,~~
 2 and make every possible effort to notify the parent, guardian, or other person
 3 having care of the juvenile, of the juvenile's location. The notification to
 4 the parents shall be in writing and shall include a notice ~~of the location of~~
 5 ~~the juvenile,~~ that the juvenile has been taken into foster care, the name,
 6 location and phone number of the person at the department who they can contact
 7 about the juvenile, of the juvenile's and parents' rights to receive a copy of
 8 any petition filed under this subchapter, the location and telephone number of
 9 the court, and the procedure for obtaining a hearing; or"

10
 11 SECTION 13. Arkansas Code Annotated Section 9-27-316(g)(4) is amended
 12 to read as follows:

13 "(g)(4) Upon presentation of an order of appointment, a CASA shall be
 14 provided access to all records relevant to the juvenile's case, including but
 15 not limited to, school records, medical records, juvenile court records, and
 16 Department of Human Services' records, ~~excluding unfounded reports to the~~
 17 extent permitted by federal law."

18
 19 SECTION 14. Arkansas Code Annotated 9-27-328(a) is amended to read as
 20 follows:

21 "(a) Before a juvenile court may order any dependent-neglected, or
 22 ~~FINS, or delinquent~~ juvenile removed from the custody of his or her parent,
 23 guardian, or custodian and placed with DHS or other licensed agency
 24 responsible for the care of juveniles, or with a relative or other individual,
 25 ~~excluding commitments to youth services centers or juvenile detention~~
 26 ~~facilities,~~ the court shall order family services appropriate to prevent
 27 removal."

28
 29 SECTION 15. Arkansas Code Annotated Section 9-27-330(a)(1)(A) is
 30 amended to read as follows:

31 "(1)(A) Transfer legal custody of the juvenile to ~~the Department of~~
 32 ~~Human Services, or to another~~ any licensed agency responsible for the care of
 33 delinquent juveniles, or to a relative or other individual;"

34
 35 SECTION 16. Arkansas Code Annotated Section 9-27-330(a)(13)(A) is
 36 amended to read as follows:

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

5
6 SECTION 17. Arkansas Code Annotated Section 9-27-331(c) is amended to
7 read as follows:

8 "(c) The court may enter an order for physical, psychiatric, or
9 psychological evaluation or counseling, or treatment affecting the family of a
10 juvenile, only after finding that such evaluation, counseling, or treatment of
11 family members is necessary for the treatment or rehabilitation of the
12 juvenile; provided, however, that this subsection shall not be applicable to
13 the parental responsibility programs in § 9-27-330(a). For purposes of this
14 section if DHS will be the payor, excluding the Community Based Providers, the
15 court shall not specify a particular provider for family services."

16
17 SECTION 18. Arkansas Code Annotated 9-27-331(e)(3) is amended to read
18 as follows:

19 "(3) State the recommendations as to the most appropriate post-
20 commitment placement of the juvenile. If the juvenile cannot return to the
21 custody of his parent, guardian, or custodian because of child maltreatment,
22 the Division of Youth Services shall immediately contact the Office of Chief
23 Counsel. The Department shall petition the court to determine the issue of
24 custody of the juvenile; and"

25
26 SECTION 19. Arkansas Code Annotated 9-27-331 is amended to add the
27 following new language:

28 "(g) Custody of a juvenile may be transferred to a relative or other
29 individual only after a full investigation of the placement is conducted by
30 the Department of Human Services and submitted to the court in writing and the
31 court determines that the placement is in the best interest of the juvenile."

32
33 SECTION 20. Arkansas Code Annotated 9-27-332(a)(1)(A) is amended to
34 read as follows:

35 "(1)(A) Order family services. At least five (5) working days prior to
36 ordering the Department of Human Services, excluding Community Based

1 Providers, to provide or pay for family services, the Court shall fax a
2 written notice of said intent to the Director of the Department of Human
3 Services and to the Local Office of Chief Counsel attorney. At any hearing in
4 which the Department of Human Services is ordered to provide family services,
5 the Court shall provide DHS with the opportunity to be heard."

6
7 SECTION 21. Arkansas Code Annotated 9-27-334(a)(1) is amended to read
8 as follows:

9 "(1) Order family services. At least five working days prior to
10 ordering the Department of Human Services, excluding Community Based
11 Providers, to provide or pay for family services in any case in which the
12 Department is not a party, the Court shall fax a written notice of said intent
13 to the Director of the Department of Human Services and to the Local Office of
14 Chief Counsel attorney. At any hearing in which the Department of Human
15 Services is ordered to provide family services, the Court shall provide DHS
16 with the opportunity to be heard;"

17
18 SECTION 22. Arkansas Code Annotated Section 12-12-503(5) is amended to
19 read as follows:

20 "~~(5) 'Sexual abuse' means: includes solicitation or participation in~~
21 ~~sexual activity with a juvenile by an adult or person responsible for the care~~
22 ~~and maintenance of the juvenile. Sexual abuse also includes any offense~~
23 ~~relating to sexual activity, abuse, or exploitation, including rape and~~
24 ~~incest, as set out and defined in the Arkansas Criminal Code and amendments~~
25 ~~thereto, 5-1-101 et seq.~~

26 (A) Sexual intercourse, deviate sexual activity or sexual contact
27 by forcible compulsion or attempted sexual intercourse, deviate sexual
28 activity or sexual contact by a person ten (10) years of age or older to a
29 person younger than eighteen (18) years of age;

30 (B) Sexual intercourse, deviate sexual activity or sexual contact
31 or solicitation or attempted sexual intercourse, deviate sexual activity or
32 sexual contact that occurs between a person eighteen (18) years of age or
33 older and a person not his spouse who is younger than sixteen (16) years of
34 age; or

35 (C) Sexual intercourse, deviate sexual activity or sexual contact
36 or solicitation or attempted sexual intercourse, deviate sexual activity or

1 sexual contact between a person younger than eighteen (18) years of age and a
2 sibling or caretaker."

3
4 SECTION 23. Arkansas Code Annotated Section 12-12-503(6) is amended to
5 add the following new language:

6 "(G) Failure to appropriately supervise the juvenile which results in
7 the juvenile being left alone at an inappropriate age or inappropriate
8 circumstances which put the juvenile in danger."

9
10 SECTION 24. Arkansas Code Annotated Section 12-12-503(8) is amended to
11 read as follows:

12 "(3) 'Abandonment' means the failure of the parent to provide
13 reasonable support and to maintain regular contact with the juvenile through
14 statement or contact, when the failure is accompanied by an intention on the
15 part of the parent to permit the condition to continue for an indefinite
16 period in the future, and failure to support or maintain regular contact with
17 the juvenile without just cause ~~for a period of one (1) year shall constitute~~
18 ~~a rebuttable presumption of abandonment~~ or an articulated intent to forego
19 parental responsibility;"

20
21 SECTION 25. Arkansas Code Annotated Section 12-12-503 (12) is amended to
22 read as follows:

23 "(12) 'Subject of the report' means the offender, the parents ~~and~~
24 ~~caretakers,~~ guardians, and legal custodians of the child who is subject to
25 suspected maltreatment, and the child who is the subject of suspected
26 maltreatment;"

27
28 SECTION 26. Arkansas Code Annotated Section 12-12-506(a)(2)(A) is
29 amended to add the following new language:

30 "(xiv) The current foster parents of a child who is a subject of a
31 report."

32
33 SECTION 27. Arkansas Code Annotated Section 12-12-506 is amended to add
34 the following new language:

35 "(i) Any records of screened out reports of child maltreatment will be
36 treated as if they are unfounded reports."

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SECTION 28. Arkansas Code Annotated Section 12-12-508 is amended to read as follows:

"12-12-508. Radiology procedures, photographs, and medical records. Any person who is required to make notification under this subchapter may take or cause to be taken radiology procedures and photographs or compile medical records which may be probative as to the existence or extent of child maltreatment. Hospitals and clinics may make video tapes which may be probative as to the existence or extent of child maltreatment. The department or law enforcement officials shall have access to the results of radiology procedures, video tapes, photographs, or medical records upon request."

SECTION 29. Arkansas Code Annotated Section 12-12-510 is amended to read as follows:

"(a) The person conducting the investigation shall have the right to enter into or upon the home, school, or any other place for the purpose of conducting and interviewing or completing the investigation required by this subchapter.

(b) If necessary access or admission is denied, the department may petition the proper juvenile division of chancery court for an ex parte order of investigation requiring the parent, caretaker, or persons denying access to any place where the child may be to allow entrance for the interviews, examinations, and investigations.

(c) However, upon application to the court by the parents, caretaker, or persons denying access to the child showing good cause, ~~the order may be stayed~~ the court may issue a written order to stay the order of investigation pending a hearing to be held within seventy-two (72) hours.

(d) The department shall investigate all allegations of child maltreatment without regard to the parent's practice of his religious beliefs and shall only consider whether the acts or omissions of the parent are abusive or neglectful as defined by the Arkansas Code.

(e) The person conducting the investigation shall have the right to inspect personnel records of employees and volunteers in any place where an allegation of child maltreatment has been reported as having occurred at that place but the alleged offender is unknown.

(f) The investigator shall have the discretion in the child's best

1 interest to limit the persons allowed to be present when a child is being
2 interviewed concerning allegations of child maltreatment."

3
4 SECTION 30. Arkansas Code 12-12-512 is amended to read as follows:

5 "12-12-512. Child maltreatment investigative determination - Notice of
6 finding - Amendment and appeal.

7 (a) Upon completion of the investigation the department shall determine
8 that the allegations of child maltreatment are:

9 (1) Unsubstantiated: This determination shall be entered when the
10 allegation is not supported by ~~some credible evidence~~ a preponderance of the
11 evidence. There can be no disclosure of unsubstantiated reports except:

12 (A) ~~for~~ For release to the prosecutor for the limited
13 purpose of prosecution of a person who willfully makes false notification
14 pursuant to this subchapter;

15 (B) To a subject of the report; and

16 (C) To a court if the information in the record is
17 necessary for a determination of an issue before the court;

18 (2) True: This determination shall be entered when the allegation
19 is supported by ~~some credible evidence~~ a preponderance of the evidence.

20 (A) A determination of true shall not be entered when a
21 parent, practicing his religious beliefs, does not, for that reason alone,
22 provide medical treatment for a child, but in lieu of such treatment the child
23 is being furnished with treatment by spiritual means alone, through prayer, in
24 accordance with a recognized religious method of healing by an accredited
25 practitioner.

26 (B) Notwithstanding subdivision (a)(2)(A) of this section,
27 the department shall have the authority to pursue any legal remedies,
28 including the authority to initiate legal proceedings in a court of competent
29 jurisdiction, to provide medical care or treatment for a child when such care
30 or treatment is necessary to prevent or remedy serious harm to the child, or
31 to prevent the withholding of medically indicated treatment from child with
32 life-threatening conditions. Except with respect to the withholding of
33 medically indicated treatments from disabled infants with life-threatening
34 conditions, case by case determinations concerning the exercise of authority
35 of this subsection shall be within the sole discretion of the department.

36 (b) If the investigation cannot be completed, the investigation shall

1 be determined incomplete and placed in inactive status.

2 (c)(1)(A) In every case where a report is determined to be true, the
3 department shall notify each subject of the report of the determination.

4 (B) Notification shall be in writing by hand delivery or by
5 certified mail, restricted delivery.

6 (C) Such notification shall include the following:

7 (i) The investigative determination, true or
8 unsubstantiated, exclusive of the source of the notification;

9 (ii) A statement that ~~an adult offender subject the~~
10 person named as the offender of the true report may request an administrative
11 hearing;

12 (iii) A statement that such request must be made to
13 the department within thirty (30) days of receipt of the hand delivery or
14 mailing of the notice of determination; and

15 (iv) The name of the person making notification, his
16 occupation, and where he can be reached.

17 (2) The administrative hearing process must be completed within
18 ninety (90) days from the date of the receipt of the request for a hearing.

19 (3) No action by appeal shall be brought more than two (2) years
20 after the completion of the investigation.

21 (4) When the department conducts such administrative appeal
22 hearings, the chief counsel of the department is authorized to require the
23 attendance of witnesses and the production of books, records, or other
24 documents through the issuance of subpoenas when such testimony or information
25 is necessary to adequately present the position of the Department of Human
26 Services, the investigating protective services agency, or the alleged
27 offender or adult subject of a report.

28 (d) Failure to obey the subpoena may be deemed a contempt, punishable
29 accordingly. "

30
31 SECTION 31. Arkansas Code Annotated 12-12-516(a)(1) is amended to read
32 as follows:

33 "(a)(1) A police officer, a law enforcement official, a Juvenile Court
34 Judge during juvenile proceedings, or a designated employee of the Department
35 of Human Services, may take a child into protective custody, or any person in
36 charge of a hospital or similar institution or any physician treating a child

1 may keep that child in his custody without the consent of the parent or the
 2 guardian, whether or not additional medical treatment is required, if the
 3 circumstances or conditions of the child are such that continuing in his place
 4 of residence or in the care and custody of the parent, guardian or custodian
 5 or caretaker presents an immediate danger of severe maltreatment."

6
 7 SECTION 32. Arkansas Code 9-27-314 is amended to read as follows:

8 "9-27-314. Emergency orders.

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

15 (b) In any case where there is probable cause to believe that an
 16 emergency order is necessary to protect the juvenile from severe maltreatment,
 17 as defined in Arkansas Code 12-12-503(10), the court shall issue an ex parte
 18 order.

19 ~~(b)~~ (c) The emergency order shall include:

20 (1) Notice to the juvenile's parents, custodian, or guardian of
 21 the right to a hearing and that a hearing will be held within five (5)
 22 business days of the issuance of the ex parte order;

23 (2) Their right to be represented by counsel;

24 (3) Their right to obtain appointed counsel if indigent, and the
 25 procedure for obtaining appointed counsel; and

26 (4) The location and telephone number of the court, and the
 27 procedure for obtaining a hearing.

28 ~~(c)~~ (d) Immediate notice of the emergency order shall be given by the
 29 petitioner or by the court to the parents, guardians, or custodian and the
 30 juvenile. All defendants shall be served according to the Arkansas Rules of
 31 Civil Procedure or as otherwise provided by the court."

32
 33 SECTION 33. Arkansas Code 9-27-315(a) is amended to read as follows:

34 "9-27-315. Emergency hearings.

35 (a)(1)(A) Following the issuance of an emergency order ~~removing the~~
 36 ~~custody of a juvenile from a parent, guardian, or custodian,~~ the court shall,

1 within five (5) business days of the issuance of the ex parte order, hold a
2 hearing to determine if probable cause to issue the emergency order continues
3 to exist.

4 (B)(i) The hearing shall be limited to the purpose of
5 determining whether probable cause existed to ~~warrant removal of~~ protect the
6 juvenile and to determine whether probable cause still exists to ~~warrant~~
7 ~~continued removal of~~ protect the juvenile.

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

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

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

19
20 SECTION 34. Arkansas Code 12-12-503 is amended by adding a new
21 subdivision to be appropriately numbered by the Arkansas Code Revision
22 Commission:

23 "'Forcible compulsion' means physical force, intimidation, or a threat,
24 express or implied, of death or physical injury to or kidnapping of any
25 person. If the act was committed against the will of the juvenile, then
26 'forcible compulsion' has been used. The age of the victim and the
27 relationship of the victim to the assailant shall be considered in weighing
28 the sufficiency of the evidence to prove compulsion."

29
30 SECTION 35. Arkansas Code 9-27-303(1)(A) is amended to read as follows:

31 "(A) ~~Is under the age of eighteen~~ Is from birth to the age of eighteen
32 (18), whether married or single;"

33
34 SECTION 36. Arkansas Code 12-12-503(1)(A) is amended to read as
35 follows:

36 "(A) ~~Is under the age of eighteen~~ Is from birth to the age of eighteen

1 (18); "

2

3 SECTION 37. All provisions of this act of a general and permanent
4 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
5 Code Revision Commission shall incorporate the same in the Code.

6

7 SECTION 38. If any provision of this act or the application thereof to
8 any person or circumstance is held invalid, such invalidity shall not affect
9 other provisions or applications of the act which can be given effect without
10 the invalid provision or application, and to this end the provisions of this
11 act are declared to be severable.

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13 SECTION 39. All laws and parts of laws in conflict with this act are
14 hereby repealed.

15

/s/ Madison

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