

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.**

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: H2/23/01*

# A Bill

HOUSE BILL 1806

5 By: Representatives Carson, J. Elliott  
6 By: Senators Mahony, Faris  
7

## For An Act To Be Entitled

10 AN ACT TO AMEND VARIOUS SECTIONS OF THE JUVENILE CODE;  
11 AND FOR OTHER PURPOSES.  
12  
13

### Subtitle

15 AN ACT TO AMEND VARIOUS SECTIONS OF THE  
16 JUVENILE CODE.  
17  
18

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

21 SECTION 1. Arkansas Code § 9-27-306(e) is amended to read as follows:

22 (e) The juvenile court shall have jurisdiction to hear proceedings  
23 commenced in any court of this state or court of comparable jurisdiction of  
24 another state which are transferred to it pursuant to the Uniform Child  
25 Custody Jurisdiction and Enforcement Act, § ~~9-13-201~~ 9-19-101 et seq.  
26

27 SECTION 2. Arkansas Code § 9-27-316 is amended to read as follows:

28 9-27-316. Right to counsel.

29 (a)(1) In delinquency and families in need of services cases, a juvenile  
30 and his parent, guardian, or custodian shall be advised by the law enforcement  
31 official taking a juvenile into custody, by the intake officer at the initial  
32 intake interview, and by the court at the juvenile's first appearance before  
33 the court that the juvenile has the right to be represented at all stages of  
34 the proceedings by counsel.

35 (2) An extended juvenile jurisdiction offender shall have a right  
36 to counsel at every stage of the proceedings, including all reviews.

1 (b)(1)(A) The inquiry concerning the ability of the juvenile to retain  
2 counsel shall include a consideration of the juvenile's financial resources  
3 and the financial resources of his or her family.

4 (B) However, the failure of the juvenile's family to retain  
5 counsel for the juvenile shall not deprive the juvenile of the right to  
6 appointed counsel if required under this section.

7 (2) After review by the court of an affidavit of financial means  
8 completed and verified by the parent of the juvenile and a determination by  
9 the court that the parent or juvenile has the ability to pay, the court may  
10 order financially able juveniles, parents, guardians, or custodians to pay all  
11 or part of reasonable attorney's fees and expenses for representation of a  
12 juvenile.

13 (3) All moneys collected by the clerk of the court under this  
14 subsection shall be retained by the clerk and deposited into a special fund to  
15 be known as the "juvenile court representation fund".

16 (4) The court ~~shall~~ may direct that money from this fund be used  
17 in providing counsel for juveniles with representation by counsel appointed  
18 under this section in delinquency or family in need of services cases and  
19 indigent parents or guardians in dependency-neglect cases as provided by  
20 subsection (h).

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

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

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

33 (e) Appointment of counsel shall be made at a time sufficiently in  
34 advance of the court appearance to allow adequate preparation by appointed  
35 counsel and adequate consultation between the appointed counsel and the  
36 client.

1 (f) Attorney ad litem. (1) The court shall appoint an attorney ad litem  
2 who shall meet standards and qualifications established by the Arkansas  
3 Supreme Court to represent the best interests of the juvenile when a  
4 dependency-neglect petition is filed or when an emergency ex parte order is  
5 entered in a dependency-neglect case, whichever occurs earlier.

6 (2) The court may appoint an attorney ad litem to represent the  
7 best interests of a juvenile involved in any case before the court and shall  
8 consider the juvenile's best interests in determining whether to appoint an  
9 attorney ad litem.

10 (3) Each attorney ad litem:

11 (A) ~~May~~ shall file written motions, responses, or objections  
12 at all stages of the proceedings when necessary to protect the best interests  
13 of the juvenile;

14 (B) Shall attend all hearings and participate in all  
15 telephone conferences with the court unless excused by the court;

16 (C) Shall present witnesses and exhibits when necessary to  
17 protect the juvenile's best interests.

18 (4) An attorney ad litem shall be provided access to all records  
19 relevant to the juvenile's case, including, but not limited to, school  
20 records, medical records, juvenile court records, and Department of Human  
21 Services records, ~~excluding unfounded reports~~ to the extent permitted by  
22 federal law.

23 (5)(A) An attorney ad litem shall represent the best interests of  
24 the juvenile.

25 (B) If the juvenile's wishes differ from the attorney's  
26 determination of the juvenile's best interests, the attorney ad litem shall  
27 communicate the juvenile's wishes to the court in addition to presenting his  
28 determination of the juvenile's best interests.

29 (g) Court-appointed special advocate. (1) The court may appoint a  
30 volunteer court-appointed special advocate from a program which shall meet all  
31 state and national court-appointed special advocate standards ~~provide services~~  
32 to advocate for juveniles ~~for whom the court determines such services~~  
33 ~~appropriate~~ in dependency-neglect proceedings.

34 (2) No court-appointed special advocate shall be assigned a case  
35 before:

36 (A) Completing a training program in compliance with

1 National Court Appointed Special Advocate Association and state standards; and  
2 (B) Being approved by the local court-appointed special  
3 advocate program which will include appropriate criminal background and child  
4 abuse registry checks.

5 (3) Each court-appointed special advocate shall:

6 (A) Investigate the case to which he or she is assigned to  
7 provide independent factual information to the court through the attorney ad  
8 litem or through court testimony and court reports;

9 (i) The court-appointed special advocate may testify  
10 if called as a witness; and

11 (ii) When the court-appointed special advocate  
12 prepares a written report for the court, the advocate shall provide all  
13 parties with a copy of the written report seven (7) business days prior to the  
14 relevant hearing.

15 (B) Monitor the case to which he or she is assigned to  
16 ensure compliance with the court's orders; and

17 (C) Assist the attorney ad litem in representing the  
18 juvenile's best interests.

19 (4) Upon presentation of an order of appointment, a  
20 court-appointed special advocate shall be provided access to all records  
21 relevant to the juvenile's case, including, but not limited to, school  
22 records, medical records, juvenile court records, and Department of Human  
23 Services records to the extent permitted by federal law.

24 (5) ~~(A)~~ A court-appointed special advocate is not a party to the  
25 case to which he or she is assigned and shall not call witnesses or examine  
26 witnesses.

27 ~~(B) The court-appointed special advocate may testify if~~  
28 ~~called as a witness.~~

29 (6) A court-appointed special advocate shall not be liable for  
30 damages for personal injury or property damage, pursuant to §§ 16-6-101 – 16-  
31 6-105.

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

35 (h) Parents' right to counsel.

36 (1) In all proceedings to remove custody from a parent or guardian

1 or to terminate parental rights, the parent or guardian shall be advised, in  
2 the dependency-neglect petition or the ex parte emergency order and the first  
3 appearance before the court, of the right to be represented by counsel at all  
4 stages of the proceedings and the right to appointed counsel if indigent.

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

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

14 (A) All moneys collected by the clerk of the court under  
15 this subsection shall be retained by the clerk and deposited into a special  
16 fund to be known as the "juvenile court representation fund".

17 (B) The court may direct that money from this fund be used  
18 in providing counsel for indigent parents or guardians at the trial level in  
19 dependency-neglect proceedings.

20 (C) Upon a determination of indigency, and a finding by the  
21 court that the "juvenile court representation fund" does not have sufficient  
22 funds to pay reasonable attorney's fees and expenses incurred at the trial  
23 court level and state funds have been exhausted, the court may order the  
24 county to pay such reasonable fees and expenses, until the state provides  
25 funding for such counsel.

26 (4)(A) Appointment of counsel shall be made at a time sufficiently  
27 in advance of the court appearance to allow adequate preparation by appointed  
28 counsel and adequate consultation between the appointed counsel and the  
29 client.

30 (B) When the first appearance before the court is an  
31 emergency hearing to remove custody pursuant to § 9-27-315, parents shall be  
32 notified of the right to appointed counsel if indigent in the emergency ex  
33 parte order.

34 (5) The parent's or guardian's attorney shall be provided access  
35 to all records relevant to the juvenile's case, including, but not limited to,  
36 school records, medical records, juvenile court records, and Department of

1 Human Services records to which they are entitled under state and federal law.  
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3 SECTION 3. Arkansas Code § 9-27-325 is amended to read as follows:  
4 9-27-325. Hearings - Generally.

5 (a)(1)(A) All hearings shall be conducted by the judge without a jury,  
6 except as provided by the Extended Juvenile Jurisdiction Act, § 9-27-501 et  
7 seq.

8 (B) If a juvenile is designated an extended juvenile  
9 jurisdiction offender, the juvenile shall have a right to a jury trial at the  
10 adjudication.

11 (2) The juvenile shall be advised of the right to a jury trial by  
12 the court following a determination that the juvenile will be tried as an  
13 extended juvenile jurisdiction offender.

14 (3) The right to a jury trial may be waived by a juvenile only  
15 after being advised of his rights and after consultation with the juvenile's  
16 attorney.

17 (4) The waiver shall be in writing and signed by the juvenile and  
18 the juvenile's attorney.

19 (b)(1) The ~~juvenile~~ defendant need not file a written responsive  
20 pleading in order to be heard by the court.

21 (2) In dependency-neglect proceedings, retained counsel shall file  
22 a notice of appearance immediately upon acceptance of representation, with a  
23 copy to be served on the petitioner.

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

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

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

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

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

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

35 (d)(1) The court shall be a court of record.

36 (2) A record of all proceedings shall be kept in the same manner

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

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

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

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

12 (h)(1) The petitioner in all proceedings shall bear the burden of  
13 presenting the case at hearings.

14 (2) The following burdens of proof shall apply:

15 (A) Proof beyond a reasonable doubt in delinquency hearings;

16 (B) Proof by a preponderance of the evidence in  
17 dependency-neglect, family in need of services, and probation revocation  
18 hearings;

19 (C) Proof by clear and convincing evidence for hearings to  
20 terminate parental rights and transfer hearings.

21 (i)(1) All hearings involving allegations and reports of child  
22 maltreatment and all hearings involving cases of children in foster care shall  
23 be closed.

24 (2) All other hearings may be closed within the discretion of the  
25 court, except that in delinquency cases the juvenile shall have the right to  
26 an open hearing and in adoption cases the hearings shall be closed as provided  
27 in the Revised Uniform Adoption Act, § 9-9-201 et seq.

28 (j) Except as provided in § 9-27-502, in any juvenile delinquency  
29 proceeding where the juvenile's fitness to proceed is put in issue by any  
30 party or the court, the provisions of § 5-2-301 et seq. shall apply.

31 (k) In delinquency proceedings, juveniles are entitled to all defenses  
32 available to defendants in circuit court.

33 ~~(k)(1)~~ (1) The Department of Human Services shall provide to foster  
34 parents and preadoptive parents of a child in department custody notice of any  
35 review or hearing to be held with respect to the child.

36 (2) Relative caregivers shall be provided notice by the original

1 petitioner in the juvenile matter.

2 (3)(A) The court shall allow foster parents, preadoptive parents,  
3 and relative caregivers an opportunity to be heard in any review or hearing  
4 held with respect to a child in their care.

5 (B) Foster parents, adoptive parents, and relative  
6 caregivers shall not be made parties to the review or hearing solely on the  
7 basis that the persons are entitled to notice and the opportunity to be heard.

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9 SECTION 4. Arkansas Code § 9-27-326(a) is amended to read as follows:

10 (a) If a juvenile is taken into custody on an allegation of delinquency,  
11 violation of probation or violation of a court order, and not released by the  
12 law enforcement officer or intake officer, a detention hearing shall be held  
13 as soon as possible but no later than seventy-two (72) hours after the  
14 juvenile was taken into custody or, if the seventy-two (72) hours ends on a  
15 Saturday, Sunday, or holiday, on the next business day. Otherwise, the  
16 juvenile shall be released.

17

18 SECTION 5. Arkansas Code § 9-27-337(b)(2) and (3) are amended to read  
19 as follows:

20 (2)~~(A)~~ Each six-month review hearing shall be completed and a  
21 written order shall be filed by the court, or by a party or party's attorney  
22 as designated by the court, within thirty (30) days of the date of the hearing  
23 or prior to the next hearing, whichever is sooner.

24 ~~(B) Otherwise, the order to be reviewed shall be deemed~~  
25 ~~vacated pending further proceedings.~~

26 ~~(3) The limitations imposed by this subdivision (b)(2) are not~~  
27 ~~subject to waiver or extension by any party or by the court.~~

28

29 SECTION 6. Arkansas Code § 9-27-401(b) is amended to read as follows:

30 (b) Representation for Children. (1) The Director of the Administrative  
31 Office of the Courts is authorized to employ or enter into professional  
32 service contracts with private individuals or businesses or public agencies to  
33 represent all children in dependency-neglect proceedings.

34 (2)(A) Prior to employing or entering into a contract or  
35 contracts, the Administrative Office of the Courts shall obtain approval from  
36 the juvenile division judge or judges in each judicial district, in accordance



1 with the provisions of §§ 19-4-1701 – 19-4-1713.

2 (B) Those obtaining employment or contracts through the  
3 Administrative Office of the Courts as described in subdivision (b)(3) of this  
4 section will be designated as the provider for representation of children in  
5 dependency-neglect cases in each judicial district.

6 (3)(A) The Administrative Office of the Courts shall advertise  
7 employment and contract opportunities ~~publish requests for proposals in each~~  
8 ~~judicial district.~~

9 (B) The distribution of funds among the judicial districts  
10 shall be based on a formula developed by the Administrative Office of the  
11 Courts and approved by the Juvenile Judges Committee of the Arkansas Judicial  
12 Council.

13 (4) The Arkansas Supreme Court shall adopt standards of practice  
14 and qualifications for service for all attorneys who seek employment or to  
15 ~~receive~~ contracts to provide legal representation to children in  
16 dependency-neglect cases.

17 (5)(A)(i) It is the intent of the General Assembly, in the  
18 transition to a state-funded system of dependency-neglect representation, to  
19 provide an appropriate and adequate level of representation to all children in  
20 dependency-neglect proceedings, as required under federal and state law  
21 pursuant to § 9-27-316.

22 (ii)(a) It is recognized by the General Assembly that  
23 in many areas of the state resources have not been available to support the  
24 requirement of representation for children at the necessary level.

25 (b) It is also recognized, however, that in  
26 other areas, a system has been developed which is appropriately and  
27 successfully serving children and the courts.

28 (iii) With the transition to state funding, it is not  
29 the intent of the General Assembly to adversely affect these systems that are  
30 working well or to put into place a system which is too inflexible to respond  
31 to local needs or restrictions.

32 (B) In its administration of the system, therefore, the  
33 Administrative Office of the Courts is charged with the authority and  
34 responsibility to establish and maintain a system which:

- 35 (i) Equitably serves all areas of the state;
- 36 (ii) Provides quality representation;

1 (iii) Makes prudent use of state resources; and  
2 (iv) Works with those systems now in place to provide  
3 an appropriate level of representation of children and courts in dependency-  
4 neglect cases.

5 /s/ Carson, et al.  
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