

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 8th General Assembly  
3 Regular Session, 2005

# A Bill

SENATE BILL 926

4  
5 By: Senator Madison  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND THE ARKANSAS JUVENILE CODE OF  
10 1989 TO PROVIDE CLARITY AND CONSISTENCY; AND FOR  
11 OTHER PURPOSES.  
12

## Subtitle

13  
14 TO AMEND THE ARKANSAS JUVENILE CODE OF  
15 1989 TO PROVIDE CLARITY AND CONSISTENCY.  
16  
17

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

20 SECTION 1. Arkansas Code § 9-27-303 is amended to read as follows:  
21 9-27-303. Definitions.

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

23 (1) "Abandoned infant" means a juvenile less than nine (9)  
24 months of age and whose parent, guardian, or custodian left the child alone  
25 or in the possession of another person without identifying information or  
26 with an expression of intent by words, actions, or omissions not to return  
27 for the infant;

28 (2) "Abandonment" means the failure of the parent to provide  
29 reasonable support and to maintain regular contact with the juvenile through  
30 statement or contact when the failure is accompanied by an intention on the  
31 part of the parent to permit the condition to continue for an indefinite  
32 period in the future and failure to support or maintain regular contact with  
33 the juvenile without just cause or an articulated intent to forego parental  
34 responsibility;

35 (3)(A) "Abuse" means any of the following acts or omissions by a  
36 parent, guardian, custodian, foster parent, person eighteen (18) years of age



1 or older living in the home with a child, whether related or unrelated to the  
 2 child, or any person who is entrusted with the juvenile's care by a parent,  
 3 guardian, custodian, or foster parent, including, but not limited to, an  
 4 agent or employee of a public or private residential home, child care  
 5 facility, public or private school, or any person legally responsible for the  
 6 juvenile's welfare:

7 (i) Extreme or repeated cruelty to a juvenile;

8 (ii) Engaging in conduct creating a realistic and  
 9 serious threat of death, permanent or temporary disfigurement, or impairment  
 10 of any bodily organ;

11 (iii) Injury to a juvenile's intellectual,  
 12 emotional, or psychological development as evidenced by observable and  
 13 substantial impairment of the juvenile's ability to function within the  
 14 juvenile's normal range of performance and behavior;

15 (iv) Any injury which is at variance with the  
 16 history given;

17 (v) Any nonaccidental physical injury;

18 (vi) Any of the following intentional or knowing  
 19 acts, with physical injury and without justifiable cause:

20 (a) Throwing, kicking, burning, biting, or  
 21 cutting a child;

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

23 (c) Shaking a child; or

24 (d) Striking a child on the face; or

25 (vii) Any of the following intentional or knowing  
 26 acts, with or without physical injury:

27 (a) Striking a child age six (6) or younger on  
 28 the face or head;

29 (b) Shaking a child age three (3) or younger;

30 (c) Interfering with a child's breathing;

31 (d) Urinating or defecating on a child; ~~or~~

32 (e) Pinching, biting, or striking a child in  
 33 the genital area;

34 (f) Without justifiable cause, unreasonably  
 35 restricting a child's mobility, actions, or physical functioning such as  
 36 tying the child to a fixed or heavy object or tying limbs together;

1 (g) Giving a child or permitting a child to  
2 consume or inhale a poisonous or noxious substance not prescribed by a  
3 physician that has the capacity to interfere with normal physiological  
4 functions;

5 (h) Giving a child or permitting a child to  
6 consume or inhale a substance not prescribed by a physician that has the  
7 capacity to alter the mood of the child, including, but not limited to, the  
8 following:

9 (1) Marijuana;

10 (2) Alcohol;

11 (3) Narcotics; or

12 (4) Over-the-counter drugs if an  
13 incorrect dosage or inappropriate drug is knowingly given to a child;

14 (i) Exposing a child to chemicals that have  
15 the capacity to interfere with normal physiological functions, including, but  
16 not limited to, chemicals used or generated during the manufacturing of  
17 methamphetamine; or

18 (j) Subjecting a child to Munchausen Syndrome  
19 by Proxy, also known as factitious illness, when reported and confirmed by  
20 medical personnel or a medical facility.

21 (B)(i) The list in subdivision (3)(A) of this section is  
22 illustrative of unreasonable action and is not intended to be exclusive.

23 (ii) No unreasonable action shall be construed to  
24 permit a finding of abuse without having established the elements of abuse.

25 (C)(i) "Abuse" shall not include physical discipline of a  
26 child when it is reasonable and moderate and is inflicted by a parent, court-  
27 appointed custodian, or court-appointed guardian for purposes of restraining  
28 or correcting the child. Abuse shall not include when a child suffers  
29 transient pain or minor temporary marks as the result of a reasonable  
30 restraint if:

31 (a) The person exercising the restraint is an  
32 employee of an agency licensed or exempted from licensure under the Child  
33 Welfare Agency Licensing Act, § 9-28-401 et seq.;

34 (b) The agency has policy and procedures  
35 regarding restraints;

36 (c) No other alternative exists to control the

1 child except for a restraint;

2 (d) The child is in danger of hurting himself  
3 or herself or others;

4 (e) The person exercising the restraint has  
5 been trained in properly restraining children, deescalation, and conflict  
6 resolution techniques; and

7 (f) The restraint is for a reasonable period  
8 of time.

9 (ii) Reasonable and moderate physical discipline  
10 inflicted by a parent or guardian shall not include any act that is likely to  
11 cause, and which does cause, injury more serious than transient pain or minor  
12 temporary marks.

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

17 (4) "Adjudication hearing" means a hearing to determine whether  
18 the allegations in a petition are substantiated by the proof;

19 (5) "Adult sentence" means punishment authorized by the Arkansas  
20 Criminal Code, § 5-1-101 et seq., subject to the limitations in § 9-27-507,  
21 for the act or acts for which the juvenile was adjudicated delinquent as an  
22 extended juvenile jurisdiction offender;

23 (6) "Aggravated circumstances" means:

24 (A) A child has been abandoned, chronically abused,  
25 subjected to extreme or repeated cruelty, or sexually abused, or a  
26 determination has been made by a judge that there is little likelihood that  
27 services to the family will result in successful reunification; or

28 (B) A child has been removed from the custody of the  
29 parent or guardian and placed in foster care or in the custody of another  
30 person more than three (3) times in the last fifteen (15) months;

31 (7) "Attorney ad litem" means an attorney appointed to represent  
32 the best interest of a juvenile;

33 (8) "Caretaker" means a parent, guardian, custodian, foster  
34 parent, or any person ten (10) years of age or older who is entrusted with a  
35 child's care by a parent, guardian, custodian, or foster parent, including,  
36 but not limited to, an agent or employee of a public or private residential

1 home, child care facility, public or private school, or any person  
 2 responsible for a child's welfare;

3 (9) "Case plan" means a document setting forth the plan for  
 4 services for a juvenile and his or her family, as described in § 9-27-402;

5 (10) "Cash assistance" means short-term financial assistance and  
 6 does not include long-term financial assistance or financial assistance that  
 7 is the equivalent of the board payment or adoption subsidy;

8 ~~(10)~~(11) "Commitment" means an order of the court which places a  
 9 juvenile in the custody of the Division of Youth Services of the Department  
 10 of Human Services for placement in a youth services facility;

11 ~~(11)~~(12) "Court" means the juvenile division of circuit court;

12 ~~(12)~~(13) "Court-appointed special advocate" means a volunteer  
 13 appointed by the court to provide services to juveniles in dependency-neglect  
 14 proceedings;

15 ~~(13)~~(14) "Custodian" means a person, other than a parent or  
 16 legal guardian who stands in loco parentis to the juvenile or a person,  
 17 agency, or institution to whom a court of competent jurisdiction has given  
 18 custody of a juvenile by court order;

19 ~~(14)~~(15) "Delinquent juvenile" means any juvenile:

20 (A) Ten (10) years old or older who has committed an act  
 21 other than a traffic offense or game and fish violation which, if the act had  
 22 been committed by an adult, would subject the adult to prosecution for a  
 23 felony, misdemeanor, or violation under the applicable criminal laws of this  
 24 state or who has violated § 5-73-119; or

25 (B) Any juvenile charged with capital murder, § 5-10-101,  
 26 or murder in the first degree, § 5-10-102, subject to extended juvenile  
 27 jurisdiction;

28 ~~(15)~~(16)(A) "Department" means the Department of Human Services  
 29 and its divisions and programs.

30 (B) Unless otherwise stated in this subchapter, any  
 31 reference to the Department of Human Services shall include all of its  
 32 divisions and programs;

33 ~~(16)~~(17) "Dependent juvenile" means:

34 (A) A child of a parent who is under the age of eighteen  
 35 (18) years and is in the custody of the department;

36 (B) A child whose parent or guardian is incarcerated and

1 the parent or guardian has no appropriate relative or friend willing or able  
 2 to provide care for the child;

3 (C) A child whose parent or guardian is incapacitated,  
 4 whether temporarily or permanently, so that the parent or guardian cannot  
 5 provide care for the juvenile and the parent or guardian has no appropriate  
 6 relative or friend willing or able to provide care for the child;

7 (D) A child whose custodial parent dies and no stand-by  
 8 guardian exists; ~~or~~

9 (E)(i) A child who is an infant relinquished to the  
 10 custody of the department for the sole purpose of adoption; or

11 (ii) A safe-haven baby, § 9-34-201 et seq.; or

12 (F) A child who has disrupted his or her adoption, and the  
 13 adoptive parents have exhausted resources available to them;

14 ~~(17)~~(18)(A) "Dependent-neglected juvenile" means any juvenile  
 15 who is at substantial risk of serious harm as a result of:

- 16 (i) Abandonment;
- 17 (ii) Abuse;
- 18 (iii) Sexual abuse;
- 19 (iv) Sexual exploitation;
- 20 (v) Neglect, or
- 21 (vi) Parental unfitness to the juvenile, a sibling,
- 22 or another juvenile.

23 (B) "Dependent-neglected juvenile" includes dependent  
 24 juveniles;

25 ~~(18)~~(19) "Detention" means the temporary care of a juvenile in a  
 26 physically restricting facility, other than a jail or lock-up used for the  
 27 detention of adults, prior to an adjudication hearing for delinquency or  
 28 pending commitment pursuant to an adjudication of delinquency;

29 ~~(19)~~(20) "Detention hearing" means a hearing held to determine  
 30 whether a juvenile accused or adjudicated of committing a delinquent act or  
 31 acts should be released or held prior to adjudication or disposition;

32 ~~(20)~~(21) "Deviant sexual activity" means any act of sexual  
 33 gratification involving:

34 (A) Penetration, however slight, of the anus or mouth of  
 35 one (1) person by the penis of another person; or

36 (B) Penetration, however slight, of the labia majora or

1 anus of one (1) person by any body member or foreign instrument manipulated  
2 by another person;

3 ~~(21)~~(22) "Disposition hearing" means a hearing held following an  
4 adjudication hearing to determine what action will be taken in delinquency,  
5 family in need of services, or dependency-neglect cases;

6 ~~(22)~~(23) "Extended juvenile jurisdiction offender" means a  
7 juvenile designated to be subject to juvenile disposition and an adult  
8 sentence imposed by the juvenile court;

9 ~~(23)~~(24) "Family in need of services" means any family whose  
10 juvenile evidences behavior which includes, but is not limited to, the  
11 following:

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

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

16 (C) Having absented himself or herself from the juvenile's  
17 home without sufficient cause, permission, or justification;

18 ~~(24)~~(25)(A) "Family services" means relevant services provided  
19 to a juvenile or his or her family, including, but not limited to:

20 (i) Child care;

21 (ii) Homemaker services;

22 (iii) Crisis counseling;

23 (iv) Cash assistance;

24 (v) Transportation;

25 (vi) Family therapy;

26 (vii) Physical, psychiatric, or psychological  
27 evaluation;

28 (viii) Counseling; or

29 (ix) Treatment.

30 (B) Family services are provided in order to:

31 (i) Prevent a juvenile from being removed from a  
32 parent, guardian, or custodian;

33 (ii) Reunite the juvenile with the parent, guardian,  
34 or custodian from whom the juvenile has been removed; or

35 (iii) Implement a permanent plan of adoption,  
36 guardianship, or rehabilitation of the juvenile;

1           ~~(25)~~(26) "Fast track" means that reunification services will not  
2 be provided or will be terminated before twelve (12) months of services;

3           ~~(26)~~(27)(A) "Forcible compulsion" means physical force,  
4 intimidation, or a threat, express or implied, of death, physical injury to,  
5 rape, sexual abuse, or kidnapping of any person.

6                   (B) If the act was committed against the will of the  
7 juvenile, then "forcible compulsion" has been used.

8                   (C) The age, developmental stage, and stature of the  
9 victim and the relationship of the victim to the assailant, as well as the  
10 threat of deprivation of affection, rights, and privileges from the victim by  
11 the assailant shall be considered in weighing the sufficiency of the evidence  
12 to prove compulsion;

13           ~~(27)~~(28) "Guardian" means any person, agency, or institution, as  
14 defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so  
15 appointed;

16           ~~(28)~~(29)(A) "Home study" means a written report which is  
17 obtained after an investigation of a home by the Department of Human Services  
18 or other appropriate persons or agencies and which shall conform to  
19 regulations established by the Department of Human Services.

20                   (B)(i) An in-state home study, excluding the results of a  
21 criminal records check, shall be completed and presented to the requesting  
22 court within thirty (30) working days of the receipt of the request for the  
23 home study.

24                   (ii) The results of the criminal records check shall  
25 be provided to the court as soon as they are received;

26           ~~(29)~~(30) "Indecent exposure" means the exposure by a person of  
27 the person's sexual organs for the purpose of arousing or gratifying the  
28 sexual desire of the person, or of any other person, under circumstances in  
29 which the person knows the conduct is likely to cause affront or alarm;

30           ~~(30)~~(31)(A) "Independence" means a permanency planning hearing  
31 disposition for the juvenile who will not be reunited with his or her family  
32 because another permanent plan is not available; and

33                   (B)(i) A compelling reason exists why termination of  
34 parental rights is not in the juvenile's best interest; or

35                   (ii) The juvenile is being cared for by a relative  
36 and termination of parental rights is not in the best interest of the



1 juvenile;

2 ~~(31)~~(32) "Juvenile" means an individual who:

3 (A) Is from birth to the age of eighteen (18) years,  
4 whether married or single; or

5 (B) Is adjudicated delinquent, a juvenile member of a  
6 family in need of services, dependent or dependent-neglected by the juvenile  
7 division of the circuit court prior to eighteen (18) years of age and for  
8 whom the juvenile division of the circuit court retains jurisdiction;

9 ~~(B)(i) Is under the age of twenty one (21) years, whether~~  
10 ~~married or single, who is adjudicated delinquent for an act committed prior~~  
11 ~~to the age of eighteen (18) years, and for whom the court retains~~  
12 ~~jurisdiction.~~

13 ~~(ii) In no event shall this person remain within the~~  
14 ~~court's jurisdiction past the age of twenty one (21) years; or~~

15 ~~(C)(i) Is adjudicated dependent neglected before reaching~~  
16 ~~the age of eighteen (18) years.~~

17 ~~(ii) The juvenile may ask the court to retain~~  
18 ~~jurisdiction past his or her eighteenth birthday.~~

19 ~~(iii) The court shall grant the request only if the~~  
20 ~~juvenile is engaged in a course of instruction or treatments.~~

21 ~~(iv) The court shall retain jurisdiction only if the~~  
22 ~~juvenile remains in instruction or treatment.~~

23 ~~(v) The court shall dismiss jurisdiction upon~~  
24 ~~request of the juvenile or when the juvenile completes, leaves, or is~~  
25 ~~dismissed from instruction or treatment.~~

26 ~~(vi) In no event shall this person remain within the~~  
27 ~~court's jurisdiction past the age of twenty one (21) years;~~

28 ~~(32)~~(33) "Juvenile detention facility" means any facility for  
29 the temporary care of juveniles alleged to be delinquent, or adjudicated  
30 delinquent and awaiting disposition, who require secure custody in a  
31 physically restricting facility designed and operated with all entrances and  
32 exits under the exclusive control of the facility's staff, so that a juvenile  
33 may not leave the facility unsupervised or without permission;

34 ~~(33)~~(34) "Law enforcement officer" means any public servant  
35 vested by law with a duty to maintain public order or to make arrests for  
36 offenses;

1           ~~(34)~~(35) "Miranda rights" means the requirement set out in  
2 Miranda v. Arizona, 384 US 436 (1966), for law enforcement officers to  
3 clearly inform an accused, including a juvenile taken into custody for a  
4 delinquent act or a criminal offense, that the juvenile has the right to  
5 remain silent, that anything the juvenile says will be used against him or  
6 her in court, that the juvenile has the right to consult with a lawyer and to  
7 have the lawyer with him or her during interrogation, and that, if the  
8 juvenile is indigent, a lawyer will be appointed to represent him or her;

9           ~~(35)~~(36) "Neglect" means those acts or omissions of a parent,  
10 guardian, custodian, foster parent, or any person who is entrusted with the  
11 juvenile's care by a parent, custodian, guardian, or foster parent,  
12 including, but not limited to, an agent or employee of a public or private  
13 residential home, child care facility, public or private school, or any  
14 person legally responsible under state law for the juvenile's welfare, which  
15 constitute:

16                   (A) Failure or refusal to prevent the abuse of the  
17 juvenile when the person knows or has reasonable cause to know the juvenile  
18 is or has been abused;

19                   (B) Failure or refusal to provide the necessary food,  
20 clothing, sanitary shelter, and education required by law, excluding failure  
21 to follow an individualized education program, or medical treatment necessary  
22 for the juvenile's well-being, except when the failure or refusal is caused  
23 primarily by the financial inability of the person legally responsible and no  
24 services for relief have been offered ~~or rejected~~;

25                   (C) Failure to take reasonable action to protect the  
26 juvenile from environmental health hazards, abandonment, abuse, sexual abuse,  
27 sexual exploitation, neglect, or parental unfitness where the existence of  
28 this condition was known or should have been known;

29                   (D) Failure or irremediable inability to provide for the  
30 essential and necessary physical, mental, or emotional needs of the juvenile,  
31 including failure to provide a shelter that does not pose a risk to the  
32 health or safety of the juvenile;

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

36                   (F) Failure, although able, to assume responsibility for

1 the care and custody of the juvenile or to participate in a plan to assume  
2 the responsibility; or

3 (G) Failure to appropriately supervise the juvenile which  
4 results in the juvenile's being left alone at an inappropriate age or in  
5 inappropriate circumstances, creating a dangerous situation or situation that  
6 puts the juvenile at risk of harm which put the juvenile in danger;

7 ~~(36)~~(37)(A) "Notice of hearing" means a notice which describes  
8 the nature of the hearing, the time, date, and place of hearing, the right to  
9 be present, heard, and represented by counsel, and instructions on how to  
10 apply to the court for appointment of counsel if indigent, or a uniform  
11 notice as developed and prescribed by the Arkansas Supreme Court.

12 (B) The notice of hearing shall be served in the manner  
13 provided for service under the Arkansas Rules of Civil Procedure;

14 ~~(37)~~(38) "Order to appear" means an order issued by the court  
15 directing a person who may be subject to the court's jurisdiction to appear  
16 before the court at a date and time as set forth in the order;

17 ~~(38)~~(39)(A) "Out-of-home placement" means:

18 (i) Placement in a home or facility other than  
19 placement in a youth services center, a detention facility, or the home of a  
20 parent or guardian of the juvenile; or

21 (ii) Placement in the home of an individual other  
22 than a parent or guardian, not including any placement where the court has  
23 ordered that the placement be made permanent and ordered that no further  
24 reunification services or six-month reviews are required.

25 (B) "Out-of-home placement" shall not include placement in  
26 a youth services center or detention facility as a result of a finding of  
27 delinquency;

28 ~~(39)~~(40) "Parent" means a biological mother, an adoptive parent,  
29 or a man to whom the biological mother was married at the time of conception  
30 or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-  
31 120 or who has been found by a court of competent jurisdiction to be the  
32 biological father of the juvenile;

33 ~~(40)~~(41) "Paternity hearing" means a proceeding brought pursuant  
34 to bastardy jurisdiction to determine the biological father of a juvenile;

35 ~~(41)~~(42) "Pornography" means:

36 ~~(A) Obscene or licentious material, including pictures,~~

1 ~~movies, and videos, lacking serious literary, artistic, political, or~~  
 2 ~~scientific value, which when taken as a whole and applying contemporary~~  
 3 ~~community standards would appear to the average person to appeal to the~~  
 4 ~~prurient interest; or~~

5 ~~(B) Material that depicts sexual conduct in a patently~~  
 6 ~~offensive manner lacking serious literary, artistic, political, or scientific~~  
 7 ~~value;~~

8 (A) Pictures, movies, and videos lacking serious literary,  
 9 artistic, political, or scientific value that when taken as a whole and  
 10 applying contemporary community standards would appear to the average person  
 11 to appeal to the prurient interest;

12 (B) Material that depicts sexual conduct in a patently  
 13 offensive manner lacking serious literary, artistic, political, or scientific  
 14 value; or

15 (C) Obscene or licentious material;

16 ~~(42)-(43)~~ (A) "Predisposition report" means a report concerning  
 17 the juvenile, the family of the juvenile, all possible disposition  
 18 alternatives, the location of the school in which the juvenile is or was last  
 19 enrolled, whether the juvenile has been tested for or has been found to have  
 20 any disability, the name of the juvenile's attorney, and, if appointed by the  
 21 court, the date of the appointment, any participation by the juvenile or his  
 22 or her family in counseling services previously or currently being provided  
 23 in conjunction with adjudication of the juvenile, and any other matters  
 24 relevant to the efforts to provide treatment to the juvenile or the need for  
 25 treatment of the juvenile or the family.

26 (B) The predisposition report shall include a home study  
 27 of any out-of-home placement which may be part of the disposition;

28 ~~(43)-(44)~~ "Prosecuting attorney" means an attorney who is elected  
 29 as district prosecuting attorney, the duly appointed deputy prosecuting  
 30 attorney, or any city prosecuting attorney;

31 ~~(44)-(45)~~ "Putative father" means any man not deemed or  
 32 adjudicated under the laws of the jurisdiction of the United States to be the  
 33 biological father of a juvenile who claims or is alleged to be the biological  
 34 father of the juvenile;

35 ~~(45)-(46)~~ (A)(i) "Reasonable efforts" means efforts to preserve  
 36 the family prior to the placement of a child in foster care to prevent the

1 need for removing the child from his or her home and efforts to reunify a  
2 family made after a child is placed out of home to make it possible for him  
3 or her to safely return home.

4 (ii) Reasonable efforts shall also be made to obtain  
5 permanency for a child who has been in an out-of-home placement for more than  
6 twelve (12) months or for fifteen (15) of the previous twenty-two (22)  
7 months.

8 (iii) In determining whether or not to remove a  
9 child from a home or return a child back to a home, the child's health and  
10 safety shall be the paramount concern.

11 (iv) The Department of Human Services or other  
12 appropriate agency shall exercise reasonable diligence and care to utilize  
13 all available services related to meeting the needs of the juvenile and the  
14 family.

15 (B) The juvenile division of circuit court may deem that  
16 reasonable efforts have been made when the juvenile division of circuit court  
17 has found the first contact by the department occurred during an emergency in  
18 which the child could not safely remain at home, even with reasonable  
19 services being provided.

20 (C) Reasonable efforts to reunite a child with his or her  
21 parent or parents shall not be required in all cases. Specifically,  
22 reunification shall not be required if a court of competent jurisdiction,  
23 including the juvenile division of circuit court, has determined by clear and  
24 convincing evidence that the parent has:

25 (i) Subjected the child to aggravated circumstances;

26 (ii) Committed murder of any child;

27 (iii) Committed voluntary manslaughter of any child;

28 (iv) Aided or abetted, attempted, conspired, or  
29 solicited to commit such a murder or such a voluntary manslaughter;

30 (v) Committed a felony battery or assault that  
31 results in serious bodily injury to any child; or

32 (vi) Had the parental rights involuntarily  
33 terminated as to a sibling of the child; or

34 (vii) Abandoned an infant as defined in subdivision  
35 (1) of this section.

36 (D) Reasonable efforts to place a child for adoption or

1 with a legal guardian or permanent custodian may be made concurrently with  
 2 reasonable efforts to reunite a child with his or her family;

3 (47) "Residence" means:

4 (A) The place where the juvenile is domiciled; or

5 (B) The permanent place of abode where the juvenile spends  
 6 an aggregate of more than six (6) months of the year;

7 ~~(46)~~(48) (A) "Restitution" means actual economic loss sustained

8 by an individual or entity as a proximate result of the delinquent acts of a  
 9 juvenile.

10 (B) Such economic loss shall include, but not be limited  
 11 to, medical expenses, funeral expenses, expenses incurred for counseling  
 12 services, lost wages, and expenses for repair or replacement of property;

13 ~~(47)~~(49) "Sexual abuse" means:

14 (A) By a person ten (10) years of age or older to a person  
 15 younger than eighteen (18) years of age:

16 (i) Sexual intercourse, deviate sexual activity, or  
 17 sexual contact by forcible compulsion;

18 (ii) Attempted sexual intercourse or deviate sexual  
 19 activity or sexual contact by forcible compulsion;

20 (iii) Indecent exposure; or

21 (iv) Forcing the watching of pornography or live  
 22 human sexual activity;

23 (B) By a person eighteen (18) years of age or older to a  
 24 person not his or her spouse who is younger than sixteen (16) years of age:

25 (i) Sexual intercourse, deviate sexual activity, or  
 26 sexual contact ~~or solicitation;~~ or

27 (ii) Attempted sexual intercourse, deviate sexual  
 28 activity, or sexual contact;

29 (C) By a sibling or caretaker to a person younger than  
 30 eighteen (18) years of age:

31 (i) Sexual intercourse, deviate sexual activity, or  
 32 sexual contact ~~or solicitation;~~ or

33 (ii) Attempted sexual intercourse, deviate sexual  
 34 activity, or sexual contact; or

35 (D) By a caretaker to a person younger than eighteen (18)  
 36 years of age:

1 (i) Forcing or encouraging the watching of  
 2 pornography; or

3 (ii) Forcing, permitting, or encouraging the  
 4 watching of live sexual activity; or

5 (E) By a person younger than ten (10) years of age to a  
 6 person younger than eighteen (18) years of age:

7 (i) Sexual intercourse, deviate sexual activity, or  
 8 sexual contact by forcible compulsion; or

9 (ii) Attempted sexual intercourse, deviate sexual  
 10 activity, or sexual contact by forcible compulsion;

11 ~~(48)-(50)~~(A)(i) "Sexual contact" means any act of sexual  
 12 gratification involving:

13 (a) the The touching, directly or through  
 14 clothing, of the sex organs, buttocks, or anus of a person or the breast of a  
 15 female;

16 ~~(ii)~~(b) The encouraging of the juvenile to  
 17 touch the offender in a sexual manner; or

18 (c) The offender requesting to touch the  
 19 juvenile in a sexual manner.

20 (ii) Evidence of sexual gratification may be inferred  
 21 from the attendant circumstances surrounding the investigation of the  
 22 specific complaint of child maltreatment.

23 (B) Nothing in this section shall permit normal,  
 24 affectionate hugging to be construed as sexual contact;

25 ~~(49)-(51)~~ "Sexual exploitation" includes:

26 (A) ~~allowing~~ Allowing, permitting, or encouraging  
 27 participation or depiction of the juvenile in:

28 (i) prostitution, Prostitution;

29 (ii) obscene Obscene photographing; or

30 (iii) Obscene filming; or

31 (B) ~~obscenely~~ Obscenely depicting, obscenely posing, or  
 32 obscenely posturing a juvenile for any use or purpose;

33 ~~(50)-(52)~~ "Shelter care" means the temporary care of a juvenile  
 34 in physically unrestricking facilities pursuant to an order for placement  
 35 pending or pursuant to an adjudication of dependency-neglect or family in  
 36 need of services;

1           ~~(51)~~(53) "Trial placement" means that custody of the juvenile  
 2 remains with the department, but the juvenile is returned to the home of a  
 3 parent for a period not to exceed thirty (30) days;

4           ~~(52)~~(54) "UCCJA" means the Uniform Child Custody Jurisdiction  
 5 Act, § 9-13-201 et seq. [repealed];

6           ~~(53)~~ "UCCJEA" means the Uniform Child Custody Jurisdiction and  
 7 Enforcement Act, § 9-19-101 et seq.;

8           ~~(54)~~(55) "UIFSA" means the Uniform Interstate Family Support  
 9 Act, § 9-17-101 et seq.;

10          ~~(55)~~(56) "Victim" means any person or entity entitled to  
 11 restitution as defined in subdivision (46) of this section as the result of a  
 12 delinquent act committed by a juvenile adjudicated delinquent;

13          ~~(56)~~(57) "Voluntary relinquishment of custody" means a written  
 14 agreement between a parent and the Department of Human Services for the  
 15 temporary placement of a child in an out-of-home placement pursuant to § 9-  
 16 27-340 [repealed];

17          ~~(57)~~(58) "Youth services center" means a youth services facility  
 18 operated by the state or a contract provider; and

19          ~~(58)~~(59) "Youth services facility" means a facility, operated by  
 20 the state or its designee, for the care of juveniles who have been  
 21 adjudicated delinquent or convicted of a crime and who require secure custody  
 22 in either a physically restrictive facility or a staff-secured facility  
 23 operated so that a juvenile may not leave the facility unsupervised or  
 24 without supervision.

25  
 26           SECTION 2. Arkansas Code § 9-27-306 is amended to read as follows:  
 27           9-27-306. Jurisdiction.

28           (a)(1) The circuit court shall have exclusive original jurisdiction of  
 29 and shall be the sole court for the following proceedings governed by this  
 30 subchapter including, but not limited to:

31                   (A) Proceedings in which a juvenile is alleged to be  
 32 delinquent or dependent-neglected as defined in this subchapter;

33                   (B) Proceedings in which emergency custody or a seventy-  
 34 two (72) hour hold has been taken on a juvenile pursuant to § 9-27-313 or §  
 35 12-12-516;

36                   (C) Proceedings in which a family is alleged to be in need



1 of services as defined in this subchapter;

2 (D) Proceedings for termination of parental rights for a  
3 juvenile who is under the jurisdiction of the circuit court; ~~and~~

4 (E) Proceedings in which custody of a juvenile is  
5 transferred to the Department of Human Services; and

6 (F) Custodial placement proceedings filed by the  
7 Department of Human Services in interference with custody actions pursuant to  
8 § 5-26-502.

9 (2) No court shall enter an order taking custody from the  
10 Department of Human Services when the department has exercised a seventy-two-  
11 hour hold on a juvenile pursuant to § 9-27-313 or § 12-12-516 without the  
12 express and written consent of the department, except for writs of habeas  
13 corpus or orders issued pursuant to a dependency-neglect petition filed by  
14 the department.

15 ~~(2)(3)~~ The court shall retain jurisdiction to issue orders of  
16 adoption, interlocutory, or final if a juvenile is placed outside the State  
17 of Arkansas.

18 (b) The assignment of cases to the juvenile division of circuit court  
19 shall be as described by the Supreme Court in Administrative Order Number 14,  
20 originally issued April 6, 2001.

21 (c)(1) The circuit court shall have concurrent jurisdiction with the  
22 district court over juvenile curfew violations.

23 (2) For juvenile curfew violations, the prosecutor may file a  
24 family in need of services petition in circuit court or a citation in  
25 district court.

26 (d) The circuit court shall have jurisdiction to hear proceedings  
27 commenced in any court of this state or court of comparable jurisdiction of  
28 another state which are transferred to it pursuant to the Uniform Child-  
29 Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

30

31 SECTION 3. Arkansas Code § 9-27-307 is amended to read as follows:  
32 9-27-307. Venue.

33 (a)(1)(A) Except as set forth in subdivisions (a)(2)-(4) of this  
34 section, a proceeding under this subchapter shall be commenced in the circuit  
35 court of the county in which the juvenile resides.

36 (B) No dependency-neglect proceeding shall be dismissed if

1 a proceeding is filed in the incorrect county. If the proceeding is filed in  
 2 the incorrect county, then the dependency-neglect proceeding shall be  
 3 transferred to the proper county upon discovery of the proper county of  
 4 residence of the juvenile.

5 (2) Proceedings may be commenced in the county where the alleged  
 6 act or omission occurred in any of the following:

- 7 (A) Nonsupport after establishment of paternity;
- 8 (B) Delinquency; or
- 9 (C) Dependency-neglect.

10 (3) Proceedings under the Uniform Child-Custody Jurisdiction and  
 11 Enforcement Act, § 9-19-101 et seq., shall be commenced in the court provided  
 12 by that subchapter.

13 (4) Adoptions and guardianships may be filed in a juvenile court  
 14 that has previously asserted continuing jurisdiction of the juvenile.

15 (5) Juvenile proceedings shall comply with § 16-13-210, except  
 16 detention hearings under § 9-27-326 and probable cause hearings under § 9-27-  
 17 315.

18 (b)(1) Following adjudication, the court may on its own motion or on  
 19 motion of any party transfer the case to the county of the juvenile's  
 20 residence when the provisions of the Uniform Child-Custody Jurisdiction and  
 21 Enforcement Act, § 9-19-101 et seq., do not apply.

22 (2) The court shall not transfer any case in which a petition to  
 23 terminate parental rights has been filed unless the court has taken final  
 24 action on the petition.

25  
 26 SECTION 4. Arkansas Code § 9-27-310 is amended to read as follows:  
 27 9-27-310. Commencement of proceedings.

28 (a) Proceedings shall be commenced by filing a petition with the clerk  
 29 of the circuit court or by transfer by another court.

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

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

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

1 (A) Any adult; or  
2 (B) Any member ten (10) years old or older of the  
3 immediate family alleged to be in need of services.

4 (4) Petitions for paternity establishment may be filed by:  
5 (A) The biological mother;  
6 (B) A putative father;  
7 (C) A juvenile; or  
8 (D) The Office of Child Support Enforcement of the Revenue  
9 Division of the Department of Finance and Administration.

10 (c) Concurrent with filing, a copy of any petition that requests that  
11 the Department of Human Services take custody or provide family services  
12 shall be mailed to the Director of the Department of Human Services and to  
13 the local Office of Chief Counsel of the Department of Human Services  
14 attorney by the petitioner.

15 (d)(1) Any person may submit to the intake officer for investigation a  
16 complaint of acts or omissions that if substantiated would constitute  
17 delinquency.

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

20 (e) No fees, including, but not limited to, fees for filings, copying,  
21 or faxing, including petitions for adoption and guardianships, summons, or  
22 subpoenas shall be charged or collected by the clerk or sheriffs' offices in  
23 cases brought in the circuit court under this subchapter by a governmental  
24 entity or nonprofit corporation, including, but not limited to, the  
25 prosecuting attorney, an attorney ad litem appointed in a dependency-neglect  
26 case, or the Department of Human Services.

27 (f) If the clerk's office has a facsimile machine, the clerk, in cases  
28 commenced in the circuit court under this subchapter by a governmental entity  
29 or nonprofit corporation, including, but not limited to, the prosecuting  
30 attorney, an attorney ad litem appointed in a dependency-neglect case, or the  
31 Department of Human Services, shall accept facsimile transmissions of any  
32 papers filed under this subchapter as described in Rule 5 of the Arkansas  
33 Rules of Civil Procedure.

34  
35 SECTION 5. Arkansas Code § 9-27-313(f) is amended to read as follows:  
36 9-27-313. Taking into custody.

1 (a)(1) A juvenile may be taken into custody without a warrant before  
2 service upon him or her of a petition and notice of hearing or order to  
3 appear as set out under § 9-27-312, only:

4 (A) Pursuant to an order of the circuit court under this  
5 subchapter;

6 (B) By a law enforcement officer without a warrant under  
7 circumstances as set forth in the Arkansas Rules of Criminal Procedure, Rule  
8 4.1; or

9 (C) By a law enforcement officer or by a duly authorized  
10 representative of the Department of Human Services if there are clear,  
11 reasonable grounds to conclude that the juvenile is in immediate danger and  
12 that removal is necessary to prevent serious harm from his or her  
13 surroundings or from illness or injury and if parents, guardians, or others  
14 with authority to act are unavailable or have not taken action necessary to  
15 protect the juvenile from the danger and there is not time to petition for  
16 and to obtain an order of the court before taking the juvenile into custody.

17 (2) When any juvenile is taken into custody without a warrant,  
18 the officer taking the juvenile into custody shall immediately make every  
19 effort possible to notify the custodial parent, guardian, or custodian of the  
20 juvenile's location.

21 (b)(1) When any juvenile is taken into custody pursuant to a warrant,  
22 the officer taking the juvenile into custody shall immediately take the  
23 juvenile before the judge of the division of circuit court out of which the  
24 warrant was issued and make every effort possible to notify the custodial  
25 parent, guardian, or custodian of the juvenile's location.

26 (2) The judge shall decide whether the juvenile should be tried  
27 as a delinquent or a criminal defendant pursuant to § 9-27-318.

28 (c) When a law enforcement officer, a representative of the  
29 department, or other authorized person takes custody of a juvenile alleged to  
30 be dependent-neglected or pursuant to the Arkansas Child Maltreatment Act, §  
31 12-12-501 et seq., he or she shall:

32 (1)(A) Notify the department and make every possible effort to  
33 notify the custodial parent, guardian, or custodian of the juvenile's  
34 location.

35 (B) The notification to the parents shall be in writing  
36 and shall include a notice:

1 (i) That the juvenile has been taken into foster  
2 care;

3 (ii) Of the name, location, and phone number of the  
4 person at the department whom they can contact about the juvenile;

5 (iii) Of the juvenile's and parents' rights to  
6 receive a copy of any petition filed under this subchapter;

7 (iv) Of the location and telephone number of the  
8 court; and

9 (v) Of the procedure for obtaining a hearing; or

10 (2) Return the juvenile to his or her home.

11 (d)(1)(A) A law enforcement officer shall take a juvenile to  
12 detention, immediately make every effort to notify the custodial parent,  
13 guardian, or custodian of the juvenile's location, and notify the juvenile  
14 intake officer within twenty-four (24) hours so that a petition may be filed  
15 if a juvenile is taken into custody for:

16 (i) Unlawful possession of a handgun, § 5-73-  
17 119(a)(1)(A);

18 (ii) Possession of a handgun on school property, §  
19 5-73-119(a)(2)(A);

20 (iii) Unlawful discharge of a firearm from a  
21 vehicle, § 5-74-107;

22 (iv) Any felony committed while armed with a  
23 firearm; or

24 (v) Criminal use of a prohibited weapon, § 5-73-104.

25 (B) The authority of a juvenile intake officer to make a  
26 detention decision pursuant to § 9-27-322 shall not apply when a juvenile is  
27 detained pursuant to subdivision (d)(1)(A) of this section.

28 (C) A detention hearing shall be held by the court  
29 pursuant to § 9-27-326 within seventy-two (72) hours after the juvenile is  
30 taken into custody or, if the seventy-two (72) hours ends on a Saturday,  
31 Sunday, or holiday, on the next business day.

32 (2) If a juvenile is taken into custody for an act that would be  
33 a felony if committed by an adult, other than a felony listed in subdivision  
34 (d)(1)(A) of this section, the law enforcement officer shall immediately make  
35 every effort possible to notify the custodial parent, guardian, or custodian  
36 of the juvenile's location and may:

1 (A)(i) Take the juvenile to detention.

2 (ii) The intake officer shall be notified  
3 immediately to make a detention decision pursuant to § 9-27-322 within  
4 twenty-four (24) hours of the time the juvenile was first taken into custody,  
5 and the prosecuting attorney shall be notified within twenty-four (24) hours.

6 (iii) If the juvenile remains in detention, a  
7 detention hearing shall be held no later than seventy-two (72) hours after  
8 the juvenile is taken into custody or, if the seventy-two (72) hours ends on  
9 a Saturday, Sunday, or holiday, on the next business day;

10 (B) Pursuant to the Arkansas Rules of Criminal Procedure,  
11 issue a citation for the juvenile and his or her parents to appear for a  
12 first appearance before the circuit court and release the juvenile and,  
13 within twenty-four (24) hours, notify the juvenile intake officer and the  
14 prosecuting attorney so that a petition may be filed under this subchapter;  
15 or

16 (C) Return the juvenile to his or her home.

17 (3) If a juvenile is taken into custody for an act that would be  
18 a misdemeanor if committed by an adult, the law enforcement officer shall  
19 immediately make every effort possible to notify the custodial parent,  
20 guardian, or custodian of the juvenile's location and may:

21 (A) Notify the juvenile intake officer, who shall make a  
22 detention decision pursuant to § 9-27-322; or

23 (B) Pursuant to the Arkansas Rules of Criminal Procedure,  
24 issue a citation for the juvenile and his or her parents to appear for a  
25 first appearance before the circuit court and release the juvenile and,  
26 within twenty-four (24) hours, notify the juvenile intake officer and the  
27 prosecuting attorney so that a petition may be filed under this subchapter;  
28 or

29 (C) Return the juvenile to his or her home.

30 (4)(A) In all instances when a juvenile may be detained, the  
31 juvenile may be held in a juvenile detention facility or a seventy-two-hour  
32 holdover if a bed is available in the facility or holdover.

33 (B) If not, an adult jail or lock-up may be used, as  
34 provided by § 9-27-336.

35 (5) In all instances when a juvenile may be detained, the intake  
36 officer shall immediately make every effort possible to notify the juvenile's

1 custodial parent, guardian, or custodian.

2 (e) When a law enforcement officer takes custody of a juvenile under  
3 this subchapter for reasons other than those specified in subsection (c) of  
4 this section concerning dependent-neglected juveniles or subsection (d) of  
5 this section concerning delinquency, he or she shall:

6 (1)(A)(i) Take the juvenile to shelter care, notify the  
7 department and the intake officer of the circuit court, and immediately make  
8 every possible effort to notify the custodial parent, guardian, or custodian  
9 of the juvenile's location.

10 (ii) The notification to parents shall be in writing  
11 and shall include a notice of the location of the juvenile, of the juvenile's  
12 and parents' rights to receive a copy of any petition filed under this  
13 subchapter, of the location and telephone number of the court, and of the  
14 procedure for obtaining a hearing.

15 (B)(i) In cases when the parent, guardian, or other person  
16 contacted lives beyond a fifty-mile driving distance or out-of-state and the  
17 juvenile has been absent from his or her home or domicile for more than  
18 twenty-four (24) hours, the juvenile may be held in custody in a juvenile  
19 detention facility for purposes of identification, processing, or arranging  
20 for release or transfer to an alternative facility.

21 (ii) The holding shall be limited to the minimum  
22 time necessary to complete these actions and shall not occur in any facility  
23 utilized for incarceration of adults.

24 (iii) A juvenile held under subdivision (e)(1)(B) of  
25 this section must be separated from detained juveniles charged or held for  
26 delinquency.

27 (iv) A juvenile may not be held under subdivision  
28 (e)(1)(B) of this section for more than six (6) hours if the parent,  
29 guardian, or other person contacted lives in the state or twenty-four (24)  
30 hours, excluding weekends and holidays, if the parent, guardian, or other  
31 person contacted lives out-of-state; or

32 (2) Return the juvenile to his or her home.

33 (f) If no delinquency petition to adjudicate a juvenile taken into  
34 custody is filed within twenty-four (24) hours after a detention hearing or  
35 ninety-six (96) hours after an alleged delinquent juvenile is taken into  
36 custody, whichever is sooner, the alleged delinquent juvenile shall be

1 discharged from custody, detention, or shelter care.

2  
 3 SECTION 6. Arkansas Code § 9-27-314(a), regarding emergency orders, is  
 4 amended to read as follows:

5 (a)(1) In any case ~~where~~ in which there is probable cause to believe  
 6 that immediate emergency custody is necessary to protect the health or  
 7 physical well-being of the juvenile from immediate danger or to prevent the  
 8 juvenile’s removal from the state, the court shall issue an ex parte order  
 9 for emergency custody to remove the juvenile from the custody of the parent,  
 10 guardian, or custodian and shall determine the appropriate plan for placement  
 11 of the juvenile.

12 (2) In any case ~~where~~ in which there is probable cause to  
 13 believe that an emergency order is necessary to protect the juvenile from  
 14 severe maltreatment, as defined in § 12-12-503(16), the court shall issue an  
 15 ex parte order to provide specific appropriate safeguards for the protection  
 16 of the juvenile if the alleged offender has a legal right to custody or  
 17 visitation with the juvenile or a property right allowing access to the home  
 18 where the juvenile resides.

19 (3) In any case in which there is probable cause to believe that  
 20 a juvenile is a dependent juvenile as defined in this subchapter, the court  
 21 shall issue an ex parte order for emergency custody placing custody of the  
 22 dependent juvenile with the department.

23  
 24 SECTION 7. Arkansas Code § 9-27-315 is amended to read as follows:  
 25 9-27-315. Probable cause hearing.

26 (a)(1)(A) Following the issuance of an emergency order, the circuit  
 27 court shall within five (5) business days of the issuance of the ex parte  
 28 order hold a probable cause hearing to determine if probable cause to issue  
 29 the emergency order continues to exist.

30 (B)(i) The hearing shall be limited to the purpose of  
 31 determining whether probable cause existed to protect the juvenile and to  
 32 determine whether probable cause still exists to protect the juvenile.

33 (ii) Provided, however, that issues as to custody  
 34 and delivery of services may be considered by the court and appropriate  
 35 orders for that entered by the court.

36 (2)(A) All other issues, with the exception of custody and



1 services, shall be reserved for hearing by the court at the adjudication  
 2 hearing, which shall be a separate hearing conducted subsequent to the  
 3 probable cause hearing.

4 (B) By agreement of the parties and with the court's  
 5 approval, the adjudication hearing may be conducted at any time after the  
 6 probable cause hearing, subject to § 9-27-327(a)(1)(B).

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

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

13 (d)(1) At the probable cause hearing, the court shall set the time and  
 14 date for the adjudication hearing.

15 (2) If the juvenile has already been adjudicated a dependent  
 16 juvenile or a dependent-neglected juvenile in the same case in which the  
 17 motion for change of custody has been filed and the case has not been  
 18 dismissed or closed, a subsequent adjudication shall not be necessary if the  
 19 ground for the removal is the same type as the ground already adjudicated.

20 ~~(2)(3)~~ A written order shall be filed by the court or by a party  
 21 or party's attorney, as designated by the court, within thirty (30) days of  
 22 the date of the hearing or prior to the next hearing, whichever is sooner.

23 (e) All probable cause hearings are miscellaneous hearings as defined  
 24 in Rule 1101(b)(3) of the Arkansas Rules of Evidence, and the rules of  
 25 evidence, including, but not limited to, the Hearsay rule, Rule 802 of the  
 26 Arkansas Rules of Evidence, are not applicable.

27  
 28 SECTION 8. Arkansas Code § 9-27-316 is amended to read as follows:  
 29 9-27-316. Right to counsel.

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

36 (2) An extended juvenile jurisdiction offender shall have a

1 right to counsel at every stage of the proceedings, including all reviews.

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

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

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

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

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

21 (5) Any money remaining in the fund at the end of the fiscal  
22 year shall not revert to any other fund but shall carry over into the next  
23 fiscal year in the juvenile 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)(1) The court shall appoint an attorney ad litem who shall meet  
2 standards and qualifications established by the Arkansas Supreme Court to  
3 represent the best interests of the juvenile when a dependency-neglect  
4 petition is filed or when an emergency ex parte order is entered in a  
5 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) 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; and

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, all court records relating to the juvenile and his  
21 or her family, and records of the Department of Human Services to the extent  
22 permitted by federal law.

23 (5)(A) An attorney ad litem shall represent the best interests  
24 of 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 or her determination of the juvenile's best interests.

29 (g)(1) The court may appoint a volunteer court-appointed special  
30 advocate from a program that shall meet all state and national court-  
31 appointed special advocate standards to advocate for the best interest of  
32 juveniles in dependency-neglect proceedings.

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

35 (A) Completing a training program in compliance with  
36 National Court Appointed Special Advocate Association and state standards;

1 and

2 (B) Being approved by the local court-appointed special  
3 advocate program, which will include appropriate criminal background and  
4 child abuse registry checks.

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

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

9 (ii) The court-appointed special advocate may  
10 testify if called as a witness.

11 (iii) When the court-appointed special advocate  
12 prepares a written report for the court, the advocate shall provide all  
13 parties or the attorney of record with a copy of the written report seven (7)  
14 business days before the relevant hearing; and

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

17 (4) Upon presentation of an order of appointment, a court-  
18 appointed special advocate shall be provided access to all records relevant  
19 to the juvenile's case, including, but not limited to, school records,  
20 medical records, all court records relating to the juvenile and his or her  
21 family, and department records to the extent permitted by federal law.

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

25 (6) A court-appointed special advocate shall not be liable for  
26 damages for personal injury or property damage pursuant to the Arkansas  
27 Volunteer Immunity Act, § 16-6-101 et seq.

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

31 (h)(1)(A) In all proceedings to remove custody from a parent or  
32 guardian or to terminate parental rights, the parent or guardian shall be  
33 advised in the dependency-neglect petition or the ex parte emergency order  
34 and the first appearance before the court of the right to be represented by  
35 counsel at all stages of the circuit court proceedings and the right to  
36 appointed counsel if indigent.

1                   (B) A court may appoint counsel for the parent or guardian  
2 from whom custody was removed in the ex parte emergency order.

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

8                   (B) If the court terminates parental rights, the circuit  
9 court, only upon request by the parent or guardian and after a hearing to  
10 receive evidence, including a new affidavit of indigence, shall re-determine  
11 if the parent or guardian is indigent and entitled to appointed counsel on  
12 appeal.

13                   (C) No payment of attorney's fees for a circuit court  
14 proceeding for indigent parents or guardians shall be authorized unless an  
15 affidavit of indigence is completed and filed with the clerk.

16                   (D) No payment of attorney's fees for appeals for indigent  
17 parents or guardians shall be authorized unless a new affidavit of indigence  
18 is completed and filed with the clerk and a redetermination of indigence  
19 hearing is held.

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

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

28                   (ii) The court may direct that money from this fund  
29 be used in providing counsel for indigent parents or guardians at the trial  
30 level in dependency-neglect proceedings.

31                   (iii) Upon a determination of ~~indigence~~ indigency  
32 and a finding by the court that the "juvenile representation fund" does not  
33 have sufficient funds to pay reasonable attorney's fees and expenses incurred  
34 at the trial court level and state funds have been exhausted, the court may  
35 order the county to pay these reasonable fees and expenses until the state  
36 provides funding for such counsel.

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

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

9           (5) The parent's or guardian's attorney shall be provided access  
10 to all records relevant to the juvenile's case, including, but not limited  
11 to, school records, medical records, all court records relating to the  
12 juvenile and his or her family, and department records to which the parent or  
13 guardian is entitled under state and federal law.

14  
15       SECTION 9. Arkansas Code § 9-27-330 is amended to read as follows:  
16       9-27-330. Disposition - Delinquency - Alternatives.

17       (a) If a juvenile is found to be delinquent, the circuit court may  
18 enter an order making any of the following dispositions based upon the best  
19 interest of the juvenile:

20           (1)(A) Transfer legal custody of the juvenile to any licensed  
21 agency responsible for the care of delinquent juveniles or to a relative or  
22 other individual;

23           (B)(i) Commit the juvenile to a youth services center  
24 using the risk assessment system for Arkansas juvenile offenders distributed  
25 and administered by the Administrative Office of the Courts.

26                   (ii) The risk assessment may be modified by the  
27 Juvenile Committee of the Arkansas Judicial Council with the Division of  
28 Youth Services of the Department of Human Services.

29                   (iii) In an order of commitment, the court may  
30 recommend that a juvenile be placed in a community-based program instead of a  
31 youth services center and shall make specific findings in support of such a  
32 placement in the order.

33                   (iv) Upon receipt of an order of commitment with  
34 recommendations for placement, the division shall consider the  
35 recommendations of the committing court in placing a youth in a youth  
36 services facility or a community-based program.

1 (v)(a) The committing court may place the juvenile  
2 on probation and require the juvenile to follow the terms of probation or the  
3 terms of a division aftercare plan upon release from the division.

4 (b) The division or the prosecuting attorney  
5 in the county in which the juvenile was committed may petition the court for  
6 a hearing regarding a juvenile's aftercare violation.

7 (c) The division or the prosecuting attorney  
8 in the county in which the juvenile was committed may request detention or  
9 recommitment, and the court may order such upon a finding by a preponderance  
10 of the evidence that the juvenile violated the terms of the aftercare plan;  
11

12 SECTION 10. Arkansas Code § 9-27-331(h), regarding the disposition of  
13 a delinquency matter, is amended to read as follows:

14 (h) Custody of a juvenile may be transferred to a relative or other  
15 individual only after a ~~full investigation~~ home study of the placement is  
16 conducted by the department or a licensed certified social worker and  
17 submitted to the court in writing and the court determines that the placement  
18 is in the best interest of the juvenile.  
19

20 SECTION 11. Arkansas Code § 9-27-331, regarding the disposition of a  
21 delinquency matter, is amended to add an additional subsection to read as  
22 follows:

23 (k) No court may commit a juvenile found solely in criminal contempt  
24 to the Division of Youth Services.  
25

26 SECTION 12. Arkansas Code § 9-27-332 is amended to read as follows:

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

28 (a) If a family is found to be in need of services, the circuit court  
29 may enter an order making any of the following dispositions:

30 (1)(A)(i) To order family services;

31 (ii)(a) To rehabilitate the juvenile and his or her  
32 family. If the Department of Human Services is the provider for family  
33 services, the family services shall be limited to those services available by  
34 the department's community-based providers or contractors, excluding the  
35 contractors with the Division of Children and Family Services of the  
36 Department of Human Services and department services for which the family

1 applies and is determined eligible; and

2 (b) To prevent removal when the department is the provider for family  
3 services, the court shall make written findings outlining how each service is  
4 intended to prevent removal;

5 (2)(A) If it is in the best interest of the juvenile, transfer  
6 custody of juvenile family members to another licensed agency responsible for  
7 the care of juveniles, or to a relative or other individual.

8 (B) If it is in the best interest of the juvenile and  
9 because of acts or omissions by the parent, guardian or custodian, removal is  
10 necessary to protect the juvenile's health and safety, transfer custody to  
11 the department.

12 (C) All juveniles in shelters or awaiting foster care  
13 placement who are in the custody of the Department of Human Services are  
14 "homeless children and youth" as defined under 42 U.S.C. § 11434a(2), as in  
15 effect on February 1, 2005.

16 (D) If the court transfers custody of the juvenile to the  
17 department, the court shall issue orders regarding educational issues of the  
18 juvenile as follows:

19 (i) Determine if the parent or guardian shall have  
20 access to school records of the juvenile;

21 (ii) Determine if the parent or guardian who has  
22 access to school records of the juvenile is entitled to obtain information on  
23 the current placement of the juvenile, that is, the name and address of the  
24 foster parent or provider; and

25 (iii) Determine if the parent or guardian may  
26 participate in school conferences or similar activities at school.

27 (E) If the court transfers custody of the juvenile to the  
28 department, the court may appoint an individual to consent to an initial  
29 evaluation and serve as a surrogate parent pursuant to the Individuals with  
30 Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on  
31 February 1, 2005.

32 (3) Grant permanent custody to an individual upon proof:

33 (A) That the parent or guardian from whom the juvenile has  
34 been removed has not complied with the orders of the court; or

35 (B) That no reunification services should be required to  
36 reunite the juvenile with his or her parent or parents and that no further



1 services or periodic reviews are required;

2 (4)(A) Order that the parent, both parents, or the guardian of  
3 the juvenile attend a court-ordered parental responsibility training program,  
4 if available.

5 (B) The court may make reasonable orders requiring proof  
6 of completion of such a training program within a certain time period and  
7 payment of a fee covering the cost of the training program;

8 (5) Place the juvenile on residential detention with electronic  
9 monitoring in the juvenile's home;

10 (6) Order the juvenile, his or her parent, both parents, or  
11 guardian to perform court-approved volunteer service in the community  
12 designed to contribute to the rehabilitation of the juvenile or the ability  
13 of the parent or guardian to provide proper parental care and supervision of  
14 the juvenile, not to exceed one hundred sixty (160) hours;

15 (7)(A) Place the juvenile on supervision terms including, but  
16 not limited to, requiring the juvenile to attend school or make satisfactory  
17 progress toward a general education development certificate, requiring the  
18 juvenile to observe a curfew, and prohibiting the juvenile from possessing or  
19 using any alcohol or illegal drugs.

20 (B) The supervision terms shall be in writing.

21 (C) The supervision terms shall be given to the juvenile  
22 and explained to the juvenile and to his or her parent, guardian, or  
23 custodian by the juvenile intake or probation officer in a conference  
24 immediately following the disposition hearing;

25 (8)(A) Order a fine not to exceed five hundred dollars (\$500) to  
26 be paid by the juvenile, a parent, both parents, a guardian, or a custodian  
27 when the juvenile exceeds the number of excessive unexcused absences provided  
28 in the student attendance policy of the district or the State Board of  
29 Workforce Education and Career Opportunities.

30 (B) The purpose of the penalty set forth in this section  
31 is to impress upon the parents, guardians, or persons in loco parentis the  
32 importance of school or adult education attendance, and the penalty is not to  
33 be used primarily as a source of revenue.

34 (C)(i) In all cases in which a fine is ordered, the court  
35 shall determine the parent's, guardian's, or custodian's ability to pay for  
36 the fine.

1 (ii) In making its determination, the court shall  
 2 consider the following factors:

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

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

8 (c) Any other factors that the court deems  
 9 relevant.

10 (D) When practicable and appropriate, the court may  
 11 utilize mandatory attendance to such programs as well as community service  
 12 requirements in lieu of a fine;

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

16 (10) Order a juvenile service fee not to exceed twenty dollars  
 17 (\$20.00) a month to be paid by the juvenile, his or her parent, both parents,  
 18 the guardian, or the custodian.

19 (b) The court may provide that any violation of its orders shall  
 20 subject the parent, both parents, the juvenile, custodian, or guardian to  
 21 contempt sanctions.

22  
 23 SECTION 13. Arkansas Code § 9-27-333(f), regarding the disposition of  
 24 family in need of services matters, is amended to read as follows:

25 (f) Custody of a juvenile may be transferred to a relative or other  
 26 individual only after a ~~full investigation~~ home study of the placement is  
 27 conducted by the department or a licensed certified social worker and  
 28 submitted to the court in writing and the court determines that the placement  
 29 is in the best interest of the juvenile.

30  
 31 SECTION 14. Arkansas Code § 9-27-333, regarding the disposition of  
 32 family in need of services matters, is amended to add an additional  
 33 subsection to read as follows:

34 (h) No court may commit a juvenile found solely in criminal contempt  
 35 to the Division of Youth Services.

1 SECTION 15. Arkansas Code § 9-27-334 is amended to read as follows:  
 2 9-27-334. Disposition - Dependent-neglected – Generally.

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

5 (1) Order family services;

6 (2)(A) If it is in the best interest of the juvenile, transfer  
 7 custody of the juvenile to the Department of Human Services, to another  
 8 licensed agency responsible for the care of juveniles, or to a relative or  
 9 other individual.

10 (B) If the court grants custody of the juvenile to the  
 11 department, the juvenile shall be placed in a licensed or approved foster  
 12 home, shelter, or facility or an exempt child welfare agency as defined at §  
 13 9-28-402(12)†.

14 (C) All juveniles in shelters or awaiting foster care  
 15 placement who are in the custody of the Department of Human Services are  
 16 "homeless children and youth" as defined at 42 U.S.C. § 11434a(2), as in  
 17 effect on February 1, 2005.

18 (D) If the court transfers custody of the juvenile to the  
 19 department, the court shall issue orders regarding educational issues of the  
 20 juvenile as follows:

21 (i) Determine if the parent or guardian shall have  
 22 access to school records of the juvenile;

23 (ii) Determine if the parent or guardian who has  
 24 access to school records of the juvenile is entitled to obtain information on  
 25 the current placement of the juvenile, that is, the name and address of the  
 26 foster parent or provider; and

27 (iii) Determine if the parent or guardian may  
 28 participate in school conferences or similar activities at school.

29 (E) If the court transfers custody of the juvenile to the  
 30 department, the court may appoint an individual to consent to an initial  
 31 evaluation and serve as a surrogate parent pursuant to the Individuals with  
 32 Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on  
 33 February 1, 2005.

34 (3) If it is in the best interest of the juvenile, grant  
 35 permanent custody to an individual upon proof that the parent or guardian  
 36 from whom the juvenile has been removed has not complied with the orders of

1 the court or upon proof that no reunification services should be required to  
2 reunite the juvenile with his or her parent or parents and that no further  
3 services or periodic reviews are required; or

4 (4)(A) Order that the parent, both parents, or the guardian of  
5 the juvenile attend a court-ordered parental responsibility training program,  
6 if available.

7 (B) The court may make reasonable orders requiring proof  
8 of completion of such a training program within a certain time period and  
9 payment of a fee covering the cost of the training program.

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

13 (c) The court may provide that any violation of its orders shall  
14 subject the parent, both parents, the juvenile, the custodian, or guardian to  
15 contempt sanctions.

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

18 9-27-335. Disposition - Dependent-neglected - Limitations.

19 (a)(1) At least five (5) working days prior to ordering the Department  
20 of Human Services, excluding community-based providers, to provide or pay for  
21 family services in any case in which the department is not a party, the  
22 circuit court shall fax a written notice of said intent to the Director of  
23 the Department of Human Services and to the attorney of the local Office of  
24 Chief Counsel of the Department of Human Services.

25 (2) At any hearing in which the department is ordered to provide  
26 family services, the court shall provide the department with the opportunity  
27 to be heard.

28 (3) Failure to provide at least five (5) working days' notice to  
29 the department renders any part of the order pertaining to the department  
30 void.

31 (b) For purposes of this section, the court shall not specify a  
32 particular provider for placement or family services when the department is  
33 the payer or provider.

34 (c)(1) In all cases in which family services are ordered, the court  
35 shall determine the parent's, guardian's, or custodian's ability to pay, in  
36 whole or in part, for these services.

1           (2) The determination of ability to pay and the evidence  
2 supporting it shall be made in writing in the order ordering family services.

3           (3) If the court determines that the parent, guardian, or custodian is  
4 able to pay, in whole or in part, for the services, the court shall enter a  
5 written order setting forth the amounts the parent, guardian, or custodian is  
6 able to pay for the family services ordered and order the parent, guardian,  
7 or custodian or pay the amount periodically to the provider from whom family  
8 services are received.

9           (d) Custody of a juvenile may be transferred to a relative or other  
10 individual only after a ~~full investigation~~ home study of the placement is  
11 conducted by the department or a licensed certified social worker and  
12 submitted to the court in writing and the court determines that the placement  
13 is in the best interest of the juvenile.

14           (e)(1)(A) The court shall enter orders transferring custody of  
15 juveniles in dependency-neglect cases only after determining that reasonable  
16 efforts have been made by the department to deliver family services designed  
17 to prevent the need for out-of-home placement and that the need for out-of-  
18 home placement exists.

19                       (B) The juvenile's health and safety shall be the  
20 paramount concern for the court in determining whether or not the department  
21 could have provided reasonable efforts to prevent the juvenile's removal.

22           (2) If the court finds that reasonable efforts to deliver family  
23 services could have been made with the juvenile safely remaining at home but  
24 were not made, the court may:

25                       (A) Dismiss the petition;

26                       (B) Order family services reasonably calculated to prevent  
27 the need for out-of-home placement; or

28                       (C) Transfer custody of the juvenile, despite the lack of  
29 reasonable efforts by the department to prevent the need for out-of-home  
30 placement if such a transfer of custody is necessary:

31                               (i) To protect the juvenile's health and safety; or

32                               (ii) To prevent the juvenile from being removed from  
33 the jurisdiction of the court.

34           (f) In a case of medical neglect involving a child's receiving  
35 treatment through prayer alone in accordance with a religious method of  
36 healing in lieu of medical care, the adjudication order shall be limited to:

- 1 (1) Preventing or remedying serious harm to the child; or  
2 (2) Preventing the withholding of medically indicated treatment  
3 from a child with a life-threatening condition.

4 (g) No court may commit a juvenile found solely in criminal contempt  
5 to the Division of Youth Services.

6  
7 SECTION 17. Arkansas Code § 9-27-337 is amended to read as follows:  
8 9-27-337. Six-month reviews required.

9 (a)(1) Every six (6) months, the court shall review every case of  
10 dependency-neglect, families in need of services, or delinquency when an out-  
11 of-home placement has occurred, as defined by § 9-27-303(36), until there is  
12 a permanent order of custody, guardianship, or adoption or the juvenile is  
13 returned to the parent, guardian, or custodian and the court has discontinued  
14 orders for family services.

15 (2) During each six-month review the court shall make  
16 determinations based upon the best interest of the juvenile.

17 (3)(A) At any time during the course of a case, the Department  
18 of Human Services, the attorney ad litem, or the court can request a hearing  
19 on whether or not reunification services should be terminated.

20 (B)(i) The requesting party shall provide notice to the  
21 parties at least fourteen (14) calendar days before the hearing.

22 (ii) The notice shall identify the grounds for  
23 recommending termination of reunification services in sufficient detail to  
24 put the family on notice.

25 (C)(i) The court shall determine whether or not  
26 reunification services shall be terminated.

27 (ii) The burden of presenting the case shall be on  
28 the requesting party.

29 (D)(i) The court shall conduct and complete a hearing on a  
30 request for no reunification services within fifty (50) days of the date of  
31 written notice to the defendants.

32 (ii) The court shall enter an order determining  
33 whether or not reunification services shall be provided.

34 (E) If the court determines that reunification services  
35 shall be terminated, the court shall hold a permanency planning hearing  
36 within thirty (30) days after the determination.

1 (b)(1)(A) In each case in which a juvenile has been placed in an out-  
2 of-home placement, within six (6) months after the original out-of-home  
3 placement and every six (6) months thereafter while the juvenile continues  
4 out of home, the court shall conduct a hearing or shall review the case  
5 sufficiently to determine the future status of the juvenile.

6 (B)(i) The court shall determine and shall include in its  
7 orders whether the case plan, services, and placement meet the special needs  
8 and best interest of the juvenile, with the juvenile's health and safety  
9 specifically addressed, and whether the state has made reasonable efforts to  
10 provide family services.

11 (ii)(a) The court may order any studies,  
12 evaluations, or post-disposition reports, if needed.

13 (b) All studies, evaluations, or post-  
14 disposition reports shall be provided in writing to all parties and counsel  
15 at least two (2) days prior to the review hearing.

16 (c) All parties shall be given a fair  
17 opportunity to controvert any parts of studies, evaluations, or post-  
18 disposition reports.

19 (C)(i) The court shall project a date for the juvenile to  
20 return home or, if there is no projected date for a return home, the  
21 projected dates for other alternatives and what those alternatives are.

22 (ii) This determination must be based on a full and  
23 deliberate consideration of all of the following:

24 (a) The extent of compliance with the case  
25 plan, including, but not limited to, a review of the department's care for  
26 the health and safety of the juvenile while he or she has been in an out-of-  
27 home placement;

28 (b) The extent of progress that has been made  
29 toward alleviating or mitigating the causes of the out-of-home placement;

30 (c) Whether the juvenile should be returned to  
31 his or her parent or parents and whether or not the juvenile's health and  
32 safety can be protected by his or her parent or parents if returned home;

33 (d) Whether the juvenile should be continued  
34 in an out-of-home placement for a specified period of time;

35 (e) Whether the juvenile should be placed for  
36 adoption; and

1 (f) Whether the juvenile, because of special  
2 needs or circumstances, should be continued in an out-of-home placement on a  
3 permanent or long-term basis.

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

8 (c)(1)(A) The court may require any case of dependency-neglect, family  
9 in need of services, or delinquency when an out-of-home placement has  
10 occurred to be reviewed prior to the sixth month.

11 (B) In such a case, the court shall announce the date,  
12 time, and place of hearing.

13 (2) In all other cases, it shall be the duty of the petitioner  
14 at least sixty (60) days prior to the date the existing order would be  
15 vacated to request the court to set a review hearing as required by this  
16 subchapter.

17 (d) At any time during the pendency of any case of dependency-neglect,  
18 family in need of services, or delinquency in which an out-of-home placement  
19 has occurred, any party may request the court to review the case.

20 (e) It shall be the duty of the petitioner to provide all parties with  
21 reasonable notice and serve this notice on all parties in accordance with the  
22 Arkansas Rules of Civil Procedure.

23 (f)(1) The department shall provide the court-appointed special  
24 advocate, the parties, and counsel with a copy of a review report no later  
25 than seven (7) business days before every scheduled review hearing of each  
26 juvenile who is in an out-of-home placement.

27 (2) The department shall present the report to the court at the  
28 scheduled hearing, subject to evidentiary objections.

29 (g) The review report shall include a summary of the parties'  
30 compliance with the case plan and court orders, including a description of  
31 the services and assistance that the department has provided to the family.  
32

33 SECTION 18. Arkansas Code § 9-27-341 is amended to read as follows:  
34 9-27-341. Termination of parental rights.

35 (a)(1)(A) This section shall be a remedy available only to the  
36 Department of Human Services or a court-appointed attorney ad litem.



1 (B) It shall not be available for private litigants or  
2 other agencies.

3 (2) It shall be used only in cases in which the department is  
4 attempting to clear a juvenile for permanent placement.

5 (3) The intent of this section is to provide permanency in a  
6 juvenile's life in all instances in which the return of a juvenile to the  
7 family home is contrary to the juvenile's health, safety, or welfare and it  
8 appears from the evidence that a return to the family home cannot be  
9 accomplished in a reasonable period of time as viewed from the juvenile's  
10 perspective.

11 (4)(A) A parent's resumption of contact or overtures toward  
12 participating in the case plan or following the orders of the court following  
13 the permanency planning hearing and preceding the termination of parental  
14 rights hearing is an insufficient reason to not terminate parental rights.

15 (B) The court shall rely upon the record of the parent's  
16 compliance in the entire dependency-neglect case and evidence presented at  
17 the termination hearing in making its decision whether it is in the  
18 juvenile's best interest to terminate parental rights.

19 (b)(1)(A) The circuit court may consider a petition to terminate  
20 parental rights if the court finds that there is an appropriate permanency  
21 placement plan for the juvenile.

22 (B) This section does not require that a permanency  
23 planning hearing be held as a prerequisite to the filing of a petition to  
24 terminate parental rights, or as a prerequisite to the court's considering a  
25 petition to terminate parental rights.

26 (2)(A) The petitioner shall provide the parent, parents, or  
27 putative parent or parents actual or constructive notice of a petition to  
28 terminate parental rights.

29 (B) If the name or whereabouts of the putative father is  
30 unknown, the petitioner shall check with the putative father registry in  
31 addition to providing constructive notice of the hearing to terminate  
32 parental rights.

33 (3) An order forever terminating parental rights shall be based  
34 upon a finding by clear and convincing evidence:

35 (A) That it is in the best interest of the juvenile,  
36 including consideration of the following factors:

1 (i) The likelihood that the juvenile will be adopted  
2 if the termination petition is granted; and

3 (ii) The potential harm, specifically addressing the  
4 effect on the health and safety of the child, caused by ~~continuing contact~~  
5 with returning the child to the custody of the parent, parents, or putative  
6 parent or parents; and

7 (B) Of one (1) or more of the following grounds:

8 (i)(a) That a juvenile has been adjudicated by the  
9 court to be dependent-neglected and has continued out of the custody of the  
10 parent for twelve (12) months and, despite a meaningful effort by the  
11 department to rehabilitate the parent and correct the conditions that caused  
12 removal, those conditions have not been remedied by the parent.

13 (b) It is not necessary that the twelve-month  
14 period referenced in subdivision (b)(3)(B)(i) of this section immediately  
15 precede the filing of the petition for termination of parental rights or that  
16 it be for twelve (12) consecutive months;

17 (ii)(a) The juvenile has lived outside the home of  
18 the parent for a period of twelve (12) months, and the parent has willfully  
19 failed to provide significant material support in accordance with the  
20 parent's means or to maintain meaningful contact with the juvenile.

21 (b) To find willful failure to maintain  
22 meaningful contact, it must be shown that the parent was not prevented from  
23 visiting or having contact with the juvenile by the juvenile's custodian or  
24 any other person, taking into consideration the distance of the juvenile's  
25 placement from the parent's home.

26 (c) Material support consists of either  
27 financial contributions or food, shelter, clothing, or other necessities  
28 where the contribution has been requested by the juvenile's custodian or  
29 ordered by a court of competent jurisdiction.

30 (d) It is not necessary that the twelve-month  
31 period referenced in subdivision (b)(3)(B)(ii) of this section immediately  
32 precede the filing of the petition for termination of parental rights or that  
33 it be for twelve (12) consecutive months;

34 (iii) The presumptive legal father is not the  
35 biological father of the juvenile and the welfare of the juvenile can best be  
36 served by terminating the parental rights of the presumptive legal father;

- 1 (iv) A parent has abandoned the juvenile;
- 2 (v) A parent has executed consent to termination of  
3 parental rights or adoption of the juvenile, subject to the court's approval;
- 4 (vi)(a) The court has found the juvenile ~~victim~~  
5 dependent-neglected as a result of neglect or abuse that could endanger the  
6 life of the child, sexual abuse, or sexual exploitation, any of which was  
7 perpetrated by the juvenile's parent or parents.
- 8 (b) Such findings by the juvenile division of  
9 circuit court shall constitute grounds for immediate termination of the  
10 parental rights of one (1) or both of the parents;
- 11 (vii)(a) That other factors or issues arose  
12 subsequent to the filing of the original petition for dependency-neglect that  
13 demonstrate that return of the juvenile to the custody of the parent is  
14 contrary to the juvenile's health, safety, or welfare and that, despite the  
15 offer of appropriate family services, the parent has manifested the  
16 incapacity or indifference to remedy the subsequent issues or factors or  
17 rehabilitate the parent's circumstances that prevent return of the juvenile  
18 to the custody of the parent.
- 19 (b) Provided, however, that the department  
20 shall make reasonable accommodations in accordance with the Americans with  
21 Disabilities Act, 42 U.S.C. § 1201 et seq., to parents with disabilities in  
22 order to allow them meaningful access to reunification and family  
23 preservation services.
- 24 (c) For purposes of subdivision (b)(3)(B)(vii)  
25 of this section, the inability or incapacity to remedy or rehabilitate  
26 includes, but is not limited to, mental illness, emotional illness, or mental  
27 deficiencies;
- 28 (viii) The parent is sentenced in a criminal  
29 proceeding for a period of time that would constitute a substantial period of  
30 the juvenile's life ~~and the conditions in subdivision (b)(3)(B)(i) or (ii) of~~  
31 ~~this section have also been established; and; or~~
- 32 (ix)(a) The parent is found by a court of competent  
33 jurisdiction, including the juvenile division of circuit court, to:
- 34 (1) Have committed murder or voluntary  
35 manslaughter of any ~~child~~ juvenile or to have aided or abetted, attempted,  
36 conspired, or solicited to commit the murder or voluntary manslaughter;

1 (2) Have committed a felony battery or  
 2 assault that results in serious bodily injury to any ~~child~~ juvenile or to  
 3 have aided or abetted, attempted, conspired, or solicited to commit felony  
 4 battery or assault that results in serious bodily injury to any juvenile;

5 (3) Have subjected ~~the child~~ any  
 6 juvenile to aggravated circumstances+. "Aggravated circumstances" means:

7 (A) A juvenile has been abandoned,  
 8 chronically abused, subjected to extreme or repeated cruelty, sexually  
 9 abused, or a determination has been made by a judge that there is little  
 10 likelihood that services to the family will result in successful  
 11 reunification, or

12 (B) A juvenile has been removed  
 13 from the custody of the parent or guardian and placed in foster care or in  
 14 the custody of another person more than three (3) times in the last fifteen  
 15 (15) months;

16 (4) Have had his or her parental rights  
 17 involuntarily terminated as to a sibling of the child; or

18 (5) Have abandoned an infant, as defined  
 19 at § 9-27-303(2).

20 (b) This subchapter does not require  
 21 reunification of a surviving child with a parent who has been found guilty of  
 22 any of the offenses listed in subdivision (b)(3)(B)(ix)(a) of this section.

23 (c)(1) An order terminating the relationship  
 24 between parent and juvenile divests the parent and the juvenile of all legal  
 25 rights, powers, and obligations with respect to each other, including the  
 26 right to withhold consent to adoption, except the right of the juvenile to  
 27 inherit from the parent which is terminated only by a final order of  
 28 adoption.

29 (2)(A)(i) Termination of the  
 30 relationship between a juvenile and one (1) parent shall not affect the  
 31 relationship between the juvenile and the other parent if those rights are  
 32 legally established.

33 (ii) If no legal rights have  
 34 been established, a putative parent must prove that significant contacts  
 35 existed with the juvenile in order for the putative parent's rights to  
 36 attach.

1 (B)(i) When the petitioner has  
 2 actual knowledge that an individual is claiming to be or is named as the  
 3 putative parent of the juvenile and the paternity of the juvenile has not  
 4 been judicially determined, the individual is entitled to notice of the  
 5 petition to terminate parental rights.

6 (ii) The notice shall  
 7 identify the rights sought to be terminated and those which may be  
 8 terminated.

9 (iii) The notice shall  
 10 further specify that the putative parent must prove that significant contacts  
 11 existed with the juvenile for the putative parent's rights to attach.

12 (3) An order terminating parental rights  
 13 under this section may authorize the department to consent to adoption of the  
 14 juvenile.

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

18 (d)(1) The court shall conduct and complete a  
 19 termination of parental rights hearing within ninety (90) days from the date  
 20 the petition for termination of parental rights is filed unless continued for  
 21 good cause as articulated in the written order of the court.

22 (2) If the parent was represented by  
 23 counsel, the court shall take judicial notice and incorporate by reference  
 24 into the record all pleadings and testimony in the case incurred before the  
 25 termination of parental rights hearing.

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

30 (f) After ~~an order of the~~ the termination of  
 31 parental rights ~~is filed~~ hearing, the court shall review the case at least  
 32 every three (3) months when the goal is adoption and, in other cases, every  
 33 six (6) months, ~~until~~ and a permanency planning hearing shall be held each  
 34 year following the initial permanency hearing until permanency is achieved  
 35 for that juvenile.

36 (g)(1)(A) A parent may withdraw consent to

1 termination of parental rights within ten (10) calendar days after it was  
 2 signed by filing an affidavit with the clerk of the court in the county  
 3 designated by the consent as the county in which the termination of parental  
 4 rights will be filed.

5 (B) If the ten-day period ends on  
 6 a weekend or legal holiday, the person may file the affidavit the next  
 7 working day.

8 (C) No fee shall be charged for  
 9 the filing of the affidavit.

10 (2) The consent to terminate parental  
 11 rights shall state that the person has the right of withdrawal of consent and  
 12 shall provide the address of the circuit clerk of the county in which the  
 13 termination of parental rights will be filed.

14  
 15 SECTION 19. Arkansas Code Title 9, Chapter 27, Subchapter 3 is amended  
 16 to add an additional section to read as follows:

17 9-27-359. Emancipation of juveniles.

18 (a) A petition for emancipation may be filed in a circuit court by the  
 19 attorney or the attorney ad litem for a juvenile who is in the custody of the  
 20 Department of Human Services pursuant to a dependency-neglect, dependency, or  
 21 family in need of services case.

22 (b) The petition shall be served along with a notice of hearing to the  
 23 juvenile's parents, legal guardians, or legal custodians.

24 (c) The circuit court has the authority to emancipate a juvenile in a  
 25 dependency-neglect, dependency, or family in need of services case.

26 (d)(1) The court may emancipate the juvenile after a hearing on the  
 27 petition if the petitioner shows by a preponderance of the evidence that:

28 (A) The juvenile is at least seventeen (17) years of age;

29 (B) The juvenile is willing to live separate and apart  
 30 from his or her parents, legal guardians, or legal custodians;

31 (C) The juvenile has an appropriate place to live;

32 (D) The juvenile has been managing or has the ability to  
 33 manage his or her own financial affairs;

34 (E) The juvenile has a legal source of income, such as  
 35 employment or a trust fund;

36 (F) The juvenile has health care coverage or a realistic

1 plan on how to meet his or her health needs;

2 (G) The juvenile agrees to comply with the compulsory  
3 school attendance laws; and

4 (H) Emancipation is in the best interest of the juvenile.

5 (2) The court shall consider the wishes of the parents, legal  
6 guardians, or legal custodians in making its decision.

7 (3) If the juvenile has an attorney ad litem, the court shall  
8 consider the recommendation of the attorney ad litem.

9 (e) An order of emancipation has the following effects:

10 (1) The juvenile has the right to obtain and consent to all  
11 medical care, including counseling;

12 (2) The juvenile has the right to enter into contracts;

13 (3) The juvenile has the right to enroll himself or herself in  
14 school, college, or other educational programs;

15 (4) The juvenile has the right to obtain a driver's license  
16 without consent of a parent or other adult so long as the juvenile complies  
17 with the remaining requirements of the driver's license law;

18 (5) The juvenile's parents, legal guardians, or legal custodians  
19 are no longer legally responsible for the juvenile;

20 (6) The juvenile may still be charged and prosecuted in juvenile  
21 court with a delinquency;

22 (7) The juvenile may not marry without parental permission  
23 pursuant to § 9-11-102;

24 (8) The juvenile is not relieved from compulsory school  
25 attendance;

26 (9) The Department of Human Services is not relieved from the  
27 responsibility of providing independent living services and funding for which  
28 the juvenile is eligible upon request by the juvenile;

29 (10) Child support orders are not terminated but may cease upon  
30 entry of an order from the court that issued the order of child support;

31 (11) Until the juvenile reaches the age of majority, the  
32 juvenile remains eligible for federal programs and services as a juvenile;

33 (12) The juvenile is not permitted to obtain items prohibited  
34 for sale to or possession by a minor, such as tobacco or alcohol;

35 (13) The juvenile remains subject to state and federal laws  
36 enacted for the protection of persons under eighteen (18) years of age such

1 as the prohibition against a juvenile obtaining a tattoo; and

2 (14) No statute of limitations is affected.

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