

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
4

As Engrossed: S3/10/05

A Bill

SENATE BILL 926

5 By: Senator Madison
6
7

For An Act To Be Entitled

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

Subtitle

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, excluding alcohol given to
 11 a child during a recognized and established religious ceremony or service;

12 (3) Narcotics; or

13 (4) Over-the-counter drugs if a person
 14 purposely administers an overdose to a child or purposely gives an
 15 inappropriate over-the-counter drug to a child;

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

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

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

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

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

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

36 (b) The agency has policy and procedures

1 regarding restraints;

2 (c) No other alternative exists to control the
3 child except for a restraint;

4 (d) The child is in danger of hurting himself
5 or herself or others;

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

9 (f) The restraint is for a reasonable period
10 of time.

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

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

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

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

25 (6) "Aggravated circumstances" means:

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

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

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

35 (8) "Caretaker" means a parent, guardian, custodian, foster
36 parent, or any person ten (10) years of age or older who is entrusted with a

1 child's care by a parent, guardian, custodian, or foster parent, including,
2 but not limited to, an agent or employee of a public or private residential
3 home, child care facility, public or private school, or any person
4 responsible for a child's welfare;

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

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

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

13 ~~(11)~~(12) "Court" means the juvenile division of circuit court;

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

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

21 ~~(14)~~(15) "Delinquent juvenile" means any juvenile:

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

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

30 ~~(15)~~(16)(A) "Department" means the Department of Human Services
31 and its divisions and programs.

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

35 ~~(16)~~(17) "Dependent juvenile" means:

36 (A) A child of a parent who is under the age of eighteen

1 (18) years and is in the custody of the department;

2 (B) A child whose parent or guardian is incarcerated and
3 the parent or guardian has no appropriate relative or friend willing or able
4 to provide care for the child;

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

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

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

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

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

16 ~~(17)~~(18)(A) "Dependent-neglected juvenile" means any juvenile
17 who is at substantial risk of serious harm as a result of:

18 (i) Abandonment;

19 (ii) Abuse;

20 (iii) Sexual abuse;

21 (iv) Sexual exploitation;

22 (v) Neglect, or

23 (vi) Parental unfitness to the juvenile, a sibling,
24 or another juvenile.

25 (B) "Dependent-neglected juvenile" includes dependent
26 juveniles;

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

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

34 ~~(20)~~(21) "Deviant sexual activity" means any act of sexual
35 gratification involving:

36 (A) Penetration, however slight, of the anus or mouth of

1 one (1) person by the penis of another person; or

2 (B) Penetration, however slight, of the labia majora or
3 anus of one (1) person by any body member or foreign instrument manipulated
4 by another person;

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

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

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

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

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

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

20 ~~(24)~~(25)(A) "Family services" means relevant services provided
21 to a juvenile or his or her family, including, but not limited to:

22 (i) Child care;

23 (ii) Homemaker services;

24 (iii) Crisis counseling;

25 (iv) Cash assistance;

26 (v) Transportation;

27 (vi) Family therapy;

28 (vii) Physical, psychiatric, or psychological
29 evaluation;

30 (viii) Counseling; or

31 (ix) Treatment.

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

33 (i) Prevent a juvenile from being removed from a
34 parent, guardian, or custodian;

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

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

3 ~~(25)-(26)~~ "Fast track" means that reunification services will not
4 be provided or will be terminated before twelve (12) months of services;

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

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

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

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

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

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

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

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

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

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

1 (ii) The juvenile is being cared for by a relative
2 and termination of parental rights is not in the best interest of the
3 juvenile;

4 ~~(31)~~(32) "Juvenile" means an individual who:

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

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

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

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

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

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

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

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

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

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

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

36 ~~(33)~~(34) "Law enforcement officer" means any public servant

1 vested by law with a duty to maintain public order or to make arrests for
2 offenses;

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

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

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

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

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

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

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

1 necessary care;

2 (F) Failure, although able, to assume responsibility for
3 the care and custody of the juvenile or to participate in a plan to assume
4 the responsibility; or

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

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

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

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

19 ~~(38)~~(39)(A) "Out-of-home placement" means:

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

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

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

30 ~~(39)~~(40) "Parent" means a biological mother, an adoptive parent,
31 or a man to whom the biological mother was married at the time of conception
32 or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-
33 120 or who has been found by a court of competent jurisdiction to be the
34 biological father of the juvenile;

35 ~~(40)~~(41) "Paternity hearing" means a proceeding brought pursuant
36 to bastardy jurisdiction to determine the biological father of a juvenile;

1 ~~(41)~~(42) "Pornography" means:

2 ~~(A) Obscene or licentious material, including pictures,~~
3 ~~movies, and videos, lacking serious literary, artistic, political, or~~
4 ~~scientific value, which when taken as a whole and applying contemporary~~
5 ~~community standards would appear to the average person to appeal to the~~
6 ~~prurient interest; or~~

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

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

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

17 (C) Obscene or licentious material;

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

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

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

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

1 ~~(45)~~(46)(A)(i) "Reasonable efforts" means efforts to preserve
2 the family prior to the placement of a child in foster care to prevent the
3 need for removing the child from his or her home and efforts to reunify a
4 family made after a child is placed out of home to make it possible for him
5 or her to safely return home.

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

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

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

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

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

27 (i) Subjected the child to aggravated circumstances;

28 (ii) Committed murder of any child;

29 (iii) Committed voluntary manslaughter of any child;

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

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

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

36 (vii) Abandoned an infant as defined in subdivision

1 (1) of this section.

2 (D) Reasonable efforts to place a child for adoption or
3 with a legal guardian or permanent custodian may be made concurrently with
4 reasonable efforts to reunite a child with his or her family;

5 (47) "Residence" means:

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

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

9 ~~(46)~~(48)(A) "Restitution" means actual economic loss sustained
10 by an individual or entity as a proximate result of the delinquent acts of a
11 juvenile.

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

15 ~~(47)~~(49) "Sexual abuse" means:

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

18 (i) Sexual intercourse, deviate sexual activity, or
19 sexual contact by forcible compulsion;

20 (ii) Attempted sexual intercourse or deviate sexual
21 activity or sexual contact by forcible compulsion;

22 (iii) Indecent exposure; or

23 (iv) Forcing the watching of pornography or live
24 human sexual activity;

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

27 (i) Sexual intercourse, deviate sexual activity, or
28 sexual contact ~~or solicitation;~~ or

29 (ii) Attempted sexual intercourse, deviate sexual
30 activity, or sexual contact;

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

33 (i) Sexual intercourse, deviate sexual activity, or
34 sexual contact ~~or solicitation;~~ or

35 (ii) Attempted sexual intercourse, deviate sexual
36 activity, or sexual contact; or

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

3 (i) Forcing or encouraging the watching of
4 pornography; or

5 (ii) Forcing, permitting, or encouraging the
6 watching of live sexual activity; or

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

9 (i) Sexual intercourse, deviate sexual activity, or
10 sexual contact by forcible compulsion; or

11 (ii) Attempted sexual intercourse, deviate sexual
12 activity, or sexual contact by forcible compulsion;

13 ~~(48)-(50)~~(A)(i) "Sexual contact" means any act of sexual
14 gratification involving:

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

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

20 (c) The offender requesting to touch the
21 juvenile in a sexual manner.

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

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

27 ~~(49)-(51)~~ "Sexual exploitation" includes:

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

30 (i) prostitution, Prostitution;

31 (ii) obscene Obscene photographing; or

32 (iii) Obscene filming; or

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

35 ~~(50)-(52)~~ "Shelter care" means the temporary care of a juvenile
36 in physically unrestricting facilities pursuant to an order for placement

1 pending or pursuant to an adjudication of dependency-neglect or family in
2 need of services;

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

6 ~~(52)~~(54) "UCCJA" means the Uniform Child Custody Jurisdiction
7 Act, § 9-13-201 et seq. [repealed];

8 ~~(53)~~(55) "UCCJEA" means the Uniform Child-Custody Jurisdiction
9 and Enforcement Act, § 9-19-101 et seq.;

10 ~~(54)~~(56) "UIFSA" means the Uniform Interstate Family Support
11 Act, § 9-17-101 et seq.;

12 ~~(55)~~(57) "Victim" means any person or entity entitled to
13 restitution as defined in subdivision (46) of this section as the result of a
14 delinquent act committed by a juvenile adjudicated delinquent;

15 ~~(56)~~(58) "Voluntary relinquishment of custody" means a written
16 agreement between a parent and the Department of Human Services for the
17 temporary placement of a child in an out-of-home placement pursuant to § 9-
18 27-340 [repealed];

19 ~~(57)~~(59) "Youth services center" means a youth services facility
20 operated by the state or a contract provider; and

21 ~~(58)~~(60) "Youth services facility" means a facility, operated by
22 the state or its designee, for the care of juveniles who have been
23 adjudicated delinquent or convicted of a crime and who require secure custody
24 in either a physically restrictive facility or a staff-secured facility
25 operated so that a juvenile may not leave the facility unsupervised or
26 without supervision.

27
28 SECTION 2. Arkansas Code § 9-27-306 is amended to read as follows:
29 9-27-306. Jurisdiction.

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

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

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

1 12-12-516;

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

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

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

8 (F) Custodial placement proceedings filed by the
9 Department of Human Services in interference with custody actions pursuant to
10 § 5-26-502.

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

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

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

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

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

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

32

33 SECTION 3. Arkansas Code § 9-27-307 is amended to read as follows:
34 9-27-307. Venue.

35 (a)(1)(A) Except as set forth in subdivisions (a)(2)-(4) of this
36 section, a proceeding under this subchapter shall be commenced in the circuit

1 court of the county in which the juvenile resides.

2 (B) No dependency-neglect proceeding shall be dismissed if
3 a proceeding is filed in the incorrect county. If the proceeding is filed in
4 the incorrect county, then the dependency-neglect proceeding shall be
5 transferred to the proper county upon discovery of the proper county of
6 residence of the juvenile.

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

9 (A) Nonsupport after establishment of paternity;

10 (B) Delinquency; or

11 (C) Dependency-neglect.

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

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

17 (5) Juvenile proceedings shall comply with § 16-13-210, except
18 detention hearings under § 9-27-326 and probable cause hearings under § 9-27-
19 315.

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

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

27
28 SECTION 4. Arkansas Code § 9-27-310 is amended to read as follows:

29 9-27-310. Commencement of proceedings.

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

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

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

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

3 (A) Any adult; or

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

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

7 (A) The biological mother;

8 (B) A putative father;

9 (C) A juvenile; or

10 (D) The Office of Child Support Enforcement of the Revenue
11 Division of the Department of Finance and Administration.

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

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

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

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

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

36

1 SECTION 5. Arkansas Code § 9-27-313(f) is amended to read as follows:
2 9-27-313. Taking into custody.

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

6 (A) Pursuant to an order of the circuit court under this
7 subchapter;

8 (B) By a law enforcement officer without a warrant under
9 circumstances as set forth in the Arkansas Rules of Criminal Procedure, Rule
10 4.1; or

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

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

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

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

30 (c) When a law enforcement officer, a representative of the
31 department, or other authorized person takes custody of a juvenile alleged to
32 be dependent-neglected or pursuant to the Arkansas Child Maltreatment Act, §
33 12-12-501 et seq., he or she shall:

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

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

3 (i) That the juvenile has been taken into foster
4 care;

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

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

9 (iv) Of the location and telephone number of the
10 court; and

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

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

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

18 (i) Unlawful possession of a handgun, § 5-73-
19 119(a)(1)(A);

20 (ii) Possession of a handgun on school property, §
21 5-73-119(a)(2)(A);

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

24 (iv) Any felony committed while armed with a
25 firearm; or

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

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

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

34 (2) If a juvenile is taken into custody for an act that would be
35 a felony if committed by an adult, other than a felony listed in subdivision
36 (d)(1)(A) of this section, the law enforcement officer shall immediately make

1 every effort possible to notify the custodial parent, guardian, or custodian
2 of the juvenile's location and may:

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

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

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

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

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

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

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

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

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

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

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

1 (5) In all instances when a juvenile may be detained, the intake
2 officer shall immediately make every effort possible to notify the juvenile's
3 custodial parent, guardian, or custodian.

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

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

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

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

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

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

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

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

35 (f) If no delinquency petition to adjudicate a juvenile taken into
36 custody is filed within twenty-four (24) hours after a detention hearing or

1 ninety-six (96) hours after an alleged delinquent juvenile is taken into
2 custody, whichever is sooner, the alleged delinquent juvenile shall be
3 discharged from custody, detention, or shelter care.

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

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

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

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

25
26 SECTION 7. Arkansas Code § 9-27-315 is amended to read as follows:

27 9-27-315. Probable cause hearing.

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

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

35 (ii) Provided, however, that issues as to custody
36 and delivery of services may be considered by the court and appropriate

1 orders for that entered by the court.

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

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

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

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

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

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

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

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

29

30 SECTION 8. Arkansas Code § 9-27-316 is amended to read as follows:
31 9-27-316. Right to counsel.

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

1 represented at all stages of the proceedings by counsel.

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

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

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

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

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

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

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

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

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

35 (e) Appointment of counsel shall be made at a time sufficiently in
36 advance of the court appearance to allow adequate preparation by appointed

1 counsel and adequate consultation between the appointed counsel and the
2 client.

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

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

12 (3) Each attorney ad litem:

13 (A) Shall file written motions, responses, or objections
14 at all stages of the proceedings when necessary to protect the best interests
15 of the juvenile;

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

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

20 (4) An attorney ad litem shall be provided access to all records
21 relevant to the juvenile's case, including, but not limited to, school
22 records, medical records, all court records relating to the juvenile and his
23 or her family, and records of the Department of Human Services to the extent
24 permitted by federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 counsel at all stages of the circuit court proceedings and the right to
2 appointed counsel if indigent.

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

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

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

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

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

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

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

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

33 (iii) Upon a determination of ~~indigence~~ indigency
34 and a finding by the court that the "juvenile representation fund" does not
35 have sufficient funds to pay reasonable attorney's fees and expenses incurred
36 at the trial court level and state funds have been exhausted, the court may

1 order the county to pay these reasonable fees and expenses until the state
2 provides funding for such counsel.

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

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

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

16
17 SECTION 9. Arkansas Code § 9-27-330 is amended to read as follows:

18 9-27-330. Disposition - Delinquency - Alternatives.

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

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

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

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

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

35 (iv) Upon receipt of an order of commitment with
36 recommendations for placement, the division shall consider the

1 recommendations of the committing court in placing a youth in a youth
2 services facility or a community-based program.

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

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

9 (c) The division or the prosecuting attorney
10 in the county in which the juvenile was committed may request detention or
11 recommitment, and the court may order such upon a finding by a preponderance
12 of the evidence that the juvenile violated the terms of the aftercare plan;
13

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

16 (h) Custody of a juvenile may be transferred to a relative or other
17 individual only after a ~~full investigation~~ home study of the placement is
18 conducted by the department or a licensed certified social worker and
19 submitted to the court in writing and the court determines that the placement
20 is in the best interest of the juvenile.
21

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

25 (k) No court may commit a juvenile found solely in criminal contempt
26 to the Division of Youth Services.
27

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

29 9-27-332. Disposition - Family in need of services - Generally.

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

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

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

1 contractors with the Division of Children and Family Services of the
2 Department of Human Services and department services for which the family
3 applies and is determined eligible; and

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

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

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

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 under 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) Grant permanent custody to an individual upon proof:

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

1 (B) 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;

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

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

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

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

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

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

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

36 (C)(i) In all cases in which a fine is ordered, the court

1 shall determine the parent's, guardian's, or custodian's ability to pay for
2 the fine.

3 (ii) In making its determination, the court shall
4 consider the following factors:

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

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

10 (c) Any other factors that the court deems
11 relevant.

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

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

18 (10) Order a juvenile service fee not to exceed twenty dollars
19 (\$20.00) a month to be paid by the juvenile, his or her parent, both parents,
20 the guardian, or the custodian.

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

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

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

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

36 (h) No court may commit a juvenile found solely in criminal contempt

1 to the Division of Youth Services.

2
3 SECTION 15. Arkansas Code § 9-27-334 is amended to read as follows:
4 9-27-334. Disposition - Dependent-neglected – Generally.

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

7 (1) Order family services;

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

12 (B) If the court grants custody of the juvenile to the
13 department, the juvenile shall be placed in a licensed or approved foster
14 home, shelter, or facility or an exempt child welfare agency as defined at §
15 9-28-402(12)†.

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

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

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

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

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

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

36 (3) If it is in the best interest of the juvenile, grant

1 permanent custody to an individual upon proof that the parent or guardian
2 from whom the juvenile has been removed has not complied with the orders of
3 the court or upon proof that no reunification services should be required to
4 reunite the juvenile with his or her parent or parents and that no further
5 services or periodic reviews are required; or

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

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

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

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

18
19 SECTION 16. Arkansas Code § 9-27-335 is amended to read as follows:
20 9-27-335. Disposition - Dependent-neglected - Limitations.

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

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

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

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

36 (c)(1) In all cases in which family services are ordered, the court

1 shall determine the parent's, guardian's, or custodian's ability to pay, in
2 whole or in part, for these services.

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

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

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

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

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

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

27 (A) Dismiss the petition;

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

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

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

34 (ii) To prevent the juvenile from being removed from
35 the jurisdiction of the court.

36 (f) In a case of medical neglect involving a child's receiving

1 treatment through prayer alone in accordance with a religious method of
2 healing in lieu of medical care, the adjudication order shall be limited to:

3 (1) Preventing or remedying serious harm to the child; or

4 (2) Preventing the withholding of medically indicated treatment
5 from a child with a life-threatening condition.

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

8
9 SECTION 17. Arkansas Code § 9-27-337 is amended to read as follows:

10 9-27-337. Six-month reviews required.

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

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

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

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

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

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

29 (ii) The burden of presenting the case shall be on
30 the requesting party.

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

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

36 (E) If the court determines that reunification services

1 shall be terminated, the court shall hold a permanency planning hearing
2 within thirty (30) days after the determination.

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

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

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

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

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

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

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

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

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

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

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

1 (e) Whether the juvenile should be placed for
2 adoption; and

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

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

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

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

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

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

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

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

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

31 (g) The review report shall include a summary of the parties'
32 compliance with the case plan and court orders, including a description of
33 the services and assistance that the department has provided to the family.
34

35 SECTION 18. Arkansas Code § 9-27-341 is amended to read as follows:
36 9-27-341. Termination of parental rights.

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

3 (B) It shall not be available for private litigants or
4 other agencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (iii) The presumptive legal father is not the

1 biological father of the juvenile and the welfare of the juvenile can best be
2 served by terminating the parental rights of the presumptive legal father;

3 (iv) A parent has abandoned the juvenile;

4 (v) A parent has executed consent to termination of
5 parental rights or adoption of the juvenile, subject to the court's approval;

6 (vi)(a) The court has found the juvenile ~~victim~~
7 dependent-neglected as a result of neglect or abuse that could endanger the
8 life of the child, sexual abuse, or sexual exploitation, any of which was
9 perpetrated by the juvenile's parent or parents.

10 (b) Such findings by the juvenile division of
11 circuit court shall constitute grounds for immediate termination of the
12 parental rights of one (1) or both of the parents;

13 (vii)(a) That other factors or issues arose
14 subsequent to the filing of the original petition for dependency-neglect that
15 demonstrate that return of the juvenile to the custody of the parent is
16 contrary to the juvenile's health, safety, or welfare and that, despite the
17 offer of appropriate family services, the parent has manifested the
18 incapacity or indifference to remedy the subsequent issues or factors or
19 rehabilitate the parent's circumstances that prevent return of the juvenile
20 to the custody of the parent.

21 (b) Provided, however, that the department
22 shall make reasonable accommodations in accordance with the Americans with
23 Disabilities Act, 42 U.S.C. § 1201 et seq., to parents with disabilities in
24 order to allow them meaningful access to reunification and family
25 preservation services.

26 (c) For purposes of subdivision (b)(3)(B)(vii)
27 of this section, the inability or incapacity to remedy or rehabilitate
28 includes, but is not limited to, mental illness, emotional illness, or mental
29 deficiencies;

30 (viii) The parent is sentenced in a criminal
31 proceeding for a period of time that would constitute a substantial period of
32 the juvenile's life ~~and the conditions in subdivision (b)(3)(B)(i) or (ii) of~~
33 ~~this section have also been established; and; or~~

34 (ix)(a) The parent is found by a court of competent
35 jurisdiction, including the juvenile division of circuit court, to:

36 (1) Have committed murder or voluntary

1 manslaughter of any ~~child~~ juvenile or to have aided or abetted, attempted,
2 conspired, or solicited to commit the murder or voluntary manslaughter;

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

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

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

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

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

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

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

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

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

35 (ii) If no legal rights have
36 been established, a putative parent must prove that significant contacts

1 existed with the juvenile in order for the putative parent's rights to
2 attach.

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

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

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

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

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

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

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

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

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

1 for that juvenile.

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

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

10 (C) No fee shall be charged for
11 the filing of the affidavit.

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

16

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

19 9-27-359. Emancipation of juveniles.

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

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

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

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

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

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

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

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

36 (E) The juvenile has a legal source of income, such as

1 employment or a trust fund;

2 (F) The juvenile has health care coverage or a realistic
3 plan on how to meet his or her health needs;

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

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

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

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

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

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

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

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

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

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

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

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

26 (8) The juvenile is not relieved from compulsory school
27 attendance;

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

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

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

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

