

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 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/5/07
A Bill

SENATE BILL 370

5 By: Senator Madison
6 By: Representative Webb
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO AMEND PROVISIONS OF THE JUVENILE CODE
11 INCLUDING THE RIGHT OF A FOSTER CHILD TO
12 CONTINUITY OF EDUCATIONAL SERVICES, DEFINITIONS
13 IN THE JUVENILE CODE, AND PROCEDURAL ISSUES
14 RELATED TO JURISDICTION, VENUE, AND HEARINGS; TO
15 AMEND PROVISIONS IN THE JUVENILE CODE RELATED TO
16 DEPENDENCY-NEGLECT PROCEEDINGS REGARDING
17 CONFIDENTIALITY, DISPOSITIONS, TERMINATION OF
18 PARENTAL RIGHTS, EMERGENCY ORDERS, AND HEARINGS;
19 TO AMEND PROVISIONS IN THE JUVENILE CODE RELATED
20 TO JUVENILE DELINQUENCY PROCEEDINGS; TO AMEND
21 PROVISIONS IN THE JUVENILE CODE RELATED TO
22 FAMILIES IN NEED OF SERVICES; TO CLARIFY THE
23 PAYMENT PROCEDURE FOR ATTORNEYS WHO REPRESENT
24 INDIGENT PARENTS OR GUARDIANS IN DEPENDENCY-
25 NEGLECT CASES; AND FOR OTHER PURPOSES.
26

27 **Subtitle**

28 TO AMEND PROVISIONS OF THE JUVENILE CODE
29 RELATED TO CASES ARISING UNDER
30 DEPENDENCY-NEGLECT, FAMILIES IN NEED OF
31 SERVICES, AND DELINQUENCY.
32
33

34 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
35

36 SECTION 1. Arkansas Code § 9-27-103(b), regarding continuity of



1 educational services to foster children, is amended to read as follows:

2 (b)(1) Foster children shall have continuity in their educational
3 placements.

4 (2) The Department of Health and Human Services shall consider
5 continuity of educational services and school stability in making foster
6 placement decisions.

7 (3) The local school district shall allow the foster child to
8 remain in the child's current school and continue his or her education unless
9 the court finds that:

10 (A) The placement is not in the child's best interest; and

11 (B) It conflicts with any other provision of current law,
12 excluding the residency requirement pursuant to § 6-18-202.

13 (4) To the extent reasonable and practical, the school district
14 is encouraged to work out a plan for transportation for the child to remain
15 in the child's current school.

16 (5) Except for emergencies, prior to making a recommendation to
17 move a child from his or her current school, the Department of Health and
18 Human Services shall provide to the following a written explanation that
19 states the basis for the recommended school change and how it serves the
20 child's best interest:

21 (A) The foster child;

22 (B) The child's attorney ad litem;

23 (C) The court-appointed special advocate, if appointed;

24 and

25 (D) Parents, guardians, or any person appointed by the
26 court.

27 (6)(A) If the court transfers custody of a child to the
28 department, the court shall issue an order containing the following
29 determinations regarding the child's educational issues of the:

30 (i) Whether the child's parent or guardian may have
31 access to the child's school records;

32 (ii) Whether the child's parent or guardian who has
33 access to the child's school records may obtain information on the current
34 placement of the child, including the name and address of the child's foster
35 parent or provider; and

36 (iii) Whether the child's parent or guardian may

1 participate in school conferences or similar activities at the child's
2 school.

3 (B) If the court transfers custody of a child to the
4 department, the court may appoint an individual to consent to an initial
5 evaluation of the child and serve as the child's surrogate parent under the
6 Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in
7 effect on February 1, 2007.

8
9 SECTION 2. Arkansas Code § 9-27-302 is amended to read as follows:
10 9-27-302. Purposes - Construction.

11 This subchapter shall be liberally construed to the end that its
12 purposes may be carried out:

13 (1) To assure that all juveniles brought to the attention of the
14 courts receive the guidance, care, and control, preferably in each juvenile's
15 own home when the juvenile's health and safety are not at risk, which will
16 best serve the emotional, mental, and physical welfare of the juvenile and
17 the best interest of the state;

18 (2)(A) To preserve and strengthen the juvenile's family ties
19 when it is in the best interest of the juvenile;

20 (B) To protect a juvenile by considering the juvenile's
21 health and safety as the paramount concerns in determining whether or not to
22 remove the juvenile from the custody of his or her parents or custodians,
23 removing the juvenile only when the safety and protection of the public
24 cannot adequately be safeguarded without such removal;

25 (C) When a juvenile is removed from his or her own family,
26 to secure for him or her custody, care, and discipline ~~as nearly as possible~~
27 ~~equivalent to that which should have been given by his or her parents,~~ with
28 primary emphasis on ensuring the health and safety of the juvenile while in
29 the out-of-home placement; and

30 (D) To assure, in all cases in which a juvenile must be
31 permanently removed from the custody of his or her parents, that the juvenile
32 be placed in an approved family home and be made a member of the family by
33 adoption;

34 (3) To protect society more effectively by substituting for
35 retributive punishment, whenever possible, methods of offender rehabilitation
36 and rehabilitative restitution, recognizing that the application of sanctions

1 which are consistent with the seriousness of the offense is appropriate in
2 all cases; and

3 (4) To provide means through which the provisions of this
4 subchapter are executed and enforced and in which the parties are assured a
5 fair hearing and their constitutional and other legal rights recognized and
6 enforced.

7
8 SECTION 3. Arkansas Code § 9-27-303(6), regarding definitions in the
9 Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to read as
10 follows:

11 (6) "Aggravated circumstances" means:

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

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

19
20 SECTION 4. Arkansas Code § 9-27-303(17), regarding definitions in the
21 Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to read as
22 follows:

23 (17) "Dependent juvenile" means:

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

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

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

33 (D) A child whose custodial parent dies and no stand-by
34 guardian exists;

35 (E) A child who is an infant relinquished to the custody
36 of the department for the sole purpose of adoption;

- 1 (F) A safe-haven baby, § 9-34-201 et seq.; or
- 2 (G) A child who has disrupted his or her adoption, and the
- 3 adoptive parents have exhausted resources available to them;

4

5 SECTION 5. Arkansas Code § 9-27-303(18), regarding definitions in the

6 Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to read as

7 follows:

8 (18)(A) "Dependent-neglected juvenile" means any juvenile who is

9 at substantial risk of serious harm as a result of the following acts or

10 omissions to the juvenile, a sibling, or another juvenile:

- 11 (i) Abandonment;
- 12 (ii) Abuse;
- 13 (iii) Sexual abuse;
- 14 (iv) Sexual exploitation;
- 15 (v) Neglect;
- 16 (vi) Parental unfitness ~~to the juvenile, a sibling,~~
- 17 ~~or another juvenile;~~ or
- 18 (vii) Being present in a dwelling or structure
- 19 during the manufacturing of methamphetamine with the knowledge of his or her
- 20 parent, guardian, or custodian.

21 (B) "Dependent-neglected juvenile" includes dependent

22 juveniles;

23

24 SECTION 6. Arkansas Code § 9-27-303(29), regarding definitions in the

25 Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to read as

26 follows:

27 (29)(A) "Home study" means a written report that is obtained

28 after an investigation of a home by the department or other appropriate

29 persons or agencies and which shall conform to regulations established by the

30 department.

31 (B)(i) An in-state home study, excluding the results of a

32 criminal records check, shall be completed and presented to the requesting

33 court within thirty (30) working days of the receipt of the request for the

34 home study.

35 (ii) The results of the criminal records check shall

36 be provided to the court as soon as they are received.

1 (C)(i) The person or agency conducting the home study
2 shall have the right to obtain a criminal background check on any person in
3 the household age sixteen (16) and older, including a fingerprint-based check
4 of national crime information databases.

5 (ii) Upon request, local law enforcement shall
6 provide the person or agency conducting the home study with criminal
7 background information on any person in the household age sixteen (16) and
8 older;

9
10 SECTION 7. Arkansas Code § 9-27-303(36)(A), regarding definitions in
11 the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to read as
12 follows:

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

20 (i) Failure or refusal to prevent the abuse of the
21 juvenile when the person knows or has reasonable cause to know the juvenile
22 is or has been abused;

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

29 (iii) Failure to take reasonable action to protect
30 the juvenile from abandonment, abuse, sexual abuse, sexual exploitation,
31 neglect, or parental unfitness when the existence of this condition was known
32 or should have been known;

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

1 (v) Failure to provide for the juvenile's care and
2 maintenance, proper or necessary support, or medical, surgical, or other
3 necessary care;

4 (vi) Failure, although able, to assume
5 responsibility for the care and custody of the juvenile or to participate in
6 a plan to assume the responsibility; or

7 (vii) Failure to appropriately supervise the
8 juvenile that results in the juvenile's being left alone at an inappropriate
9 age or in inappropriate circumstances, creating a dangerous situation or a
10 situation that puts the juvenile at risk of harm.

11 (viii) Knowingly allowing inappropriate contact with
12 a person who is:

13 (a) Registered as a sexual offender;

14 (b) Convicted of a sexual crime involving a
15 child; or

16 (c) Convicted of a crime involving child
17 pornography;

18
19 *SECTION 8. Arkansas Code § 9-27-303, regarding the definitions in the*
20 *Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to add an*
21 *additional definition to read as follows:*

22 (61) "Safety plan" means a plan ordered by the court to be developed
23 for an adjudicated delinquent sex offender who is at moderate or high risk of
24 re-offending for the purposes of § 9-27-352.

25
26 *SECTION 9. Arkansas Code § 9-27-303(49), regarding the definitions in*
27 *the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to read as*
28 *follows:*

29 (49) "Sexual abuse" means:

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

32 (i) Sexual intercourse, deviant sexual activity, or
33 sexual contact by forcible compulsion;

34 (ii) Attempted sexual intercourse or deviant sexual
35 activity or sexual contact by forcible compulsion;

36 (iii) Indecent exposure; or

1 (iv) Forcing the watching of pornography or live
2 human sexual activity;

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

6 (i) Sexual intercourse, deviant sexual activity, or
7 sexual contact; or

8 (ii) Attempted sexual intercourse, deviant sexual
9 activity, or sexual contact;

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

12 (i) Sexual intercourse, deviant sexual activity, or
13 sexual contact; or

14 (ii) Attempted sexual intercourse, deviant sexual
15 activity, or sexual contact;

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

18 (i) Forcing or encouraging the watching of
19 pornography; ~~or~~

20 (ii) Forcing, permitting, or encouraging the
21 watching of live sexual activity; ~~or~~

22 (iii) Forcing the listening to of a description of
23 sexual intercourse, deviate sexual activity, or sexual contact transmitted by
24 any method; or

25 (iv) An act of voyeurism as defined under § 5-16-
26 102; or

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

29 (i) Sexual intercourse, deviant sexual activity, or
30 sexual contact by forcible compulsion; or

31 (ii) Attempted sexual intercourse, deviant sexual
32 activity, or sexual contact by forcible compulsion;

33
34 SECTION 10. Arkansas Code § 9-27-303(53), regarding definitions in the
35 Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to read as
36 follows:

1 (53) "Trial placement" means that custody of the juvenile
 2 remains with the department, but the juvenile is returned to the home of a
 3 parent for a period not to exceed ~~thirty (30)~~ sixty (60) days;

4
 5 SECTION 11. Arkansas Code § 9-27-307, regarding the venue of juvenile
 6 courts, is amended to add an additional subsection to read as follows:

7 (c)(1) Prior to transferring a case to another venue, the court shall
 8 contact the judge in the other venue to confirm that the judge in the other
 9 venue will accept the transfer.

10 (2)(A) Upon confirmation that the judge will accept the transfer
 11 of venue, the transferring judge shall enter the transfer order. The
 12 transfer order shall:

13 (i) Indicate that the judge has accepted the
 14 transfer;

15 (ii) State the location of the court in the new
 16 venue; and

17 (iii) Set the time and date of the next hearing.

18 (B) The transfer order shall be:

19 (i) Provided to all parties and attorneys to the
 20 case; and

21 (ii) Transmitted immediately to the judge accepting
 22 the transfer.

23 (3) The transferring court shall also ensure that all court
 24 records are copied and sent to the judge in the new venue.

25
 26 SECTION 12. Arkansas Code § 9-27-314(a)(2), regarding emergency orders
 27 under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., is amended to
 28 read as follows:

29 (2) In any case in which there is probable cause to believe that
 30 an emergency order is necessary to protect the juvenile from severe
 31 maltreatment, as defined in § 12-12-503(16), the court shall issue an ex
 32 parte order to provide specific appropriate safeguards for the protection of
 33 the juvenile if the alleged offender:

34 (A) ~~has~~ Has a legal right to custody or visitation with
 35 the juvenile; ~~or~~

36 (B) Has a property right allowing access to the home

1 where the juvenile resides; or
2 (C) Is a juvenile.

3
4 SECTION 13. Arkansas Code § 9-27-325(1), regarding hearings under the
5 Arkansas Juvenile Code of 1989, is amended to read as follows:

6 (1)(1) The Department of Health and Human Services shall provide to
7 foster parents and preadoptive parents of a child in department custody
8 notice of any ~~review or hearing~~ proceeding to be held with respect to the
9 child.

10 (2) Relative caregivers shall be provided notice by the original
11 petitioner in the juvenile matter.

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

15 (B) Foster parents, adoptive parents, and relative
16 caregivers shall not be made parties to the ~~review or hearing~~ proceeding
17 solely on the basis that the persons are entitled to notice and the
18 opportunity to be heard.

19 (C) Foster parents, preadoptive parents, and relative
20 caregivers shall have the right to be heard in any proceeding.

21
22 SECTION 14. Arkansas Code § 9-27-326, regarding detention hearings, is
23 amended to add an additional subsection to read as follows:

24 (f)(1) If the juvenile who is being detained is also in the custody of
25 the department pursuant to a family in need of services or dependency-neglect
26 petition and the court does not keep the juvenile in detention, then any
27 issues regarding placement of the juvenile shall be addressed only in the
28 family in need of services or dependency-neglect case and shall not be an
29 issue addressed, nor shall any orders be entered in the delinquency case
30 regarding placement of the juvenile.

31 (2) Within ten (10) days of the entry of any order in the
32 delinquency case, the prosecuting attorney shall file a copy of the order in
33 the juvenile's dependency-neglect or family in need of services case.

34
35 SECTION 15. Arkansas Code § 9-27-327(a)(1), regarding adjudication
36 hearings, is amended to read as follows:

1 9-27-327. Adjudication hearing.

2 (a)(1)(A) An adjudication hearing shall be held to determine whether
3 the allegations in a petition are substantiated by the proof.

4 (B)~~(i)~~ The dependency-neglect adjudication hearing shall
5 be held within thirty (30) days after the probable cause hearing under § 9-
6 27-315, but on motion of the court and parties, for good cause shown, it may
7 be continued for no more than thirty (30) days following the first thirty
8 (30) days.

9 ~~(ii) However, the adjudication hearing shall not be~~
10 ~~completed more than sixty (60) days after the probable cause hearing under §~~
11 ~~9-27-315.~~

12
13 SECTION 16. Arkansas Code § 9-27-328, regarding removal of a juvenile
14 from the custody of his or her parent or guardian, is amended to add an
15 additional subsection to read as follows:

16 (f) Within one (1) year from the date of removal of the juvenile and
17 annually thereafter, the court shall determine whether the department has
18 made reasonable efforts to obtain permanency for the juvenile.

19
20 SECTION 17. Arkansas Code § 9-27-330(a), regarding dispositions for
21 delinquency findings, is amended to read as follows:

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

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

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

31 (ii) The risk assessment may be modified by the
32 Juvenile Judges Committee of the Arkansas Judicial Council with the Division
33 of Youth Services of the Department of Health and Human Services.

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

1 placement in the order.

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

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

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

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

16 (C) This transfer of custody shall not include placement
17 of adjudicated delinquents into the custody of the department for the purpose
18 of foster care except as provided in § 12-12-516;

19 (2) Order the juvenile or members of the juvenile's family to
20 submit to physical, psychiatric, or psychological evaluations;

21 (3) Grant permanent custody to an individual upon proof that the
22 parent or guardian from whom the juvenile has been removed has not complied
23 with the orders of the court and that no further services or periodic reviews
24 are required;

25 (4)(A) Place the juvenile on probation under those conditions
26 and limitations that the court may prescribe pursuant to § 9-27-339(a).

27 (B)(i) In addition, the court shall have the right as a
28 term of probation to require the juvenile to attend school or make
29 satisfactory progress toward a general educational development certificate.

30 (ii) The court shall have the right to revoke
31 probation if the juvenile fails to regularly attend school or if satisfactory
32 progress toward a general educational development certificate is not being
33 made;

34 (5) Order a probation fee, not to exceed twenty dollars (\$20.00)
35 per month, as provided in § 16-13-326(a);

36 (6) Assess a court cost of no more than thirty-five dollars

1 (\$35.00) to be paid by the juvenile, his or her parent, both parents, or his
2 or her guardian;

3 (7)(A) Order restitution to be paid by the juvenile, a parent,
4 both parents, the guardian, or his or her custodian.

5 (B) If the custodian is the State of Arkansas, both
6 liability and the amount which may be assessed shall be determined by the
7 Arkansas State Claims Commission;

8 (8) Order a fine of not more than five hundred dollars (\$500) to
9 be paid by the juvenile, a parent, both parents, or the guardian;

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

15 (10)(A) Order that the parent, both parents, or the guardian of
16 the juvenile attend a court-approved parental responsibility training program
17 if available.

18 (B) The court may make reasonable orders requiring proof
19 of completion of the training program within a certain time period and
20 payment of a fee covering the cost of the training program.

21 (C) The court may provide that any violation of such
22 orders shall subject the parent, both parents, or the guardian to the
23 contempt sanctions of the court;

24 (11)(A)(i) Order that the juvenile remain in a juvenile
25 detention facility for an indeterminate period not to exceed ninety (90)
26 days.

27 (ii) The court may further order that the juvenile
28 be eligible for work release or to attend school or other educational or
29 vocational training.

30 (B) The juvenile detention facility shall afford
31 opportunities for education, recreation, and other rehabilitative services to
32 adjudicated delinquents;

33 (12) Place the juvenile on residential detention with electronic
34 monitoring, either in the juvenile's home or in another facility as ordered
35 by the court;

36 (13)(A) Order the parent, both parents, or the guardian of any

1 juvenile adjudicated delinquent and committed to a youth services center,
 2 detained in a juvenile detention facility, or placed on electronic monitoring
 3 to be liable for the cost of the commitment, detention, or electronic
 4 monitoring.

5 (B)(i) The court shall take into account the financial
 6 ability of the parent, both parents, or the guardian to pay for the
 7 commitment, detention, or electronic monitoring.

8 (ii) The court shall take into account the past
 9 efforts of the parent, both parents, or the guardian to correct the
 10 delinquent juvenile's conduct.

11 (iii) If the parent is a noncustodial parent, the
 12 court shall take into account the opportunity the parent has had to correct
 13 the delinquent juvenile's conduct.

14 (iv) The court shall take into account any other
 15 factors the court deems relevant; or

16 (14) When a juvenile is committed to a youth services center or
 17 detained in a juvenile detention facility and the juvenile is covered by
 18 private health insurance, order the parent or guardian to provide information
 19 on the juvenile's health insurance coverage, including a copy of the health
 20 insurance policy and the pharmacy card when available, to the juvenile
 21 detention center or youth services center that has physical custody of the
 22 juvenile;

23 ~~(14)(A)(15)(A)~~ *Order the Department of Finance and*
 24 *Administration to suspend the driving privileges of any juvenile adjudicated*
 25 *delinquent.*

26 (B) The order shall be prepared and transmitted to the
 27 Department of Finance and Administration within twenty-four (24) hours after
 28 the juvenile has been found delinquent and is sentenced to have his or her
 29 driving privileges suspended.

30 (C) The court may provide in the order for the issuance of
 31 a restricted driving permit to allow driving to and from a place of
 32 employment or driving to and from school or for other circumstances.

33

34 SECTION 18. Arkansas Code § 9-27-332 is amended to read as follows:
 35 9-27-332. Disposition - Family in need of services - Generally.

36 (a) If a family is found to be in need of services, the circuit court

1 may enter an order making any of the following dispositions:

2 (1)(A) To order family services to rehabilitate the juvenile and
3 his or her family.

4 (B)(i) If the Department of Health and Human Services is
5 the provider for family services, the family services shall be limited to
6 those services available by the department's community-based providers or
7 contractors, excluding the contractors with the Division of Children and
8 Family Services of the Department of Health and Human Services and services
9 of the department for which the family applies and is determined eligible.

10 (ii) To prevent removal when the department is the
11 provider for family services, the court shall make written findings outlining
12 how each service is intended to prevent removal;

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

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

20 (C) All juveniles in shelters or awaiting foster care
21 placement who are in the custody of the department are "homeless children and
22 youth" as defined under 42 U.S.C. § 11434a(2), as in effect on February 1,
23 2005;

24 ~~(D) If the court transfers custody of the juvenile to the~~
25 ~~department, the court shall issue orders regarding educational issues of the~~
26 ~~juvenile as follows:~~

27 ~~(i) Determine if the parent or guardian shall have~~
28 ~~access to school records of the juvenile;~~

29 ~~(ii) Determine if the parent or guardian who has~~
30 ~~access to school records of the juvenile is entitled to obtain information on~~
31 ~~the current placement of the juvenile, that is, the name and address of the~~
32 ~~foster parent or provider; and~~

33 ~~(iii) Determine if the parent or guardian may~~
34 ~~participate in school conferences or similar activities at school.~~

35 ~~(E) If the court transfers custody of the juvenile to the~~
36 ~~department, the court may appoint an individual to consent to an initial~~

1 ~~evaluation and serve as a surrogate parent pursuant to the Individuals with~~
2 ~~Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on~~
3 ~~February 1, 2005;~~

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

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

7 ~~(B) That no reunification services should be required to~~
8 ~~reunite the juvenile with his or her parent or parents and that no further~~
9 ~~services or periodic reviews are required;~~

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

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

16 ~~(5)(4)~~ Place the juvenile on residential detention with
17 electronic monitoring in the juvenile's home;

18 ~~(6)(5)~~ Order the juvenile, his or her parent, both parents, or
19 guardian to perform court-approved volunteer service in the community
20 designed to contribute to the rehabilitation of the juvenile or the ability
21 of the parent or guardian to provide proper parental care and supervision of
22 the juvenile, not to exceed one hundred sixty (160) hours;

23 ~~(7)(6)(A)~~ Place the juvenile on supervision terms, including,
24 but not limited to, requiring the juvenile to attend school or make
25 satisfactory progress toward a general education development certificate,
26 requiring the juvenile to observe a curfew, and prohibiting the juvenile from
27 possessing or using any alcohol or illegal drugs.

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

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

33 ~~(8)(7)(A)~~ Order a fine not to exceed five hundred dollars (\$500)
34 to be paid by the juvenile, a parent, both parents, a guardian, or a
35 custodian when the juvenile exceeds the number of excessive unexcused
36 absences provided in the student attendance policy of the district or the

1 State Board of Workforce Education and Career Opportunities.

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

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

9 (ii) In making its determination, the court shall
10 consider the following factors:

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

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

16 (c) Any other factors that the court deems
17 relevant.

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

21 ~~(9)~~(8) Assess a court cost of no more than thirty-five dollars
22 (\$35.00) to be paid by the juvenile, his or her parent, both parents, the
23 guardian, or the custodian; and

24 ~~(10)~~(9) Order a juvenile service fee not to exceed twenty
25 dollars (\$20.00) a month to be paid by the juvenile, his or her parent, both
26 parents, the guardian, or the custodian.

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

30

31 *SECTION 19. Arkansas Code § 9-27-333(f), regarding the dispositions of*
32 *families in need of services matters, is amended to read as follows:*

33 (f) *Custody of a juvenile may be transferred to a relative or other*
34 *individual only after a home study of the placement is conducted by the*
35 ~~department~~ Department of Health and Human Services *or a licensed* ~~certified~~
36 *social worker* who is approved to do home studies *and submitted to the court*

1 *in writing and the court determines that the placement is in the best*
2 *interest of the juvenile.*

3

4 SECTION 20. Arkansas Code § 9-27-334 is amended to read as follows:

5 9-27-334. Disposition - Dependent-neglected - Generally.

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

8 (1) Order family services;

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

13 (B) If the court grants custody of the juvenile to the
14 department, the juvenile shall be placed in a licensed or approved foster
15 home, shelter, or facility or an exempt child welfare agency as defined at §
16 9-28-402(12).

17 (C) All juveniles in shelters or awaiting foster care
18 placement who are in the custody of the department are "homeless children and
19 youth" as defined at 42 U.S.C. § 11434a(2), as in 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)(3)(A)~~ Order that the parent, both parents, or the
 7 guardian of the juvenile attend a court-ordered parental responsibility
 8 training program, 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 the
 17 guardian to contempt sanctions.

18
 19 SECTION 21. Arkansas Code § 9-27-335(d), regarding the disposition of
 20 dependent-neglected matters, is amended to read as follows:

21 (d) Custody of a juvenile may be transferred to a relative or other
 22 individual only after a home study of the placement is conducted by the
 23 ~~department~~ Department of Health and Human Services or a licensed ~~certified~~
 24 social worker who is approved to do home studies and submitted to the court
 25 in writing and the court determines that the placement is in the best
 26 interest of the juvenile.

27
 28 SECTION 22. Arkansas Code § 9-27-335(e)(2), regarding the disposition
 29 of dependent-neglected matters, is amended to read as follows:

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

33 (A) ~~Dismiss the petition;~~

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

36 ~~(C)(B)~~ Transfer custody of the juvenile despite the lack

1 of reasonable efforts by the ~~department~~ Department of Health and Human
2 Services to prevent the need for out-of-home placement if the transfer is
3 necessary and in the best interest of juvenile:

- 4 (i) To protect the juvenile's health and safety; or
- 5 (ii) To prevent the removal of the juvenile from the
- 6 jurisdiction of the court.

7
8 SECTION 23. Arkansas Code § 9-27-337(a)(1), regarding six-month
9 reviews, is amended to read as follows:

10 (a)(1) The court shall review every case of dependency-neglect or
11 families in need of services when:

12 (A) A juvenile is placed by the court in the custody of
13 the Department of Health and Human Services or in another out-of-home
14 placement until there is a permanent order of custody, guardianship, or other
15 permanent placement for the juvenile; or

16 (B) A juvenile is returned to the parent, guardian, or
17 custodian and the court has not discontinued orders for family services.

18
19 SECTION 24. Arkansas Code § 9-27-341(b), regarding termination of
20 parental rights, is amended to read as follows:

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

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 returning the child
7 to the custody of the parent, parents, or putative parent or parents; and

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

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

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

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

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

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

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

35 (iii) The presumptive legal father is not the
36 biological father of the juvenile and the welfare of the juvenile can best be

1 served by terminating the parental rights of the presumptive legal father;

2 (iv) A parent has abandoned the juvenile;

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

5 (vi)(a) The court has found the juvenile or a
6 sibling dependent-neglected as a result of neglect or abuse that could
7 endanger the life of the child, sexual abuse, or sexual exploitation, any of
8 which was perpetrated by the juvenile's parent or parents or step-parent or
9 step-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) The department shall make reasonable
22 accommodations in accordance with the Americans with Disabilities Act, 42
23 U.S.C. § 12101 et seq., to parents with disabilities in order to allow them
24 meaningful access to reunification and family preservation services.

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

29 (viii) The parent is sentenced in a criminal
30 proceeding for a period of time that would constitute a substantial period of
31 the juvenile's life; or

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

34 (1) Have committed murder or voluntary
35 manslaughter of any juvenile or to have aided or abetted, attempted,
36 conspired, or solicited to commit the murder or voluntary manslaughter;

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

5 (3)(A) Have subjected any juvenile to
6 aggravated circumstances.

7 (B) "Aggravated circumstances"
8 means:

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

14 (ii) A juvenile has been
15 removed from the custody of the parent or guardian and placed in foster care
16 or in the custody of another person ~~more than~~ three (3) or more times in the
17 last fifteen (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
26 SECTION 25. Arkansas Code § 9-27-341(d), regarding termination of
27 parental rights, is amended to read as follows:

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

32 ~~(2) If the parent was represented by counsel, the court shall~~
33 ~~take judicial notice and incorporate by reference into the record all~~
34 ~~pleadings and testimony in the case incurred before the termination of~~
35 ~~parental rights hearing.~~

1 SECTION 26. Arkansas Code § 9-27-341(f), regarding termination of
2 parental rights, is amended to read as follows:

3 (f) After the termination of parental rights hearing, the court shall
4 review the case at least ~~every three (3) months when the goal is adoption~~
5 ~~and, in other cases,~~ every six (6) months, and a permanency planning hearing
6 shall be held each year following the initial permanency hearing until
7 permanency is achieved for that juvenile.

8
9 SECTION 27. Arkansas Code § 9-27-349 is amended to read as follows:

10 9-27-349. Compliance with federal acts.

11 The Division of ~~Children and Family~~ Youth Services of the Department of
12 Health and Human Services shall have the responsibility for the collection,
13 review, and reporting of statistical information on detained or incarcerated
14 juveniles, for adult jails, adult lock-ups, and juvenile detention facilities
15 to assure compliance with the provisions of Pub. L. No. 93-415, the Juvenile
16 Justice and Delinquency Prevention Act of 1974.

17
18 SECTION 28. Arkansas Code § 9-27-353, regarding the duties and
19 responsibilities of custodian, is amended to add an additional subsection to
20 read as follows:

21 (f) The court shall not split custody, that is, grant legal custody to
22 one (1) person or agency and grant physical custody to another person or
23 agency.

24
25 SECTION 29. Arkansas Code § 9-27-355(c)(5), regarding the duties and
26 responsibilities of custodian, is amended to add an additional subsection to
27 read as follows:

28 (5) If the court grants custody of the juvenile to the relative
29 or other person:

30 (A)(i) The juvenile shall not be placed back in the
31 custody of the department while remaining in the home of the relative or
32 other person.

33 (ii) The juvenile shall not be removed from the
34 custody of the relative or other person, placed in the custody of the
35 department, and then remain or be returned to the home of the relative or
36 other person while remaining in the custody of the department;

1 (B) The relative or other person shall not receive any
2 financial assistance, including board payments, from the department, except
3 for financial assistance for which the relative has applied and for which the
4 relative or other person qualifies pursuant to the program guidelines, such
5 as the Transitional Employment Assistance Program, § 20-76-401, food stamps,
6 Medicaid, and the federal adoption subsidy; and

7 (C) The department shall not be ordered to pay the
8 equivalent of board payments or adoption subsidies to the relative or other
9 person as reasonable efforts to prevent removal of custody from the relative.

10
11 SECTION 30. Arkansas Code § 9-27-355(d), regarding the duties and
12 responsibilities of custodian, is amended to add an additional subsection to
13 read as follows:

14 (d)(1) Juveniles who are in the custody of the department shall be
15 allowed trial placements with parents for a period not to exceed ~~thirty (30)~~
16 sixty (60) days.

17 (2) At the end of ~~thirty (30)~~ sixty (60) days, the court shall
18 either place custody of the juvenile with the parent or the department shall
19 return the juvenile to a licensed or approved foster home, shelter, or
20 facility or an exempt child welfare agency as defined in § 9-28-402(12).

21
22 SECTION 31. Arkansas Code § 9-27-360(a), regarding the review of
23 termination of parental rights, is amended to read as follows:

24 (a) After an order of termination of parental rights, the circuit
25 court shall review the case following the termination hearing at least ~~every~~
26 ~~three (3) months when the goal is adoption and in other cases~~ every six (6)
27 months until permanency is achieved, and a permanency planning hearing shall
28 be held each year following the initial permanency hearing until permanency
29 is achieved for that juvenile.

30
31 SECTION 32. Arkansas Code § 9-27-361(c) is amended to read as follows:

32 (c)(1) Nothing in this section shall prevent the department or the
33 court-appointed special advocate from filing a report with the court and
34 providing it to all parties or their attorneys at least seven (7) business
35 days prior to any scheduled dependency-neglect hearing or presenting any
36 subsequent or addendum reports to the court during a hearing.

1 (2)(A) The court shall determine on the record whether the
2 reports or addendum reports shall be admitted into evidence based on any
3 evidentiary objections made by the parties.

4 (B) The court shall not consider as evidence any report or
5 part of a report or an addendum report that was not admitted into evidence on
6 the record.

7
8 SECTION 33. Arkansas Code § 9-27-401(d), regarding the creation of the
9 Division of Dependency-Neglect Representation, is amended to read as follows:

10 (d)(1) *The director is authorized to establish a program to represent*
11 *indigent parents or guardians in dependency-neglect cases.*

12 (2) *The court shall appoint counsel in compliance with federal*
13 *law, and § 9-27-316(h), and Supreme Court Administrative Order No. 15 in all*
14 *proceedings to remove custody or to terminate parental rights.*

15 ~~(3) *With the advice of judges who hear dependency-neglect cases,*~~
16 ~~*the Arkansas Supreme Court shall adopt standards of practice and*~~
17 ~~*qualifications for service for attorneys who seek to be appointed to provide*~~
18 ~~*legal representation for indigent parents or guardians in dependency-neglect*~~
19 ~~*cases.*~~

20 ~~(4)(3)(A) *When attorneys are appointed under subdivision (d)(2)*~~
21 ~~*of this section, the fees for services and court-appointed attorney fees and*~~
22 ~~*reasonable expenses shall be reimbursable expenses as set forth in the*~~
23 ~~*Administrative Office of the Courts reimbursement guidelines which shall*~~
24 ~~*include contracts with attorneys for such fees and reasonable expenses.*~~

25 (B) *Funding for contracts shall be administered from the*
26 *state or funds shall be provided to the judicial district for the county to*
27 *administer the contracts.*

28 (C) *All contracts shall be paid from funds appropriated*
29 *for that purpose to the office of this section.*

30 ~~(5)(4) *When a court orders the payment of funds for the fees and*~~
31 ~~*expenses authorized by this subsection, the attorney shall transmit a copy of*~~
32 ~~*the order to the office or county, which is authorized to pay the funds.*~~

33 ~~(6)(5) *The court may also require the parties to pay all or a*~~
34 ~~*portion of the expenses, depending on the ability of the parties to pay.*~~

35 ~~(7)(6) *The office shall establish guidelines to provide a*~~
36 ~~*maximum amount of expenses and fees per hour and per case that will be paid*~~

1 under this section.

2 ~~(8)~~(7) In order to ensure that each judicial district will have
3 an appropriate amount of funds to utilize indigent parent or guardian
4 representation in dependency-neglect cases, the funds appropriated shall be
5 apportioned based upon a formula developed by the office and approved by the
6 committee.

7 (8) The Administrative Office of the Courts shall not be liable
8 directly to any attorney or indirectly to the Arkansas State Claims
9 Commission for the payment of attorney fees or expenses except to the extent
10 specific funding is appropriated and available for the purpose of providing
11 indigent parent counsel in dependency-neglect cases.

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13 /s/ Madison
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