

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

# A Bill

HOUSE BILL 1754

5 By: Representative V. Flowers  
6 By: Senator Rice  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING GUARDIANSHIP  
10 SUBSIDIES AWARDED BY THE DEPARTMENT OF HUMAN  
11 SERVICES; TO CLARIFY THE RIGHTS OF CERTAIN JUVENILES  
12 IN THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES;  
13 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 TO AMEND THE LAW CONCERNING GUARDIANSHIP  
17 SUBSIDIES AWARDED BY THE DEPARTMENT OF  
18 HUMAN SERVICES; TO CLARIFY THE RIGHTS OF  
19 CERTAIN JUVENILES IN THE CUSTODY OF THE  
20 DEPARTMENT OF HUMAN SERVICES; AND TO  
21 DECLARE AN EMERGENCY.  
22  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code § 9-8-204 is amended to read as follows:  
28 9-8-204. Eligibility.

29 (a) A child is eligible for a guardianship subsidy if the Department  
30 of Human Services determines the following:

31 (1) The child has been removed from the custody of his or her  
32 parent or parents as a result of a judicial determination to the effect that  
33 continuation in the custody of the parent or parents would be contrary to the  
34 welfare of the child;

35 (2) The department is responsible for the placement and care of  
36 the child;



1 (3) Being returned home or being adopted is not an appropriate  
 2 permanency option for the child;

3 (4) Permanent placement with a guardian is in the best interest  
 4 of the child;

5 (5) The child demonstrates a strong attachment to the  
 6 prospective guardian, and the guardian has a strong commitment to caring  
 7 permanently for the child;

8 (6) With respect to a child who has attained fourteen (14) years  
 9 of age, the child has been consulted regarding the guardianship;

10 (7) The necessary degree of relationship exists between the  
 11 prospective guardian and the child;

12 (8) The child:

13 (A) Is eligible for Title IV-E foster care maintenance  
 14 payments; or

15 (B) The department determines that adequate funding is  
 16 available for the guardianship subsidy for a child who is not Title IV-E  
 17 eligible;

18 (9) The home of the prospective guardian complies with any  
 19 applicable rules promulgated by the:

20 (A) Child Welfare Agency Review Board for foster home  
 21 licensure; and

22 (B) Department of Human Services for foster home approval;  
 23 and

24 (10) While in the custody of the department, the child resided  
 25 in the home of the prospective relative guardian for at least six (6)  
 26 consecutive months after the prospective guardian's home was opened as a  
 27 foster home.

28 (b) A child who was previously determined by the department to be  
 29 eligible for an initial guardianship subsidy under subsection (a) of this  
 30 section, may receive a subsequent guardianship subsidy when:

31 (1) A guardianship subsidy agreement under subsection (a) of  
 32 this section was signed by the department and the initial relative guardian;

33 (2) The relative guardian has died or is incapacitated after the  
 34 effective date of the guardianship subsidy agreement;

35 (3) A successor guardian is named in the guardianship assistance  
 36 agreement or an amendment to the agreement;

1           (4) The department determines the successor guardian meets the  
 2 necessary degree of relationship between the successor guardian and the child  
 3 and the safety requirements in state and federal rules and regulations and  
 4 departmental policy; and

5           (5) A new guardianship subsidy agreement is signed by the  
 6 successor guardian and the department before the entry of a successor  
 7 guardianship.

8  
 9           SECTION 2. Arkansas Code § 9-27-338 is amended to read as follows:  
 10           9-27-338. Permanency planning hearing.

11           (a)(1) A permanency planning hearing shall be held to finalize a  
 12 permanency plan for the juvenile:

13                   (A) No later than twelve (12) months after the date the  
 14 juvenile enters an out-of-home placement;

15                   (B) After a juvenile has been in an out-of-home placement  
 16 for fifteen (15) of the previous twenty-two (22) months, excluding trial  
 17 placements and time on runaway status; or

18                   (C) No later than thirty (30) days after a hearing  
 19 granting no reunification services.

20           (2) If a juvenile remains in an out-of-home placement after the  
 21 initial permanency planning hearing, a permanency planning hearing shall be  
 22 held annually to reassess the permanency plan selected for the juvenile.

23           (b)(1) This section does not prevent the Department of Human Services  
 24 or the attorney ad litem from filing at any time prior to the permanency  
 25 planning hearing a:

26                   (A) Petition to terminate parental rights;

27                   (B) Petition for guardianship; or

28                   (C) Petition for permanent custody.

29           (2) A permanency planning hearing is not required prior to any  
 30 of these actions.

31           (c) At the permanency planning hearing, based upon the facts of the  
 32 case, the circuit court shall enter one (1) of the following permanency  
 33 goals, listed in order of preference, in accordance with the best interest,  
 34 health, and safety of the juvenile:

35                   (1) Placing custody of the juvenile with a fit parent at the  
 36 permanency planning hearing;

1           (2) Returning the juvenile to the guardian or custodian from  
2 whom the juvenile was initially removed at the permanency planning hearing;

3           (3) Authorizing a plan to place custody of the juvenile with a  
4 parent, guardian, or custodian only if the court finds that:

5           (A)(i) The parent, guardian, or custodian is complying  
6 with the established case plan and orders of the court, making significant  
7 measurable progress toward achieving the goals established in the case plan  
8 and diligently working toward reunification or placement in the home of the  
9 parent, guardian, or custodian.

10           (ii) A parent's, guardian's, or custodian's  
11 resumption of contact or overtures toward participating in the case plan or  
12 following the orders of the court in the months or weeks immediately  
13 preceding the permanency planning hearing are insufficient grounds for  
14 authorizing a plan to return or be placed in the home as the permanency plan.

15           (iii) The burden is on the parent, guardian, or  
16 custodian to demonstrate genuine, sustainable investment in completing the  
17 requirements of the case plan and following the orders of the court in order  
18 to authorize a plan to return or be placed in the home as the permanency  
19 goal;

20           (B)(i) The parent, guardian, or custodian is making  
21 significant and measurable progress toward remedying the conditions that:

22           (a) Caused the juvenile's removal and the  
23 juvenile's continued removal from the home; or

24           (b) Prohibit placement of the juvenile in the  
25 home of a parent; and

26           (ii) Placement of the juvenile in the home of the  
27 parent, guardian, or custodian shall occur within a time frame consistent  
28 with the juvenile's developmental needs but no later than three (3) months  
29 from the date of the permanency planning hearing;

30           (4) Authorizing a plan for adoption with the department's filing  
31 a petition for termination of parental rights unless:

32           (A) The juvenile is being cared for by a relative and the  
33 court finds that:

34           (i) Either:

35           (a) The relative has made a long-term  
36 commitment to the child and the relative is willing to pursue guardianship or

1 permanent custody; or

2 (b) The juvenile is being cared for by his or  
 3 her minor parent who is in foster care; and

4 (ii) Termination of parental rights is not in the  
 5 best interest of the juvenile;

6 (B) The department has documented in the case plan a  
 7 compelling reason why filing such a petition is not in the best interest of  
 8 the juvenile and the court approves the compelling reason as documented in  
 9 the case plan; or

10 (C)(i) The department has not provided to the family of  
 11 the juvenile, consistent with the time period in the case plan, such services  
 12 as the department deemed necessary for the safe return of the juvenile to the  
 13 juvenile's home if reunification services were required to be made to the  
 14 family.

15 (ii) If the department has failed to provide  
 16 services as outlined in the case plan, the court shall schedule another  
 17 permanency planning hearing for no later than six (6) months;

18 (5) Authorizing a plan to obtain a guardian for the juvenile;

19 (6) Authorizing a plan to obtain a permanent custodian,  
 20 including permanent custody with a fit and willing relative; or

21 (7)(A) Authorizing a plan for another planned permanent living  
 22 arrangement that includes a permanent planned living arrangement and  
 23 addresses the quality of services, including, but not limited to, independent  
 24 living services, ~~if age appropriate,~~ and a plan for the supervision and  
 25 nurturing the juvenile will receive.

26 (B) Another Planned Permanent Living Arrangement (APPLA)  
 27 shall be selected only if:

28 (i) the ~~The~~ department has documented to the circuit  
 29 court a compelling reason for determining that it would not be in the best  
 30 interest of the child to follow one (1) of the permanency plans identified in  
 31 subdivisions (c)(1)-(7) of this section;

32 (ii) The child is sixteen (16) years of age or  
 33 older; and

34 (iii) The court makes a judicial determination  
 35 explaining why, as of the date of the hearing, another planned permanent  
 36 living arrangement is the best permanency plan for the juvenile and the court

1 finds compelling reasons why it continues to not be in the best interest of  
 2 the juvenile to:

- 3 (a) Return home;
- 4 (b) Be placed for adoption;
- 5 (c) Be placed with a legal guardian; or
- 6 (d) Be placed with a fit and willing relative.

7 (d)(1) At every permanency planning hearing, the court shall ask the  
 8 child aged sixteen (16) years of age or older about his or her desired  
 9 permanency outcome.

10 (2) If the juvenile aged sixteen (16) years of age or older is  
 11 not present at the permanency planning hearing, documentation about the  
 12 juvenile's desired permanency outcome shall be provided to the court by the  
 13 attorney ad litem for the juvenile..

14 ~~(e)-(d)~~ At every permanency planning hearing the court shall make a  
 15 finding on whether the department has made reasonable efforts and shall  
 16 describe the efforts to finalize a permanency plan for the juvenile.

17 ~~(f)-(e)~~ A written order shall be filed by the court or by a party or  
 18 party's attorney as designated by the court and distributed to the parties  
 19 within thirty (30) days of the date of the hearing or prior to the next  
 20 hearing, whichever is sooner.

21 ~~(g)-(f)~~ If the court determines that the permanency goal is adoption,  
 22 the department shall file the petition to terminate parental rights within  
 23 thirty (30) days from the date of the permanency planning hearing that  
 24 establishes adoption as the permanency goal.

25  
 26 SECTION 3. Arkansas Code § 9-27-363(e), concerning the transition of  
 27 foster care youth out of care, is amended to add an additional subdivision to  
 28 read as follows:

29 (6) Driver's license or a state-issued official identification  
 30 card.

31  
 32 SECTION 4. Arkansas Code § 9-28-107(a), concerning notice given to  
 33 relatives when a youth is placed in the custody of the Department of Human  
 34 Services, is amended to read as follows:

35 (a) The Department of Human Services shall exercise due diligence to  
 36 identify and provide notice to all adult grandparents, all parents of a

1 sibling of the juvenile where the parent has legal custody of the sibling,  
2 and other adult relatives of a juvenile transferred to the custody of the  
3 department.

4  
5 SECTION 5. Arkansas Code § 9-28-107, concerning notice given to  
6 relatives when a youth is placed in the custody of the Department of Human  
7 Services, is amended to add an additional subdivision to read as follows:

8 (f)(1) As used in this section, a "sibling" includes an individual who  
9 would have been considered a sibling of the child but for a termination or  
10 other disruption of parental rights.

11 (2) This section shall not be construed as subordinating the  
12 rights of foster or adoptive parents of a child to the rights of the parents  
13 of a sibling of that child.

14  
15 SECTION 6. Arkansas Code § 9-28-111(a)(1), concerning case plans for  
16 children when custody is transferred to the Department of Human Services, is  
17 amended to add an additional subdivision to read as follows:

18 (D)(i) When a juvenile is fourteen (14) years of age or  
19 older the case plan shall be developed in consultation with the juvenile.

20 (ii) A juvenile aged fourteen (14) years of age or  
21 older has the option to chose two (2) members of the case planning team who  
22 are not a foster parent of or caseworker for the juvenile.

23 (iii) The department may reject an individual  
24 selected by the juvenile to be a member of the case planning team if the  
25 department has good cause to believe that the individual would not act in the  
26 best interests of the juvenile.

27 (iv) This section does not preclude other persons  
28 selected by the juvenile from being present during the development of the  
29 case plan;

30  
31 SECTION 7. Arkansas Code § 9-28-111(c), concerning case plans for  
32 children when custody is transferred to the Department of Human Services, is  
33 amended to add an additional subdivision to read as follows:

34 (15) When a juvenile is fourteen (14) years of age or older the  
35 juvenile shall be provided a:

36 (A) Separate document that describes:

1                   (i) The rights of the juvenile concerning education,  
 2 health, visitation, and court participation;

3                   (ii) The right to obtain a copy of a credit report  
 4 each year the juvenile remains in the custody of the department at no cost to  
 5 the juvenile; and

6                   (iii) The right of the juvenile to receive  
 7 assistance in interpreting and resolving inaccuracies in the credit report;  
 8 and

9                   (B) A signed acknowledgement by the juvenile that:

10                   (i) The juvenile has been provided with a copy of  
 11 the documents required under subdivision (c)(15)(A) of this section; and

12                   (ii) The department explained the rights to the  
 13 juvenile in an age-appropriate way.

14  
 15           SECTION 8. Arkansas Code § 9-28-114(e), concerning the transition of  
 16 foster care youth out of care, is amended to add a new subdivision to read as  
 17 follows:

18                   (6) Driver's license or a state-issued official identification  
 19 card.

20  
 21           SECTION 9. EMERGENCY CLAUSE. It is found and determined by the  
 22 General Assembly of the State of Arkansas that federal law requires that the  
 23 Department of Human Services amend the law addressed in this bill; that state  
 24 law needs to comply with federal law; and that this act is necessary to avoid  
 25 a violation of federal law. Therefore, an emergency is declared to exist, and  
 26 this act being immediately necessary for the preservation of the public  
 27 peace, health, and safety shall become effective on:

28                   (1) The date of its approval by the Governor;

29                   (2) If the bill is neither approved nor vetoed by the Governor,  
 30 the expiration of the period of time during which the Governor may veto the  
 31 bill; or

32                   (3) If the bill is vetoed by the Governor and the veto is  
 33 overridden, the date the last house overrides the veto.