

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

As Engrossed: H3/24/15

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.
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Subtitle

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

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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) At the permanency planning hearing on a juvenile sixteen (16)
8 years of age or older, the court shall ask the juvenile his or her desired
9 permanency outcome, or the attorney ad litem shall enter evidence concerning
10 the child's wishes.

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

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

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

22
23 SECTION 3. Arkansas Code § 9-27-363(e), concerning the transition of
24 foster care youth out of care, is amended to add an additional subdivision to
25 read as follows:

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

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

32 (a) The Department of Human Services shall exercise due diligence to
33 identify and provide notice to all adult grandparents, all parents of a
34 sibling of the juvenile where the parent has legal custody of the sibling,
35 and other adult relatives of a juvenile transferred to the custody of the
36 department.

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

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

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

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

(D)(i) The parent, guardian, or custodian and juvenile may choose additional members to be part of the case planning team.

(ii) The department may reject a selected individual for good cause.

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

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

(A) Separate document that describes:

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

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

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

(B) A signed acknowledgement by the juvenile that:

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

1 (ii) The department explained the rights to the
2 juvenile in a developmentally appropriate and age-appropriate way.

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

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

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10 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
11 General Assembly of the State of Arkansas that federal law requires that the
12 Department of Human Services amend the law addressed in this bill; that state
13 law needs to comply with federal law; and that this act is necessary to avoid
14 a violation of federal law. Therefore, an emergency is declared to exist, and
15 this act being immediately necessary for the preservation of the public
16 peace, health, and safety shall become effective on:

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

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

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

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24 /s/V. Flowers
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