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4

A Bill

SENATE BILL 15

5 By: Senator A. Clark
6 By: Representatives Gates, Hammer
7

For An Act To Be Entitled

9 AN ACT TO AMEND PROVISIONS CONCERNING JUVENILE COURTS
10 AND PROCEEDINGS; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 TO AMEND PROVISIONS CONCERNING JUVENILE
14 COURTS AND PROCEEDINGS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 9-27-310(b)(2), concerning commencement of
21 proceedings, is amended to read as follows:

22 (2) Only a law enforcement officer, prosecuting attorney, or the
23 Department of Human Services or its designee, ~~or a dependency-neglect~~
24 ~~attorney ad litem employed by or contracting with the Administrative Office~~
25 ~~of the Courts~~ may file a dependency-neglect petition seeking ex parte
26 emergency relief.
27

28 SECTION 2. Arkansas Code § 9-27-316(f), concerning right to counsel,
29 is amended to read as follows:

30 (f)(1) The court shall appoint an attorney ad litem who shall meet
31 standards and qualifications established by the Supreme Court to represent
32 the best interest of the juvenile when a dependency-neglect petition is filed
33 or when an emergency ex parte order is entered in a dependency-neglect case,
34 whichever occurs earlier.

35 (2) The court may appoint an attorney ad litem to represent the
36 best interest of a juvenile involved in any case before the court and shall



1 consider the juvenile's best interest in determining whether to appoint an
2 attorney ad litem.

3 (3) Each attorney ad litem shall:

4 (A) Obtain a clear understanding of the juvenile's
5 circumstances and needs by interviewing the juvenile and other relevant
6 parties, including the juvenile's parents, foster parents, caseworkers,
7 service providers, and school personnel;

8 ~~(A)(B)~~ File written motions, responses, or objections at
9 all stages of the proceedings when necessary to protect the best interest of
10 the juvenile;

11 ~~(B)(C)~~ Attend and participate in all hearings and
12 participate in all telephone conferences with the court, unless excused by
13 the court; and

14 ~~(C)(D)~~ Present witnesses and exhibits when necessary to
15 protect the juvenile's best interest.

16 (4) An attorney ad litem shall be provided access to all records
17 relevant to the juvenile's case, including, ~~but not limited to,~~ without
18 limitation school records, medical records, all court records relating to the
19 juvenile and his or her family, and records, including those maintained
20 electronically and in the Children's Reporting and Information System, of the
21 Department of Human Services relating to the juvenile and his or her family
22 to the extent permitted by federal law.

23 (5)(A) An attorney ad litem shall represent the best interest of
24 the juvenile.

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

29 (6)(A) Before making a recommendation to the court under
30 subdivision (f)(5)(B) of this section, the attorney ad litem shall file a
31 report with the court to demonstrate his or her compliance, as required under
32 subdivision (f)(1) of this section, with standards and qualifications
33 established by the Supreme Court.

34 (B) The report, as required under subdivision (f)(1) of
35 this section, shall state the nature and amount of contact the attorney ad
36 litem had with the juvenile and the juvenile's parent or parents, as well as

1 with service providers if the attorney ad litem is recommending permanent
 2 placement or adoption.

3
 4 SECTION 3. Arkansas Code § 9-27-325(1)(3), concerning hearings,
 5 is amended to read as follows:

6 (3)(A) The court shall allow foster parents, preadoptive
 7 parents, and relative caregivers an opportunity to be heard in any proceeding
 8 held with respect to a child in their care.

9 (B) Foster parents, adoptive parents, and relative
 10 caregivers shall not be made parties to the proceeding solely on the basis
 11 that the persons are entitled to notice and the opportunity to be heard.

12 (C) ~~Foster parents, preadoptive parents, and relative~~
 13 ~~caregivers shall have the right to be heard in any proceeding~~ Foster parents,
 14 adoptive parents, and relative caregivers shall not be made parties to the
 15 proceeding when reunification remains the goal of the case.

16
 17 SECTION 4. Arkansas Code § 9-27-327(a)(1)(B), concerning an
 18 adjudication hearing, is amended to read as follows:

19 (B)(i) If the court finds that the juvenile is dependent-
 20 neglected, the court shall ~~address~~ determine whether a noncustodial parent
 21 contributed to the dependency-neglect and whether the noncustodial parent is
 22 a fit parent for purposes of custody or visitation.

23 (ii) A noncustodial parent in subdivision
 24 (a)(1)(B)(i) of this section is presumed to be a fit parent, and it shall be
 25 the burden of the petitioner to prove that the noncustodial parent is unfit.

26 ~~(ii)(iii)~~ (iii) If the court determines that the child
 27 cannot safely be placed in the custody of the noncustodial parent, the court
 28 shall make specific findings of fact regarding the safety factors that need
 29 to be corrected by the noncustodial parent before placement or visitation
 30 with the juvenile.

31 (iv) If there is no finding by the court that the
 32 noncustodial parent is unfit, the child shall be placed with the noncustodial
 33 parent on a temporary basis while reunification services continue to be
 34 offered to the parent from whom custody was removed.

35
 36 SECTION 5. Arkansas Code § 9-27-329(d), concerning disposition

1 hearings, is amended to read as follows:

2 (d) In initially considering the disposition alternatives and at any
 3 subsequent hearing, the court shall give preference to the least restrictive
 4 disposition consistent with the best interests and welfare of the juvenile
 5 and the public.

6
 7 SECTION 6. Arkansas Code § 9-27-337(e), concerning six-month reviews,
 8 is amended to read as follows:

9 (e)(1)~~(A)~~ In each case in which a juvenile has been placed in an out-
 10 of-home placement, the court shall conduct a hearing to review the case
 11 sufficiently to determine the future status of the juvenile based upon the
 12 best interest of the juvenile.

13 ~~(B)(i)(2)(A)~~ The court shall determine and ~~shall~~ include
 14 in its orders the following:

15 ~~(a)(i)~~ Whether the case plan, services, and
 16 placement meet the special needs and best interest of the juvenile, with the
 17 juvenile's health, safety, and educational needs specifically addressed;

18 ~~(b)(ii)~~ Whether the state has made reasonable
 19 efforts to provide family services;

20 (iii) Whether the parent or parents have benefited
 21 from the family services provided by the state in subdivision (e)(2)(A)(ii)
 22 of this section;

23 ~~(e)(iv)~~ Whether the case plan is moving
 24 ~~towards toward~~ an appropriate permanency plan ~~pursuant to~~ under § 9-27-338
 25 for the juvenile; ~~and~~

26 ~~(d)(v)~~ Whether the visitation plan is
 27 appropriate for the juvenile, the parent or parents, and any siblings, if
 28 separated; and

29 (vi)(a) Whether the juvenile should be returned to
 30 his or her parent or parents and whether or not the juvenile's health and
 31 safety can be protected by his or her parent or parents if returned home,
 32 either permanently or for a trial placement.

33 (b) The court shall return the child home,
 34 either for a trial placement or through a return of custody, if the child is
 35 no longer found by the court to be at imminent risk of harm if returned home.

36 ~~(ii)(a)(B)(i)~~ The court may order any studies,

1 evaluations, or post-disposition reports, if needed.

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

5 ~~(e)~~(iii) All parties shall be given a fair
6 opportunity to controvert any part of a study, evaluation, or post-
7 disposition report.

8 ~~(C)~~(3)(A) In making its findings, the court shall consider
9 the following:

10 (i) The extent of compliance with the case plan,
11 including, ~~but not limited to,~~ without limitation a review of the
12 department's care for the health, safety, and education of the juvenile while
13 he or she has been in an out-of-home placement;

14 (ii) The extent of progress that has been made
15 toward alleviating or mitigating the causes of the out-of-home placement; and

16 ~~(iii) Whether the juvenile should be returned to his
17 or her parent or parents and whether or not the juvenile's health and safety
18 can be protected by his or her parent or parents if returned home; and~~

19 ~~(iv)~~(iii) An appropriate permanency plan ~~pursuant to~~
20 under § 9-27-338 for the juvenile, including concurrent planning.

21 (B) Incompletion of the case plan under subdivision
22 (e)(3)(A)(i) of this section is an insufficient reason by itself to deny the
23 juvenile's return to the family home.

24 ~~(2)~~(f) Each six-month review hearing shall be completed, and a
25 the written order under subsection (e) of this section shall be filed by the
26 court or by a party or a party's attorney as designated by the court and
27 distributed to the parties within thirty (30) days of the date of the hearing
28 or ~~prior to~~ before the next hearing, whichever is sooner.

29
30 SECTION 7. Arkansas Code § 9-27-341(b)(3)(A), concerning termination
31 of parental rights, is amended to read as follows:

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

34 (i) The likelihood that the juvenile will be adopted
35 if the termination petition is granted considering the following factors:+
36 and

- 1 (a) The age of the juvenile;
- 2 (b) The health of the juvenile;
- 3 (c) The number of placements the juvenile has
 4 had and the results of the placements;
- 5 (d) The length of time the juvenile has been
 6 in the current placement and the stability of the placement;
- 7 (e) The likelihood of future placements that
 8 are not a permanent placement;
- 9 (f) The likelihood that the juvenile will be
 10 adopted with siblings, if it is in the best interest of the juvenile to
 11 remain with his or her siblings; and
- 12 (g) Any other relevant consideration; and
- 13 (ii) The potential harm, specifically addressing the
 14 effect on the health and safety of the ~~child~~ juvenile, caused by returning
 15 the ~~child~~ juvenile to the custody of the parent, parents, or putative parent
 16 or parents; and

17

18 SECTION 8. Arkansas Code § 9-27-355 is amended to read as follows:
 19 9-27-355. Placement of juveniles.

20 (a) The court shall not specify a particular provider for placement of
 21 any a foster child.

22 ~~(b)(1) A relative of a juvenile placed in the custody of the~~
 23 ~~Department of Human Services shall be given preferential consideration for~~
 24 ~~placement if the relative caregiver meets all relevant child protection~~
 25 ~~standards and it is in the best interest of the juvenile to be placed with~~
 26 ~~the relative caregiver.~~

27 (b)(1)(A) When the Department of Human Services takes custody of a
 28 juvenile under § 12-18-1001, or when the court determines that a juvenile
 29 shall be removed from his or her home under this subchapter, the department
 30 shall conduct an immediate investigation to locate:

- 31 (i) A nonrespondent parent of the juvenile;
- 32 (ii) A relative of the juvenile, including each
 33 grandparent of the juvenile;
- 34 (iii) Suitable persons as identified by a respondent
 35 or nonrespondent parent; and
- 36 (iv) Fictive kin identified by the juvenile as one

1 (l) or more persons who play or have a significant positive role in his or
2 her life.

3 (B) The duty of the department to conduct an investigation
4 under subdivision (b)(1)(A) of this section shall continue throughout the
5 case.

6 (C) The department shall provide upon request by the
7 court, parties to the proceeding, or counsel for the parties to the
8 proceeding a record of the efforts made to locate relatives, fictive kin, or
9 other suitable persons described under subdivisions (b)(1)(A)(i)-(iv) of this
10 section and the results of the investigation, including the located person's:

11 (i) Name;

12 (ii) Last known address;

13 (iii) Employer address; and

14 (iv) Other identifying information to the extent
15 known by the department.

16 (D) During the investigation under subdivision (b)(1)(A)
17 of this section, the department shall inform persons identified under
18 subdivisions (b)(1)(A)(i)-(iv) of this section in writing of the pendency of
19 the proceeding and of the opportunity to obtain placement of the juvenile,
20 including the availability of supportive benefits provided for under this
21 subchapter.

22 (E) A relative or fictive kin identified by the department
23 under subdivision (b)(1)(A) of this section shall be given preferential
24 consideration for placement if the relative or fictive kin meets all relevant
25 protective standards and it is in the best interest of the juvenile to be
26 placed with the relative or fictive kin.

27 (F) Preferential consideration for a relative or fictive
28 kin shall be given at all stages of the case.

29 (G) If the court denies placement with a relative or
30 fictive kin, the court shall make specific findings of fact in writing
31 regarding the considerations given to the relative or fictive kin and the
32 reasons the placement was denied.

33 (H) The court shall not base its decision to place the
34 juvenile solely upon the consideration of the:

35 (i) Relationship formed between the juvenile and a
36 foster parent;

1 (ii) Age of the relative or fictive kin under
 2 subdivision (b)(1)(E) of this section;

3 (iii) Square footage of the home belonging to the
 4 relative or fictive kin in subdivision (b)(1)(E) of this section; or

5 (iv) Circumstance that children placed with a
 6 relative or fictive kin in subdivision (b)(1)(E) of this section may have to
 7 share a bedroom.

8 (2) Placement or custody of a juvenile in the home of a relative
 9 ~~or other person~~, fictive kin, or other suitable person as described under
 10 subdivisions (b)(1)(A)(i)-(v) of this section shall not relieve the
 11 department of its responsibility to actively implement the goal of the case.

12 (3)(A) The juvenile shall remain in a licensed or approved
 13 foster home, shelter, or facility or an exempt child welfare agency as
 14 defined ~~at~~ under § 9-28-402(12) until the home is opened as a regular foster
 15 home, as a provisional foster home if the person is a relative to one (1) of
 16 the children in the sibling group, including step-siblings, or the court
 17 grants custody of the juvenile to the relative ~~or person~~, fictive kin, or
 18 other suitable person as described under subdivisions (b)(1)(A)(i)-(v) of
 19 this section after a written approved home study is presented to the court.

20 (B) For placement only with a relative or fictive kin:

21 (i) The juvenile and the juvenile's siblings or
 22 step-siblings may be placed in the home of a relative or fictive kin on a
 23 provisional basis for up to six (6) months pending the relative or fictive
 24 kin's home being opened as a regular foster home;

25 (ii) If the relative or fictive kin opts to have his
 26 or her home opened as a provisional foster home, the relative or fictive kin
 27 shall not be paid a board payment until the relative or fictive kin meets all
 28 of the requirements and his or her home is opened as a regular foster home;

29 (iii) Until the relative or fictive kin's home is
 30 opened as a regular foster home, the relative or fictive kin may:

31 (a) Apply for and receive benefits that the
 32 relative or fictive kin may be entitled to due to the placement of the
 33 juvenile in the home, such as benefits under the Transitional Employment
 34 Assistance Program, § 20-76-401, and the Supplemental Nutrition Assistance
 35 Program (SNAP); and

36 (b) Receive child support or any federal

1 benefits paid on behalf of the juvenile in the relative or fictive kin's
2 home; and

3 (iv) If the relative or fictive kin's home is not
4 fully licensed as a foster home after six (6) months of the placement of the
5 juvenile and the siblings or step-siblings in the home:

6 (a) The department shall remove the juvenile
7 and any of the siblings or step-siblings from the relative or fictive kin's
8 home and close the relative or fictive kin's provisional foster home; or

9 (b) The court shall remove custody from the
10 department and grant custody of the juvenile to the relative or fictive kin
11 subject to the limitations outlined in subdivision (b)(4) of this section.

12 (4) If the court grants custody of the juvenile and any siblings
13 or step-siblings to the relative ~~or other person~~, fictive kin, or other
14 suitable person as described under subdivisions (b)(1)(A)(i)-(v) of this
15 section:

16 (A)(i) The juvenile and any siblings or step-siblings
17 shall not be placed back in the custody of the department while remaining in
18 the home of the relative ~~or other person~~, fictive kin, or other suitable
19 person as described under subdivisions (b)(1)(A)(i)-(v) of this section.

20 (ii) The juvenile and any siblings or step-siblings
21 shall not be removed from the custody of the relative ~~or other person~~,
22 fictive kin, or other suitable person as described under subdivisions
23 (b)(1)(A)(i)-(v) of this section, placed in the custody of the department,
24 and then remain or be returned to the home of the relative ~~or other person~~,
25 fictive kin, or other suitable person while remaining in the custody of the
26 department;

27 (B) The relative ~~or other person~~, fictive kin, or other
28 suitable person as described under subdivisions (b)(1)(A)(i)-(v) of this
29 section shall not receive any financial assistance, including board payments,
30 from the department, except for financial assistance for which the relative,
31 fictive kin, or other suitable person has applied and for which the relative
32 ~~or other person~~, fictive kin, or other suitable person qualifies under the
33 program guidelines, such as the Transitional Employment Assistance Program, §
34 20-76-401, food stamps, Medicaid, and the federal adoption subsidy; and

35 (C) The department shall not be ordered to pay the
36 equivalent of board payments, adoption subsidies, or guardianship subsidies

1 to the relative ~~or other person~~, fictive kin, or other suitable person as
 2 described under subdivisions (b)(1)(A)(i)-(v) of this section as reasonable
 3 efforts to prevent removal of custody from the relative fictive kin, or
 4 suitable person.

5 (c)(1) Juveniles who are in the custody of the department shall be
 6 allowed trial placements with parents or the person from whom custody was
 7 removed for a period not to exceed sixty (60) days.

8 (2)(A) At every stage of the case, the court shall consider the
 9 least restrictive placement for the juvenile and assess safety concerns that
 10 prevent either a trial home placement or the juvenile from being returned to
 11 or placed in the custody of the parent of the juvenile.

12 (B) The court shall detail the safety concerns in
 13 subdivision (c)(2)(A) of this section in its written order.

14 (C) Trial home placements may be made with parents or the
 15 person from whom custody was removed.

16 ~~(2)(3)(A)~~ (A) At the end of sixty (60) days, the court shall either
 17 place custody of the juvenile with the parent ~~or the person, fictive kin, or~~
 18 other suitable person as described under subdivisions (b)(1)(A)(i)-(v) of
 19 this section from whom custody was removed, or the department shall return
 20 the juvenile to a licensed or approved foster home, shelter, or facility or
 21 an exempt child welfare agency as defined in § 9-28-402(12).

22 (B) Failure to complete a case plan is not a sufficient
 23 reason in and of itself to deny the placement of the juvenile in the home of
 24 a parent.

25 (d) When a juvenile leaves the custody of the department and the court
 26 grants custody to the parent or another person, the department is no longer
 27 legal custodian of the juvenile, even if the juvenile division of circuit
 28 court retains jurisdiction.

29
 30 SECTION 9. Arkansas Code Title 9, Chapter 27, Subchapter 3, is amended
 31 to add an additional section to read as follows:

32 9-27-369. Reinstatement of parental rights.

33 (a) A petition to reinstate parental rights may be filed by the
 34 Department of Human Services or the attorney ad litem for a juvenile.

35 (b)(1) The department or attorney ad litem may petition to reinstate
 36 parental rights under the following circumstances:

1 (A) The juvenile was previously adjudicated dependent,
2 dependent-neglected, or a member of a Family in Need of Services as defined
3 under § 9-27-303 under this chapter;

4 (B) The rights of the parent or parents of the juvenile
5 were terminated in a proceeding under this chapter;

6 (C) The juvenile has not been adopted, appointed a
7 guardian, or appointed a permanent custodian;

8 (D) The juvenile was adopted, appointed a guardian, or
9 appointed a permanent custodian but the placement was disrupted or dissolved;

10 (E) The permanency placement plan for adoption,
11 guardianship, or permanent custody is not likely to be achieved within a
12 reasonable time;

13 (F) One (1) year has passed since the order terminating
14 parental rights was entered; or

15 (G) The court finds good cause shown.

16 (2) The department shall provide notice of the petition to
17 reinstate parental rights to a parent identified in the petition and to the
18 attorney ad litem.

19 (c)(1)(A) If the juvenile is fourteen (14) years of age or older, the
20 attorney ad litem shall present a consent form for reinstatement of parental
21 rights to the juvenile who may consent or decline to consent to the
22 reinstatement of parental rights.

23 (B) A parent identified in the petition to reinstate
24 parental rights shall consent to reinstate parental rights.

25 (2) If either the juvenile or a parent identified in the
26 petition does not consent to reinstatement of parental rights, the petition
27 as to that parent shall be dismissed without prejudice.

28 (3) If the juvenile and a parent consent to reinstate parental
29 rights, a hearing shall be held on the petition as to the consenting parent
30 no later than ninety (90) days after the petition is filed.

31 (d)(1) The department shall provide notice of hearing under
32 subdivision (c)(3) of this section to the consenting parent identified in the
33 petition and the attorney ad litem.

34 (2) The court shall grant the petition if it finds by clear and
35 convincing evidence:

36 (A) The juvenile has not been adopted or has not been

1 appointed a guardian or permanent custodian, or the juvenile had a disrupted
2 or dissolved adoption, guardianship, or permanent custody;

3 (B) The juvenile is not likely to be adopted or appointed
4 a guardian or permanent custodian within a reasonable time; and

5 (C) Reinstatement of parental rights is in the best
6 interest of the juvenile.

7 (e) In determining whether reinstatement of parental rights is in the
8 best interest of the juvenile, the considerations of the court shall
9 include:

10 (1) Whether the parent whose rights are to be reinstated is a
11 fit parent and has remedied the conditions which caused removal;

12 (2) The age and maturity of the juvenile and the ability of the
13 juvenile to express his or her preference;

14 (3) Whether the reinstatement of parental rights will present a
15 risk to the juvenile's health, safety, or welfare; and

16 (4) Other material changes in circumstances that may warrant the
17 granting of the petition.

18 (f)(1) If the court grants the petition to reinstate parental rights,
19 a temporary order of reinstatement of parental rights shall be entered and
20 the juvenile shall be placed in the custody of the parent when the court
21 determines the placement is safe and appropriate.

22 (2) A trial home placement in the home of the parent shall not
23 exceed sixty (60) days.

24 (3) The case shall remain open for a minimum of six (6) months
25 after placement of the juvenile in the custody of the parent.

26 (4) If the juvenile is removed from the custody of the parent
27 due to concerns regarding the health, safety or welfare of the juvenile, the
28 court shall dismiss the petition to reinstate parental rights if the court
29 finds the allegations for a new removal have been proven by a preponderance
30 of the evidence.

31 (5) If the juvenile has not been placed in the custody of the
32 parent within six (6) months of the hearing on the petition to reinstate
33 parental rights, the petition shall be dismissed.

34 (g)(1) If the juvenile has been placed with the parent for six (6)
35 months, the court shall hold a hearing.

36 (2) If the placement with the parent is successful, the court

1 shall:

2 (A) Enter a final order of reinstatement of parental
3 rights, which shall restore all rights, powers, privileges, immunities,
4 duties, and obligations of the parent as to the juvenile, including those
5 relating to custody, control, and support of the juvenile; and

6 (B) Close the juvenile case.

7 (3) If the placement with the parent is unsuccessful, the court
8 shall:

9 (A) Return custody of the juvenile to the department; and

10 (B) Dismiss the petition to reinstate parental rights.

11 (h) The granting of the petition to reinstate parental rights under
12 subdivision (g)(2)(A) of this section shall supersede the original
13 termination order as to the parent or parents whose parental rights have been
14 reinstated.

15 (i) This section is retroactive and applies to a juvenile who is under
16 the jurisdiction of the court at the time of the hearing regardless of the
17 date parental rights were terminated.

18 (j)(1) The state, the department, and the employees of the department
19 are not liable for civil damages resulting from any act or omission in the
20 provision of services under this section unless the act or omission
21 constitutes gross negligence.

22 (2) This section does not create a cause of action against the
23 state, the department, the supervising agency, or the employees of the
24 supervising agency concerning the original termination.

25 (d) A parent whose rights to the juvenile have been previously
26 terminated does not have standing to petition for a reinstatement of parental
27 rights unless the conditions precedent to a petition for reinstatement have
28 been met under this subchapter.

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