

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1811

By: Representatives Hudson, V. Flowers

By: Senator B. Davis

For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING CHANGE IN FOSTER HOME PLACEMENTS IN A DEPENDENCY-NEGLECT CASE UNDER THE ARKANSAS JUVENILE CODE OF 1989; TO REQUIRE THE DEPARTMENT OF HUMAN SERVICES TO FILE A MOTION WHEN IT RECOMMENDS A NONEMERGENCY CHANGE IN A CHILD'S PLACEMENT FROM ONE FOSTER HOME TO ANOTHER FOSTER HOME; TO REQUIRE A JUVENILE COURT TO HOLD A HEARING WHEN THE DEPARTMENT OF HUMAN SERVICES RECOMMENDS A NONEMERGENCY CHANGE IN A CHILD'S PLACEMENT FROM ONE FOSTER HOME TO ANOTHER; AND FOR OTHER PURPOSES.

Subtitle

TO REQUIRE THE DEPARTMENT OF HUMAN SERVICES TO FILE A MOTION WHEN IT RECOMMENDS A NONEMERGENCY CHANGE IN A CHILD'S PLACEMENT FROM ONE FOSTER HOME TO ANOTHER AND FOR A HEARING TO BE HELD BEFORE THE CHANGE IN PLACEMENT OCCURS.

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

SECTION 1. Arkansas Code § 9-27-335(b), concerning limitations on the disposition of a dependency-neglect case when determining a child's placement, is amended to read as follows:

(b)(1) For purposes of this section, the court shall not specify a particular provider for placement or family services if the department is the



payor or provider.

(2)(A) The court may order a child to be placed or to remain in a placement if the court finds the placement is in the best interest of the child after hearing evidence from all parties, if the placement is ordered on the court's own accord, or after the hearing set forth under § 9-27-372, if the placement is ordered after granting the department's motion under § 9-27-372.

(B) A court may also order a child into a licensed or approved placement after a hearing where the court makes a finding that it is in the best interest of the child based on bona fide consideration of evidence and recommendations from all the parties, but if the placement is made by removing a child from one (1) foster home placement and placing the child in another foster home, the removal and change in placement shall be as set forth under § 9-27-372.

(C) The court shall not order a child to be placed or remain in a placement in a foster home that has been closed or suspended by a child placement agency.

(D)(i) If the health or welfare of a child is in immediate danger while in a court-ordered placement, the department may immediately remove the child from the court-ordered placement.

(ii) The department shall notify all parties within twenty-four (24) hours of the change in placement under subdivision (b)(2)(D)(i) of this section.

(iii) A party may request a hearing on the change in placement made under subdivision (b)(2)(D)(ii) of this section, and the hearing shall be held within five (5) business days of receiving the request.

SECTION 2. Arkansas Code Title 9, Chapter 27, Subchapter 3, is amended to add an additional section to read as follows:

9-27-372. Placement – Dependent-neglected – Change from one foster home to another – Hearing.

(a)(1) A child who is placed in a foster home may not be removed from the foster home by the Department of Human Services and placed in another foster home or any other temporary placement unless:

(A) The department has reason to believe that the child has been subjected to child maltreatment or that there is a substantial risk

of child maltreatment in the foster home;

(B) The court orders removal and change in placement of the child under § 9-27-335;

(C) The removal and change in placement occurs less than thirty (30) days after the child's placement in the foster home, provided that the department has given the foster parent notice that the change in placement will occur at least two (2) weeks prior to the planned change under § 9-28-109;

(D) The removal and change in placement occurs less than ninety (90) days after the child's placement in the foster home and the new placement is with a relative or fictive kin, provided that the department has given the foster parent notice that the change in placement will occur at least two (2) weeks prior to the planned change under § 9-28-109;

(E) The removal and change in placement will result in reuniting siblings, after consideration and assessment of whether reunification with siblings is in the best interest of the child, and provided that the department has given the foster parent notice that the planned change in placement will occur at least two (2) weeks before the change under § 9-28-109;

(F) The person providing foster care requests or agrees to the removal; or

(G) The removal and change in placement occurs in accordance with the placement preferences and other requirements under the Indian Child Welfare Act of 1978, 25 U.S.C. § 1901 et seq., as it existed on January 1, 2023.

(2) Within twenty-four (24) hours of a change in placement under subdivision (a)(1)(A) of this section, the department shall:

(A) Notify the child's parent or guardian of the change;

(B) Notify the child's attorney ad litem of the change;

and;

(C) Provide the attorney ad litem with the name, address, and telephone number of the new foster home.

(b)(1) If the department seeks to remove a child from a foster home for placement in another foster home or other temporary placement for any reason other than a reason under subsection (a) of this section, then the department shall file a motion and obtain from the court an order for removal

and change in placement.

(2) The motion under subdivision (b)(1) of this section shall include:

(A) Clearly stated reasons for the proposed placement change;

(B) The number of times that the child's placement has been changed since he or she was removed from the custody of his or her parent, guardian, or custodian and the reasons for each change in placement;

(C) Whether the child will change schools as a result of the change in placement;

(D) Whether the change in placement will separate siblings or affect sibling family time; and

(E) Any other information the court may require.

(3)(A) The department is required to serve the motion under subdivision (b)(1) of this section in accordance with the Arkansas Rules of Civil Procedure, and each party shall have the opportunity to respond in accordance with the Arkansas Rules of Civil Procedure.

(B) The department is required to serve along with the motion a notice that each party has a right to be heard at the change in placement hearing in accordance with the Arkansas Rules of Civil Procedure.

(C)(i) The court shall schedule a hearing no later than thirty (30) days after the filing of the motion and shall provide notice to each party of the date, time, and place of the hearing, or shall require the department to provide the notice.

(ii) The court shall also provide notice to the child's current foster parent under § 9-28-109, or shall require the department to provide the notice, and the notice shall include that the foster parent is entitled to appear with counsel under this subdivision (b)(4)(C)(ii).

(4)(A) Based upon bona fide consideration of testimony, other evidence, and recommendations from all the parties bearing on the proposed removal and change in placement, the court shall determine whether a removal and change in placement is in the best interest of the child and may order either:

(i) The continuation of placement in the child's current foster home; or

(ii) The removal and change in placement set forth in the department's motion under subdivision (b)(1) of this section.

(B) In making the determination under subdivision (b)(4)(A) of this section, the court may take into consideration:

(i) The preference of the child, if the child is of sufficient age and capacity to reason, regardless of the juvenile's age, in accordance with § 9-27-355; and

(ii) The potential for achieving permanency for the child through the current foster home placement, including without limitation through guardianship or adoption by the child's current foster parent.

(C)(i) The child's current foster parent shall be provided an opportunity to testify regarding the child's placement and to opine on what he or she believes is in the best interest of the child, based upon the foster parent's personal knowledge of and relationship with the child.

(ii) The child's current foster parent is entitled to appear with counsel to represent his or her interest at the hearing under this section.

SECTION 3. Arkansas Code § 9-28-109(c) and (d), concerning the persons to whom the Department of Human Services shall provide notification of a change in a foster child's placement and exceptions to the notification requirement, are amended to read as follows:

~~(c)(1) Other changes in placement shall be made only after notification to the:~~

~~(A) Foster child;~~

~~(B) Foster parent or parents;~~

~~(C) Child's attorney ad litem;~~

~~(D) Child's birth parents; and~~

~~(E) Court having jurisdiction over the child in compliance with § 9-27-335 and § 9-27-372.~~

~~(2) The notices shall:~~

~~(A) Be sent in writing two (2) weeks before the proposed change in placement unless the current placement is a temporary placement under subdivision (d)(1) of this section;~~

~~(B) State the reasons that justify the proposed change in placement;~~

~~(C) Convey to the attorney ad litem the address of the proposed new foster home or placement provider; and~~

~~(D) Convey to the child the name and telephone number of his or her attorney ad litem and a statement that if the child objects to the change in placement, the attorney ad litem may be able to assist the child in challenging the change in placement.~~

~~(d)(1) Exceptions to the advance notice requirement shall be made if the:~~

~~(A) Health or welfare of the child would be endangered by delaying a change in placement; or~~

~~(B) Child is placed in a placement intended to be temporary until a stable placement can be located for the child in accordance with department policy.~~

~~(2) Within twenty-four (24) hours of the change in placement the department shall:~~

~~(A) Notify the birth parent of the change;~~

~~(B) Notify the child's attorney ad litem of the change;~~

~~and~~

~~(C) Provide the attorney ad litem with the name, address, and telephone number of the new foster care home or placement provider.~~

~~(3) Within seventy-two (72) hours of the change in placement, the department shall provide written notice to the attorney ad litem stating the specific reasons justifying the change of placement without advance notice.~~