

Act 273 of the 1989 Regular Session.

Act 273

HB1446

By: Representatives Cabe and Pollan

"AN ACT TO ESTABLISH STATE POLICY AND PROCEDURES TO BE FOLLOWED IN ALL JUVENILE AND FAMILY MATTERS BROUGHT BEFORE THE JUVENILE DIVISION OF CHANCERY COURT; TO REPEAL THE JUVENILE CODE OF 1975; AND FOR OTHER PURPOSES."

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

SECTION 1. Title. This act shall be known and may be cited as the "Arkansas Juvenile Code of 1989."

SECTION 2. Purposes. This act shall be liberally construed to the end that its purposes may be carried out:

(1) To assure that all juveniles brought to the attention of the courts receive the guidance, care and control, preferably in each juvenile's own home, which will best serve the emotional, mental and physical welfare of the juvenile and the best interests of the state;

(2) To preserve and strengthen the juvenile's family ties whenever possible, removing him from the custody of his parents only when his welfare or the safety and protection of the public cannot adequately be safeguarded without such removal; and, when the juvenile is removed from his own family, to secure for him custody, care, and discipline as nearly as possible equivalent to that which should have been given by his parents; and to assure, in all cases in which a juvenile must be permanently removed from the custody of his parents, that the juvenile be placed in an approved family home and be made a member of the family by adoption;

(3) To protect society more effectively by substituting for retributive punishment, whenever possible, methods of offender rehabilitation and rehabilitative restitution, recognizing that the application of sanctions which are consistent with the seriousness of the offense is appropriate in all cases;

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

SECTION 3. Definitions. As used in this act, unless the context otherwise requires:

(1) "Juvenile" means an individual who:

(A) is under the age of eighteen (18) years, whether married or single;

(B) is under the age of twenty-one (21) years, whether married or single, who was adjudicated delinquent for an act committed prior to the age of eighteen (18) years and for whom the court retains jurisdiction. In no event shall such person remain within the court's jurisdiction past the age of twenty-one (21) years; or

(C) was adjudicated dependent-neglected before reaching the age of eighteen (18) years and who, while engaged in a course of instruction or treatments, requests the court to retain jurisdiction until the course has been completed. In no event shall such person remain within the court's jurisdiction past the age of twenty-one (21) years.

(2) "Parent" means a biological mother, an adoptive parent, a man to whom the biological mother was married at the time of conception or birth, or who has been found, by a court of competent jurisdiction, to be the biological father of the juvenile.

(3) "Abandonment" means the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact, when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future, and failure to support or maintain regular contact with the juvenile without just cause for a period of one (1) year shall constitute a rebuttable presumption of abandonment.

(4) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

(A) Extreme and repeated cruelty to a juvenile; or

(B) Physical, psychological, or sexual abuse of any juvenile which includes, but is not limited to, intentionally, knowingly, or negligently and without justifiable cause:

(i) Engaging in conduct creating a substantial possibility of death, permanent or temporary disfigurement, illness, impairment of any bodily organ, or an observable and substantial impairment in the intellectual or psychological capacity of the juvenile to function within his normal range of performance and behavior with due regard to his culture except when the juvenile is being furnished with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized religious denomination by a duly accredited practitioner thereof in lieu of medical treatment;

(ii) any non-accidental physical injury or mental injury; or

(iii) any injury which is at variance with the history given.

(5) "Adjudication hearing" means a hearing to determine whether the allegations in a petition are substantiated by the proof.

(6) "Case plan" means a document set out in a form prescribed by DHS, which includes those items required by this act. The case plan shall include a description and discussion of the following:

(A) The goal of the plan;

(B) The specific reasons for the placement of the juvenile in care outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian which necessitated removal of the juvenile, and the remediation of which will determine the return of the juvenile to the home;

(C) A description of the type of out-of-home placement selected for the juvenile including a discussion of the appropriateness of the placement;

(D) A plan for addressing the needs of the juvenile while in the placement, including a discussion of the services provided within the last six (6) months;

(E) The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the period during which the actions are to be taken. The plan may include any person or agency who shall agree to and be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile;

(F) The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the period the juvenile is in out-of-home placement;

(G) The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the period the juvenile is in placement and a timetable for the provision of those services, the purposes of which shall be to promote the availability to the juvenile of a continuous and stable living environment, promote family autonomy, strengthen family life where possible, and promote the reunification of the juvenile with the parent, guardian, or custodian;

(H) A statement directed to the parent, custodian, or guardian that:

(i) Failure to remedy the conditions causing the out-of-home placement of the juvenile may result in termination of parental rights;

(ii) Termination of parental rights may occur only after notice and a hearing on termination;

(iii) If the parent, guardian, or custodian disagrees with the terms in the plan, the party may petition the court for resolution of the disagreement; and

(iv) The parent, guardian, or custodian has a right to notice of any modification of the case plan and the right to petition the court for a hearing on the modification.

(7) "Commitment" means an order of the court which places a juvenile in the custody of a Youth Services Center operated by the Youth Services Board or any other licensed juvenile facility approved by the court.

(8) "Court" or "juvenile court" means the Juvenile Division of Chancery Court.

(9) "Custodian" means a person, other than a parent or legal guardian who stands in loco parentis to the juvenile or a person, agency, or institution to whom a court of competent jurisdiction has given custody of a juvenile by court order;

(10) "DHS" or "the department" means the Arkansas Department of Human Services;

(11) "Delinquent juvenile" means any juvenile ten (10) years or older who has committed an act other than a traffic offense or game and fish violation which, if such act had been committed by an adult, would subject such adult to prosecution for a felony, misdemeanor, or violation under the applicable criminal laws of this state.

(12) "Dependent-neglected juvenile" means any juvenile who as a result of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness is at substantial risk of serious harm.

(13) "Detention" means the temporary care of a juvenile in a physically restricting facility, other than a jail or lock-up used for the detention of adults, prior to an adjudication hearing for delinquency or pending commitment pursuant to an adjudication of delinquency.

(14) "Detention hearing" means a hearing held to determine whether a juvenile accused or adjudicated of committing a delinquent act(s) should be released or held prior to adjudication or disposition.

(15) "Disposition hearing" means a hearing held following an adjudication hearing to determine what action will be taken in delinquency, family in need of services, or dependent-neglect cases.

(16) "Family in need of services" means any family whose juvenile evidences behavior which includes, but is not limited to, the following:

(A) Being habitually and without justification absent from school while subject to compulsory school attendance;

(B) Being habitually disobedient to the reasonable and lawful commands of his parent, guardian, or custodian; or

(C) Having absented himself from his home without sufficient cause, permission, or justification.

(17) "Family services" means relevant services, including, but not limited to: child care; homemaker services; crisis counseling; cash

assistance; transportation; family therapy; physical, psychiatric, or psychological evaluation; counseling; or treatment, provided to a juvenile or his family. Family services are provided in order to:

(A) Prevent a juvenile from being removed from a parent, guardian, or custodian;

(B) Reunite the juvenile with the parent, guardian, or custodian from whom the juvenile has been removed; or

(C) Implement a permanent plan of adoption, guardianship, or rehabilitation of the juvenile.

(18) "Guardian" means any person, agency, or institution as defined by Ark. Code 28-65-201 et seq. whom a court of competent jurisdiction has so appointed;

(19) "Home study" means a written report, obtained after an investigation of a home by DHS or other appropriate persons or agencies and shall conform to regulations established by DHS.

(20) "Juvenile Detention Facility" means any facility for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission.

(21) "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make arrests for offenses.

(22) "Long term foster care" means the placement of a juvenile in a specified out-of-home placement pursuant to this act.

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

(A) Failure or refusal to prevent the abuse of the juvenile when such person knows or has reasonable cause to know the juvenile is or has been abused;

(B) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected, or when the juvenile is being furnished with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized religious denomination by a duly accredited practitioner thereof in lieu of medical treatment;

(C) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness where the existence of such condition was known or should have been known;

(D) Failure or irremedial inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile;

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

(F) Failure, although able, to assume responsibility for the care and custody of the juvenile or participate in a plan to assume such responsibility.

(24) "Notice of hearing" means a notice which describes the nature of the hearing, the time, date, and place of hearing, the right to be present, heard, and represented by counsel, and instructions on how to apply to the court for

appointment of counsel if indigent, or a uniform notice as developed and prescribed by the Arkansas Supreme Court. The notice of hearing shall be served at least twenty (20) days prior to the hearing date in the manner provided for service under the ARCP.

(25) "Order to appear" means an order issued by the court directing a person who may be subject to the court's jurisdiction to appear before the court at a date and time as set forth in the order.

(26) "Out-of-home placement" means:

(A) Placement in a home or facility other than the home of the parent or guardian from whose custody the court has removed the juvenile; or

(B) Placement in the home of a relative; provided, however, this definition shall not include circumstances where the court has discontinued orders for delivery of family services pursuant to a determination that the home of the relative shall be the permanent home of the juvenile.

Out-of-home placement shall not include placement in a Youth Services Center or detention facility as a result of a finding of delinquency.

(27) "Paternity hearing" means a proceeding brought pursuant to bastardy jurisdiction to determine the biological father of a juvenile.

(28) "Predisposition report" means a report concerning the juvenile, the family of the juvenile, all possible disposition alternatives, the location of the school in which the juvenile is or was last enrolled, whether the juvenile has been tested for or has been found to have any handicap, the name of the juvenile's attorney, and, if appointed by the court, the date of the appointment, any participation by the juvenile or his family in counseling services previously or currently being provided in conjunction with adjudication of the juvenile and any other matters relevant to the efforts to provide treatment to the juvenile or the need for treatment of the juvenile or the family. The predisposition report shall include a home study of any out-of-home placement which may be part of the disposition.

(29) "Prosecuting attorney" means an attorney who is elected as district prosecuting attorney, the duly appointed deputy prosecuting attorney, or any city prosecuting attorney.

(30) "Putative father" means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the biological father of a juvenile who claims or is alleged to be the biological father of the juvenile.

(31) "Reasonable efforts" means the exercise of reasonable diligence and care by DHS or other appropriate agency to utilize all available services relating to meeting the needs of the juvenile and the family.

(32) "Sexual abuse" includes solicitation or participation in sexual activity with a juvenile by an adult or person responsible for the care and maintenance of the juvenile. Sexual abuse also includes any offense relating to sexual activity, abuse, or exploitation, including rape and incest, as set out and defined in the Arkansas Criminal Code and amendments thereto.

(33) "Sexual exploitation" includes allowing, permitting, or encouraging participation or depiction of the juvenile in prostitution, obscene photographing, filming, or obscenely depicting a juvenile for any use or purpose.

(34) "Shelter care" means the temporary care of a juvenile in physically unrestricting facilities pursuant to an order for placement pending or pursuant to an adjudication of dependency-neglect or family in need of services.

(35) "UCCJA" means the Uniform Child Custody Jurisdiction Act as found in Ark. Code 9-13-201 et seq.

(36) "URESAs" means the Uniform Reciprocal Enforcement of Support Act found in Ark. Code 9-14-301 et seq.

SECTION 4. Any juvenile within this state may be subjected to the care,

custody, control, and jurisdiction of the juvenile court.

SECTION 5. Jurisdiction.

(a) The Juvenile Court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this act:

(1) Proceedings in which a juvenile is alleged to be delinquent or dependent-neglected as defined herein.

(2) Proceedings in which a family is alleged to be in need of services as defined herein.

(3) Proceedings for establishment of paternity, custody, visitation, or support of a juvenile alleged to be illegitimate.

(4) Proceedings for termination of parental rights for a juvenile who is under the jurisdiction of the Juvenile Court.

(b) The Juvenile Court shall have exclusive jurisdiction of the following matters governed by other law which arise during pendency of original proceedings under (a) and involve the same juvenile.

(1) Adoptions under the Revised Uniform Adoption Act, as amended, Ark. Code 9-9-201 et seq.;

(2) Guardianships under Ark. Code 28-65-201 et seq.; or

(3) URESA proceedings, Ark. Code 9-14-301 et seq.

(c) The Juvenile Court shall have concurrent jurisdiction with Probate Court for civil commitment of juveniles.

(d) The Juvenile Court shall have jurisdiction to hear proceedings commenced in any court of this state or court of comparable jurisdiction of another state which are transferred to it pursuant to UCCJA, Ark. Code 9-13-201 et seq.

SECTION 6. Venue.

(a) (1) Except as set forth in (2) or (3) below, a proceeding under this act shall be commenced in the court of the county in which the juvenile resides.

(2) Proceedings may be commenced in the county where the alleged act or omission occurred in the following:

(A) Non-support after establishment of paternity.

(B) Delinquency.

(C) Dependency-neglect.

(3) Proceedings under UCCJA shall be commenced in the court provided by that subchapter.

(b) Following adjudication, the court may on its own motion or on motion of any party transfer the case to the county of the juvenile's residence when the provisions of UCCJA do not apply.

SECTION 7. Personnel and Powers.

(a) Intake Officers.

(1) The judge of the Juvenile Court shall designate no less than one person in his Judicial District as "intake officer" for the court.

(2) (A) An intake officer shall have the following duties:

(i) To receive and investigate complaints and charges that a juvenile is delinquent or dependent-neglected, or that a family is in need of services;

(ii) To make appropriate referrals to other public or private agencies of the community if their assistance appears to be needed or desired;

(iii) To perform all other functions assigned to him by this act, by rules promulgated pursuant thereto, or by order of the court.

(B) Any of the foregoing functions may be performed in another state if authorized by a court of this state and permitted by the laws of the

other state.

(b) Probation Officers.

(1) The judge of the Juvenile Court shall designate no less than one person in his Judicial District as "probation officer."

(2) A probation officer shall have the following duties:

(A) To make appropriate investigations and reports when required to do so by any provision of this act or the rules promulgated pursuant thereto or by order of the court;

(B) To aid and counsel juveniles and their families when required to do so by order of the court;

(C) To perform all other appropriate functions assigned to him by this act or the rules promulgated pursuant thereto or by order of the Juvenile Court;

(D) To give appropriate aid and assistance to the court when requested to do so by the judge.

SECTION 8. Confidentiality of Records.

(a) All records may be closed and confidential within the discretion of the court.

(b) The court may expunge at any time the records of a juvenile and shall expunge all the records of a juvenile upon his twenty-first (21st) birthday, in delinquency, dependency-neglect, or Families in Need of Services cases. For purposes of this section, "expunge" means to destroy.

(c) Nothing in this section applies to or restricts the use or publication of statistics, data, or other materials which summarize or refer to any records, reports, statements, notes, or other information in the aggregate and which do not refer to or disclose the identity of any juvenile defendant in any proceeding when used only for the purpose of research and study.

SECTION 9. Commencement of Proceedings.

(a) Proceedings shall be commenced by filing a petition with the clerk of the chancery court or by transfer by another court.

(b) (1) The prosecuting attorney shall have sole authority to file a delinquency petition or petition for revocation of probation.

(2) Only a law enforcement officer, prosecuting attorney, DHS or its designee may file a dependency-neglect petition seeking ex parte emergency relief.

(3) Petitions for dependency-neglect or family in need of services may be filed by:

(A) Any adult; or

(B) Any member ten (10) years or older of the immediate family alleged to be in need of services.

(4) Petitions for paternity establishment may be filed by:

(A) biological mother;

(B) A putative father;

(C) A juvenile; or

(D) DHS.

(c) A copy of any petition for dependency-neglect which requests that DHS take custody or provide family services shall be mailed to the Director of the Department of Human Services by the petitioner.

(d) (1) Any person may submit to the intake officer for investigation a complaint of acts or omissions which, if substantiated, would constitute delinquency.

(2) Upon substantiation, the intake officer may refer the matter to the prosecuting attorney or any appropriate agency.

SECTION 10. Required Contents of Petition.

(a) The petition shall set forth the following:

- (1) The name, address, gender, and date of birth of the juvenile.
- (2) The name and address of each of the parents or the surviving parent of the juvenile.
- (3) The name and address of the person, agency, or institution having custody of the juvenile.
- (4) The name and address of any other person, agency, or institution having a claim to custody or guardianship of the juvenile.
- (5) In a proceeding to establish paternity, the name and address of both the putative father and the presumed legal father, if any.

(b) If the name or address of anyone listed in (a) above is unknown or cannot be ascertained by the petitioner with reasonable diligence, such shall be alleged in the petition and the petition shall not be dismissed for insufficiency, but the court shall direct appropriate measures to find and give notice to such persons.

(c) All persons named in (a) shall be made defendants and served as required by this act.

(d) (1) The petition shall set forth the following in plain and concise words:

- (A) The facts which, if proven, would bring the family or juvenile within the court's jurisdiction;
- (B) The subsection of this act upon which jurisdiction for the petition is based;
- (C) The relief requested by the petitioner; and
- (D) If a petition for delinquency proceedings, any and all sections of the criminal laws allegedly violated.

(2) The petition shall be supported by an affidavit of facts.

SECTION 11. Notification to Defendants.

All juvenile defendants age ten (10) and above, any person having care and control of the juvenile, and all adult defendants shall be served with a copy of the petition and either a Notice of Hearing or Order to Appear in the manner provided by the Arkansas Rules of Civil Procedure.

SECTION 12. Taking into Custody.

(a) A juvenile may be taken into custody without a warrant prior to service upon him of a petition and Notice of Hearing or Order to Appear as set out under Section 11 only:

- (1) Pursuant to an order of the court under this act;
- (2) By a law enforcement officer without a warrant under circumstances as set forth in Arkansas Rules of Criminal Procedure 4.1; or
- (3) By a law enforcement officer or by a duly authorized representative of the Department of Human Services if there are clear, reasonable grounds to conclude that the juvenile is in immediate danger and that removal is necessary to prevent serious harm from his surroundings or from illness or injury and if parents, guardians, or others with authority to act are unavailable or have not taken action necessary to protect the juvenile from the danger and there is not time to petition for and obtain an order of the court prior to taking the juvenile into custody.

(b) When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately take the juvenile before the court out of which the warrant was issued. The court shall decide whether jurisdiction is in juvenile court or circuit court pursuant to Section 17.

(c) When a law enforcement officer, representative of DHS, or other authorized person takes custody of a juvenile alleged to be

dependent-neglected or pursuant to the Child Abuse Reporting Act (Ark. Code 12-12-501 et seq.), he shall:

(1) Take the juvenile to shelter care, notify the Department of Human Services and the intake officer of the Juvenile Court, and make every possible effort to notify the parent, guardian, or other person having care of the juvenile of the juvenile's location. The notification to parents shall be in writing and shall include a notice of the location of the juvenile, of the juvenile's and parents' rights to receive a copy of any petition filed under this act, the location and telephone number of the court, and the procedure for obtaining a hearing; or

(2) Return the juvenile to his home.

(d) When a law enforcement officer or other authorized person takes custody of an alleged delinquent juvenile under this act, he shall:

(1) Pursuant to the Arkansas Rules of Criminal Procedure issue a citation for the juvenile and his parents to appear for a first appearance before the Juvenile Court and release the juvenile, and within twenty-four (24) hours notify the intake officer and prosecuting attorney so that a petition may be filed under this act;

(2) If the juvenile has been taken into custody under (a) (2) for an act which would be a felony, the juvenile may be taken to detention. The intake officer shall be notified immediately if any juvenile is taken to detention. The intake officer shall make a detention decision pursuant to Section 21 of this act within twenty-four (24) hours of the time the juvenile was first taken into custody. If the juvenile remains in detention, a detention hearing shall be held within seventy-two (72) hours (excluding weekends and holidays) of the time the juvenile was first taken into custody, pursuant to Section 25 (a) of this act; or

(3) Return the juvenile to his home.

(e) When a law enforcement officer takes custody of a juvenile under this act for reasons other than those specified in (c) (dependent-neglected) or (d) (delinquency), he shall:

(1) Take the juvenile to shelter care, notify the Department of Human Services and the intake officer of the Juvenile Court, and make every possible effort to notify the parent, guardian, or other person having care of the juvenile of the juvenile's location. The notification to parents shall be in writing and shall include a notice of the location of the juvenile, of the juvenile's and parents' rights to receive a copy of any petition filed under this act, the location and telephone number of the court, and the procedure for obtaining a hearing;

(2) In cases when the parent, guardian or other person contacted lives beyond a fifty (50) mile driving distance or out of state and the juvenile has been absent from his home or domicile for more than twenty-four (24) hours, the juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing or arranging for release or transfer to an alternative facility. Such holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults. A juvenile held under this paragraph must be separated from detained juveniles charged or held for delinquency. A juvenile may not be held under this paragraph for more than six (6) hours if the parent, guardian or other person contacted lives in state or twenty-four (24) hours (excluding weekends and holidays) if the parent, guardian or other person contacted lives out of state; or

(3) Return the juvenile to his home.

(e) If no petition to adjudicate a juvenile taken into custody is filed within twenty-four (24) hours after a detention hearing or ninety-six (96) hours after a juvenile is taken into custody, whichever is sooner, the juvenile shall be discharged from custody, detention, or shelter care.

SECTION 13. Emergency Orders.

(a) In any case where there is probable cause to believe a juvenile is dependent-neglected or in need of services and that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or to prevent the juvenile's removal from the state, the court shall issue an ex parte order for emergency custody to remove the juvenile from the custody of the parent, guardian, or custodian and shall determine the appropriate plan for placement of the juvenile.

(b) The emergency order shall include:

(1) Notice to the juvenile's parents, custodian, or guardian of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order;

(2) Their right to be represented by counsel;

(3) Their right to obtain appointed counsel if indigent and the procedure for obtaining appointed counsel; and

(4) The location and telephone number of the court and the procedure for obtaining a hearing.

(c) Immediate notice of the emergency order shall be given by the petitioner or by the court to the parents, guardians, or custodian and the juvenile. All defendants shall be served according to the Arkansas Rules of Civil Procedure or as otherwise provided by the court.

SECTION 14. Emergency Hearings.

(a) Following the issuance of an emergency order removing the custody of a juvenile from a parent, guardian, or custodian, the court shall, within five (5) business days of the issuance of the ex parte order, hold a hearing to determine if probable cause to issue the emergency order continues to exist.

(b) The petitioner shall have the burden of proof by a preponderance of evidence that probable cause exists for continuation of the emergency order.

(c) If the court determines that the juvenile can safely be returned to his home pending adjudication, the court shall so order.

(d) (1) At the emergency hearing the court shall set the time and date for the adjudication hearing.

(2) The adjudication hearing shall be held within thirty (30) days of the emergency hearing, but may be continued for no more than twenty (20) days following the first thirty (30) days on motion of any party for good cause shown.

SECTION 15. Right to Counsel - Guardian Ad Litem.

(a) In delinquency and families in need of services cases, a juvenile and his parent, guardian, or custodian shall be advised by the law enforcement official taking a juvenile into custody, by the intake officer at the initial intake interview, and by the court at the juvenile's first appearance before the court that the juvenile has the right to be represented at all stages of the proceedings by counsel.

(b) (1) The inquiry concerning the ability of the juvenile to retain counsel shall include a consideration of the juvenile's financial resources and financial resources of his or her family. However, the failure of the juvenile's family to retain counsel for the juvenile shall not deprive the juvenile of the right to appointed counsel if required under this section.

(2) The court may order financially able juveniles, parents, guardians, or custodians to pay all or part of reasonable attorneys' fees and expenses for representation of a juvenile.

(c) If counsel is not retained for the juvenile or it does not appear that counsel will be retained, counsel shall be appointed to represent the juvenile at all appearances before the court, unless the right to counsel is

waived in writing as set forth in Section 16.

(d) In a proceeding in which the judge determines that there is a reasonable likelihood that the proceeding may result in the juvenile's commitment to an institution in which the freedom of the juvenile would be curtailed, and counsel has not been retained for the juvenile, the court shall appoint counsel for the juvenile.

(e) (1) In all proceedings involving the custody of juveniles, the court shall appoint a guardian ad litem to represent the best interest of the juvenile and to advocate for the juvenile's articulated wishes.

(2) The guardian ad litem for the juvenile shall be given access to all reports relevant to the case and to any reports of examination of the juvenile's parents or other persons responsible for the care of the juvenile.

(3) The participation of the guardian ad litem may include presentation of evidence, prehearing and posthearing motions, examination and cross examination of witnesses in any hearing involving the represented juvenile, and appeals.

(4) Appointment of guardian ad litem shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by the guardian ad litem.

(f) (1) In all proceedings to terminate parental rights or remove custody of a juvenile from a parent or guardian, the parent or guardian shall be advised at his first appearance before the court of the right to be represented by counsel at all stages of the proceedings and the right to appointed counsel if indigent.

(2) Upon request by a parent or guardian and a determination by the court of indigency, the court shall appoint counsel, and if an attorney other than the public defender is appointed the court shall award a fee and costs from the Juvenile Court Representation Fund in an amount not to exceed the amounts provided by law for appointment of counsel for indigent defendants in criminal cases.

(g) (1) The court, after a determination of ability to pay, may order the parent or guardian of the estate of any juvenile for whom an attorney is appointed to pay a user fee of up to one hundred dollars (\$100.00) for the services of counsel.

(2) All money collected by the clerk of the court under this subsection shall be retained by the clerk, who shall deposit the money into a special fund to be known as the Juvenile Court Representation Fund. All monies formerly collected and deposited under the Guardian Ad Litem Fund Act shall be transferred to and be deposited in the Juvenile Court Representation Fund.

(3) The court shall direct that money from this fund be paid for use in providing the cost of representation by counsel or guardian ad litem appointed under this section.

(4) Any money remaining in the fund at the end of the fiscal year shall not revert to any other fund but carry over into the next fiscal year in the Juvenile Court Representation Fund.

(h) Appointment of counsel shall be made at a time sufficiently in advance of the court appearance to allow adequate preparation by appointed counsel and adequate consultation between the appointed counsel and the client.

#### SECTION 16. Waiver of Right to Counsel.

(a) Waiver of the right to counsel shall be accepted only upon a finding by the court from clear and convincing evidence, after questioning the juvenile, that:

(1) The juvenile understands the full implications of the right to counsel;

(2) The juvenile freely, voluntarily, and intelligently wishes to waive the right to counsel; and

(3) The parent, guardian, custodian, or counsel for the juvenile has agreed with the juvenile's decision to waive the right to counsel.

(b) The agreement of the parent, guardian, custodian, or attorney shall be accepted by the court only if the court finds:

(1) That such person has freely, voluntarily, and intelligently made the decision to agree with the juvenile's waiver of the right to counsel;

(2) That such person has no interest adverse to the juvenile; and

(3) That such person has consulted with the juvenile in regard to the juvenile's waiver of the right to counsel.

(c) In determining whether a juvenile's waiver of the right to counsel was made freely, voluntarily, and intelligently, the court shall consider all the circumstances of the waiver, including:

(1) The juvenile's physical, mental, and emotional maturity;

(2) Whether the juvenile and his parent, guardian, custodian, or guardian ad litem understood the consequences of the waiver;

(3) Whether the juvenile and his parent, guardian, or custodian were informed of the alleged delinquent act;

(4) Whether the waiver of the right to counsel was the result of any coercion, force, or inducement;

(5) Whether the juvenile and his parent, guardian, custodian, or guardian ad litem had been advised of the juvenile's right to remain silent and to the appointment of counsel.

(d) No waiver of the right to counsel shall be accepted in any case in which the parent, guardian, or custodian has filed a petition against the juvenile, initiated the filing of a petition against the juvenile, or requested the removal of the juvenile from the home.

(e) No waiver of the right to counsel shall be accepted in any case where counsel was appointed due to the likelihood of the juvenile's commitment to an institution under Section 15 (d).

(f) All waivers of the right to counsel shall be in writing and signed by the juvenile and his parent, guardian, or custodian.

#### SECTION 17. Waiver and Transfer of Juvenile Cases.

(a) Waiver of juvenile court jurisdiction and transfer to a circuit court is not available when a case involves a juvenile:

(1) less than age fourteen (14) at the time the alleged delinquent act occurred;

(2) less than age eighteen (18) at the time the alleged delinquent act occurred and the alleged act would not constitute a felony if committed by an adult; or

(3) age fourteen (14) or age fifteen (15) and the alleged act, if committed by an adult, would constitute a misdemeanor or a felony, other than those felonies specifically enumerated in section (b) (1).

(b) (1) When a case involves a juvenile age fourteen (14) or fifteen (15) at the time the alleged delinquent act occurred, the prosecuting attorney has the discretion to file charges in circuit court for an alleged act which constitutes capital murder, murder in the first degree, murder in the second degree, kidnapping in the first degree, aggravated robbery, or rape.

(2) The circuit court shall hold a hearing within ninety (90) days of the filing of charges to determine whether to retain jurisdiction of the juvenile in circuit court or to waive jurisdiction and transfer the case to juvenile court.

(c) When a case involves a juvenile age sixteen (16) or above at the time the alleged delinquent act occurred and the alleged act would constitute a felony if committed by an adult, the prosecuting attorney has the discretion

to file a petition in juvenile court alleging delinquency or to file charges in circuit court and to prosecute as an adult.

(d) Upon the motion of the court or of any party, the judge of the court in which a delinquency petition or criminal charges have been filed shall conduct a hearing to determine whether to retain jurisdiction or to transfer the case to another court having jurisdiction.

(e) In making the decision to retain jurisdiction or to transfer the case, the court shall consider the following factors:

(1) The seriousness of the offense and whether violence was employed by the juvenile in the commission of the offense;

(2) Whether the offense is part of a repetitive pattern of adjudicated offenses which would lead to the determination that the juvenile is beyond rehabilitation under existing rehabilitation programs, as evidenced by past efforts to treat and rehabilitate the juvenile and the response to such efforts; and

(3) The prior history, character traits, mental maturity, and any other factor which reflects upon the juvenile's prospects for rehabilitation.

(f) Upon a finding by clear and convincing evidence that a juvenile should be tried as an adult, the court shall enter an order to that effect.

(g) If the case is transferred to another court, any bail or appearance bond given for the appearance of the juvenile shall continue in effect in the court to which the case is transferred.

(h) Any party may appeal from an order granting or denying the transfer of a case from one court to another court having jurisdiction over the matter.

#### SECTION 18. Double Jeopardy.

(a) No juvenile who has been subjected to an adjudication pursuant to a petition alleging him to be delinquent shall be tried later under criminal charges based upon facts alleged in the petition to find him delinquent.

(b) No juvenile who has been tried for a violation of the criminal laws of this state shall be later subjected to a delinquency proceeding arising out of the facts which formed the basis of the criminal charges.

#### SECTION 19. Fingerprinting or Photographing.

(a) A juvenile shall not be photographed or fingerprinted under this act by any law enforcement agency unless he has been taken into custody on an allegation of delinquency.

(b) Copies of a juvenile's fingerprints or photograph shall be made available only to other law enforcement agencies and to the juvenile court.

(c) Each law enforcement agency in the state shall keep a separate file of photographs and fingerprints, it being the intention that such photographs and fingerprints of juveniles not be kept in the same file with those of adults.

(d) However, in any case where the juvenile is found not to have committed the alleged delinquent act, the juvenile court may order any law enforcement agency to return all pictures and fingerprints to the juvenile court and shall order the law enforcement agency that took the juvenile into custody to mark the arrest record with the notation "found not to have committed the alleged offense."

#### SECTION 20. Statements Made During Intake Process Not Admissible - Results of Investigations Admissible.

Statements made by a juvenile to the intake officer or probation officer during the intake process prior to a hearing on the merits of the petition filed against the juvenile shall not be used or be admissible against the juvenile at any stage of any proceedings in juvenile court or in any other

court.

SECTION 21. Release from Custody.

(a) Upon receiving notice that a juvenile has been taken into custody on an allegation of delinquency, the intake officer shall immediately notify the juvenile's parent, guardian, or custodian of the location at which the juvenile is being held and of the reasons for the juvenile's detention, if such notification has not previously taken place, and shall:

(1) Unconditionally release the juvenile to the juvenile's parent, guardian, or custodian; or

(2) Release the juvenile to the juvenile's parent, guardian, or custodian upon the written promise of the parent, guardian, or custodian to bring the juvenile before the court when summoned; or

(3) Detain the juvenile pending a detention hearing before the juvenile court.

(b) Criteria for Release by Intake Officer. (1) In determining whether to detain a juvenile who has been taken into custody on an allegation of delinquency pending a detention hearing, the intake officer shall consider the following facts:

(A) Ties to the community including place and length of residence; school attendance; present and past employment; family relationships; and references.

(B) Nature of the alleged offense including whether the offense would constitute a felony or misdemeanor; the use of force or violence; prior juvenile or criminal record; and any history of failure to appear for court appearances.

(2) The intake officer may determine that there is no less restrictive alternative to detention if detention is necessary:

(A) To prevent imminent bodily harm to the juvenile or to another; or

(B) To prevent flight when the juvenile is a fugitive or escapee from another jurisdiction.

(3) Only if a substantial number of the facts considered under subsection (1) weigh against the juvenile or one of the two circumstances in subsection (2) exists shall the juvenile be detained pending a detention hearing by the court.

SECTION 22. Diversion.

(a) If the prosecuting attorney, after consultation with the intake officer, determines that a diversion of a delinquency case is in the best interests of the juvenile and the community, the officer may, with the consent of the juvenile and his parent, guardian, or custodian, attempt to make a satisfactory diversion of a case.

(b) In addition to the requirements of subsection (2), a diversion of a case is subject to the following conditions:

(1) The juvenile has admitted his involvement in a delinquent act;

(2) The intake officer advises the juvenile and his parent, guardian, or custodian that they have the right to refuse a diversion of the case and demand the filing of a petition and a formal adjudication;

(3) Any diversion agreement shall be entered into voluntarily and intelligently by the juvenile with the advice of his attorney, or by the juvenile with the consent of a parent, guardian, or custodian if the juvenile is not represented by counsel;

(4) The diversion agreement shall provide for the supervision of a juvenile or the referral of the juvenile to a public or private agency for services not to exceed six (6) months;

(5) All other diversion agreements shall not exceed nine (9) months;

(6) The juvenile and his parent, guardian, or custodian shall have the right to terminate the diversion agreement at any time and to request the filing of a petition and a formal adjudication.

(c) (1) The terms of the diversion agreement shall:

(A) Be in writing in simple, ordinary, and understandable language;

(B) State that the agreement was entered into voluntarily by the juvenile;

(C) Name the attorney or other person who advised the juvenile upon the juvenile's entering into the agreement; and

(D) Be signed by all parties to the agreement, and by the prosecuting attorney if the offense would constitute a felony if committed by an adult.

(2) A copy of the agreement shall be given to the juvenile, the counsel for the juvenile, the parent, guardian, or custodian, and the intake officer, who shall retain the copy in the case file.

(d) Diversion agreements shall be limited to providing for:

(1) Nonjudicial probation under the supervision of the intake officer or probation officer for a period during which the juvenile may be required to comply with specified conditions concerning his conduct and activities; and

(2) Participation in a court-approved program of education, counseling, or treatment.

(e) (1) If a diversion of a complaint has been made, a petition based upon the events out of which the original complaint arose may be filed only during the period for which the agreement was entered into.

(2) If a petition is filed within this period, the juvenile's compliance with all proper and reasonable terms of the agreement shall be grounds for dismissal of the petition by the court.

(f) The diversion agreement may be terminated and the prosecuting attorney may file a petition if at any time during the agreement period:

(1) The juvenile or his parent, guardian, or custodian declines to further participate in the diversion process;

(2) The juvenile fails, without reasonable excuse, to attend a scheduled conference;

(3) The juvenile appears unable or unwilling to benefit from the diversion process; or

(4) The intake officer becomes apprised of new or additional information which indicates that further efforts at diversion would not be in the best interests of the juvenile or society.

(g) Upon the satisfactory completion of the diversion period:

(1) The juvenile shall be dismissed without further proceedings;

(2) The intake officer shall furnish written notice of such dismissal to the juvenile and his parent, guardian, or custodian; and

(3) The complaint and the agreement and all references thereto may be expunged by the court from the juvenile's file.

#### SECTION 23. Preliminary Investigations.

(a) Upon receiving notice that a juvenile has been taken into custody on an allegation of delinquency, the intake officer shall also conduct a preliminary investigation.

(b) In the course of a preliminary investigation, the intake officer may:

(1) Interview the complainant, victim, or witnesses of the act and circumstances alleged in the complaint;

(2) Review existing records of the court, law enforcement agencies, and public records of other agencies;

(3) Hold conferences with the juvenile and his or her parent,

guardian, or custodian for the purpose of interviewing them and discussing the disposition of the complaint.

(c) Any additional inquiries may be made only with the consent of the juvenile and his or her parent, guardian, or custodian.

(d) (1) Participation of the juvenile and his or her parent, guardian, or custodian in a conference with an intake officer shall be voluntary, with the right to refuse to continue participation at any time.

(2) At such conferences, the juvenile and his or her parent, guardian, or custodian shall be advised of the juvenile's right to assistance of counsel and the right to remain silent when questioned by the intake officer.

#### SECTION 24. Hearings - General Provisions.

(a) All hearings shall be conducted by the judge without a jury.

(b) The defendant need not file a written responsive pleading in order to be heard by the court.

(c) (1) At the time set for hearing, the court may:

(A) Proceed to hear the case only if the juvenile is present or excused for good cause by the court; or

(B) Continue the case upon determination that the presence of an adult defendant is necessary.

(2) Upon determining that a necessary party is not present before the court, the court may:

(A) Issue an order for contempt if the defendant was served with an Order to Appear; or

(B) Issue an Order to Appear with a time and place set by the court for hearing if the defendant was served with a Notice of Hearing.

(d) The court shall be a court of record. A record of all proceedings shall be kept in the same manner as other proceedings of chancery court and in accordance with rules promulgated by the Arkansas Supreme Court.

(e) Unless otherwise indicated, the Arkansas Rules of Evidence shall apply.

(f) Except as otherwise provided in this act and until rules of procedure for Juvenile Court are developed and in effect, the Arkansas Rules of Civil Procedure (ARCP) shall apply to all proceedings and the Arkansas Rules of Criminal Procedure (ARCrImP) shall apply to delinquency proceedings.

(g) All defendants shall have the right to compel attendance of witnesses in accordance with the ARCP and ARCrImP.

(h) The following burdens of proof shall apply:

(1) Proof beyond a reasonable doubt in hearings concerning delinquency and revocation of probation.

(2) Proof by a preponderance of the evidence in dependent-neglect or family in need of services hearings.

(3) Proof by clear and convincing evidence for hearings to terminate parental rights.

(i) All hearings may be closed within the discretion of the court, except in delinquency cases the juvenile shall have the right to an open hearing.

#### SECTION 25. Detention Hearings.

(a) If a juvenile is taken into custody on an allegation of delinquency and not released by the law enforcement officer or intake officer, a detention hearing shall be held as soon as possible but no later than seventy-two (72) hours after the juvenile was taken into custody or, if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day. Otherwise, the juvenile shall be released.

(b) Prior written notice of the time, place and purpose of the detention hearing shall be given to:

- (1) the juvenile;
- (2) the juvenile's attorney; and
- (3) the juvenile's parent, guardian, or custodian, provided, if the court finds after a reasonable diligent effort, the petitioner was unable to notify the parent, guardian or custodian, the hearing may proceed without notice to that party.

(c) The petitioner shall have the burden of proof by clear and convincing evidence that the restraint on the juvenile's liberty is necessary and that no less restrictive alternative will reduce the risk of flight, of serious harm to property or to the physical safety of the juvenile or others.

(d) During the detention hearing, the court shall:

- (1) Inform the juvenile:
  - (A) Of the reasons continued detention is being sought;
  - (B) That he is not required to say anything and that anything he says may be used against him;
  - (C) That he has a right to counsel; and
  - (D) That before the hearing proceeds further, he has the right to communicate with his attorney, parent, guardian or custodian and reasonable means will be provided for him to do so.

- (2) Admit testimony and evidence relevant only to determination that probable cause exists that the juvenile committed the offense as alleged and that detention of the juvenile is necessary.

- (3) Assess the following factors in determining whether to release the juvenile prior to further hearings in the case:

- (A) Place and length of residence;
- (B) Family relationships;
- (C) References;
- (D) School attendance;
- (E) Past and present employment;
- (F) Juvenile and criminal records;
- (G) The juvenile's character and reputation;
- (H) Nature of the charge being brought and any mitigating or aggravating circumstances;
- (I) Whether detention is necessary to prevent imminent bodily harm to the juvenile or to another;
- (J) The possibility of additional violations occurring if the juvenile is released;
- (K) Factors which indicate the juvenile is likely to appear as required;
- (L) Whether conditions should be imposed on the juvenile's release.

(e) (1) The court shall release the juvenile when there is a finding that no probable cause exists that the juvenile committed the offense as alleged.

(2) The court, upon a finding that detention is not necessary, may release the juvenile:

- (A) Upon his personal recognizance;
- (B) Upon an order to appear;
- (C) To his parent, guardian, or custodian upon written promise to bring the juvenile before the court when required;
- (D) To the care of a qualified person or agency agreeing to supervise the juvenile and assist him in appearing in court;
- (E) Under the supervision of the probation officer or other appropriate public official;
- (F) Upon reasonable restrictions on activities, movements, associations, and residences of the juvenile;
- (G) On bond to his parent, guardian, or custodian; or

(H) Under such other reasonable restrictions to insure the appearance of the juvenile.

(3) If the court determines that only a money bond will insure the appearance of the juvenile, the court may require:

(A) An unsecured bond in an amount set by the judicial officer;

(B) A bond accompanied by a deposit of cash or securities equal to ten percent (10%) of the face amount set by the court which shall be returned at the conclusion of the proceedings if the juvenile has not defaulted in the performance of the conditions of the bond;

(C) A bond secured by deposit of the full amount in cash, or by other property, or by obligation of qualified securities.

(4) Orders of conditional release may be modified upon notice, hearing and good cause shown.

#### SECTION 26. Adjudication Hearings.

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

(b) If a juvenile is in detention, an adjudication hearing shall be held not later than fourteen (14) days from the date of the detention hearing unless waived by the juvenile or good cause is shown for a continuance.

(c) Following an adjudication in which a juvenile is found to be delinquent, dependent-neglected, or a member of a Family in Need of Services, the court may order any studies or predisposition reports, if needed, that bear on disposition.

(d) All such reports shall be provided in writing to all parties and counsel at least two (2) days prior to the disposition hearing. All parties shall be given a fair opportunity to controvert any parts of such reports.

#### SECTION 27. Removal and Placement of Juvenile.

(a) Before a juvenile may be removed from the parent, guardian, or custodian of the juvenile by order of a juvenile court, excluding commitments to youth services centers, the court shall order family services appropriate to prevent removal or to reunify the family and in its orders make these specific findings:

(1) Whether removal of the juvenile is necessary to protect the juvenile and the reasons therefor;

(2) Which family services were made available to the family before removal of the juvenile;

(3) What efforts were made to provide those family services relevant to the needs of the family before the removal of the juvenile;

(4) Why efforts made to provide family services described did not prevent removal of the juvenile; and

(5) Whether efforts made to prevent removal of the juvenile were reasonable, based upon the needs of the family and juvenile.

(b) Where the state agency's first contact with the family has occurred during an emergency in which the juvenile could not safely remain at home, even with reasonable services being provided, the responsible state agency shall be deemed to have made reasonable efforts to prevent or eliminate the need for removal.

(c)(1) At any hearing to determine whether a juvenile should be removed from the parent, guardian, or custodian of the juvenile or continued in out-of-home placement, the juvenile court may release the juvenile to the parent, guardian, or custodian or may order the juvenile placed in the legal custody of the state agency for placement in a foster care program. The court shall, in its orders, determine whether:

(A) The juvenile is in need of the services of the state agency;

- (B) Out-of-home placement is necessary to protect the juvenile;
- (C) The juvenile is unlikely to appear before the juvenile court for subsequent proceedings;
- (D) The juvenile makes a reasonable request not to be released;
- (E) The parent, guardian, or custodian cannot be located, is unable or refuses to take custody of the juvenile; or
- (F) Considerations for the safety of the juvenile preclude the use of family services to prevent removal of the juvenile.
- (2) Prior to placement of a juvenile in a placement other than the home of the parent, guardian, or custodian from which the juvenile was removed, the juvenile court must make specific findings whether reasonable efforts were made to keep the family together and avoid out-of-home placement and whether reasonable efforts to eliminate the need for removal of the juvenile from the home were made by the state.
- (d) Where the court finds the state agency's preventative or reunification efforts have not been reasonable, but further preventative or reunification efforts could not permit the juvenile to safely remain at home, the court may authorize or continue the removal of the juvenile but shall note the failure by the state agency in the record of the case.

#### SECTION 28. Disposition Hearings and Predisposition Reports.

- (a) If the court finds that the petition has been substantiated by the proof at the adjudication hearing, a disposition hearing shall be held for the court to enter orders consistent with the disposition alternatives.
- (b) When a juvenile is held in detention after an adjudication hearing for delinquency pending a disposition hearing, the disposition hearing shall be held no more than fourteen (14) days following the adjudication hearing.
- (c) In considering the disposition alternatives, the court shall give preference to the least restrictive disposition consistent with the best interests and welfare of the juvenile and the public.
- (d) At the disposition hearing, the court may admit into evidence any studies or reports which have been ordered, even though they are not admissible at the adjudication hearing.

#### SECTION 29. Disposition Alternatives for Delinquency Cases. If a juvenile is found to be delinquent, the court may enter an order making any of the following dispositions:

- (1) Transfer legal custody of the juvenile to the Arkansas Department of Human Services or to another licensed agency responsible for the care of juveniles or to a relative or other individual.
- (2) Order the juvenile or members of the juvenile's family to submit to physical, psychiatric, or psychological evaluations.
- (3) Commit the juvenile to a youth services center operated by the Youth Services Board.
- (4) Place the juvenile on probation under those conditions and limitations that the court may prescribe pursuant to Section 38(a).
- (5) Assess a court cost of no more than thirty-five dollars (\$35.00) to be paid by the juvenile or his parent, guardian, or custodian.
- (6) Order restitution to be paid by the juvenile or his parent, guardian, or custodian.
- (7) Order a fine of not more than five hundred dollars (\$500) to be paid by the juvenile or his parent, guardian, or custodian.
- (8) Order that the juvenile participate in court-approved public service not to exceed one hundred sixty (160) hours.

SECTION 30. Limitations on Disposition in Delinquency Cases.

(a) (1) Unless otherwise stated, an order transferring custody of a juvenile to an agency or an individual shall remain in effect for an indeterminate period not exceeding two (2) years from the date entered.

(2) Prior to the expiration of an order transferring custody, the court may extend the order for additional periods of one (1) year if it finds the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(b) (1) Unless otherwise stated, an order of probation shall remain in effect for an indeterminate period not exceeding two (2) years.

(2) A juvenile shall be released from probation upon expiration of the order or upon a finding by the court that the purpose of the order has been achieved.

(3) Prior to the expiration of an order of probation, the court may extend the order for an additional period of one (1) year if it finds the extension is necessary to safeguard the welfare of the juvenile or the interest of the public.

(c) The court may enter an order for physical, psychiatric, or psychological evaluation or counseling or treatment affecting the family of a juvenile only after finding that such evaluation, counseling, or treatment of family members is necessary for the treatment or rehabilitation of the juvenile.

(d) An order of restitution to be paid by the juvenile, his parent, guardian, or custodian may be entered only after the loss caused by the juvenile is proved by a preponderance of the evidence and the amount of restitution may not exceed two thousand dollars (\$2,000).

(e) In every case where an order of commitment has been entered pursuant to an adjudication of delinquency, the facility to which the juvenile is committed shall, within thirty (30) days of the juvenile's commitment, prepare a written case plan which shall:

- (1) State the treatment plan for the juvenile;
- (2) State the anticipated length of commitment of the juvenile;
- (3) State recommendations as to the most appropriate post-commitment placement of the juvenile; and
- (4) Specify post-commitment family services, if any, which should be offered by DHS.

(f) A copy of the written case plan shall be submitted to the committing court for its review, and, in addition, shall be provided to the custodian of the juvenile, and filed in any court files of any court in which a dependency-neglect or family in need of services action concerning that juvenile is then pending.

SECTION 31. Disposition Alternatives for Families in Need of Services Cases.

If a family is found to be in need of services, the court may enter an order making any of the following dispositions:

- (a) Order family services.
- (b) Transfer custody of juvenile family members to the Arkansas Department of Human Services or to another licensed agency responsible for the care of juveniles, or to a relative or other individual.

SECTION 32. Limitations on Disposition in Families in Need of Services Cases.

(a) If custody of a juvenile is transferred by the court to the Arkansas Department of Human Services or to another licensed agency responsible for the care of juveniles, the department or agency shall prepare a written case plan within thirty (30) days of the date of placement.

(b) Custody of a juvenile may be transferred to a relative or other individual only after a full investigation of the placement is conducted by DHS and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

SECTION 33. Disposition Alternatives for Dependency-Neglect Cases.

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

(a) Order family services.

(b) Transfer custody of the juvenile to the Arkansas Department of Human Services or to another licensed agency responsible for the care of juveniles, or to a relative or other individual.

SECTION 34. Limitations on Disposition in Dependency-Neglect Cases.

(a) If custody of a juvenile is transferred by the court to the Arkansas Department of Human Services or to another licensed agency responsible for the care of juveniles, the department or agency shall prepare a written case plan within thirty (30) days of the date of placement.

(b) Custody of a juvenile may be transferred to a relative or other individual only after a full investigation of the placement is conducted by DHS and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(c) The court shall enter orders transferring custody of juveniles in dependency-neglect cases only after determining that reasonable efforts have been made by DHS to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists. If the court finds that reasonable efforts to deliver family services have not been made, the court may:

(1) Dismiss the petition;

(2) Order family services reasonably calculated to prevent the need for out-of-home placement;

(3) Transfer custody of the juvenile despite the lack of reasonable efforts by DHS to prevent the need for out-of-home placement if such a transfer of custody is necessary to protect the juvenile from immediate danger or to prevent the juvenile from being removed from the jurisdiction of the court.

SECTION 35. Limitations on Detention.

(a) A juvenile who is alleged to be or adjudicated either dependent-neglected or a member of a family in need of services shall not be placed or detained in a secure detention facility, in a facility utilized for the detention of alleged or adjudicated delinquent juveniles, or in a facility utilized for the detention of adults held for, charged with, or convicted of a crime.

(b) A juvenile shall not be placed or confined in a jail or lock-up used for the detention of adults except under the following circumstances:

(1) A juvenile in custody on felony charges filed in circuit court may be placed in an adult jail or lock-up provided he is separated by sight and sound from adults who are pre-trial detainees or convicted persons and provided he is not under the supervision of the same jail staff as are incarcerated adults.

(2) A juvenile alleged to have committed a delinquent act may be held in an adult jail or lock-up for up to six (6) hours for purposes of identification, processing, or arranging for release or transfer to an alternative facility, provided he is separated by sight and sound from adults who are pre-trial detainees or convicted persons and provided he is not under the supervision of the same jail staff as are incarcerated adults. A holding

for those purposes shall be limited to the minimum time necessary and shall not include travel time for transporting the juvenile to the alternative facility.

(c) Nothing in this act is intended to prohibit the use of juvenile detention facilities which are attached to or adjacent to adult jails or lock-ups, provided the facilities are designed and used in accordance with federal and state guidelines and restrictions.

#### SECTION 36. Review Hearings.

(a) The court shall periodically review every case of dependency-neglect or families in need of services where out-of-home placement has occurred until there is a permanent order of custody or the juvenile is returned to the parent, guardian, or custodian and the court has discontinued orders for family services.

(b) In each case requiring review, a review hearing shall be commenced prior to the expiration of six (6) months from the entry of the order to be reviewed. Said hearing shall be completed and a ruling announced within an additional thirty (30) days. Otherwise, the order to be reviewed shall be deemed vacated pending further proceedings. The limitations imposed by this subsection are not subject to waiver or extension by any party, or by the court.

(c) (1) The court may require any case of dependency-neglect or family in need of services to be reviewed prior to the sixth (6th) month. In such case it shall be the responsibility of the court to announce the date, time, and place of hearing.

(2) In all other cases, it shall be the duty of the petitioner at least sixty (60) days prior to the date the existing order would be vacated, to request the court to set a review hearing as required by this act.

(d) Any party may, at any time during the pendency of any case of dependency-neglect or family in need of services, request the court to review such case.

(e) It shall be the duty of the petitioner to provide all parties with reasonable notice and serve such notice on all parties in accordance with the Arkansas Rules of Civil Procedure.

#### SECTION 37. Hearing - 18-month review - State Agency Report.

(a) Eighteen (18) months after the date the juvenile enters an out-of-home placement, or earlier if ordered by the court, the court shall hold a hearing in order to enter a new disposition in the case. At the hearing, based upon the facts of the case, the court shall enter one of the following dispositions:

- (1) Return the juvenile to the parent, guardian, or custodian;
- (2) Authorize a plan for the termination of the parent-child relationship, guardianship, or custody;
- (3) Place the juvenile in long-term foster care; or
- (4) Allow the juvenile to continue in an out-of-home placement for a specified, limited period of time.

(b) If the court finds that the juvenile should remain in an out-of-home placement, either long-term or otherwise, the juvenile's care shall be reviewed every six (6) months.

(c) Nothing in this section shall be construed to prevent the state agency from proceeding to terminate parental rights, guardianship, or custody at any time prior to the eighteen-month review.

(d) Before the eighteen-month review, the court shall direct the state or other licensed agency to prepare a written report on the progress made in implementing the court's original plan, including the progress made in rehabilitating the juvenile and the parent, guardian, or custodian of the

juvenile and reuniting the family.

(e) Any report prepared by the state agency for the court's review or hearing shall be made available to the juvenile and the parent, guardian, or custodian of the juvenile, guardian ad litem, and attorney at least ten (10) working days prior to the hearing.

SECTION 38. Probation and Revocation of Probation in Delinquency Cases.

(a) After an adjudication of delinquency, the court may place a juvenile on probation. The conditions of probation shall be given to the juvenile in writing and explained to him and to his parent, guardian or custodian by the probation officer in the initial conference following the disposition hearing.

(b) Any violation of a condition of probation may be reported to the prosecuting attorney, who may initiate a petition in the court for revocation of probation. A petition for revocation of probation shall contain specific factual allegations constituting each violation of a condition of probation.

(c) The petition alleging violation of a condition of probation and seeking revocation of probation shall be served upon the juvenile, his attorney, and his parent, guardian, or custodian.

(d) A revocation hearing shall be set within a reasonable time after the filing of the petition or within fourteen (14) days if the juvenile has been detained as a result of the filing of the petition for revocation.

(e) If the court finds beyond a reasonable doubt that the juvenile violated the terms and conditions of probation, the court may:

- (1) extend probation;
- (2) impose additional conditions of probation; or
- (3) make any disposition that could have been made at the time probation was imposed.

(f) Non-payment of restitution, fines, or court costs may constitute violation of probation only if the prosecuting attorney proves beyond a reasonable doubt that the juvenile has the ability to pay and failed to make payment as previously ordered by the court.

SECTION 39. Voluntary Relinquishment of Custody.

(a) The court may issue an order approving a voluntary relinquishment and placing custody of a juvenile upon finding:

(1) That there has been an informed and voluntary release of custody in writing before a Notary Public or before the court.

(2) That the parent relinquishing custody acknowledges in the document relinquishing rights that he has been offered specific family services to maintain the parent-child relationship.

(3) That the person or agency to whom custody is relinquished is appropriate to undertake the responsibility for the juvenile, agrees to undertake responsibility for the juvenile, and that a case plan for the juvenile has been approved by the court.

(4) That the relinquishment is in the best interest of the juvenile.

(5) That the period for voluntary relinquishment of custody will not exceed six (6) months.

(b) An order approving voluntary relinquishment of custody shall be for a period not to exceed six (6) months and shall have the following effect:

(1) During the period of voluntary relinquishment of custody, the parent shall retain rights to withhold consent to adoption or marriage, to visit and communicate with and be informed of events in the juvenile's life, and shall be encouraged to so do.

(2) A voluntary relinquishment of custody may be withdrawn at any time during the six-month period by written notice.

(c) (1) The parent who voluntarily relinquishes custody shall be served with a copy of the document relinquishing custody, the court's order approving

the relinquishment, and any other pleadings.

(2) The relinquishment is invalid unless it states clearly that the parent has this right of withdrawal and the right and duty to resume custody of the juvenile by the end of the six-month period.

(d) (1) At the end of the six-month period or within forty-eight (48) hours of written notice that the relinquishment has been withdrawn, the person or agency to whom custody has been relinquished shall return the juvenile to the parent. If for any reason the person or agency to whom custody has been relinquished is unable to return the juvenile to the parent, the person or agency shall file a request for a hearing and a report to the court of the efforts made to comply with this requirement.

(2) The court, after notice to the parent and the juvenile, pursuant to Section 11 of this act, appointment of a guardian ad litem for the juvenile and notice to any other persons whose rights may be affected, shall hold a hearing in which the burden of proof will be on the person or agency to whom custody has been relinquished to show compliance with this section.

(3) The court shall order any steps appropriate for notification to the parent or other persons whose rights are affected.

(4) Nothing in this section shall be construed to change the jurisdiction or procedures of the Uniform Adoption Act.

#### SECTION 40. Termination of Parental Rights.

(a) This section shall be a remedy available only to DHS. It shall not be available for private litigants or other agencies. It shall be used only in such cases when DHS is attempting to clear a juvenile for permanent placement.

(b) The court may consider a petition to terminate parental rights if it finds that DHS has physical or legal custody of the juvenile and an appropriate placement plan for the juvenile. An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence of one or more of the following grounds:

(1) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the home for one (1) year and despite a meaningful effort by DHS to rehabilitate the home and correct the conditions which caused removal, those conditions have not been remedied by the parent.

(2) The juvenile has lived outside the home of the parent for a period of one (1) year and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile. To find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home. Material support consists of either financial contributions or food, shelter, clothing, or other necessities where such contribution has been requested by the juvenile's custodian or ordered by a court of competent jurisdiction.

(3) The presumptive legal father is not the biological father of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of such a presumptive legal father.

(c) (1) An order terminating the relationship between parent and juvenile divests the parent and the juvenile of all legal rights, powers, and obligations with respect to each other, including the rights to withhold consent to adoption, except the right of the juvenile to inherit from the parent, which is terminated only by a final order of adoption.

(2) Termination of the relationship between a juvenile and one parent shall not affect the relationship between the juvenile and the other

parent if those rights are legally established.

(3) An order terminating parental rights under this section may authorize DHS to consent to adoption of the juvenile.

SECTION 41. Proceedings for Establishment of Paternity, Custody, Visitation, or Support of Illegitimate Juveniles.

(a) Absent orders of this court or another court of competent jurisdiction to the contrary, the biological mother, whether adult or minor, of an illegitimate juvenile is deemed to be the natural guardian of that juvenile and is entitled to the care, custody, and control of that juvenile.

(b) The biological mother, the putative father, the juvenile himself, or DHS may bring an action to establish paternity or support of a juvenile alleged to be illegitimate.

(c) Hearings prior to birth of juvenile - Temporary orders.

(1) If the juvenile is not born when the parties appear before the court, the court may hear evidence and issue temporary orders and findings pending the birth of the juvenile.

(2) In the event the final order is contrary to the temporary one, the court shall render judgment for the amount paid under the temporary order against the petitioner if such was the biological mother.

(3) If the mother dies before the final order, the action may be revived in the name of the juvenile, and the mother's testimony at the temporary hearing may be introduced in the final hearing.

(d) Upon an adjudication by the court that the putative father is the father of the juvenile, the court shall follow the same guidelines, procedures, and requirements as established by the laws of this state applicable to child support orders and judgments entered upon divorce. The court may award court costs and attorney's fees.

(e) A father, providing that paternity has been established in a court of competent jurisdiction, may petition the juvenile court in the county where the juvenile resides for custody of the juvenile. The court may award custody to a father who has had paternity established if the court finds by a preponderance of the evidence that:

(1) He is a fit parent to raise the juvenile;

(2) He has assumed his responsibilities toward the juvenile by providing care, supervision, protection, and financial support for the juvenile; and

(3) It is in the best interest of the juvenile to award custody to the father.

(f) At the request of either party in a paternity action, the trial court shall direct that the putative father, biological mother, and juvenile submit to one (1) or more blood tests or other scientific examinations or tests, including deoxyribonucleic acid (DNA) typing, to determine whether or not the putative father can be excluded as being the father of the juvenile and to establish the probability of paternity if the test does not exclude the putative father.

(g) The tests shall be made by a duly qualified physician or physicians, or by another duly qualified person or persons, not to exceed three (3), to be appointed by the court.

(h) (1) The results of the tests shall be receivable in evidence.

(2) (A) A written report of the test results by the duly qualified expert performing the test, or by a duly qualified expert under whose supervision and direction the test and analysis have been performed, certified by an affidavit duly subscribed and sworn to by him before a notary public, may be introduced in evidence in illegitimacy actions without calling the expert as a witness. If either party shall desire to question the expert, the party shall have him subpoenaed within a reasonable time prior to trial.

(B) If the results of the paternity tests establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the juvenile and after corroborating testimony of the mother in regard to access during the probable period of conception, such shall constitute a prima facie case of establishment of paternity and the burden of proof shall shift to the putative father to rebut such proof.

(3) The experts shall be subject to cross-examination by both parties after the court has caused them to disclose their findings.

(i) Whenever the court orders the blood tests to be taken and one (1) of the parties refuses to submit to the test, that fact shall be disclosed upon the trial unless good cause is shown to the contrary.

(j) The costs of the test and witness fees shall be taxed by the court as other costs in the case.

(k) Whenever it shall be relevant to the prosecution or the defense in a paternity action, blood tests which exclude third parties as the father of the juvenile shall be the same as set out in subsections (f) - (g).

(l) The refusal of a party to submit to a genetic or other ordered test is admissible at a hearing to determine paternity only as to the credibility of the party.

(m) If a male witness offers testimony indicating that his act of intercourse with the mother may have resulted in the conception of the juvenile, the court may require the witness to submit to genetic or other tests to determine whether he is the juvenile's father.

#### SECTION 42. Appeals.

(a) All appeals from juvenile court shall be made to the Arkansas Supreme Court or to the Arkansas Court of Appeals in the same time and manner provided for appeals from chancery court.

(b) In delinquency cases, the petitioner may appeal only under those circumstances as would permit the state to appeal in criminal proceedings.

(c) In any case involving out-of-home placement, if a final decision from the appellate court is not rendered within six (6) months from the date of entry of the notice of appeal, the Executive Secretary of the Judicial Department shall designate either a foster care magistrate or a juvenile judge of another court to conduct a review of the case as required under this act. The magistrate or judge may order appropriate family services for the juvenile upon review.

#### SECTION 43. Monthly Report.

The juvenile court shall submit monthly to the Executive Secretary of the Judicial Department a report in writing upon forms to be furnished by the Executive Secretary of the Judicial Department showing the number and disposition of juveniles brought before the juvenile court together with such other information regarding those cases as may be requested by the Executive Secretary of the Judicial Department.

#### SECTION 44. Evidence Not Admissible in Other Courts.

No evidence adduced against a juvenile in any proceeding under this act nor the fact of adjudication or disposition shall be admissible evidence against such juvenile in any civil, criminal, or other proceeding. However, such evidence shall be admissible, where proper, in subsequent proceedings against the same juvenile under this act.

#### SECTION 45. Act Supplemental.

(a) Unless this act otherwise provides, nothing in this act shall be construed to be in conflict with, to repeal, or to prevent proceedings under

any act or statute of this state which may otherwise define any specific act of any person as a crime or misdemeanor, which act might also constitute contributing to the delinquency or dependency of a juvenile, or to prevent or to interfere with proceedings under any such acts.

(b) Nor shall this act be construed to be inconsistent with or to repeal any act providing for the support by parents of their minor children; the taking of indecent liberties with, or selling liquor, tobacco, or firearms to children; or permitting them in prohibited places. Nothing in any such act or similar acts shall be construed to be inconsistent with or repeal this act or prevent proceedings under this act.

SECTION 46. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 47. The following sections of the Arkansas Code of 1987 are hereby repealed: 5-1-116; 9-9-302, 9-9-303(a)-(e), 9-9-304; 9-27-301 through 9-27-356, 9-27-359 through 9-27-363, 9-27-367; and 9-28-301 through 9-28-306.

SECTION 48. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 49. This act shall become effective August 1, 1989.

APPROVED: March 1, 1989

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