

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas

As Engrossed: S3/9/99 S3/11/99 H3/25/99

2 82nd General Assembly

# A Bill

3 Regular Session, 1999

SENATE BILL 505

4

5 By: Senators Kennedy, Webb, Everett, Gwatney, Wooldridge, Beebe, Roebuck, Hill, Critcher, Ross,  
6 Gordon, Scott, K. Smith, Brown, D. Malone, Hoofman, Canada, Bearden, Fitch, DeLay

7 By: Representatives Vess, Luker, Napper, Madison, Elliott, Teague, Milum, T. Thomas, Simon, Hale,

8 Pappas, Wilkinson, Horn, Simmons, Glover, L. Thomas, Parks, Lynn, Duggar, Creekmore, Sheppard,

9 Hathorn, T. Smith, Kidd, Biggs, Courtway, French, Broadway, Salmon, Bookout, Gillespie, Rackley, B.

10 Johnson, G. Jeffress, J. Jeffress, Carson, Gullett, Eason, Ferrell, Gipson, Trammell, Allison, Davis, Green,

11 Weaver, M. Smith, Hunt, Files, Hendren, T. Steele, Lancaster, Shoffner, Agee, Cleveland, Bennett,

12 Scrimshire, P. Malone, Angel, Bevis, Bond, Faris, Laverty

13

14

## For An Act To Be Entitled

16 "THE EXTENDED JUVENILE JURISDICTION ACT; AND FOR OTHER PURPOSES."

17

### Subtitle

19 "THE EXTENDED JUVENILE JURISDICTION ACT."

20

21

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

23

24 *SECTION 1. Extended Juvenile Jurisdiction Designation.*

25 *(a) The state may request extended juvenile jurisdiction designation in*  
26 *a delinquency petition or file a separate motion if the:*

27 *(1) Juvenile, under the age of thirteen (13) at the time of the*  
28 *alleged offense, is charged with capital murder or murder in the first degree*  
29 *and the state has overcome presumptions of lack of fitness to proceed and lack*  
30 *of capacity as set forth in Section 2 below;*

31 *(2) Juvenile, age thirteen (13) at the time of the alleged*  
32 *offense, is charged with capital murder or murder in the first degree,*  
33 *however, juveniles age thirteen (13) at the time of the alleged offense shall*  
34 *have an evaluation pursuant to Section 2 of this act and the burden will be*  
35 *upon the juvenile to establish lack of fitness to proceed and lack of*  
36 *capacity; or*

1           (3) Juvenile, age fourteen or fifteen (14-15) at the time of the  
2 alleged offense, is charged with any of the crimes listed in A.C.A. § 9-27-  
3 318(b) and (c)(2) as amended by this act.

4           (b) The juvenile's attorney may file a motion to request extended  
5 juvenile jurisdiction if the state could have filed pursuant to Section 1(a).

6  
7           SECTION 2. Competency: Fitness to proceed-Lack of capacity.

8           (a) Except as provided by subsection (b) below the provisions of  
9 A.C.A. § 5-2-301 through 5-2-318 shall apply to the following:

10           (1) In any juvenile delinquency proceeding where the juvenile's  
11 fitness to proceed is put in issue by any party or the court; and

12           (2) In juvenile delinquency proceedings where extended juvenile  
13 jurisdiction designation has been requested by any party, and a party intends  
14 to raise lack of capacity as an affirmative defense.

15           (b)(1) For juveniles under the age of thirteen (13) at the time of the  
16 alleged offense and who are charged with capital murder or murder in the first  
17 degree there shall be a presumption that said juvenile is unfit to proceed and  
18 that he lacked capacity to possess the necessary mental state required for the  
19 offense charged, to conform his conduct to the requirements of law and to  
20 appreciate the criminality of his conduct. The prosecution must overcome  
21 these presumptions by a preponderance of the evidence.

22           (2) For such juveniles, under the age of thirteen (13) and who  
23 are charged with capital murder or murder in the first degree, the court shall  
24 order an evaluation, to be performed in accordance with A.C.A. § 5-2-305(b),  
25 by a psychiatrist or a clinical psychologist who is specifically qualified by  
26 training and experience in the evaluation of juveniles. Upon an order for  
27 evaluation, all proceedings shall be suspended and the period of delay until  
28 the juvenile is determined fit to proceed shall constitute an excluded period  
29 for the speedy trial provisions of Arkansas Rules of Criminal Procedure Rule  
30 28.

31           (3) The court shall require the prosecuting attorney to provide  
32 to the examiner any information relevant to the evaluation, including, but not  
33 limited to:

34           (A) the names and addresses of all attorneys involved;

35           (B) information about the alleged offense; and

36           (C) any information about the juvenile's background that the

1 prosecutor deems relevant.

2 (4) The court may require the attorney for the juvenile to  
3 provide any available information relevant to the evaluation, including, but  
4 not limited to:

5 (A) psychiatric records;

6 (B) school records; and

7 (C) medical records.

8 (5) All information required under subsections (3) and (4) must  
9 be provided to the examiner within ten (10) days after the court order for the  
10 evaluation, and, when possible, this information shall be received prior to  
11 the juvenile's admission to the facility providing the inpatient evaluation.

12 (6) In assessing the juvenile's competency, the examiner shall:

13 (A) obtain and review all records pertaining to the  
14 juvenile; this should include the information in subsection (b)(3) and (b)(4)  
15 and any other relevant records;

16 (B) consider the social, developmental, and legal history of  
17 the juvenile, as related by the juvenile and a parent or guardian, and any  
18 other relevant source;

19 (C) consider the current alleged offense;

20 (D) conduct a competence abilities interview of the  
21 juvenile;

22 (E) conduct an age appropriate mental status exam using  
23 tests designed for juveniles;

24 (F) conduct age appropriate psychological evaluation, using  
25 tests designed for juveniles; and

26 (G) consider any other relevant test or information.

27 (7) Evaluations shall be filed with the court and distributed to  
28 the parties within ninety (90) days from the date of the order requesting such  
29 evaluation. All such reports shall be filed under seal with the court and  
30 shall not be subject to the Arkansas Freedom of Information Act, beginning at  
31 A.C.A. § 25-19-101, et seq. The report shall include, but not be limited to  
32 the following:

33 (A) Identification of the juvenile and the charges;

34 (B) Listing of assessment methods used;

35 (C) Description of what the juvenile was told about the  
36 purpose of the evaluation;

1 (D) Social, clinical and developmental history and the  
2 sources from which this information was obtained;

3 (E) Mental status data, including any psychological testing  
4 conducted and results;

5 (F) Comprehensive intelligence testing;

6 (G) Competence data assessing the competence to stand trial  
7 abilities;

8 (H) Interpretation of the data, including clinical or  
9 developmental explanations for any serious deficits in competence abilities;

10 (I) An opinion as to the juvenile's fitness to proceed. In  
11 reaching this opinion, the examiner shall consider and make written findings  
12 regarding the following:

13 (i) Do the juvenile's capabilities entail:

14 (a) An ability to understand and appreciate the  
15 charges and their seriousness;

16 (b) An ability to understand and realistically  
17 appraise the likely outcomes;

18 (c) A reliable episodic memory so that he can  
19 accurately and reliably relate a sequence of events;

20 (d) An ability to extend thinking into the  
21 future;

22 (e) An ability to consider the impact of his  
23 actions on others;

24 (f) Verbal articulation abilities or the ability  
25 to express himself in a reasonable and coherent manner; and

26 (g) Logical decision-making abilities,  
27 particularly multi-factored problem solving or the ability to take several  
28 factors into consideration in making a decision.

29 (ii) Developmentally, does he have:

30 (a) An ability to understand the charges;

31 (b) An ability to understand the roles of  
32 participants in the trial process, judge, defense attorney, prosecutor,  
33 witnesses, and jury, and understand the adversarial nature of the process;

34 (c) An ability to adequately trust and work  
35 collaboratively with his attorney and provide a reliable recounting of events;

36 (d) An ability to reason about available options

1 by weighing their consequences, including but not limited to, weighing pleas,  
2 wavers, and strategies;

3 (e) An ability to disclose to an attorney a  
4 reasonably coherent description of facts pertaining to the charges, as  
5 perceived by the juvenile; and

6 (f) An ability to articulate his motives.

7 (J)(i) An opinion as to whether at the time the juvenile  
8 engaged in the conduct charged, as a result of immaturity or mental disease or  
9 defect, the juvenile lacked capacity to:

10 (a) possess the necessary mental state required  
11 for the offense charged;

12 (b) conform his conduct to the requirements of  
13 the law; and

14 (c) appreciate the criminality of his conduct.

15 (ii) In reaching this opinion, the examiner shall  
16 consider and make written findings with respect to the following questions  
17 regarding the juvenile's abilities and capacities:

18 (a) Was he able to form the necessary intent;

19 (b) Did he know which actions were wrong;

20 (c) Did he have reasonably accurate  
21 expectations of the consequences of his actions;

22 (d) Was he able to act on his own volition;

23 (e) Did he have the capacity to behave  
24 intentionally;

25 (f) Did he have the capacity to engage in  
26 logical decision-making;

27 (g) Did he have the capacity to foresee the  
28 consequences of his actions;

29 (h) Did he have the capacity to exert control  
30 over his impulses and to resist peer pressure.

31 (8) Within thirty (30) days of the receipt of the evaluation  
32 report, the court shall first determine whether the juvenile is fit to  
33 proceed. The parties may stipulate to the findings and conclusions of the  
34 evaluation report and the court may enter an order with respect to fitness  
35 based thereon. Otherwise, a hearing shall be conducted and in order for the  
36 court to find a juvenile fit to proceed, the prosecution shall be required to

1 prove by a preponderance of the evidence the following:

2 (A) The juvenile understands the charges and potential  
3 consequences;

4 (B) The juvenile understands the trial process and  
5 proceedings against him; and

6 (C) The juvenile has the capacity to effectively participate  
7 with and assist his attorney in a defense to prosecution.

8 The court shall issue written findings as to whether the prosecution has  
9 met its burden with respect to such issues and whether the juvenile is fit or  
10 unfit to proceed.

11 (9) If the juvenile is found unfit to proceed, the court shall  
12 commit the juvenile to the Arkansas State Hospital or a residential treatment  
13 facility for a period not to exceed nine (9) months. During this period, the  
14 facility responsible for the juvenile shall be required to report to the court  
15 and the parties at least every thirty (30) days on the juvenile's progress.  
16 If fitness to proceed is not restored within nine (9) months, the court shall  
17 convert the delinquency petition to a FINS petition.

18 (10)(A) If a juvenile is found fit to proceed, the court shall  
19 next conduct a hearing wherein the state shall be required to prove by a  
20 preponderance of the evidence, that at the time the juvenile engaged in the  
21 conduct charged he had the capacity to:

22 (i) possess the necessary mental state required for  
23 the offense charged;

24 (ii) conform his conduct to the requirements of the  
25 law; and

26 (iii) appreciate the criminality of his conduct.

27 (B) In making such determination, the court shall consider  
28 the written findings of the examiner and any other relevant evidence, and  
29 shall issue a written order with respect to such hearing.

30 (i) If the court finds that the state did not meet its  
31 burden with regard to the capacity of the charged offense, but the juvenile  
32 had the capacity for a lesser included offense, the court shall convert the  
33 extended juvenile jurisdiction petition to a delinquency petition.

34 (ii) If the court finds the state did not meet its  
35 burden with regard to the capacity of the charged offense or a lesser included  
36 offense, the court shall convert the delinquency petition into a FINS

1 petition.

2 (iii) If the court finds that the state met its burden  
3 with regard to the capacity, the court shall schedule a designation hearing as  
4 described in Section 3 of this act. Such a finding by the court does not  
5 prevent the juvenile from raising the affirmative defense of lack of capacity  
6 at a subsequent adjudication hearing.

7  
8 SECTION 3. Designation Hearing.

9 (a) When a party requests an extended juvenile jurisdiction  
10 designation, the court shall hold a designation hearing within thirty (30)  
11 days, if the juvenile is detained, and no longer than ninety (90) days  
12 following the petition or motion requesting such designation. These time  
13 limitations shall be tolled during the pendency of any competency issues.

14 (b) The party requesting the extended juvenile jurisdiction designation  
15 has the burden to prove by a preponderance of the evidence that such  
16 designation is warranted.

17 (c) The court shall make written findings and consider all of the  
18 following factors in making its determination to designate a juvenile as an  
19 extended juvenile jurisdiction offender:

20 (1) The seriousness of the alleged offense and whether the  
21 protection of society requires prosecution as an extended juvenile  
22 jurisdiction offender;

23 (2) Whether the alleged offense was committed in an aggressive,  
24 violent, premeditated or willful manner;

25 (3) Whether the offense was against a person or property, with  
26 greater weight being given to offenses against persons, especially if personal  
27 injury resulted;

28 (4) The culpability of the juvenile including the level of  
29 planning and participation in the alleged offense;

30 (5) The previous history of the juvenile, including whether the  
31 juvenile had been adjudicated delinquent and, if so, whether the offenses were  
32 against persons or property, and any other previous history of antisocial  
33 behavior or patterns of physical violence;

34 (6) The sophistication and maturity of the juvenile as determined  
35 by consideration of the juvenile's home, environment, emotional attitude,  
36 pattern of living, or desire to be treated as an adult;

1           (7) Whether there are facilities or programs available to the  
2 court which are likely to rehabilitate the juvenile prior to the expiration of  
3 the court's jurisdiction;

4           (8) Whether the juvenile acted alone or was part of a group in the  
5 commission of the alleged offense; and

6           (9) Written reports and other materials relating to the juvenile's  
7 mental, physical, educational, and social history.

8           (10) Any other factors deemed relevant by the court.

9           (d) Upon finding that the juvenile shall be treated as an extended  
10 juvenile jurisdiction offender, the court shall enter its written findings and  
11 inform the juvenile of his right to a jury trial and shall set a date for the  
12 adjudication.

13           (e) If the court denies the request for extended juvenile jurisdiction  
14 the court shall enter its written findings and proceed with the case as a  
15 delinquency proceeding.

16           (f) For purposes of appeal, a designation order is a final appealable  
17 order and shall be subject to an interlocutory appeal.

18  
19           SECTION 4. Right to Counsel.

20           An extended juvenile jurisdiction offender shall have a right to counsel  
21 at every stage of the proceedings, including all reviews. This right to  
22 counsel cannot be waived.

23  
24           SECTION 5. Extended Juvenile Jurisdiction Adjudication.

25           (a) An extended juvenile jurisdiction offender and the state shall have  
26 the right to a jury trial at the adjudication hearing.

27           (b) The juvenile shall be advised of the right to a jury trial by the  
28 court following a determination that the juvenile will be tried as an extended  
29 juvenile jurisdiction offender.

30           (1) The right to a jury trial may be waived by a juvenile only  
31 after being advised of his rights and after consultation with the juvenile's  
32 attorney.

33           (2) The waiver shall be in writing and signed by the juvenile,  
34 juvenile's attorney, and the juvenile's parent or guardian and the court shall  
35 inquire on the record to ensure that the waiver was made in a knowing,  
36 intelligent, and voluntary manner.

1       (c) All provisions of the Arkansas Code of 1987 Annotated and the  
2 Arkansas Rules of Criminal Procedure, not in conflict with this Act, that  
3 regulate criminal jury trials in circuit court shall apply to jury trials for  
4 juveniles subject to extended juvenile jurisdiction proceedings.

5       (d) The adjudication shall be held within the time prescribed by the  
6 speedy trial provisions of Arkansas Rules of Criminal Procedure Rule 28.

7       (e) The state bears the burden to prove the charges in the petition  
8 beyond a reasonable doubt.

9       (f) If a juvenile is adjudicated delinquent as an extended juvenile  
10 jurisdiction offender, the juvenile court shall enter a disposition subject to  
11 Section 6. If the juvenile is adjudicated delinquent for an offense that  
12 would not have subjected him to extended juvenile jurisdiction the court shall  
13 enter any of the dispositions available at A.C.A. § 9-27-330.

14  
15       SECTION 6. Extended Juvenile Jurisdiction Disposition Hearing.

16       If a juvenile is found delinquent as an extended juvenile jurisdiction  
17 offender, the court shall enter the following dispositions:

18       (1) Order any of the juvenile dispositions authorized by A.C.A. § 9-27-  
19 330; and

20       (2) Suspend the imposition of adult sentence pending juvenile court  
21 review.

22  
23       SECTION 7. Extended Juvenile Jurisdiction Court Review Hearing.

24       (a) The state may petition the juvenile court at any time to impose an  
25 adult sentence if the juvenile:

26               (1) has violated a juvenile disposition order;

27               (2) has been adjudicated delinquent or found guilty of committing  
28 a new offense; or

29               (3) is not amenable to rehabilitation in the juvenile system.

30       (b) If the court finds by a preponderance of the evidence that the  
31 juvenile has violated a juvenile disposition order, has been found delinquent  
32 or guilty of committing a new offense; or is not amenable to rehabilitation in  
33 the juvenile system the court may:

34               (1) amend or add any juvenile disposition authorized A.C.A. § 9-  
35 27-330;

36 or

1           (2) Exercise its discretion to impose the full range of sentencing  
2 available in circuit court, including probation, suspended imposition of  
3 sentence, and imprisonment; however, a sentence of imprisonment shall not  
4 exceed forty (40) years except juveniles adjudicated for capital murder and  
5 murder in the first degree, who may be sentenced for any term up to and  
6 including life.

7           (A) Statutory provisions prohibiting or limiting probation  
8 or suspended imposition of sentence or parole for offenses when committed by  
9 an adult shall not apply to juveniles sentenced as extended juvenile  
10 jurisdiction offenders.

11           (B) A juvenile shall receive credit for time served in a  
12 juvenile detention or any juvenile facility.

13           (C)(i) A court may not order an absolute release of an  
14 extended juvenile jurisdiction offender who has been adjudicated delinquent  
15 for capital murder or murder in the first degree.

16           (ii) If release is ordered, the court shall impose a  
17 period of probation for not less than three (3) years.

18           (c) The juvenile may petition the court to review and modify the  
19 disposition at any time. If the juvenile's initial petition is denied, the  
20 juvenile must wait one (1) year from the date of the denial to file a new  
21 petition for modification.

22           (d) If the state or the juvenile files a petition to modify the  
23 juvenile court's disposition order before six (6) months prior to the  
24 juvenile's eighteenth (18<sup>th</sup>) birthday, the filing party bears the burden of  
25 proof.

26           (e) If no hearing has been conducted six (6) months prior to the  
27 juvenile's eighteenth (18<sup>th</sup>) birthday, the court shall conduct a hearing to  
28 determine whether to release the juvenile, amend or add any juvenile  
29 disposition, or impose an adult sentence.

30           (1) In making its determination the court shall consider the  
31 following:

32           (A) The experience and character of the juvenile before and  
33 after the juvenile disposition, including compliance with the court's orders;

34           (B) The nature of the offense(s) and the manner in which it  
35 was committed;

36           (C) The recommendations of the professionals who have

1 worked with the juvenile;

2 (D) The protection of public safety;

3 (E) Opportunities provided to the juvenile for  
4 rehabilitation and the juvenile's efforts toward rehabilitation; and

5 (F) Victim impact evidence admitted pursuant to A.C.A. §  
6 16-97-103.

7 (2) If the state seeks to impose an adult sentence, the state must  
8 prove by a preponderance of the evidence that the imposition of an adult  
9 sentence is appropriate and that public safety requires imposition;

10 (3) Following a hearing the court may enter any of the following  
11 dispositions:

12 (A) Release the juvenile;

13 (B) Amend or add any juvenile disposition; and

14 (C) Exercise its discretion to impose the full range of  
15 sentencing available in circuit court, including probation, suspended  
16 imposition of sentence, and imprisonment; however, a sentence of imprisonment  
17 shall not exceed forty (40) years except juveniles adjudicated for capital  
18 murder and murder in the first degree, who may be sentenced for any term up to  
19 and including life.

20 (i) Statutory provisions prohibiting or limiting  
21 probation or suspended imposition of sentence or parole for offenses when  
22 committed by an adult shall not apply to juveniles sentenced as extended  
23 juvenile jurisdiction offenders.

24 (ii) A juvenile shall receive credit for time served  
25 in a juvenile detention or any juvenile facility.

26 (iii)(a) A court may not order an absolute release of  
27 an extended juvenile jurisdiction offender who has been adjudicated delinquent  
28 for capital murder or murder in the first degree.

29 (b) If release is ordered, the court shall  
30 impose a period of probation for not less than three (3) years.

31  
32 SECTION 8. Extended Juvenile Jurisdiction Records.

33 (a) Records of juveniles who are designated as extended juvenile  
34 jurisdiction offenders shall be kept for ten (10) years after the last  
35 adjudication of delinquency, date of guilty plea or nolo contendere, or  
36 finding of guilt as an adult, or until the juvenile's twenty-first (21<sup>st</sup>)

1 birthday, whichever is longer.

2 (b) If an adult sentence is imposed upon an extended juvenile  
3 jurisdiction offender, the records of that case shall be considered adult  
4 criminal records. The juvenile court shall enter an order transferring the  
5 juvenile records to the clerk who is the custodian of adult criminal records.  
6 The clerk shall assign a circuit docket number and shall maintain the file as  
7 if the case had originated in circuit court.

8  
9 SECTION 9. DYS Commitment of Extended Juvenile Jurisdiction Juveniles.

10 (a) The court has sole release authority for juveniles in extended  
11 juvenile jurisdiction proceedings.

12 (b) In every case where an order of commitment has been entered  
13 pursuant to an adjudication of delinquency, the facility to which the juvenile  
14 is committed shall, within thirty (30) days of the juvenile's commitment,  
15 prepare and file with the court a treatment case plan which shall:

16 (1) State the treatment plan for the juvenile; and

17 (2) State the anticipated length of commitment of the juvenile.

18 (c) Upon determination that the juvenile has been rehabilitated, DYS may  
19 petition the court for release.

20 (1) The court shall conduct a hearing and shall consider the  
21 following factors in making its determination to release the juvenile from  
22 DYS:

23 (A) The experience and character of the juvenile before and  
24 after the juvenile disposition, including compliance with the court's orders;

25 (B) The nature of the offense(s) and the manner in which it  
26 was committed;

27 (C) The recommendations of the professionals who have  
28 worked with the juvenile;

29 (D) The protection of public safety; and

30 (E) Opportunities provided to the juvenile for  
31 rehabilitation and the juvenile's efforts toward rehabilitation.

32 (2) The court shall release the juvenile upon a finding by a  
33 preponderance of the evidence that the juvenile's release does not pose a  
34 substantial threat to public safety.

35  
36 SECTION 10. Department of Correction Placement.

1       (a) A juvenile who has received an adult sentence to the Department of  
2 Correction shall not be transported to the Department of Correction until the  
3 juvenile is sixteen (16). If a juvenile receives a sentence to the Department  
4 of Correction prior to the juvenile's sixteenth (16th) birthday, the juvenile  
5 shall be housed by the Division of Youth Services until such date, except as  
6 provided by court order or parole decision made by the Post Prison Transfer  
7 Board.

8       (b) A juvenile sentenced in circuit court who is less than sixteen (16)  
9 years of age when sentenced shall be committed to the custody of the Division  
10 of Youth Services until his sixteenth (16th) birthday, at which time he shall  
11 be transferred to the Department of Correction.

12       (c) Juveniles sentenced to the Department of Correction pursuant to  
13 extended juvenile jurisdiction are subject to parole as any other inmate  
14 within the Department of Correction. Juveniles adjudicated for capital murder  
15 or murder in the first degree are subject to parole. Juveniles will be given  
16 credit for time served in a juvenile detention or juvenile facility against  
17 any adult sentence.

18  
19       SECTION 11. Arkansas Code 5-4-402 is amended to read as follows:

20       "5-4-402. Place of imprisonment.

21       (a) Except as provided in §§ 5-4-203 and 5-4-304, a defendant convicted  
22 of a felony and sentenced to imprisonment shall be committed to the custody of  
23 the Department of Correction for the term of his sentence or until released in  
24 accordance with law.

25       (b) A defendant convicted of a misdemeanor and sentenced to  
26 imprisonment shall be committed to the county jail or other authorized  
27 institution designated by the court for the term of his sentence or until  
28 released in accordance with law.

29       (c) A defendant convicted of a violation of § 5-64-401 shall be  
30 committed to the custody of the Department of Correction for the term of his  
31 sentence or until released in accordance with law.

32       (d) A juvenile sentenced in circuit court who is less than sixteen (16)  
33 years of age when sentenced shall be committed to the custody of the Division  
34 of Youth Services until his sixteenth (16th) birthday, at which time he shall  
35 be transferred to the Department of Correction except, as provided by court  
36 order or parole decision made by the Post Prison Transfer Board.

1           (e) Juveniles less than sixteen (16) years of age who are awaiting  
2 transfer to the Department of Correction shall be segregated from the general  
3 delinquency population housed at the Division of Youth Services. All records  
4 from the Division of Youth Services shall be transferred to the Department of  
5 Correction at the time the juvenile is transferred."  
6

7           SECTION 12. Arkansas Code 9-27-303 is amended to read as follows:

8           "9-27-303. Definitions.

9           As used in this subchapter, unless the context otherwise requires:

10          (1) 'Juvenile' means an individual who:

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

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

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

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

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

34          (4)(A) 'Abuse' means any of the following acts or omissions by a  
35 parent, guardian, custodian, foster parent, or any person who is entrusted  
36 with the juvenile's care by a parent, guardian, custodian, or foster parent,

1 including, but not limited to, an agent or employee of a public or private  
2 residential home, child care facility, public or private school, or any person  
3 legally responsible for the juvenile's welfare:

4 (i) Extreme and repeated cruelty to a juvenile; or  
5 (ii) Physical, psychological, or sexual abuse of any  
6 juvenile, which includes, but is not limited to, intentionally, knowingly, or  
7 negligently and without justifiable cause:

8 (a) Engaging in conduct creating a substantial  
9 possibility of death, permanent or temporary disfigurement, illness,  
10 impairment of any bodily organ, or an observable and substantial impairment in  
11 the intellectual or psychological capacity of the juvenile to function within  
12 his normal range of performance and behavior with due regard to his culture;

13 (b) Any nonaccidental physical injury or mental  
14 injury; or

15 (c) Any injury which is at variance with the history  
16 given.

17 (B)(i) 'Abuse' shall not include physical discipline of a child  
18 when it is reasonable and moderate and is inflicted by a parent or guardian  
19 for purposes of restraining or correcting the child.

20 (ii) The following actions are not reasonable or moderate  
21 when used to correct or restrain a child:

22 (a) Throwing, kicking, burning, biting, or cutting a  
23 child;

24 (b) Striking a child with a closed fist;

25 (c) Shaking a child under age three (3);

26 (d) Striking or other actions which result in any  
27 nonaccidental injury to a child under the age of eighteen (18) months;

28 (e) Interfering with a child's breathing;

29 (f) Threatening a child with a deadly weapon;

30 (g) Striking a child on the face; or

31 (h) Doing any other act that is likely to cause  
32 bodily harm greater than transient pain or minor temporary marks.

33 (iii) The age, size, and condition of the child, and the  
34 location of the injury and the frequency or recurrence of injuries shall be  
35 considered when determining whether the bodily harm is reasonable or moderate.

36 (iv) This list is illustrative of unreasonable action and

1 is not intended to be exclusive.

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

4 (6) 'Adult sentence' means punishment authorized by the Arkansas  
5 Criminal Code, subject to the limitations in Section 7 of this Act, the act(s)  
6 for which the juvenile was adjudicated delinquent as an extended juvenile  
7 jurisdiction offender.

8 ~~(6)(7)~~ 'Attorney ad litem' means an attorney appointed to represent the  
9 best interest of a juvenile.

10 ~~(7)(8)~~ 'Court-appointed special advocate (CASA)' means a volunteer  
11 appointed by the court to provide services to juveniles in dependency-neglect  
12 proceedings.

13 ~~(8)(9)~~ 'Case plan' means a document setting forth the plan for services  
14 for a juvenile and his or her family, as described in § 9-27-402.

15 ~~(9)(10)~~ 'Commitment' means an order of the court which places a  
16 juvenile in the custody of the Division of Youth Services of the Department of  
17 Human Services for placement in a youth services facility.

18 ~~(10)(11)~~ 'Court' or 'juvenile court' means the juvenile division of  
19 chancery court.

20 ~~(11)(12)~~ 'Custodian' means a person, other than a parent or legal  
21 guardian who stands in loco parentis to the juvenile or a person, agency, or  
22 institution to whom a court of competent jurisdiction has given custody of a  
23 juvenile by court order.

24 ~~(12)(13)~~(A) 'Department' means the Department of Human Services and its  
25 divisions and programs.

26 (B) Unless otherwise stated in this subchapter, any reference to  
27 the Department of Human Services shall include all of its divisions and  
28 programs.

29 ~~(13)(14)~~ 'Delinquent juvenile' means any juvenile:

30 (A) ten (10) years or older who has committed an act other than a  
31 traffic offense or game and fish violation which, if such act had been  
32 committed by an adult, would subject such adult to prosecution for a felony,  
33 misdemeanor, or violation under the applicable criminal laws of this state, or  
34 who has violated § 5-73-119-; or

35 (B) any juvenile charged with capital murder or murder in the  
36 first degree subject to extended juvenile jurisdiction.

1       ~~(14)~~(15) 'Dependent-neglected juvenile' means any juvenile who as a  
2 result of abandonment, abuse, sexual abuse, sexual exploitation, neglect, or  
3 parental unfitness is at substantial risk of serious harm.

4       ~~(15)~~(16) 'Detention' means the temporary care of a juvenile in a  
5 physically restricting facility, other than a jail or lock-up used for the  
6 detention of adults, prior to an adjudication hearing for delinquency or  
7 pending commitment pursuant to an adjudication of delinquency.

8       ~~(16)~~(17) 'Detention hearing' means a hearing held to determine whether  
9 a juvenile accused or adjudicated of committing a delinquent act or acts  
10 should be released or held prior to adjudication or disposition.

11       ~~(17)~~(18) 'Disposition hearing' means a hearing held following an  
12 adjudication hearing to determine what action will be taken in delinquency,  
13 family in need of services, or dependent-neglect cases.

14       (19) 'Extended juvenile jurisdiction offender' means a juvenile  
15 designated to be subject to juvenile disposition and an adult sentence imposed  
16 by the juvenile court.

17       ~~(18)~~(20) 'Family in need of services' means any family whose juvenile  
18 evidences behavior which includes, but is not limited to, the following:

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

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

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

25       ~~(19)~~(21) 'Family services' means relevant services, including, but not  
26 limited to: child care; homemaker services; crisis counseling; cash  
27 assistance; transportation; family therapy; physical, psychiatric, or  
28 psychological evaluation; counseling; or treatment, provided to a juvenile or  
29 his family. Family services are provided in order to:

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

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

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

36       ~~(20)~~(22) 'Guardian' means any person, agency, or institution, as

1 defined by § 28-65-201 et seq., whom a court of competent jurisdiction has so  
2 appointed.

3 ~~(21)~~(23) (A) 'Home study' means a written report obtained after an  
4 investigation of a home by the Department of Human Services or other  
5 appropriate persons or agencies and which shall conform to regulations  
6 established by the department.

7 (B) An in-state home study shall be completed and presented to  
8 the requesting court within thirty (30) working days of the receipt of the  
9 request for the home study.

10 ~~(22)~~(24) 'Juvenile detention facility' means any facility for the  
11 temporary care of juveniles alleged to be delinquent, or adjudicated  
12 delinquent and awaiting disposition, who require secure custody in a  
13 physically restricting facility designed and operated with all entrances and  
14 exits under the exclusive control of the facility's staff, so that a juvenile  
15 may not leave the facility unsupervised or without permission.

16 ~~(23)~~(25) 'Law enforcement officer' means any public servant vested by  
17 law with a duty to maintain public order or to make arrests for offenses.

18 ~~(24)~~(26) 'Long-term foster care' means the placement of a juvenile in a  
19 specified out-of-home placement pursuant to this subchapter in those cases  
20 where juveniles are not appropriate for a termination of parental rights and  
21 adoption, but cannot have a goal of reunification because it is not in the  
22 juvenile's best interest.

23 ~~(25)~~(27) 'Neglect' means those acts or omissions of a parent, guardian,  
24 custodian, foster parent, or any person who is entrusted with the juvenile's  
25 care by a parent, custodian, guardian, or foster parent, including, but not  
26 limited to, an agent or employee of a public or private residential home,  
27 child care facility, public or private school, or any person legally  
28 responsible under state law for the juvenile's welfare, which constitute:

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

32 (B) Failure or refusal to provide the necessary food, clothing,  
33 shelter, and education required by law, or medical treatment necessary for the  
34 juvenile's well-being, except when the failure or refusal is caused primarily  
35 by the financial inability of the person legally responsible and no services  
36 for relief have been offered or rejected;

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

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

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

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

12 ~~(26)~~(28) 'Notice of hearing' means a notice which describes the nature  
13 of the hearing, the time, date, and place of hearing, the right to be present,  
14 heard, and represented by counsel, and instructions on how to apply to the  
15 court for appointment of counsel if indigent, or a uniform notice as developed  
16 and prescribed by the Arkansas Supreme Court. The notice of hearing shall be  
17 served in the manner provided for service under the Arkansas Rules of Civil  
18 Procedure.

19 ~~(27)~~(29) 'Order to appear' means an order issued by the court directing  
20 a person who may be subject to the court's jurisdiction to appear before the  
21 court at a date and time as set forth in the order.

22 ~~(28)~~(30) 'Out-of-home placement' means:

23 (A)(i) Placement in a home or facility other than placement in a  
24 youth services center, a detention facility, or the home of the parent or  
25 guardian from whose custody the court has removed the juvenile; or

26 (ii) Placement in the home of an individual other than a  
27 parent or guardian, unless the court has ordered that said placement be made  
28 permanent and that no further reunification services or six-month reviews  
29 would be required.

30 (B) 'Out-of-home placement' shall not include placement in a  
31 youth services center or detention facility as a result of a finding of  
32 delinquency.

33 ~~(29)~~(31) 'Paternity hearing' means a proceeding brought pursuant to  
34 bastardy jurisdiction to determine the biological father of a juvenile.

35 ~~(30)~~(32) 'Predisposition report' means a report concerning the  
36 juvenile, the family of the juvenile, all possible disposition alternatives,

1 the location of the school in which the juvenile is or was last enrolled,  
2 whether the juvenile has been tested for or has been found to have any  
3 disability, the name of the juvenile's attorney, and, if appointed by the  
4 court, the date of the appointment, any participation by the juvenile or his  
5 family in counseling services previously or currently being provided in  
6 conjunction with adjudication of the juvenile and any other matters relevant  
7 to the efforts to provide treatment to the juvenile or the need for treatment  
8 of the juvenile or the family. The predisposition report shall include a home  
9 study of any out-of-home placement which may be part of the disposition.

10 ~~(31)~~(33) 'Prosecuting attorney' means an attorney who is elected as  
11 district prosecuting attorney, the duly appointed deputy prosecuting attorney,  
12 or any city prosecuting attorney.

13 ~~(32)~~(34) 'Putative father' means any man not deemed or adjudicated  
14 under the laws of the jurisdiction of the United States to be the biological  
15 father of a juvenile who claims or is alleged to be the biological father of  
16 the juvenile.

17 ~~(33)~~(35)(A) 'Reasonable efforts' means the exercise of reasonable  
18 diligence and care by the Department of Human Services or other appropriate  
19 agency to utilize all available services relating to meeting the needs of the  
20 juvenile and the family.

21 (B) Except that, upon petition of termination of parental rights,  
22 the juvenile court may deem that reasonable efforts have been made when the  
23 juvenile court has found the juvenile victim to be dependent-neglected due to  
24 severe maltreatment, as defined in § 12-12-503(10), which was perpetrated by  
25 the juvenile's parent or parents.

26 (36) 'Restitution' means actual economic loss sustained by an  
27 individual or entity as a proximate result of the delinquent acts of a  
28 juvenile. Such economic loss shall include, but not be limited to, medical  
29 expenses, funeral expenses, expenses incurred for counseling services, lost  
30 wages, and expenses for repair or replacement of property.

31 ~~(34)~~(37)(A) 'Sexual abuse' includes solicitation or participation in  
32 sexual activity with a juvenile by an adult or person responsible for the care  
33 and maintenance of the juvenile.

34 (B) 'Sexual abuse' also includes any offense relating to sexual  
35 activity, abuse, or exploitation, including rape and incest, as set out and  
36 defined in the Arkansas Criminal Code and amendments thereto, § 5-1-101 et

1 seq.

2 ~~(35)~~(38) 'Sexual exploitation' includes allowing, permitting, or  
3 encouraging participation or depiction of the juvenile in prostitution,  
4 obscene photographing, filming, or obscenely depicting a juvenile for any use  
5 or purpose.

6 ~~(36)~~(39) 'Shelter care' means the temporary care of a juvenile in  
7 physically unrestricting facilities pursuant to an order for placement pending  
8 or pursuant to an adjudication of dependency-neglect or family in need of  
9 services.

10 ~~(37)~~(40) 'UCCJA' means the Uniform Child Custody Jurisdiction Act as  
11 found in § 9-13-201 et seq.

12 ~~(38)~~(41) 'UIFSA' means the Uniform Interstate Family Support Act found  
13 in § 9-17-101 et seq.

14 (42) 'Victim' means any person or entity entitled to restitution as  
15 defined herein as the result of a delinquent act committed by a juvenile  
16 adjudicated delinquent.

17 ~~(39)~~(43) 'Voluntary relinquishment of custody' means a written  
18 agreement between a parent and the Department of Human Services for the  
19 temporary placement of a child in an out-of-home placement pursuant to § 9-27-  
20 340.

21 ~~(40)~~(44) 'Youth services center' means a youth services facility  
22 operated by the state, or a contract provider.

23 ~~(41)~~(45) 'Youth services facility' means a facility, operated by the  
24 state or its designee, for the care of juveniles who have been adjudicated  
25 delinquent or convicted of a crime and who require secure custody in either a  
26 physically restrictive facility or a staff-secured facility, operated so that  
27 a juvenile may not leave the facility unsupervised or without supervision."  
28

29 SECTION 13. Arkansas Code 9-27-309 is amended to read as follows:

30 "9-27-309. Confidentiality of records.

31 (a) All records may be closed and confidential within the discretion of  
32 the court, except:

33 (1) Adoption records shall be closed and confidential as provided  
34 in the Revised Uniform Adoption Act, as amended, § 9-9-201 et seq.; and

35 (2) Records of delinquency adjudications for which a juvenile  
36 could have been tried as an adult shall be made available to prosecuting

1 attorneys for use at sentencing if the juvenile is subsequently tried as an  
2 adult or to determine if the juvenile should be tried as an adult.

3 (b) Records of delinquency adjudications for which a juvenile could  
4 have been tried as an adult shall be kept for ten (10) years after the last  
5 adjudication of delinquency or the date of a plea of guilty or nolo contendere  
6 or finding of guilt as an adult. Thereafter they may be expunged. The court  
7 may expunge other juvenile records at any time and shall expunge all the  
8 records of a juvenile upon his twenty-first birthday, in other types of  
9 delinquency, dependency-neglect, or families in need of services cases. For  
10 purposes of this section, 'expunge' means to destroy.

11 (c) Records of juveniles who are designated as extended juvenile  
12 jurisdiction offenders shall be kept for ten (10) years after the last  
13 adjudication of delinquency, date of guilty plea or nolo contendere, or  
14 finding of guilt as an adult, or until the juvenile's twenty-first (21<sup>st</sup>)  
15 birthday, whichever is longer.

16 (d) If an adult criminal sentence is imposed on an extended juvenile  
17 jurisdiction offender, the record of that case shall be considered an adult  
18 criminal record. The juvenile court shall enter an order transferring the  
19 juvenile record to the clerk who is the custodian of adult criminal records.  
20 The clerk shall assign a circuit docket number and shall maintain the file as  
21 if the case had originated in circuit court.

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

28 ~~(d)~~(f) Nothing in this subchapter shall preclude prosecuting attorneys  
29 or the juvenile court from providing information, upon written request,  
30 concerning the disposition of juveniles who have been adjudicated delinquent  
31 to:

- 32 (1) The victim or his next of kin; or  
33 (2) The school superintendent of the school district in which the  
34 juvenile is currently enrolled.

35 ~~(e)~~(g) When a juvenile is adjudicated delinquent for an offense for  
36 which he could have been charged as an adult or for unlawful possession of a

1 handgun, the prosecuting attorney shall notify the school superintendent of  
2 the school district in which the juvenile is currently enrolled.

3 ~~(f)~~(h) Information provided pursuant to subsections (d) and (e) of this  
4 section shall not be released in violation of any state or federal law  
5 protecting the privacy of the juvenile."

6

7 SECTION 14. Arkansas Code 9-27-316 is amended to read as follows:

8 "9-27-316. Right to counsel.

9 (a)(1) In delinquency and families in need of services cases (FINS), a  
10 juvenile and his parent, guardian, or custodian shall be advised by the law  
11 enforcement official taking a juvenile into custody, by the intake officer at  
12 the initial intake interview, and by the court at the juvenile's first  
13 appearance before the court that the juvenile has the right to be represented  
14 at all stages of the proceedings by counsel.

15 (2) An extended jurisdiction offender shall have a right to  
16 counsel at every stage of the proceedings including all reviews.

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

22 (2) After review by the court of an affidavit of financial means  
23 completed and verified by the parent of the juvenile and a determination by  
24 the court that the parent or juvenile has the ability to pay, the court may  
25 order financially able juveniles, parents, guardians, or custodians to pay all  
26 or part of reasonable attorneys' fees and expenses for representation of a  
27 juvenile.

28 (3) All moneys collected by the clerk of the court under this  
29 subsection shall be retained by the clerk, and deposited into a special fund  
30 to be known as the 'juvenile court representation fund.'

31 (4) The court shall direct that money from this fund be used in  
32 providing juveniles with representation by counsel appointed under this  
33 section in delinquency or FINS cases.

34 (5) Any money remaining in the fund at the end of the fiscal year  
35 shall not revert to any other fund but shall carry over into the next fiscal  
36 year in the juvenile court representation fund.

1           (c) If counsel is not retained for the juvenile, or it does not appear  
2 that counsel will be retained, counsel shall be appointed to represent the  
3 juvenile at all appearances before the court, unless the right to counsel is  
4 waived in writing as set forth in § 9-27-317.

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

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

14          (f) Attorney ad litem. (1) The court shall appoint an attorney ad litem  
15 to represent the best interest of the juvenile when a dependency-neglect  
16 petition is filed or when an emergency ex parte order is entered in a  
17 dependency-neglect case, whichever occurs earlier.

18               (2) The court may appoint an attorney ad litem to represent the  
19 best interest of a juvenile involved in any case before the court and shall  
20 consider the juvenile's best interest in determining whether to appoint an  
21 attorney ad litem.

22               (3) Each attorney ad litem:

23                       (A) May file written motions, responses or objections at  
24 all stages of the proceedings when necessary to protect the best interest of  
25 the juvenile;

26                       (B) Shall attend all hearings and participate in all  
27 telephone conferences with the court unless excused by the court;

28                       (C) Shall present witnesses and exhibits when necessary to  
29 protect the juvenile's best interest;

30               (4) An attorney ad litem shall be provided access to all records  
31 relevant to the juvenile's case, including but not limited to, school records,  
32 medical records, juvenile court records, and Department of Human Services  
33 records, excluding unfounded reports.

34               (5) An attorney ad litem shall represent the best interest of the  
35 juvenile. If the juvenile's wishes differ from the attorney's determination of  
36 the juvenile's best interest, the attorney ad litem shall communicate the

1 juvenile's wishes to the court in addition to presenting his determination of  
2 the juvenile's best interest.

3 (g) Court-appointed Special Advocate. (1) The court may appoint a  
4 volunteer court-appointed special advocate (CASA) from a program which shall  
5 meet all state and national CASA standards to provide services to juveniles  
6 for whom the court determines such services appropriate in dependency-neglect  
7 proceedings.

8 (2) No CASA shall be assigned a case before:

9 (A) Completing a training program in compliance with  
10 National Court Appointed Special Advocate Association and state standards; and

11 (B) Being approved by the local CASA program which will  
12 include appropriate criminal background and child abuse registry checks.

13 (3) Each CASA shall:

14 (A) Investigate the case to which he or she is assigned to  
15 provide independent factual information to the court through the attorney ad  
16 litem;

17 (B) Monitor the case to which he or she is assigned to  
18 ensure compliance with the court's orders;

19 (C) Assist the attorney ad litem in representing the  
20 juvenile's best interest.

21 (4) Upon presentation of an order of appointment, a CASA shall be  
22 provided access to all records relevant to the juvenile's case, including but  
23 not limited to, school records, medical records, juvenile court records, and  
24 Department of Human Services records, excluding unfounded reports.

25 (5) A CASA is not a party to the case to which he or she is  
26 assigned and shall not call witnesses or examine witnesses. The CASA may  
27 testify if called as a witness.

28 (6) A CASA shall not be liable for damages for personal injury or  
29 property damage, pursuant to §§ 16-6-101 - 16-6-105.

30 (7) Except as provided by this subsection, a CASA shall not  
31 disclose any confidential information or reports to anyone except as ordered  
32 by the court or otherwise provided by law.

33 (h) Parents' right to counsel.

34 (1) In all proceedings to remove custody from a parent or  
35 guardian or to terminate parental rights, the parent or guardian shall be  
36 advised, in the dependency-neglect petition or the ex parte emergency order

1 and the first appearance before the court, of the right to be represented by  
2 counsel at all stages of the proceedings and the right to appointed counsel if  
3 indigent.

4 (2) Upon request by a parent or guardian and a determination by  
5 the court of indigence, the court shall appoint counsel for the parent or  
6 guardian in all proceedings to remove custody or terminate parental rights of  
7 a juvenile.

8 (3) After review by the court of an affidavit of financial means  
9 completed and verified by the parent or guardian and a determination by the  
10 court of an ability to pay, the court shall order financially able parents or  
11 guardians to pay all or a part of reasonable attorneys' fees and expenses for  
12 court-appointed representation of the parent or guardian.

13 (4) Appointment of counsel shall be made at a time sufficiently  
14 in advance of the court appearance to allow adequate preparation by appointed  
15 counsel and adequate consultation between the appointed counsel and the  
16 client. When the first appearance before the court is an emergency hearing to  
17 remove custody pursuant to § 9-27-315, parents shall be notified of the right  
18 to appointed counsel if indigent in the emergency ex parte order.

19 (5) The parent's or guardian's attorney shall be provided access  
20 to all records relevant to the juvenile's case, including but not limited to,  
21 school records, medical records, juvenile court records, and Department of  
22 Human Services records to which they are entitled under state and federal  
23 law. "

24

25 SECTION 15. Arkansas Code 9-27-317 is amended to read as follows:

26 "9-27-317. Waiver of right to counsel - Detention of juvenile -  
27 Questioning.

28 (a) Waiver of the right to counsel at a delinquency or family in need  
29 of services hearing shall be accepted only upon a finding by the court from  
30 clear and convincing evidence, after questioning the juvenile, that:

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

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

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

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

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

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

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

8           (c) In determining whether a juvenile's waiver of the right to counsel  
9 at any stage of the proceeding was made freely, voluntarily, and  
10 intelligently, the court shall consider all the circumstances of the waiver,  
11 including:

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

13               (2) Whether the juvenile understood the consequences of the  
14 waiver;

15               (3) In cases in which the parent, guardian, or custodian agreed  
16 with the juvenile's waiver of the right to counsel, whether the parent,  
17 guardian, or custodian understood the consequences of the waiver;

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

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

22               (6) Whether the juvenile and his parent, guardian, or custodian  
23 had been advised of the juvenile's right to remain silent and to the  
24 appointment of counsel and had waived such rights.

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

29           (e) No waiver of the right to counsel shall be accepted in any case  
30 where counsel was appointed due to the likelihood of the juvenile's commitment  
31 to an institution under § 9-27-316(d).

32           (f) No waiver of counsel shall be accepted when a juvenile has been  
33 designated an extended juvenile jurisdiction offender.

34           ~~(f)~~(g) All waivers of the right to counsel, except those made in the  
35 presence of the court pursuant to subsection (a) of this section, shall be in  
36 writing and signed by the juvenile.

1 ~~(g)(h)~~ (1)(A) Whenever a law enforcement officer has reasonable cause to  
2 believe that any juvenile found at or near the scene of a felony is a witness  
3 to the offense, he may stop that juvenile.

4 (B) After having identified himself, the officer must  
5 advise the juvenile of the purpose of the stopping and may then demand of him  
6 his name, address, and any information he may have regarding the offense.

7 (C) Such detention shall in all cases be reasonable and  
8 shall not exceed fifteen (15) minutes, unless the juvenile shall refuse to  
9 give such information, in which case the juvenile, if detained further, shall  
10 immediately be brought before any judicial officer or prosecuting attorney to  
11 be examined with reference to his name, address, or the information he may  
12 have regarding the offense.

13 (2)(A) No law enforcement officer shall question a juvenile who  
14 has been taken into custody for a delinquent act or criminal offense if the  
15 juvenile has indicated in any manner that he:

16 (i) Does not wish to be questioned;

17 (ii) Wishes to speak with a parent or guardian or to  
18 have a parent or guardian present; or

19 (iii) Wishes to consult counsel before submitting to  
20 any questioning.

21 (B) Any waiver of the right to counsel by a juvenile shall  
22 conform to subsection ~~(f)(g)~~ of this section."  
23

24 SECTION 16. Arkansas Code 9-27-318 is amended to read as follows:

25 "9-27-318. Waiver and transfer to circuit court.

26 (a) A juvenile court has exclusive jurisdiction when a delinquency case  
27 involves a juvenile:

28 (1) ~~Less than fourteen (14) years old~~ Fifteen (15) years of age  
29 or younger when the alleged delinquent act occurred except as provided by  
30 subsection (c)(2);

31 ~~(2) Less than sixteen (16) years old:~~

32 ~~(A) When he engages in conduct that, if committed by an~~  
33 ~~adult, would be any felony not listed in subdivision (b)(2) of this section or~~  
34 ~~the offense in subdivision (b)(3) of this section; or~~

35 ~~(B) Who would not qualify as an habitual juvenile offender~~  
36 ~~under the conditions prescribed by subdivision (b)(4) of this section;~~

1 ~~(3)(2)~~ Less than eighteen (18) years old when he engages in  
2 conduct that, if committed by an adult, would be any misdemeanor.

3 ~~(b) A circuit court and a juvenile court have concurrent jurisdiction~~  
4 ~~and a prosecuting attorney may charge a juvenile in either court when a case~~  
5 ~~involves a juvenile:~~

6 ~~\_\_\_\_\_ (1) At least sixteen (16) years old when he engages in conduct~~  
7 ~~that, if committed by an adult, would be any felony;~~

8 (b) The state may file a motion in juvenile court to transfer to circuit  
9 court or designate as an extended juvenile jurisdiction offender case when a  
10 case involves a juvenile:

11 ~~(2)(1)~~ Fourteen (14) or fifteen (15) years old when he engages in  
12 conduct that, if committed by an adult, would be:

13 ~~(A) Capital murder, § 5-10-101;~~

14 ~~(B) Murder in the first degree, § 5-10-102;~~

15 ~~(C)(A) Murder in the second degree, § 5-10-103;~~

16 ~~(D) Kidnapping, § 5-11-102;~~

17 ~~(E) Aggravated robbery, § 5-12-103;~~

18 ~~(F) Rape, § 5-14-103;~~

19 ~~(G) Battery in the first degree, § 5-13-201;~~

20 ~~(H)(B) Battery in the second degree in violation of § 5-13-~~  
21 ~~202(a)(2), (3), or (4);~~

22 ~~(I)(C) Possession of a handgun on school property, § 5-73-~~  
23 ~~119(a)(2)(A);~~

24 ~~(J)(D) Aggravated assault, § 5-13-204;~~

25 ~~(K) Terroristic act, § 5-13-310;~~

26 ~~(L)(E) Unlawful discharge of a firearm from a vehicle, § 5-~~  
27 ~~74-107;~~

28 ~~(M)(F) Any felony committed while armed with a firearm;~~

29 ~~(N)(G) Soliciting a minor to join a criminal street gang,~~  
30 ~~§5-74-203;~~

31 ~~(O)(H) Criminal use of prohibited weapons, § 5-73-104;~~

32 ~~(P)(I) First degree escape, § 5-54-110;~~

33 ~~(Q)(J) Second degree escape, § 5-54-111; or~~

34 ~~(R)(K) A felony attempt, solicitation, or conspiracy to~~  
35 ~~commit any of the following offenses:~~

36 (i) Capital murder, § 5-10-101;

- (ii) Murder in the first degree, § 5-10-102;
- (iii) Murder in the second degree, § 5-10-103;
- (iv) Kidnapping, § 5-11-102;
- (v) Aggravated robbery, § 5-12-103;
- (vi) Rape, § 5-14-103;
- (vii) Battery in the first degree, § 5-13-201;
- (viii) First degree escape, § 5-54-110; and
- (ix) Second degree escape, § 5-54-111;

~~(3)~~(2) At least fourteen (14) years old when he engages in conduct that constitutes a felony under § 5-73-119(a)(1)(A);

~~(4)~~(3) At least fourteen (14) years old when he engages in conduct that, if committed by an adult, constitutes a felony and who has, within the preceding two (2) years, three (3) times been adjudicated as a delinquent juvenile for acts that would have constituted a felony if they had been committed by an adult.

(c) A circuit court and a juvenile court have concurrent jurisdiction and a prosecuting attorney may charge a juvenile in either court when a case involves a juvenile:

(1) At least sixteen (16) years old when he engages in conduct that, if committed by an adult, would be any felony;

(2) Fourteen (14) or fifteen (15) years old when he engages in conduct that, if committed by an adult would be:

- (A) Capital murder, § 5-10-101;
- (B) Murder in the first degree, § 5-10-102;
- (C) Kidnapping, § 5-11-102;
- (D) Aggravated robbery, § 5-12-103;
- (E) Rape, § 5-14-103;
- (F) Battery in the first degree, § 5-13-201;
- (G) Terroristic act § 5-13-310.

~~(e)~~(d) If a prosecuting attorney can file charges in circuit court for an act allegedly committed by a juvenile, the ~~prosecutor~~ state may file any other criminal charges that arise out of the same act or course of conduct in the same circuit court case if, after a hearing before the juvenile division of chancery court, a motion to transfer is so ordered.

~~(d)~~(e) 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

1 shall conduct a hearing to determine whether to retain jurisdiction or to  
2 transfer the case to another court having jurisdiction.

3 (f) The juvenile court or the circuit court shall conduct a transfer  
4 hearing within thirty (30) days, if the juvenile is detained, and no longer  
5 than ninety (90) days from the date of the motion to transfer jurisdiction to  
6 circuit or juvenile court.

7 ~~(e)(g)~~ In making the decision to retain jurisdiction or to transfer the  
8 case, the court shall make written findings and consider all of the following  
9 factors:

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

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

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

19 (1) The seriousness of the alleged offense and whether the  
20 protection of society requires prosecution as an extended juvenile  
21 jurisdiction offender or in circuit court;

22 (2) Whether the alleged offense was committed in an aggressive,  
23 violent, premeditated or willful manner;

24 (3) Whether the offense was against a person or property, with  
25 greater weight being given to offenses against persons, especially if personal  
26 injury resulted;

27 (4) The culpability of the juvenile including the level of  
28 planning and participation in the alleged offense;

29 (5) The previous history of the juvenile, including whether the  
30 juvenile had been adjudicated a juvenile offender and, if so, whether the  
31 offenses were against persons or property, and any other previous history of  
32 antisocial behavior or patterns of physical violence;

33 (6) The sophistication or maturity of the juvenile as determined  
34 by consideration of the juvenile's home, environment, emotional attitude,  
35 pattern of living or desire to be treated as an adult;

36 (7) Whether there are facilities or programs available to the

1 court which are likely to rehabilitate the juvenile prior to the expiration of  
 2 the court's jurisdiction;

3 (8) Whether the juvenile acted alone or was part of a group in the  
 4 commission of the alleged offense;

5 (9) Written reports and other materials relating to the  
 6 juvenile's mental, physical, educational, and social history; and

7 (10) Any other factors deemed relevant by the court.

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

10 (i) Upon a finding by the circuit court that a juvenile age fourteen  
 11 (14) or fifteen (15) and charged with the crimes in subsection (c)(2) should  
 12 be transferred to juvenile court, the circuit court shall enter an order to  
 13 transfer as an extended juvenile jurisdiction case.

14 (j) If a juvenile age fourteen (14) or fifteen (15) is found guilty in  
 15 circuit court for an offense other than an offense listed in subsection (b) or  
 16 (c)(2), the circuit court shall transfer the case to juvenile court for the  
 17 court to enter a juvenile disposition.

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

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

24 (m) A juvenile court may conduct a transfer hearing and an extended  
 25 juvenile jurisdiction hearing at the same time."

26  
 27 SECTION 17. Arkansas Code 9-27-325 is amended to read as follows:

28 "9-27-325. Hearings - Generally.

29 (a) All hearings shall be conducted by the judge without a jury- except  
 30 as provided by the Extended Juvenile Jurisdiction Offender Act, if a juvenile  
 31 is designated an extended juvenile jurisdiction offender, the juvenile shall  
 32 have a right to a jury trial at the adjudication.

33 (1) The juvenile shall be advised of the right to a jury trial by  
 34 the court following a determination that the juvenile will be tried as an  
 35 extended juvenile jurisdiction offender.

36 (2) The right to a jury trial may be waived by a juvenile only

1 after being advised of his rights and after consultation with the juvenile's  
2 attorney.

3 (3) The waiver shall be in writing and signed by the juvenile and  
4 juvenile's attorney.

5 (b)(1) The ~~defendant~~ juvenile need not file a written responsive  
6 pleading in order to be heard by the court.

7 (2) In dependency-neglect proceedings, retained counsel shall  
8 file a notice of appearance immediately upon acceptance of representation,  
9 with a copy to be served on the petitioner.

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

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

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

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

17 (A) Issue an order for contempt if the ~~defendant~~ juvenile  
18 was served with an order to appear; or

19 (B) Issue an order to appear, with a time and place set by  
20 the court for hearing, if the ~~defendant~~ juvenile was served with a notice of  
21 hearing.

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

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

27 (f) Except as otherwise provided in this subchapter and until rules of  
28 procedure for juvenile court are developed and in effect, the Arkansas Rules  
29 of Civil Procedure shall apply to all proceedings and the Arkansas Rules of  
30 Criminal Procedure shall apply to delinquency proceedings.

31 (g) All ~~defendants~~ juveniles shall have the right to compel attendance  
32 of witnesses in accordance with the Arkansas Rules of Civil Procedure and the  
33 Arkansas Rules of Criminal Procedure.

34 (h)(1) The petitioner in all proceedings shall bear the burden of  
35 presenting the case at hearings.

36 (2) The following burdens of proof shall apply:

1 (A) Proof beyond a reasonable doubt in delinquency  
2 hearings;

3 (B) Proof by a preponderance of the evidence in dependency-  
4 neglect, family in need of services (FINS), and probation revocation hearings;

5 (C) Proof by clear and convincing evidence for hearings to  
6 terminate parental rights, and transfer hearings.

7 (i) All hearings may be closed within the discretion of the court,  
8 except, in delinquency cases the juvenile shall have the right to an open  
9 hearing, and, in adoption cases the hearings shall be closed as provided in  
10 the Revised Uniform Adoption Act, as amended, § 9-9-201 et seq.

11 (j) Except as provided by Section 2 of this act, in any juvenile  
12 delinquency proceeding where the juvenile's fitness to proceed is put in issue  
13 by any party or the court, the provisions of A.C.A. § 5-2-301 through 5-2-318  
14 shall apply."

15  
16 SECTION 18. Arkansas Code 9-27-327 is amended to read as follows:

17 "9-27-327. Adjudication hearing.

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

20 (b) If a juvenile is in detention, an adjudication hearing shall be  
21 held not later than fourteen (14) days, unless the juvenile or a party is  
22 seeking an extended juvenile jurisdiction designation, from the date of the  
23 detention hearing unless waived by the juvenile or good cause is shown for a  
24 continuance.

25 (c) In extended juvenile jurisdiction offender proceedings, the  
26 adjudication shall be held within the time prescribed by the speedy trial  
27 provisions of Arkansas Rules of Criminal Procedure Rule 28.

28 ~~(e)~~(d) Following an adjudication in which a juvenile is found to be  
29 delinquent, dependent-neglected, or a member of a family in need of services,  
30 the court may order any studies or predisposition reports, if needed, that  
31 bear on disposition.

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

35 ~~(e)~~(f) In dependency-neglect cases, a written adjudication order shall  
36 be filed by the court, or by a party or party's attorney as designated by the

1 court, within thirty (30) days of the date of the hearing or prior to the next  
2 hearing, whichever is sooner."

3  
4 SECTION 19. Arkansas Code 9-27-330 is amended to read as follows:

5 "9-27-330. Disposition - Delinquency - Alternatives.

6 (a) If a juvenile is found to be delinquent, the court may enter an  
7 order making any of the following dispositions based upon the best interest of  
8 the juvenile:

9 (1)(A) Transfer legal custody of the juvenile to the Department  
10 of Human Services, or to another licensed agency responsible for the care of  
11 juveniles, or to a relative or other individual;

12 (B) Commit the juvenile to a youth services center using  
13 the Risk Assessment System for Arkansas Juvenile Offenders distributed and  
14 administered by the Administrative Office of the Courts.

15 (i) The risk assessment may be modified by the  
16 Juvenile Committee of the Arkansas Judicial Council with the Division of Youth  
17 Services.

18 (ii) In an order of commitment, the court may  
19 recommend that a juvenile be placed in a community-based program instead of a  
20 youth services center, and shall make specific findings in support of such a  
21 placement in the order.

22 (iii) Upon receipt of an order of commitment with  
23 recommendations for placement, the Division of Youth Services of the  
24 Department of Human Services shall consider the recommendations of the  
25 committing court in placing a youth in a youth services facility or a  
26 community-based program.

27 (C) In all cases in which both commitment and transfer of  
28 legal custody are ordered by the court in the same order, transfer of custody  
29 will be entered only upon compliance with the provisions of §§ 9-27-310 - 9-  
30 27-312, 9-27-316, 9-27-327, and 9-27-328;

31 (2) Order the juvenile or members of the juvenile's family to  
32 submit to physical, psychiatric, or psychological evaluations;

33 (3) Grant permanent custody to an individual upon proof that the  
34 parent or guardian from whom the juvenile has been removed has not complied  
35 with the orders of the court and that no further services or periodic reviews  
36 are required;

1           (4)(A) Place the juvenile on probation under those conditions and  
2 limitations that the court may prescribe pursuant to § 9-27-339(a).

3           (B)(i) In addition, the court shall have the right, as a  
4 term of probation, to require the juvenile to attend school or make  
5 satisfactory progress toward a general education development certificate.

6           (ii) The court shall have the right to revoke  
7 probation if the juvenile fails to regularly attend school or if satisfactory  
8 progress toward a general education development certificate is not being made;

9           (5) Order a probation fee, not to exceed twenty dollars (\$20.00)  
10 per month, as provided in § 16-13-326(a);

11           (6) Assess a court cost of no more than thirty-five dollars  
12 (\$35.00) to be paid by the juvenile, his parent, both parents, or his  
13 guardian;

14           (7)(A) Order restitution to be paid by the juvenile, a parent,  
15 both parents, the guardian, or his custodian.

16           (B) If the custodian is the State of Arkansas, both  
17 liability and the amount which may be assessed shall be determined by the  
18 Arkansas State Claims Commission;

19           (8) Order a fine of not more than five hundred dollars (\$500) to  
20 be paid by the juvenile, a parent, both parents, or the guardian;

21           (9) Order that the juvenile and his parent, both parents, or the  
22 guardian perform court-approved volunteer service in the community, designed  
23 to contribute to the rehabilitation of the juvenile or to the ability of the  
24 parent or guardian to provide proper parental care and supervision of the  
25 juvenile, not to exceed one hundred sixty (160) hours;

26           (10)(A) Order that the parent, both parents, or the guardian of  
27 the juvenile attend a court-approved parental responsibility training program,  
28 if available.

29           (B) The court may make reasonable orders requiring proof of  
30 completion of such training program within a certain time period and payment  
31 of a fee covering the cost of the training program.

32           (C) The court may provide that any violation of such orders  
33 shall subject the parent, both parents, or the guardian to the contempt  
34 sanctions of the court;

35           (11)(A)(i) Order that the juvenile remain in a juvenile detention  
36 facility for an indeterminate period not to exceed ninety (90) days.

1                   (ii) The court may further order that the juvenile be  
2 eligible for work release or to attend school or other educational or  
3 vocational training.

4                   (B) The juvenile detention facility shall afford  
5 opportunities for education, recreation, and other rehabilitative services to  
6 adjudicated delinquents;

7                   (12) Place the juvenile on residential detention with electronic  
8 monitoring, either in the juvenile's home or in another facility as ordered by  
9 the court;

10                  (13)(A) Order the parent, both parents, or the guardian of any  
11 juvenile adjudicated delinquent and committed to a youth services center,  
12 detained in a juvenile detention facility, or placed in foster care, to be  
13 liable for the cost of the commitment, detention, or foster care.

14                  (B)(i) The court shall take into account the financial  
15 ability of the parent, both parents, or the guardian to pay for such  
16 commitment, detention, or foster care.

17                  (ii) The court shall take into account the past  
18 efforts of the parent, both parents, or the guardian to correct the delinquent  
19 juvenile's conduct.

20                  (iii) The court shall take into account, if the  
21 parent is a noncustodial parent, the opportunity the parent has had to correct  
22 the delinquent juvenile's conduct.

23                  (iv) The court shall take into account any other  
24 factors the court deems relevant;

25                  (14)(A) Order the Department of Finance and Administration to  
26 suspend the driving privileges of any juvenile adjudicated delinquent.

27                  (B) The order shall be prepared and transmitted to the  
28 department within twenty-four (24) hours after the juvenile has been found  
29 delinquent and is sentenced to have his driving privileges suspended.

30                  (C) The court may provide in the order for the issuance of  
31 a restricted driving permit to allow driving to and from a place of employment  
32 or driving to and from school, or for other circumstances.

33                  (b) The juvenile court shall specifically retain jurisdiction to amend  
34 or modify any orders entered pursuant to subdivisions (a)(4)-(12) of this  
35 section.

36                  (c)(1) If a juvenile is adjudicated delinquent for possession of a

1 handgun, as provided in § 5-73-119, or criminal use of prohibited weapons, as  
2 provided in § 5-73-104, or possession of a defaced firearm, as provided in §5-  
3 73-107, the court shall commit the juvenile:

4 (A) To a juvenile detention facility, as provided in  
5 subdivision (a)(11) of this section; or

6 (B) To a youth services center operated by the Arkansas  
7 Youth Services Board, as provided in subdivision (a)(1) of this section; or

8 (C) Place the juvenile on residential detention, as  
9 provided in subdivision (a)(12) of this section.

10 (2) The court may take into consideration any preadjudication  
11 detention period served by the juvenile and sentence the juvenile to such time  
12 served.

13 (d)(1) When the court orders restitution pursuant to subdivision (a)(7)  
14 of this section, the court shall consider the following:

15 (A) The amount of restitution may be decided:

16 (i) If the juvenile is to be responsible for the  
17 restitution, by agreement between the juvenile and the victim; or

18 (ii) If the parent or parents are to be responsible  
19 for the restitution, by agreement between the parent or parents and the  
20 victim; or

21 (iii) If the juvenile and the parent or parents are  
22 to be responsible for the restitution, by agreement between the juvenile, his  
23 parent or parents, and the victim; or

24 (iv) At a hearing at which the state must prove the  
25 restitution amount by a preponderance of the evidence;

26 (B) Restitution shall be made immediately, unless the court  
27 determines that the parties should be given a specified time to pay or should  
28 be allowed to pay in specified installments;

29 (C)(i) In determining if restitution should be paid and by  
30 whom, as well as the method and amount of payment, the court shall take into  
31 account:

32 (a) The financial resources of the juvenile,  
33 his parent, both parents, or the guardian, and the burden such payment will  
34 impose with regard to the other obligations of the paying party;

35 (b) The ability to pay restitution on an  
36 installment basis or on other conditions to be fixed by the court;

1 (c) The rehabilitative effect of the payment of  
2 restitution and the method of payment; and

3 (d) The past efforts of the parent, both  
4 parents, or the guardian to correct the delinquent juvenile's conduct;

5 (ii) The court shall take into account if the parent  
6 is a noncustodial parent, the court may take into consideration the  
7 opportunity the parent has had to correct the delinquent juvenile's conduct;  
8 and

9 (iii) The court shall take into account any other  
10 factors the court deems relevant.

11 (2) If the juvenile is placed on probation, any restitution  
12 ordered under this section may be a condition of the probation.

13 (e) When an order of restitution is entered, it may be collected by any  
14 means authorized for the enforcement of money judgments in civil actions, and  
15 it shall constitute a lien on the real and personal property of the persons  
16 and entities the order of restitution is directed upon in the same manner and  
17 to the same extent as a money judgment in a civil action.

18 (f)(1) The judgment entered by the court may be in favor of the state,  
19 the victim, or any other appropriate beneficiary.

20 (2) The judgment may be discharged by a settlement between the  
21 parties ordered to pay restitution and the beneficiaries of the judgment.

22 (g) The court shall determine priority among multiple beneficiaries on  
23 the basis of the seriousness of the harm each suffered, their other resources,  
24 and other equitable factors.

25 (h) If more than one (1) juvenile is adjudicated delinquent of an  
26 offense for which there is a judgment under this section, the juveniles are  
27 jointly and severally liable for the judgment unless the court determines  
28 otherwise.

29 (i)(1) A judgment under this section does not bar a remedy available in  
30 a civil action under other law.

31 (2) A payment under this section must be credited against a money  
32 judgment obtained by the beneficiary of the payment in a civil action.

33 (3) A determination under this section and the fact that payment  
34 was or was not ordered or made are not admissible in evidence in a civil  
35 action and do not affect the merits of the civil action.

36 (j) If a juvenile is adjudicated delinquent as an extended juvenile

1 jurisdiction offender, the court shall enter the following dispositions:

2 (1) Order any of the juvenile delinquency dispositions authorized  
3 by A. C. A. § 9-27-330; and

4 (2) Suspend the imposition of an adult sentence pending juvenile  
5 court review.

6  
7 SECTION 20. Arkansas Code 9-27-331 is amended to read as follows:

8 "9-27-331. Disposition - Delinquency - Limitations.

9 (a)(1) A commitment to the Division of Youth Services is for an  
10 indeterminate period, not to exceed the eighteenth birthday of a juvenile,  
11 except as otherwise provided by law.

12 (2) An order of commitment shall remain in effect for an  
13 indeterminate period not exceeding two (2) years from the date entered.

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

18 (4) The committing court may recommend, at any time, that a  
19 juvenile be released from the custody of the Division of Youth Services by  
20 making a written request for release stating the reasons release is deemed in  
21 the best interests of the juvenile and society.

22 (5) Length of stay and final decision to release shall be the  
23 exclusive responsibility of the Division of Youth Services, except when the  
24 juvenile is an extended juvenile jurisdiction offender.

25 (b) Subsection (a) does not apply to extended juvenile jurisdiction  
26 offenders. The juvenile court shall have sole release authority when an  
27 extended juvenile jurisdiction offender is committed to DYS.

28 (1) Upon determination that the juvenile has been rehabilitated,  
29 DYS may petition the court for release. The court shall conduct a hearing and  
30 shall consider the following factors in making its determination to release  
31 the juvenile from DYS:

32 (A) The experience and character of the juvenile before and  
33 after the juvenile disposition, including compliance with the court's orders;

34 (B) The nature of the offense(s) and the manner in which it  
35 was committed;

36 (C) The recommendations of the professionals who have worked

1 with the juvenile;

2 (D) The protection of public safety; and

3 (E) Opportunities provided to the juvenile for  
4 rehabilitation and the juvenile's efforts toward rehabilitation.

5 (2) The court shall release the juvenile upon a finding by a  
6 preponderance of the evidence that the Juvenile's release does not pose a  
7 substantial threat to public safety.

8 ~~(b)(c)~~(1) Unless otherwise stated, and excluding extended juvenile  
9 jurisdiction offenders, an order of probation shall remain in effect for an  
10 indeterminate period not exceeding two (2) years.

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

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

18 ~~(e)(d)~~ The court may enter an order for physical, psychiatric, or  
19 psychological evaluation or counseling, or treatment affecting the family of a  
20 juvenile, only after finding that such evaluation, counseling, or treatment of  
21 family members is necessary for the treatment or rehabilitation of the  
22 juvenile; provided, however, that this subsection shall not be applicable to  
23 the parental responsibility training programs in § 9-27-330(a).

24 ~~(d)(e)~~(1) An order of restitution, not to exceed ten thousand dollars  
25 (\$10,000), per victim to be paid by the juvenile, his parent, both parents,  
26 the guardian, or custodian may be entered only after proof by a preponderance  
27 of the evidence that specific damages were caused by the juvenile and that the  
28 juvenile's actions were the proximate cause of the damage.

29 (2) If the amount of restitution determined by the court exceeds  
30 ten thousand dollars (\$10,000), ~~the juvenile, the parent, both parents, the~~  
31 ~~guardian, or custodian shall be afforded the right of trial by jury on all~~  
32 ~~issues of liability and damages, pursuant to § 9-27-330(i)(1) for any~~  
33 individual victim, the court shall enter a restitution order for ten thousand  
34 dollars (\$10,000) in favor of the victim. Nothing in this section is intended  
35 to bar or prevent a person or entity from seeking recovery for damages in  
36 excess of ten thousand dollars (\$10,000) available under other law.

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

5                   (1) State the treatment plan for the juvenile;

6                   (2) State the anticipated length of commitment of the juvenile;

7                   (3) State recommendations as to the most appropriate post-  
8 commitment placement of the juvenile; and

9                   (4) Specify post-commitment family services, if any, which should  
10 be offered by the Department of Human Services.

11           ~~(f)~~(g) A copy of the written case treatment plan shall be submitted to  
12 the committing court for its review and, in addition, shall be provided to the  
13 custodian of the juvenile and filed in any court files of any court in which a  
14 dependency-neglect or family in need of services action concerning that  
15 juvenile is then pending."  
16

17           SECTION 21. Arkansas Code 9-28-206 is amended to read as follows:

18           "9-28-206. Disposition of delinquent youth juvenile.

19           When a juvenile division of chancery court, a circuit court, or any  
20 other court having jurisdiction of a youth juvenile under eighteen (18) years  
21 of age, finds a youth juvenile to be delinquent or to have committed a crime  
22 as defined by the laws of this state, the court may commit the youth juvenile  
23 to the Division of Youth Services of the Department of Human Services for an  
24 indeterminate period, not to exceed the ~~eighteenth~~ twenty-first (21st)  
25 birthday of the youth juvenile, ~~except as otherwise provided by law."~~  
26

27           SECTION 22. Arkansas Code 9-28-208 is amended to read as follows:

28           "9-28-208. Order of commitment.

29           (a) An order of commitment to the Division of Youth Services shall  
30 state that the youth juvenile is found to be delinquent or to have committed a  
31 crime and shall state information regarding the underlying facts of the  
32 adjudication.

33           (b)(1) A court shall, with a committing order, transmit to the Division  
34 of Youth Services a copy of the risk assessment instrument and a report on the  
35 youth juvenile setting forth in detail all available pertinent information  
36 concerning the ~~youth's~~ juvenile's background, family status, school record,

1 behavioral tendencies, and all other pertinent information that it may have,  
2 including the reasons for the ~~youth's~~ juvenile's commitment.

3 (2) Information relating to the committing offense is exclusively  
4 for the benefit of the Division of Youth Services and shall not be disclosed  
5 by division officials or employees without written authorization of the  
6 committing court, except for data and statistical compilations as otherwise  
7 provided by law.

8 (c) Except when an extended juvenile jurisdiction offender is committed  
9 to DYS, an ~~AA~~ order of commitment shall remain in effect for an indeterminate  
10 period, not exceeding two (2) years, subject to extension by the committing  
11 court for additional periods of one (1) year if the court finds an extension  
12 is necessary to safeguard the welfare of the ~~youth~~ juvenile or the interest of  
13 the public.

14 (d) Commitment shall not exceed the ~~eighteenth~~ twenty-first (21st)  
15 birthday of a ~~youth~~ juvenile, ~~unless the Department of Human Services' State~~  
16 ~~Institutional System Board determines that an adequate facility or facilities~~  
17 ~~are available for youths eighteen (18) years of age or older.~~

18 (e) When an order of commitment includes recommendations for a specific  
19 type of placement, the Division of Youth Services shall consider those  
20 recommendations in making a placement."  
21

22 SECTION 23. Arkansas Code 9-28-210 is amended to read as follows:

23 "9-28-210. Release.

24 (a)(1) In consideration of its juvenile correctional role, the Division  
25 of Youth Services shall establish objective guidelines for length of stay when  
26 ~~youths~~ juveniles are committed to the division.

27 (2) Except when an extended juvenile jurisdiction offender or a  
28 juvenile committed to DYS from circuit court is committed to DYS, length-of-  
29 stay ~~Length-of-stay~~ determinations shall be the exclusive responsibility of  
30 the Division of Youth Services, and committed ~~youths~~ juveniles shall be  
31 reintegrated into society at a pace determined by the seriousness of the  
32 committing offense, aggravating or mitigating circumstances, community  
33 compatibility, and clinical prognosis.

34 (3) When an extended juvenile jurisdiction offender has been  
35 committed to DYS, the committing court shall have sole release authority.

36 (4) Upon determination that the juvenile has been rehabilitated,

1 DYS may petition the court for release. The court shall conduct a hearing and  
2 shall consider the following factors in making its determination to release  
3 the juvenile from DYS:

4 (A) The experience and character of the juvenile before and  
5 after the juvenile disposition, including compliance with the court's orders;

6 (B) The nature of the offense(s) and the manner in which it  
7 was committed;

8 (C) The recommendations of the professionals who have worked  
9 with the juvenile;

10 (D) The protection of public safety; and

11 (E) Opportunities provided to the juvenile for  
12 rehabilitation and the juvenile's efforts toward rehabilitation.

13 (5) The court shall release the juvenile upon a finding by a  
14 preponderance of the evidence that the juvenile's release does not pose a  
15 substantial threat to public safety.

16 (b) The Division of Youth Services shall establish policies regarding  
17 the eligibility of ~~youths~~ juveniles for release consideration.

18 (c)(1) Whenever the Director of the Division of Youth Services, upon  
19 examination of all information and recommendations provided, shall determine  
20 that release of a ~~youth~~ juvenile is in the interest of both the state and the  
21 ~~youth~~ juvenile, the division shall grant release or petition the committing  
22 court for release if the juvenile is an extended juvenile jurisdiction  
23 offender.

24 (2) Except when an extended jurisdiction offender is committed to  
25 DYS, release ~~Release~~ decisions shall be made by the Director of the Division  
26 of Youth Services without the necessity of an application by or on behalf of a  
27 ~~youth~~ juvenile.

28 (3) In determining whether the release of a ~~youth~~ juvenile is in  
29 the best interest of both the state and the ~~youth~~ juvenile, the division shall  
30 consider the circumstances of the committing offense, any recommendations of  
31 the committing judge, any recommendations of the probation officer of the  
32 committing court, the ~~youth's~~ juvenile's previous delinquency record, the  
33 availability of community programs, and the stability of the youth's home  
34 environment.

35 (d)(1) The committing court may, at any time, recommend that a ~~youth~~  
36 juvenile be released from the custody of the Division of Youth Services.

