

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

Act 1192 of 1999

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 (18th) 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 (18th) 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 (21st)

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 (21st)
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.

1 (2) A recommendation for release shall be provided in writing to
2 the Division of Youth Services stating the reasons release is deemed in the
3 best interest of the ~~youth~~ juvenile and society.

4 (3) Except when an extended juvenile jurisdiction offender is
5 committed to DYS, a final decision to release shall be made by the Division
6 of Youth Services.

7 (e) Upon release from the custody of the Division of Youth Services, a
8 ~~youth~~ juvenile shall remain under the jurisdiction of the committing court for
9 an indeterminate period not to exceed two (2) years, except when an extended
10 juvenile jurisdiction offender is committed to DYS.

11
12 SECTION 24. All provisions of this act of a general and permanent
13 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
14 Code Revision Commission shall incorporate the same in the Code.

15
16 SECTION 25. If any provision of this act or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 act are declared to be severable.

21
22 SECTION 26. All laws and parts of laws in conflict with this act are
23 hereby repealed.

24 /s/ Kennedy, et al

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27 APPROVED: 4/7/1999
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