

Chapter 27.
Juvenile Courts And Proceedings.

Subchapter 1. General Provisions.

9-27-101. Appointment of supervisor of juvenile court work.

The Director of the Department of Human Services is authorized and empowered to appoint a supervisor of juvenile court work and such other employees as may be necessary, over which organization, supervisor, and employees the department shall have exclusive direction and control.

9-27-102. Legislative determinations.

The General Assembly recognizes that children are defenseless and that there is no greater moral obligation upon the General Assembly than to provide for the protection of our children and that our child welfare system needs to be strengthened by establishing a clear policy of the state that the best interests of the children must be paramount and shall have precedence at every stage of juvenile court proceedings. The best interests of the child shall be the standard for recommendations made by employees of the Department of Human Services and for juvenile court determinations as to whether a child should be reunited with his or her family or removed from or remain in a home wherein the child has been abused or neglected.

9-27-103. Continuity of educational services to foster children.

(a)(1)(A) It is the intent of the General Assembly that children in foster care:

- (i) Be entitled to the same opportunities to meet the academic achievement standards to which all children are held;
- (ii) Be assisted so that they are able to remain in their schools;
- (iii) Be placed in the least restrictive education placement;
- (iv) Have the same access to academic resources, services, and extracurricular enrichment activities as all other children.

(B) Decisions regarding the education of children in foster care are to be based on the best interests of the children.

(2)(A) The following individuals who are directly involved in the care, custody, and education of foster children should work together to ensure continuity of educational services to foster children, including, but not limited to:

- (i) Educators;
- (ii) The Department of Health and Human Services;
- (iii) The Department of Education;
- (iv) The circuit courts presiding over the foster care cases;
- (v) Providers of services to foster children;
- (vi) Attorneys;
- (vii) Court-appointed special advocates; and
- (viii) Parents, guardians, or any person appointed by the

court.

(B) The individuals in subdivision (a)(2)(A) shall ensure the continuity of educational services so that foster children:

(i) Remain in their schools of current enrollment whenever possible;

(ii) Are moved to new schools in a timely manner when it is determined to be necessary, appropriate, and in their best interests under this section;

(iii) Participate in the appropriate educational programs; and

(iv) Have access to the academic resources, services, and extracurricular enrichment activities that are available to all pupils.

(b)(1) Foster children shall have continuity in their educational placements.

(2) The Department of Health and Human Services shall consider continuity of educational services and school stability in making foster placement decisions.

(3) The local school district shall allow the foster child to remain in the child's current school and continue his or her education unless the court finds that:

(A) The placement is not in the child's best interest; and

(B) It conflicts with any other provision of current law, excluding the residency requirement pursuant to § 6-18-202.

(4) To the extent reasonable and practical, the school district is encouraged to work out a plan for transportation for the child to remain in the child's current school.

(5) Except for emergencies, prior to making a recommendation to move a child from his or her current school, the Department of Health and Human Services shall provide to the following a written explanation that states the basis for the recommended school change and how it serves the child's best interest:

(A) The foster child;

(B) The child's attorney ad litem;

(C) The court-appointed special advocate, if appointed; and

(D) Parents, guardians, or any person appointed by the court.

(c)(1) Every school district shall identify a foster care liaison.

(2) The school district shall forward the name of each foster care liaison and the contact information to the Special Education Section of the Department of Education at the beginning of each school year.

(3) The foster care liaison shall:

(A) Ensure and facilitate the timely school enrollment of foster children; and

(B)(i) Assist foster children when transferring schools by ensuring the transfer of credits, records, grades, and any other relevant school records.

(ii)(a) Expedite the transfer of records.

(b) When a foster child changes school placement, the foster care liaison in the new school shall request the child's education record, as defined by the Department of Education's regulation, from the foster care liaison in the child's previous school within three (3) school days.

(iii) The foster care liaison from the previous school shall provide all relevant school records to the new school within ten (10) school days of receipt of the request under subdivision (c)(3)(C)(ii)(b) of this section.

(d)(1) If a foster child is subject to a school enrollment change, then the foster child's caseworker shall contact the school district foster care liaison within two (2) business days, and the new school must immediately enroll the foster child even if the foster child is unable to produce any required clothing or required records, including, but not limited to:

- (A) Academic records;
- (B) Medical records; or
- (C) Proof of residency.

(2) The Department of Human Services shall provide all known information to the school district that would have an impact upon the health and safety of the child being enrolled or others in the school.

(e)(1) A school district shall recognize the rights of a foster parent to make education decisions for a foster child pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., if the foster parent is qualified.

(2) A foster parent may have educational rights with respect to consenting to the individualized educational program and related services if the court has specifically limited the educational rights of the parent and the child is in foster care.

(f) The grades of a child in foster care may not be lowered due to absence from school because of:

- (1) A change in the child's school enrollment;
- (2) The child's attendance at a dependency-neglect court proceeding; or
- (3) The child's attendance at court-ordered counseling or treatment.

(g) Each school district shall accept credit course work when the child demonstrates that he or she has satisfactorily completed the appropriate education placement assessment.

(h) If a child completes the graduation requirements of his or her school district while being detained in a juvenile detention facility or while being committed to the Division of Youth Services of the Department of Human Services, the school district that the child last attended before the child's detention or commitment shall issue the child a diploma.

(i) Nothing in this section shall be interpreted to be in conflict with the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., and regulations promulgated thereunder.

(j) Notwithstanding any of the provisions of this section, if it is in the best interests of the child, a foster child may be placed in a nonpublic school, including a private, parochial, or home school as long as no state or federal funding is used for such placement.

Subchapter 2. Juvenile Officers [Repealed.]

9-27-201 - 9-27-206. [Repealed.]

Subchapter 3. Juvenile Code.

9-27-301. Title.

This subchapter shall be known and may be cited as the "Arkansas Juvenile Code of 1989".

9-27-302. Purposes - Construction.

This subchapter shall be liberally construed to the end that its purposes may be carried out:

(1) To assure that all juveniles brought to the attention of the courts receive the guidance, care, and control, preferably in each juvenile's own home when the juvenile's health and safety are not at risk, which will best serve the emotional, mental, and physical welfare of the juvenile and the best interest of the state;

(2)(A) To preserve and strengthen the juvenile's family ties when it is in the best interest of the juvenile;

(B) To protect a juvenile by considering the juvenile's health and safety as the paramount concerns in determining whether or not to remove the juvenile from the custody of his or her parents or custodians, removing the juvenile only when the safety and protection of the public cannot adequately be safeguarded without such removal;

(C) When a juvenile is removed from his or her own family, to secure for him or her custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents, with primary emphasis on ensuring the health and safety of the juvenile while in the out-of-home placement; and

(D) To assure, in all cases in which a juvenile must be permanently removed from the custody of his or her parents, that the juvenile be placed in an approved family home and be made a member of the family by adoption;

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

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

9-27-303. Definitions.

As used in this subchapter:

(1) "Abandoned infant" means a juvenile less than nine (9) months of age whose parent, guardian, or custodian left the child alone or in the possession of another person without identifying information or with an expression of intent by words, actions, or omissions not to return for the infant;

(2) "Abandonment" means the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future and failure to support or

maintain regular contact with the juvenile without just cause or an articulated intent to forego parental responsibility;

(3)(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child, whether related or unrelated to the child, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

- (i) Extreme or repeated cruelty to a juvenile;
- (ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;
- (iii) Injury to a juvenile's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the juvenile's ability to function within the juvenile's normal range of performance and behavior;
- (iv) Any injury that is at variance with the history given;
- (v) Any nonaccidental physical injury;
- (vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:
 - (a) Throwing, kicking, burning, biting, or cutting a child;
 - (b) Striking a child with a closed fist;
 - (c) Shaking a child; or
 - (d) Striking a child on the face; or
- (vii) Any of the following intentional or knowing acts, with or without physical injury:
 - (a) Striking a child six (6) years of age or younger on the face or head;
 - (b) Shaking a child three (3) years of age or younger;
 - (c) Interfering with a child's breathing;
 - (d) Urinating or defecating on a child;
 - (e) Pinching, biting, or striking a child in the genital area;
 - (f) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;
 - (g) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;
 - (h) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:
 - (1) Marijuana;

(2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;

(3) Narcotics; or

(4) Over-the-counter drugs if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or over-the-counter drug;

(i) Exposing a child to chemicals that have the capacity to interfere with normal physiological functions, including, but not limited to, chemicals used or generated during the manufacturing of methamphetamine; or

(j) Subjecting a child to Munchausen syndrome by proxy, also known as factitious illness by proxy, when reported and confirmed by medical personnel or a medical facility.

(B)(i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.

(ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.

(C) "Abuse" shall not include:

(i) Physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child; or

(ii) Instances when a child suffers transient pain or minor temporary marks as the result of a reasonable restraint if:

(a) The person exercising the restraint is an employee of an agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;

(b) The agency has policies and procedures regarding restraints;

(c) No other alternative exists to control the child except for a restraint;

(d) The child is in danger of hurting himself or herself or others;

(e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques; and

(f) The restraint is for a reasonable period of time.

(iii) Reasonable and moderate physical discipline inflicted by a parent or guardian shall not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.

(iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;

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

(5) "Adult sentence" means punishment authorized by the Arkansas Criminal Code, § 5-1-101 et seq., subject to the limitations in § 9-27-507, for the act or

acts for which the juvenile was adjudicated delinquent as an extended juvenile jurisdiction offender;

(6) "Aggravated circumstances" means:

(A) A child has been abandoned, chronically abused, subjected to extreme or repeated cruelty, or sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification; or

(B) A child has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person more than three (3) times in the last fifteen (15) months;

(7) "Attorney ad litem" means an attorney appointed to represent the best interest of a juvenile;

(8) "Caretaker" means a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person responsible for a child's welfare;

(9) "Case plan" means a document setting forth the plan for services for a juvenile and his or her family, as described in § 9-27-402;

(10)(A) "Cash assistance" means short-term financial assistance.

(B) "Cash assistance" does not include long-term financial assistance or financial assistance that is the equivalent of the board payment or adoption subsidy;

(11) "Commitment" means an order of the court that places a juvenile in the custody of the Division of Youth Services of the Department of Health and Human Services for placement in a youth services facility;

(12) "Court" means the juvenile division of circuit court;

(13) "Court-appointed special advocate" means a volunteer appointed by the court to provide services to juveniles in dependency-neglect proceedings;

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

(15) "Delinquent juvenile" means any juvenile:

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

(B) Any juvenile charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, subject to extended juvenile jurisdiction;

(16)(A) "Department" means the Department of Health and Human Services and its divisions and programs.

(B) Unless otherwise stated in this subchapter, any reference to the department shall include all of its divisions and programs;

(17) "Dependent juvenile" means:

(A) A child of a parent who is under eighteen (18) years of age and is in the custody of the department;

(B) A child whose parent or guardian is incarcerated and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(C) A child whose parent or guardian is incapacitated, whether temporarily or permanently, so that the parent or guardian cannot provide care for the juvenile and the parent or guardian has no appropriate relative or friend willing or able to provide care for the child;

(D) A child whose custodial parent dies and no stand-by guardian exists;

(E) A child who is an infant relinquished to the custody of the department for the sole purpose of adoption;

(F) A safe-haven baby, § 9-34-201 et seq.; or

(G) A child who has disrupted his or her adoption, and the adoptive parents have exhausted resources available to them;

(18)(A) "Dependent-neglected juvenile" means any juvenile who is at substantial risk of serious harm as a result of:

(i) Abandonment;

(ii) Abuse;

(iii) Sexual abuse;

(iv) Sexual exploitation;

(v) Neglect;

(vi) Parental unfitness to the juvenile, a sibling, or another juvenile; or

(vii) Being present in a dwelling or structure during the manufacturing of methamphetamine with the knowledge of his or her parent, guardian, or custodian.

(B) "Dependent-neglected juvenile" includes dependent juveniles;

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

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

(21) "Deviant sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one (1) person by any body member or foreign instrument manipulated by another person;

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

(23) "Extended juvenile jurisdiction offender" means a juvenile designated to be subject to juvenile disposition and an adult sentence imposed by the court;

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

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

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

(C) Having absented himself or herself from the juvenile's home without sufficient cause, permission, or justification;

(25)(A) "Family services" means relevant services provided to a juvenile or his or her family, including, but not limited to:

(i) Child care;

(ii) Homemaker services;

(iii) Crisis counseling;

(iv) Cash assistance;

(v) Transportation;

(vi) Family therapy;

(vii) Physical, psychiatric, or psychological evaluation;

(viii) Counseling; or

(ix) Treatment.

(B) Family services are provided in order to:

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

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

(iii) Implement a permanent plan of adoption, guardianship, or rehabilitation of the juvenile;

(26) "Fast track" means that reunification services will not be provided or will be terminated before twelve (12) months of services;

(27)(A) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of death, physical injury to, rape, sexual abuse, or kidnapping of any person.

(B) If the act was committed against the will of the juvenile, then "forcible compulsion" has been used.

(C) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant shall be considered in weighing the sufficiency of the evidence to prove compulsion;

(28) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(29)(A) "Home study" means a written report that is obtained after an investigation of a home by the department or other appropriate persons or agencies and which shall conform to regulations established by the department.

(B)(i) An in-state home study, excluding the results of a criminal records check, shall be completed and presented to the requesting court within thirty (30) working days of the receipt of the request for the home study.

(ii) The results of the criminal records check shall be provided to the court as soon as they are received;

(30) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or any other person, under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(31) "Independence" means that:

(A)(i) A permanency planning hearing disposition for the juvenile who will not be reunited with his or her family because another permanent plan is not available; and

(ii) A compelling reason exists why termination of parental rights is not in the juvenile's best interest; or

(B) The juvenile is being cared for by a relative and termination of parental rights is not in the best interest of the juvenile;

(32) "Juvenile" means an individual who is:

(A) From birth to eighteen (18) years of age, whether married or single; or

(B) Adjudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of the circuit court prior to eighteen (18) years of age and for whom the juvenile division of the circuit court retains jurisdiction;

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

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

(35) "Miranda rights" means the requirement set out in *Miranda v. Arizona*, 384 U.S. 436 (1966), for law enforcement officers to clearly inform an accused, including a juvenile taken into custody for a delinquent act or a criminal offense, that the juvenile has the right to remain silent, that anything the juvenile says will be used against him or her in court, that the juvenile has the right to consult with a lawyer and to have the lawyer with him or her during interrogation, and that, if the juvenile is indigent, a lawyer will be appointed to represent him or her;

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

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

(ii) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, excluding failure to follow an

individualized education program, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

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

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile, including failure to provide a shelter that does not pose a risk to the health or safety of the juvenile;

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

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

(vii) Failure to appropriately supervise the juvenile that results in the juvenile's being left alone at an inappropriate age or in inappropriate circumstances, creating a dangerous situation or a situation that puts the juvenile at risk of harm.

(B)(i) "Neglect" shall also include the causing of a newborn child's being born with:

(a) An illegal substance present in the newborn's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the newborn; or

(b) A health problem as a result of the pregnant mother's use before birth of an illegal substance.

(ii) For the purposes of this subdivision (36)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances or the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (36)(B)(i)(b) of this section;

(37)(A) "Notice of hearing" means a notice that describes the nature of the hearing, the time, date, and place of hearing, the right to be present, heard, and represented by counsel, and instructions on how to apply to the court for appointment of counsel if indigent, or a uniform notice as developed and prescribed by the Arkansas Supreme Court.

(B) The notice of hearing shall be served in the manner provided for service under the Arkansas Rules of Civil Procedure;

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

(39)(A) "Out-of-home placement" means:

(i) Placement in a home or facility other than placement in a youth services center, a detention facility, or the home of a parent or guardian of the juvenile; or

(ii) Placement in the home of an individual other than a parent or guardian, not including any placement when the court has ordered that the placement be made permanent and ordered that no further reunification services or six-month reviews are required.

(B) "Out-of-home placement" shall not include placement in a youth services center or detention facility as a result of a finding of delinquency;

(40) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has signed an acknowledgment of paternity pursuant to § 9-10-120 or who has been found by a court of competent jurisdiction to be the biological father of the juvenile;

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

(42) "Pornography" means:

(A) Pictures, movies, and videos lacking serious literary, artistic, political, or scientific value that when taken as a whole and applying contemporary community standards would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(43)(A) "Predisposition report" means a report concerning the juvenile, the family of the juvenile, all possible disposition alternatives, the location of the school in which the juvenile is or was last enrolled, whether the juvenile has been tested for or has been found to have any disability, the name of the juvenile's attorney, and, if appointed by the court, the date of the appointment, any participation by the juvenile or his or her family in counseling services previously or currently being provided in conjunction with adjudication of the juvenile, and any other matters relevant to the efforts to provide treatment to the juvenile or the need for treatment of the juvenile or the family.

(B) The predisposition report shall include a home study of any out-of-home placement that may be part of the disposition;

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

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

(46)(A)(i) "Reasonable efforts" means efforts to preserve the family prior to the placement of a child in foster care to prevent the need for removing the child from his or her home and efforts to reunify a family made after a child is placed out of home to make it possible for him or her to safely return home.

(ii) Reasonable efforts shall also be made to obtain permanency for a child who has been in an out-of-home placement for more than twelve (12) months or for fifteen (15) of the previous twenty-two (22) months.

(iii) In determining whether or not to remove a child from a home or return a child back to a home, the child's health and safety shall be the paramount concern.

(iv) The department or other appropriate agency shall exercise reasonable diligence and care to utilize all available services related to meeting the needs of the juvenile and the family.

(B) The juvenile division of circuit court may deem that reasonable efforts have been made when the court has found that the first contact by the department occurred during an emergency in which the child could not safely remain at home, even with reasonable services being provided.

(C) Reasonable efforts to reunite a child with his or her parent or parents shall not be required in all cases. Specifically, reunification shall not be required if a court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:

- (i) Subjected the child to aggravated circumstances;
- (ii) Committed murder of any child;
- (iii) Committed voluntary manslaughter of any child;
- (iv) Aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter;
- (v) Committed a felony battery or assault that results in serious bodily injury to any child;
- (vi) Had the parental rights involuntarily terminated as to a sibling of the child; or
- (vii) Abandoned an infant as defined in subdivision (1) of this section.

(D) Reasonable efforts to place a child for adoption or with a legal guardian or permanent custodian may be made concurrently with reasonable efforts to reunite a child with his or her family;

(47) "Residence" means:

- (A) The place where the juvenile is domiciled; or
- (B) The permanent place of abode where the juvenile spends an aggregate of more than six (6) months of the year;

(48)(A) "Restitution" means actual economic loss sustained by an individual or entity as a proximate result of the delinquent acts of a juvenile.

(B) Such economic loss shall include, but not be limited to, medical expenses, funeral expenses, expenses incurred for counseling services, lost wages, and expenses for repair or replacement of property;

(49) "Sexual abuse" means:

- (A) By a person ten (10) years of age or older to a person younger than eighteen (18) years of age:
 - (i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;
 - (ii) Attempted sexual intercourse or deviant sexual activity or sexual contact by forcible compulsion;
 - (iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live human sexual activity;

(B) By a person eighteen (18) years of age or older to a person who is younger than sixteen (16) years of age and is not his or her spouse:

(i) Sexual intercourse, deviant sexual activity, or sexual contact; or

(ii) Attempted sexual intercourse, deviant sexual activity, or sexual contact;

(C) By a sibling or caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact; or

(ii) Attempted sexual intercourse, deviant sexual activity, or sexual contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

(i) Forcing or encouraging the watching of pornography; or

(ii) Forcing, permitting, or encouraging the watching of live sexual activity; or

(E) By a person younger than ten (10) years of age to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion; or

(ii) Attempted sexual intercourse, deviant sexual activity, or sexual contact by forcible compulsion;

(50)(A) "Sexual contact" means any act of sexual gratification involving:

(i) Touching, directly or through clothing, of the sex organs, buttocks, or anus of a juvenile or the breast of a female juvenile;

(ii) Encouraging the juvenile to touch the offender in a sexual manner; or

(iii) Requesting the offender to touch the juvenile in a sexual manner.

(B) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the investigation of the specific complaint of child maltreatment.

(C) Nothing in this section shall permit normal, affectionate hugging to be construed as sexual contact;

(51) "Sexual exploitation" includes:

(A) Allowing, permitting, or encouraging participation or depiction of the juvenile in:

- (i) Prostitution;
- (ii) Obscene photographing; or
- (iii) Obscene filming; or

(B) Obscenely depicting, obscenely posing, or obscenely posturing a juvenile for any use or purpose;

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

(53) "Trial placement" means that custody of the juvenile remains with the department, but the juvenile is returned to the home of a parent for a period not to exceed thirty (30) days;

(54) "UCCJA" means the Uniform Child Custody Jurisdiction Act, § 9-13-201 et seq. [repealed];

(55) "UCCJEA" means the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(56) "UIFSA" means the Uniform Interstate Family Support Act, § 9-17-101 et seq.;

(57) "Victim" means any person or entity entitled to restitution as defined in subdivision (48) of this section as the result of a delinquent act committed by a juvenile adjudicated delinquent;

(58) "Voluntary relinquishment of custody" means a written agreement between a parent and the department for the temporary placement of a child in an out-of-home placement pursuant to § 9-27-340 [repealed];

(59) "Youth services center" means a youth services facility operated by the state or a contract provider; and

(60) "Youth services facility" means a facility operated by the state or its designee for the care of juveniles who have been adjudicated delinquent or convicted of a crime and who require secure custody in either a physically restrictive facility or a staff-secured facility operated so that a juvenile may not leave the facility unsupervised or without supervision.

9-27-304. Provisions supplemental.

(a) Unless this subchapter otherwise provides, nothing in this subchapter shall be construed to be in conflict with, to repeal, or to prevent proceedings under any act or statute of this state which may otherwise define any specific act of any person as a crime or misdemeanor, which act might also constitute contributing to the delinquency or dependency of a juvenile, or to prevent or to interfere with proceedings under any such acts.

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

9-27-305. Applicability.

Any juvenile within this state may be subjected to the care, custody, control, and jurisdiction of the circuit court.

9-27-306. Jurisdiction.

(a)(1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including but not limited to:

(A)(i) Proceedings in which a juvenile is alleged to be delinquent as defined in this subchapter, including juveniles ten (10) to eighteen (18) years of age.

(ii) However, the court may retain jurisdiction of a juvenile delinquent up to twenty-one (21) years of age if the juvenile was adjudicated delinquent prior to eighteen (18) years of age;

(B) Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18) years, of age, except for the following:

(i)(a) A juvenile who has been adjudicated dependent or dependent-neglected prior to the age of eighteen (18) years of age may request the court to continue jurisdiction until twenty-one (21) years of age so long as the juvenile is engaged in a course of instruction or treatment.

(b) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment.

(c) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from instruction or treatment; or

(ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court's jurisdiction to receive independent living services if the juvenile:

(a) Was adjudicated dependent or dependent-neglected;

(b) Was in foster care at eighteen (18) years of age; and

(c) Left foster care but decides to return prior to twenty-one (21) years of age to benefit from independent living services;

(C) Proceedings in which emergency custody or a seventy-two-hour hold has been taken on a juvenile pursuant to § 9-27-313 or § 12-12-516;

(D) Proceedings in which a family is alleged to be in need of services as defined by this subchapter, which shall include juveniles from birth to eighteen (18) years of age, except for the following:

(i) A juvenile whose family has been adjudicated as a family in need of services and who is in foster care before eighteen (18) years of age may request that the court continue jurisdiction until twenty-one (21) years of age if the juvenile is engaged in a course of instruction or treatment to receive independent living services;

(ii) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment to receive independent living services; or

(iii) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from the instruction or treatment to receive independent living services;

(E) Proceedings for termination of parental rights for a juvenile under this subchapter;

(F) Proceedings in which custody of a juvenile is transferred to the Department of Health and Human Services;

(G) Proceedings for which a juvenile is alleged to be an extended juvenile jurisdiction offender pursuant to § 9-27-501 et seq.;

(H) Proceedings for which a juvenile is transferred to the juvenile division from the criminal division pursuant to § 9-27-318; and

(I) Custodial placement proceedings filed by the department.

(2) In no event shall a juvenile remain under the court's jurisdiction past twenty-one (21) years of age.

(3)(A) When the department exercises custody of a juvenile pursuant to § 12-12-516 and a dependency-neglect petition is filed by the department concerning that juvenile, any party to that petition may file a motion to transfer any other legal proceeding concerning the juvenile to the court hearing the dependency-neglect petition.

(B) Upon the motion's being filed, the other legal proceeding shall be transferred to the court hearing the dependency-neglect case.

(4) The court shall retain jurisdiction to issue orders of adoption, interlocutory or final, if a juvenile is placed outside the State of Arkansas.

(b) The assignment of cases to the juvenile division of circuit court shall be as described by the Supreme Court in Administrative Order Number 14, originally issued April 6, 2001.

(c)(1) The circuit court shall have concurrent jurisdiction with the district court over juvenile curfew violations.

(2) For juvenile curfew violations, the prosecutor may file a family in need of services petition in circuit court or a citation in district court.

(d) The circuit court shall have jurisdiction to hear proceedings commenced in any court of this state or court of comparable jurisdiction of another state which are transferred to it pursuant to the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

9-27-307. Venue.

(a)(1)(A) Except as set forth in subdivisions (a)(2)-(4) of this section, a proceeding under this subchapter shall be commenced in the circuit court of the county in which the juvenile resides.

(B)(i) No dependency-neglect proceeding shall be dismissed if a proceeding is filed in the incorrect county.

(ii) If the proceeding is filed in the incorrect county, then the dependency-neglect proceeding shall be transferred to the proper county upon discovery of the proper county of residence of the juvenile.

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

(A) Nonsupport after establishment of paternity;

(B) Delinquency; or

(C) Dependency-neglect.

(3) Proceedings under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., shall be commenced in the court provided by that subchapter.

(4) Adoptions and guardianships may be filed in a juvenile court that has previously asserted continuing jurisdiction of the juvenile.

(5) Juvenile proceedings shall comply with § 16-13-210, except detention hearings under § 9-27-326 and probable cause hearings under § 9-27-315.

(b)(1) Following adjudication, the court may on its own motion or on motion of any party transfer the case to the county of the juvenile's residence when the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., do not apply.

(2) The court shall not transfer any case in which a petition to terminate parental rights has been filed unless the court has taken final action on the petition.

9-27-308. Personnel - Duties.

(a) Intake Officers.

(1) The judge or judges of the circuit court designated to hear juvenile cases in their district plan under Arkansas Supreme Court Administrative Order Number 14, originally issued April 6, 2001, shall designate no fewer than one (1) person in his or her judicial district as intake officer for the court.

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

- (i) To receive and investigate complaints and charges that a juvenile is delinquent or dependent-neglected, or that a family is in need of services;
- (ii) To make appropriate referrals to other public or private agencies of the community if their assistance appears to be needed or desired; and
- (iii) To perform all other functions assigned to him or her by this subchapter, by rules promulgated pursuant thereto, or by order of the court.

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

(3) If that the intake officer has reasonable cause to suspect that a juvenile has been subjected to child maltreatment as defined at § 12-12-503(6), the intake officer shall immediately notify the central intake of the Department of Human Services.

(b) Probation Officers.

(1) The judge or judges of the circuit court designated to hear juvenile cases in their district plan under Arkansas Supreme Court Administrative Order Number 14, originally issued April 6, 2001, shall designate no fewer than one (1) person in his or her judicial district as probation officer.

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

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

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

(C) To perform all other appropriate functions assigned to him or her by this subchapter or the rules promulgated pursuant thereto or by order of the court;

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

9-27-309. Confidentiality of records.

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

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

(2) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be made available to prosecuting attorneys for use at sentencing if the juvenile is subsequently tried as an adult or to determine if the juvenile should be tried as an adult; and

(3) Records of delinquency adjudications for a juvenile adjudicated delinquent for any felony or a Class A misdemeanor wherein violence or a weapon was involved shall be made available to the Arkansas Crime Information Center.

(b)(1)(A) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be kept for ten (10) years after the last adjudication of delinquency or the date of a plea of guilty or nolo contendere or a finding of guilt as an adult.

(B) Thereafter they may be expunged.

(2) The court may expunge other juvenile records at any time and shall expunge all the records of a juvenile upon his or her twenty-first birthday, in other types of delinquency, dependency-neglect, or families in need of services cases.

(3) For purposes of this section, "expunge" means to destroy.

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

(d)(1) If an adult criminal sentence is imposed on an extended juvenile jurisdiction offender, the record of that case shall be considered an adult criminal record.

(2)(A) The court shall enter an order transferring the juvenile record to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a criminal docket number and shall maintain the file as if the case had originated as a criminal case.

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

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

(1) The victim or his or her next of kin; or

(2) The school superintendent of the school district in which the juvenile is currently enrolled.

(g) When a juvenile is adjudicated delinquent for an offense for which he or she could have been charged as an adult or for unlawful possession of a handgun, § 5-73-119, the prosecuting attorney shall notify the school superintendent of the school district in which the juvenile is currently enrolled.

(h) Information provided pursuant to subsections (f) and (g) of this section shall not be released in violation of any state or federal law protecting the privacy of the juvenile.

(i)(1) If a juvenile is arrested for unlawful possession of a firearm under § 5-73-119, an offense involving a deadly weapon under § 5-1-102, or battery in the first degree under § 5-13-201, the arresting agency shall as soon as practical and with all reasonable haste cause written notification of the arrest to be given to the superintendent of the school district in which the juvenile is currently enrolled.

(2)(A) The superintendent shall then notify the principal and the resource officer of the school in which the juvenile is currently enrolled.

(B) The arrest information shall be treated as confidential information and shall not be disclosed by the superintendent to any person other than the principal and resource officer, who shall also maintain the information as confidential.

(3) The arrest information shall be used by the school only for the limited purpose of obtaining services for the juvenile or to ensure school safety.

9-27-310. Commencement of proceedings.

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

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

(2) Only a law enforcement officer, prosecuting attorney, or the Department of Health and Human Services or its designee may file a dependency-neglect petition seeking ex parte emergency relief.

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

(A) Any adult; or

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

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

(A) The biological mother;

(B) A putative father;

(C) A juvenile; or

(D) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(c) Concurrent with filing, a copy of any petition that requests that the department take custody or provide family services shall be mailed to the Director of the Department of Health and Human Services and to the attorney of the local Office of Chief Counsel of the Department of Health and Human Services by the petitioner.

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

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

(e) No fees, including, but not limited to, fees for filings, copying, or faxing, including petitions for adoption and guardianships, summons, or subpoenas shall be charged or collected by the clerk or sheriff's office in cases brought in the circuit court

under this subchapter by a governmental entity or nonprofit corporation, including, but not limited to, the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the department.

(f) If the clerk's office has a facsimile machine, the clerk, in cases commenced in the circuit court under this subchapter by a governmental entity or nonprofit corporation, including, but not limited to, the prosecuting attorney, an attorney ad litem appointed in a dependency-neglect case, or the Department of Health and Human Services shall accept facsimile transmissions of any papers filed under this subchapter as described in Rule 5 of the Arkansas Rules of Civil Procedure.

9-27-311. Required contents of petition.

(a) The petition shall set forth the following:

(1)(A) The name, address, gender, social security number, and date of birth of each juvenile subject of the petition.

(B) A single petition for dependency-neglect or family in need of services shall be filed which includes all siblings who are subjects of the petition;

(2) The name and address of each of the parents or the surviving parent of the juvenile or juveniles;

(3) The name and address of the person, agency, or institution having custody of the juvenile or juveniles;

(4) The name and address of any other person, agency, or institution having a claim to custody or guardianship of the juvenile or juveniles;

(5) In a proceeding to establish paternity, the name and address of both the putative father and the presumed legal father, if any; and

(6) In a dependency-neglect proceeding, the name and address of a putative parent, if any.

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

(c) All persons named in subdivisions (a)(1)-(3) and (6) of this section shall be made defendants and served as required by this subchapter, except that all actions filed pursuant to § 9-27-310(b)(4)(D) shall be required to name as defendants only the mother, the putative father, and the presumed legal father, if any.

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

(A) The facts which, if proven, would bring the family or juvenile within the court's jurisdiction;

(B) The section of this subchapter upon which jurisdiction for the petition is based;

(C) The relief requested by the petitioner; and

(D) If a petition for delinquency proceedings, any and all sections of the criminal laws allegedly violated.

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

(B) A supporting affidavit of facts shall not be required for delinquency, paternity, or termination of parental rights petitions.

9-27-312. Notification to defendants.

All juvenile defendants age ten (10) years and above, any persons having care and control of the juveniles and all adult defendants shall be served with a copy of the petition and either a notice of hearing or order to appear in the manner provided by the Arkansas Rules of Civil Procedure.

9-27-313. Taking into custody.

(a)(1) A juvenile only may be taken into custody without a warrant before service upon him or her of a petition and notice of hearing or order to appear as set out under § 9-27-312:

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

(2) When any juvenile is taken into custody without a warrant, the officer taking the juvenile into custody shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(b)(1) When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately take the juvenile before the judge of the division of circuit court out of which the warrant was issued and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(2) The judge shall decide whether the juvenile should be tried as a delinquent or a criminal defendant pursuant to § 9-27-318.

(c) When a law enforcement officer, a representative of the department, or other authorized person takes custody of a juvenile alleged to be dependent-neglected or pursuant to the Arkansas Child Maltreatment Act, § 12-12-501 et seq., he or she shall:

(1)(A) Notify the department and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(B) The notification to the parents shall be in writing and shall include a notice:

(i) That the juvenile has been taken into foster care;
(ii) Of the name, location, and phone number of the person at the department whom they can contact about the juvenile;
(iii) Of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter;
(iv) Of the location and telephone number of the court; and
(v) Of the procedure for obtaining a hearing; or

(2) Return the juvenile to his or her home.

(d)(1)(A) A law enforcement officer shall take a juvenile to detention, immediately make every effort to notify the custodial parent, guardian, or custodian of

the juvenile's location, and notify the juvenile intake officer within twenty-four (24) hours so that a petition may be filed if a juvenile is taken into custody for:

- (i) Unlawful possession of a handgun, § 5-73-119(a)(1)(A);
- (ii) Possession of a handgun on school property, § 5-73-119(a)(2)(A);
- (iii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
- (iv) Any felony committed while armed with a firearm; or
- (v) Criminal use of prohibited weapons, § 5-73-104.

(B) The authority of a juvenile intake officer to make a detention decision pursuant to § 9-27-322 shall not apply when a juvenile is detained pursuant to subdivision (d)(1)(A) of this section.

(C) A detention hearing shall be held by the court pursuant to § 9-27-326 within seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day.

(2) If a juvenile is taken into custody for an act that would be a felony if committed by an adult, other than a felony listed in subdivision (d)(1)(A) of this section, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

- (A)(i) Take the juvenile to detention.
- (ii) The intake officer shall be notified immediately to make a detention decision pursuant to § 9-27-322 within twenty-four (24) hours of the time the juvenile was first taken into custody, and the prosecuting attorney shall be notified within twenty-four (24) hours.
- (iii) If the juvenile remains in detention, a detention hearing shall be held no later than seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day;

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

(C) Return the juvenile to his or her home.

(3) If a juvenile is taken into custody for an act that would be a misdemeanor if committed by an adult, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A) Notify the juvenile intake officer, who shall make a detention decision pursuant to § 9-27-322;

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

(C) Return the juvenile to his or her home.

(4)(A) In all instances when a juvenile may be detained, the juvenile may be held in a juvenile detention facility or a seventy-two-hour holdover if a bed is available in the facility or holdover.

(B) If not, an adult jail or lock-up may be used, as provided by § 9-27-336.

(5) In all instances when a juvenile may be detained, the intake officer shall immediately make every effort possible to notify the juvenile's custodial parent, guardian, or custodian.

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

(1)(A)(i) Take the juvenile to shelter care, notify the department and the intake officer of the court, and immediately make every possible effort to notify the custodial parent, guardian, or custodian of the juvenile's location.

(ii) The notification to parents shall be in writing and shall include a notice of the location of the juvenile, of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter, of the location and telephone number of the court, and of the procedure for obtaining a hearing.

(B)(i) In cases when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or lives out of state and the juvenile has been absent from his or her home or domicile for more than twenty-four (24) hours, the juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(iii) A juvenile held under this subdivision (e)(1)(B) must be separated from detained juveniles charged or held for delinquency.

(iv) A juvenile may not be held under this subdivision (e)(1)(B) for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out of state; or

(2) Return the juvenile to his or her home.

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

9-27-314. Emergency orders.

(a)(1) In any case in which there is probable cause to believe that immediate emergency custody is necessary to protect the health or physical well-being of the juvenile from immediate danger or to prevent the juvenile's removal from the state, the circuit court shall issue an ex parte order for emergency custody to remove the juvenile

from the custody of the parent, guardian, or custodian and shall determine the appropriate plan for placement of the juvenile.

(2) In any case in which there is probable cause to believe that an emergency order is necessary to protect the juvenile from severe maltreatment, as defined in § 12-12-503(16), the court shall issue an ex parte order to provide specific appropriate safeguards for the protection of the juvenile if the alleged offender has a legal right to custody or visitation with the juvenile or a property right allowing access to the home where the juvenile resides.

(3) In any case in which there is probable cause to believe that a juvenile is a dependent juvenile as defined in this subchapter, the court shall issue an ex parte order for emergency custody placing custody of the dependent juvenile with the Department of Health and Human Services.

(b) The emergency order shall include:

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

(2) Their right to be represented by counsel;

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

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

(c)(1) Immediate notice of the emergency order shall be given by the petitioner or by the court to the parents, guardians, or custodian and the juvenile.

(2) All defendants shall be served according to the Arkansas Rules of Civil Procedure or as otherwise provided by the court.

9-27-315. Probable cause hearing.

(a)(1)(A) Following the issuance of an emergency order, the circuit court shall hold a probable cause hearing within five (5) business days of the issuance of the ex parte order to determine if probable cause to issue the emergency order continues to exist.

(B)(i) The hearing shall be limited to the purpose of determining whether probable cause existed to protect the juvenile and to determine whether probable cause still exists to protect the juvenile.

(ii) However, the issues as to custody and delivery of services may be considered by the court and appropriate orders for that entered by the court.

(2)(A) All other issues, with the exception of custody and services, shall be reserved for hearing by the court at the adjudication hearing, which shall be a separate hearing conducted subsequent to the probable cause hearing.

(B) By agreement of the parties and with the court's approval, the adjudication hearing may be conducted at any time after the probable cause hearing, subject to § 9-27-327(a)(1)(B).

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

(c) If the court determines that the juvenile can safely be returned to his or her home pending adjudication and it is in the best interest of the juvenile, the court shall so order.

(d)(1) At the probable cause hearing, the court shall set the time and date of the adjudication hearing.

(2) If the juvenile has already been adjudicated a dependent juvenile or a dependent-neglected juvenile in the same case in which the motion for change of custody has been filed and the case has not been dismissed or closed, a subsequent adjudication shall not be necessary if the ground for the removal is the same type as the ground already adjudicated.

(3) A written order shall be filed by the court or by a party or party's attorney, as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(e) All probable cause hearings are miscellaneous proceedings as defined in Rule 1101(b)(3) of the Arkansas Rules of Evidence, and the rules of evidence, including, but not limited to, the hearsay rule, Rule 802 of the Arkansas Rules of Evidence, are not applicable.

9-27-316. Right to counsel.

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

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

(b)(1)(A) The inquiry concerning the ability of the juvenile to retain counsel shall include a consideration of the juvenile's financial resources and the financial resources of his or her family.

(B) However, the failure of the juvenile's family to retain counsel for the juvenile shall not deprive the juvenile of the right to appointed counsel if required under this section.

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

(3) All moneys collected by the circuit clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the juvenile representation fund.

(4) The court may direct that money from this fund be used in providing counsel for juveniles under this section in delinquency or family in need of services cases and indigent parents or guardians in dependency-neglect cases as provided by subsection (h) of this section.

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

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

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

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

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

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

(3) Each attorney ad litem shall:

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

(B) Attend all hearings and participate in all telephone conferences with the court unless excused by the court; and

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

(4) An attorney ad litem shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and records of the Department of Health and Human Services to the extent permitted by federal law.

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

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

(g)(1) The court may appoint a volunteer court-appointed special advocate from a program that shall meet all state and national court-appointed special advocate standards to advocate for the best interest of juveniles in dependency-neglect proceedings.

(2) No court-appointed special advocate shall be assigned a case before:

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

(B) Being approved by the local court-appointed special advocate program, which will include appropriate criminal background and child abuse registry checks.

(3) Each court-appointed special advocate shall:

(A)(i) Investigate the case to which he or she is assigned to provide independent factual information to the court through the attorney ad litem, court testimony, or court reports.

(ii) The court-appointed special advocate may testify if called as a witness.

(iii) When the court-appointed special advocate prepares a written report for the court, the advocate shall provide all parties or the attorney of record with a copy of the written report seven (7) business days before the relevant hearing; and

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

(4) Upon presentation of an order of appointment, a court-appointed special advocate shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and department records to the extent permitted by federal law.

(5) A court-appointed special advocate is not a party to the case to which he or she is assigned and shall not call witnesses or examine witnesses.

(6) A court-appointed special advocate shall not be liable for damages for personal injury or property damage pursuant to the Arkansas Volunteer Immunity Act, § 16-6-101 et seq.

(7) Except as provided in this subsection, a court-appointed special advocate shall not disclose any confidential information or reports to anyone except as ordered by the court or otherwise provided by law.

(h)(1)(A) In all proceedings to remove custody from a parent or guardian or to terminate parental rights, the parent or guardian shall be advised in the dependency-neglect petition or the ex parte emergency order and the first appearance before the court of the right to be represented by counsel at all stages of the court proceedings and the right to appointed counsel if indigent.

(B) A court may appoint counsel for the parent or guardian from whom custody was removed in the ex parte emergency order.

(2)(A) Upon request by a parent or guardian from whom custody was removed and a determination by the court of indigence, the court shall appoint counsel for the parent or guardian from whom custody was removed in all circuit court proceedings to remove custody or terminate parental rights of a juvenile.

(B) If the court terminates parental rights, the court shall redetermine if the parent or guardian is indigent and entitled to appointed counsel on appeal only upon request by the parent or guardian and after a hearing to receive evidence, including a new affidavit of indigence.

(C) No payment of attorney's fees for a court proceeding for indigent parents or guardians shall be authorized unless an affidavit of indigence is completed and filed with the clerk of the court.

(D) No payment of attorney's fees for appeals for indigent parents or guardians shall be authorized unless a new affidavit of indigence is completed and filed with the clerk of the court and a redetermination of indigence hearing is held.

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

(B)(i) All moneys collected by the clerk under this subsection shall be retained by the clerk and deposited into a special fund to be known as the juvenile representation fund.

(ii) The court may direct that money from this fund be used in providing counsel for indigent parents or guardians at the trial level in dependency-neglect proceedings.

(iii) Upon a determination of indigency and a finding by the court that the juvenile representation fund does not have sufficient funds to pay reasonable attorney's fees and expenses incurred at the trial court level and state funds have been exhausted, the court may order the county to pay these reasonable fees and expenses until the state provides funding for counsel.

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

(B) When the first appearance before the court is an emergency hearing to remove custody pursuant to § 9-27-315, parents shall be notified of the right to appointed counsel if indigent in the emergency ex parte order.

(5) The parent's or guardian's attorney shall be provided access to all records relevant to the juvenile's case, including, but not limited to, school records, medical records, all court records relating to the juvenile and his or her family, and department records to which the parent or guardian is entitled under state and federal law.

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

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

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

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

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

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

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

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

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

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

- (1) The juvenile's physical, mental, and emotional maturity;
- (2) Whether the juvenile understood the consequences of the waiver;
- (3) In cases in which the parent, guardian, or custodian agreed with the juvenile's waiver of the right to counsel, whether the parent, guardian, or custodian understood the consequences of the waiver;
- (4) Whether the juvenile and his or her parent, guardian, or custodian were informed of the alleged delinquent act;
- (5) Whether the waiver of the right to counsel was the result of any coercion, force, or inducement;
- (6) Whether the juvenile and his or her parent, guardian, or custodian had been advised of the juvenile's right to remain silent and to the appointment of counsel and had waived such rights.

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

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

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

(g) No waiver of the right to counsel shall be accepted when a juvenile is in the custody of the Department of Human Services, including the Division of Youth Services.

(h)(1) All waivers of the right to counsel, except those made in the presence of the court pursuant to subsection (a) of this section, shall be in writing and signed by the juvenile.

(2)(A) When a custodial parent, guardian, or custodian cannot be located or is located and refuses to go to the place where the juvenile is being held, counsel shall be appointed for the juvenile.

(B) Procedures shall then be the same as if the juvenile had invoked counsel.

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

(B) After having identified himself or herself, the officer must advise the juvenile of the purpose of the stopping and may then demand of the juvenile his or her name, address, and any information the juvenile may have regarding the offense.

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

(2)(A) A law enforcement officer who takes a juvenile into custody for a delinquent or criminal offense shall advise the juvenile of his or her Miranda rights in the juvenile's own language.

(B) A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense until the law enforcement officer has advised the juvenile of his or her rights pursuant to subdivision (i)(2)(C) of this section in the juvenile's own language.

(C) A law enforcement officer shall not question a juvenile who has been taken into custody for a delinquent act or criminal offense if the juvenile has indicated in any manner that he or she:

- (i) Does not wish to be questioned;
- (ii) Wishes to speak with his or her custodial parent, guardian, or custodian or to have that person present; or
- (iii) Wishes to consult counsel before submitting to any questioning.

(D) Any waiver of the right to counsel by a juvenile shall conform to subsection (h) of this section.

9-27-318. Filing and transfer to the criminal division of circuit court.

(a) The state may proceed with a case as a delinquency only when the case involves a juvenile:

(1) Fifteen (15) years of age or younger when the alleged delinquent act occurred, except as provided by subdivision (c)(2) of this section; or

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

(b) The state may file a motion in the juvenile division of circuit court to transfer a case to the criminal division of circuit court or to designate a juvenile as an extended juvenile jurisdiction offender when a case involves a juvenile:

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

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

(B) Battery in the second degree in violation of § 5-13-202(a)(2),

(3), or (4);

(C) Possession of a handgun on school property, § 5-73-

119(a)(2)(A);

(D) Aggravated assault, § 5-13-204;

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

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

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

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

(I) First degree escape, § 5-54-110;

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

(K) A felony attempt, solicitation, or conspiracy to commit any of

the following offenses:

(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;

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

(3) At least fourteen (14) years old when he or she 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 felonies if they had been committed by an adult.

(c) A prosecuting attorney may charge a juvenile in either the juvenile or criminal division of circuit court when a case involves a juvenile:

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

(2) Fourteen (14) or fifteen (15) years old when he or she 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; or
- (G) Terroristic act, § 5-13-310.

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

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

(f) The court shall conduct a transfer hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days from the date of the motion to transfer the case.

(g) In the transfer hearing, the court shall consider all of the following factors:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court;

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

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

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

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

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

(7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday;

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

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

(10) Any other factors deemed relevant by the judge.

(h)(1) The court shall make written findings on all of the factors set forth in subsection (g) of this section.

(2) Upon a finding by clear and convincing evidence that a case should be transferred to another division of circuit court, the judge shall enter an order to that effect.

(i) Upon a finding by the criminal division of circuit court that a juvenile fourteen (14) through seventeen (17) years of age and charged with the crimes in subdivision (c)(2) of this section should be transferred to the juvenile division of circuit court, the criminal division of circuit court may enter an order to transfer as an extended juvenile jurisdiction case.

(j) If a juvenile age fourteen (14) or fifteen (15) is found guilty in the criminal division of circuit court for an offense other than an offense listed in subsection (b) or subdivision (c)(2) of this section, the judge shall enter a juvenile delinquency disposition under § 9-27-330.

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

(l) Any party may appeal from a transfer order.

(m) The circuit court may conduct a transfer hearing and an extended juvenile jurisdiction hearing under § 9-27-503 at the same time.

9-27-319. Double jeopardy.

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

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

9-27-320. Fingerprinting or photographing.

(a)(1) When a juvenile is arrested for any offense that if committed by an adult would constitute a felony or a Class A misdemeanor in which violence or the use of a weapon was involved, the juvenile shall be photographed and fingerprinted by the law enforcement agency.

(2) In the case of an allegation of delinquency, a juvenile shall not be photographed or fingerprinted under this subchapter by any law enforcement agency unless he or she has been taken into custody for the commission of an offense that, if committed by an adult, would constitute a felony or a Class A misdemeanor in which violence or the use of a weapon was involved.

(b)(1) Copies of a juvenile's fingerprints and photographs shall be made available only to other law enforcement agencies, the Arkansas Crime Information Center, prosecuting attorneys, and the juvenile division of circuit court.

(2) Photographs and fingerprints of juveniles adjudicated delinquent for offenses for which they could have been tried as adults shall be made available to prosecuting attorneys and circuit courts for use at sentencing in subsequent adult criminal proceedings against those same individuals.

(3)(A) When a juvenile departs without authorization from a youth services center or other facility operated by the Division of Youth Services for the care of delinquent juveniles, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the Director of the Division of Youth Services of the Department of Human Resources shall release to the general public the name, age, and description of the juvenile and any other pertinent information the Director of the Division of Youth Services deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(B) When a juvenile departs without authorization from the State Hospital, if at the time of departure the juvenile is committed as a result of an acquittal on the grounds of mental disease or defect for an offense for which the juvenile could have been tried as an adult, the Director of the Division of Mental Health Services of the Department of Human Services shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

(C) When a juvenile departs without authorization from a local juvenile detention facility, if at the time of departure the juvenile is committed or detained for an offense for which the juvenile could have been tried as an adult, the director of the juvenile detention facility shall release to the general public the name, age, and description of the juvenile and any other pertinent information the director deems necessary to aid in the apprehension of the juvenile and to safeguard the public welfare.

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

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

9-27-321. Statements not admissible.

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

9-27-322. Release from custody.

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

- (1) Unconditionally release the juvenile to the juvenile's parent, guardian, or custodian; or
- (2) Release the juvenile to the juvenile's parent, guardian, or custodian upon the written promise of the parent, guardian, or custodian to bring the juvenile before the court when summoned; or
- (3) Detain the juvenile pending a detention hearing before the circuit court.

(b) Criteria for Release by Intake Officer.

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

- (A) Ties to the community, including:
 - (i) Place and length of residence;
 - (ii) School attendance;
 - (iii) Present and past employment;
 - (iv) Family relationships;
 - (v) References; and
 - (B) Nature of the alleged offense, including:
 - (i) Whether the offense would constitute a felony or misdemeanor;
 - (ii) The use of force or violence;
 - (iii) Prior juvenile or criminal record; and
 - (iv) Any history of failure to appear for court appearances.
- (2) The intake officer may determine that there is no less restrictive alternative to detention if detention is necessary:
- (A) To prevent imminent bodily harm to the juvenile or to another; or
 - (B) To prevent flight when the juvenile is a fugitive or escapee from another jurisdiction.

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

9-27-323. Diversion - Conditions - Agreement - Completion.

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

(b) If the intake officer determines that a diversion of a family in need of services case is in the best interest of the juvenile and the community, the officer with the consent of the petitioner, juvenile, and his or her parent, guardian, or custodian may attempt to make a satisfactory diversion of a case.

(c) In addition to the requirements of subsections (a) and (b) of this section, a diversion of a case is subject to the following conditions:

(1) The juvenile has admitted his or her involvement in:

(A) A delinquent act for a delinquency diversion; or

(B) A family in need of services act for a family in need of services diversion;

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

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

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

(5) All other terms of a diversion agreement shall not exceed nine (9) months;

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

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

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

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

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

(D) Be signed by all parties to the agreement and by the prosecuting attorney if it is a delinquency case and the offense would constitute a felony if committed by an adult or a family in need of services case, pursuant to § 6-18-222.

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

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

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

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

(3) Participation in a court-approved teen court.

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

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

(g) The diversion agreement may be terminated, and the prosecuting attorney in a delinquency case or the petitioner in a family in need of services case may file a petition if at any time during the agreement period:

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

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

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

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

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

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

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

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

(i)(1) A juvenile intake or probation officer may charge a diversion fee only after review of an affidavit of financial means and a determination of the juvenile's or the juvenile's parent's, guardian's, or custodian's ability to pay the fee.

(2) The diversion fee shall not exceed twenty dollars (\$20.00) per month to the juvenile division of circuit court.

(3) The court may direct that the fees be collected by the juvenile officer, sheriff, or court clerk for the county in which the fees are charged.

(4) The officer designated by the court to collect diversion fees shall maintain receipts and account for all incoming fees and shall deposit the fees at least weekly in the county treasury of the county where the fees are collected and in which diversion services are provided.

(5) The diversion fees shall be deposited in the account with the juvenile service fees under § 16-13-326.

(j)(1) In judicial districts having more than one (1) county, the judge may designate the treasurer of one (1) of the counties in the district as the depository of all juvenile fees collected in the district.

(2) The treasurer so designated by the court shall maintain a separate account of the juvenile fees collected and expended in each county in the district.

(3) Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year.

(4) The funds derived from the collection of diversion fees shall be used by agreement of the judge or judges of the circuit court designated to hear juvenile cases in their district plan pursuant to Supreme Court Administrative Order Number 14, originally issued April 6, 2001, and the quorum court of the county to provide services and supplies to juveniles at the discretion of the juvenile division of circuit court.

9-27-324. Preliminary investigation.

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

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

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

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

(3) Hold conferences with the juvenile and his or her parent, guardian, or custodian for the purpose of interviewing them and discussing the disposition of the complaint.

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

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

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

9-27-325. Hearings - Generally.

(a)(1)(A) All hearings shall be conducted by the judge without a jury, except as provided by the Extended Juvenile Jurisdiction Act, § 9-27-501 et seq.

(B) If a juvenile is designated an extended juvenile jurisdiction offender, the juvenile shall have a right to a jury trial at the adjudication.

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

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

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

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

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

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

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

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

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

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

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

(d)(1) The court shall be a court of record.

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

(e)(1) Unless otherwise indicated, the Arkansas Rules of Evidence shall apply.

(2)(A) Upon motion of any party, the court may order that the father, mother, and child submit to scientific testing for drug or alcohol abuse.

(B) A written report of the test results prepared by the person conducting the test, or by a person under whose supervision or direction the test and analysis have been performed, certified by an affidavit subscribed and sworn to by him or her before a notary public, may be introduced in evidence without calling the person as a witness unless a motion challenging the test procedures or results has been filed within thirty (30) days before the hearing and bond is posted in an amount sufficient to cover the costs of the person's appearance to testify.

(C)(i) If contested, documentation of the chain of custody of samples taken from test subjects shall be verified by affidavit of one (1) person's witnessing the procedure or extraction, packaging, and mailing of the samples and by one (1) person's signing for the samples at the place where the samples are subject to the testing procedure.

(ii) Submission of the affidavits along with the submission of the test results shall be competent evidence to establish the chain of custody of those specimens.

(D) Whenever a court orders scientific testing for drug or alcohol abuse and one (1) of the parties refuses to submit to the testing, that refusal shall be disclosed at trial and may be considered civil contempt of court.

(f) Except as otherwise provided in this subchapter, the Arkansas Rules of Civil Procedure shall apply to all proceedings and the Arkansas Rules of Criminal Procedure shall apply to delinquency proceedings.

(g) All parties shall have the right to compel attendance of witnesses in accordance with the Arkansas Rules of Civil Procedure and the Arkansas Rules of Criminal Procedure.

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

(2) The following burdens of proof shall apply:

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

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

(C) Proof by clear and convincing evidence for hearings to terminate parental rights and transfer hearings and in hearings to determine whether or not reunification services shall be provided.

(i)(1) All hearings involving allegations and reports of child maltreatment and all hearings involving cases of children in foster care shall be closed.

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

(j) Except as provided in § 9-27-502, in any juvenile delinquency proceeding where the juvenile's fitness to proceed is put in issue by any party or the court, the provisions of § 5-2-301 et seq. shall apply.

(k) In delinquency proceedings, juveniles are entitled to all defenses available to criminal defendants in circuit court.

(l)(1) The Department of Human Services shall provide to foster parents and preadoptive parents of a child in department custody notice of any review or hearing to be held with respect to the child.

(2) Relative caregivers shall be provided notice by the original petitioner in the juvenile matter.

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

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

(m)(1)(A) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or younger when:

(i) The grandchild resides with this grandparent for at least six (6) continuous months prior to his or her first birthday;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent;

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated; and

(iv) Notice to a grandparent under subdivision (m)(1)(A) of this section shall be given by the Department of Human Services; and

(B) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any dependency-neglect proceeding involving a grandchild who is twelve (12) months of age or older when:

(i) The grandchild resides with this grandparent for at least one (1) continuous year regardless of age;

(ii) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(iii) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(2) For purposes of this subsection, "grandparent" does not mean a parent of a putative father of a child.

9-27-326. Detention hearing.

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

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

(1) The juvenile;

(2) The juvenile's attorney; and

(3) The juvenile's parent, guardian, or custodian. However, if the court finds after a reasonable diligent effort, the petitioner was unable to notify the parent, guardian, or custodian, the hearing may proceed without notice to that party.

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

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

(1) Inform the juvenile:

(A) Of the reasons continued detention is being sought;

(B) That he or she is not required to say anything, and that anything he or she says may be used against him or her;

(C) That he or she has a right to counsel; and

(D) That before the hearing proceeds further he or she has the right to communicate with his or her attorney, parent, guardian, or custodian, and that reasonable means will be provided for him or her to do so;

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

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

(A) Place and length of residence;

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

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

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

(A) Upon his or her personal recognizance;
(B) Upon an order to appear;
(C) To his or her parent, guardian, or custodian upon written promise to bring the juvenile before the court when required;
(D)(i) To the care of a qualified person or agency agreeing to supervise the juvenile and assist him or her in appearing in court.

(ii) Provided, that for purposes of this subdivision (e)(2)(D), "qualified agency" does not include the Department of Human Services or any of its divisions;

(E)(i) Under the supervision of the probation officer or other appropriate public official.

(ii) Provided, however, for purposes of this subdivision (e)(2)(E), "appropriate public official" does not include the department;

(F) Upon reasonable restrictions on activities, movements, associations, and residences of the juvenile;
(G) On bond to his or her parent, guardian, or custodian; or
(H) Under such other reasonable restrictions to ensure the appearance of the juvenile.

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

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

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

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

(5)(A) If the court releases a juvenile under subdivision (e)(2)(D) of this section, the court may, if necessary for the best interest of the juvenile, request that the department immediately initiate an investigation as to whether the juvenile is in imminent danger or a situation exists whereby the juvenile is dependent-neglected.

(B) The court shall not place preadjudicated juveniles in the custody of the department except as provided in § 12-12-516.

9-27-327. Adjudication hearing.

(a)(1)(A) An adjudication hearing shall be held to determine whether the allegations in a petition are substantiated by the proof.

(B)(i) The dependency-neglect adjudication hearing shall be held within thirty (30) days after the probable cause hearing under § 9-27-315, but on motion of the court and parties, for good cause shown, it may be continued for no more than thirty (30) days following the first thirty (30) days.

(ii) However, the adjudication hearing shall not be completed more than sixty (60) days after the probable cause hearing under § 9-27-315.

(2)(A)(i) In dependency-neglect cases, if the Department of Human Services, the attorney ad litem, or the court recommends that reunification services should not be provided to reunite a child with his or her family, the department, attorney ad litem, or court shall provide written notice to the defendants.

(ii) The notice shall be provided to the parties at least fourteen (14) calendar days before the hearing.

(iii) The notice shall identify, in sufficient detail to put the family on notice, the grounds for recommending no reunification services.

(B)(i) The court shall determine whether or not reunification services shall be provided.

(ii) The burden of presenting the case shall be on the requesting party.

(C) The request for no reunification services shall be heard immediately after the adjudication hearing or in a separate disposition hearing.

(D) The department, the attorney ad litem, or the court can make a recommendation of no reunification services and provide notice to the parties of the recommendation at any time.

(E)(i)(a) The court shall conduct and complete a hearing on a request of no reunification services within fifty (50) days of the date of service of written notice to the defendants and shall enter an order determining whether or not reunification services shall be provided.

(b) However, upon good cause shown, the hearing may be continued for an additional twenty (20) days.

(ii) If the court determines that reunification services shall not be provided, the court shall hold a permanency planning hearing within thirty (30) days after the determination.

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

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

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

(e)(1) All such reports shall be provided in writing to all parties and counsel at least two (2) days prior to the disposition hearing.

(2) All parties shall be given a fair opportunity to controvert any parts of such reports.

(f) In dependency-neglect cases, a written adjudication order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

9-27-328. Removal of juvenile.

(a) Before a circuit court may order any dependent-neglected juvenile or family in need of services juvenile removed from the custody of his or her parent, guardian, or custodian and placed with the Department of Human Services or other licensed agency responsible for the care of juveniles or with a relative or other individual, the court shall order family services appropriate to prevent removal unless the health and safety of the juvenile warrant immediate removal for the protection of the juvenile.

(b) When the court orders a dependent-neglected or family in need of services juvenile removed from the custody of a parent, guardian, or custodian and placed in the custody of the department or other licensed agency responsible for the care of juveniles or with a relative or other individual, the court shall make these specific findings in the order:

(1) In the initial order of removal, the court must find:

(A) Whether it is contrary to the welfare of the juvenile to remain at home;

(B) Whether the removal and the reasons for the removal of the juvenile is necessary to protect the health and safety of the juvenile; and

(C) Whether the removal is in the best interest of the juvenile; and

(2) Within sixty (60) days of removal, the court must find:

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

(B) What efforts were made to provide those family services relevant to the needs of the family before the removal of the juvenile, taking into consideration whether or not the juvenile could safely remain at home while family services were provided;

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

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

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

(d) Where the court finds the department's preventive or reunification efforts have not been reasonable, but further preventive or reunification efforts could not permit the juvenile to remain safely at home, the court may authorize or continue the removal of the juvenile but shall note the failure by the department in the record of the case.

(e)(1) In all instances of removal of a juvenile from the home of his or her parent, guardian, or custodian by a court, the court shall set forth in a written order:

- (A) The evidence supporting the decision to remove;
- (B) The facts regarding the need for removal; and
- (C) The findings required by this section.

(2) The written findings and order shall be filed by the court or by a party or party's attorney as designated by the court within thirty (30) days of the date of the hearing at which removal is ordered or prior to the next hearing, whichever is sooner.

9-27-329. Disposition hearing.

(a) If the circuit court finds that the petition has been substantiated by the proof at the adjudication hearing, a disposition hearing shall be held for the court to enter orders consistent with the disposition alternatives.

(b) When a juvenile is held in detention after an adjudication hearing for delinquency pending a disposition hearing, the disposition hearing shall be held no more than fourteen (14) days following the adjudication hearing.

(c)(1) In dependency-neglect proceedings, the disposition hearing may be held immediately following or concurrent with the adjudication hearing but in any event shall be held no more than fourteen (14) days following the adjudication hearing.

(2)(A) In dependency-neglect cases, if the Department of Human Services, the attorney ad litem, or the court recommends that reunification services should not be provided to reunite a child with his or her family, the department, attorney ad litem, or court shall provide notice to the defendants.

(B) The notice shall be provided to the parties at least fourteen (14) calendar days before the hearing.

(C) The notice shall identify in sufficient detail to put the family on notice the grounds for recommending no reunification services.

(3) The court shall determine whether the request of no reunification services shall be heard at the conclusion of the adjudication hearing or in a separate disposition hearing.

(4) The department, the attorney ad litem, or the court can make a recommendation of no reunification services and provide notice to the parties of the recommendation at any time.

(5)(A) The court shall conduct and complete a hearing on a request of no reunification services within fifty (50) days of the date of written notice to the defendants

and shall enter an order determining whether or not reunification services shall be provided.

(B) The burden of presenting the case shall be on the requesting party.

(C) If the court determines that reunification services shall not be provided, the court shall hold a permanency planning hearing within thirty (30) days after the determination.

(d) In considering the disposition alternatives, the court shall give preference to the least restrictive disposition consistent with the best interests and welfare of the juvenile and the public.

(e) In dependency-neglect cases, a written disposition order shall be filed by the court, or by a party or party's attorney as designated by the court, within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(f) At the disposition hearing, the court may admit into evidence any victim impact statements and studies or reports which have been ordered, even though they are not admissible at the adjudication hearing.

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

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

(1)(A) Transfer legal custody of the juvenile to any licensed agency responsible for the care of delinquent juveniles or to a relative or other individual;

(B)(i) Commit the juvenile to a youth services center using the risk assessment system for Arkansas juvenile offenders distributed and administered by the Administrative Office of the Courts.

(ii) The risk assessment may be modified by the Juvenile Committee of the Arkansas Judicial Council with the Division of Youth Services of the Department of Health and Human Services.

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

(iv) Upon receipt of an order of commitment with recommendations for placement, the division shall consider the recommendations of the committing court in placing a youth in a youth services facility or a community-based program.

(v)(a) The committing court may place the juvenile on probation and require the juvenile to follow the terms of probation or the terms of a division aftercare plan upon release from the division.

(b) The division or the prosecuting attorney in the county in which the juvenile was committed may petition the court for a hearing regarding a juvenile's aftercare violation.

(c) The division or the prosecuting attorney in the county in which the juvenile was committed may request detention or recommitment, and the court may order such upon a finding by a preponderance of the evidence that the juvenile violated the terms of the aftercare plan;

(C) This transfer of custody shall not include placement of adjudicated delinquents into the custody of the department for the purpose of foster care except as provided in § 12-12-516;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B)(i) The court shall take into account the financial ability of the parent, both parents, or the guardian to pay for the commitment, detention, or electronic monitoring.

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

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

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

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

(B) The order shall be prepared and transmitted to the Department of Finance and Administration within twenty-four (24) hours after the juvenile has been found delinquent and is sentenced to have his or her driving privileges suspended.

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

(b) The court shall specifically retain jurisdiction to amend or modify any orders entered pursuant to this section.

(c)(1) If a juvenile is adjudicated delinquent for possession of a handgun, as provided in § 5-73-119, or criminal use of prohibited weapons, as provided in § 5-73-104, or possession of a defaced firearm, as provided in § 5-73-107, then the court shall commit the juvenile:

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

(B) To a youth services center operated by the Department of Human Services State Institutional System Board, as provided in subdivision (a)(1) of this section; or

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

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

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

(A) The amount of restitution may be decided:

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

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

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

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

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

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

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

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

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

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

(ii)(a) The court shall take into account whether the parent is a noncustodial parent.

(b) The court may take into consideration the opportunity the parent has had to correct the delinquent juvenile's conduct.

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

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

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

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

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

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

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

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

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

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

(j) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall enter the following dispositions:

(1) Order any of the juvenile delinquency dispositions authorized by this section; and

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

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

(a)(1) A commitment to the Division of Youth Services of the Department of Health and Human Services is for an indeterminate period not to exceed the juvenile's twenty-first birthday, except as otherwise provided by law.

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

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

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

(5) Length of stay and final decision to release shall be the exclusive responsibility of the division, except when the juvenile is an extended juvenile jurisdiction offender.

(b)(1)(A) Subsection (a) of this section does not apply to extended juvenile jurisdiction offenders.

(B) The circuit court shall have sole release authority when an extended juvenile jurisdiction offender is committed to the division.

(2)(A) Upon a determination that the juvenile has been rehabilitated, the division may petition the court for release.

(B) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the division:

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

(ii) The nature of the offense or offenses and the manner in which they were committed;

(iii) The recommendations of the professionals who have worked with the juvenile;

(iv) The protection of public safety; and

(v) Opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation.

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

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

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

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

(d)(1)(A) The court may enter an order for physical, psychiatric, or psychological evaluation or counseling or treatment affecting the family of a juvenile only after finding that the evaluation, counseling, or treatment of family members is necessary for the treatment or rehabilitation of the juvenile.

(B) Subdivision (d)(1)(A) of this section shall not be applicable to the parental responsibility training programs in § 9-27-330(a).

(2) For purposes of this section, if the Department of Health and Human Services will be the payor, excluding the community-based providers, the court shall not specify a particular provider for family services.

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

(2)(A) If the amount of restitution determined by the court exceeds ten thousand dollars (\$10,000) for any individual victim, the court shall enter a restitution order for ten thousand dollars (\$10,000) in favor of the victim.

(B) Nothing in this section is intended to bar or prevent a person or entity from seeking recovery for damages in excess of ten thousand dollars (\$10,000) available under other law.

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

(1) State the treatment plan for the juvenile;

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

(3)(A) State recommendations as to the most appropriate post-commitment placement of the juvenile.

(B)(i) If the juvenile cannot return to the custody of his or her parent, guardian, or custodian because of child maltreatment, the division shall immediately contact the Office of Chief Counsel of the Department of Health and Human Services.

(ii) The department shall petition the court to determine the issue of custody of the juvenile; and

(4) Specify post-commitment family services, if any, which should be offered by the department.

(g) A copy of the written case treatment plan shall be submitted to the committing court for its review and, in addition, shall be provided to the custodian of the

juvenile and filed in any court files of any court in which a dependency-neglect or family in need of services action concerning that juvenile is then pending.

(h) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or a licensed certified social worker and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(i)(1) If the juvenile who has been adjudicated delinquent is also in the custody of the department pursuant to a family in need of services or dependency-neglect petition and the court does not commit the juvenile to the division or order the juvenile to detention, C-Step, or a facility exclusively for delinquents, then any issues regarding placement of the juvenile shall be addressed only in the family in need of services or dependency-neglect case and shall not be an issue addressed, nor shall any orders be entered in the delinquency case regarding placement of the juvenile.

(2) Within ten (10) days of the entry of any order in the delinquency case, the prosecuting attorney shall file a copy of the order in the juvenile's dependency-neglect case.

(j) Custody of a juvenile shall not be transferred to the department when a delinquency petition or case is converted to a family in need of services petition or case.

(k) No court may commit a juvenile found solely in criminal contempt to the division.

9-27-332. Disposition - Family in need of services - Generally.

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

(1)(A) To order family services to rehabilitate the juvenile and his or her family.

(B)(i) If the Department of Health and Human Services is the provider for family services, the family services shall be limited to those services available by the department's community-based providers or contractors, excluding the contractors with the Division of Children and Family Services of the Department of Health and Human Services and services of the department for which the family applies and is determined eligible.

(ii) To prevent removal when the department is the provider for family services, the court shall make written findings outlining how each service is intended to prevent removal;

(2)(A) If it is in the best interest of the juvenile, transfer custody of juvenile family members to another licensed agency responsible for the care of juveniles or to a relative or other individual.

(B) If it is in the best interest of the juvenile and because of acts or omissions by the parent, guardian, or custodian, removal is necessary to protect the juvenile's health and safety, transfer custody to the department.

(C) All juveniles in shelters or awaiting foster care placement who are in the custody of the department are "homeless children and youth" as defined under 42 U.S.C. § 11434a(2), as in effect on February 1, 2005.

(D) If the court transfers custody of the juvenile to the department, the court shall issue orders regarding educational issues of the juvenile as follows:

(i) Determine if the parent or guardian shall have access to school records of the juvenile;

(ii) Determine if the parent or guardian who has access to school records of the juvenile is entitled to obtain information on the current placement of the juvenile, that is, the name and address of the foster parent or provider; and

(iii) Determine if the parent or guardian may participate in school conferences or similar activities at school.

(E) If the court transfers custody of the juvenile to the department, the court may appoint an individual to consent to an initial evaluation and serve as a surrogate parent pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on February 1, 2005;

(3) Grant permanent custody to an individual upon proof:

(A) That the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court; or

(B) That no reunification services should be required to reunite the juvenile with his or her parent or parents and that no further services or periodic reviews are required;

(4)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-ordered parental responsibility training program, if available.

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

(5) Place the juvenile on residential detention with electronic monitoring in the juvenile's home;

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

(7)(A) Place the juvenile on supervision terms, including, but not limited to, requiring the juvenile to attend school or make satisfactory progress toward a general education development certificate, requiring the juvenile to observe a curfew, and prohibiting the juvenile from possessing or using any alcohol or illegal drugs.

(B) The supervision terms shall be in writing.

(C) The supervision terms shall be given to the juvenile and explained to the juvenile and to his or her parent, guardian, or custodian by the juvenile intake or probation officer in a conference immediately following the disposition hearing;

(8)(A) Order a fine not to exceed five hundred dollars (\$500) to be paid by the juvenile, a parent, both parents, a guardian, or a custodian when the juvenile exceeds the number of excessive unexcused absences provided in the student attendance policy of the district or the State Board of Workforce Education and Career Opportunities.

(B) The purpose of the penalty set forth in this section is to impress upon the parents, guardians, or persons in loco parentis the importance of school or adult education attendance, and the penalty is not to be used primarily as a source of revenue.

(C)(i) In all cases in which a fine is ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay for the fine.

(ii) In making its determination, the court shall consider the following factors:

(a) The financial ability of the parent, both parents, the guardian, or the custodian to pay for such services;

(b) The past efforts of the parent, both parents, the guardian, or the custodian to correct the conditions that resulted in the need for family services; and

(c) Any other factors that the court deems relevant.

(D) When practicable and appropriate, the court may utilize mandatory attendance to such programs as well as community service requirements in lieu of a fine;

(9) Assess a court cost of no more than thirty-five dollars (\$35.00) to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian; and

(10) Order a juvenile service fee not to exceed twenty dollars (\$20.00) a month to be paid by the juvenile, his or her parent, both parents, the guardian, or the custodian.

(b) The court may provide that any violation of its orders shall subject the parent, both parents, the juvenile, custodian, or guardian to contempt sanctions.

9-27-333. Disposition - Family in need of services - Limitations.

(a) At least five (5) working days prior to ordering the Department of Health and Human Services, excluding community-based providers, to provide or pay for family services, the circuit court shall fax a written notice of intent to the Director of the Department of Health and Human Services and to the attorney of the local Office of Chief Counsel of the Department of Health and Human Services.

(b) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(c) Failure to provide at least five (5) working days' notice to the department renders any part of the order pertaining to the department void.

(d) For purposes of this section, the court shall not specify a particular provider for placement or family services when the department is the payor or provider.

(e)(1) In all cases in which family services are ordered, the court shall determine a parent's, guardian's, or custodian's ability to pay, in whole or in part, for these services.

(2) This determination and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or part, for the services, the court shall enter a written order setting forth the amounts the parent, guardian, or custodian can pay for the family services ordered and ordering the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(4) For purposes of this subsection:

(A) "Parent, guardian, and custodian" means the individual or individuals from whom custody was removed; and

(B) "Periodically" means a period of time no greater than once per month.

(5) In making its determination, the court shall consider the following factors:

(A) The financial ability of the parent, both parents, the guardian, or the custodian to pay for such services;

(B) The past efforts of the parent, both parents, the guardian, or the custodian to correct the conditions that resulted in the need for family services; and

(C) Any other factors that the court deems relevant.

(f) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or a licensed certified social worker and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(g) Custody of a juvenile shall not be transferred to the department when a delinquency petition or case is converted to a family in need of services petition or case.

(h) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services of the Department of Health and Human Services.

9-27-334. Disposition - Dependent-neglected - Generally.

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

(1) Order family services;

(2)(A) If it is in the best interest of the juvenile, transfer custody of the juvenile to the Department of Health and Human Services, to another licensed agency responsible for the care of juveniles, or to a relative or other individual.

(B) If the court grants custody of the juvenile to the department, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined at § 9-28-402(12).

(C) All juveniles in shelters or awaiting foster care placement who are in the custody of the department are "homeless children and youth" as defined at 42 U.S.C. § 11434a(2), as in effect on February 1, 2005.

(D) If the court transfers custody of the juvenile to the department, the court shall issue orders regarding educational issues of the juvenile as follows:

(i) Determine if the parent or guardian shall have access to school records of the juvenile;

(ii) Determine if the parent or guardian who has access to school records of the juvenile is entitled to obtain information on the current placement of the juvenile, that is, the name and address of the foster parent or provider; and

(iii) Determine if the parent or guardian may participate in school conferences or similar activities at school.

(E) If the court transfers custody of the juvenile to the department, the court may appoint an individual to consent to an initial evaluation and serve as a surrogate parent pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., as in effect on February 1, 2005;

(3) If it is in the best interest of the juvenile, grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been

removed has not complied with the orders of the court or upon proof that no reunification services should be required to reunite the juvenile with his or her parent or parents and that no further services or periodic reviews are required; or

(4)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-ordered parental responsibility training program, if available.

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

(b) Such an order of custody shall supersede an existing court order of custody and shall remain in full force and effect until a subsequent order of custody is entered by a court of competent jurisdiction.

(c) The court may provide that any violation of its orders shall subject the parent, both parents, the juvenile, the custodian, or the guardian to contempt sanctions.

9-27-335. Disposition - Dependent-neglected - Limitations.

(a)(1) At least five (5) working days prior to ordering the Department of Health and Human Services, excluding community-based providers, to provide or pay for family services in any case in which the department is not a party, the circuit court shall fax a written notice of intent to the Director of the Department of Health and Human Services and to the attorney of the local Office of Chief Counsel of the Department of Health and Human Services.

(2) At any hearing in which the department is ordered to provide family services, the court shall provide the department with the opportunity to be heard.

(3) Failure to provide at least five (5) working days' notice to the department renders any part of the order pertaining to the department void.

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

(c)(1) In all cases in which family services are ordered, the court shall determine the parent's, guardian's, or custodian's ability to pay, in whole or in part, for these services.

(2) The determination of ability to pay and the evidence supporting it shall be made in writing in the order ordering family services.

(3) If the court determines that the parent, guardian, or custodian is able to pay, in whole or in part, for the services, the court shall enter a written order setting forth the amounts the parent, guardian, or custodian is able to pay for the family services ordered and order the parent, guardian, or custodian to pay the amount periodically to the provider from whom family services are received.

(d) Custody of a juvenile may be transferred to a relative or other individual only after a home study of the placement is conducted by the department or a licensed certified social worker and submitted to the court in writing and the court determines that the placement is in the best interest of the juvenile.

(e)(1)(A) The court shall enter orders transferring custody of juveniles in dependency-neglect cases only after determining that reasonable efforts have been made by the department to deliver family services designed to prevent the need for out-of-home placement and that the need for out-of-home placement exists.

(B) The juvenile's health and safety shall be the paramount concern for the court in determining whether or not the department could have provided reasonable efforts to prevent the juvenile's removal.

(2) If the court finds that reasonable efforts to deliver family services could have been made with the juvenile safely remaining at home but were not made, the court may:

(A) Dismiss the petition;

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

(C) Transfer custody of the juvenile despite the lack of reasonable efforts by the department to prevent the need for out-of-home placement if such a transfer of custody is necessary:

(i) To protect the juvenile's health and safety; or

(ii) To prevent the juvenile from being removed from the jurisdiction of the court.

(f) In a case of medical neglect involving a child's receiving treatment through prayer alone in accordance with a religious method of healing in lieu of medical care, the adjudication order shall be limited to:

(1) Preventing or remedying serious harm to the child; or

(2) Preventing the withholding of medically indicated treatment from a child with a life-threatening condition.

(g) No court may commit a juvenile found solely in criminal contempt to the Division of Youth Services of the Department of Health and Human Services.

9-27-336. Limitations on detention.

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

(1)(A) A juvenile may be held in a juvenile detention facility when he or she has been away from home for more than twenty-four (24) hours and when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or out of state.

(B)(i) The juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(C)(i) A juvenile held under this subdivision (a)(1) shall be separated from detained juveniles charged or held for delinquency.

(ii) A juvenile may not be held under this subdivision (a)(1) for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out of state; and

(2)(A) An adjudicated family in need of services juvenile may be held in a juvenile detention facility when the court finds that the juvenile violated a valid court order.

(B)(i) For the purposes of this subdivision (a)(2), a valid court order shall include any order of a circuit court regarding a juvenile who has been brought before the court and made subject to a court order.

(ii) The juvenile who is the subject of the order shall receive full due process rights.

(C)(i) A juvenile held under this subdivision (a)(2) shall be separated from detained juveniles charged or held for delinquency.

(ii) The holding shall not occur in any facility utilized for incarceration of adults.

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

(1) A juvenile who has been formally transferred from the juvenile division of circuit court to the criminal division of circuit court and against whom felony charges have been filed or a juvenile whom the prosecuting attorney has the discretion to charge in circuit court and to prosecute as an adult and against whom the circuit court's jurisdiction has been invoked by the filing of felony charges may be held in an adult jail or lock-up;

(2)(A) A juvenile alleged to have committed a delinquent act may be held in an adult jail or lock-up for up to six (6) hours for purposes of identification, processing, or arranging for release or transfer to an alternative facility provided he or she is separated by sight and sound from adults who are pretrial detainees or convicted persons.

(B) A holding for those purposes shall be limited to the minimum time necessary and shall not include travel time for transporting the juvenile to the alternative facility; or

(3)(A) A juvenile alleged to have committed a delinquent act who is awaiting an initial appearance before a judge may be held in an adult jail or lock-up for up to twenty-four (24) hours, excluding weekends and holidays, provided the following conditions exist:

(i) The alleged act would be a misdemeanor or a felony if committed by an adult or is a violation of § 5-73-119;

(ii) The geographical area having jurisdiction over the juvenile is outside a metropolitan statistical area pursuant to the current designation of the United States Bureau of the Census;

(iii) No acceptable alternative placement for the juvenile exists; and

(iv) The juvenile is separated by sight and sound from adults who are pretrial detainees or convicted persons.

(B)(i) A juvenile awaiting an initial appearance and being held in an adult jail or lock-up pursuant to the twenty-four-hour exception, as provided in subdivision (b)(3)(A) of this section, may be held for an additional period not to exceed twenty-four (24) hours, provided that the following conditions exist:

(a) The conditions of distance to be traveled or the lack of highway, road, or other ground transportation does not allow for court appearances within twenty-four (24) hours; and

(b) All the conditions in subdivision (b)(3)(A) of this section exist.

(ii) Criteria will be adopted by the Governor or his or her designee to establish what distance, highway or road conditions, or ground transportation limitations will provide a basis for holding a juvenile in an adult jail or lock-up under this exception.

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

(d) A detention facility shall not release a serious offender for a less serious offender except by order of the judge who committed the more serious offender.

9-27-337. Six-month reviews required.

(a)(1) The court shall review every case of dependency-neglect or families in need of services when:

(A) A juvenile is placed by the court in the custody of the Department of Health and Human Services or in another out-of-home placement until there is a permanent order of custody, guardianship, or other permanent placement for the juvenile; or

(B) A juvenile is returned to the parent, guardian, or custodian and the court has discontinued orders for family services.

(2)(A) The first six-month review shall be held no later than six (6) months from the date of the original out-of-home placement of the child.

(B) It shall be reviewed every six (6) months thereafter until permanency is achieved.

(b)(1) The court may require these cases to be reviewed prior to the sixth month.

(2)(A) If a court requires a case to be reviewed prior to the sixth month, the court shall announce the date, time, and place of hearing.

(B) In all other cases, it shall be the duty of the petitioner at least sixty (60) days prior to date of the required six-month review to request that the court:

(i) Set the review hearing;

(ii) Provide reasonable notices; and

(iii) Serve notice on all parties in accordance with the

Arkansas Rules of Civil Procedure.

(c) At any time during the pendency of any case of dependency-neglect or families in need of services in which an out-of-home placement has occurred, any party may request the court to review the case.

(d) At any time during the course of a case, the department, the attorney ad litem, or the court can request a hearing on whether or not reunification services should be terminated pursuant to § 9-27-327(a)(2).

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

(B)(i) The court shall determine and shall include in its orders the following:

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

(b) Whether the state has made reasonable efforts to provide family services;

(c) Whether the case plan is moving towards an appropriate permanency plan pursuant to § 9-27-338 for the juvenile; and

(d) Whether the visitation plan is appropriate for the juvenile, the parent or parents, and any siblings, if separated.

(ii)(a) The court may order any studies, evaluations, or post-disposition reports, if needed.

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

(c) All parties shall be given a fair opportunity to controvert any part of a study, evaluation, or post-disposition report.

(C) In making its findings, the court shall consider the following:

(i) The extent of compliance with the case plan, including, but not limited to, a review of the department's care for the health, safety, and education of the juvenile while he or she has been in an out-of-home placement;

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

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

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

(2) Each six-month review hearing shall be completed and a written order shall be filed by the court or by a party or a party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

9-27-338. Permanency planning hearing.

(a)(1) A permanency planning hearing shall be held to finalize a permanency plan for the juvenile:

(A) Twelve (12) months after the date the juvenile enters an out-of-home placement;

(B) After a juvenile has been in an out-of-home placement for fifteen (15) of the previous twenty-two (22) months, excluding trial placements and time on runaway status; or

(C) No later than thirty (30) days after a hearing granting no reunification services.

(2) If a juvenile remains in an out-of-home placement after the initial permanency planning hearing, a permanency planning hearing shall be held annually to reassess the permanency plan selected for the juvenile.

(b)(1) Nothing in this section shall be construed to prevent the Department of Health and Human Services or the attorney ad litem from filing at any time prior to the permanency planning hearing a:

- (A) Petition to terminate parental rights;
- (B) Petition for guardianship; or
- (C) Petition for permanent custody.

(2) A permanency planning hearing is not required prior to any of these actions.

(c) At the permanency planning hearing, based upon the facts of the case, the circuit court shall enter one (1) of the following permanency goals, listed in order of preference, in accordance with the best interest of the juvenile:

(1) Returning the juvenile to the parent, guardian, or custodian at the permanency planning hearing if it is in the best interest of the juvenile and the juvenile's health and safety can be adequately safeguarded if returned home;

(2) Authorizing a plan for the termination of the parent-child relationship so that the child is available to be adopted unless:

(A) The juvenile is being cared for by a relative, including a minor foster child caring for his or her own child who is in foster care, and termination of parental rights is not in the best interest of the juvenile;

(B) The department has documented in the case plan a compelling reason why filing such a petition is not in the best interest of the juvenile and the court approves the compelling reason as documented in the case plan; or

(C)(i) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, such services as the department deemed necessary for the safe return of the juvenile to the juvenile's home if reunification services were required to be made to the family.

(ii) If the department has failed to provide services as outlined in the case plan, the court shall continue the permanency planning hearing for no later than six (6) months;

(3) Authorizing a plan to obtain a guardian for the juvenile;

(4) Authorizing a plan to obtain a permanent custodian, including permanent custody with a relative, for the juvenile;

(5)(A) Continuing the goal of reunification only when the parent is complying with the established case plan and orders of the court, making significant measurable progress towards achieving the goals established in the case plan and diligently working toward reunification.

(B) Reunification must be expected to occur within a time frame that is consistent with the juvenile's developmental needs.

(C) A parent's resumption of contact or overtures toward participating in the case plan or following the orders of the court in the months or weeks

immediately preceding the permanency hearing are insufficient grounds for retaining reunification as the permanency plan.

(D) The burden is on the parent to demonstrate genuine, sustainable investment in completing the requirements of the case plan and following the orders of the court in order to retain reunification as the permanency goal; or

(6)(A) Authorizing a plan for another planned permanent living arrangement that shall include a permanent planned living arrangement and addresses the quality of services, including, but not limited to, independent living services, if age appropriate, and a plan for the supervision and nurturing the juvenile will receive.

(B) Another planned permanent living arrangement shall be selected only if:

- (i) The juvenile cannot be reunited with his or her family;
- (ii) Another permanent plan is not available; and
- (iii) Either:

(a) A compelling reason exists why termination of parental rights is not in the juvenile's best interest; or

(b) The juvenile is being cared for by a relative and termination of parental rights is not in the best interest of the juvenile.

(d) At every permanency planning hearing the court shall make a finding on whether the department has made reasonable efforts and shall describe the efforts to finalize a permanency plan for the juvenile.

(e) A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

(f) If the court determines that the permanency goal is termination of parental rights, the department shall file the petition to terminate parental rights within thirty (30) days from the date of the permanency planning hearing that establishes termination of parental rights as the permanency goal.

9-27-339. Probation - Revocation.

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

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

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

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

(e) If the court finds by a preponderance of the evidence that the juvenile violated the terms and conditions of probation, the court may:

(1) Extend probation;
(2) Impose additional conditions of probation;
(3) Make any disposition that could have been made at the time probation was imposed; or

(4)(A) Commit the juvenile to a juvenile detention facility for an indeterminate period not to exceed ninety (90) days.

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

(f)(1) Nonpayment of restitution, fines, or court costs may constitute a violation of probation, unless the juvenile shows that his or her default was not attributable to a purposeful refusal to obey the sentence of the court or was not due to a failure on his or her part to make a good faith effort to obtain the funds required for payment.

(2) In determining whether to revoke probation, the court shall consider the juvenile's employment status, earning ability, financial resources, the willfulness of the juvenile's failure to pay, and any other special circumstances that may have a bearing on the juvenile's ability to pay.

(3) If the court determines that the default in payment of a fine, costs, or restitution is excusable under subdivision (f)(1) of this section, the court may enter an order allowing the juvenile additional time for payment, reducing the amount of each installment, or revoking the fine, costs, or restitution or unpaid portion thereof in whole or in part.

9-27-340. [Repealed.]

9-27-341. Termination of parental rights.

(a)(1)(A) This section shall be a remedy available only to the Department of Health and Human Services or a court-appointed attorney ad litem.

(B) It shall not be available for private litigants or other agencies.

(2) It shall be used only in cases in which the department is attempting to clear a juvenile for permanent placement.

(3) The intent of this section is to provide permanency in a juvenile's life in all instances in which the return of a juvenile to the family home is contrary to the juvenile's health, safety, or welfare and it appears from the evidence that a return to the family home cannot be accomplished in a reasonable period of time as viewed from the juvenile's perspective.

(4)(A) A parent's resumption of contact or overtures toward participating in the case plan or following the orders of the court following the permanency planning hearing and preceding the termination of parental rights hearing is an insufficient reason to not terminate parental rights.

(B) The court shall rely upon the record of the parent's compliance in the entire dependency-neglect case and evidence presented at the termination hearing in making its decision whether it is in the juvenile's best interest to terminate parental rights.

(b)(1)(A) The circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile.

(B) This section does not require that a permanency planning hearing be held as a prerequisite to the filing of a petition to terminate parental rights or as a prerequisite to the court's considering a petition to terminate parental rights.

(2)(A) The petitioner shall provide the parent, parents, or putative parent or parents actual or constructive notice of a petition to terminate parental rights.

(B) In addition to providing constructive notice of the hearing to terminate parental rights, the petitioner shall check with the putative father registry if the name or whereabouts of the putative father is unknown.

(3) An order forever terminating parental rights shall be based upon a finding by clear and convincing evidence:

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

(i) The likelihood that the juvenile will be adopted if the termination petition is granted; and

(ii) The potential harm, specifically addressing the effect on the health and safety of the child, caused by returning the child to the custody of the parent, parents, or putative parent or parents; and

(B) Of one (1) or more of the following grounds:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

(b) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(i)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

(b) To find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

(c) Material support consists of either financial contributions or food, shelter, clothing, or other necessities when the contribution has been requested by the juvenile's custodian or ordered by a court of competent jurisdiction.

(d) It is not necessary that the twelve-month period referenced in subdivision (b)(3)(B)(ii)(a) of this section immediately precede the filing of the petition for termination of parental rights or that it be for twelve (12) consecutive months;

(iii) The presumptive legal father is not the biological father of the juvenile and the welfare of the juvenile can best be served by terminating the parental rights of the presumptive legal father;

(iv) A parent has abandoned the juvenile;
(v) A parent has executed consent to termination of parental rights or adoption of the juvenile, subject to the court's approval;
(vi)(a) The court has found the juvenile dependent-neglected as a result of neglect or abuse that could endanger the life of the child, sexual abuse, or sexual exploitation, any of which was perpetrated by the juvenile's parent or parents.

(b) Such findings by the juvenile division of circuit court shall constitute grounds for immediate termination of the parental rights of one (1) or both of the parents;

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

(b) The department shall make reasonable accommodations in accordance with the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., to parents with disabilities in order to allow them meaningful access to reunification and family preservation services.

(c) For purposes of this subdivision (b)(3)(B)(vii), the inability or incapacity to remedy or rehabilitate includes, but is not limited to, mental illness, emotional illness, or mental deficiencies;

(viii) The parent is sentenced in a criminal proceeding for a period of time that would constitute a substantial period of the juvenile's life; or

(ix)(a) The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:

(1) Have committed murder or voluntary manslaughter of any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit the murder or voluntary manslaughter;

(2) Have committed a felony battery or assault that results in serious bodily injury to any juvenile or to have aided or abetted, attempted, conspired, or solicited to commit felony battery or assault that results in serious bodily injury to any juvenile;

(3)(A) Have subjected any juvenile to aggravated circumstances.

(B) "Aggravated circumstances" means:

(i) A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification; or

(ii) A juvenile has been removed from the custody of the parent or guardian and placed in foster care or in the custody of another person more than three (3) times in the last fifteen (15) months;

(4) Have had his or her parental rights involuntarily terminated as to a sibling of the child; or

(5) Have abandoned an infant, as defined at § 9-27-303(2).

(b) This subchapter does not require reunification of a surviving child with a parent who has been found guilty of any of the offenses listed in subdivision (b)(3)(B)(ix)(a) of this section.

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

(2)(A)(i) Termination of the relationship between a juvenile and one (1) parent shall not affect the relationship between the juvenile and the other parent if those rights are legally established.

(ii) If no legal rights have been established, a putative parent must prove that significant contacts existed with the juvenile in order for the putative parent's rights to attach.

(B)(i) When the petitioner has actual knowledge that an individual is claiming to be or is named as the putative parent of the juvenile and the paternity of the juvenile has not been judicially determined, the individual is entitled to notice of the petition to terminate parental rights.

(ii) The notice shall identify the rights sought to be terminated and those that may be terminated.

(iii) The notice shall further specify that the putative parent must prove that significant contacts existed with the juvenile for the putative parent's rights to attach.

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

(4) An order terminating parental rights under this section does not preclude adoptive parents from allowing contact between an adopted child and the birth sibling or other birth family members.

(d)(1) The court shall conduct and complete a termination of parental rights hearing within ninety (90) days from the date the petition for termination of parental rights is filed unless continued for good cause as articulated in the written order of the court.

(2) If the parent was represented by counsel, the court shall take judicial notice and incorporate by reference into the record all pleadings and testimony in the case incurred before the termination of parental rights hearing.

(e) A written order shall be filed by the court or by a party or party's counsel as designated by the court within thirty (30) days of the date of the termination hearing or before the next hearing, whichever is sooner.

(f) After the termination of parental rights hearing, the court shall review the case at least every three (3) months when the goal is adoption and, in other cases, every six (6) months, and a permanency planning hearing shall be held each year following the initial permanency hearing until permanency is achieved for that juvenile.

(g)(1)(A) A parent may withdraw consent to termination of parental rights within ten (10) calendar days after it was signed by filing an affidavit with the circuit clerk in the county designated by the consent as the county in which the termination of parental rights will be filed.

(B) If the ten-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(C) No fee shall be charged for the filing of the affidavit.

(2) The consent to terminate parental rights shall state that the person has the right of withdrawal of consent and shall provide the address of the circuit clerk of the county in which the termination of parental rights will be filed.

9-27-342. Proceedings concerning illegitimate juveniles.

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

(b) The biological mother, the putative father, the juvenile himself or herself, or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may bring an action to establish paternity or support of a juvenile alleged to be illegitimate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9-27-343. Appeals.

(a) All appeals from juvenile cases shall be made to the Arkansas Supreme Court or to the Arkansas Court of Appeals in the time and manner provided for appeals in the Arkansas Rules of Appellate Procedure.

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

(c) Pending an appeal from any case involving a juvenile out-of-home placement, the juvenile division of the circuit court retains jurisdiction to conduct further hearings.

9-27-344. Monthly report.

The circuit court shall submit monthly to the Director of the Administrative Office of the Courts a report in writing upon forms to be furnished by the director showing the number and disposition of juveniles brought before the juvenile division of circuit court together with such other information regarding those cases as may be requested by the director.

9-27-345. Admissibility of evidence.

(a) Juvenile adjudications of delinquency for offenses for which the juvenile could have been tried as an adult may be used at the sentencing phase in subsequent adult criminal proceedings against those same individuals.

(b)(1) No other evidence adduced against a juvenile in any proceeding under this subchapter nor the fact of adjudication or disposition shall be admissible evidence against such juvenile in any civil, criminal, or other proceeding.

(2) However, the evidence shall be admissible where proper in subsequent proceedings against the same juvenile under this subchapter.

9-27-346. Support orders.

(a) If it appears at the adjudication or disposition hearing in any case brought under this subchapter that the parents or any other person named in the petition who is by law required to provide support for the juvenile is able to contribute to the support of the juvenile, the court shall issue an order requiring such person to pay a reasonable sum pursuant to the guidelines for child support and the family support chart for the support, maintenance, or education of the juvenile to any person, agency, or institution to whom custody is awarded.

(b) The court may, upon proper motion make such adjustments and modifications of the order as may appear reasonable and proper.

(c) The court shall also order the persons required by law to support a juvenile to disclose their places of employment and the amounts earned by them. Anyone who refuses to disclose such information may be cited for contempt of court.

9-27-347. Probation reports.

(a) The probation officer shall make and keep a complete history of each case before disposition and during the course of any probation imposed by the circuit court.

(b)(1) It is the intention of this section to require an intelligent and thorough report of each juvenile before probation and during probation as to heredity, environment, condition, treatment, development, and results.

(2) The report shall contain among other information the age, sex, nativity, residence, education, mentality, habits, whether married or single, and employment and income and shall be continued so as to show the condition of the person during the term of his or her probation and the results of probation in the case.

(3) The report shall never be disclosed except as required by law or directed by the court.

(c) The probation officer shall furnish to each person released on probation a written statement of the terms and conditions of probation and shall report to the court any violation or breach of the terms and conditions so imposed.

9-27-348. Publication of proceedings.

No information by which the name or identity of a juvenile who is the subject of proceedings under this subchapter may be ascertained shall be published by the news media without written order of the circuit court.

9-27-349. Compliance with federal acts.

The Division of Children and Family Services of the Department of Human Services shall have the responsibility for the collection, review, and reporting of statistical information on detained or incarcerated juveniles, for adult jails, adult lock-ups, and juvenile detention facilities to assure compliance with the provisions of Pub. L. 93-415, the Juvenile Justice and Delinquency Prevention Act of 1974.

9-27-350. Compacts to share costs.

Nothing in this subchapter shall prohibit two (2) or more counties, cities, or school districts of this state from agreeing by compact to share the costs of court personnel or juvenile facilities to serve both or all of the counties so agreeing.

9-27-351. Escape considered an act of delinquency.

The escape of a juvenile from the locked portion of a juvenile facility is an act of delinquency.

9-27-352. Confidentiality of records.

(a) Records of the arrest of a juvenile, the detention of a juvenile, and the proceedings under this subchapter shall be confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., unless:

(1) Authorized by a written order of the juvenile division of circuit court;

or

(2) The arrest or the proceedings under this subchapter result in the juvenile's being formally charged in the criminal division of circuit court for a felony.

(b) Information regarding the arrest or detention of a juvenile, and related proceedings under this subchapter shall be confidential unless the exchange of information is:

(1) For the purpose of obtaining services for the juvenile or to ensure public safety;

(2) Reasonably necessary to achieve one (1) or both purposes; and

(3) Pursuant to a written order by the circuit judge.

(c)(1) The information may only be given to the following persons:

(A) A school counselor;

(B) A juvenile court probation officer or caseworker;

(C) A law enforcement officer;

(D) A spiritual representative designated by the juvenile or his parents or legal guardian;

(E) A Department of Human Services caseworker;

(F) A community-based provider designated by the court, the school, or the parent or legal guardian of the juvenile;

(G) A Department of Health representative; or

(H) The juvenile's guardian ad litem or other court-appointed special advocate.

(2) The persons listed in subdivision (c)(1) of this section may assemble to exchange information to discuss options for assistance to the juvenile, to develop and implement a plan of action to assist the juvenile, and to ensure public safety.

(3) The juvenile and his parents or legal guardian shall be notified within a reasonable time before and may attend any meeting of the persons referred to in subdivision (c)(1) of this section when three (3) or more individuals meet to discuss assistance for the juvenile or protection of the public due to the juvenile's behavior.

(4) Medical records, psychiatric records, psychological records, and information related thereto shall remain confidential unless the juvenile's parents or legal guardian waives confidentiality in writing specifically describing the records to be disclosed between the persons listed in subdivision (c)(1) of this section and the purpose for the disclosure.

(5) Persons listed in subdivision (c)(1) of this section who exchange any information referred to in this section may be held civilly liable for disclosure of the information wherein the person did not comply with limitations set forth in this section.

9-27-353. Duties and responsibilities of custodian.

(a) It shall be the duty of any person or agency appointed as the custodian of any juvenile in a proceeding under this subchapter to care for and maintain the juvenile and to see that the juvenile is protected, properly trained and educated, and has the opportunity to learn a trade, occupation, or profession.

(b) The custodian has the right to obtain medical care for the juvenile and to enroll the juvenile in school upon presentation of an order of custody.

(c) The custodian has the right to obtain medical and school records of any juvenile in his or her custody upon presentation of an order of custody.

(d) Any agency appointed as the custodian of a juvenile has the right to consent to the juvenile's traveling with foster parents on vacation or similar trips.

(e)(1) It shall be the duty of every person granted custody, guardianship, or adoption of any juvenile in a proceeding pursuant to or arising out of a dependency-neglect action under this subchapter to ensure that the juvenile is not returned to the care or supervision of any person from whom the child was removed or any person the court has specifically ordered not to have care, supervision, or custody of the juvenile.

(2) This section shall not be construed to prohibit these placements if the person who has been granted custody, guardianship, or adoption obtains a court order to that effect from the juvenile court that made the award of custody, guardianship, or adoption.

(3) Failure to abide by subdivision (e)(1) of this section is punishable as a criminal offense pursuant to § 5-26-502(a)(3).

9-27-354. Progress reports on juveniles.

(a)(1) The court may order progress reports from a service provider whenever a juvenile is placed out of home and in a setting other than a Department of Health and Human Services foster home.

(2) The order shall:

(A) Set forth the schedule for the progress reports; and

(B) Identify the service provider responsible for submitting the

progress reports.

(3) The service provider shall be provided a copy of the written court order by:

- (A) Certified mail, restricted delivery; or
- (B) Process server.

(4) Failure to follow the order of the court shall subject the service provider to contempt sanctions of the court.

(b) A progress report shall include, but not be limited to the:

- (1) Reason for admission;
- (2) Projected length of stay;
- (3) Identified goals and objectives to be addressed during placement;
- (4) Progress of the juvenile in meeting goals and objectives;
- (5) Barriers to progress;
- (6) Significant behavioral disruptions and response of provider; and
- (7) Recommendations upon the juvenile's release.

(c) The service provider shall immediately report any incidents concerning the juvenile's health or safety to:

- (1) The juvenile's attorney or attorney ad litem; and
- (2) The custodian of the juvenile.

9-27-355. Placement of juveniles.

(a) For purposes of this section, "relative" means a person within the fifth degree of kinship by virtue of blood or adoption.

(b)(1)(A) After the Department of Health and Human Services removes a juvenile or the circuit court grants custody of the juvenile to the department, the juvenile shall be placed in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency, as defined at § 9-28-402(12).

(B) For juveniles placed out of state, the placement shall be approved pursuant to the Interstate Compact on the Placement of Children, § 9-29-201 et seq.

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

(3) When it is in the best interest of each of the juveniles, the department shall attempt to place:

(A) Siblings together while they are in foster care and adoptive placement; and

(B) The infants of a minor mother together in foster care.

(c)(1) A relative of a juvenile placed in the custody of the department shall be given preferential consideration for placement if the relative caregiver meets all relevant child protection standards and it is in the juvenile's best interest to be placed with the relative caregiver.

(2) Placement or custody of a juvenile in the home of a relative or other person shall not relieve the department of its responsibility to actively implement the goal of the case.

(3) If a relative or other person inquires about the placement of a juvenile in his or her home, the department shall discuss the following two (2) options for the placement of the juvenile:

- (A) Becoming a department foster home; or
- (B) Obtaining legal custody of the juvenile.

(4)(A) The juvenile shall remain in a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined at § 9-28-402(12) until the home is opened as a regular foster home, as a provisional foster home if the person is a relative, or the court grants custody of the juvenile to the relative or person after a written approved home study is presented to the court.

(B) For placement only with a relative:

(i) The juvenile may be placed in the home of a relative on a provisional basis for up to six (6) months pending the relative's home being opened as a regular foster home.

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

(iii) Until the relative's home is opened as a regular foster home, the relative may apply for and receive benefits for which the relative may be entitled due to the placement of the juvenile in the home, such as benefits under the Transitional Employment Assistance Program, § 20-76-401, and food stamps; and

(iv) If the relative's home is not fully licensed as a foster home after six (6) months of the placement of the juvenile in the home:

(a) The department shall remove the juvenile from the relative's home and close the relative's provisional foster home; or

(b) The court shall remove custody from the department and grant custody of the juvenile to the relative subject to the limitations outlined in subdivision (c)(5) of this section.

(5) If the court grants custody of the juvenile to the relative or other person:

(A) The juvenile shall not be placed back in the custody of the department while remaining in the home of the relative or other person;

(B) The relative or other person shall not receive any financial assistance, including board payments, from the department, except for financial assistance for which the relative has applied and for which the relative or other person qualifies pursuant to the program guidelines, such as the Transitional Employment Assistance Program, § 20-76-401, food stamps, Medicaid, and the federal adoption subsidy; and

(C) The department shall not be ordered to pay the equivalent of board payments or adoption subsidies to the relative or other person as reasonable efforts to prevent removal of custody from the relative.

(d)(1) Juveniles who are in the custody of the department shall be allowed trial placements with parents for a period not to exceed thirty (30) days.

(2) At the end of thirty (30) days, the court shall either place custody of the juvenile with the parent or the department shall return the juvenile to a licensed or approved foster home, shelter, or facility or an exempt child welfare agency as defined in § 9-28-402(12).

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

9-27-356. Juvenile sex offender assessment and registration.

(a) If a juvenile is an adjudicated delinquent for any of the following offenses, the court shall order a sex offender screening and risk assessment:

- (1) Rape, § 5-14-103;
- (2) Sexual assault in the first degree, § 5-14-124;
- (3) Sexual assault in the second degree, § 5-14-125;
- (4) Incest, § 5-26-202; or
- (5) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303.

(b)(1) The court may order a sex offender screening and risk assessment if a juvenile is adjudicated delinquent for any offense with an underlying sexually motivated component.

(2) The court may require that a juvenile register as a sex offender upon recommendation of the Sex Offenders Assessment Committee and following a hearing as set forth in subsection (e) of this section.

(c) The juvenile division of circuit court judge may order reassessment of the sex offender screening and risk assessment by the committee at any time while the court has jurisdiction over the juvenile.

(d) Following a sex offender screening and risk assessment, the prosecutor may file a motion to request that a juvenile register as a sex offender at any time while the court has jurisdiction of the delinquency case if a juvenile is found delinquent for any of the offenses listed in subsection (a) of this section.

(e)(1) The court shall conduct a hearing within ninety (90) days of the registration motion.

(2)(A) The juvenile defendant shall be represented by counsel, and the court shall consider the following factors in making its decision to require the juvenile to register as a delinquent sex offender:

- (i) The seriousness of the offense;
- (ii) The protection of society;
- (iii) The level of planning and participation in the alleged offense;
- (iv) The previous sex offender history of the juvenile, including whether the juvenile has been adjudicated delinquent for prior sex offenses;
- (v) Whether there are facilities or programs available to the court that are likely to rehabilitate the juvenile prior to the expiration of the court's jurisdiction;
- (vi) The sex offender assessment and any other relevant written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
- (vii) Any other factors deemed relevant by the court.

(B) However, under no circumstances shall the exercise by the juvenile of the right against self-incrimination, the right to an adjudication hearing or appeal, the refusal to admit to an offense for which he or she was adjudicated delinquent, or the refusal to admit to other offenses in the assessment process be considered in the decision whether to require registration.

(f)(1) The court shall make written findings on all the factors in subsection (e) of this section.

(2) Upon a finding by clear and convincing evidence that a juvenile should or should not be required to register as a sex offender, the court shall enter its order.

(g) When the juvenile division of circuit court judge orders a juvenile to register as a sex offender, the judge shall order either the Division of Youth Services of the Department of Health and Human Services or a juvenile probation officer to complete the registration process by:

(1) Completing the sex offender registration form;

(2) Providing a copy of the sex offender registration order, fact sheet, registration form, and the Juvenile Sex Offender Rights and Responsibilities Form to the juvenile and the juvenile's parent, guardian, or custodian and explaining this information to the juvenile and the juvenile's parent, guardian, or custodian;

(3) Mailing a copy of the registration court order, fact sheets, and registration form to the Arkansas Crime Information Center, Sex Offender Registry Manager, One Capitol Mall 4D-200, LR, AR 72201;

(4) Providing local law enforcement agencies where the juvenile resides a copy of the sex offender registration form; and

(5) Ensuring that copies of all documents are forwarded to the court for placement in the court file.

(h) The juvenile may petition the court to have his or her name removed from the sex offender register at any time while the court has jurisdiction over the juvenile or when the juvenile turns twenty-one (21) years of age, whichever is later.

(i) The juvenile division of circuit court judge shall order the juvenile's name removed from the sex offender register upon proof by a preponderance of the evidence that the juvenile does not pose a threat to the safety of others.

(j) If the court does not order the juvenile's name removed from the sex offender register, the juvenile shall remain on the sex offender register for ten (10) years from the last date on which the juvenile was adjudicated a delinquent or found guilty as an adult for a sex offense or until the juvenile turns twenty-one (21) years of age, whichever is longer.

(k) Once a juvenile is ordered to register as a sex offender, he or she shall be subject to the registration requirements set forth in §§ 12-12-904, 12-12-906, 12-12-908, 12-12-909, and 12-12-912.

9-27-357. Deoxyribonucleic acid samples.

(a) A person who is adjudicated delinquent for the following offenses shall have a deoxyribonucleic acid sample drawn:

(1) Rape, § 5-14-103;

(2) Sexual assault in the first degree, § 5-14-124;

(3) Sexual assault in the second degree, § 5-14-125;

(4) Incest, § 5-26-202;

(5) Capital murder, § 5-10-101;

(6) Murder in the first degree, § 5-10-102;

(7) Murder in the second degree, § 5-10-103;

- (8) Kidnapping, § 5-11-102;
- (9) Aggravated robbery, § 5-12-103; and
- (10) Terroristic act, § 5-13-310.

(b) The court shall order a fine of two hundred fifty dollars (\$250) unless the court finds that the fine would cause an undue hardship.

(c)(1) A juvenile adjudicated delinquent for one (1) of the offenses listed in subsection (a) of this section shall have a deoxyribonucleic acid sample drawn upon intake at a juvenile detention facility or intake at a Division of Youth Services of the Department of Human Services facility.

(2) If the juvenile is not placed in a facility, the juvenile probation officer to whom the juvenile is assigned shall ensure that the deoxyribonucleic acid sample is drawn.

(d) All deoxyribonucleic acid samples taken under this section shall be taken in accordance with regulations promulgated by the State Crime Laboratory.

9-27-358. [Repealed.]

9-27-359. Fifteenth-month review hearing.

(a) A hearing shall be held to determine whether the Department of Health and Human Services shall file a petition to terminate parental rights if:

(1) A juvenile has been in an out-of-home placement for fifteen (15) continuous months, excluding trial placements and time on runaway status; and

(2) The goal at the permanency planning hearing was either:

(A) Reunification; or

(B) Another planned permanent living arrangement.

(b) The circuit court shall authorize the department to file a petition to terminate parental rights unless:

(1)(A) The child is being cared for by a relative or relatives; and

(B) Termination of parental rights is not in the best interest of the child;

(2)(A) The department has documented in the case plan a compelling reason why filing a petition is not in the best interest of the child; and

(B) The court approves the compelling reason as documented in the case plan; or

(3) The department has not provided to the family of the juvenile, consistent with the time period in the case plan, the services the department deemed necessary for the safe return of the child to the child's home if reunification services were required to be made to the family.

(c) If the court determines the permanency goal to be termination of parental rights, the department shall file the petition to terminate parental rights no later than the fifteenth month of the child's entry into foster care.

(d) If the court finds that the juvenile should remain in an out-of-home placement, either long-term or otherwise, the juvenile's case shall be reviewed every six (6) months, with an annual permanency planning hearing.

(e) A written order shall be filed by the court or by a party or party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

9-27-360. Review of termination of parental rights.

(a) After an order of termination of parental rights, the circuit court shall review the case following the termination hearing at least every three (3) months when the goal is adoption and in other cases every six (6) months until permanency is achieved.

(b) The court shall determine and shall include in its orders whether:

(1) The case plan, services, and current placement meet the juvenile's special needs and best interest, with the juvenile's health, safety, and educational needs specifically addressed;

(2) The Department of Health and Human Services has made reasonable efforts to finalize a permanency plan for the juvenile; and

(3) The case plan is moving toward an appropriate permanent placement for the juvenile.

(c) In making its findings, the court shall consider the extent of the compliance of the department and the juvenile with the case plan and court orders to finalize the permanency plan.

(d) A written order shall be filed by the court or by a party or a party's attorney as designated by the court and distributed to the parties within thirty (30) days of the date of the hearing or prior to the next hearing, whichever is sooner.

9-27-361. Court reports.

(a)(1) Seven (7) business days prior to a scheduled dependency-neglect review hearing, including the fifteenth-month review hearing and any post-termination of parental rights hearing, the Department of Health and Human Services and a court-appointed special advocate, if appointed, shall file with the juvenile division of the circuit court a review report including a certificate of service that the report has been distributed to all the parties or their attorneys and the court-appointed special advocate, if appointed.

(2)(A) The court report prepared by the department shall include a summary of the compliance of the parties with the court orders and case plan, including the description of the services and assistance the department has provided and recommendations to the court.

(B) In cases in which a child has been returned home, the department's review report shall include a description of any services needed by and requirements of the parent or parents, including, but not limited to, a safety plan to ensure the health and safety of the juvenile in the home.

(3) The report prepared by the court-appointed special advocate shall include, but is not limited to:

(A) Any independent factual information that he or she feels is relevant to the case;

(B) A summary of the compliance of the parties with the court orders; and

(C) Recommendations to the court.

(4)(A) At a review hearing, the court shall determine on the record whether the previously filed reports shall be admitted into evidence based on any evidentiary objections made by the parties.

(B) The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record.

(b)(1) Seven (7) business days prior to a scheduled dependency-neglect permanency planning hearing, the department and the court-appointed special advocate, if appointed, shall file with the court a permanency planning court report that includes a certificate of service which establishes that the report has been distributed to all of the parties or their attorneys and the court-appointed special advocate, if appointed.

(2) The permanency planning court report prepared by the department shall include, but not be limited to, the following:

(A) A summary of the compliance of the parties with the court orders and case plan, including the description of the services and assistance the department has provided;

(B) A list of all the placements in which the juvenile has been;

(C) A recommendation and discussion regarding the permanency plan including:

(i) The appropriateness of the plan;

(ii) A timeline; and

(iii) The steps and services necessary to achieve the plan, including the persons responsible; and

(D) The location of any siblings, and if separated, a statement for the reasons for separation and any efforts to reunite or maintain contact if appropriate and in the best interest of the siblings.

(3) The report prepared by the court-appointed special advocate shall include, but is not limited to:

(A) Any independent factual information that he or she feels is relevant to the case;

(B) A summary of the compliance of the parties with the court orders; and

(C) The recommendations to the court.

(4)(A) At the permanency planning hearing, the court shall determine on the record whether the previously filed reports shall be admitted into evidence based on any evidentiary objections made by the parties.

(B) The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record.

(c)(1) Nothing in this section shall prevent the department or the court-appointed special advocate from filing a report with the court and providing it to all parties or their attorneys at least seven (7) business days prior to any scheduled dependency-neglect hearing or presenting any subsequent or addendum reports to the court during a hearing.

(2)(A) The court shall determine on the record whether the reports shall be admitted into evidence based on any evidentiary objections made by the parties.

(B) The court shall not consider as evidence any report or part of a report that was not admitted into evidence on the record.

9-27-362. Emancipation of juveniles.

(a) A petition for emancipation may be filed in a circuit court by the attorney or the attorney ad litem for a juvenile who is in the custody of the Department of Health and Human Services pursuant to a dependency-neglect, dependency, or family in need of services case.

(b) The petition shall be served along with a notice of hearing to the juvenile's parent, legal guardian, or legal custodian.

(c) The circuit court has the authority to emancipate a juvenile in a dependency-neglect, dependency, or family in need of services case.

(d)(1) The court may emancipate the juvenile after a hearing on the petition if the petitioner shows by a preponderance of the evidence that:

(A) The juvenile is at least seventeen (17) years of age;

(B) The juvenile is willing to live separate and apart from his or her parent, legal guardian, or legal custodian;

(C) The juvenile has an appropriate place to live;

(D) The juvenile has been managing or has the ability to manage his or her own financial affairs;

(E) The juvenile has a legal source of income, such as employment or a trust fund;

(F) The juvenile has health care coverage or a realistic plan on how to meet his or her health needs;

(G) The juvenile agrees to comply with the compulsory school attendance laws; and

(H) Emancipation is in the best interest of the juvenile.

(2) The court shall consider the wishes of the parent, legal guardian, or legal custodian in making its decision.

(3) If the juvenile has an attorney ad litem, the court shall consider the recommendation of the attorney ad litem.

(e) An order of emancipation has the following effects:

(1) The juvenile has the right to obtain and consent to all medical care, including counseling;

(2) The juvenile has the right to enter into contracts;

(3) The juvenile has the right to enroll himself or herself in school, college, or other educational programs;

(4) The juvenile has the right to obtain a driver's license without consent of a parent or other adult so long as the juvenile complies with the remaining requirements of the driver's license law;

(5) The juvenile's parent, legal guardian, or legal custodian is no longer legally responsible for the juvenile;

(6) The juvenile may still be charged with a delinquency and prosecuted in juvenile court;

(7) The juvenile may not marry without parental permission pursuant to § 9-11-102;

(8) The juvenile is not relieved from compulsory school attendance;

(9) The department is not relieved from the responsibility of providing independent living services and funding for which the juvenile is eligible upon request by the juvenile;

(10) Child support orders are not terminated but may cease upon entry of an order from the court that issued the order of child support;

(11) Until the juvenile reaches the age of majority, the juvenile remains eligible for federal programs and services as a juvenile;

(12) The juvenile is not permitted to obtain items prohibited for sale to or possession by a minor, such as tobacco or alcohol;

(13) The juvenile remains subject to state and federal laws enacted for the protection of persons under eighteen (18) years of age such as the prohibition against a juvenile's obtaining a tattoo; and

(14) No statute of limitations is affected.

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9-27-401. Creation - Representation for children and parents.

(a) There is hereby created a Division of Dependency-Neglect Representation within the Administrative Office of the Courts which will be staffed by a court-appointed special advocate coordinator and an attorney coordinator.

(b)(1) The Director of the Administrative Office of the Courts is authorized to employ or enter into professional service contracts with private individuals or businesses or public agencies to represent all children in dependency-neglect proceedings.

(2)(A) Before employing or entering into a contract or contracts, the office shall consult with the judge or judges of the circuit court designated to hear dependency-neglect cases in their district plan under Arkansas Supreme Court Administrative Order Number 14, originally issued April 6, 2001, in each judicial district in accordance with the provisions of § 19-11-1001 et seq.

(B) Those obtaining employment or contracts through the office as described in subdivision (b)(3) of this section will be designated as the providers for representation of children in dependency-neglect cases in each judicial district.

(3)(A) The office shall advertise employment and contract opportunities.

(B) The distribution of funds among the judicial districts shall be based on a formula developed by the office and approved by the Juvenile Division Judges Committee of the Arkansas Judicial Council.

(4) The Supreme Court shall adopt standards of practice and qualifications for service for all attorneys who seek employment or contracts to provide legal representation to children in dependency-neglect cases.

(5)(A)(i) In the transition to a state-funded system of dependency-neglect representation, it is the intent of the General Assembly to provide an appropriate and adequate level of representation to all children in dependency-neglect proceedings as required under federal and state law pursuant to § 9-27-316.

(ii)(a) It is recognized by the General Assembly that in many areas of the state, resources have not been available to support the requirement of representation for children at the necessary level.

(b) It is also recognized, however, that in other areas a system has been developed that is appropriately and successfully serving children and the courts.

(iii) With the transition to state funding, it is not the intent of the General Assembly to adversely affect these systems that are working well or to put into place a system that is too inflexible to respond to local needs or restrictions.

(B) In its administration of the system, therefore, the Administrative Office of the Courts is charged with the authority and responsibility to establish and maintain a system that:

- (i) Equitably serves all areas of the state;
- (ii) Provides quality representation;
- (iii) Makes prudent use of state resources; and
- (iv) Works with those systems now in place to provide an appropriate level of representation of children and courts in dependency-neglect cases.

(c) The director is authorized to:

- (1) Establish a statewide court-appointed special advocate program;
- (2) Provide grants or contracts to local court-appointed special advocate programs; and
- (3) Work with judicial districts to establish local programs by which circuit courts may appoint trained volunteers to provide valuable information to the courts concerning the best interests of children in dependency-neglect proceedings.

(d)(1) The director is authorized to establish a program to represent indigent parents or guardians in dependency-neglect cases.

(2) The court shall appoint counsel in compliance with federal law and § 9-27-316(h) in all proceedings to remove custody or to terminate parental rights.

(3) With the advice of judges who hear dependency-neglect cases, the Arkansas Supreme Court shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for indigent parents or guardians in dependency-neglect cases.

(4) When attorneys are appointed under subdivision (d)(2) of this section, the fees for services and reimbursable expenses shall be paid from funds appropriated for that purpose to the office.

(5) When a court orders the payment of funds for the fees and expenses authorized by this subsection, the attorney shall transmit a copy of the order to the office, which is authorized to pay the funds.

(6) The court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(7) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid under this section.

(8) In order to ensure that each judicial district will have an appropriate amount of funds to utilize indigent parent or guardian representation in dependency-neglect cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the committee.

History. Acts 1997, No. 1227, § 14; 1999, No. 708, § 1; 2001, No. 987, § 6; No. 1267, § 1; 2003, No. 1166, § 28; 2003, No. 1315, § 1.

9-27-402. Case plans.

(a) A case plan shall be developed in all dependency-neglect cases or any case involving an out-of-home placement. The Department of Human Services shall be responsible for developing case plans in all dependency-neglect cases, and in family in need of services or delinquency cases when custody is transferred to the Department of Human Services, pursuant to § 9-27-328. The case plan shall be:

(1)(A) Developed in consultation with the juvenile's parent, guardian, or custodian and, if appropriate, the juvenile, the juvenile's foster parents, the court-appointed special advocate, the juvenile's attorney ad litem, and all parties' attorneys.

(B) If the parents are unwilling or unable to participate in the development of the case plan, the department shall document that unwillingness or inability and provide this written documentation to the parent, if available. The department shall then prepare a case plan conforming as nearly as possible with the requirements set forth in this section.

(C) A parent's incarceration, by itself, does not make a parent unavailable to participate in the development of a case plan;

(2)(A) Developed and filed with the court no later than thirty (30) days after the date the petition was filed or the juvenile was first placed out of home, whichever is sooner.

(B) If the department does not have sufficient information prior to the adjudication hearing to complete all of the case plan, the department shall complete those parts for which information is available.

(C) All parts of the case plan shall be completed and filed with the court thirty (30) days after the adjudication hearing;

(3) Signed by and distributed to all parties, and distributed to the juvenile's attorney ad litem, court-appointed special advocate, and foster parents, if available; and

(4)(A) Subject to modification based on changing circumstances.

(B) All parties to the case plan shall be notified of any substantive change to the case plan;

(C) A substantive change to a case plan includes, but is not limited to, such changes as the placement of the juvenile, the visitation rights of any party, or the goal of the plan.

(b) When the juvenile is receiving services in the home of the parent, guardian or custodian, the case plan shall include at a minimum, in addition to the requirements in subsection (a) of this section:

- (1) A description of the problems being addressed;
- (2) A description of the services to be provided to the family and juvenile specifically addressing the identified problems and time frames for providing services;
- (3) A description of any reasonable accommodations made to parents in accordance with the Americans with Disabilities Act to assure to all the parents meaningful access to reunification and family preservation services;
- (4) The name of an individual who the petitioner, parent, guardian, or custodian knows is claiming to be or who is named as the father or possible father of the juvenile and whose paternity of the juvenile has not been judicially determined; and
- (5) A description of how the juvenile's health and safety will be protected.

(c) When the juvenile is receiving services in an out-of-home placement, the case plan must include at a minimum, in addition to the requirements in subsections (a) and (b) of this section:

- (1) A description of the permanency goal;
- (2) The specific reasons for the placement of the juvenile in care outside the home, including a description of the problems or conditions in the home of the parent, guardian, or custodian which necessitated removal of the juvenile and the remediation of which will determine the return of the juvenile to the home;
- (3) A description of the type of out-of-home placement selected for the juvenile, including a discussion of the appropriateness of the placement;
- (4) A plan for addressing the needs of the juvenile while in the placement, with emphasis on the health and safety safeguards in place for the child, including a discussion of the services provided within the last six (6) months;
- (5)(A) The specific actions to be taken by the parent, guardian, or custodian of the juvenile to eliminate or correct the identified problems or conditions and the period during which the actions are to be taken.
(B) The plan may include any person or agency who shall agree to and be responsible for the provision of social and other family services to the juvenile or the parent, guardian, or custodian of the juvenile;
- (6) The visitation rights and obligations of the parent, guardian, or custodian and the state agency during the period the juvenile is in the out-of-home placement;
- (7) The social and other family services to be provided to the parent, guardian, or custodian of the juvenile, and foster parent, if any, during the period the juvenile is in placement and a timetable for the provision of those services, the purposes of which shall be to promote the availability to the juvenile of a continuous and stable living environment, promote family autonomy, strengthen family life where possible, and promote the reunification of the juvenile with the parent, guardian, or custodian;
- (8) To the extent available and accessible, the health and education records of the juvenile, pursuant to 42 U.S.C. § 675(1);
- (9) A description of the financial support obligation to the juvenile, including health insurance of the juvenile's parent, parents, or guardian;
- (10)(A) A description of the location of siblings.

(B) If siblings have been separated, a statement of the reasons for separation and the efforts that have been and will be made to enable the siblings to maintain regular contact while separated and to be reunited as soon as possible;

(11) When appropriate for a juvenile of age sixteen (16) and over, the case plan must also include a written description of the programs and services which will help the juvenile prepare for the transition from foster care to independent living; and

(12) A written notice to the parent or parents that failure of the parent or parents to comply substantially with the case plan may result in the termination of parental rights and that a material failure to comply substantially may result in the filing of a petition for termination of parental rights sooner than the compliance periods set forth in the case plan itself.

(d) The case plan is subject to court approval upon review by the court.

(e) A parent's, guardian's, or custodian's participation in the development or the acceptance of a case plan shall not constitute an admission of dependency-neglect.

History. Acts 1997, No. 1227, § 8; 1999, No. 401, § 16.

9-27-501. Extended juvenile jurisdiction designation.

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

(1) Juvenile, under thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, and the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in § 9-27-502;

(2)(A) Juvenile, thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(B) However, juveniles thirteen (13) years of age at the time of the alleged offense shall have an evaluation pursuant to § 9-27-502 and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity;

(3) Juvenile, fourteen (14) or fifteen (15) years of age at the time of the alleged offense, is charged with any of the crimes listed in § 9-27-318(b)(1) and (c)(2); or

(4) Juvenile, sixteen (16) or seventeen (17) years of age at the time of the alleged offense, is charged with any of the crimes listed in § 9-27-318(b)(1) and (c)(2).

(b) The juvenile's attorney may file a motion to request extended juvenile jurisdiction if the state could have filed pursuant to subsection (a) of this section.

History. Acts 1999, No. 1192, § 1; 2003, No. 1809, § 13.

9-27-502. Competency - Fitness to proceed - Lack of capacity.

(a) Except as provided by subsection (b) of this section, the provisions of § 5-2-301 et seq. shall apply to the following:

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

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

(b)(1)(A) For a juvenile under the age of thirteen (13) at the time of the alleged offense and who is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, there shall be a presumption that:

(i) The juvenile is unfit to proceed; and

(ii) He or she lacked capacity to:

(a) Possess the necessary mental state required for the offense charged;

(b) Conform his or her conduct to the requirements of law; and

(c) Appreciate the criminality of his or her conduct.

(B) The prosecution must overcome these presumptions by a preponderance of the evidence.

(2)(A) For such juveniles under the age of thirteen (13) and who are charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, the court shall order an evaluation to be performed in accordance with § 5-2-305(b) by a psychiatrist or a clinical psychologist who is specifically qualified by training and experience in the evaluation of juveniles.

(B) Upon an order for evaluation, all proceedings shall be suspended and the period of delay until the juvenile is determined fit to proceed shall constitute an excluded period for the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

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

(A) The names and addresses of all attorneys involved;

(B) Information about the alleged offense; and

(C) Any information about the juvenile's background that the prosecutor deems relevant.

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

(A) Psychiatric records;

(B) School records; and

(C) Medical records.

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

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

(A)(i) Obtain and review all records pertaining to the juvenile.

(ii) This should include the information in subdivisions (b)(3) and (4) of this section and any other relevant records;

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

- (C) Consider the current alleged offense;
 - (D) Conduct a competence abilities interview of the juvenile;
 - (E) Conduct an age-appropriate mental status exam using tests designed for juveniles;
 - (F) Conduct an age-appropriate psychological evaluation using tests designed for juveniles; and
 - (G) Consider any other relevant test or information.
- (7)(A) Evaluations shall be filed with the court and distributed to the parties within ninety (90) days from the date of the order requesting such evaluation.
- (B) All such reports shall be filed under seal with the court and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.
 - (C) The report shall include, but not be limited to, the following:
 - (i) Identification of the juvenile and the charges;
 - (ii) Listing of assessment methods used;
 - (iii) Description of what the juvenile was told about the purpose of the evaluation;
 - (iv) Social, clinical, and developmental history and the sources from which this information was obtained;
 - (v) Mental status data, including any psychological testing conducted and results;
 - (vi) Comprehensive intelligence testing;
 - (vii) Competence data assessing the competence-to-stand-trial abilities;
 - (viii) Interpretation of the data, including clinical or developmental explanations for any serious deficits in competence abilities;
 - (ix)(a) An opinion as to the juvenile's fitness to proceed.
 - (b) In reaching this opinion, the examiner shall consider and make written findings regarding the following:
 - (1) Do the juvenile's capabilities entail:
 - (A) An ability to understand and appreciate the charges and their seriousness;
 - (B) An ability to understand and realistically appraise the likely outcomes;
 - (C) A reliable episodic memory so that he or she can accurately and reliably relate a sequence of events;
 - (D) An ability to extend thinking into the future;
 - (E) An ability to consider the impact of his or her actions on others;
 - (F) Verbal articulation abilities or the ability to express himself in a reasonable and coherent manner; and
 - (G) Logical decision-making abilities, particularly multifaceted problem solving or the ability to take several factors into consideration in making a decision.
 - (2) Developmentally, does the juvenile have:
 - (A) An ability to understand the charges;
 - (B) An ability to understand the roles of participants in the trial process, i.e., judge, defense attorney, prosecutor, witnesses, and jury and understand the adversarial nature of the process;
 - (C) An ability to adequately trust and work collaboratively with his or her attorney and provide a reliable recounting of events;

(D) An ability to reason about available options by weighing their consequences, including, but not limited to, weighing pleas, waivers, and strategies;

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

(F) An ability to articulate his or her motives; and

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

- (1) Possess the necessary mental state required for the offense charged;
- (2) Conform his or her conduct to the requirements of the law; and
- (3) Appreciate the criminality of his or her conduct.

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

- (1) Was the juvenile able to form the necessary intent;
- (2) Did the juvenile know which actions were wrong;
- (3) Did the juvenile have reasonably accurate expectations of the consequences of his or her actions;
- (4) Was the juvenile able to act of his or her own volition;
- (5) Did the juvenile have the capacity to behave intentionally;
- (6) Did the juvenile have the capacity to engage in logical decision-making;
- (7) Did the juvenile have the capacity to foresee the consequences of his or her actions; and
- (8) Did the juvenile have the capacity to exert control over his or her impulses and to resist peer pressure.

(8)(A) Within thirty (30) days of the receipt of the evaluation report, the court shall first determine whether the juvenile is fit to proceed.

(B)(i) The parties may stipulate to the findings and conclusions of the evaluation report and the court may enter an order with respect to fitness based thereon.

(ii)(a) Otherwise, a hearing shall be conducted and in order for the court to find a juvenile fit to proceed, the prosecution shall be required to prove by a preponderance of the evidence the following:

- (1) The juvenile understands the charges and potential consequences;
- (2) The juvenile understands the trial process and proceedings against him or her; and
- (3) The juvenile has the capacity to effectively participate with and assist his attorney in a defense to prosecution.

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

(9)(A) If the juvenile is found unfit to proceed, the court shall commit the juvenile to the Arkansas State Hospital or a residential treatment facility for a period not to exceed nine (9) months.

(B) During this period, the facility responsible for the juvenile shall be required to report to the court and the parties at least every thirty (30) days on the juvenile's progress.

(C) If fitness to proceed is not restored within nine (9) months, the court shall convert the delinquency petition to a family in need of services petition.

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

- (i) Possess the necessary mental state required for the offense charged;
- (ii) Conform his or her conduct to the requirements of the law; and
- (iii) Appreciate the criminality of his or her conduct.

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

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

(iii) If the court finds the state did not meet its burden with regard to the capacity of the charged offense or a lesser included offense, the court shall convert the delinquency petition into a family in need of services petition.

(iv)(a) If the court finds that the state met its burden with regard to the capacity, the court shall schedule a designation hearing as described in § 9-27-503.

(b) Such a finding by the court does not prevent the juvenile from raising the affirmative defense of lack of capacity at a subsequent adjudication hearing.

History. Acts 1999, No. 1192, § 2.

9-27-503. Designation hearing.

(a)(1) When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days following the petition or motion requesting such designation.

(2) These time limitations shall be tolled during the pendency of any competency issues.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History. Acts 1999, No. 1192, § 3.

9-27-504. Right to counsel.

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

(b) This right to counsel cannot be waived.

History. Acts 1999, No. 1192, § 4.

9-27-505. Extended juvenile jurisdiction adjudication.

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

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

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

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

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

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

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

(g)(1) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall enter a disposition subject to § 9-27-506.

(2) If the juvenile is adjudicated delinquent for an offense that would not have subjected him or her to extended juvenile jurisdiction, the court shall enter any of the dispositions available at § 9-27-330.

History. Acts 1999, No. 1192, § 5; 2003, No. 1166, § 29.

9-27-506. Extended juvenile jurisdiction disposition hearing.

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

- (1) Order any of the juvenile dispositions authorized by § 9-27-330; and
- (2) Suspend the imposition of an adult sentence pending court review.

History. Acts 1999, No. 1192, § 6; 2003, No. 1166, § 30.

9-27-507. Extended juvenile jurisdiction court review hearing.

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

- (1) Has violated a juvenile disposition order;
- (2) Has been adjudicated delinquent or found guilty of committing a new offense; or

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

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

(1) Amend or add any juvenile disposition authorized by § 9-27-330; or
(2)(A)(i) Exercise its discretion to impose the full range of adult sentencing available in the criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment.

(ii) However, a sentence of imprisonment shall not exceed forty (40) years except for juveniles adjudicated for capital murder, § 5-10-101, and murder in the first degree, § 5-10-102, who may be sentenced for any term, up to and including life.

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

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

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

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

(c)(1) The juvenile may petition the court to review and modify the disposition at any time.

(2) If the juvenile's initial petition is denied, the juvenile must wait one (1) year from the date of the denial to file a new petition for modification.

(d)(1) If the state or the juvenile files a petition to modify the court's disposition order before six (6) months prior to the juvenile's eighteenth birthday, the filing party bears the burden of proof.

(2) If the juvenile is sixteen (16) or seventeen (17) years of age at the time that the extended juvenile jurisdiction petition is filed, then the State of Arkansas or the juvenile may petition the court after the juvenile's eighteenth birthday but no later than six (6) months before the juvenile's twenty-first birthday.

(e)(1) If no hearing has been conducted six (6) months before the juvenile's eighteenth birthday or no later than six (6) months before the juvenile's twenty-first birthday if the juvenile is sixteen (16) or seventeen (17) years of age at the time that the extended juvenile jurisdiction petition is filed, the court shall conduct a hearing to determine whether to release the juvenile, amend or add any juvenile disposition, or impose an adult sentence.

(2) In making its determination, the court shall consider the following:

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

(B) The nature of the offense or offenses and the manner in which the offense or offenses were committed;

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

(D) The protection of public safety;

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

(F) Victim impact evidence admitted pursuant to § 16-97-103.

(3) If the state seeks to impose an adult sentence, the state must prove by a preponderance of the evidence that the imposition of an adult sentence is appropriate and that public safety requires imposition.

(4)(A) Following a hearing, the court may enter any of the following dispositions:

(i) Release the juvenile;
(ii) Amend or add any juvenile disposition; and
(iii)(a) Exercise its discretion to impose the full range of sentencing available in circuit court, including probation, suspended imposition of sentence, and imprisonment.

(b) A sentence of imprisonment shall not exceed forty (40) years, except juveniles adjudicated for capital murder, § 5-10-101, and murder in the first degree, § 5-10-102, may be sentenced for any term, up to and including life.

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

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

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

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

History. Acts 1999, No. 1192, § 7; 2001, No. 1582, § 4; 2003, No. 1166, § 31; 2005, No. 1191, §§ 8, 9.

9-27-508. Extended juvenile jurisdiction records.

(a) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult, or until the juvenile's twenty-first birthday, whichever is longer.

(b)(1) If an adult sentence is imposed upon an extended juvenile jurisdiction offender, the records of that case shall be considered adult criminal records.

(2)(A) The juvenile court shall enter an order transferring the juvenile records to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a criminal division of circuit court docket number and shall maintain the file as if the case had originated in the criminal division of circuit court.

History. Acts 1999, No. 1192, § 8; 2001, No. 1582, § 5.

9-27-509. Division of Youth Services - Commitment of extended juvenile jurisdiction juveniles.

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

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

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

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

(c)(1) Upon determination that the juvenile has been rehabilitated, the Division of Youth Services of the Department of Human Services may petition the court for release.

(2) The court shall conduct a hearing and shall consider the following factors in making its determination to release the juvenile from the division:

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

(B) The nature of the offense or offenses and the manner in which they were committed;

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

(D) The protection of public safety; and

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

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

History. Acts 1999, No. 1192, § 9.

9-27-510. Department of Correction - Placement.

(a)(1) A juvenile who has received an adult sentence to the Department of Correction shall not be transported to the Department of Correction until the juvenile is sixteen (16) years of age.

(2) If a juvenile receives a sentence to the Department of Correction prior to the juvenile's sixteenth birthday, the juvenile shall be housed by the Division of Youth Services of the Department of Human Services until that date, except as provided by court order or parole decision made by the Post Prison Transfer Board.

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

(c)(1)(A) Juveniles sentenced to the Department of Correction pursuant to extended juvenile jurisdiction are subject to parole as any other inmate within the Department of Correction.

(B) Juveniles adjudicated for capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, are subject to parole.

(2) Juveniles will be given credit for time served in a juvenile detention or juvenile facility against any adult sentence.

History. Acts 1999, No. 1192, § 10; 2001, No. 1582, § 6.