

Delinquency / Extended Juvenile  
Jurisdiction

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Hon. Wiley Branton  
Circuit Judge, Little Rock  
and

Hon. Jay Finch  
Circuit Judge, Bentonville

## DELINQUENCY OVERVIEW

(Revised 10-29-08)

Judge Wiley Branton, Jr.

- I. IN THE CONTEXT OF CHILDREN BEING CHARGED WITH CRIMINAL OFFENSES, WHY HAVE A SPECIAL JUVENILE COURT FOR CHILDREN?
- II. WHAT ARE THE PRIMARY DISTINCTIONS BETWEEN JUVENILE DELINQUENCY AND ADULT CRIMINAL PROCEEDINGS?

**In juvenile court, unless the case has been designated an extended juvenile jurisdiction case, there is no trial by jury. However, in EJJ cases, the defendant may request a trial by jury.**

**In juvenile court, the disposition or punishment fits the needs of the child, not necessarily the severity of the crime.**

Juvenile delinquency records are generally not made available to the public and do not necessarily follow the juvenile into adult life. There are exceptions.

- III. WHAT ARE SOME OF THE MORE IMPORTANT FEDERAL CONSTITUTIONAL PRINCIPLES AFFECTING CHILDREN FACING CHARGES IN JUVENILE COURT?

**In *In Re Gault*, 387 U.S. 1, (1966), the Supreme Court held that the Due Process Clause of the Fourteenth Amendment applied to “proceedings to determine delinquency which may result in commitment to an institution in which the juvenile’s freedom is curtailed.” The court went on to state that due process required that juveniles were entitled to written notice of charges, notice of right to counsel, notice of right to have counsel appointed, the right to confront and cross examine witnesses, and were entitled to the privilege against self incrimination.**

**In *In Re Winship*, 397 U.S. 358, (1969), the Supreme Court held that juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt when they are charged with a violation of criminal law.**

**In *Breed v. Jones*, 421 U.S. 519, (1975), the Supreme Court held that the double jeopardy clause does apply to juvenile court proceedings.**

IV WHAT ARE THE SOURCES OF ARKANSAS JUVENILE LAW AND PROCEDURE?

ACA § 9-27-301 *et seq.* Juvenile Code

ACA § 9-27-501 *et seq.* Extended Juvenile Jurisdiction

ACA Title 5. Criminal Offenses

Arkansas Rules of Criminal Procedure ACA §§ 9-27-313 (Taking into custody), 9-27-327(c) (Adjudication hearing), 9-27-325(f) & (g) (Hearings - Generally)

Arkansas Rules of Civil Procedure ACA §§ 9-27-312 (Notification to defendant), 9-27-314(c)(2) (Emergency orders)

Arkansas Rules of Evidence ACA § 9-27-325(e) (Hearings -Generally)

V WHAT IS THE PURPOSE OF THE JUVENILE CODE IN GENERAL?

The primary purpose of the Arkansas Juvenile Code is to fix or mend broken children and families and to make sure that children are kept in a minimally safe, secure, and otherwise appropriate environment. See ACA § 9-27-302. Purposes - Construction

VI JUVENILE COURT JURISDICTION AND DEFINITIONS

A. WHO IS A "DELINQUENT JUVENILE" WITHIN THE MEANING OF THE PROVISIONS OF THE JUVENILE CODE?

A juvenile aged 10 to 17 who commits an act for which an adult could be criminally prosecuted.

A juvenile of any age charged with capitol murder, or first degree murder, and who is subject to extended juvenile jurisdiction.

See ACA § 9-27-303(14) & (29) (Definitions)

B. WHICH COURT OR DIVISION HAS JURISDICTION OVER JUVENILE DELINQUENCY CASES?

The juvenile division of circuit court shall have exclusive original jurisdiction of and shall be the sole court for proceedings in which a juvenile is alleged to be delinquent. See ACA § 9-27-306 (Jurisdiction).

### C. JUVENILE INTAKE OFFICER - ACA § 9-27-308

Note: ACA § 9-27-321 provides: **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."**

### VII WHO CAN FILE A DELINQUENCY PETITION

**The prosecuting attorney has sole authority to file a delinquency petition or petition for revocation of probation. ACA § 9-27-310. Commencement of proceedings.**

**Any person may submit to the intake officer for investigation a complaint of acts or omissions which, if substantiated, would constitute delinquency. Upon substantiation, the intake officer may refer the matter to the prosecuting attorney. ACA § 9-27-310(d)**

### VIII PARTIES AND REPRESENTATION

The juvenile is obviously the defendant in a delinquency proceeding. Parents or guardians are also considered party defendants in delinquency petitions. ACA § 9-27-311(c).

Juvenile defendants are clearly entitled to legal representation at all critical stages. ACA § 9-27-316.

**While a juvenile may waive his/her right to counsel, a very specific process must be followed. See ACA § 9-27-317. This judge does not recommend that a juvenile be permitted to waive counsel.**

### IX WHAT IS THE PROPER PROCEDURE FOR TAKING A JUVENILE INTO CUSTODY ? See ACA § 9-27-313

A. Arrest Warrant based upon probable cause- See ARCrImP Rule 7. Arrest With A Warrant

B. Arrest By Law Enforcement Officer Without Warrant - See ARCrImP Rule 4. Arrest: General Provisions. A law officer may arrest without an arrest warrant if he/she has reasonable cause to believe that a person has committed a felony. A law officer may arrest a person for any offense committed in the officer's presence.

**May a law officer legally arrest a person without an arrest warrant for a misdemeanor not committed in the presence of the officer? It depends. See ARCrImP 4.1**

C. Order of the court (i.e. Pick Up Order for failure to appear or violation of conditions of release or terms of probation)

#### D. PROCEDURE UPON BEING TAKEN INTO CUSTODY

If a juvenile is arrested by a law enforcement officer, the law enforcement officer will contact the juvenile intake officer who makes the initial decision to detain or release the juvenile. The intake officer has 24 hours in which to make the initial detention decision. The intake officer may authorize the release of the juvenile to his parents or guardians or may detain the juvenile pending a detention hearing before a judge.

If a juvenile is initially detained by the juvenile intake officer, the juvenile must be given a detention hearing before a judge within 72 hours after he/she is taken into custody. If the juvenile is not afforded a timely detention hearing, the juvenile must be released.

#### E. DETENTION HEARINGS - ACA § 9-27-326

**At the detention hearing, the juvenile must be informed of the nature of the charges against him/her, be informed of his/her right to counsel, be informed of the privilege against self-incrimination, and be informed of the reasons his/her detention is being sought. The juvenile should be provided an attorney at the detention hearing.**

**If a juvenile is arrested without a warrant, and is initially detained, at the detention hearing, the court must determine, upon affidavit or testimony, whether probable cause exists. If there is no probable cause supported by sworn statement or in court testimony, the juvenile must be released.**

If at a detention hearing the court determines that probable cause exists, the court must then determine whether the juvenile can be released pending the next court date or whether he/she must be detained. See detention factors - ACA § 9-27-326(d)(3)

Setting conditions of release.

#### X DETENTION LIMITATIONS

If the court decides to detain a juvenile, the plea and adjudication must take place within 14 days, unless the time is extended for good cause.

**If the court decides to detain a juvenile, the delinquency petition must be filed within 24 hours after the detention hearing, or within 96 hours after the juvenile has been taken into custody, whichever is sooner, or else the juvenile must be released from detention. ACA § 9-27-313(f).**

**If a juvenile is adjudicated delinquent, and the court determines that the juvenile needs to be detained pending disposition, the disposition shall take place within 14 days of the disposition. ACA § 9-27-329 (b) (Disposition Hearing)**

XI JUVENILE COMPETENCY TO PROCEED (mental status during relevant court proceedings) Competency Evaluation or Act III evaluation

ACA § 9-27-325(j) provides: "Except as provided in § 9-27-502, in any juvenile delinquency proceedings 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.

ACA § 5-2-302(a) provides: "No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or her or to assist effectively in his or her own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures."

XII AFFIRMATIVE DEFENSES (involving culpable mental state)

**"In delinquency proceedings, juveniles are entitled to all defenses available to criminal defendants in circuit court."** See ACA § 9-27-325(k)

Involuntary Intoxication (§ 5-2-207), Duress (§ 5-2-208), Entrapment (§ 5-2-209)

Lack of Mental Capacity (mental capacity at time of offense). ACA § 5-2-312(a)(1) provides: **It is an affirmative defense to a prosecution that at the time the defendant engaged in the conduct charged, he or she lacked capacity, as a result of mental disease or defect, to conform his or her conduct to the requirements of law or to appreciate the criminality of his or her conduct."**

XIII PLEAS - NOT TRUE - NO CONTEST - TRUE

A plea of "no contest" or "true" requires the court to address the juvenile directly and to ascertain that the no contest or true plea is knowingly, voluntarily, and intelligently made. See ARCrP Rule 24.4.

XIV DIVERSION See ACA § 9-27-323 (Diversion - Conditions - Agreement - Completion)

XV ADJUDICATION

**The rules of evidence apply. ACA § 9-27-325(e)**

**The state must prove its case beyond a reasonable doubt. ACA § 9-27-325(h)(2)**

**A juvenile has the same defenses available to adults. ACA § 9-27-325(k)**

**The juvenile must be competent to proceed to trial. ACA § 9-27-325(j)**

**Unless it is an EJJ case, there is no right to trial by jury. ACA § 9-27-325(a)**

**XVI. DISPOSITION ALTERNATIVES - ACA §§ 9-27-329, 9-27-330, 9-27-331**

**Judge has great discretion in making disposition. The rules of evidence do not strictly apply; hearsay is admissible. ARE 1101. Rules applicable. The dispositional alternatives are not mutually exclusive.**

Indeterminate sentence not to exceed 90 days in local detention facility

DYS Commitment

Probation on terms ( set curfew, require school attendance, specify where juvenile must live, treatment, therapy, counseling, boot camp, drug & alcohol screens, suspend driver's license, up to 160 hours of community service, family services if necessary.

fine \$500, costs \$35, Restitution - \$10,000, Probation Fee - \$20 per month, atty. fees

**XVII. SEXUAL OFFENDER REGISTRATION - See ACA §9-27-356, §12-12-906**

**XVIII. REVIEW HEARINGS**

**XIX. PROBATION REVOCATION ACA § 9-27-339**

**A juvenile's probation may be revoked. The state must prove its case by a preponderance of the evidence. ACA § 9-27-339(e). The rules of evidence do not strictly apply. ARE 1101.**

**If juvenile is detained pending probation revocation, revo hearing must take place within 14 days. Revo petition must be filed within 24 hours of detention hearing, or juvenile must be released.**

**XX CRIMINAL AND JUVENILE DIVISION CHARGING (WHEN CAN A JUVENILE BE PROSECUTED AS AN ADULT?)**

**ACA § 9-27-318. Waiver and transfer to the criminal division of circuit court.**

Any juvenile aged 16 or 17 who is charged with any felony offense may be tried as a juvenile or as an adult.

Any juvenile aged 14 or 15, who is charged with certain serious offenses such as murder, aggravated robbery, kidnaping, rape, any felony charge committed with a firearm, and others, may be tried as a juvenile or adult.

When a juvenile has been charged with an offense for which he/she can be prosecuted as a juvenile or adult, the prosecutor makes the initial decision as to how the juvenile will be prosecuted. "Upon the motion of the court or of any party, the judge ...shall conduct a hearing to determine whether to retain jurisdiction or to transfer the case to another division of circuit court having jurisdiction." ACA § 9-27-318(e).

**Transfer factors - ACA § 9-27-318(g).**

(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 person 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 aged fourteen through seventeen 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.

## XXI. EXTENDED JUVENILE JURISDICTION (EJJ) ACA § 9-27-501 *et seq*

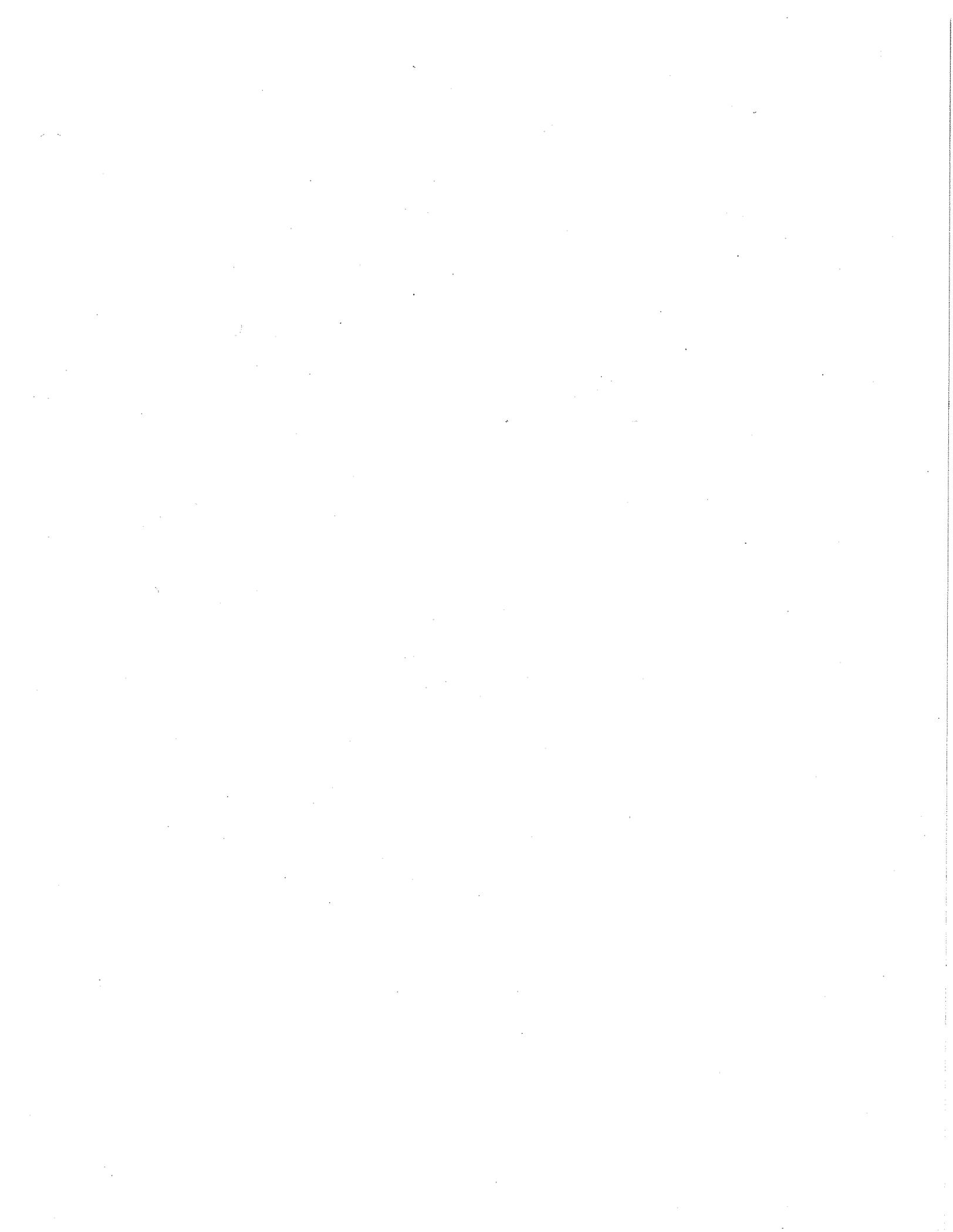
EJJ essentially applies to juveniles who have been charged with capitol murder, or first degree murder, who are 13 or under, juveniles aged 14 & 15 charged with certain enumerated offenses, juveniles aged 16 and 17 charged with certain enumerated offenses. See ACA § 9-27-318(b). EJJ defendants are entitled to a jury trial. If found delinquent/guilty, the court will impose a juvenile sentence and the juvenile will be subject to a potential adult sentence. The adult sentence can be for up to 40 years. Whether or not the juvenile actually gets an adult sentence will depend upon a number of factors which will be determined at a review hearing.

## XXII. MISCELLANEOUS

**The juvenile officer, both intake and probation officer, are “mandatory reporters” under the child welfare statutes.** When any mandatory reporter has reasonable cause to suspect child maltreatment or that a child has died as a result of child maltreatment, or who observes a child being subject to conditions or circumstances that would reasonably result in child maltreatment, said mandatory reporter must immediately notify the child abuse hotline. See ACA § 9-27-308(a)(3), § 12-12-503(6), § 12-12-507(b)(28).

A judge is also a mandatory reporter and is authorized to take an emergency hold on a child in a case of suspected child maltreatment and may place the child in DCFS custody pursuant to ACA § 12-12-516.

If a child is too young to be charged with an act that would otherwise constitute a crime or delinquent act, then a FINS petition may be the appropriate course of action.



Extended Juvenile Jurisdiction - ACA 9-27-501 *et seq.*

Judge Wiley Branton, Jr.

I. SO WHAT THE \*\*\*\*\* IS AN EJJ CASE ANYWAY AND WHY SHOULD I CARE?

An extended juvenile jurisdiction case has the potential of sentencing certain juvenile offenders to both a juvenile sentence, and possibly an adult sentence for up to 40 years. EJJ issues are not only heard by juvenile division judges, but there are occasions where they are heard before criminal division judges as well.

II. WHAT ARE THE MAJOR FEATURES OF EJJ CASES?

1. EJJ cases are adjudicated/tried in the juvenile division of circuit court even if the case started out in the criminal division. See ACA 9-27-306 and 9-27-501

2. A case does not actually become an EJJ case, unless a proper EJJ “**designation hearing**” is conducted in either the criminal or juvenile division, and the court determines that a case may proceed as an EJJ case after applying the statutory factors. See ACA 9-27-503

3. The transfer of juvenile defendants to the criminal division and the designation of juvenile defendants to EJJ status involve similar considerations. See ACA 9-27-318 and 9-27-503.

4. A juvenile has a right to a jury trial if the case is designated as an EJJ case. The right to a jury trial can be waived, if done appropriately. See ACA 9-27-505

5. If the juvenile is adjudicated delinquent on an EJJ offense, the court may impose both a juvenile disposition and an adult sentence. The court need not impose the adult sentence at the same time it imposes the juvenile sentence, but there is a time limit on imposing the adult sentence. See ACA 9-27-506 and 9-27-507

6. When the juvenile division court commits a juvenile to DYS in a regular juvenile division case, DYS determines the juvenile’s length of commitment. But if the juvenile is committed to DYS as an EJJ offender, the juvenile court determines the length of the juvenile’s DYS commitment. ACA 9-27-509

### III. FOR WHAT SPECIFIC OFFENSES MAY A JUVENILE DEFENDANT BE PROSECUTED AS AN ADULT OR GIVEN EJJ TREATMENT?

#### 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.

**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.

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

(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.

ACA 9-27-503. [EJJ] Designation hearing.

(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.

#### IV. EJJ PROCEEDINGS AND TIME LINES

1. **Plea and arraignment** (usual procedures)
2. **Designation Hearing** (if EJJ is requested). ACA 9-27-503

“When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing within 30 days if the juvenile is detained and no longer than 90 days following the [motion]”.

The party requesting EJJ status has to prove by a preponderance of the evidence that EJJ is warranted.

The court must make written findings applying the statutory factors.

3. **Juvenile has a right to counsel at every stage of proceeding.** ACA 9-27-504
4. **Adjudication** with or without jury. State has burden of proof beyond a reasonable doubt. If jury trial, jury determines guilt, judge determines disposition/sentence. ACA 9-27-505
5. **EJJ Disposition** ACA 9-27-506

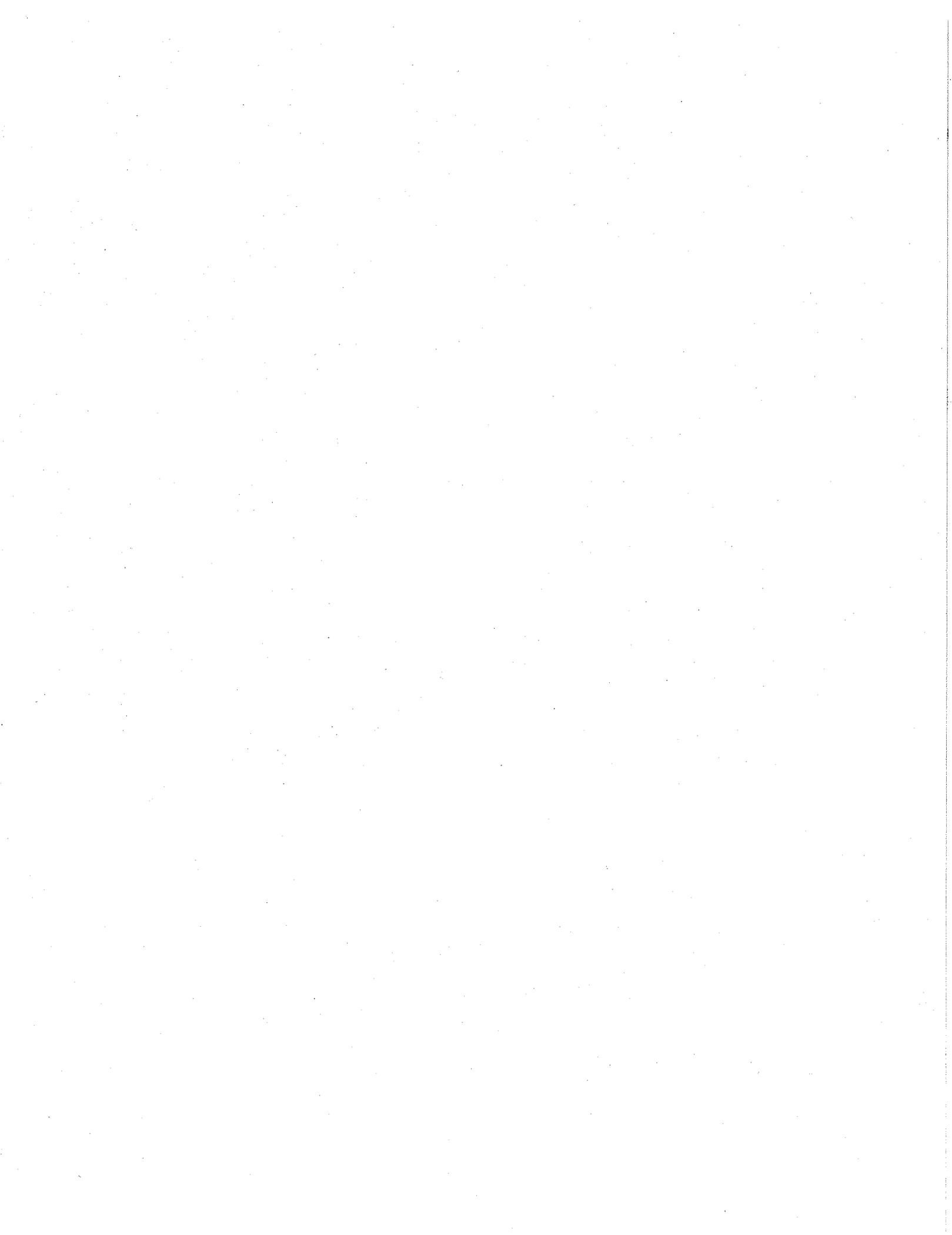
If juvenile is adjudicated delinquent on EJJ offense, the court shall impose any juvenile disposition allowed and suspend the imposition of an adult sentence pending court review.

6. **EJJ Court Review Hearing** ACA 9-27-507

The state may petition the court for imposition of an adult sentence under certain circumstances.

The court may, *sua sponte*, impose an adult sentence if it finds it to be appropriate.

7. **Watch out for regular juvenile cases or EJJ cases transferred from the criminal division which are DOA due to speedy trial violations.**



## TRUANCY DAY PROCEDURE

- 1.) As each juvenile and parent is brought back, you will need to do the following:
  - a.) Each parent must complete an information form;
  - b.) Put your initials on the spreadsheet as the officer who saw the family;
  - c.) If we will open a FINS, do the following:
    - i. Give the parent an Order to Appear in Court next week
    - ii. Have the parent complete the information sheet
    - iii. Officer shall retain all documents and make copies of any excuses brought in
    - iv. Check the FINS box on the spreadsheet
  - d.) If we are opening a Diversion, do the following:
    - i. Have the parent complete the information sheet
    - ii. Officer shall retain all documents and make copies of any excuses brought in
    - iii. Check the Diversion box on the spreadsheet
    - iv. Hand them a diversion form and show them the way to the jury room to complete paperwork on diversion
    - v. Officers doing diversion – fill out diversion form, give everyone a 4 month diversion.
  - e.) If we are not going to take action, do the following:
    - i. Check the Closed box on the spreadsheet
    - ii. Keep all paperwork and excuses
    - iii. Tell them they are free to go and remind them to still turn in excuses to the school so school will not continue to report them.

## TRUANCY CRITERIA

- 1.) Cases to open a FINS:
  - a. Juvenile fails to appear with parent
  - b. Parent fails to appear with juvenile
  - c. 11 plus unexcused absences this school year
  - d. Something seems off with juveniles or family and you believe they need supervision or looked at more closely regardless of the # of absences.
- 2.) Cases to divert:
  - a. Cases with 5-10 unexcused absences this school year
- 3.) Cases to close:
  - a. Less than 5 unexcused absences this school year

\*\* You will not necessarily keep the cases you open or divert as they will be equally divided among all officers.

\*\* All FINS petitions must be filed and Linda, trial assistant, must have the name and case # for the docket within 48 hours.

JUVENILE NAME	PARENT NAME	ADDRESS	NOTES:	OFF	FINS	DIV	CLOS
[REDACTED]	Arellano, J. Juan and	129 Giffith St. Conway, AR	Sent ltr. 9/26/07				
[REDACTED]	Erika Jimenez	Conway, AR					
[REDACTED]	Ball, Kenneth	19 Mockingbird Lane Vilonia, AR	Sent ltr. 8/17/07				
[REDACTED]	Bang, Karen	39 B. Blair Road Greenbrier, AR	Sent ltr. 8/17/07				
[REDACTED]	Le Mann, Tracie	42 Deerfield Road Vilonia, AR	Sent ltr. 8/17/07				
[REDACTED]	Burrell, Jeremy/Melissa	60 Church Circle Greenbrier, AR	Sent ltr. 8/17/07				
[REDACTED]	Stevens, Rhonda	72 Adams Lake Loop Conway, AR	Sent ltr. 8/17/07				
[REDACTED]	Cobb, John/Carrie	2405 Bay Berry Road Conway, AR	Sent ltr. 9/26/07				
[REDACTED]	Cohoe, Thomas/Rhonda	2 Hope Drive Conway, AR	Sent ltr. 8/17/07				
[REDACTED]	Colbert, Ray or Vickey	885 Hwy. 36 Vilonia, AR	Sent ltr. 9/20/07				
[REDACTED]	Conner, John	2126 Weems Street Conway, AR	Sent ltr. 8/17/07				
[REDACTED]	Parker, Sherry	1845 Teresa Drive Conway, AR	Sent ltr. 10/10/07				
[REDACTED]	Crosley, Robert/Debra	19 Gerik Lane Conway, AR	Sent ltr. 8/17/07				
[REDACTED]	Cullum, Paul	23 Lawrence Landing Conway, AR	Sent ltr. 8/17/07				
[REDACTED]	Panzer, Debbie	P. O. Box 2588 Conway, AR	Sent ltr. 9/26/07				
[REDACTED]	Dover, Jerral/Mary	106 West Lewisburg Rd Vilonia, AR	Sent ltr. 8/17/07				
[REDACTED]	Dubose, Colleen	1712 Marilyn Conway, AR	Sent ltr. 9/27/07				

**DIVERSION AGREEMENT**

We, \_\_\_\_\_ (juvenile(s)), and \_\_\_\_\_ (the parent, guardian, or custodian) understand that a complaint has made against the juvenile by the State alleging that juvenile is a

FINS - Truancy

We agree to the following:

We have been advised that we do not have to accept this diversion and if we refuse, formal court action will be taken.

We hereby accept the diversion agreement and request that no formal court action be taken.

We understand that if there is a violation of this Diversion Agreement, a FINS-Truancy case will be filed.

This Diversion Agreement is entered into by all of us voluntarily, intelligently.

If the Juvenile is entering into this without parental or guardian consent, the juvenile agrees that the juvenile has consulted with legal counsel before entering into the Diversion Agreement.

We have the right to terminate this Diversion Agreement at any time and request filing of a Petition for FINS-Truancy.

This diversion will last \_\_\_\_\_ months (no more than 9 months) and will terminate on: \_\_\_\_\_, 2008.

During the time stated above, I voluntarily agree to do each of the following:

1. I will attend school every day unless I have an excuse from a doctor.
2. I will maintain a C average.
3. I will send all my report cards to the Juvenile Officer for as long as I am under the Diversion Agreement.
4. I will report to the Juvenile Officer any address or school change.
5. I will obey the reasonable and lawful commands of my parent (s), guardian (s) and/or custodian (s).
6. I will attend all meetings scheduled by the Juvenile Officer.
7. I will not use or possess any alcohol or a controlled substance without a prescription.

IN ADDITION I AGREE TO THE FOLLOWING AS MARKED:

I will pay \$15.00 per month to the juvenile court.

With the fee, we will complete a diversion report each month. Both shall be sent to the Juvenile Office at the beginning of each month.

I, the juvenile, admit involvement in a FINS- Truancy act. This admission shall not be used against the juvenile if this matter is later brought to court.

We understand the Judge has no knowledge of this Diversion Agreement and will not be notified of it.

I understand that failure to comply with this Diversion Agreement will result in a FINS case against me in court.

\_\_\_\_\_  
Juvenile

\_\_\_\_\_  
Date

As the parent (s), guardian (s), and/or custodian (s), I (we) also request that there be no formal court action taken on the child's referral to Faulkner County Circuit Court, Juvenile Division. I (we) agree to report any violation of this agreement to the Juvenile Officer.

\_\_\_\_\_  
Parent/Custodian/Guardian

\_\_\_\_\_  
Parent/Custodian/Guardian

\_\_\_\_\_  
Date

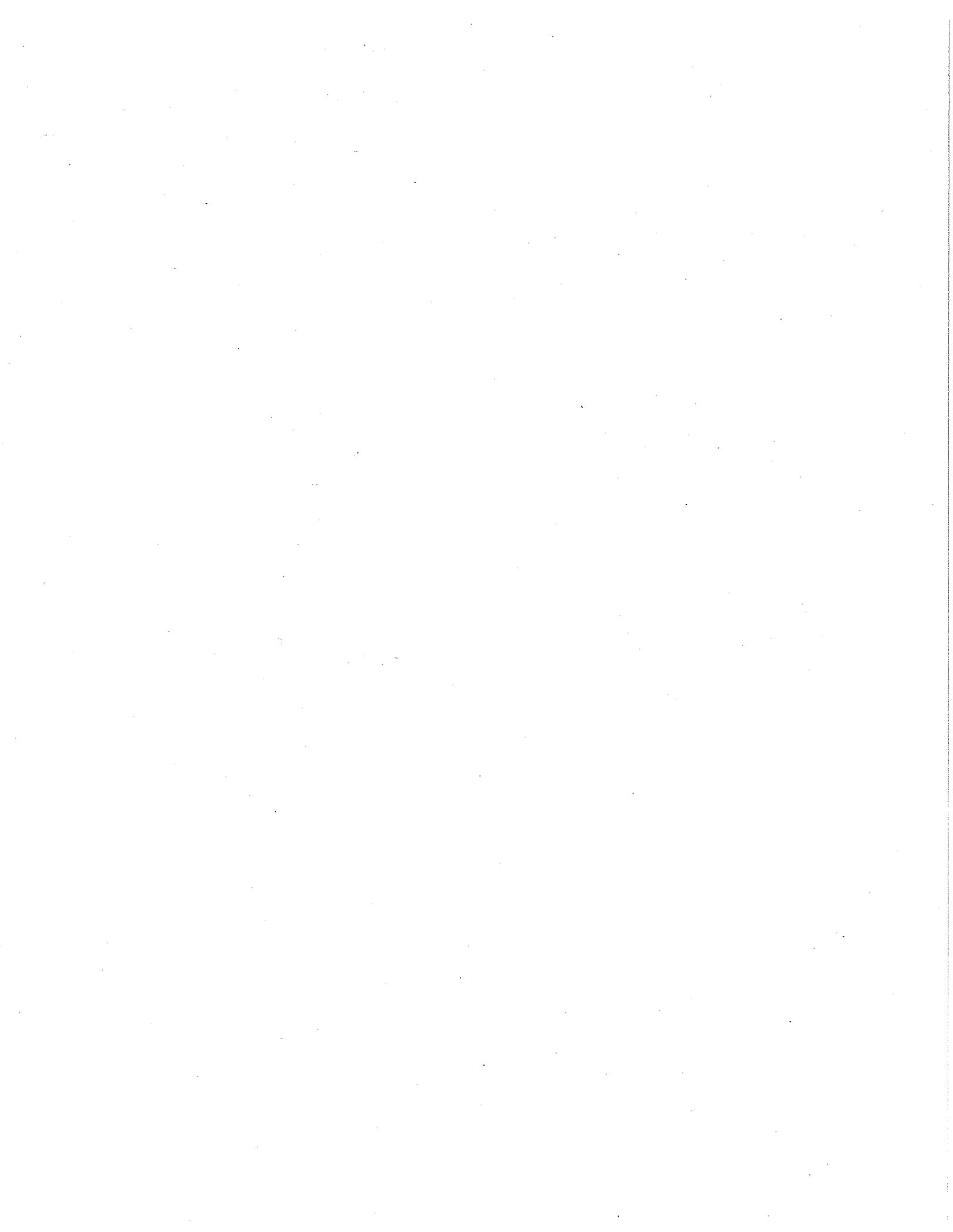
\_\_\_\_\_  
Date

\_\_\_\_\_  
Intake Officer

\_\_\_\_\_  
Prosecuting Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



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## DELINQUENCY OVERVIEW

(Revised 7-23-07)

Judge Wiley Branton, Jr.

### I. FEDERAL CONSTITUTIONAL PRINCIPLES

In *In Re Gault*, 387 U.S. 1, (1966), the Supreme Court held that the **Due Process Clause of the Fourteenth Amendment applied to "proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed."** The court went on to state that due process required that juveniles were entitled to written notice of charges, notice of right to counsel, notice of right to have counsel appointed, the right to confront and cross examine witnesses, and were entitled to the privilege against self incrimination.

In *In Re Winship*, 397 U.S. 358, (1969), the Supreme Court held that **juveniles, like adults, are constitutionally entitled to proof beyond a reasonable doubt** when they are charged with a violation of criminal law.

In *Breed v. Jones*, 421 U.S. 519, (1975), the Supreme Court held that the double jeopardy clause does apply to juvenile court proceedings.

### II. THE PURPOSE OF THE JUVENILE CODE IN GENERAL

The primary purpose of the Arkansas Juvenile Code is to fix or mend broken children and families and to make sure that children are kept in a minimally safe, secure, and otherwise appropriate environment. See ACA § 9-27-302. Purposes - Construction

### III. JUVENILE COURT JURISDICTION AND DEFINITIONS

#### A. WHO IS A "DELINQUENT JUVENILE" WITHIN THE MEANING OF THE PROVISIONS OF THE JUVENILE CODE?

A juvenile aged 10 to 17 who commits an act for which an adult could be criminally prosecuted.

A juvenile of any age charged with capital murder, or first degree murder, and who is subject to extended juvenile jurisdiction.

See ACA § 9-27-303(14) & (29) (Definitions)

#### E. DETENTION HEARINGS - ACA § 9-27-326

**At the detention hearing, the juvenile must be informed of the nature of the charges against him/her, be informed of his/her right to counsel, be informed of the privilege against self-incrimination, and be informed of the reasons his/her detention is being sought. The juvenile should be provided an attorney at the detention hearing.**

**If a juvenile is arrested without a warrant, and is initially detained, at the detention hearing, the court must determine, upon affidavit or testimony, whether probable cause exists. If there is no probable cause supported by sworn statement or in court testimony, the juvenile must be released.**

If at a detention hearing the court determines that probable cause exists, the court must then determine whether the juvenile can be released pending the next court date or whether he/she must be detained. See detention factors - ACA § 9-27-326(d)(3)

Setting conditions of release.

#### V. DETENTION LIMITATIONS

If the court decides to detain a juvenile, the plea and adjudication must take place within 14 days, unless the time is extended for good cause.

**If the court decides to detain a juvenile, the delinquency petition must be filed within 24 hours after the detention hearing, or within 96 hours after the juvenile has been taken into custody, whichever is sooner, or else the juvenile must be released from detention. ACA § 9-27-313(f).**

**If a juvenile is adjudicated delinquent, and the court determines that the juvenile needs to be detained pending disposition, the disposition shall take place within 14 days of the disposition. ACA § 9-27-329 (b) (Disposition Hearing)**

#### VI. CRIMINAL AND JUVENILE DIVISION CHARGING (WHEN CAN A JUVENILE BE PROSECUTED AS AN ADULT)

**ACA § 9-27-318.** Waiver and transfer to the criminal division of circuit court.

Any juvenile aged 16 or 17 who is charged with any felony offense may be tried as a juvenile or as an adult.

Any juvenile aged 14 or 15, who is charged with certain serious offenses such as murder, aggravated robbery, kidnaping, rape, any felony charge committed with a firearm, and others, may be tried as a juvenile or adult.

X. AFFIRMATIVE DEFENSES (involving culpable mental state)

**“In delinquency proceedings, juveniles are entitled to all defenses available to criminal defendants in circuit court.” See ACA § 9-27-325(k)**

Involuntary Intoxication (§ 5-2-207), Duress (§ 5-2-208), Entrapment (§ 5-2-209)

Lack of Mental Capacity (mental capacity at time of offense). ACA§ 5-2-312(a)(1) provides: **It is an affirmative defense to a prosecution that at the time the defendant engaged in the conduct charged, he or she lacked capacity, as a result of mental disease or defect, to conform his or her conduct to the requirements of law or to appreciate the criminality of his or her conduct.”**

XI PLEAS - NOT TRUE - NO CONTEST - TRUE

A plea of “no contest” or “true” requires the court to address the juvenile directly and to ascertain that the no contest or true plea is knowingly, voluntarily, and intelligently made. See ARCrImP Rule 24.4.

XII. DIVERSION See ACA § 9-27-323 (Diversion - Conditions - Agreement - Completion)

XIII. ADJUDICATION

**The rules of evidence apply. ACA § 9-27-325(e)**

**The state must prove its case beyond a reasonable doubt. ACA § 9-27-325(h)(2)**

**A juvenile has the same defenses available to adults. ACA § 9-27-325(k)**

**The juvenile must be competent to proceed to trial. ACA § 9-27-325(j)**

**Unless it is an EJJ case, there is no right to trial by jury. ACA § 9-27-325(a)**

XIV. DISPOSITION ALTERNATIVES - ACA §§ 9-27-329, 9-27-330, 9-27-331

**Judge has great discretion in making disposition. The rules of evidence do not strictly apply; hearsay is admissible. ARE 1101. Rules applicable. The dispositional alternatives are not mutually exclusive.**

Indeterminate sentence not to exceed 90 days in local detention facility

DYS Commitment

## XXI. PRIMARY DISTINCTIONS BETWEEN JUVENILE AND ADULT PROCEEDINGS

**In juvenile court, unless the case has been designated an extended juvenile jurisdiction case, there is no trial by jury. However, in EJJ cases, the defendant may request a trial by jury.**

**In juvenile court, the disposition or punishment fits the needs of the child, not necessarily the severity of the crime.**

Juvenile delinquency records are generally not made available to the public and do not necessarily follow the juvenile into adult life. There are exceptions.

## XXII. MISCELLANEOUS

**The juvenile officer, both intake and probation officer, are “mandatory reporters” under the child welfare statutes. When any mandatory reporter has reasonable cause to suspect child maltreatment or that a child has died as a result of child maltreatment, or who observes a child being subject to conditions or circumstances that would reasonably result in child maltreatment, said mandatory reporter must immediately notify the child abuse hotline. See ACA § 9-27-308(a)(3), § 12-12-503(6), § 12-12-507(b)(28).**

A judge is also a mandatory reporter and is authorized to take an emergency hold on a child in a case of suspected child maltreatment and may place the child in DCFS custody pursuant to ACA § 12-12-516.

If a child is too young to be charged with an act that would otherwise constitute a crime or delinquent act, then a FINS petition may be the appropriate course of action.

## **DELINQUENCY PROCEEDINGS**

*Prepared by Connie Hickman Tanner*

### **A. Detention Hearings**

#### **1. Purpose**

To determine whether a juvenile taken into custody on an allegation of delinquency, violation of probation, or violation of a court order should be released or held prior to the substantive hearing. Ark. Code Ann. §9-27-303(20) (Supp. 2005); Ark. Code Ann. §9-27-326(a) (Supp. 2005).

#### **2. Notice**

- a. Prior written notice of the time, place, and purpose of the hearing shall be given to the juvenile, juvenile's attorney, and juvenile's parent, guardian, or custodian. Ark. Code Ann. §9-27-326(b)(1-3) (Supp. 2005).
- b. Hearing may proceed without notice to parent if the court finds that, after a reasonable diligent effort, petitioner was unable to notify parent. Ark. Code Ann. §9-27-326(b)(3) (Supp. 2005).

#### **3. Time Constraints**

The hearing shall be held as soon as possible, but no later than 72 hours after juvenile is taken into custody on an allegation of delinquency, violation of probation, or violation of a court order. Ark. Code Ann. §9-27-326(a) (Supp. 2005).

- (1) If the 72 hours ends on a weekend or holiday, the hearing shall be held on the next business day or the juvenile shall be released. Ark. Code Ann. §9-27-326(a) (Supp. 2005).
- (2) If the juvenile is taken into custody on an alleged delinquency and no delinquency petition is filed within 24 hours after a detention hearing or 96 hours after juvenile is taken into custody, whichever is sooner, the juvenile shall be discharged from custody, detention, or shelter care. Ark. Code Ann. § 9-27-313(f) (Supp. 2005).

#### **4. Burden of Proof**

Petitioner has the burden to show by clear and convincing evidence that restraint on liberty is necessary, and no less restrictive alternative will reduce the risk of flight, serious harm to property, or the physical safety of juvenile or others. Ark. Code Ann. §9-27-326(c) (Supp. 2005).

- (11) factors which indicate that juvenile is likely to appear as required; and
  - (12) whether conditions should be imposed on juvenile's release. Ark. Code Ann. §9-27-326(d)(3) (Supp. 2005).
- d. The court shall release the juvenile upon finding no probable cause exists that juvenile committed alleged offense. Ark. Code Ann. § 9-27-326(e)(1) (Supp. 2005).
- e. Upon finding detention unnecessary, the court shall release juvenile:
- (1) upon juvenile's recognizance;
  - (2) upon an order to appear;
  - (3) to parent upon written promise to bring juvenile before court when required;
  - (4) to qualified person or agency (not DHHS) agreeing to supervise and assist juvenile in appearing in court;
  - (5) under supervision of probation officer or other public official (not DHHS);
  - (6) upon reasonable restrictions on juvenile's activities, movements, associations and residences;
  - (7) upon bond to parent, guardian, or custodian; or
  - (8) upon finding that bond is only means of insuring juvenile's appearance, the court may require an unsecured bond in an amount set by the court; or
    - (i) The bond may be accompanied by a deposit of cash or security equal to 10% of the face amount set by the court which shall be returned if juvenile does not default on conditions under bond; or
    - (ii) The bond may be secured by deposit of full amount in cash, property or obligation of qualified securities.
  - (9) under reasonable restrictions to insure appearance of juvenile's activities. Ark. Code Ann. §9-27-326(e)(2-3) (Supp. 2005).

## **B. Transfer Hearings**

### **1. Purpose**

The court shall conduct a Transfer Hearing to determine whether to try a juvenile as a delinquent or as a criminal defendant and transfer the case to another division of circuit court. Ark. Code Ann. §9-27-318(e) (Supp. 2005).

*Note:* Pursuant to Ark. Code Ann. §9-27-318(m), a juvenile court may conduct a transfer hearing and an extended juvenile jurisdiction hearing at the same time.

### **2. Motion to Transfer**

- a. Upon the motion of the court or any party, the judge of the division of circuit court in which a delinquency petition or criminal charges have been filed shall conduct a hearing to determine whether to transfer the case to another division of circuit court. Ark. Code Ann. §9-27-318(e) (Supp. 2005).

*The juvenile court does not have authority to sua sponte transfer jurisdiction to circuit court. Chavez v. State, 71 Ark. App. 29, 25 S.W.3d 431 (2000).*

*The 10-day response requirement of Ark. R. Civ. P. 6(c) is not inflexible. A four-day notice of transfer hearing was a technical error that did not prejudice the defendant. A 3-justice dissent opined that the transfer from juvenile court to circuit court is a serious matter and that procedural rules must be followed when "fundamental due process is at issue." Smith v. State, 307 Ark. 223, 818 S.W.2d 945 (1991).*

*The party seeking the transfer has the burden of proof. Wright v. State, 331 Ark. 173, 959 S.W.2d 50 (1998).*

### **3. Time Constraints**

Transfer hearing must be held within 30 days, if the juvenile is detained or no longer than 90 days from the date of the transfer motion. Ark. Code Ann. §9-27-318(f) (Supp. 2005).

### **4. Burden of Proof**

The burden of proof at a Transfer Hearing is clear and convincing evidence. Ark. Code Ann. §9-27-318(h)(2) (Supp. 2005); Ark. Code Ann. §9-27-325(h)(2)(C) (Supp. 2005).

*Appellant argued that his Fifth Amendment right was violated because he was forced to incriminate himself at the transfer hearing. However, there is nothing in the statute that requires the defendant to testify, and in fact the defendant did not testify at the hearing. Moreover, appellant did not argue that he declined to provide testimony that might have persuaded the trial court to transfer his case to the juvenile division because of his fear of self-incrimination.*

*Finally, appellant argued an equal protection violation based on the alleged impermissible classification between juveniles charged as adults and juveniles in the transfer statute. The equal protection clause permits classifications that have a rational basis and that are reasonably related to a legitimate governmental purpose. Appellant failed to demonstrate that the transfer statute is arbitrary or irrational. *Otis v. State*, 355 Ark. 590, 142 S.W.3d 615 (2004).*

*The trial court must consider all ten factors at Ark. Code Ann. § 9-27-318(g). The circuit court's failure to specifically mention certain evidence presented by the defendant does not mean that the court ignored it or failed to consider the evidence. *Beulah v. State*, 344 Ark. 528, 42 S.W.3d 461 (2001).*

*Appellant argued that the circuit court considered improper evidence, including hearsay and a confession that was not voluntarily, knowingly, and intelligently given. The court found that even if the hearsay statements should not have been admitted, appellant was not prejudiced because there was sufficient testimony to establish the serious and violent nature of the crimes. The court also held that it was not an error for the court to consider the allegedly involuntary confession at the transfer hearing. Transfer hearings are held for the purpose of determining jurisdiction and the statute does not suggest that the trial court should consider motions to suppress at these hearings. *Witherspoon v. State*, 74 Ark. App. 151, 46 S.W.3d 549 (2001).*

*It was not necessary for the findings of fact to explicitly detail rulings on the ten statutory factors because the record supported that the trial court considered the statutory factors. In considering [Ark. Code Ann. § 9-27-318] subsection (g)(5) regarding the previous history of the juvenile, the court was correct in considering the juvenile's entire background. *Jongewaard v. State*, 71 Ark. App. 269, 29 S.W.3d 758 (2000).*

*Appellant was sixteen at the time he was charged in circuit court with residential burglary, rape and first degree terroristic threatening. He appealed the circuit court's denial of his motion to transfer his case to juvenile court. He argued that the court failed to offer any evidence regarding the seriousness of the charged offenses and the court failed to make written findings to support its decision. The*

transfer the case as an extended juvenile jurisdiction case. Ark. Code Ann. §9-27-318(i) (Supp. 2005).

*Note: the following case was decided under law prior to 2003 when EJJ was only available to juveniles up to the age of 15. Act 1809 of 2003 extended the age of EJJ offenders to the age of 17.*

*The circuit court transferred a case to juvenile court as an extended juvenile jurisdiction case (EJJ). The juvenile was 16 at the time of the alleged offense and was charged with a terroristic act and first-degree battery. After learning that EJJ was not available, the judge entered an order to rescind the transfer order. The Court found that it lacked appellate jurisdiction because of the state's failure to appeal the original transfer order and the circuit court's ensuing lack of jurisdiction. Thomas v. State, 345 Ark. 236, 45 S.W.3d 818 (2001).*

- d. If a juvenile age 14 or 15 is found guilty in the criminal division of circuit court for an offense other than those listed in Ark. Code Ann. §9-27-318(b) or (c)(2), the judge shall enter a juvenile delinquency disposition pursuant to Ark. Code Ann. §9-27-330. Ark. Code Ann. §9-27-318(j) (Supp. 2005).

## 7. Bail or Bond

Upon transfer to another division of circuit court, any bail or appearance bond shall continue in effect in the division to which the case is transferred. Ark. Code Ann. §9-27-318(k) (Supp. 2005).

## 8. Appeal

Any party may appeal an order granting or denying transfer. Ark. Code Ann. § 9-27-318(l) (Supp. 2005).

*The court adopted a prospective rule that an appeal from an order concerning a juvenile transfer from one court to another court with jurisdiction must be considered by way of an interlocutory appeal. A juvenile cannot challenge transfer orders from juvenile to circuit court on direct appeal from a judgment or conviction of the circuit court. Hamilton v. State, 320 Ark. 346, 896 S.W.2d 877 (1995); Sims v. State, 320 Ark. 528, 900 S.W.2d 508 (1995).*

*Appeal did not satisfy Rule 36.10, which requires prejudicial error. State v. Gray, 319 Ark. 356, 891 S.W.2d 376 (1995).*

*The first case in which the U.S. Supreme Court addressed the rights of a juvenile accused of a crime was a waiver case. The Court held that a condition to a valid waiver from juvenile court to adult court is that a juvenile is entitled to a hearing and right to counsel at hearing. A waiver hearing must measure up to essentials of Due Process and fair treatment.*

## C. Adjudication

### 1. Purpose

To determine whether the allegations in petition are substantiated by proof. Ark. Code Ann. §9-27-303(4) (Supp. 2005); Ark. Code Ann. § 9-27-327(a)(1)(A) (Supp. 2005).

### 2. Time Constraints

If a juvenile is in detention, the Adjudication Hearing shall be held no later than 14 days from the date of the Detention Hearing unless waived by juvenile or good cause is shown for continuance. Ark. Code Ann. §9-27-327(b) (Supp. 2005).

*Arkansas Court of Appeals found that failure to conduct adjudication hearing within 14 days of detention hearing did not result in loss of court's jurisdiction. Robinson v. State, 41 Ark. App. 20, 847 S.W.2d 49 (1993).*

### 3. Rules

- a. Unless otherwise indicated, the Arkansas Rules of Evidence apply. Ark. Code Ann. §9-27-325(e)(1) (Supp. 2005).
- b. The Arkansas Rules of Civil Procedure shall apply to all proceedings, except as otherwise provided. Ark. Code Ann. § 9-27-325(f) (Supp. 2005).

*Note: There are no exceptions in the juvenile code with regard to delinquency proceedings.*

- c. The Rules of Criminal Procedure shall apply to delinquency proceedings. Ark. Code Ann. §9-27-325(f) (Supp. 2005).

*The Arkansas Rules of Criminal Procedure apply to delinquency proceedings and failure to renew the directed verdict motion at the close of all the evidence waived any sufficiency challenge on appeal. Jones v. State, 347 Ark. 409, 64 S.W.3d 728 (2002).*

*Pursuant to Ark. R. Crim. P. 33.1(b), failure to make a timely motion for dismissal at the close of the evidence waives any right to challenge the sufficiency of the evidence. If properly preserved for review, there was sufficient evidence to find the juvenile delinquent for possession of a controlled substance with intent to deliver where the juvenile was in close proximity and accessible to the methamphetamine, he was driving and he told the officers, "the stuff was not his"*

*The trial court did not violate the juvenile's right to equal protection when it refused to allow the juvenile to plead not guilty by reason of mental disease or defect. B.C. v. State, 344 Ark. 385, 40 S.W.3d 315 (2001).*

*Neither due process nor equal protection entitles a juvenile in juvenile court the right to the insanity defense. Insanity is not a defense in juvenile proceedings because there is no statutory authority or case law for the defense, therefore, a juvenile defendant may not assert the defense. Golden v. State, 341 Ark. 656, 21 S.W.3d 801(2000).*

*Appellant argued that trial court failed to consider evidence of his mental state during the adjudication and to determine whether he was able to conform his conduct to the requirements of the law at the time of the incident. A defendant may assert the insanity defense only if the State has conferred the right by statute. Nothing in the juvenile code or criminal code suggests that the insanity defense applies to juveniles under the age of 14. The issue of whether the equal protection clause was violated was not reached because it was not properly preserved for appeal. K.M. Father of J.M. v. State, 335 Ark. 85, 983 S.W.2d 93 (1998).*

*Appeal of juvenile court's order adjudicating a juvenile delinquent for being a minor in possession of a handgun. The appellant raised an affirmative defense, under Ark. Code Ann. § 5-73-119(c)(1), arguing that he had a possessory interest in the property because he resided on his mother's property and maintained access at all times (which gave him a certain degree of control over the property). The court held that the affirmative defense of possessory interest was applicable to the juvenile. Lucas v. State, 319 Ark. 752, 894 S.W.2d 891 (1995).*

**7. Delinquency Adjudication Subject to Sex & Child Offender Assessment**

- a. The court shall order a juvenile to submit to a Sex Offender Screening and Risk Assessment if the juvenile is found delinquent of the following offenses:
- (1) Rape;
  - (2) Sexual assault in the first degree;
  - (3) Sexual assault in the second degree;

- (1) upon intake at a juvenile detention facility;
  - (2) upon intake at a DYS facility; or
  - (3) if the juvenile is not placed in a facility, the probation officer shall ensure that the DNA sample is drawn. Ark. Code Ann. §9-27-357(c) (Supp. 2005).
- d. All DNA samples shall be taken in accordance with the regulations promulgated by the State Crime Laboratory. Ark. Code Ann. §9-27-357(d) (Supp. 2005).

## 9. Studies & Reports

- a. Court may order studies, evaluations, or predisposition reports, if needed and bear on the disposition, following adjudication. Ark. Code Ann. §9-27-327(d) (Supp. 2005).
- b. Reports shall be written and be provided to all parties at least two days prior to disposition hearing. Ark. Code Ann. §9-27-327(e)(1) (Supp. 2005).
- c. All parties shall be given a fair opportunity to controvert any part of reports. Ark. Code Ann. §9-27-327(e)(2) (Supp. 2005).

## 10. Delinquency Cases

### Closing Argument

*Delinquency adjudication reversed because defendant was denied an opportunity to make a closing argument. A juvenile defendant in a jury or bench trial has a fundamental right to make a closing argument under the Fourteenth Amendment. S.S. v. State, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (No. 04-933, March 3, 2005).*

### Hearsay

*Delinquency adjudication affirmed based on check forgery. Appellant argued that the trial court erred in allowing hearsay testimony about her identification in reference to a picture in a yearbook. Hearsay is not violated when a witness testifies about a physical object which was not presented in court. Further, the statements were not offered for the truth of the matter asserted but to explain the employee's conduct. Taylor v. State, \_\_\_ Ark. App. \_\_\_, \_\_\_ S.W.3d \_\_\_ (No. 04-369, November 3, 2004).*

### **Accomplice**

*Delinquency adjudication upheld. The Arkansas Court of Appeals found sufficient evidence to support a finding that the juvenile was an accomplice to felony criminal mischief charges. An accomplice is one who directly participates in the commission of the offense or who, with the purpose of promoting or facilitating the commission of the offense, aids, agrees to aid or attempts to aid the other person in committing the offense. An accomplice is criminally liable for the conduct of others. The relevant factors in determining the connection of an accomplice to a crime are the presence of the accused in the proximity of the crime, the opportunity to commit the crime and the association with a person involved in the crime in a manner suggestive of joint participation. Pack v. State, 73 Ark. App. 123, 41 S.W.3d 409 (2001).*

*Delinquency adjudication was upheld based on the testimony from the appellant's accomplices because the accomplice-corroboration rule at Ark. Code Ann. § 16-89-111(e)(1) does not apply to juvenile proceedings. Swanner v. State, 73 Ark. App. 4, 37 S.W.3d 697 (2001); Munhall v. State, 337 Ark. 41, 986 S.W. 2d 863 (1999).*

*Note: Act 903 of 2001 amended Ark. Code Ann. § 16-89-111(e)(1) to add that an adjudication of delinquency for a felony cannot be based on the testimony of an accomplice unless corroborated by other evidence tending to connect the juvenile to the commission of the offense.*

### **Victim Impact Evidence**

*Note: Act 1809 of 2003 amended Ark. Code Ann. § 9-27-329(f) to allow victim impact statements at disposition hearings. The trial court erred in allowing victim impact evidence because it is applicable to criminal, not juvenile proceedings. However, the appellant failed to show how he was prejudiced by the victim impact testimony. Hunter v. State, 341 Ark. 665, 19 S.W.3d 607 (2000).*

### **Sufficiency of the Evidence**

*Reversed and remanded delinquency adjudication for harassment holding that the juvenile's statement was not likely to invoke violence or a disorderly response. The trial court's reliance on [what wasn't said] was not sufficient. Unspoken words do not constitute harassment because silence is not likely to provoke a violent or disorderly response. Hunt v. State, (05-178; August 21, 2005).*

*Delinquency adjudication reversed where appellant was charged and found delinquent for terroristic threatening in the first degree for having a "Hit List (To Shoot List)" naming fellow students in a notebook at school that a teacher discovered. The Court relied on Knight v. State, 25 Ark. App. 353 (1988) that the gravamen of the offense is communication. Evidence of the list was insufficient to find that the appellant had the purpose of terrorizing another. Roberts v. State, 78 Ark. App. 103, 78 S.W. 3d 103 (2002).*

*destroyed or damaged the car. While the evidence was not sufficient to show that appellant willfully intended to wreck and damage the car, the court found that there was enough evidence to find that he acted recklessly. The court modified the basis for the trial court's finding of delinquency to criminal mischief in the second degree and remanded the case to the trial court for assessment of the penalty. McGill v. State, 60 Ark. App. 246, 962 S.W.2d 382 (1998).*

*Appellant was adjudicated delinquent for second-degree assault. Appellant argued that there was insufficient evidence to support the trial court's determination that he committed second-degree assault. A person commits second-degree assault if he recklessly engages in conduct which creates a substantial risk of physical injury to another person. The fact that the juvenile's actions created a substantial risk that the teacher's aide could have fallen and injured herself is sufficient to sustain the trial court's findings. Walker v. State, 330 Ark. 652, 955 S.W.2d 905 (1997).*

*The appellant was adjudicated delinquent for possession of marijuana. The evidence included an assistant principal's testimony that a drug-sniffing dog stopped at the juvenile's locker and that a bag containing a "green leafy substance" was found along with a pipe. There was also testimony that the juvenile admitted that the substance was his. A stipulated exhibit, prepared by a chemist, was also introduced that provided that the presence or absence of THC could not be confirmed by the test, although visual inspection and the chemical test yielded results consistent with the presence of marijuana. The juvenile moved to dismiss on the basis that the statutory definition of marijuana requires the state to prove the presence of THC and that it failed to do so. The Court held that there was substantial evidence to support the juvenile's adjudication. Lay testimony may provide substantial evidence of the identity of a controlled substance, even in the absence of expert chemical analysis. Springston v. State, 327 Ark. 90, 936 S.W.2d 550 (1997).*

*The Court affirmed the trial court's order adjudicating a juvenile as delinquent for committing the crime of rape. Appellant argued that the trial court erred in denying his directed verdict motions. A motion for a directed verdict is a challenge to the sufficiency of the evidence. In reviewing the sufficiency of the evidence on appeal the Court will view the evidence in the light most favorable to the State and affirm if the verdict is supported by substantial evidence. Substantial evidence is evidence that is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resort to speculation or conjecture. Further, appellant, who was two years, four months and one day older than the victim on the date of the offense, could not avail himself to the affirmative defense set forth in Ark. Code Ann. 5-14-103(a)(3) because he was more than two years older than the victim. W.D. v. State, 55 Ark. App. 88, 931 S.W.2d 790 (1996).*

## **D. Delinquency Dispositions**

### **1. Purpose**

Hearing following adjudication to determine what action will be taken and to enter orders consistent with the disposition alternatives. Ark. Code Ann. § 9-27-303(22) (Supp. 2005); Ark. Code Ann. §9-27-329(a) (Supp. 2005).

### **2. Time Constraints**

If juvenile is in detention following the Adjudication Hearing, the Disposition Hearing shall be held no more than 14 days following the Adjudication Hearing. Ark. Code Ann. §9-27-329(b) (Supp. 2005).

*Note: Most disposition hearings immediately follow the adjudication hearing.*

### **3. Evidence**

- a. Unless otherwise indicated, the Arkansas Rules of Evidence apply. Ark. Code Ann. §9-27-325(e) (Supp. 2005).
- b. The court may enter into evidence any victim impact statements, studies or reports which have been ordered, even though they are not admissible at the adjudication hearing. Ark. Code Ann. §9-27-329(f) (Supp. 2005).
- c. In considering the disposition alternatives the court shall give preference to the least restrictive disposition consistent with the best interests and welfare of the juvenile and the public. Ark. Code Ann. §9-27-329(d) (Supp. 2005).

## **E. Delinquency Disposition Alternatives**

After juvenile is adjudicated delinquent, court may make any of the following dispositions, based on the best interest of the juvenile: Ark. Code Ann. §9-27-330(a)(Supp. 2005)

### **1. Transfer Legal Custody**

- a. The court may transfer legal custody of juvenile to any licensed agency responsible for care of delinquent juveniles, to relatives, or to other individuals Ark. Code Ann. §9-27-330(a)(1)(A) (Supp. 2005).
  - (1) Prior to the court placing a juvenile in a residential placement the court shall comply with the mental health assessments required by Act 1959 of 2005. Ark. Code Ann. §9-27-602 (Supp. 2005); Ark. Code Ann. §9-27-603 (Supp. 2005);

*serious offender program. The court found that General Assembly intended to confer the board, not the court, with the authority to determine the program or facility suitable for juveniles committed to the Youth Services Center. Arkansas Dep't. of Human Servs. v. State, Harbin and Joseph, 319 Ark. 749, 894 S.W.2d 592 (1995).*

*Note: Ark. Code Ann. §9-28-209 grants DYS the authority to make placement decisions once a juvenile is committed to DYS.*

- d. The order of commitment to DYS shall state that the juvenile was found delinquent or to have committed a crime and the underlying facts of the adjudication. Ark. Code Ann. §9-28-208(a) (Supp. 2005).
- e. Prior or upon commitment to DYS, the court shall transmit the following information to the division:
  - (1) a copy of the commitment order;
  - (2) a copy of the risk assessment;
  - (3) records or information pertaining to the juvenile compiled by the juvenile intake or probation officer that shall include:
    - (a) information on the juvenile's background, history and behavioral tendencies and family status;
    - (b) the reasons for commitment;
    - (c) the name of the school in which the juvenile is currently or was last enrolled;
    - (d) the juvenile's offense history;
    - (e) the juvenile's placement history;
    - (f) a copy of all psychological or psychiatric evaluations or examinations performed on the juvenile admitted into evidence or ordered by the court while under the court's jurisdiction or supervision of court staff;
    - (g) a comprehensive list of all medications taken by the juvenile; and
    - (h) a comprehensive list of all medical treatment currently being provided to the juvenile. Ark. Code Ann. §9-27-208(b) (Supp. 2005).

- j. A copy of the written plan shall be:
  - (1) submitted to committing court for review;
  - (2) provided to custodian of juvenile; and
  - (3) filed with any court files with a pending dependency-neglect or FINS action concerning the juvenile. Ark. Code Ann. §9-27-331(g) (Supp. 2005).
- k. The court may recommend juvenile's release at any time by making a written request to DYS, including the reasons release is deemed in the best interests of the juvenile and society. Ark. Code Ann. §9-27-331(a)(4) (Supp. 2005).
- l. Length of commitment and final decision to release shall be the exclusive responsibility of DYS, except in EJJ cases. Ark. Code Ann. §9-27-331(a)(5) (Supp. 2005).

### 3. Order Evaluations

- a. The court may order the juvenile or members of the juvenile's family to submit to physical, psychiatric or psychological evaluations. Ark. Code Ann. §9-27-330(a)(2) (Supp. 2005).
- b. Evaluation, counseling or treatment of family members may be ordered only after the court's finding such necessary for treatment or rehabilitation of the juvenile. Ark. Code Ann. §9-27-331(d) (Supp. 2005).

### 4. Permanent Custody

- a. The court may grant permanent custody to an individual upon proof that:
  - (1) the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court; and
  - (2) no further services or periodic review are required. Ark. Code Ann. §9-27-330(a)(3) (Supp. 2005).

### 5. Probation

- a. The court may place the juvenile on probation under terms and conditions prescribed by the court. Ark. Code Ann. §9-27-330(a)(4)(A) (Supp. 2005).
- b. The court shall have the right to require the juvenile to attend high school or make satisfactory progress toward a general education development certificate. Ark. Code Ann. §9-27-330(a)(4)(B)(i) (Supp. 2005).

**7. Court Cost**

Court may assess a court cost of no more than \$35.00 to be paid by the juvenile, his/her parent, both parents, or guardian Ark. Code Ann. §9-27-330(a)(6) (Supp. 2005).

**8. Restitution**

- a. Court may order restitution (not to exceed \$10,000 per victim) to be paid by the juvenile, a parent, both parents, the guardian, or custodian. Ark. Code Ann. §9-27-330(a)(7)(A) (Supp. 2005); Ark. Code Ann. §9-27-331(e)(1) (Supp. 2005).
- b. The prosecutor must prove the following by a preponderance of the evidence that the specific damages were caused by the juvenile, and that the juvenile's actions were the proximate cause of the damage. Ark. Code Ann. §9-27-331(e)(1) (Supp. 2005).
- c. If the amount of restitution exceeds \$10,000 for any individual victim, the court shall enter a restitution order of \$10,000 in favor of the victim. Ark. Code Ann. §9-27-331(e)(2) (Supp. 2005).
- d. Nothing prevents a person or entity from seeking a recovery for damages in excess of \$10,000 under other law. Ark. Code Ann. §9-27-331(e)(2) (Supp. 2005).

*The trial court ordered appellants to make restitution on destroyed property in an amount exceeding \$2,000.00 pursuant to Acts 61 and 62 of 1994, which raised the limit to \$10,000.00. However, the property was destroyed on April 2, 1994, and the new legislation did not take effect until August 26, 1994. Restitution is a penalty that falls within the Constitutional prohibition of ex post facto laws, and therefore, an increase in the amount of restitution constitutes the increase of a penalty. The scheme of the legislation is punitive because it allows for revocation of probation if restitution is not paid. The statutory limits on restitution apply to each victim. Further, the proof admitted of one victim's damages was hearsay because the only evidence presented was an invoice for repairs. Eichelberger and Elam v. State, 323 Ark. 551, 916 S.W.2d 109 (1996).*

*The Arkansas Supreme Court held that the \$2,000 limit on restitution applies only to "one loss" and not to a "multiplicity of crimes." Note: The \$2,000 cap has been deleted. Leach v. State, 307 Ark. 201, 819 S.W.2d 1 (1991).*

- i. If the juvenile is placed on probation, any restitution ordered under this section may be a condition of the probation. Ark. Code Ann. §9-27-330(d)(2) (Supp. 2005).
- j. 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. Ark. Code Ann. §9-27-330(e) (Supp. 2005).
- k. The judgment entered by the court may be in favor of the state, the victim, or any other appropriate beneficiary. The judgment may be discharged by a settlement between the parties ordered to pay restitution and the beneficiaries of the judgment. Ark. Code Ann. §9-27-330(f) (Supp. 2005).
- l. 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. Ark. Code Ann. §9-27-330(g) (Supp. 2005).
- m. If more than one 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. Ark. Code Ann. §9-27-330(h) (Supp. 2005).
- n. A judgment under this section does not bar a remedy available in a civil action under other law. Ark. Code Ann. §9-27-330(i)(1) (Supp. 2005).
- o. A payment under this section must be credited against a money judgment obtained by the beneficiary of the payment in a civil action. Ark. Code Ann. §9-27-330(i)(2) (Supp. 2005).
- p. 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. Ark. Code Ann. §9-27-330(i)(3) (Supp. 2005).

**9. Fine**

The court may order a fine not to exceed \$500.00 to be paid by the juvenile, parent(s), or the guardian. Ark. Code Ann. §9-27-330(a)(8) (Supp. 2005).

**10. Community Service**

- a. The court may order that the juvenile, his/her parent(s), or guardian(s) to perform court-approved volunteer community service.

- b. The court shall take into account the financial ability of the parent, both parents, or the guardian to pay for such commitment, detention, or electronic monitoring. Ark. Code Ann. §9-27-330(a)(13)(B)(i) (Supp. 2005).
- c. The court shall take into account the past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct. Ark. Code Ann. §9-27-330(a)(13)(B)(ii) (Supp. 2005).
- d. The court shall take into account, if the parent is a noncustodial parent, the opportunity the parent has had to correct the delinquent juvenile's conduct. Ark. Code Ann. §9-27-330(a)(13)(B)(iii) (Supp. 2005).
- e. The court shall take into account any other factors the court deems relevant. Ark. Code Ann. §9-27-330(a)(13)(B)(iv) (Supp. 2005).

**15. Suspend Driving Privileges**

- a. The court may order the Department of Finance and Administration (DF&A) to suspend the driving privileges of any juvenile adjudicated delinquent. Ark. Code Ann. §9-27-330(a)(14)(A) (Supp. 2005).
- b. The order shall be prepared and transmitted to the DF&A within 24 hours after the juvenile has been found delinquent and is to have his driving privileges suspended. Ark. Code Ann. §9-27-330(a)(14)(B) (Supp. 2005).
- 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. Ark. Code Ann. §9-27-330(a)(14)(C) (Supp. 2005).

**16. Jurisdiction Retention**

The court shall specifically retain jurisdiction to amend or modify any orders pursuant to this section. Ark. Code Ann. §9-27-330(b) (Supp. 2005).

## **H. Sex Offender Registration Hearing**

### **1. Purpose**

To determine if juvenile adjudicated should register as a sex offender. Ark. Code Ann. §9-27-356 (b)(2) and (d) (Supp. 2005).

### **2. Time Constraints**

The court shall conduct a hearing within 90 days of the sex offender registration motion. Ark. Code Ann. §9-27-356(e)(1) (Supp. 2005).

### **3. Petition**

The prosecutor may file a petition requesting a juvenile to register as a sex offender. Ark. Code Ann. § 9-27-356(d) (Supp. 2005).

### **4. Right To Counsel**

The juvenile shall be represented by counsel at the Sex Offender Registration Hearing. Ark. Code Ann. §9-27-356(e)(2)(A) (Supp. 2005).

### **5. Burden of Proof**

Clear and convincing evidence Ark. Code Ann. § 9-27-356(f)(2) (Supp. 2005).

### **6. Registration Hearing Factors**

a. Court shall consider the following factors in making a decision to require the juvenile to register as a delinquent sex offender:

- (1) the seriousness of the offense;
- (2) the protection of society;
- (3) the level of planning and participation in the offense;
- (4) the previous sex offender history of the juvenile, including whether the juvenile has been adjudicated for prior sex offenses;
- (5) 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;
- (6) the sex offender assessment and other relevant written reports or other materials relating to the juvenile's mental, physical, educational and social history; and

(5) ensuring that copies of all documents are forwarded to the court for placement in the court file. Ark. Code Ann. §9-27-356(g) (Supp. 2005).

b. If the court orders the juvenile to register as a sex offender, juveniles are subject to the registration requirements set forth in Ark. Code Ann. §§ 12-12-904, -906, -908, 909 and 912. Ark. Code Ann. §9-27-356(k) (Supp. 2005).

**9. Registration Removal**

a. A juvenile may petition the court to have his/her name removed from the sex offender register at any time while the court has jurisdiction or until the juvenile turns 21. Ark. Code Ann. §9-27-356(h) (Supp. 2005).

b. Court shall remove the juvenile's name from the sex offender register upon proof by a preponderance of the evidence that the juvenile does not pose a threat of safety to others. Ark. Code Ann. §9-27-356(i) (Supp. 2005).

c. If the court does not order removal, the juvenile shall remain on the sex offender register for 10 years from the last date on which the juvenile was adjudicated delinquent or found guilty as an adult for a sex offense or until the juvenile turns 21, whichever is longer. Ark. Code Ann. §9-27-356(j) (Supp. 2005).

- (3) If court determines the juvenile's default in payment is excusable, the court may enter an order allowing the juvenile additional time for payment, reducing the amount of each installment, or revoking the fine, costs, retribution, or unpaid portion in whole or in part. Ark. Code Ann. §9-27-339(f)(3) (Repl. 2002).

## 5. Court's Options

a. Upon finding juvenile violated the terms and conditions of probation:

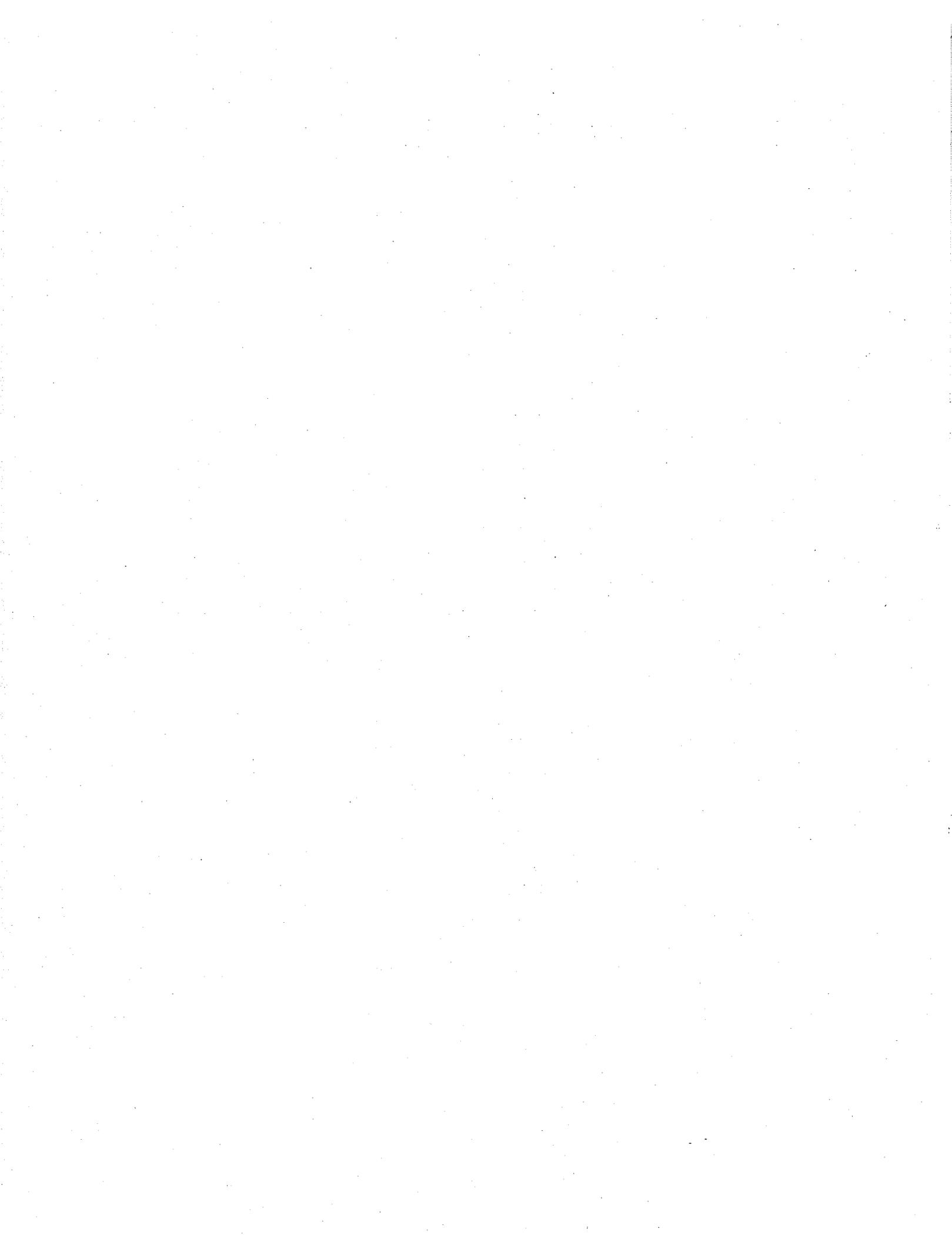
- (1) Extend probation;
- (2) Impose additional conditions of probation;
- (3) Make any disposition that could have been made at time probation was imposed; or

*Ark. Code Ann. § 9-27-339(e)(3) provides the court the authority upon revocation to make any disposition that could have been made at the time probation was imposed including detention and probation. Byrd v. State, 84 Ark. App. 203, 138 S.W.3d 309 (2003).*

*Note: See delinquency dispositions at pages XIII-21 through -31*

- (4) Commit the juvenile to a juvenile detention facility for an indeterminate period not to exceed 90 days. Ark. Code Ann. §9-27-339(e) (Repl. 2002).

*An adjudicated delinquent was ordered on probation and ordered to pay restitution. Subsequently the juvenile's probation was revoked due to possession of a controlled substance and the trial court ordered 90 days of detention. The detention order disposed of the probation revocation pursuant to Ark. Code Ann. §9-27-339. The trial court lacked jurisdiction to enter a subsequent order to pay restitution which constituted a second disposition of the same petition. Bailey v. State, 348 Ark. 524, 74 S.W. 3d 622 (2002).*



#### **XIV. EXTENDED JUVENILE JURISDICTION (EJJ) PROCEEDINGS**

##### **A. Extended Juvenile Jurisdiction (EJJ) Designation**

1. The state may request an EJJ designation in a delinquency petition or file a separate motion if the:
  - a. Juvenile, under the age of 13 at the time of the alleged offense, is charged with:
    - (1) capital murder, or
    - (2) murder in the first degree, and
    - (3) the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in Ark. Code Ann. §9-27-502. **Ark. Code Ann. §9-27-501(a)(1) (Supp. 2005).**
  - b. Juvenile, age 13 at the time of the alleged offense, is charged with:
    - (1) capital murder, or
    - (2) murder in the first degree.
  - c. Juveniles age 13 at the time of the alleged offense shall have an evaluation pursuant to Ark. Code Ann. §9-27-502 and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity. **Ark. Code Ann. §9-27-501(a)(2) (Supp. 2005).**
  - d. Juveniles ages 14 through 17 at the time of the alleged offense, are charged with any of the crimes listed in Ark. Code Ann. §9-27-318(b)(1) and (c)(2). **Ark. Code Ann. § 9-27-501(a)(3) and (a)4) (Supp. 2005).**
2. The juvenile's attorney may file a motion to request EJJ if the state could have requested EJJ under subsection (a) of § 9-27-501. **Ark. Code Ann. §9-27-501(b) (Supp. 2005).**

##### **B. Right to Counsel**

1. An extended juvenile jurisdiction offender shall have a right to counsel at every stage of the proceedings, including all reviews. **Ark. Code Ann. §9-27-316(a)(2); (Supp. 2005); Ark. Code Ann. §9-27-504(a) (Repl. 2002).**
2. This right to counsel cannot be waived. **Ark. Code Ann. §9-27-504(b) (Repl. 2002).**

**C. Competency: Fitness to Proceed – Lack of Capacity**

1. A juvenile's fitness to proceed may be put in issue by any party or the court in any delinquency proceeding; and **Ark. Code Ann. §9-27-502(a) (Repl. 2002).**
2. In any 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. **Ark. Code Ann. §9-27-502(a) (Repl. 2002).**
3. For a juvenile under the age of 13 at the time of the alleged offense and who is charged with capital murder or murder in the first degree, there shall be a presumption that:
  - (1) the juvenile is unfit to proceed; and
  - (2) he/she lacked capacity to:
    - (a) possess the necessary mental state required for the offense charged;
    - (b) conform his conduct to the requirements of law; and
    - (c) appreciate the criminality of his conduct. **Ark. Code Ann. §9-27-502(b)(1)(A) (Repl. 2002).**
4. The prosecution must overcome these presumptions by a preponderance of the evidence. **Ark. Code Ann. §9-27-502(b)(1)(B) (Repl. 2002).**
5. Evaluation
  - a. The court shall order an evaluation for such juveniles under the age of 13 and who are charged with capital murder or murder in the first degree to be performed in accordance with Ark. Code Ann. § 5-2-305(b), by a psychiatrist or a clinical psychologist who is specifically qualified by training and experience in the evaluation of juveniles. **Ark. Code Ann. §9-27-502(b)(2)(A) (Repl. 2002).**
  - 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. **Ark. Code Ann. §9-27-502(b)(2)(B) (Repl. 2002).**
  - c. The court shall require the prosecuting attorney to provide to the examiner any information relevant to the evaluation, including, but not limited to:
    - (1) the names and addresses of all attorneys involved;

- (2) information about the alleged offense; and
  - (3) any information about the juvenile's background that the prosecutor deems relevant. **Ark. Code Ann. §9-27-502(b)(3) (Repl. 2002).**
  - (3) This information must be provided to the examiner within ten 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. **Ark. Code Ann. §9-27-502(b)(5) (Repl. 2002).**
- d. The court may require the attorney for the juvenile to provide any available information relevant to the evaluation, including, but not limited to:
- (1) psychiatric record,
  - (2) school records, and
  - (3) medical records. **Ark. Code Ann. §9-27-502(b)(4) (Repl. 2002).**
  - (4) This information must be provided to the examiner within ten 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. **Ark. Code Ann. §9-27-502(b)(5) (Repl. 2002).**
- e. In reaching an opinion as to the juvenile's fitness to proceed, the examiner shall consider and make written findings regarding whether the juvenile's capabilities entail:
- (1) an ability to understand and appreciate the charges and their seriousness;
  - (2) an ability to understand and realistically appraise the likely outcomes;
  - (3) a reliable episodic memory so that he can accurately and reliably relate a sequence of events;
  - (4) an ability to extend thinking into the future;
  - (5) an ability to consider the impact of his actions on others;
  - (6) verbal articulation abilities or the ability to express himself in a reasonable and coherent manner; and

- (7) logical decision-making abilities, particularly multi-factored problem solving or the ability to take several factors into consideration in making a decision. **Ark. Code Ann. §9-27-502(b)(7)(C)(ix)(b)(i) (Repl. 2002).**
- (8) Whether developmentally, he/she has:
  - (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 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/her motives. **Ark. Code Ann. §9-27-502(b)(7)(C)(ix)(b)(2) (Repl. 2002).**

f. In reaching 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, the examiner shall consider and make written findings regarding the following whether the juvenile:

- (1) was able to form the necessary intent;
- (2) knew which actions were wrong;
- (3) had reasonably accurate expectations of the consequences of his/her actions;
- (4) was able to act of his/her own volition;
- (5) had the capacity to behave intentionally;
- (6) had the capacity to engage in logical decision-making;
- (7) had the capacity to foresee the consequences of his/her actions; and

- (8) had the capacity to exert control over his/her impulses and to resist peer pressure. **Ark. Code Ann. §9-27-502(b)(7)(C)(x)(b) (Repl. 2002).**
- g. In assessing the juvenile's competency, the examiner shall:
- (1) obtain and review all records pertaining to the juvenile, including but not limited to all the records listed above;
  - (2) 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;
  - (3) consider the current alleged offense;
  - (4) conduct a competence abilities interview of the juvenile;
  - (5) conduct an age-appropriate mental status exam using tests designed for juveniles;
  - (6) conduct an age-appropriate psychological evaluation, using tests designed for juveniles; and
  - (7) consider any other relevant test or information. **Ark. Code Ann. §9-27-502(b)(6) (Repl. 2002).**
- h. Evaluations shall be filed with the court and distributed to the parties within 90 days from the date of the order requesting such evaluation. **Ark. Code Ann. §9-27-502(b)(7)(A) (Repl. 2002).**
- i. All such reports shall be filed under seal with the court and shall not be subject to the Freedom of Information Act at Ark. Code Ann. § 25-19-101 et seq. **Ark. Code Ann. §9-27-502(b)(7)(B) (Repl. 2002).**
- j. The evaluation report shall include, but not be limited to, the following:
- (1) identification of the juvenile and the charges;
  - (2) listing of assessment methods used;
  - (3) description of what the juvenile was told about the purpose of the evaluation;
  - (4) social, clinical, and developmental history and the sources from which this information was obtained;
  - (5) mental status data, including any psychological testing conducted and results;

- (6) comprehensive intelligence testing;
- (7) competence data assessing the competence-to-stand-trial abilities;
- (8) interpretation of the data, including clinical or developmental explanations for any serious deficits in competence abilities;
- (9) an opinion as to the juvenile's fitness to proceed; and
- (10) 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:
  - (a) possess the necessary mental state required for the offense charged;
  - (b) conform his/her conduct to the requirements of the law; and
  - (c) appreciate the criminality of his/her conduct. **Ark. Code Ann. §9-27-502(b)(7)(C) ((Repl. 2002).**

k. Time Constraints

- (1) 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. **Ark. Code Ann. §9-27-502(b)(7)(A) (Repl. 2002).**
- (2) Within thirty (30) days of the receipt of the evaluation report, the court shall first determine whether the juvenile is fit to proceed. **Ark. Code Ann. §9-27-502(b)(8)(A) (Repl. 2002).**

**D. Competency: Fitness to Proceed & Capacity Proceedings**

- 1. A hearing shall be conducted unless the parties stipulate to the findings and conclusions of the evaluation report and the court enters an order with respect to fitness based thereon. **Ark. Code Ann. §9-27-502(b)(8)(B)(i-ii) (Repl. 2002).**
- 2. In order for the court to find a juvenile fit to proceed at the hearing, the prosecution all be required to prove by a preponderance of the evidence the following:
  - a. The juvenile understands the charges and potential consequences;
  - b. The juvenile understands the trial process and proceedings against him/her; and

- c. The juvenile has the capacity to effectively participate with and assist his/her attorney in a defense to prosecution. **Ark. Code Ann. §9-27-502(b)(8)(B)(ii)(a) (Repl. 2002).**
3. 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. **Ark. Code Ann. §9-27-502(b)(8)(B)(ii)(b) (Repl. 2002).**
4. If the juvenile is found unfit to proceed:
  - a. The court shall commit the juvenile to the Arkansas State Hospital or a residential treatment facility for a period not to exceed nine months, and the facility responsible for the juvenile shall be required to report to the court and the parties at least every 30 days on the juvenile's progress. **Ark. Code Ann. §9-27-502(b)(9)(A-B) (Repl. 2002).**
  - b. If fitness to proceed is not restored within nine months, the court shall convert the delinquency petition to a family in need of services petition. **Ark. Code Ann. §9-27-502(b)(9)(C) (Repl. 2002).**
5. If the juvenile is found fit to proceed, the court shall 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 had the capacity to:
  - a. Possess the necessary mental state required for the offense charged;
  - b. Conform his conduct to the requirements of the law; and
  - c. Appreciate the criminality of his conduct. **Ark. Code Ann. §9-27-502(b)(10)(A) (Repl. 2002).**
6. 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. **Ark. Code Ann. §9-27-502(b)(10)(B) (Repl. 2002).**
7. 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 EJJ petition to a delinquency petition. **Ark. Code Ann. §9-27-502(b)(10)(B)(ii) (Repl. 2002).**
8. 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 (FINS) petition. **Ark. Code Ann. §9-27-502(b)(10)(B)(iii) (Repl. 2002).**

9. If the court finds that the state met its burden with regard to the capacity, the court shall:
  - a. Schedule a designation hearing as described in Ark. Code Ann. §9-27-503. **Ark. Code Ann. §9-27-502(b)(10)(B)(iv)(a) (Repl. 2002).**
  - b. Such a finding by the court that the state has met its burden as to capacity, does not prevent the juvenile from raising the affirmative defense of lack of capacity at a subsequent adjudication hearing. **Ark. Code Ann. §9-27-502(b)(10)(B)(iv)(b) (Repl. 2002).**

## **E. Designation Hearing**

### **1. Time Constraints**

- a. When a party requests an extended juvenile jurisdiction designation, the court shall hold a designation hearing within 30 days, if the juvenile is detained, and no longer than ninety 90 days following the petition or motion requesting such designation.
- b. These time limitations shall be tolled during the pendency of any competency issues. **Ark. Code Ann. §9-27-503(a) (Repl. 2002).**

### **2. Burden of Proof**

The party requesting the extended juvenile jurisdiction designation has the burden to prove by a preponderance of the evidence that such designation is warranted. **Ark. Code Ann. §9-27-503(b) (Repl. 2002).**

### **3. Designation Factors**

- a. The court shall make written findings considering 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. Ark. Code Ann. §9-27-503(c) (Repl. 2002).

#### **4. Court's Findings**

- a. Upon finding that the juvenile shall be treated as an extended juvenile jurisdiction offender, the court shall:
  - (1) enter its written findings;
  - (2) inform the juvenile of his right to a jury trial; and
  - (3) set a date for the adjudication. Ark. Code Ann. §9-27-503(d) (Repl. 2002).
- b. 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. Ark. Code Ann. §9-27-503(e) (Repl. 2002).

#### **5. Appeal**

For purposes of appeal, a designation order is a final appealable order and shall be subject to an interlocutory appeal. Ark. Code Ann. §9-27-503(f) (Repl. 2002).

**F. Extended Juvenile Jurisdiction (EJJ) Adjudication & Disposition Hearings**

**1. Jury Trial**

- a. An extended juvenile jurisdiction offender and the state shall have the right to a jury trial at the adjudication hearing. **Ark. Code Ann. §9-27-505(a) (Supp. 2005).**
- b. 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. **Ark. Code Ann. §9-27-505(b) (Supp. 2005).**
- c. The right to a jury trial may be waived by a juvenile only after being advised of his rights and consultation with the juvenile's attorney. **Ark. Code Ann. §9-27-505(c)(1) (Supp. 2005).**
- d. 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. **Ark. Code Ann. §9-27-505(c)(2) (Supp. 2005).**
- e. 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. **Ark. Code Ann. §9-27-505(d) (Supp. 2005).**

**2. Time Constraints**

The adjudication shall be held within the time prescribed by the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure. **Ark. Code Ann. §9-27-505(e) (Supp. 2005).**

**3. Burden of Proof**

The state bears the burden to prove the charges in the petition beyond a reasonable doubt. **Ark. Code Ann. §9-27-505(f) (Supp. 2005).**

**4. EJJ Adjudication**

- a. If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the juvenile court shall:
  - (1) order any of the juvenile dispositions authorized by Ark. Code Ann. §9-27-330; and

- (2) suspend the imposition of adult sentence pending juvenile court review. **Ark. Code Ann. §9-27-505(g)(1) (Supp. 2005); Ark. Code Ann. § 9-27-506 (Supp. 2005).**
- b. If the juvenile is adjudicated delinquent for an offense that would not have subjected him to extended juvenile jurisdiction, the court shall enter any of the delinquency dispositions available at Ark. Code Ann. § 9-27-330. **Ark. Code Ann. §9-27-505(g)(2) (Supp. 2005).**

## **G. Extended Juvenile Jurisdiction Court Review Hearing**

### **1. Adult Sentence Petition**

- a. The state may petition the juvenile 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. **Ark. Code Ann. §9-27-507(a) (Supp. 2005).**

### **2. Court Disposition**

If the court finds by a preponderance of the evidence that the juvenile has violated a juvenile disposition order, is 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) exercise its discretion to impose the full range of sentencing available in the criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment. **Ark. Code Ann. §9-27-507(b) (Supp. 2005).**
  - (a) A sentence of imprisonment shall not exceed 40 years, except for juveniles adjudicated for capital murder and murder in the first degree who may be sentenced for any term, up to and including life. **Ark. Code Ann. §9-27-507(b)(2)(A)(ii) (Supp. 2005).**
  - (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. **Ark. Code Ann. §9-27-507(b)(2)(B) (Supp. 2005).**
  - (c) A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility. **Ark. Code Ann. §9-27-507(b)(2)(C) (Supp. 2005).**

**3. Review and Modification of EJJ Disposition**

- a. The juvenile may petition the court to review and modify the disposition at any time. **Ark. Code Ann. §9-27-507(c)(1) (Supp. 2005).**
- b. If the juvenile's initial petition is denied, the juvenile must wait one year from the date of the denial to file a new petition for modification. **Ark. Code Ann. §9-27-507(c)(2) (Supp. 2005).**
- c. If the state or the juvenile files a petition to modify the juvenile court's disposition order before six months prior to the juvenile's eighteenth birthday, the filing party bears the burden of proof. If the juvenile is 16 or 17 when the EJJ petition is filed, then the state or juvenile may petition the court six month's prior to the juvenile's 21<sup>st</sup> birthday. **Ark. Code Ann. §9-27-507(d) (Supp. 2005).**
- d. If no hearing has been conducted six months prior to the juvenile's eighteenth birthday or six months prior the juvenile's 21<sup>st</sup> birthday, if the juvenile was 16 or 17 when the EJJ petition was filed, the court shall conduct a hearing and consider the following to determine whether to release the juvenile, amend or add any juvenile disposition, or impose an adult sentence:
  - (1) the experience and character of the juvenile before and after the juvenile disposition, including compliance with the court's orders;
  - (2) the nature of the offense or offenses and the manner in which the offense or offenses were committed;
  - (3) the recommendations of the professionals who have worked with the juvenile;
  - (4) the protection of public safety;
  - (5) opportunities provided to the juvenile for rehabilitation and the juvenile's efforts toward rehabilitation; and
  - (6) victim impact evidence admitted pursuant to Ark. Code Ann. §16-97-103. **Ark. Code Ann. §9-27-507(e)(1-2) (Supp. 2005).**
- e. 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. **Ark. Code Ann. §9-27-507(e)(3) (Supp. 2005).**

- f. Following a hearing, the court may enter any of the following dispositions:
- (1) release the juvenile;
  - (2) amend or add any juvenile disposition; or
  - (3) exercise its discretion to impose the full range of sentencing available in criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment. **Ark. Code Ann. §9-27-507(e)(4)(A) (Supp. 2005).**
    - (a) A sentence of imprisonment shall not exceed 40 years, except for juveniles adjudicated for capital murder or murder in the first degree who may be sentenced for any term up to and including life. **Ark. Code Ann. §9-27-507(e)(4)(A)(iii)(b) (Supp. 2005).**
    - (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. **Ark. Code Ann. §9-27-507(e)(4)(B) (Supp. 2005).**
    - (c) A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility. **Ark. Code Ann. §9-27-507(e)(4)(C) (Supp. 2005).**

#### 4. Release

- a. A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder or murder in the first degree. **Ark. Code Ann. §9-27-507(b)(2)(D)(i) (Supp. 2005); Ark. Code Ann. §9-27-507(e)(4)(D)(i) (Supp. 2005).**
- b. If release is ordered, the court shall impose a period of probation for not less than 3 years. **Ark. Code Ann. §9-27-507(b)(2)(D)(ii) (Supp. 2005); Ark. Code Ann. §9-27-507(e)(4)(D)(ii) (Supp. 2005).**

## **H. Extended Juvenile Jurisdiction (EJJ) Records**

1. Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for:
  - a. Ten 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. **Ark. Code Ann. §9-27-508(a) (Repl. 2002).**
  - b. If an adult sentence is imposed upon an extended juvenile jurisdiction offender, the records of that case shall be considered adult criminal records.
    - (1) The juvenile court shall enter an order transferring the juvenile records to the clerk who is the custodian of adult criminal records.
    - (2) 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 the circuit court. **Ark. Code Ann. §9-27-508(b) (Repl. 2002).**