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# ARKANSAS'S EXTENDED JUVENILE JURISDICTION ACT: THE BALANCE OF OFFENDER REHABILITATION AND ACCOUNTABILITY

*Connie Hickman Tanner\**

## I. INTRODUCTION

In response to tragic school shootings across the country, the national debate on how to treat children who commit heinous crimes intensified. Legislators across the country struggled with whether children who commit such crimes should be treated and tried as adults in criminal courts, or whether they should be treated as children and should have an opportunity for rehabilitation—the cornerstone of our juvenile justice system.<sup>1</sup> At the center of the issue was whether the focus should be on the offender or on the offense committed.

The concept of “blended sentencing” is an attempt to balance the interest of the juvenile offender with the interests in making juveniles accountable for offenses they commit. Currently, there are five models of blended sentencing.<sup>2</sup> Three of the models provide for jurisdiction in juvenile court, and two models provide for jurisdiction in adult criminal court.<sup>3</sup> Two of the five models are exclusive blends and provide juvenile or criminal courts the authority to impose either a juvenile disposition or an adult criminal sanction.<sup>4</sup> Two other models are inclusive blends and allow juvenile or criminal courts to impose a juvenile sanction and an adult sentence.<sup>5</sup> Generally, the execution of the adult sentence is stayed.<sup>6</sup> The juvenile is given a chance at rehabilitation and the adult sanction is entered only if the court finds that the juvenile violated the original juvenile disposition order or is adjudicated delinquent or found guilty of a new offense.<sup>7</sup> The final model is a contiguous blend where the juvenile court has jurisdiction to impose a

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\* Director of Juvenile Courts, Arkansas Supreme Court Administrative Office of the Courts. Appreciation is expressed to Juvenile Division judges who make difficult decisions every week affecting the lives of children and their families with limited resources. I would also like to thank my colleagues Liz Dowling and Jewel “Cricket” Harper for their editing expertise, and my partner, Scott Tanner, for his continued support, feedback, and patience.

1. See ARK. CODE ANN. § 9-27-302(3) (Michie Supp. 2000).

2. See PATRICIA TORBET ET AL., STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME 217 (1996).

3. See *id.*

4. See *id.* at 12.

5. See *id.*

6. See *id.*

7. See *id.*

juvenile disposition and an adult sanction.<sup>8</sup> A juvenile sentenced under this model is sent to a juvenile correctional facility and awaits a transfer to an adult correctional facility at a certain age.<sup>9</sup>

Arkansas' Extended Juvenile Jurisdiction ("EJJ") law could best be categorized as a juvenile contiguous and inclusive model. It is contiguous with respect to adjudications for capital murder and first degree murder.<sup>10</sup> For example, a court cannot order an automatic release if an EJJ offender is adjudicated delinquent for these offenses.<sup>11</sup> At a minimum the court must order adult probation. EJJ is also viewed as an inclusive blend with a twist.<sup>12</sup> The juvenile court has exclusive jurisdiction.<sup>13</sup> Once a juvenile is found to have committed a crime that is classified as an EJJ offense, the court enters a juvenile disposition, but instead of entering an adult sentence and staying the execution of the sentence, the court suspends the imposition of an adult sentence pending further review.<sup>14</sup> Although EJJ became law on July 1, 1999, only two cases to date have been reported to the Administrative Office of the Courts as EJJ cases.<sup>15</sup>

## II. JURISDICTION

EJJ applies to a juvenile, at any age, charged with capital murder or first degree murder.<sup>16</sup> Arkansas extended the blended sentencing concept to any child under the age of fourteen and charged with capital murder or murder in the first degree, which no state had done previously and which was a drastic move away from the common law. Prior to EJJ, no one under the age of ten could be adjudicated delinquent.<sup>17</sup> Under common law, juveniles under the age of seven were presumed incapable of forming the intent necessary to commit a crime.<sup>18</sup> Juveniles between the ages of seven and thirteen were presumed incapable of forming the intent; however, this presumption could be rebutted by the

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8. See TORBET ET AL., *supra* note 2, at 217.

9. See *id.* at 12-14.

10. See ARK. CODE ANN. § 9-27-501 to -510 (Michie Supp. 2000).

11. See *id.* § 9-27-507(b)(2)(D)(i).

12. See *id.* § (D)(ii).

13. See *id.* §§ 9-27-318(a), 9-27-501(a), 9-27-306(a)(1).

14. See ARK. CODE ANN. § 9-27-506(1)-(2) (Michie Supp. 2000).

15. Information on file with author.

16. See ARK. CODE ANN. § 9-27-501(a)(1) (Michie Supp. 2000).

17. See ARK. CODE ANN. § 9-27-303(13) (Michie Repl. 1998).

18. See WAYNE R. LA FAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW § 4.11, at 398 (2d ed. 1986).

state.<sup>19</sup> Juveniles age fourteen and above were considered capable of understanding the consequences of their actions and therefore capable of forming intent.<sup>20</sup> EJJ also applies to juveniles age fourteen or fifteen at the time of the alleged offense and charged with offenses enumerated in the statute.<sup>21</sup>

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19. *See id.*

20. *See id.* at 399.

21. *See* 1999 Ark. Acts 1192. Section 1(a)(3) was codified incorrectly at Arkansas Code Annotated section 9-27-501(a)(3) (Michie Supp. 2000). The crimes for which a juvenile ages 14 and 15 may be charged as an EJJ offender are found at title 9, chapter 27 section 318(b) and (c)(2) of the Arkansas Code Annotated 2000 supplement and include the following:

- (1) capital murder (§ 5-10-101);
- (2) murder in the first degree (§ 5-10-102);
- (3) kidnapping (§ 5-11-102);
- (4) aggravated robbery (§ 5-12-103);
- (5) rape (§ 5-14-103);
- (6) battery in the first degree (§ 5-13-201);
- (7) terroristic act (§ 5-13-310);
- (8) murder in the second degree (§5-10-103)
- (9) second degree battery (§5-13-202(a)(2), (3) or (4));
- (10) possession of handgun on school property (§5-73-119(a)(2)(A));
- (11) aggravated assault (§5-13-204);
- (12) unlawful discharge of a firearm from a vehicle (§5-74-107);
- (13) soliciting a minor to join a criminal street gang (§5-74-203);
- (14) criminal use of prohibited weapons (§5-73-104);
- (15) first-degree escape (§5-54-110);
- (16) second-degree escape (§5-54-111);
- (17) felony attempt, solicitation, or conspiracy to commit any of the following:
  - (a) capital murder (§ 5-10-101);
  - (b) first degree murder (§ 5-10-102);
  - (c) second degree murder (§ 5-10-103);
  - (d) kidnapping (§ 5-11-102);
  - (e) aggravated robbery (§ 5-12-103);
  - (f) rape (§ 5-14-103);
  - (g) first degree battery (§ 5-12-103);
  - (h) first-degree escape (§ 5-54-110);
  - (i) second-degree escape (§ 5-56-111);
- (18) juveniles at least 14 when engaged in conduct that constitutes a felony under (§5-73-119(a)(1)(A)) (minor in possession of a handgun);
- (19) a juvenile who is at least 14 when he engages in conduct, that if committed by an adult would constitute a felony *and* having been adjudicated delinquent three times within the last two years for acts that would have been a felony if they had been committed by an adult. (§ 9-27-318(b) & (c)(2)).

### III. REPRESENTATION

EJJ offenders have a right to counsel at every stage of the proceeding, including review hearings.<sup>22</sup> This right to counsel cannot be waived.<sup>23</sup> This could play a critical role in confessions. Recently the Arkansas Supreme Court found that a juvenile made a knowing and intelligent waiver of his *Miranda* rights based on the juvenile's age, experience, education, background, and intelligence.<sup>24</sup> Arguably, because a juvenile charged as an EJJ offender cannot waive his right to counsel, any confession obtained without a juvenile's attorney being present could be subject to question.

### IV. COMPETENCY REQUIREMENTS

Stringent competency requirements were included in the new EJJ law to balance the loss of a minimum age limit for juveniles charged with capital murder or murder in the first degree and the move from the common law. Juveniles age twelve and under at the time of the alleged offense are presumed incompetent both as to fitness to proceed and criminal responsibility.<sup>25</sup> The State must overcome the presumption of incompetence by a preponderance of the evidence standard and prove that the juvenile: (1) understands the charges and potential consequences, (2) understands the trial process, and (3) has the capacity to effectively participate and assist his attorney in a defense.<sup>26</sup>

For juveniles twelve and under, the court must order a psychological evaluation to be filed with the court and distributed to the parties within ninety days.<sup>27</sup> Upon order for evaluation all proceedings must be suspended and the period of delay shall be excluded from the speedy trial provisions.<sup>28</sup> Within thirty days of receipt of the report the court must determine if the juvenile is fit to proceed.<sup>29</sup> If the parties do not stipulate to the findings and conclusions in the report, the court must conduct a hearing.<sup>30</sup>

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22. See ARK. CODE ANN. §§ 9-27-504, -316(a)(2) (Michie Supp. 2000).

23. See *id.*

24. See *Miller v. State*, 338 Ark 445, 452-53, 994 S.W.2d 476, 480-81 (1999).

25. See ARK. CODE ANN. § 9-27-501(a)(1) (Michie Supp. 2000).

26. See *id.* § 9-27-502(b)(8)(B)(ii)(a)(1)-(3).

27. See *id.* § 9-27-502(b)(2)(A), (7)(A).

28. See *id.* § 9-27-502(b)(2)(B).

29. See *id.* § 9-27-502(b)(8)(A).

30. See *id.* § 9-27-502(b)(8)(B)(ii)(a).

If the court finds that the juvenile is not fit to proceed, the court must commit the juvenile to the Arkansas State Hospital or a residential treatment facility for a period not to exceed nine months.<sup>31</sup> During this period the facility must report the juvenile's progress to the court and the parties every thirty days.<sup>32</sup> If the juvenile is not found fit to proceed within nine months, the court must convert the delinquency petition to a Family In Need of Services ("FINS") petition.<sup>33</sup> If the juvenile is found fit to proceed, the court must conduct a hearing to determine the juvenile's capacity.<sup>34</sup> For juveniles age twelve and under, the State is required to prove by a preponderance of the evidence that, at the time of the alleged conduct, the juvenile had the capacity to: (1) possess the necessary mental state required for the offense charged, (2) conform his conduct to the requirements of the law, and (3) appreciate the criminality of his conduct.<sup>35</sup>

The court must issue a written order and shall consider the written findings of the examiner and any other relevant evidence.<sup>36</sup> The court can make one of the three findings.<sup>37</sup> First, the court can find that the state did not meet its burden with regard to the capacity of the charged offense, but that the juvenile had the capacity for a lesser offense.<sup>38</sup> Upon such finding the court must convert the EJJ petition to a delinquency petition.<sup>39</sup> Second, the court can find that the state failed to meet its burden with regard to the capacity of the charged offense or a lesser offense.<sup>40</sup> Upon such finding the court must convert the EJJ petition to a FINS petition.<sup>41</sup> Third, the court can find that the state met its burden with regard to capacity of the charged offense.<sup>42</sup>

Juveniles age thirteen at the time of the alleged offense must have a juvenile competency evaluation pursuant to Arkansas Code Annotated section 9-27-502; however, the burden is on the defense to establish the lack of fitness to proceed and the lack of capacity.<sup>43</sup> Juveniles age fourteen or older have the right to raise competency as to fitness to

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31. See ARK. CODE ANN. § 9-27-502(b)(9)(A) (Michie Supp. 2000).

32. See *id.* § 9-27-502(b)(9)(B).

33. See *id.* § 9-27-502(b)(9)(C).

34. See *id.* § 9-27-502(b)(10)(A).

35. See *id.*

36. See *id.* § 9-27-502(b)(10)(B)(i).

37. See ARK. CODE ANN. § 9-27-502(b)(10)(B)(i) (Michie Supp. 2000).

38. See *id.* § 9-27-502(b)(10)(B)(ii).

39. See *id.*

40. See *id.* § 9-27-502(b)(10)(B)(iii).

41. See *id.*

42. See *id.* § 9-27-502(b)(10)(B).

43. See ARK. CODE ANN. § 9-27-501(a)(2) (Michie Supp. 2000).

proceed and capacity, but any pre-trial motions or defenses are governed by the criminal code at Arkansas Code Annotated section 5-2-301 and following sections and not the special provisions of the juvenile evaluation.<sup>44</sup>

Under the EJJ competency standards, protections vary based on the chronological age of the juvenile. However, the standard does not take into account the mentality or ability of a juvenile. For example, one may have a juvenile who is chronologically fifteen, but mentally who is ten. Whether the juvenile is entitled to the rebuttable presumption that the juvenile is not fit to proceed and did not have the capacity to commit the crime is an open question.

If the court finds the juvenile had the capacity to commit the offense charged, the court shall set a date for the designation hearing.<sup>45</sup> Such a finding does not prevent the defense from raising the affirmative defense of lack of capacity at a subsequent adjudication hearing.<sup>46</sup>

## V. DESIGNATION HEARING

If the juvenile is detained, a designation hearing should be conducted within thirty days.<sup>47</sup> No more than ninety days may lapse following the petition or motion requesting an EJJ designation.<sup>48</sup> These time limitations shall be tolled during the pendency of any competency issues.<sup>49</sup> The burden is on the party requesting such designation to prove by a preponderance of the evidence that such a designation is warranted.<sup>50</sup> The court shall make written findings and consider all of the enumerated factors.<sup>51</sup> The statute states "If the court denies the EJJ

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44. *See id.* § 9-27-502(a).

45. *See id.* § 9-27-502(b)(10)(B)(iv)(a).

46. *See id.* § 9-27-502(b)(10)(B)(iv)(b).

47. *See id.* § 9-27-503(a)(1).

48. *See id.*

49. *See* ARK. CODE ANN. § 9-27-503(a)(2) (Michie Supp. 2000).

50. *See id.* § 9-27-503(b).

51. *See id.* § 9-27-503(c). The statute lists the following factors which the court must consider in making an EJJ designation determination:

(1) The seriousness of the alleged offense and whether the protection of society requires prosecution as an EJJ 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

motion or petition, the court shall enter its written findings and the case shall continue as a delinquency proceeding.”<sup>52</sup> Upon finding that the juvenile should be treated as an EJJ offender, the court must inform the juvenile of his right to a jury trial and shall set a date for the adjudication.<sup>53</sup>

## VI. ADJUDICATION AND DISPOSITION

The juvenile has a right to a jury trial.<sup>54</sup> This right can be waived by the juvenile only after consultation with an attorney.<sup>55</sup> In addition, the waiver must be in writing and signed by the juvenile, the juvenile’s attorney, and the juvenile’s parents or guardians.<sup>56</sup> If the juvenile requests a jury trial, the jury will only determine if the juvenile committed the alleged offense. Upon a finding that the juvenile committed an offense that would not have subjected the juvenile to EJJ, the court will enter any of the juvenile disposition alternatives outlined in Arkansas Code Annotated section 9-27-330.<sup>57</sup> Upon a finding that the juvenile committed one or more of the offenses that subjected the juvenile to EJJ, the court shall enter any of the juvenile dispositions and shall suspend the imposition of an adult sentence pending court review.<sup>58</sup>

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adjudicated delinquent and if so, whether the offenses were against persons or property and any other 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.

*Id.*

52. *See id.* § 9-27-503(e).

53. *See id.* § 9-27-503(d).

54. *See id.* §§ 9-27-325(a)(1)(B), -505(a).

55. *See* ARK. CODE ANN. §§ 9-27-325(a)(3), -505(c)(1) (Michie Supp. 2000).

56. *See id.* §§ 9-27-325(a)(4), -505(c)(2).

57. *See id.* § 9-27-505(g)(2).

58. *See id.* §§ 9-27-505(g)(1), -506(1)-(2).



## VII. REVIEW HEARING

The State may petition the juvenile court to impose an adult sentence at any time, but must prove by a preponderance of the evidence that the juvenile: (1) has violated one of the juvenile disposition orders, (2) has been found delinquent or guilty of committing a new crime, or (3) is no longer amenable to rehabilitation in the juvenile system.<sup>59</sup> The juvenile's attorney can petition the court for review or modification at any time.<sup>60</sup> However, if the initial petition is denied, the juvenile must wait one year from the date of denial to file a new petition for modification.<sup>61</sup>

If no review has been conducted, the juvenile court must conduct a review hearing six months prior to the juvenile's eighteenth birthday to determine the juvenile's disposition.<sup>62</sup> The court may release the juvenile; however, a court may not order an absolute release for juveniles adjudicated for capital murder and murder in the first degree. If release is ordered, the court may act within the following guidelines: (1) the court shall impose a probation period of not less than three years; (2) the court can amend or add any juvenile disposition pursuant to Arkansas Code Annotated section 9-27-330; and (3) the court can impose the full range of sentencing available in circuit court up to forty years, except that juveniles adjudicated delinquent for capital murder or murder in the first degree may be sentenced for any term up to and including life.<sup>63</sup> Statutory provisions prohibiting or limiting probation, suspended imposition of sentence or parole for offenses when committed by an adult do not apply to juveniles sentenced as EJJ offenders.<sup>64</sup> Juveniles who receive an adult sentence will receive credit for time served in any juvenile facility.<sup>65</sup>

## VIII. RECORDS

EJJ court records must be kept for ten years from the last adjudication of delinquency, guilty plea, nolo contendere plea, finding of guilt or until the juvenile's twenty-first birthday, whichever is longer.<sup>66</sup> If an

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59. *See id.* § 9-27-507(a)-(b).

60. *See id.* § 9-27-507(c)(1).

61. *See* ARK. CODE ANN. § 9-27-507(c)(2) (Michie Supp. 2000).

62. *See id.* § 9-27-507(e)(1).

63. *See id.* § 9-27-507(b), (e)(4).

64. *See id.* § 9-27-507(b)(2)(B), (e)(4)(B).

65. *See id.* § 9-27-507(b)(2)(C), (e)(4)(C).

66. *See id.* § 9-27-508(a).

adult sentence is imposed upon an EJJ offender, the juvenile records must be transferred to the circuit clerk and will be considered adult criminal records.<sup>67</sup>

#### IX. DIVISION OF YOUTH SERVICES COMMITMENT

The Department of Human Services' Division of Youth Services ("DYS") is charged with the responsibility to provide juvenile delinquency services.<sup>68</sup> Judges can commit a juvenile to DYS pursuant to either a delinquency or EJJ disposition.<sup>69</sup> In a juvenile delinquency case once the judge commits a juvenile to DYS, DYS has complete release authority.<sup>70</sup> If a judge commits an EJJ offender to DYS; however, DYS must petition the court for release.<sup>71</sup> The court should consider factors enumerated in the statute and release the juvenile upon a finding by a preponderance of the evidence that the juvenile's release does not pose a substantial threat to public safety.<sup>72</sup>

#### X. DEPARTMENT OF CORRECTION

No juvenile under the age of sixteen will be placed in the Department of Correction ("DOC").<sup>73</sup> If a juvenile or circuit court imposes an adult sentence prior to a juvenile's sixteenth birthday, the juvenile should be housed at DYS until the juvenile turns sixteen, except as provided by court order or the Post Prison Transfer Board. Juveniles awaiting transfer to DOC are to be segregated from the general delinquency population at DYS.

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67. See ARK. CODE ANN. § 9-27-508(b)(1) (Michie Supp. 2000).

68. See *id.* § 9-28-201.

69. See *id.* § 9-27-330(a)(1)(B).

70. See *id.* § 9-27-331(a)(5).

71. See *id.* §§ 9-27-331(a)(5), 331(b)(2)(A), 509(A)(c)(1).

72. See *id.* §§ 9-27-331(b)(3), 509(c)(3). The court shall consider the following factors:

(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 they were committed;

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

(4) the protection of public safety; and

(5) opportunities provided to the juvenile for rehabilitation and the juvenile's effort toward rehabilitation.

ARK. CODE ANN. §§ 9-27-331(b)(2)(B)(i)-(v) (Michie Supp. 2000). See also ARK. CODE ANN. §§ 9-27-509(c)(2)(A)-(E) (Michie Supp. 2000).

73. See ARK. CODE ANN. § 9-27-510(a)(1) (Michie Supp. 2000).

## XI. WAIVER AND TRANSFER TO CIRCUIT COURT

In addition to providing juvenile courts with blended sentencing authority, EJJ made substantial changes to Arkansas' waiver and transfer statute. Prior to EJJ, the legislative trend in Arkansas was to increase the number of crimes for which a juvenile age fourteen or fifteen could be charged in circuit court.<sup>74</sup> EJJ reversed this trend and provided exclusive juvenile court jurisdiction for most juveniles age fourteen and fifteen. The State retained the discretion to file the following offenses in either juvenile or circuit court: (1) capital murder, (2) murder in the first degree, (3) kidnapping, (4) aggravated robbery, (5) rape, (6) battery in the first degree, and (7) terroristic act.<sup>75</sup> The state may file a motion to transfer to circuit court or request an EJJ designation for enumerated charges.<sup>76</sup> EJJ also reinstated timelines for transfer hearings that were eliminated in 1994. A juvenile or circuit court must conduct a transfer hearing within thirty days, if the juvenile is detained, and no longer than ninety days from the date of the motion to transfer.<sup>77</sup> The court must make written findings and consider all of the factors enumerated in the statute.<sup>78</sup> The EJJ designation factors and transfer factors the court must consider are almost identical. As a result, an EJJ

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74. When the new juvenile code was enacted in 1989 the prosecutor had discretion to file in circuit court the following charges on juveniles 14 and 15 years old at the time of the offense: capital murder, murder in the first degree, murder in the second degree, kidnapping in the first degree, aggravated robbery, and rape. *See* ARK. CODE ANN. § 9-27-318(b)(1) (Michie Supp. 2000). In 1991 the legislature added battery in the first degree to the list. *See id.* § 9-27-318(b)(1). During the 1994 Second Extraordinary Session the legislature added the following crimes: battery in the second degree, possession of handgun on school property, aggravated assault, unlawful discharge of a firearm from a vehicle, any felony committed while armed with a firearm, soliciting a minor to join a criminal street gang, criminal use of a prohibited weapon, minor in possession of a handgun, and any felony attempt, solicitation, or conspiracy to commit any of the following: capital murder, first degree murder, second degree murder, kidnapping, aggravated robbery, rape and first degree battery. *See id.* § 9-27-318(b)(2). In 1995, the legislature added a juvenile who is at least 14 when he engages in conduct, that if committed by an adult would constitute a felony, and he has been adjudicated delinquent three times within the last two years for acts that would have been a felony if they had been committed by an adult. *See id.* § 9-27-318(b)(2)-(4). In 1997, the legislature added first and second degree escape and a felony attempt, solicitation, or conspiracy to commit first or second degree escape. *See id.* § 9-27-318(b)(2).

75. *See* ARK. CODE ANN. § 9-27-318(c)(2) (Michie Supp. 2000).

76. *See id.* § 9-27-318 (b)(1)-(3), (c)(2)(A)-(G).

77. *See id.* § 9-27-318(f).

78. *See id.* § 9-27-318(g).

designation hearing and transfer hearing may be conducted at the same time.<sup>79</sup>

Upon a finding by a circuit court that the case should be transferred to juvenile court, the circuit court shall enter an order to transfer to juvenile court as an EJJ case.<sup>80</sup> EJJ has also altered one of the first transfer holdings. In *Walker v. State*, the supreme court held that when a juvenile is tried for an offense for which the circuit court has jurisdiction, the court does not lose jurisdiction by a jury convicting of a lesser included offense, even if the offense included is not one with which the juvenile could have originally been charged as an adult.<sup>81</sup> Under EJJ, if a juvenile age fourteen or fifteen is charged in circuit court and is found guilty of an offense that would not have subjected the juvenile to the circuit court's jurisdiction, the circuit court shall transfer the case to the juvenile court for the court to enter a juvenile disposition.<sup>82</sup> For example, if a prosecutor charges a juvenile age fourteen with murder in the first degree in circuit court, but the juvenile is found guilty of manslaughter, an offense for which the circuit court does not have jurisdiction, the circuit court would transfer the case to the juvenile court to enter a juvenile disposition.

## XII. CONCLUSION

Arkansas has made a critical step in recognizing that children need to be treated in a justice system that is skilled in dealing with the complex issues that children and their families face. EJJ addresses the balance inherent in holding children accountable for their crimes while affording them opportunities for rehabilitation. EJJ will challenge the juvenile justice system to work in concert with others to create a wider array of services designed to redirect juvenile behavior. Currently the level of rehabilitative services available to juveniles is lacking. EJJ is a tool which provides judges with more options to address the serious issues of juvenile delinquency. Efforts toward creating and enhancing services designed to curb delinquency are essential, should we desire to decrease the number of people we are forced to incarcerate.

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79. *See id.* § 9-27-318(m).

80. *See id.* § 9-27-318(i).

81. *See Walker v. State*, 309 Ark. 23, 24, 827 S.W.2d 637, 638 (1992).

82. *See* ARK. CODE ANN. § 9-27-318(j) (Michie Supp. 2000).

