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COMMENTARY ON  
ALABAMA JUVENILE JUSTICE  
STATUTES  
(JJJP-WPI-77)

Juvenile Justice Judicial Project  
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## INTRODUCTION

This document is one of a series of reports compiled by the Juvenile Justice Judicial Project (JJJP) of the University of Alabama. The Project, jointly sponsored by the Alabama Department of Pensions and Security (DPS) and the Alabama Department of Youth Services (DYS), is being carried out at the School of Social Work at the University. The primary purpose of the project is to facilitate the implementation of Act No. 1205, which relates to the new Judicial Article of the Alabama Constitution. Act No. 1205 was passed as part of the Regular Session of the 1975 Alabama legislature and, when its provisions become effective, amends and repeals many sections of Title 13 of the Code of Alabama, 1940.

This document, hereinafter referred to as the Commentary, is designed to serve as a source book for workers who will be involved in providing services to juveniles under the new Act. Its contents center on the provisions contained in Article 5 (Juvenile Proceedings) of Act No. 1205 and on the Alabama Rules of Juvenile Procedure (Rules) which are associated with those provisions. This Commentary possesses the following elements and characteristics:

1. the provisions of Article 5 of the Act are presented in an abbreviated form;
2. the above-stated provisions have been analyzed by subject area and are presented in functional grouping;
3. each provision of Article 5 has been "keyed" to appropriate Alabama Rules of Juvenile Procedure (Rules) and to the section(s) of Title 13 of the Alabama Code (Title 13) which it repeals, as well as other pertinent Titles and sections;
4. specific duties and responsibilities of various components of the juvenile justice system, where they have been made explicit in the Act, have been grouped and are presented as such;
5. the Alabama Rules of Juvenile Procedure are presented in their entirety.

By formatting the material in this fashion, it was felt that the Commentary could serve as a useful tool for increasing the understanding of Article 5 among various people (e.g., case workers, probation officers, mental health workers, law enforcement officers, school officials) who will be implementing its provisions. In developing the Commentary, great care was taken to minimize interpretation and paraphrasing. Emphasis was constantly placed on preserving the meaning and language of Article 5 while reducing, whenever possible, its length and fragmentation. Consequently, while it can serve as a handy reference it should not be used as a substitute for the original document.

The Commentary contains three major sections. Part I presents the provisions of Act No. 1205 (Article 5 only) which have been regrouped by functional heading. Each provision is "keyed" to its corresponding Rule(s) and to the section(s) of Title 13 which are repealed by it. Part II presents the explicit duties and responsibilities of the various components of the juvenile justice system. Part III contains the complete text of the Alabama Rules of Juvenile Procedure. A Table of Contents and brief Index are included.

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PART I

COMMENTARY ON ACT 1205





Act Number 1205

## DEFINITIONS

## Section 101

1. "adult" means an individual 19 years of age or older;
2. "aftercare" means such conditions and supervision as the court orders after release of legal custody;
3. "child" prior to January 1, 1978, means an individual under the age of 17; or under 19 years of age who committed the acts of delinquency with which he is charged before reaching the age of 17 years; after December 31, 1977, "child" means an individual under the age of 18; or under 19 years of age and who committed the act of delinquency with which he is charged before reaching the age of 18 years;
4. "child in need of supervision" means a child who:
  - (a) being subject to compulsory school attendance, is habitually truant from school; or
  - (b) disobeys the reasonable and lawful demands of his parents, guardian or other custodian and is beyond their control; or
  - (c) has committed an offense established by law but not classified as criminal or one applicable only to children; and
  - (d) in any of the foregoing is in need of care or rehabilitation;
5. "commit" means to transfer legal and physical custody;
6. "consent decree" means an order, entered after the filing of a delinquency petition and before the entry of an adjudication order, suspending the proceedings and continuing the case of the child under terms and conditions agreed to by all parties concerned;
7. "court" or "juvenile court" means the juvenile division of the district court or the juvenile division of the circuit court as established by this Act;

Comparison with Repealed Title 13 Sections and Other Statutes

Section 350 is repealed

This is a new definition.

The age increases in stages under the new code to eventually include those children up to age 18. In the old statute the upper age limit was age 16.

The "child in need of supervision" is a new category which includes what are commonly called status offenses, e.g., truancy, running away, incorrigibility, promiscuity, etc.

This is a new definition.

The juvenile court previously was the probate court or a court created by special act for the county.

8. "delinquent act" means an act designated a crime under the law of this state, or of another state if the act occurred in another state, or under federal law, or a violation of a municipal ordinance; however, traffic offenses committed by one 16 years of age or older shall be excepted unless transferred to the juvenile court by the court having jurisdiction;
9. "delinquent child" means a child who has committed a delinquent act and is in need of care or rehabilitation;
10. "dependent child" means a child:
  - (a) who, for any reason is destitute, homeless, or dependent on the public for support; or
  - (b) who is without a parent or guardian able to provide for his support, training or education; or
  - (c) whose custody is the subject of controversy; or
  - (d) whose home, by reason of neglect, cruelty, or depravity, on the part of his parent, parents, guardian, or other person in whose care he may be, is an unfit and improper place for him; or
  - (e) whose parent, parents, guardian, or other custodian neglects or refuses, when able to do so or when such service is offered without charge, to provide or allow medical, surgical or other care necessary for such child's health or well being; or
  - (f) who is in such condition or surroundings or is under such improper or insufficient guardianship or control as to endanger his morals, health, or general welfare; or
  - (g) who has no proper parental care or guardianship; or
  - (h) whose parent, parents, guardian or custodian fail, refuse or neglect to send such child to school in accordance with the terms of the compulsory school attendance laws of this state; or

### Comparison with Repealed Title 13 Sections and Other Statutes

This definition is more restrictive than it was in the past, i. e., it includes fewer offenses as "status" offenses are now included in the "children in need of supervision."

Sections (a), (b), and (c) made up the definition of "dependent child" in the old code. See Title 13, section 350(1), Alabama Code (Recomp. 1958).

Sections (d), (e), (f), (g), (h), (i), and (m) were included in Title 13, section 350, as definitions of the "neglected child."

Sections (d), (f), and (g) must not be used by Department of Pensions and Security representatives as definitions of a dependent child in preparing petitions. In a 1976 decision, the U. S. District Court for the Middle district of Alabama

Comparison with Repealed Title  
13 Sections and Other Statutes

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enjoined the Department from enforcing standards of neglect found in Title 13, Section 350(2).

- (i) who has been abandoned by his parents, guardian or other custodian; or
  - (j) who is physically, mentally or emotionally abused by his parents, guardian or other custodian or who is without proper parental care and control necessary for his well-being because of the faults or habits of his parents, guardian or other custodian or their neglect or refusal, when able to do so, to provide them; or
  - (k) whose parents, guardian or other custodian are unable to discharge their responsibilities to and for the child; or
  - (l) who has been placed for care or adoption in violation of the law; or
  - (m) who for any other cause is in need of the care and protection of the state; and
  - (n) in any of the foregoing is in need of care or supervision;
11. "detention care" means the temporary care of delinquent children or children alleged to be delinquent in secure custody pending court disposition or transfer to a residential facility or further care of a child adjudicated a delinquent, provided, however, that detention care may also include temporary care of children in need of supervision until January 1, 1978;
  12. "guardian ad litem" means a licensed lawyer appointed by a court to defend or represent a child in any suit to which he may be a party;
  13. "intake office" means the office in the probation service or designee of the judge with the duty of primary contact with the law enforcement agency and complainants of children coming under the jurisdiction of the court;
  14. "judge" means judge of the juvenile court as prescribed by this article;
  15. "law enforcement officer" means any person, however denominated, i. e., constable, sheriff or police officer, who is authorized by law to exercise the police

Unlike the old statute, (Title 13, Section 352), the Guardian ad litem has to be a lawyer.

The "intake office" as defined here is a new function as all complaints concerning children will be received here.

Comparison with Repealed Title  
13 Sections and Other Statutes

- powers of the state or local governments;
16. "legal custodian" means a person, agency or department other than a parent or legal guardian, to whom legal custody of the child has been given by court, or who has been given legal custody by court order, or who is acting in loco parentis;
  17. "legal custody" means a legal status created by court order which vests in a custodian the right to have physical custody of the child and to determine where and with whom he shall live within the state, and the right and duty to protect, train and discipline him and to provide him with food, shelter, clothing, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the person of the child and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the juvenile court;
  18. "minor" means an individual who is under the age of 19 years and is not a "child" within the meaning of this article;
  19. "probation" means the legal status created by court order following an adjudication of delinquency or in need of supervision whereby a child is permitted to remain in a community subject to supervision and return to the court for violation of probation at any time during the period of probation;
  20. "protective supervision" means a legal status created by court order following an adjudication of dependency whereby a child is permitted to remain in his home subject to supervision, and to return to the court for violation of protective supervision at any time during the period of protective supervision;
  21. "residential facility" means a dwelling, other than a detention or shelter care facility, providing living accommodations, care, treatment and maintenance for

This is a new definition.

This is a new definition.

Comparison with Repealed Title  
13 Sections and Other Statutes

children, including institutions, foster family homes, group homes, halfway houses, forestry camps, and where not operated by a public agency, is licensed or approved to provide such care;

- 22. "residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not necessarily limited to the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support;
- 23. "shelter care" means the temporary care of children in group homes, foster care or other non-penal facilities;
- 24. the singular includes the plural, the plural the singular, the masculine the feminine, and the feminine the masculine, when consistent with the intent of this article.

This is a new definition.

Section 101

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PERSONNEL AND DUTIES

Section 103

Sections 351, 355 are repealed.

- 1. Juvenile Judge
  - (a) The district court judge if the only one in the district shall be the juvenile court judge. If more than one district judge exists, the presiding circuit judge shall from time to time designate a district judge or circuit judge as the juvenile court judge.
  - \*(b) Juvenile court judges must report on or before the tenth of each month on the activities of their courts to the Administrative Director of Courts.

The creation of the district court and the new district judgeships has brought the juvenile jurisdiction before a new forum. See also Act No. 388, Alabama Legislature Regular Session, 1976.

Section 103

- \* Until further notification by the Administrative Director of Courts, all data on juvenile proceedings shall be reported to the Department of Youth Services.

See: Rule 2. Juvenile Judge - Assignment  
(page 55)

Rule 3. Juvenile Judge - Administrative  
Authority (page 56)

Rule 7. Administrative Reports (page 57)

Rule 18. Release of Information (page 63)

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## 2. Referees

- (a) The juvenile judge may appoint one or more persons as a referee who shall be licensed to practice law. Such appointments shall be subject to the approval of the Department of Court Management.
- (b) The Judge may designate any case to be heard first by a referee unless;
  - (1) the hearing is to consider transfer to the circuit court for criminal prosecution as an adult; or
  - (2) a party objects to the referee hearing the case.
- (c) The referee must give his written findings and recommendations to the judge and to the parties.
- (d) A rehearing before the judge may be ordered at any time by the judge or shall be ordered upon written request of the parties within 14 days after the referee's notice.
- (e) If a hearing before the judge is not requested, or the right is waived, the findings and recommendations of the referee, if confirmed by an order of the judge, shall become the order of the court.

Section 104

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Section 105

## 3. Probation Services (Probation Officer)

- (a) The juvenile court may appoint one or more probation officers who will be certified by the Department of Youth Services and employed by the county

## Comparison with Repealed Title 13 Sections and Other Statutes

A referee must now be a lawyer licensed to practice in Alabama. Parties now have 14 days instead of 5 as in the old code to request a rehearing. A referee can not handle transfer cases to criminal court nor a case where any party objects to a hearing before a referee. The findings and recommendations for disposition made by the referee must be written and accompanied by notice to the parties of their rights to a rehearing before the judge.

Section 360 is repealed.

Probation officers are to be certified by Department of Youth Services, not Department

- governing body.
- (b) The probation officers shall:
- (1) make investigations, reports, and recommendations to the juvenile court;
  - (2) examine and receive complaints and allegations of delinquency, in need of supervision or dependency of a child for considering the commencement of proceedings;
  - (3) refer complaints and allegations of dependency or other appropriate matters to the Department of Pensions and Security for investigation;
  - (4) supervise any child placed on probation or in protective supervision of probation officer or in after care by court order;
  - (5) make referrals to other agencies;
  - (6) make predisposition studies and submit recommendations to the court, except as provided in subsection (b) (3) above.
- (c) A probation officer or a representative of the Department of Pensions and Security, with the approval of the court, shall have the power to take into custody and place in shelter care or detention care, a child who is under its supervision as a delinquent, in need of supervision or dependent when the probation officer or representative of the Department of Pensions and Security has reasonable cause to believe that the child has violated the conditions of his probation, aftercare or terms of protective supervision, or that he may flee from the jurisdiction of the court. A probation officer does not have the powers of a law enforcement officer nor may he sign a petition under this article with respect to a person who is not on probation or otherwise under his supervision.
- (d) The probation officer or representative

### Comparison and Repealed Title 13 Sections and Other Statutes

of Pensions and Security as formerly provided in Title 13, Section 360. This power had already been given to the Department of Youth Services, however, in Act. No. 816, Alabama Legislature Regular Session 1973, Section 8. In Act 1205 it is specifically spelled out that probation officers no longer have the powers of a law enforcement officer. The new law only allows a probation officer to take a child into custody who is already under his supervision. However, Act No. 1124, Alabama Legislature Regular Session 1975, provides that the child who meets the definitions of an abused or neglected child as specified therein may be taken into protective custody by other authorized persons.

of the Department of Pensions and Security who takes the child into custody shall proceed as provided in sections 5-120 of this article.

Section 105

See: Rule 4. Probation Officers (page 56)  
 Rule 5. Chief Probation Officer (page 57)  
 Rule 6. Volunteers in Probation (page 57)  
 Rule 8. Intake Office (page 57)

Section 107

4. District Attorney

The local district attorney must represent the state in all cases arising under this article when requested by the court. He shall represent the state in all cases appealed from the juvenile court to the circuit court.

Section 107

Section 106

5. Advisory Board

- (a) The juvenile judge shall appoint not less than five nor more than twenty-five concerned citizens to serve as an advisory board to the juvenile court.
- (b) Their duties include:
  - (1) assisting the court in obtaining services of voluntary probation officers;
  - (2) visiting child detention centers and other child care facilities;
  - (3) making recommendations to the court;
  - (4) making periodic reports to the public.

Section 106

Section 138(a)

6. Guardian ad litem

The court may appoint an attorney as guardian ad litem at any stage in any

Comparison and Repealed Title  
 13 Sections and Other Statutes

Section 359 is repealed.

This is essentially the same duty as under the prior statute.

Sections 375,376 are repealed.

The numbers on the advisory board have changed. Under the prior statute, the judge could appoint not less than five nor more than ten. Now he can appoint not less than five nor more than twenty-five.

Section 352 is repealed.

Unlike the prior statute, it is expressly stated that the guardian ad litem must be an attorney.



Comparison and Repealed Title  
13 Sections and Other Statutes

proceeding for a child who is before the  
court. (See also section 124(a) and (b).)  
Section 138(a)

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Section 138(b)

7. Guardian of the Person

Any time a child has no natural or adopted  
parents or guardian, the court shall appoint  
a guardian of the person.

Section 138(b)

This is a new provision. There  
was no such provision in the  
prior code.

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JURISDICTION

Section 102

1. General

The circuit and district court will exercise  
original, concurrent jurisdiction as to the  
juvenile court. The docket of said court  
and the minute book shall be kept separately  
from any other business of the court. The  
supreme court shall make rules governing  
procedures in juvenile court.

Section 102

Section 351 is repealed.

Juvenile jurisdiction now rests  
concurrently in district and  
circuit courts. Under the old  
statute, it rested in the probate  
court unless a special court  
had been created by legislative  
act.

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Section 108, 110

2. Children, Jurisdiction of

(a) The juvenile court shall have exclusive  
original jurisdiction over:

- (1) delinquency, dependency, or in  
need of supervision proceedings;  
and
- (2) traffic offense proceedings trans-  
ferred to the juvenile court.

(b) The court also has exclusive original  
jurisdiction over:

- (1) proceedings to determine custody  
or to appoint a legal custodian or  
guardian of the person of a child  
who is otherwise before the court.  
Other courts shall not be deprived  
of the right to determine custody  
or guardianship of the person of

Section 351 is repealed.

Dependency has been expanded  
to include what was once called  
the neglected child, and children  
in need of supervision is a new  
category.

Traffic offenses committed by  
children sixteen or over and  
transferred are a new area of  
jurisdiction because under the  
old statute, children 16 years  
and above were not within the  
jurisdiction of the juvenile  
court.

Comparison and Repealed Title  
13 Sections and Other Statutes

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a child when such custody or guardianship is incidental to the determination of causes pending in those courts. Such courts may certify such questions to the juvenile court for hearing and determinations or recommendations;

- (2) removal of disabilities of non-age, including judicial consent to marriage, employment or enlistment;
- (3) proceedings under the Interstate Compact on Juveniles;

- (4) commitment proceedings related to mental health;

- (5) adoption proceedings when they are removed from probate court by motion; and

- (6) termination of parental rights.

- (c) The court shall have original jurisdiction in proceedings:

- (1) concerning any child who is being subjected to physical, mental abuse, or is in clear and present danger of suffering lasting or permanent damage;
- (2) concerning any child who requires emergency medical treatment to save his life, prevent permanent physical impairment or deformity, or alleviate prolonged agonizing pain; or
- (3) when it is alleged that a child's rights have been abridged in proceedings resulting in suspension, expulsion or exclusion from a public school.

- (d) Jurisdiction over a child is retained until he is 21 unless terminated by a court order. But this provision does not take away the jurisdiction of other

This is a new area of jurisdiction for the juvenile court. It was previously in the circuit court. See Title 27, Section 13.

This is not a new area of jurisdiction. See Interstate Compact on Juveniles, Title 49, Section 108, Article III, (1973 Cum. Supp.) regarding juvenile court jurisdiction.

Adoption proceedings were previously handled solely by the probate court. See Title 27, Section 1.

Comparison and Repealed Title  
13 Sections and Other Statutes

courts over offenses committed by the child after he reaches the age of 18 years.

- (e) Jurisdiction of the juvenile court is ended if the child is convicted in a criminal court of a crime committed after the age of 18.

Section 108, 110

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 Section 109

3. Minors and Adults

The court has exclusive jurisdiction over:

- (a) any minor or adult charged with aiding, causing or encouraging delinquency, dependency or need of supervision of any child; or disregarding any lawful court order; or interfering with the custody of any child under the jurisdiction of the juvenile court; or interfering with orders of the court regarding custody;
- (b) Paternity proceedings;
- (c) Desertion or non-support violation or
- (d) Commitment proceedings for a mentally ill or mentally retarded minor or child.

Section 109

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 VENUE AND TRANSFER

Section 111

1. Venue

- (a) If the case is a delinquency or in need of supervision case, the proceedings are in the district where the act occurred.
- (b) If the case is a dependency case, the proceedings are in the district where the child resides or where he is present when the proceedings are commenced.

Section 111  
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Section 366 is repealed.

This is not a new area of jurisdiction. See Title 27, Section 12 (1) (1973 Cum. Supp.) with its reference to Title 34, Section 94.

Section 112

2. From other Courts

- (a) If a criminal or quasi-criminal court ascertains that the defendant before it is a child as defined in Act 1205 at the time of the alleged offense, the case, with all records, shall be transferred to the juvenile court.
- (b) Any court exercising jurisdiction over traffic cases may transfer any such case involving a child to the juvenile court for adjudication as an act of delinquency.

Section 112

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Section 113

3. Transfer to other Juvenile Courts

The case may be transferred from one district to another within the state under motion of the court or party if the residency of the child is in another district or if the child's residence changes while a case is pending.

Section 113

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Section 129

4. Transfer to Criminal Courts

- (a) The prosecutor may petition prior to a hearing on the merits and following consultation with probation services for a transfer to criminal court, for prosecution as an adult if:
  - (1) the child is fourteen or over and has committed what would be a felony if done by an adult; or
  - (2) the child is fourteen and already

Comparison and Repealed Title 13 Sections and Other Statutes

Section 363 is repealed.

Traffic jurisdiction is new because no one 16 or over was considered a juvenile under the old code.

Section 365 is repealed.

This transfer procedure is more restrictive now than it was before. Under Title 13, Section 365, the judge was allowed to transfer the case if it would be for the "best interests" of the child. However, transfer was conditioned upon acceptance of jurisdiction by the judge of the court to which the case was to be transferred.

Section 364 is repealed.

There is broader latitude now for transferring cases to criminal court than before. This was needed due to the increased age limit resulting in more serious criminal offenses coming before the juvenile court.

Comparison and Repealed Title  
13 Sections and Other Statutes

under commitment to an agency  
 as a delinquent.

- (b) A hearing, to determine if it is in the best interest of the child or public to grant the motion, will be held before any transfer is granted. If the court determines that there are no reasonable grounds to believe that he is committable to an institution or agency for the mentally retarded or mentally ill, the case shall be order transferred for criminal prosecution.
- (c) If there are grounds to believe a child should be committed to a public or private agency for treatment of mental illness, the court shall proceed under Section 5-136.
- (d) The following are factors the court shall use in considering whether to grant a motion to transfer:
  - (1) the nature of the alleged offense;
  - (2) any prior delinquency record;
  - (3) the past treatment efforts and the child's response;
  - (4) the demeanor;
  - (5) the child's mental and physical maturity; and
  - (6) the interest of the community in restraining the child.
- (e) A study and report of the above factors shall be made by probation services.
- (f) If transfer is made the court shall set forth in writing its reasons, which shall include a finding of probable cause for believing the allegations are true.

Section 129

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 RIGHTS OF CHILDREN

Section 124

1. Right to Counsel

- (a) In delinquency and in need of supervision cases, the child and parents

Section 359 is repealed.

The right to counsel is not discretionary anymore, Under

shall be advised at intake of the child's right to counsel at all stages of the proceedings by counsel retained by them or if they are unable to afford counsel, by counsel appointed by the court. If counsel is not retained for the child in a proceeding in which there is a reasonable likelihood that the hearing may result in a commitment to an institution in which the freedom of the child is curtailed, counsel shall be appointed for the child. The court may appoint counsel in any case when it deems it in the interests of justice.

- (b) In dependency cases, the parents, custodians or guardians shall be informed of their right to be represented by counsel and, upon request, counsel shall be appointed where the parties are unable for financial reasons to retain their own attorney. The court shall also appoint counsel for the child in dependency cases where there is an adverse interest between parent or child or where the parent is an unmarried minor or is married, widowed, divorced, under the age of 18 years, or counsel is otherwise required in interests of justice.

Section 124

See: Rule 14. Appearance of Counsel (page 61)  
Rule 22. Right to Counsel (page 65)

Section 125

2. Statements; Admissibility

Any statement of a child made to police or law enforcement officers, prosecutor or probation officer may be admissible unless the child has been taken into custody or a petition has been filed. No statements made after the filing of a petition or the taking into custody of the child may be admissible prior to determination of

Comparison and Repealed Title  
13 Sections and Other Statutes

Title 13, Section 359, the decision to appoint counsel was at the discretion of the judge.

NOTE: The Department of Pensions and Security is enjoined by a 1976 Federal Court order from instituting change of custody proceedings without independent counsel to represent the child.

Section 377 is repealed.

Under the old statute, such an admission or confession, if otherwise competent, would have been received as legal evidence.

Comparison and Repealed Title  
13 Sections and Other Statutes

allegations in the petition unless the child is advised by counsel.

Section 125

See: Rule 21. Admissibility of Child's Statement (page 64)

Section 126

3. Other Basic Rights

- (a) A child charged with a delinquent act or who is alleged to be in need of supervision has a privilege against self-incrimination. Extra-judicial statements are not admissible over objection if it will be constitutionally inadmissible in a criminal proceeding. Extra-judicial admissions or confessions alone will not support a finding that the child committed the alleged act but must be corroborated.
- (b) No other proceedings, criminal or juvenile, can come from the facts alleged in the petition or from the same act if the court has already begun taking evidence or where the court has accepted a child's plea of guilty to the petition.

Section 126

See: Rule 11. Rights of the Child (page 58)

CUSTODY AND PRE-TRIAL DETENTION AND  
SHELTER CARE

Section 119

1. Taking into Custody

A child may be taken into custody:

- (a) Pursuant to an order of the court under sections 5-117 and 5-120;
- (b) For a delinquent act;
- (c) By a law enforcement officer having reasonable grounds to believe the child has run away from a detention, residential, shelter or other care facility;

All of these constitutional rights are newly granted to juveniles. These rights codified here are drawn from decisions of the U.S. Supreme Court in various juvenile cases since 1966.

Law enforcement officers may take children into custody for largely the same reasons as in the past. However, probation officers and Department of Pensions and Security representatives may only take a child into custody if he has previously

- (d) By a law enforcement officer having reasonable grounds to believe the child is suffering from illness or injury or is in immediate danger, and removal from such surroundings is necessary for the protection and safety of the child;
- (e) By a law enforcement officer who has reasonable grounds to believe that the child has run away from his parents, guardian or other custodian;
- (f) By a law enforcement officer who has reasonable grounds to believe that the child has no parent, guardian, custodian or other suitable person willing and able to provide supervision and care;
- (g) By a probation officer or a representative of the Department of Pensions and Security under section 5-105; or
- (h) By a law enforcement officer pursuant to a court order based upon allegations that the child's surroundings are dangerous to his mental or physical health.

Section 119

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Section 120

## 2. Release at Custody Level

- (a) The person taking the child into custody shall:
  - (1) release him to his parents, guardian or custodian with appropriate counseling and a warning;
  - (2) release him to his parents or guardian upon promise to bring the child before the court when requested;
  - (3) bring the child to an intake officer or suitable detention or shelter care center giving written notice and reasons why the child should be taken into custody to the parent, the court and to the Department of Pensions and Security in case of dependency.

## Comparison and Repealed Title 13 Sections and Other Statutes

been under their supervision. Act No. 1124, Alabama Legislature Regular Session 1975, allows for other authorized persons to take an abused child into custody.

Sections 352(3) and (4) are repealed.

These specific provisions for detention and shelter care are new.



Comparison and Repealed Title  
13 Sections and Other Statutes

- (b) When a child is brought to a shelter or other care facility established or approved by the Department of Pensions and Security, or the Department of Youth Services, or to the intake office, the person in charge of such intake office or the representative of the Department of Pensions and Security prior to admitting the child for care, shall review the need for detention or shelter care, and shall release the child unless detention or shelter care is required under section 5-121 or has been ordered by the court.
- (c) If the parent fails to bring the child before the court, the court may order the child taken into custody and brought before the court.
- (d) A person taking a child into custody pursuant to section 5-119 subsections (a) and (g) shall bring the child to the intake office or place of detention or shelter care facility and proceed in accordance with the provisions of this article.
- (e) If a law enforcement officer takes custody of a child because he fears the surroundings are dangerous to the child's mental or physical health and safety, the child may be brought directly to a hospital or mental health facility designated by the court, for evaluation and treatment with written notice to the court, the parent, custodian or guardian, intake officer and Department of Pensions and Security in case of dependency.

Section 120

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Section 121

In Title 13, section 352(4) it states that "... such child may be detained in such manner as the judge may order pending the hearing of the case..."

Section 379 is repealed.

3. Criteria for Continuing Detention or Shelter Care

- (a) Unless otherwise ordered by the court a child who has been detained shall

These criteria for continuing detention are new. There were

immediately be released to the care of his parents, guardian, custodian or other suitable person upon the ascertainment of necessary facts, except where:

- (1) there are no parents, guardians, custodians or other suitable person willing or able to provide care and supervision;
  - (2) release would be dangerous for others or their property where child is alleged delinquent;
  - (3) release would be a serious threat of substantial harm to the child; or
  - (4) the child has a history of failing to appear at juvenile court for court hearings.
- (b) Such criteria shall be supported by clear and convincing evidence which will support a decision of continued detention.

Section 121

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Section 122

4. Facilities

- (a) The court shall only use such facilities for detention, shelter and other care as have been established and approved or licensed by Department of Youth Services or Department of Pensions and Security.
- (b) A delinquent child or one alleged to be delinquent may be detained in a jail only if:
  - (1) no other detention facility is available;
  - (2) the detention is in a room that is separate and removed from adult inmates;
  - (3) adequate supervision is provided; and
  - (4) the facility is approved by Department of Youth Services.

Comparison and Repealed Title 13 Sections and Other Statutes

no such guidelines for the judge in the old statute. Under Title 13, section 352(4), the judge could order such manner of detention as he deemed best.

Section 379 is repealed.

The provisions for licensing by the Department of Pensions and Security are found in Title 49, sections 84(1) - (17). Act No. 816, Alabama Legislature Regular Session 1973, section 9 provides for licensing by the Department of Youth Services.

Child detention in a jail is much more restricted than before.

- (c) Any official of a jail or an adult offender detention facility who receives a child shall immediately notify the court for disposition.
- (d) When the case of a child is transferred to a criminal court, the child shall also be transferred to the appropriate facility.

#### Section 122

See: Rule 9. Designation of Detention or Shelter Care Facility (page 58)  
 Rule 10. Disruptive Behavior in Detention (page 58)

#### Section 123

#### 5. Release

- (a) When a child is not released from detention or shelter care a petition must be filed and a hearing held within 72 hours (holidays and weekends included) to determine if continued detention is required.
- (b) Notice of the detention or shelter or other care hearing, either oral or written, stating the time, place and purpose of the hearing and the right to counsel shall be given to the parent, guardian or custodian if they can be found and to the child if such child is over 12 years of age or if delinquency is alleged; in every case of a dependent child the Department of Pensions and Security shall be notified.
- (c) At the commencement of the detention or shelter or other care hearing, the court shall advise the parties of the right to counsel and shall appoint counsel as required. The parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency. They shall also be informed of the contents of the petition and shall be given an

#### Comparison and Repealed Title 13 Sections and Other Statutes

Section 361 is repealed.

The 72 hour limitation on a detention hearing is new. This is another example of the new rights children have under this code.

These rights are all newly recognized in the statute.

opportunity to admit or deny the allegations of the petition.

- (d) If full-time detention or shelter care is not required, the court shall order a release and may singly or in combination impose one or more of the following conditions:
  - (1) place the child in the custody of a parent, guardian or any other person who the court deems proper, or under the supervision of an agency or organization agreeing to supervise him;
  - (2) place restrictions on the child such as travel, associations, place of abode; or
  - (3) any other reasonable condition consistent with the criteria specified in 5-121.
- (e) Any order under this section may be amended at any time to impose additional or different conditions of release or to return the child to custody for failure to abide by said conditions.
- (f) Any relevant and material evidence may be admitted in a hearing to determine a need for detention or shelter care even if such evidence is not competent in a hearing on the petition.
- (g) If the child is not released and no parent or guardian is notified, appears at the hearing or waives appearance, the court shall rehear the matter in 24 hours (weekends and holidays included) if an affidavit is filed stating such facts.

Section 123

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JUVENILE PROCEEDINGS

Section 114

1. Initiation of Cases

Cases shall be initiated by the intake officer

Section 352(2) is repealed.

Under the old statute, any

filing a petition upon receipt of a verified (i. e., sworn) complaint.

#### Section 114

See: Rule 8. Intake Office (page 57)  
Rule 12. Initiation of Cases (page 60)

#### Section 116

##### 2. Informal Adjustment

Before a petition alleging delinquency or in need of supervision is filed, the probation officer or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties for the purpose of an informal adjustment pursuant to rules of procedure adopted by the supreme court.

#### Section 116

See: Rule 15. Informal Adjustment (page 61)

#### Section 115

##### 3. Petition: Who may Sign: Contents

- (a) A petition may be signed by any person with knowledge of the alleged facts or is informed of them and believes they are true.
- (b) A sworn petition shall set forth with specificity facts which:
  - (1) establish jurisdiction and constitute dependency, need of supervision, or delinquency and state that the child needs supervision, treatment, rehabilitation, care, or protection;
  - (2) the name, age, and address of the child;
  - (3) names and addresses of the child's parents, custodian or guardian; and

#### Comparison and Repealed Title 13 Sections and Other Statutes

person having knowledge that the child was within the jurisdiction of the court could file a verified petition.

Section 352(2) is repealed.

Under the old code, any such person could file the petition but this decision now rests with the intake officer.

- (4) if the child in custody is delinquent or in need of supervision, the place of his detention and time taken into custody;

Section 115

See: Rule 17. Amending Petition (page 63)

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Section 117

#### 4. Summons

- (a, b) After the petition is filed, the court shall issue summonses with an attached copy of the petition to the child if he is twelve or more years old; one to the parents in any case, and guardian or custodian and other parties the court thinks are necessary and proper.
- (c) The court may order the person in control of the child to bring him to the hearing.
- (d) If the court determines that detention, shelter or other care is necessary it may order the officer that is serving the summons to take the child into custody.
- (e) A party other than the child may waive service of summons by written stipulation or by voluntary appearance at the hearing.

Section 117

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Section 118

#### 5. Service of Summons

Service of the summons shall be pursuant to rules of procedure adopted by the supreme court.

Section 118

See: Rule 13. Service of Summons (page 60)

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### Comparison and Repealed Title 13 Sections and Other Statutes

Section 352(5) is repealed.

There is a new requirement to issue a copy of the summons to the child if he is over 12 years of age.

Sections 352(5) and (8) are repealed.

Comparison and Repealed Title  
13 Sections and Other Statutes

Section 133

6. Constructive Service

The court may make final disposition and interlocutory orders where parties were served by publication according to rules of the supreme court.

Section 133

See: Rule 13. Service of Summons (page 60)  
Rule 27. Modification (page 67)

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Section 127

7. Pre-dispositional Study and Report

- (a) If a petition alleges delinquency or need of supervision, the court may order a predisposition study done by the probation services. If dependency is alleged, the court may order a predisposition study done by the Department of Pensions and Security.
- (b) Physical or mental examinations may be done as a part of the predispositional study by an authorized doctor or other qualified examiner if the court so orders.
- (c) The court, after hearing, may also order an examination for parents with their consent when disability to care or supervise the child is in issue.

Section 127

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Section 136

8. Mental and Physical Examinations of Children

The court may, either before or after a hearing, cause any child within its jurisdiction to be given a physical or mental examination, or both, by a competent physician or other qualified examiner under the supervision of a physician, psychiatrist or psychologist who shall certify to the

Sections 352(5) and (8) are repealed.

Section 358 is repealed.

This is essentially the same.

Comparison and Repealed Title  
13 Sections and Other Statutes

examiner's findings in writing, or an examiner approved by the Department of Mental Health, shall certify to the court the condition of the child. If after such examination, or as provided in section 5-137, the court has reason to believe a minor or child is mentally ill or mentally retarded, the court shall proceed in the manner set out in section 5-137. Upon examination, if it appears that the child is in need of surgery, medical treatment or care, hospital care, or dental care, the court may cause the child to be treated by a qualified professional or placed in a public or other institution for training or care or in an approved private home, hospital or institution which will receive it. The expense for such treatment shall be a valid charge against the county. The court may grant authority to order emergency medical care to any such person, agency or department charged with the detention, temporary shelter care or other care of the child within its jurisdiction.

Section 136

Section 128

Section 354 is repealed.

9. Hearing

- (a) Juvenile court hearings shall be non-jury hearings with the general public excluded. Only parties, their counsel, and witnesses or other persons by special permission will be allowed to attend the hearings. The child may be excluded from court if the court finds that it is in his best interest, except for hearings alleging delinquency or need of supervision.
- (b) At intake and before the court, parties shall be advised of their rights, informed of the specific allegations in the petitions, and given an opportunity to admit or deny such allegations.
- (c) If the allegations are denied, the court

This again involves all the newly granted rights.



- Rule 24. Conduct of Hearing (page 65)  
 Rule 1. Procedure when Rules not Applicable (page 55)

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 Section 130

10. Consent Decree

After a petition is filed, the court may suspend the case or continue it, under terms and conditions agreed to by all parties, pursuant to rules adopted by the supreme court.

Section 130

See: Rule 16. Continuance under supervision without adjudication - consent decree (page 62)

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 Section 132

11. Adjudication; Noncriminal

An order of adjudication under section 5-108 (a) shall not result in criminal conviction or impose civil disabilities. Disposition of a child or evidence in such hearings is not admissible as evidence against him in any other proceeding except in disposition and sentencing proceedings in subsequent juvenile or adult cases.

Section 132

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 Section 131

12. Disposition

- (a) If a child is dependent, the court may:
- (1) allow him to remain with his parents, guardian, or other custodian, with court prescribed conditions and limitations;
  - (2) place him under protective supervision as defined in section 5-101
  - (t) above or, under the protective supervision of the Department of Pensions and Security;
  - (3) transfer legal custody to:

Comparison and Repealed Title  
 13 Sections and Other Statutes

There was no provision for this in the old code. It is to be used in accomplishing informal adjustments.

Section 378 is repealed.

Similar provision as in the old code.

Section 361 is repealed.

Comparison and Repealed Title  
13 Sections and Other Statutes

- (A) Department of Pensions and Security, provided that the department is equipped to care for the child;
  - (B) a local public child placing agency, or private organization or facility willing and able to assume the education, care and maintenance of the child, and which is licensed by the Department of Pensions and Security or otherwise authorized by law to receive and provide care for such a child; or
  - (C) a relative or other individual who, after study by the Department of Pensions and Security is found by the court to be qualified to receive and care for the child.
- (4) if the child is fourteen or older, and failing to benefit from school, the court, after finding that the school officials have made a diligent effort to meet the child's educational needs, and after study the court further finds the child is not able to benefit appreciably from further schooling, the court may excuse the child from compulsory school attendance laws, and allow the child to be employed in a nonhazardous occupation.
- (5) make any other order in the best interest of the child; and
- (6) award permanent custody to the Department of Pensions and Security or to a licensed child placing agency with termination of parental rights and authorization to place the child for adoption without appointing a legal custodian or guardian or guardian of the person or award temporary custody to the same without appointing a legal custodian or guardian or

This is a totally new option the court has for a child not responding in school.

This is a new area of jurisdiction for the juvenile court.

guardian of the person. (See also Title 27, Sections 1-9. Alabama Code (Recomp. 1958) on "Adoption of Children".)

- (b) A dependent child, unless also found delinquent, cannot be committed to or confined in an institution established for the care and rehabilitation of delinquent children or detention facility. This prohibition does not apply to residential facilities defined in section 5-101(u). This means that a dependent child may be placed in any residential facility which is a dwelling providing living accommodations, care and treatment and maintenance for children including institutions, foster family homes, group homes, half-way houses, forestry camps, and, where not operated by a public agency, is licensed or approved by public agencies to provide such care. Such dwellings do not include detention or shelter care facilities.
- (c) If a child is delinquent or in need of supervision the court may:
  - (1) permit the child to remain with the parents, guardian or custodian under court prescribed conditions and limitations;
  - (2) place the child on probation;
  - (3) transfer legal custody to:
    - (A) the Department of Youth Services with or without an order of commitment to a specific institution;
    - (B) in the case of children in need of supervision to the Department of Youth Services or the Department of Pensions and Security;
    - (C) a local public or private agency, organization or facility willing and able to assume the education, care and maintenance of the child and

### Comparison and Repealed Title 13 Sections and Other Statutes

There was no such limitation under the old statute on mixing the different categories of children.

The judge may specify the institution he wants the child committed to, which is a new option.

This is a point of discretion which allows the judge to commit a child in need of supervision to either the Department of Youth Services or the Department of Pensions and Security.

Comparison and Repealed Title  
13 Sections and Other Statutes

- which is licensed to receive and provide care for children;
- (D) a relative or other individual who, after study by the probation services, is found by the court to be qualified to receive and care for the child.
- (4) any order which is authorized by subsection (a)(4) and subject to the requirements thereof; or
- (5) make such other order as the court in its discretion shall deem to be for the welfare and best interests of the child; including assessment of fines not to exceed \$250.00 and restitution as the court deems appropriate.
- (d) No child under this section may be put in a penal institution or other facility used for the execution of sentences of convicted criminals.
- (e) No child in need of supervision, unless also found to be delinquent, shall be committed to institutions or facilities established for the care or rehabilitation of delinquent children unless the court finds upon a further hearing that the child is not amenable to treatment or rehabilitation under any prior disposition, or unless such child is again alleged to be a child in need of supervision and the court after a hearing finds that the child is in such status.
- (f) When a delinquent child is committable to an institution or agency for the mentally retarded or mentally ill, the court shall proceed as provided in section 5-136 rather than committing to an institution or facility for the care and rehabilitation of delinquent children.
- (g) When the court transfers legal custody of a child to an agency, predispositional study, reports, clinical reports, and other pertinent information from the court files shall accompany the child.

This is a new study done by Probation Services. Previously, only the judge made such a determination.

Restitution was not specifically provided for in the old statute.

This is another new limitation on the mixing of various categories of children.

## Section 134

13. Modification of Court Order

(a) An order concerning legal custody or an order of probation or protective supervision may either be revoked, modified or extended on motion by:

(1) a child, whose legal custody has been transferred to a department, institution, agency or person requesting the court for a modification or termination of the order alleging that he is no longer in need of commitment, probation or protective supervision, and the department, institution, agency, or person, has denied application for release of the child or has failed to act upon the application within a reasonable time; or

(2) a department, institution, or agency or person vested with legal custody or responsibility for probation or protective supervision requesting the court for an extension of the order on the grounds that such action is necessary to safeguard the welfare of the child or the public interest.

(b) The court may dismiss the above motions if it finds them without substance. If not, the hearing following the same procedure as the initial hearing shall be held. After the hearing, the court may terminate, extend or modify the original order.

## Section 134

See: Rule 25. Findings and Orders (page 66)

## Section 135

14. Revocation of Probation, Protective Supervision

(a) A child who is adjudicated a delinquent or a child in need of supervision who is on probation or aftercare who

Comparison and Repealed Title  
13 Sections and Other Statutes

Section 370 is repealed.

This is a new provision which explicitly allows the offender to move for a modification under certain conditions.

Section 370 is repealed.

A child breaking protective supervision is a new concept.

Comparison and Repealed Title  
13 Sections and Other Statutes

breaks the terms of such probation or a child under protective supervision who does not conform to the terms of such supervision, may be proceeded against for revocation of such order.

- (b) A proceeding to revoke probation, aftercare or protective supervision shall be started by filing a petition. Such a petition shall contain the same information as contained in section 5-114, 115.
- (c) A decision to revoke probation, aftercare or protective supervision shall require clear and convincing evidence. These proceedings shall be governed by procedures, safeguards, rights and duties applicable to delinquency, in need of supervision and dependency cases and hearings contained in this article.
- (d) If a child is found to have violated the terms of his probation or aftercare pursuant to a revocation hearing the court may extend the period of probation or aftercare, or make any other order of disposition specified for a child adjudicated delinquent or in need of supervision. If a child is found to have violated the terms of his protective supervision pursuant to a revocation hearing the court may extend the period of protective supervision or may make any other order specified for a child adjudicated dependent.

Section 135

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INVOLUNTARY COMMITMENT

Section 137

I. To Mental Health Department

- (a) Any governmental agency or person may petition the court to commit a child or minor to the custody of the

Title 45, Section 252(a13) 1973  
Cum. Supp. is repealed.

Because of the passage of Act No.  
1226, Alabama Legislature Regular

State Department of Mental Health on the basis that such minor or child is mentally ill or mentally retarded, and as a consequence poses a real and present threat of substantial harm to himself or to others. A petition must be sworn to and filed in the county in which such minor or child is located, petitioning the court to commit such minor or child to the custody of the Department of Mental Health.

- (b) When such a petition is filed the court shall immediately review it and may question the petitioner under oath.
- (c) The child or minor and his parents shall be served with a copy of the petition according to rules promulgated by the supreme court.
- (d) (1) when any child or minor against whom a petition had been filed, is initially brought before the court, the court shall read the petition to the minor or child and to his parents, guardian and counsel, and inform them orally and in writing of the date, time and place of the next hearing to be held in regard to the minor or child, the purpose of such hearing, and the possible consequences of the hearing.
- (2) the court shall determine the need for the ability to pay an attorney to represent the minor or child and shall appoint an attorney or guardian ad litem as in other proceedings under this article. No statement or act done by the child in the presence of the court without counsel can be considered in the court's determination of the case.
- (3) the State Department of Mental Health shall be notified of such hearings and they shall notify the district court whether adequate facilities are available for the

### Comparison and Repealed Title 13 Sections and Other Statutes

Session 1975, there is no large change in juvenile involuntary commitment proceedings. The same criteria for commitment are found in both acts. They are as follows:

- (1) there must be a finding of mental illness;
- (2) there must be treatment available for this illness;
- (3) the person poses a threat to himself or others;
- (4) this threat of harm has been manifested by a recent overt act; and,
- (5) involuntary commitment is the least restrictive alternative available;

These criteria are lifted directly from Lynch v. Baxley, 386 Fed. Supp. 378, (M.D. Ala. 1974). The largest major change that results from the juvenile code is that jurisdiction of involuntary commitment for minors and children is taken from the probate court and given to the newly created juvenile court.

Comparison and Repealed Title  
13 Sections and Other Statutes

minor or child. No person shall be committed unless adequate facilities exist.

- (e) No limitations on the child's liberty shall be placed pending hearing, unless he is dangerous to himself or to others. He shall not be detained in a jail, juvenile detention center, or other facility for persons accused of or convicted of crime unless he is dangerous and no other facility exists. The court may order a minor or child to appear at designated times and places to be set for hearing the petition and may order the child to appear at designated times and places to be examined by medical doctors or mental health professionals.
- (f) If the court places custody of a child or minor in some agency pending hearing, the hearing shall be held within 7 days to determine probable cause. The final hearing shall be within 30 days of the date that such child or minor was served with a copy of the petition.
- (g) The following rules shall apply to commitment hearings:
  - (1) the child must be present unless prior to the hearing the attorney for such minor or child has filed in writing a waiver of the presence of such minor or child on the ground that the child or minor's presence would be dangerous to such person's physical or mental health or that such minor or child's conduct could reasonably be expected to prevent the hearing to be held in an orderly manner, and the court has determined from evidence that the waiver should be granted and has entered an order approving the waiver;
  - (2) the minor or child shall have the right to compel the attendance of



Comparison and Repealed Title  
13 Sections and Other Statutes

witnesses and offer testimony,  
and shall have the right to cross-  
examine witnesses against him,  
nor can he be compelled to testi-  
fy against himself;

(3) the hearing shall be recorded  
mechanically or electronically to  
be retained for not less than three  
years or for the duration of any  
commitment; and

(4) all hearings shall be heard by the  
court without a jury.

(h) An attorney representing the agency  
or person filing the petition to have  
the child committed may serve as  
advocate in support of the petition.

(i) The court in a final hearing may grant  
the petition if substantial evidence  
proves:

- (1) the minor or child is mentally ill;
- (2) the child or minor poses a real and  
present threat of substantial harm  
to himself or to others;
- (3) such threat has been evidenced by  
a recent overt act; and
- (4) treatment is available for the  
minor or child's mental illness or  
that confinement is necessary to  
prevent the minor or child from  
causing substantial harm to himself  
or others; and
- (5) commitment is the least restrictive  
alternative necessary and avail-  
able for the treatment of the minor  
or child's illness.

Upon such written findings the court  
may order the person committed to the  
custody of the State Department of  
Mental Health.

(j) On a petition alleging mental retarda-  
tion, the court in a final hearing, may  
commit to the State Department of  
Mental Health, if substantial evidence  
proves:

- (1) the minor child is mentally re-  
tarded;

Comparison and Repealed Title  
13 Sections and Other Statutes

- (2) the minor or child is not simply borderline or mildly retarded;
- (3) the minor, if allowed to remain in a community, may harm himself or others or that adequate rehabilitation and training opportunities are available only at a facility provided by the Department of Mental Health. Upon such findings the court may order the minor or child committed to the custody of the Department of Mental Health.
- (k) A court which commits any minor or child to the custody of the State Department of Mental Health shall retain jurisdiction over such minor or child concurrently with the district court of the county in which the minor or child is subsequently located for so long as the minor or child is in the custody of the Department of Mental Health.

Section 137

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RECORDS

Section 142

Section 353 is repealed.

1. Social and Legal Inspection

- (a) Social, medical and psychiatric or psychological records shall be filed separately from other records and can only be inspected by the following people:
  - (1) the judge and professional staff or probation officers;
  - (2) representatives of a public or private agency or department providing supervision or having legal custody of the child;
  - (3) any person or agency having a legitimate interest and with special permission of the court;
  - (4) probation officers and professional staff of criminal courts for

sentence determination; and  
 (5) the child's parent (except where parental rights have been terminated), guardian, counsel or guardian ad litem.

- (b) All or any part of the records enumerated in the above section, when presented to and used by the judge in court shall be made available to the parties to the proceeding and their counsel and representatives.
- (c) All other court records, including dockets, petitions, motions or other papers filed with the case transcripts, findings, orders and decrees, shall be open to inspection only to those persons designated above.
- (d) Whoever discloses or misuses such information shall be guilty of a misdemeanor.

#### Section 142

See: Rule 18. Release of Information (page 63)

#### Section 143

## 2. Law Enforcement

- (a) Records of law enforcement agencies concerning children shall be protected against disclosure, unless the charge of delinquency is transferred for criminal prosecution, such records shall not be open to public inspection unless the court otherwise orders in the interest of the child or of national security.
- (b) Inspection of such records or files shall be permitted only by the following:
  - (1) the juvenile court having assumed current jurisdiction;
  - (2) Department of Pensions and Security and Department of Youth Services officers, or officers of any public or private agency to whom the child is committed and those responsible for his supervision

## Comparison and Repealed Title 13 Sections and Other Statutes

The old statute was less specific in this area.

The punishment for misuse of such records was not specified in the old code.

Section 353 is repealed.

Comparison and Repealed Title  
13 Sections and Other Statutes

- after release;
- (3) any person by order of the court determined to have a legitimate interest;
  - (4) law enforcement officers of other jurisdictions when necessary to the discharge of their duties;
  - (5) probation officers and professional staff of a criminal court in sentence determination, officers of penal institutions or professional staff of a parole board;
  - (6) the parent, guardian or other custodian and counsel for the child.
- (c) Whoever misuses or discloses such information shall be guilty of a misdemeanor.

Section 143

See: Rule 19. Confidentiality of Law Enforcement Records (page 64)

Section 144

3. Children's Fingerprints and Photographs

- (a) Fingerprints of a child 14 years or older referred to the court for the alleged commission of a felony may be taken. If the court finds that the child did not commit the alleged felony, the fingerprint card and all copies shall be destroyed.
- (b) If latent fingerprints are found and the officer believes that they belong to the child in custody he may fingerprint the child for comparison. If the comparison is negative the print cards shall be destroyed immediately. If the comparison is positive and the child is under 14 years of age and referred to the court, the fingerprints shall be delivered to the court for disposition. If the child is not referred to the court the prints shall be immediately destroyed.
- (c) If a child of 14 or more years has

This punishment is a newly specified one.

This is a new section concerning a problem not addressed in the old statute.

Comparison and Repealed Title  
13 Sections and Other Statutes

committed a felony, the prints may be retained locally and sent to a central state file with a requirement for special precautionary care.

- (d) A child in custody may not be photographed for criminal identification purposes without the court's consent unless the case is transferred for criminal prosecution.
- (e) Any person who willfully violates these provisions shall be guilty of a misdemeanor.

Section 144

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Section 145

4. Sealing and Destruction of Records

- (a) On motion of the party who has been the subject of a delinquency petition or the court, the court shall vacate its order and findings and order the sealing of the legal and social files and records of the court, probation services, and of any other agency in the case if it finds:
  - (1) 2 years have elapsed since the final discharge of the person from legal custody or supervision, or 2 years after the entry of any other court order not involving custody or supervision; and
  - (2) the child has not been adjudicated delinquent prior to the filing of the motion, has not been convicted of a felony or misdemeanor involving moral turpitude, and no proceeding is pending seeking such adjudication or conviction.
- (b) Reasonable notice of the motion shall be given to:
  - (1) the prosecutor;
  - (2) the authority granting the final discharge;
  - (3) the law enforcement officers, departments, and central depositories having custody of the files.

This is a totally new section concerning an area not addressed in the old code.

Comparison and Repealed Title  
13 Sections and Other Statutes

- (c) When the order is entered, the proceedings shall be treated as if they never occurred. Afterwards, inspection of such records shall only be allowed by the person who is their subject; however, there is some discretion of the court in special circumstances.
- (d) Any subsequent adjudication of delinquency or conviction for a felony shall nullify the sealing order.
- (e) One who has been the subject of a delinquency petition and met conditions of (a)(2) above, may, five years after reaching majority, file a motion requesting destruction of all records of his case.
- (f) After such a sealing or destruction order a person may state that he has never been arrested, taken into custody, committed, or adjudicated delinquent with regard to the sealed or destroyed records.
- (g) A person who is the subject of a delinquency petition shall be notified of his rights under (a) and (e) above at the time of his final discharge.

Section 145

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MINOR AND ADULT PROCEEDINGS

Section 148

1. Causing Delinquency, Dependency, or Need of Supervision of Children

It shall be unlawful for any parent, guardian or other person to willfully aid, encourage or cause any child to become or remain delinquent, dependent or in need of supervision; or by words, acts, threats, commands or persuasions, induce, aid or encourage any child to do or perform any act or to follow any course of conduct which would cause or manifestly tend to cause such child to become or remain delinquent, dependent or in need of supervision or by the neglect of any lawful duty or in any other

Section 366 is repealed.

The size of the fine has increased from \$100 to \$500. Also added as an offense is causing need for supervision because of the creation of that new category of children.

Comparison and Repealed Title  
13 Sections and Other Statutes

manner contribute to the delinquency, dependency or need of supervision of a child. The employment of any child in violation of any of the provisions of the child labor law, or permitting, conniving at, aiding or abetting such employment shall be held to be encouraging, causing and contributing to the delinquency, dependency or need of supervision of such child. Failure on the part of any parent, guardian or other person having custody of the child to cause such child to attend school as required by the compulsory attendance law shall be held to be encouraging, causing and contributing to the delinquency, dependency or need of supervision of such child. Whoever violates any provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or sentenced to hard labor for the county not to exceed twelve months, or both. Whenever, in the course of any proceedings under this article, or when, by affidavit as hereinafter provided, it shall appear to the juvenile court that a parent, guardian or other person having custody, control or supervision of a child, or any other person not standing in any such relation to such child, has aided, encouraged or caused such child to become delinquent, dependent or in need of supervision as defined herein, or has by words, act or omission contributed thereto, by threats, commands or persuasion, induced or endeavored, such child to become or remain delinquent, dependent or in need of supervision, the court shall, for the protection of such child from such influence, have jurisdiction in such matters, as provided herein. The court shall cause such parent, guardian or other person to be brought before it upon either summons or warrant, affidavit of probable cause

Comparison and Repealed Title  
13 Sections and Other Statutes

having first been made. Upon conviction, the court shall have the power to suspend any sentence, remit any fine or place such person on probation under orders, directives or conditions for his discipline and supervision as the court deems fit.

Section 148

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 Section 149

2. Disobeying Orders of the Court, Punishments for

Any person who knowingly and willfully disregards or fails to obey any lawful order made by the court under the provisions of this article or who knowingly and willfully interferes with the custody of any child under the jurisdiction of said court shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than five hundred dollars or sentenced to hard labor for the county not to exceed six months, or both. The court shall, however, have the power to suspend any sentence, remit any fine or place such person on probation under orders, directives or conditions for his discipline and supervision as the court deems fit.

Section 149

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 Section 141

3. Protective Order

The court may issue a restraining order on any party over whom the court has obtained jurisdiction, if:

- (a) An order of disposition of a delinquent or a dependent child or a child in need of supervision has been made; and
- (b) The court finds such parties' conduct may be harmful to the child and tend to defeat the disposition ordered by the court; and

Section 373 is repealed.

Section 373 of Title 13 stated the punishment as not more than \$100 and hard labor not to exceed 12 months.

This is a new provision not explicitly provided in the old statute.



- (c) Notice of the application or motion for a temporary restraining order and grounds therefore, and opportunity to be heard have been given to the person against whom the order is directed.

Section 141

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Section 150

4. Obstructing an Officer in the Performance of Duties

It shall be unlawful for any person to remove, conceal or cause to be removed or concealed, or attempt so to do, any delinquent or dependent child or one in need of supervision, as defined in this article, or one alleged in a petition or order of transfer filed in said court to be so, or any child whose custody is the subject of controversy in said court, or for any person to interfere with the custody of, or remove, or attempt to remove any delinquent or dependent child or one in need of supervision, or one alleged so to be, or of a probation officer or any other officer or person designated by the court as a special officer, or any such child who has been by said court committed to a department of state government, any persons, institution, association or corporation, under the terms of this article, or by virtue of its general equity jurisdiction. And it shall be unlawful for any person to interfere knowingly with or oppose or otherwise obstruct any probation officer or representative of the Department of Pensions and Security in the performance of his duties under this article. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or sentenced to hard labor for the county not to exceed twelve months, or both. The court shall, however, have the power to

Comparison and Repealed Title  
13 Sections and Other Statutes

Section 374 is repealed.

The fine was \$100. It has now been increased to \$500.

Comparison and Repealed Title  
13 Sections and Other Statutes

suspend any sentence, remit any fine or place such person on probation under orders, directives or conditions for his discipline and supervision as the court deems fit.

Section 150

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Section 151

Section 366 is repealed.

5. Procedure in Minor or Adult Cases

In any proceeding arising under section 5-109, the court, with consent of the defendant, may make a preliminary investigation and such adjustments as is practicable without prosecution. The procedure and disposition applicable in the trial of such cases in a criminal court shall be applicable to trial in the juvenile court. The prosecutor shall prepare and prosecute any case within the purview of section 5-109. Where, in his opinion, it is necessary to protect the welfare of the persons before the court, the judge, with the consent of the defendant and the parties in interest, may conduct hearings in chambers, and may exclude persons having no direct interest in the case.

Section 151

See: Rule 1. Procedure when Rules not  
Applicable (page 55)

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CONTINUANCES

Section 146

Continuances shall be granted only for good cause and for as long as necessary, taking into account the interest of the public in quick adjudication and the interest of the child and whether the child is being detained.

Section 146

See: Rule 16. Continuance Under Supervision  
Without Adjudication-Consent  
Decree (page 62)

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## COSTS

### Section 139

#### 1. Court Costs and Expenses

- (a) Court costs of juvenile cases shall be assessed as charges against the county.
- (b) If parents are able, the court shall order them to pay the court costs and enumerated other costs for the child wholly or partially by paying money to the office of the court clerk. Parents who willfully fail or refuse to follow such an order may be held in contempt of court or an order may be filed and shall have the effect of a civil judgment.

### Section 139

See: Rule 26. Court Costs (page 66)

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### Section 140

#### 2. Support of a Committed Child

Whenever legal custody of a child is placed with someone other than the parents, after due notice to the parents or other persons legally obligated to care for and support the child and after a hearing, the court may order that the parent or other legally obligated person shall pay a reasonable sum that will cover in whole or in part the support and treatment of the child after the order is entered and including support and treatment costs and legal fees from the commencement of the proceeding. If the parent or other legally obligated person willfully fails or refuses to pay such sum the court may proceed against him for contempt, or the order may be filed and

## Comparison and Repealed Title 13 Sections and Other Statutes

Sections 351 and 361 are repealed.

Similar provision as in the old statute.

Section 361 is repealed.

shall have the effect of a civil judgment.

Section 140

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## CONTEMPT POWERS

Section 140

### 1. Support of Committed Child

Whenever legal custody of a child is placed with someone other than the parents, after due notice to the parents or other persons legally obligated to care for and support the child and after the hearing, the court may order that the parent or other legally obligated person shall pay a reasonable sum that will cover in whole or in part the support and treatment of the child after the order is entered and including support and treatment costs and legal fees from the commencement of the proceeding. If the parent or other legally obligated person willfully fails or refuses to pay such sum the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

Section 140

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Section 147

### 2. General Contempt Powers

The court may punish a person for contempt of court for disobeying an order of the court or for obstructing enforcement of its orders. The court is limited in the actions it may take with respect to a child violating the terms of protective supervision to those the court could have taken at the time of the court's original disposition under section 5-131(a).

Section 147

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## Comparison and Repealed Title 13 Sections and Other Statutes

Section 361 is repealed.

Section 352(7) is repealed.

Similar provision as in the old statute with the added offense of violating a protective supervision order.

APPEALS

Section 152

An aggrieved party (including the state or any subdivision of the state except in criminal cases, delinquency cases, and in need of supervision cases) may appeal from a final order, judgment or decree of the juvenile court to the circuit court by filing written notice of appeal within 14 days. Upon appeal, the circuit court shall try the case de novo.

Section 152

See: Rule 28. Appeals (page 67)  
Rule 20. Recording of Proceedings  
(page 64)

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Comparison and Repealed Title  
13 Sections and Other Statutes

Parties now have 14 days to appeal rather than the 10 days allowed in the old code.

PART II

JUVENILE JUSTICE SYSTEM COMPONENTS AND THEIR  
SPECIFIED DUTIES AND RESPONSIBILITIES



## JUVENILE JUSTICE SYSTEM COMPONENTS AND THEIR SPECIFIED DUTIES AND RESPONSIBILITIES

### Department of Court Management (Administrative Director of Courts)

- (1) Approval of appointment of referees - Section 5-143(6)(2)

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### Department of Education

- (1) Prove schools have made a diligent effort to meet the educational needs of a child in question - Section 5-131(a)(4)

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### Department of Mental Health

- (1) Approval of psychiatric examiners - Section 5-127(b) and Section 5-136
- (2) Notification of district court as to whether adequate facilities are available for a minor or child committed to them - Section 5-137(d)(3)

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### Department of Pensions and Security

- (1) Making investigations, reports and recommendations upon complaints of dependency or need of supervision - Section 5-105(b)(3)
- (2) When DPS representative has the power to take a child into custody - Section 5-105(c)
- (3) What to do upon taking a child into custody - Section 5-105(d)
- (4) Taking a child into custody - Section 5-119(g)
- (5) Reviewing the need for detention or shelter care - Section 5-120(b)
- (6) Licensing facilities - Section 5-122(a)
- (7) Making predisposition study and report - Section 5-127(a)
- (8) Disposition - receiving protective supervision of dependent children - Section 5-131(a)(2)
- (9) Disposition - receiving custody of dependent children and notifying whether facilities are available-Section 5-131(a)(3)(A)
- (10) Making individual or relative case study for court-determined child placement - Section 5-131(a)(3)(C)
- (11) Disposition - receiving custody of children in need of supervision - Section 5-131(c)(3)(B)
- (12) Inspecting legal records - Section 5-143(b)(2)



Department of Youth Services

- (1) Certification of probation officers - Section 5-105(a)
- (2) Licensing of facilities - Section 5-122(a)
- (3) Approval of facilities for detention of delinquents - Section 5-122(b)
- (4) Disposition - receiving custody of delinquents or children in need of supervision - Section 5-131(c)(3)(A) and (B)
- (5) Inspection of legal records - Section 5-143(b)(2)

Probation Officer

- (1) Making investigations, reports, and recommendations to the juvenile court - Section 5-105(b)(2)
- (2) Receiving and examining complaints and allegations of delinquency, in need of supervision, or dependency of a child for the purpose of considering the commencement of proceedings - Section 5-105(b)(2)
- (3) Referring dependency or other appropriate matters for investigations, reports, and recommendations to the Department of Pensions and Security - Section 105(b)(3)
- (4) Supervising or assisting a child placed under his care - Section 105(b)(4)
- (5) Referring to appropriate private or public facilities if their assistance appears needed - Section 5-105(b)(5)
- (6) Making predispositional studies and submitting reports and recommendations to the court as required - Section 5-105(b)(6)
- (7) Notifying parents in a most expeditious manner when their child has been picked up and detained - Section 5-120(a)(3)

Intake Officer

- (1) Receiving verified complaints - Section 5-114
- (2) Filing of petition - Section 5-114
- (3) Advising parties and counseling concerning informal adjustment - Section 5-116

PART III

ALABAMA RULES OF JUVENILE PROCEDURE



Rule 1: PROCEDURE WHEN RULES NOT APPLICABLE. --

These rules govern the procedure for all matters in the juvenile court. If no procedure is specifically provided in these rules or by statute, the Alabama Rules of Civil Procedure shall be applicable to the extent not inconsistent herewith.

COMMENT: Because juvenile jurisdiction may be exercised by district courts as well as circuit courts, the Alabama Rules of Civil Procedure referred to in Rule 1 contemplates said rules as modified for applicability in the district courts where juvenile jurisdiction is exercised at the district court level.

See Section 5-151, Act No. 1205, Acts of Alabama, 1975 Regular Session. In exercising jurisdiction in minor or adult cases of a criminal nature involving either a minor or an adult, procedure and disposition applicable in criminal courts are applicable to trial in the juvenile court.

When used herein, court refers to juvenile court.

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Rule 2: JUVENILE JUDGE - ASSIGNMENT. --

(A) The judge of the district court shall serve as the juvenile court judge unless otherwise ordered by the presiding circuit judge.

(B) The presiding circuit judge shall designate from time to time a circuit judge or a district judge to serve as the juvenile judge.

(C) The presiding circuit judge may designate two or more circuit judges or a combination of circuit and district judges, one of whom shall be designated as presiding juvenile judge, to hear juvenile cases in situations in which:

- (1) the caseload in any district requires more than one juvenile judge;
- (2) the district encompasses more than one county; or
- (3) the district encompasses a county wherein venue lies within an area of lesser geographic extent than the county pursuant to Section 4-107 of Act No. 1205, Acts of Alabama, 1975 Regular Session.

(D) The presiding circuit judge shall designate a circuit judge or a district judge within the circuit to sit in juvenile cases in the absence or recusal of the juvenile judge.

(E) All designations of juvenile judges must be approved by the supreme court. The presiding circuit judge shall report designations of juvenile judges to the administrative director of courts (ADC), who shall forward these designations to the supreme court for approval.

(F) When the juvenile judge is a circuit judge, the juvenile court shall have and exercise full jurisdiction and power of the juvenile court and of the circuit court of the state.

(G) When the juvenile judge is a district judge, the juvenile court shall have and exercise full jurisdiction and power of the juvenile court and of the district court of the state.

COMMENT: See Section 5-103(a), Act. No. 1205, Acts of Alabama, 1975 Regular Session. This rule clarifies the administrative duties of the presiding circuit judge in each circuit in designating a judge or judges to exercise juvenile jurisdiction within the circuit. Section (A) of this rule clarifies the power of the presiding circuit judge to designate a circuit or district judge as the juvenile judge in any circuit or district. This procedural flexibility is necessary due to inability to predict caseloads of district courts, especially in respect to possible municipal jurisdiction. See also Act No. 388, Acts of Alabama, 1976, Regular Session, empowering the presiding circuit judge to establish family court divisions.

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Rule 3: JUVENILE JUDGE - ADMINISTRATIVE AUTHORITY. --

The juvenile judge, or where there is more than one, the presiding juvenile judge shall exercise executive and administrative authority of the juvenile court. This authority shall include power to employ and supervise the personnel, to initiate and carry on the programs, to assign and distribute the work of the court, to establish and implement policies, and to assign such duties as may be legally delegated. The administrative director of courts (ADC) shall have the authority to fix the character and the form of the records.

COMMENT: Administrative authority in a juvenile judge is necessary for efficient and uniform procedure within the circuit. Uniformity in records throughout the state may be maintained by the ADC.

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Rule 4: PROBATION OFFICERS. --

(A) There shall be such number of probation officers and other non-judicial employees of the juvenile court as, in the judgment of the judge, the administrative director of courts (ADC), the Department of Youth Services and the governing body of the county, may be necessary for the proper functioning of the court.

(B) The compensation and benefits of the non-judicial employees of the court shall be fixed by the local civil service authority if one is available. If no local civil service authority is available, then the compensation and benefits shall be fixed by the judge, ADC, and the governing body of the county. Such employees may be eligible for all benefits of the appropriate civil service authority.

(C) Compensation and benefits of non-judicial employees shall be payable out of the general funds of the county and any other funds authorized by law.

COMMENT: "Available" as used in this rule contemplates a local decision. This is to clarify the authority of civil service authorities to extend civil service benefits to such employees even though they serve at the pleasure of the judge.

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# Rule 5: CHIEF PROBATION OFFICER. --

The juvenile judge, or where there is more than one, the presiding juvenile judge shall appoint a chief probation officer or director of probation services who shall serve at the pleasure of the judge. The chief probation officer shall be responsible directly to the judge for coordinating the probation services of the court, their internal procedures, budgeting, office management, allocation of space, and personnel transactions.

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# Rule 6: VOLUNTEERS IN PROBATION. --

The judge may appoint one or more volunteer probation officers who shall serve without compensation upon conditions and for such purposes as the judge may prescribe in the order of appointment. The county governing body may reimburse these volunteer probation officers for reasonable and necessary expenses incurred in connection with their appointment.

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# Rule 7: ADMINISTRATIVE REPORTS. --

The juvenile judge shall submit reports on matters before the juvenile court and any additional reports which shall be required by the administrative director of courts (ADC). The ADC shall prescribe the form for any required reports.

COMMENT: While there may be many agencies, departments, etc., such as the Department of Pensions and Security and the Department of Youth Services, interested in information concerning the operations of juvenile courts, this rule should prevent duplication of requested information. Agencies may aid the ADC in formulating information requirements; however, the judge may file centrally with the Department of Court Management from which information may be disseminated to interested agencies or departments.

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# Rule 8: INTAKE OFFICE. --

(A) The juvenile court judge shall designate one or more probation officers or magistrates in the district to serve as the intake office for the juvenile court.

(B) The intake office shall have the power to administer oaths for the purpose of verifying complaints.

COMMENT: See Section 4-106(g) and Section 5-101(m), Act No. 1205, Acts of Alabama, 1975 Regular Session.

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Rule 9: DESIGNATION OF DETENTION OR SHELTER CARE FACILITY. --

Each juvenile court shall by order designate the detention or shelter care facility or facilities to which children shall be delivered when taken into custody. In districts where such shelter care facilities are unavailable for dependent children, the order shall specify that dependent children shall be brought to the Department of Pensions and Security for placement in licensed or approved foster homes.

Copies of the order shall be made available to all law enforcement agencies within the territorial jurisdiction of the court.

COMMENT: See Section 5-119-121, Act No. 1205, Acts of Alabama, 1975 Regular Session, in regard to circumstances under which a child may be taken into custody and detained. This rule should provide a means for anyone taking a child into custody to deliver such child to an appropriate detention or shelter facility without undue delay.

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Rule 10: DISRUPTIVE BEHAVIOR IN DETENTION. --

In the event a child's habits or conduct are a menace to himself or to others or when no other detention facility is available, upon order of the juvenile court the child may be placed in a jail in accordance with Section 5-122(b), Act No. 1205, Acts of Alabama, 1975 Regular Session. A detention hearing shall then be held within 72 hours, Saturdays, Sundays and holidays included, to determine whether continued detention in the jail is required. The child shall be represented by counsel at such hearing.

COMMENT: Although placing a child in jail should be avoided whenever possible, where no juvenile detention facility is available or where such facility is inadequate in light of a child's disruptive behavior to protect the child or others from the consequences of such behavior, the child may be placed in a jail. See Section 5-122(b), Act No. 1205, Acts of Alabama, 1975 Regular Session, for legislative safeguards when jails are utilized.

Under this rule a child who is removed from a detention facility and placed in a jail must be given a hearing to determine the necessity of continued detention in the jail. This hearing is required even when a detention hearing determining the need for detention has already been held.

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Rule 11: RIGHTS OF THE CHILD. --

(A) When the child is taken into custody, he must be informed of the following rights by the person taking him into custody:

(1) that he has the right to counsel;

(2) that if he is unable to pay a lawyer and if his parents or guardian have not provided a lawyer, one can be provided at no charge;

(3) that he is not required to say anything and that anything he says may be used against him; and

(4) if his counsel, parent, or guardian is not present, that he has a right to communicate with them, and that, if necessary, reasonable means will be provided for him to do so.

(B) When a child is brought to the intake office of probation services or delivered to a place of detention or shelter care, the intake office or person in charge of the facility shall immediately inform the child of:

(1) the reason for his detention;

(2) his right to a detention hearing as provided under these rules;

and

(3) his rights during detention as set forth in part (D) of this rule.

(C) When the child is detained, the person in charge of the intake office shall notify the child of his rights as set out in part (A) of this rule. In addition, the person in charge of the intake office shall immediately attempt to notify the parents or guardian of the child of the detention. He shall also inform them of the child's rights and of their right to be represented by counsel throughout the proceedings. The parents or guardian shall also be informed of the child's right to remain silent.

(D) The intake office or person in charge of the detention facility shall, in the most expeditious manner possible, insure that the parents or guardian of the child are notified of the child's whereabouts and the reason for his detention, as well as the child's and the parents' rights, provided by part (B) of this rule. Such a communication shall, if practicable, be made in person or by telephone; otherwise the communication shall be by the best means practicable.

(E) A written statement containing the above information shall be given to the parents, guardian, or custodian at their first meeting with the officer. If they do not appear at the facility within 24 hours after the placement of the child in the facility or if they fail to attend the detention or shelter care hearing, this written statement shall be mailed to them if the addresses may reasonably be ascertained.

(F) If a petition has been filed, the parties shall be informed of their rights as set out in parts (A) and (C) of this rule. In addition, the court shall inform the parties at the commencement of the detention or shelter or other care hearing, of the contents of the petition and all of the parties shall be given an opportunity to admit or deny the allegations of the petition.

(G) The child has a right to be represented by counsel at all stages of the proceeding.

(1) If any proceeding in which there is a reasonable likelihood that the child may be committed to an institution in which his freedom may be curtailed, and if counsel has not otherwise been retained, counsel shall be appointed for the child.

(2) In all other proceedings, the court may appoint counsel in any case upon request or when it deems such appointment is in the interest of justice.

(H) The child, through his attorney, has the right to cross-examine witnesses.

(I) The child has the right to confront all witnesses against him unless the court finds that such confrontation would not be in the best interests of the child.



(J) The child shall be furnished a transcript on appeal. If the child or his parents cannot afford a transcript, the court shall order the transcript paid for out of funds set aside for this purpose.

COMMENT: This rule clarifies the child's rights at the different phases of the case.

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#### Rule 12: INITIATION OF CASES. --

(A) Any person or agency having knowledge of the facts may make a complaint to the intake office alleging facts sufficient to establish the jurisdiction of the court and the delinquency, dependency or need of supervision of the child. A complaint is made when it is filed with the intake office, which shall immediately note thereon the date and time of filing.

(B) Whenever the court is in receipt of a complaint the intake office shall conduct a preliminary inquiry to determine whether the child is within the jurisdiction of the court and whether the best interests of the child or of the public require that a petition be filed.

(C) If it appears from the preliminary inquiry that the child is within the jurisdiction of the court and judicial action appears necessary, the intake office shall either:

- (1) make informal adjustment pursuant to Rule 15; or
- (2) file a petition where judicial action appears necessary.

(D) If the intake office recommends the filing of a petition, such action shall be final. The filing of a petition shall occur within fourteen (14) days of receipt of the complaint, except as provided in Rule 15 or when a child has been detained.

(E) In cases of the violation of a law or ordinance relating to the operation of a motor vehicle by a child under the age of sixteen (16), or in cases transferred to a juvenile court by any court exercising jurisdiction over traffic citation or summons shall be sufficient to invoke the jurisdiction of the court.

COMMENT: The preliminary inquiry at intake should consist of a review or evaluation of information supplied by the agency or person making the complaint. See Sections 5-116 and 5-123(a), Act No. 1205, Acts of Alabama, 1975 Regular Session.

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#### Rule 13: SERVICE OF SUMMONS. --

Service of summons shall be pursuant to the Alabama Rules of Civil Procedure except as hereinafter provided:

(A) The summons shall be served upon a party at least 24 hours before the hearing.

(B) There shall be no notice by publication of any proceeding in the juvenile court except in proceedings to terminate parental rights.

(C) The inability to serve any party shall not deprive the court of jurisdiction to proceed.

(D) If a person summoned fails to appear, without reasonable cause, he may be proceeded against for contempt of court.

COMMENT: Notice by publication, when personal service cannot be effected, is not provided in most juvenile cases. Effectiveness of this notice must be balanced against the necessity for immediacy of the hearing and the requirement of confidentiality of juvenile court proceedings. Rule 27 provides modification procedure when a party has not been served personally or by publication.

Rule 23 provides a waiver of timeliness of notice requirements under this rule. See also Section 5-117(c), Act. No. 1205, Acts of Alabama, 1975 Regular Session, for waiver of service.

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#### Rule 14: APPEARANCE OF COUNSEL. --

Counsel shall enter his appearance in all court proceedings with the clerk of the court, or by appearing personally at a court hearing and advising the court that he is representing a party. Counsel who have appeared shall receive copies of all notices required by statute or rule to be given to parties, and, in such cases, notices need not be given to the parties unless the court shall so order. When counsel has entered an appearance or accepted an appointment, he shall not withdraw from the case without the consent of the court.

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#### Rule 15: INFORMAL ADJUSTMENT. --

(A) If there is sufficient evidence to bring the child within the jurisdiction of the court, and following advisement of rights to the child and his parents or custodian, including the right to counsel at this and all other stages of the proceeding, upon recommendation of the intake office the matter may be held open and the intake office may attempt, with the consent of the child and his parents or custodian, to make satisfactory informal adjustment.

(B) Informal adjustment shall include counseling and advising the child and his parents or custodian by the intake officer and other appropriate persons and may include, with the consent of the juvenile and with the consent of his parents or custodian, supervision by the juvenile officer and the temporary placement of the juvenile with persons other than his parents or custodian. Referrals may be made to public and private agencies which may provide assistance or services to the juvenile and his parents or custodian.

(C) The intake officer may either terminate the informal adjustment process and dismiss the child without further proceedings or terminate the informal adjustment process and file a petition in the court if at any time:

(1) it appears that the child and his parents or custodian have received the maximum benefit from the informal adjustment process;

- (2) the child or his parents or custodian declines to participate further in the informal adjustment process;
- (3) the child or his parents or custodian denies the jurisdiction of the court;
- (4) the child or his parents or custodian expresses a desire that the facts be determined by the court;
- (5) the child fails without reasonable excuse to attend scheduled conferences;
- (6) the child appears unable or unwilling to benefit from the informal adjustment process;
- (7) the intake officer becomes apprised of new or additional information which makes it appear that further efforts at informal adjustment would not be in the best interests of the juvenile or of society; or
- (8) other sufficient reasons exist for terminating the informal adjustment process.

(D) The informal adjustment process shall not continue beyond a period of six months from its commencement.

(E) Upon termination of the informal adjustment process and dismissal of the child without further proceedings, the intake officer shall notify the child and his parents or custodian thereof and report such action to the court.

COMMENT: Informal adjustment procedures allow the intake office to suspend formal proceedings and proceed to adjustment satisfactory to the parties. This rule provides adjustment without the necessity of the filing of a petition.

"Custodian," as used in this and other rules, does not mean "legal custodian" as defined in Section 5-101(g) of Act No. 1205, Acts of Alabama, 1975 Regular Session, and is intended to include the guardian of the child.

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#### Rule 16: CONTINUANCE UNDER SUPERVISION WITHOUT ADJUDICATION- CONSENT DECREE. --

(A) At any time after the filing of a delinquency or in need of supervision petition and before the entry of an adjudication order, the court, following advisement of rights to the child and his parents or custodian including the right to counsel at this and other stages of the proceeding, may suspend the proceedings, and continue the child under supervision under terms and conditions negotiated with probation services and agreed to by all parties affected; provided, however, that the judge may continue the child under supervision over the objection of the prosecutor. The court's order continuing the child under supervision shall be known as a consent decree.

(B) Where the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition. Where the child does not object, but an objection is made by the prosecutor after consultation with probation services, the court shall, after considering the objections and reasons therefore, proceed to determine whether it is appropriate to enter a consent decree.

(C) A consent decree shall remain in force for six (6) months unless the child is discharged sooner by the court. Upon application of probation services or other agency supervising the child, made before expiration of the six-month period, a consent decree may be extended by the court for an additional six (6) months.

(D) If prior to discharge by the probation services or expiration of the consent decree, a new delinquency or in need of supervision petition is filed against the child, or the child otherwise fails to fulfill express terms and conditions of the decree, the petition under which the child was continued under supervision may be reinstated and the case may proceed to adjudication just as if the consent decree had never been entered.

(E) The petition of a child who is discharged or who completes a period of continuance under supervision without reinstatement of the original delinquency or in need of supervision petition shall be dismissed and the child shall not again be proceeded against in any court for same offense based upon the same conduct.

COMMENT: This rule permits the court on its own motion or on the motion of the party to suspend the proceedings and continue the child under supervision at any time before the entry of finding with respect to the allegations in the petition. This will not only expedite the administration of justice but also can eliminate the need of a finding of delinquency which may cause problems for the child later in life. A number of provisions included are designed not only to protect the child but also to protect the public. This section should eliminate the necessity of the court carrying cases on an informal or unofficial basis after a petition has been filed.

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#### Rule 17: AMENDING PETITION. --

A petition may be amended by order of the court at any time provided that if the amendment results in a substantial departure from the original allegations in the petition, the court shall continue the hearing on motion of any interested party, or the court may grant a continuance on its own motion.

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#### Rule 18: RELEASE OF INFORMATION

The court may release statistical information regarding the processing and disposition of juvenile cases if identity of parties cannot be ascertained from such information and such release is not detrimental to the interests of a child or the work of the juvenile court.

COMMENT: Sections 5-142 and 5-143, Act No. 1205, Acts of Alabama, 1975 Regular Session, protect the confidentiality of juvenile court records. This rule is designed to protect such confidentiality of individual records while allowing the release of statistical information to the public. The protection of the identity

of parties may preclude courts in small communities from releasing information except quarterly, semi-annually, etc.

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#### Rule 19: CONFIDENTIALITY OF LAW ENFORCEMENT RECORDS. --

The juvenile court may adopt local rules to enforce confidentiality of law enforcement records. All local rules must be approved by the supreme court. The juvenile judge, or where there is more than one, the presiding juvenile judge shall submit in writing all proposed local rules to the administrative director of courts who shall forward them to the supreme court for approval.

COMMENT: The concern for protection of confidentiality of juvenile court records is prevalent throughout Article 5, Act No. 1205, Acts of Alabama, 1975 Regular Session. This rule permits local rules to further such protection where local law enforcement procedures may vary. Approval for all such local rules shall enable uniformity to be maintained wherever possible.

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#### Rule 20: RECORD OF PROCEEDINGS. --

(A) A complete record of all testimony shall be kept by stenographic reporting, by mechanical or electronic device, or by some combination thereof. Exhibits and other tangible evidence shall be preserved by the party offering the same unless otherwise directed by the court. The record shall be preserved until the time for taking an appeal has expired.

(B) Testimony shall be transcribed only upon order of the court or upon the request of any party at his own expense.

COMMENT: The rule encompasses the possible use of electronic devices for recording testimony and procedures in any hearing in the juvenile court. This rule should facilitate appeals in that a complete record may be provided in each case.

#### Rule 21: ADMISSIBILITY OF CHILD'S STATEMENT. --

Any statement of a child made to police or law enforcement officers, prosecutor or probation officer may be admissible unless the child has been taken into custody or a petition has been filed. No such statements made after the filing of a petition or the taking into custody of the child may be admissible prior to determination of allegations in the petition unless the child is advised by counsel.

COMMENT: See Section 5-125, Act No. 1205, Acts of Alabama, 1975 Regular Session, for the basic provision limiting the admissibility of statements of children. That section limits admissibility only of those statements made while in custody. Statements made prior to such time are admissible in any phase of the case.

Statements made by the child which are inadmissible in the adjudicatory

hearing may be considered after an adjudication of the allegations in determining proper disposition of the case.

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#### Rule 22: RIGHT TO COUNSEL. --

Right to counsel at all stages of the proceedings shall include the right to counsel in an appeal.

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#### Rule 23: SCHEDULING HEARING - WAIVER. --

(A) All adjudicatory hearings shall be scheduled for the earliest practicable date with priority given those children in detention or shelter care facilities.

(B) The hearing may be held before the scheduled date if each party waives, in writing or on the record at the hearing, his right to notice of the hearing. In this event each party shall be given a copy of the petition at or before the hearing.

COMMENT: Hearings should be held as quickly as possible allowing for time necessary for preparation. Where a judge also exercises jurisdiction other than that of the juvenile court, priority in scheduling hearings should be given to juvenile cases, especially those cases in which a child has been detained.

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#### Rule 24: CONDUCT OF HEARING. --

The court shall open the hearing by ascertaining if all necessary parties are present and ready to proceed, and should so note on the record.

The court shall then explain to the parties their rights during the proceedings, the substance of the petition and the specific allegations contained in said petition. The court shall also explain to the parties the nature of the proceedings and the alternatives available to the court should the allegations contained in the petition be admitted or proven.

Following these procedures, the court may inquire of the child whether he admits or denies all or some of the allegations contained in the petition. Failure or refusal of the child to admit any allegation shall be deemed a denial of such allegation. If the admissions do not obviate the necessity for a hearing, the court shall then proceed to hear evidence, unless additional time is necessary to prepare for the hearing and all testimony shall be under oath.

The eliciting of testimony shall not be by any probation officer.

COMMENT: See Section 5-128, Act No. 1205, Acts of Alabama, 1975 Regular Session. The hearing should be as informal as the requirements of due process and fairness permit.

The probation officer should not be placed in the position of prosecuting attorney. See Section 5-107, Act No. 1205, Acts of Alabama, 1975 Regular Session, for the duty of the district attorney to assist the court in its proceedings.

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#### Rule 25: FINDINGS AND ORDERS. --

(A) At any hearing other than to transfer to another court, the court may handle all matters at one time or in phases.

If the allegations of the petition are denied, the court shall direct that testimony of witnesses be taken. The conduct of the hearing shall be consistent with legal and due process requirements and shall proceed generally in a manner similar to the trial of a civil action before the court sitting without a jury, except that the child may not be compelled to be a witness. If the child admits the allegations of the petition, the court may hear evidence to corroborate the admissions of the child. At the close of the hearing the court shall make one of the following findings in a docket entry or written order:

(1) that the facts alleged in the petition are true and the child is dependent, in need of supervision, or delinquent and is in need of care or rehabilitation; or

(2) that the facts alleged in the petition are not proved or that the child is not in need of care or rehabilitation, in which event the petition shall be dismissed.

(B) Following a finding of delinquency, the child shall remain subject to orders of the court pending the dispositional phase.

(C) When the court makes a finding that a child is a delinquent, the court shall make a disposition of the matter concerning the child or set the matter for a dispositional hearing. Wherever possible the judge or judicial officer who presided at the adjudicatory hearing should preside at the dispositional hearing.

(D) At the close of the dispositional phase, the court shall make its finding by docket entry or written order. If the disposition is probation, the order shall set forth the conditions of probation.

(E) Following the entry of a recommendation by a referee, the referee shall explain to parties not represented by counsel their right to appeal his recommendations to the court and shall set forth in simple and nontechnical language the method of appeal.

(F) Any interested party may request the court for a review of the dispositional recommendation.

COMMENT: See Section 5-128, Act No. 1205, Acts of Alabama, 1975 Regular Session. Phases referred to in (A) above contemplates, e.g., an advisory phase, a detention phase if necessary, an adjudicatory phase, a dispositional phase, or in any combination of phases.

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#### Rule 26: COURT COSTS. --

Court costs of juvenile cases shall be assessed at \$25.00 to be distributed

as docket fees for civil cases in the district court are distributed. Uncollected court costs may not be assessed as charges against the county.

COMMENT: Section 16-112(b) of Act No. 1205, Acts of Alabama, 1975 Regular Session, provides for the allocation of docket fees for civil cases in the district court as follows: \$2.00 to the Fair Trial Tax Fund, \$18.00 to the state general fund and \$5.00 to the county general fund.

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#### Rule 27: MODIFICATION. --

(A) A party not served under Rule 13 may for good cause shown petition the court in writing for a modification of any order, judgment or decree of the court.

(B) The court may dismiss such motion if, after preliminary investigation, it finds that the motion is without substance. If the court finds the motion should be reviewed, it may conduct a hearing upon the issues raised by the motion and may make any orders relative to the issues as it deems proper.

COMMENT: This rule provides for modification when a party has not been served as provided in Rule 13. This does not include parties served by publication in termination of parental rights cases in which service by publication is effected.

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#### Rule 28: APPEALS. --

(A) Appeal from a final order, judgment or decree, including an order transferring a child for criminal prosecution, of the juvenile court shall be to the appropriate appellate court:

(1) if an adequate record or stipulation of facts is available and the right to a jury trial has been granted to or waived by all parties entitled thereto, or

(2) if the parties stipulate that only questions of law are involved and the juvenile court certifies the questions.

(B) In all other cases appeal from a final order, judgment or decree, including an order transferring a child for criminal prosecution, of the juvenile court shall be to the circuit court which shall try the case de novo and shall proceed to render such judgment as is otherwise provided for by law in such cases.

COMMENT: This rule reconciles Sections 4-111 and 5-152, Act No. 1205, Acts of Alabama, 1975 Regular Session, with the purpose of providing uniformity of appeals from juvenile courts whether a district or circuit judge sits as the juvenile judge.

The right to a jury trial in this rule applies to cases arising from jurisdiction of minors or adults as provided in Section 5-109, Act No. 1205, Acts of Alabama, 1975 Regular Session, in which a trial by jury is otherwise provided by law.

See Section 5-152(a), Act No. 1205, Acts of Alabama, 1975 Regular Session, in which all appeals from juvenile courts are provided to take precedence over all other business of the court to which the appeal is taken.



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Rule 29: TITLE. --

These rules shall be known as the Alabama Rules of Juvenile Procedure.

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Rule 30: EFFECTIVE DATE. --

These rules shall take effect on January 16, 1977.

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**END**