

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1022 of the Regular Session

1 State of Arkansas

As Engrossed: S2/22/07 S3/15/07 H3/29/07

2 86th General Assembly

A Bill

3 Regular Session, 2007

SENATE BILL 18

4
5 By: Senators B. Pritchard, Laverty, Altes, Madison, T. Smith, R. Thompson, Trusty, Whitaker, Wilkinson

6 By: Representatives Key, Berry, Burkes, Cornwell, Edwards, Gaskill, Glidewell, R. Green, Hardwick,

7 Harris, Medley, Norton, Patterson, Ragland, Rosenbaum, L. Smith, Wells, Woods

8
9
10 **For An Act To Be Entitled**

11 AN ACT TO EXPAND DRUG COURT PROGRAMS; TO CREATE A
12 DIVISION OF DRUG COURT PROGRAMS WITHIN THE
13 ADMINISTRATIVE OFFICE OF THE COURTS; TO CREATE
14 THE DRUG COURT ADVISORY COMMITTEE; AND FOR OTHER
15 PURPOSES.

16
17 **Subtitle**

18 TO EXPAND DRUG COURT PROGRAMS; TO CREATE
19 A DIVISION OF DRUG COURT PROGRAMS WITHIN
20 THE ADMINISTRATIVE OFFICE OF THE COURTS;
21 AND TO CREATE THE DRUG COURT ADVISORY
22 COMMITTEE.

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 SECTION 1. Arkansas Code § 9-27-323(e), concerning diversion
28 agreements in delinquency cases and family in need of services cases, is
29 amended to read as follows:

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

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

35 (2) Participation in a court-approved program of education,



1 counseling, or treatment; ~~and~~

2 (3) Participation in a court-approved teen court; and

3 (4) Participation in a juvenile drug court program.

4
5 SECTION 2. Arkansas Code § 9-27-334 is amended to read as follows:

6 9-27-334. Disposition - Dependent-neglected - Generally.

7 (a) If a juvenile is found to be dependent-neglected, the circuit
8 court may enter an order making any of the following dispositions:

9 (1) Order family services;

10 (2)(A) If it is in the best interest of the juvenile, transfer
11 custody of the juvenile to the Department of Health and Human Services, to
12 another licensed agency responsible for the care of juveniles, or to a
13 relative or other individual.

14 (B) If the court grants custody of the juvenile to the
15 department, the juvenile shall be placed in a licensed or approved foster
16 home, shelter, or facility or an exempt child welfare agency as defined at §
17 9-28-402(12).

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

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

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

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

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

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

1 (3) *If it is in the best interest of the juvenile, grant*
 2 *permanent custody to an individual upon proof that the parent or guardian*
 3 *from whom the juvenile has been removed has not complied with the orders of*
 4 *the court or upon proof that no reunification services should be required to*
 5 *reunite the juvenile with his or her parent or parents and that no further*
 6 *services or periodic reviews are required; or*

7 (4)(A) *Order that the parent, both parents, or the guardian of*
 8 *the juvenile:*

9 *(i) ~~attend~~ Attend a court-ordered parental*
 10 *responsibility training program, if available; and*

11 *(ii) Participate in a juvenile drug court program.*

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

15 (b) *Such an order of custody shall supersede an existing court order*
 16 *of custody and shall remain in full force and effect until a subsequent order*
 17 *of custody is entered by a court of competent jurisdiction.*

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

21
 22 SECTION 3. *Arkansas Code § 16-98-302 is amended to read as follows:*

23 16-98-302. ~~Definitions~~ Purpose and intent.

24 ~~For purposes of this subchapter:~~

25 ~~(1) "Drug court program" means a highly structured judicial~~
 26 ~~intervention process for substance abuse treatment of eligible offenders~~
 27 ~~which requires successful completion of the drug court program treatment in~~
 28 ~~lieu of incarceration; and~~

29 ~~(2) "Drug court team" means a circuit judge, a prosecuting~~
 30 ~~attorney, a defense attorney, and one (1) or more addiction counselors.~~

31 (a) There is a critical need for judicial intervention and support for
 32 effective treatment programs that reduce the incidence of drug use, drug
 33 addiction, and family separation due to parental substance abuse and drug-
 34 related crimes. It is the intent of the General Assembly for this subchapter
 35 to enhance public safety by facilitating the creation, expansion, and
 36 coordination of drug court programs.

1 (b) The goals of the drug court programs in this state shall be
2 consistent with the standards adopted by the United States Department of
3 Justice and recommended by the National Association of Drug Court
4 Professionals and shall include the following key components:

5 (1) Integration of substance abuse treatment with justice system
6 case processing;

7 (2) Use of a nonadversarial approach in which prosecution and
8 defense promote public safety while protecting the right of the accused to
9 due process;

10 (3) Early identification of eligible participants and prompt
11 placement of eligible participants;

12 (4) Access to a continuum of treatment, rehabilitation, and
13 related services;

14 (5) Frequent testing for alcohol and illicit drugs;

15 (6) A coordinated strategy among the judge, prosecution,
16 defense, and treatment providers to govern offender compliance;

17 (7) Ongoing judicial interaction with each participant;

18 (8) Monitoring and evaluation of the achievement of program
19 goals and effectiveness;

20 (9) Continuing interdisciplinary education to promote effective
21 planning, implementation, and operation; and

22 (10) Development of partnerships with public agencies and
23 community-based organizations to generate local support and enhance drug
24 court effectiveness.

25 (c)(1) Drug court programs are specialized court dockets within the
26 existing structure of the Arkansas court system. Drug court programs offer
27 judicial monitoring of intensive treatment and strict supervision of addicts
28 in drug and drug-related cases.

29 (2) The creation of a drug court docket and the appointment of a
30 circuit judge to that docket shall be approved by the administrative judge in
31 each judicial circuit and made a part of the judicial circuit's
32 administrative plan required by Arkansas Supreme Court Administrative Order
33 Number 14.

34
35 SECTION 4. Arkansas Code § 16-98-303 is amended to read as follows:
36 16-98-303. Drug court programs authorized.

1 (a)(1) Each judicial district of this state is authorized to establish
2 a drug court program under this subchapter, ~~which.~~

3 (2)(A) The structure, method, and operation of each drug court
4 program may differ and should be based upon the specific needs of and
5 resources available to the judicial district where the drug court program is
6 located.

7 (B)(i) A drug court program may be preadjudication or
8 postadjudication ~~subject to the availability of funds for an adult offender.~~

9 (ii) A juvenile drug court program or services may
10 be used in a delinquency case or a family in need of services case pursuant
11 to a diversion agreement under § 9-27-323.

12 (iii) A juvenile drug court program or services may
13 be used in a dependency-neglect case under § 9-27-334.

14 (3) Notwithstanding the authorization described in subdivision
15 (a)(1) of this section, no judge of a circuit court, drug court, or juvenile
16 court may order any services or treatment under subsection (b) of this
17 section or § 16-98-305 unless:

18 (A) An administrative and programmatic appropriation has
19 been made for those purposes;

20 (B) Administrative and programmatic funding is available
21 for those purposes; and

22 (C) Administrative and programmatic positions have been
23 authorized for those purposes.

24 (b)(1) A drug court program shall incorporate services from the
25 Department of Community Correction, the Department of Health and Human
26 Services, and the Administrative Office of the Courts.

27 (2) Subject to an appropriation, funding, and position
28 authorization, both programmatic and administrative, the Department of
29 Community Correction shall:

30 (A) Provide positions for persons to serve as probation
31 officers, drug counselors, and administrative assistants;

32 (B) Provide for drug testing for drug court program
33 participants;

34 (C) Provide for intensive outpatient treatment for drug
35 court program participants; and

36 (D) Provide for intensive short-term and long-term

1 residential treatment for drug court program participants.

2 (3) Subject to an appropriation, funding, and position
3 authorization, both programmatic and administrative, the Department of Health
4 and Human Services shall:

5 (A) Provide positions for persons to serve as drug
6 counselors and administrative assistants in delinquency cases, dependency-
7 neglect cases, and family in need of services cases;

8 (B) Provide for drug testing for drug court program
9 participants in delinquency cases, dependency-neglect cases, and family in
10 need of services cases;

11 (C) Provide for intensive outpatient treatment for drug
12 court program participants in delinquency cases, dependency-neglect cases,
13 and family in need of services cases;

14 (D) Provide for intensive short-term and long-term
15 residential treatment for drug court program participants in delinquency
16 cases, dependency-neglect cases, and family in need of services cases;

17 (E) Certify and license treatment providers and treatment
18 facilities that serve drug court program participants;

19 (F) Provide and oversee residential beds for drug court
20 programs;

21 (G) Oversee catchment area facilities for drug court
22 programs;

23 (H) Act as a liaison between the courts and drug court
24 program participants; and

25 (I) Oversee performance standards for residential and
26 long-term facilities providing services to drug court programs.

27 (4) Subject to an appropriation, funding, and position
28 authorization, both programmatic and administrative, the Administrative
29 Office of the Courts shall:

30 (A) Provide state-level coordination and support for drug
31 court judges and their programs;

32 (B) Administer funds for the maintenance and operation of
33 local drug court programs;

34 (C) Provide training and education to drug court judges
35 and other professionals involved in drug court programs; and

36 (D) Operate as a liaison between drug court judges and

1 other state-level agencies providing services to drug court programs.

2 ~~(b)(c)~~(1) A drug court program shall not be available to any defendant
3 who:

4 (A) ~~having~~ Has a pending violent criminal charge against
5 him or her;

6 (B) Has been convicted of a violent felony offense or
7 adjudicated delinquent as a juvenile of a violent felony offense; or

8 (C)(i) Is required to register under the Sex Offender
9 Registration Act of 1997, § 12-12-901 et seq.

10 (ii) The exclusion under subdivision (c)(1)(C)(i) of
11 this section shall not apply to the offense of prostitution, § 5-70-102.

12 (2) Eligible offenses may be further restricted by the rules of
13 a specific drug court program.

14 (3) Nothing in this subchapter shall require a drug court judge
15 to consider or accept every offender with a treatable condition or addiction,
16 regardless of the fact that the controlling offense is eligible for
17 consideration in the program.

18 (4) Any ~~offender~~ defendant who is ~~determined not appropriate for~~
19 ~~the~~ denied entry to a drug court program shall be prosecuted as provided by
20 law.

21 ~~(e)(d)~~(1) Drug court programs may require a separate judicial
22 processing system differing in practice and design from the traditional
23 adversarial criminal prosecution and trial systems.

24 (2) A drug court team shall be designated by a circuit judge
25 assigned to manage the drug court docket and may include ~~consisting of a~~
26 ~~circuit judge to administer the program,~~ a prosecuting attorney, a public
27 defender or private defense attorney, ~~and~~ one (1) or more addiction
28 counselors, one (1) or more probation officers, one (1) or more private
29 treatment provider representatives, ~~who has appropriate understanding of the~~
30 ~~goals of the program and of the appropriate treatment methods for the various~~
31 ~~conditions~~ and any other individual or individuals determined necessary by
32 the drug court judge.

33 (3) The administrative judge of the judicial district ~~or an~~
34 ~~agreement of a majority of the circuit judges in the judicial district~~ shall
35 designate one (1) or more circuit judges to administer the drug court
36 program.

1 ~~(d) All drug court programs shall be required to keep reliable data~~
 2 ~~on:~~

- 3 ~~(1) Recidivism;~~
 4 ~~(2) Relapses;~~
 5 ~~(3) Restarts;~~
 6 ~~(4) Sanctions imposed; and~~
 7 ~~(5) Incentives given.~~

8 (e) Each judicial district may develop a training and implementation
 9 manual for drug court programs with the assistance of the:

- 10 (1) Department of Health and Human Services;
 11 (2) Department of Education;
 12 (3) Department of Workforce Education;
 13 ~~(4) Department of Correction;~~
 14 ~~(5)~~(4) Department of Community Correction; and
 15 ~~(6)~~(5) Administrative Office of the Courts.

16 (f) A Division of Drug Court Programs is created within the
 17 Administrative Office of the Courts. The position of Drug Court Coordinator
 18 is created within the Division of Drug Court Programs and the Drug Court
 19 Coordinator shall:

20 (1) Provide assistance, counsel, and advice to the Drug Court
 21 Advisory Committee;

22 (2) Serve as a coordinator between drug court judges, the
 23 Department of Community Correction, the Bureau of Alcohol and Drug Abuse
 24 Prevention, private treatment provider representatives, and public health
 25 advocates;

26 (3) Establish, manage, and maintain a uniform statewide drug
 27 court information system to track information and data on drug court program
 28 participants to be reviewed by the Drug Court Advisory Committee;

29 (4) Train and educate drug court judges and drug court staff in
 30 those judicial districts maintaining a drug court program;

31 (5) Provide staff assistance to the Arkansas Association of Drug
 32 Court Professionals;

33 (6) Oversee the disbursement of funds appropriated to the
 34 Administrative Office of the Courts for the maintenance and operation of
 35 local drug court programs based on a formula developed by the Administrative
 36 Office of the Courts and reviewed by the Drug Court Advisory Committee; and

1 (7) Develop guidelines to be reviewed by the Drug Court Advisory
2 Committee to serve as a framework for developing effective local drug court
3 programs and to provide a structure for conducting research and evaluation
4 for drug court program accountability.

5
6 SECTION 5. Arkansas Code Title 16, Chapter 98, Subchapter 3 is amended
7 to add additional sections to read as follows:

8 16-98-305. Required resources.

9 Each drug court program established under this subchapter, subject to
10 an appropriation, funding, and position authorization, both programmatic and
11 administrative, shall be provided with the following resources:

12 (1) The Department of Community Correction shall provide the
13 following pursuant to § 16-98-303(a)(2)(B)(i) for adult offenders:

14 (A)(i) Except as provided in subdivision (1)(A)(ii) of
15 this section, provide a minimum of one (1) drug counselor position for every
16 thirty (30) drug court participants.

17 (ii) If a drug court judge does not require the drug
18 counselor position or positions described in subdivision (1)(A)(i) of this
19 section, funding for a drug counselor or counselors shall be provided under
20 subdivision (1)(E)(i) of this section;

21 (B) Provide a minimum of one (1) probation officer
22 position for every forty (40) drug court participants;

23 (C) Provide a minimum of one (1) administrative assistant
24 position for each drug court program;

25 (D) Provide for drug screens and testing as needed; and

26 (E)(i) Based upon a formula to be developed by the
27 Administrative Office of the Courts, reviewed by the Drug Court Advisory
28 Committee, and approved by the Legislative Council, provide for:

29 (a) Intensive outpatient treatment to be made
30 available to drug court programs in each judicial district;

31 (b) Short-term and long-term inpatient
32 treatment to be made available to drug court programs in each judicial
33 district; and

34 (c) A drug court judge to contract with a
35 local licensed treatment provider for counseling services for drug court
36 participants so that each privately contracted addiction counselor does not

1 have more than thirty (30) drug court participants in his or her caseload.

2 (ii) The Department of Community Correction shall
3 enter into an inter-agency memorandum of understanding with the
4 Administrative Office of the Courts in order to establish the process and
5 procedures for the payment of treatment services ordered by a drug court
6 judge and funded through the Department of Community Correction.

7 (iii) Expenditures of funds for treatment services
8 allocated to each drug court program under the formula described in
9 subdivision (1)(E)(i) of this section shall be at the direction of a drug
10 court judge, except as limited by the procedures adopted in the memorandum of
11 understanding described in subdivision (1)(E)(ii) of this section;

12 (2) The Department of Health and Human Services shall:

13 (A) Provide a minimum of one (1) drug counselor position
14 for every thirty (30) drug court participants in delinquency cases,
15 dependency-neglect cases, and family in need of services cases;

16 (B) Provide for drug screens and testing as needed in
17 delinquency cases, dependency-neglect cases, and family in need of services
18 cases; and

19 (C) Provide for intensive outpatient treatment and short-
20 term and long-term inpatient treatment to be made available to drug court
21 programs in each judicial district in delinquency cases, dependency-neglect
22 cases, and family in need of services cases based upon a formula developed by
23 the Administrative Office of the Courts and reviewed by the Drug Court
24 Advisory Committee; and

25 (3) The Administrative Office of the Courts shall:

26 (A) Provide funding to be reviewed by the Drug Court
27 Advisory Committee for additional ongoing maintenance and operation costs of
28 local drug court programs not provided by the Department of Community
29 Correction or the Department of Health and Human Services, including local
30 drug court program supplies, education, travel, and related expenses;

31 (B) Provide direct support to the drug court judge and
32 drug court program;

33 (C) Provide coordination between the multidisciplinary
34 team and the drug court judge;

35 (D) Provide case management;

36 (E) Monitor compliance of drug court participants with

1 drug court program requirements; and

2 (F) Provide drug court program evaluation and
3 accountability.

4
5 16-98-306. Collection of data.

6 (a) A drug court program shall collect and provide data on drug court
7 applicants, drug court participants, and the entire drug court program as
8 required by the Division of Drug Court Programs within the Administrative
9 Office of the Courts in accordance with the rules promulgated under § 16-98-
10 307.

11 (b) The data collected for evaluation purposes under subsection (a) of
12 this section shall:

13 (1) Include a minimum standard data set developed and specified
14 by the Division of Drug Court Programs; and

15 (2) Be maintained in the court files or be otherwise accessible
16 by the courts and the Division of Drug Court Programs.

17 (c)(1) As directed by the Division of Drug Court Programs, after an
18 individual is discharged either upon completion or termination of a drug
19 court program, the drug court program shall conduct, as much as practical,
20 follow-up contacts with and reviews of former drug court participants for key
21 outcome indicators of drug use, recidivism, and employment.

22 (2)(A) The follow-up contacts with and reviews of former drug
23 court participants shall be conducted as frequently and for a period of time
24 determined by the Division of Drug Court Programs based upon the nature of
25 the drug court program and the nature of the participants.

26 (B) The follow-up contacts with and reviews of former drug
27 court participants are not extensions of the drug court's jurisdiction over
28 the drug court participants.

29 (d) For purposes of standardized measurement of success of drug court
30 programs across the state, the Division of Drug Court Programs in
31 consultation with other state agencies and subject to the review of the Drug
32 Court Advisory Committee shall adopt an operational definition of terms such
33 as "recidivism", "retention", "relapses", "restarts", "sanctions imposed",
34 and "incentives given" to be used in any evaluation and report of drug court
35 programs.

36 (e) Each drug court program shall provide to the Division of Drug

1 Court Programs all information requested by the Division of Drug Court
2 Programs.

3 (f) The Division of Drug Court Programs, the Department of Community
4 Correction, the Bureau of Alcohol and Drug Abuse Prevention, and the Arkansas
5 Crime Information Center shall work together to share and make available data
6 to provide a comprehensive data management system for the state's drug court
7 programs.

8 (g)(1) The Administrative Office of the Courts shall:

9 (A) Develop a statewide evaluation model to be reviewed by
10 the Drug Court Advisory Committee; and

11 (B) Conduct ongoing evaluations of the effectiveness and
12 efficiency of all drug court programs.

13 (2) A report of the evaluations of the Administrative Office of
14 the Courts shall be submitted to the General Assembly by July 1 of each year.

15
16 16-98-307. Drug Court Advisory Committee – Creation.

17 (a) There is created a Drug Court Advisory Committee.

18 (b) The Drug Court Advisory Committee shall consist of the following
19 members:

20 (1) The Chief Justice of the Supreme Court or the Chief
21 Justice's designee who shall serve as chair;

22 (2) The Director of the Administrative Office of the Courts or
23 the director's designee;

24 (3) A judge to be appointed by the Arkansas Judicial Council;

25 (4) The Director of the Department of Community Correction or
26 the director's designee;

27 (5) The Director of the Department of Health and Human Services
28 or the director's designee;

29 (6) The Director of the Bureau of Alcohol and Drug Abuse
30 Prevention or the director's designee;

31 (7) A prosecutor appointed by the Prosecutor Coordinator;

32 (8) A public defender appointed by the Executive Director of the
33 Arkansas Public Defender Commission;

34 (9) A member of the Senate appointed by the President Pro
35 Tempore of the Senate;

36 (10) A member of the House of Representatives appointed by the

1 Speaker of the House of Representatives;

2 (11) The Arkansas Drug Director or the Arkansas Drug Director's
3 designee; and

4 (12) The Chair of the Board of Corrections or the chair's
5 designee.

6 (c) The chair or the chair's designee shall promptly call the first
7 meeting after the effective date of this section.

8 (d)(1) The committee shall conduct its meetings at the State Capitol
9 or at any place designated by the chair or the chair's designee.

10 (2) Meetings shall be held at least one (1) time every three (3)
11 months but may occur more often at the call of the chair.

12 (e) If any vacancy occurs on the committee, the vacancy shall be
13 filled by the same process as the original appointment.

14 (f) The committee shall establish rules and procedures for conducting
15 its business.

16 (g) Members of the committee shall serve without compensation.

17 (h) A majority of the members of the committee shall constitute a
18 quorum for transacting any business of the committee.

19 (i)(1) The committee is established to promote collaboration and
20 provide recommendations on issues involving drug courts.

21 (2) The committee may provide advice and review on at least the
22 following:

23 (A) Provisions to identify data to be collected for
24 evaluation; and

25 (B) Provisions to ensure uniform data collection.

26
27 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
28 General Assembly of the State of Arkansas that there is a critical need for
29 judicial intervention and support for effective treatment programs that
30 reduce the incidence of drug use, drug addiction, and family separation due
31 to parental substance abuse and drug-related crimes; that this act expands
32 drug court programs and creates the Drug Court Advisory Committee; and that
33 this act is immediately necessary because any delay in the expansion of drug
34 court programs or the creation of the Drug Court Advisory Committee will harm
35 citizens of this state who will benefit from judicial monitoring of intensive
36 treatment and strict supervision of addicts in drug and drug-related cases.

1 Therefore, an emergency is declared to exist and this act being immediately
2 necessary for the preservation of the public peace, health, and safety shall
3 become effective on:

4 (1) The date of its approval by the Governor;

5 (2) If the bill is neither approved nor vetoed by the Governor,
6 the expiration of the period of time during which the Governor may veto the
7 bill; or

8 (3) If the bill is vetoed by the Governor and the veto is
9 overridden, the date the last house overrides the veto.

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/s/ B. Pritchard

APPROVED: 4/4/2007