

Developmental Disabilities Statutory Synopsis

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evaluation, treatment, care, education, training, supervision, or control in his or her home or community, or in a state institution for the mentally retarded; or

(B) A functionally retarded person who may not exhibit an intellectual deficit on standard psychological tests, but who, because of other handicaps, functions as a retarded person. Not included is a person whose primary problem is mental illness, emotional disturbance, physical handicap, or sensory defect;

(7) "Individual" means a person without regard to chronological age;

(8) "Mental retardation services" or "services" means all services pertaining to and incidental to the prevention, detection, diagnosis, evaluation, treatment, care, custody, education, training, rehabilitation, or supervision of retarded individuals;

(9) "Region" means a geographical area defined by the division, usually consisting of all or parts of two (2) or more counties, which is created to provide services for retarded individuals when the services cannot be provided feasibly or practically at the local level;

(10) "Locality" means a geographical area defined by the division usually consisting of a municipality or county but not excluding other areas within easy commuting distance;

(11) "Community" means either region or locality;

(12) "Coordinate" means to bring resources to bear in appropriate sequence and relationship to provide the proper services for retarded individuals. "Coordinate" implies a working relationship with, but not administrative authority over, public agencies providing mental retardation services;

(13) "Public agencies" means all agencies, departments, boards, institutions, commissions, officers, officials, political subdivisions and agencies thereof, and school districts of this state; and

(14) "Private organizations" means organizations, persons, firms, individuals, corporations, or associations.

History. Acts 1969, No. 265, § 2; A.S.A. 1947, § 59-1002.

20-48-203. Board of Developmental Disabilities Services — Creation — Members.

(a) (1) The Board of Developmental Disabilities Services shall consist of seven (7) members, at least one (1) of whom shall be a woman, who shall be citizens and residents of the State of Arkansas and more than twenty-five (25) years of age.

(2) One (1) of the members shall be a resident of each of the six (6) former congressional districts established by Acts 1951, No. 297 [repealed].

(3) The seventh shall be a member at large.

(b) Upon completion of the term of each member, a successor shall be appointed for a term of seven (7) years.

(c) Appointment to fill a vacancy arising other than by expiration of a term of office shall be for the unexpired portion thereof.

(d) Appointment shall be made by the Governor with the advice and consent of the Senate.

(e) The board shall serve without compensation, except that each board member may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

History. Acts 1969, No. 265, § 4; A.S.A. 1947, § 59-1004; Acts 1997, No. 250, § 199.

Publisher's Notes. Acts 1969, No. 265, § 3, redesignated the Arkansas Children's Colony Board as the Arkansas Board of Mental Retardation.

Acts 1981, No. 513, § 2, subsequently redesignated the board as the Board of Developmental Disabilities Services. It further provided, in part, that the name of the Division of Mental Retardation-Developmental Disabilities Services (MR-DDS) should be changed to Developmental Disabilities Services (DDS).

Amendments. The 1997 amendment rewrote (e).

Case Notes

Habeas Corpus.

Habeas Corpus.

Habeas corpus action to produce in court a child from the Arkansas Children's Colony (now human development centers) should not have been brought against the State Department of Public Welfare (now Department of Human Services) or the members of the Board of Mental Retardation (now Board of Developmental Disabilities Services) but against the superintendent of the Arkansas Children's Colony. *State Dep't of Pub. Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975).

20-48-204. Board of Developmental Disabilities Services — Officers — Proceedings.

(a) The Board of Developmental Disabilities Services shall annually elect from its membership a chair and vice-chair, each of whom shall hold office until his or her successor shall be chosen. The chair shall preside at meetings of the board, and in his or her absence, the vice chair shall preside.

(b) The board is authorized to designate the commissioner or some employee of the Division of Developmental Disabilities Services to serve as disbursing officer of all funds of the division.

(c) The board shall meet at least one (1) time each three (3) months and at such other times as the chairman may deem advisable.

(d) The board shall report biennially to the Governor and General Assembly.

(e) The affirmative vote of four (4) members of the board shall be necessary to take any board action.

History. Acts 1969, No. 265, § 5; A.S.A. 1947, § 59-1005.

20-48-205. Board of Developmental Disabilities Services — Powers and duties.

(a) The Board of Developmental Disabilities Services:

(1) Shall have charge of the properties used for the purposes of the human development centers;

(2) Shall exercise supervision over the appointment, performance of duties which includes such matters as off-premises assignments for educational or training purposes, removal of all employees, and the fixing of their compensation;

(3) Shall exercise supervision over expenditures of the centers;

(4) May accept and hold in trust real, personal, or mixed property received by grant, gift, will, or otherwise;

(5) May make purchases of land or receive grants or gifts of land and take deeds therefor in the name of the State of Arkansas;

(6) May accept grants or gifts of money from any source whatever and use the money for any of its powers and purposes; and

(7) May take all action and execute all documents necessary or desirable to carry out its powers and purposes.

(b) The board may make such regulations respecting the care, custody, training, and discipline of retarded individuals in the centers or receiving mental retardation services and respecting the management of the centers and their affairs as it may deem necessary or desirable to the proper performance of its powers and purposes.

(c) The board is prohibited from promulgating any rule or regulation that would set the salary of any employee at the local level unless specifically required to do so by the federal government.

History. Acts 1969, No. 265, § 5; 1981, No. 774, § 18; A.S.A. 1947, §§ 59-1005, 59-1005.1.

20-48-206. Board of Developmental Disabilities Services — Human development centers — Powers and duties — Admission.

(a) With regard to the establishing and operating of the human development centers, the Board of Developmental Disabilities Services, in addition to the authorities, rights, and duties

granted by this subchapter, shall continue to have all of its authorities, rights, and duties granted by existing law, which shall include, without limitation, the applicable provisions of §§ 20-48-401 et seq. and 20-48-501 et seq., save only those instances where there are express inconsistencies in which event the provisions of this subchapter shall control.

(b) (1) In this regard, admissions to the institutional facilities of the centers shall be on the basis of a determination by the board that:

(A) The individual involved is mentally retarded;

(B) His parent or guardian has resided in the state not less than three (3) years prior to the date of the filing of the petition for his or her admission, or the individual involved is dependent and a public charge or ward of the state or a political subdivision thereof;

(C) The welfare of the individual involved requires the special care, training, or education provided by institutional facilities of the center; and

(D) The board has adequate funds and institutional facilities available for the care, training, or education of the individual.

(2) Also, the determination of whether an individual is mentally retarded shall be made after there has been an investigation which shall include an examination by an evaluation team appointed by the board. The team shall be composed of two (2) or more physicians, psychiatrists, psychologists, or other persons found by the board to be professionally qualified on the basis of training and experience in mental retardation services to make a determination as to whether the individual involved is mentally retarded.

History. Acts 1969, No. 265, § 11; A.S.A. 1947, § 59-1011.

Publisher's Notes. Acts 1985, No. 348, § 6, provided that, effective July 1, 1985, the powers and duties of the Division of Developmental Disabilities Services concerning community programs and services for mental retardation or developmental disabilities, regulation of private mental retardation and developmental disabilities services, etc., other than operation of the institutional services of the human development centers, should be performed by the Department of Human Services through any divisions, offices, etc. as determined by the director of the department. It further provided that powers and duties of the Division of Developmental Disabilities Services with respect to the operation of human development centers and their institutional programs should be performed by the Board of Developmental Disabilities Services to be located and coordinated within the Department of Human Services through any divisions, offices, etc. as designated by the director. See § 25-10-104 and notes thereto.

20-48-207. Board of Developmental Disabilities Services — Contracts for provision of services.

(a) If and to the extent necessary to accomplish the intended purpose of this subchapter to make available the broadest and most effective provision of mental retardation services to those in need of the services, the Board of Developmental Disabilities Services is authorized to

contract for the providing of mental retardation services by other public agencies or private organizations.

(b) In this regard, the board is authorized to promulgate regulations and fix standards necessary to properly ensure that such mental retardation services are furnished in a proper and reasonable manner and on an economical basis.

History. Acts 1969, No. 265, § 10; A.S.A. 1947, § 59-1010.

20-48-208. Board of Developmental Disabilities Services — License for facilities and institutions required.

(a) The Board of Developmental Disabilities Services shall regulate the providing of mental retardation services by private organizations and public agencies. The board shall promulgate regulations covering the issuance, suspension, and revocation of licenses and fixing the standards for construction, reconstruction, maintenance, and operation of institutions and facilities, or parts thereof, operated primarily for the providing of developmental disabilities services, unless the facilities or institutions in their entirety are licensed by the Office of Long-Term Care.

(b) No public agency or private organization shall operate any institution or facility for the provision of mental retardation services unless it has a license in effect.

(c) The board shall not deny a license or suspend or revoke a license unless the applicant or licensee has notice and an opportunity for a hearing. The hearing and proceedings incidental thereto shall be governed by the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) By appropriate proceeding in the Circuit Court of Pulaski County, the board may enjoin the operation of any organization so long as it is not in compliance with the provisions of this subchapter.

History. Acts 1969, No. 265, § 12; 1981, No. 106, § 1; A.S.A. 1947, § 59-1012.

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

20-48-209. Board of Developmental Disabilities Services — Planning and implementation.

(a) The Board of Developmental Disabilities Services is designated as the single state agency for the purpose of full participation under any federal act requiring the designation of a single state agency concerning planning, formulation, and implementation of programs, construction and operation of facilities, financing of facilities and programs, or otherwise pertaining to the obtaining and rendition of mental retardation services. However, this shall not be construed as depriving other public agencies of jurisdiction over or the right to plan for and control and

operate programs that pertain to mental retardation services but which fall within the primary jurisdiction of other public agencies such as programs administered by the Arkansas School for the Deaf, Arkansas School for the Blind, State Board of Workforce Education and Career Opportunities, State Board of Education, Department of Health, and the Department of Human Services.

(b) The Board of Developmental Disabilities Services is authorized to coordinate the planning and implementation of mental retardation programs and institutional and community activities of all public agencies. However, this shall not be construed as depriving other public agencies of jurisdiction over or the right to plan for and control and operate programs that pertain to mental retardation services but which fall within the primary jurisdiction of other public agencies such as programs administered by the Arkansas School for the Deaf, Arkansas School for the Blind, State Board of Workforce Education and Career Opportunities, State Board of Education, Department of Health, and the Department of Human Services.

(c) Effective planning and coordination is essential to the public interest. In order to achieve this to the fullest extent possible, the Board of Developmental Disabilities Services is authorized to establish and promulgate regulations fixing standards for mental retardation programs and activities and to evaluate mental retardation programs and activities of public agencies.

History. Acts 1969, No. 265, § 8; A.S.A. 1947, § 59-1008.

20-48-210. Deputy Director of the Division of Developmental Disabilities Services.

(a) There is created the office of the Deputy Director of the Division of Developmental Disabilities Services of the Department of Human Services. The deputy director shall be appointed by and shall serve at the pleasure of the Board of Developmental Disabilities Services.

(b) The deputy director shall be a person of proven administrative ability and professional qualifications, preferably a Ph.D. degree or equivalent, but including at least a master's degree in psychology, education, social service, or other field of study approved by the board and shall have at least five (5) years' experience in mental retardation services.

(c) The deputy director shall be the executive secretary of the board and shall maintain an official set of minutes of all board action.

(d) The deputy director shall be the executive officer of the division and shall operate and manage the division, subject to the control of the board.

(e) The board may delegate to the deputy director any powers of the board upon such terms and for such duration as the board shall specify.

History. Acts 1969, No. 265, § 7; A.S.A. 1947, § 59-1007.

20-48-211. Board of Developmental Disabilities Services — Community centers.

(a) The Board of Developmental Disabilities Services is authorized to take the necessary action to establish and maintain, or to cause to be established and maintained, community centers, alone or together with public agencies or private organizations, at localities determined to be appropriate for the better providing of or for assistance in the providing of mental retardation services for any region or locality in the state. Community centers may be organized on a formal or informal basis as shall be determined to best suit the circumstances at any particular region or locality, including without limitation organization under the provisions of the Arkansas Nonprofit Corporation Act, § 4-28-201 et seq.

(b) Within the limits of available funds, a program for furnishing mental retardation services shall be developed for each community center which may include a state grants-in-aid program. In this regard, the board is authorized to promulgate regulations covering the establishment and operation of community centers, the formulation and implementation of mental retardation programs and activities for community centers, and the funding of the programs and activities.

(c) The board is prohibited from promulgating any rule or regulation that would set the salary of any employee of a community-based program unless specifically required to do so by the federal government.

History. Acts 1969, No. 265, § 9; 1983, No. 779, § 19; A.S.A. 1947, §§ 59-1009, 59-1009.1.

Publisher's Notes. Acts 1973, No. 217, provided for the establishment, at Warren in Southeast Arkansas, of a pilot project to be designated as a Comprehensive Mental Retardation-Developmental Disabilities Service Center, providing a broad spectrum of institutional and community services benefiting the mentally retarded and developmentally disabled in the Southeast Arkansas area.

20-48-212. Amount requested for Arkansas Special Olympics, Inc.

The Board of Developmental Disabilities Services shall, when preparing their biennial budget request for submission to the Governor and the Legislative Council, consult with the Arkansas Special Olympics, Inc., concerning the amount which is to be submitted as the request for each year of the forthcoming biennium for a grant to the Arkansas Special Olympics, Inc. The amount as may be determined by the Arkansas Special Olympics, Inc. shall be submitted as the agency request to the Governor and to the Legislative Council.

History. Acts 1989 (1st Ex. Sess.), No. 246, § 17.

Subchapter 3 — Cooperative Agreements

20-48-301. Purpose.

20-48-302. Authority to participate.

20-48-303. Terms.

20-48-304. Approval by Attorney General required.

20-48-305. Status of interstate compacts.

20-48-301. Purpose.

It is the purpose of this subchapter to permit the Board of Developmental Disabilities Services, a division of the Department of Human Services, to cooperate with public agencies or private nonprofit organizations of adjoining states to provide services for residents of Arkansas that are mentally retarded or developmentally disabled.

History. Acts 1973, No. 465, § 1; A.S.A. 1947, § 59-1013.

20-48-302. Authority to participate.

(a) Subject to the conditions and limitations contained in this subchapter, the Board of Developmental Disabilities Services may enter into agreements with public agencies, private nonprofit organizations, or combinations thereof from adjoining states for the purpose of performing its responsibility to the residents of Arkansas that are mentally retarded or developmentally disabled.

(b) The agreements may include financial participation, using any funds that are at its disposal, to the extent that similar services would be performed within the state.

History. Acts 1973, No. 465, § 2; A.S.A. 1947, § 59-1014.

20-48-303. Terms.

Every agreement or contract entered into in accordance with this subchapter shall specify the following:

- (1) Full names and addresses of all parties to the agreement;
- (2) The precise organization, composition, and nature of the legal or administrative entity that will be providing services, together with its powers and limitations and manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;
- (3) A description of the joint or cooperative undertaking that specifies the duties and responsibilities of all parties to the agreement;
- (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget thereof, or in the case whereby one (1) of the participants agrees to furnish specified services, the financial arrangements therefor;
- (5) The permissible methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon a partial or complete termination; and

(6) Any other necessary and proper matters.

History. Acts 1973, No. 465, § 3; A.S.A. 1947, § 59-1015.

20-48-304. Approval by Attorney General required.

(a) At the discretion of the Board of Developmental Disabilities Services, every agreement made pursuant to this subchapter shall be submitted to the Attorney General who shall determine whether the agreement is in proper form and compatible with the laws of this state prior to and as a condition precedent to its entry into force.

(b) The Attorney General shall approve any agreement submitted to him or her hereunder unless he or she shall find that it does not meet the conditions set forth in this subchapter and shall detail in writing addressed to the board and the governing bodies concerned with the agreement the specific respects in which the proposed agreement fails to meet the requirements of law.

(c) Failure to disapprove an agreement submitted pursuant to this subchapter within twenty (20) days of its submission shall constitute approval thereof.

History. Acts 1973, No. 465, § 4; A.S.A. 1947, § 59-1016.

20-48-305. Status of interstate compacts.

Every agreement or contract entered into pursuant to this subchapter shall have the status of an interstate compact.

History. Acts 1973, No. 465, § 5; A.S.A. 1947, § 59-1017.

Subchapter 4
— Human Development Centers Generally

20-48-401. Definitions.

20-48-402. Penalties.

20-48-403. Human development centers — Creation.

20-48-404. Eligibility for admission.

20-48-405. Petition for admission.

20-48-406. Admission procedures.

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20-48-409. Permit to visit.

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20-48-411. Charges.

20-48-412. Discharge.

- 20-48-413. Emotionally disturbed mentally retarded individuals.
- 20-48-414. Off-premise training for staff members.
- 20-48-415. Board of Developmental Disabilities Services — Powers and duties — Proceedings — Appointment of superintendents.
- 20-48-416. Designation as state agency for carrying out federal mental retardation acts.

A.C.R.C. Notes. Acts 2009, No. 1419, § 12, provided:

"DEVELOPMENTAL DISABILITIES — VOCATIONAL TRAINEES. The Division of Developmental Disabilities Services of the Department of Human Services is hereby authorized to provide employment opportunities for people with developmental disabilities residing at the Human Development Centers who work less than a competitive employment level.

"The provisions of this section shall be in effect only from July 1, 2009 through June 30, 2010."

Preambles. Acts 1959, No. 352 contained a preamble which read:

"Whereas, Act 6 of 1955 authorizes the Board of the Arkansas Children's Colony to establish a system of charges, to be based upon the ability of a child or its parent or guardian to pay for maintenance, training and education in the Children's Colony; and such fees when collected are to be deposited in the State Treasury for the use and benefit of the Colony;

"Now, therefore...."

Acts 1969, No. 72 contained a preamble which read:

"Whereas, there is currently no facility in the State designed especially for the care and treatment of emotionally disturbed mentally retarded children; and

"Whereas, it is believed that it is most appropriate that such facility be established and operated under the supervision and direction of the Arkansas Children's Colony Board;

"Now, therefore...."

Effective Dates. Acts 1955, No. 6, § 18: Jan. 25, 1955. Emergency clause provided: "It is hereby found by the General Assembly of the State of Arkansas that no facilities exist for the proper training and care of mentally deficient persons; that there is a possibility of certain federal funds being made available for the purpose of constructing suitable facilities for the training and care of mentally deficient persons; and, that the immediate passage of this act is necessary in order that the mentally retarded persons in the State of Arkansas might receive proper care. Now, therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval."

Acts 1963, No. 277, § 5: Mar. 18, 1963. Emergency clause provided: "It is hereby found and determined by the general assembly that federal funds are available for assisting institutions for mentally retarded in providing care and facilities for mentally retarded children; that the Arkansas children's colony presently has a waiting list of several hundred children who are desiring admission to the children's colony; that additional funds are necessary before facilities may be provided and operating expenses may be defrayed to accommodate such children; and that the immediate passage of this act is necessary to enable the children's colony to take advantage of available federal funds and thereby extend this service for the mentally retarded children of this state. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Case Notes

Habeas Corpus.

Habeas Corpus.

In a habeas corpus action for a person detained in the Arkansas Children's Colony (now human development centers) the defendant should have been the superintendent of the Arkansas Children's Colony and not the State Department of Public Welfare (now Department of Human Services) nor the members of the Board of Mental Retardation (now Board of Developmental Disabilities Services). State Dep't of Pub. Welfare v. Lipe, 257 Ark. 1015, 521 S.W.2d 526 (1975).

20-48-401. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Board" means the Board of Developmental Disabilities Services;
- (2) "Center" means a human development center; and
- (3) "Superintendent" means the superintendent of a human development center.

History. Acts 1955, No. 6, § 1; A.S.A. 1947, § 59-1101.

Publisher's Notes. Acts 1969, No. 265, § 3, redesignated the Arkansas Children's Colony Board as the Arkansas Board of Mental Retardation.

Acts 1981, No. 513, § 2, subsequently redesignated the board as the Board of Developmental Disabilities Services and changed the name of the Division of Mental Retardation-Developmental Disabilities Services (MR-DDS) to Developmental Disabilities Services (DDS).

It further provided that the units of the Arkansas Children's Colony at Alexander, Arkadelphia, Booneville, Conway, and Jonesboro should be known as human development centers and the Developmental Disabilities Services Institution at Warren should continue to be known by that title and that Acts 1981, No. 513, should not affect the purpose behind the creation of the Southeast Arkansas Human Development Center.

20-48-402. Penalties.

Any person who violates the following provisions shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two

hundred dollars (\$200) or by imprisonment for not less than six (6) months, or both:

(1) Under the provisions of this subchapter, knowingly, unlawfully, or improperly causes an individual to be adjudged mentally defective;

(2) Procures the escape of an individual or knowingly conceals an escaped individual of a human development center; or

(3) Unlawfully brings any firearm, deadly weapon, or explosive into a center or its grounds or passes any thereof to an individual, employee, or officer of a center.

History. Acts 1955, No. 6, § 16; A.S.A. 1947, § 59-1116.

20-48-403. Human development centers — Creation.

(a) There are created and there shall be maintained institutions for the care, custody, treatment, and training of mentally defective individuals to be known as human development centers.

(b) For the purposes of the institutions, the Board of Developmental Disabilities Services is charged with the care and training of mentally defective individuals.

History. Acts 1955, No. 6, § 2; A.S.A. 1947, § 59-1102.

20-48-404. Eligibility for admission.

An individual may be deemed eligible for admission to a human development center if:

(1) Due to developmental disability, the person is incapable of managing his or her affairs and the person's welfare requires the special care, training, and treatment provided at a center.

(2) The examining physicians provided for in § 20-48-406 shall use standard mental and psychological tests and physical examinations in determining that the individual is developmentally disabled and in need of special training which is provided for in this subchapter.

History. Acts 1955, No. 6, § 3; A.S.A. 1947, § 59-1103; Acts 1999, No. 1437, § 1.

Publisher's Notes. This section may be affected by § 20-48-206.

Amendments. The 1999 amendment rewrote this section.

20-48-405. Petition for admission.

(a) A parent or guardian of a mentally defective individual may file with the Board of

Developmental Disabilities Services a verified petition requesting that the individual be admitted to the human development center.

(b) The petition shall include:

- (1) The relation of the individual to the petitioner;
- (2) The name, age, sex, and residence of the individual;
- (3) A statement of the mental and physical condition of the individual;
- (4) Whether the individual has any property or means of support;
- (5) The name of the person having custody of the individual;
- (6) The place where and length of time the individual has resided in the state; and
- (7) A statement as to whether the petitioner desires that the individual be admitted voluntarily or by commitment.

(c) In the event the estate of the individual or his or her parents, relative, or guardian is unable to pay for the maintenance, training, and education, the petition shall state this fact.

History. Acts 1955, No. 6, § 4; 1957, No. 349, § 1; A.S.A. 1947, § 59-1104.

20-48-406. Admission procedures.

(a) (1) Upon receipt of the petition, the Board of Developmental Disabilities Services shall make a determination as to whether or not a human development center then has adequate facilities and funds to properly care for, treat, and train the individual. If the board determines that no center currently has adequate facilities and funds, then the individual shall not be admitted to a center. If the board determines that the centers do have adequate facilities and funds to care for, treat, and train the individual and that the proposed admission would not crowd the centers beyond their maximum capacity, it shall cause an investigation to be made on the petition.

(2) (A) The investigation shall include an examination of the individual by two (2) reputable physicians appointed or designated by the board for the purpose of determining the mental status and condition of the individual and whether or not he or she has or is a carrier of a contagious or infectious disease.

(B) The investigation may also include one (1) or more examinations of the individual by psychologists, psychiatrists, and physicians designated by the board

(C) The board may proceed toward admission of the individual to the center in accordance with the provisions of subsection (b) or (c) of this section, whichever the board may deem proper in the particular case, but taking into consideration the request contained in the petition if the board determines from the investigation that:

- (i) The statements made in the petition are true and correct;
- (ii) The individual is eligible under the provisions of § 20-48-404;
- (iii) The individual neither has nor is a carrier of a contagious or infectious disease; and
- (iv) The individual is not suffering from psychosis of such nature and extent that a center could not properly and beneficially care for, treat, and train the individual with the facilities and program it then has.

(b) The board may permit the voluntary admission of the individual to a center for such period of time as the board may deem necessary for the proper care, training, and education of the individual. The admission shall be by action of the board without the necessity of any court procedure.

(c) (1) The board may determine that the individual should be admitted to a center by legal commitment only. In that event, the board shall file the petition for admission with the probate court of the county in which the individual resides. There shall be filed with the court, along with the petition, such of the reports received by the board in the course of its investigation and examination as the board may deem necessary.

(2) The court shall promptly set a time and place for a hearing on the petition.

(3) The court may appoint one (1) or two (2) reputable physicians to examine the individual and report to the court the mental status of the individual and whether he or she is afflicted with or a carrier of a contagious or infectious disease, or it may adopt the report of the physician appointed by the board in the investigation of the individual as provided for in subsection (a) of this section.

(4) Upon the hearing on the petition, the court shall determine whether or not the individual should be committed to a center for care, treatment, and training and shall enter an appropriate order in accordance with its determination.

History. Acts 1955, No. 6, § 5; 1957, No. 349, § 2; A.S.A. 1947, § 59-1105; Acts 1997, No. 208, § 22; 2003, No. 1473, § 42.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, codified as § 24-4-408, provided:

"LEGISLATIVE INTENT AND PURPOSE. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this Act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code Annotated of 1987."

The omission of (a)(2)(D) from the version of (a)(2) set out in Acts 1997, No. 208 may have been an engrossing error. Subdivision (a)(2)(D) read as follows:

“(a)(2)(D) The individual is not suffering from psychosis of such nature and extent that a center could not properly and beneficially care for, treat, and train the individual with the facilities and program it then has, then the board may proceed toward admission of the individual to the center in accordance with the provisions of subsection (b) or subsection (c) of this section, whichever the board may deem proper in the particular case, but taking into consideration the request contained in the petition.”

Amendments. The 1997 amendment substituted “he has or is” for “he is afflicted with or” in the first sentence of (a)(2); and “individual neither has” for “individual is not afflicted with” in (a)(2)(C); and deleted (a)(2)(D).

The 2003 amendment rewrote (a)(2).

20-48-407. Order of commitment.

(a) The order of commitment shall include the name, residence, and date of birth of the individual, the nationality and address, insofar as may be ascertained, of his or her parents, and the amount of his or her estate.

(b) The order of commitment shall be made in duplicate and signed by the judge of the court. One (1) copy shall become a record of the court files, and the other copy shall be mailed by the clerk of the court to the superintendent of the center.

History. Acts 1955, No. 6, § 6; A.S.A. 1947, § 59-1106.

20-48-408. Transfer of individuals from other institutions.

(a) The superintendent of a state institution other than a human development center may report to the examining physicians and request the examination of any individual therein deemed mentally defective.

(b) Upon receipt of the report and request, the examining physicians shall conduct the examination in the county in which the institution having custody of the individual is located and, in the event that it is determined by the examining physicians that the individual is mentally defective and will benefit by the services offered by the center, shall file a petition showing those facts with the court originally committing the individual to the institution.

(c) Upon receipt of the petition, the court may order the individual transferred to a center.

History. Acts 1955, No. 6, § 7; A.S.A. 1947, § 59-1107.

20-48-409. Permit to visit.

(a) The Board of Developmental Disabilities Services may, under such conditions and for such length of time as it may deem advisable, permit an individual to leave a human development center for the purpose of visiting in a private home and may revoke or extend the period of the visit or change the conditions upon which it is granted.

(b) The board shall, prior to the granting of a permit to visit, cause an investigation to be made of the home in which the individual is to visit and such other conditions and circumstances as may affect his or her welfare and behavior.

(c) The board may provide such supervision of an individual leaving the center for the purpose of a visit as it may deem advisable.

(d) An individual receiving a permit to visit shall not be deemed discharged from the center.

History. Acts 1955, No. 6, § 8; A.S.A. 1947, § 59-1108.

20-48-410. Return of individual.

Any officer authorized to serve criminal process shall, upon the written request of the superintendent, return to the human development center or hold in custody an individual who has escaped or who has been temporarily released from the center under a permit to visit.

History. Acts 1955, No. 6, § 10; A.S.A. 1947, § 59-1110.

20-48-411. Charges.

(a) (1) In the case of each petition for admission, the Board of Developmental Disabilities Services shall investigate and determine whether the individual or his or her parents or guardian can pay for the maintenance, training, education, or care of the individual.

(2) The board is authorized to establish a system of charges to be based upon the ability of the individual or his or her parents or guardian to pay for maintenance, training, education, or care and to impose the charges.

(3) However, if the board determines that the individual or his or her parents or guardian is unable to pay for all or part of the maintenance, training, education, or care of the individual, the board may provide all or part without charge.

(3) The board may vary the schedule of charges from time to time as circumstances warrant.

(b) (1) If any individual or his parents or guardian shall fail or refuse to pay the charges so assessed by the board, the board shall have and is granted the authority to institute appropriate legal proceedings in a court of competent jurisdiction for the collection of the charges.

(2) The board is authorized to retain the services of legal counsel and pay a reasonable fee for any services furnished the board.

(c) All fees provided for by subsections (a) and (b) of this section for the benefit of the human development centers shall be deposited in the State Treasury as special revenues and shall be credited to the Developmental Disabilities Services Fund Account.

(d) Subsections (a) and (b) of this section shall be liberally construed. The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History. Acts 1955, No. 6, § 11; 1957, No. 349, § 4; 1959, No. 352, § 1; 1963, No. 186, §§ 6, 11; A.S.A. 1947, §§ 59-1111, 59-1112, 59-1126.

20-48-412. Discharge.

(a) Any individual who has entered a human development center by voluntary admission in accordance with the provisions of § 20-48-406(b) may be withdrawn from the center at any time upon the application of the parent or guardian who has legal custody of the individual, provided the parent or guardian shall have first given to the Board of Developmental Disabilities Services thirty (30) days' notice in writing of his or her intention to withdraw the individual from the center.

(b) An individual committed by order of the probate court to a center or transferred from another institution shall not be discharged therefrom until, in the judgment of the board and the superintendent, his or her condition justifies the discharge. Whenever the board in its sole judgment determines that the individual should be discharged, the discharge shall be by order of the board, and the board shall certify the discharge to the probate court of the county making the order of commitment.

History. Acts 1955, No. 6, § 9; 1957, No. 349, § 3; A.S.A. 1947, § 59-1109.

20-48-413. Emotionally disturbed mentally retarded individuals.

(a) The Board of Developmental Disabilities Services is authorized to establish and operate an appropriate facility at such location in the state as it shall determine for the care and treatment of emotionally disturbed mentally retarded individuals, and persons with disorganized behavior, including hyperkinetic, hyperactive, or aggressive behaviors who, because of their problem, function as retarded individuals.

(b) The board is authorized to make such rules and regulations regarding eligibility for admission to the facility, care and treatment of the individuals, discharge from and return to the facility, charges for the maintenance, care, and training of individuals admitted to the facility, and such other matters as the board shall deem necessary to carry out the most effective program for the care and treatment of emotionally disturbed mentally retarded individuals of this state.

History. Acts 1969, No. 72, §§ 1, 2; A.S.A. 1947, §§ 59-1132, 59-1133.

Publisher's Notes. Acts 1969, No. 72, § 2 provided, in part, that until the board provides otherwise, the laws and regulations applicable to human development centers with respect to the matters

enumerated in subsection (b) of this section shall be equally applicable to the operation of the facility provided for in this section.

20-48-414. Off-premise training for staff members.

(a) The Board of Developmental Disabilities Services is authorized to extend to selected staff members of the human development centers off-premise assignments for educational or training purposes. In determining whether to make the off-premise assignments, the board shall be guided by the recommendations of the center superintendent based on such considerations as the requirements of the center for qualified personnel, the availability of qualified persons in specialized fields, the availability of funds, and other factors contributing to staff development.

(b) (1) Before granting any off-premise assignment for educational or training purposes, the board shall enter into an agreement with the staff member which shall require the staff member, upon completion of the educational or training program, to return to the human development center in the same or comparable position for such period of time as may be agreed upon by the board and the staff member.

(2) Any staff member who fails to return to the center pursuant to the agreement shall be liable for any compensation paid to the staff member by the center during the period for which he or she was granted the off-premise assignment for educational or training purposes.

(3) The agreement entered into by the board and the staff member shall provide that the venue of any action brought to recover any funds paid the staff member under the agreement shall be in Pulaski County.

History. Acts 1967, No. 443, §§ 1, 2; A.S.A. 1947, §§ 59-1130, 59-1131.

20-48-415. Board of Developmental Disabilities Services — Powers and duties — Proceedings — Appointment of superintendents.

(a) The government and control of the human development centers shall be vested in the Board of Developmental Disabilities Services.

(b) The board:

(1) Shall have charge of the property of the state which may be used for the purposes of the centers;

(2) Shall make and execute its bylaws;

(3) Shall appoint and remove its officers, attendants, and employees and fix their compensation;

(4) Shall exercise a strict supervision of the centers' expenditures; and

(5) (A) May acquire real and personal property by purchase, gift, or other transfer, and

may own, sell, and transfer real and personal property and establish trusts.

(B) (i) Ownership of real and personal property under the control of the board shall be in the name of the State of Arkansas, or in the trust or trusts as the board may from time to time create.

(ii) All property under the control of the board, whether owned by the State of Arkansas or in a trust established by the board, shall be held for the benefit of persons with developmental disabilities.

(c) (1) The board shall appoint superintendents who shall not be one (1) of its number. The superintendents shall be reputable, trained administrators of institutions engaged in the care, custody, treatment, and training of children and youth, with at least five (5) years' experience as the superintendent or administrative assistant of such an institution.

(2) The board shall fix the superintendents' salaries and prescribe their duties.

(d) (1) The board shall annually elect from its membership a chair and vice chair, each of whom shall hold office until his or her successor is chosen.

(2) The chair shall preside at meetings of the board, and in his or her absence, the vice chair shall preside.

(3) A superintendent shall serve as executive secretary to the board and shall maintain an official set of minutes of all votes and actions of the board. These minutes shall be signed by the superintendent as executive secretary and by the chair of the board.

(4) The board is authorized to designate the superintendent, or some other competent employee or official of the center, to serve as disbursing officer of all funds of the center.

(e) The board shall meet at least one (1) time each three (3) months and at such other times as the chair may deem advisable.

(f) The superintendent of each center shall annually, or more often if required, present to the board for himself or herself and his or her staff a written report of the management of the center setting forth in detail all receipts and disbursements and general conditions of the affairs of the center.

(g) The board shall report biennially to the Governor and General Assembly, accompanying its report with the annual report of the superintendent.

(h) A majority vote of the entire membership of the board shall be necessary to take any board action.

(i) The board may make such rules and regulations respecting the care, custody, training, and discipline of individuals admitted to the centers and the management thereof and of its affairs as it may deem for the best interest of the centers and the State of Arkansas.

History. Acts 1955, No. 6, §§ 13, 14; A.S.A. 1947, §§ 59-1113, 59-1114; Acts 2005, No. 662,

§§ 1, 2.

Publisher's Notes. Acts 1985, No. 348, § 6, provided that, effective July 1, 1985, the powers and duties of the Division of Developmental Disabilities Services concerning community programs and services for mental retardation or developmental disabilities, regulation of private mental retardation and developmental disabilities services, etc., other than operation of the institutional services of the human development centers, should be performed by the Department of Human Services through any divisions, offices, etc. as determined by the director of the department. It further provided that any powers and duties of the Division of Developmental Disabilities Services with respect to the operation of human development centers and their institutional programs should be performed by the Board of Developmental Disabilities Services to be located and coordinated within the Department of Human Services through any divisions, offices, etc. as designated by the director. See § 25-10-104 and notes thereto.

This section may be affected by §§ 20-48-205 and 20-48-206.

Amendments. The 2005 amendment rewrote (b)(5); and repealed (i).

Case Notes

Habeas Corpus.

Habeas Corpus.

In a habeas corpus action for a person detained in the Arkansas Children's Colony (now human development centers) the defendant should have been the superintendent of the Arkansas Children's Colony and not the State Department of Public Welfare (now Department of Human Services) nor the members of the Board of Mental Retardation (now Board of Developmental Disabilities Services). *State Dep't of Pub. Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975).

20-48-416. Designation as state agency for carrying out federal mental retardation acts.

(a) The Board of Developmental Disabilities Services is designated as the single state agency for carrying out the purposes of any act of Congress pertaining to mental retardation.

(b) The board is authorized to take all action of every nature whatever necessary or desirable in complying with the requirements of any federal act and accomplishing the purposes thereof, including, without limitation:

(1) The receiving, handling, and disbursing of grants and funds appropriated by any federal act;

(2) The making of provisions to assure full consideration of all aspects of services essential to planning for comprehensive state and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) The preparing and submitting of plans for expenditure of such grants and funds and providing the assurance required by any federal act as to carrying out the purposes of any federal

act;

(4) The preparing and submitting of reports of the activities of the center in carrying out the purposes of any federal act in such form and containing such information as may be required by any federal act and keeping such records and affording access thereto necessary to assure correctness and verification of such reports as may be required by any federal act;

(5) The providing for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for grants and funds paid to the center in accordance with the requirements of any federal act; and

(6) The doing of all things and taking of all action to carry out any plans for expenditures of the grants and funds in accordance with and for the accomplishment of the purposes of any federal act.

(c) (1) This section shall be liberally construed.

(2) The enumeration of any object, purpose, power, manner, method, and thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

(3) This section shall be construed as being supplementary to any existing purposes and powers authorized to be accomplished by the human development centers or the board.

History. Acts 1963, No. 277, §§ 1-3; A.S.A. 1947, §§ 59-1127 — 59-1129.

Subchapter 5 **— Human Development Centers — Property and Finances**

20-48-501. Liberal construction — Act supplemental.

20-48-502. Authority to acquire properties.

20-48-503. Authority to issue revenue bonds and use available funds and revenues.

20-48-504. Procedure for issuing revenue bonds.

20-48-505. Liability of Board of Developmental Disabilities Services for bonds.

20-48-506. Nonliability of board members for bonds — Exception.

20-48-507. Revenue bonds secured by pledge of gross charges and surplus charges.

20-48-508. Issuance of refunding bonds.

20-48-509. Taxation of bonds.

20-48-510. Municipalities, boards, commissions, etc. authorized to invest in bonds.

20-48-511. Developmental disabilities — Timber sales proceeds — Capital improvements and equipment.

Effective Dates. Acts 1970 (Ex. Sess.), No. 56, § 5: Mar. 13, 1970. Emergency clause provided: "It has been found and is hereby declared by the General Assembly of the State of Arkansas that the financing of the public improvements to which this Act pertains is not feasible under existing maximum interest rate limitations, that the accomplishment of these public improvements is essential to the continued development of this State and the continued improvement of the economic conditions of her