

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Representative M. Wilson**

# A Bill

**HOUSE BILL 1378**

## For An Act To Be Entitled

8 "AN ACT TO AMEND VARIOUS SECTIONS OF THE JUVENILE CODE;  
9 AND FOR OTHER PURPOSES."

### Subtitle

12 "TO AMEND VARIOUS SECTIONS OF THE JUVENILE CODE."

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16 SECTION 1. Arkansas Code 9-27-312 is amended to read as follows:

17 "§9-27-312. Notification to defendants.

18 All juvenile defendants age ten (10) years and above, any person having care  
19 and control of the juvenile, and all adult defendants shall be served with a  
20 copy of the petition and either a notice of hearing or order to appear in the  
21 manner provided by the Arkansas Rules of Civil Procedure, except that  
22 delinquency petitions may also be served in the manner provided for by the  
23 Arkansas Rules of Criminal Procedure."

25 SECTION 2. Arkansas Code 9-27-313(d) (2) is amended to read as follows:

26 "(2) If the juvenile has been taken into custody under subdivision  
27 (a) (2) of this section for an act which would be a felony or a misdemeanor  
28 involving use or possession of a firearm, the juvenile may be taken to  
29 detention. The intake officer shall be notified immediately if any juvenile is  
30 taken to detention. The intake officer shall make a detention decision  
31 pursuant to §9-27-322 within twenty-four (24) hours of the time the juvenile  
32 was first taken into custody. If the juvenile remains in detention, a  
33 detention hearing shall be held within seventy-two (72) hours excluding  
34 weekends and holidays, of the time the juvenile was first taken into custody,  
35 pursuant to §9-27-326(a); or"

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SECTION 3. Arkansas Code 9-27-322(b) (1) is amended to read as follows:

"(1) In determining whether to detain a juvenile who has been taken into custody on an allegation of delinquency pending a detention hearing, the intake officer shall consider the following facts:

(A) Ties to the community, including:

- (i) Place and length of residence;
- (ii) School attendance;
- (iii) Present and past employment;
- (iv) Family relationships;
- (v) References; and

(B) Nature of the alleged offense, including:

- (i) Whether the offense would constitute a felony or misdemeanor;
- (ii) The use of force or violence;
- (iii) Prior juvenile or criminal record;
- (iv) Any history of failure to appear for court appearances; and
- (v) Whether the offense includes use or possession of a

firearm."

SECTION 4. Arkansas Code 9-27-323(b) is amended to read as follows:

"(b) In addition to the requirements of subsection (a) of this section, a diversion of a case is subject to the following conditions:

- (1) The juvenile has admitted his involvement in a delinquent act;
- (2) The intake officer advises the juvenile and his parent, guardian, or custodian that they have the right to refuse a diversion of the case and demand the filing of a petition and a formal adjudication;
- (3) Any diversion agreement shall be entered into voluntarily and intelligently by the juvenile with the advice of his attorney, or by the juvenile with the consent of a parent, guardian, or custodian if the juvenile is not represented by counsel;
- (4) The diversion agreement shall provide for the supervision of a juvenile or the referral of the juvenile to a public or private agency for services not to exceed six (6) months;
- (5) All other diversion agreements shall not exceed twelve (12)

1 months;

2           (6) The juvenile and his parent, guardian, or custodian shall  
3 have the right to terminate the diversion agreement at any time and to request  
4 the filing of a petition and a formal adjudication."

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6           SECTION 5. Arkansas Code 9-27-323(f) is amended to read as follows:

7           "(f) The diversion agreement may be terminated and the prosecuting  
8 attorney may file a petition if at any time during the agreement period:

9           (1) The juvenile or his parent, guardian, or custodian declines  
10 to further participate in the diversion process;

11           (2) The juvenile fails, without reasonable excuse, to attend a  
12 scheduled conference;

13           (3) The juvenile appears unable or unwilling to benefit from the  
14 diversion process; or

15           (4) The intake officer or prosecuting attorney becomes apprised  
16 of new or additional information which indicates that further efforts at  
17 diversion would not be in the best interests of the juvenile or society."

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19           SECTION 6. Arkansas Code 9-27-325(h) is amended to read as follows:

20           "(h) The following burdens of proof shall apply:

21           (1) Proof beyond a reasonable doubt in hearings concerning  
22 delinquency and preponderance of evidence in revocation of probation  
23 proceedings;

24           (2) Proof by a preponderance of the evidence in dependent-neglect  
25 or family in need of services hearings;

26           (3) Proof by clear and convincing evidence for hearings to  
27 terminate parental rights.

28           (i) All hearings may be closed within the discretion of the  
29 court, except, in delinquency cases the juvenile shall have the right to an  
30 open hearing."

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32           SECTION 7. Arkansas Code 9-27-327(b) is amended to read as follows:

33           "(b) If a juvenile is in detention, an adjudication hearing shall be  
34 held not later than *fourteen (14)* days from the date of the detention hearing  
35 unless waived by the juvenile or good cause is shown for a continuance."

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2 SECTION 8. Arkansas Code 9-27-330 is amended to read as follows:

3 "§9-27-330. Disposition - Delinquency - Alternatives.

4 If a juvenile is found to be delinquent, the court may enter an order  
5 making any of the following dispositions:

6 (1) Transfer legal custody of the juvenile to the Department of Human  
7 Services, or to another licensed agency responsible for the care of juveniles,  
8 or to a relative or other individual;

9 (2) Order the juvenile or members of the juvenile's family to submit to  
10 physical, psychiatric, or psychological evaluations;

11 (3) Commit the juvenile to a youth services center operated by the  
12 Youth Services Board, using the Risk Assessment System for Arkansas Juvenile  
13 Offenders developed by the 1990 Youth Services Center Commitment Criteria  
14 Review Committee to be distributed and administered by the Administrative  
15 Office of the Courts;

16 (A) In an order of commitment, the court may recommend that a  
17 juvenile be placed in a community-based program instead of a youth services  
18 center, and shall make specific findings in support of such a placement in the  
19 order;

20 (B) Upon receiving an order of commitment with recommendations  
21 for placement in a community-based program, the Youth Services Board shall  
22 consider the recommendations of the committing court in making its placement  
23 to a youth services center or to a community-based alternative;

24 (4) Place the juvenile on probation under those conditions and  
25 limitations that the court may prescribe pursuant to § 9-27-339(a) or *this*  
26 *section*;

27 (5) Assess a court cost of no more than thirty-five dollars (\$35.00) to  
28 be paid by the juvenile or his parent, guardian, or custodian;

29 (6) Order restitution to be paid by the juvenile or his parent,  
30 guardian, or custodian;

31 (7) Order a fine of not more than five hundred dollars (\$500) to be  
32 paid by the juvenile or his parent, guardian, or custodian;

33 (8) Order that the juvenile participate in court-approved public  
34 service not to exceed one hundred sixty (160) hours.

35 (9) *Commit the juvenile to a juvenile detention facility for an*

1 *indeterminate period of time not to exceed thirty (30) days, and then only*  
2 *after the court makes a finding that other forms of rehabilitation are*  
3 *inappropriate or have been unsuccessful."*

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5 SECTION 9. Arkansas Code 9-27-331(a) (2) is amended to read as follows:

6 "(2) An order of commitment shall remain in effect for an indeterminate  
7 period not exceeding four (4) years from the date entered."

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9 SECTION 10. Arkansas Code 9-27-331(d) and (e) is amended to read as  
10 follows:

11 "(d) An order of restitution to be paid by the juvenile, his parent,  
12 guardian, or custodian may be entered only after the loss caused by the  
13 juvenile is proved by a preponderance of the evidence. *The amount of*  
14 *restitution may not exceed five thousand dollars (\$5,000).*

15 (e) In every case where an order of commitment has been entered pursuant  
16 to an adjudication of delinquency, the facility to which the juvenile is  
17 committed shall, within thirty (30) days of the juvenile's commitment, prepare  
18 a written case plan which shall:

19 (1) State the treatment plan for the juvenile;

20 (2) State the anticipated length of commitment of the juvenile;

21 (3) State recommendations as to the most appropriate  
22 post-commitment placement of the juvenile;

23 (4) Specify post-commitment family services, if any, which should  
24 be offered by the Department of Human Services."

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26 SECTION 11. Arkansas Code 9-27-339(d) is amended to read as follows:

27 "(d) A revocation hearing shall be set within a reasonable time after  
28 the filing of the petition, or within *fourteen (14) days* if the juvenile has  
29 been detained as a result of the filing of the petition for revocation *unless*  
30 *waived by the juvenile or good cause as shown for a continuance."*

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32 SECTION 12. Arkansas Code 9-28-209(a) (1) (A) is amended to read as  
33 follows:

34 "(A) An order of commitment shall remain in effect for an indeterminate  
35 period not exceeding two (2) years, subject to extension by the committing

1 court for additional periods of one (1) year if the court finds an extension  
2 is necessary to safeguard the welfare of the youth or the interest of the  
3 public."

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5 SECTION 13. Arkansas Code 9-28-209(d)(2) is amended to read as follows:

6 "(2) If the board determines that the youth is not suited for detention  
7 in the youth services centers of the state, *before release*, it shall report  
8 its findings and recommendations to the committing court and the prosecuting  
9 attorney along with recommendations, if any, regarding the appropriate  
10 disposition for the youth."

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12 SECTION 14. Arkansas Code 9-28-210(c)(3) is amended to read as follows:

13 "(3) In determining whether the interest of the state and the interest  
14 of the youth would best be served by release, the board shall *be required to*  
15 *consider thirty (30) days prior to release* the circumstances of the offense  
16 for which the youth has been committed, the opinion of the sentencing judge,  
17 the opinion of the prosecuting attorney of the prosecuting jurisdiction, the  
18 opinion of the probation officer of the sentencing court, the youth's previous  
19 delinquency record, the adequacy of community programs, and the stability of  
20 his home environment."

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22 SECTION 15. All provisions of this act of a general and permanent  
23 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
24 Code Revision Commission shall incorporate the same in the Code.

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26 SECTION 16. If any provision of this act or the application thereof to  
27 any person or circumstance is held invalid, such invalidity shall not affect  
28 other provisions or applications of the act which can be given effect without  
29 the invalid provision or application, and to this end the provisions of this  
30 act are declared to be severable.

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32 SECTION 17. (a) Paragraph (24) of §9-27-303 of the Arkansas Code is  
33 hereby repealed.

34 (b) All laws and parts of laws in conflict with this act are hereby  
35 repealed.

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*/s/Mike Wilson*