

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S3/17/97

A Bill

ACT 1118 OF 1997
SENATE BILL 467

4
5 By: Senator Harriman
6 By: Representative Lynn

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF THE JUVENILE CODE;
10 ESTABLISHING A DIVERSION PROCESS FOR FINS; PROVIDING FOR
11 THE REVISION OF THE RISK ASSESSMENT; PROVIDING FOR
12 ADDITIONAL DISPOSITION ALTERNATIVES FOR FINS; AUTHORIZING
13 DETENTION FOR CONTEMPT OF A VALID COURT ORDER; AND FOR
14 OTHER PURPOSES."

Subtitle

15
16
17 "TO AMEND VARIOUS SECTIONS OF THE
18 JUVENILE CODE"

19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21
22 SECTION 1. Arkansas Code Annotated § 9-27-323 is amended to read as
23 follows:

24 "9-27-323. Diversion - Conditions - Agreement - Completion.

25 (a) If the prosecuting attorney, after consultation with the intake
26 officer, determines that a diversion of a delinquency case is in the best
27 interests of the juvenile and the community, the officer may, with the consent
28 of the juvenile and his parent, guardian, or custodian, attempt to make a
29 satisfactory diversion of a case.

30 (b) If the intake officer determines that a diversion of a family in
31 need of services (FINS) case is in the best interest of the juvenile and the
32 community, the officer may, with the consent of the petitioner, juvenile and
33 his/her parent, guardian, or custodian, attempt to make a satisfactory
34 diversion of a case.

35 ~~—— (b)(c)~~ In addition to the requirements of ~~subsection (a)~~ subsections
36 (a) and (b) of this section, a diversion of a case is subject to the following

1 conditions:

2 (1) The juvenile has admitted his involvement in:
 3 (A) a delinquent act for a delinquency diversion; or
 4 (B) a FINS act for a FINS diversion;

5 (2) The intake officer advises the juvenile and his parent,
6 guardian, or custodian that they have the right to refuse a diversion of the
7 case and demand the filing of a petition and a formal adjudication;

8 (3) Any diversion agreement shall be entered into voluntarily and
9 intelligently by the juvenile with the advice of his attorney, or by the
10 juvenile with the consent of a parent, guardian, or custodian if the juvenile
11 is not represented by counsel;

12 (4) The diversion agreement shall provide for the supervision of
13 a juvenile or the referral of the juvenile to a public or private agency for
14 services not to exceed six (6) months;

15 (5) All other terms of a diversion agreements shall not exceed
16 nine (9) months;

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

20 ~~_____ (e)~~(d)(1) The terms of the diversion agreement shall:

21 (A) Be in writing in simple, ordinary, and understandable
22 language;

23 (B) State that the agreement was entered into voluntarily
24 by the juvenile;

25 (C) Name the attorney or other person who advised the
26 juvenile upon the juvenile's entering into the agreement; and

27 (D) Be signed by all parties to the agreement, and by the
28 prosecuting attorney if it is a delinquency case and the offense would
29 constitute a felony if committed by an adult or a FINS case, pursuant to
30 Arkansas Code Annotated § 6-18-222.

31 (2) A copy of the diversion agreement shall be given to the
32 juvenile, the counsel for the juvenile, the parent, guardian, or custodian,
33 and the intake officer, who shall retain the copy in the case file.

34 ~~_____ (d)~~(e) Diversion agreements shall be limited to providing for:

35 (1) Nonjudicial probation under the supervision of the intake
36 officer or probation officer for a period during which the juvenile may be

1 required to comply with specified conditions concerning his conduct and
2 activities; and

3 (2) Participation in a court-approved program of education,
4 counseling, or treatment; and

5 (3) Participation in a court-approved teen court in a delinquency
6 case.

7 ~~(e)~~(f)(1) If a diversion of a complaint has been made, a petition based
8 upon the events out of which the original complaint arose may be filed only
9 during the period for which the agreement was entered into.

10 (2) If a petition is filed within this period, the juvenile's
11 compliance with all proper and reasonable terms of the agreement shall be
12 grounds for dismissal of the petition by the court.

13 ~~(f)~~(g) The diversion agreement may be terminated and the prosecuting
14 attorney in a delinquency case or the petitioner in a FINS case may file a
15 petition if at any time during the agreement period:

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

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

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

22 (4) The intake officer becomes apprised of new or additional
23 information which indicates that further efforts at diversion would not be in
24 the best interests of the juvenile or society.

25 ~~(g)~~(h) Upon the satisfactory completion of the diversion period:

26 (1) The juvenile shall be dismissed without further proceedings;

27 (2) The intake officer shall furnish written notice of such
28 dismissal to the juvenile and his parent, guardian, or custodian; and

29 (3) The complaint and the agreement, and all references thereto,
30 may be expunged by the court from the juvenile's file."

31

32 SECTION 2. Arkansas Code Annotated § 9-27-325 is amended to read as
33 follows:

34 "9-27-325. Hearings - Generally.

35 (a) All hearings shall be conducted by the judge without a jury.

36 (b)(1) The defendant need not file a written responsive pleading in

1 order to be heard by the court.

2 (2) In dependency-neglect proceedings, retained counsel shall
3 file a notice of appearance immediately upon acceptance of representation,
4 with a copy to be served on the petitioner.

5 (c)(1) At the time set for hearing, the court may:

6 (A) Proceed to hear the case only if the juvenile is
7 present or excused for good cause by the court; or

8 (B) Continue the case upon determination that the presence
9 of an adult defendant is necessary.

10 (2) Upon determining that a necessary party is not present before
11 the court, the court may:

12 (A) Issue an order for contempt if the defendant was served
13 with an order to appear; or

14 (B) Issue an order to appear, with a time and place set by
15 the court for hearing, if the defendant was served with a notice of hearing.

16 (d) The court shall be a court of record. A record of all proceedings
17 shall be kept in the same manner as other proceedings of chancery court and in
18 accordance with rules promulgated by the Arkansas Supreme Court.

19 (e) Unless otherwise indicated, the Arkansas Rules of Evidence shall
20 apply.

21 (f) Except as otherwise provided in this subchapter and until rules of
22 procedure for juvenile court are developed and in effect, the Arkansas Rules
23 of Civil Procedure shall apply to all proceedings and the Arkansas Rules of
24 Criminal Procedure shall apply to delinquency proceedings.

25 (g) All defendants shall have the right to compel attendance of
26 witnesses in accordance with the Arkansas Rules of Civil Procedure and the
27 Arkansas Rules of Criminal Procedure.

28 (h)(1) The petitioner in all proceedings shall bear the burden of
29 presenting the case at hearings.

30 (2) The following burdens of proof shall apply:

31 (A) Proof beyond a reasonable doubt in delinquency hearings
32 ~~concerning delinquency and revocation of probation;~~

33 (B) Proof by a preponderance of the evidence in
34 dependency-neglect, ~~or~~ family in need of services (FINS), and probation
35 revocation hearings;

36 (C) Proof by clear and convincing evidence for hearings to

1 terminate parental rights.

2 (i) All hearings may be closed within the discretion of the court,
3 except, in delinquency cases the juvenile shall have the right to an open
4 hearing, and, in adoption cases the hearings shall be closed as provided in
5 the Revised Uniform Adoption Act, as amended, § 9-9-201 et seq."

6

7 SECTION 3. Arkansas Code Annotated § 9-27-330 is amended to read as
8 follows:

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

10 (a) If a juvenile is found to be delinquent, the court may enter an
11 order making any of the following dispositions based upon the best interest of
12 the juvenile:

13 (1)(A) Transfer legal custody of the juvenile to the Department
14 of Human Services, or to another licensed agency responsible for the care of
15 juveniles, or to a relative or other individual;

16 (B) Commit the juvenile to a youth services center using
17 the Risk Assessment System for Arkansas Juvenile Offenders ~~developed by the~~
18 ~~1990 Youth Services Center Commitment Criteria Review Committee to be~~
19 distributed and administered by the Administrative Office of the Courts.

20 (i) The Risk Assessment may be modified by the
21 Juvenile Committee of the Arkansas Judicial Council with the Division of Youth
22 Services.

23 ~~(i)~~(ii) In an order of commitment, the court may
24 recommend that a juvenile be placed in a community-based program instead of a
25 youth services center, and shall make specific findings in support of such a
26 placement in the order.

27 ~~(ii)~~(iii) Upon receipt of an order of commitment with
28 recommendations for placement, the Division of Youth Services of the
29 Department of Human Services shall consider the recommendations of the
30 committing court in placing a youth in a youth services facility or a
31 community-based program.

32 (C) In all cases in which both commitment and transfer of
33 legal custody are ordered by the court in the same order, transfer of custody
34 will be entered only upon compliance with the provisions of §§ 9-27-310 -
35 9-27-312, 9-27-316, 9-27-327, and 9-27-328;

36 (2) Order the juvenile or members of the juvenile's family to

1 submit to physical, psychiatric, or psychological evaluations;

2 (3) Grant permanent custody to an individual upon proof that the
3 parent or guardian from whom the juvenile has been removed has not complied
4 with the orders of the court and that no further services or periodic reviews
5 are required;

6 (4)(A) Place the juvenile on probation under those conditions and
7 limitations that the court may prescribe pursuant to § 9-27-339(a).

8 (B)(i) In addition, the court shall have the right, as a
9 term of probation, to require the juvenile to attend school or make
10 satisfactory progress toward a general education development certificate.

11 (ii) The court shall have the right to revoke
12 probation if the juvenile fails to regularly attend school or if satisfactory
13 progress toward a general education development certificate is not being made;

14 (5) Order a probation fee, not to exceed twenty dollars (\$20.00)
15 per month, as provided in § 16-13-326(a);

16 (6) Assess a court cost of no more than thirty-five dollars
17 (\$35.00) to be paid by the juvenile, his parent, both parents, or his
18 guardian;

19 (7)(A) Order restitution to be paid by the juvenile, a parent,
20 both parents, the guardian, or his custodian.

21 (B) If the custodian is the State of Arkansas, both
22 liability and the amount which may be assessed shall be determined by the
23 Arkansas State Claims Commission;

24 (8) Order a fine of not more than five hundred dollars (\$500) to
25 be paid by the juvenile, a parent, both parents, or the guardian;

26 (9) Order that the juvenile and his parent, both parents, or the
27 guardian perform court-approved volunteer service in the community, designed
28 to contribute to the rehabilitation of the juvenile or to the ability of the
29 parent or guardian to provide proper parental care and supervision of the
30 juvenile, not to exceed one hundred sixty (160) hours;

31 (10)(A) Order that the parent, both parents, or the guardian of
32 the juvenile attend a court-approved parental responsibility training program,
33 if available.

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

1 (C) The court may provide that any violation of such orders
2 shall subject the parent, both parents, or the guardian to the contempt
3 sanctions of the court;

4 (11)(A)(i) Order that the juvenile remain in a juvenile detention
5 facility for an indeterminate period not to exceed ninety (90) days.

6 (ii) The court may further order that the juvenile be
7 eligible for work release or to attend school or other educational or
8 vocational training.

9 (B) The juvenile detention facility shall afford
10 opportunities for education, recreation, and other rehabilitative services to
11 adjudicated delinquents;

12 (12) Place the juvenile on residential detention with electronic
13 monitoring, either in the juvenile's home or in another facility as ordered by
14 the court;

15 (13)(A) Order the parent, both parents, or the guardian of any
16 juvenile adjudicated delinquent and committed to a youth services center,
17 detained in a juvenile detention facility, or placed in foster care, to be
18 liable for the cost of the commitment, detention, or foster care.

19 (B)(i) The court shall take into account the financial
20 ability of the parent, both parents, or the guardian to pay for such
21 commitment, detention, or foster care.

22 (ii) The court shall take into account the past
23 efforts of the parent, both parents, or the guardian to correct the delinquent
24 juvenile's conduct.

25 (iii) The court shall take into account, if the
26 parent is a noncustodial parent, the opportunity the parent has had to correct
27 the delinquent juvenile's conduct.

28 (iv) The court shall take into account any other
29 factors the court deems relevant;

30 (14)(A) Order the Department of Finance and Administration to
31 suspend the driving privileges of any juvenile adjudicated delinquent.

32 (B) The order shall be prepared and transmitted to the
33 department within twenty-four (24) hours after the juvenile has been found
34 delinquent and is sentenced to have his driving privileges suspended.

35 (C) The court may provide in the order for the issuance of
36 a restricted driving permit to allow driving to and from a place of employment

1 or driving to and from school, or for other circumstances.

2 (b) The juvenile court shall specifically retain jurisdiction to amend
3 or modify any orders entered pursuant to subdivisions (a)(4)-(12) of this
4 section.

5 (c)(1) If a juvenile is adjudicated delinquent for possession of a
6 handgun, as provided in § 5-73-119, or criminal use of prohibited weapons, as
7 provided in § 5-73-104, or possession of a defaced firearm, as provided in
8 § 5-73-107, the court shall commit the juvenile:

9 (A) To a juvenile detention facility, as provided in
10 subdivision (a)(10) of this section; or

11 (B) To a youth services center operated by the Arkansas
12 Youth Services Board, as provided in subdivision (a)(3) of this section; or

13 (C) Place the juvenile on residential detention, as
14 provided in subdivision (a)(11) of this section.

15 (2) The court may take into consideration any preadjudication
16 detention period served by the juvenile and sentence the juvenile to such time
17 served.

18 (d)(1) When the court orders restitution pursuant to subdivision (a)(7)
19 of this section, the court shall consider the following:

20 (A) The amount of restitution may be decided:

21 (i) If the juvenile is to be responsible for the
22 restitution, by agreement between the juvenile and the victim; or

23 (ii) If the parent or parents are to be responsible
24 for the restitution, by agreement between the parent or parents and the
25 victim; or

26 (iii) If the juvenile and the parent or parents are
27 to be responsible for the restitution, by agreement between the juvenile, his
28 parent or parents, and the victim; or

29 (iv) At a hearing at which the prosecutor must prove
30 the restitution amount by a preponderance of the evidence;

31 (B) Restitution shall be made immediately, unless the court
32 determines that the parties should be given a specified time to pay or should
33 be allowed to pay in specified installments;

34 (C)(i) In determining if restitution should be paid and by
35 whom, as well as the method and amount of payment, the court shall take into
36 account:

1 (a) The financial resources of the juvenile,
2 his parent, both parents, or the guardian, and the burden such payment will
3 impose with regard to the other obligations of the paying party;

4 (b) The ability to pay restitution on an
5 installment basis or on other conditions to be fixed by the court;

6 (c) The rehabilitative effect of the payment of
7 restitution and the method of payment; and

8 (d) The past efforts of the parent, both
9 parents, or the guardian to correct the delinquent juvenile's conduct;

10 (ii) The court shall take into account if the parent
11 is a noncustodial parent, the court may take into consideration the
12 opportunity the parent has had to correct the delinquent juvenile's conduct;
13 and

14 (iii) The court shall take into account any other
15 factors the court deems relevant.

16 (2) If the juvenile is placed on probation, any restitution
17 ordered under this section may be a condition of the probation.

18 (e) When an order of restitution is entered, it may be collected by any
19 means authorized for the enforcement of money judgments in civil actions, and
20 it shall constitute a lien on the real and personal property of the persons
21 and entities the order of restitution is directed upon in the same manner and
22 to the same extent as a money judgment in a civil action.

23 (f)(1) The judgment entered by the court may be in favor of the state,
24 the victim, or any other appropriate beneficiary.

25 (2) The judgment may be discharged by a settlement between the
26 parties ordered to pay restitution and the beneficiaries of the judgment.

27 (g) The court shall determine priority among multiple beneficiaries on
28 the basis of the seriousness of the harm each suffered, their other resources,
29 and other equitable factors.

30 (h) If more than one (1) juvenile is adjudicated delinquent of an
31 offense for which there is a judgment under this section, the juveniles are
32 jointly and severally liable for the judgment unless the court determines
33 otherwise.

34 (i)(1) A judgment under this section does not bar a remedy available in
35 a civil action under other law.

36 (2) A payment under this section must be credited against a money

1 judgment obtained by the beneficiary of the payment in a civil action.

2 (3) A determination under this section and the fact that payment
3 was or was not ordered or made are not admissible in evidence in a civil
4 action and do not affect the merits of the civil action."

5

6 SECTION 4. Arkansas Code Annotated § 9-27-332 is amended to read as
7 follows:

8 "9-27-332. Disposition - Family in need of services - Generally.

9 (a) If a family is found to be in need of services, the court may enter
10 an order making any of the following dispositions:

11 (1)(A) Order family services.

12 (B)(i) In all cases in which family services are ordered,
13 the court shall determine the parent's, guardian's, or custodian's ability to
14 pay, in whole or in part, for said services.

15 (ii) Said determination, and the evidence supporting
16 it, shall be made in writing in the order ordering family services.

17 (iii) If the court determines that the parent,
18 guardian, or custodian is able to pay, in whole or part, for said services,
19 the court shall enter a written order setting forth the amounts the parent,
20 guardian, or custodian can pay for the family services ordered, and ordering
21 the parent, guardian, or custodian to pay such amount periodically to the
22 provider from whom family services are received.

23 (iv) For purposes of this subsection:

24 (a) Periodically is deemed to be a period of
25 time no greater than once per month; and

26 (b) Further, that parent, guardian, and
27 custodian refers to the individual or individuals from whom custody was
28 removed.

29 (v) In making its determination, the court shall
30 consider the following factors:

31 (a) The financial ability of the parent, both
32 parents, the guardian, or custodian to pay for such services;

33 (b) The past efforts of the parent, or both
34 parents, the guardian, or the custodian to correct the conditions which
35 resulted in the need for family services; and

36 (c) Any other factors which the court deems

1 relevant.

2 (2) Transfer custody of juvenile family members to the Department
3 of Human Services or to another licensed agency responsible for the care of
4 juveniles, or to a relative or other individual.

5 (3) Grant permanent custody to an individual upon proof that the
6 parent or guardian from whom the juvenile has been removed has not complied
7 with the orders of the court and that no further services or periodic reviews
8 are required.

9 (4)(A) Order that the parent, both parents, or the guardian of
10 the juvenile attend a court-ordered parental responsibility training program,
11 if available.

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

15 (C) The court may provide that any violation of such orders
16 shall subject the parent, both parents, or the guardian to contempt sanctions
17 of the court.

18 (5) Place the juvenile on residential detention with electronic
19 monitoring in the juveniles home.

20 (6) Order the juvenile, his/her parent, both parents, or guardian
21 to perform court-approved volunteer service in the community designed to
22 contribute to the rehabilitation of the juvenile or the ability of the parent
23 or guardian to provide proper parental care and supervision of the juvenile,
24 not to exceed one hundred and sixty (160) hours.

25 (7) Place the juvenile on supervision terms including, but not
26 limited to, requiring the juvenile to attend school or make satisfactory
27 progress toward a general education development certificate, requiring the
28 juvenile to observe a curfew, and prohibiting the juvenile from possessing or
29 using any alcohol or illegal drugs.

30 (A) The supervision terms shall be in writing.

31 (B) The supervision terms shall be given to the juvenile
32 and explained to him/her and to his/her parent, guardian, or custodian by the
33 juvenile intake or probation officer in a conference immediately following the
34 disposition hearing.

35 (8) Order a fine not to exceed five hundred dollars (\$500) to be
36 paid by the juvenile, a parent, both parents, guardian, or custodian when said

1 juvenile exceeds the number of excessive unexcused absences provided for in
2 the districts or the State Board of Vocational Educations student attendance
3 policy.

4 (A) The purpose of the penalty set forth in this section is
5 to impress upon the parents, guardians, or persons in loco parentis the
6 importance of school or adult education attendance, and the penalty is not to
7 be used primarily as a source of revenue.

8 (B)(i) In all cases in which a fine is ordered, the court
9 shall determine the parents, guardians or custodians ability to pay for said
10 fine.

11 (ii) In making its determination, the court shall
12 consider the following factors:

13 (a) The financial ability of the parent, both
14 parents, the guardian, or custodian to pay for such services;

15 (b) The past efforts of the parent, or both
16 parents, the guardian, or the custodian to correct the conditions which
17 resulted in the need for family services; and

18 (c) Any other factors which the court deems
19 relevant.

20 (C) When practicable and appropriate, the court may utilize
21 mandatory attendance to such programs as well as community service
22 requirements in lieu of a fine.

23 (9) Assess a court cost of no more than thirty-five dollars
24 (\$35.00) to be paid by the juvenile, his/her parent, both parents, guardian,
25 or custodian.

26 (10) Order a juvenile service fee not to exceed twenty dollars
27 (\$20.00) a month to be paid by the juvenile, his/her parent, both parents,
28 guardian, or custodian.

29 (b) For purposes of this section, the court shall not specify a
30 particular provider for placement or family services."
31

32 SECTION 5. Arkansas Code Annotated § 9-27-336 is amended to read as
33 follows:

34 "9-27-336. Limitations on detention.

35 (a) A juvenile who is alleged to be, or who has been adjudicated either
36 dependent-neglected or a member of a family in need of services (FINS) shall

1 not be placed or detained in a secure detention facility, in a facility
2 utilized for the detention of alleged or adjudicated delinquent juveniles, or
3 in a facility utilized for the detention of adults held for, charged with, or
4 convicted of a crime-, except:

5 (1) A juvenile may be held in a juvenile detention facility when
6 he/she has been away from home for more than twenty-four (24) hours and when
7 the parent, guardian, or other person contacted lives beyond a fifty (50) mile
8 driving distance or out of state.

9 (A) The juvenile may be held in custody in a juvenile
10 detention facility for purposes of identification, processing, or arranging
11 for release or transfer to an alternative facility. Such holding shall be
12 limited to the minimum time necessary to complete these actions and shall not
13 occur in any facility utilized for incarceration of adults.

14 (B) A juvenile held under this subsection shall be
15 separated from detained juveniles charged or held for delinquency. A juvenile
16 may not be held under this subsection for more than six (6) hours if the
17 parent, guardian, or other person contacted lives in the state, or twenty-four
18 hours, excluding weekends and holidays, if the parent, guardian, or other
19 person contacted lives out of state.

20 (2) An adjudicated FINS may be held in a juvenile detention
21 facility when the juvenile court finds that the juvenile violated a valid
22 court order.

23 (A) For the purposes of this subsection, a valid court
24 order shall include any order of a juvenile court judge to a juvenile who has
25 been brought before the court and made subject to a court order. The juvenile
26 who is the subject of the order shall receive full due process rights.

27 (B) A juvenile held under this subsection shall be
28 separated from detained juveniles charged or held for delinquency. Such
29 holding shall not occur in any facility utilized for incarceration of adults.

30 (b) Except pursuant to subsection (d) of this section, a juvenile shall
31 not be placed or confined in a jail or lock-up used for the detention of
32 adults except under the following circumstances:

33 (1) A juvenile who has been formally transferred from juvenile
34 court to circuit court and against whom felony charges have been filed or a
35 juvenile who the prosecuting attorney has the discretion to charge in circuit
36 court and to prosecute as an adult and against whom the circuit court's

1 jurisdiction has been invoked by the filing of felony charges may be held in
2 an adult jail or lock-up;

3 (2) A juvenile alleged to have committed a delinquent act may be
4 held in an adult jail or lock-up for up to six (6) hours for purposes of
5 identification, processing, or arranging for release or transfer to an
6 alternative facility, provided he is separated by sight and sound from adults
7 who are pretrial detainees or convicted persons. A holding for those purposes
8 shall be limited to the minimum time necessary and shall not include travel
9 time for transporting the juvenile to the alternative facility; or

10 (3)(A) A juvenile alleged to have committed a delinquent act who
11 is awaiting an initial appearance before a judge may be held in an adult jail
12 or lock-up for up to twenty-four (24) hours, excluding weekends and holidays,
13 provided the following conditions exist:

14 (i) The alleged act would be a misdemeanor or a
15 felony if committed by an adult or is a violation of § 5-73-119; and

16 (ii) The geographical area having jurisdiction over
17 the juvenile is outside a metropolitan statistical area pursuant to the United
18 States Bureau of the Census' current designation; and

19 (iii) No acceptable alternative placement for the
20 juvenile exists; and

21 (iv) The juvenile is separated by sight and sound
22 from adults who are pretrial detainees or convicted persons.

23 (B)(i) A juvenile awaiting an initial appearance and being
24 held in an adult jail or lock-up pursuant to the twenty-four-hour exception,
25 as provided in subdivision (b)(3) of this section, may be held for an
26 additional period, not to exceed twenty-four (24) hours, provided that the
27 following conditions exist:

28 (a) The conditions of distance to be traveled
29 or the lack of highway, road, or other ground transportation do not allow for
30 court appearances within twenty-four (24) hours; and

31 (b) All the conditions in subdivision (b)(3) of
32 this section exist;

33 (ii) Criteria will be adopted by the Governor or his
34 designee to establish what distance, highway or road conditions, or ground
35 transportation limitations will provide a basis for holding a juvenile in an
36 adult jail or lock-up under this exception.

1 (c) Except as provided in subsection (d) of this section, nothing in
2 this subchapter is intended to prohibit the use of juvenile detention
3 facilities which are attached to or adjacent to adult jails or lock-ups,
4 provided the facilities are designed and used in accordance with federal and
5 state guidelines and restrictions.

6 (d) A detention facility shall not release a serious offender for a
7 less serious offender, except by order of the judge who committed the more
8 serious offender.

9 ~~——(d)~~(e) Provided, however, that upon petition by the quorum court of any
10 county, the Governor may waive the requirements of subsections (b) and (c) of
11 this section and any other provision of state law, state jailing standards,
12 and state regulations limiting the detention of juveniles in adult facilities,
13 subject to the following restrictions:

14 (1) The authority to grant such a waiver will expire on March 31,
15 1997; and

16 (2) Such waivers may be granted only for periods of up to six (6)
17 months, but may be renewed for successive six-month periods, provided all such
18 waivers shall expire on March 31, 1997; and

19 (3) Such waivers shall be available only if a county:

20 (A) Is making a good faith effort to provide a juvenile
21 detention facility that otherwise complies with state law and regulations for
22 detaining juveniles in a juvenile detention facility and has entered into a
23 written agreement with another county or counties for that specific purpose;
24 or

25 (B) Has a juvenile detention facility located in that
26 county, but certifies that no further bed capacity is available or will be
27 available within a reasonable period of time, and certifies that the county
28 will increase the bed capacity of its facility by March 31, 1997; and

29 (4) Such waivers shall not permit detaining juveniles in the same
30 cell or within physical reach of adults who are pretrial detainees or
31 convicted persons."

32

33 SECTION 6. All provisions of this act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.

36

1 SECTION 7. If any provision of this act or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall not affect
3 other provisions or applications of the act which can be given effect without
4 the invalid provision or application, and to this end the provisions of this
5 act are declared to be severable.

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7 SECTION 8. All laws and parts of laws in conflict with this act are
8 hereby repealed.

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/s/Harriman

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APPROVED: 4-05-97

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