

**ARKANSAS SENATE**  
83rd General Assembly - Regular Session, 2001  
**Amendment Form**

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**Subtitle of Senate Bill No. 186**

"TO REPEAL OBSOLETE STATUTES RELATING TO THE DEPARTMENT OF  
CORRECTION; TO AMEND ARKANSAS CODE 12-28-403 PERTAINING TO THE  
COMMITMENT OF CERTAIN YOUTHFUL OFFENDERS, AND 12-28-404 PERTAINING TO  
THE TRANSFER OF INMATES."

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**Amendment No. 1 to Senate Bill No. 186.**

Amend Senate Bill No. 186 as engrossed, H1/12/01:

Delete Sections 4 and 5 and substitute the following:

SECTION 4. Arkansas Code 12-28-403 is repealed.

~~12-28-403. Commitment of certain youthful male offenders.~~

~~(a) All youthful male offenders under the age of eighteen (18) years convicted of a felony in the State of Arkansas may, in the discretion of the sentencing authority, be sentenced to the appropriate division of the Department of Human Services or to the Tucker Unit of the Department of Correction.~~

~~(b)(1) If the sentencing authority determines that a youthful male offender would be more amenable to the rehabilitation programs of the appropriate division of the Department of Human Services, the sentencing authority may sentence the youthful offender to the Department of Correction for a term of years, suspend the sentence, and commit the youth to the custody of the appropriate division of the Department of Human Services.~~

~~(2) In such case, if the youth completes the training school program satisfactorily, the appropriate division of the Department of Human Services shall return him to the sentencing court and provide the court with a written report of the youth's progress and a recommendation that he be placed on probation.~~

~~(3) In the event that the youth becomes unruly, incorrigible, or is not amenable to the training program of the appropriate division of the Department of Human Services, the board may return him to the sentencing court with a written report of the youth's conduct and a recommendation that he be transferred to the Department of Correction. The court shall then revoke the suspension of the sentence originally imposed and commit the youth to the Tucker Unit of the Department of Correction.~~

SECTION 5. Arkansas Code 12-28-404 is repealed.

12-28-404. Transfer of inmate of Tucker Unit.

~~(a) The Department of Correction shall have the power to transfer from the Tucker Unit of the Department of Correction to the state penitentiary any person committed to it by a court having criminal jurisdiction, for a felony, if in the opinion of the department the person is not a fit subject for the program of the Tucker Unit of the Department of Correction.~~

~~(b) With the consent and approval of the Department of Human Services, the Department of Correction may transfer from the Tucker Unit of the Department of Correction to the Department of Human Services any youthful offender under the age of eighteen (18) years who, in the opinion of the Department of Correction and the Department of Human Services, is more suited and adaptable by age, physical size, and temperament to the programs of the Department of Human Services."~~

AND

Insert two additional Sections at the end of the bill to read as follows:

"SECTION 8. Arkansas Code 5-4-104(e) is amended to read as follows:

(e)(1)(A) The court shall not suspend imposition of sentence as to a term of imprisonment nor place the defendant on probation for the following offenses:

(i) Capital murder;

(ii) Treason;

(iii) Class Y felonies, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section;

(iv) Driving while intoxicated;

(v) Murder in the second degree, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section;

(vi) Engaging in a continuing criminal enterprise.

(B)(i) In other cases, the court may suspend imposition of sentence or place the defendant on probation, in accordance with §§ 5-4-301 - 5-4-311, except as otherwise specifically prohibited by statute.

(ii) The court may not suspend execution of sentence.

(2) If the offense is punishable by fine and imprisonment, the court may sentence the defendant to pay a fine and suspend imposition of the sentence as to imprisonment or place him on probation.

(3) The court may sentence the defendant to a term of imprisonment and suspend imposition of sentence as to an additional term of imprisonment, but the court shall not sentence a defendant to imprisonment and place him on probation, except as authorized by § 5-4-304.

~~(4) [Repealed].~~

(4)(A) If the court determines that an offender under the age of eighteen (18) years would be more amenable to the rehabilitation programs of the Division of Youth Services, and that the youth has not been previously committed to the Division of Youth Services on more than one occasion, the court may sentence the youthful offender to the Department of Correction for a term of years, suspend the sentence, and commit the youth to the custody of the Division of Youth Services.

(B) In such case, if the youth completes the program of the

Division of Youth Services satisfactorily, the Division of Youth Services shall return him or her to the sentencing court and provide the court with a written report of the youth's progress and a recommendation that he or she be placed on probation.

(C) In the event that the youth violates the rules of the Division's program or facility or is otherwise not amenable to the Division's rehabilitative efforts, the Division may return him or her to the sentencing court with a written report of the youth's conduct and a recommendation that he or she be transferred to the Department of Correction.

(D) If the court finds that the juvenile has violated the rules of the Division of Youth Services' program or facility, or is otherwise not amenable to the Division's rehabilitative efforts, it shall then revoke the suspension of the sentence originally imposed and commit the youth to the Department of Correction.

SECTION 9. Arkansas Code 5-4-402 is amended by adding an additional subsection to read as follows:

(e)(1) With the consent and approval of the Division of Youth Services, the Department of Correction may transfer from the Department of Correction to the Division of Youth Services any inmate under the age of eighteen (18) years who, in the opinion of the Department of Correction and the Division of Youth Services is more suited and adaptable by age, physical size, and temperament to the programs of the Department of Human Services.

(2) Inmates transferred to the Division of Youth Services shall be segregated from the general delinquency population housed at the Division of Youth Services. In the event that the youth violates the rules of the division's program or facility, or is otherwise not amenable to the Division's rehabilitative efforts, the Division may return the inmate to the Department of Correction.

(3) All inmates transferred to the Division of Youth Services under this subsection shall be returned to the Department of Correction on their eighteenth (18<sup>th</sup>) birthday."

**The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_**

**By: Senator Gullett**

**LH/RRS**

**RRS247**

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**Secretary**