

State of Arkansas

76th General Assembly

Regular Session, 1987

HOUSE BILL 1357

By: Representatives Pollan, Shaver,
and Mahony et al

" AN ACT TO TRANSFER TO THE JUVENILE DIVISION OF THE CIRCUIT COURT OF EACH COUNTY THE JURISDICTION NOW VESTED IN THE JUVENILE COURT, AND IN THE COUNTY JUDGE AS JUDGE OF THE JUVENILE COURT, WITH RESPECT TO JUVENILE DELINQUENCIES AND VIOLATIONS OF THE CRIMINAL LAWS OF THIS STATE COMMITTED BY JUVENILES WHO ARE TO BE TRIED IN JUVENILE COURT; TO TRANSFER TO A JUVENILE DIVISION OF THE PROBATE COURT OF EACH COUNTY THE JURISDICTION NOW VESTED IN THE JUVENILE COURT, AND IN THE COUNTY JUDGE AS JUDGE OF THE JUVENILE COURT, WITH RESPECT TO JUVENILES IN NEED OF SUPERVISION AND DEPENDENT-NEGLECTED JUVENILES; TO PROVIDE THAT ALL POWERS, FUNCTIONS, AND DUTIES VESTED IN JUVENILE COURTS UNDER THE PROVISIONS OF THE ARKANSAS JUVENILE CODE OF 1975 AND UNDER THE PROVISIONS OF OTHER LAWS OF THIS STATE PERTAINING TO JUVENILES WHICH REQUIRE THAT SAID MATTERS BE WITHIN THE JURISDICTION OF JUVENILE COURT, SHALL HEREAFTER BE VESTED IN AND ADMINISTERED BY A JUVENILE DIVISION OF THE CIRCUIT COURT AND A JUVENILE DIVISION OF THE PROBATE COURT OF EACH COUNTY, AS PROVIDED IN THIS ACT; AND FOR OTHER PURPOSES."

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

SECTION 1. INTENT AND PURPOSE. In the case of Walker v. Arkansas Department of Human Services (86-184), Opinion delivered January 20, 1987, the Supreme Court of Arkansas ruled the "juvenile court", which was established within the county court, to be presided over by the county judge of each county, as originally established by Act 215 of 1911 and as re-established under the provisions of the Arkansas Juvenile Code of 1975 (Act 451 of 1975, as amended), to be unconstitutional.

The General Assembly recognizes that the impact of such decision upon the

administration of the juvenile justice system of this State creates a state of urgency necessitating the immediate designation of an appropriate court or courts within the judicial structure of this State to exercise jurisdiction over juvenile matters formerly vested in the juvenile court, until such time as more permanent provisions will be made for the administration of juvenile justice in this State. It is, therefore, the intent of this Act to transfer and vest all powers, functions, and duties now vested by law in the juvenile court, and in the county judge as judge of the juvenile court, to a juvenile division to be established within the circuit court of each county, and to a juvenile division to be established within the probate court of each county, with each such division to be assigned the jurisdiction over juvenile matters as provided in this Act, to be administered by said divisions until such time as otherwise provided by law.

SECTION 2. (a) From and after the effective date of this Act, all jurisdiction, powers, functions, and duties of the juvenile court and of the county judge as judge of the juvenile court, as provided in the Arkansas Juvenile Code of 1975 and laws amendatory and supplemental thereto, with respect to juvenile delinquents, are hereby transferred to and vested in a juvenile division of the circuit court of each county, which is hereby created, to be presided over by the circuit judge of each county.

(b) All matters pertaining to juvenile delinquency and violations of the criminal laws of this State committed by juveniles now pending on the dockets of the respective juvenile courts of this State, and all matters pertaining to juvenile delinquency or violations of the criminal laws of this State committed by juveniles from and after the effective date of this Act, shall hereafter be placed on the docket of the juvenile division of the circuit court of the county in which the case is filed, to be tried by the circuit judge as judge of the juvenile division of the circuit court.

SECTION 3. (a) From and after the effective date of this Act, all jurisdiction, powers, functions, and duties of the juvenile court and of the county judge as judge of the juvenile court, as provided in the Arkansas Juvenile Code of 1975 and laws amendatory and supplemental thereto, with respect to "juveniles in need of supervision" and "dependent-neglected juveniles", are hereby transferred to and vested in a juvenile division of the

probate court of each county, which is hereby created, to be presided over by the probate judge of each county.

(b) All matters pertaining to juveniles in need of supervision and pertaining to dependent-neglected juveniles, and all other matters pertaining to juveniles, other than juvenile delinquency and violations of criminal laws by juveniles, which are declared by law to be within the jurisdiction of the juvenile courts of this State, now pending on the dockets of the respective juvenile courts, and all such matters that arise hereafter, shall be placed on the dockets of the juvenile division of the probate court of the county and shall be tried by the probate judge, acting as judge of the juvenile division of the probate court of the county.

SECTION 4. As used in this Act, the terms "juvenile", "delinquent juvenile", "juvenile in need of supervision", and "dependent-neglected juvenile" shall have the meanings as provided in subsections (1), (2), (3), and (4), respectively, of Section 3 of Act 451 of 1975, as amended. The term "court" as defined in subsection (5) of Section 3 of Act 451 of 1975, as amended, shall hereafter mean the juvenile division of the circuit court and the juvenile division of the probate court of each county, each of which shall exercise the jurisdiction with respect to juvenile matters as assigned to their respective courts under the provisions of this Act. The term "judge" as defined in subsection (6) of Section 3 of Act 451 of 1975, as amended, shall hereafter mean the judge of the juvenile division of the circuit court and the judge of the juvenile division of the probate court, respectively, of each county, each of whom shall exercise the jurisdiction with respect to juvenile matters as assigned to their respective divisions under the provisions of this Act.

Whenever the term "juvenile court" or "juvenile courts" are used in the Arkansas Juvenile Code of 1975, and any laws amendatory or supplemental thereto, or under the provisions of other laws of this State, said terms shall hereafter be construed to mean the juvenile division of the circuit court and the juvenile division of the probate court, acting within their respective jurisdictions over juvenile matters, as provided in this Act.

Whenever the term "juvenile court" or "juvenile judge" or "judge of the juvenile court", or the term "judge" is used in the laws of this State pertaining to juvenile matters to be tried in the juvenile court, said term shall

hereafter be construed to mean the judge of the juvenile division of the circuit court and the judge of the juvenile division of the probate court of each county, acting within their respective jurisdictions over juvenile matters.

As used in this Act, the term "Arkansas Juvenile Code of 1975" shall mean Act 451 of 1975 and all laws or parts of laws amendatory or supplemental thereto.

SECTION 5. (a) The juvenile division of the circuit court and the juvenile division of the probate court of each county shall be administered, within their respective jurisdictions, in the same manner and procedures as provided in the Arkansas Juvenile Code of 1975, as amended, and shall be operated in accordance with the procedures prescribed by law for the operation of juvenile courts, and said divisions shall follow the same rules of evidence and the rules of criminal and civil procedures as are applicable to matters in the circuit court and the probate court that are not inconsistent with procedures as provided in the Arkansas Juvenile Code of 1975, as amended.

(b) In those counties in this State in which there are more than two divisions of circuit court and more than two divisions of chancery and probate court, the circuit judges of the various divisions of circuit court in said counties may designate, by a majority vote, the judge of one of their number to whom may be referred all cases filed in the juvenile division of the circuit court of said counties, and the probate judges in said counties may, by a majority vote, designate one of their number to whom may be referred all cases filed in the juvenile division of the probate court.

SECTION 6. That Section 8 of Act 451 of 1975, as amended, the same being Section 45-408 of the Arkansas Statutes, is hereby amended to read as follows:

"Section 8. The circuit judge in each of the several counties shall be judge of the juvenile division of the circuit court, and the judge of the probate court in each of the several counties shall be judge of the juvenile division of the probate court.

The judge or judges of the juvenile division of the circuit court and the juvenile division of the probate court of each county may, by joint agreement, designate and appoint a referee or master (whenever the term "referee" is used

in this Act, said term shall also include and mean the term "master"), who shall have such power as may be granted by the judges of said divisions to hear juvenile cases within the jurisdiction of their respective courts, and submit recommendations to the judges of their respective divisions. Provided however, that in any county in this State in which there are more than two divisions of the chancery court, and in which two referees are now provided, the circuit judges of said county may, by a majority vote of their number, designate a referee (or master) to serve as referee (or master) of the juvenile division of the circuit court, and the judges of the probate courts of said county may, by majority vote of their number, select a referee (or master), who shall serve as referee (or master) of the juvenile division of the probate court of said county.

A referee (or master) so designated shall have all the authority and powers of the judges of their respective divisions, but all orders arising from cases referred to the referee (or master) shall be issued by the judges of their respective divisions, and in no event shall the referee (or master) have the authority to issue a final order with respect to any matter referred to them. Provided, however, that the respective judges of the juvenile division of the circuit court and of the juvenile division of the probate court may authorize the referee (or master) to enter temporary orders in emergencies or under special circumstance, as authorized by such judge, which shall become final only on the approval and signature of the judge of the court from which such order is issued."

SECTION 7. That Section 9 of Act 451 of 1975, as amended, the same being Section 45-409 of the Arkansas Statutes, is hereby amended to read as follows:

"Section 9. Every referee appointed after the effective date of this Act shall be an attorney licensed to practice law in this State."

SECTION 8. The quorum court of each county is hereby authorized to appropriate funds to be jointly used by the judges of the juvenile divisions of the circuit court and probate court of the county, for the employment of referees (or masters), probation officers, and other support personnel necessary to assist such divisions in the performance of their duties under this Act. Provided, it shall be the duty of the county judge of each county in this State and of the quorum court of each county in this State, to

appropriate and make available to the juvenile division of the circuit court and the juvenile division of the probate court of their respective counties an amount of financial support for the 1987 county fiscal year and for each county fiscal year hereafter, which shall not be less than the amount appropriated for the support of the juvenile court of such county for the 1987 county fiscal year. Buildings and other space and facilities now provided for use of or in support of the juvenile court, and support personnel of the juvenile court and for custody or services for juveniles, provided under the jurisdiction of the juvenile court, shall continue to be available to the juvenile division of the circuit court and the juvenile division of the probate court in the performance of their duties under this Act. If the judge or judges of the juvenile division of the circuit court and the judge or judges of the juvenile division of the probate court shall determine that additional space is necessary for the performance of their duties under this Act, said judges may, by joint agreement, direct the county judge and the quorum court of the county to provide space deemed adequate for such purposes.

The selection and appointment of referees (or masters), probation officers, and other support personnel of the juvenile division of the circuit court and the juvenile division of the probate court of each county, and the assignment of their respective duties, shall be upon mutual and joint agreement of the respective judges of said divisions, provided that in those counties now having two referees, such referees shall be selected in the manner provided in Section 8 of Act 451 of 1975, as amended by Section 6 of this Act.

If any county in this State shall fail to appropriate and make available an aggregate amount of county funds to be used jointly by the judges of the juvenile division of the circuit court and the juvenile division of the probate court for the employment of referees (or masters) and support personnel of their respective divisions, as was appropriated and provided for the support of the juvenile court of the county for the 1987 county fiscal year, and fails to provide in each year thereafter similar support in an amount not less than the amount provided in the 1987 county fiscal year, said fact shall be certified by the judges of such divisions to the Treasurer of the State of Arkansas, who shall withhold from any general revenues turnback funds to the county the amount thereof. All such amounts so withheld shall be distributed by the State Treasurer to the treasurer of the county, to be made available

solely for the joint use by the judges of the juvenile division of the circuit court and of the juvenile division of the probate court for the employment, in the manner provided herein, of referees (or masters) and other support personnel of the juvenile divisions in the same manner as if said funds had been provided by the county.

SECTION 9. The laws of this State pertaining to fees to be collected for cases filed in the circuit court and in the probate court of each county shall not be applicable to cases filed in the juvenile division of the circuit court and the juvenile division of the probate court, and the amount of fees, if any, to be charged in cases filed in the juvenile division of the circuit court and in the juvenile division of the probate court shall be the same as now provided by law for cases filed in the juvenile court.

SECTION 10. (a) The docket pertaining to cases and matters of juvenile delinquency and violations of the criminal laws of this State committed by juveniles, now pending in the respective juvenile courts of this State which are in the custody of the county clerk of each county shall, upon the passage of this Act, be transferred to the circuit clerk of the county, who shall hereafter serve as the clerk of the juvenile division of the circuit court, and who shall maintain a separate docket of matters filed in said division in the same manner as is now required by law for cases filed in the juvenile courts.

(b) The docket of all other matters pertaining to juveniles other than juvenile delinquency and violations of the criminal laws of this State committed by juveniles, which are declared by law to be within the jurisdiction of the juvenile courts of this State, shall be retained by the county clerk of each county, who shall hereafter serve as the clerk of the juvenile division of the probate court and who shall maintain a separate docket of matters filed in the juvenile division of the probate court in the same manner as now required by law for cases filed in the juvenile courts.

Provided that, in those counties in this State having a chancery clerk separate and apart from the circuit clerk, instead of the county clerk retaining the docket of juvenile cases covered by this subsection, all such cases shall be transferred by the county clerk to the chancery clerk of the

county, who shall hereafter serve as clerk of the juvenile division of the probate court and who shall maintain a separate docket of matters filed in the juvenile division of the probate court in the same manner as now required by law for cases filed in the juvenile court.

SECTION 11. That Section 40 of Act 451 of 1975, as amended, the same being Section 45-440 of the Arkansas Statutes, is hereby amended to read as follows:

"Section 40. Appeals from any decision of the judge of the juvenile division of the circuit court or the judge of the juvenile division of the probate court on the record of findings of fact and conclusions of law may be taken to the Supreme Court of Arkansas in the same manner and procedure as is now provided by law for appeals filed from their respective courts."

SECTION 12. That Section 42 of Act 451 of 1975, as amended, the same being Section 45-442 of the Arkansas Statutes, is hereby amended to read as follows:

"Section 42. All hearings held in the juvenile division of the circuit court and in the juvenile division of the probate court under the provisions of this Act shall be open or closed to the public at the discretion of the court."

SECTION 13. That Section 617 of Act 280 of 1975, as amended, the same being Section 41-617 of the Arkansas Statutes, is hereby amended to read as follows:

"Section 617. (1) A person shall not be tried for, or convicted of, an offense if he was fourteen (14) years of age or less at the time of the conduct alleged to constitute the offense. In such case, the juvenile division of the circuit court shall have exclusive jurisdiction except as otherwise provided in subsection (2) of this Section.

(2) If a person was at least fifteen (15) years of age, but less than eighteen (18) years of age, at the time of the conduct alleged to constitute an offense, he may be charged either in the circuit or municipal court, or in the juvenile division of the circuit court. If he is charged in circuit or municipal court, such court may enter an order waiving jurisdiction, and transfer the proceedings to the juvenile division of the circuit court.

If a person fourteen (14) years of age commits first degree murder, second degree murder, or rape, such person may be prosecuted by the prosecuting attorney at his discretion, or if the prosecutor does not choose to prosecute such person, proceedings shall be instituted against such person in the appropriate juvenile division of the circuit court.

(3) In any case where the age of a person charged with the commission of an offense becomes an issue, the court before which the proceeding is pending shall hold a hearing, and the burden shall be on the person charged to establish age to the satisfaction of the court. If the court determines that because of age the proceeding is barred or referral to the juvenile division of the circuit court is appropriate, custody of the person charged shall be surrendered to the juvenile division of the circuit court, and the case, including all papers and processes relating thereto, shall be transferred.

(4) This Section shall not apply to persons charged with traffic offenses."

SECTION 14. The provisions of this Act shall cease to be in force and effect at midnight of the date of the sine die adjournment of the Seventy-Seventh Regular Session of the General Assembly of the State of Arkansas, unless otherwise specifically provided by law.

SECTION 15. EMERGENCY. It is hereby found and determined by the General Assembly that the Supreme Court of the State of Arkansas has declared the juvenile court as now constituted to be unconstitutional, and the immediate passage of this Act is necessary in order to transfer jurisdiction from the juvenile court to a juvenile division of the circuit court and a juvenile division of the probate court of each county, in order that there be an orderly and efficient administration of the juvenile justice system of this State, and that the immediate passage of this Act is necessary to accomplish such purpose. Therefore, an emergency is hereby declared to exist, and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

