

As Engrossed: 8/16/94 8/17/94 8/24/94

1 **State of Arkansas**

Call Item No. 8

2 **79th General Assembly**

A Bill

3 **Second Extraordinary Session, 1994**

HOUSE BILL 1009

4 **By: Representatives M. Wilson, Shaver, Beatty and Pryor**

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For An Act To Be Entitled

8 *"AN ACT TO AMEND ARKANSAS CODE ANNOTATED §9-27-330 TO*
9 *AUTHORIZE THE COMMITMENT OF DELINQUENT JUVENILES TO*
10 *JUVENILE DETENTION FACILITIES; TO AMEND ARKANSAS CODE 9-*
11 *27-331 TO INCREASE THE CAP ON THE AMOUNT A JUVENILE CAN BE*
12 *REQUIRED TO PAY AS RESTITUTION; TO DECLARE AN EMERGENCY;*
13 *AND FOR OTHER PURPOSES."*

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Subtitle

16 *"TO AUTHORIZE COMMITMENT OF DELINQUENT*
17 *JUVENILES TO JUVENILE DETENTION*
18 *FACILITIES; TO INCREASE THE CAP ON THE*
19 *AMOUNT A JUVENILE CAN BE REQUIRED TO PAY*
20 *AS RESTITUTION."*

21

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

23

24 *SECTION 1. Arkansas Code 9-27-330 is amended to read as follows:*

25 *"9-27-330. Disposition - Delinquency - Alternatives.*

26 *(a) If a juvenile is found to be delinquent, the court may enter an*
27 *order making any of the following dispositions:*

28 *(1) Transfer legal custody of the juvenile to the Department of*
29 *Human Services, or to another licensed agency responsible for the care of*
30 *juveniles, or to a relative or other individual;*

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

33 *(3) Commit the juvenile to a youth services center operated by*
34 *the Youth Services Board, using the Risk Assessment System for Arkansas*
35 *Juvenile Offenders developed by the 1990 Youth Services Center Commitment*

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1 Criteria Review Committee to be distributed and administered by the
2 Administrative Office of the Courts;

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

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

11 (4) Place the juvenile on probation under those conditions and
12 limitations that the court may prescribe pursuant to §9-27-339(a). In
13 addition the court shall have the right, as a term of probation, to require
14 the juvenile to attend high school or make satisfactory progress toward a GED.
15 The court shall have the right to revoke probation if the juvenile fails to
16 regularly attend high school classes or if satisfactory progress toward a GED
17 is not being made;

18 (5) Order a probation fee, not to exceed twenty dollars (\$20.00)
19 per month, as provided in Arkansas Code Annotated 16-13-326;

20 (6) Assess a court cost of no more than thirty-five dollars
21 (\$35.00) to be paid by the juvenile, his parent, both parents, or guardian;

22 (7) Order restitution to be paid by the juvenile, a parent, both
23 parents, the guardian or custodian. If the custodian is the State of
24 Arkansas, both liability and the amount which may be assessed shall be
25 determined by the Arkansas Claims Commission;

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

28 (9) Order that the juvenile participate in court-approved public
29 service not to exceed one hundred sixty (160) hours;

30 (10) Order that the juvenile remain in a juvenile detention
31 facility for an indeterminate period not to exceed ninety (90) days. The
32 court may further order that the juvenile be eligible for work release or to
33 attend school or other educational or vocational training. The juvenile
34 detention facility shall afford opportunities for education, recreation, and
35 other rehabilitative services to adjudicated delinquents;

1 (11) Place the juvenile on residential detention with electronic
2 monitoring, either in the juvenile_s home or in another facility as ordered by
3 the court;

4 (12) Order the parent, both parents, or the guardian of any
5 juvenile adjudicated delinquent and committed to a youth services center,
6 detained in a juvenile detention facility or placed in foster care to be
7 liable for the cost of the commitment, detention or foster care.

8 (A) The court shall take into account the financial ability
9 of the parent, both parents, or the guardian to pay for such commitment,
10 detention or foster care.

11 (B) The court shall take into account the past efforts of
12 the parent, both parents, or the guardian to correct the delinquent juvenile_s
13 conduct;

14 (C) The court shall take into account if the parent is a
15 non-custodial parent, the court may take into consideration the opportunity
16 the parent has had to correct the delinquent juvenile_s conduct;

17 (D) The court shall take into account any other factors the
18 court deems relevant.

19 (b) The juvenile court shall specifically retain jurisdiction to amend
20 or modify any orders entered pursuant to subsection (a)(4) through (a)(12).

21 (c) If a juvenile is adjudicated delinquent for possession of a
22 handgun as provided in Arkansas Code Annotated Section 5-73-119, or criminal
23 use of a prohibited weapon as provided in Arkansas Code Annotated Section
24 5-73-104, or possession of a defaced weapon as provided in Arkansas Code
25 Annotated Section 5-73-107, the court shall commit the juvenile to a juvenile
26 detention facility as provided in subsection (a)(10) above, or to a youth
27 services center operated by the Youth Services Board as provided in subsection
28 (a)(3) above or place the juvenile on residential detention as provided in
29 subsection (a)(11) above. The court may take into consideration any
30 preadjudication detention period served by the juvenile and sentence the
31 juvenile to such time served.

32 (d) When the court orders restitution pursuant to (a)(7) above, the
33 court shall consider the following:

34 (1) The amount of restitution may be decided

35 (A) If the juvenile is to be responsible for the

1 restitution, by agreement between the juvenile and the victim; or

2 (B) If the parent or parents are to be responsible for the
3 restitution, by agreement between the parent or parents and the victim; or

4 (C) If the juvenile and the parent or parents are to be
5 responsible for the restitution, by agreement between the juvenile, parent or
6 parents, and the victim; or

7 (D) At a hearing at which the prosecutor must prove the
8 restitution amount by a preponderance of the evidence.

9 (2) Restitution shall be made immediately, unless the court
10 determines that the parties should be given a specified time to pay or should
11 be allowed to pay in specified installments.

12 (3) In determining if restitution should be paid and by whom, as
13 well as the method and amount of payment, the court shall take into account:

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

17 (B) The ability to pay restitution on an installment basis
18 or on other conditions to be fixed by the court;

19 (C) The rehabilitative effect of the payment of restitution
20 and the method of payment; and

21 (D) The past efforts of the parent, both parents, or the
22 guardian to correct the delinquent juvenile_s conduct.

23 (E) The court shall take into account if the parent is a
24 non-custodial parent, the court may take into consideration the opportunity
25 the parent has had to correct the delinquent juvenile_s conduct;

26 (F) The court shall take into account any other factors the
27 court deems relevant.

28 (4) If the juvenile is placed on probation, any restitution
29 ordered under this section may be a condition of the probation.

30 (5) When an order of restitution is entered it may be collected by
31 any means authorized for the enforcement of money judgments in civil actions
32 and it shall constitute a lien on the real and personal property of the
33 persons and entities the order of restitution is directed upon in the same
34 manner and to the same extent as a money judgment in a civil action.

35 (6) The judgment entered by the court may be in favor of the

1 state, the victim, or any other appropriate beneficiary. The judgment may be
2 discharged by a settlement among the parties ordered to pay restitution and
3 the beneficiaries of the judgment.

4 (7) The court shall determine priority among multiple
5 beneficiaries on the basis of the seriousness of the harm each suffered, their
6 other resources, and other equitable factors.

7 (8) If more than one juvenile is adjudicated delinquent of an
8 offense for which there is a judgment under this section, the juveniles are
9 jointly and severally liable for the judgment unless the court determines
10 otherwise.

11 (9) A judgment under this section does not bar a remedy available
12 in a civil action under other law.

13 (10) A payment under this section must be credited against a money
14 judgment obtained by the beneficiary of the payment in a civil action.

15 (11) A determination under this section and the fact that payment
16 was or was not ordered or made are not admissible in evidence in a civil
17 action and do not affect the merits of the civil action."
18

19 SECTION 2. Subsection (d) of Arkansas Code 9-27-331 is amended to read
20 as follows:

21 "(d) (1) An order of restitution, not to exceed ten thousand dollars
22 (\$10,000), to be paid by the juvenile, his parent, both parents, the guardian
23 or custodian may be entered only after proof by a preponderance of the
24 evidence that specific damages were caused by the juvenile and that the
25 juvenile_s actions are the proximate cause of the damage.

26 (2) If the amount of restitution exceeds ten thousand dollars
27 (\$10,000), the juvenile, the parent, both parents, the guardian or custodian
28 shall be afforded the right of trial by jury on all issues of liability and
29 damages, pursuant to Section 1 (d) (9)."
30

31 SECTION 3. Arkansas Code 16-13-326 is amended to read as follows:

32 "16-13-326. Fee - Disposition of funds.

33 (a) The judge of the juvenile division of chancery court may charge a
34 juvenile a fee, not to exceed twenty dollars (\$20.00) per month, for services
35 provided to juveniles by the court.

1 (b) Funds derived from the fee shall be deposited in the county
2 treasury of the county in which probation services are provided. The funds
3 shall be used by agreement of the juvenile division of chancery court and the
4 quorum court of the county to provide services to juveniles at the discretion
5 of the juvenile division of chancery court."
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7 SECTION 4. The Arkansas Department of Education, General Education
8 Division and Vocational and Technical Division, are hereby directed to prepare
9 recommendations for the education of juveniles detained in adult or juvenile
10 facilities in the State of Arkansas, including but not limited to,
11 recommendations concerning enrollment in a public school or an adult education
12 program by juveniles granted a suspended sentence or probation. The Directors
13 of both Divisions shall report these recommendations to the Joint Interim
14 Committed on Judiciary and Education no later than December 1, 1994.
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16 SECTION 5. All provisions of this act of a general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.
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20 SECTION 6. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.
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26 SECTION 7. All laws and parts of laws in conflict with this act are
27 hereby repealed.
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29 SECTION 8. EMERGENCY. It is hereby found and determined by the General
30 Assembly that in order to address the problem of juvenile crime it is
31 necessary to authorize the commitment of delinquent juveniles to juvenile
32 detention facilities; that present law now limits to two thousand dollars
33 (\$2,000) the amount a juvenile can be required to pay as restitution to
34 victims, and that amount is becoming increasingly too low; that this act
35 remedies both situations and should go into effect immediately in order to

1 better protect the citizens of this state from the acts of delinquent
2 juveniles and more adequately compensate the victims through restitution.
3 Therefore, an emergency is hereby declared to exist, and this act being
4 immediately necessary for the preservation of the public peace, health, and
5 safety shall be in full force and effect from and after its passage and
6 approval.

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/s/Rep. M. Wilson, et al