

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/29/99

A Bill

SENATE BILL 915

5 By: Senator Ross
6 By: Representatives Madison, Napper, Ferrell, Davis, Hale
7

For An Act To Be Entitled

10 "AN ACT TO CREATE THE JUVENILE OMBUDSMAN DIVISION
11 WITHIN THE ARKANSAS PUBLIC DEFENDER COMMISSION; AND
12 FOR OTHER PURPOSES. "

Subtitle

15 "TO CREATE THE JUVENILE OMBUDSMAN
16 DIVISION WITHIN THE ARKANSAS PUBLIC
17 DEFENDER COMMISSION. "

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

21
22 SECTION 1. For purposes of this Act, the following definitions shall
23 apply:

24 (1) "Executive Director" means the Executive Director of the Arkansas
25 Public Defender Commission;

26 (2) "DYS" means the Division of Youth Services of the Department of
27 Human Services;

28 (3) "Juvenile" means any juvenile who has been committed to the custody
29 of DYS pursuant to a disposition order of a Juvenile Division of a
30 Circuit/Chancery Court;

31 (4) "Best interests of the juvenile" include those actions and courses
32 of action which keep the juvenile safe from physical, mental, or sexual abuse
33 while in state custody; carry out the court's disposition plan; and work
34 toward rehabilitating the juvenile.

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36 SECTION 2. (a) It is the intent of the General Assembly to create a

1 Juvenile Ombudsman Division to provide for an independent oversight mechanism
2 of the secure facilities, to which many juveniles are committed once placed in
3 state custody pursuant to a disposition order.

4 (b) Effective July 1, 1999, there shall be created within the Arkansas
5 Public Defender Commission a Juvenile Ombudsman Division.

6 (c) Within this Division, there shall be regional offices located in the
7 geographic vicinity of the facilities to which juveniles in DYS custody have
8 been committed.

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10 SECTION 3. (a) The Executive Director shall appoint each juvenile
11 ombudsman and select a chief ombudsman to assist in administration of the
12 program.

13 (b) The minimum qualifications for a juvenile ombudsman shall be as
14 follows:

15 (1) A master's degree in social work, psychology, law or related
16 field, or

17 (2) A bachelor degree in social work, psychology, law or related
18 field, and four years direct experience in programs serving juvenile offenders
19 and their families.

20 (c) Support staff for each regional office shall be hired by the
21 Executive Director.

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23 SECTION 4. (a) Each juvenile committed to a secure DYS facility shall
24 be appointed a juvenile ombudsman.

25 (b) The powers and duties of the juvenile ombudsman shall be as follows:

26 (1) Initiate and maintain contact with the juvenile throughout the
27 juvenile's custodial placement and for a period of up to six (6) months
28 following the juvenile's release from state custody;

29 (2) Explain the disposition and the treatment plan to the juvenile
30 and the juvenile's family and what is expected of the juvenile and the family;

31 (3) Work with DYS and other persons involved in the treatment plan
32 to ensure that the letter and spirit of the court's orders are carried out,
33 including, but not limited to, meeting with treatment teams as needed and
34 appropriate;

35 (4) Document the juvenile's questions, complaints, and concerns
36 and seek answers to those questions and address the complaints and concerns in

1 an expedient manner;

2 (5) Request and review, as needed, all records on the history and
3 treatment of the juvenile, including family and foster care history as well as
4 any previous DYS custodial placements;

5 (6) Maintain frequent contact and/or communication with the
6 following:

7 (A) The juvenile;

8 (B) The juvenile's family;

9 (C) DYS officials including, but not limited to school and
10 treatment staff of DYS and private entities involved in the custody and care
11 of the juvenile;

12 (D) The court having jurisdiction over the juvenile, in the
13 form of progress reports, to be submitted at least every forty-five (45) days;
14 and

15 (E) The executive director;

16 (7) Identify instances where necessary services are not being
17 provided or are not being provided in an appropriate manner. When such a
18 problem is identified, the ombudsman shall:

19 (A) Notify the Director of DYS, the juvenile court having
20 jurisdiction and the juvenile's attorney(s) of the problem; and

21 (B) Seek to mediate an appropriate solution which is
22 consistent with the orders of the court and in the best interests of the
23 juvenile;

24 (8) Make unannounced visits to the DYS facilities in the
25 ombudsman's region, whether state-run or privately operated facilities, to
26 assure the safety and well-being of the juveniles;

27 (9) Upon receipt of a complaint, the ombudsman shall follow the
28 Child Maltreatment Act in reporting the complaint to:

29 (A) The executive director;

30 (B) The Arkansas State Police; and

31 (C) The DYS Director, who shall be responsible for ensuring
32 that the juvenile is immediately sequestered to an area of safety; and

33 (10) Prepare annual reports on the overall functioning of each
34 facility in the ombudsman's region, to be submitted to the Executive Director,
35 the juvenile court, the DYS Director, the House Interim Committee on Aging,
36 Children & Youth, Legislative & Military Affairs and the Senate Interim

1 Committee on Children and Youth, and the Governor.

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3 SECTION 5. All matters under investigation by the office of the
4 juvenile ombudsman shall be confidential. However, disclosure may be
5 necessary to perform the duties of the office and to support recommendations
6 resulting from the investigation.

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8 SECTION 6. (a) The Executive Director shall operate the Juvenile
9 Ombudsman Division in such a manner that the respective juvenile ombudsmen
10 shall not be deemed to be a part of the same office for purposes of
11 appointments in conflict of interest situations.

12 (b) In a situation in which there is convincing physical evidence to
13 support an allegation of abuse by a juvenile which stems from involvement with
14 another juvenile assigned to the same ombudsman, the ombudsman shall notify
15 the Executive Director of the conflict situation.

16 (2) The Executive Director shall then assign a temporary ombudsman
17 from within the system, or, if necessary, appoint a temporary ombudsman from
18 outside the system, for each juvenile involved, until the situation is
19 resolved.

20 (3) In the event a temporary ombudsman is appointed from outside
21 the Juvenile Ombudsman Division, compensation for the temporary ombudsman
22 shall be paid by the Arkansas Public Defender Commission.

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24 SECTION 7. (a) A comprehensive outside evaluation of the Juvenile
25 Ombudsman Division shall be conducted by an independent organization with
26 established expertise in this area in the last quarter of the fiscal year 2003
27 to determine the ability of the Division to carry out its purpose.

28 (b) The independent organization shall be selected by the House Interim
29 Committee on Children and Youth, Legislative and Military Affairs and the
30 Senate Interim Committee on Children and Youth, and the organization shall
31 present its report to the two (2) interim committees. The organization shall
32 provide a copy to the Director of the Department of Human Services, the
33 Director of the Division of Youth Services, and the Executive Director of the
34 Arkansas Public Defender Commission.

35 (c) The evaluation shall be paid by the Arkansas Public Defender
36 Commission.

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SECTION 8. Arkansas Code 16-87-203(a) is amended by adding a new subdivision pertaining to the powers and duties of the Arkansas Public Defender Commission to read follows:

"(a) The commission shall have the following powers and duties:

- (1) To establish policies and standards for the public defender system throughout the state, including standards for determining who qualifies as an indigent person;
- (2) To establish policies and standards for the organization and operation of public defender's offices throughout the state, including funding, compensation, staffing, and standards of experience for attorneys assigned to particular cases;
- (3) To allocate personnel for each public defender's office throughout the state;
- (4) To require annual reports regarding expenditures, caseloads, and status of cases from each public defender;
- (5) To evaluate the performance of the Executive Director of the Arkansas Public Defender Commission, the Capital, Conflicts, and Appellate Office, the Trial Public Defender Office, each public defender, and private attorneys assigned to represent indigent persons;
- (6) To approve the reassignment of cases from one public defender to another public defender in an adjacent area for the purpose of avoiding conflicts or adjusting caseloads;
- (7) To approve the purchase, rental, and sharing of office space, equipment, or personnel among public defenders in the event and to the extent such items have been provided through an appropriation of the General Assembly;
- (8) To establish employee personnel policies for the commission and the public defenders;
- (9) To accept and to authorize a public defender to accept moneys, gifts, grants, or services from any public or private source;
- (10) To enter and authorize a public defender to enter into contracts with individuals, educational institutions, nonprofit associations, or state or federal agencies, including contracts for the provision of legal services related to the defense of indigent persons;
- (11) To maintain for each judicial district a current list of

1 private attorneys who are willing to accept court appointments and who meet
2 any other qualifications established by the commission; ~~and~~

3 (12) To maintain a separate list of private attorneys who are
4 willing to accept court appointments in capital cases and who meet any other
5 qualifications established by the commission; and

6 (13) To oversee the Juvenile Ombudsman Division."

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8 SECTION 9. Arkansas Code 16-87-204(b) is amended to read as follows:

9 "(b) The executive director shall have the following powers and duties:

10 (1) To supervise the operations of the Capital, Conflicts, and
11 Appellate Office, and the Trial Public Defender Office;

12 (2) To maintain records of the operation of the public defender
13 system, including, but not limited to, the following:

14 (A) Detailed descriptions of the organization of each
15 public defender's office;

16 (B) The caseload of each public defender's office,
17 including cases assigned to private attorneys;

18 (C) Budgets and actual expenditures of the commission and
19 each public defender's office;

20 (D) Reassignment of cases from one public defender to
21 another public defender in an adjacent area; and

22 (E) Assignment of cases to private attorneys.

23 (3) To present to the commission within ninety (90) days after
24 the end of the fiscal year an annual report on the operation of the public
25 defender system which shall include an accounting of all funds received and
26 disbursed, an evaluation of the cost-effectiveness of the public defender
27 system, and recommendations for improvement;

28 (4) To prepare a budget for the operations of the commission;

29 (5) To allocate and disburse funds appropriated for the
30 operations of the commission and the public defender system pursuant to
31 guidelines established by the commission;

32 (6) To allocate public defenders, investigators, and secretary
33 positions to the office of the public defender in each county or judicial
34 district, based upon a formula established by the commission;

35 (7) To establish procedures for evaluating the performance of
36 public defenders and private attorneys participating in the public defender

1 system, pursuant to policies and standards developed by the commission;

2 (8) To appear before and provide assistance to the General
3 Assembly and other relevant bodies regarding matters related to the public
4 defender system;

5 (9) To convene conferences and training seminars related to the
6 public defender system;

7 (10) To compile and disseminate statutes, court opinions, and
8 other information to public defenders and private attorneys participating in
9 the public defender system;

10 (11) To maintain a brief bank for use in connection with appeals;
11 and

12 (12) To perform other duties related to the administration of the
13 public defender system as the commission may direct; and

14 (13) To supervise the operation of the Juvenile Ombudsman Division
15 of the Public Defender Commission, and maintain records of such operation,
16 including but not limited to:

17 (A) Preparation of a budget and record of actual
18 expenditures;

19 (B) Assignment of cases and caseload of each Ombudsman;

20 (C) Evaluation of the performance of each Ombudsman; and

21 (D) Detailed description of the organization of each
22 Juvenile Ombudsman office."

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24 SECTION 10. All provisions of this act of a general and permanent
25 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
26 Code Revision Commission shall incorporate the same in the Code.

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28 SECTION 11. If any provision of this act or the application thereof to
29 any person or circumstance is held invalid, such invalidity shall not affect
30 other provisions or applications of the act which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 act are declared to be severable.

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34 SECTION 12. All laws and parts of laws in conflict with this act are
35 hereby repealed.

36 /s/ Ross, et al