

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: S2/6/01*

# A Bill

SENATE BILL 186

5 By: Senator Gullett  
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## For An Act To Be Entitled

9 AN ACT TO REPEAL OBSOLETE STATUTES RELATING TO THE  
10 DEPARTMENT OF CORRECTION; TO AMEND ARKANSAS CODE 12-  
11 28-403 PERTAINING TO THE COMMITMENT OF CERTAIN  
12 YOUTHFUL OFFENDERS, AND 12-28-404 PERTAINING TO THE  
13 TRANSFER OF INMATES.  
14

## Subtitle

15 TO REPEAL OBSOLETE STATUTES RELATING TO  
16 THE DEPARTMENT OF CORRECTION; TO AMEND  
17 ARKANSAS CODE 12-28-403 PERTAINING TO  
18 THE COMMITMENT OF CERTAIN YOUTHFUL  
19 OFFENDERS, AND 12-28-404 PERTAINING TO  
20 THE TRANSFER OF INMATES.  
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code 12-28-201 is repealed.

27 ~~12-28-201. Cummins Unit.~~

28 ~~The Cummins Unit, commonly referred to as the Cummins State~~  
29 ~~Penitentiary, hereafter shall be designated as the Cummins Unit of the~~  
30 ~~Department of Correction.~~  
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32 SECTION 2. Arkansas Code 12-28-301 and 302 are repealed.

33 ~~12-28-301. Creation.~~

34 ~~There is created and established within the state penitentiary system,~~  
35 ~~under the management and control of the Board of Correction and Community~~  
36 ~~Punishment, a division which shall be designated and known as the Women's Unit~~

1 ~~of the Department of Correction.—~~

2 ~~12-28-302. Existing authority unaffected.—~~

3 ~~Authority relating to terms of confinement and receipt and discharge of~~  
4 ~~women prisoners is not repealed, abridged, or altered by this subchapter,~~  
5 ~~except to the extent that such women prisoners are to be delivered on the~~  
6 ~~premises herein identified.—~~

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8 SECTION 3. ~~Arkansas Code 12-28-401 and 402 are repealed.~~

9 ~~12-28-401. Purpose and construction.—~~

10 ~~(a) It is the expressed intent of the General Assembly to provide~~  
11 ~~within the Department of Correction an institution with competent and~~  
12 ~~qualified staff to allow for the separation of youthful male offenders from~~  
13 ~~the influence of older, more intractable offenders and to provide for~~  
14 ~~appropriate educational and vocational training, counseling, and professional~~  
15 ~~treatment services for youthful offenders.—~~

16 ~~(b) This subchapter shall be liberally construed so as to effectuate~~  
17 ~~its purposes.—~~

18 ~~12-28-402. Establishment—Programs.—~~

19 ~~(a) The Tucker Unit of the Department of Correction shall be~~  
20 ~~established in such a manner as to provide ample opportunities for vocational~~  
21 ~~training, formal education, vocational rehabilitation, and other treatment~~  
22 ~~programs designed to prepare and equip inmates at the institution for~~  
23 ~~productive law-abiding lives upon release therefrom.—~~

24 ~~(b) In connection therewith, the State Board of Vocational Education~~  
25 ~~shall conduct and operate a suitable vocational technical training program at~~  
26 ~~the Tucker Unit of the Department of Correction, and the division of~~  
27 ~~vocational rehabilitation shall establish a rehabilitation program for the~~  
28 ~~benefit of the inmates therein.—~~

29 ~~(c) Everything practicable shall be done to develop the youthful~~  
30 ~~offenders morally, intellectually, and industrially. For these purposes,~~  
31 ~~competent teachers and instructors shall be employed by the Department of~~  
32 ~~Correction.—~~

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

35 ~~12-28-403. Commitment of certain youthful male offenders.—~~

36 ~~(a) All youthful male offenders under the age of eighteen (18) years~~

1 ~~convicted of a felony in the State of Arkansas may, in the discretion of the~~  
 2 ~~sentencing authority, be sentenced to the appropriate division of the~~  
 3 ~~Department of Human Services or to the Tucker Unit of the Department of~~  
 4 ~~Correction.~~

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

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

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

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

25 12-28-404. Transfer of inmate of Tucker Unit.

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

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

1 ~~Department of Human Services.~~

2

3 SECTION 6. Arkansas Code 12-28-405 through 408 are repealed.

4 ~~12-28-405. Rules and regulations.~~

5 ~~The Board of Correction and Community Punishment shall promulgate rules~~  
6 ~~and regulations, to be administered by the Director of the Department of~~  
7 ~~Correction, governing the operation of the Tucker Unit of the Department of~~  
8 ~~Correction.~~

9 ~~12-28-406. Board of Correction authorized to accept gifts, etc.~~

10 ~~The Board of Correction and Community Punishment is authorized to accept~~  
11 ~~gifts, grants, money, real and personal property, federal aid, and such other~~  
12 ~~moneys, gifts, and property as it deems shall be in the best interest of the~~  
13 ~~Tucker Unit of the Department of Correction. The board shall administer the~~  
14 ~~moneys and all property for the purposes for which they are granted so long as~~  
15 ~~it is pursuant to the provisions of this subchapter. 3.~~

16 ~~12-28-407. Rights unaffected.~~

17 ~~No youthful offender who has been committed to the Tucker Unit of the~~  
18 ~~Department of Correction and who has completed his sentence in the reformatory~~  
19 ~~shall be deprived of the right of franchise or be disqualified to testify in~~  
20 ~~any court by reason of the commitment or confinement.~~

21 ~~12-28-408. Aid in escape — Penalty.~~

22 ~~If any person procures the escape of any person confined in the Tucker~~  
23 ~~Unit of the Department of Correction, or aids, abets, or assists in an escape,~~  
24 ~~he shall be deemed guilty of a felony. Upon conviction he shall be punished by~~  
25 ~~imprisonment for a period of not less than two (2) years nor more than five~~  
26 ~~(5) years.~~

27

28 SECTION 7. Arkansas Code 12-28-501 through 507 are repealed.

29 ~~12-28-501. Establishment — Purposes.~~

30 ~~(a) There exists a need within the Department of Correction for a~~  
31 ~~greater diversity in classification for purposes of custody and treatment of~~  
32 ~~convicted felons.~~

33 ~~(b) In order that the department may fulfill these and other~~  
34 ~~legislative mandates, there is established an institution within the~~  
35 ~~Department of Correction for the custody, care, and treatment of youthful male~~  
36 ~~offenders whose age, lack of recurrent criminal behavior, and length of~~

1 ~~sentence make them most amenable to successful rehabilitative programs under~~  
2 ~~minimum security conditions.~~

3 ~~12-28-502. Acquisition of Land—Expenditures.~~

4 ~~(a) The Department of Correction may acquire land by gift or, with the~~  
5 ~~Governor's approval, may lease land from other state agencies to serve as a~~  
6 ~~site for the facilities and programs contemplated by this subchapter.~~

7 ~~(b) The Department of Correction shall not expend any funds out of that~~  
8 ~~department's capital improvements fund for the construction of any buildings~~  
9 ~~for the purposes of this subchapter without prior approval by laws~~  
10 ~~specifically enacted by the General Assembly therefor.~~

11 ~~12-28-503. Treatment program.~~

12 ~~It is the intent of the General Assembly that the Department of~~  
13 ~~Correction shall utilize this youthful offenders treatment facility as an~~  
14 ~~institution:~~

15 ~~(1) Where young men who must be institutionalized may be kept~~  
16 ~~strictly segregated from inmates assigned to the state penitentiary;~~

17 ~~(2) Where a small but highly competent staff may give them the~~  
18 ~~specialized counseling that this classification requires; and~~

19 ~~(3) Where the young men may be usefully occupied in basic~~  
20 ~~vocational and educational training programs to include, but not to be limited~~  
21 ~~to, training in forestry conservation.~~

22 ~~12-28-504. Assignment, commitment, or transfer.~~

23 ~~(a) The Department of Correction may assign inmates who meet criteria~~  
24 ~~established by the department to the youthful offenders treatment facility.~~

25 ~~(b) A person may be incarcerated at the youthful offenders treatment~~  
26 ~~facility who has been committed to the Department of Correction with or~~  
27 ~~without recommendation that he be kept at the youthful offenders treatment~~  
28 ~~facility.~~

29 ~~(c) A person chosen by the Department of Correction as a proper person~~  
30 ~~for confinement at the youthful offenders treatment facility may be~~  
31 ~~transferred from any other institution of the Department of Correction to the~~  
32 ~~youthful offenders treatment facility and from that facility back to another~~  
33 ~~institution at the direction of the commissioner.~~

34 ~~12-28-505. Security.~~

35 ~~(a) The staff shall provide for security adequate to maintain internal~~  
36 ~~order and prevent escapes.~~

1 ~~(b) No inmate shall be allowed to carry a firearm or any other weapon.~~

2 ~~12-28-506. Transportation of released inmate.~~

3 ~~Upon the release of any inmate from youthful offenders treatment~~  
 4 ~~facility, the Department of Correction shall provide transportation for the~~  
 5 ~~inmate to his home, if he is a resident of this state, or to the county from~~  
 6 ~~which he was committed to the department, at the option of the department, and~~  
 7 ~~the cost thereof shall be paid by the department.~~

8 ~~12-28-507. Rights unaffected.~~

9 ~~Upon successful completion of his sentence by discharge from the~~  
 10 ~~youthful offenders treatment facility, no youthful offender shall thereafter~~  
 11 ~~be deprived of the right of franchise or be disqualified to testify in any~~  
 12 ~~court by reason of his commitment or confinement.~~

13  
 14 *SECTION 8. Arkansas Code 5-4-104(e) is amended to read as follows:*

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

18 *(i) Capital murder;*

19 *(ii) Treason;*

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

23 *(iv) Driving while intoxicated;*

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

27 *(vi) Engaging in a continuing criminal enterprise.*

28 *(B)(i) In other cases, the court may suspend imposition of*  
 29 *sentence or place the defendant on probation, in accordance with §§ 5-4-301 -*  
 30 *5-4-311, except as otherwise specifically prohibited by statute.*

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

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

35 *(3) The court may sentence the defendant to a term of*  
 36 *imprisonment and suspend imposition of sentence as to an additional term of*

1 imprisonment, but the court shall not sentence a defendant to imprisonment and  
2 place him on probation, except as authorized by § 5-4-304.

3 ~~(4) [Repealed].~~

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

11 (B) In such case, if the youth completes the program of the  
12 Division of Youth Services satisfactorily, the Division of Youth Services  
13 shall return him or her to the sentencing court and provide the court with a  
14 written report of the youth's progress and a recommendation that he or she be  
15 placed on probation.

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

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

26  
27 SECTION 9. Arkansas Code 5-4-402 is amended by adding an  
28 additional subsection to read as follows:

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

35 (2) Inmates transferred to the Division of Youth Services shall  
36 be segregated from the general delinquency population housed at the Division

1 of Youth Services. In the event that the youth violates the rules of the  
2 division's program or facility, or is otherwise not amenable to the Division's  
3 rehabilitative efforts, the Division may return the inmate to the Department  
4 of Correction.

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

8 /s/ Gullett

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