

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 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 2097

5 By: Representative Nichols
6
7

For An Act To Be Entitled

9 AN ACT TO AUTHORIZE THE UNIVERSITY OF ARKANSAS
10 FOR MEDICAL SCIENCES TO ESTABLISH MINIMUM
11 SECURITY DETENTION FACILITIES FOR NONVIOLENT
12 OFFENDERS OF DRUG OFFENSES; TO CREATE THE
13 "MINIMUM SECURITY DETENTION FACILITIES FOR
14 OFFENDERS OF DRUG OFFENSES ACT"; TO ALLOW
15 EXPUNGEMENT OF CRIMINAL RECORDS IN CERTAIN CASES
16 FOLLOWING RELEASE FROM A MINIMUM SECURITY
17 DETENTION FACILITY; AND FOR OTHER PURPOSES.

Subtitle

19 AN ACT TO CREATE THE "MINIMUM SECURITY
20 DETENTION FACILITIES FOR OFFENDERS OF
21 DRUG OFFENSES ACT".
22
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 12-27-103 is amended to read as follows:
28 12-27-103. Department of Correction - Creation - Powers and duties.

29 (a) There is established, under the supervision, control, and
30 direction of the Board of Corrections, a Department of Correction.

31 (b) The Department of Correction shall have the following functions,
32 powers, and duties, administered in accordance with the policies, rules, and
33 regulations promulgated by the Board of Corrections:

34 (1) The Department of Correction shall have exclusive
35 jurisdiction over the care, charge, custody, control, management,
36 administration, and supervision of all persons and offenders committed to, or



1 in the custody of, the state penitentiary;

2 (2) The department shall assume management and control over all
 3 properties, both real and personal, facilities, books, records, equipment,
 4 supplies, materials, contracts, funds, moneys, equities, and all other
 5 properties belonging to the state penitentiary, except those deemed by the
 6 board to be more appropriate for placement in the Department of Community
 7 Correction. The Department of Correction shall administer said properties in
 8 accordance with the provisions of this act and other laws applicable to the
 9 administration of the state correctional system;

10 (3) The Department of Correction shall assume all obligations,
 11 contracts, indebtedness, liabilities, and other obligations of the state
 12 penitentiary system existing on March 1, 1968;

13 (4)(A) The Department of Correction shall have custody,
 14 management, and control over all institutions and facilities, and the inmates
 15 therein, now belonging to the state penitentiary or hereafter established by
 16 the Department of Correction for the custodial correction and rehabilitation
 17 of persons committed to the department for its care, except for those
 18 institutions established by or transferred to the Department of Community
 19 Correction.

20 (B) Legal custody of inmates transferred to the Department
 21 of Community Correction shall remain with the Department of Correction unless
 22 altered by court order;

23 (5) The Department of Correction shall establish and operate
 24 classification committees, diagnosis and treatment programs, and such other
 25 programs as may be desirable to fulfill the purposes of this act;

26 (6) The Department of Correction shall employ such officers,
 27 employees, and agents and shall secure such offices and quarters as are
 28 deemed necessary to discharge the functions of the Department of Correction;

29 (7) The Department of Correction shall receive all offenders
 30 committed to the Department of Correction for conviction of felonies or other
 31 offenses, the punishment of which is commitment to the penitentiary under the
 32 laws of this state, and shall be responsible for the care, custody, and
 33 correction of such persons pursuant to policies established by the Board of
 34 Corrections;

35 (8) The Department of Correction shall operate all farming,
 36 livestock, industries, and other income-producing facilities of the

1 Department of Correction and shall sell the products of its industries and
 2 farms in the manner provided by law;

3 (9) The Department of Correction may establish and operate
 4 regional adult detention facilities, provided funds therefor have been
 5 authorized and appropriated by the General Assembly;

6 (10) The Department of Correction shall cooperate with
 7 municipalities and counties in this state in providing consulting services
 8 when requested with respect to detention and correctional facilities operated
 9 by the municipalities or counties;

10 (11) The Department of Correction shall cooperate with law
 11 enforcement agencies of this state, the United States, institutions of this
 12 state for the detention, custody, and care of delinquent and dependent
 13 juveniles, and with all agencies and departments of this state offering
 14 services or programs of welfare, rehabilitation, and other services for the
 15 benefit of persons committed to the Department of Correction;

16 (12) The Department of Correction may accept gifts, grants, and
 17 funds from public and private sources with prior approval of the Board of
 18 Corrections and administer the same in furtherance of the purposes of this
 19 act;

20 (13)(A) The Department of Correction shall have the authority to
 21 issue warrants for the retaking of any person who, committed to its custody,
 22 unlawfully escapes therefrom.

23 (B) The warrant shall:

24 (i) Authorize all law enforcement officials of this
 25 state to take custody and return the person named therein to the custody of
 26 the Department of Correction; and

27 (ii) Authorize all law enforcement officials of this
 28 state, any other state, and the federal government to take custody and detain
 29 the person in any suitable detention facility while awaiting further transfer
 30 to the Department of Correction;

31 (14) The Department of Correction may cooperate with and
 32 contract with the federal government, governmental agencies of Arkansas and
 33 other states, political subdivisions of Arkansas, and private contractors to
 34 provide and improve correctional operations;

35 (15) The Department of Correction shall cooperate with the
 36 Department of Community Correction, the Post Prison Transfer Board, the

1 Arkansas Sentencing Commission, judicial districts, municipalities, and
2 counties in this state in providing guidance and services required to ensure
3 a full range of correctional options for the state as a whole;

4 (16) The Department of Correction shall provide support to the
5 Department of Community Correction as determined by the Board of Corrections;

6 (17) The Department of Correction shall assist the Board of
7 Corrections in the furtherance of its goals by staffing the specific charges
8 articulated for it through legislation and by the Board of Corrections; ~~and~~

9 (18) The Department of Correction shall establish programs of
10 research, evaluation, statistics, audit, and planning, including studies and
11 evaluation of the performance of various functions and activities of the
12 department and studies affecting the treatment of offenders and information
13 about other programs; and

14 (19) The Department of Correction shall cooperate with the
15 University of Arkansas for Medical Sciences to establish and operate minimum
16 security detention facilities to house nonviolent drug offenders and provide
17 for the rehabilitation and treatment of male and female inmates.

18
19 SECTION 2. Arkansas Code Title 12, Chapter 28 is amended to add an
20 additional subchapter to read as follows:

21 Subchapter 8 - Minimum Security Detention Facilities for Offenders of
22 Drug Offenses Act

23 12-28-801. Title.

24 This subchapter shall be known as and may be cited as the "Minimum
25 Security Detention Facilities for Offenders of Drug Offenses Act".

26
27 12-28-802. Legislative findings and determinations.

28 The General Assembly finds that:

29 (1) The State of Arkansas is incarcerating nonviolent offenders
30 who are addicted to drugs;

31 (2) The nonviolent offenders usually have a felony conviction
32 that resulted from an attempt to support their drug addiction;

33 (3) The cost of incarcerating the expanding number of offenders
34 in conventional penitentiaries is bringing added fiscal pressure on the State
35 of Arkansas;

36 (4) Nonviolent offenders of drug offenses may be effectively

1 rehabilitated and treated in a more affordable manner by detention in minimum
 2 security facilities that offer therapeutic programs under the direction of a
 3 staff of sociologists and psychiatrists; and

4 (5) This subchapter shall be liberally construed to accomplish
 5 the intent and purposes of the General Assembly in adopting it and shall be
 6 the sole authority required for the accomplishment of these purposes.

7
 8 12-28-803. Programs and procedures for nonviolent offenders of drug
 9 offenses.

10 (a) Nonviolent offenders of drug offenses may be segregated from the
 11 remainder of the prison population when minimum security detention facilities
 12 are operational.

13 (b) A nonviolent offender of a drug offense shall be eligible for
 14 expedited release from confinement if he or she successfully completes a
 15 mandatory therapeutic program established at a minimum security detention
 16 facility.

17 (c) If a nonviolent offender of a drug offense who is released from
 18 confinement under this subchapter submits to drug testing and remains drug-
 19 free for a period of one (1) year after his or her release, the record of the
 20 felony conviction that caused the incarceration of the offender shall be
 21 expunged.

22 (d) A nonviolent offender of a drug offense who fails to complete a
 23 mandatory therapeutic program established at a minimum security detention
 24 facility shall be returned to the Department of Correction to complete his or
 25 her sentence of imprisonment.

26 (e) A nonviolent offender of a drug offense participating in the
 27 programs established under this subchapter shall be liable for the cost of
 28 his or her confinement unless the Department of Correction waives all or part
 29 of the payment for the cost of the offender's confinement.

30
 31 12-28-804. Authorization.

32 (a)(1) The University of Arkansas for Medical Sciences may establish
 33 minimum security detention facilities, one (1) for male inmates and one (1)
 34 for female inmates, for rehabilitation and treatment of nonviolent offenders
 35 of drug offenses.

36 (2) The minimum security detention facilities described in

1 subdivision (a)(1) of this section shall:

2 (A) Be located on or near the University of Arkansas for
 3 Medical Sciences campus; and

4 (B) Provide sufficient floor space for housing and
 5 treating one hundred (100) inmates in each facility.

6 (b) The Board of Corrections and the University of Arkansas for
 7 Medical Sciences shall develop and implement programs for nonviolent
 8 offenders of drug offenses at minimum security detention facilities that:

9 (1) Include rehabilitation and treatment under the direction of
 10 a staff of sociologists and psychiatrists; and

11 (2) Operate in accordance with the guidelines contained in § 12-
 12 28-803.

13 (c) The Board of Corrections shall promulgate rules that shall set
 14 minimum standards and procedures for establishing minimum security detention
 15 facilities for nonviolent offenders of drug offenses in the State of
 16 Arkansas.

17 (d)(1) The rules described in subsection (c) of this section shall
 18 include at least the following:

19 (A) Procedures for providing supervision of offenders that
 20 are confined in minimum security detention facilities for the rehabilitation
 21 and treatment of male and female inmates;

22 (B) Procedures for determining the amount of cost an
 23 offender must pay for his or her confinement and procedures for determining
 24 if the Department of Correction will waive all or part of the payment for the
 25 cost of the offender's confinement;

26 (C) Procedures for establishing therapeutic programs under
 27 the direction of a staff of sociologists and psychiatrists for the
 28 rehabilitation and treatment of male and female inmates; and

29 (D) Guidelines for releasing and monitoring offenders
 30 after a successful completion of a therapeutic program created under this
 31 subchapter in order to determine eligibility for expungement.

32 (2) The Board of Corrections is authorized to make additions,
 33 amendments, changes, or alterations to the rules in accordance with the
 34 Arkansas Administrative Procedure Act, § 25-15-201 et seq.

35 (e) The procedure, effect, and definition of "expungement" for the
 36 purposes of this section shall be in accordance with that established in §

1 16-90-901 et seq.

2
3 12-28-805. Eligibility.

4 Inmates shall be chosen for the minimum security detention facility
5 programs established by this subchapter in accordance with guidelines to be
6 adopted by the Board of Corrections. These guidelines shall include a risk
7 profile system to be used in selecting inmates eligible for assignment to the
8 programs.

9
10 12-28-806. Applicability to other laws.

11 For actions taken pursuant to this subchapter, it shall not be
12 necessary to comply with general provisions of other laws dealing with the
13 minimum time constraints as applied to release eligibility.

14
15 SECTION 3. Arkansas Code § 16-90-901 is amended to read as follows:
16 16-90-901. Definition.

17 (a)(1) As used in §§ 5-64-407, 5-4-311, 12-28-803, 16-90-601, 16-90-
18 602, 16-90-605, 16-93-301 - 16-93-303, and 16-93-1207, "expunge" or
19 "expungement" shall mean that the record or records in question shall be
20 sealed, sequestered, and treated as confidential in accordance with the
21 procedures established by this subchapter.

22 (2) Unless otherwise provided by this subchapter, "expunge"
23 shall not mean the physical destruction of any records.

24 (3) No person who pleads guilty or nolo contendere to, or is
25 found guilty of, a sexual offense as defined in this section and in which the
26 victim was under the age of eighteen (18) years shall be eligible to have the
27 offense expunged under the procedures set forth in this subchapter.

28 (b) For purposes of this subchapter, "sexual offense" shall be defined
29 as conduct prohibited by § 5-14-101 et seq., §§ 5-26-202, 5-27-602, 5-27-603,
30 5-27-605, 16-93-303(a)(1)(B), and any other subsequently enacted criminal law
31 prohibiting sexual conduct with a child.