

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019

# A Bill

HOUSE BILL 1891

4  
5 By: Representative Scott  
6

## For An Act To Be Entitled

8 AN ACT TO ALLOW THE DIVERSION OF CERTAIN JUVENILE  
9 OFFENSES; AND FOR OTHER PURPOSES.  
10

### Subtitle

11  
12 TO ALLOW THE DIVERSION OF CERTAIN  
13 JUVENILE OFFENSES.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code Title 9, Chapter 27, is amended to add a new  
20 subchapter to read as follows:

21 Subchapter 8 – Diversion of Criminal Complaints against Juveniles  
22

23 9-27-801. Diversion of a criminal complaint against a juvenile.

24 (a) A criminal complaint alleging the commission of an offense by a  
25 juvenile that is transferred to a juvenile court shall be referred to the  
26 prosecutor for a determination of whether:

27 (1) The alleged facts bring the case within the jurisdiction of  
28 the juvenile court; and

29 (2)(A) There is probable cause to believe that the juvenile  
30 committed the alleged offense.

31 (B) If the alleged offense constitutes an offense under  
32 the law of this state, or an ordinance of a city or county of this state, the  
33 state laws shall govern the screening and charging decision of the prosecutor  
34 for both a filed or diverted case.

35 (b) If the prosecutor determines that the requirements of subsection  
36 (a) of this section are not met, the prosecutor:



1           (1) Shall maintain a record of his or her determination and the  
2 reasons supporting his or her determination for one (1) year; and

3           (2) May file a motion to modify community supervision if the  
4 alleged offense would constitute a violation of community supervision.

5           (c) If the requirements of subsection (a) of this section are met, the  
6 prosecutor may:

7           (1)(A) File an information in juvenile court.

8           (B) A prosecutor shall file an information with the  
9 juvenile court if the juvenile is alleged to have committed an offense that  
10 is a:

11                   (i) Sex offense as defined in § 12-12-104(f)(2); or

12                   (ii) Violent offense as defined in § 12-12-104(f)(3)  
13 other than assault in the second degree or robbery; or

14           (2) Divert the case if:

15                   (A) The alleged offense would be the juvenile's first  
16 offense or violation; and

17                   (B) Either the:

18                           (i) Alleged offense is a misdemeanor or gross  
19 misdemeanor or violation; or

20                           (ii) Facts of the case are legally sufficient to  
21 charge the juvenile with:

22                                   (a) Prostitution; or

23                                   (b)(1) Voyeurism.

24                                   (2) The prosecutor shall not divert a  
25 case alleging voyeurism if the juvenile has received more than one (1)  
26 diversion preceding the current alleged offense of voyeurism.

27           (d) In determining whether or not to divert a case, the prosecutor  
28 shall consider:

29                   (1) The length, seriousness, and recent of the criminal history  
30 of the juvenile;

31                   (2) The circumstances surrounding the commission of the alleged  
32 offense by the juvenile; and

33                   (3) Any other factors that are relevant to the determination.

34           (e) If a juvenile is placed in custody or referred to a diversion  
35 interview, the parent or legal guardian of the juvenile shall be notified  
36 immediately of the:

1 (1) Allegation made against the juvenile; and

2 (2) Current status of the juvenile.

3 (f) If a juvenile is referred to a diversion unit and the alleged  
 4 offense is a crime against the person of a victim or the property of the  
 5 victim of the alleged offense has not been recovered, the victim of the  
 6 alleged offense shall be:

7 (1) Notified of the referral of the juvenile to a diversion  
 8 unit; and

9 (2) Provided with contact information for the diversion unit.

10 (g) The responsibilities of a prosecutor under this section may be  
 11 performed by a juvenile court probation officer if the:

12 (1) Complaint against the juvenile that is referred to the  
 13 juvenile court alleges the commission of an offense that would not be a  
 14 felony if committed by an adult; and

15 (2) The prosecutor provides written notice to the juvenile court  
 16 that he or she will not review the complaint.

17 (h) A prosecutor or juvenile court probation officer who exercises his  
 18 or her authority under this section may refer a juvenile to:

19 (1) A community-based program;

20 (2) A restorative justice program;

21 (3) Mediation; or

22 (4)(A) A victim-offender reconciliation program.

23 (B) Participation in a victim-offender reconciliation  
 24 program is voluntary for a victim.

25 (i) Prosecutors and juvenile courts shall engage and partner with  
 26 community-based programs to expand, improve, and increase options to divert  
 27 juveniles from formal processing in juvenile court.

28 (j) This section does not limit partnership with community-based  
 29 programs to create diversion opportunities for juveniles.

30  
 31 9-27-802. Definitions – Diversion agreements – Diversion units.

32 (a) As used in this section:

33 (1) "Community agency" includes without limitation a community-  
 34 based nonprofit organization, a physician, a counselor, a school, or a  
 35 treatment provider that is approved by a diversion unit; and

36 (2) "Diversion agreement" means a contract between an alleged

1 juvenile offender and a diversion unit in which the juvenile agrees to  
 2 fulfill certain conditions in lieu of prosecution.

3 (b) A diversion agreement shall be:

4 (1) Entered into after a prosecutor or juvenile court probation  
 5 officer determines that there is probable cause to believe that a crime has  
 6 been committed by a juvenile; and

7 (2) Limited to one (1) or more of the following:

8 (A) Community restitution that:

9 (i) Does not exceed one hundred fifty (150) hours;

10 and

11 (ii) Is not performed during the hours in which the  
 12 juvenile attends school;

13 (B) Restitution in the amount of the actual loss incurred  
 14 by a victim;

15 (C) Attendance at:

16 (i)(a) Counseling for up to ten (10) hours.

17 (b) If an assessment of the juvenile  
 18 identifies mental health or chemical dependency needs, attendance at  
 19 counseling may be increased to up to thirty (30) hours.

20 (c) The state is not liable for costs arising  
 21 out of the decision of a diversion unit to include attendance at counseling,  
 22 educational or informational sessions, or positive youth development in a  
 23 diversion agreement;

24 (ii) Positive youth development for up to twenty  
 25 (20) hours; or

26 (iii)(a) Educational or informational sessions at a  
 27 community agency up to twenty (20) hours.

28 (b) An educational or informational session  
 29 may include a session relating to:

30 (1) Respect for oneself, others, and  
 31 authority;

32 (2) Victim awareness;

33 (3) Accountability;

34 (4) Self-worth;

35 (5) Responsibility;

36 (6) Work ethic and good citizenship; or

(7) Literacy and life skills;

(D) A requirement to remain at home, school, or work during specified hours;

(E) Restrictions on leaving or entering a specified geographical area;

(F) A requirement to refrain from contacting the victim or witness to the alleged offense committed by the juvenile; and

(G) Any other reasonable conditions.

(c)(1) In assessing periods of community restitution to be performed and restitution to be paid by a juvenile who enters into a diversion agreement, the juvenile court probation officer shall consult with the parent or legal guardian of the juvenile.

(2) If and when possible, the juvenile court probation officer shall:

(A) Advise the victim of the diversion process;

(B) Offer victim impact letter forms and restitution claim forms to the victim; and

(C)(i) Involve a member of the community in the diversion process.

(ii) A member of the community who is involved in a diversion process for a juvenile may:

(a) Meet with the juvenile;

(b) Advise the juvenile court probation officer as to the terms of the diversion agreement; and

(c) Supervise the juvenile in fulfilling the terms of the diversion agreement.

(d)(1) A diversion agreement:

(A) Shall not exceed a period of six (6) months; and

(B) May include a period that extends beyond the eighteenth birthday of the juvenile.

(2)(A) If restitution required by a diversion agreement cannot reasonably be paid due to a material change in the circumstances of the juvenile, the diversion agreement may be modified at the request of the juvenile and with the agreement of the diversion unit to convert unpaid restitution into community restitution.

(B) A modification of a diversion agreement under this

1 subdivision (d)(2) shall be in writing and signed by the juvenile and the  
2 diversion unit.

3 (C) The number of hours of community restitution instead  
4 of a monetary penalty shall be converted at the rate of the prevailing state  
5 minimum wage per hour.

6 (3) If additional time is necessary for the juvenile to complete  
7 paying restitution to a victim, the time period limitation for a diversion  
8 agreement may be extended by an additional six (6) months.

9 (4)(A) If the juvenile has not paid the full amount of  
10 restitution by the end of the additional six-month period, the juvenile shall  
11 be referred to the juvenile court for entry of a civil judgment establishing  
12 the remaining amount of restitution that is owed to the victim.

13 (B) The civil judgment shall address the terms and  
14 conditions of the restitution, including without limitation a payment plan  
15 that extends to up to ten (10) years if the juvenile court determines that  
16 the juvenile does not have the means to make full restitution over a shorter  
17 period of time.

18 (C)(i) For the purposes of subdivision (d)(4)(B) of this  
19 section, the juvenile shall remain under the jurisdiction of the juvenile  
20 court for a maximum of ten (10) years after the eighteenth birthday of the  
21 juvenile.

22 (ii) Before the expiration of the initial ten-year  
23 period, the juvenile court may extend the civil judgment for restitution for  
24 an additional ten (10) years.

25 (D)(i) The juvenile court may relieve the juvenile of the  
26 requirement to pay full or partial restitution if the juvenile reasonably  
27 satisfies the court that he or she:

28 (a) Does not have the means to make full or  
29 partial restitution; and

30 (b) Cannot reasonably acquire the means to pay  
31 the restitution over a ten-year period.

32 (ii) If the juvenile court relieves the juvenile of  
33 the requirement to pay full or partial restitution, the juvenile court may  
34 order an amount of community restitution that the juvenile court deems  
35 appropriate.

36 (E)(i) The county clerk shall disburse restitution to each

1 victim named in a restitution order.

2 (ii) Restitution to each victim named in a  
3 restitution order shall be paid before a payment for other penalties or  
4 monetary assessments.

5 (F) A juvenile who is under an obligation to pay  
6 restitution may petition the court for a modification of the restitution  
7 order.

8 (e) A juvenile shall:

9 (1) Retain the right to be referred to the juvenile court at any  
10 time before signing a diversion agreement; and

11 (2)(A) Be afforded due process in all contacts with a diversion  
12 unit regardless of whether the juvenile is approved for diversion or whether  
13 the program is successfully completed.

14 (B) Due process afforded to a juvenile under subdivision  
15 (e)(2)(A) of this section shall include without limitation:

16 (i) A written diversion agreement in clearly  
17 understandable language that is executed;

18 (ii) A violation of the terms clause of the  
19 diversion agreement as the only grounds for terminating the diversion  
20 agreement;

21 (iii) A hearing before the juvenile court concerning  
22 the possible termination of the diversion agreement;

23 (iv) Written notice of each alleged violation of the  
24 terms of a diversion agreement;

25 (v) Disclosure of all evidence to be offered against  
26 a juvenile concerning each alleged violation of the terms of a diversion  
27 agreement;

28 (vi) The opportunity for a juvenile to be heard in  
29 person and present evidence concerning a diversion agreement;

30 (vii) The right of a juvenile to confront and cross-  
31 examine each adverse witness regarding a diversion agreement;

32 (viii) Evidence that a juvenile has substantially  
33 violated the terms of a diversion agreement; and

34 (ix) A written order issued by the juvenile court as  
35 to the evidence relied upon and the reasons for the termination of a  
36 diversion agreement.

1       (f) If a diversion agreement is terminated, the prosecutor may file an  
2 information on the alleged offense for which the juvenile was diverted in:

3           (1) Juvenile court if the juvenile is under eighteen (18) years  
4 of age; or

5           (2) Circuit court or another appropriate court of limited  
6 jurisdiction if the juvenile is eighteen (18) years of age or older.

7       (g) Subject to available funds, a diversion unit is responsible for:

8           (1) Providing an interpreter if a juvenile requires an  
9 interpreter to effectively communicate during a diversion unit hearing or  
10 negotiation; and

11           (2) Advising a juvenile of his or her rights under this  
12 section.

13       (h) A diversion unit may refer a juvenile to a restorative justice  
14 program, community-based counseling, or treatment program.

15       (i)(1) A juvenile has a right to counsel before the initial diversion  
16 interview and at any other critical stage of the diversion process.

17           (2) The juvenile shall be advised at the time of his or her  
18 diversion interview and any other interview concerning the diversion process  
19 of his or her right to counsel.

20       (j)(1) A juvenile shall be advised and sign an acknowledgment that he  
21 or she has been advised that a diversion agreement constitutes a part of his  
22 or her criminal history.

23           (2) The acknowledgment signed by the juvenile shall be  
24 maintained with the diversion agreement.

25           (3) A copy of the acknowledgment signed by the juvenile shall be  
26 provided to the prosecutor upon his or her request.

27           (4) The Supreme court shall promulgate rules concerning the  
28 required content of the advisement required to be given to a juvenile under  
29 subdivision (j)(1) of this section.

30       (k) If a juvenile enters into a diversion agreement, the juvenile  
31 court may receive the following information for the purposes of a  
32 disposition:

33           (1) The charge alleged against the juvenile;

34           (2) Whether a diversion agreement was executed;

35           (3) The obligation of the juvenile under the diversion  
36 agreement; and



1           (4) The facts of the offense the juvenile is alleged to have  
2 committed.

3           (1)(1) A diversion unit may refuse to enter into a diversion agreement  
4 with a juvenile.

5           (2) If a diversion unit refuses to enter into a diversion  
6 agreement with a juvenile, the diversion unit shall immediately:

7                   (A) Refer the juvenile to the juvenile court for action;  
8 and

9                   (B) Forward the criminal complaint and detailed statement  
10 of the reasons that the diversion unit has refused to enter into a diversion  
11 agreement with the juvenile to the prosecutor.

12           (m) If a juvenile violates the terms of his or her diversion  
13 agreement, the diversion unit shall immediately refer the case to the  
14 prosecutor for action.

15           (n) A diversion unit may:

16                   (1) Supervise the fulfillment of a diversion agreement entered  
17 into before the eighteenth birthday of the juvenile, including a period that  
18 extends beyond the eighteenth birthday of the juvenile; and

19                   (2)(A) Counsel, release, or both counsel and release a juvenile  
20 without entering into a diversion agreement if the diversion unit determines  
21 that the alleged offense for which the juvenile has been referred does not  
22 involve:

23                           (i) A victim;

24                           (ii) A threat of or instance of actual physical harm  
25 to a person;

26                           (iii) More than fifty dollars (\$50.00) in property  
27 loss or damage; and

28                           (iv) An outstanding loss to a person or entity.

29                   (B) The authority of a diversion unit to counsel, release,  
30 or both counsel and release a juvenile includes without limitation the  
31 authority to refer the juvenile to a community-based counseling program,  
32 treatment program, or restorative justice program.

33                   (C)(i) A juvenile who is released under this subdivision  
34 (n)(2) shall be advised that the alleged offense for which he or she was  
35 referred constitutes a part of his or her criminal history.

36                           (ii) The juvenile shall sign an acknowledgment that

1 he or she has been advised that the alleged offense for which he or she was  
2 referred constitutes a part of his or her criminal history.

3 (iii) A copy of the signed acknowledgment shall be  
4 provided to the prosecutor upon his or her request.

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