

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1891

By: Representative Scott

## For An Act To Be Entitled

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

### Subtitle

TO ALLOW THE DIVERSION OF CERTAIN  
JUVENILE OFFENSES.

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

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

Subchapter 8 – Diversion of Criminal Complaints against Juveniles

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

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

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

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

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

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



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

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

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

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

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

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

(ii) Violent offense as defined in § 12-12-104(f)(3)

other than assault in the second degree or robbery; or

(2) Divert the case if:

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

(B) Either the:

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

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

(a) Prostitution; or

(b)(1) Voyeurism.

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

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

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

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

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

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

- (1) Allegation made against the juvenile; and
- (2) Current status of the juvenile.

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

- (1) Notified of the referral of the juvenile to a diversion unit; and
- (2) Provided with contact information for the diversion unit.

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

- (1) Complaint against the juvenile that is referred to the juvenile court alleges the commission of an offense that would not be a felony if committed by an adult; and
- (2) The prosecutor provides written notice to the juvenile court that he or she will not review the complaint.

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

- (1) A community-based program;
- (2) A restorative justice program;
- (3) Mediation; or
- (4)(A) A victim-offender reconciliation program.

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

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

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

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

(a) As used in this section:

- (1) "Community agency" includes without limitation a community-based nonprofit organization, a physician, a counselor, a school, or a treatment provider that is approved by a diversion unit; and
- (2) "Diversion agreement" means a contract between an alleged

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

(b) A diversion agreement shall be:

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

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

(A) Community restitution that:

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

and

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

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

(C) Attendance at:

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

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

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

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

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

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

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

(2) Victim awareness;

(3) Accountability;

(4) Self-worth;

(5) Responsibility;

(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

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

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

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

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

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

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

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

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

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

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

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

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

victim named in a restitution order.

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

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

(e) A juvenile shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The charge alleged against the juvenile;

(2) Whether a diversion agreement was executed;

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

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

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

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

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

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

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

(n) A diversion unit may:

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

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

(i) A victim;

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

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

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

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

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

(ii) The juvenile shall sign an acknowledgment that

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

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