

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Senators Bell, Bookout, Malone, Edwards, and Everett**

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For An Act To Be Entitled

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"AN ACT TO EXTEND AND CLARIFY ECONOMIC SANCTIONS FOR
9 CRIMINAL OFFENSES; AND FOR OTHER PURPOSES."

10

11

Subtitle

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"TO EXTEND AND CLARIFY ECONOMIC SANCTIONS FOR CRIMINAL
13 OFFENSES"

14

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

16

17 SECTION 1. Arkansas Code Annotated 5-4-101 is amended to read as
18 follows:

19

"5-4-101. Definitions.

20

As used in this chapter, unless the context otherwise requires:

21

(1) _Suspension_ or _suspend imposition of sentence_ means a procedure
22 whereby a defendant who pleads or is found guilty of an offense is released by
23 the court without pronouncement of sentence and without supervision;

24

(2) _Probation_ or _place on probation_ means a procedure whereby a
25 defendant who pleads or is found guilty of an offense is released by the court
26 without pronouncement of sentence but subject to the supervision of a
27 probation officer;

28

(3) _Probation officer_ means a salaried officer *attached* to the court
29 pursuant to § 16-93-402 or a reputable person designated by the court to
30 supervise a defendant who is placed on probation;

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(4) _Imprisonment_ means incarceration in a detentional facility
32 operated by the state or any of its political subdivisions;

33

(5) _Restitution_ means the act of making good or giving equivalent
34 value for any loss, damage, or injury. In the event of injury or loss that
35 the offender has special capacity to restore or repair, _restitution_ may also

1 include a sentence to perform such reparations."

2

3 SECTION 2. Arkansas Code Annotated 5-4-104(c) is amended to read as
4 follows:

5 "(c) A defendant convicted of a Class Y felony or murder in the second
6 degree shall be sentenced to a term of imprisonment in accordance with §§
7 5-4-401 - 5-4-404. In addition to imposing a term of imprisonment, the trial
8 court may sentence one convicted of a Class Y felony or murder in the second
9 degree to any one (1) or more of the following:

10 (1) Pay a fine as authorized by §§ 5-4-201 - 5-4-203;

11 (2) Make restitution as authorized by the provisions of Section 4
12 of this act; or

13 (3) Suspend imposition of an additional term of imprisonment, as
14 authorized by subdivision (e)(3) of this section."

15

16 SECTION 3. Arkansas Code Annotated 5-4-104(d) is amended to read as
17 follows:

18 "(d) A defendant convicted of an offense other than a Class Y felony,
19 capital murder, treason, or murder in the second degree may be sentenced to
20 any one or more of the following, except as precluded by subsection (e) of
21 this section:

22 (1) Imprisonment as authorized by §§ 5-4-401 - 5-4-404; or

23 (2) Probation as authorized by §§ 5-4-301 - 5-4-311; or

24 (3) Pay a fine as authorized by §§ 5-4-201 - 5-4-203; or

25 (4) Make restitution as authorized by the provisions of Section 4
26 of this act; or

27 (5) Imprisonment and to pay a fine."

28

29 SECTION 4. Subchapter 2 of Chapter 4 of Title 5, Arkansas Code
30 Annotated is hereby renamed as "Fines, Costs, and Restitution," and that
31 subchapter is amended by adding the following new section:

32 "5-4-205. Restitution.

33 (a) A defendant who is found guilty or who enters a plea of guilty or
34 nolo contendere may be ordered to pay restitution. The sentencing authority
35 whether the trial court or a jury shall make a determination of actual

1 economic loss caused to a victim by the crime.

2 (b) The determination of the amount of loss is a factual question to be
3 decided by the preponderance of the evidence presented to the sentencing
4 authority during the sentencing phase of a trial. The amount may be decided
5 by agreement between a defendant and the victim represented by the prosecuting
6 attorney.

7 (c) Restitution shall be made immediately, unless prior to the
8 imposition of sentence the court determines that the defendant should be given
9 a specified time to pay or should be allowed to pay in specified installments.
10 In determining the method of payment, the court shall take into account:

11 (1) the financial resources of the defendant and the burden that
12 payment of restitution will impose, with regard to the other obligations of
13 the defendant;

14 (2) the ability of the defendant to pay restitution on an
15 installment basis or on other conditions to be fixed by the court;

16 (3) the rehabilitative effect on the defendant of the payment of
17 restitution and the method of payment.

18 (d) If the defendant is placed on probation or any form of conditional
19 release, any restitution ordered under this section shall be a condition of
20 the suspended imposition of sentence, probation, parole, or transfer. The
21 court may revoke probation and any agency establishing conditions of release
22 may revoke such release if the defendant fails to comply with the order and if
23 the defendant has not made a good faith effort to comply with the order. In
24 determining whether to revoke probation or conditional release, the court or
25 releasing authority shall consider the defendant's employment status, earning
26 ability, financial resources, and the willfulness of the defendant's failure
27 to pay, and any other special circumstances that may have a bearing on the
28 defendant's ability to pay.

29 (e) The court shall enter a judgment against the defendant for the
30 amount determined under subsection (b). The judgment may be enforced by the
31 State or a beneficiary of the judgment in the same manner as a judgment for
32 money in a civil action. A judgment under this section may be discharged by a
33 settlement between the defendant and the beneficiary of the judgment.

34 (f) If more than one defendant is convicted of the crime for which there
35 is a judgment under this section, the defendants are jointly and severally

1 liable for the judgment unless the court determines otherwise.

2 (g) A judgment shall require payment to the Department of Community
3 Punishment which shall provide for supervision and disbursement of those funds
4 by the department's authorized economic sanction officers. The court shall
5 determine priority among multiple beneficiaries on the basis of the
6 seriousness of the harm each suffered, their other resources, and other
7 equitable factors.

8 (h) A judgment under this section does not bar a remedy available in a
9 civil action under other law. A payment under this section must be credited
10 against a money judgment obtained by the beneficiary of the payment in a civil
11 action. A determination under this section and the fact that payment was or
12 was not ordered or made are not admissible in evidence in a civil action and
13 do not affect the merits of the civil action."

14 (i) *Any restitution type program currently being operated by a*
15 *prosecuting attorney or a circuit court may continue and the Department of*
16 *Community Punishment shall assist such program whenever possible.*

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18 SECTION 5. Arkansas Code Annotated §§16-90-303, 16-90-304, 16-90-305,
19 and 16-90-306 are repealed.

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21 SECTION 6. All provisions of this act of a general and permanent nature
22 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
23 Revision Commission shall incorporate the same in the Code.

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25 SECTION 7. If any provision of this act or the application thereof to
26 any person or circumstance is held invalid, such invalidity shall not affect
27 other provisions or applications of the act which can be given effect without
28 the invalid provision or application, and to this end the provisions of this
29 act are declared to be severable.

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31 SECTION 8. All laws and parts of laws in conflict with this act are
32 hereby repealed.

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34 s/ Senators Bell, et al.