

1 State of Arkansas *As Engrossed: H3/7/13 H3/13/13 S4/5/13*  
2 89th General Assembly  
3 Regular Session, 2013

# A Bill

HOUSE BILL 1470

4  
5 By: Representatives Williams, Baine, *Shepherd*  
6

## For An Act To Be Entitled

8 AN ACT TO ESTABLISH PRE-ADJUDICATION PROBATION  
9 PROGRAMS; AND FOR OTHER PURPOSES.

### Subtitle

12 TO ESTABLISH PRE-ADJUDICATION PROBATION  
14 PROGRAMS.

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

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19 SECTION 1. Arkansas Code Title 5, Chapter 4 is amended to add a new  
20 subchapter to read as follows:

21 Subchapter 9 - Sentencing Alternative - Pre-adjudication Probation  
22 5-4-901. Legislative intent.

23 The intent of this act is to provide the judiciary with an additional  
24 alternative to the disposition of criminal offenders that would assist the  
25 offender in atoning for his or her criminal transgression and promote the  
26 enforcement of the state's criminal statutes while easing the inmate burden  
27 on the county jails and the Department of Correction.

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29 5-4-902. Definitions.

30 As used in this subchapter, "pre-adjudication" means the period of time  
31 after:

32 (1) The prosecuting attorney files a criminal information or an  
33 indictment is filed in circuit court;

34 (2) The person named in the criminal information or indictment is  
35 arraigned on the charge in circuit court; and

36 (3) The person enters the program without a guilty plea or the person



1 enters a plea of guilty but before the circuit court enters a judgment and  
2 pronounces a sentence against the person.

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4 5-4-903. Program authorized.

5 (a)(1) Each judicial district of this state may establish a pre-  
6 adjudication probation program under this subchapter.

7 (2) The structure, method, and operation of the pre-adjudication  
8 probation program may differ and shall be based upon the specific needs of  
9 and resources available to the judicial district where the pre-adjudication  
10 probation program is located.

11 (b)(1) A pre-adjudication probation program may incorporate services  
12 from various state agencies, including without limitation the Department of  
13 Community Correction and the Department of Human Services.

14 (2) Participating state agencies may provide:

15 (A) Persons to serve as pre-adjudication probation  
16 officers, drug counselors, or other support staff;

17 (B) Drug testing and other substance-abuse facilities;

18 (C) Intensive short-term and long-term residential  
19 treatment for participants in the pre-adjudication probation program who have  
20 demonstrated a need for substance abuse treatment or other mental health-  
21 related treatment; and

22 (D) Other personnel, support staff, or facilities that the  
23 circuit court administering the pre-adjudication probation program finds  
24 necessary or helpful.

25 (c) Subject to an appropriation, funding, and position authorization,  
26 both programmatic and administrative, the Administrative Office of the Courts  
27 shall:

28 (1) Provide state-level coordination and support for circuit  
29 courts administering the pre-adjudication probation program;

30 (2) Administer funds for the maintenance and operation of local  
31 pre-adjudication probation programs;

32 (3) Provide training and education to judges and other  
33 professionals involved in pre-adjudication probation programs; and

34 (4) Operate as a liaison between judges and other state-level  
35 agencies providing services to pre-adjudication probation programs.

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1 5-4-904. Eligibility.

2 (a) The judicial district in which a person is charged with a felony  
3 shall have in place a pre-adjudication probation program as authorized by  
4 this subchapter before this subchapter may be utilized by the person charged  
5 with the felony, the circuit court with jurisdiction, or the state.

6 (b) A person charged with a felony is eligible to participate in a  
7 pre-adjudication probation program if:

8 (1) The circuit court with jurisdiction over the case and the  
9 prosecuting attorney agree; and

10 (2) The person is not charged with one (1) of the following  
11 criminal offenses:

12 (A) A criminal offense for which the person would be  
13 required to register as a sex offender under the Sex Offender Registration  
14 Act of 1997, § 12-12-901 et seq.;

15 (B) A felony involving violence as listed in § 5-4-  
16 501(d)(2);

17 (C) A felony involving a victim who was seventeen (17)  
18 years of age or younger at the time the felony was committed; or

19 (D) A felony involving a victim who was sixty-five (65)  
20 years of age or older at the time the felony was committed.

21 (c)(1) A person charged with a traffic offense committed in any type  
22 of motor vehicle who was a holder of a commercial learner's permit or  
23 commercial driver license at the time the traffic offense was committed is  
24 ineligible to participate in a pre-adjudication probation program.

25 (2) As used in subdivision (c)(1) of this section, "traffic  
26 offense" does not include a parking violation, motor vehicle weight  
27 violation, or motor vehicle defect violation.

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29 5-4-905. Sanctions.

30 (a)(1) A pre-adjudication probation program judge may impose sanctions  
31 on a pre-adjudication probation program participant who fails to complete  
32 certain court-ordered pre-adjudication program requirements or meet certain  
33 court-ordered pre-adjudication program goals.

34 (2) Sanctions may include without limitation:

35 (A) Time spent in the custody of the county sheriff;

36 (B) Additional fines;

1 (C) Community service;

2 (D) Substance abuse testing;

3 (E) Written assignments; and

4 (F) Volunteer work for a nonprofit organization.

5 (b) The imposition of an additional sanction under this section:

6 (1) Is not an execution of a sentence resulting from a  
7 conviction for the criminal offense for which the participant has entered the  
8 pre-adjudication probation program; and

9 (2) Does not result by itself in the expulsion of the pre-  
10 adjudication probation program participant from the pre-adjudication  
11 probation program.

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13 5-4-906. Record expungement upon completion.

14 (a) A pre-adjudication probation program judge, on his or her own  
15 motion or upon a request from the participant in the pre-adjudication  
16 probation program, shall order expungement and dismissal of a case if:

17 (1) The participant in the pre-adjudication probation program  
18 has successfully completed a pre-adjudication probation program, as  
19 determined by the pre-adjudication probation program judge;

20 (2) The pre-adjudication probation program judge has received a  
21 recommendation from the prosecuting attorney for expungement and dismissal of  
22 the case; and

23 (3) The pre-adjudication probation program judge, after  
24 considering the past criminal history of the participant in the pre-  
25 adjudication probation program, determines that expungement and dismissal of  
26 the case is appropriate.

27 (b) Unless otherwise ordered by the pre-adjudication probation  
28 program court, expungement under this section shall be as described in § 16-  
29 90-901 et seq.

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31 5-4-907. Cost, fees, and restitution.

32 (a) The pre-adjudication probation program judge may order the  
33 offender to pay:

34 (1) Court costs as provided in § 16-10-305;

35 (2) Any substance abuse treatment costs;

36 (3) Drug testing costs;

1           (4) Costs associated with mental health treatment;  
2           (5) A pre-adjudication probation program user fee;  
3           (6) Any restitution owed the victim of the charged criminal  
4 offense;  
5           (7) Necessary supervision fees;  
6           (8) Any applicable residential treatment fees; and  
7           (9) Any fees determined or authorized under § 12-27-  
8 125(b)(17)(B) or § 16-93-104(a)(1), which are to be paid to the Department of  
9 Community Correction.

10           (b)(1) The pre-adjudication probation program judge shall establish a  
11 schedule for the payment of costs, fees, and restitution.

12           (2) The cost for substance abuse treatment, mental health  
13 treatment, drug testing, and supervision shall be set by the treatment and  
14 supervision providers respectively and made part of the order of the pre-  
15 adjudication probation program judge for payment.

16           (3) Pre-adjudication probation program user fees shall be set by  
17 the pre-adjudication probation program judge.

18           (4) Treatment, drug testing, and supervision costs or fees shall  
19 be paid to the respective providers.

20           (5) Fees determined or authorized under § 12-27-125(b)(17)(B) or  
21 § 16-93-104(a)(1) shall be paid to the Department of Community Correction.

22           (6) Restitution to the victim shall be paid directly to the  
23 victim.

24           (c) Court orders for costs, fees, and restitution shall remain an  
25 obligation of the participant in the pre-adjudication probation program with  
26 court monitoring until fully paid.

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28           5-4-908. Program operation.

29           (a)(1) A pre-adjudication probation program may require a separate  
30 judicial processing system differing in practice and design from the  
31 traditional adversarial criminal prosecution and trial systems.

32           (2) A pre-adjudication probation program team shall be  
33 designated by a circuit judge assigned to manage the pre-adjudication  
34 probation program docket and may include a circuit judge, a prosecuting  
35 attorney, a public defender or private defense attorney, one (1) or more  
36 probation officers, and any other individual or individuals determined

1 necessary by the pre-adjudication probation program judge.

2 (3)(A) The administrative judge of the judicial district shall  
3 designate one (1) or more circuit judges to administer the pre-adjudication  
4 probation program.

5 (B) If a county is in a judicial district that does not  
6 have a circuit judge who is able to administer the pre-adjudication probation  
7 program on a consistent basis, the administrative plan for the judicial  
8 circuit required by Administrative Order No. 14 of the Supreme Court may  
9 designate a state district court judge to administer the pre-adjudication  
10 probation program.

11 (b) Each judicial district may develop a training and implementation  
12 manual for a pre-adjudication probation program with the assistance of the:

13 (1) Department of Human Services;

14 (2) Department of Education;

15 (3) Department of Career Education;

16 (4) Department of Community Correction; and

17 (5) Administrative Office of the Courts.

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19 5-4-909. Administrative Office of the Courts.

20 The Administrative Office of the Courts shall:

21 (1) Serve as a coordinator between pre-adjudication probation  
22 program judges, the Department of Community Correction, and other parties;

23 (2) Establish, manage, and maintain a uniform statewide pre-  
24 adjudication probation program information system to track information and  
25 data on pre-adjudication probation program participants;

26 (3) Train and educate pre-adjudication probation program judges  
27 and pre-adjudication probation program staff in those judicial districts  
28 maintaining a pre-adjudication probation program;

29 (4) Oversee the disbursement of funds appropriated to the  
30 Administrative Office of the Courts for the maintenance and operation of  
31 local pre-adjudication probation programs based on a formula developed by the  
32 office; and

33 (5) Develop guidelines to serve as a framework for developing  
34 effective local pre-adjudication probation programs and to provide a  
35 structure for conducting research and evaluation for pre-adjudication  
36 probation program accountability.

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5-4-910. Disposition of court costs and user fees.

(a) All court costs and pre-adjudication probation program user fees assessed by the pre-adjudication probation program judge shall be paid to the circuit court clerk for remittance to the county treasury under § 14-14-1313.

(b) The county treasurer shall credit all court costs received under this section to the county administration of justice fund to be distributed under § 16-10-307.

(c) The county treasurer shall credit all pre-adjudication probation program user fees received under this section to a fund known as the county pre-adjudication probation program fund and appropriated by the quorum court for the benefit and administration of the pre-adjudication probation program,

5-4-911. Required resources.

Each pre-adjudication probation program established under this subchapter, subject to an appropriation, funding, and position authorization, both programmatic and administrative, shall be provided with the following resources:

(1) The Department of Community Correction shall provide the following pursuant to § 5-4-903 for adult offenders:

(A) A minimum of one (1) counselor position for every thirty (30) pre-adjudication probation program participants;

(B) A minimum of one (1) probation officer position for every forty (40) pre-adjudication probation program participants;

(C) A minimum of one (1) administrative assistant position for each pre-adjudication probation program; and

(D) Drug screens and testing as needed.

(2) The Administrative Office of the Courts shall:

(A) Provide funding for additional ongoing maintenance and operation costs of local pre-adjudication probation programs not provided by the Department of Community Correction or the Department of Human Services, including without limitation local pre-adjudication probation program supplies, education, travel, and related expenses;

(B) Provide direct support to the pre-adjudication probation program judge and pre-adjudication probation program;

(C) Provide coordination between the multidisciplinary team and

1 the pre-adjudication probation program judge;

2 (D) Provide case management;

3 (E) Monitor compliance of pre-adjudication probation program  
4 participants with pre-adjudication probation program requirements; and

5 (F) Provide pre-adjudication probation program evaluation and  
6 accountability.

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8 5-4-912. Collection of data – Reporting requirement.

9 (a)(1) A pre-adjudication probation program shall collect and provide  
10 data on pre-adjudication probation program applicants and all participants as  
11 required by the Administrative Office of the Courts.

12 (2) Data collected under subdivision (a)(1) of this section  
13 shall include:

14 (A) The total number of applicants;

15 (B) The total number of participants;

16 (C) The total number of successful applicants;

17 (D) The total number of successful participants;

18 (E) The reason why each unsuccessful participant did not  
19 complete the pre-adjudication probation program;

20 (F) Information about what happened to each unsuccessful  
21 participant;

22 (G) The total number of participants who were arrested for  
23 a new criminal offense while in the pre-adjudication probation program;

24 (H) The total number of participants who were convicted of  
25 a new criminal offense while in the pre-adjudication probation program;

26 (I) The total number of participants who committed a  
27 violation of one (1) or more conditions of the pre-adjudication probation  
28 program and the resulting sanction;

29 (J) The results of the initial risk-needs assessment  
30 review for each participant;

31 (K) The race and gender of each applicant;

32 (L) The race and gender of each participant;

33 (M) The race and gender of each victim of an offense  
34 committed by the applicant;

35 (N) The race and gender of each victim of an offense  
36 committed by the participant; and



1                   (O) Any other data or information as required by the  
2 Administrative Office of the Courts.

3           (b) The data collected for evaluation purposes under subsection (a) of  
4 this section shall:

5                   (1) Include a minimum standard data set developed and specified  
6 by the Administrative Office of the Courts; and

7                   (2) Be maintained in the court files or be otherwise accessible  
8 by the courts and the Administrative Office of the Courts.

9           (c)(1) After an individual is discharged either upon completion or  
10 termination of a pre-adjudication probation program, the pre-adjudication  
11 probation program as far as is practicable shall conduct follow-up contacts  
12 with and reviews of former pre-adjudication probation program participants  
13 for key outcome indicators of drug use, recidivism, and employment.

14                   (2)(A) The follow-up contacts with and reviews of former pre-  
15 adjudication probation program participants shall be conducted as frequently  
16 and for a period of time as determined by the Administrative Office of the  
17 Courts based upon the nature of the pre-adjudication probation program and  
18 the nature of the participants.

19                   (B) The follow-up contacts with and reviews of former pre-  
20 adjudication probation program participants are not extensions of the pre-  
21 adjudication probation program court's jurisdiction over the pre-adjudication  
22 probation program participants.

23           (d) For purposes of standardized measurement of success of pre-  
24 adjudication probation programs across the state, the Administrative Office  
25 of the Courts in consultation with other state agencies shall adopt an  
26 operational definition of terms to be used in any evaluation and report of  
27 pre-adjudication probation programs such as:

28                   (1) "Incentives given";

29                   (2) "Recidivism";

30                   (3) "Retention";

31                   (4) "Relapses";

32                   (5) "Restarts"; and

33                   (6) "Sanctions imposed".

34           (e) Each pre-adjudication probation program shall provide all  
35 information requested by the Administrative Office of the Courts.

36           (f) The Administrative Office of the Courts, the Department of

1 Community Correction, the Office of Alcohol and Drug Abuse Prevention, and  
2 the Arkansas Crime Information Center shall work together to share and make  
3 available data to provide a comprehensive data management system for the  
4 state's pre-adjudication probation programs.

5 (g)(1) The Administrative Office of the Courts shall:

6 (A) Develop a statewide evaluation model for pre-  
7 adjudication probation programs; and

8 (B) Conduct ongoing evaluations of the effectiveness and  
9 efficiency of all pre-adjudication probation programs.

10 (2) The Administrative Office of the Courts shall submit to the  
11 General Assembly by July 1 of each year a report of the evaluations under  
12 subdivision (g)(1) of this section

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14 */s/Williams*

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17 **APPROVED: 04/18/2013**  
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