

ARKANSAS SENATE
91st General Assembly - Regular Session, 2017
Amendment Form

Subtitle of Senate Bill No. 136

TO CREATE THE CRIMINAL JUSTICE EFFICIENCY AND SAFETY ACT OF 2017.

Amendment No. 4 to Senate Bill No. 136

Amend Senate Bill No. 136 as engrossed, S2/16/17 (version: 02/16/2017 08:43:12 AM)

Page 2, delete lines 6 through 13, and substitute the following:

"(h) In addition to other available sanctions, a person sentenced prior to the effective date of this act that is on probation under this section has the option to be sanctioned administratively under § 16-93-306(d) as it existed at the time of his or her sentence or as § 16-93-306 exists as of the effective date of this act."

AND

Page 7, line 33, delete "sixteen (16)" and substitute "seventeen (17)"

AND

Page 7, line 35, delete "Six (6)" and substitute "Seven (7)"

AND

Page 8, delete line 6, and substitute the following:

"(F) Two (2) members who are prosecuting attorneys;"

AND

Page 16, delete lines 35 and 36

AND

Page 17, delete lines 1 through 8, and substitute the following:

"(a)(1) ~~The trial~~ At a bench trial, a court may ~~deviate~~ depart from the voluntary presumptive ~~sentence without~~ sentence range determined under § 16-90-803 in reliance on one (1) or more aggravating factors by providing a written justification in the record of:

(A) A listing of the charges and sentencing enhancements against the offender as set out in the first charging instrument as well as



any additional charges or sentence enhancements subsequently added in the case, if any; and

(B) A thorough recitation of the facts underlying the departure from the voluntary presumptive sentence range under § 16-90-803.

(2)(A) The justification regarding an aggravating factor shall be entered into the sentencing order.

(B) The sentencing order shall also reflect whether the sentence is the result of an original charge or whether an original charge was nolle prosequi."

AND

Page 23, delete lines 5 through 9 and substitute the following:

"on probation or parole;

(D) A misdemeanor offense of driving or boating while intoxicated, § 5-65-103, when the probationer or parolee is currently being supervised for a felony offense of § 5-65-103, § 5-10-104, or § 5-10-105, and the felony offense was alcohol- or drug-related; or

(E) Except for an offense under the Uniform Controlled Substances Act, § 5-64-101 et seq., a misdemeanor offense that is a lesser included offense or falls within the same chapter of the Arkansas Criminal Code of the offense for which the defendant was placed on probation or parole; and"

AND

Page 23, delete line 15, and substitute the following:

"herself from supervision.

SECTION 17. Arkansas Code § 16-93-306 is amended to read as follows:
16-93-306. Probation generally – Supervision.

(a)(1) The Director of the Department of Community Correction with the advice of the Board of Corrections shall establish written policies and procedures governing the supervision of probationers designed to enhance public safety and to assist the probationers in integrating into society.

(2)(A) The supervision of probationers shall be based on evidence-based practices including a validated risk-needs assessment.

(B) Decisions shall target the probationer's criminal risk factors with appropriate supervision and treatment.

(b) A probation officer shall:

(1) Investigate all cases referred to him or her by the director, the sentencing judge, or the prosecuting attorney;

(2) Furnish to each probationer under his or her supervision a written statement of the conditions of probation and instruct the probationer that he or she ~~must~~ is required to stay in compliance with the conditions of probation or risk revocation under § 16-93-308;

(3) Develop a case plan for each individual who is assessed as a moderate to high risk to reoffend based on the risk and needs assessment that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;

(4) Stay informed of the probationer's conduct and condition

through visitation, required reporting, or other methods, and report to the sentencing court of that information upon request;

(5) Use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage a probationer to improve his or her conduct and condition and to reduce the risk of recidivism;

(6)(A) Conduct a validated risk-needs assessment of the probationer, including without limitation criminal risk factors and specific individual needs.

(B) The actuarial assessment shall include an initial screening and, if necessary, a comprehensive assessment.

(C) The results of the risk-needs assessment shall assist in making decisions that are consistent with evidence-based practices on the type of supervision and services necessary to each parolee; and

(7) Receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

(c)(1) The Department of Community Correction shall allocate resources, including the assignment of probation officers, to focus on moderate-risk and high-risk offenders as determined by the actuarial assessment provided in subdivision (b)(6) of this section.

(2) ~~The department~~ Department of Community Correction shall require public and private treatment and service providers that receive state funds for the treatment of or service for probationers to use evidence-based programs and practices.

(d)(1) ~~The department~~ Department of Community Correction shall have the authority to sanction probationers administratively without utilizing the revocation process under § 16-93-307.

(2)(A) ~~The department~~ Department of Community Correction shall develop an intermediate sanctions procedure and grid to guide a probation officer in determining the appropriate response to a violation of conditions of supervision.

(B) Intermediate sanctions administered by the ~~department~~ Department of Community Correction are required to conform to the sanctioning grid.

(3) Intermediate sanctions shall include without limitation:

(A) Day reporting;

(B) Community service;

(C) Increased substance abuse screening and or treatment;

(D) Increased monitoring, including electronic monitoring and home confinement; and

(E)(i) Incarceration in a county jail for no more than seven (7) days or incarceration in a Department of Community Correction or Department of Correction facility for no more than one hundred eighty (180) days.

(ii)(a) Incarceration as an intermediate sanction shall not be used more than ~~ten (10)~~ six (6) times with an individual probationer, ~~and.~~

(b) ~~no~~ A probationer shall accumulate no more than thirty (30) days' incarceration in a county jail or no more than three hundred sixty (360) days' incarceration in a Department of Community Correction or Department of Correction facility as an intermediate sanction before the probation officer recommends a violation of the person's probation

under § 16-93-307.

(c) A probationer is subject to a period of incarceration of:

(1) Up to ninety (90) days in a Department of Community Correction or Department of Correction facility for a technical conditions violation; and

(2) Exactly one hundred eighty (180) days in a Department of Community Correction or Department of Correction facility for a serious conditions violation.

(d) A probationer may not be incarcerated more than two (2) times as a probation sanction in a Department of Community Correction or Department of Correction facility.

(4) The Department of Community Correction shall notify the prosecuting attorney in writing when a probationer has been incarcerated due to an administrative sanction under this subsection and shall include an explanation of the cause for incarceration as well as the result of the sanction, if applicable.

(e) Any time in custody for which the probationer is held before a period of incarceration under this section is administered shall not count as period of incarceration ordered under subdivision (d)(3)(E)(ii)(a) of this section or toward the total accumulation of days of incarceration as set forth in subdivision (d)(3)(E)(ii)(b) of this section.

(f) A sanction under this section is not available to a person serving a suspended imposition of sentence.

(g) A period of incarceration under this section:

(1) May be reduced by the Department of Correction or the Department of Community Correction for good behavior and successful program completion; and

(2) Shall not be reduced under this section for more than fifty percent (50%) of the total time of incarceration ordered to be served.

(h)(1)(A) A probationer subject to an administrative probation sanction under subsection (d) of this section does not have the right to an attorney at the administrative probation sanction but may elect instead to have a probation sanction heard in circuit court as provided in this subchapter and in which he or she has the right to an attorney.

(B) This subsection does not prohibit a probationer from conferring with a privately retained attorney during the administrative probation sanction process.

(2)(A) The Department of Community Correction shall inform the probationer who is subject to a probation sanction under this section in writing that he or she may elect to have the probation sanction heard in circuit court.

(B) If the probationer elects to have his or her probation sanction heard in circuit court, the Department of Community Correction shall notify the prosecuting attorney and cause a petition to hear the probation sanction to be filed in the circuit court within ten (10) days of the election."

AND

Page 23, delete SECTION 17 in its entirety

AND

Page 24, line 8, delete "§ 16-93-309(a)(4)" and substitute "§ 16-93-306(d) or § 16-93-309(a)(4)"

AND

Page 24, line 19, delete "under § 16-93-315" and substitute "under § 16-93-306(d)"

AND

Page 24, line 24, delete "under § 16-93-315"

AND

Page 26, delete lines 9 through 36

AND

Page 27, delete lines 1 through 7, and substitute the following:

"(i)(1)(A) Except as provided for in subdivision (i)(2) of this section, if a defendant on probation is subject to a revocation hearing under this subchapter or an administrative probation sanction for a technical conditions violation or a serious conditions violation, the defendant on probation is subject to confinement according to the time periods set out in § 16-93-306(d) and § 16-93-309(a)(4) without having his or her probation revoked.

(B)(i) A defendant on probation is subject to having his or her probation revoked and being sentenced to the Department of Correction or the Department of Community Correction for a subsequent violation of his or her probation if the defendant has been confined six (6) times under § 16-93-306(d).

(ii) After a defendant on probation has been confined two (2) times under either § 16-93-306(d) or § 16-93-309(a)(4) for any combination of a technical conditions violation or serious conditions violation for any period of time, the defendant on probation is subject to having his or her probation revoked and being sentenced to the Department of Correction or the Department of Community Correction for a subsequent violation of his or her probation.

(2)(A) A defendant is subject to having his or her probation revoked under this section for a technical conditions violation or a serious conditions violation without having been sanctioned for a period of confinement set out under § 16-93-306(d) or § 16-93-309(a)(4) if upon the filing of a petition in the court with jurisdiction the Department of Community Correction or the prosecuting attorney proves by a preponderance of the evidence that the defendant is engaging in or has engaged in behavior that poses a threat to the community.

(B) If a prosecuting attorney alleges a technical conditions violation or a serious conditions violation under subdivision (i)(2)(A) of this section and meets the standard established under

subdivision (i)(2)(A) of this section, the court may revoke the defendant's probation and sentence him or her to a period of time exceeding the time periods set out under § 16-93-306(d) or § 16-93-309(a)(4).

(3) A period of confinement that a defendant on probation serves for a probation violation but before being administratively sanctioned or sanctioned by the circuit court shall not count as a period of confinement for the purposes of the aggregate number of periods of confinement under this subsection or under § 16-93-306(d)(3)(E)(ii)(a) nor shall the number of days of confinement count toward the total accumulation of days of confinement as set forth in § 16-93-306(d)(3)(E)(ii)(b).

(j) To the extent that a participant in a specialty court program is subject to this section, any period of confinement ordered by the specialty court is not subject to the accumulation of sanctions under subsection (i) of this section nor is a specialty court program bound by the time periods under § 16-93-306(d) or § 16-93-309(a)(4)."

AND

Page 27, delete SECTION 19 in its entirety and substitute the following:

"SECTION 19. Arkansas Code § 16-93-309 is amended to read as follows:

16-93-309. Probation generally – Revocation hearing – Sentence alternatives – Sanctions.

(a) Following a revocation hearing held under § 16-93-307 and in which a defendant on probation or who is serving a suspended imposition of sentence has been found guilty or has entered a plea of guilty or nolo contendere, the court may:

(1) Continue the period of suspension ~~of imposition~~ of sentence or continue the period of probation;

(2) Lengthen the period of suspension of sentence or the period of probation within the limits set by § 5-4-306;

(3) Increase the fine within the limits set by § 5-4-201;

(4)(A) Impose a period of confinement to be served during the period of suspension ~~of imposition~~ of sentence or period of probation; ~~or.~~

(B)(i) A period of confinement ordered under subdivision (a)(4)(A) of this section resulting from a technical conditions violation or serious conditions violation of probation shall be for the following periods, subject to subsection (b) of this section and § 16-93-308(i)(2)(A), before the defendant on probation is released and returned to probation:

(a) Up to ninety (90) days' confinement for a technical conditions violation; and

(b) Exactly one hundred eighty (180) days' confinement for a serious conditions violation.

(ii) Any time in custody for which the defendant is held before a period of confinement is ordered by the court under subdivision (a)(4)(A) of this section shall not be credited to the overall period of confinement ordered under subdivision (a)(4) of this section or toward the maximum number of periods of confinement or the maximum number of days authorized under § 16-93-306(d)(3)(E).

(C) The periods of confinement under subdivision (a)(4)(B) of this section are not available to a person serving a suspended imposition of sentence; or

(5) Impose any conditions that could have been imposed upon

conviction of the original offense.

(b)(1) A period of confinement under subdivision (a)(4) of this section may be reduced by the Department of Correction or the Department of Community Correction for good behavior and successful program completion.

(2) A period of confinement shall not be reduced under subdivision (a)(4) of this section for more than fifty percent (50%) of the total time of confinement ordered to be served.

(3) A period of confinement under subdivision (a)(4) of this section shall not be reduced by any time served by the defendant while he or she awaits a court hearing to challenge the imposition of the sanction.

(c)(1) If a defendant is in custody awaiting a hearing under this section for a technical conditions violation or a serious conditions violation, the hearing shall be conducted as soon as practicable but no later than thirty (30) business days from the date the defendant was taken into custody.

(2) If a defendant on probation is in custody in a county jail awaiting a hearing to challenge the imposition of a sanction under subdivision (a)(4) of this section, the state shall reimburse the county for the costs of incarceration at the prevailing rate of reimbursement.

~~(b)(d)~~ Following a revocation hearing in which a defendant is ordered to continue on a period of suspension of sentence or a period of probation, nothing prohibits the court, upon finding the defendant guilty at a subsequent revocation hearing, from the court may:

(1) ~~Revoking~~ Revoke the suspension of sentence or period of probation; and

(2) ~~Sentencing~~ Sentence the defendant to incarceration in the Department of Correction.

~~(e)(e)~~ If the suspension of sentence or probation of a defendant is subsequently revoked and the defendant is sentenced to a term of imprisonment, any period of time actually spent in confinement due to the original revocation shall be credited against the subsequent sentence.

(f) The location of the appropriate confining facility in which a defendant serves a period of confinement for a technical conditions violation or a serious conditions violation shall be determined by the Board of Corrections.

(g) Noncompliance with program requirements approved by the Board of Corrections or violent or sexual behavior while confined for a technical conditions violation or serious conditions violation under this section may result in revocation of the defendant's probation for a period of time exceeding the limitations of subdivision (a)(4) of this section, up to and including the time remaining on the defendant's original sentence.

(h) To the extent that a participant in a specialty court program is subject to this section, any period of confinement ordered by the specialty court is not subject to the periods of confinement required under subdivision (a)(4) of this section."

AND

Page 30, delete SECTION 21 in its entirety

AND

Page 31, delete SECTION 23 in its entirety and substitute the following:

"SECTION 23. Arkansas Code § 16-93-712 is amended to read as follows:
16-93-712. Parole supervision.

(a)(1) The Parole Board shall establish written policies and procedures governing the supervision of parolees designed to enhance public safety and to assist the parolees in reintegrating into society.

(2)(A) The supervision of parolees shall be based on evidence-based practices including a validated risk-needs assessment.

(B) Decisions shall target the parolee's criminal risk factors with appropriate supervision and treatment designed to reduce the likelihood of reoffense.

(b) A parole officer shall:

(1) Investigate each case referred to him or her by the Chair of the Parole Board, the Department of Community Correction, or the prosecuting attorney;

(2) Furnish to each parolee under his or her supervision a written statement of the conditions of parole and instruct the parolee that he or she must stay in compliance with the conditions of parole or risk revocation under § 16-93-705;

(3) Develop a case plan for each individual who is assessed as being moderate to high risk to reoffend based on the risk and needs assessment that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;

(4) Stay informed of the parolee's conduct and condition through visitation, required reporting, or other methods and shall report to the board that information upon request;

(5) Use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage a parolee to improve his or her conduct and condition and to reduce the risk of recidivism;

(6)(A) Conduct a validated risk-needs assessment of the parolee, including without limitation criminal risk factors and specific individual needs.

(B) The actuarial assessment shall include an initial screening and, if necessary, a comprehensive assessment;

(7) Make decisions with the assistance of the risk-needs assessment that are consistent with evidence-based practices on the type of supervision and services necessary to each parolee; and

(8) Receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

(c)(1) The ~~department~~ Department of Community Correction shall allocate resources, including the assignment of parole officers, to focus on moderate-risk and high-risk offenders as determined by the validated risk-needs assessment provided in subdivision (b)(6) of this section.

(2) The ~~department~~ Department of Community Correction shall require each public and private treatment and service provider that receives state funds for the treatment of or service for parolees to use evidence-based programs and practices.

(d)(1) The ~~department~~ Department of Community Correction shall have the authority to sanction a parolee administratively without engaging the revocation process under § 16-93-705.

(2)(A)(i) The ~~department~~ Department of Community Correction shall develop an intermediate sanctions procedure and grid to guide a parole officer in determining the appropriate response to a violation of conditions of supervision.

(ii) The intermediate sanctions procedure shall include a requirement that the parole officer consider multiple factors when determining the sanction to be imposed, including previous violations and sanctions and the severity of the current and prior violation.

(B) Intermediate sanctions administered by the ~~department~~ Department of Community Correction are required to conform to the sanctioning grid.

(3) Intermediate sanctions shall include without limitation:

(A) Day reporting;

(B) Community service;

(C) Increased substance abuse screening or treatment, or both;

(D) Increased monitoring, including electronic monitoring and home confinement; and

(E)(i) Incarceration in a county jail for no more than seven (7) days or incarceration in a Department of Community Correction facility or Department of Correction facility for no more than one hundred eighty (180) days.

(ii)(a) Incarceration as an intermediate sanction shall not be used more than ~~seven (7)~~ six (6) times with an individual parolee, ~~and no parolee shall accumulate more than twenty one (21) days' incarceration as an intermediate sanction before the parole officer files for revocation under § 16-93-706.~~

(b) A parolee shall accumulate no more than twenty-one (21) days' incarceration in a county jail or no more than three hundred sixty (360) days' incarceration in a Department of Community Correction facility or Department of Correction facility as an intermediate sanction before the parole officer recommends a violation of the person's parole under § 16-93-706.

(c) A parolee is subject to a period of incarceration of:

(1) Up to ninety (90) days in a Department of Community Correction facility or Department of Correction facility for a technical conditions violation; and

(2) Exactly one hundred eighty (180) days in a Department of Community Correction or Department of Correction facility for a serious conditions violation.

(d) A parolee may not be incarcerated more than two (2) times as a parole sanction in a Department of Community Correction facility or Department of Correction facility.

(e) Any time in custody for which the parolee is held before a period of incarceration under this section is administered shall not count as period of incarceration ordered under (d)(3)(E)(ii)(a) of this section or toward the total accumulation of days of incarceration as set forth in subdivision (d)(3)(E)(ii)(b) of this section.

(f) A period of incarceration under this section:

(1) May be reduced by the Department of Correction or the Department of Community Correction for good behavior and successful program

completion; and

(2) Shall not be reduced under this section for more than fifty percent (50%) of the total time of incarceration ordered to be served.

(g) If a parolee is in custody in a county jail awaiting an administrative sanction under this section, the state shall reimburse the county for the costs of incarceration at the prevailing rate of reimbursement.

SECTION 24. Arkansas Code Title 16, Chapter 93, Subchapter 7, is amended to add an additional section to read as follows:

16-93-715. Revocation – Technical conditions violations and serious conditions violations.

(a)(1) If a parolee is subject to a parole revocation hearing under this subchapter for a technical conditions violation or a serious conditions violation, the parolee is subject to confinement for the following periods, subject to subdivision (a)(2)(A) of this section, before being released and returned to parole supervision:

(A) Up to ninety (90) days' confinement for a technical conditions violation; and

(B) Exactly one hundred eighty (180) days' confinement for a serious conditions violation.

(2)(A) A period of confinement under subdivision (a)(1) of this section may be reduced by the Department of Correction or the Department of Community Correction for good behavior and successful program completion.

(B) A period of confinement shall not be reduced under subdivision (a)(2)(A) of this section for more than fifty percent (50%) of the total time of confinement ordered to be served.

(3) Any time in custody for which the person is held before a period of confinement is ordered to be served under subdivision (a)(1) of this section shall not be credited to the overall period of confinement ordered under subdivision (a)(1) of this section.

(b)(1) Except as provided for in subdivision (b)(2) of this section, if a parolee is subject to a revocation hearing under this subchapter or an administrative parole sanction for a technical conditions violation or a serious conditions violation, the parolee is subject to confinement according to the time periods set out in § 16-93-712(d) and subdivision (a)(1) of this section without having his or her parole revoked.

(2)(A) A parolee is subject to having his or her parole revoked and being returned to the Department of Correction or the Department of Community Correction for the next violation of his or her parole if the parolee has been confined six (6) times under § 16-93-712(d).

(B) After a parolee has been confined two (2) times under subsection (a)(1) of this section for any combination of a technical conditions violation or serious conditions violation for any period of time, the parolee is subject to having his or her parole revoked and being returned to the Department of Correction or the Department of Community Correction for the next violation of his or her parole.

(C) A parolee is subject to having his or her parole revoked and being returned to the Department of Correction or the Department of Community Correction under this section without having been sanctioned for a period of confinement set out under § 16-93-712(d) or subsection (a)(1) of this section if the Parole Board determines by a preponderance of the

evidence that the parolee is engaging in or has engaged in behavior that poses a threat to the community.

(c) The location of the appropriate confining facility in which a parolee serves a period of confinement under this section shall be determined by the Board of Corrections.

(d) A period of confinement that a parolee serves as a result of being arrested for a parole violation but before being administratively sanctioned shall not count as a period of confinement for the purposes of the aggregate number of periods of confinement under this section.

(e) Noncompliance with Department of Correction or Department of Community Correction program requirements or violent or sexual behavior while confined for a technical conditions violation or serious conditions violation under this section may result in revocation of the parolee's parole for a period of time exceeding the limitations of subdivision (a)(1) of this section, up to and including the time remaining on the person's original sentence."

AND

Page 48, delete line 33 and substitute the following:

"certification of a nonhospital crisis stabilization unit.

SECTION 35. DO NOT CODIFY. Effective date:

(a) Sections 16 through 23 of this act are effective on and after October 1, 2017.

(b) Section 15 of this act is effective on and after January 1, 2018."

AND

Appropriately renumber the sections of the bill.

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator J. Hutchinson
BPG/TDW - 02-21-2017 11:19:55
BPG304

Secretary