

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1470

As Engrossed: 3/13/2013

Bill Subtitle: TO ESTABLISH PRE-ADJUDICATION PROBATION PROGRAMS.

Basic Change :

Sponsors: Representatives Williams, Baine, Shepherd

This bill establishes a pre-adjudication probation program for people not charged with one of the following;

1. A criminal offense for which the person would be required to register as a sex offender under the Sex Offender Registration Act of 1997.
2. A felony involving violence as listed in § 5-4-501 (d) (2);
3. A felony involving a victim who was seventeen (17) years of age or younger at the time the felony was committed or
4. A felony involving a victim who was sixty-five (65) years of age or older at the time the felony was committed.

In addition the bill provides the record is to be expunged upon completion of the pre-adjudication probation program.

This bill does not exclude motor vehicle violations charged against commercial driver's license (CDL) holders or against holders of commercial driver permits (CDP). Federal and state law prohibits sealing, expunging or masking of these violations. The bill does not exclude violations of DWI or DUI for which a DFA Administrative Hearing may have suspended a person's driver's license.

Revenue Impact :

If this bill is not amended to exclude motor vehicle violations for CDL and CDP holders, the Arkansas Highway and Transportation Department could lose up to \$17 million in federal funds the first year of non compliance and \$34 million the second year.

An unknown amount of driver's license reinstatement fees may be lost if the driver's license has been suspended by DFA at an Administrative Hearing for a DWI or DUI offense and the charge is expunged through the pre-adjudication probation program.

Taxpayer Impact :

Taxpayers, who are eligible under this bill, will be able to expunge their records upon completion of a pre-adjudication probation program if this bill is passed.

Resources Required :

Some programming will be required to create a transaction to expunge violations from driving records.

Time Required :

DFA would need until January 1, 2014 for programming and training.

Procedural Changes :

Procedures would need to be developed to administer the expungement orders from the courts.

Legal Analysis :

HB1470 creates a sentencing alternative for courts to provide for pre-adjudication probation. Under the bill, "pre-adjudication probation" is where a person is charged by felony information or indictment in circuit court, is arraigned, and enters a guilty plea before the court enters a judgment or pronounces a sentence. In other words, a pre-adjudication program is a diversion program that allows a person charged with a felony to be ordered to complete criminal sanctions such as payment of fines and

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1470

As Engrossed: 3/13/2013

Bill Subtitle: TO ESTABLISH PRE-ADJUDICATION PROBATION PROGRAMS.

restitution, serve jail time, probation, or community service, and the like without having a criminal conviction. If the person completes his or her criminal sanctions, the bill provides that the person's criminal record for the offense be expunged.

Of primary importance to DFA is that this bill, if applied by an Arkansas court to the holder of a commercial learner's permit (CLP) or commercial driver's license (CDL) that has been charged with a traffic violation, will conflict with federal and Arkansas law. 49 C.F.R. § 384.226 provides that the a State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a [commercial learner's permit] or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the [Commercial Driver's License Information System] driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State. The bill provides that only felony offenders will be eligible for pre-adjudication programs. However, there are felony traffic violations, such as negligent homicide and manslaughter, that an Arkansas court could transfer a CLP or CDL holder to a pre-adjudication program under HB1470.

Arkansas will risk the loss of federal highway funds if the U.S. Department of Transportation or other federal agency determines Arkansas has enacted a statute that circumvents the federal regulation that prohibits a CLP or CDL holder from obtaining an expungement for a traffic violation conviction. This bill should be amended to clarify that if a person is a holder of a CLP or a CDL, the person cannot avail themselves of the provisions of the newly-created statutory pre-adjudication procedures.

This bill does not have an emergency clause or effective date.