

State of Arkansas  
89th General Assembly  
Regular Session, 2013

# A Bill

DRAFT BPG/BPG  
HOUSE BILL

By: Representative <NA>

## For An Act To Be Entitled

AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 5,  
CONCERNING CRIMINAL LAW, OF THE ARKANSAS CODE; AND  
FOR OTHER PURPOSES.

## Subtitle

TO MAKE TECHNICAL CORRECTIONS TO TITLE 5,  
CONCERNING CRIMINAL LAW, OF THE ARKANSAS  
CODE.

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

SECTION 1. Arkansas Code § 5-2-316(a)(1) is amended to read as follows  
to clarify its application:

(a)(1) The Director of the Department of Human Services or his or her  
designee, or a person conditionally released under § 5-2-315, or both, may  
apply to the court ordering the conditional release for discharge from or  
modification of the order granting conditional release on the ground that ~~he~~  
~~or she~~ the person conditionally released under § 5-2-315 may be discharged or  
the order modified without danger to ~~himself or herself~~ the person  
conditionally released under § 5-2-315 or to the person or property of  
another person.

SECTION 2. Arkansas Code § 5-4-802 is amended to read as follows to  
clarify its application:

5-4-802. Rules.

The Board of Corrections shall promulgate necessary rules to be  
followed by a government entity in the supervision of eligible offenders

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1 ~~utilized~~ sentenced under this subchapter.

2  
3 SECTION 3. Arkansas Code § 5-4-803(b)(2) is amended to read as follows  
4 to clarify its application:

5 (2) In order for the eligible offender to participate in a community  
6 work project, space must be available in the county jail or regional jail as  
7 certified by the county sheriff, to the:

8 (A) Department of Correction for an eligible offender committed  
9 to the department, ~~or to the court~~

10 (B) Court for an eligible offender serving time for a misdemeanor  
11 offense.

12  
13 SECTION 4. Arkansas Code § 5-5-204(a)(1) is amended to read as follows  
14 to clarify its application:

15 (a)(1)(A) Upon conviction and a hearing, when the circuit court having  
16 jurisdiction over the conveyance seized finds ~~upon a hearing~~ by a  
17 preponderance of the evidence that a ground for a forfeiture exists under  
18 this subchapter, the circuit court may enter an order to sell the conveyance,  
19 ~~with the proceeds, after~~

20 (B) After allowance for reasonable expenses of seizure and  
21 maintenance of custody of the conveyance, the proceeds from a sale under  
22 subdivision (a)(1)(A) of this section going shall be used to satisfy any  
23 outstanding restitution under § 5-4-205 owed to a victim of an offense for  
24 which the conveyance was used, if the victim files a petition with the  
25 circuit court or makes a request to the circuit court within thirty (30) days  
26 of the filing of the judgment and commitment order of the convicted  
27 defendant.

28  
29 SECTION 5. Arkansas Code § 5-14-129(a)(2) and (b) are amended to read  
30 as follows to use consistent terms and to make stylistic changes:

31 (2) Accept work as a self-employed person, an independent  
32 contractor, or an employee or agent of a self-employed person or independent  
33 contractor that is to be performed at a ~~private~~ privately owned daycare  
34 facility when the privately owned daycare facility has in its care a child.

35 (b) ~~A sex offender who is required to register under the Sex Offender~~  
36 ~~Registration Act of 1997, § 12-12-901 et seq., and who knowingly violates~~

~~this section is guilty of~~ A violation of this section is a Class D felony.

SECTION 6. Arkansas Code § 5-14-202(d) is repealed because § 12-12-107 requiring human immunodeficiency virus (HIV) testing was not enacted, making the subsection obsolete.

~~(d) For medical records of testing done under § 12-12-107, the prosecuting attorney shall:~~

~~(1) Be notified of any human immunodeficiency virus (HIV) testing done under § 12-12-107;~~

~~(2) Be given a copy of the results of the human immunodeficiency virus (HIV) test; and~~

~~(3) Notify the victim, his or her parent or parents or guardian if the victim is a minor, and the defendant of the results of the human immunodeficiency virus (HIV) test as soon as is practicable.~~

SECTION 7. Arkansas Code § 5-36-103(b)(3)(F) is amended to read as follows to add clarifying language:

(F) ~~An~~ The property is an electric power line, gas line, water line, wire or fiber insulator, electric motor, or other similar apparatus connected to a farm shop, on-farm grain drying and storage complex, heating and cooling system, environmental control system, animal production facility, irrigation system, or dwelling; or

SECTION 8. Arkansas Code § 5-36-124(c) is amended to read as follows to clarify its application:

(c)~~(1)~~ Theft by receiving of scrap metal is a:

(A) Class D felony if it is a second or subsequent offense of theft by receiving of scrap metal or the value of the scrap metal is more than one thousand dollars (\$1,000); or

(B) Class A misdemeanor.

~~(2) A person who is found guilty of or pleads guilty or nolo contendere to a second or subsequent violation of this section is guilty of a Class D felony.~~

SECTION 9. Arkansas Code § 5-37-226(b)(1)(B) is amended to read as follows to clarify its application:

1 (B) A Except as provided under subdivision (b)(2) of this section, a  
 2 person who has a previous conviction under ~~subdivision (b)(1)(A)~~ of this  
 3 section upon conviction is guilty of a Class D felony for a subsequent  
 4 violation of subsection (a) of this section.

5  
 6 SECTION 10. Arkansas Code § 5-37-304(b) and (c) are amended to read as  
 7 follows to add clarifying language:

8 (b)(1) ~~Nothing impairs the A prosecuting attorney's power to~~  
 9 ~~immediately~~ attorney may file charges immediately after the check, draft,  
 10 order, or other form of presentment involving the transmission of account  
 11 information has been returned.

12 (2) The prosecuting attorney may collect restitution, including  
 13 a service charge, not exceeding thirty dollars (\$30.00) per check, draft,  
 14 order, or other form of presentment involving the transmission of account  
 15 information plus the amount of any fees charged to the holder of the check,  
 16 draft, order, or other form of presentment involving the transmission of  
 17 account information by a financial institution as a result of the check's,  
 18 draft's, order's, or other forms of presentment involving the transmission of  
 19 account information not being honored, for the payees of the check, draft,  
 20 order, or other form of presentment involving the transmission of account  
 21 information.

22 (c) The check, draft, ~~or~~ order, or other form of presentment involving  
 23 the transmission of account information bearing an "insufficient" stamp or  
 24 "no account" stamp from the collecting bank or any other report or stamp from  
 25 the collecting bank indicating that the check, draft, order, or other form of  
 26 presentment involving the transmission of account information was dishonored  
 27 or unable to be paid due to insufficient funds on deposit to cover the value  
 28 of the check, draft, order, or other form of presentment involving the  
 29 transmission of account information shall be received as evidence that there  
 30 were insufficient funds or no account at trial in any court in this state.

31  
 32 SECTION 11. Arkansas Code § 5-64-405(e)(4) is amended to read as  
 33 follows to add clarifying language:

34 (4) Have the execution of the sentence deferred;

35  
 36 SECTION 12. Arkansas Code § 5-64-441(b)(1) is amended to read as

1 follows to add clarifying language:

2 (1) A Schedule I or Schedule II controlled substance upon conviction  
3 is guilty of a Class D felony;

5 SECTION 13. Arkansas Code § 5-64-442(b)(3) is amended to read as  
6 follows to add clarifying language:

7 (3) A counterfeit substance purporting to be a Schedule ~~IV-VI~~ IV,  
8 Schedule V, or Schedule VI controlled substance or that is not classified as  
9 a scheduled controlled substance upon conviction is guilty of a Class A  
10 misdemeanor.

12 SECTION 14. Arkansas Code § 5-64-1103(c)(1)(A) is amended to read as  
13 follows to clarify a term:

14 (c)(1)(A) Except under a valid prescription, before dispensing a  
15 product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is  
16 not exempt under subdivision (b)(1) or (b)(2) of this section, a pharmacist  
17 shall make a professional determination, based on a pharmacist-patient  
18 relationship, as to whether or not there is a legitimate medical and  
19 pharmaceutical need for the ~~drug~~ product containing ephedrine,  
20 pseudoephedrine, or phenylpropanolamine.

22 SECTION 15. Arkansas Code § 5-64-1113(a) is amended to read as follows  
23 to add clarifying language:

24 (a) The Arkansas State Board of Pharmacy may adopt rules creating and  
25 adding to a list of additional nonprescription drugs that are subject to the  
26 same restrictions as are imposed for ephedrine, pseudoephedrine, or  
27 phenylpropanolamine under §§ 5-64-1103(c) and (d)(4) and § 5-64-1104.

29 SECTION 16. Arkansas Code § 5-71-230(b)(2) is amended to read as  
30 follows to correct a culpable mental state:

31 (2) ~~Intends~~ Has a purpose to interfere with the funeral; and

33 SECTION 17. Arkansas Code § 5-73-124(a)(1) is amended to read as  
34 follows to add clarifying language:

35 (a)(1) Except as otherwise provided in this section, any person who  
36 knowingly carries or has in his or her possession any tear gas or pepper

1 spray in any form, or any person who knowingly carries or has in his or her  
2 possession any gun, bomb, grenade, cartridge, or other weapon designed for  
3 the discharge of tear gas or pepper spray, upon conviction is guilty of a  
4 Class A misdemeanor.

5  
6 SECTION 18. Arkansas Code § 5-73-124(b)(1) is amended to read as  
7 follows to clarify a term for consistency with the Arkansas Criminal Code:

8 (b)(1) ~~Peace~~ Law enforcement officer while engaged in the discharge of  
9 his or her official duties; or

10  
11 SECTION 19. Arkansas Code § 5-78-102(b) is amended to read as follows  
12 to clarify its application:

13 (b) If a minor who is found by a court to be in violation of any  
14 criminal statute is also found to ~~be~~ have been in possession of a cigarette  
15 or tobacco product at the time of the violation of the criminal statute, the  
16 court may order the minor to perform up to three (3) hours of community  
17 service and to enroll in a tobacco education program, in addition to any  
18 other punishment imposed by the court for the violation of the criminal  
19 statute.

20  
21 SECTION 20. DO NOT CODIFY. The enactment and adoption of this act  
22 shall not repeal, expressly or impliedly, the acts passed at the regular  
23 session of the Eighty-Ninth General Assembly. All such acts shall have the  
24 full force and effect and, so far as those acts intentionally vary from or  
25 conflict with any provision contained in this act, those acts shall have the  
26 effect of subsequent acts and as amending or repealing the appropriate parts  
27 of the Arkansas Code of 1987.