

Exhibit C

C. Continuation of Discussion of Issues Related to the Implementation of the Protect Arkansas Act Identified by the Arkansas Sentencing Commission.

1 State of Arkansas

As Engrossed: S3/30/23 H4/5/23

2 94th General Assembly

A Bill

3 Regular Session, 2023

SENATE BILL 495

4
5 By: Senators Gilmore, J. Dismang, J. Boyd, J. Bryant, Caldwell, Crowell, B. Davis, Dees, J. English,
6 Flippo, K. Hammer, Hester, Hill, Irvin, B. Johnson, M. Johnson, M. McKee, C. Penzo, J. Petty, Rice,
7 Stone, G. Stubblefield, D. Wallace, *A. Clark*

8 By: Representatives Gazaway, *M. Shepherd, Achor, Andrews, Barker, Beck, Beaty Jr., Bentley, M. Berry,*
9 *S. Berry, Breaux, Brooks, K. Brown, M. Brown, Burkes, Joey Carr, John Carr, Cavanaugh, C. Cooper,*
10 *Cozart, Crawford, Dalby, Duffield, Eaves, Eubanks, Evans, C. Fite, L. Fite, Fortner, Furman, Gramlich,*
11 *Haak, Hawk, G. Hodges, Holcomb, Hollowell, L. Johnson, Ladyman, Lundstrum, Maddox, McAlindon,*
12 *McCollum, McGrew, B. McKenzie, McNair, S. Meeks, Milligan, J. Moore, Painter, Pearce, Pilkington,*
13 *Ray, R. Scott Richardson, Richmond, Rose, Rye, Schulz, Steimel, Tosh, Underwood, Vaught, Walker,*
14 *Wardlaw, Warren, Watson, Wing, Wooldridge, Wooten*

For An Act To Be Entitled

15
16
17 AN ACT TO CREATE THE PROTECT ARKANSAS ACT; TO AMEND
18 ARKANSAS LAW CONCERNING SENTENCING AND PAROLE; TO
19 AMEND ARKANSAS LAW CONCERNING CERTAIN CRIMINAL
20 OFFENSES; TO AMEND ARKANSAS LAW CONCERNING THE PAROLE
21 BOARD; TO CREATE THE LEGISLATIVE RECIDIVISM REDUCTION
22 TASK FORCE; AND FOR OTHER PURPOSES.

Subtitle

23
24
25 TO CREATE THE PROTECT ARKANSAS ACT; TO
26 AMEND ARKANSAS LAW CONCERNING SENTENCING
27 AND PAROLE; TO AMEND ARKANSAS LAW
28 CONCERNING CERTAIN CRIMINAL OFFENSES; AND
29 TO CREATE THE LEGISLATIVE RECIDIVISM
30 REDUCTION TASK FORCE.
31

32
33
34 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

35
36 SECTION 1. DO NOT CODIFY. This act shall be known as the "Protect



1 SECTION 251. DO NOT CODIFY. CORRECTION OF TECHNICAL ERRORS RELATED TO
2 IMPLEMENTATION OF the "Protect Arkansas Act".

3 (a)(1) The General Assembly finds that:

4 (A) The implementation of this act involves a multitude of
5 changes to existing Arkansas law;

6 (B) Many of the changes implicated by this act are highly
7 technical and require careful study of the purpose and context of each
8 Arkansas Code section, with the need for some of the changes not becoming
9 apparent until the implementation of this act;

10 (C) When implementing revisions as large and comprehensive
11 as the changes under this act, it is inevitable that certain sections of the
12 Arkansas Code requiring technical changes to follow the intent of this act
13 will be either omitted or amended in a manner that is later found to be
14 erroneous and unintentional;

15 (D) It is likewise inevitable that other acts enacted by
16 the Ninety-fourth General Assembly will not take into account the changes in
17 this act, resulting in technical inconsistencies between newly passed laws;
18 and

19 (E) If the correct statutory change to remedy an
20 unintentional error or an inconsistency between this act and another act of
21 the Ninety-fourth General Assembly is readily apparent and consistent with
22 the intent of this act, the unintentional error or inconsistency should be
23 corrected as part of the codification process due to the technical nature of
24 the unintentional error or inconsistency.

25 (2) It is the intent of the General Assembly to empower the
26 Arkansas Code Revision Commission to correct technical errors identified in
27 the Arkansas Code during the implementation of this act to allow this act to
28 be fully implemented.

29 (b)(1)(A) Any person or state entity identifying one (1) or more
30 sections of the Arkansas Code that require revision to implement the intent
31 of this act may notify the Director of the Bureau of Legislative Research or
32 his or her designee of the section or sections at issue.

33 (B) If the Bureau of Legislative Research, while assisting
34 the commission with the commission's powers and duties, becomes aware of one
35 (1) or more sections of the Arkansas Code that require revision to implement
36 the intent of this act for which it appears that the bureau and the

1 commission do not have authority to make the necessary revision under § 1-2-
2 303(d), the bureau may notify the commission of the section or sections at
3 issue.

4 (2) If the commission determines that the revision necessary to
5 one (1) or more sections of the Arkansas Code under subdivision (b)(1) of
6 this section is technical in nature, germane to the intent of this act, and
7 consistent with this act's policy and purposes, the commission may make the
8 revision to the Arkansas Code.

9 (3) The commission shall notify the publisher of the Arkansas
10 Code of a revision to the Arkansas Code under subdivision (b)(2) of this
11 section as soon as possible so that the revision may be reflected in the
12 official hard copy version of the Arkansas Code and official electronic
13 version of the Arkansas Code.

14 (4)(A) Except as provided in subdivision (b)(4)(B) of this
15 section, when the commission approves a revision to the Arkansas Code under
16 subdivision (b)(2) of this section, the commission shall notify the following
17 of the revision within thirty (30) days:

18 (i) The Speaker of the House of Representatives;
19 (ii) The President Pro Tempore of the Senate; and
20 (iii) The Legislative Council.

21 (B) The commission is not required to make a notification
22 under subdivision (b)(4)(A) of this section if the revision is made under §
23 1-2-303(d).

24 (c) The authority granted to the commission under this section is
25 supplemental to the commission's authority under § 1-2-303.

26 (d) This section shall expire on December 31, 2024.

27

28 SECTION 252. DO NOT CODIFY. CONSTRUCTION.

29 (a) Except as provided in subsection (b) of this section, to the
30 extent that a conflict exists between an act of the regular session of the
31 Ninety-Fourth General Assembly and this act:

32 (1) Section 1-2-107 shall not apply; and

33 (2) All of the enactments of each act shall be given effect
34 except to the extent of irreconcilable conflicts, in which case the
35 conflicting provision of this act shall prevail.

36 (b) This section shall not revive or re-enact any provision of the

Item # 2 Held Over from June 2023 Meeting: Discussion of the use of “no” in § 16-93-306(d)(3)(E)(ii)(b).

1 (3) Intermediate sanctions shall include without limitation:

2 (A) Community service;

3 (B) Increased substance abuse screening and treatment;

4 (C) Increased monitoring, including electronic monitoring
5 and home confinement; and

6 (D)(i) Incarceration in a county or regional jail for no
7 more than seven (7) days or incarceration in a Division of Correction
8 facility or a Division of Community Correction facility for no more than
9 ninety (90) days.

10 (ii)(a) Incarceration as an intermediate sanction
11 shall not be used more than six (6) times with an offender on post-release
12 supervision.

13 (b) If an offender on post-release supervision
14 accumulates no more than thirty (30) days' incarceration in a county or
15 regional jail or more than three hundred sixty (360) days' incarceration in a
16 Division of Correction facility or a Division of Community Correction
17 facility as an intermediate sanction, the community supervision officer shall
18 recommend a revocation of the offender's post-release supervision under § 16-
19 93-1908.

20 (c) An offender shall not be incarcerated more
21 than two (2) times as a result of an intermediate sanction in a Division of
22 Correction facility during any two (2) year period.

23 (4) The Division of Community Correction shall:

24 (A) Notify the Post-Prison Transfer Board in writing when
25 an offender has been incarcerated due to an intermediate sanction under this
26 subsection;

27 (B) Include an explanation of the cause for incarceration;
28 and

29 (C) Include the result of the intermediate sanction, if
30 applicable.

31 (b) Any time in custody for which the offender on post-release
32 supervision is held, before a period of incarceration under this section is
33 administered, does not count as a period of incarceration ordered toward the
34 total accumulation of days of incarceration as stated in subsection (a) of
35 this section.

36 (c) A period of incarceration under this section:

16-93-306. Probation generally — Supervision.

(b) 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 Division of Community Correction or Division of Correction facility as an intermediate sanction before the probation officer recommends a violation of the person's probation under § 16-93-307.

16-93-712. Parole supervision.

(b) A parolee shall accumulate no more than twenty-one (21) days' incarceration in a county jail or no more than two hundred forty (240) days' incarceration in a Division of Community Correction facility or Division of Correction facility as an intermediate sanction before the parole officer recommends a violation of the person's parole under § 16-93-706.

Item # 4 Held Over from June 2023 Meeting: Discussion of revision § 16-93-1908(e).

1 (1) May be reduced by the Division of Correction for good
2 behavior and successful program completion; and

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

5 (d)(1) An offender subject to an intermediate sanction under
6 subsection (a) of this section does not have the right to an attorney at the
7 intermediate sanction hearing.

8 (2) This subsection does not prohibit an offender from
9 conferring with a privately retained attorney during the intermediate
10 sanction process.

11
12 **16-93-1908. Revocation of post-release supervision.**

13 (a)(1)(A) At any time during an offender's post-release supervision,
14 the Post-Prison Transfer Board may issue a warrant for the arrest of the
15 offender for violation of any of the conditions of post-release supervision
16 or may issue a notice to appear to answer a charge of a violation.

17 (B)(i) The board shall issue a warrant for the arrest of
18 an offender on post-release supervision if the board determines that the
19 offender has been charged with a felony ineligible to receive earned release
20 credits or a restricted release felony, as defined in § 16-93-1802.

21 (ii) An offender arrested on a warrant issued under
22 subdivision (a)(1)(B)(i) of this section shall be detained pending a
23 mandatory post-release supervision hearing.

24 (C) The Division of Community Correction shall provide the
25 information necessary for the board to issue a warrant under this subdivision
26 (a)(1).

27 (2) A warrant or notice issued under subdivision (a)(1) of this
28 section shall be served personally upon the offender.

29 (3) A warrant issued under subdivision (a)(1) of this section
30 shall authorize all officers named in the warrant to place the offender in
31 custody at any suitable detention facility pending a hearing.

32 (4) A community supervision officer may arrest an offender on
33 post-release supervision without a warrant by giving him or her a written
34 statement stating that the offender, in the judgment of the community
35 supervision officer, violated the conditions of his or her post-release
36 supervision.

1 (5) A written statement under subdivision (a)(4) of this section
2 delivered by the arresting community supervision officer with the offender to
3 the official in charge of the detention facility to which the offender is
4 brought is sufficient for detaining the offender pending disposition.

5 (6) If the board or its designee finds, by a preponderance of
6 the evidence, that the offender has inexcusably failed to comply with a
7 condition of his or her post-release supervision, the post-release
8 supervision may be revoked at any time before the expiration of the period of
9 post-release supervision.

10 (7) An offender serving on post-release supervision for whose
11 return a warrant has been issued by the board under this subsection shall be
12 deemed a fugitive from justice if it is found that the warrant cannot be
13 served.

14 (b)(1) An offender transferred to or serving on post-release
15 supervision shall be entitled to a preliminary hearing to determine whether
16 there is reasonable cause to believe that the offender has violated a
17 condition of his or her post-release supervision.

18 (2) A preliminary hearing conducted under subdivision (b)(1) of
19 this section shall be scheduled within seven (7) days after arrest or within
20 seven (7) days after notice is served and shall be conducted within fourteen
21 (14) days after arrest or service of notice to appear, excluding a weekend,
22 holiday, or delay caused by an act of nature, by the revocation hearing judge
23 for the board and at a location reasonably near the place of the alleged
24 violation or the arrest.

25 (3) The offender shall be given notice of the date, time, and
26 location of the preliminary hearing and the conditions of post-release
27 supervision that the offender is alleged to have violated.

28 (4) Except as provided in subsection (d) of this section, the
29 offender has the right to hear and controvert evidence against him or her, to
30 offer evidence on his or her own behalf, and to be represented by counsel at
31 the preliminary hearing.

32 (5) If a revocation hearing judge finds after the preliminary
33 hearing that there is reasonable cause to believe that an offender has
34 violated a condition of post-release supervision by committing a felony
35 ineligible to receive earned release credits or a restricted release felony,
36 as defined in § 16-93-1802, the revocation hearing judge shall order the

1 offender be returned to the nearest facility of the Division of Correction or
2 the Division of Community Correction where he or she shall be placed in
3 custody for a revocation hearing before the board.

4 (6) If a revocation hearing judge finds after the preliminary
5 hearing that there is reasonable cause to believe that an offender has
6 violated a condition of post-release supervision other than the commission of
7 a felony ineligible to receive earned release credits or a restricted release
8 felony, as defined in § 16-93-1802, the revocation hearing judge shall:

9 (A) Order the offender be returned to the nearest facility
10 of the Division of Correction or the Division of Community Correction where
11 he or she shall be placed in custody for a revocation hearing before the
12 board; or

13 (B) Return the offender to post-release supervision with
14 or without additional supervision conditions in response to the violating
15 conduct.

16 (7)(A) If a revocation hearing judge does not find after the
17 preliminary hearing reasonable cause to believe that an offender has violated
18 a condition of post-release supervision, he or she shall order the offender
19 be released from custody.

20 (B) An order to release the offender from custody under
21 subdivision (b)(7) of this section does not bar the board from holding a
22 revocation hearing on the alleged violation of a condition of post-release
23 supervision or from ordering the offender to appear before the board.

24 (8) A revocation hearing judge shall prepare and furnish to the
25 board and the offender a summary of the preliminary hearing proceedings,
26 including without limitation the substance of the evidence and testimony
27 considered along with his or her finding and order, within twenty-one (21)
28 days from the date of the preliminary hearing, excluding a weekend, holiday,
29 or delay caused by an act of nature.

30 (c)(1)(A) Unless a revocation hearing is knowingly and intelligently
31 waived by the offender, transfer to post-release supervision shall not be
32 revoked except after a revocation hearing, which shall be conducted by the
33 board or its designee within a reasonable period after the offender's arrest
34 or service of notice to appear.

35 (B) If a waiver is granted under subdivision (c)(1)(A) of
36 this section, the offender may subsequently appeal the waiver to the board.

1 (2) An offender shall be given notice of the date, time, and
2 location of the revocation hearing, the purpose of the revocation hearing,
3 and the conditions of supervision he or she is alleged to have violated.

4 (3) Except as provided in subsection (d) of this section, the
5 offender has the right to hear and controvert evidence against him or her, to
6 offer evidence in his or her own defense, and to be represented by counsel at
7 the revocation hearing.

8 (4) If post-release supervision is revoked after a revocation
9 hearing, the board or its designee shall prepare and furnish to the offender
10 a statement of evidence relied on and the reasons for revoking the post-
11 release supervision.

12 (d) At a preliminary hearing under subsection (b) of this section or a
13 revocation hearing under subsection (c) of this section:

14 (1) The offender has the right to confront and cross-examine
15 adverse witnesses unless the revocation hearing judge, the board, or the
16 designee of the board specifically finds good cause for not allowing
17 confrontation and cross-examination; and

18 (2) The offender may introduce any relevant evidence of the
19 alleged violation, including without limitation letters, affidavits, and
20 other documentary evidence, regardless of the admissibility of the evidence
21 under the rules governing the admission of evidence.

22 (e)(1) A preliminary hearing under subsection (b) of this section is
23 not required if the offender knowingly and intelligently waives the
24 preliminary hearing.

25 (2) If the preliminary hearing is not waived by the offender
26 under subsection (c) of this section, the revocation hearing shall be held
27 within fourteen (14) days after the arrest and reasonably near the place
28 where the alleged violation occurred or where the offender was arrested.

29 (f) A preliminary hearing under subsection (b) of this section and a
30 revocation hearing under subsection (c) of this section is not required if
31 the revocation is based on the offender's conviction of a felony offense for
32 which he or she is sentenced to the Division of Correction or to any other
33 state or federal correctional institution.

34 (g) An offender may be held in a county or regional jail while
35 awaiting a revocation hearing and the ruling of the board or its designee
36 under this section.

1 (h) An offender whose post-release supervision is revoked under this
2 section due to a technical conditions violation or serious conditions
3 violation and who is sentenced to any period of incarceration resulting from
4 the revocation is subject to the periods of incarceration provided in § 16-
5 93-1907.

6 (i) Upon revocation under this section, an offender subject to a term
7 of post-release supervision for a felony ineligible to receive earned release
8 credits or a restricted release felony shall return to incarceration for the
9 entire remaining period of imprisonment or post-release supervision assessed
10 by the sentencing court.

11
12 16-93-1909. Subpoena of witnesses and documents for revocation of
13 post-release supervision.

14 (a)(1) The following persons have the power to issue oaths, subpoena
15 witnesses to appear, and subpoena the production of any relevant books,
16 papers, records, or documents under this subchapter:

17 (A) The Chair of the Post-Prison Transfer Board or his or
18 her designee;

19 (B) The administrator of the Post-Prison Transfer Board;

20 (C) Any member of the Post-Prison Transfer Board; and

21 (D) The revocation hearing judge presiding over any
22 preliminary hearing concerning an alleged violation of the conditions of
23 post-release supervision.

24 (2)(A) A subpoena issued under this section shall be:

25 (i) Directed to the county sheriff, county coroner,
26 or constable of any county where the designated witness resides or is found;
27 and

28 (ii) Served and returned in the same manner as
29 subpoenas in civil actions in the circuit courts.

30 (B) An endorsed affidavit on a subpoena of a person
31 eighteen (18) years of age or older is proof of service of the subpoena.

32 (b) The fees and mileage expenses prescribed by law for witnesses in
33 civil cases shall be paid by the Division of Correction for any witness
34 subpoenaed to appear under this section.

35 (c)(1) If a person fails or refuses to comply with a subpoena issued
36 under this section to testify or answer to any matter regarding which the

16-93-705. Revocation — Procedures and hearings generally.

(b)(1) A parolee arrested for violation of parole shall be entitled to a preliminary hearing to determine whether there is reasonable cause to believe that he or she has violated a condition of parole.

(2) The preliminary hearing shall be scheduled within seven (7) days after arrest and conducted within fourteen (14) days after arrest, excluding a weekend, holiday, or delay caused by an act of nature, by the parole revocation judge for the board and reasonably near the place of the alleged violation or arrest.

(e) A preliminary hearing under subsection (b) of this section shall not be required if:

(1) The parolee waives a preliminary hearing; or

(2) Unless a parole revocation hearing is knowingly and intelligently waived by the parolee under subsection (c) of this section, the parole revocation hearing under subsection (c) of this section is held within fourteen (14) calendar days after the arrest and reasonably near the place where the alleged violation occurred or where the parolee was arrested.

Item # 5 Held Over from June 2023 Meeting: Discussion of insertion of effective date language into § 16-90-120(g).

1 notwithstanding any law allowing the award of meritorious good time or any
2 other law to the contrary, except as provided in subdivision (e)(1)(B)(ii) of
3 this section, any person who is sentenced under subsection (a) of this
4 section is not eligible for parole, transfer to post-release supervision, or
5 community correction transfer until the person serves:

6
7 **SECTION 125.** Arkansas Code § 16-90-120, concerning a felony with a
8 firearm, is amended to add an additional subsection to read as follows:

9 (g) Any person convicted under this section is not eligible for early
10 release on parole, transfer to post-release supervision, or community
11 correction transfer for the additional period of confinement.

12
13 SECTION 126. Arkansas Code § 16-90-121 is amended to read as follows:

14 16-90-121. Second or subsequent felony with firearm.

15 Any person who is found guilty of or pleads guilty or nolo contendere
16 to a second or subsequent felony involving the use of a firearm shall be
17 sentenced to a minimum term of imprisonment of ten (10) years in the Division
18 of Correction without eligibility of parole or community correction transfer
19 but subject to reduction by meritorious good-time credit or earned release
20 credits.

21
22 SECTION 127. Arkansas Code § 16-90-402 is amended to read as follows:

23 16-90-402. Delivery of defendant and copy of judgment to proper
24 officials – Development of standardized copy of sentencing order.

25 (a)(1) In executing a judgment of confinement, the county sheriff
26 shall deliver the defendant with a certified standardized copy of the
27 sentencing order to the Division of Correction, Division of Community
28 Correction, or to another detention facility, as indicated in the sentencing
29 order.

30 (2) If electronic filing of court records has been implemented
31 by the circuit clerk in the county where the defendant's conviction occurred,
32 the standardized copy of the sentencing order may be electronically
33 transmitted by the circuit clerk to the Division of Correction, the Division
34 of Community Correction, or to another detention facility, as indicated in
35 the sentencing order.

36 (b) The standardized copy of the sentencing order shall be developed