

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H4/5/99 H4/7/99

A Bill

HOUSE BILL 1964

5 By: Representative Vess
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For An Act To Be Entitled

9 " AN ACT TO ALLOW CIRCUIT COURTS TO INCREASE
10 CONDITIONS OF PROBATION FOLLOWING A REVOCATION
11 HEARING; AND FOR OTHER PURPOSES. "

Subtitle

13 "AN ACT TO ALLOW CIRCUIT COURTS TO
14 INCREASE CONDITIONS OF PROBATION
15 FOLLOWING A REVOCATION HEARING. "
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code 5-4-301 is amended to read as follows:

22 "5-4-301. Crimes for which suspension or probation prohibited - Criteria
23 for suspension or probation in other cases.

24 (a)(1) A court shall not suspend imposition of sentence as to a term of
25 imprisonment nor place the defendant on probation for the following offenses:

26 (A) Capital murder;

27 (B) Treason;

28 (C) Class Y felonies, except to the extent suspension of an
29 additional term of imprisonment is permitted in § 5-4-104(c);

30 (D) Driving while intoxicated;

31 (E) Murder in the second degree, except to the extent
32 suspension of an additional term of imprisonment is permitted in § 5-4-104(c);

33 (F) Engaging in a continuing criminal enterprise.

34 (2) The court shall not suspend imposition of sentence or place a
35 defendant on probation if it is determined, pursuant to § 5-4-502, that the
36 defendant has previously been convicted of two (2) or more felonies.

1 (b) In making a determination as to suspension or probation, the court
2 shall consider whether:

3 (1) There is undue risk that during the period of a suspension or
4 probation the defendant will commit another offense; or

5 (2) The defendant is in need of correctional treatment that can
6 be provided most effectively by his commitment to an institution; or

7 (3) Suspension or probation will discount the seriousness of the
8 defendant's offense; or

9 (4) The defendant has the means available or is so gainfully
10 employed that restitution or compensation to the victim of his offense will
11 not cause an unreasonable financial hardship and will be beneficial to the
12 rehabilitation of the defendant.

13 (c) The following grounds, while not controlling the discretion of the
14 court, shall be accorded weight in favor of suspension or probation:

15 (1) The defendant's conduct neither caused nor threatened serious
16 harm;

17 (2) The defendant did not contemplate that his conduct would
18 cause or threaten serious harm;

19 (3) The defendant acted under strong provocation;

20 (4) There were substantial grounds tending to excuse or justify
21 the defendant's conduct, though failing to establish a defense;

22 (5) The victim of the offense induced or facilitated its
23 commission;

24 (6) The defendant has compensated or will compensate the victim
25 of the offense for the damage or injury that he sustained;

26 (7) The defendant has no history of prior delinquency or criminal
27 activity or has led a law-abiding life for a substantial period of time before
28 the commission of the present offense;

29 (8) The defendant's conduct was the result of circumstances
30 unlikely to recur;

31 (9) The character and attitudes of the defendant indicate that he
32 is unlikely to commit another offense;

33 (10) The defendant is particularly likely to respond
34 affirmatively to suspension or probation;

35 (11) The imprisonment of the defendant would entail excessive
36 hardship to him or his dependents;

- 1 (12) The defendant is elderly or in poor health;
- 2 (13) The defendant cooperated with law enforcement authorities in
- 3 his own prosecution or in bringing other offenders to justice.
- 4 (d) When the court suspends the imposition of sentence on a defendant
- 5 or places him on probation, the court shall enter a judgment of conviction
- 6 only if:
- 7 (1) It sentences the defendant to pay a fine and suspends
- 8 imposition of sentence as to imprisonment or places the defendant on
- 9 probation; or
- 10 (2) It sentences the defendant to a term of imprisonment and
- 11 suspends imposition of sentence as to an additional term of imprisonment.
- 12 (3) The entry of a judgment of conviction shall not preclude the
- 13 modification of the original order suspending the imposition of sentence on a
- 14 defendant or placing a defendant on probation following a revocation hearing
- 15 held pursuant to Arkansas Code § 5-4-310 and modifications set within the
- 16 limits of Arkansas Code 5-4-303, 5-4-304, and 5-4-306."

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18 SECTION 2. Arkansas Code 5-4-303 is amended to read as follows:

19 "5-4-303. Conditions.

- 20 (a) If the court suspends imposition of sentence on a defendant or
- 21 places him on probation, it shall attach such conditions as are reasonably
- 22 necessary to assist the defendant in leading a law-abiding life.
- 23 (b) The court shall provide as an express condition of every suspension
- 24 or probation that the defendant not commit an offense punishable by
- 25 imprisonment during the period of suspension or probation.
- 26 (c) If the court suspends imposition of sentence on a defendant or
- 27 places him on probation, it may, as a condition of its order, require that the
- 28 defendant:
- 29 (1) Support his dependents and meet his family responsibilities;
- 30 (2) Work faithfully at suitable employment;
- 31 (3) Pursue a prescribed secular course of study or vocational
- 32 training designed to equip him for suitable employment;
- 33 (4) Undergo available medical or psychiatric treatment, and enter
- 34 and remain in a specified institution, when required for that purpose;
- 35 (5) Participate in a community-based rehabilitative program or
- 36 work-release program which meets the minimum state standards for certification

1 and for which the court may impose reasonable fees or assessments on the
2 defendant to be used in support of said programs;

3 (6) Refrain from frequenting unlawful or designated places or
4 consorting with designated persons;

5 (7) Have no firearms in his possession;

6 (8) Make restitution or reparation to aggrieved parties, in an
7 amount he can afford to pay, for the actual loss or damage caused by his
8 offense;

9 (9) Post a bond, with or without surety, conditioned on the
10 performance of prescribed conditions;

11 (10) Satisfy any other conditions reasonably related to the
12 rehabilitation of the defendant and not unduly restrictive of his liberty or
13 incompatible with his freedom of conscience.

14 (d) Following a revocation hearing held pursuant to Arkansas Code § 5-
15 4-310 and wherein the defendant has been found guilty or has entered a plea of
16 guilty or nolo contendere, the court may:

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

19 (2) Lengthen such periods within the limits set by Arkansas Code
20 5-4-306;

21 (3) Increase the fine within the limits set by Arkansas Code 5-4-
22 201; or

23 (4) Impose a period of confinement within the limits set by
24 Arkansas Code 5-4-304;

25 (5) Impose any conditions which could have been imposed in the
26 original order.

27 ~~(d)~~(e) If the court places a defendant on probation, it may, as a
28 condition of its order, require that the defendant:

29 (1) Report as directed to the court or probation officer and
30 permit the probation officer to visit him at his place of employment or
31 elsewhere;

32 (2) Remain within the jurisdiction of the court unless granted
33 permission to leave by the court or the probation officer;

34 (3) Answer all reasonable inquiries by the court or probation
35 officer and promptly notify the court or probation officer of any change in
36 address or employment.

1 (f) Following a revocation hearing where the defendant continues on a
2 period of suspension of imposition of sentence or a period of probation,
3 nothing shall prohibit the court from revoking the suspension of imposition of
4 sentence or period of probation, and sentencing a defendant to incarceration
5 in the Department of Correction upon finding the defendant guilty at a
6 subsequent revocation hearing.

7 ~~(e)~~(g) If the court suspends the imposition of sentence on a defendant
8 or places him on probation, the defendant shall be given a written statement
9 explicitly setting forth the conditions under which he is being released.

10 ~~(f)~~(h) If the court suspends the imposition of sentence on a defendant
11 or places him on probation conditioned upon his making restitution or
12 reparation under subdivision (c)(8) of this section, the court shall, by
13 concurrence of the victim, defendant, and the prosecuting authority, determine
14 the amount to be paid as restitution. The court shall further, after
15 considering the assets, financial condition, and occupation of the defendant,
16 determine whether restitution shall be total or partial, the amounts to be
17 paid if by periodic payments, and if personal services are contemplated, the
18 reasonable value and rate of compensation for services rendered to the victim.
19 If the court has suspended the imposition of sentence or placed a defendant on
20 probation conditioned upon his making restitution or reparation and the
21 defendant has not satisfactorily made all his payments when the probation
22 period has ended, the court shall have the authority to continue to assert its
23 jurisdiction over the recalcitrant defendant and extend the probation period
24 as it deems necessary or revoke the defendant's suspended sentence.

25 ~~(g)~~(i) If the court places a defendant on probation conditioned upon
26 his paying supervision fees and the defendant has not satisfactorily made all
27 his payments when the probation period has ended, the court shall have the
28 authority to continue to assert its jurisdiction over the defendant and extend
29 the probation period as it deems necessary."
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31 SECTION 3. Arkansas Code 5-4-304 is amended to read as follows:

32 "5-4-304. Confinement as condition of suspension or probation.

33 (a) If the court suspends the imposition of sentence on a defendant or
34 places him on probation, it may require, as an additional condition of its
35 order, that the defendant serve a period of confinement in the county jail,
36 city jail, or other authorized local detentional, correctional, or

1 rehabilitative facility, at whatever time or consecutive or nonconsecutive
2 intervals within the period of suspension or probation as the court shall
3 direct.

4 (b) An order that the defendant serve a period of confinement as a
5 condition of suspension or probation shall not be deemed a sentence to a term
6 of imprisonment and the court need not enter a judgment of conviction before
7 imposing such a condition.

8 (c) Following a revocation hearing held pursuant to Arkansas Code § 5-
9 4-310 and wherein a finding of guilt has been made or the defendant has
10 entered a plea of guilty or nolo contendere, the court may add a period of
11 confinement to be served during the period of suspension of imposition of
12 sentence or period of probation, if no period of confinement was included in
13 the original order placing the defendant on suspended imposition of sentence
14 or probation.

15 ~~(e)~~(d) The period actually spent in confinement pursuant to this
16 section shall not exceed one hundred twenty (120) days in the case of a felony
17 or thirty (30) days in the case of a misdemeanor. For purposes of this
18 subsection, any part of a twenty-four-hour period spent in confinement shall
19 constitute a day of confinement.

20 ~~(d)~~(e) If the suspension or probation of the defendant is subsequently
21 revoked and the defendant is sentenced to a term of imprisonment, the period
22 actually spent in confinement pursuant to this section shall be credited
23 against the subsequent sentence."
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25 SECTION 4. Arkansas Code 5-4-306 is amended to read as follows:

26 "5-4-306. Time period generally - Modification.

27 (a) If the court suspends the imposition of sentence on a defendant or
28 places him on probation, the period of suspension or probation shall be for a
29 definite period of time not to exceed the maximum jail or prison sentence
30 allowable for the offense charged. The court may discharge the defendant at
31 any time.

32 (b) During the period of suspension or probation, the court, on motion
33 of a probation officer or the defendant, or on its own motion, may modify the
34 conditions imposed on the defendant, ~~or~~ impose additional conditions
35 authorized by § 5-4-303, impose additional fines authorized by 5-4-201 and 5-
36 4-303, or impose a period of confinement as authorized by 5-4-304."

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2 SECTION 5. All provisions of this act of a general and permanent nature
3 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
4 Revision Commission shall incorporate the same in the Code.

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6 SECTION 6. If any provision of this act or the application thereof to
7 any person or circumstance is held invalid, such invalidity shall not affect
8 other provisions or applications of the act which can be given effect without
9 the invalid provision or application, and to this end the provisions of this
10 act are declared to be severable.

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12 SECTION 7. All laws and parts of laws in conflict with this act are
13 hereby repealed.

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15 SECTION 8. EMERGENCY CLAUSE. It is hereby found and determined by the
16 Eighty-second General Assembly that McGhee v. State, ___Ark. ___ (Oct. 15,
17 1998) held that a court revoking a suspended sentence or probation and adding
18 a term of confinement as a condition of the suspension or probation, cannot
19 subsequently revoke at a second revocation hearing and impose a term of
20 incarceration. Therefore, in accord with the sentencing policy of the state
21 contained in Arkansas Code 16-90-801(c), which provides that there should be a
22 continuum of sanctions with significant intermediate sanctions (including
23 short terms of confinement) utilized when appropriate. Therefore, an
24 emergency is declared to exist and this act being immediately necessary for
25 the preservation of the public peace, health and safety shall become effective
26 on the date of its approval by the Governor. If the bill is neither approved
27 nor vetoed by the Governor, it shall become effective on the expiration of the
28 period of time during which the Governor may veto the bill. If the bill is
29 vetoed by the Governor and the veto is overridden, it shall become effective
30 on the date the last house overrides the veto.

31 /s/ Vess
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