

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

*As Engrossed: S3/25/99*

# A Bill

SENATE BILL 873

4  
5 By: Senator Kennedy  
6 By: Representative Vess

## For An Act To Be Entitled

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

### Subtitle

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15 "TO ALLOW CIRCUIT COURTS TO INCREASE  
16 CONDITIONS OF PROBATION FOLLOWING A  
17 REVOCATION HEARING."

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

21  
22 SECTION 1. Arkansas Code 5-4-301 is amended to read as follows:

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

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

27 (A) Capital murder;

28 (B) Treason;

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

31 (D) Driving while intoxicated;

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

34 (F) Engaging in a continuing criminal enterprise.

35 (2) The court shall not suspend imposition of sentence or place a  
36 defendant on probation if it is determined, pursuant to § 5-4-502, that the

1 defendant has previously been convicted of two (2) or more felonies.

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

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

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

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

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

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

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

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

20 (3) The defendant acted under strong provocation;

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

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

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

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

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

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

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

36 (11) The imprisonment of the defendant would entail excessive

1 hardship to him or his dependents;

2 (12) The defendant is elderly or in poor health;

3 (13) The defendant cooperated with law enforcement authorities in  
4 his own prosecution or in bringing other offenders to justice.

5 (d) When the court suspends the imposition of sentence on a defendant  
6 or places him on probation, the court shall enter a judgment of conviction  
7 only if:

8 (1) It sentences the defendant to pay a fine and suspends  
9 imposition of sentence as to imprisonment or places the defendant on  
10 probation; or

11 (2) It sentences the defendant to a term of imprisonment and  
12 suspends imposition of sentence as to an additional term of imprisonment.

13 (3) The entry of a judgment of conviction shall not preclude the  
14 modification of the original order suspending the imposition of sentence on a  
15 defendant or placing a defendant on probation following a revocation hearing  
16 held pursuant to Arkansas Code § 5-4-310 and modifications set within the  
17 limits of Arkansas Code 5-4-303, 5-4-304, and 5-4-306."

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19 SECTION 2. Arkansas Code 5-4-303 is amended to read as follows:  
20 "5-4-303. Conditions.

21 (a) If the court suspends imposition of sentence on a defendant or  
22 places him on probation, it shall attach such conditions as are reasonably  
23 necessary to assist the defendant in leading a law-abiding life.

24 (b) The court shall provide as an express condition of every suspension  
25 or probation that the defendant not commit an offense punishable by  
26 imprisonment during the period of suspension or probation.

27 (c) If the court suspends imposition of sentence on a defendant or  
28 places him on probation, it may, as a condition of its order, require that the  
29 defendant:

30 (1) Support his dependents and meet his family responsibilities;

31 (2) Work faithfully at suitable employment;

32 (3) Pursue a prescribed secular course of study or vocational  
33 training designed to equip him for suitable employment;

34 (4) Undergo available medical or psychiatric treatment, and enter  
35 and remain in a specified institution, when required for that purpose;

36 (5) Participate in a community-based rehabilitative program or

1 work-release program which meets the minimum state standards for certification  
 2 and for which the court may impose reasonable fees or assessments on the  
 3 defendant to be used in support of said programs;

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

6 (7) Have no firearms in his possession;

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

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

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

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

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

20 (2) Lengthen such periods within the limits set by Arkansas Code  
 21 5-4-306;

22 (3) Increase the fine within the limits set by Arkansas Code 5-4-  
 23 201; or

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

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

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

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

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

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

1 address or employment.

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

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

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

26 ~~(g)~~(i) If the court suspends the imposition of sentence on a defendant  
27 or places him on probation and if the defendant was determined to be indigent  
28 and was appointed counsel, who was paid by the county, then the court, as a  
29 condition thereof, may require the defendant to pay, in an amount he can  
30 afford to pay, to the county the amount of any indigent attorney's fee  
31 expended on his behalf. If the attorney's fees were paid from the county  
32 general fund, they shall be returned to the county general fund. If the  
33 attorney's fees were expended from the fund pursuant to § 14-20-102, then the  
34 money shall be placed back in that fund.

35 ~~(h)~~(j) If the court places a defendant on probation conditioned upon  
36 his paying supervision fees and the defendant has not satisfactorily made all

1 his payments when the probation period has ended, the court shall have the  
2 authority to continue to assert its jurisdiction over the defendant and extend  
3 the probation period as it deems necessary.”

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5 SECTION 3. Arkansas Code 5-4-304 is amended to read as follows:

6 “5-4-304. Confinement as condition of suspension or probation.

7 (a) If the court suspends the imposition of sentence on a defendant or  
8 places him on probation, it may require, as an additional condition of its  
9 order, that the defendant serve a period of confinement in the county jail,  
10 city jail, or other authorized local detentional, correctional, or  
11 rehabilitative facility, at whatever time or consecutive or nonconsecutive  
12 intervals within the period of suspension or probation as the court shall  
13 direct.

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

18 (c) Following a revocation hearing held pursuant to Arkansas Code § 5-  
19 4-310 and wherein a finding of guilt has been made or the defendant has  
20 entered a plea of guilty or nolo contendere, the court may add a period of  
21 confinement to be served during the period of suspension of imposition of  
22 sentence or period of probation, if no period of confinement was included in  
23 the original order placing the defendant on suspended imposition of sentence  
24 or probation.

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

30 ~~(d)~~(e) If the suspension or probation of the defendant is subsequently  
31 revoked and the defendant is sentenced to a term of imprisonment, the period  
32 actually spent in confinement pursuant to this section shall be credited  
33 against the subsequent sentence.”

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35 SECTION 4. Arkansas Code 5-4-306 is amended to read as follows:

36 “5-4-306. Time period generally - Modification.

1 (a) If the court suspends the imposition of sentence on a defendant or  
2 places him on probation, the period of suspension or probation shall be for a  
3 definite period of time not to exceed the maximum jail or prison sentence  
4 allowable for the offense charged. The court may discharge the defendant at  
5 any time.

6 (b) During the period of suspension or probation, the court, on motion  
7 of a probation officer or the defendant, or on its own motion, may modify the  
8 conditions imposed on the defendant, ~~or~~ impose additional conditions  
9 authorized by § 5-4-303, impose additional fines authorized by 5-4-201 and 5-  
10 4-303, or impose a period of confinement as authorized by 5-4-304."

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

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

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

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25 SECTION 8. EMERGENCY CLAUSE. It is hereby found and determined by the  
26 Eighty-second General Assembly that McGhee v. State, \_\_\_ Ark. \_\_\_ (Oct. 15,  
27 1998) held that a court revoking a suspended sentence or probation and adding  
28 a term of confinement as a condition of the suspension or probation, cannot  
29 subsequently revoke at a second revocation hearing and impose a term of  
30 incarceration. Therefore, in accord with the sentencing policy of the state  
31 contained in Arkansas Code 16-90-801(c), which provides that there should be a  
32 continuum of sanctions with significant intermediate sanctions (including  
33 short terms of confinement) utilized when appropriate. Therefore, an  
34 emergency is declared to exist and this act being immediately necessary for  
35 the preservation of the public peace, health and safety shall become effective  
36 on the date of its approval by the Governor. If the bill is neither approved

1 nor vetoed by the Governor, it shall become effective on the expiration of the  
2 period of time during which the Governor may veto the bill. If the bill is  
3 vetoed by the Governor and the veto is overridden, it shall become effective  
4 on the date the last house overrides the veto.

5 */s/ Kennedy*